

# QBCC LEVEL 2 RENOVATION, EXTENSION AND REPAIR CONTRACT

## (FOR CONTRACTS \$20,000 OR MORE)

This Contract is recommended for the renovation, extension, improvement and routine repair of a home (including a house, duplex or unit), or associated work (e.g. landscaping, pool building, etc.), where the contract price is \$20,000 or more.

- For minor renovations, extensions, improvements and repairs priced at \$3,301 - \$19,999 the **QBCC Level 1 Renovation, Extension and Repair Contract** is recommended.
- For repairs of any value arising from natural disasters, the **QBCC Natural Disaster Repairs Contract** is recommended.
- For construction of a home, the **QBCC New Home Construction Contract** is recommended.

### HOMEOWNER'S BOOKLET

#### IMPORTANT NOTES FOR THE HOMEOWNER

This QBCC Level 2 Renovation, Extension and Repair Contract Pack consists of the following documents (most of which are held by the Contractor and will be used and copied to you as required):

**Contractor's Booklet** (including *Timeframes for Key Obligations* and *General Conditions*)

**Homeowner's Booklet** (including *Timeframes for Key Obligations*, *General Conditions* and *Consumer Building Guide*)

**Contract Schedule** (with any relevant plans and specifications attached)

**Prime Cost Items Schedule** (if relevant)

**Provisional Sums Schedule** (if relevant)

**Form 1** – *Commencement Notice*

**Form 2** – *Extension of Time Claim & Owner's Response to Claim*

**Form 3** – *Progress Claim*

**Form 4** – *Notice of Dispute of Progress Claim*

**Form 5** – *Variation Document*

**Form 6** – *Defects Document*

**Form 7** – *Certificate of Practical Completion*

**The Contractor must give you a signed copy of the full Contract**, including any plans and specifications, **within 5 business days after the Contractor signs the Contract**. You should also **read and sign the Consumer Building Guide** at the back of this booklet **before you sign the Contract**.

These documents form an integrated package which should not be mixed with documents from other contracts. The Contractor is required to give you 2 copies of any schedule or form you are asked to sign. Retain 1 copy and give 1 copy to your Lender (if any).

**TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT** ..... 1

**GENERAL CONDITIONS** ..... 2

    1. Definitions ..... 2

    2. Withdrawal during ‘cooling-off’ period ..... 3

    3. Warranties under Schedule 1B of QBCC Act ..... 3

    4. Price ..... 4

    5. Evidence of capacity to pay the Contract Price..... 5

    6. Security account money..... 5

    7. Evidence of title to, and boundaries of, the Site ..... 5

    8. Copyright..... 5

    9. Building approval and certification ..... 6

    10. Termination for lack of building approval ..... 6

    11. Contractor’s indemnity in favour of the Owner ..... 6

    12. Contractor’s insurance obligations ..... 6

    13. Access to the Site ..... 7

    14. Care of the work under this Contract ..... 7

    15. Workplace health and safety ..... 7

    16. Communication between Owner and Contractor ..... 7

    17. Commencement and performance of the Works ..... 7

    18. Assignment and subcontracting ..... 7

    19. Payment ..... 7

    20. Interest on overdue payments ..... 8

    21. Variations ..... 8

    22. Time for Practical Completion ..... 9

    23. Extension of time..... 9

    24. Liquidated damages ..... 10

    25. Dispute resolution ..... 10

    26. Termination after notice of default ..... 10

    27. Termination for bankruptcy or liquidation ..... 10

    28. Practical Completion ..... 11

    29. Defects after completion..... 11

    30. Notices ..... 11

    31. Entire agreement ..... 12

**NOTES** ..... 13

**CONTACT LIST** ..... 14

**CONSUMER BUILDING GUIDE**

(NOTE: Owner to read and sign this Guide before signing the Contract; Contractor to retain a signed and dated copy)

# TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

(NOTE: The list below is not exhaustive. 'GC' numbers refer to relevant clauses in the General Conditions; unless otherwise stated, 's' numbers refer to section numbers in the Queensland domestic building legislation, Schedule 1B of the QBCC Act).

## HOMEOWNER

WHEN CONTRACT SIGNED
<ul style="list-style-type: none"> <li>• <b>DEPOSIT:</b> On signing, pay deposit stated in the Contract Schedule (<b>GC 19.1</b>) – <b>maximum 5% [s33(1)(c)]</b></li> <li>• <b>COOLING-OFF PERIOD:</b> Expires 5 Business Days after the day the Owner receives both a signed copy of the full contract (including any plans and specifications) and the QBCC Consumer Building Guide (<b>ss 35-38</b>)</li> </ul>
BEFORE WORK COMMENCES ON SITE
<ul style="list-style-type: none"> <li>• <b>FINANCE:</b> By Finance Date (or if no date stated, within 10 Business Days from contract date) - give Contractor written evidence of capacity to pay the Contract Price (<b>GC 5.1</b>)</li> <li>• <b>ACCESS:</b> Ensure Contractor has clear access to Site (<b>GC 13</b>)</li> <li>• <b>INSURANCE:</b> Arrange Public Liability insurance for the Site until work starts; check Contractor has Public Liability &amp; Contract Works insurance, and paid Home Warranty premium to QBCC, before work starts (<b>GC 12</b>)</li> </ul>
AFTER WORK COMMENCES ON SITE
<ul style="list-style-type: none"> <li>• <b>PROGRESS CLAIMS:</b> Within 5 Business Days of receipt of progress claim - check the timing and amount of claim agrees with Item 8 of the Contract Schedule and pay valid claim (<b>GC 19.1</b>)</li> <li>• <b>VARIATIONS:</b> Respond ASAP to all Variation Documents presented by Contractor (<b>GC 21</b>)</li> <li>• <b>EXTENSIONS OF TIME (EOT):</b> Within 10 Business Days of receiving EOT claim from Contractor – assess, complete and return signed EOT Claim Form 2 (<b>GC 23.4</b>)</li> <li>• <b>AS PRACTICAL COMPLETION APPROACHES:</b> <ul style="list-style-type: none"> <li>(a) Liaise with lender to ensure final contract payment will be ready as required at Practical Completion (<b>GC 28.5</b>)</li> <li>(b) Arrange Home and Contents insurance effective from Date of Practical Completion (don't wait until handover!)</li> </ul> </li> </ul>
AT PRACTICAL COMPLETION (PC)
<ul style="list-style-type: none"> <li>• <b>CHECK CONTRACT</b> (incl. plans &amp; specs) AND <b>INSPECT WORK</b> with Contractor to ensure PC Stage has been reached (Note: Definition of PC allows for minor defects and minor omissions) (<b>GC 28.2 &amp; s1</b>)</li> <li>• <b>DEFECTS DOCUMENT:</b> Compile with Contractor at final inspection, sign and retain a copy (<b>GC 28.2 &amp; s1</b>)</li> <li>• <b>PC PAYMENT:</b> Pay Contractor immediately all PC requirements in Form 7 are satisfied (<b>GC 28.5</b>)</li> </ul>

