



Fair  
Trading

## Home building contract for work over \$5,000

Legislation obliges a contractor to give a copy of the *Consumer building guide* to consumers before entering into a home building contract. You can download copies from our website.

[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

This publication can be viewed or printed from our website  
at [www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)

This contract is recommended for home building work over \$5,000 such  
as a new home, large additions and residential swimming pool installations.

For home building work over \$1,000 up to the value of \$5,000 such as minor additions,  
repairs or improvements, our *Home Building Contract for work over \$1,000 up to  
\$5,000* should be used.

Work with a value more than \$20,000 requires the contractor to provide home warranty  
insurance to the owner.

This contract complies with the requirements of the *Home Building Act 1989*.

You must obtain permission from NSW Fair Trading if you wish to copy this *Home  
building contract* other than downloading, printing or distributing it in order to use  
it as intended as a home building contract.

**Important:** For full details, see NSW Fair Trading's copyright policy at  
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# This contract starts here

## Introduction

Before signing, the owner should carefully go through all of the items in the check list overleaf. If you answer 'no' to any of the questions in the check list you may not be ready to sign the contract. Both parties should take time to read and understand all the contract documents.

This contract should have been available to both parties in sufficient time to allow for reading and for advice to be obtained if necessary, prior to signature.

References to costs and prices throughout the contract are inclusive of GST where applicable (Goods and Services Tax levied by the Federal Government).

**Note:** In this contract:



Refers to explanatory notes of primary interest to contractors.



Refers to explanatory notes of primary interest to owners.

## Signatures

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in this document.



**Warning:** The contract price may increase in accordance with the contract terms. This is because not all costs can be absolutely determined at the outset although the contractor is obliged to make reasonable estimates given known conditions. The reasons for possible increases include:

- Increase in taxes, eg. GST (Clause 3)
- Provisional Sums (Clause 10)
- Prime Cost Items (Clause 11)
- Variations, including those due to unforeseen matters or required by council (Clause 13)
- Interest on overdue payments (Clause 14)
- Boundary Survey (Clause 20).



**Note:** Where the owner or the contractor is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg. director, must be inserted.

### Contract price

(including GST)

Amount in words

Ninehundredseventysixthousandfourhundredninetyfour

dollarstwentyninecents

\$ 976,494.29

**Owner's signature**

*Dave Fen*

Name (print)

Dave Fen

Date

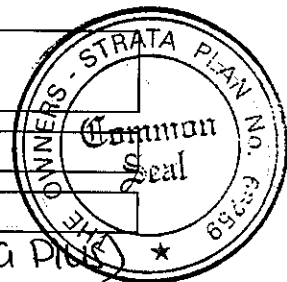
30/10/13

Managing Director (Strata Plan)

**Contractor's signature**

Name (print)

Date



## Check list for owners entering building contracts

- 1) Does the contractor hold a current contractor licence? Yes  No
- 2) Does the licence cover the type of work included in the contract? Yes  No
- 3) Is the name and number on the contractor's licence the same as on the contract? Yes  No
- 4) Is the work to be undertaken covered in the contract, drawings or specification? Yes  No
- 5) Does the contract clearly state a contract price or contain a warning that the contract price is not known? Yes  No
- 6) If the contract price may be varied is there a warning and an explanation about how it may be varied? Yes  No
- 7) Are you aware of the cooling off provisions relating to the contract? Yes  No
- 8) Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000. Yes  No
- 9) Is the procedure for variations understood? Yes  No
- 10) Are you aware of who is to obtain any council or other approval for the work? Yes  No
- 11) Do you understand that the contractor must have a policy of home warranty insurance under the *Home Building Act 1989* and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than 20,000? Yes  No
- 12) Has the contractor given you a document that explains the operation of the *Home Building Act 1989* and the procedures for the resolution of contract and insurance disputes? Yes  No

### Signed copy of contract

Under the *Home Building Act 1989* a signed copy of the contract must be given to the owner within 5 clear business days after the contract is entered into.

Both the contractor and the owner should retain an identical signed copy of this contract including the plans, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

### Home warranty insurance

If the builder or tradesperson does not have home warranty insurance where the contracted work is valued over \$20,000 (including the cost of materials supplied by the contractor), they are committing an offence under the *Home Building Act 1989*. They also commit an offence if they demand or receive payment before providing the insurance certificate.

## Owners acknowledgment

I/we have been given a copy of the publication *Consumer Building Guide* and I/we have read and understand it.

I/we have completed the check list and answered 'Yes' to all items on it.

**Note:** Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg. director, must be inserted.

Signature

*D. W. Kery*

Name (print)

David Peterson

Capacity (print)

State Managing Agent

Signature

Name (print)

Capacity (print)

### **Home Warranty Insurance**

OK! You have completed the check list and you may be ready to sign the contract. But before your contractor starts work, and before you pay any money, make sure that you have been given a certificate of home warranty insurance if your project is valued over \$20,000. Attach the certificate to this contract with the other contract documents. You will need to produce this certificate if you need to claim for any defective or incomplete work. Make sure the name and licence number of the contractor as shown on the certificate are exactly the same as those on the contract.

File no: 870/111750  
The Owners - Strata Plan No. 69259  
Address of Property: "Mondrian", 2 Powell Street, Waterloo

**SPECIAL CONDITIONS TO CONTRACT  
BETWEEN THE OWNERS – STRATA PLAN NO. 69259 AND BILTBETA  
CONSTRUCTIONS PTY LIMITED ("BILTBETA")**

These special conditions are based on the Department of Fair Trading contract which Biltbeta has chosen to utilise in respect of its remediation work to the owner's building pursuant to the Home Owner Warranty ("HOW") claim with Allianz Australia Insurance Limited ("Allianz").

**Clause 12 – Progress Payments**

This clause is amended as below:

Notwithstanding anything to the contrary in the Terms of Settlement, Allianz is to pay the contractor directly the GST exclusive component of the progress claim, within 21 days of its receipt.

The owner acknowledges that it is responsible for the GST component of the deposit and each progress claim. Allianz and/or Sergon will notify the owner when Allianz has paid the contractor a progress claim directly and within five days of that notification the owner will draw a cheque in the sum of the GST component of the progress claim and remit it to the contractor without delay.

The owner acknowledges that given the contract price of \$976,494.29 (inclusive of GST), the approximate amount of the GST component of the work is \$89,000.00.

The contractor will allow inspections by Sergon when required.

**Clause 13 – Variations**

This clause is amended as below:

The contractor acknowledges that it cannot vary the work done under the contract or the materials used under the contract without written permission from Sergon acting as the agent of the insurer in respect of the remedial work.

Notice in writing issued by the contractor in respect of variations must be also issued on Sergon.

**Clause 14 – Time for Payments**

This clause is amended as below:

The time for payments in this clause is overridden by the special conditions of clause 12 and the contractor acknowledges that its progress claims are being met by Allianz except for the GST component of those progress claims which are to be paid by the owner.

By entering into this contract, the contractor acknowledges and agrees that the timeframes for the payment of progress claims under this contract are varied by the special conditions to take into account the fact that the cheques must be drawn by Allianz once Sergon has

inspected the work the subject of the progress claim and has indicated to Allianz that the progress claim can be paid.

The reference to 5 business days in the second paragraph of clause 14 in the contract conditions is changed to 15 business days.

