

# Conditions of Contract

## 1. Responsibilities of Builder and Results of Construction

- (a) The **Builder** will, subject to these Conditions and the Contract Work details in Schedule 3, execute and complete the works required by the contract.
- (b) Statutory Warranties for Residential Building Work Pursuant to s18B of the Home Building Act 1989 (the "Act") the **Builder** warrants that in relation to any residential building work as defined by the Act and for the time periods allowed for under the Act:-
- (i) the work will be done with due care and skill and in accordance with the plans and specifications set out in the contract;
  - (ii) all materials supplied by the **Builder** will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the contract, those materials will be new;
  - (iii) the work will be done in accordance with, and will comply with, the Act or any other law;
  - (iv) the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time;
  - (v) if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling;
  - (vi) the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to the holder of the contractor licence or person required to hold a contractor licence, or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the holder or person, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the holder's or person's skill and judgment.

### Plans and specifications

- (c) (i) All plans and specifications for work to be done under this Contract, including any variations to those plans and specifications, are taken to form part of this Contract.
- (ii) Any agreement to vary this Contract, or to vary the plans and specifications for work to be done under this Contract, must be in writing signed by or on behalf of each party to this Contract.
- (iii) This clause only applies to a contract to which section 7AA (Consumer information) of the *Home Building Act 1989* applies.

### Quality of construction

- (d) (i) All work done under this Contract will comply with:

- (a) the *Building Code* of Australia (to the extent required under the *Environmental Planning and Assessment Act 1979*, including any regulation or other instrument made under that Act), and
  - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
  - (c) the conditions of any relevant development consent or complying development certificate.
- (ii) Despite **Sub-Clause 1(d)(i)**, this Contract may, and accordingly does, limit the liability of the contractor **Builder** so the **Builder** is not liable for a failure to comply with **Sub-Clause 1(d)(i)** if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of the **Owner** (but not by or on behalf of the contractor **Builder**), or
  - (b) a design or specification required by the **Owner**, if the contractor **Builder** has advised the **Owner** in writing that the design or specification contravenes **Sub-Clause 1(d)(i)**.

### Selection of Registered Certifier

- (e) (i) The **Builder** will notify the **Owner** if a registered certifier is required with respect to particular work done under this contract.
- (ii) The selection of a registered certifier is the sole responsibility of the **Owner** (subject to section 6.6(4A) or 6.12(4A) of the *Environmental Planning and Assessment Act 1979*).

### Budget Report to be Provided

- (f) If and as indicated in **Schedule 1 Part E** the **Builder** will provide to the **Owner** a **written** report on the cost of the works. This will be known as the budget report. The budget report is to be provided no later than **five (5) days** after the date indicated in **Schedule 1 Part E**.
- (g) The budget report will include:
- (i) details of the work done, costs known and moneys paid or payable as at the date identified in the budget report;
  - (ii) a summary of work being performed and still to be performed;
  - (iii) details of work about which the **Owner** needs to provide instructions in order to allow the works to proceed; and
  - (iv) a revised estimated total cost of works.

The estimate above will be based on the **Builder's** knowledge at the time the budget report is done. The **Builder** is to use reasonable care in preparing the budget report. However, the revised estimate of the total cost of works provided in the budget report is not a lump sum or guaranteed amount and is subject to the impact of the costs and the fees payable or incurred under the contract. Refer to **Clause 30** also.

## 2. Owner's Responsibilities Concerning the Works – Pre Construction & During Construction

The **Owner** must:

- (a) produce to the **Builder** prior to the commencement of the works:
  - (i) documentary evidence of the **Owner's** title to the land on which the works are to be executed; and
  - (ii) documentary evidence of the **Owner's** capacity to pay the **Builder** for the contract work, including, but not limited to, a full copy of loan approval documents and terms, and recent copies of bank statements, and any other documents the **Builder** may reasonably require; andIf the **Owner** fails to produce the evidence required by this clause within **ten (10) days** of the execution of this Contract, the **Builder** may terminate the Contract in accordance with **Clause 27**; and
  - (iii) A survey necessary to set out the works. If the **Owner** does not provide the **Builder** with a survey, or the survey provided is insufficient, the **Builder** is entitled to obtain the survey at the **Owner's** expense; and
  - (iv) If the **Owner** is demolishing an existing structure, an asbestos clearance certificate.
- (b) provide to the **Builder** upon request, at any time during the contract, reasonable evidence of the **Owner's** capacity to pay for the works. A failure to do so may, pursuant to **Clause 19**, allow the **Builder** to suspend work. (Refer to **Clause 19**).
- (c) make payment as required by the Contract within the period required by the Contract. This includes directing any Lending Authority to make payment direct to the **Builder**.
- (d) provide **written** instructions to the **Builder**, where required, in a timely and proper manner so as to avoid delay to the works. This specifically relates to variations, directions and instructions in relation to work under the Contract.
- (e) appoint the Principal Certifying Authority (**PCA**).
- (f) arrange and pay for any inspection of the works required to satisfy the mandatory inspection requirements which are part of the approval process or terms imposed by the **PCA**.

### **Owner's Duty to provide full terms of approval to Builder**

- (g)
  - (i) ensure that the **Builder** receives all terms and conditions of any approval by an Authority which affects or is relevant to the works. This should be done prior to signing the contract. If not it may cause the amount of money to be paid by the **Owner** to change.
  - (ii) if the Drawings and Specification are lodged by the **Builder** this duty will be met only if the **Builder** collects the approval documents from the Authority.
- (h) If there is more than one **Owner**, any direction or instruction given to the **Builder** by any **Owner** is binding on all **Owners**.

## 2A. Joint Responsibilities of the Builder and Owner

- (a) The Parties acknowledge the fact that:
  - (i) the amount payable by the **Owner** under this Contract is not as at the date of the Contract known;
  - (ii) the total amount payable under the Contract will not necessarily be ascertainable during the course of the Contract; and
  - (iii) the amount to be paid by the **Owner** is the result of the costs incurred by the **Builder**, the **Builder's** fee or return and the impact of the GST on the work done.
- (b) The Parties agree in order to manage this situation that they will conduct regular meetings in order to:
  - (i) review the work done and costs incurred;
  - (ii) review the work to be done and the costs thought to be payable for such work; and
  - (iii) make decisions and choices regarding work under the Contract so that the work to be paid for by the **Owner** is consistent with the **Owner's** capacity to pay.
- (c) they will act co-operatively and in a manner which progresses the works.
- (d) either party may require a meeting to be held within **five (5) days** of a **written** request for a meeting. Both parties must attend such a meeting. The party calling the meeting will identify issues to be covered at the meeting.

