

Conditions of Contract

1. Responsibility of Builder and Results of Construction

- (a) The **Builder** will, subject to these Conditions and the work particulars set out in **Schedule 3**, execute and complete the works required by the Contract.

NOTE: Work which is excluded from the contract work but apparent from the contract documents should be listed at Schedule 3 item (b) or otherwise made clear, through the contract details, that such work is excluded from the work the Builder is to carry out.

Statutory Warranties for Residential Building Work

- (b) 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 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 **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 **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 **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*).

2A. Joint Responsibilities of the Builder and Owner

The parties acknowledge the fact that the amount payable by the **Owner** under this contract and the time taken to carry out the work is subject to change for various reasons. As at the date of the contract the work detailed in **Schedule 3** is work which can be carried out for the contract sum.

The contract sum will be affected by the impact of choices made and work done under the provisional sum and prime cost allowances as well as the various other matters listed on the page 1 warning as to matters which may change the Contract Price.

The parties agree that:

- (a) they will conduct regular meetings in order to:
- (i) review the work done and money paid under the contract;

- (ii) review the work to be done and the amount payable for such work; and
 - (iii) make decisions and choices regarding work under the contract covered by “allowances” (see **Schedule 2 item 11**) and required by variations (see **Clause 14**) so that the work to be paid for by the **Owner** is consistent with the **Owner's** capacity to pay.
- (b) any adjustments to the work to be done under the contract are to be recorded in **written** and signed by both parties. If such adjustment comprises a variation under **Clause 14**, the variation should be valued under that clause and the Contract Price adjusted accordingly.
- (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.

Connection of Services

- (e) (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.

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** the Contract Price, including, but not limited to, a full copy of loan approved documents and terms, recent copy bank statements, and any other documents the **Builder** may reasonably require; and

If 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 29. Refer to Clause 29**; 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) at the **Builder's written** request produce to the **Builder** at any time prior to practical completion documentary evidence of the **Owner's** capacity to pay the **Builder** the Contract Price, including a full copy of any loan approved documents and terms. If the **Owner** fails to produce the evidence required by this subclause within **five (5) days** of the **Builder's** request or the evidence does not reasonably indicate that the **Owner** has the capacity to pay the Contract Price, then the **Builder** may suspend works in accordance with **Clause 21. Refer to Clause 21**.
- (c) make payment as required by the contract. This includes directing any Lending Authority to make payment direct to the **Builder. Refer to Schedule 2 item 4 and Clauses 18, 19, 20 and 23**.
- (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. If more than one **Owner** then any may provide the instructions required to the **Builder** on behalf of all.
- (e) appoint the Principal Certifying Authority (**PCA**) and provide to the **Builder** a list of mandatory critical stage inspections.
- (f) pay for any inspection required to satisfy the inspection requirements set as part of the approval process or to confirm that the work under the contract is acceptable to the Principal Certifying Authority (**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 a Relevant Authority which affects or is relevant to the works. This should be done prior to signing the contract. If not it may cause the Contract Price to change.
- (ii) if the drawings and specifications are lodged by the **Builder** this duty will be met only if the **Builder** collects the approval documents from the Authority.
- (h) if more than one **Owner**, any direction or instruction given to the **Builder** by any **Owner** is binding on all **Owners**.

3. Contract Documentation

- (a) The party that provides the Drawings and/or Specification 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 presumed that the **Owner** supplied to the **Builder** all drawings and specifications relevant to the work.
- (c) Further to **Clause 3(b)** where the **Builder** does not prepare the drawings and/or specifications, or

prepares the drawings and/or specifications under the instruction, direction or supervision of the **Owner** or from sketches supplied by the **Owner**, then the **Owner** indemnifies the **Builder** against all actions, proceedings and claims for or in respect of any breach of copyright.