## BUILDING CONTRACTOR

WHEN CONTRACT SIGNED
<ul style="list-style-type: none"> <li>• <b>CONSUMER BUILDING GUIDE:</b> Ensure Owner given Guide before they sign contract (<b>s18</b>)</li> <li>• <b>COPY OF CONTRACT</b> (incl. plans &amp; specs): Give to Owner within 5 Business Days after signing (<b>GC 2</b>) (<b>s15</b>)</li> <li>• <b>HOME WARRANTY INSURANCE:</b> Collect premium from Owner and pay to QBCC within 10 Business Days of entering the contract and before starting work (<b>GC 12 &amp; s68B(2) of the QBCC Act</b>)</li> </ul>
BEFORE WORK COMMENCES ON SITE
<ul style="list-style-type: none"> <li>• <b>FINANCIAL CAPACITY:</b> Within 5 Business Days after Finance Date - Contractor may terminate contract if not satisfied with Owner's capacity to pay Contract Price (<b>GC 5.2</b>)</li> <li>• <b>INSURANCE:</b> Ensure all insurances (incl. QBCC Home Warranty Scheme) are in place before work starts (<b>GC 12</b>)</li> <li>• <b>LODGE PLANS:</b> Within 10 Business Days of Owner providing satisfactory evidence of financial capacity, Contractor must lodge plans (unless Owner responsible for lodgment, or later lodgment is agreed) (<b>GC 9.1</b>)</li> </ul>
AFTER WORK COMMENCES ON SITE
<ul style="list-style-type: none"> <li>• <b>COMMENCE WORK:</b> On/before Start Date (<b>GC 17.1</b>)</li> <li>• <b>COMMENCEMENT NOTICE:</b> Within 10 Business Days after starting on Site – give notice to Owner (<b>GC 17.2 &amp; s16</b>)</li> <li>• <b>VARIATIONS:</b> Give Variation Document (Form 5) to Owner and get agreement in writing before starting variation work and before asking for payment [<b>s40(5)</b>] – give Owner a fully signed copy within 5 Business Days of agreement on variation (<b>GC 21.5 &amp; s40</b>)</li> <li>• <b>EOT:</b> Within 10 Business Days of becoming aware of (or when you reasonably ought to have become aware of) the cause and extent of the delay – give EOT claim to Owner on Form 2. Give Owner a copy of the fully signed form within 5 Business Days of their approval (<b>GC 23 &amp; s42</b>)</li> <li>• <b>AS PRACTICAL COMPLETION APPROACHES:</b> Give Owner 5 Business Days prior written notice of PC (<b>GC 28.1</b>)</li> </ul>
AT PRACTICAL COMPLETION (PC)
<ul style="list-style-type: none"> <li>• <b>Before presenting claim for PC Stage (GC 28):</b> <ul style="list-style-type: none"> <li>(a) Inspect contracted work, compile Defects Document with Owner, sign and copy to Owner (<b>s1</b>)</li> <li>(b) Give copies of any remaining Certificates of Inspection (incl. 'Final' where applicable) to Owner (<b>s17</b>)</li> <li>(c) Give Owner a completed and signed PC Certificate (Form 7)</li> </ul> </li> <li>• <b>Present claim for PC Stage to Owner (GC 28.5) and, when paid, hand over the property and keys</b></li> </ul>

