

# NSW Residential Building Contract for New Dwellings

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**OWNERS:** Mr Anecito (aka. John) Mantilla &  
Mrs Charina Mantilla

**JOB:** 6269

**LOT:** 6

**SITE:** No. 24 Paddock Close,  
Elmore Vale  
NSW 2287.



**To verify your builder is a HIA member call 1902 973 555**

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## Schedule 1. Particulars of contract

### Item

#### 1. Date

This contract is dated the:

#### 2.(a) Contract price (Clause 1)

PRICE EXCLUDING GST: \$742,458.18  
 GST ON THE ABOVE AMOUNT: \$74,245.82  
 THE CONTRACT PRICE IS: \$816,704.00

**The contract price is GST inclusive**

**WARNING The contract price** may vary under this **contract**. The reasons for variations to the **contract price** include:

- Clause 7 - planning and building approvals;
- Clause 10 - a survey being required;
- Clause 12 - a consultant being engaged to report on the **site** conditions;
- Clause 13 - an increase in a tax, charge or levy after this **contract** is signed;
- Clause 17 - **variations** to the **building works**;
- Clause 21 - an adjustment for **prime cost items** and **provisional sum items**.

NOTE: The **builder** cannot demand or receive any of the **contract price** (including the deposit) until warranty insurance is in force and the **owner** is provided with a certificate of insurance.

#### (b) Deposit (Clause 15.1)

*The deposit must not exceed 5% if the contract price is more than \$20,000 or more than 10% if the contract price is \$20,000 or less*

THE DEPOSIT IS: \$30,000.00

#### 3. Owners (Clause 1)

**NAME** Mr Anecito (aka. John) Mantilla & Mrs Charina Mantilla  
**ADDRESS** 17 Valleyview Cres  
**SUBURB** Glendale **STATE** NSW **POSTCODE** 2285  
**ABN** **ACN**  
**WORK** 0439 383 622 **HOME**  
**FAX** **MOBILE** 0439 383 622  
  
**EMAIL** johnmmd@mantillaph.net

#### 4. **Builder** (Clause 1)

**NAME** Tullipan Homes Pty Ltd.  
**ADDRESS** Suite 18, St no. 1 Reliance Drive Tuggerah Business Park  
**SUBURB** Tuggerah NSW Australia **STATE** NSW **POSTCODE** 2259  
**ABN** 56001299672 **ACN**  
**WORK** 0243538644 **HOME**  
**FAX** 0243538655 **MOBILE** 0411968190

**EMAIL** mark@tullipanhomes.com.au  
**BUILDER'S LICENCE NUMBER** 131446C  
**HIA MEMBER NUMBER** 380927 **HIA MEMBERSHIP EXPIRY** 31st May 2015.

#### 5. **The Site** (Clause 1)

**THE SITE IS LAND AT:**  
**LOT** 6 **DP NO** 1196932  
**CERTIFICATE OF TITLE**  
**STREET ADDRESS:**  
 No. 24 Paddock Close,  
  
**SUBURB** Elermore Vale **STATE** NSW  
**POSTCODE** 2287.

### Mortgages

#### Mortgage 1

**LENDING BODY** St George  
**AMOUNT** \$608,872.00  
**BRANCH** Kotara Westfield  
**CONTACT NAME** TBA

#### 6. **Encumbrances, covenants and easements** (Clause 4)

*The land containing the **site** is affected by the following encumbrances, covenants, easements and caveats. Please specify the substance of each encumbrance, covenant, easement and caveat and give details of any registrations where registered at the Titles Office.*

#### 7. **Sources of funds** (Clauses 4 and 5)

The **contract price** will be funded by:

<b>ST GEORGE KOTARA WESTFIELD</b>	\$608,872.00
<b>OWNERS FUNDS</b>	\$207,832.00
<b>TOTAL FUNDS</b>	\$816,704.00

Note: The total funds are to equal the **contract price**.

#### 8. **Builder's margin** (Clause 1)

*(If nothing stated then 20%)*

**THE BUILDER'S MARGIN IS** 20.00%

9. **Other statutory obligations** (Clause 4)

The **owner** has to satisfy the following statutory obligations within the **initial period**.

10. **Interest** (Clause 16)

*(If nothing stated then the post judgment interest rate applicable to judgments in the NSW Supreme Court from time to time.)*

**INTEREST ON LATE PAYMENT IS: 7.00%**

11. **Development application and complying development certificate** (Clause 7)

*(If no person stated then the builder)*

**THE PERSON TO MAKE AND PAY FOR ALL APPLICATIONS FOR DEVELOPMENT CONSENT AND/OR A COMPLYING DEVELOPMENT CERTIFICATE IS:**  
 The Builder

12. **Contract period** (Clauses 1 and 9)

**THE BUILDING WORKS MUST REACH THE STAGE OF PRACTICAL COMPLETION NO MORE THAN 44 Weeks**  
**AFTER THE CONTRACT PERIOD (CLAUSE 8) COMMENCES, SUBJECT TO CLAUSE 9.**

13. **Liquidated damages** (Clause 30)

*(If nothing stated, then \$1)*

**LIQUIDATED DAMAGES PER WORKING DAY CALCULATED ON A DAILY BASIS. \$1.00**

14. **Other contract documents** (Clause 1)

In addition to these general conditions, any special conditions, the plans and the specifications, the following documents form part of this **contract**.

1. Contract documents listed below in their order of Precedence: 1.Client Selections (signed word document). 2.Individual Signed client selections cost VARIATION document's. 3.Tender Document 6269C-Mantilla 4.Structural Engineer Details & Borehole report with site classification By Rafeletos Zanuttini. 5.Basix report and nathers energy assessment 6.Consultant plans and reports as required for DA approval.

15. **Initial Period** (Clause 4)

*If nothing stated then 15 working days*

The **owner** must satisfy the essential matters in Clause 4 within the **initial period** being a period of 15 working days.

The builder does not need to commence on site until the essential matters are satisfied and may terminate the contract if the essential matters are not satisfied.

