

QBCC LEVEL 1 RENOVATION, EXTENSION AND REPAIR CONTRACT

(FOR CONTRACTS \$3,301 - \$19,999)

This Contract is recommended for minor renovations, extensions, improvements and routine repairs of a home (including a house, duplex or unit), or associated work (e.g. landscaping, construction of a retaining wall, pool or spa, driveway, fencing, etc.), where the contract price is more than \$3,300 but less than \$20,000.

- For renovations, extensions, improvements and repairs priced at \$20,000 or more the **QBCC Level 2 Renovation, Extension and Repair Contract** is recommended.
- For repairs of any value arising from natural disasters, the **QBCC Natural Disaster Repairs Contract** is recommended.
- For construction of a new home, the **QBCC New Home Construction Contract** is recommended.

HOMEOWNER'S BOOKLET

IMPORTANT NOTE FOR THE HOMEOWNER

This Contract Pack consists of the following documents (most of which are held by the Contractor and will be used and copied to you as required):

Contractor's Booklet (includes *Timeframes for Key Obligations* and *General Conditions*)

Form 1 - *Extension of Time Claim and Owner's Response to Claim*

Homeowner's Booklet (includes *Contract Checklist*, *Timeframes for Key Obligations* and *General Conditions*)

Form 2 - *Progress Claim*

Form 3 - *Notice of Dispute of Progress Claim*

Contract Schedule (*with any relevant plans and specifications attached*)

Form 4 - *Variation Document*

Form 5 - *Defects Document*

Prime Cost Items Schedule and Provisional Sums Schedule

These documents form an integrated package which should not be mixed with documents from other contracts. The Contractor is required to give you 1 copy of any form you are asked to sign (e.g. Form 2 - *Progress Claim*, Form 4 - *Variation Document*, etc.). You should retain your copy of each document for your records.

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CONTRACT CHECKLIST

(Ensure you are able to tick all boxes before signing the contract)

- CONTRACT DOCUMENTS:** I have read and checked all contract documents, including the Contract Schedule, General Conditions, Special Conditions (if any) and plans and specifications. **NOTE: Your contractor must give you a copy of the entire contract, including any plans and specifications, within 5 business days of it being signed by both parties.**
- LICENCE CHECK:** I have checked the contractor's licence and track record on the Online Licence Search on the QBCC website www.qbcc.qld.gov.au The licence must be current and appropriate for your project – if in doubt, contact the QBCC.
- COOLING-OFF PERIOD:** I have read and understand my cooling-off rights as set out on the last page of the Contract Schedule and s.35 of Schedule 1B of the QBCC Act (including how and when I may withdraw if I choose to do so, as set out in s.37 of Schedule 1B of the QBCC Act).
- PAYMENT ARRANGEMENTS:** I have read and understand the payment provisions, including the Contract Price and how much of this amount is fixed and what proportion is made up of allowances (the price of which may later increase), the deposit and progress payments and when these payments are required. **(NOTE: It is particularly important to know how quickly you have to pay after the contractor presents a claim for payment – normally within 5 business days, but immediately at completion).**
- START AND FINISH DATES:** I have checked the start and finish dates and practical completion requirements in the contract (The law requires that the finish date, or how it can be calculated, must be stated in the contract – **DO NOT SIGN** if there is no completion date in the contract.....don't rely on verbal statements by the contractor.....it's what's written in the contract that counts!).
- TIMELINES FOR KEY OBLIGATIONS:** I have read this important document in the Homeowner's Booklet.
- EXTENSIONS OF TIME:** I understand the circumstances under which the contractor may legitimately claim an extension of time and that this may delay the completion of my project (the most common causes for extensions are: agreed variations involving extra work, and work interruptions due to wet weather beyond what the contractor could reasonably have anticipated and allowed for in the contract).
- QBCC HOME WARRANTY INSURANCE:** I know whether or not this project is covered by the Queensland Home Warranty Scheme administered by the QBCC and, if so, what protection that cover gives me. **I note that if the Home Warranty Scheme applies the contractor must collect the premium from me (usually as part of the deposit) and pay it to QBCC within 10 business days of the date of the contract and before the contracted work starts.**
- STATUTORY WARRANTIES:** I note that the QBCC Act includes Statutory Warranties deemed to be part of every *domestic building contract* priced at more than \$3,300 (warranties include: materials will be suitable and new, unless otherwise stated in the contract; the work will be carried out in accordance with all relevant laws and legal requirements and the plans and specifications; the work will be carried out in an appropriate and skilful way, with reasonable care and skill and with reasonable diligence; any allowances included in the contract will be calculated with reasonable care and skill; if the work consists of the construction, renovation, improvement or repair of a home to a stage suitable for occupation, the home will be suitable for occupation when the contracted work is finished).
- VARIATIONS TO THE CONTRACT:** I understand what documentation is required if changes to the contract (called 'variations') are necessary after it is signed **(NOTE: It is strongly recommended that such changes be kept to a minimum as they often lead to extra cost and delays. If variations are required by you or the contractor, they must be detailed in writing by the contractor, priced and signed off by you before the variation work commences. The contractor cannot seek extra payment for a variation before the variation work commences. Accurate documentation of variations, is essential to avoid confusion as to exactly what work is included in the contract).**
- DISPUTE RESOLUTION:** I understand what to do if I get into a dispute with the contractor. If a dispute arises and you cannot resolve the matter informally with your contractor, you should follow the procedures set out in the 'Dispute Resolution' section of the contract. The QBCC's dispute resolution services must be exhausted before any proceedings can be commenced in the Tribunal (QCAT) or a court **(NOTE: It is essential that you engage a practising solicitor BEFORE ending the contract for any reason - incorrect termination may reduce your Home Warranty insurance protection).**
- LEGAL ADVICE:** (if applicable) I have, BEFORE SIGNING, discussed my questions/concerns about the contract with a practising solicitor.