Contract Represents Entire Agreement

- (d) Apart from any terms implied by statute, the whole of the terms, conditions and warranties of this contract are as set out in the contract. The same 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:
- (i) this contract and these Conditions including any Special Conditions or quotation referred to; and then
 - (ii) quotation if attached or referred to in this contract; and then
 - (iii) plans and drawings to a larger scale; and then
 - (iv) other plans and drawings; and then
 - (v) the specifications
- (b) The **Builder** should notify the **Owner** in **writing** of any discrepancy or ambiguity and request instructions on how to resolve the discrepancy or ambiguity.
- (c) Should the **Owner** fail to give **written** instructions within **five (5) days** of receiving notice under **Clause 4(b)**, 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)**, then the **Builder** may be entitled to a variation which, if it arises, will be dealt with under **Clause 14. Please refer to Clause 14.**
- (e) Notwithstanding this Clause, in case of any difference between scaled dimensions and figures on the plans and 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. Such termination will be 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 of the contract.

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 paid for by the **Owner** and are not included in the Contract Price. The **Builder** must arrange with the **PCA** the carrying out of such inspections. The **Builder** should advise the **Owner** when the mandatory inspections will be carried out.
- (c) The works will be deemed to comply with the requirements of any 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

- (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:
- (i) that any termite treatment system installed as part of the contract work will provide protection to existing parts of the residence or structure; or
 - (ii) that the termite treatment system installed will prevent the "works" from being affected by an infestation 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 in relation to termite activity at least once every **twelve (12) months** with such inspection to be carried out by a licensed pest control person or firm.
- (d) The **Owner** agrees to maintain the termite treatment system in the manner specified or required by the manufacturer and installer of such termite treatment system and is responsible for all acts necessary or required to maintain any 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 the proper working or maintenance of the termite treatment system.

7. Lending Authority Procedures

In respect of that part of the Contract Price for which finance is being provided to the **Owner** by a Lending Authority the following provisions apply:

- (a) The **Owner** will, prior to the commencement of the works, irrevocably authorise and direct the Lending Authority to pay to the **Builder** monies, which 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 or cause to be provided to the **Builder** written notice of the various stages at which inspection of the works will be required by the Lending Authority. The **Builder** is to notify the Lending Authority when such stages have been reached.
- (c) Where check or progress surveys or inspections are required by the Lending Authority, the **Builder** must promptly inform the **Owner** when the works reach the required stage. The **Owner** is responsible for having the survey or inspection carried out within a reasonable time.
- (d) The **Builder** is to take such reasonable steps as may be required on its part to facilitate inspection of the works by the Lending Authority.
- (e) The **Builder** may also require that, prior to the execution of any variation, the **Owner** produce the written consent of the Lending Authority to the variation.

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.
- (c) If the **Owner**, or any agent of the **Owner**, accesses or causes an independent contractor to access the site without the **Builder's** written approval, the **Builder** can suspend the works and claim delay costs. *Refer to Clauses 21(a)(v) and 11(a)(ii) and 11(f).*
- (d) The **Owner** or his 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. See also **Clause 2A**.
Meetings under either clause can be relied upon and should be used to progress the work and resolve issues affecting the work.
The **Builder** may record minutes of any meetings and 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 by the **Owner** concerning the works are to be in writing and are to be provided directly to the **Builder**.
- (g) The **Owner** is not to instruct any trade contractor engaged by the **Builder** nor cause a trade contractor engaged by the **Owner** to attend the site without the **Builder's written** permission.

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 hard to get or delay will be experienced because the material required is hard to get 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) If any materials are supplied by or specified to be used by the **Owner**, or required pursuant to plans and drawings and/or specifications supplied to the **Builder** by or on behalf of the **Owner**, then the **Builder** is entitled to rely on the **Owner's** warranty that the same 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 6**. Otherwise all demolition material will become the property of the **Builder**.
- (f) Unused materials are and remain the property of the **Builder** unless otherwise agreed.

10. Date for Commencement and Time for Completion of Works

- (a) The **Builder** should commence the works:
- (i) on the date specified in **Schedule 2 item 5(a)**;
 - (ii) within **20** days after the **Owner's** compliance with **Clause 2(a)**;
 - (iii) within **20** days after receipt of the Construction Certificate; or
 - (iv) within **20** days of any deposit referred to at **Schedule 2 item 4(b)** being paid; or
 - (v) within **20** days of the issuance of the Home Building Compensation Fund insurance certificate;
- whichever is the later. If the commencement of the work will be delayed the **Builder** is to notify the **Owner** in writing and advise why. **See Clause 11(a)**.
- (b) The **Builder** is to proceed with due diligence and bring the works to Practical Completion within the Construction Period stated in **Schedule 2 item 5(b)**. The construction period and consequently the date by which Practical Completion is to be achieved are subject to change under **Clause 11**. **Refer to Clause 11**.

