

# QBCC NATURAL DISASTER REPAIRS CONTRACT

## (FOR REPAIRS OF ANY VALUE)

**This Contract is strictly intended for repairs of any value to a home, duplex or home unit arising from a natural disaster (e.g. a flood, severe storm or cyclone, etc.). This Contract must NOT be used for the construction or rebuilding of an entire home.**

- For minor renovations, extensions, improvements and routine repairs to a home priced at \$3,301 - \$19,999, the **QBCC Level 1 Renovation, Extension and Repair Contract** is recommended.
- For larger renovations, extensions, improvements and routine repairs to a home priced at \$20,000 or more, the **QBCC Level 2 Renovation, Extension and Repair Contract** is recommended.
- For construction of a new home, the **QBCC New Home Construction Contract** should be used.

### **IMPORTANT NOTE FOR CONTRACTOR**

In addition to the General Conditions, this **booklet now includes a new one-page document** titled '**Timeframes for Key Obligations Under this Contract**' which summarises when you need to meet important requirements under the contract and the legislation.

# CONTENTS

Timeframes for key obligations under this contract .....	2
General conditions.....	3
1. Definitions.....	3
2. Withdrawal during 'cooling-off' period .....	4
3. Warranties under schedule 1b of QBCC act .....	4
4. Price.....	5
5. Evidence of title, site boundaries and capacity to pay contract price .....	5
6. Copyright.....	6
7. Building approval .....	6
8. Termination for lack of building approval .....	6
9. Contractor's indemnity in favour of the owner.....	6
10. Contractor to effect insurances .....	6
11. Access to the site.....	6
12. Care of the work under this contract.....	6
13. Workplace health and safety .....	6
14. Communication between owner and contractor .....	6
15. Commencement and performance of the works .....	6
16. Assignment and subcontracting .....	7
17. Payment .....	7
18. Interest on overdue payments .....	7
19. Variations.....	7
20. Latent condition.....	8
21. Time for practical completion .....	8
22. Extension of time.....	8
23. Liquidated damages.....	8
24. Dispute resolution .....	9
25. Termination after notice of default .....	9
26. Termination for bankruptcy or liquidation .....	9
27. Practical completion .....	9
28. Defects after completion .....	10
29. Notices.....	10

# TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

(NOTE: The list below is not exhaustive; 'GC' numbers below indicate the relevant clause number in the General Conditions)