16. **Guarantors**

*(refer to Deed of Guarantee and Indemnity)*

**NAME**

ADDRESS  
SUBURB

STATE

POSTCODE

**DRAFT ONLY  
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## Schedule 2. Progress Payments

Stage	Percent	Amount
<b>PP1: Preliminary Payment on acceptance of Tender.</b> Initial payment on Tender acceptance & sign up. Part payment towards the total combined costs of preparing all construction documentation, plans, building approval etc = \$8,000 PAID 22.07.2015 Adjusted by -\$0.02 to allow for rounding	.98%	\$8,003.68
<b>PP2: 5% Initial payment on Contract signing.</b> Initial deposit of 5% payable on signing of contracts and receipt of HOW insurance policy. Payable prior to construction works commencing on site = \$ 30,000	3.67%	\$29,973.04
<b>PP3: Raft slab down + Strip footings.</b> Raft slab down, internal drainage complete = \$90,000	11.00%	\$89,837.44
<b>PP4: Construction to Floor Level</b> Floor sheets installed, ready to receive wall frames = \$ 85,000	10.41%	\$85,018.89
<b>PP5: Upper Floor Wall Frames erected = \$65,000.00</b>	7.96%	\$65,009.64
<b>PP6: Suspended Balcony slab + Roof trusses erected = \$65,000.00</b>	7.96%	\$65,009.64
<b>PP7: Brickwork, Windows &amp; Fascia &amp; Guttering installed</b> Minimum of 80% installed = \$ 120,000	14.69%	\$119,973.82
<b>PP8: Brickwork, Windows &amp; Roof coverings stage</b> Brickwork, Windows & Roof coverings completed with the exception of minor omissions and tidy ups = \$ 95,000	11.63%	\$94,982.68
<b>PP9: Services + Gyprock installed = \$ 107,000</b> Plumbing & electrical services	13.12%	\$107,151.56
<b>PP10: Kitchen &amp; Internal fix out complete = \$ 65,000</b>	7.96%	\$65,009.64
<b>PP11: Pc items &amp; Floor &amp; Wall Tiling to wet areas</b> (excluding Living / Family / Kitchen Floor Tiles) = \$47,000	5.76%	\$47,042.15
<b>PP12: Remainder of Tiling completed</b> = \$ 20,000	2.45%	\$20,009.25
<b>PP13: Final payment on practical completion = \$ 19,704</b> The actual amount payable for this Final stage will be presented in the form of a Detailed Final Account. This account will be calculated based on Contract sum, less any payments to date, plus and contract variations throughout the course of construction.	2.41%	\$19,682.57
<b>Total</b>	<b>100.00%</b>	<b>\$816,704.00</b>

NOTE: In accordance with Clause 15.1 the deposit is brought to account with the first progress payment.  
 The total amount must be the same as the contract price.

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## Schedule 3. Excluded Items (Clause 18)

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The **owner** acknowledges that the **builder** is not responsible for the supply and installation of materials, goods or the provision of services that are listed below:

Refer to Tender Ref: 6269C-Mantilla for a detailed list of Exclusions to the Building Contract / Works By Owner / Tender notes etc :

DRAFT ONLY  
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## Schedule 4. Description of Work

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Insert brief description of the **building works**:

Custom Home design, Two Storey Up slope Split Level design, 5 Bedroom + Study, Brick veneer home with Triple Lock up Garage.

**Noted:**The **building works** are described in detail in the plans and specifications.

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## Schedule 5. Warranty Insurance

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**NOTE:** The **builder** must not carry out any **building work** or demand or receive any part of the **contract price** until warranty insurance is in force and the **owner** is provided with the certificate of insurance.

**INSURER** Calliden Insurance Ltd ABN 47 004 125 268 AFS Licence 234438  
**ADDRESS** Level 9, 11-33 Exhibition Street  
**SUBURB** MELBOURNE                      **STATE** VIC                      **POSTCODE** 3000  
**PHONE** (03) 9637 1300  
**FAX** 1300 662 215

**NAME OF INSURED**

Mr Anecito (aka. John) Mantilla & Mrs Charina Mantilla (Premium included in contract sum)  
**PREMIUM PAYABLE** \$.00

**ATTACH CERTIFICATE HERE.**

Except for the **builder's** interest in this **contract** and the legal requirement for warranty insurance to be arranged in respect of the **building works**, the **builder** receives no benefit in relation to arranging such insurance.

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## Schedule 6. Prime Cost and Provisional Sum Items (Clause 21)

### Prime cost items - fittings, fixtures, materials only

Item	Quantity	Rate	Allowance	Margin (if nothing stated 20%)
Refer to Separate attachments resulting from Owners selections ; Kitchen, Floor & Wall Tiling, Electrical, Reece items & Appliance (detailed cost variation) documents.				

### Provisional sum items - labour and materials

Item	Quantity	Rate	Allowance	Margin (if nothing stated 20%)
Refer to our Detailed Tender document attached. Ref: 6269C-Mantilla.doc				

## Special Conditions

### **Special Conditions to Contract :**

Any items of works to be carried out by the Owner's &/or his or her representative forming part of the Building is not to commence until after completion of this Building agreement (as defined in clause 26 - practical completion). This does not extend to include Retaining walls, which are necessary for construction, & to comply with Councils conditions of approval.

Any items supplied by the Owner's remain the responsibility of the Owners & shall not be covered by the Builders (Contractors all risk insurance policy) for theft or damage of such goods. Any possible damage to such goods during installation is to be the Owners responsibility. For that reason, it is our policy that all items either ; **1. Be Supplied & installed By the Builder** or **2. Be supplied & installed by the Owner's directly engaging trades people after the completion of this contract** (practical completion stage).

All items of work &/or variations to the items of work included in the Building agreement must be carried out by Tullipan Homes. All **Variations** are to be confirmed with a signed variation form. **Verbal instructions** from the Owners not confirmed in writing and signed by both parties shall be considered null & void.

### **HIA Contract - Clause 8.1 (b) – Commencement Date :**

In addition to the Owners obligations as detailed at Clause 4. The Building Works Date of Commencement is subject to the owners finalization of all *essential items* listed on their "Client Selection Sheets". These *essential items* being; Harvey Norman items, All Exterior finishes, Kitchen/Sink Layout, Electrical layout. To be completed and handed to the office of Tullipan Homes Pty Ltd.

### **Variations :**

Tullipan Homes reserves the right to refuse a request by the Owner's for the Cancellation &/Or a request by the Owner for changes to any variation after receipt of the signed variation. An acceptance by the Builder to Cancel &/or make changes to a signed variation will incur an additional administration fee of \$ 100.00.

### **Client Selection sheets :**

In reference to our Client selection sheets, we hereby confirm that the contract sum has been calculated entirely from the detail of inclusions and or specifications contained within your Tender document only. Any variations to your final Tender, contained within your selection sheets will incur a contract price adjustment. i.e. Changes to your final tender inclusions as required to align your selection will invoke a variation to the contract sum, presented for your approval and sign off.

### **Water & Electricity usage during construction :**

In accordance with the universally applied, standard practice within the building industry. The cost of Water & Electricity usage during the construction period has not been included in the Tender sum. Any such

costs are to be paid directly by the property Owners.

**Standard of Workmanship :**

Notwithstanding Clause 2.1 of This Building contract. Should a disagreement arise between Tullipan Homes & the Owner's in relation to the standard &/or specification of workmanship provided. It is to be understood that the above Contract has been prepared on the basis of providing standards of workmanship in line with that exhibited on our current Display Home.

