

## NOTES TO THIS CONTRACT

This *Contract* is not suitable for use as a 'mixed contract' by reason of Schedule 1B, Part 4, section 5 (1) (c) of the Queensland Building and Construction Commission Act 1991. A 'mixed contract' is one that combines domestic building work with other work.

For the purposes of Schedule 1B, Part 4, section 5 (1) (b) of the Queensland Building and Construction Commission Act 1991 this *Contract* is not a cost plus contract.

The *Contractor* is required to give the *Owner* a copy of any invoice or receipt relevant to any *Provisional Sum* or *Prime Cost Item* as soon as practicable after the *Contractor* receives the invoice or receipt for such items or at the time of submission of a progress payment claim in accordance with Queensland Building and Construction Commission Act 1991.

### 1. Definitions and Interpretation

- 1.1 "**Contract**" means the terms and conditions contained herein, together with any Residential Quotation; invoice or other document or amendments expressed to be supplemental to this *Contract*.
- 1.2 "**Contractor**" shall mean Barker Property Pty Ltd T/A Barker Plumbing Services, its successors and assigns or any person acting on behalf of and with the authority of Barker Property Pty Ltd T/A Barker Plumbing Services.
- 1.3 "**Owner**" means the person/s, entities or any person acting on behalf of and with the authority of the *Owner* requesting the *Contractor* to provide the *Works* as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one *Owner*, is a reference to each *Owner* jointly and severally; and
  - (b) if the *Owner* is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the *Owner* is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the *Owner's* executors, administrators, successors and permitted assigns.
- 1.4 "**Works**" shall mean all *Works* (including the supply of *Materials*) undertaken by the *Contractor* and described in this *Contract* and includes any advice or recommendations. Where the context so permits the terms '*Works*' or '*Materials*' shall be interchangeable for each other.
- 1.5 "**Materials**" shall mean *Materials* supplied by the *Contractor* that are required in order complete the *Works*.
- 1.6 "**Intended Use**" means an associated building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with the *Works*.
- 1.7 "**Non-Conforming Building Product**" means any associated building products that are regarded as *Non-Conforming* for an *Intended Use* if, when associated with the *Works*:
- (a) the product is not, or will not be, safe; or
  - (b) does not, or will not, comply with the relevant regulatory provisions; or
  - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 "**Personal Information**" means name, address, telephone number, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable).
- 1.9 "**Prime Cost Item**" shall mean an item that either has not been selected, or whose price is not known, at the time this *Contract* is entered into and for the cost of supply and delivery of which the *Contractor* must make a reasonable allowance in the *Contract*.
- 1.10 "**Provisional Sum**" shall mean an estimate of the cost of carrying out particular *Works* under this *Contract* for which the *Contractor*, after making all reasonable inquiries, cannot give a definite price at the time this *Contract* is entered into.
- 1.11 "**Contract Price**" shall mean the price of the *Works* as agreed between the *Contractor* and the *Owner*.
- 1.12 "**GST**" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.13 "**Worksite**" means the land (or that part of the land) that the *Contractor* reasonably needs to occupy in order to carry out and practically complete the *Works* required under this *Contract*.
- 1.14 "**QBCC Act**" means the Queensland Building and Construction Commission Act 1991 (and includes any amendments from time to time).
- 1.15 In this *Contract*, unless the context requires otherwise:
- (a) **Plurals**. The singular shall include the plural and vice versa and words importing one gender shall include every gender and a reference to a person shall include any other legal entity of whatsoever kind and vice versa.
  - (b) **Business Days**. Business Days means Monday to Friday and shall not include Saturday or Sunday and/or a public holiday in the area of the *Worksite* or throughout the State of Queensland (whether a whole or part of a day).

- (c) **Statutory amendments.** A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- (d) **Parts of Contract.** References to this *Contract* including its clauses, schedules, and annexures.
- (e) **Headings.** Headings shall be ignored in construing this document.

**2. Acceptance/Cooling Off Period**

- 2.1 Any instructions received by the *Contractor* from the *Owner* (including the acceptance of a Domestic Quotation) for the supply of *Works* and/or the *Owner's* acceptance of *Works* to be undertaken by the *Contractor* shall constitute acceptance of the terms and conditions contained herein subject to the *Owner* being able to terminate this *Contract* (subject to clause 2.2) within five (5) Business Days following the later of:
  - (a) receipt from the *Contractor* of a signed copy of this *Contract*; or
  - (b) receipt from the *Contractor* of a copy of the appropriate contract information sheet.
- 2.2 To terminate this *Contract* the *Owner* must complete a withdrawal notice within the timeframe specified in clause 2.1 above, and
  - (a) give it to the *Contractor*; or
  - (b) leave it at the *Contractor's* address in this *Contract*; or
  - (c) serve it on the *Contractor* in accordance with any provision in this *Contract* providing for delivery of notices on the *Contractor* by the *Owner*; and
  - (d) pay to the *Contractor* the sum of one hundred dollars (\$100.00) plus any out-of-pocket expenses reasonably incurred by the *Contractor* before the date of withdrawal from this *Contract*.
- 2.3 The *Owner* may not withdraw from this *Contract* where:
  - (a) there has been a previous contract on similar terms for the same *Worksite*/house; or
  - (b) the *Owner* has received independent legal advice about the *Contract*; or
  - (c) the *Owner* informs the *Contractor* that they have received independent legal advice about the *Contract* when or after the *Contract* is made.
- 2.4 Subject to clauses 2.1 and 2.2 upon acceptance of this *Contract* by the *Owner*, this *Contract* is binding and can only be rescinded in accordance with this *Contract* or with the written consent of the *Contractor*.
- 2.5 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.