HOME OWNER	BUILDING CONTRACTOR
<b>WHEN CONTRACT SIGNED</b> <ul style="list-style-type: none"> <li>• <b>DEPOSIT:</b> On signing, pay deposit stated in the Contract Schedule (<b>GC 17.2</b>)</li> <li>• <b>COOLING-OFF PERIOD:</b> Expires 5 business days after Owner receives signed copy of the full contract and (if price is \$20,000 or more) the Consumer Building Guide (<b>Sections 35-38 of Schedule 1B of QBCC Act</b>)</li> </ul>	<b>WHEN CONTRACT SIGNED</b> <ul style="list-style-type: none"> <li>• <b>CONSUMER BUILDING GUIDE:</b> Ensure Guide given to Owner before they sign contract</li> <li>• <b>COPY OF CONTRACT</b> (incl. plans &amp; specs): Give to Owner within 5 business days of signing (<b>GC 2</b>)</li> <li>• <b>HOME WARRANTY INSURANCE:</b> Collect premium from Owner and pay to QBCC within 10 business days</li> </ul>
<b>BEFORE WORK COMMENCES ON SITE</b> <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 Contract Price (<b>GC 5.2</b>)</li> <li>• <b>ACCESS:</b> Ensure Contractor has clear access to Site (<b>GC 11</b>)</li> <li>• <b>INSURANCE:</b> Contact home property insurer to check their requirements (especially if insurer paying)</li> </ul>	<b>BEFORE WORK COMMENCES ON SITE</b> <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</li> <li>• <b>INSURANCE:</b> Ensure all insurances (incl. QBCC Home Warranty Scheme) are in place before work starts (<b>GC 10</b>)</li> <li>• <b>LODGE PLANS:</b> Within 10 business days of Owner providing satisfactory evidence of financial capacity (<b>GC 5.2</b>), Contractor must lodge plans (unless Owner responsible for lodgement)</li> </ul>
<b>AFTER WORK COMMENCES ON SITE</b> <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 17.9</b>)</li> <li>• <b>VARIATIONS:</b> Respond ASAP to all Variation Documents presented by Contractor (<b>GC 19</b>)</li> <li>• <b>EXTENSIONS OF TIME (EOT):</b> Within 10 business days of receiving EOT claim from Contractor - assess, complete and return EOT Claim Form 2 (<b>GC 22.4</b>)</li> <li>• <b>AS PRACTICAL COMPLETION APPROACHES:</b> Liaise with lender to ensure final contract payment will be available when required at Practical Completion</li> </ul>	<b>AFTER WORK COMMENCES ON SITE</b> <ul style="list-style-type: none"> <li>• <b>COMMENCE WORK:</b> On/before Start Date (<b>GC 15.1</b>)</li> <li>• <b>COMMENCEMENT NOTICE:</b> Within 10 business days after starting on Site - give notice to Owner (<b>GC 15.2</b>)</li> <li>• <b>VARIATIONS:</b> Give 'Variation Document' (Form 5) to Owner and get approval before starting variation work and before asking for payment - give a signed copy to Owner within 5 business days of agreement on variation (<b>GC 19</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 claim to Owner on Form 2. Give Owner a copy of the fully signed form within 5 business days of their approval (<b>GC 22</b>)</li> <li>• <b>AS PRACTICAL COMPLETION APPROACHES:</b> Give owner 5 business days prior written notice of PC (<b>GC 27.1</b>)</li> </ul>
<b>AT PRACTICAL COMPLETION (PC)</b> <ul style="list-style-type: none"> <li>• <b>CHECK CONTRACT (incl. plans &amp; specs) AND INSPECT WORK</b> with Contractor to ensure PC Stage has been reached (Note: Definition of PC allows for minor defects and minor omissions)</li> <li>• <b>DEFECTS DOCUMENT:</b> Compile with Contractor at final inspection, sign and retain a copy (<b>GC 27.2</b>)</li> <li>• <b>PC PAYMENT:</b> Pay Contractor immediately all PC requirements in Form 7 are satisfied (<b>GC 27.5</b>)</li> </ul>	<b>AT PRACTICAL COMPLETION (PC)</b> <ul style="list-style-type: none"> <li>• Before presenting claim for PC Stage (<b>GC 27</b>): <ul style="list-style-type: none"> <li>(a) Inspect contracted work, compile Defects Document with Owner, sign and copy to Owner</li> <li>(b) Give any remaining Certificates of Inspection (incl. 'Final' where applicable) to Owner</li> <li>(c) Complete PC Certificate (Form 7) and hand over property to Owner</li> </ul> </li> <li>• <b>Present claim for PC Stage to Owner (GC 27.5)</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 or Local Government Authority responsible for granting the relevant building approvals and authorisations for the Works.
  - (b) **“Building Product”** means any material or other thing associated with, or that could be associated with, a building.
  - (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, 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 27.
  - (j) **“Finance Date”** means the date stated in Schedule Item 10 or, in the event no date is stated, the date 10 business days from the date of this Contract.
  - (k) **“Fixed Price Component”** means the sum stated in Schedule Item 1 (a) 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.
  - (l) **“Foundations Data”** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
  - (m) **“GST”** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
  - (n) **“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
  - (o) **“Intended Use”**, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.
  - (p) **“Latent Condition”** means any physical condition on the Site, excluding weather condition, which differs substantially from the physical condition which could reasonably be expected by the Contractor at the time of entering into the Contract, if the Contractor had conducted all reasonable inspections of the Site and obtained any necessary reports, including foundations data.
  - (q) **“Non-conforming Building Product”** - a building product is a non-conforming building product for an intended use if—
    - (i) the association of the product with a building for the use—
      - is not, or will not be, safe; or
      - does not, or will not, comply with the relevant regulatory provisions; or
    - (ii) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.
  - (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 27, apart from minor omissions or minor defects.
  - (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 17.
  - (v) **“Provisional Sum”** means any item noted in the Provisional Sums Schedule to this Contract and as contemplated by Conditions 4 and 17.
  - (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 5.2.

