

# General Conditions

## Clause 1. Performance

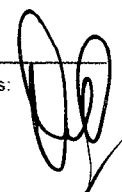
- Building contractor's obligations* 1.1 The **building contractor** must:
- (a) complete the **works** in accordance with this **contract**; and
  - (b) comply with all laws and lawful requirements of any **statutory or other authority** with respect to the carrying out of the **works**.
- Owner's obligation* 1.2 The **owner** must pay the **contract price**, adjusted by any additions or deductions made under this **contract**, in the manner and at the times stated in this **contract**.

## Clause 2. Commencement

- Date for commencement* 2.1 **Commencement** is to take place on or before the **anticipated start date** stated in **item 14** or within **20 working days** from the day that:
- (a) the **owner** gives the **building contractor** evidence of the **owner's** title to the **land** under Clause 6;
  - (b) the **owner** gives the **building contractor** evidence of the **owner's** capacity to pay the **contract price** under Clause 7.1;
  - (c) where **item 5** is specified as subject to finance, the **owner** obtains finance in accordance with Clause 7.2;
  - (d) the **owner** establishes the **security account** under Clause 8;
  - (e) the **owner** gives the **building contractor** possession of the **site** under Clause 10;
  - (f) where the name of the **lending body** is stated in **item 6**, the **owner** gives the **building contractor** a notice from the **lending body** that construction of the **works** may commence; and
  - (g) the **building contractor** receives all permissions, consents and approvals required from the relevant **statutory or other authority** under Clause 2.3,
- whichever is the later.
- When essential matters (a) to (f) not satisfied* 2.2 If any of the requirements set out in Clause 2.1(a) to (f) (inclusive) are not satisfied by the **anticipated start date**, the **building contractor** may, by notice in writing to the **owner**,
- (a) end this **contract**, in which case, Clause 28.8 applies; or
  - (b) extend the time for the **owner** to satisfy the requirements of Clause 2.1 and, at the option of the **building contractor**, increase the **contract price** under Clause 16.
- Planning and Building Approvals* 2.3 The party named in **item 10** of **Schedule 1** is responsible for obtaining any planning approval, building permits and/or statutory consent that is required for the **contract works**. The party obtaining such approvals must take all reasonable steps to do so by the **anticipated start date**.
- 2.4 If the **building contractor** is the party named at **item 10** of **Schedule 1**, the **owner** must sign all documents and do all acts as requested by the **building contractor** to obtain all permissions, consents and approvals required from the relevant **statutory or other authority**.

Owner Copy



T.D. 

- 2.5 If the necessary planning approval and/or building permits are not obtained by the **anticipated start date**, then if:
- (a) neither party is at fault, either party may bring this **contract** to an end by giving notice **in writing** to the other;
  - (b) the **building contractor** is at fault, the **owner** may:
    - (i) bring this **contract** to an end by giving the **building contractor** notice **in writing**; or
    - (ii) extend the time for the **building contractor** to obtain the necessary planning approval and/or building permits, without any increase to the **contract price**, but no more than 30 days.
  - (c) the **owner** is at fault, the **building contractor** may:
    - (i) bring this **contract** to an end by giving the **owner** notice **in writing**, in which case, Clause 28.7 applies; or
    - (ii) extend the time for the **building contractor** to obtain the necessary planning approval and/or building permits in accordance with Clause 2.2(b).
- 2.6 If this **contract** is ended under Clause 2.5(a), the **building contractor** is entitled to a reasonable price for the work done to date. This price:
- (a) may include an amount for the preparation of any plans and specifications, any engineer's design and soil test reports and survey information - unless these have been allowed for in a separate contract or agreement; and
  - (b) the costs of materials ordered from suppliers that are non returnable; but must not include an amount for work on the building **site** for which planning or building approval was not obtained.
- Commencement of building period 2.7 The **building period** starts on the actual day of **commencement**.
- Building contractor to ensure commencement 2.8 The **building contractor** must ensure **commencement** occurs as soon as is reasonably possible.
- Building contractor to provide commencement notice 2.9 Within 10 **working days** of **commencement** the **building contractor** is to provide the **owner** with a signed notice stating:
- (a) the actual day of **commencement** on the **site**; and
  - (b) the date for **practical completion**.

### Clause 3. Completion and progress

- Building contractor to complete the works 3.1 The **building contractor** must complete the **works** on or before the end of the **building period** stated in item 13 as extended under Clause 17.
- Increase in contract price 3.2 If, after **commencement**, progress of the **works** is delayed by a cause for which the **owner** is responsible the **contract price** may, at the option of the **building contractor**, be increased under Clause 16.

### Clause 4. Progress payments

- Owner to pay progressively 4.1 The **owner** must pay the **contract price** adjusted by any additions or deductions made under this **contract** progressively at each **stage**.
- Owner to pay deposit 4.2 The **owner** must pay the **deposit** stated in **Schedule 2** when the **owner** signs this **contract**.
- Building contractor to claim 4.3 The **building contractor** must give the **owner** a written claim for a progress payment for the completion of each **stage**.

Owner Copy



T.D.

- |  |     |   |
|--|-----|---|
| <i>Contents of progress claim</i>                | 4.4 | A progress claim should state: <ul style="list-style-type: none"> <li>(a) the amount claimed for the <b>stage</b>;</li> <li>(b) the amount of any addition or deduction for <b>variations</b>;</li> <li>(c) the amount of any addition or deduction due to a prime cost item or provisional sum item;</li> <li>(d) the amount of any other addition to or deduction from the <b>contract price</b> made under this <b>contract</b>; and</li> <li>(e) the sum of the above amounts.</li> </ul> |
| <i>Due date for payments</i>                     | 4.5 | The <b>owner</b> must pay a progress claim to the <b>building contractor</b> within <b>5 working days</b> of receiving the progress claim.  |
| <i>No certificates required</i>                  | 4.6 | The <b>building contractor</b> is not required to give any certificate of approval from any relevant <b>statutory or other authority</b> to the <b>owner</b> as a precondition to the payment of a progress claim and <b>final claim</b> .  |
| <i>Owner liable if lending body does not pay</i> | 4.7 | The <b>owner</b> must ensure the <b>lending body</b> , if any, pays a progress claim by the due date. If payment is not made by the due date, the <b>building contractor</b> is entitled to claim <b>default interest</b> under Clause 33.  |
| <i>Payment on account</i>                        | 4.8 | Other than in relation to the final claim, payment of a progress claim is on account only and any such payment is not to be taken as evidence against or an admission that <b>works</b> have been performed in accordance with the contract.  |
| <i>Right of set-off</i>                          | 4.9 | Subject to the rights provided in Clause 32.2, the <b>owner</b> is not entitled to set-off against, or in reduction of any amount due to the <b>building contractor</b> under this contract, any claim that the <b>owner</b> may have against the <b>building contractor</b> .  |

## Clause 5. Direction to the lending body

- |  |     |   |
|--|-----|---|
| <i>Lending body may directly pay the building contractor</i> | 5.1 | The <b>lending body</b> may pay all money advanced to the <b>owner</b> for payment of all or part of the <b>contract price</b> , adjusted by any additions or deductions made under this <b>contract</b> , directly to the <b>building contractor</b> . |
| <i>Direction to the lending body</i>                         | 5.2 | The <b>owner</b> must give a direction to the <b>lending body</b> to pay all such money advanced by the <b>lending body</b> directly to the <b>building contractor</b> .  |

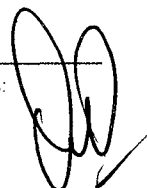
## Clause 6. Evidence of title

- |   |     |   |
|---|-----|---|
| <i>Owner to give evidence of title</i>                              | 6.1 | As soon as practicable after the date of this <b>contract</b> , the <b>owner</b> must give the <b>building contractor</b> evidence, to the <b>building contractor's</b> satisfaction, of the <b>owner's</b> title to the <b>land</b> .                        |
| <i>Owner warrants title and description</i>                         | 6.2 | The <b>owner</b> warrants: <ul style="list-style-type: none"> <li>(a) that the <b>owner</b> is entitled to build on the <b>land</b>; and</li> <li>(b) the accuracy of the description of the <b>land</b> as set out in <b>Schedule 1, item 11</b>.</li> </ul> |
| <i>Owner warrants disclosure of restrictions affecting the site</i> | 6.3 | The <b>owner</b> warrants that all easements, covenants, caveats and zoning restrictions that may affect the <b>works</b> being carried out and constructed on the <b>site</b> are disclosed in <b>Schedule 1, item 12</b> .                                  |

## Clause 7. Finance and evidence of capacity to pay

- |   |     |   |
|---|-----|---|
| <i>Owner to give evidence of ability to pay</i> | 7.1 | As soon as practicable after the date of this <b>contract</b> , the <b>owner</b> must give the <b>building contractor</b> evidence, to the <b>building contractor's</b> |
|---|-----|---|



T.D. 