**3. Variations**

- 3.1 In the event that the *Owner* requests a variation, the *Contractor* will give the *Owner* a written variation document detailing the *Works*, the amended *Contract Price*, the estimated time to undertake the variation, and the likely delay, if any, and shall require written acceptance by the *Owner* of the variation before commencing work on the variation.
- 3.2 In the event that the *Contractor* requests a variation, the *Contractor* will, in writing:
  - (a) state the reason for the variation; and
  - (b) provide a full description of the variation; and
  - (c) state any effect the variation will have on the *Contract*, including but not limited to, the *Contract Price*, completion date and whether further permits or authorisations are required.
- 3.3 Other than for the events outlined in clause 3.4 the *Contractor* shall obtain written acceptance by the *Owner* of any variation submitted by the *Contractor* before commencing work on the variation.
- 3.4 The *Contractor* may carry out any necessary *Works* in the event of:
  - (a) unforeseeable problems with the site which are only revealed when undertaking the *Works* which the *Contractor* considers should be rectified for the safe completion of the *Works*; or
  - (b) any *Works* that the *Contractor* considers are required to be undertaken urgently and it is not reasonably practicable to obtain written acceptance from the *Owner* before commencing the variation; or
  - (c) the *Contractor* being instructed to undertake extra *Works* by any person authorised by the Building Act 1975;
 Any such additional *Works* are to be treated as a variation. However, if an amended *Contract Price* is not agreed upon then the *Owner* will be charged at the *Contractor's* actual cost plus twenty percent (20%) for the *Works*.

**4. Contract Price and Payment**

- 4.1 Time for payment for the *Works* shall be of the essence and will be stated on the invoice and/or progress payment claim. If no time is stated then payment shall be due seven (7) days following the date of the invoice and/or progress payment claim.
- 4.2 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the *Owner* and the *Contractor*.
- 4.3 The *Contract Price* shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the *Contract Price*.

**5. Finance**

- 5.1 If this *Contract* is conditional upon the *Owner* obtaining a loan from an Australian financial institution then they shall provide the *Contractor* with written confirmation of the loan approval by the date specified in Box H above. Such written confirmation is to include confirmation from the financial institution that the *Contractor* may commence the *Works*.
- 5.2 The *Owner* shall authorise the *Owner's* lender to, and the *Owner's* lender may then, pay all monies advanced to the *Owner* for payment of the *Contract Price* of the *Works* (or any part thereof) and approved by the *Owner* direct to the *Contractor*.

5.3 In the event any such loan application is declined then the *Owner* shall have the right to withdraw from this *Contract* subject to the *Owner* providing the *Contractor* with written evidence within five (5) Business Days of the date specified in Box H above that the loan was declined. Upon receipt of such evidence the *Contractor* shall refund the *Owner* any deposit paid in accordance with clauses 21.4 and 21.5.

#### **6. Security Monies**

6.1 The *Owner* shall, prior to the commencement of the *Works*, deposit any *Security Monies* into an interest bearing account at a financial institution mutually agreed between the *Owner* and the *Contractor*. The account must be a joint account in the names of both the *Owner* and the *Contractor* and withdrawals shall require the signature of both of those parties.

6.2 It is agreed that *Security Monies* shall be used to pay progress payments to the *Contractor* before any loan monies are used to pay progress payments.

6.3 In the event that the *Owner* fails to pay any *Security Monies* due to the *Contractor* or the *Contractor* terminates this *Contract* under clause 21 then the *Contractor* shall be entitled to *Security Monies* equivalent to any amount due and owing to the *Contractor* after having applied clauses 21.4 and 21.5.

6.4 After payment of the final progress payment to the *Contractor* any *Security Monies* remaining in the account (including any interest) shall belong to the *Owner* (including any interest earned thereon).

#### **7. Liquidated Damages**

7.1 In the event that practical completion has not been achieved by the end of the building period specified in Box F (subject to any extension of the building period allowed under this *Contract*) then the *Owner* shall be entitled to liquidated damages equivalent to the amount specified in Box J for each day after the building period that the *Works* remain uncompleted, continuing until either practical completion has been achieved or the *Owner* has taken possession of the *Worksite* whichever is the earliest.

7.2 Liquidated damages applied under this *Contract* may only be deducted from the final progress payment specified in Box G, and in the event there is a shortfall then such shortfall shall become a debt due and payable by the *Contractor* to the *Owner*.