- (z) “**Substantial breach by the Contractor**” has the meaning given in Condition 25.4.
- (aa) “**Substantial breach by the Owner**” has the meaning given in Condition 25.3.
- (bb) “**work under this Contract**” means all that work necessary to build the Works in accordance with this Contract, including the plans and specifications, 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 2.4, the Owner may withdraw from the Contract within the times noted below:
  - (a) if the Contract Price is less than \$20,000 –
    - (i) within 5 **business days** after the day on which the Owner receives from the Contractor a copy of the Contract, including any plans and specifications, signed by the Owner and the Contractor; or
  - (b) if the Contract Price is \$20,000 or more –
    - (i) within 5 **business days** after the day on which the Owner receives from the Contractor a copy of both the Contract, including any plans and specifications, signed by the Owner and the Contractor and the QBCC Consumer Building Guide; or
    - (ii) 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 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must within the cooling-off period 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’).
- 2.3 If the Owner withdraws from the Contract under this Condition, the Owner must pay 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 (a) or (b).

The Contractor must provide details of any out-of-pocket expenses they intend to claim. If, at the time they withdraw, the Owner has already paid more than the Contractor’s entitlement under this Condition, the Contractor must promptly refund the excess.

- 2.4 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 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 of good quality 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 13;
  - (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 reasonably 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 other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:
  - (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an intended use; and
  - (b) the Owner is given all information about the **building product** required by section 74AG(4) 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.

## 4. Price

- 4.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:
- Fixed Price Component;**
  - Prime Cost Items** Component (if any); and
  - Provisional Sum** Items Component (if any).
- 4.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's markup) and **Provisional Sums** (including the Contractor's markup) exceeds 20% as a proportion of the **Contract Price** as stated in Schedule Item 1, the Contractor must prior to 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 of 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 detailed description of the **Prime Cost Item** or of the contracted services to which the **Provisional Sum** relates;
  - a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**; and
  - any markup the Contractor proposes to charge for providing the items or services covered by the allowances (the 'Contractor's markup').
- 4.4 The Contractor warrants that each such estimate in the *Prime Cost Items Schedule* or the *Provisional Sums Schedule* 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 markup.
- 4.5 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 markup (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*).
- 4.6 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 markup, from the **Contract Price**.
- 4.7 Prior to or when making 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 service.

- 4.8 As soon as practicable after the Contractor becomes aware that the allowance for any **Prime Cost Item** or **Provisional Sum** Item will be exceeded by more than 10%, and where practicable before the relevant work commences, the Contractor must provide the Owner with a written notice which:
- describes the **Prime Cost Item** or **Provisional Sum**;
  - states the amount by which the relevant allowance in the *Prime Cost Items Schedule* or *Provisional Sums Schedule* will be exceeded; and
  - 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

- 4.9 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 19) have been or will be calculated on a **GST** inclusive basis.

## 5. Evidence of title, site boundaries and capacity to pay Contract Price

- 5.1 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 and position of the **Site**.
- 5.2 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**.
- 5.3 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 this Contract is at an end.
- 5.4 If by the **Finance Date** the Owner fails to provide any written evidence as to its capacity to pay the **Contract Price** or advises the Contractor in writing that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.5 If this Contract is ended under this Condition, the Contractor must immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor less any fees, costs and expenses incurred by the Contractor with the Owner's express consent.

## 6. Copyright

- 6.1 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 those plans.
- 6.2 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.

## 7. Building approval

- 7.1 If building approval is required for the subject work, within 10 **business days** from the date the Owner has satisfied its obligations under Condition 5.2 the party named in Schedule Item 12 (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.
- 7.2 All parties must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of the **Works**.

## 8. Termination for lack of building approval

- 8.1 Either party may give a written notice to the other party terminating 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.
- 8.2 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 5.4 and Condition 5.5 shall apply.

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

The Contractor shall indemnify the Owner against any liability for loss, damage, injury or death arising out of the **work under this Contract** except where such loss, damage, injury or death is caused by an act or omission of the Owner.