For further general information telephone QBCC on 139 333. **NOTE: QBCC cannot provide legal advice concerning your particular contract.**

TIMEFRAMES FOR KEY OBLIGATIONS UNDER THIS CONTRACT

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

| HOMEOWNER | BUILDING CONTRACTOR |
|--|---|
| WHEN CONTRACT SIGNED | WHEN CONTRACT SIGNED |
| <ul style="list-style-type: none"> DEPOSIT: On signing, pay deposit stated in the Contract Schedule (GC 14.1) COOLING-OFF PERIOD: Expires 5 business days after Owner receives signed copy of the full contract, including any associated plans and specifications (Sect 35-38 of Schedule 1B of QBCC Act) | <ul style="list-style-type: none"> COPY OF CONTRACT (incl. plans & specs): Give to Owner within 5 business days of entering the Contract (Sect 15 of Schedule 1B of QBCC Act) |
| BEFORE WORK COMMENCES ON SITE | BEFORE WORK COMMENCES ON SITE |
| <ul style="list-style-type: none"> FINANCE: By Finance Date (or if no date stated, within 10 business days from contract date) - give Contractor written evidence of capacity to pay Contract Price (GC 5.1) ACCESS: Ensure Contractor has clear access to Site (GC 11) INSURANCE: Contact Home & Contents insurer to ensure appropriate insurance (incl. Public Liability) is in place (GC 8) | <ul style="list-style-type: none"> FINANCIAL CAPACITY: Within 5 business days after Finance Date - Contractor may terminate contract if not satisfied with Owner's capacity to pay Contract Price (GC 5.2) INSURANCE: Ensure Construction and Public Liability insurances are in place (GC 9), and the Queensland Home Warranty Scheme premium is paid to QBCC within 10 business days of entering the contract and before work starts (Sect 68B(2) of QBCC Act) LODGE PLANS: Within 10 business days of Owner providing satisfactory evidence of financial capacity (GC 5.1), Contractor must lodge plans (unless Owner responsible for lodgement) (GC 6.2) |
| AFTER WORK COMMENCES ON SITE | AFTER WORK COMMENCES ON SITE |
| <ul style="list-style-type: none"> PROGRESS CLAIMS: Within 5 business days of receipt of progress claim - check the timing and amount of claim agrees with Item 8 of the Contract Schedule and pay valid claim (GC 14.1) VARIATIONS: Respond ASAP to all Variation Documents presented by Contractor (GC 16) EXTENSIONS OF TIME (EOT): Within 10 business days of receiving EOT claim from Contractor - assess, complete and return EOT Claim Form 1 (GC 17.4) AS PRACTICAL COMPLETION APPROACHES: Liaise with lender to ensure final contract payment will be available when required at Practical Completion (GC 22.4) | <ul style="list-style-type: none"> COMMENCE WORK: On/before Start Date (GC 3.1) VARIATIONS: Give 'Variation Document' (Form 4) to Owner and get approval in writing before starting variation work and before asking for payment - give a fully signed copy to Owner within 5 business days of agreement on variation (GC 16) EOT: Give any EOT claims to Owner on Form 1 within 10 business days of becoming aware of (or when you reasonably ought to have become aware of) the cause and extent of the delay. Give Owner a copy of the fully signed form within 5 business days of their approval (GC 17) AS PRACTICAL COMPLETION APPROACHES: Give owner 5 business days prior written notice of PC (GC 22.1) |
| AT PRACTICAL COMPLETION (PC) | AT PRACTICAL COMPLETION (PC) |
| <ul style="list-style-type: none"> CHECK CONTRACT (incl. plans & specs) AND INSPECT WORK with Contractor to ensure PC Stage has been reached (Note: Definition of PC allows for minor defects and minor omissions) (GC 22.2) DEFECTS DOCUMENT: Compile with Contractor at final inspection, sign and retain a copy (GC 22.2) PC PAYMENT: Pay Contractor immediately the Contractor has satisfied its obligations under GC 22.2 (GC 22.4) | <ul style="list-style-type: none"> Before presenting claim for PC Stage (GC 22): <ol style="list-style-type: none"> Inspect contracted work, compile Defects Document with Owner, sign and copy to Owner; and Give any remaining Certificates of Inspection (incl. 'Final' where applicable) to Owner; and Hand over contracted work to Owner Present claim for PC Stage to Owner (GC 22) |