Compensation may be payable by Builder

- (c) (i) If the **Builder** fails to bring the works to Practical Completion by the Date for Practical Completion calculated in accordance with **Schedule 2 item 5**, 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, a sum calculated at the rate stated in **Schedule 2 item 3(a)**. 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 22**. **Refer to Clause 22**.
- (iii) Any amount payable under this clause cannot be deducted from any payment until such time as the actual date of Practical Completion has been determined.
- (d) During the execution of the works the **Builder** will, in response to a written request from the **Owner**, state his estimate of the time that will elapse before the works will reach Practical Completion. This estimated date is subject to change pursuant to **Clause 11** and is to be based upon the **Builder's** knowledge of the works as at the time of the request.

11. Delays and Extensions of Time

- (a) Should the progress of the works be delayed by any of the following matters, conditions or consequences resulting from them:
- (i) variations;
 - (ii) suspension of the works under **Clause 21**;
 - (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 or contractor of the **Owner**, or a nominated subcontractor, 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 and the effect of weather on site access, site safety or the ability to do the work;
- (xi) delay beyond **20** days after the date of this contract by any local or other authority in granting any necessary consent or approval where the word "authority" includes 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 procuring trades or materials, or from delays caused by 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 a delay will not of itself prohibit an extension of time provided the matter which is claimed to cause delay is shown to cause delay to the works.
- (e) The **Builder** must use his best endeavours to minimise any delay.

Compensation to Builder for Delay not caused by Builder

- (f) (i) If the delay results from any of the matters listed in **Clauses 11(a)(ii), (iii), (iv), (v), (vi), (vii) or (xi)**, then the Contract Price is 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 3(b)**.

If no amount, “nil”, “n/a” or words to that effect is specified in **Schedule 2 item 3(b)** then the actual costs 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 at 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 Authorities and Inspections

- (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.
- (ii) The **Builder** is to pay and indemnify the **Owner** against any fees or negotiated charges legally demandable under an Act of Parliament, regulation or by-law in respect of the works.

However 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**.

- (iii) The **Contract Price**, unless it is specifically stated in **Schedule 4** to be otherwise, **does not include** any amount for fees payable for mandatory inspection by a Relevant Authority, inspections by a lending institution or any inspections which the **Owner** may request be done.

Written Notice of Need to alter proposed work or processes

- (b) The **Builder**, before making any variation from the contract Plans and Drawings and/or Specifications necessary for compliance with **Clause 12(a)**, is to give to the **Owner** written notice specifying and giving 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 **Clause 12(b)** the **Builder** does not receive those instructions, the **Builder** is entitled to suspend pursuant to **Clause 21(a)(ii)**.

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 **Clause 12(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 such work has commenced. The said notice should specify the reasons for not giving the notice in writing required by **Clause 12(b)** above and advise the reason for that work.
- (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 added to the Contract Sum and valued in accordance with **Clause 14**.

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 priced and agreed to do the work.
- (b) The **Builder** must promptly give written notice to the **Owner** should it appear to him that the site and/or existing structure will not support the works. 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 site being able to support the work. The cost of such consultation is to be paid for by the **Owner** as a cost not otherwise allowed for in the Contract Price. Such geotechnical investigations must be carried out if requested in writing by the **Builder**.
- (d) Should it appear as a result of excavating for footings, services or otherwise, as indicated in the notice from the **Builder**, that 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. Such amounts include money paid by the **Builder** which is not recoverable by the **Builder** or which has to be paid by the **Builder** because of this contract ceasing to operate.