#### **8. Owner's Agent**

8.1 Where the *Owner* specifies an agent in Box L of this *Contract* then the agent shall be deemed to be acting on behalf of and with the full authority of the *Owner* and shall be responsible for all acts, errors, omissions, directions, instructions or requested variations as if they were the actions of the actual *Owner*. Where requested by the *Contractor* the *Owner's* agent shall confirm any directions, instructions or requested variations in writing which documentation shall be signed by the *Owner's* agent.

8.2 The *Owner* may with the written consent of the *Contractor* change the *Owner's* agent at any time.

#### **9. Foundations Data and Latent Conditions**

9.1 This clause applies if the *Works*:

- (a) requires the construction or alteration of footings, or a concrete slab, for a building; or
- (b) may adversely affect the footings of a building or a concrete slab forming part of a building.

9.2 Before entering into the *Contract*, the *Contractor* must obtain the foundations data that is appropriate for the *Worksite*, having regard to the following:

- (a) the Building Code of Australia;
- (b) the need for a drainage plan;
- (c) the need for engineer's drawings and computations;
- (d) the need for information on the fall of the land at the *Worksite*.

9.3 Nothing in clause 9.2 requires the *Contractor* to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the *Contractor* to rely on the data.

9.4 The *Contractor* must give a copy of any foundations data obtained by the *Contractor* in compliance with this clause 9 to the *Owner* on payment by the *Owner* of the costs incurred by the *Contractor* in obtaining the data.

9.5 Clause 9.4 shall not be applicable if:

- (a) the data is given to the *Contractor* by the *Owner*; or
- (b) the *Contractor* reasonably believes the *Owner* already has a copy of the data.

9.6 The *Contractor* cannot seek from the *Owner* an amount not already provided for in the *Contract* if:

- (a) the *Contractor* entered into the *Contract* before obtaining the foundations data under clause 9.2; and
- (b) the need for the additional amount could reasonably have been established, and the amount calculated, had the *Contractor* complied with clause 9.2.

9.7 For clause 9.6, an amount is not taken to be provided for in this *Contract* only because the *Contract* contains a provision allowing for an increase to be made in the *Contract Price*.

9.8 Nothing in this clause 9 prevents the *Contractor* from claiming an amount not provided for in the *Contract* if:

- (a) the *Contractor* has complied with clause 9.2; and
- (b) the need for the additional amount cannot be established from the foundations data obtained by the *Contractor*.

9.9 The *Contractor* shall immediately on discovery of any latent condition at the *Worksite* advise the *Owner* of the nature of the condition and detail all the additional costs or *Works* required to rectify the condition (including any likely delays). Where the *Owner* is responsible under this *Contract* for additional costs due to latent conditions such notification shall be in the form of a variation which shall comply with clause 3 herein.

9.10 Where the *Contractor* is responsible for additional costs due to latent conditions, the *Contractor* shall not be liable for those costs if the *Works* required to rectify the condition have already been allowed for in this *Contract* as a *Provisional Sum*.

#### **10. Provision of Works**

- 10.1 Subject to clause 10.2, it is the *Contractor's* responsibility to ensure that the *Works* commence as soon as it is reasonably possible.
- 10.2 The *Works* commencement date will be put back and/or the building period extended by whatever time is reasonable in the event that the *Contractor* claims an extension of time (by giving the *Owner* written notice) where completion will be delayed by any event beyond the *Contractor's* reasonable control (or which was not foreseeable at the time this *Contract* was entered into), including, but not limited to:
- (a) a variation being requested by either the *Owner* or *Contractor*;
  - (b) a calculable delay in excess of the period allowed for and specified in Box F (but only to the extent of the actual delay in excess of the period already allowed);
  - (c) a force majeure event as per clause 26.8 (but only for the period that the force majeure event affects the *Works*);
  - (d) any dispute with adjoining, residents (including tenants), neighbours, or owners;
  - (e) anything act, omission, or default of the *Owner* (including the failure of the *Owner* to agree to, or sign a variation, or to comply with clauses 5.1, 6.1, or failing evidence to the *Contractor's* satisfaction of the *Owner's* title to the *Worksite* as per Box E);
  - (f) any delay in the supply or manufacture of *Materials* required for the *Works*;
  - (g) delays in receiving consent/s and/or approvals;
  - (h) delay by the *Owner* in making a selection.
- 10.3 Nothing in this *Contract* shall have the effect of limiting or preventing the *Contractor* from claiming more than one extension of time for a delay specified in clause 10.2.
- 10.4 If the *Owner* disputes any extension of time the *Owner* must provide the *Contractor* with written notification specifying why they are disputing the time extension requested, such notification to be provided to the *Contractor* within five (5) Business Days of the *Owner* receiving the *Contractor's* time extension request. Lack of advice from the *Owner* to the contrary shall mean that the *Owner* has accepted the *Contractor's* time extension request.
- 10.5 The *Contractor* shall within five (5) Business Days of commencement of the *Works* confirm to the *Owner* in writing the actual date that the *Works* commenced and the expected date for practical completion.
- 10.6 The *Works* shall be deemed to be practically completed when:
- (a) the *Worksite* is reasonably suitable for habitation (if applicable); and/or
  - (b) subject to clauses 11.1 and 11.2, the *Works* carried out under this *Contract* have been completed without any omissions or defects in accordance with the plans and specifications set out in this *Contract*; and
  - (c) all statutory requirements have been met.