# GENERAL CONDITIONS

## 1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, words and expressions used have the meaning defined or explained below:
- (a) **“Assessing Certifier”** means the private certifier, building certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the Works.
  - (b) **“Base Stage”** means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
  - (c) **“Business Day”** means a day that is not:
    - (i) a Saturday or Sunday; or
    - (ii) a public holiday, special holiday, or bank holiday in Queensland.
  - (d) **“Completion Period”** means the Completion Period stated in Schedule Item 6.
  - (e) **“Contract Price”** means the total price of the Works stated in Schedule Item 1, including the Fixed Price Component and any allowances for Prime Cost Items and Provisional Sums, inclusive of GST, as adjusted under this Contract.
  - (f) **“Contractor’s Authorised Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Owner) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
  - (g) **“Date for Practical Completion”** means the date stated in or calculated by reference to Schedule Item 7 or any extended date pursuant to this Contract.
  - (h) **“Date of Commencement of Works on Site”** means the date the Works commenced on Site as stated in the Commencement Notice issued by the Contractor.
  - (i) **“Date of Practical Completion”** means the date certified in the QBCC Form 7 - *Certificate of Practical Completion* in accordance with Condition 28.
  - (j) **“Enclosed Stage”** means that stage of the Works when: external wall cladding is fixed; the roof is fixed but without soffit linings necessarily having been fixed or for a tile roof, pointing necessarily having been done or, for a metal roof, scribing and final screwing off necessarily having been done; and the structural flooring is laid; and the external doors are fixed (even if only temporarily), but if a lockable door separating the garage from the rest of the building has been fixed, without the garage doors necessarily having been fixed, and the external windows are fixed (even if only temporarily).
  - (k) **“Finance Date”** means the date stated in Schedule Item 12 or, in the event no date is stated, the date 10 Business Days from the date of this Contract.
  - (l) **“Fixed Price Component”** means the sum stated in Schedule Item 1a of the Contract Price being the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the Works, other than the allowances (if any) for Prime Cost Items or Provisional Sums.
  - (m) **“Fixing Stage”** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves and built-in cabinets and built-in cupboards are fitted and fixed in position.
  - (n) **“Foundations Data”** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
  - (o) **“Frame Stage”** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
  - (p) **“GST”** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
  - (q) **“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
  - (r) **“Owner’s Authorised Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Contractor) as the person empowered by the Owner to communicate with the Contractor, including giving instructions as to variations.
  - (s) **“Practical Completion”** means the date upon which the Works are completed in accordance with the requirements of this Contract, including Condition 3 and Condition 28, apart from minor omissions or minor defects that will not unreasonably affect occupation.
  - (t) **“Practical Completion Stage”** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
  - (u) **“Prime Cost Item”** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Conditions 4 and 19.
  - (v) **“Provisional Sum”** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Conditions 4 and 19.
  - (w) **“Relevant Criteria”** for materials means:
    - (i) generally accepted practices or standards applied in the building industry for the materials; or
    - (ii) specifications, instructions or recommendations of manufacturers or suppliers of the materials.
  - (x) **“Site”** means the Site described in Schedule Item 4 of this Contract.
  - (y) **“Starting Date”** means whichever of the following dates occurs the latest:
    - (i) the Starting Date stated in Schedule Item 5; or
    - (ii) the day which is 10 Business Days after the issue of the plans duly approved by the **Assessing Certifier**; or
    - (iii) the day which is 10 Business Days after the Owner has satisfied its obligations under Condition 5.1.

- (z) **“Substantial breach by the Contractor”** has the meaning given in Condition 26.4.
- (aa) **“Substantial breach by the Owner”** has the meaning given in Condition 26.3.
- (bb) **“work under this Contract”** means all that work necessary to build the Works in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
  - (i) work to make the Site accessible to the Contractor;
  - (ii) provision of any special equipment;
  - (iii) work to clear the Site for building;
  - (iv) set out of the Works and survey if necessary;
  - (v) necessary structural retaining walls;
  - (vi) sewerage, draining and electrical connections;
  - (vii) provision of temporary water and power during construction; and
  - (viii) provision of clean up and disposal of waste material from the Site.
- (cc) **“Works”** means the work described in Schedule Item 3 to be built in accordance with this Contract, including variations authorised under the Contract, and which by the Contract is to be handed over to the Owner.

## 2. Withdrawal during ‘cooling-off’ period

- 2.1 Subject to Condition 2.5, the Owner may withdraw from the Contract within the times noted below:
  - (a) within 5 **Business Days** after the day on which the Owner receives from the Contractor a copy of both the signed Contract, including any plans and specifications, and the QBCC Consumer Building Guide; or
  - (b) if the Contract is given to the Owner separately from the Consumer Building Guide, then within 5 **Business Days** after the day on which the Owner receives the second document.
- 2.2 Further, if the Contractor fails to give both the above documents to the Owner within 5 **Business Days** of the parties entering the Contract then, in addition, the Owner may withdraw at any time up until 5 **Business Days** after the day on which the Owner receives those documents in accordance with Condition 2.1 (a) or (b) above.
- 2.3 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 35 of Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (‘the QBCC Act’).
- 2.4 If the Owner withdraws from the Contract pursuant to this Condition, the Owner must pay to the Contractor an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract, plus an additional \$100 if the Contractor has provided the Owner with the documents required in accordance with Condition 2.1. If the Owner has already paid more than this amount at the time they withdraw, the Contractor must promptly refund the excess.

- 2.5 The Owner may not withdraw from the Contract under section 35 of Schedule 1B of the QBCC Act if:
  - (a) the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
  - (b) the Owner received formal legal advice about the Contract before entering into the Contract; or
  - (c) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

## 3. Warranties under Schedule 1B of QBCC Act

- 3.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:
  - (a) the **work under this Contract** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
  - (b) all materials supplied will be good and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless this Contract expressly provides otherwise;
  - (c) the **work under this Contract** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
  - (d) the **work under this Contract** will be carried out in accordance with the plans and specifications and any other Contract documents described in Schedule Item 15;
  - (e) if the **work under this Contract** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is 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
  - (f) any estimate of **Provisional Sums** or **Prime Cost Items** included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building **Site**).
- 3.2 Without limiting any warranty under this Contract, the Contractor must, so far as *reasonably practicable*, ensure that:
  - (a) if the Contractor supplies a *building product*, the *building product* associated with the work under this Contract is not a *non-conforming building product* for an *intended use*; and
  - (b) if the Contractor installs a *building product*, the Owner is given information about the *building product* required by section 74AG(4) of the QBCC Act.

The terms ‘building product’, ‘non-conforming building product’, ‘intended use’ and ‘reasonably practicable’ used in Condition 3.2 have the same meaning as those terms in Part 6AA of the QBCC Act.