- Subject to finance* 7.2 satisfaction, of the **owner's** capacity to pay the **contract price** by way of the progress payments and at the **stages** specified in **Schedule 2**.  
Where the parties have nominated at **item 5** for this **contract** to be subject to finance then:
- (a) this **contract** is conditional upon the **owner** within 10 **working days** from the date of this **contract** obtaining written approval from the **lending body** stated in **item 6** for a **loan** in an amount sufficient to enable the **owner** to pay the **contract price**;
  - (b) the **owner** must apply to the **lending body** and use best endeavours to sign all documents and do all acts necessary to obtain **loan** approval;
  - (c) the **owner** must within the time specified in Clause 7.2(a) give to the **building contractor** a notice stating whether the **lending body** has either approved or refused to approve the **loan**;
  - (d) unless the **owner** notifies the **building contractor** that the **lending body** has refused to approve the **loan**, this **contract** will cease being conditional upon such approval; and
  - (e) if the **owner** gives the **building contractor** a notice that the **lending body** has refused to approve the **loan**, then this **contract** will be at an end in which case all monies paid by the **owner** under this **contract** will be refunded except for the **building contractor's** reasonable expenses.
- Owner to give evidence of ability to pay on request* 7.3 From time to time where reasonably requested by the **building contractor**, the **owner** must give the **building contractor** evidence, to the **building contractor's** satisfaction, of the **owner's** capacity to pay to the **building contractor** the balance of the **contract price**, adjusted by any additions or deductions made under this **contract**.

Owner Copy

## Clause 8. Security account

- Owner to establish security account* 8.1 The **owner** must:
- (a) if Item 6A so requires, on or before **commencement**; or otherwise
  - (b) from time to time when so requested by the **building contractor**, establish a **security account**, and/or deposit into a **security account** an amount of money equal to the **security account money** or any additional amount to reach the total required for the **security account money**.
- Withdrawals* 8.2 Withdrawals from the **security account** require the signature of both the **owner** and the **building contractor**.
- Interest* 8.3 The **owner** is entitled to all interest earned on the investment of the **security account money**.
- Use of security account money* 8.4 The **security account money** must be applied to pay the **contract price**, adjusted by any additions or deductions made under this **contract** and other amounts due to the **building contractor** under this **contract**.
- Lending body's discretion* 8.5 Where the **owner** is to pay the **contract price**, adjusted by any additions or deductions made under this **contract**, using **security account money** and other money from the **lending body**, the priority of payments will be at the **lending body's** discretion.
- Entitlement to security account money* 8.6 If:
- (a) the **owner** does not pay an amount to the **building contractor** by the due date for payment; or
  - (b) this **contract** is ended,

T.D.



T.D.

Del

~~the **building contractor** is entitled to the money in the **security account** to the extent of any money due and owing to the **building contractor**. The **owner** is only entitled to the balance in the **security account**, after payment of the **contract price**, adjusted by any additions or deductions made under this **contract**, and other amounts due to the **building contractor** under this **contract**.~~

## Clause 9. Site information and survey

- |                                     |     |  |
|-------------------------------------|-----|--|
| <i>Owner to identify the site</i>   | 9.1 | Unless stated elsewhere in this <b>contract</b> , the <b>owner</b> must, prior to <b>commencement</b> , identify the <b>land</b> , the <b>site</b> and the siting of the <b>works</b> .  |
| <i>Owner to survey</i>              | 9.2 | If, in the <b>building contractor's</b> opinion, the boundaries of the <b>land</b> or the <b>site</b> or the siting of the <b>works</b> are unclear, the <b>building contractor</b> must give the <b>owner</b> a notice in <b>writing</b> asking the <b>owner</b> to provide a survey of the <b>land</b> or the <b>site</b> , as required. |
| <i>If the owner does not survey</i> | 9.3 | If the <b>owner</b> does not provide a survey within 5 <b>working days</b> of the <b>building contractor</b> giving such notice, the <b>owner</b> is deemed to have requested a <b>variation</b> for the <b>building contractor</b> to obtain the survey and Clause 20 applies.  |

## Clause 10. Site possession and access

- |   |      |  |
|---|------|--|
| <i>Owner to give exclusive possession</i> | 10.1 | The <b>owner</b> must, as soon as practicable after the date of this <b>contract</b> , give the <b>building contractor</b> exclusive possession of the <b>site</b> to carry out the <b>works</b> .   |
| <i>All weather access</i>                 | 10.2 | The <b>owner</b> must provide <b>all weather access</b> . If the <b>owner</b> does not provide <b>all weather access</b> and the <b>building contractor</b> is required to carry out extra work, the <b>building contractor</b> may request a <b>variation</b> in accordance with Clause 20 to carry out such extra work.  |
| <i>Owner not to impede</i>                | 10.3 | The <b>owner</b> , a person authorised by the <b>owner</b> and officers of the <b>lending body</b> :<br>(a) must not interfere with:<br>(i) the <b>building contractor's</b> access or possession of the <b>site</b> ;<br>or<br>(ii) the progress of the <b>works</b> ;<br>(b) must not:<br>(i) make inquiry of;<br>(ii) issue directions to; or<br>(iii) give instructions to,<br>the <b>building contractor's</b> workers or subcontractors. Communication must only be with the <b>building contractor</b> ; and<br>(c) may only have access to the <b>works</b> under the <b>building contractor's</b> supervision, at reasonable times and after giving reasonable prior notice in <b>writing</b> , for the purposes of inspecting the progress of the <b>works</b> . |
| <i>Owner to pay costs of interference</i> | 10.4 | Notwithstanding any other provision of this <b>contract</b> , the <b>owner</b> is to pay the <b>building contractor</b> , on demand, any additional costs the <b>building contractor</b> incurs because the <b>owner</b> or the <b>owner's</b> representative interferes with the carrying out of the <b>works</b> .   |

Owner Copy



T.D.