## 11. Omissions or Defects

- 11.1 In addition to clause 10.6, practical completion also takes place when, in the event of a minor omission or defect the *Contractor* gives the *Owner* a defects document that:
- (a) lists the minor defects and minor omissions that both the *Contractor* and *Owner* agree exist; and
  - (b) states by when the *Contractor* is to correct the listed defects and omissions; and
  - (c) lists the minor defects and omissions the *Owner* claims exist, but that are not agreed by the *Contractor* to exist; and
  - (d) is signed by the *Contractor*.
- 11.2 The *Contractor* shall be entitled to make a claim for any completion payment so long as the *Contractor* has made all reasonable efforts to have the *Owner* sign the defects document to acknowledge its contents.

## 12. Worksite Access and Condition

- 12.1 The *Owner* shall ensure that the *Contractor* has clear and free access to the *Worksite* at all times to enable them to undertake the *Works* (including carrying out *Worksite* inspections, gain signatures for required documents, and for the delivery and installation of the *Materials*); and
- (a) the *Contractor* shall not be liable for any loss or damage to the *Worksite* (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas etc.) unless due to the *Contractor's* negligence; and
  - (b) if the *Works* are interrupted by the failure of the *Owner* to adhere to the work schedule agreed to between the *Contractor* and the *Owner*, any additional costs will be invoiced to the *Owner* as a variation in accordance with clause 3;
- 12.2 It is the intention of the *Contractor* and agreed by the *Owner* that it is the *Owner's* responsibility to:
- (a) remove from the work area any furniture, personal effects or other property likely to impede the *Contractor* in order to minimise the risk of injury or any damage; and
  - (b) provide the *Contractor*, while at the *Worksite*, with adequate access to available water, electricity, toilet and washing facilities.
- 12.3 The *Owner* agrees to be present at the *Worksite* when and as reasonably requested by the *Contractor* and its employees, contractors and/or agents.
- 12.4 Where the *Contractor* requires that *Materials*, tools etc. required for the *Works* be stored at the *Worksite*, the *Owner* shall supply the *Contractor* a safe area for storage and shall take all reasonable efforts to protect all items from destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the *Owner's* responsibility.
- 12.5 *Worksite* Inductions:
- (a) in the event the *Owner* requires an employee or sub-contractor of the *Contractor* to undertake a *Worksite* induction during working hours, the *Owner* will be liable to pay the hourly charges for that period. If any induction needs to be undertaken prior to the commencement date then the *Owner* shall be liable to pay the *Contractor's* standard (and/or overtime, if applicable) hourly labour rate; or
  - (b) where the *Contractor* is in control of the *Worksite*, the *Owner* and/or the *Owner's* third-party contractors must initially carry out the *Contractor's* Health & Safety induction course before access to the *Worksite* will be granted. Inspection of the *Worksite* during the course of the *Works* will be by **appointment only** and unless otherwise agreed, in such an event the *Owner* and/or third party acting on behalf of the *Owner* must at all times be accompanied by the *Contractor*.

### 13. Owner's Responsibility

- 13.1 Where the *Owner* has supplied products for the *Contractor* to complete the *Works*, the *Owner* acknowledges that it accepts responsibility for the suitability of purpose and are for their *Intended Use* and any faults inherent in those products. However, if in the *Contractor's* opinion, it is believed that the materials supplied are *Non-Conforming* products and will not conform with the state regulations, then the *Contractor* shall be entitled, without prejudice, to halt the *Works* until the appropriate conforming products are sourced and all costs associated with such a change to the plans and design will be invoiced in accordance with clause 3.
- 13.2 It is the intention of the *Contractor* and agreed by the *Owner* that:
- the *Worksite* will comply with all Queensland work health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
  - the *Contractor* is not responsible for the removal of rubbish (including but not limited to contaminated soil stockpiling of excess spoil) from or clean-up of the *Worksite*. This is the responsibility of the *Owner* or the *Owner's* agent. Under no circumstances will the *Contractor* handle removal of asbestos product.