14. Variations – How to Deal with Changes to the Work

- (a) The works may be varied by such things as:
- (i) execution of additional work;
 - (ii) decreases in or omissions from the works;
 - (iii) changes in the character or quality of any material or work such as may be necessary due to the existence of a latent condition;
 - (iv) changes in the levels, lines, positions or dimensions of any part of the works.
- (b) For the sake of clarity a variation is established by:

- (i) **written** instructions from the **Owner** or the **Owner's** representative; and/or
- (ii) the supply to the **Builder** of post contract details such as updated or further plans and drawings and /or specifications; and/or
- (iii) the discovery of an otherwise unknown or latent condition; and/or
- (iv) an instruction issued by a Relevant Authority under **Clause 12**

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 a Relevant Authority.

- (c) The **Builder** is not obliged to vary the contract works or carry out any extra work unless the **Builder** consents. Such consent will not be unreasonably withheld.
- (d) (i) If the **Builder** agrees to undertake a variation requested or required 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.

Builder to Advise Value of Variations

- (e) The **Builder**, within a reasonable time of receipt of instructions to execute a variation (i.e. an instruction signed by the **Owner** or **Owner's** agent), is to notify the **Owner**, in **writing**, of the value of the variation.

Less Work due to a variation

- (f) Where the works are decreased or omitted the cost of the work not now required is to be deducted from the contract price. Cost in this case means the actual cost of labour, subcontractors or materials saved by the **Builder** because the work and/or materials is now not required. No other deduction is required by reason of the work or materials being decreased or omitted.

Additional work due to a variation

- (g) Where the work to be done is increased, the cost of the extra work is to be added to the Contract Price. The **Builder** can choose when and how often to claim payment for variation work and is not required to wait until the next stage claim.
- (h) Where a price has not been previously agreed for additional work, the **Builder** may proceed with the variation work and the price to be paid for the work will be the **cost** as calculated in accordance with **Clause 14(i)** below, plus the allowance specified in **Schedule 2 item 1**.
- (i) The cost referred to in **Clause 14(h)** above, unless otherwise agreed, will be calculated as follows:

- (i) for work, including supervision and administration, by the **Builder** or **Builder's** employees, the rates for such labour are those set out in Item **Schedule 2 item 2**;
- (ii) where the work or some part of it is executed by a sub-contractor, the cost to be paid under Clause 14(h) above is the amount properly paid or payable to the sub-contractor which will be established by provision of a proper tax invoice from the sub-contractor engaged to do the extra work.
- (iii) the price for materials is the cost of the materials to the **Builder**.
- (iv) Any other cost paid by the **Builder** to any third party that is necessary for the carrying out of the variation works.

All Directions Concerning Work are to be Given to the Builder

- (j) 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 sub-contractors concerning the works or any part thereof. All instructions are to be given to the **Builder** and are to be in **writing**.

15. Allowance for Prime Cost Items and Provisional Sum Items and Work

- (a) A prime cost allowance is for the cost to the **Builder** of an item of material or equipment and does not include any installation. A prime cost item may not be able to be accurately priced and/or has not yet been selected and/or cannot be or has not been costed at the date of the contract.

A provisional sum allowance is for the cost to the **Builder** of work/labour including the supply of any items/materials necessary. A provisional sum item and work may not be able to be accurately priced and/or cannot be or has not been costed at the time of the contract.

- (b) Details of any prime cost items and allowances or provisional sum items and work are set out in the table of allowances at **Schedule 2 item 10**.
The sums listed at **Schedule 2 item 10** are allowances. They are not lump sum amounts and are not warranted as reasonable amounts for the items and/or work described.
- (c) Where prime cost or provisional sum items are included in the contract price and works, the **Owner** must furnish to the **Builder** **written** directions regarding the selection and supply of the work and or goods represented by such sums in sufficient time to ensure that no delay is occasioned in the progress of the works or with 5 days of the **Builder's** written request to do so. **Actual amount spent in total is different to the total amount allowed**.
- (d) If any part of each prime cost allowance or provisional sum allowance is not expended then that amount is to be deducted from the contract price. The amount to be deducted is the difference between the amount allowed, excluding any **Builder's** margin, and the

amount actually spent or the debt incurred to have the work done or item supplied.