- |  |      |   |
|--|------|---|
| <i>Building contractor to claim interference costs</i> | 10.5 | To claim payment from the <b>owner</b> , the <b>building contractor</b> must give the <b>owner</b> notice <b>in writing</b> of such costs within 5 <b>working days</b> after the interference comes to the <b>building contractor's</b> knowledge.  |
| <i>Owner liable for damage</i>                         | 10.6 | The <b>owner</b> will be solely responsible for any loss or damage sustained by the <b>owner</b> if the <b>owner</b> accesses the <b>site</b> without the <b>building contractor's</b> prior approval <b>in writing</b> .   |
| <i>Owner indemnifies the building contractor</i>       | 10.7 | The <b>owner</b> indemnifies the <b>building contractor</b> against any liability, loss, claim or proceeding in respect of any injury to any person or any loss or damage to any property on the <b>site</b> to the extent that such injury, loss or damage is connected with the <b>owner's</b> breach of this Clause. |

## Clause 11. Compliance with requirements of local and other authorities


- |  |      |   |
|--|------|---|
| <i>Requirements of statutory and other authorities</i> | 11.1 | The <b>building contractor</b> must, on behalf of the <b>owner</b> , comply with any lawful requirement of any <b>statutory or other authority</b> but only to the extent that such requirement relates to carrying out and completing the <b>works</b> .   |
| <i>Variation to comply with a requirement</i>          | 11.2 | The <b>building contractor</b> must: <ul style="list-style-type: none"> <li>(a) notify the <b>owner</b> of any extra work required to comply with Clause 11.1; and</li> <li>(b) request a <b>variation</b> under Clause 20 to carry out that extra work.</li> </ul>   |
| <i>Owner to do acts</i>                                | 11.3 | The <b>owner</b> must sign all documents and do all acts as requested by the <b>building contractor</b> to obtain all permissions, consents and approvals required from the relevant <b>statutory or other authority</b> .  |
| <i>Owner's works and final certificate</i>             | 11.4 | If the <b>owner</b> is to carry out other works and the failure to complete those works on or before <b>practical completion</b> prevents the <b>building contractor</b> from obtaining a final certificate from the relevant <b>statutory or other authority</b> , the <b>owner</b> releases the <b>building contractor</b> from any obligation to obtain the final certificate. |
| <i>Certificate of inspection</i>                       | 11.5 | If the <b>building contractor</b> receives a certificate of inspection from a third party then the <b>building contractor</b> must provide a copy of this document to the <b>owner</b> as soon as practicable after receiving this document.  |

## Clause 12. Use of plans

- |                                     |      |   |
|-------------------------------------|------|---|
| <i>Where the owner is to supply</i> | 12.1 | If the <b>owner</b> is to supply the plans to the <b>building contractor</b> then, without cost to the <b>building contractor</b> , the <b>owner</b> must give the <b>building contractor</b> 5 copies of the plans to enable the <b>building contractor</b> to carry out the <b>works</b> .  |
| <i>Indemnity</i>                    | 12.2 | Each party indemnifies the other party for all costs and expenses incurred relating to any claim for breach of copyright if the <b>building contractor</b> carries out the <b>works</b> according to plans which are: <ul style="list-style-type: none"> <li>(a) supplied by that party;</li> <li>(b) prepared under instruction of that party; or</li> <li>(c) prepared from sketches provided by that party.</li> </ul> |
| <i>Grant of licence</i>             | 12.3 | Where the <b>building contractor</b> draws the plans, the <b>owner</b> agrees that the <b>building contractor</b> retains copyright in those plans but the <b>building contractor</b> grants to the <b>owner</b> a licence to cause the construction of the <b>works</b> by the <b>building contractor</b> in accordance with those plans.  |

Owner Copy



T.D. 

- Licence fee* 12.4 The parties agree that the reasonable fee for the licence granted to the **owner** is 5% of the **contract price**. It is acknowledged that the **contract price** includes this licence fee.
- Unauthorised use of plans* 12.5 If the **owner** uses the **building contractor's** plans without the **building contractor's** written consent, other than under the above licence, the **owner** must pay to the **building contractor** on demand the licence fee referred to in Clause 12.4.

## Clause 13. Discrepancy or error in documentation

- Owner warrants contract documents* 13.1 The **owner** warrants the accuracy of the **contract documents** supplied by the **owner** and the suitability of the design, materials and methods of working each specified therein.
- Notice of errors* 13.2 If either party becomes aware of any error, ambiguity or inconsistency in or between the **contract documents**, that party must, within 5 **working days** of becoming aware, give the other party written notice detailing the problem.
- Owner to instruct* 13.3 The **owner** must within 5 **working days** of becoming aware of such a problem, give to the **building contractor** such written instructions as are necessary to enable the **building contractor** to proceed with the **works**.
- Owner fails to instruct* 13.4 If the **owner** does not give written instructions as required by Clause 13.3 the **owner** is deemed to have instructed that the **building contractor** carry out the **works** using the order of precedence.
- Cost of any extra work* 13.5 If:  
(a) compliance with the **owner's** instructions involves more or less cost than a reasonable **building contractor** would have anticipated on the signing of this **contract**; and  
(b) the problem is not solely caused by documents provided by the **building contractor**,  
the **owner** is deemed to have also asked for a **variation** for the **building contractor** to comply with those instructions and Clause 20 applies.
- Order of precedence* 13.6 The order of precedence is:  
(a) any special conditions;  
(b) these general conditions;  
(c) the specifications;  
(d) the plans, then  
(e) other documents in the order listed in **item 16**.

Owner Copy

## Clause 14. Insurance and risk

- Building contractor to have public liability and works insurance cover* 14.1 The **building contractor** must:  
(a) prior to **commencement**, take out insurance to cover the public liability risk referred to in Clause 14.4 for an amount of not less than \$10 million for any one claim and maintain such cover until the **date of practical completion**; and  
(b) prior to **commencement**, take out insurance cover against loss or damage to the **works** in an amount equal to the **contract price** and maintain such cover until the **date of practical completion**; and  
(c) if requested by the **owner**, give to the **owner** evidence of such insurance cover.



T.D. [Signature]

- Extent of works insurance cover* 14.2 Such insurance must:
- (a) note the insured as jointly being the **building contractor** and the **owner**; and
  - (b) be against all liability, loss, action, claim or proceeding whatsoever including without limitation in respect of fire, explosion, earthquake, lightning, flood, storm and tempest or civil commotion.
- Risk of the works* 14.3 The **building contractor** is not responsible for loss or damage to the building **works** from the **date of practical completion**.
- Public liability risk* 14.4 The **building contractor** is liable for and indemnifies the **owner** against any liability, loss, claim or proceeding in respect of:
- (a) any personal injury; or
  - (b) damage to any property real or personal,
- which may be occasioned by or arise out of the carrying out of the **works** to the extent that it is due to the negligent or wilful act, omission or default of the **building contractor** or the **building contractor's** contractors or employees (the "public liability risk").
- WorkCover* 14.5 The **building contractor** must comply with all obligations imposed on the **building contractor** under the WorkCover legislation.
- Building contractor not liable for certain property* 14.6 The **building contractor** is not liable for any liability, loss, claim or proceeding in respect of any property placed on the **site** without the **building contractor's** written approval.

## Clause 15. Unforeseen circumstances

- Building contractor to give notice of unforeseen circumstances* 15.1 If the **building contractor** becomes aware of **unforeseen circumstances**, the **building contractor** must promptly notify the **owner** in writing and cease the carrying out of the **works**.
- Effect of unforeseen circumstances* 15.2 Subject to Clause 15.5, if the **unforeseen circumstances** differ from those either:
- (a) disclosed to the **building contractor** prior to this **contract** being signed; or
  - (b) shown in the **contract documents**,
- and:
- (c) if the effect of that difference requires more or less work than that which a reasonable **building contractor** would have anticipated on the signing of this **contract**; and
  - (d) that work is not provided for elsewhere in this **contract**
- then the **building contractor** is to ask for a **variation** to carry out that work under Clause 20.
- Building contractor may end contract* 15.3 If the **owner** does not approve within 5 **working days** on and from the date the **building contractor** gives the **owner** a **variation document**, the **building contractor** may at any time thereafter, do either or both of the following:
- (a) suspend the carrying out of the **works** under Clause 19;
  - (b) end this **contract** under Clause 28.
- Building contractor's entitlement to extra costs* 15.4 If the **owner** agrees to such **variation in writing**, the **building contractor** is only entitled to payment of an additional amount for such work where the **building contractor** had the **foundations data** when the **building contractor** entered into this **contract**, and if the need for the additional amount can not be established from that data.