### 14. Risk

- 14.1 If the *Contractor* retains ownership of the *Materials* nonetheless, all risk for the *Materials* passes to the *Owner* on practical completion.
- 14.2 Where the *Contractor* is required to install the *Materials* the *Owner* warrants that the structure of the premises or equipment in or upon which these *Materials* are to be installed or erected is sound and will sustain the installation and work incidental thereto and the *Contractor* shall not be liable for any claims, demands, losses, damages, costs and expenses howsoever caused or arising should the premises or equipment be unable to accommodate the installation (including but not limited to insufficient or defective foundations, walls or other structures not erected by the *Contractor*).
- 14.3 The installation of some appliances can cause water hammer or damage to existing pipe work. The *Owner* agrees to indemnify the *Contractor* against any such loss, damage or claim that may arise if the existing pipe work is unable to accommodate the installation of the *Materials*.
- 14.4 Where the *Contractor* gives advice or recommendations to the *Owner*, or the *Owner's* agent, regarding the suitability of the *Worksite* for the installation of the *Materials* or similar works and such advice or recommendations are not acted upon then the *Contractor* shall require the *Owner* or their agent to authorise commencement of the *Works* in writing. The *Contractor* shall not be liable in any way whatsoever for any damages or losses that occur after any subsequent commencement of the *Works*.
- 14.5 The *Owner* acknowledges and accepts that:
- choked drains generally indicate pipelines are not fully efficient (i.e. breakages, cracks, negative fall or tree root entry); the drain line cannot be repaired or rectified just by clearing it on its own. Once cleared, the *Contractor* cannot give any guarantee against reoccurrence or further damage. In the event that the *Owner* requests the *Contractor* to use drain/pipe unblocking equipment (including but not limited to, CCTV camera or an electric eel), and the *Contractor* does not recommend the use of such equipment due to the risk of the equipment becoming lodged or stuck, the *Contractor* may require the *Owner* or their agent to authorise commencement of the *Works* in writing. If the drain/pipe unblocking equipment subsequently becomes lodged or stuck, the *Owner* shall be responsible for the cost of repair, replacement and/or retrieval of said equipment; and
  - the *Contractor* is only responsible for components that are replaced by the *Contractor* and does not at any stage accept any liability in respect of previous goods and/or services supplied by any other third party that subsequently fail and found to be the source of the failure; and
  - Materials* supplied may:
    - exhibit variations in shade, colour, texture, surface and finish, and may fade or change colour over time. The *Contractor* will make every effort to match batches of product supplied in order to minimise such variations but shall not be liable in any way whatsoever where such variations occur; and
    - expand, contract or distort as a result of exposure to heat, cold, weather; and
    - mark or stain if exposed to certain substances; and
    - be damaged or disfigured by impact or scratching; and
    - create undesirable smells caused by a system as a result of its normal operation.

### 15. Underground Locations

- 15.1 Prior to the *Contractor* commencing the *Works* the *Owner* must advise the *Contractor* of the precise location of all underground services on the *Worksite* and clearly mark the same. The underground mains and services the *Owner* must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on the *Worksite*.
- 15.2 Whilst the *Contractor* will take all care to avoid damage to any underground services the *Owner* agrees to indemnify the *Contractor* in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 15.1.

### 16. Title

- 16.1 It is the intention of the *Contractor* and agreed by the *Owner* that ownership of *Materials* shall not pass until:
- the *Owner* has paid all amounts owing for the particular *Materials*; and
  - the *Owner* has met all other obligations due by the *Owner* to the *Contractor* in respect of all contracts between the *Contractor* and the *Owner*.

- 16.2 Receipt by the *Contractor* of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the *Contractor's* ownership or rights in respect of *Materials*, and this *Contract*, shall continue.
- 16.3 It is further agreed that:
- (a) where practicable the *Materials* shall be kept separate and identifiable until the *Contractor* shall have received payment and all other obligations of the *Owner* are met; and
  - (b) until such time as ownership of the *Materials* shall pass from the *Contractor* to the *Owner* the *Contractor* may give notice in writing to the *Owner* to return the *Materials* or any of them to the *Contractor*. Upon such notice the rights of the *Owner* to obtain ownership or any other interest in the *Materials* shall cease; and
  - (c) the *Contractor* shall have the right of stopping the *Materials* in transit whether or not delivery has been made; and
  - (d) if the *Owner* fails to return the *Materials* to the *Contractor* then the *Contractor* or the *Contractor's* agent may (as the invitee of the *Owner*) enter upon and into land and premises owned, occupied or used by the *Owner*, or any premises where the *Materials* are situated and take possession of the *Materials*.

## 17. Personal Property Securities Act 2009 ("PPSA")

- 17.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;
  - (c) security agreement means the security agreement under the PPSA created between the *Owner* and the *Contractor* by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 17.2 Upon assenting to these terms and conditions in writing the *Owner* acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in:
    - (i) all *Materials* previously supplied (if any), and that will be supplied in the future, by the *Contractor* to the *Owner*;
    - (ii) any monetary obligations owed by the *Owner* to the *Contractor* for the provision of the *Works*.
- 17.3 The *Owner* undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the *Contractor* may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 17.3(a)(i) or 17.3(a)(ii).
  - (b) indemnify, and upon demand reimburse, the *Contractor* for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the *Contractor*;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the *Materials* and/or *Works* in favour of a third party without the prior written consent of the *Contractor*; and
  - (e) immediately advise the *Contractor* of any material change in its business practices of selling the *Materials* which would result in a change in the nature of proceeds derived from such sales.
- 17.4 The *Contractor* and the *Owner* agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 17.5 The *Owner* hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 17.6 The *Owner* waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 17.7 Unless otherwise agreed to in writing by the *Contractor*, the *Owner* waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 17.8 The *Owner* shall unconditionally ratify any actions taken by the *Contractor* under clauses 17.3 to 17.5.
- 17.9 Subject to any express provisions to the contrary (including those contained in this clause 17), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