GENERAL CONDITIONS

1. Definitions

- 1.1 In this Contract, unless the context otherwise requires, words and expressions in **bold** have the meaning defined or explained below:
- (a) **“Assessing Certifier”** means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the Contract Work.
 - (b) **“Building Product”** means any material or other thing associated with, or that could be associated with, a building.
 - (c) **“Business Day”** means a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday, or bank holiday in Queensland.
 - (d) **“Completion Period”** means the Completion Period stated in Schedule Item 6.
 - (e) **“Contract Price”** means the total price payable under this Contract for the Contract Work, including the Fixed Price Component and any allowances for Prime Cost Items or Provisional Sums, as adjusted under this Contract.
 - (f) **“Contract Work”** means all the work and supply of materials necessary for, and incidental to, the performance of the Contract in accordance with its terms, including any plans and specifications, and, unless expressly excluded, includes:
 - (i) work to make the Site accessible to the Contractor;
 - (ii) provision of any special equipment (including scaffolding where its use could reasonably be anticipated at the date of the Contract);
 - (iii) work to clear the Site for building;
 - (iv) set out of the Contract Work and survey if necessary;
 - (v) necessary structural retaining walls;
 - (vi) sewerage, draining and electrical connections;
 - (vii) provision of temporary water and power during construction; and
 - (viii) provision of clean up and disposal of waste material from the Site.
 - (g) **“Date for Practical Completion”** means the date stated in Schedule Item 7 or any extended date pursuant to this Contract.
 - (h) **“Date of Practical Completion”** means the date when the Contract Work has reached Practical Completion.
 - (i) **“Finance Date”** means the date stated in Schedule Item 9 or, in the event no date is stated, the date 10 business days from the date of this Contract.
 - (j) **“Fixed Price Component”** means the sum stated in Schedule Item 1(a) of the Contract Price being the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the Contract Work other than the allowances (if any) for Prime Cost Items or Provisional Sums.
 - (k) **“Foundations Data”** means information about the building site required to prepare footings design and, if required, concrete slab design for the Site.
 - (l) **“Intended Use”**, for a building product, means a use for which the building product is intended to be, or is reasonably likely to be, associated with a building.
 - (m) **“Non-conforming Building Product”** - a building product is a non-conforming building product for an intended use if—
 - (i) the association of the product with a building for the use—
 - is not, or will not be, safe; or
 - does not, or will not, comply with the relevant regulatory provisions; or
 - (ii) the product does not perform, or is not capable of performing, for the use to the standard it is represented to perform by or for a person in the chain of responsibility for the product.
 - (n) **“Practical Completion”** means the date upon which the Contract Work is completed in accordance with the requirements of this Contract, including Condition 4 and Condition 22, apart from minor omissions or minor defects.
 - (o) **“Practical Completion Stage”** means that stage of the Contract Work in which Practical Completion will be attained in accordance with this Contract.
 - (p) **“Prime Cost Item”** means any item noted in the *Prime Cost Items Schedule* being an item such as a fixture or fitting (e.g. tiles or tap fittings) –
 - (i) that has not been selected, or the price of which is not reasonably able to be ascertained, when the Contract is entered into; and
 - (ii) for the cost of supply and delivery of which a reasonable allowance is made in the Contract by the Contractor.
 - (q) **“Provisional Sum”** means any item noted in the *Provisional Sums Schedule* being an amount that is an estimate of the cost of providing particular contracted services (including labour and materials) for which the Contractor, after making all reasonable enquiries, cannot provide a definite price when the Contract is entered into (e.g. the removal of asbestos materials the

extent of which is uncertain).

- (r) “**Relevant Criteria**” for materials means:
 - (i) generally accepted practices or standards applied in the building industry for the materials; or
 - (ii) specifications, instructions or recommendations of manufacturer’s or suppliers of the materials.
- (s) “**Site**” means the Site described in Schedule Item 4 where the Contract Work is to be performed.
- (t) “**Starting Date**” means whichever of the following dates occurs the latest:
 - (i) the Starting Date stated in Schedule Item 5; or
 - (ii) the day which is 10 business days after the issue of the plans duly approved by the Assessing Certifier (if approved plans are required); or
 - (iii) the day which is 10 business days after the Owner has satisfied its obligations under Condition 5.1.
- (u) “**Substantial Breach by the Contractor**” includes, but is not limited to:
 - (i) failing to comply with any necessary approvals associated with the work under this Contract;
 - (ii) failing to provide materials which comply with this Contract;
 - (iii) unreasonably failing to replace or remedy defective work or materials;
 - (iv) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
 - (v) failing to effect or maintain any insurance required by this Contract;
 - (vi) failing to hold the current, active and appropriate licence or to have the authorities necessary to complete the Contract Work, including, without limitation, a licence required under the QBCC Act; and
 - (vii) the Contractor failing to pay a judgement debt.
- (v) “**Substantial Breach by the Owner**” includes, but is not limited to:
 - (i) failing to pay any money due and owing to the Contractor within 10 business days of the receipt of a valid progress claim; and
 - (ii) substantially or persistently obstructing the Contractor in the performance of the Contract Work.