Owner Copy



T.D.

- Building contractor to carry out the work* 15.5 Notwithstanding the above, the **building contractor** must, if Clause 15.2 does not apply, carry out that work at the **building contractor's** cost.


## Clause 16. Delay Damages

- Delays to commencement of works* 16.1 Where **commencement** is delayed for longer than 4 weeks on and after the **anticipated start date** due to a cause of delay for which the **building contractor** is not responsible, the **owner** must pay to the **building contractor** as a debt due and payable, the higher of the amount:
- (a) of the reasonable costs to be incurred by the **building contractor** because of the delay; or
  - (b) representing 0.125% of the **contract price** for each week or part of a week of the delay after the first 4 weeks of the delay
- Delays to carrying out the works after commencement* 16.2 Where, after **commencement**, the carrying out of the **works** are delayed, by a cause for which the **owner** is responsible, the **owner** must pay to the **building contractor**, as a debt due and payable, the higher of the amount:
- (a) of the costs incurred by the **building contractor** because of the delay; or
  - (b) representing 0.125% of the **contract price** for each **day** of the delay.

## Clause 17. Delays and extensions of time

- Building contractor entitled to extend time* 17.1 The **building contractor** is entitled to a reasonable extension of time to the **building period** if **commencement** or the carrying out of the **works** is delayed by a claimable delay.
- When the building contractor is entitled to extend time* 17.2 A claimable delay means a cause beyond the **building contractor's** sole control that was not reasonably foreseeable at the time the **building contractor** entered into this **contract** including but not limited to:
- (a) a **variation** requested by the **owner** or a request by the **owner** for a **variation**;
  - (b) a **variation** requested by the **building contractor** if the need for the **variation** could not have been reasonably foreseen at the date of this **contract**;
  - (c) a **time allowance** in excess of the allowance for that cause of delay stated in **item 13**;
  - (d) an act of God, fire, explosion, earthquake or civil commotion;
  - (e) an industrial dispute;
  - (f) a dispute with adjoining or neighbouring residents or owners;
  - (g) anything done or not done by the **owner**;
  - (h) delays in getting any approvals;
  - (i) a delay in the supply of materials selected by the **owner**;
  - (j) the need for a survey of or other report in relation to the **site**;
  - (k) the industry shutdown being a 3 week period commencing on or about 22 December in each year, if construction during the Christmas period could not have been reasonably foreseen at the date of this contract; or
  - (l) the **owner** refusing to agree to a **variation** requested by the **building contractor** under Clause 10.2.

Owner Copy

T.D. 

- The building contractor is to notify* 17.3 The **building contractor** is to give the **owner** written notice of the extension of time detailing both:  
(a) the cause of the delay; and  
(b) the extension of time, within 10 **working days** of when the **building contractor** became aware of both the cause and the extent of the delay, or when the **building contractor** ought to have become aware of the cause and extent of the delay.
- Building contractor can lodge more than one extension of time* 17.4 Nothing in Clause 17.3 shall limit or prevent the **building contractor** from claiming more than one extension of time if a particular claimable delay has more than one effect on the carrying out of the **works**
- Owner must not unreasonably refuse, and must approve* 17.5 The **owner** must reply to the **building contractor's** claim for an extension of time **in writing** within 5 **working days** of receiving the **building contractor's** written claim. The **owner** must not unreasonably refuse to approve an extension of time.
- Building contractor to provide copy of approved claim* 17.6 The **building contractor** must give the **owner** a copy of the claim for an extension of time, signed by the **building contractor**, within 5 **working days** of the **owner** approving the claim.
- If the owner disputes* 17.7 If the **owner** disputes the **building contractor's** claim for an extension of time the **owner** must provide the **building contractor** a notice **in writing** within 5 **working days** of receiving the **building contractor's** written claim:  
(a) disputing the extension of time; and  
(b) detailing the reasons why the extension of time is disputed.
- Allowance for omissions* 17.8 The **building contractor** must allow a reasonable reduction to the **building period** if, by **variation**, work is omitted from the **works**.

## Clause 18. Compliance with Work Health & Safety Act

- Principal contractor* 18.1 The **building contractor** is the "principal contractor" for the purposes of the Work Health and Safety Act 2011, and Work Health and Safety Regulation 2011.
- Right to exclude* 18.2 The **building contractor** may exclude or remove from the **site** any person who fails to comply with the requirements of the Work Health and Safety Act 2011, and Work Health and Safety Regulation 2011.

## Clause 19. Suspension of works

- Building contractor's right to suspend* 19.1 The **building contractor** may by written notice to the **owner** suspend the carrying out of the **works** if:  
(a) the **owner** does not pay a progress claim as required by Clause 4;  
(b) the **owner** does not give the **building contractor** evidence, satisfactory to the **building contractor**, of the **owner's** capacity to pay the balance of the **contract price** when requested by the **building contractor** under Clause 7.3;  
(c) the **owner** enters the **site** in breach of Clause 10;  
(d) the **owner** does not give an instruction within 5 **working days** of becoming aware of a problem under Clause 13;  
(e) the **building contractor** gives notice **in writing** of **unforeseen circumstances** under Clause 15 and the **owner** fails to agree to a **variation** within 5 **working days** of receiving the **building contractor's** request;



T.D.

- (f) the **owner** objects to the **building contractor's** selection of a substitute prime cost item in accordance with Clause 21;
- (g) the **owner** or the **owner's** contractors when supplying materials or goods or carrying out any work breach the requirements of Clause 24;
- (h) the **owner** takes control of, possession of or uses the **works** or any part of the **works** without the **building contractor's** written consent, prior to payment of the **final claim**;
- (i) any dispute or difference between the **owner** and the **building contractor** has been referred to the Queensland Building and Construction Commission, and/or the Queensland Civil and Administrative Tribunal under Clause 37;
- (j) the **owner** unreasonably refuses to approve the **building contractor's** extension of time claim **in writing** under Clause 17;
- (k) the **owner** is otherwise in breach of this **contract**.

<i>Building contractor to recommence</i>	19.2	The <b>building contractor</b> must recommence the carrying out of the <b>works</b> within a reasonable time after the <b>owner</b> gives the <b>building contractor</b> notice <b>in writing</b> that the reason for the suspension no longer exists.
<i>Cost of suspension and recommencement</i>	19.3	The <b>owner</b> must, on demand, pay to the <b>building contractor</b> , in addition to any other amounts the <b>building contractor</b> may have a right to claim, the <b>building contractor's</b> costs of suspending and recommencing the <b>works</b> including the <b>building contractor's</b> margin applied to those costs.
<i>No waiver</i>	19.4	The <b>building contractor's</b> exercise of the right of suspension does not prevent the <b>building contractor</b> from exercising any right to end this <b>contract</b> under Clause 28 in regard to the same occurrence.
<i>Days not forming part of building period</i>	19.5	Any <b>days</b> which are subject to a suspension of <b>works</b> under Clause 19.1, do not form part of the <b>building period</b> .