## 18. Warranty

- 18.1 To the extent required by the Queensland Building and Construction Commission Act 1991, the *Contractor* warrants that:
- (a) subject to the conditions of warranty set out in clause 18.3 if any defect in any workmanship of the *Contractor* becomes apparent and is reported to the *Contractor* within six (6) years and six (6) months of the date of completion (time being of the essence) then the *Contractor* will either (at the *Contractor's* sole discretion) replace or remedy the workmanship; and
  - (b) the *Works* shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the *Contract* schedule;
  - (c) all *Materials* supplied will be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this *Contract*, those *Materials* will be new;
  - (d) the *Works* will be carried out in accordance with all relevant laws and legal requirements (including, but not limited to, the Building Act 1975, Sustainable Planning Act 2009, the Electrical Safety Act 2002, and the Plumbing & Drainage Act 2002);
  - (e) the *Works* will be carried out in an appropriate and skilful way, with reasonable skill and care;
  - (f) the *Works* will be carried out in accordance with the plans and the specifications to this *Contract*;

- (g) if the *Works* consist of the construction of a detached dwelling or are intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the *Works* are finished; and
  - (h) if the *Contract* states the particular purpose for which the *Works* are required, or the result which the *Owner* wishes the *Works* to achieve (so as to show that the *Owner* relies on the *Contractor's* skill and judgment) then the *Works* and any *Materials* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.
- 18.2 Clause 18.1(c) does not apply if the *Contractor* is subject to the direction of the *Owner's* architect for the supply of *Materials*, or the *Owner* is responsible for nominating the *Materials* and either:
- (a) there are no reasonable grounds for not using the *Materials*; or
  - (b) there are reasonable grounds for not using the *Materials* and the *Contractor* advises the *Owner* as such in writing and the *Owner* still insists on the *Materials* been being used.
- 18.3 The conditions applicable to the warranty given by clause 18.1(a) are:
- (a) the warranty shall not cover any defect or damage which may be caused or partly caused by or arise through:
    - (i) failure on the part of the *Owner* to properly maintain any *Works*; or
    - (ii) failure on the part of the *Owner* to follow any instructions or guidelines provided by the *Contractor*; or
    - (iii) the continued use of any *Works* after any defect becomes apparent or would have become apparent to a reasonably prudent operator or user; or
    - (iv) fair wear and tear, any accident or act of God.
  - (b) the warranty shall cease and the *Contractor* shall thereafter in no circumstances be liable under the terms of the warranty if the workmanship is repaired, altered or overhauled without the *Contractor's* consent;
  - (c) in respect of all claims the *Contractor* shall not be liable to compensate the *Owner* for any delay in either replacing or repairing the workmanship or in properly assessing the *Owner's* claim.
- 18.4 For *Materials* not manufactured by the *Contractor* the warranty shall be the current warranty provided by the manufacturer of the *Materials*. The *Contractor* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.

**19. The Commonwealth Competition and Consumer Act 2010, Queensland Building and Construction Commission Act 1991, Building Act 1975, Sustainable Planning Act 2009 and Fair Trading Acts**

- 19.1 Nothing in this *Contract* is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Competition and Consumer Act 2010, Queensland Building and Construction Commission Act 1991, Building Act 1975, Sustainable Planning Act 2009 or the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

**20. Default and Consequences of Default**

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the *Owner* owes the *Contractor* any money the *Owner* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the *Contractor's* contract default fees, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the *Contractor* may have under this *Contract*, if the *Owner* has made payment to the *Contractor*, and the transaction is subsequently reversed or cancelled, the *Owner* shall be liable for the amount of the reversed or cancelled transaction, in addition to any further costs incurred by the *Contractor* under this clause 20, where it can be proven that such reversal or cancellation is found to be illegal, fraudulent or in contravention to the *Owner's* obligations under this *Contract*.
- 20.4 Without prejudice to any other remedies the *Contractor* may have, if at any time the *Owner* is in breach of any obligation (including those relating to payment) under these terms and conditions the *Contractor* may suspend or terminate the provision of *Works* to the *Owner*. The *Contractor* will not be liable to the *Owner* for any loss or damage the *Owner* suffers because the *Contractor* has exercised its rights under this clause.
- 20.5 Without prejudice to the *Contractor's* other remedies at law, the *Contractor* shall be entitled to cancel all or any part of the *Works* which remains unperformed and all amounts owing to the *Contractor* shall, whether or not due for payment, become immediately payable in the event that:
- (a) the *Owner* becomes unable to pay their debts or bankrupt; or
  - (b) enters into an arrangement with, or makes an assignment for the benefit of their creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of any asset of the *Owner*.