2. Price

- 2.1 The parties agree that the **Contract Price** stated in Schedule Item 1 comprises the following:

- (a) **Fixed Price Component**; and
- (b) **Prime Cost Items** Component (if any); and
- (c) **Provisional Sum** Items Component (if any).

- 2.2 If the Contract includes allowances for **Prime Cost Items** and **Provisional Sum** Items, the total amount of each type of allowance must be shown adjacent to the words ‘**Prime Cost Items**’ and/or ‘**Provisional Sums**’ in Schedule Item 1 and the Contractor must complete all details set out in the *Prime Cost Items Schedule* and/or *Provisional Sums Schedule* and give a copy of the Schedule/s to the Owner.
 - 2.3 Where the Owner has not finalised its selection of a **Prime Cost Item**, the Owner must select the Item and notify the Contractor in writing of that selection in sufficient time to ensure that the performance of the **Contract Work** is not thereby delayed.
 - 2.4 If the actual cost of a **Prime Cost Item** or **Provisional Sum** Item is more than the Contractor’s estimate, the Owner must pay the Contractor the increase, plus the margin (as stated in the *Prime Cost Items Schedule* or *Provisional Sums Schedule*) on the increase for the Contractor’s overheads and profits. If the actual cost of a **Prime Cost Item** or **Provisional Sum** Item is less than the Contractor’s estimate, the Contractor must deduct the difference, plus the margin, from the **Contract Price**.
 - 2.5 The Contractor must provide the Owner with the invoice, receipt or other document showing the cost of the **Prime Cost Item** to the Contractor, or relating to the cost to the Contractor of the work for a **Provisional Sum** Item, before or when making the next progress claim under the Contract. The Contractor cannot seek payment for the Item until the next progress claim after the **Prime Cost Item** has been supplied and installed or the contracted services covered by the **Provisional Sum** have been completed.
 - 2.6 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any variation pursuant to Condition 16) have been or will be calculated on a **GST** inclusive basis.
- ## 3. Performance under the Contract
- 3.1 The Contractor must commence the **Contract Work** in compliance with the provisions of this Contract on or before the **Starting Date**.
 - 3.2 The Contractor must diligently carry out the **Contract Work** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of the **Contract Work**.
 - 3.3 The Contractor warrants that all drawings and specifications provided to the Owner by the Contractor have been or will be prepared with reasonable skill and care.

3.4 The Contractor shall, unless this Contract expressly provides otherwise, supply at the Contractor's cost and expense, everything necessary for the performance of the **Contract Work** and achieve **Practical Completion** of the **Contract Work** by the **Date for Practical Completion**. The Owner shall pay the Contractor the **Contract Price** in accordance with this Contract.

4. Warranties under Schedule 1B of QBCC Act

4.1 To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:

- (a) the **Contract Work** will be carried out in an appropriate and skilful way and with reasonable care and skill and reasonable diligence;
- (b) all materials supplied will be of good quality and suitable for the purpose for which they are used having regard to the **Relevant Criteria**, and that all materials used will be new unless the Contract expressly provides otherwise;
- (c) the **Contract Work** will be carried out in accordance with all relevant laws and legal requirements including, for example, the *Building Act 1975*;
- (d) the **Contract Work** will be carried out in accordance with any plans and specifications which form part of the Contract and any other Contract documents described in Schedule Item 13;
- (e) if the **Contract Work** consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be suitable for occupation when the **Contract Work** is finished; and
- (f) any estimate of **Provisional Sums** or **Prime Cost Items** included in the Contract has been calculated with reasonable care and skill, having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the building **Site**).

4.2 Without limiting any other warranty under this Contract, the Contractor shall ensure that, so far as reasonably practicable:

- (a) a building product associated with the **work under this Contract** is not a **non-conforming building product** for an **intended use**; and
- (b) the Owner is given all information about the **building product** required by section 74AG(4) of the QBCC Act.