## 10. Contractor to effect insurances

- 10.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
- (a) all insurance required by the *Workers' Compensation and Rehabilitation Act 2003*;
  - (b) Queensland Home Warranty insurance (if required for the **Works**), 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 or before the **work under this Contract** starts (whichever is earlier); and
  - (c) Contract Works insurance for the full insurable value of the Contract Work and Public Liability insurance for not less than 5 million dollars, both until 4pm on the **Date of Practical Completion**, 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.
- 10.2 Prior to commencement of the **Works**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract Works and Public Liability insurances are current.

## 11. Access to the Site

- 11.1 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**.

- 11.2 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:

- (a) have reasonable access to the **Site**; and
- (b) view any part of the **work under this Contract**.

## 12. Care of the work under this Contract

- 12.1 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**.
- 12.2 The Contractor must promptly make good any loss or damage to that work, or 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.

## 13. Workplace health and safety

The Contractor shall comply with all applicable requirements of the *Work Health and Safety Act 2011*.

## 14. 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.

## 15. Commencement and performance of the Works

- 15.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.
- 15.2 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**.
- 15.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

## 16. Assignment and subcontracting

- 16.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 16.2 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**.

## 17. Payment

- 17.1 The Owner must pay the Contractor the **Contract Price** for the **Works** calculated and adjusted as provided by this Contract in accordance with the provisions of this Condition.
- 17.2 The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 2 upon the signing of this Contract.
- 17.3 After receiving the deposit (if any), the Contractor is entitled to claim either:
- one Lump Sum Payment as stated in Schedule Item 8(a) upon completion of the **Works**; or
  - a Progress Payment when the Contractor has achieved completion of each of the payment stages set out in Schedule Item 8(b) which claim shall consist of the percentage of the Contract Price applicable to that stage as set out in Schedule Item 8(b).
- 17.4 Payment claims under Condition 17.3 shall be subject to the following adjustments (if applicable):
- 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
  - 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
  - an increase to the relevant stage payment in respect to an amount payable under an agreed Variation Document where the variation work has been completed and for which payment has not previously been made; and
  - a decrease in the relevant stage payment in respect to an agreed variation which reduces the **Contract Price**.
- 17.5 Any such adjustments referred to in Condition 17.4 shall be recorded by the Contractor on the *Form 3 - Progress Claim* or similar appropriate document and the relevant progress claim shall be adjusted accordingly.
- 17.6 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.
- 17.7 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.

- 17.8 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.
- 17.9 Except in regard to the Progress Payment for the **Practical Completion Stage** payable in accordance with Condition 27.5, 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.
- 17.10 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.
- 17.11 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 24.

## 18. Interest on overdue payments

The Owner must pay the Contractor interest on overdue payments at the rate set out in Schedule Item 11 or at the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the payment becomes overdue plus 5% per annum (the 'default rate'), whichever is the lesser rate. If no amount is entered in Schedule Item 11 the default rate shall apply.

## 19. Variations

- 19.1 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 in a written Variation Document provided that, before work commences and before any additional payment is sought, the details of the variation are put in a written Variation Document agreed in writing by both parties.
- 19.2 The Contractor shall not commence work on a variation or be entitled to any payment in respect of a variation unless the variation is documented in accordance with Condition 19.3 and Condition 19.4.
- 19.3 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.
- 19.4 The Variation Document complies with the requirements of Schedule 1B of the QBCC Act if it:
- is readily legible; and
  - describes the variation; and
  - states the date of the request for the variation; and
  - if the variation will result in a delay affecting the subject work - states the Contractor's reasonable estimate for the period of delay; and
  - 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.
- 19.5 The Contractor must give the Owner a readily legible signed copy of the Variation Document within 5 **business days** after the variation is agreed and before the variation work is commenced.
- 19.6 The Contractor must not seek an increase in the Contract Price due to a variation until after the variation work has been completed.