The **Builder** will provide a report on the matters raised at the meeting within a reasonable time but no later than **ten (10) days** after the meeting.
- (e) for the purpose of improved certainty the scope of work to be completed by the **Builder** is limited to that work for which the **Owner** has made or can make and does make payment. Consequently any work which is not able to be paid for by the **Owner** will be eliminated from the work to be carried out by the **Builder**.

### **Connection of Services**

- (f)
  - (i) The **Owner** is responsible for the provision of services to immediately adjacent to the building footprint.
  - (ii) The **Builder** is responsible for the connection of those services when immediately adjacent to the building footprint.
  - (iii) "Services" in this sub-clause means electricity, sewerage, water and gas, if specified in the contract.
  - (iv) Unless specified in the contract, the **Owner** is responsible for the connection(s) of other services.

## 3. Contract Documentation

- (a) The party that provides the Drawings and/or Specifications warrants their accuracy and correctness. As of the date of the Contract, the work to be done is as set out in **Schedule 3**.
- (b) **Schedule 3** requires that the party responsible for having the Drawings and or Specifications prepared

be identified. If that detail is left blank it will be concluded that the **Owner** is responsible for all drawings and specifications relevant to the work.

- (c) The **Owner** indemnifies the **Builder** against all actions, proceedings and claims for or in respect of any breach of copyright against the **Builder**, where the **Builder** does not prepare the Drawings, or prepares the Drawings under the instruction, direction or supervision of the **Owner** or from sketches supplied by the **Owner**.

#### **Contract Represents Entire Agreement.**

- (d) Apart from any terms implied by Statute, the whole of the terms, conditions and warranties of this Contract are set out in the Contract, drawings and specification (as set out in **Schedule 3**) and will not and are not in any way varied or affected by reference to any prior negotiations, stipulations or agreement, whether **written** or verbal.

## 4. Discrepancies and Ambiguities

- (a) Should there be any discrepancy or ambiguity in the contract documents the following order of precedence is to be employed to resolve the same:
- this Agreement and Conditions including any Special Conditions or quotation referred to;
  - drawings to a larger scale;
  - other drawings;
  - the specification.
- (b) The **Builder** must notify the **Owner** in **writing** of any discrepancy or ambiguity in the contract documents and request instructions on how to proceed. This should be done as soon as practicable to allow the **Owner** to respond.
- (c) The **Owner** must give **written** instructions within **five (5) days** of receiving the above notice. If the **Owner** does not then the **Builder** may proceed with the work on the basis of the interpretation in accordance with **Clause 4(a)** above.
- (d) Should any instruction of the **Owner** require an interpretation to be adopted, other than that in **Clause 4(a)** above, then the **Builder** is entitled to a variation under **Clause 14** and the work will be valued or costed accordingly.
- (e) Notwithstanding this clause, in case of any difference between scaled dimensions and figures on the Drawings, the figures are to prevail.

## 5. Approval of Works by Relevant Authorities

#### **Delay in Approval by Relevant Authority.**

- (a) Should any necessary approval not be issued, and the **Builder** notified in writing, within **twenty five (25) days** of the execution of this Contract, then either party may by giving **written** notice to the other, terminate this Contract without liability to the other except that the **Builder** will be entitled to a reasonable sum for services performed and reimbursement of all expenses incurred and payable as at the date of

termination. Any such sum must be paid prior to or upon the termination.

#### **Compliance with Relevant Authority's requirements, particularly mandatory inspections**

- (b) The documents approving the work will include details of the mandatory inspections required by the **PCA**. As per **Clause 2(f)** such inspections are to be arranged and paid for by the **Owner**. The **Builder** must advise the **Owner** when the works reach a stage where a mandatory inspection is required and the **Builder** must notify the **PCA** when the carrying out of such inspection is appropriate. If the **Builder** pays any such fee it will be a Cost of the Works and become payable as such.
- (c) The works will be deemed to comply with the requirements of any Relevant Authority upon the issuing, if applicable, of a certificate of compliance or similar document by the Relevant Authority.
- (d) The inspection and approval of work, by the **PCA** or by a person or party authorised to carry out any inspection required as part of the mandatory inspection process or terms of approval for the work, will satisfy **Clause 5(c)**.

## 6. Termite Treatment and Maintenance – Residential Building Work Only

- (a) The **Owner** acknowledges and understands that where a termite treatment system is installed, or forms part of the work, that the same has a limited working life and requires ongoing maintenance and servicing. The **Owner** further acknowledges and accepts that any such system is a management scheme and that termites are a peculiar environmental risk that cannot always be controlled or eliminated.

#### **Work other than to create a new house**

- (b) In relation to work involving a renovation or addition to an existing residence or structure the **Builder** does **not** warrant:
- that any termite treatment system installed as part of the contract work will provide protection to existing parts of the residence or structure; or
  - that the termite treatment system installed will prevent the "works" from being affected by an infestation of termites sourced from an existing structure or the environment and through the existing structure.

#### **Owner's duty to maintain Termite Treatment System**

- (c) The **Owner** is solely responsible for having the works and the property inspected at least every **twelve (12) months** with such inspection to be carried out by a licensed pest control person or firm.
- (d) Nothing the **Builder** does will extend the warranty applicable to the termite treatment system used in the works beyond the warranty period provided by the manufacturer of the treatment system. The **Owner** is responsible for all acts necessary or required to maintain this warranty.
- (e) No action will lie against the **Builder** for any costs:

- (i) incurred by or work done by or for the **Owner** or necessary to maintain the termite treatment system; or
- (ii) incurred or necessary because of the failure by the **Owner** to do a thing relevant to maintaining the proper working or maintenance of the termite treatment system.

## 7. Lending Authority Procedures

The following provisions are to apply to that part of the Contract funds which are being provided to the **Owner** by a Lending Authority:

- (a) The **Owner** will, prior to the commencement of the works, irrevocably authorise and direct the Lending Authority to pay to the **Builder** all monies which may become due to the **Builder**. The **Builder** is to receive a copy of this irrevocable authorisation within **five (5) days** of a written request for the same.
- (b) The **Owner** must provide to the **Builder**, written notice of the various stages at which inspection of the works will be required by the Lending Authority within **ten (10) days** of signing the contract. The **Builder** will notify the Lending Authority when such stages have been reached.
- (c) Subject to the **Owner** satisfying **Clause 7(b)** above, the **Builder** must promptly inform the **Owner** when the works reach the required stage and the **Owner** will be responsible for having any survey or inspection carried out within a reasonable time.
- (d) Subject to **Clause 8(c)** the **Builder** is to take such reasonable steps as may be required on the **Builder's** part to allow inspection of the works on behalf of the Lending Authority.
- (e) The **Owner** is responsible for all payments to the **Builder**. The **Owner** carries the risk of the Lending Authority delaying or failing to make any payment necessary to satisfy the contract.