- 3.3 The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.
- 3.4 The Owner must pay the Contractor the **Contract Price** for the **Works** in accordance with this Contract.
- 3.5 Condition 3.1(b) only applies if the materials are supplied by the Contractor.
- 3.6 Despite Condition 3.5:
- (a) if this Contract is being administered by an architect engaged by the Owner, Condition 3.1(b) does not apply if the Contractor is subject to the direction of the architect for supplying the materials; and
  - (b) Condition 3.1(b) does not apply for materials if –
    - (i) the Owner is responsible for nominating the materials for use in the **work under this Contract**; and
    - (ii) either:
      - (A) there are no reasonable grounds for not using the materials; or
      - (B) if there are reasonable grounds for not using the materials, the Owner insists on the materials despite written advice to the contrary given to the Owner by the Contractor.
- 3.7 In Condition 3.6(b)(i), the Owner is responsible for nominating materials for use in the subject work only in the circumstances set out in section 20(5) of Schedule 1B of the QBCC Act.
- #### 4. Price
- 4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:
- (a) **Fixed Price Component**;
  - (b) **Prime Cost Items** Component (if any); and
  - (c) **Provisional Sum** Component (if any).
- 4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to the commencement of the **Works** give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**. In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.
- 4.3 If allowances for **Prime Cost Items** and **Provisional Sums** are included in the **Contract Price**, the total amount for each type of allowance must be shown adjacent to the words '**Prime Cost Items**' and '**Provisional Sums**' in Schedule Item 1 and the Contractor must give the Owner a separate schedule which states, for each **Prime Cost Item** or **Provisional Sum**, the following details:
- (a) a detailed description of the **Prime Cost Item**, or of the contracted services to which the **Provisional Sum** relates;
    - (b) a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**, including any margin the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's margin'); and
    - (c) the total price payable, inclusive of **GST**, for each **Prime Cost Item** or **Provisional Sum**.
- 4.4 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost at the date of this Contract and which the Contractor cannot therefore price accurately as at that date.
- 4.5 For **Prime Cost Items** which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain and supply the relevant item.
- 4.6 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.
- 4.7 The Contractor warrants that each estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*:
- (a) has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the **Site**); and
  - (b) represents the reasonable cost of supplying and delivering each **Prime Cost Item**, or providing the contracted service covered by the **Provisional Sum**, including the Contractor's margin.
- 4.8 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.9 If the actual cost of providing a **Prime Cost Item**, or the contract services covered by a **Provisional Sum**, is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Contract Price**.
- 4.10 Prior to or when presenting a progress claim relating to the cost to the Contractor of supplying a **Prime Cost Item**, or providing the contracted services covered by a **Provisional Sum**, the Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost to the Contractor of supplying the item or providing the contracted services under the Contract. The Contractor cannot seek payment for the **Prime Cost Item**, or the contracted service covered by the **Provisional Sum**, until the progress claim following the incorporation of the item in the **Works** or following the completion of the said contracted services.

4.11 As soon as practicable after the Contractor becomes aware that the actual cost of any **Prime Cost Item** or **Provisional Sum** will be more than 20% above the Contractor's estimate for that item in the *Prime Cost Items Schedule* or the contracted service in the *Provisional Sums Schedule*, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:

- (a) describes the **Prime Cost Item** or **Provisional Sum**;
- (b) states the cost to the Contractor of the **Prime Cost Item** or **Provisional Sum**, together with the Contractor's margin, and the amount by which this total amount exceeds the total allowance for that item in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule*; and
- (c) identifies the Progress Payment stage under this Contract at which payment for the **Prime Cost Item** or **Provisional Sum** will be required.

#### GOODS AND SERVICES TAX

4.12 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 21) have been or will be calculated on a **GST** inclusive basis.

### 5. Evidence of capacity to pay the Contract Price

- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied as to the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than 5 **Business Days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must, subject to Condition 5.5, immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor and comply with Condition 5.6.
- 5.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- (a) fees paid by the Contractor to another person for the **Foundations Data**;
  - (b) fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
  - (c) fees paid to an **Assessing Certifier** for development and/or building approval; and
  - (d) fees previously agreed with the Contractor for the provision of plans for the **Works**.

5.6 The Contractor must hand over to the Owner all documents relevant to such deductions excluding plans for which the Contractor holds the copyright. Each party is otherwise under no further liability to the other.

5.7 After commencement of **work under this Contract**, the Owner must, upon reasonable written request from the Contractor, provide the Contractor with current evidence satisfactory to the Contractor of the Owner's continued capacity to pay the **Contract Price**.

### 6. Security account money

- 6.1 If Schedule Item 9 is completed, the Owner must, within 5 **Business Days** of the date of this Contract, deposit in an interest bearing account in a bank or other appropriate financial institution nominated by the Owner, the amount stipulated in Schedule Item 9 as Security Account Money.
- 6.2 The account must be in the joint names of the Owner and the Contractor and the authority of each of the Owner and the Contractor must be required to effect any withdrawal. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.
- 6.3 The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.
- 6.4 If the Owner fails to pay any money due and owing to the Contractor within 5 **Business Days**, or if the Contractor terminates the Contract pursuant to Condition 26 or Condition 27, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.
- 6.5 Upon payment of the last Progress Payment due to the Contractor as provided by Condition 19, the Owner is entitled to any remaining Security Account Money (including interest).
- 6.6 Any dispute between the parties as to the entitlement to Security Account Money shall be dealt with in accordance with Condition 25.

### 7. Evidence of title to, and boundaries of, the Site

- 7.1 Prior to the date of this Contract, the Contractor has satisfied itself as to the Owner's title to the **Site** and, where relevant to the **Works**, of the boundaries of the **Site** and the relevant Local Government setback requirements.
- 7.2 The Contractor will check the relevant Local Government setback requirements applicable to the **Works** and the **Site** and notify the Owner in writing, within 10 **Business Days** of the date of the Contract, if the Owner's design for the **Works** does those comply with those requirements.

### 8. Copyright

- 8.1 A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.

8.2 Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** by the Contractor in accordance with those plans.