**Clause 16 is deleted.**

**Clause 19 - Access to Site and Material Handling**

This clause is amended as below:

- 19.1 The access to site obligations of the owner in clause 19 of the contract conditions are subject to the following in relation to access that the contractor requires to individual lots within the strata scheme on site.
- 19.2 The consent of the owner and/or occupier of that lot will be required and the contractor must not enter that lot without such consent and without the occupier being present, unless the occupier otherwise agrees.
- 19.3 Prior to the commencement of work the contractor must give the owner an indicative construction program showing the intended sequence of the work.
- 19.4 The contractor must give the occupier at least 2 business days notice in writing of the dates on which the contractor requires access to any lots and the contractor must from time to time make any amendments to such dates which the owner may reasonably request for the purpose of coordinating the contractor's access to lots with any occupier availability. The construction program will be used to inform the occupiers of approximate timing for access.
- 19.5 In the event that the owner is unable to provide the contractor with access to a lot due to circumstances beyond the owner's reasonable control, including where the occupier fails to consent to access and the owner is unable to obtain or in its absolute discretion considers it inappropriate to seek an Access Order, any part of the works which cannot practically be completed without such access will be deemed excluded from the works as a variation and the contract price will be adjusted accordingly, but the contractor will not otherwise be entitled to any compensation by reason of such variation.
- 19.6 The contractor must:
  1. By entering into this contract the contractor acknowledges that the building is occupied and will be occupied throughout the conduct of the works extending over at least 30 weeks.
  2. Ensure that the property of owners and occupiers of lots and their invitees is not damaged in the course of carrying out the works.
  3. Maintain existing access and security measures in relation to the site, comply with reasonable directions of the owner for the purpose of maintaining security of the site and return all keys to the owner on completion of the works.



4. Restrict access to the parts of the site in which the contractor is carrying out the works to its employees and subcontractors and for that purpose erect appropriate signage, entry controls and fencing, including:
  - a. a particular lot being worked on at a particular time, with access to the lot being restricted at all times by a locked door.
  - b. a particular common area being worked on at a particular time, with access to the area being restricted at all times by appropriate fencing.
  - c. if considered appropriate by the owner, a safety area designated by the owner around the areas specified in a & b above.
5. Ensure minimal disturbance to owners and occupiers of lots and their invitees, including without limitation:
  - a. ensuring that owners and occupiers of lots and their invitees have reasonable and safe access to their lots and common areas, taking into account the needs of elderly or disabled persons, except areas to which it is necessary to restrict access for the purpose of carrying out the works safely.
  - b. minimising disruption to services and if it is necessary to disrupt a service, ensure that functionality of that service is restored by the end of the day on which the disruption occurs.
  - c. employing the most effective practical methods to suppress noise, dust, vibration and other nuisances arising from carrying out the works.
  - d. ensuring that all areas accessed by the contractor on a day are left unobstructed, safe and clean at the end of the day.
  - e. providing the owner and any affected occupiers, as soon as practical, with notice of any anticipated restrictions on access, disruptions of services, nuisances or hazards.
  - f. the contractor must comply with the reasonable directions of the owner regarding use of utilities and amenities at the site, including in relation to:
    1. Electricity.
    2. Water
    3. Toilet facilities.
    4. Routing for ingress to and egress from the site.
    5. Lifts.
    6. Waste disposal.

#### **Clause 23 – Defects Rectification**

This clause is amended as below:

The defects rectification period is 26 weeks from the date the work reaches completion and a certificate of practical completion has been issued.

## **Clause 28 - Giving of Notices**

This clause is amended as below:

The only address for the giving of notices is the address for the owner that appears on this contract and that is The Owners – Strata Plan No. 69259, c/- Strata Plus Pty Ltd, PO Box H181, Australia Square NSW 1215.

## **Clause 31 – Site Meetings**

The owner will elect a representative or representatives who will attend site meetings and be responsible for liaison with the contractor.

A prestart meeting is to be held on site before any works commence, a representative of the owner, the contractor and Sergon must attend this meeting. Following consultation with the owner, a schedule of works will be issued after the meeting to the attendees that are tracked by the construction schedule.

Site meetings will be held on a fortnightly basis between the contractor, the owner's representative and Sergon. The date of site meetings is to be agreed in advance of works commencing, by the contractor issuing a list of dates to Sergon taking into account the construction schedule.

The contractor is to record minutes of all site meetings and provide a copy of those minutes to owner's representative and Sergon within 5 days of those site meetings being held.

## **Clause 32 - Obligations to Third Parties**

The contractor must, if requested by the owner or insurer, provide written confirmation satisfactory to the owner or the insurer as the case may be, that the contractor has satisfied its liabilities to third parties in relation to the works, including, without limitation, liabilities to sub-contractors, employees and in respect of payroll taxation.

## **Clause 33 – Work Health and Safety**

33.1 In this clause, unless the contrary intention appears:

- a) Any term defined in the Act, Regulation or any Code will have the same meaning when used in this clause.
- b) **Act** means the Work Health and Safety Act 2011 NSW.
- c) **Authorisation** means any licence, permit, or authorisation required under the Act in relation to the work.
- d) **Code** means any code of practice approved under section 274 of the Act.
- e) **Policies** means all policies and procedures implemented or adopted by the owner or contractor from time to time that are in any way applicable to this agreement or the performance of the work, including but not limited to:
  1. By-Laws for the subject strata scheme.

2. Any drug and alcohol management policies.
  3. Any health and safety policies and procedures.
  4. Any other such policies or procedures relevant to a safe workplace notified to the contractor by the owner from time to time.
- f) **Regulation** means the Work Health and Safety Regulation 2011 NSW.
- g) **Safety Documents** means any management plan, risk assessment, safe work method statement, work method statement, emergency plan, safety data sheets, notice to Regulator or register required under the Act or Regulation.

33.2 The Contractor must at all times:

- a. ensure that the work is carried out in a safe manner.
- b. comply with the Act and Regulation.
- c. ensure that all persons engaged in performing the work are properly briefed on and take proper precautions in relation to any site hazards disclosed in any risk audit or other report supplied to the contractor or otherwise known to the contractor.
- d. ensure that all persons engaged in performing the work comply with the Policies.
- e. immediately comply with any reasonable instruction from the owner relating to safety and/or directions on health and safety issued by any person having authority under the Act or Regulation to do so.
- f. ensure that prompt and adequate communication and coordination occurs with the owner and any person specified in paragraph (e) on health and safety matters where the health and safety of other persons may be affected by the work.
- g. communicate any issue or concern that it has regarding work health and safety matters, as soon as practicable, to the owner.
- h. provide the owner with such reports as are requested by the owner from time to time, including but not limited to evidence of ongoing compliance with the Act and Regulation by the contractor; and health or safety inspections, audits or assessments undertaken during the course of the work.
- i. if the contractor is required by the Act to report a Notifiable Incident arising out of the work to the Regulator, at the same time or as soon as is possible in the circumstances, give notice of such Notifiable Incident and a copy of any written notice provided to the Regulator, to the owner and provide to the owner, within such time as is reasonably specified by the owner, a report detailing the circumstances of the Notifiable Incident, the results of

investigations into its cause and any recommendations or strategies for prevention in the future.