- (e) In the event that the amount expended in respect of each prime cost allowance or provisional sum allowance exceeds the amount allowed in **Schedule 2**, the excess amount, together with the percentage on the excess specified in **Schedule 2 item 11**, is to be added to the Contract Price and the appropriate staged claim amount as set out in **Schedule 2 item 4**.
- (f) Normal trade discounts are to be allowed in favour of the **Owner**. However any cash discounts or discounts for prompt payment are to be allowed in favour of the **Builder**.

Owner may be required to provide payment to allow work to be done

- (g) (i) When a choice is made by the **Owner** in relation to a prime cost item, the **Builder** may require the **Owner** to pay the supplier monies required by the supplier to start or progress the work.
- (ii) Any such payment will be for and on behalf of the **Builder**. The **Builder** will account for any such payment in the next progress claim.

16. Assignment and Subletting

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

17. Insurance Responsibilities

Home Building Compensation Fund Insurance (Builder) (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 insurance on terms acceptable to the **Builder**, then the **Builder** may cancel the contract without penalty and without claim by the **Owner**.

Workers Compensation (Builder)

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

Injury to Persons (Builder)

- (c) The **Builder** will insure in respect of and against any loss arising under any Statute [other than as provided in **Clause 18(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 the loss arises out of any act or neglect of the

Owner or of any other person for whom the **Owner** is responsible.

The Works (Builder)

- (d) (i) The **Builder** in his name will:-
 - (a) obtain and effect Contract Works Insurance.
 - (b) for at least the full reinstatement value of the works.
 - (c) including all unfixed materials stored upon the site.

The policy should 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 or to 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 (Builder)

- (e) (i) The **Builder** will insure against any 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**, his 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 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:-
 - (a) into a bank account in the names of the **Owner** and the **Builder**, but operated by the **Builder**; or
 - (b) 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.

(g) **Period and Currency of Insurance**

- (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 Home Building Compensation Fund insurance is from a Government approved provider and complies with the Act as at the date it is obtained.

(h) **Occupation or Use by Owner (Owner)**

Notwithstanding **Clauses 17(c)** and **(e)**, should any portion of the works be utilised by the **Owner** or a tenant of his 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.

(i) **Owner to Insure Existing Structures & Contents (Owner)**

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 premises and ensure that such cover is in place.

(j) **Upon the Works Reaching Practical Completion (Owner)**

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 **Clause 22(f)** arise. The **Owner** will be solely responsible for insurance coverage of the works in either of these events.

18. Deposit

- (a) The **Owner** subject to having been provided, if applicable, with a copy of the Home Building Compensation Fund certificate of insurance for the work, is to pay a deposit before the commencement of work. The amount of the deposit is detailed at **Schedule 2 item 4(b)**.
- (b) Pursuant to the Act the deposit is not to exceed 10% of the Contract Price.
- (c) The deposit is to be deducted from the final payment claimed in accordance with **Schedule 2 item 4(a)**.

- (d) The deposit is not to be deducted in accordance with **Clause 18(c)** above if it has already been taken into account in the payment schedule in **Schedule 2 item 4(a)**.

19. GST

- (a) The work under this contract is subject to GST. All prices will be treated as GST inclusive unless specifically stated to be "plus 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.
- (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 claim or any final claim and warrants that the proper amount of GST has been included. This should be quoted as a separate amount otherwise it will be deemed to be 1/11th of the amount claimed.
- (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.

20. Payment

NOTE: The contract parties are encouraged to make and pay smaller and more frequent claims as this is a good way to review and monitor the work and payment for work.

- (a) The Contract price or sum is to be paid to the **Builder** in accordance with **Schedule 2 item 4** and may be claimed in any order.
- (b) A payment claim by the **Builder** is to show:
 - (i) the stage of the contract work performed at the date of the claim;
 - (ii) the value and brief description of any variations which are included in the claim;
 - (iii) other adjustments under the provisions of the Contract; and
 - (iv) the proper GST charge relevant to the works to which the claim relates.
- (c) The **Owner** must pay the amount of the payment claim to the **Builder** within the period stated in **Schedule 2 item 4(d)** to the account nominated in the Contract. If no period is stated the payment must be made, within **five (5) days** of the date the claim was submitted to the **Owner**.