## 9. Building approval and certification

- 9.1 Within 10 **Business Days** from the date on which the Owner has satisfied its obligation under Condition 5.1, the party named in Schedule Item 13 (or if no party is named, then the Contractor) must lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building work with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.
- 9.2 All parties must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.
- 9.3 The Contractor and the Owner agree that the Contractor must comply with section 143A of the *Building Act 1975* in relation to providing the Owner's name and contact details to a Private Certifier.

### OWNER'S REQUEST FOR ADDITIONAL INSPECTIONS

- 9.4 The Contractor and the Owner acknowledge that:
- (a) under section 143A of the *Building Act 1975*, a Private Certifier is required to give the Owner a notice of the Private Certifier's name and the details, in an approved form, of the responsibilities of the Private Certifier;
  - (b) under section 143B of the *Building Act 1975*, if a building certifier is, or was, engaged by the Contractor, the Owner may, by an additional certification notice which is given to the Contractor within 10 **Business Days** of the Owner receiving the notice from the Private Certifier referred to in condition 9.3(b), direct the Contractor to ask the building certifier to perform one or more additional certifying functions; and
  - (c) under section 143B of the *Building Act 1975*, the Contractor must give a copy of the additional certification notice to the building certifier within 5 **Business Days** after receiving the additional certification notice from the Owner.
- 9.5 For an example of the notice referred to in Condition 9.4(b), and other relevant information, visit the Business Queensland website [www.business.qld.gov.au](http://www.business.qld.gov.au), search 'Form 33 Additional certification notice' and read the Appendix to this form.
- 9.6 The Owner and the Contractor agree that a direction by the Owner under Condition 9.4(b) is not a variation but that the Owner is liable to the building certifier for the Building Certifier's Reasonable Costs. The Owner must pay the Building Certifier's Reasonable Costs to the building certifier within 5 **Business Days** of receiving a copy of a tax invoice of the building certifier.
- 9.7 In this Condition:
- (a) each of the terms "building", "building assessment work", "building certifier", "private certifier" and "private certifying functions" has the same meaning as that same term has in the *Building Act 1975*;
  - (b) each of the terms "additional certification notice" and "certifying functions" has the same meaning as that same term has in section 143B of the *Building Act 1975*;

- (c) "Building Certifier's Reasonable Costs" means the reasonable costs of the performance of any additional certifying functions by the building certifier under the additional certification notice; and
- (d) "Private Certifier" means a private certifier engaged by the Contractor to perform private certifying functions for a building or building assessment work in relation to the **work under this Contract**.

## 10. Termination for lack of building approval

- 10.1 Either party may give to the other party a written notice which terminates this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of building has not issued within 3 months of the date of this Contract or such further period extended by the parties' agreement in writing.
- 10.2 If the Contract is terminated pursuant to this Condition the parties' entitlements and obligations shall be the same as if the Contract were brought to an end under Condition 5.3 and Conditions 5.4, 5.5 and 5.6 shall apply.

## 11. Contractor's indemnity in favour of the Owner

The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by an act or omission of the Owner.

## 12. Contractor's insurance obligations

- 12.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
- (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
  - (b) Queensland Home Warranty Scheme cover, the premium for which must be collected from the Owner and paid to QBCC within 10 **Business Days** after the date the Contract was entered into and before the **work under this Contract** starts (whichever is earlier); and
  - (c) Contract **Works** insurance for an amount not less than the **Contract Price** until 4pm on the **Date of Practical Completion** and Public Liability insurance for not less than 10 million dollars, until 4pm on the day of which the contractor has complied with its obligations under Condition 29, with a reputable and financially sound insurer upon usual and reasonable terms which name or include as an insured the Owner and the Contractor for their respective rights and interests.
- 12.2 The insurances required under Condition 12.1(c) will include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.
- 12.3 Prior to commencement of the **work under this Contract**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract **Works** and Public Liability Insurances required under this Condition are current.



### 13. Access to the Site

- 13.1 The Owner gives the Contractor a licence to access the **Site** sufficient to enable the Contractor to commence and carry out the **work under this Contract** from the **Starting Date** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.
- 13.2 The rights granted by the Owner to the Contractor under Condition 13.1 do not convey to the Contractor an interest in the land comprising the **Site**.
- 13.3 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision and subject to the Owner or any person authorised by the Owner complying with all workplace health and safety requirements as identified by the Contractor:
- (a) have reasonable access to the **Site**; and
  - (b) view any part of the **work under this Contract**.
- 13.4 The Owner or any person authorised by the Owner must not unreasonably interfere with the performance of the **work under this Contract** when at the **Site**.

### 14. Care of the work under this Contract

- 14.1 The Contractor is responsible for the care of the **work under this Contract** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.
- 14.2 The Contractor must promptly make good any loss or damage to the **work under this Contract**, or to the Owner's property, occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

### 15. Workplace health and safety

- 15.1 For the purposes of this Condition:
- 'Act' means the *Work Health and Safety Act 2011 (Qld)* as amended from time to time; 'Regulation' means the *Work Health and Safety Regulation 2011 (Qld)*, as amended from time to time; and 'workplace', 'inspector', 'notifiable incident', 'principal contractor', 'structure', 'dangerous goods' and 'regulator' have the same meaning as in the Act.
- 15.2 In relation to the **work under this Contract**, the Contractor will:
- (a) comply with and discharge all obligations and duties imposed on a person by the Act, the Regulation and any other regulation in connection with health and safety including without limitation obligations imposed on a person who conducts a business or undertaking; and
  - (b) accept that it is the principal contractor and the person having management and control of the workplace at which the **work under this Contract** is being undertaken.