- j. inform the owner of the full details of:
    - 1. any suspected contravention of the Act or Regulation relating to the work, within 24 hours of becoming aware of any such suspected contravention.
    - 2. any cessation or direction to cease work due to unsafe work, immediately upon the contractor being informed of any such cessation or direction.
    - 3. any workplace entry by an Entry Permit Holder or an Inspector, to any place where the work is being performed or undertaken, within 24 hours of becoming aware of any such workplace entry.
    - 4. any proceedings against the contractor or its officers or any decision or request by the Regulator given to the contractor or its officers under the Act or Regulation, within 24 hours of becoming aware of any such proceedings, decision or request.
    - 5. any notices and correspondence issued to the contractor by any person under the Act or Regulation, within 24 hours of receiving any such notice or correspondence.
- 33.3 If the contractor is required by the Act or Regulation to prepare any Safety Document, review any existing Safety Document or obtain any Authorisation or install any sign or barrier relating to the work, the contractor must do so, before undertaking any further work, in compliance with the Act and Regulation and provide the owner with a copy of any such Safety Documents or Authorisation with sufficient time for the owner to review and consult in relation to the relevant document.
- 33.4 Without limiting any other right or remedy of the owner, if during the performance of the work:
- a. the owner notifies the contractor in writing that the owner is not satisfied that the contractor is performing the work in compliance with the Act, the Regulation, the Policies or the contractor's obligations under this clause:
    - 1. the contractor will promptly remedy that breach; and
    - 2. the owner may direct the contractor to suspend the work until such time as the contractor satisfies the owner that the work will be performed in compliance with the Act, the Regulation, the Policies or the contractor's obligations under this clause and during the period of suspension in accordance with this clause, the owner will not be required to make any payment whatsoever to the contractor; and
  - b. If the contractor fails to rectify any breach for which the work has been suspended under this clause within a reasonable period, but no later than 10

Business Days, after receiving notification from the owner to do so, the owner may, at its option, immediately terminate this contract.

33.5 The owner:

- a. Appoints the contractor, and the contractor accepts its appointment as the principal contractor for the work and the contractor must, in addition to its obligations under this clause, comply with its obligations as principal contractor, at its own cost, and do all things necessary to assist the owner in discharging its obligations under the Act and Regulation.
- b. authorises the contractor to exercise such authority as is necessary to enable the contractor to discharge the responsibilities imposed on the contractor, as principal contractor, by the Act and Regulation.

33.6 The owner may monitor the contractor's compliance with the Act, the Regulation, the Policies and the contractor's obligations under this clause, by:

- a. conducting audits of the contractor's work health and safety performance.
- b. conducting site inspections.

requiring the contractor to provide it with whatever documents or other information the owner reasonably requires relating to work health and safety matters.

33.6 Without limiting this clause, the contractor must perform its obligations under this contract in such a way that ensures:

- a. The owner's personnel are able to participate in any necessary inspections of work in progress and tests and evaluations of the work.
- b. The owner is able to make full use of the work.

without the owner being in breach of the Act or Regulation.

33.8 The contractor must cooperate with any investigation undertaken by the owner concerning any Notifiable Incident, or breach or alleged breach of the Act or Regulation relating to the work.

33.9 Where there is any inconsistency or ambiguity between this clause and the Act or Regulation, the Act or Regulation will prevail

### **Clause 34 - Waterproofing Works**

In relation to the waterproofing membrane works to be carried out as part of the works the contractor will ensure that:

- (a) The contractor will meet with a membrane manufacturer on-site to consider and select the appropriate membrane product/s required for the work;

- (b) The selected membrane product/s are installed by contractors accredited by the membrane manufacturer to install the selected membrane product/s in the manner specified by the manufacturer;
- (c) Each membrane will be subjected to a 48 hour flood test by the contractor;
- (d) The membrane manufacturer will attend the site to confirm that each new membrane installed is the selected membrane product for the application;
- (e) The installation contractor/s in respect of the new membranes shall provide certification of the new membranes confirming that the installation is in accordance with the membrane manufacturer's specifications.

The contractor is to supply to the owner a manufacturer's warranty as to the waterproofing product used on site and the method of its installation by the contractor.

**Clause 35 - Terms of Settlement with the Insurer**

The Terms of settlement between the Owner and the insurer, Allianz Australia Insurance Pty Ltd ("Allianz") form an attachment to the contract.

# Owner and Contractor details

## Notes, Explanations and Warnings

The notes, explanations and warnings that follow do not form part of the contract.

**Note:** The owner should check these details by contacting Fair Trading before signing the contract.

**Explanation:** A qualified supervisor is applicable unless the contractor's licence has the letter 'Q' shown in the right hand bottom corner.

**Warning:** If a payment is made by a business to another business when the payer has not received notification of the recipient's ABN (Australian Business Number) then the payer will be obliged to withhold tax as required by the ATO (currently 48.5%) and send it to the ATO.

**Warning:** The contract price may increase in accordance with the contract terms. This is because not all costs can be absolutely determined at the outset although the contractor is obliged to make reasonable estimates given known conditions. The reasons for possible increases include:

- Increase in taxes, eg. GST (Clause 3)
- Provisional Sums (Clause 10)
- Prime Cost Items (Clause 11)
- Variations, including those due to unforeseen matters or required by council (Clause 13)
- Interest on overdue payments (Clause 14)
- Boundary Survey (Clause 20).

▶ <b>Owner</b> Name(s)	Owners Corporation SP 69259		
	C/- Strata Plus Pty Limited, attn: David Ferguson		
	Address		
	PO Box H 181		
	Australia Square		
	Postcode 1215		
Home phone	Work phone	9319 1899	
Fax number	9319 1866	Mobile	
Email	David.Ferguson@strataplus.com.au		
▶ <b>Contractor</b> Name (as shown on licence)	Biltbeta Constructions Pty Ltd		
	Qualified supervisor (if applicable)	Mathew Turner	
	Australian Company Number (if applicable)	39 050 057 924	
	Address (as shown on licence)	17 Carlton Road	
		North Rocks NSW	
		Postcode 2151	
	Business address and address for service documents (if different from address on licence)		
		Postcode	
	Home phone	Work phone	02 9872 5531
Fax number	02 9872 5094	Mobile	
Email	info@biltbeta.com.au		
Licence number	5957C	Expiry date 06 / 11 / 2013	
ABN	39 050 057 924		
Category of work shown on licence	Builder		
Address Where work has to be done (site)	2- 4 Powell Street		
	Waterloo NSW 2017		
Title details Lot number	Deposited plan no.		
Certificate of Title-Folio identifier			
Contract price* Amount in words	*(Including GST)		
	Ninehundredseventysixthousandfourhundred ninetyfourdollarstwentyninecents \$976,494.29		

Contractor initials

Owner initials 

# Clause 1


## Contract documents


**Note:** This contract is a legally binding agreement. The following 30 clauses set out the parties' rights and obligations.


Take time to read and understand the various clauses and do not sign unless you have read the check list and answered 'yes' to all questions.

**Explanation:** The general conditions of contract contain the terms upon which the work is to be carried out and payment made.

The purpose of the specification is to describe the materials to be used and standard of workmanship to be observed. The plans are the pictorial representation of the work. The parties may also wish to include other documents, such as a final tender, an engineer's drawing, geotechnical report, council conditions of approval, sewer diagram, survey certificate, if applicable, as part of the contract and these need to be specified opposite.

 **Note:** Under the Home Building Act it is a requirement that the contract contain a sufficient description of the work. If there are plans and specifications, these must be attached as part of the contract.