How to determine if a stage has been reached?

- (d) (i) A stage of the works is to be treated as reached, and therefore enabling a payment claim to be made, when it is complete except for minor omissions or defects.
- (ii) If the **Owner** identifies in **writing** within **two (2) days** of receipt of the claim work which is omitted, incomplete or defective and for which no

deduction has been made then an amount equal to no more than 2.5% of the amount claimed may be withheld unless an alternative amount has been agreed between the parties. Any amount withheld becomes payable once the work omitted, incomplete or defective has been completed.

- (e) The making of any payment to the **Builder** is to be taken as payment on account.
- (f) If the **Owner** fails to pay any or part of any payment by the due date, the **Builder** is entitled to interest on the overdue amount at the rate specified in **Schedule 2 item 4(e)**.
- (g) For the purpose of identifying when a payment is to be made the definition of days in **Clause 32** is to be replaced with a day when banks or financial institutions are opened for business.
- (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 2 item 4(d)**.

21. 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 2 item 4**;
 - (ii) fail to confirm in **writing** instructions regarding an **Owner** requested 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 the balance of the Contract Sum satisfactory to the **Builder** as required by **Clauses 2(a), 2(b) or 14(d)(ii)**; or
 - (v) or the **Owner's** agent access the site 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 his 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 **Clause 21(a)** to the **Owner**.
- (c) Should the **Owner** direct the **Builder** to not proceed with the works then without prejudice to the **Builder's** right to terminate this Contract the Contract is automatically suspended.
- (d) The **Builder** must recommence the works within **twenty (20) days** of the default in **Clause 21(a)** or (c) being rectified, or, in the case of **Clause 21(a)(v)**, the

Owner providing a **written** undertaking to not repeat that conduct.

- (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 **Clause 11(f)**.
- (f) Failure to pay a final payment will entitle the **Builder** to suspend any defect liability work under **Clause 24**. However such suspension does not extend or prolong the Defects Liability Period.

22. 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) Within **five (5) days** after the service of notice of a Practical Completion the **Owner** must give to the **Builder** a **written** list, of all 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 **Clause 22(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 upon the date possession is taken in the circumstances referred to in **Clause 22(f)**. The **Owner** will be solely responsible for insurance coverage of the works in either of these events.

23. Payment on Practical Completion

- (a) When Practical Completion is achieved, the **Builder** is entitled to and must receive the unpaid balance of the Contract price or sum together with any other monies which are payable in connection with this Contract .
- (b) The amount due under this Clause must be paid to the **Builder** within **two (2) days** of a written request or invoice for payment due because practical completion has been reached. This request is to give brief, accurate particulars of the claim.
- (c) Should the **Builder** not receive from the **Owner** any payment or part of any payment on Practical Completion by the due date the **Builder** is entitled to interest at the rate specified in **Schedule 2 item 4(e)**.
- (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 has been made.
- (e) The **Builder**, at the **Owner's** cost is entitled to and required to take all actions to secure the property so as to prevent entry, other than by normal means, prior to final payment being made.

24. Defects Liability Period – Builder's Obligations

- (a) The Defects Liability Period commences upon Practical Completion of the works and will continue for the period stated in **Schedule 2 item 7**, 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 all 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 his own cost and within a reasonable time of notification.
- (d) The **Owner** is to allow the **Builder** the opportunity to attend and rectify the defects or faults identified. Any dispute as to defects or faults does not prevent the **Builder** exercising the right to attend to inspect and or rectify the works.
- (e) The **Owner** must provide access for the **Builder** to carry out his 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.

- (f) Subject to **Clause 24(d)**, if the **Builder** fails to comply with his obligations under this Clause within a reasonable time of a notification made under **Clause 24(b)** then 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 rectification work within this notice period.
- (g) The **Builder's** duty to attend to and carry out work pursuant to this clause is limited to work and materials or defects which directly relate to the workmanship of the **Builder**. The **Builder's** duty does not extend to matters caused by:-
 - (i) the use or occupation of the works by the **Owner** or their agents;
 - (ii) fair wear and tear or design faults where the design is not the responsibility of the **Builder**; or
 - (iii) a failure to maintain the works post practical completion.