- 15.3 The Contractor will indemnify the Owner against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by the Owner as a result of or in connection with:
- (a) any breach of this clause by the Contractor;
  - (b) any breach by the Contractor of its obligations under the Act, the Regulation or any other regulation in connection with health and safety; and
  - (c) any enforcement of obligations imposed on the Contractor under the Act, the Regulation or any other regulation in connection with health and safety,
- except to the extent that such claim, action, demand, loss, damage, cost or expense results from or is contributed to by any act or omission of the Owner.

### 16. Communication between Owner and Contractor

The Owner or the **Owner's Authorised Representative** must communicate and deal with the Contractor personally or with the **Contractor's Authorised Representative**. The Owner must not give directions to the Contractor's employees or subcontractors or rely on information provided by them.

### 17. Commencement and performance of the Works

- 17.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.
- 17.2 Within 10 **Business Days** after the date on which **work under this Contract** commences on **Site**, the Contractor must give a written notice to the Owner (such as QBCC Form 1 - *Commencement Notice*) stating:
- (a) the date on which **work under this Contract** commenced on **Site**; and
  - (b) the **Date for Practical Completion**.
- 17.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, suspend, or fail to maintain reasonable progress in the performance of that work.

### 18. Assignment and subcontracting

- 18.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 18.2 The Contractor may subcontract parts of the **work under this Contract** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

### 19. Payment

- 19.1 The Owner must pay the Contractor the **Contract Price** for the **Works** calculated and adjusted as provided by this Contract in accordance with the following provisions:
- (a) The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 2 upon the signing of this Contract.

- (b) The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 8 which claim shall consist of the percentage of the **Contract Price** applicable to that stage as set out in Schedule Item 8, subject to the following adjustments:
- (i) an adjustment for any **Prime Cost Item** incorporated in the **Works** to that stage, and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8 depending on whether the final cost of the **Prime Cost Item** is more or less than the amount allowed and stated in the *Prime Cost Items Schedule*; and
  - (ii) an adjustment for the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8 depending on whether the final cost of the **Provisional Sum** Item is more or less than the amount allowed and stated in the *Provisional Sums Schedule*; and
  - (iii) an increase to the relevant stage payment in respect to an amount payable under a Variation Document where the work the subject of the variation has been completed and for which payment has not previously been made; and
  - (iv) a decrease in the relevant stage payment in respect to a variation which reduces the **Contract Price**.
- (c) Such adjustments referred to in Condition 19.1(b) shall be recorded by the Contractor on the QBCC Form 3 - *Progress Claim* or similar appropriate document and the relevant progress claim shall be adjusted accordingly.
- (d) The QBCC Form 3 - *Progress Claim* or similar appropriate document must be accompanied by a QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice and any certificates of inspection relevant to the payment stage.
- (e) The progress claim for the **Practical Completion Stage** must, in addition to the requirements specified for any other progress claim, be accompanied by a completed and signed QBCC Form 6 - *Defects Document* and QBCC Form 7 - *Certificate of Practical Completion*, or similar appropriate documents.
- (f) The Contractor must make all reasonable efforts to have the Owner sign the QBCC Form 6 - *Defects Document* or similar appropriate document used to record the minor defects and minor omissions.
- (g) Except in regard to the Progress Payment for the **Practical Completion Stage** payable in accordance with Condition 28.6, the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim for Progress Payment as is not disputed by the Owner, within 5 **Business Days** of receipt of the relevant claim.
- (h) If the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must, within 5 **Business Days** of receipt of the relevant claim, give to the Contractor a completed and signed QBCC Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice stating the reasons for so disputing the claim or part of it.
- (i) If the dispute is not resolved by the parties within 5 **Business Days** of the receipt by the Contractor of the notice of the dispute, the dispute must be referred for resolution in accordance with Condition 25.

## 20. Interest on overdue payments

The Owner must pay the Contractor interest on overdue payments at the rate of six percent above the cash rate target as published by the Reserve Bank of Australia (<https://www.rba.gov.au/statistics/cash-rate/>) at the date on which the payment is due.

## 21. Variations

- 21.1 The **work under this Contract** may be varied by way of an increase, decrease or substitution of **work under this Contract** agreed between the Contractor and the Owner provided that, before work commences and before any additional payment is required, the details of the variation are put in writing in a Variation Document agreed in writing by both parties.
- 21.2 The Variation Document may be a QBCC Form 5 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of Schedule 1B of the QBCC Act, agreed in writing by both parties.
- 21.3 The Variation Document complies with the requirements of Schedule 1B of the QBCC Act if it:
  - (a) is readily legible; and
  - (b) describes the variation; and
  - (c) states the date of the request for the variation; and
  - (d) if the variation will result in a delay affecting the subject work - states the Contractor's reasonable estimate for the period of delay; and
  - (e) states the change to the **Contract Price** because of the variation, or the method for calculating the change to the **Contract Price** because of the variation; and
  - (f) if the variation results in an increase in the **Contract Price** - states when the increase is to be paid; and
  - (g) if the variation results in a decrease in the **Contract Price** - states when the decrease is to be accounted for.
- 21.4 Any increase in the **Contract Price** as a result of the variation cannot be required to be paid before work the subject of the variation has been completed.
- 21.5 The Contractor must give the Owner a readily legible signed copy of the Variation Document as soon as practicable (but within 5 **Business Days**) after the variation is agreed and before the variation work is commenced.
- 21.6 The Contractor may present the Variation Document to the Owner, and the Owner may respond to it in writing, by any of the communication methods detailed in the Notice provisions in Condition 30.
- 21.7 If the Contractor has requested the variation, the Contractor is only entitled to additional payment:
  - (a) if the variation is necessary because it could not have been reasonably foreseen by the Contractor when the Contract was entered into; or,

- (b) if the variation could have been reasonably foreseen by the Contractor when the Contract was entered into, if the variation was necessary because of circumstances beyond the reasonable control of the Contractor when the Contract was entered into.