 **Note:** The owner should check that the contractor is aware of any special finishes, appliances or materials required by the owner and that the specifications and plans incorporate those requirements.

 **If Home Warranty Insurance is not taken out before work begins, this is a breach of the Home Building Act and will affect a contractor's right to receive payment.**

This contract consists of owner, contractor, site and price details, the Clauses 1 through to 30 (hereafter referred to as 'the contract conditions') and any additional conditions agreed to by the owner and contractor which must be in writing, together with the section for signatories and contract date appearing after the contract conditions.

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.

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 each party to this contract. The documents listed below also form part of this contract and must be attached:

Specifications: prepared by	No. of pages	Date
Sergon Bulding Consultants	52	/ /
AECOM - Window Rectification Essential Works Package	79	11 / 10 / 2012
Peter Karsai – Car Park Slab Control Joint	1	/ /

Plans: prepared by	No. of pages	Date
Peter Karsai - Waterproofing Car Park Slab	8 pages	/ /
CTI Consultants - Concrete Specification	8 pages	/ /
		/ /
		/ /

Other documents: prepared by	No. of pages	Date
Mills Oakley Lawyers - Terms of Settlement	6	26 / 08 / 2013
Billbeta Constructions Pty Ltd - Tender	3	30 / 04 / 2013
Special Conditions to Contract	2	/ /

Certificate of home warranty insurance: Name of insurer	Certificate date or annual period
QBE Insurance	

In the event of any difference or inconsistency between the above documents, the contractor must discuss the matter with the owner and attempt to seek agreement on the work to be performed or the materials to be used.

See dispute resolution procedures in Clause 27.

The additional conditions shall take precedence over the printed contract conditions where there is any inconsistency or ambiguity.

All items shown in the plans form part of the work to be performed under this contract unless specifically excluded by the contract conditions, including any additional conditions, specifications or other documents listed above.

Items listed in the Excluded Items schedule (opposite) are not included in this contract. The Schedule should be completed or marked 'Not Applicable'. If the Excluded items schedule is not completed it will be deemed to be not applicable.

Contractor  
initials

Owner  
initials

*[Handwritten signature]*



## Excluded items schedule (items not included in contract)


**Note:** This schedule lists those items which are not included in the contract. You should carefully check the plans, specifications and other documents if applicable to ensure that there is no inconsistency between this schedule and those documents. (If space is insufficient attach a sheet referring to this schedule).

The contract price may need to be amended for the reasons listed in the warning at the start of the contract. The owner should discuss these matters with the contractor prior to signing this contract to clarify what additional costs, if any, may be involved.

No alterations, additions or deletions to the clauses contained in this contract should be made unless reasons for such changes are provided in writing and both parties agree to the changes. If the changes are unclear, seek appropriate legal or technical advice. Where there are any changes to the clauses or where information is inserted in any of the boxes provided, the parties should initial their amendments or additions.

## Clause 2

### Quality of construction

All work done under this contract will comply with:

1. (a) the Building Code of Australia to the extent required under the *Environmental Planning and Assessment Act 1979* (including any instrument made under that Act)
  - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law
  - (c) the conditions of any relevant development consent or complying development certificate
  - (d) any construction certificate and any other requirement of the relevant local council and any statutory authority whose approval or consent is required with respect to the work.
2. This contract may limit the liability of the contractor for a failure to comply with (1) 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), or
    - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes (1).

## Clause 3

### General conditions of contract

It is agreed, subject to this and the other clauses of this contract, that:

- (a) the contractor will:
  - diligently proceed and complete all work to be done under this contract in a proper and workmanlike manner
  - supply all materials necessary for the completion of the work of the kind and quality stated in the plans and/or specifications
  - comply with all relevant Australian Standards, laws and the requirements of the relevant local council and all statutory authorities with respect to the work.
- (b) the owner will pay the contract price in the manner specified in this contract.

Contractor  
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**O** The contractor must have home warranty insurance (for work over \$20,000) and provide the owner with a certificate of insurance applicable to the contracted work before commencement of work and before demanding or receiving any payment. Your contractor may be able to organise optional home warranty insurance for work up to \$20,000, and you can discuss this with your contractor.

**O** The cooling off period may be shortened or deleted from the contract by an additional condition of the contract, provided the owner gives to the contractor a certificate by a legal practitioner that complies with s.7BA(5) Home Building Act. You should seek legal advice if the owners rights to a cooling off period is sought to be changed in any way.

Clause 17 of the Home Building Regulation 2004 provides that the cooling off provisions do not apply to contracts:

- (i) that are subordinate to a principal contract to do residential building work (eg. contracts between a licensed builder and a licensed sub-contractor)
- (ii) between a speculative licensed builder and a licensed trade contractor
- (iii) between a licensed contractor and a developer (as referred to in s.3A(1) of the Act)
- (iv) for work that is required to be completed urgently so as to rectify a potential hazard to the health or safety of persons or to prevent substantial damage to property
- (v) that are prepared by or on behalf of the owner.

The contract price includes all taxes (including GST) associated with the work. References to costs and payments are inclusive of GST where applicable. The contract price may be increased by the amount of any increase in tax or duty which is imposed after the date of this contract and which directly relates to work done or materials supplied under this contract.

The contractor warrants that as at the date of this contract, the contract price is based upon site inspections and all other investigations which would usually be undertaken by an experienced and competent contractor and includes all matters including equipment that could be reasonably expected to be necessary for the completion of the work covered by this contract. The contract price may be adjusted after the date of contract only in accordance with this contract.

### **Cooling off period for contracts with price over \$20,000**

Under the Home Building Act the owner may, by notice in writing, rescind the contract. The contract may be rescinded even if work has commenced under the contract.

The notice of rescision must be given to the contractor:

- (a) where the owner has been given a copy of the signed contract – within 5 clear business days after being given a copy of the signed contract, or
- (b) where the owner has not been given a copy of the signed contract within 5 days after the contract was signed – within 5 clear business days after the owner becomes aware of being entitled to be given a copy of the signed contract.

The notice of rescision must state that the owner rescinds the contract, and must be given to the contractor by leaving it at the address shown as the contractor's address, or by any method of service provided by Clause 28 of this contract.

If a notice of rescision is given to the contractor:

- (a) the contract is taken to be rescinded from the time it was signed, subject to (b), (c), (d) and (e) below
- (b) the contractor may retain out of any money already paid to the contractor the amount of any reasonable out of pocket expenses that the contractor incurred before the rescision
- (c) the contractor must refund all other money paid to the contractor under the contract by, or on behalf of, the owner at or since the time the contract was made
- (d) the owner is not liable to the contractor in any way for rescinding the contract
- (e) the contractor is entitled to be paid a reasonable price for any work carried out under the contract to the date the notice of rescision is given.

## Clause 4 Deposit

The deposit under this contract will be: paid by insurer

Amount in words

Fortyeightthousandeighthundredtwentyfourdollars

seventyonecents

\$ 48,824.71

**Note:** A deposit must not be requested or paid until a home warranty insurance certificate has been given to the owner.

Any deposit amount must be specified opposite and must not exceed the maximum allowable under the law of:

- 10% if the contract price is \$20,000 or less, or
- 5% if the contract price exceeds \$20,000.

Certain deposits could attract GST liability eg. where deposit is forfeited or part of a payment. Any amount received by the contractor prior to the commencement of work irrespective of whether the payment is described as a deposit or a payment for any other reason must not exceed the maximum allowable deposit amount.