5. Evidence of title, boundaries and capacity to pay

- 5.1 This Contract is subject to the Owner providing the Contractor by the **Finance Date** with written evidence, satisfactory to the Contractor, of the Owner's capacity to pay the **Contract Price**.
- 5.2 If by the **Finance Date** the Contractor is not satisfied by the Owner's capacity to pay the **Contract Price**, the Contractor may, no later than 5 **business days** after the **Finance Date**, give written notice to the Owner that the Contract is at an end.
- 5.3 If the Owner provides no written evidence as to its financial capacity by the **Finance Date**, or advises the Contractor in writing by the **Finance Date** that it does not have the capacity to pay the **Contract Price**, this Contract is at an end.
- 5.4 If this Contract is ended under this Condition, the Contractor must immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor less any fees, costs and expenses incurred by the Contractor with the Owner's express consent.

6. Building approval

- 6.1 Unless otherwise agreed in writing, the Contractor shall obtain all permissions, consents or approvals required in connection with the commencement and completion of the **Contract Work**.
- 6.2 The party named in Schedule Item 12 as being responsible for obtaining building approval (or if no party is named, then the Contractor) must lodge the plans for approval within 10 **business days** of the Owner satisfying its obligations under Condition 5.1.
- 6.3 All parties must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of the **Contract Work**.

7. Termination for lack of building approval

- 7.1 Either party may give a written notice to the other terminating this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of the **Contract Work** has not issued within 3 months of the date of this Contract or such further period extended by the parties' agreement in writing.
- 7.2 If the Contract is terminated pursuant to this Condition the parties' entitlements and obligations shall be the same as if the Contract were brought to an end under Condition 5.3 and Condition 5.4 shall apply.

8. Owner to effect insurances

- 8.1 The Owner shall effect and maintain during this Contract, House and Contents Insurance (including appropriate Public Liability cover) for the existing

structure and its contents with a reputable and financially sound insurer and upon usual and reasonable terms. Evidence of such insurance shall be provided if requested by the Contractor.

9. Contractor to effect insurances

- 9.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
- (a) all insurances required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) all insurances required to comply with the *Queensland Building and Construction Commission Act 1991* ('the QBCC Act'); and
 - (c) Contract Works insurance for the full insurable value of the **Contract Work** and Public Liability insurance for not less than 5 million dollars, both until 4pm on the **Date of Practical Completion**, with a reputable and financially sound insurer upon usual and reasonable terms which name or include as an insured the Owner and the Contractor for their respective rights.
- 9.2 If the **Contract Work** is covered by the Queensland Home Warranty Scheme, the Contractor must collect the premium from the Owner and pay it to the QBCC within 10 **business days** of entering the Contract and before the **Contract Work** starts.
- 9.3 Prior to commencement of the **Contract Work**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the insurances required under this Condition are current.

10. Contractor's indemnity in favour of the Owner

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

11. Access to the Site

- 11.1 The Owner shall give the Contractor access to the **Site** as necessary to enable performance of this Contract. The Contractor does not, by virtue of this Contract, acquire any interest in the **Site**. The Contractor must permit the Owner, or a person authorised by the Owner, to have reasonable access to the **Site**, under the Contractor's supervision, to inspect the **Contract Work**.

12. Workplace health and safety

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

13. Care of the Contract Work

- 13.1 The Contractor shall be responsible for the care of

the **Contract Work** until **Practical Completion** and shall promptly make good loss or damage to the **Contract Work**, or the Owner's property, caused by any act, neglect or default of the Contractor or the Contractor's employees, agents or sub-contractors.

14. Payment

- 14.1 The Owner must pay the Contractor the **Contract Price** for the **Works** calculated and adjusted as provided by this Contract in accordance with the following provisions:
- (a) The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 2 upon the signing of this Contract.
 - (b) The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 8. Each such claim shall consist of the percentage of the **Contract Price** applicable to that stage as set out in Schedule Item 8, subject to the following adjustments:
 - (i) an adjustment for any **Prime Cost Item** incorporated in the **Works** to that stage, and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8 depending on whether the final cost of the **Prime Cost Item** is more or less than the amount allowed and stated in the *Prime Cost Items Schedule*; and
 - (ii) an adjustment for the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment, such adjustment being an increase or decrease to the relevant stage payment as set out in Schedule Item 8 depending on whether the final cost of the **Provisional Sum** Item is more or less than the amount allowed and stated in the *Provisional Sums Schedule*; and
 - (iii) an increase to the relevant stage payment in respect to an amount payable under a Variation Document where the work, the subject of the variation, has been completed and for which payment has not previously been made; and
 - (iv) a decrease in the relevant stage payment in respect to a variation which reduces the **Contract Price**.
 - (c) Such adjustments referred to in Condition 14.1(b) shall be recorded by the Contractor on the Form 2 - *Progress Claim* or similar appropriate document and the relevant progress claim shall be adjusted accordingly.
 - (d) The QBCC Form 2 - *Progress Claim* or similar appropriate document must be accompanied

by a QBCC Form 3 - *Notice of Dispute of Progress Claim* or similar appropriate written notice and any certificates of inspection relevant to the payment stage.