#### VARIATIONS REQUIRED BY LAW

- 21.8 If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner (who must act reasonably in deciding whether to consent), vary the **work under this Contract** accordingly. If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense. In any other case, the Contractor shall give to the Owner the Contractor's calculation of the change to the **Contract Price**, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.

#### VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

- 21.9 If the Owner is named in Schedule Item 14 as the party responsible for extra excavations and foundations, and if it becomes apparent that extra work or materials are required in respect of excavations or foundations beyond what could reasonably be established by the required **Foundations Data**, then the Contractor may, with the prior written consent of the Owner (who must act reasonably in deciding whether to consent), vary the **work under this Contract** to include the provision of such extra work or materials.
- 21.10 In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within 5 **Business Days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the **Contract Price**, if any, consequent upon the proposed variation, and the **work under this Contract** shall be varied when the Owner (who must act reasonably in deciding whether to agree) agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.
- 21.11 The Contractor cannot seek additional payment from the Owner for a variation in respect of extra excavations and foundations where the need for the variation has arisen because:
- (a) the Contractor failed to obtain the appropriate **Foundations Data** before entering the Contract and, had the Contractor obtained the appropriate **Foundations Data**, the need for the additional amount could reasonably have been established; or
  - (b) the Contractor obtained the appropriate **Foundations Data**, and the need for the extra work or materials could reasonably have been established from the **Foundations Data**.

## 22. Time for Practical Completion

The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated in or calculated in accordance with Schedule Item 7 or any extended date under Condition 23.

## 23. Extension of time

- 23.1 Subject to complying with Condition 23.2, the Contractor may only claim and is entitled to a reasonable extension of the **Date for Practical Completion** if:
- (a) the need for the extension of time arises because one or more of the following causes of delay prevents the Contractor from achieving **Practical Completion** by the **Date for Practical Completion**:
    - (i) a variation complying with Condition 21; or
    - (ii) a delay caused by the Owner or the **Owner's Authorised Representative**; or
    - (iii) a delay event stated in Schedule Item 6B which exceeds the stated allowance; or
    - (iv) another cause of delay which is not reasonably foreseeable and beyond the reasonable control of the Contractor; and
  - (b) the claim is made to the Owner in writing using a QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document with the particulars, including the cause of the delay and the extension of the **Date for Practical Completion** claimed, completed; and
  - (c) the claim is given to the Owner within 10 **Business Days** of the earlier of the Contractor becoming aware of the cause and extent of the delay and when the Contractor reasonably ought to have become aware of the cause and extent of the delay; and
  - (d) the Owner approves the claim in writing using the QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document.
- 23.2 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.
- 23.3 The Contractor must give the Owner a signed copy of the claim for an extension of time within 5 **Business Days** of the Owner approving the claim.
- 23.4 The Owner must, within 10 **Business Days** of receiving the Contractor's claim, reasonably assess and return to the Contractor the said QBCC Form 2 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document either agreeing to the extension of time claimed or giving reasons for the rejection of the whole or part of the said claim, failing which the said extension of time claim will be deemed to be disputed by the Owner.
- 23.5 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to damages arising from the unreasonable rejection of all or part of a claim for an extension of the **Date for Practical Completion**.

## 24. Liquidated damages

- 24.1 If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 10.
- 24.2 If Schedule Item 10 is left blank, a default amount of \$50 per day shall be deemed to apply.
- 24.3 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

### WARNING TO OWNER

**The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract.**

**Any valid extensions of time must be taken into consideration when calculating the number of days of liquidated damages which can be claimed.**

## 25. Dispute resolution

- 25.1 If a dispute under the Contract arises between the parties, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 25.2 If the dispute is not resolved within 10 **Business Days** of the receipt of the notice of dispute, either party may refer the matter to a dispute resolution process administered by the Queensland Building and Construction Commission.
- 25.3 A party will not commence any proceedings in respect of the dispute in any court or tribunal of competent jurisdiction until the dispute resolution process referred to in Condition 25.2 is at an end.
- 25.4 Where a dispute has arisen under or in connection with this Contract, including Condition 23.4, the Contractor must proceed diligently with the **work under this Contract** notwithstanding the existence of the dispute.

## 26. Termination after notice of default

- 26.1 If:
- (a) a party is in substantial breach of this Contract; and
  - (b) the other party gives a notice to the party in breach identifying and describing the breach and stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within 10 **Business Days** from the giving of the notice; and
  - (c) the breach is not so remedied, then the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.

- 26.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.
- 26.3 **Substantial breach by the Owner** includes, but is not limited to:
- (a) failing to produce evidence satisfactory to the Contractor of the Owner's capacity to pay the **Contract Price** in compliance with Condition 5.7 of this Contract;
  - (b) failing to pay any money due and owing to the Contractor within 5 **Business Days** after the due date for payment; and
  - (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.
- 26.4 **Substantial breach by the Contractor** includes, but is not limited to:
- (a) failing to comply with any necessary approvals associated with the **work under this Contract**;
  - (b) failing to provide materials which comply with this Contract;
  - (c) unreasonably failing to replace or remedy defective work or materials;
  - (d) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
  - (e) failing to effect or maintain any insurance required by this Contract;
  - (f) failing to hold the current, active and appropriate licence required to perform the **Works**, including, without limitation, a licence required under the QBCC Act; and
  - (g) the Contractor failing to pay a judgement debt.

## 27. Termination for bankruptcy or liquidation

- 27.1 Notwithstanding Condition 26, if a party to this Contract:
- (a) is made bankrupt; or
  - (b) being a company, goes into liquidation,
- then the other party may forthwith by written notice terminate this Contract.
- 27.2 If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the **Site** and retain all unfixed materials, goods, plant and equipment previously provided at the **Site** by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.
- 27.3 If the Owner terminates the Contract under this Condition, the Owner may, in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials and goods previously provided at the **Site** by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract.