**Note:** The contractor should check that the owner's name stated on the contract is the same as that appearing on the certificate of title for the land. A letter from the lending authority or owner's bank may be requested in relation to capacity to pay.

It is an offence to commence work or demand payment before taking out home warranty insurance and providing a certificate to the owner. Failure to take out home warranty insurance may affect the contractor's right to payment.

## Clause 5

### Commencement of work

The contractor must commence the work within 30 working days from:

- the date of this contract, or
- if the approval of the local council or other statutory authority has still to be obtained for the work, the date of written notification of that approval, or
- if the consent of the lending authority is required, the date of written notification of consent that the work may proceed whichever is latest.

The contractor may, by written notice, request the owner to provide satisfactory evidence of the owner's title to the land and capacity to pay the contract price and for any variations agreed to after the contract is signed.

If the owner fails to provide such evidence within 10 business days from receipt of such notice, the contractor may suspend the work under the contract in accordance with **Clause 24** or take action to end it in accordance with **Clause 26**.

Contractor  
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Owner  
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## Clause 6 Time for completion

**O** **Explanation:** The time allowed for completion should be realistic. The contract time should allow for any public holidays or periods when it is known the work will not be performed, for example the building industry shutdown over the Christmas period and industry rostered days off. Instances can occur when the time for completion has to be adjusted. See Clause 7.

The contractor must diligently proceed and complete the work within 30 calendar weeks from the date the work is due to commence as referred to in Clause 5. The period of time allowed for completion has taken into account any public holidays and other days when it is known that work will not be performed. The time for completion may be subject to amendment in accordance with Clause 7.

## Clause 7 Extension of time

**Explanation:** Delays can occur during the course of the work. The contractor is entitled to apply for a reasonable extension of time for completion.

In order to qualify for an extension of time the contractor must comply with the requirements set out in this clause.

**Note:** Disagreements may occur if a contractor fails to correctly claim for justified extensions of time. The contractor should ensure that the procedure set out in Clause 7 is always followed.

If the work is delayed by:

- inclement weather or conditions resulting from inclement weather
- any order of a court or tribunal that the work be suspended, unless that order resulted from the fault of the contractor
- any act or omission of the owner
- any industrial dispute affecting the progress of the work (not being a dispute limited to the site or limited to employees of the contractor)
- the unavailability of materials necessary for the continuation of the work, unless due to the fault of the contractor
- a variation to the work
- a suspension of the work by contractor under Clause 24, or
- any other matter, cause or thing beyond the control of the contractor, the contractor will be entitled to a reasonable extension of time to complete the work. **Both the contractor and owner (if applicable) must take all reasonable steps to minimise any delay to the work.**

If the contractor wishes to claim an extension of time, the contractor must notify the owner in writing of the cause and estimated length of the delay within 10 business days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.


If the owner does not, within a further 10 business days, notify the contractor in writing that the extension of time sought is unreasonable, the completion date for the contract will be extended by the period notified to the owner.

If the owner gives the contractor written notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure (Clause 27).

**O** **Explanation:** Should any defects or omissions become apparent after completion, refer to the Defects Rectification clause (Clause 23).

**Explanation:** Under the Home Building Act the contractor is required to give the warranties set out in this clause.

The statutory warranties in the contract are as printed in the Home Building Act. They require the contractor to provide a product as agreed, in a suitable state, fit for its intended purpose, complying with all relevant laws and within the agreed time, or if not agreed a time that is reasonable.

 Paragraph (f) on this page relates to work where the owner makes known to the contractor the intended purpose of the works or the result the owner expects to achieve with the work. This warranty requires the contractor to use appropriate expertise to provide the stated and expected results.

**O** **Note:** Any legal action for a breach of statutory warranties must be taken before the end of the warranty period for the breach ie. 6 years for a breach resulting in a structural defect (as defined in the regulations) or 2 years in any other case.

The warranty period starts on completion of the relevant work to which it relates (but this does not prevent proceedings from being commenced before completion of the work). However, if the work is not completed, the warranty period starts on:

- (i) the date the contract is terminated, or
- (ii) if the contract is not terminated – the date on which work under the contract ceased, or
- (iii) if the contract is not terminated and work under the contract was not commenced – the date of the contract.

If the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period.

## Clause 8 Completion of work

The work will be complete when the contractor has finished the work in accordance with the contract documents and any variations, it is free of apparent defects, any damage of the kind referred to in Clause 19 has been repaired, and all rubbish and surplus material has been removed from the site.

When the contractor believes the work is complete, the contractor must notify the owner in writing certifying that the work has been completed in accordance with this contract. Within 10 business days of receipt of written notice from the contractor, the owner must advise the contractor in writing of any items of work the owner considers to be incomplete or defective. If the owner does not so notify the contractor, the work will be taken to be complete.

The contractor must complete any outstanding work promptly and again notify the owner in writing. Unless the owner notifies the contractor in writing that any item is still incomplete or defective within a further 10 business days from receipt of notification by the contractor, the work will be taken to be complete.

Should there be any dispute between the parties as to whether the work has been completed, it must be dealt with in accordance with the dispute resolution procedure (Clause 27).

## Clause 9 Statutory warranties

The contractor warrants that:

- (a) the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract
- (b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in the contract, those materials will be new
- (c) the work will be done in accordance with, and will comply with, the Home Building Act or any other law
- (d) 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
- (e) 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
- (f) the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the owner expressly makes known to the contractor or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the contractor, 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 contractor's skill and judgment.

These warranties do not in any way reduce or limit the contractor's obligations in relation to workmanship, materials, completion or other matters specified in Clauses 3 and 4 or elsewhere in this contract. No provision of this contract can reduce, restrict or remove these statutory warranties.

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## Clause 12 Progress payments

**Explanation:** Progress payments are usually made at specific stages as the work proceeds. These payments, which include GST, should equate to the value of work done. Note, a lending authority may have certain requirements for progress payments and the parties should check these. If the lending authority has any special requirements for progress payments there may be a need to include an additional clause in the contract covering them.

**Note:** If the owner makes a progress payment but is concerned with any aspect of the work the owner should promptly advise the contractor in writing of these concerns. If the owner has any doubt, they should consider obtaining independent advice from a building consultant, architect or quantity surveyor. Should there be a dispute in relation to any part of the work the parties should try to agree on an appropriate amount to be deducted from the progress claim until the dispute is resolved.

The owner must pay the contract price by progress payments within 5 business days of the completion of the stages of the work nominated in the schedule of progress payments. The contractor must notify the owner in writing when a stage of the work has reached completion. A stage of work has reached completion when it has been finished in accordance with the contract documents and any variations agreed to and is free of apparent defects. Any deposit paid must be deducted from the first progress payment.

Despite the preceding paragraph, if the owner's lending authority (if applicable) is to make all or any progress payments, then the contractor agrees to accept the usual payment terms (including the need for inspections and certificates required by the lending authority) in place of the requirements specified in the preceding paragraph.