## 8. Possession of the Site, Access and Site Meetings

- (a) (i) The **Builder** is to have exclusive and uninterrupted possession of and access to the site for the performance of work. The possession to be given to the **Builder** includes access to other parts of the property necessary to enable the **Builder** to carry out work.
- (ii) If access requires further works or expense or is required to any other property in order for the works to be carried out it will be the responsibility of the **Owner** to do or authorise any actions necessary for such access.
- (b) The **Owner** acknowledges that the site is a work site which, by reason of the work to be undertaken, can be a dangerous place. As such the **Owner** will comply with any direction of the **Builder** concerning site access and movement around the site. If the **Owner** accesses the site without the **Builder's** written consent the **Builder** can suspend works and claim delay costs (see **Clause 19**).
- (c) If the **Owner**, or the **Owner's** agent, accesses the site without the **Builder's** written approval, the **Builder**

can suspend the works and claim delay costs. Refer to **Clauses 19(a)(v)**, and **11(a)(ii)** and **11(f)**.

- (d) The **Owner** or a duly appointed representative or an authorised officer of the Lending Authority may have access to the site for the purpose of inspecting and viewing the progress of the works **but only with the consent of the Builder**. Access to the site by the **Owner** without **Builder** supervision and permission **is not allowed**.

### Site Meetings are Strongly Recommended

- (e) The **Owner** or a person authorised by the **Owner** to provide instructions to the **Builder** concerning the works is to be available to attend on site at times nominated in any construction program provided by the **Builder** or otherwise at mutually agreed times. The parties agree to use any such meetings to discuss and resolve issues relating to the works.  
The **Builder** may record minutes of any meetings and will provide a copy of any such minutes to the **Owner**.
- (f) Neither the **Owner** nor any duly appointed representative will give or be entitled to give at any time directions to the **Builder's** workers or Trade Contractors relating to the works or any part thereof. Any instructions concerning the works which are to be in writing and are to be provided directly to the **Builder**.

## 9. Quality and Availability of Materials

- (a) The **Builder** will obtain and use materials which comply with the requirements of this Contract.
- (b) The **Builder** is entitled to rely on materials required to carry out the work being readily available. If, for reasons beyond the control of the **Builder**, materials are difficult to obtain or delay will be experienced because the material required is difficult to obtain or unavailable, then the **Builder** is entitled to an extension of time. Refer to **Clause 11(a)(xii)**.
- (c) If any material specified to be used in the works cannot be obtained or can only be obtained with an unreasonable period of delay, the **Builder** will seek instructions concerning substitutes to be used. Any price difference will be deemed to be a variation pursuant to **Clause 14**. Refer to **Clause 14**.
- (d) The **Builder** is entitled to rely on the **Owner's** warranty that any materials supplied by or specified to be used by the **Owner** are fit for the purpose for which the **Builder** is directed or required to use such materials.
- (e) Any demolition material which the **Owner** wishes to keep must be detailed at **Schedule 2 Item (h)**. Otherwise all demolition material will become the property of the **Builder**.

## 10. Date for Commencement of and Time for Completion of Work

- (a) The **Builder** will commence the works:
  - (i) on the date specified in **Schedule 2 item (c)**;
  - (ii) within **fifteen (15) days** after the **Owner's** compliance with **Clause 2(a)**; or



- (iii) within **twenty (20)** days after receipt of the Construction Certificate; or
  - (iv) within **twenty (20)** days of the issuance of the Home Building Compensation Fund insurance certificate;
- whichever is the later.
- (b) The **Builder** is to proceed with due diligence and bring the works to Practical Completion within the construction period. The construction period and consequently the date by which Practical Completion is to be achieved are subject to change under **Clause 11**.
- (c) Compensation maybe payable by **Builder**
- (i) If the **Builder** fails to bring the works to Practical Completion by the Date for Practical Completion calculating in accordance with **Schedule 2 item (c)(i)**, extended as provided for in **Clause 11**, then the **Builder** is to pay or allow to the **Owner** by way of agreed pre-estimated general and liquidated damages, some calculated at the rate stated in **Schedule 2 item (g)(i)**. It is agreed that the amount indicated is the only remedy for damages and there will be no general damages claimable.
  - (ii) This amount will be applied to the period from the day after the Date for Practical Completion under the contract until the date Practical Completion has been achieved in accordance with **Clause 20**.
  - (iii) Any amount payable under this clause cannot be deducted from any payment until such time is the actual date of Practical Completion has been determined.
  - (iv) If “nil”, “n/a”, or words to that effect, are inserted or no amount is specified at **Schedule 2 item (g)(i)** then it is agreed that no damages, liquidated and/or general, are payable in relation to the time to complete the works. Any amount inserted must reflect the actual cost of the delay to the **Owner**.

## 11. Delays and Extensions of Time

- (a) Should the progress of the works be delayed by any of the following causes or conditions resulting from them:
- (i) variations;
  - (ii) suspension of the works under **Clause 19**;
  - (iii) latent conditions affecting the site, the ability to carry out work or requiring work;
  - (iv) proceedings taken or threatened by, or disputes or access arrangements with adjoining or neighbouring owners or residents;
  - (v) any act, default, delay or omission on the part of the **Owner**, an agent of the **Owner** or a nominated subcontractor including, but not limited to, providing instructions, obtaining finance, or doing a thing necessary to allow the works to proceed including signing instructions concerning variations;
  - (vi) delay in having a mandatory inspection carried out by the **PCA** or an authorised person;
  - (vii) an instruction by the **Owner** to stop the works;
  - (viii) delay due to an insurance claim by the **Owner** or the **Builder** or the **Builder's** subcontractors,

- or due to works resulting from such an insurance claim;
- (ix) civil commotion or industrial dispute affecting any of the trades employed upon the works or the manufacture or supply of materials for the works;
- (x) inclement weather or the affect of weather on site access or site safety;
- (xi) delay beyond 20 days after the date of this contract by any local or other Relevant Authority in granting any necessary consent or approval where the word “authority” is taken to include the **PCA** or any party authorised or allowed to carry out a mandatory inspection;
- (xii) any other cause, thing or matter beyond the reasonable control of the **Builder** such as (but not limited to) shortages or delays in trades or materials, or from delays caused the trade contractors, which affect the **Builder's** ability to do the work;

**then** in any such case the **Builder** must receive a fair and reasonable extension of time to the Construction Period.