**Final Inspection Report / Occupation certificate :**

In addition to Clause 27.1 of This Building agreement. Tullipan Homes agrees to arrange a final inspection by the designated private certifier (PCA), to achieve compliance for the full scope of works being carried out by Tullipan Homes. i.e. those works included within this Building Contract + any future variations. Providing no exclusions from our scope of works prevent this, we will then issue final inspection report from the PCA.

After handover date, all outstanding works from your ( Development application - Conditions of approval ) which are outside our scope of works, will need to be arranged By Owner. Such works usually include; Driveways, Landscaping, Retaining walls & the likes. Once these works are completed you will then be required to engage the Certifier directly for an additional final inspection, to achieve full compliance for an Occupation certificate.

**Selection of Face Bricks :**

*Note:* The supply of clay fired brick are subject to " Terms of sale conditions ". These conditions relate to acceptance that product variation in Size, Colour & Texture of the bricks supplied does occur. Please request a copy of these conditions from your chosen brick supply company, prior to final selection.

**Conditions of Sale – relating to Variations :**

In reference to ( Clause 17.6 - " VARIATIONS " ) of the HIA Building agreement .

The Terms for payment of each Variation are to be; 50% upfront payment of the variation amount, due upon acceptance of the variation. The balance of each *variation* being due & at the next progress payment, after it is carried out.

**Engineer design pending :**

Given that this Contract has been signed prior to receipt of the required approval for construction in accordance with Geotech requirements and pre any possible associated revisions to the Structural engineer details. We hereby reserve the right to review our Tender document and the associated construction costs. To apply a possible future variation, to account for any changes from the current structural design by Rafeletos Zanutini which is attached to this contract.

**Tender Valid Dates :**

This Tender shall remain firm for a period ending 28<sup>th</sup> February 2015 *and is subject to the following being effected in that time ;*

- Formal signing of this building contract.
- A construction certificate has been issued by the certifying authority.
- The owner providing to the Builder a formal letter of authority from the Owner's lending authority that the building works may commence.

Note: The construction cost / **contract sum** will be re-calculated should the above not be effected by the date of Expiry.

DRAFT ONLY  
DO NOT SIGN



# Signatures

This **contract** is made between the **Owner** and the **Builder**.  
The **schedules** form part of this **contract**.  
The **Owner** has read and understood this **contract**.

## Owner

**NAME** Mr Anecito (aka. John) Mantilla & Mrs Charina Mantilla

**SIGNATURE** .....

**WITNESS'S SIGNATURE** .....

**WITNESS'S NAME AND ADDRESS**

.....  
.....  
.....

## Builder

**NAME**

**SIGNATURE** .....

Signed for and on behalf of:Tullipan Homes Pty Ltd.

**WITNESS'S SIGNATURE** .....

**WITNESS'S NAME AND ADDRESS**

.....  
.....  
.....

### Please note

1. Where a company is signing: 'by A. Smith, director' or 'Signed for and on behalf of XYZ Pty Ltd'.
2. Where a partnership is signing: 'B. Bloggs in partnership with A. Bloggs and C. Bloggs'

**STATEMENT SETTING OUT THE OWNER'S RIGHT TO WITHDRAW FROM THIS CONTRACT UNDER SECTION**



### 7B OF THE HOME BUILDING ACT

This **contract** may be subject to a cooling off period that entitles the owner to rescind this contract by giving a notice in writing as required by Section 7BA of the Home Building Act:

- (a) If the **owner** has been given a copy of the signed **contract** – at any time before the expiration of 5 clear business days after the **owner** is given a copy of the signed **contract**; or;
- (b) If the **owner** has not been given a copy of the signed **contract** within 5 days after the **contract** has been signed – at any time before the expiration of 5 clear business days after the **owner** becomes aware that the **owner** is entitled to be given a copy of the signed **contract**

If the **owner** exercises the right to cool off then this **contract** is rescinded and the **builder** is entitled to a reasonable price for the work carried out under the **contract** until the date the **contract** is rescinded.

DRAFT ONLY  
DO NOT SIGN

# Deed of guarantee and indemnity

## Interpretation

BUILDER IS  
OWNER IS

## Guarantors

ADDRESS LINE 1  
ADDRESS LINE 2  
SUBURB

STATE

POSTCODE

**Contract** is that between the Builder and the **owner** dated:

## Background

The **owner** executed the **contract** at the **guarantor's** request.

The **guarantor** is aware of the **owner's** obligations under the **contract**.

## Operative

### 1. Guarantee

The **Guarantor** guarantees to the **Builder**, the fulfilment of the **Owner's** obligations under the **Contract** including but not limited to the due payment of all moneys arising out of the subject matter of the **Contract**.

### 2. Indemnity

The **Guarantor** indemnifies the **Builder** against any claim, loss or damage arising out of the subject matter of the **contract** caused by or resulting from any non-fulfilment of the **Owner's** obligations under the **Contract**.

### 3. Principal Debtor

The **Guarantor** is deemed to be principal debtor jointly and severally liable with the **Owner** to discharge the **Owner's** obligations under the **Contract**.

### 4. No Merger

The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

### 5. No Release

The **Guarantor** is not discharged by:

- any variation to the **Contract** including a variation to the building works;
- any delay or claim by the **Builder** to enforce a right against the **Owner**; and
- any forbearance given to the **Owner** to perform the **Owner's** obligations under the contract.

### 6. Severability

Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.

**7. When More Than One Guarantor**

If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

**8. Waiver of Rights**

The **Guarantor** waives all rights as surety inconsistent with any of the terms of this Deed or to the detriment or disadvantage of the **Builder**.

**Guarantor's Statement**

I/we understand that the nature, terms and extent of the guarantee and indemnity provided by me/us and further acknowledge that I/we have obtained legal advice prior to executing this Deed.

**Signed as a Deed**

SIGNATURE .....

WITNESS'S NAME AND ADDRESS .....