### Schedule of progress payments (to be completed by parties)

Stages of work (payments to be made at completion of the stage)	Amount (including GST)
1 Progress Claim 1	
(less deposit: \$ 48,824.71 paid by insurer)	\$ 195,298.85
2 Progress claim 2	\$ 195,298.86
3 Progress claim 3	\$ 195,298.86
4 Progress claim 4	\$ 195,298.86
5 Final on completion	\$ 195,298.86
6	\$
7	\$
8	\$
9	\$
10	\$
<b>Total</b>	<b>\$ 976,494.29</b>

(If space is insufficient, attach a sheet referring to this schedule)

Please refer to items 10 & 11 of the Signed Terms of settlement dated 26.08.11 in regards to payment

Payment of a progress payment is not to be regarded as acceptance by the owner that the work has been completed satisfactorily or in accordance with the contract documents.

If there is any bona fide dispute in relation to the value or quality of work done, the dispute must be dealt with in accordance with the dispute resolution procedure set out in Clause 27. In those circumstances, the parties agree as follows:

- (a) the owner may withhold from the progress payment, an amount estimated by the owner, acting reasonably, equal to the owner's estimate of the value of the disputed item
- (b) the contractor must continue to carry out its obligations under this contract pending resolution of the dispute.

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**Note:** These stages should correspond with those in the 'Schedule of Progress Payments' under Clause 12.

### Schedule for payments inspections

Stages of work	Amount (including GST)
1	\$
2	\$
3	\$
4	\$
5	\$
6	\$
7	\$
8	\$
9	\$
10	\$
(If space is insufficient, attach a sheet referring to this schedule)	<b>Total</b> \$

## Clause 13 Variations

**Explanation:** If, after work has commenced, the owner decides to delete, alter or add to the work to be done, a variation to the contract may be required. The work also may be varied at the request of the contractor, due to a requirement of the council or other authority, or a matter which could not be foreseen at the time of signing the contract.

**Note:** Copies of letters and notices relating to variations should be kept by both parties.

The work to be done or materials used under this contract may be varied:

- at the request of the owner, or
- at the request of the contractor. If the necessity for the variation is due to the fault of the contractor the owner will not be liable for any increase in the contract price, or
- due to such other matters that could not reasonably be expected to be foreseen by an experienced, competent and skilled contractor for the completion of the work at the date of the contract, or
- due to a requirement of a council or other statutory authority relating to the work, if at the date of this contract such requirement could not reasonably have been foreseen by the contractor.

### Procedure for variations

Before commencing work on a variation, the contractor must provide to the owner a notice in writing containing a description of the work and the price (including GST). If not otherwise specified, the price will be taken to include the contractor's margin for overheads, supervision and profit. **The notice must then be signed and dated by both parties to constitute acceptance.**

If the time for completion will be delayed by the variation the contractor must include in the notice an estimate of the additional time required. Any extension of time must be dealt with in accordance with Clause 7.

The requirement for variations to be in writing does not apply if there is likely to be a danger to any person or damage to property, and the work could not be done promptly if the variation had to be put in writing before commencing the work.

Variations shall be subject to the overall conditions of this contract.

Contractor  
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Owner  
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**O** **Explanation:** Contractors normally include in the price for all work a margin to cover overheads, supervision and profit. The margin to be applied to the adjustment of prime cost items is to be inserted in the box opposite. This margin should not exceed 20%.

### Adjustment of contract price

The cost of deletions from the contract will be deducted from the contract price. The price of any variation specified in the notice signed and dated by both parties will be added to the contract price.

Any adjustment to the contract price due to an agreed variation will be taken into account at the time of the next progress payment or paid as agreed by the parties.

### Right to terminate the contract for variations due to unforeseen matters or a requirement of council or other statutory authority

If the work must be varied due to a matter that could not reasonably be expected to be necessary for the completion of the work or a requirement of the council or other statutory authority which was not known at the date of this contract and the owner notifies the contractor in writing that the owner is unable to meet the cost of that variation, then the owner will be entitled to terminate the contract by notice in writing to the contractor (Clause 25).

If the contract is so terminated, the contractor is entitled to payment:

- in accordance with Clause 12 in respect of completed stages
- the actual cost of the work done since the completion of the last stage, and for any materials on the site, together with a margin of 20 % for profit, supervision and overhead on the cost of that work and materials, and GST payable.

## Clause 14

### Time for payments

**O** **Note:** The contractor will have to account for GST 21 days after the end of the tax period in which an invoice (ie. claim for payment) is issued or the payment is received, whichever is earlier.

When the contractor gives the owner a written claim for a progress payment or other amount due under the contract, the owner must pay, unless the owner notifies the contractor in the manner stated below, the amount of the claim within 5 business days of receipt of the claim (which must not be less than 5 business days). However, the preceding sentence is subject to any contrary term or condition specified in Clause 12.

If the owner disagrees that the contractor is entitled to be paid a progress claim or other amount due under the contract, the owner must notify the contractor in writing within 5 business days of receiving the claim setting out the reasons for that disagreement. If there is any dispute between the parties relating to a payment under the contract it must be resolved according to the dispute resolution procedure set out in Clause 27.

If the owner fails to pay the amount of a claim in part or in full by the due date and fails to give notice disputing the claim to the contractor, interest at the current bank rate (as defined in Clause 30) will be payable to the contractor on the amount outstanding for the period overdue. However, if the owner gives notice of a dispute in accordance with the dispute resolution clause (Clause 27), interest at the current bank rate will only be payable if the dispute is resolved in favour of the contractor and shall be calculated from the time when payment would have otherwise been due.

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## Clause 15 Final payment

When the work is complete in accordance with Clause 8 the owner must pay the amount remaining unpaid under the contract. Payment must be made in the manner specified in Clause 14. If the amount is not paid, interest in accordance with Clause 14 applies.

On receipt of the final payment, the contractor must hand over to the owner all guarantees, instruction manuals and the like unless already provided and all keys relating to the work, together with any certificate or approval which may have been provided by any public authority relating to the work.

## Clause 16 Work done and/or materials supplied by owner

The owner will carry out the work and supply the materials described below. The cost of that work and materials is not included in the contract price.

### Work and materials by owner

N/A


The owner will supply the materials set out below. The cost of these materials is not included in the contract price. The cost of installation by the contractor is included in the contract price.

### Materials only by owner

N/A

The owner must diligently carry out the work and supply the materials described above to avoid undue delay to the work under the contract.

**Explanation:** If the owner is to perform any of the work or provide any items or materials they must be specified in the space provided. Ensure the items are clearly and fully described.

 **Note:** If the work to be done by the owner requires council approval an owner-builder permit may be required. The owner should contact Fair Trading to check. Also the owner should check with his or her insurer the need to take out separate insurance.

The owner should advise the contractor when the work will be done so as to avoid any delay in the work under the contract. If the owner is to arrange for the installation of swimming pool fencing the owner should discuss with the contractor when this will need to be done.

The owner should check with the contractor that any materials to be supplied by the owner are suitable for their purpose.

Contractor  
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Owner  
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**Note:** As a general rule, all necessary building and other approvals for the work should be obtained prior to the signing of the contract. If any approvals will have to be obtained after the date of the contract the parties should carefully note the provisions of Clause 17. The Council may require a security deposit covering possible damage to kerbs. The owner should pay such deposits to ensure refunds are payable. Refer to Clause 19 regarding rectification of damage to kerbs.

## Clause 17 Approvals

Unless obtained by one of the parties prior to the date of the contract, the contractor must promptly apply for, and bear the cost of, all necessary application fees for approval of the work. The contractor must also apply for and obtain, at its expense, all approvals required from any public authority to occupy and use the completed work. The cost of doing so and all fees are included in the contract price.