27.4 Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

### WARNING TO OWNER AND CONTRACTOR

**New legislation effective from 1 July 2018 makes it illegal to terminate a contract with a contractor solely because they have encountered financial difficulties short of bankruptcy or, being a company, liquidation.** For this reason (and the probable loss for Owners of non-completion protection under the Qld Home Warranty Scheme if you terminate your Contract incorrectly), **it is very important that you obtain formal legal advice before terminating the Contract for any reason.**

## 28. Practical Completion

- 28.1 The Contractor must give to the Owner 5 **Business Days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach the **Practical Completion stage**.
- 28.2 The Contractor will give the Owner written notice when it considers that the **Works** have reached the **Practical Completion stage**.
- 28.3 On the date specified in the notice under Condition 28.2 or within 2 **Business Days** after that date and at a time agreed by the parties (or if no time is agreed, at a time nominated by the Owner), the Owner or the Owner's Representative will inspect the **Works** with the Contractor and if satisfied that the **Works** have reached the **Practical Completion stage**, and if the Contractor produces to the Owner satisfactory written evidence that all relevant inspections and approvals required by the *Planning Act 2016* and the *Building Act 1975* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must:
- complete and sign the QBCC Form 6 - *Defects Document* or similar appropriate document identifying agreed and non-agreed minor defects and minor omissions that will not unreasonably affect occupation, and when the Contractor will remedy the agreed matters, and give a copy to the Owner; and
  - give the Owner a completed and signed QBCC Form 7 - *Certificate of Practical Completion* stating that date as the **Date of Practical Completion**; and
  - hand over the **Works** to the Owner in exchange for payment in accordance with Condition 28.6.
- 28.4 If the Owner, acting reasonably, considers that the **Works** have not reached the **Practical Completion stage** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with Condition 28.3.
- 28.5 The issue of a *Certificate of Practical Completion* does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.
- 28.6 When the Contractor has satisfied all of its obligations under Condition 28.3 the Owner must immediately pay the Contractor the progress claim for the **Practical Completion Stage** (as adjusted under Condition 24, if applicable).
- 28.7 The Contractor must rectify the agreed minor defects and minor omissions by the time stated in the document referred to in Condition 28.3(a) subject to the Owner giving the Contractor reasonable access to the **Site** for that purpose.

## 29. Defects after completion

- 29.1 The Contractor must make good defects or omissions in the **work under this Contract** which become apparent to the Owner within 12 months of the **Date of Practical Completion**.
- 29.2 If there are any such defects or omissions, the Owner must, as soon as practicable after becoming aware of the defects or omissions, give the Contractor written notice to make good such defects or omissions and give the Contractor reasonable access to the **Site** for that purpose.
- 29.3 Subject to reasonable access being provided, the Contractor must within 20 **Business Days** of the notice being given rectify any defects or omissions notified to the Contractor under Condition 29.2 during usual business hours unless there are reasonable reasons why the defects cannot be rectified within that period in which case the Contractor will rectify those defects or omissions within an agreed time or, in the absence of an agreement, within a reasonable time.

## 30. Notices

- 30.1 Any notice under this Contract must, unless otherwise stated, be given in writing.
- 30.2 Any notice may be given to the party to whom the notice is to be given by delivering the notice to:
- the party's Last Address by hand; or
  - the party's Last Address by prepaid post; or
  - the party's Last Number by facsimile; or
  - the party's Last Email Address by email.
- 30.3 The time when the notice to a party is given to the party is the time at the **Site** when the party receives the notice.
- 30.4 If a notice to a party is delivered by hand or by prepaid post to the party's Last Address, the notice shall be deemed to have been received by the party at the time when the notice is so delivered.
- 30.5 If a notice is given by delivering the notice to the party's Last Number, the notice shall be deemed to have been received by the party at the time set out in the sender's written confirmation of the completed transmission of the facsimile.

- 30.6 If a notice is given by delivering the notice by email to the party's Last Email Address, the notice shall be deemed to have been received by the party at the time when the email reaches the party's system for generating, sending, receiving, storing or otherwise processing emails.
- 30.7 A party's Last Address means the postal address of a party stated in the Schedule or, if the party has subsequently advised to the other party another address, then the last address advised in writing to the other party.
- 30.8 A party's Last Number means the facsimile number of the party stated in the Schedule or, if the party has subsequently advised to the other party another facsimile number, then the last facsimile number advised in writing to the other party.
- 30.9 A party's Last Email Address means the email address of the party stated in the Schedule or, if the party has subsequently advised to the other party another email address, then the last email address advised in writing to the other party.

### 31. Entire agreement

The Contract constitutes the entire agreement between the parties in relation to the **Works** and also supersedes any representations made by either party.



# CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Keep copies of all important papers regarding your project in a safe place.

## YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

PERSON	NAME & EMAIL		OTHER CONTACT DETAILS
<b>Solicitor</b>	Name:		Phone:
	Email:		
<b>Finance Provider</b>	Name:		Phone:
	Email:		
<b>Building Designer or Architect</b>	Name:		Phone:
	Email:		
<b>Building Contractor</b>	Name:		Phone:
	Email:		
<b>Site Supervisor</b>	Name:		Phone:
	Email:		
<b>Building Certifier</b>	Name:		Phone:
	Email:		
<b>Local Government</b>	Name:		Phone:
	Email:		
<b>Insurance Company</b>	Name:		Phone:
	Email:		
<b>Building Consultant</b>	Name:		Phone:
	Email:		
<b>Neighbours (if relevant)</b>	Name:		Phone:
	Email:		
	Name:		Phone:
	Email:		
<b>Contact QBCC</b>	Post:	GPO Box 5099, Brisbane Qld 4001	Phone 139 133
	Web:	qbcc.qld.gov.au	