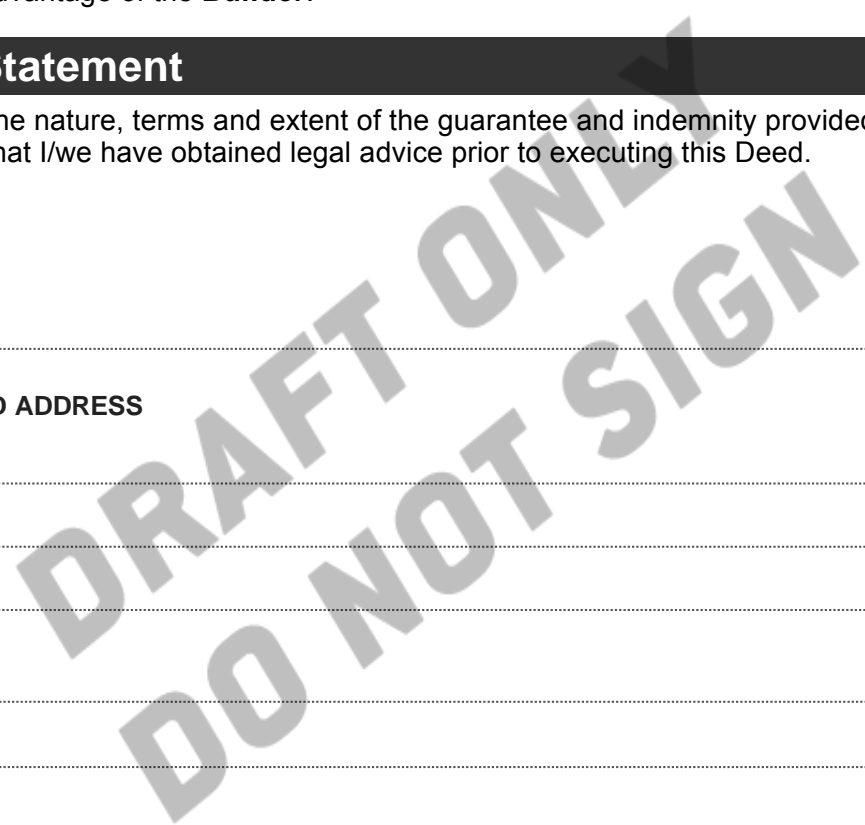
.....

.....

.....

SIGNATURE .....

DATE .....



# General Conditions

## Clause 1. Interpretation

### 1.1 In this **contract**:

'**adverse weather**' means any weather condition that, in the reasonable opinion of the **builder**, prevents work from being carried out in the usual manner;

'**all weather access**' means access in all weather conditions as required by the **builder** for carrying out the **building works**.

'**builder**' means the party named in Item 4 of Schedule 1 and, where appropriate, includes a representative appointed by the **builder**;

'**builder's margin**' means the percentage stated in Item 8 of Schedule 1;

'**building works**' means the **building works** to be carried out, completed and handed over to the **owner** in accordance with this **contract** as shown in the **contract documents** and including **variations**.

'**contract**' means the agreement between the **builder** and the **owner** set out in the **contract documents**;

'**contract documents**' means these general conditions, any special conditions, the plans, the specifications and other documents specified in Item 14 of Schedule 1;

'**contract period**' means the number of calendar weeks or **working days** stated in Item 12 of Schedule 1 as extended by Clause 9;

'**contract price**' means the amount stated in Item 2(a) of Schedule 1, as changed by this **contract**;

'**contract price adjustment**' means an amount that is added to or deducted from the **contract price** under this **contract**;

'**date of practical completion**' means the date that is deemed to be the **date of practical completion** under Clause 26 except where the date is determined by dispute resolution (including litigation) then it is that date;

'**initial period**' means the period stated in Item 15 of Schedule 1;

'**lending body**' means any corporation or institution that lends to the **owner** part of or the whole of the **contract price**;

'**notice of practical completion**' means the notice given by the **builder** to the **owner** under Clause 26;

'**owner**' means the party named in Item 3 of Schedule 1 and includes the **owner's** agents, employees and invitees;

'**practical completion**' means when the **building works** are complete except for minor omissions and defects that do not prevent the **building works** from being reasonably capable of being used for their usual purpose;

'**prime cost item**' means an item (for example a fixture or fitting) that either has not been selected or cannot be costed exactly at the time that the **contract** is entered into and for which the **builder** has made allowance in the **contract price**;

'**provisional sum item**' means an item of work (including labour and materials) which cannot be costed exactly at the time that the **contract** is entered into and for which the **builder** has made allowance in the **contract price**;

*Refer to Clause 14 for when to pay a contract price adjustment.*

*Refer to Clause 26 for practical completion.*

*Refer to Clause 26.*

*Refer to Clause 21.*

*Refer to Clause 21.*

Refer to Clauses 4 and 5.

'**rock**' means material, other than clay or soil, that cannot, in the **builder's** opinion, be readily removed by hand;

'**security account**' means an account described in sub-clause 5.1;

'**site**' means the land described in Item 5 of Schedule 1;

'**stage**' means any of the stages described in Schedule 2;

'**statutory or other authority**' means the principal certifying authority, Local Government, State or Federal Government, or any Government agency that has power to affect the **building works**;

Refer to Clause 17.

'**variation**' means:

(a) an omission, addition or change to the **building works**; or

(b) a change in the manner of carrying out the **building works**;

'**working days**' means days other than Saturdays, Sundays or public holidays;

and like words have corresponding meanings.

- 1.2 In this **contract** the general notes, the table of contents, clause headings and side notes do not form part of this **contract** and cannot be used in its interpretation.

## Clause 2. Builder's obligations

Refer to Clause 38 for statutory warranties.

Refer to Clause 43 for mandatory conditions.

- 2.1 The **builder** must carry out and complete the **building works** in accordance with this **contract**.

## Clause 3. Owner's obligations

- 3.1 The **owner** must pay the **contract price** and other money that becomes payable under this **contract** in the manner and at the times stated in this **contract**.
- 3.2 If there is more than one **owner**:
- (a) the obligations in this **contract** apply to each of them individually and to all of them as a group;
- (b) a quote, notice, claim or any other communication to the **owners** has only to be given to one of the **owners**; and
- (c) to the extent allowed by law, one of the **owners** may sign a quote, notice, instruction, direction or other communication in order to bind all of the **owners** and in doing so is deemed to be signing on behalf of all **owners**.

## Clause 4. Essential matters

Evidence of ownership includes a copy of the certificate of title to the site.

Refer to Clause 5 for the security account.

- 4.1 The **owner** must, within the **initial period**, give the **builder**:
- (a) written proof that the **owner** owns or is otherwise entitled to build on the **site**;
- (b) written details of any encumbrances, covenants, easements and caveats affecting the **site**;
- (c) if required written evidence that the **security account** has been established and the amount required to be paid into the **security account** is held in clear funds;
- (d) if the **owner** is obtaining finance from a **lending body**, written



*The builder does not have to start the works until this Clause is satisfied. Refer to Clause 8.*

advice from the **lending body** that:

(i) the amount of finance, when added to the **owner's** own available funds, is sufficient to pay the **contract price**; and

(ii) the **building works** may commence;

(e) if the **owner** is named in Item 11 of Schedule 1, written evidence of development consent for the **building works**;

(f) if required, written proof that the **owner** has obtained any building approvals and has satisfied any conditions imposed by a **statutory or other authority** where required prior to commencement of work;

(g) if required, written proof that the **owner** has appointed the principal certifying authority and has paid any costs associated with such appointment; and

(h) written proof that all of the **owner's** other statutory obligations that are listed in Item 9 of Schedule 1 have been satisfied.