## Clause 20. Variations

<i>Contents of a variation document</i>	20.1	A <b>variation document</b> must be <b>in writing</b> , in readily legible English, and in all cases, state; <ul style="list-style-type: none"> <li>(a) the work required to carry out the <b>variation</b>;</li> <li>(b) the date of the request of the <b>variation</b>;</li> <li>(c) the price of the <b>variation</b>;</li> <li>(d) for an increase in <b>contract price</b>, when that price becomes payable, or for a decrease in the <b>contract price</b>, when the decrease is to be accounted for;</li> <li>(e) the change to the <b>contract price</b> because of the <b>variation</b>; and</li> <li>(f) if there will be a delay because of the <b>variation</b>, a reasonable estimate of that delay.</li> </ul>
<i>Building contractor to give copy of variation document</i>	20.2	The <b>building contractor</b> must give the <b>owner</b> a copy of the <b>variation document</b> before the first of the following happens: <ul style="list-style-type: none"> <li>(a) 5 <b>working days</b> elapse from the day the <b>building contractor</b> and the <b>owner</b> agree to the <b>variation</b>; or</li> <li>(b) any work the subject of the <b>variation</b> starts.</li> </ul>
<i>Variation to be agreed in writing</i>	20.3	The <b>owner</b> must agree to the <b>variation in writing</b> prior to the <b>building contractor</b> commencing the <b>variation</b> works.
<i>Where the owner does not agree to variation</i>	20.4	If a <b>variation</b> is agreed and the <b>owner</b> has not, within 5 <b>working days</b> of the <b>building contractor</b> giving the <b>owner</b> a <b>variation document</b> , approved that <b>variation in writing</b> the <b>building contractor</b> may withdraw the request or acceptance, as applicable.

Owner Copy



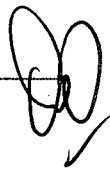
T.D.

- Where work is required urgently* 20.5 Notwithstanding the above, the **building contractor** is not required to create a **variation document** before carrying out the varied work if that work is required to be carried out urgently and it is not reasonably practicable in the particular circumstances to do so.
- If the price is not agreed* 20.6 If the price of a **variation** is not agreed, the price is:  
 (a) for additional work, the reasonable price for that work including an amount for the **building contractor's margin**; and  
 (b) for omitted work, the reasonable price for that work.
- Payment of variation* 20.7 The price of a **variation** is due and payable at the next progress payment after it is carried out unless a different time is agreed.
- Owner must not refuse where work is required by law* 20.8 The **owner** must not refuse a request by the **building contractor** for a **variation** where the **variation** is required for the **works** to comply with the law.
- Natural materials* 20.9 The **owner** acknowledges that the colour and grain of timber, granite and other natural materials can vary. The **building contractor** is to use reasonable endeavours to match the colour or grain of any sample selected by the **owner** but is under no liability if there is a difference and such a difference is not a **variation**.

## Clause 21. Prime cost and provisional sum items

- Owner to give notice of selection* 21.1 The **owner** must give the **building contractor** written notice of the **owner's** selection of a prime cost item in sufficient time to ensure that there is no delay to the carrying out of the **works**.
- Alternative selection* 21.2 If a prime cost item selected by the **owner** is unavailable, the **owner** must give the **building contractor** written notice of an alternative selection within 5 **working days** of the **building contractor** advising of the unavailability.
- Building contractor to give notice of substitute* 21.3 If the **owner** does not give an alternative selection, the **building contractor** may give the **owner** written notice of the **building contractor's** intention to select an alternative item that is similar in quality to the unavailable item including details of the proposed alternative item.
- Owner to agree or reject substitute* 21.4 If within 5 **working days** of receiving the **building contractor's** notice the **owner** does not give the **building contractor** written objection to the alternative item, the **owner** is deemed to have agreed to that alternative item. If the **owner** does object, the **building contractor** may suspend the **works** under Clause 18 until the item selected by the **owner** is available.
- Prime cost items* 21.5 Each prime cost item must be described and have an allowance stated next to it in **Schedule 3** or a schedule forming part of this **contract**. The allowance is the estimated price of supplying and delivering the item to the **owner** and does not include an amount for the **building contractor's margin**.
- Provisional sum items* 21.6 Each provisional sum item must be described and have an allowance stated next to it in **Schedule 3** or a schedule forming part of this **contract**. The allowance is the estimated price of providing the labour and materials to the **owner** and does not include an amount for the **building contractor's margin**.
- Cost adjustment* 21.7 In relation to each prime cost item and provisional sum item if the actual price of supplying the item or providing the work is:  
 (a) less than the allowance, the difference is deducted from the **contract price**; or

Owner Copy

T.D. 

(b) more than the allowance, the total of the difference plus the relevant margin on excess stated in **Schedule 3** or a schedule forming part of this **contract** applied to the difference is added to the **contract price**.

- |   |       |   |
|---|-------|---|
| <i>When adjustment is payable</i>                   | 21.8  | Any adjustment to the <b>contract price</b> for a prime cost item or a provisional sum item is due and payable with the progress payment in which the amount for that item is included.   |
| <i>Building contractor to give evidence of cost</i> | 21.9  | The <b>building contractor</b> must give the <b>owner</b> evidence of the cost of the prime cost item or provisional sum item when claiming payment for that item.  |
| <i>Footings, slab etc.</i>                          | 21.10 | Where the provisional sum relates to excavation, footings or the slab, the <b>building contractor</b> is only entitled to claim an amount in excess of the allowance where the <b>building contractor</b> had the <b>foundations data</b> when the <b>building contractor</b> entered into this <b>contract</b> , and the need for the additional amount can not be established from that data. |

## Clause 22. Excluded items

- |   |      |   |
|---|------|---|
| <i>Items that are not part of the works</i> | 22.1 | The <b>owner</b> and the <b>building contractor</b> agree that the materials, goods, labour and services shown in the <b>contract documents</b> and which are set out in <b>Schedule 4</b> are excluded from the <b>works</b> and the cost of those items are not included in the <b>contract price</b> . |
|---|------|---|

## Clause 23. Other costs

- |                                   |      |   |
|-----------------------------------|------|---|
| <i>Owner to pay cost increase</i> | 23.1 | The <b>owner</b> must, on demand, pay as an addition to the <b>contract price</b> the amount of any cost increase due to a <b>statutory or other authority</b> introducing or increasing any tax, charge, levy or other regulation after the date of this <b>contract</b> . |
|-----------------------------------|------|---|

## Clause 24. Materials etc. supplied by owner

- |  |      |  |
|--|------|--|
| <i>Owner's obligation</i>                  | 24.1 | Materials, goods and work to be provided by the <b>owner</b> must be: <ul style="list-style-type: none"> <li>(a) suitable for including into the <b>works</b>;</li> <li>(b) supplied or completed in the time required by the <b>building contractor</b>;</li> <li>(c) new unless otherwise specified; and</li> <li>(d) completed to the <b>building contractor's</b> satisfaction.</li> </ul> |
| <i>Building contractor not responsible</i> | 24.2 | Notwithstanding Clauses 24.3 and 24.4, the <b>building contractor</b> is not responsible for the performance and suitability of materials, services, labour and goods provided by the <b>owner</b> .   |
| <i>Defective items or materials</i>        | 24.3 | The <b>building contractor</b> may reject any item or material supplied by the <b>owner</b> , if the <b>building contractor</b> believes that item or material to be defective, and require the replacement or correction of that item or material.  |
| <i>Defective work</i>                      | 24.4 | The <b>building contractor</b> may reject any work carried out by or on behalf of the <b>owner</b> or by the <b>owner's</b> contractor and require that the <b>owner</b> or the <b>owner's</b> contractor replace, correct or remove the defective work.   |
| <i>Owner's risk</i>                        | 24.5 | Notwithstanding Clause 14.5, all materials and goods supplied and work carried out by the <b>owner</b> or the <b>owner's</b> contractors on the <b>site</b> are at the risk of the <b>owner</b> .  |

Owner Copy



*[Handwritten signature]*

T.D.

Conditions for the owner's works

- 24.6 If the **owner** carries out or causes to be carried out other work on the **site** while the **works** are being carried out then the **owner** must, and must ensure that the **owner's** contractors:
- (a) do not interfere with the progress of the **works**;
  - (b) hold and maintain the same insurance coverage as the **building contractor** is required to hold and maintain under this **contract** in relation to their works;
  - (c) hold an appropriate licence to carry out the work;
  - (d) observe all relevant occupational health and safety laws and the requirements of the **building contractor** in regard to occupational health and safety;
  - (e) obey all directions issued by the **building contractor** regarding the co-ordination and timing of their works on the **site**;
  - (f) co-operate with all of the other workers and contractors on the **site**.