Further where the work involves a renovation, any **Builder's** duty to attend to and carry out work pursuant to this clause does not cover matters arising from conditions in the existing structure.

After Defects Liability Period and or work by Builder is completed

- (h) At the end of the Defects Liability Period and subject to the matters identified in the **Owner's written** list of issues being dealt with as set out above, the work of the **Builder** is agreed to have been completed as required by the Contract.

Parties to work Cooperatively

- (i) 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 matters are not immediately attended to. However the **Builder** must with regard to matters covered by the Defects Liability Period act with reasonable speed in carrying out necessary work.

25. 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** is to be allowed to carry out any necessary work provided it is within the above time periods.
- (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) 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**.

26. 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 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 or expert determination. The mediator or expert is set out at **Schedule 2 item 8**. 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 is to 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.

27. 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 26, 28 or 29** 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 **Clause 26, 28 or 29** without proper details will not be a valid notice.

28. 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) if without cause under the contract the **Builder** wholly suspends the carrying out of the works before Practical Completion; or
 - (iv) if the **Builder** 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) if the **Builder** states in **writing** that he/she or it 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 to terminate this Contract, THEN the **Owner** may, without prejudice to any other rights or remedies, by notice served as allowed by **Clause 30**, 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 **Clause 28(a)**, the **Owner** may engage another **Builder** to carry out the works and the following provisions are to apply:-
 - (i) If the reasonable cost of the works exceeds that which would have been otherwise payable under this Contract, then the amount of that excess may be recovered as a debt by the **Builder** to the **Owner**.
 - (ii) If the reasonable cost of the works is less than that which would have been otherwise payable under this Contract, then the amount of that difference will be a debt payable by the **Owner** to the **Builder**.

In the event that the **Owner** engages another **Builder** to complete the work under this contract and pursuant to the **Owner's** right to terminate then any claim under **Clause 28(c)(i)** above is restricted to work which is the same as required under this contract.

29. 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 **Clauses 2 or 14(d)(ii)**; or
 - (iv) fails to pay the **Builder** any payment within the period stated in **Schedule 2 item 4(d)**; or
 - (v) fails to pay the deposit required by **Clause 18**; or
 - (vi) subject to limitations in the *Corporations Act 2001* (Cth), commits an act of insolvency; or
 - (vii) any suspension by agreement continues for more than **three (3) months**; or
 - (viii) fails to remedy the matter, thing or event which has allowed suspension of the work under **Clause 21**; or
 - (ix) 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 30**, terminate this Contract.
- (b) The **Builder** can immediately terminate the Contract by serving a notice pursuant to **Clause 30** if:
- if any **Owner** dies or becomes incapacitated and cannot provide instructions; or
 - assaults or threatens with violence the **Builder** or any employee, agent or subcontractor of the **Builder**.

30. Service of Notices – parties need to confirm delivery

All notices (and/or other documents) 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.

31. 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.

32. Definitions

- (a) Words in this Contract importing the singular shall be deemed to include 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" 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 scheme of assignment or arrangement;
 - (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.
- (d) "Construction Period" – see **Schedule 2 item 5**.
- (e) "Day" or "Days" for the purposes of this contract, other than clause 20, does not include:-
- (i) Saturdays, Sundays or industry rostered days off;
 - (ii) 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;
 - (iii) any other day which is specifically excluded from the construction period as listed at **Schedule 2 item 5(c)**.
- (iv) January 2, 3, 4, 5, 6 and December 27, 28, 29, 30 and 31 of the calendar year.
- Please also refer to **Clause 20**.
- (f) "Latent Condition" – 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.
- (g) "Mandatory inspection" – an inspection required by the Principal Certifying Authority and listed in the terms of approval allowing the work to proceed.
- (h) "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.
- (i) "Work", "works" or "work under the contract" means the work that the **Builder** is required to carry out and complete under the contract as described in Schedule 3(a). It includes variations and the provision of materials required to be supplied by the **Builder**.