## 20. Latent condition

The Contractor shall have no entitlement to claim a price increase or an extension of time due to a **Latent Condition** unless, on becoming aware of the **Latent Condition**, and prior to commencing work to address the **Latent Condition**, the Contractor gives the Owner written notice of the **Latent Condition** in QBCC Form 5 – *Variation Document* and/or QBCC Form 2 – *Extension of Time Claim & Owner's Response to Claim*, as the case may be.

## 21. Time for Practical Completion

- 21.1 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 22.

## 22. Extension of time

- 22.1 Subject to complying with Condition 22.2, 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 of 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 19; 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.

- 22.2 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.

- 22.3 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.

- 22.4 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.

- 22.5 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**.

## 23. Liquidated damages

- 23.1 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 9.
- 23.2 If Schedule Item 9 is left blank, a default amount of \$50 per day shall be deemed to apply.
- 23.3 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.

## 24. Dispute resolution

- 24.1 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.
- 24.2 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 (QBCC).
- 24.3 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 administered by the QBCC referred to in Condition 24.2 is at an end.

24.4 Where a dispute has arisen under or in connection with this Contract, including Condition 22.4, the Contractor must proceed diligently with the **work under this Contract** notwithstanding the existence of the dispute.

## 25. Termination after notice of default

25.1 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 date notice is given in accordance with Condition 29; 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.

25.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

25.3 **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 of this Contract;
- (b) failing to pay any money due and owing to the Contractor for more than 10 **business days** from receipt of the relevant claim; and
- (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.

25.4 **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 under this Contract** 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.

## 26. Termination for Bankruptcy or liquidation

Notwithstanding Condition 25, should either party be made bankrupt or, being a company, go into liquidation, then the other party may, by giving a written notice, immediately terminate the Contract.

### WARNING TO OWNER AND CONTRACTOR

New legislation effective from 1 July 2018 makes it illegal to terminate a contract with a company solely because they have gone into voluntary administration, appointed a receiver/managing controller or entered a scheme of arrangement with creditors. 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.

## 27. Practical Completion

27.1 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 Practical Completion.

27.2 On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** will inspect the **Works** and if satisfied that the **Works** have reached **Practical Completion**, and if the Contractor produces to the Owner satisfactory written evidence that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must:

- (a) complete and sign the QBCC *Form 6 - Defects Document* or similar appropriate document identifying minor defects and minor omissions and give a copy to the Owner; and
- (b) give the Owner a completed and signed QBCC *Form 7 - Certificate of Practical Completion* stating that date as the **Date of Practical Completion**; and
- (c) hand over the **Works** to the Owner.

27.3 If the Owner considers that the **Works** have not reached **Practical Completion** 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 the preceding paragraph.

27.4 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**.

27.5 When the Contractor has satisfied all of its obligations under Condition 27.2 the Owner must immediately pay the Contractor the progress claim for the **Practical Completion Stage** (as adjusted under Condition 23, if applicable).

## 28. Defects after completion

- 28.1 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**.
- 28.2 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 must give the Contractor reasonable access to the **Site** for that purpose.
- 28.3 Subject to reasonable access being provided, the Contractor must, within 28 calendar days of the notice being given, rectify any defects or omissions notified to the Contractor under Condition 28.2 during usual business hours.

## 29. Notices

- 29.1 Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given at the address stated in the Schedule, or such other address as is subsequently advised in writing, in one of the following ways:
- (a) delivered to the other party by hand; or
  - (b) delivered by prepaid post to the address noted in the Schedule; or
  - (c) sent by facsimile to the facsimile number noted in the Schedule; or
  - (d) sent by email to the email address noted in the Schedule.
- 29.2 Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.
- 29.3 Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.
- 29.4 Any notice sent by email is deemed to be given in accordance with the following provisions:
- (a) the notice is deemed given at the time the email is sent provided it is sent before 5.00pm on a **business day** at the place of receipt and otherwise on the next **business day** at the place of receipt, provided:
    - (i) the sender's computer or email account does not receive a message that the email has not been delivered (including an 'out of office' message); and
    - (ii) the email has been received fully and in legible form by the receiver; and
    - (iii) the receiver has not advised the sender in writing that a notice cannot be given to them by email for the stated period.

THIS PAGE IS LEFT INTENTIONALLY BLANK