### **Builder to Advise of Delay**

- (b) The **Builder** is entitled to a reasonable extension of time to the Construction Period for any delay referred to in **Clause 11(a)**.
- (c) The **Builder** will issue a notice after the period of delay is determined stating the extension of time to the Construction Period.
- (d) Delay in notifying or a failure to notify the **Owner** of a delay or matter causing delay will not of itself prohibit an extension of time being granted or allowed provided the cause of the delay is shown to cause delay to the works being carried out.
- (e) The **Builder** must use its best endeavours to minimise any delay.
- (f) (i) If the delay results from any of the matters or consequences of the matters in **Sub-Clauses 11(a)(ii), (iii), (iv), (v), (vi), (vii) or (xi)**, then the Cost of Works are to be adjusted to include an amount calculated to cover the cost or expense of the delay incurred by the **Builder** (the “Delay Costs”). Variation delays are adjusted pursuant to **Clause 14**.
- (ii) The amount payable will be determined with reference to **Schedule 2 item (g)(ii)**.  
If no amount, “nil”, “n/a” or words to that effect is specified in **Schedule 2 item (g)(ii)** then the actual cost of the delay will be payable, if claimed by the **Builder**.  
The Delay Costs can be claimed at any time including on a daily basis or at any time after the conclusion of the delay.
- (g) Delays due to work health and safety issues concerning work site access, work site conditions and the ability to work safely will enable the **Builder** to claim additional time and will alter the Construction Period.

## 12. Compliance with the Requirements of Local and Other Relevant Authority

- (a) (i) The **Builder** is to comply with and give all notices required by an Act of Parliament or by any regulation or by-law of any Relevant Authority or of any public service company or authority which have jurisdiction over the works or with whose systems the same are or will be connected, to the extent applicable to the contract works.

The **Builder** will not be responsible for any fees, charges, taxes, levies or any other expense that take effect, are imposed, payable or adjusted (to the extent of the adjustment) after the date of this Contract by a Relevant Authority. Any such new or increased amounts will be payable by the **Owner**.

- (ii) Any amount payable for mandatory inspection, inspections by a Relevant Authority or any inspections which the **Owner** may request be done will be a cost of the works unless the **Owner** pays the same directly.

### **Written Notice of Need to Alter Proposed Work or Processes**

- (b) The **Builder**, before making any variation from the Contract Drawings or Specification necessary for compliance with **Sub-Clause (a)(i)**, is to give to the **Owner** **written** notice identifying the reason for the variation and applying for instructions. The **Owner** is to provide **written** instructions to the **Builder** within **five (5) days**.
- (c) If after **five (5) days** of having applied for the instruction referred to in **Sub-Clause (b)** the **Builder** does not receive those instructions, he is entitled to proceed with the work conforming to the provision, regulation or by-law in question and any variation thereby necessitated will be treated a variation under **Clause 14**. Refer to **Clause 14**. The said provision, regulation or by law will for the purposes of this contract, be taken to be a **written** instruction by the **Owner** to the **Builder**.

### **Circumstances which Requires Quick Action or Insufficient Time to Provide Notice**

- (d) (i) The **Builder** is **not required** to provide the **written** notice pursuant to **Sub-Clause (b)** above whenever the work to be carried out is urgently necessary to prevent loss of or damage to the works or to any property or to prevent personal injury to or the death of any person.
- (ii) The **Builder** is to give the **Owner** **written** notice as soon as practicable after the work has commenced this notice should specify the reasons for not giving the notice in **writing** required by **Sub-Clause (b)** above and advising the reason for the variation.
- (e) If compliance with the requirements of this clause involves the **Builder** in loss or expense beyond that provided for in this Contract, the amount of that loss or expense is to be treated as a cost of the works and paid as such.

## 13. The Site is Presumed Suitable for and able to Support the Works

- (a) The **Owner** warrants that the site and or any existing structure will support and allow the works to be carried out. This is the basis upon which the **Builder** has agreed to do the work.
- (b) If in the reasonable opinion of the **Builder** the site and or existing structure will not support the works, the **Builder** must promptly give **written** notice to the **Owner**. The **Owner** must provide **written** instructions within **five (5) days** of this advice as to what the **Owner** wishes to be done.

### **Investigations can be Requested and Required**

- (c) Either the **Builder** or the **Owner** may employ the services of a geotechnical engineer to investigate the site and or existing structures in relation to the same being able to support the work. The cost of such consultation is to be paid for by the **Owner** as a cost of the works. Such geotechnical investigations must be carried out if requested by the **Builder**.
- (d) If in the reasonable opinion of the **Builder**, as indicated in the notice from the site and or an existing structure will not support the works then the Contract may be terminated. The **Builder** is to be paid the cost of all work undertaken by the **Builder** plus any costs or amounts payable because of the contract being terminated under this provision.

## 14. Variations – Changes to Scope of Works Post Contract Date

- (a) The works as initially understood at the time of contracting may be varied by:
- (i) the execution of additional work;
  - (ii) changes in the character or quality of any material or work;
  - (iii) changes in the levels, lines, positions or dimensions of any part of the works.
  - (iv) deletions or omissions from the works.

For the sake of clarity a variation is established by:

- **written** instructions from the **Owner** or the **Owner's** representative; and or
- the supply to the **Builder** of post contract details such as drawings; and or
- the discovery of an otherwise unknown or latent condition,

which alters the work done, the work to be done or requires adjustments to an existing situation or the work which was otherwise expected to be done.

Accordingly a variation may for example result from such things as a request from the **Owner**, a choice made by the **Owner**, dealing with latent conditions and complying with the requirements of an Authority.

- (b) The **Builder** is not obliged to vary the Contract or carry out any extra work unless he consents, which consent is not to be unreasonably withheld.
- (c) (i) If the **Builder** agrees to undertake a variation by the **Owner**, the variation is to be detailed in **writing** and **signed by the Owner** (or the **Owner's** agent) and the **Builder**. Documents

detailing the variation, including as appropriate, amended drawings or specifications, become contract documents.