Evidence of licences etc.

- 24.7 The **owner** must, on request, give the **building contractor** evidence of all licences and insurances referred to under Clause 24.6.

Building contractor may exclude people

- 24.8 If the **owner** or the **owner's** contractors do not observe all of the requirements in Clauses 24.6 and 24.7 the **building contractor** may exclude or direct the **owner** or the **owner's** contractors to leave the **site**.

Building contractor's rights on the owner's breach

- 24.9 If the **owner** breaches this Clause the **building contractor** may:
- (a) carry out the **works** without incorporating such materials, services or goods; or
  - (b) do either or both of the following:
    - (i) suspend the carrying out of the **works** under Clause 19;
    - (ii) end this **contract** under Clause 28.

Owner Copy

## Clause 25. Practical completion

Building contractor to give estimate

- 25.1 The **building contractor** must, at the **owner's** request from time to time, give a non-binding estimate of when **practical completion** will be reached.

Building contractor to give notice and claim

- 25.2 When the **building contractor** believes that the **works** have been completed the **building contractor** must give the **owner**:
- (a) a defects document listing minor defects and minor omissions:
    - (i) that are agreed to exist and the time for when those items will be completed or rectified; and
    - (ii) that the **owner** claims to exist but the **building contractor** does not agree with; and
    - (iii) that is signed by the **building contractor**; and
  - (b) a **notice of practical completion** stating the **building contractor's** opinion of the **date of practical completion**; and
  - (c) the **final claim**.

Final claim

- 25.3 Subject to Clause 25.4, the **owner** must, within 5 **working days** of receiving the **final claim**, pay the amount of the **final claim** to the **building contractor**.

Owner's notice

- 25.4 If the **owner** believes that **practical completion** has not been reached the **owner** must, within 5 **working days** of receiving the **notice of practical completion**, give the **building contractor** a written notice stating:
- (a) the **owner's** requirements for the **works** to reach **practical completion**; and
  - (b) the provisions of this **contract** that relate to each requirement.



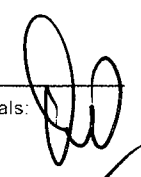
T.D.

- Building contractor's response* 25.5 The **building contractor** must, on receiving the **owner's** notice, complete those requirements that, in the **building contractor's** opinion, are necessary to reach **practical completion**.
- Further notice by building contractor* 25.6 On completion of those requirements the **building contractor** must give a further notice of **practical completion** stating the new **date of practical completion**, and the **owner** must, within 5 **working days** of receipt pay the amount of the **final claim** to the **building contractor**.
- Payment is evidence* 25.7 The **owner's** payment of the **final claim** is conclusive evidence of the **building contractor's** satisfaction, and discharge, of the **building contractor's** obligations in connection with the subject matter of this **contract** except for:
- (a) fraud, dishonesty or fraudulent concealment relating to the **works**;
  - (b) the **building contractor's** liability under Clause 27.1; and
  - (c) the **building contractor's** liability under a statutory warranty set out in Clause 36.
- Date of practical completion* 25.8 The date stated in the last **notice of practical completion** is deemed to be the **date of practical completion** unless within 5 **working days** of receiving the last **notice of practical completion** the **owner** gives the **building contractor** written notice:
- (a) disputing the date; and
  - (b) detailing the reasons why the date is disputed.

## Clause 26. Owner taking possession

- Illegal early possession* 26.1 The **owner** is not entitled to:
- (a) take control of, possession of or use the **works** or any part of the **works**; or
  - (b) receive the keys for the **works**,
- until the **building contractor** has been paid the **contract price**, adjusted by any additions or deductions made under this **contract**.
- Agreed early possession* 26.2 The **building contractor** may by written notice to the **owner** permit the **owner** to:
- (a) take control of;
  - (b) take possession of; or
  - (c) use,
- the whole or any part of the **works** prior to **practical completion** but such possession does not reduce the **owner's** liability to pay the outstanding balance of the **contract price**, adjusted by any additions or deductions made under this **contract**.
- Consequences of taking possession* 26.3 If the **owner** breaches Clause 26.1 then, unless such control, possession or use is with the written consent of the **building contractor** under Clause 26.2 or after the **owner** has lawfully ended this **contract** under Clauses 28 or 29, the **owner** commits a substantial breach of this **contract** entitling the **building contractor** to elect to either:
- (a) treat the **owner's** actions as a repudiation of this **contract** and to accept that repudiation;
  - (b) give the **owner** a notice to remedy breach of **contract** under Clause 28; or
  - (c) accept the **owner's** actions as a **variation** to omit that part of the **works** not carried out and completed as at the date the **owner** breaches Clause 26.1



T.D. 

- Reservation of rights* 26.4 If the **owner** breaches (including repudiates) this **contract**, nothing in this Clause prejudices the right of the **building contractor** to recover damages or exercise any other right or remedy.
- Rights to suspend* 26.5 If the **building contractor** elects to give a notice to remedy breach under Clause 26.3(b), the **building contractor** is still entitled to suspend the carrying out of the **works** under Clause 19.
- Accepting variation* 26.6 If the **building contractor** accepts the **variation** under Clause 26.3(c), the **building contractor** is to give the **owner**:  
 (a) a **variation document** signed by the **building contractor** complying with Clause 20.1 to that effect; and  
 (b) a **notice of practical completion** and a **final claim** under Clause 25.
- Release* 26.7 The **building contractor** is deemed to be discharged and released from all liabilities, costs, losses or damages which the **owner** may suffer or incur which are in any way related to the **works** omitted under Clause 26.3(c).
- Indemnity* 26.8 The **owner** indemnifies the **building contractor** against all liabilities, costs, charges, losses, damages, expenses or fees (including legal fees on a full indemnity basis) that the **building contractor** may suffer or incur arising out of or in any way related to:  
 (a) the **owner's** breach of Clause 26.1; or  
 (b) any direction to rectify or complete any part of the **works** omitted under Clause 26.3(c) issued by the Queensland Building and Construction Commission.
- Risk* 26.9 The **works** are at the risk of the **owner** on and from the **owner** taking possession of the **works** or any part of the **works** or from the **date of practical completion**, whichever occurs first.
- Continuing rights* 26.10 The rights of the **building contractor** and obligations of the **owner** under this Clause 26 continue to be in effect after the ending of this **contract**.

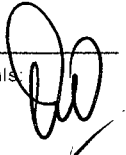
## Clause 27. Defects liability period

- Building contractor to fix defects* 27.1 The liability period for any non-structural defects (except for minor settlement or minor shrinkage) is 12 calendar months from the **date of practical completion**.
- Owner to give access* 27.2 The **owner** must give the **building contractor** access to the **site** during the **building contractor's** normal business hours to rectify any defects or other faults.

## Clause 28. Termination by default

- When the building contractor is in substantial breach* 28.1 The **owner** is entitled to give a notice to remedy breach under Clause 28.3 if the **building contractor** is in substantial breach of this **contract**. The **building contractor** is in substantial breach of this **contract** if the **building contractor**:  
 (a) suspends the carrying out of the **works**, otherwise than under Clause 19;  
 (b) has the **building contractor's** licence cancelled or suspended; or  
 (c) is otherwise in substantial breach of this **contract**.
- When the owner is in substantial breach* 28.2 The **building contractor** is entitled to give a notice to remedy breach under Clause 28.3 if the **owner** is in substantial breach of this **contract**. The **owner** is in substantial breach of this **contract** if the **owner**:  
 (a) does not pay progress payments as required by Clause 4;



T.D. 