The contract price does not include the cost of local government security deposits and these must be met by the owner.

If the contractor is required to obtain approvals before starting work under this contract and all necessary approvals have not been obtained within 60 business days of the date of this contract, either party may terminate the contract by notifying the other party in writing at the expiry of the 60 business day period.

If the contract is terminated in accordance with this clause, the contractor is entitled to be paid all reasonable costs associated with applying for the approvals to the date the contract is terminated together with the contractor's margin on these costs.

If a deposit has been paid by the owner which is in excess of the amount payable to the contractor, the excess must be refunded to the owner within 5 business days of the termination of the contract.

## Clause 18 Compliance with requirements of local statutory authorities

In carrying out the work the contractor must comply with the codes, standards, specifications and conditions of consent as set out in Clause 3.

If, due to such a requirement, the plans or specifications have to be amended, the contractor must immediately advise the owner in writing explaining the reason for the change. Any agreement to vary the plans and specifications for the work must be in writing and signed by both parties.

Any changes to be made to the work or materials to be used, provided they are not as a result of any fault on the part of the contractor, will be dealt with as variations in accordance with Clause 13.

The contractor must make good, at the contractor's own cost, any damage to footpaths and kerbs to the council's satisfaction.

## Standards and tolerances

The *Home Building Act 1989* stipulates that the work will be performed in a proper and workmanlike manner, and in accordance with the plans and specifications set out in the contract. Unless otherwise stated these must comply with the Building Code of Australia, to the extent required under the *Environmental Planning and Assessment Act 1979* (including any instrument made under that Act), Australian Standards and relevant NSW legislation.

Changes in climate or geographic conditions can cause movement and variations in building work. Not all variations are a defect. The Building Code of Australia and the relevant Australian Standards specify what are considered acceptable minimum levels of performance.

Contractor  
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Owner  
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**C** **Note:** The contractor should discuss with the owner the question of access to the site and materials handling before signing the contract. If there are any special site conditions which may present problems during the course of the work, for example due to wet weather, agreement should be reached as to how to deal with this matter and who is to pay for any additional cost which may be incurred.

**C** **Note:** Serious consequences can arise if the work is inadvertently performed on land not belonging to the owner. If there is any doubt the contractor should arrange for a boundary survey.

**Explanation:** It is common practice in the building industry for work to be performed by sub-contractors and the contractor is allowed to do so under this contract. Assignment is the transfer of a party's rights and obligations under the contract to a third party. The contract prohibits assignment without the consent of both the owner and contractor.

## Clause 19

### Access to site and materials handling

The contractor must do all work necessary to provide access to the site for vehicles and other equipment required by the contractor to carry out the work, and the cost of providing such access to the site is included in the contract price.

The contractor must bear all costs involved in the delivery of materials to the work, handling of materials, the removal and disposal from the site of rubbish, surplus material, excavated material, vegetation and demolished or dismantled structures.

The contractor shall be liable to the owner for any damage to kerbs, gutters, paving, underground services, drains, structures or other property on the site caused by the negligence or default of the contractor, any employee or subcontractor of the contractor as a consequence of carrying out the work.

The contractor must allow the owner, any person authorised by the owner or an authorised officer of the lending authority, if any, access to the site to view and inspect the work in progress.

The owner must allow the contractor, and any employee or sub-contractor of the contractor, access to the site during the currency of this contract.

The owner or the owner's representative must communicate and deal with the contractor personally or with such person nominated by the contractor as the contractor's authorised representative.

The owner must not give directions to the contractor's employees or sub-contractors.

## Clause 20

### Identifying the site

The contractor is responsible to ensure that the work is carried out on the owner's land. If there is any doubt as to the correct location of the boundaries, the contractor must take all necessary steps to determine their position. If the position of the boundaries can only be determined by a boundary survey, the contractor, at the owner's cost, must provide a boundary survey. However, the contractor must notify the owner in writing prior to obtaining the survey including a proper estimate of the cost of the survey.

## Clause 21

### Assignment and sub-contracting

Neither the owner nor the contractor may assign their rights or obligations under the contract without the prior written consent of the other party, such consent not to be unreasonably withheld.

The contractor may sub-contract any part (but not the whole) of the work without the owner's consent but is not relieved from the responsibility under this contract for that work.


Contractor  
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Owner  
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## Clause 22 Insurance

**Explanation:** This Clause is not concerned with home warranty insurance (covering defective work or breach of contract). Contact Fair Trading for information on that subject.

**Note:** If value of work exceeds \$20,000 (including the cost of materials supplied by the contractor), a certificate of insurance covering the work against defective work or breach of contract is required by the Home Building Act to be given to the owner before work commences or a deposit is paid.

 **Note:** If in doubt, the owner should check with his or her own insurer whether the cover to be provided is adequate.

The contractor must effect and maintain the following insurances until completion of the work:

- public liability insurance to cover liabilities to third parties resulting from death or personal injury or from damage to property for an amount not less than \$5 million
- property damage insurance in respect of the work, including the work in progress, any associated temporary work and materials on the site, for the full reinstatement and replacement cost plus an amount of not less than 10% of the estimate of the full reinstatement and replacement cost to cover removal of debris, demolition, architects and other consultant's fees. The interest of the owner must be noted on the policy and the policy must where possible contain a 'cross-liability' clause. This insurance must cover loss by accident, theft, fire, explosions, lightning, hail, storm and tempest, vandalism and civil commotion
- employer's liability and worker's compensation insurance.

### Settlement of claim

On settlement of any claim for damage to the work the contractor must diligently proceed to rebuild, replace or repair the work. The contractor will not be entitled to any payment other than for the amount of the claim payment received from the insurer for the claim for the rebuilding, replacement or repair of the work.

### Evidence of insurance

Prior to the commencement of the work, and on request by the owner at any time thereafter, the contractor must provide to the owner evidence in writing that insurances required by this contract have been obtained and are current. The evidence must include properly completed certificates of currency and copies of the relevant policies (unless these are not reasonably obtainable from the insurer or insurance broker). If the contractor fails to provide such evidence, or if any of the insurances required by this contract have not been taken out by the contractor, the owner may arrange the insurance and deduct the cost from payments then or subsequently due to the contractor.

### Indemnity

The contractor indemnifies the owner against any liability or loss in respect of death or personal injury or property damage (including damage to or loss of goods or materials on site including the work under the contract) arising out of, or as a consequence of, the carrying out of the work. However, if such liability or loss arises in whole or in part through the negligence of the owner or owner's representative the extent of the contractor's indemnity will be reduced by the extent to which the negligence of the owner or owner's representative contributed to such liability or loss.

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## Clause 23

### Defects rectification

**Explanation:** After the work has been completed omissions and defects may become apparent. The defects rectification period is intended to allow the owner to bring these matters to the attention of the contractor so that the contractor may attend to them.

It is not intended that the defects rectification period be used to finish items of work which should have been completed to achieve completion of the work in accordance with Clause 8.

The contractor must rectify omissions and defects in the work which become apparent within the period of 13 weeks from the date the work has been completed. The date of completion shall be determined in accordance with Clause 8.

The owner must notify the contractor in writing of any omissions or defects which need to be made good no later than 10 business days after the expiry of the 13 week period. The contractor must rectify the omissions and defects at the contractor's own cost within 30 business days from receipt of such notification and the owner must give the contractor reasonable access for this purpose.