*The builder may end this contract.*

- 4.2 If the **owner** fails to satisfy all of the above within the **initial period** the **builder** may end this **contract**, by giving the **owner** a written notice to that effect, at any time prior to physical commencement of the **building works**.
- 4.3 If the **builder** so ends this **contract**, the **owner** must pay to the **builder** the price of the services provided and works carried out to the date that this **contract** is ended. The price includes the **builder's margin** applied to the costs incurred by the **builder** which costs include the cost of materials on **site** or already ordered from suppliers that are non-returnable.

## Clause 5. Security account and ability to pay

*This is an essential matter. Refer to Clause 4.*

- 5.1 The **owner**, when requested by the **builder** at any time, must deposit that part of the **contract price** not being supplied by a **lending body** into an account at a bank, building society or a similarly recognised financial institution (to be known as a **security account**). The **security account** must be in the joint names of the **owner** and the **builder** with:
- (a) the **owner** receiving interest, if any, on the money deposited in the account; and
- (b) the **builder** as joint signatory for any withdrawal from the account.
- 5.2 The **owner** must, within 2 **working days** of being requested by the **builder** at any time, give the **builder** written evidence, to the **builder's** satisfaction, of the **owner's** ability to pay all money that is or may become payable to the **builder** under this **contract**.

## Clause 6. Accuracy of contract documents

*Notices are to be given in the manner set out in Clause 40.*

- 6.1 Where the **owner** supplies any **contract document**, the **owner** warrants:
- (a) that **contract document** is accurate; and
- (b) the suitability of the design, materials and methods of working each specified therein.
- 6.2 If either party becomes aware of any error, ambiguity or inconsistency in or between the **contract documents**, that party must, within 2 **working days** of becoming aware, give the other party written notice detailing the problem.
- 6.3 The **owner** must, within 2 **working days** of receiving a notice or becoming aware of a problem, give the **builder** written instructions as to how the **builder** is to proceed with the **building works**.
- 6.4 If the **owner** fails to give the **builder** such written instructions within 2 **working days**, the **builder** may proceed with the **building works** applying

the following order of precedence:

- (a) any special conditions;
- (b) these general conditions;
- (c) the specifications;
- (d) the plans, then
- (e) other documents.

6.5 If:

- (a) compliance with the **owner's** instructions or the order of precedence, as applicable, involves more or less cost than a reasonable builder would have anticipated on the signing of this **contract**; and
- (b) the problem is caused by documents other than those provided by the **builder**,

*For variations refer to Clause 17.*

the **owner** is deemed to have asked the **builder** for a **variation** to carry out that work and the procedure for **variations** in Clause 17 will apply.

6.6 In relation to a document that is:

- (a) supplied by;
- (b) prepared under instruction of; or
- (c) prepared from sketches provided by,

*Indemnity is a legal concept requiring the payment to the other party of all costs and expenses.*

a party, that party indemnifies the other party for all costs, expenses, losses or damages that are incurred by the other party relating to or as a consequence of any claim for breach of copyright or moral right arising from the **builder** carrying out the **building works** in accordance with that document.

6.7 The **builder** owns the copyright in any document prepared by the **builder**.

## Clause 7. Planning and building approvals

- 7.1 The party named in Item 11 of Schedule 1 must obtain and pay for all applications for development consent and/or a complying development certificate for the **building works**.
- 7.2 If the **builder** is named in Item 11 of Schedule 1, the **owner** must provide a signed statement to the effect that the **owner** consents to the **builder** making any application for development consent and/or a complying development certificate in relation to the **building works**.
- 7.3 Notwithstanding that the **builder** may be named in Item 11 of Schedule 1, unless otherwise stated in this **contract**, at all times the **owner** is responsible for the payment of any and all additional fees, charges, taxes, costs and levies, however described, associated with:
  - (a) inspections conducted by the principal certifying authority or its agents, employees and invitees;
  - (b) registrations relating to title to the **site**;
  - (c) planning and building approvals for the **building works**;
  - (d) complying with the conditions of the development consent, including but not limited to payment of infrastructure contributions.

*For variations refer to Clause 17.*

7.4 If the requirements of a **statutory or other authority** necessitate a change to the **building works** the **builder** must inform the **owner** of the change required and ask for a **variation** for the **building works** to comply



with the requirements.

## Clause 8. Commencing the building works

- 8.1 The **builder** is to commence the **building works** within 20 **working days** after the day that:
- (a) the **builder** receives all necessary building permits and planning approvals for the **building works** to commence; or
  - (b) the **owner** satisfies all of the requirements of Clause 4, whichever is later.
- 8.2 The **contract period** commences on the date the **builder** is obliged to commence the **building works** under sub-clause 8.1.

*The builder may commence before the contract period commences.*

## Clause 9. Delays and extensions of time

- 9.1 The **builder** is entitled to a reasonable extension of the **contract period** if the **building works** are delayed by the **builder** suspending the **building works** under Clause 32 or from a cause beyond the sole control of the **builder** including:
- (a) a **variation** or a request for a **variation** by the **owner**;
  - (b) an act of God, fire, explosion, earthquake or civil commotion;
  - (c) **adverse weather**;
  - (d) an industrial dispute;
  - (e) a dispute with adjoining or neighbouring residents or owners;
  - (f) anything done or not done by the **owner**;
  - (g) delays in getting any approvals;
  - (h) a delay in the supply of materials selected by the **owner**;
  - (i) the need for a survey of or other report in relation to the **site**; or
  - (j) the industry shutdown being a 5 week period commencing on or about 22 December in each year.
- 9.2 The **builder** is to give the **owner** written notice of an entitlement to an extension of time detailing both:
- (a) the cause of the delay; and
  - (b) the extension of time,
- within 10 **working days** after becoming aware of both the cause and the extent of the delay.
- 9.3 If the **owner** wishes to dispute the **builder's** entitlement to an extension of time the **owner** must, within 5 **working days** of receiving the **builder's** notice, give the **builder** a written notice:
- (a) disputing the extension of time; and
  - (b) detailing the reasons why the extension of time is disputed.
- 9.4 For every day the subject of an extension of time caused by an act, default or omission of the **owner**, delay damages, being the total of the actual increase in cost to the **builder** to carry out the **building works** plus the **builder's margin** applied to that cost is due and payable to the **builder** on demand.

*For dispute resolution refer to Clause 39.*

*The builder is entitled to extra costs where the owner is responsible for a delay.*

## Clause 10. Survey of the site

- 10.1 If, in the **builder's** opinion, the boundaries of the **site** are unclear, the

**builder** must give the **owner** a written notice asking the **owner** to provide a survey of the **site**.

- 10.2 If the **owner** does not provide a survey within 5 **working days** of the **builder** giving notice the **builder** may, as the **owner's** agent, obtain the survey. The **owner** must pay to the **builder** on demand the total of the price of the survey plus the **builder's margin** applied to that price.