- (b) does not pay the **deposit** as required by Clause 4.2;
- (c) does not give evidence of the **owner's** capacity to pay the **contract price** from time to time as required by Clause 7.3;
- (d) where a **lending body** is stated in **item 6**, does not comply with:
  - (i) the requirements of Clauses 7.2 or 7.3;
  - (ii) any of the requirements of the **lending body**; or
  - (iii) the requirements of Clause 5.2;
- (e) does not establish or maintain the **security account** as required by Clause 8;
- (f) enters the **site** in breach of Clause 10;
- (g) interferes with or obstructs the **building contractor** or the **building contractor's** workers, suppliers or subcontractors in carrying out the **works** in breach of Clause 10.3;
- (h) does not give an instruction within 5 **working days** of becoming aware of a problem under Clause 13;
- (i) does not, or does not ensure that the **owner's** contractors, comply with the requirements of Clause 24;
- (j) takes control of, possession of or uses the **works** or any part of the **works** without the prior written agreement of the **building contractor** prior to the payment in full of the **contract price**, adjusted by any additions or deductions made under this **contract**, in breach of Clause 26; or
- (k) is otherwise in substantial breach of this **contract**.

*Notice to remedy breach*

- 28.3 If a party is in substantial breach of this **contract**, then the other party may give to that party a notice to remedy breach **in writing**:
- (a) specifying the substantial breach;
  - (b) requiring that the substantial breach be rectified within 10 **working days** after the notice is given under this **contract**; and
  - (c) stating that, if the substantial breach is not rectified, the other party intends to end this **contract**.

*Notice to end the contract*

- 28.4 If the party in substantial breach does not rectify or commence to substantially rectify the substantial breach stated in the notice to remedy breach within 10 **working days** of receiving that notice, the other party may end this **contract** by giving a separate notice to that effect.

*No right to end where matter is referred to QBCC and/or QCAT*

- 28.5 A party is not entitled to end this **contract** under this Clause if, within 5 **working days** of receiving the notice to remedy breach, the party in substantial breach refers the matter to the Queensland Building and Construction Commission, and/or the Queensland Civil and Administrative Tribunal under Clause 37.

*When notice is ineffective*

- 28.6 Neither party is entitled to give a notice to remedy breach while that party is in substantial breach of this **contract**. A notice given by a party in substantial breach is ineffective.

*Building contractor's rights*

- 28.7 On this **contract** being ended by the **building contractor** under Clauses 2, 15, 24, 28 or 29 the **building contractor** may, without prejudice to any other rights or remedies that the **building contractor** may have under this **contract** or at law, recover from the **owner** a debt due and owing the greater of the following amounts:

- (a) 5% of the **contract price**; or
- (b) damages including:
  - (i) the cost of all work carried out by the **building contractor** under this **contract**;

Owner Copy



- (ii) the cost to the **building contractor** of any materials purchased by the **building contractor** and delivered to the **site** or ordered by the **building contractor** from suppliers and which orders can not be cancelled;
- (iii) the cost to the **building contractor** of quitting the **site**;
- (iv) the **building contractor's margin** on the total of the amounts payable under subparagraphs (i), (ii) and (iii);
- (v) default interest on any unpaid moneys under Clause 33; and
- (vi) all other costs and losses incurred by the **building contractor** as a consequence of this **contract** being ended.

*Other rights unaffected*

- 28.8 If a party breaches (including repudiates) this **contract**, nothing in this Clause prejudices the right of the other party to recover damages or exercise any other right or remedy.

## Clause 29. Termination for insolvency

*Ending contract for insolvency*

- 29.1 If a party:
- (a) informs the other party **in writing** or its creditors generally that the party is insolvent; or
  - (b) becomes or is bankrupt or seeks to take advantage of the laws relating to bankruptcy; or
  - (c) has a Court order made for the winding up of the party or a resolution for its winding up is made, and
- as a consequence, that party is unable to perform its obligations under this **contract**, the other party may immediately end this **contract** by giving written notice to that party to that effect.

*Building contractor's rights on ending of contract*

- 29.2 The **building contractor** is entitled to be paid all amounts calculated in accordance with Clause 28.7 if this **contract** is ended under this Clause 29.

## Clause 30. Assignment and subcontracting

*No assignment without consent*

- 30.1 Neither party may assign this **contract** or any payment or any other right, benefit or interest under this **contract** without the prior written consent of the other party.

*Building contractor may subcontract*

- 30.2 The **building contractor** may subcontract any part of the **works** but such subcontracting does not relieve the **building contractor** from the **building contractor's** obligations under this **contract**.

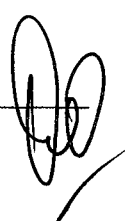
## Clause 31. Notices

*When given and received*

- 31.1 Unless otherwise stated in this **contract**, a notice is deemed to be given and received if the notice is:
- (a) delivered by hand to the other party;
  - (b) posted by ordinary pre-paid mail to the other party's last known address, 2 **working days** following the day it was posted;
  - (c) sent by facsimile transmission to the party's last known facsimile number, on receiving confirmation of transmission; or
  - (d) e-mailed to the party's current e-mail address.

Owner Copy



*T.D.* 

## Clause 32. Late completion damages

- When the owner is entitled* 32.1 If the **works** do not reach **practical completion** by the end of the **building period** the **owner** is entitled to liquidated damages in the sum specified in **item 15** for each **day** after the end of the **building period** to and including the earlier of:
- (a) the **date of practical completion**;
  - (b) the date this **contract** is ended; or
  - (c) the date that the **owner** takes control of, possession of, or uses the **site** or any part of the **site**.
- Right of set-off* 32.2 The **owner** may set-off or deduct its claim for liquidated damages under Clause 32.1 from the **final claim** payment to the **building contractor**.

## Clause 33. Default interest

- Default interest* 33.1 The **building contractor** may charge the **owner** interest at the rate stated in **item 8** of **Schedule 1** from the day on which an amount falls due to be paid to the **building contractor** up to and including the day that amount is paid.

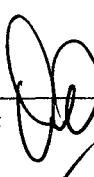
## Clause 34. Debt collection costs

- Owner to pay additional costs* 34.1 The **owner** must pay to the **building contractor** any debt collection costs, including any legal fees on a solicitor and own client basis, associated with recovering or the attempted recovery of an amount under this **contract**.

## Clause 35. Charge on materials and the site

- Charge over the site* 35.1 The **owner** grants a lien to the **building contractor** on all materials located on the **site** for the due payment to the **building contractor** of all moneys that are or may become payable to the **building contractor** arising out of the subject matter of this **contract**.
- Charge over the land* 35.2 Except where the **owner** is a **resident owner**, the **owner** charges the **land** with, and grants an equitable mortgage in favour of the **building contractor**, for the due payment to the **building contractor** of all moneys that are or may become payable to the **building contractor** arising out of the subject matter of this **contract**.
- Owner to sign a mortgage* 35.3 If so requested by the **building contractor**, the **owner** must deliver an executed mortgage in registrable form to secure the charge over the **land**.
- Owner to pay fees and duties* 35.4 The **owner** is to pay to the **building contractor** on demand all stamp duty and registration fees that are payable or paid on:
- (a) this **contract**;
  - (b) any caveat or mortgage under this Clause that is lodged for registration; and
  - (c) any withdrawal of such caveat or release of such mortgage.
- Guarantee* 35.5 The **owner** must, at the **building contractor's** request, provide to the **building contractor** a deed of guarantee and indemnity in the form of the Annexure duly executed by every **guarantor** named in **item 7** and enforceable against each such **guarantor**.



T.D. 