In respect of major omissions and defects in the work, a further defects liability period of 13 weeks from the date the work has been completed will apply.

If there is a dispute between the parties as to whether any item of work is defective, has been omitted or has been satisfactorily rectified the dispute must be dealt with in accordance with the dispute resolution clause (Clause 27).

## Clause 24

### Suspension of work by contractor

If the owner, without reasonable and substantial cause:

- fails to provide satisfactory evidence of title to the land and/or capacity to pay the contract price, including any variations
- fails to pay a progress payment or any other amount due to the contractor within the time allowed, but only if the owner fails to pay the progress payment or other amount due after a written notice from the contractor requiring payment within a further period of 5 business days
- fails to advise the contractor promptly of any requirement of or notice from a statutory authority or the lending authority, if any, that affects the work
- fails to perform any work or supply materials as specified in Clause 16 which prevents the contractor from continuing with the work under the contract
- denies the contractor or the contractor's sub-contractors access to the site so as to prevent the work from proceeding, or otherwise prevents the contractor from carrying on the work; or if the owner becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity,

the contractor may, without prejudice to any other rights under the contract, suspend the work by giving written notice to the owner in accordance with Clause 28 (Giving of Notices) specifying the reason.

If the owner remedies the default, the contractor must recommence the work within 10 business days unless the contractor has ended the contract under Clause 26.

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Owner  
initials







## Clause 26

### Termination of contract by contractor

#### Due to the fault of the owner

If the owner:

- fails to provide satisfactory evidence of title to the land or capacity to pay the contract price including any variations (see Clause 5)
- fails to pay a progress payment or other amount due under the contract (see Clause 14)
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity
- denies access to the site to the contractor, the contractor's employees or sub-contractors so as to prevent the work from proceeding (see Clause 19)
- fails to perform any work or supply materials as specified in Clause 16 which prevents the contractor from continuing with the work under the contract or otherwise obstructs the contractor from performing the work
- fails to rectify a cause of suspension under Clause 24 within the time specified in Clause 24, or
- without the consent of the contractor prior to completion of the work enters into occupation or otherwise obstructs the contractor from performing the work,

the contractor may, where such default can be remedied, notify the owner in writing that unless the default is remedied within 10 business days or such longer period as specified, the contractor will terminate the contract.

Unless the owner complies with the contractor's request within the time allowed, or if the default cannot be remedied, the contractor may terminate the contract by giving written notice to this effect to the owner.

If the contractor terminates the contract under this clause, the contractor may remove from the site and retain all unfixed materials, fittings and equipment supplied by the contractor and will be entitled to recover all losses and expenses arising from the termination of the contract or to offset such amounts from any amount due to the owner.

#### Other than due to the fault of the owner

The contractor may terminate the contract by notice in writing to the owner if all necessary approvals for the work have not been obtained within 60 business days of the date of the contract, unless failure to obtain those approvals is due to the act, omission or default of the contractor (see Clause 17).

A notice required under this clause must be given in accordance with Clause 28.


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## Clause 27 Disputes

**Note:** If you have a dispute you should firstly discuss the matter with the other party. Serious disputes can often be avoided by good communication between owner and contractor. It is suggested that in the event of a dispute the parties meet as soon as possible and by discussion endeavour to resolve the matter.

Make sure you understand your obligations under the contract. If necessary, obtain independent advice. The dispute resolution procedure is aimed at reducing the need for possible costly litigation. Fair Trading can investigate a complaint from an owner and may issue an order requiring a contractor to rectify or complete work or to rectify any damage. For further details refer to Part 3A Division 2 Home Building Act.

 If the dispute cannot be resolved informally the owner may contact Fair Trading for information.

**Note:** A copy of any notice given under the contract should be kept. Where a notice is given other than by handing to the other party, the person who gave notice should follow up to ensure it is received.

If the owner or contractor considers that a dispute has arisen in relation to any matter covered by this contract, either during the progress of the work, after completion of the work or after the contract has been terminated, that person must promptly give to the other party written notice of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.

If the parties do not agree to confer with a third party to assist in the resolution of the dispute, or if the dispute is not resolved following the assistance of such a third party, the owner may notify Fair Trading that a building dispute exists and seek the assistance of Fair Trading to resolve the dispute.

**Even if a dispute has arisen the parties must, unless acting in accordance with an express provision of this contract, continue to perform their obligations under the contract so that the work is completed satisfactorily within the agreed time.**

## Clause 28 Giving of notices

If the contract requires or permits a party to give a notice, consent, or other communication in writing to the other party, it must be given by either:

- handing it to the other party
- leaving it with a person, apparently over the age of 16, at the other party's business or residential address, or
- by registered post to the last known address of the other party.

## Clause 29 Copyright

The party supplying any plans or specifications (documents) for use under this contract warrants that they may be used for the purposes of this contract and indemnifies the other party against any liability or cause of action by any person claiming ownership or copyright in respect of the documents or arising out of their use.

If the contractor prepares the documents under the direction of the owner or from sketches supplied by the owner which may infringe the copyright of another person, the owner indemnifies the contractor against any legal action in respect of a breach of copyright by the contractor.

If the contractor prepares the documents the contractor retains copyright in those documents but the owner will, provided the contractor has been paid for those documents, be entitled to complete the work in accordance with those documents.

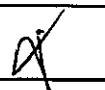
## Clause 30 Definitions

### In the printed general conditions of contract

- Words imparting the singular include the plural and vice versa.
- A reference to the male gender includes the female and a reference to a person includes a partnership and a company.
- The current bank rate is the Commonwealth Bank Overdraft Index Rate as published from time to time plus 2% per annum.
- 'Lending authority' means a bank, building society or other financial institution which lends the owner the contract price or any portion of that amount.
- 'GST' means Goods & Services Tax – a tax levied by the Federal Government on the supply of goods and services.
- 'Business day' means any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.
- A reference to 'include' or 'including' or 'for example' in a list means that items not listed may be included.
- A reference to any legislation includes any statutory modification, re-enactment, substitution and any subordinate legislation issued under that legislation.
- A reference to any party includes that party's executors, administrators, successors and permitted assigns.
- A provision of or a right created under this contract may not be:
  - (i) waived, except in writing signed by the party granting the waiver, or
  - (ii) varied, except in writing signed by the parties.
- The rights, powers and remedies provided in this contract are cumulative with, and are not exclusive of, the rights.

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Owner  
initials





**C** Use this space to keep a record of payments made. In all cases a written receipt for a payment should be obtained.

# Payments made

*(This is not part of the contract)*

## Payments made

Date agreed	Stage	Amount
/ /	Deposit	\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
/ /		\$
<b>Total</b>		\$

## Notes

Notations for Clause 12:

The progress claim amount will reflect the percentage of works complete.

An itemised claim sheet will be submitted alongside the claimed sum, nominating the item numbers and correlating percent of completed works.

The claimable sum may vary to that nominated in the contract, if the amount being claimed has been proven to be complete.

We are basing the nominated claim sums on a maximum of 5 possible claims, including the final.

No claim will be submitted without confirmation of the works being complete - Further to progress claims, we ask if you would appoint someone, who will have the authority to sign off on such claims. It would be easier to arrange this prior to any formal claim being submitted. A few options are:

1. Strata Manager

2. An owner/member of the Owners Corporation

3. A Building Consultant

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