- (e) The progress claim for the **Practical Completion Stage** must, in addition to the requirements specified for any other progress claim, be accompanied by a completed and signed QBCC Form 5 - *Defects Document*, or similar appropriate document.
- (f) The Contractor must make all reasonable efforts to have the Owner sign the QBCC Form 5 - *Defects Document* or similar appropriate document used to record the minor defects and minor omissions.
- (g) Except in regard to the Progress Payment for the **Practical Completion Stage** payable in accordance with Condition 22.4, the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim for Progress Payment as is not disputed by the Owner, within 5 **business days** of receipt of the relevant claim.
- (h) If the Owner fails to pay a valid payment claim, or the undisputed portion of a claim, in accordance with this Condition, the Owner must pay the Contractor interest on the overdue payments at the rate stated, or the default rate provided for, in Schedule Item 11.
- (i) If the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must, within 5 **business days** of receipt of the relevant claim, give to the Contractor a completed and signed QBCC Form 3 - *Notice of Dispute of Progress Claim* or similar appropriate written notice stating the reasons for so disputing the claim or part of it.
- (j) If the dispute is not resolved by the parties within 5 **business days** of the receipt by the Contractor of the notice of the dispute, the dispute must be referred for resolution in accordance with Condition 19.

15. Assignment and subcontracting

- 15.1 The Contractor must not assign this Contract or the **Contract Work** without the prior written consent of the Owner.
- 15.2 The Contractor may subcontract parts of the **Contract Work** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **Contract Work**.

16. Variations

- 16.1 The **Contract Work** may be varied by way of an increase, decrease or substitution of the **Contract Work** agreed between the Contractor and the Owner provided that, before work commences and before any additional payment is sought, the details of the

variation are put in writing in a Variation Document agreed in writing by both parties.

- 16.2 The Contractor shall not commence work on a variation, or be entitled to any payment in respect of a variation, unless the variation is documented in accordance with Conditions 16.3 and 16.4.
- 16.3 The Variation Document may be a QBCC Form 4 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of Schedule 1B of the QBCC Act, agreed in writing by both parties.
- 16.4 The Variation Document complies with the requirements of Schedule 1B of the QBCC Act if it:
 - (a) is readily legible; and
 - (b) describes the variation; and
 - (c) states the date of the request for the variation; and
 - (d) if the variation will result in a delay affecting the subject work - states the Contractor's reasonable estimate for the period of delay; and
 - (e) states the change to the **Contract Price** because of the variation, or the method for calculating the change to the **Contract Price** because of the variation; and
 - (f) if the variation results in an increase in the **Contract Price** - states when the increase is to be paid; and
 - (g) if the variation results in a decrease in the **Contract Price** - states when the decrease is to be accounted for.
- 16.5 Any increase in the **Contract Price** as a result of the variation can not be required to be paid before work the subject of the variation is started.
- 16.6 The Contractor must give the Owner a readily legible signed copy of the Variation Document within 5 **business days** after the variation is agreed and before the variation work is commenced.
- 16.7 If the Contractor has requested the variation, the Contractor is only entitled to additional payment if the variation was necessary because of circumstances that could not have been reasonably foreseen by the Contractor when the Contract was entered into.

17. Extension of time

- 17.1 Subject to complying with Condition 17.2, the Contractor may only claim and is entitled to a reasonable extension of the **Date for Practical Completion** if:
 - (a) the need for the extension of time arises because of one or more of the following causes of delay prevents the Contractor from achieving **Practical Completion** by the **Date for Practical**

Completion:

- (i) a variation complying with Condition 16; or
 - (ii) a delay caused by the Owner or the Owner's authorised representative; or
 - (iii) a delay event stated in Schedule Item 6B which exceeds the stated allowance; and
- (b) the delay is not reasonably foreseeable and is beyond the reasonable control of the Contractor; and
 - (c) the claim is made to the Owner in writing using a QBCC Form 1 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document with the particulars, including the cause of the delay and the extension of the **Date for Practical Completion** claimed, completed; and
 - (d) the claim is given to the Owner within 10 **business days** of the earlier of the Contractor becoming aware of the cause and extent of the delay and when the Contractor reasonably ought to have become aware of the cause and extent of the delay; and
 - (e) the Owner approves the claim in writing using the QBCC Form 1 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document.
- 17.2 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.
- 17.3 The Contractor must give the Owner a signed copy of the claim for an extension of time within 5 **business days** of the Owner approving the claim.
- 17.4 The Owner must, within 10 **business days** of receiving the Contractor's claim, reasonably assess and return to the Contractor the said QBCC Form 1 - *Extension of Time Claim and Owner's Response to Claim* or similar appropriate document either agreeing to the extension of time claimed or giving reasons for the rejection of the whole or part of the said claim, failing which the said extension of time claim will be deemed to be disputed by the Owner.
- 17.5 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to damages arising from the unreasonable rejection of all or part of a claim for an extension of the **Date for Practical Completion**.