- (ii) The **Builder** may require, prior to the execution of any variation, that the **Owner** produce evidence, satisfactory to the **Builder**, of the **Owner's** capacity to pay for the variation.
- (d) The cost of all work arising from any such variation is a cost of the works payable by the **Owner** and is to be valued and paid as such.
- (e) **Deletion or omission of work**  
If the **Owner** reduces the work to be done or materials to be supplied by the **Builder**, the **Builder** will be entitled, as compensation for the loss, to a payment which will be calculated as follows:
- (i) 50% of the percentage fee listed in **Schedule 1 Part B**,
- (ii) applied to the cost of the work now not required to be done.
- By way of example;
- **Owner** instructs **Builder** in writing not to do X.
  - The fee at **Schedule 1 Part B** is 25%.
  - X costs or would cost the **Owner** \$10,000.00 plus GST.
  - Compensation to the **Builder** is 50% x 25% x \$10,000 = \$1,250.00 plus GST.

If a nominated lump sum is listed in **Schedule 1 Part B** then the percentage fee in **Sub-Clause (i)** will be treated as 20%.

By way of example;

- **Owner** instructs **Builder** in writing not to do X.
  - The fee will be 20%.
  - X costs or would cost the **Owner** \$10,000.00 plus GST.
  - Compensation to the **Builder** is 50% x 20% x \$10,000 = \$1,000.00 plus GST.
- (f) **All Directions Concerning Work to be given to the Builder in writing**  
Neither the **Owner** nor any duly appointed representative will give or are entitled to give at any time directions to the **Builder's** workers or subcontractors concerning the works or any part thereof. All instructions are to be given to the **Builder** and are to be in writing.

## 15. Assignment and Subletting

- (a) Neither party to this Contract can assign the Contract without the written consent of the other party. Such consent will not be unreasonably withheld.
- (b) The **Builder** may subcontract any portion of the works, but any subcontracting does not relieve the **Builder** from any of its liabilities or obligations under this Contract.

## 16. Insurance Responsibilities Concerning the Works

### Home Building Compensation Fund Insurance (if Applicable)

- (a) Under the Home Building Act 1989 it is the duty of the **Builder** to provide to the **Owner**, prior to receipt of money, a copy of the Home Building Compensation Fund certificate of insurance for the works where the value of the works, at the time of contracting, is \$20,000 or more.

If the contract is signed before such insurance is available then it is signed subject to the insurance being made available to the **Builder**. If the **Builder** cannot get the insurance on terms acceptable to the **Builder**, then the **Builder** may cancel the contract without penalty and without claim by the **Owner**.

### Workers Compensation

- (b) The **Builder** must comply with its obligations under relevant workers compensation legislation.

### Injury to Persons

- (c) The **Builder** will insure in respect of and against any loss arising under any Statute [other than as provided in **Sub-Clause (a)**] or at common law in respect of personal injury to or death of any person arising out of or in the course of the works except to the extent that such loss arises out of any act or neglect of the **Owner** or of any other person for whom the **Owner** is responsible.

### The Works

- (d) (i) The **Builder** in its name will:-
- (1) obtain and effect Contract Works Insurance;
  - (2) for at least the full reinstatement value of the works;
  - (3) including all unfixed materials stored upon the site.

The policy will record the **Owner** as an interested party.

If the **Builder** does not comply with this sub-clause, the **Owner** may insure and deduct the premium paid from any monies due to or that become due to the **Builder**.

- (ii) The policy of insurance will provide that insofar as the policy may cover more than one insured all insuring agreements and endorsements with the exception of limits of liability will operate in the same manner as if there were a separate policy of insurance covering each party comprising the Insured.
- (iii) The policy of insurance will not cover any act or omission of the **Owner** or their consultants, agents, employees or other contractors.
- (iv) The policy of insurance will not cover any loss or damage caused by the use of the works or occupation by the **Owner** or their consultants, agents, employees or other contractors.

### Damage to Property

- (e) (i) The **Builder** will insure against loss in respect of injury or damage to property, real or personal, in so far as the injury or damage arises out of or in

the course of or by reason of the execution of the works.

- (ii) The **Builder** will only be liable if the injury or damage is due to any negligence, omission or default of the **Builder**, its servants or agents or of any **Builder's** contractors. The **Builder** will not be negligent or guilty of an omission or default where the actions taken by the **Builder** are found to be inappropriate or ineffective due to or because of events beyond the control of the **Builder** such as violent storms, earthquakes, fire, civil commotion or acts of God.
- (f) (i) The **Builder** will, upon settlement of any claim under these policies, proceed with diligence to rebuild or repair the works and replace or repair the materials destroyed or damaged.
- (ii) Any amount so payable in respect of the settlement is to be immediately paid:-
  - into a bank account in the names of the **Owner** and the **Builder**, but operated by the **Builder**; or
  - directly to the **Builder**,in stages, or otherwise, by the insurance company liable to make the payment.
- (iii) The money paid under the insurance policy is to be used to allow the **Builder** to rebuild or repair the works covered by the insurance policy. However the **Builder** is, apart from this, to be paid by the **Owner** the proper value of the work done prior to the insured event occurring.

#### Period and Currency of Insurance

- (g) (i) The insurances referred to in this clause are to be effected before the works are commenced and maintained effective in respect of the works until Practical Completion or occupation or use of the works or any portion by the **Owner** and in respect of Public Liability and of Workers Compensation until the end of the Defects Liability Period.
- (ii) The party responsible for effecting and maintaining insurances must produce evidence of currency and insurance upon request by the other party.
- (iii) If a party fails to insure, the other party may take out the insurance and the premium is to be added to or deducted from the contract sum as the case may require.
- (iv) The **Builder** only warrants that any certificate of insurance under the Home Compensation Fund is from a Government approved provider and complies with the Act as at the date it is obtained.

#### Occupation or Use by Owner

- (h) Notwithstanding **Sub-Clauses 16(c)** and **16(e)**, should any portion of the works be utilised by the **Owner** or tenant or their employees during the progress of the works, the **Builder** will not be liable for any injury to or the death of any person or loss or damage to property which may be occasioned by reason of the utilisation of the portion of the works by the person or persons.

#### Owner to Insure Existing Structures & Contents

- (i) Any existing structures together with all the contents thereof on the site of the works are at the sole risk of the **Owner** who must maintain insurance against the risk of insurable loss or damage thereto [including consequential loss to the **Owner**]. The **Owner** is to advise their insurer of the work to the promises and ensure that such cover is in place.

#### Upon the Works Reaching Practical Completion

- (j) The works will be at the risk of the **Owner** in all respects once Practical Completion is reached or from the date possession is taken where the circumstances referred to in **Sub-Clause 20(f)** arise. The **Owner** will be solely responsible for insurance coverage of the works in either of these events.

## 17. Payment

NOTE: Ensure that the GST is applied to amounts exclusive of GST so that the proper fee and Cost of the Works, is determined exclusive of GST. Add the GST effect to that amount. **Clause 17** is subject to the proper effect of **Clause 18**.