## Clause 11. Site possession and access

- 11.1 The **owner** gives the **builder** exclusive possession of the **site** to carry out the **building works**.

*For variations refer to Clause 17.*

- 11.2 The **owner** must provide **all weather access**. If the **owner** does not provide **all weather access** and the **builder** will be required to carry out further work to achieve such access the **owner** is deemed to have asked the **builder** for a **variation** to carry out that extra work and the procedure for **variations** in Clause 17 applies.

- 11.3 The **owner**, the **owner's** agents and officers of the **lending body**:
- (a) must not hinder;
    - (i) the **builder's** access or possession of the **site**; or
    - (ii) the progress of the **building works**;
  - (b) must not:
    - (i) make inquiry of;
    - (ii) issue directions to; or
    - (iii) give instructions to,
 the **builder's** workers or subcontractors. Communication must only be with the **builder's** nominated person; and
  - (c) may only have access to the **building works** at reasonable times and after giving reasonable prior notice for the purposes of inspecting the progress of the **building works**.

- 11.4 The **builder's** unused materials on the **site** are the property of the **builder**.

## Clause 12. Hidden site conditions

- 12.1 If:
- (a) either party believes that the surface or sub-surface conditions of the site may not support or are likely to affect the **building works**, or
  - (b) **rock** is found at the **site**,

the **builder** may, or must at the **owner's** written request, as the **owner's** agent, retain consultants to report on the **site** conditions and their effect on the **building works** and the cost of every consultant is to be paid by the **owner** as a **contract price adjustment**.

*For variations refer to Clause 17.*

- 12.2 The **builder** must promptly give the **owner** a notice detailing the details of any extra work required and the estimated cost of that work. The **builder** must attach a copy of any report to that notice.

- 12.3 Subject to sub-clause 12.6, the **owner** must:
- (a) within 5 **working days** of receiving the notice under sub-clause 12.2, confirm in writing that the **builder** is authorised to proceed with the extra work as detailed by the **builder** under sub-clause 12.2;
  - (b) pay the **builder** the sum of the total cost of all extra work plus the **builder's** margin applied to that cost at the next progress payment after the work is carried out unless a different time is agreed.

- 12.4 If the **owner** does not give the **builder** written notice under sub-clause 12.3 the **builder** may do either or both of the following:
- suspend the carrying out of the **building works** under Clause 32;
  - end this **contract** and Clause 35 applies.
- 12.5 The **builder** is only entitled to payment for such extra work if the actual **site** conditions differ from those either:
- disclosed or known to the **builder** prior to this **contract** being signed; or
  - shown in the **contract documents**,
- and if the effect of that difference requires more or less work than that which a reasonable builder would have anticipated on the signing of this **contract**.
- 12.6 If the estimated price of the extra work exceeds 5% of the **contract price**, the **owner** may end this contract by giving the **builder** a written notice to that effect within 5 **working days** of receiving the estimated cost from the **builder** under sub-clause 12.2 and sub-clause 12.7 applies.
- 12.7 If the **owner** so ends this **contract**, the **owner** must pay to the **builder** the price of the works carried out to the date that this **contract** is ended. The price includes the **builder's margin** applied to the costs incurred by the **builder** which costs include the cost of materials on **site** or already ordered from suppliers that are non-refundable.

*The owner may end this contract.*

## Clause 13. Other costs

*The contract price may change due to an increased cost.*

- 13.1 If, after this **contract** is signed, a **statutory or other authority** introduces or increases:
- any tax, charge, levy or other regulation; or
  - any requirement that affects the **building works**,
- that causes any cost increase in the cost of the **building works** there is a **contract price adjustment**.

*For contract price adjustments refer to Clause 14.*

*For variations refer to Clause 17.*

- 13.2 If the **builder** is required to do more or less work to comply with a requirement of a **statutory or other authority** the **builder** must ask for a **variation** for the change required and Clause 17 applies.

## Clause 14. Contract price adjustments

- 14.1 A **contract price adjustment** is due and payable at the next progress payment after it arises unless a different time is agreed.
- 14.2 When there is a deletion to the **building works** or substitution of materials resulting in a **contract price adjustment**, the **contract price** will be adjusted at the progress payment of the stage where the **building works** would have been carried out, unless a different time is agreed in writing.

## Clause 15. Progress payments

- 15.1 The **owner** must pay the deposit stated in Item 2(b) of Schedule 1 on the later of the day that:
- this **contract** is signed by the **owner**; and
  - warranty insurance described in Schedule 5 is in force and the **owner** is provided with a certificate of insurance for such insurance.
- The deposit is brought to account with the first progress payment.
- 15.2 The **owner** must pay the **contract price** progressively as claimed by the

**builder.**

- 15.3 The **builder** must give the **owner** a written claim for a progress payment for the substantial completion of each **stage**.
- 15.4 A progress claim is to state:
- the amount claimed and not paid for the **stages** substantially completed;
  - the amount claimed and not paid for **contract price adjustments**;
  - the amount claimed and not paid for **variations**; and
  - the sum of the above amounts.
- 15.5 The **owner** must pay a progress claim within 5 **working days** of the **builder** giving the claim.
- 15.6 Other than in relation to the final progress claim:
- payment of a progress claim is on account only; and
  - the **owner** has no right of set off.

*Payment does not mean that the owner accepts the work is done in accordance with the contract. The owner cannot hold any money back on a progress claim.*

## Clause 16. Interest on late payments

*Interest can be charged on any amount to be paid by the owner to the builder.*

- 16.1 The **builder** may charge the **owner** interest at the rate stated in Item 10 of Schedule 1 from the day on which an amount falls due to be paid to the **builder** up to and including the day that amount is paid.