## Clause 36. Statutory warranties

*Building contractor's warranties*

- 36.1 To the extent required by the Queensland Building and Construction Commission Act 1991 (Qld), the **building contractor** warrants that:
- (a) all materials supplied by the **building contractor** will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this **contract**, those materials will be new;
  - (b) the **works** will be carried out in accordance with all relevant laws and legal requirements, including, for example, the Building Act 1975 (Qld);
  - (c) the **works** will be carried out in an appropriate and skilful way and with reasonable skill and care;
  - (d) the **works** will be carried out in accordance with the plans and the specification to this **contract**;
  - (e) the **works** will be carried out with reasonable diligence;
  - (f) if the **works** consist of the erection or construction of a detached dwelling, or are intended to renovate, alter, extend, improve or repair a home, to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **works** are finished; and
  - (g) each provisional sum item allowance, if calculated by the **building contractor**, has been calculated with reasonable skill and care, having regard to all the information reasonably available when this **contract** is entered into (including information about the nature and location of the **site**).

*Meaning of relevant criteria*

- 36.2 The relevant criteria for materials for the purpose of Clause 36.1(a) means:
- (a) generally accepted practices or standards applied in the building industry for the materials; or
  - (b) specifications, instructions or recommendations of manufacturers or suppliers of materials.

## Clause 37. Disputes

*Reference to QBCC and/or QCAT*

- 37.1 If any dispute or difference between the **owner** and the **building contractor** arises in connection with the subject matter of this **contract** then either party may give to the other party written notice of such dispute or difference and such dispute or difference may be referred for determination to the Queensland Building and Construction Commission and/or the Queensland Civil and Administrative Tribunal as per Section 77 of the Queensland Building and Construction Commission Act 1991.

## Clause 38. Interpretation

*Meanings*

- 38.1 In this **contract**, except where the context otherwise requires:
- 'all weather access' means reasonable access to the **site** as reasonably required by the **building contractor** for the **building contractor** to carry out the **works**, including in conditions resulting from **restricted access**;
  - 'anticipated start date' means the date stated in **item 14**, subject to Clause 2.1;

Owner Copy



*T.D.*

'**building contractor**' means the party named in **item 4** and includes the **building contractor's** successors, permitted assigns and, where appropriate, includes anyone acting with the **building contractor's** express authority;

'**building contractor's margin**' means the percentage of an amount to cover the **building contractor's** administration costs, overheads and profit being 20%.

'**building period**' means the number of **days** stated in **item 13** as extended by Clause 17;

'**commencement**' means:

- (a) when the **building contractor** commences physical construction on **site** of the footing, slab or drainage system; or
- (b) where the **works** do not include construction of a footing, slab or drainage system, when work to change an on-site fixed structure has physically commenced;

'**contract**' means the agreement between the parties set out in the **contract documents**;

'**contract documents**' means these general conditions, any special conditions, the specification, the plans and other documents specified in **item 16**;

'**contract price**' means the amount stated in **item 2**;

'**date of practical completion**' has the meaning in Clause 25;

'**days**' means calendar days;

'**defects liability period**' has the meaning in Clause 27.1;

'**deposit**' means the amount stated for the deposit in **Schedule 2**;

'**final claim**' means the claim by the **building contractor** for payment of the balance of the unpaid **contract price**, as adjusted by any additions or deductions made under this **contract**, plus all other moneys owing under this **contract**.

'**foundations data**' means the information about the **site** that a **building contractor** exercising reasonable care and skill would need to prepare:

- (a) an appropriate footings design and, if appropriate, an appropriate concrete slab design; and
- (b) an adequate estimate of the cost of constructing the footings and, if appropriate, concrete slab.

including that information required to be obtained under the Queensland Building and Construction Commission Act 1991;

'**in writing**' means in handwritten or typewritten form, or in a combination of handwritten and typewritten forms;

'**guarantor**' means those persons or entities named as guarantor in **item 7**;

'**item**' means the relevant **item** number in **Schedule 1**;

'**land**' means the **land** described in **item 11**;

'**lending body**'; where stated in **item 6** means any bank, financial institution or government authority that provides funds to the **owner** to enable the **owner** to pay the **contract price**, adjusted by any additions or deductions made under this **contract**, to the **building contractor**.

Owner Copy



*[Handwritten signature]*  
T.D.

'**loan**' means an agreement between the **owner** and the **lending body** for the **owner** to borrow funds sufficient to pay the **contract price**;

'**non-working days**' means weekends, public holidays, rostered days off or other **days** not generally available for carrying out the **works**;

'**notice of practical completion**' has the meaning in Clause 25;

'**owner**' means the party named in **item 3** and includes the **owner's** successors and permitted assigns;

'**practical completion**' has the same meaning as in **Schedule 2**;

'**resident owner**' means an individual who intends to reside in the completed **works**;

(a) on **practical completion**; or

(b) within 6 months after **practical completion**;

'**restricted access**' means where due to conditions resulting from inclement weather:

(a) access to the **site** is restricted so as to impede the carriage of machinery and/or materials to and from the **site** or the **works** being carried out in a safe manner; and

(b) the carrying out of the **works** are, or will be, delayed.

'**schedule**' means the relevant schedule forming part of this **contract**;

'**security account**' means an account with a financial institution, bank or building society, or solicitor trust account nominated by the **owner** and approved by the **building contractor** and described in Clause 8;

'**security account money**' means an amount equal to the **contract price**, adjusted by any additions or deductions made under this **contract**, less the total of any money being advanced by the **lending body** and any payments received by the **building contractor**;

'**site**' means the whole of or that part of the **land** reasonably required by the **building contractor** for the carrying out and completion of the **works**;

'**stage**' means the relevant stage as described in **Schedule 2**;

'**statutory or other authority**' means a person authorised under the Building Act or the Local Government, State or Federal Government or any government agency that has power to affect the **works**;

'**time allowance**' means a delay to the carrying out of the **works** caused by inclement weather that is reasonably likely to delay the carrying out of the **works** for which a description and an allowance are set in **item 13**;

'**unforeseen circumstances**' means an actual surface or sub-surface condition of the **site** which will not support or is likely to affect the **works** or cause an increase in the **contract price**;

'**variation**' means:

(a) an omission, addition or change to the **works**; or

(b) a change in the manner of carrying out the **works**;

'**variation document**' has the meaning in Clause 20.1;

'**works**' means the **works** to be carried out, completed and handed over to the **owner** in accordance with this **contract** as shown in the **contract documents** including **variations**;

'**working days**' means **days** other than **non-working days**, and like words have a corresponding meaning.

Owner Copy



*[Handwritten signature]*  
T.D.

*Defined terms indicated*

38.2 Whenever a defined term appears in this **contract** it is in bold text.

*Construction*

38.3 In this **contract**:

(a) words denoting the singular number only include the plural number and vice versa;

(b) a reference to any gender includes every other gender;

(c) words denoting individuals only includes corporations and vice versa;

(d) where a period of time is specified by a number of **days** and the last day of the period falls on a **non-working day** such period is extended to end on the next **working day**; and

(e) the general notes, clause headings and side notes do not form part of this **contract** and cannot be used in its interpretation.

*Governing law*

38.4 This **contract** is to be construed under the law of the State of Queensland.

*Where more than one owner*

38.5 If there is more than one **owner**:

(a) the obligations in this **contract** apply to each **owner** individually and to all **owners** as a group;

(b) a quote, notice, claim or any other communication to the **owner** has only to be given to one of the **owners**; and

(c) only one **owner** has to sign a quote, notice, instruction or other communication to bind all **owners**.

*No waiver*

38.6 Except as provided at law or in equity or elsewhere in this **contract**, none of the provisions of this **contract** may be varied, waived, discharged or released, except with the prior written consent of the parties.

*Severance*

38.7 Any provision in this **contract** which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this **contract**.

Owner Copy