18. Liquidated damages

- 18.1 If the Contractor fails to achieve **Practical Completion** of the **Contract Work** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 10.
- 18.2 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor

in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

WARNING TO OWNER

The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract. Any valid extensions of time must be taken into consideration when calculating the number of days of liquidated damages which can be claimed.

19. Dispute resolution

- 19.1 If a dispute under the Contract arises between the parties, either party may give the other party a written notice of dispute adequately identifying and providing details of the dispute.
- 19.2 If the dispute is not resolved within 10 **business days** of the receipt of the notice of dispute, either party may refer the matter to a dispute resolution process administered by the Queensland Building and Construction Commission.
- 19.3 A party will not commence any proceedings in respect of the dispute in any court or tribunal of competent jurisdiction until the dispute resolution process referred to in Condition 19.2 is at an end.
- 19.4 Where a dispute has arisen under or in connection with this Contract, including Condition 17.4, the Contractor must proceed diligently with the **Contract Work** notwithstanding the existence of the dispute.

20. Termination after notice of default

- 20.1 If either party is in **Substantial Breach** of this Contract, the party not in breach may give the other party a written notice identifying and describing the breach and stating the intention to terminate the Contract if the breach is not remedied within 10 **business days** from the giving of the notice.
- 20.2 If the **Substantial Breach** is not remedied within 10 **business days** of receipt of the written request to remedy the breach, the party not in breach may end this Contract by giving written notice to that effect.
- 20.3 If the Contract is terminated pursuant to this Condition the Owner must pay the Contractor the reasonable value of any work properly carried out by the Contractor prior to that termination which has not been the subject of previous payment.

21. Termination for bankruptcy or liquidation

- 21.1 Notwithstanding Condition 20, should either party be made bankrupt or, being a company, go into

liquidation, then the other party may, by giving a written notice, immediately terminate this Contract.

WARNING TO OWNER AND CONTRACTOR

New legislation effective from 1 July 2018 makes it illegal to terminate a contract with a company solely because they have gone into voluntary administration, appointed a receiver/managing controller or entered a scheme of arrangement with creditors. For this reason (and the probable loss for Owners of non-completion protection under the Qld Home Warranty Scheme if you terminate your Contract incorrectly), **it is very important that you obtain formal legal advice before terminating the Contract for any reason.**

22. Practical Completion

- 22.1 The Contractor must give to the Owner 5 **business days** prior written notice of the date upon which the Contractor anticipates that the **Contract Work** will reach **Practical Completion**.
- 22.2 On the date specified in that notice as the anticipated date on which the **Contract Work** will reach **Practical Completion**, the Owner or the Owner's authorised representative will inspect the **Contract Work** and if satisfied that the **Contract Work** has reached **Practical Completion**, and if the Contractor produces to the Owner satisfactory written evidence that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must:
- (a) compile with the Owner, or the Owner's authorised representative, and sign the QBCC Form 5 - *Defects Document* and give a copy to the Owner; and
 - (b) hand over the **Contract Work** to the Owner.
- 22.3 If the Owner considers that the **Contract Work** has not reached **Practical Completion** the Owner must as soon as practicable give the Contractor written notice of those matters which are required to be done for the **Contract Work** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Contract Work** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.
- 22.4 When the Contractor has satisfied all of its obligations under Condition 22.2 the Owner must immediately pay the Contractor the progress claim for the **Practical Completion Stage** (as adjusted under Condition 18, if applicable).

23. Defects after completion

- 23.1 The Contractor shall make good any defects or omissions in the **Contract Work** which become apparent to the Owner within 12 months of the **Date of Practical Completion**.
- 23.2 If there are any such defects or omissions, the Owner must, as soon as practicable after becoming aware of the defects or omissions, give the Contractor written notice to make good such defects or omissions and must give the Contractor reasonable access to the **Site** for that purpose.
- 23.3 Subject to reasonable access being provided, the Contractor must within 28 calendar days of the notice being given rectify any defects or omissions notified to the Contractor under Condition 23.2 during usual business hours.





























24. Notices

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

CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS RELEVANT TO YOUR BUILDING PROJECT

| Person | Name & Email | Other Contact Details |
|------------------------------------|--------------|--|
| Solicitor | Name: |  |
| | Email: |   |
| Finance Provider <i>(if any)</i> | Name: |  |
| | Email: |   |
| Building Designer or Architect | Name: |  |
| | Email: |   |
| Building Contractor | Name: |  |
| | Email: |   |
| Site Supervisor | Name: |  |
| | Email: |   |
| Building Certifier | Name: |  |
| | Email: |   |
| Local Government | Name: |  |
| | Email: |   |
| Insurance Company | Name: |  |
| | Email: |   |
| Building Consultant | Name: |  |
| | Email: |   |
| Neighbours <i>(if relevant)</i> | Name: |  |
| | Email: |   |

CONSUMER BUILDING GUIDE

Your building contractor must give you this guide before you sign the contract.