**21. Cancellation**

- 21.1 Subject to clauses 21.2 to 21.5, the *Owner* may cancel this *Contract* if:
- (a) either:
    - (i) the *Contract Price* rises by fifteen (15%) percent or more after the *Contract* was entered into; or
    - (ii) the *Contract* has not been completed within one and a half (1½) times the period it was to have been completed by; and
  - (b) the reason for the increased time or cost was something that could have been reasonably foreseen by the *Contractor* on the date the *Contract* was made.
- 21.2 For the purposes of clause 21.1 any increased time or cost that arises as a result of a *Prime Cost Item* or a *Provisional Sum* or that is caused by a variation is to be ignored in calculating any *Contract Price* rise or increase in time.

- 21.3 To end the *Contract*, the *Owner* must give the *Contractor* a signed notice stating that the *Owner* is ending the *Contract* under this clause and giving the details of why the *Contract* is being ended.
- 21.4 If the *Contract* is ended under this clause 21, the *Contractor* is entitled to a reasonable amount for any *Works* already carried out, plus any other costs incurred by the *Contractor* as a result of, or prior to, the termination of the *Contract*, including, but not limited to:
- (a) the cost of any *Materials* already purchased for the *Works*, or ordered from the *Contractor's* suppliers which cannot be returned to the *Contractor's* suppliers, or for which the order cannot be cancelled;
  - (b) any restocking fees charged by the *Contractor's* suppliers;
  - (c) any additional costs incurred by the *Contractor* through having to quit the *Worksite* early;
  - (d) the *Contractor's* margin (i.e. twenty percent (20%)) on any monies that become due and payable as a result of the application of this clause 21.4, excluding sub-clauses (b) and (e);
  - (e) any default interest, fees or charges that the *Contractor* is entitled to charge, or incurs, under clause 20.
- 21.5 Notwithstanding clause 21.4 where the *Contractor* has already taken a deposit from the *Owner* and the deposit amount is in excess of the monies to which the *Contractor* is entitled under clause 21.4 then the *Contractor* agrees to refund all monies in excess of the amount due to the *Contractor* to the *Owner* within five (5) Business Days of the termination of this *Contract*.
- 21.6 Either the *Owner* or the *Contractor* may terminate this *Contract* upon written notice if the other party:
- (a) becomes insolvent or is unable to pay their debts;
  - (b) commits an act of bankruptcy or is made bankrupt;
  - (c) assigns assets for the benefit of creditors generally;
  - (d) makes a composition or other arrangement with creditors; or
  - (e) enters into liquidation or receivership.

## 22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by the *Contractor* is *Personal Information*, as defined and referred to in clause 22.3, and therefore considered confidential information. The *Contractor* acknowledges its obligation in relation to the handling, use, disclosure and processing of *Personal Information* pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The *Contractor* acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the *Owner's* *Personal Information*, held by the *Contractor* that may result in serious harm to the *Owner*, the *Contractor* will notify the *Owner* in accordance with the Act and/or the GDPR. Any release of such *Personal Information* must be in accordance with the Act and the GDPR (where relevant) and must be approved by the *Owner* by written consent, unless subject to an operation of law.
- 22.2 Notwithstanding clause 22.1, privacy limitations will extend to the *Contractor* in respect of cookies where the *Owner* utilises the *Contractor's* website to make enquiries. The *Contractor* agrees to display reference to such cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of *Personal Information* such as the *Owner's*:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to the *Contractor* when the *Contractor* sends an email to the *Owner*, so the *Contractor* may collect and review that information ("collectively *Personal Information*")

**If the *Owner* consents to the *Contractor's* use of cookies on the *Contractor's* website and later wish to withdraw that consent, the *Owner* may manage and control the *Contractor's* privacy controls via the *Owner's* web browser, including removing cookies by deleting them from the browser history when exiting the site.**

- 22.3 The *Owner* agrees for the *Contractor* to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the *Owner* in relation to credit provided by the *Contractor*.
- 22.4 The *Owner* agrees that the *Contractor* may exchange information about the *Owner* with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the *Owner*; and/or
  - (b) to notify other credit providers of a default by the *Owner*; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the *Owner* is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the *Owner* including the *Owner's* repayment history in the preceding two (2) years.
- 22.5 The *Owner* consents to the *Contractor* being given a consumer credit report to collect overdue payment on commercial credit.
- 22.6 The *Owner* agrees that personal credit information provided may be used and retained by the *Contractor* for the following purposes (and for other agreed purposes or required by):
- (a) the provision of *Works*; and/or
  - (b) analysing, verifying and/or checking the *Owner's* credit, payment and/or status in relation to the provision of *Works*; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the *Owner*; and/or
  - (d) enabling the collection of amounts outstanding in relation to the *Materials*.
- 22.7 The *Contractor* may give information about the *Owner* to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the *Owner* including credit history.
- 22.8 The information given to the CRB may include:
- (a) *Personal Information* as outlined in 22.3 above;