## Clause 17. Variations

*Variations may change the contract price.*

*Refer to Clause 43 for mandatory conditions.*

*The builder may ask the owner for evidence of ability to pay for the variation.*

- 17.1 A **variation** must be in writing and signed by or on behalf of each party to this **contract**. Either the **owner** or the **builder** may ask for a **variation**.
- 17.2 If the **owner** asks for a **variation**, the **builder** must reply in writing as soon as is reasonable.
- 17.3 The reply is to be either:
- a signed written offer to carry out the **variation** detailing:
    - the work required to carry out the **variation**;
    - the price of the **variation**; and
    - any extension of time to the **contract period** as a result of carrying out the **variation**; or
  - a refusal to carry out the **variation**. The **builder** does not have to give any reasons for refusing to carry out a **variation**.
- 17.4 If the **owner** does not give to the **builder** signed written acceptance of the **builder's** offer within 5 **working days** of the **builder** giving the reply, the **builder's** offer is deemed to be withdrawn
- 17.5 If the price of a **variation** is not agreed prior to it being carried out that price includes:
- the deduction of the reasonable cost of all deletions from the **building works**; and
  - the addition of the total cost of all extra work plus the **builder's** margin applied to that cost.
- 17.6 The price of a **variation** is due and payable at the next progress payment

*The contract price may change as a result of a variation.*



- after it is carried out unless a different time is agreed.
- 17.7 The **owner** must not unreasonably withhold consent to any **variation** which is required for the **building works** to comply with the law or a requirement of any **statutory or other authority**.
- 17.8 The **owner** acknowledges that the colour and grain of timber, granite and other natural materials can vary. The **builder** is to use reasonable endeavours to match the colour or grain of any sample selected by the **owner** but is under no liability if there is a difference and such difference is not a **variation**.

## Clause 18. Excluded items

- 18.1 The **owner** and the **builder** agree that the items set out in Schedule 3 are excluded from this **contract**.

## Clause 19. Materials supplied by owner

*These items should be listed in a contract document.*

- 19.1 The goods and services to be provided by the **owner** must be:

- (a) suitable for inclusion into the **building works**;
- (b) supplied or completed in the time required by the **builder**; and
- (c) completed to the satisfaction of the **builder**.

*For variations refer to Clause 17.*

- 19.2 If the **owner** breaches the above condition the **builder** may elect to either:

- (a) carry out the **building works** without incorporating the goods or services; or
- (b) do either or both of the following:
  - (i) suspend the carrying out of the **building works** under Clause 32;
  - (ii) give to the **owner** a notice of default under Clause 33.

- 19.3 The **builder** is not responsible for the performance and suitability of goods and services provided by the **owner**.

## Clause 20. Specified materials

*For variations refer to Clause 17.*

- 20.1 If any material specified to be used in the **building works** is unavailable when required by the **builder**, the **builder** may ask the **owner** for a **variation** to substitute the use of similar material.

## Clause 21. Prime cost and provisional sum items

*Refer to Schedule 6 or other contract documents for prime cost items.*

- 21.1 The **owner** must give the **builder** written notice of the **owner's** selection of a **prime cost item** within 5 **working days** after the **builder's** request to do so.
- 21.2 If a **prime cost item** selected by the **owner** is unavailable, the **owner** must give the **builder** written notice of an alternative selection within 5 **working days** of the **builder** advising that the item selected is unavailable.
- 21.3 If the **owner** fails to give written notice under sub-clause 21.2, the **builder** may select an alternative item that is similar in quality to the unavailable item.
- 21.4 Each **prime cost item** must have an allowance stated next to it. The allowance is the estimated price to supply the item and does not include an amount for the **builder's** margin.

Refer to Schedule 6 or other contract documents for provisional sum items.

This may change the contract price.

- 21.5 Each **provisional sum item** must have an allowance stated next to it. The allowance is the estimated price of providing the work and does not include an amount for the **builder's margin**.
- 21.6 In relation to each **prime cost item** and **provisional sum item**, if the actual price is:
- (a) less than the allowance, the difference is deducted from the **contract price**;
  - (b) more than the allowance, the total of the difference and the **builder's margin** applied to that difference is added to the **contract price**.
- 21.7 Any adjustment to the **contract price** for a **prime cost item** or a **provisional sum item** is due and payable with the next progress payment, unless a different time is agreed in writing.

## Clause 22. Assignment and subcontracting

- 22.1 Neither party may assign this **contract** or any of their rights, benefits or obligations under this **contract** without the prior written consent of the other party.
- 22.2 The **builder** may subcontract any part of the **building works** but remains responsible for all of the **building works**.

## Clause 23. Risk

- 23.1 While carrying out the **building works** to and including the **date of practical completion**, the **builder** is responsible for loss or damage to the **building works** except to the extent that it is caused or contributed to by an act or omission of the **owner**.
- 23.2 The **builder** is not responsible for loss or damage to the **owner's** property or property for which the **owner** is responsible that is left on the **site**.
- 23.3 The **builder** is not responsible for personal injury, death, property loss or damage caused by war or terrorism. The **owner** is responsible for such injury, death, damage or loss.
- 23.4 The **builder** is not responsible for any loss and damage that the **owner** may incur arising from the **owner** taking early possession in breach of Clause 28.1.
- 23.5 The **builder** must take all reasonable steps to mitigate any loss or damage to the **building works** caused or contributed to by an act or omission of the **owner**.

To mitigate is to take steps to reduce or limit the loss or damage.

## Clause 24. Indemnity

Indemnity is a legal concept by which a person is to reimburse the other person for costs incurred.

- 24.1 Except to the extent limited by another provision of this **contract**, each party indemnifies the other against:
- (a) loss or damage to property (other than the **building works**); and
  - (b) claims in respect of personal injury or death,
- arising out of or as a consequence of a cause or event at that party's risk.

## Clause 25. Insurances

- 25.1 The **builder** must insure against:
- (a) loss or damage to the **building works** and any goods and materials on the **site** relating to the **building works** against theft, fire,

- explosion, lightning, hail, storm and tempest, vandalism, civil commotion and earthquake; and
- (b) public liability for an amount of \$5,000,000 for any one claim.
- 25.2 The above insurance policies must be in place before the **builder** commences the **building works** and must be maintained:
- (a) in the case of the **building works** policy, to and including the **date of practical completion**; and
- (b) in the case of public liability policy, for the duration of the **contract**.
- 25.3 If the **owner** asks, the above insurances must note the names of the **owner** and the **lending body** as being in the class of the insureds under the above insurance policies.
- 25.4 The **builder** must comply with all obligations under workers compensation legislation.
- 25.5 If the **owner** asks for proof of any of the above insurance policies being in place the **builder** must give the **owner** a copy of the certificate of currency relating to the relevant insurance policy.
- 25.6 On the settlement of any claim under the **building works** policy the **builder** is to:
- (a) immediately be paid any part of the settlement moneys relating to loss suffered by the **builder** relating to any work that is the subject of the claim but for which the **owner** has not paid the **builder**; and
- (b) carry out the reinstatement of the **building works** and be paid the balance of the settlement moneys for the reinstatement works.