This guide has been developed by the Queensland Building and Construction Commission (QBCC) under Schedule 1B of the *Queensland Building and Construction Commission Act 1991* (the Act) to assist home owners undertaking domestic building work with a total contract price of \$20,000 or more. It's aimed at helping you avoid disputes and common pitfalls.

COOLING-OFF PERIOD

You may withdraw from the contract within five business days of receiving copies of the signed contract (including any plans and specifications) and this guide. However, there are costs for home owners in withdrawing (generally \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). You must also advise the contractor in writing.

QBCC LICENCE

You should only deal with a QBCC-licensed contractor. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home Warranty Scheme. Always check the contractor's licence and licence history via QBCC's Online Licence Search.

QLD HOME WARRANTY INSURANCE

Residential construction work valued at more than \$3,300 is covered by the Queensland Home Warranty Scheme. It provides protection for home owners against non-completion, defective work and subsidence for up to 6 years from completion, provided a licensed contractor performs the work. After the contract has been signed, the contractor must pay the insurance premium to QBCC, and you should receive a Certificate of Insurance and Policy Booklet within two weeks.

COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS

QBCC recommends home owners obtain formal legal advice before signing either of these types of contracts which reduce your Home Warranty insurance protection and often result in disputes and cost overruns. Visit the [QBCC website](#) for more details on the risks associated with these contracts.

COMMENCEMENT NOTICE

For contracts priced at \$20,000 or more, the contractor must give the owner a signed Commencement Notice within 10 business days of work commencing on site.

It must state the date work started on site and the Date for Practical Completion.

CONTRACT PRICE

The total contract price must be stated on the first page of the contract schedule. For contracts priced at \$20,000 or more, the contract must also contain a warning about any provisions that may cause the contract price to change and if the contract price includes any allowances (items or services for which the price is not fixed at the time the contract is signed), these allowances must be stated in the contract schedule.

DEPOSITS AND PROGRESS PAYMENTS

The maximum deposit allowed is:

- 10% where the total contract price is under \$20,000
- 5% where the price is \$20,000 or more
- 20% for a contract of any price where the value of the work to be performed off-site is more than 50% of the total contract price.

Owners and contractors are free to determine the number and timing of progress payments (if any) for their particular project, provided these payments are proportionate to the value of work performed on site (e.g. don't pay more than 50% before half of the work has been completed).

BUILDING APPROVALS AND INSPECTIONS

Building inspections and approvals are the responsibility of a building certifier. Mandatory building inspections may be required at certain stages of construction. You can check the certifier's licence via QBCC's Online Licence Search.

VARIATIONS

Any change to the materials used or the scope of the work to be performed under the contract is known as a 'variation'. Variations are frequently the cause of cost overruns and building disputes. All variations must be detailed in writing and copied to the owner by the contractor within five business days after they are agreed to, and before any of the variation work commences.

DISPUTE PREVENTION

To reduce the risk of a dispute, carefully read and understand the contract. Also check any associated plans and specifications before signing. Discuss any questions with your contractor and seek legal advice if you still have concerns.

DISPUTE RESOLUTION

If a dispute with your contractor occurs, firstly advise them in writing giving them a reasonable time to respond. If this doesn't resolve the problem, explore QBCC's free Early Dispute Resolution (EDR) service and your legal options. It's critical that you engage a practising solicitor before terminating the contract. Incorrect termination may have serious legal and financial consequences and reduce your Home Warranty protection.

EXTENSIONS OF TIME (EOTs)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined (e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could have been anticipated).

The contractor must give you a written EOT claim that you should carefully consider (not unreasonably reject) and respond to promptly in writing. If you approve the claim, the Date for Practical Completion will be extended by the period claimed. If you do not approve the claim, the extension is deemed 'disputed'.

PRACTICAL COMPLETION AND HANDOVER

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract, all legal requirements, and either without any defects or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.

IMPLIED WARRANTIES

Under the Act, a range of warranties are deemed to be part of all regulated domestic building contracts. The warranty period is six years for structural defects and one year for all other defects.

Quick checklist (Ensure you are able to tick all boxes below before signing the contract)

- I have read this Consumer Building Guide
- I have read and checked all contract documents, including the schedule, general conditions and special conditions (if any) and all plans and specifications
- I have checked the contractor's licence and licence history on the QBCC Online Licence Search at qbcc.qld.gov.au
- I note and understand my cooling-off rights (including how and when I may withdraw if I choose to)
- I have checked the total price (including what proportion is comprised of allowances) and I understand the deposit and progress payments set out in the contract
- I have checked the start and finish dates and practical completion requirements in the contract
- (If applicable) I have discussed my questions/concerns about the contract with a practising solicitor.

Acknowledgement

Complete and sign the section below to acknowledge that you have received this guide from your building contractor. Once signed, the building contractor will return a copy of this guide to you with the contract.

NAME: _____ DATE: _____

SIGNATURE: _____