- (a) The **Owner** must pay to the **Builder's** account nominated in this Contract the Cost of Works as set out in **Schedule 1 Part A** when completed, except for minor defects and/or omissions, and:
  - (i) the fee set out in **Schedule 1 Part B**;
  - (ii) the percentage referred to in **Schedule 1 Part B Alternative 1** based on:
    - (1) the Cost of Works as set out in **Schedule 1 Part A**;
    - (2) the cost of any goods and/or materials purchased by the **Owner** if those goods and/or materials are to be installed by the **Builder**; and
    - (3) the cost of any subcontractor engaged by the **Owner** if the **Builder** is requested and/or agrees to supervise that subcontractor.For the purposes of (2) and (3) above, the **Owner** is to supply the **Builder** with copies of all invoices for that subcontractor and/or supplier.
  - (iii) GST. Refer to **Clause 18**.
- (b) The above amounts must be paid to the **Builder** in accordance with the timetable set out in **Schedule 1 Part C**.
- (c) A claim for payment by the **Builder** is to identify:-
  - (i) the work for which payment is required;
  - (ii) the Cost of Works for works performed in this period;
  - (iii) a brief description of any variations relative to the initial scope of work under the contract;
  - (iv) the fee payable under **Schedule 1 Part B**; and
  - (v) GST.

The Cost of Works determined by the above is to be a figure initially exclusive of any GST component. The amount determined by the above processes will be subject to GST pursuant to **Clause 18**. (This is to avoid compounding the GST or to ensure the GST is only charged once on the aspects or components



used to establish the cost of the work and the **Builder's** fee).

- (d) All claims for payment of Costs of Works should be evidenced as far as possible by supporting copies of documents such as clear copies of invoices, receipts, account documents and schedules of hours worked by employees and/or the **Builder**.
- (e) Payment is to be made within the period stated in **Schedule 1 Part C item (b)**. If no period is stated, then the payment must be made within **five (5) days** of the date the claim was submitted to the **Owner**.
- (f) Should the **Builder** not receive from the **Owner** payment of or any part of a payment by the due date, the **Builder** will be entitled to interest on the overdue amount at the rate specified at **Schedule 2 item (d)**. The **Builder** may also suspend further work pursuant to **Clause 19**, if the **Owner** fails to pay for work under this contract.
- (g) Payment under this clause is due when the works the subject of the claim for payment are complete except for minor omissions or defects.
- (h) Any waiver or reduction by the **Builder** of any entitlement to moneys under this contract is dependent on the **Owner** paying all moneys due under this contract in accordance with **Schedule 1 Part C item (b)**.

## 18. GST – Its Impact on Work, Goods and Services

- (a) The work under this contract is subject to GST. All prices will be treated as GST exclusive unless specifically stated to be “including GST @ 10%” or words of a similar effect.
- (b) The **Owner** is the party liable to pay the proper amount of GST applicable to the works. The **Builder** is responsible for including the proper amount of GST applicable to the works.
- (c) When the work is varied or changed the amount payable for GST will be adjusted to include the proper amount of GST applicable to the work as varied or changed.
- (d) The **Builder** must include the proper amount of GST in each progress claim or any final claim and warrants that the proper amount of GST has been included.
- (e) To recover the GST the **Builder** must:-
  - (i) be a GST registered entity; and
  - (ii) provide the **Owner** a tax invoice in the form approved by the Australian Taxation Office for the amount which includes GST.

## 19. Suspension of Work

- (a) Should the **Owner**:-
  - (i) fail to pay or cause to be paid any payment or any part thereof including an amount for GST within the time required by **Schedule 1 Part C item (b)**;
  - (ii) fail to confirm in **written** instructions regarding an **Owner** requested variation or a necessary variation to the works;

- (iii) fail to provide **written** instructions in a manner and time so as to reasonably avoid delay to the progress of works;
- (iv) fail to provide evidence of their capacity to pay for the works satisfactory to the **Builder** as required by **Clauses 2 or 14(c)(ii)**;
- (v) or the **Owner's** agent access the site and/or cause independent sub-contractors to attend the site address without the **Builder's written** consent;
- (vi) assault or threaten with violence the **Builder** or any employee, agent or subcontractor of the **Builder**;

THEN the **Builder** may, without prejudice to its right to determine this Contract or any other rights, suspend the works.

Suspension pursuant to this clause will act as a bar to any claim for damages, compensation or offset by the **Owner** against the **Builder** which relates to the period of suspension or consequences of such suspension.

- (b) The **Builder** is to give notice in **writing** of any suspension under this clause to the **Owner**.
- (c) Should the **Owner** direct the **Builder** to not proceed with the works then the Contract is automatically suspended.
- (d) The **Builder** must recommence the works within **twenty (20) days** of the default in **Sub-Clauses (a) or (c)** being rectified, or in the case of **Sub-Clause (a) (v)** the **Owner** providing a **written** undertaking to not repeat that breach.
- (e) Any period of suspension will automatically and as of right extend the construction period and by consequence the date for Practical Completion. The **Builder** is also entitled to claim delay costs for the suspension period calculated in accordance with that set out in **Clause 11(f)**.
- (f) Failure to pay a payment will entitle the **Builder** to suspend any defect liability work under **Clause 22**. However such suspension does not extend or prolong the Defects Liability Period.

## 20. Practical Completion

- (a) Practical Completion is that stage when the works are complete except for minor omissions and defects which do not prevent the works from being reasonably fit for their intended use; or
- (b) For the purposes of this Clause the works that need to be completed to achieve Practical Completion do not include
  - (i) the results of any labour or materials which are to be or were supplied or fixed by the **Owner** or work done or to be done by the **Owner**; or
  - (ii) the provision of any certificates required to obtain an occupation certificate unless the **Builder** is the party who is to obtain the occupation certificate.

In this contract unless stated otherwise as a special condition it is not the **Builder's** obligation to obtain an occupation certificate.

- (c) When in the opinion of the **Builder** the works have reached Practical Completion, the **Builder** is to give to the **Owner** **notice of this in writing**.
- (d) If the **Owner** disputes that Practical Completion has been reached then no later than **five (5) days** after the service of notice of Practical Completion the **Owner** must give to the **Builder** a **written** notice, of those things (if any) required by this Contract to be done to achieve Practical Completion. The **Builder** is to as soon as possible do all those things necessary for Practical Completion and give to the **Owner** **notice in writing** on completion of such things.
- (e) In the event of the **Owner** not complying with the provisions of **Sub-Clause 20(d)**, the works will be deemed to have reached Practical Completion.