- (b) name of the credit provider and that the *Contractor* is a current credit provider to the *Owner*;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the *Owner's* application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the *Owner* no longer has any overdue accounts and the *Contractor* has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of the *Contractor*, the *Owner* has committed a serious credit infringement;
  - (h) advice that the amount of the *Owner's* overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.9 The *Owner* shall have the right to request (by e-mail) from the *Contractor*:
- (a) a copy of the *Personal Information* about the *Owner* retained by the *Contractor* and the right to request that the *Contractor* correct any incorrect *Personal Information*; and
  - (b) that the *Contractor* does not disclose any *Personal Information* about the *Owner* for the purpose of direct marketing.
- 22.10 The *Contractor* will destroy *Personal Information* upon the *Owner's* request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this *Contract* or is required to be maintained and/or stored in accordance with the law.
- 22.11 The *Owner* can make a privacy complaint by contacting the *Contractor* via e-mail. The *Contractor* will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the *Owner* is not satisfied with the resolution provided, the *Owner* can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au)

### 23. Security and Charge

- 23.1 In consideration of the *Contractor* agreeing to provide the *Works*, the *Owner* charges all of its rights, title and interest (whether joint or several) in any land (excluding any land specified in section 43 of the *QBCC Act*), realty or other assets capable of being charged, owned by the *Owner* either now or in the future, to secure the performance by the *Owner* of its obligations under this *Contract* (including, but not limited to, the payment of any money).
- 23.2 The *Owner* indemnifies the *Contractor* from and against all the *Contractor's* costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the *Contractor's* rights under this clause.
- 23.3 The *Owner* irrevocably appoints the *Contractor*, and each director of the *Contractor*, as the *Owner's* true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 23, including, but not limited to, signing any document on the *Owner's* behalf.

### 24. Service of Notices

- 24.1 Any written notice given under this *Contract* shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this *Contract*;
  - (c) by sending it by registered post to the address of the other party as stated in this *Contract*;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this *Contract* (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's current email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 25. Trusts

- 25.1 If the *Owner* at any time upon or subsequent to entering in to the *Contract* is acting in the capacity of trustee of any trust ("Trust") then whether or not the *Contractor* may have notice of the Trust, the *Owner* covenants with the *Contractor* as follows:
- (a) the *Contract* extends to all rights of indemnity which the *Owner* now or subsequently may have against the Trust and the trust fund;
  - (b) the *Owner* has full and complete power and authority under the Trust to enter into the *Contract* and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the *Owner* against the Trust or the trust fund. The *Owner* will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
  - (c) the *Owner* will not without consent in writing of the *Contractor* (the *Contractor* will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the *Owner* as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

### 26. General

- 26.1 Both parties acknowledge and agree:
- (a) to comply with the National Construction Code (NCC) and the *QBCC Act* section 74AA, in respect of all workmanship and building products to be supplied during the course of the *Works*; and
  - (b) that *Works* will be provided in accordance with any current relevant Australian/New Zealand Standards applicable.

- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 If any provisions of this *Contract* are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 26.4 This *Contract* shall be governed by the laws of Queensland and are subject to the jurisdiction of the Brisbane Courts of Queensland.
- 26.5 Subject to clause 7, the *Contractor* shall be under no liability whatever to the *Owner* for any indirect loss and/or expense (including loss of profit) suffered by the *Owner* arising out of a breach by the *Contractor* of this *Contract*.
- 26.6 Subject to clause 18, in the event of any breach of this *Contract* by the *Contractor* the remedies of the *Owner* shall be limited to damages (including (where applicable) liquidated damages under clause 7) which under no circumstances shall exceed the *Contract Price*.
- 26.7 The *Owner* shall not be entitled to set off against or deduct from the *Contract Price* any sums owed or claimed to be owed to the *Owner* by the *Contractor*.
- 26.8 The *Contractor* may licence and/or assign all or any part of its rights and/or obligations under this *Contract* without the *Owner's* consent.
- 26.9 The *Owner* cannot licence or assign without the written approval of the *Contractor*.
- 26.10 The *Contractor* may elect to subcontract out any part of the *Works* but shall not be relieved from any liability or obligation under this *Contract* by so doing. Furthermore, the *Owner* agrees and understands that they have no authority to give any instruction to any of the *Contractor's* sub-contractors without the authority of the *Contractor*.
- 26.11 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.
- 26.12 This *Contract*, the plans and specifications have precedence in that order if there is any inconsistency between them.

I/we certify that the above information is true and correct and that I/we have received read and understand this REGULATED DOMESTIC CONTRACT. I authorise the use of my *Personal Information* as detailed in the Privacy Policy clause 22 above. I/we have been supplied with a copy of the Consumer Building Guide and have read and understand its contents.

**Owner/s**

Signed Owner (1): \_\_\_\_\_ Date: \_\_\_\_\_

Name: (please print): \_\_\_\_\_

Signed Owner (2): \_\_\_\_\_ Date: \_\_\_\_\_

Name: (please print): \_\_\_\_\_

**Contractor**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: (please print): \_\_\_\_\_



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