#### **Occupation or use will amount to Practical Completion**

- (f) (i) Should the **Owner** or any tenant or their employees or agents take possession of the works or any part of the works without the **written** agreement of the **Builder**, the date of Practical Completion will be the date possession is taken, unless Practical Completion has already been reached.
- (ii) Without limiting the generality of this clause possession being taken will be established by any or all of such things as placement of furniture, use of any part of works, denial of access of the **Builder** to the works or work site or action by the **Owner** or their agent which prevents the **Builder** undertaking work.

#### **Owner must Insure**

- (g) The works are at the risk of the **Owner** in all respects upon Practical Completion or from the date possession is taken in the circumstances referred to in **Clause 20(f)**. The **Owner** will be solely responsible for insurance coverage of the works in either of these events.

## 21. Payment on Practical Completion

- (a) Upon Practical Completion being achieved, the **Builder** is to receive any other monies which are payable in connection with the works. The **Builder** is to provide a claim for such work to the **Owner**. The claim is to comply with **Clause 17** and **Clause 18**.
- (b) The amount due under this clause must be paid to the **Builder** within the period specified in **Schedule 1 Part C item (b)**.
- (c) Should the **Builder** not receive from the **Owner** any payment or part of any payment on or before the due date then the **Builder** is entitled to interest at the rate specified in **Schedule 2 item (d)**.
- (d) The **Owner** is not entitled to take possession of the works nor receive the keys and/or any certificates until payment to the **Builder** of all monies payable under this Contract have been made.
- (e) On payment of all monies due, the **Builder** must hand all keys to the works to the **Owner** or such other person as the **Owner** may authorise to receive them.

## 22. Defects Liability Period

- (a) The Defects Liability Period commences upon Practical Completion of the works and will continue for the period stated in **Schedule 2 item (e)**, or if no period is stated, for **thirteen (13) weeks**.
- (b) Prior to the expiration of the Defects Liability Period the **Owner** is to provide to the **Builder** a **written** list of any defects or faults arising out of workmanship or material provided by the **Builder** which is not in accordance with the Contract. The parties must meet to review the items listed by the **Owner**, if the **Builder** requests such a meeting.
- (c) The **Builder** is to make good defects or faults which are attributable to the **Builder's** work or failure to do something at its own cost and within a reasonable time of receiving **written** notification issued in accordance with **Sub Clauses (a)** and **(b)** above.
- (d) The **Owner** must provide access for the **Builder** to carry out its obligations under this clause during normal working hours Monday to Friday and must allow a reasonable time for such work to be carried out. The parties are free to agree on alternative times for any such work to be carried out.
- (e) Subject to **Sub-Clauses (a), (b)** and **(d)**, if the **Builder** fails to comply with its obligations under this clause within a reasonable time of the notification the **Owner** may, after giving the **Builder** **twenty five (25) days written** notice, engage others to make good the listed defects or faults. The **Owner** must provide access to the site for the **Builder** to do defects liability work within this notice period.
- (f) The **Builder's** duty to attend to and carry out defects liability work is limited to work and materials or defects which directly relate to the workmanship of the **Builder**. It does not, as of right, extend to matters arising from the use or occupation of the works by the **Owner** or their agents nor does it cover fair wear and tear or design faults, where the design is not the responsibility of the **Builder**.
- (g) Further where the work involves a renovation, the **Builder's** duty to attend to and carry out defects liability work does not cover matters arising from or concerning pre-existing conditions in the existing structure.

#### **Parties to work Co-operatively**

- (h) The **Owner** and **Builder** agree to utilise the Defects Liability Period to identify and resolve issues covered by this clause. Consequently there is no breach by the **Builder** if it fails to immediately attend to matters. However the **Builder** must with regard to matters covered by the Defects Liability Period act with reasonable speed in carrying out necessary work.

## 23. Owner's Maintenance Obligations After Practical Completion

- (a) (i) The **Owner** is required to and agrees to carry out ongoing maintenance to the property and specifically the works from the date of Practical Completion. Failure to do this properly or adequately will render the **Owner** liable for

consequential damage, loss or expense in relation to the works.

- (ii) Without limiting the above clause this ongoing duty of the **Owner** covers things such as painting, termite management and termite system maintenance and general property inspections, cleaning and maintenance.
- (b) (i) If the **Owner** discovers a matter or thing which they believe is the responsibility of the **Builder** they must promptly notify the **Builder** in **writing** of the matter or thing and allow the **Builder** free access to review the matter of concern.
- (ii) Unless the **Owner** allows access for the **Builder** and provided the **Builder** responds within the Defects Liability Period or if that period has expired within **twenty five (25) days** of receipt of the notice then the **Owner** agrees not to make any claim about or take any action against the **Builder** in relation to the works.
- (iii) The **Builder**, provided he responds within the above time periods, is to be allowed to carry out any necessary work.
- (c) The **Builder** is not obliged to carry out work where the need for the work is due to:
  - (i) a failure by the **Owner** to properly maintain the works; or
  - (ii) is necessary due to fair wear and tear caused by use of the works; or
  - (iii) the exposure of the works to the environment in which they are situated; or
  - (iv) a design related matter where the design is not the **Builder's** responsibility; or
  - (v) a matter beyond the control of the **Builder**.

## 24. Dispute Resolution

### Reference to NSW Fair Trading Guide to Standards & Tolerances

- (a) The parties agree that where a property of an item of work performed by the **Builder** satisfies the requirements of the Guide to Standards and Tolerances that property will not cause that item of work to be defective. However if the item of work does not satisfy the requirements of the Guide to Standards and Tolerances that alone will not be sufficient to determine such item to be defective, being a matter to be determined in the context of the Works.

### Notify the other party of matters in dispute

- (b) If any dispute or difference (a dispute) concerning this Agreement or work arises between the **Owner** and the **Builder** then the party saying there is a dispute **must** give the other **written notice of the dispute**.

### Parties must meet and seek to resolve any dispute

- (c) Within **ten (10) business days** after the giving of such a notice the parties must confer at least once to attempt to resolve the dispute or to agree on methods of resolving the dispute by other means such as mediation independent review and comment, expert determination or arbitration. The mediator, expert or arbitrator is to be nominated as per **Schedule 2 item (f)**. At any such conference each party must be

represented by someone having authority to settle the dispute.

- (d) Any agreement reached at the above meeting should be recorded in writing and a copy kept by both parties. An agreement may be relied upon as an addendum to this contract and used as a response to any subsequent action or inaction by a party to this agreement.

## 25. Details Required to Support Notices Under Contract or to Substantiate a Dispute

With regard to any notice issued by a party pursuant to or which relies upon **Clauses 24, 26** or **27** the said notice must accurately set out the matters giving rise to the issuing of the notice. Any notice which merely recites the words or intent of **Clauses 24, 26** or **27** without proper details will not be a valid notice.

## 26. Termination by the Owner

- (a) If the **Builder** is in default in any of the following respects, namely:
  - (i) subject to limitations in the *Corporations Act 2001* (Cth), commits an act of insolvency; or
  - (ii) fails to proceed with the works with due diligence or in a competent manner with regard to the circumstances of the contract works; or
  - (iii) without reasonable cause he wrongfully suspends the carrying out of the works before Practical Completion; or
  - (iv) refuses or persistently neglects –
    - (a) to comply with the requirements of **Clause 12** of these conditions; or
    - (b) to remove or remedy defective work or improper materials, so that by the refusal or persistent neglect the works are materially affected; or
  - (v) states that he is unable or unwilling to complete the works or abandons the Contract;

### AND if,

in the case of any default that is capable of remedy, the default continues for **twenty five (25) days** after notice in **writing** has been given to the **Builder** specifying the default and stating the **Owner's** intention of terminating this Contract, THEN the **Owner** may, without prejudice to any other rights or remedies, by notice served as allowed by **Clause 29** terminate this Contract.

- (b) The **Owner** may terminate this Contract in the circumstances provided by the general law however this does not prevent the **Owner** and **Builder** from agreeing to additional circumstances in which the contract may be terminated.
- (c) In the event that the **Owner** terminates this Contract in accordance with **Sub-Clause 26(a)** of this clause, the **Owner** may engage another **Builder** to carry out the works.

## 27. Termination by the Builder

- (a) If the **Owner** is in default in any of the following respects, namely:
- (i) refuses the **Builder** access to the site at any time after commencement of the works; or
  - (ii) fails to provide evidence of title satisfactory to the **Builder** as required by **Clause 2(a)**; or
  - (iii) fails to produce evidence of his capacity to pay the Contract Sum satisfactory to the **Builder** as required by **Clause 2**; or
  - (iv) fails to pay the **Builder** any payment within the period stated in **Schedule Part C item (b)**; or
  - (v) subject to limitations in the *Corporations Act 2001* (Cth), commits an act of insolvency;
  - (vi) any suspension by agreement continues for more than **three (3) months**; or
  - (vii) fails to remedy the matter, thing or event which has allowed the suspension of the work under **Clause 19**; or
  - (viii) any other substantial breach of the Contract;
- AND, if in the case of any such default that is capable of remedy, the default continues for **ten (10) days** after notice in **writing** specifying the same and stating the **Builder's** intention to terminate this Contract, THEN the **Builder** may without prejudice to any other rights or remedies, by notice served pursuant to **Clause 29**, terminate this Contract.
- (b) The **Builder** can immediately terminate the Contract by serving a notice pursuant to **Clause 29** if:
- any **Owner** dies or becomes incapacitated and cannot provide instructions; or
  - any **Owner** assaults or threatens with violence the **Builder** or any employee, agent or subcontractor of the **Builder**;

## 28. Charge on Land

Upon an order or judgement by a Court or Tribunal for money due under this contract, the **Owner** agrees to charge the parcel of land on which or on part of which the works are to be or were erected to secure the payment of that order or judgement.

## 29. Service of Notices

A notice (and/or other document) will be deemed to have been given, received or served if sent to the other party at the relevant address, email address, or facsimile number nominated in the Contract or the address last communicated in **writing** to the person giving the notice.

## 30. Estimate for Owner

If an estimation of the total amount that will become payable by the **Owner** under this Contract is or has been made either before or after the date of the Contract **THEN** such estimation will be or will have been made on the basis of the information, as to the detailed and complete nature and extent of the works, then available to the **Builder**. However the estimation will **not** be of any contractual significance whatsoever between the parties

or deemed to be a representation innocent or otherwise as to the amount or approximate amount that will become payable by the **Owner**. This clause also applies to the budget report referred to in **Clause 1(f)**.

## 31. Definitions

- (a) Words in this Contract importing the singular are to be treated as including the plural and vice versa where the text so requires; words importing a gender include every gender; words importing persons shall be deemed to include companies and bodies corporate and/or bodies unincorporated.
- (b) "Act" for residential building work means Home Building Act 1989.
- (c) "act of insolvency" means:-
- (i) an act of bankruptcy as defined under the Bankruptcy Act 1966
  - (ii) the entry into a personal insolvency scheme;
  - (iii) the appointment of provisional liquidator, liquidator, receiver, receiver in manager, administrator, scheme administrator, controller, trustee in bankruptcy, interim receiver, controlling trustee or any other such administrator.
  - (iv) an execution is levied by a creditor or judgment debtor.
- (d) "Cost of Works" has the meaning arising from the terms of **Schedule 1**. This is to be administered as required by **Clause 17** and **Clause 18**.
- (e) "Construction Period" — see **Schedule 2 item (c)**.
- (f) "days" for the purposes of this contract excludes Saturdays, Sundays, rostered days off or any day that has been gazetted or proclaimed to be a public holiday in the locality where the works are being or are to be executed. In addition 27, 28, 29, 30 and 31 December are not days for the purposes of determining the constructions period. Other days may be excluded by completing **Schedule 2 item (c)**.
- (g) "Independent Expert" a person agreed or, as appropriate, appointed by an agreed body to hear any dispute.
- (h) "latent condition" means physical conditions on site or affecting the site which differ materially from the physical conditions which should have reasonably been anticipated at the time of contracting.
- (i) "Relevant Authority" is a body or organization, statutory or otherwise, which has authority over the Work in accordance with any legislation, including suppliers of services such as gas, electricity, telecommunications, water, stormwater or sewerage.
- (j) "Work", "work" or "works", means the work that the **Builder** is or may be required to carry out and complete under the contract, and includes variations and rectification and includes the provision of materials is required to be supplied by the **Builder**.



## NOTICE OF PRACTICAL COMPLETION OF WORKS

To ..... **(Owner)**

**Take notice** that the works the subject of the contract reached practical completion in accordance with **Clause 20** on  
(date): .....

..... **(Builder)**

## NOTICE OF PRACTICAL COMPLETION OF WORKS

To ..... **(Owner)**

**Take notice** that the works the subject of the contract reached practical completion in accordance with **Clause 20** on  
(date): .....

..... **(Builder)**