## Clause 26. Practical completion

*Refer to the definition of practical completion in Clause 1.*

- 26.1 The **builder** must give the **owner** a **notice of practical completion** at least 5 **working days** prior to **practical completion** being reached.
- 26.2 The **notice of practical completion** is to:
- (a) state the **builder's** assessment of the **date of practical completion**;
- (b) state the date and time for the **owner** to meet the **builder** on the **site** to carry out an inspection of the **building works**; and
- (c) have attached the **builder's** final progress claim.
- 26.3 The **owner** must meet the **builder** on the **site** for the inspection at the date and time stated by the **builder** in the **notice of practical completion** or at a date and time otherwise agreed with the **builder** and either:
- (a) pay the amount of the final progress claim; or
- (b) if the **owner** believes that the **building works** have not reached **practical completion** give the **builder** a written notice detailing anything to be done to reach **practical completion**.
- 26.4 If the **owner** pays the amount of the final progress claim under sub-clause 26.3(a) the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**.
- 26.5 If the **owner** gives the **builder** a notice under sub-clause 26.3(b) of work to be completed:
- (a) the **builder** must carry out any work required for **practical completion** and give the **owner** a further **notice of practical completion**;

*The owner is responsible to insure the building works after the day of practical completion.*

*For dispute resolution refer to Clause 39.*

- (b) if the **builder** does not agree that there is any further work to be carried out to reach **practical completion** the **builder**:
- (i) must give the **owner** written notice rejecting the **owner's** notice. In this case, such a notice will also serve as notice of the matters in dispute for the purposes of Clause 39;
  - (ii) is not obliged to carry out any further work on the **site** while the dispute remains unresolved.
- 26.6 If the **owner** does not pay the amount of the final progress claim under sub-clause 26.3(a) or give the **builder** a notice under sub-clause 26.3(b);
- (a) the amount of the final progress claim is deemed to be a debt due and owing from the **owner** to the **builder**;
  - (b) the **date of practical completion** stated in the **notice of practical completion** is deemed to be the **date of practical completion**; and
  - (c) the **owner** acknowledges the **building works** have reached **practical completion**.
- 26.7 On the **owner** paying the final progress claim, the **builder** must give the keys to the **building works** to the **owner**.

## Clause 27. Final certificate

- 27.1 The **builder** is not required to obtain any certificate of occupancy or final inspection certificate relating to the **building works**.

## Clause 28. Early possession

*If this Clause applies the owner is in substantial breach of this contract.*

- 28.1 If the **owner**:
- (a) enters enter into occupation of the **site** or any part of the **site**;
  - (b) takes control of the **building works** or the **site**; or
  - (c) prevents or inhibits the **builder** from carrying out the **building work**,
- without the **builder's** written consent, the **owner** commits a substantial breach of this contract entitling the **builder** to elect to either:
- (d) treat the **owner's** actions as a repudiation of this **contract** and accept that repudiation; or
  - (e) do either or both of the following:
    - (i) suspend the carrying out of the **building works** under Clause 32;
    - (ii) give the **owner** a notice of default under Clause 33.

## Clause 29. Defects liability period

*Refer also to the statutory warranties set out in Clause 38.*

- 29.1 The defects liability period is a period of 13 weeks commencing on and including the **date of practical completion**.
- 29.2 The **owner** may, before the end of the defects liability period, give the **builder** one list of defects in the **building works** that appear after the **date of practical completion**.
- 29.3 The **builder** must rectify defects that are the **builder's** responsibility and which are notified to the **builder** during the defects liability period.



## Clause 30. Liquidated damages

- 30.1 If the **building works** do not reach **practical completion** by the end of the **contract period** the **owner** is entitled to liquidated damages in the sum specified in Item 13 of Schedule 1 for each **working day** after the end of the **contract period** to and including the earlier of:
- the date of **practical completion**;
  - the date this **contract** is ended; or
  - the date the **owner** takes possession of the **site** or any part of the **site**.

## Clause 31. Charge on the site

- 31.1 The **owner** charges the **site** with the due payment to the **builder** of all moneys that are or may become payable under this **contract** to the extent that a court or tribunal has made an order that the **owner** pays that amount to the **builder**.

## Clause 32. Suspension

*The builder may suspend without ending this contract.*

- 32.1 If the **owner** is in breach of this **contract** the **builder** may suspend the carrying out of the **building works**.

- 32.2 The **builder** must give to the **owner** written notice of the suspension and details of the breach.

*The builder must claim an extension of time under Clause 9.*

- 32.3 The **builder** must recommence the carrying out of the **building works** within a reasonable time after the **owner** remedies the breach and gives the **builder** written notice of that fact.

- 32.4 The **builder's** exercise of the right of suspension does not prevent the **builder** from exercising any right to end this **contract** under Clause 33 in regard to the same occurrence.

## Clause 33. Ending the contract - breach

*If there is a dispute consider dispute resolution. Refer to Clause 39.*

- 33.1 A substantial breach of this **contract** by the **builder** includes but is not limited to if the **builder**:
- has its licence cancelled;
  - suspends the carrying out of the **building works** other than under Clause 32.
- 33.2 A substantial breach of this **contract** by the **owner** includes but is not limited to if the **owner**:
- fails to pay any amount by the due date;
  - fails to give evidence of ability to pay as requested;
  - fails to establish and maintain a **security account** if requested;
  - interferes with or obstructs the progress of the **building works**;
  - fails to give or interferes with the **builder's** possession of the **site**;
  - fails to give an instruction or direction required within the time specified.
- 33.3 If a party is in substantial breach of this **contract** the other party may give the party in breach a written notice stating:
- details of the breach; and
  - that, if the breach is not remedied within 10 **working days**, that party is entitled to end this **contract**.

- 33.4 If 10 **working days** have passed since the notice of default is given and the breach is not remedied then the party giving the notice of default may end this **contract** by giving a further written notice to that effect.
- 33.5 All notices to be given under this Clause must be given by registered post or personally.

## Clause 34. Ending the contract - insolvency

- 34.1 Either party may end this **contract** by giving the other party written notice by registered post or personal service if the other party:
- being a person, is or becomes bankrupt; or
  - being a Corporation, is in or goes into liquidation.

## Clause 35. Effect of the builder ending the contract

- 35.1 If the **builder** ends this **contract** under Clause 12, Clause 28, Clause 33 or Clause 34, then at the election of the **builder**, the **owner** must pay as a debt due and payable either:
- the greater of the cost of or the market value of the **building works** to date including the cost of any materials on the **site** or already ordered from suppliers and the cost of quitting the **site** less the amount already paid by the **owner**; or
  - damages.

## Clause 36. Effect of the owner ending the contract

*The owner is under a duty to mitigate any loss.*

- 36.1 If the **owner** ends this **contract** under Clause 33 the **owner** must complete the **building works** and keep records of the cost incurred.
- 36.2 The **owner** must take all reasonable steps to minimise the cost of completing the **building works**.
- 36.3 The **owner** must, within 5 **working days** of the **building works** reaching **practical completion**, give the **builder** a written detailed statement of the costs incurred (including copies of all invoices and receipts) and notice of the date when **practical completion** was reached.
- 36.4 If the costs incurred by the **owner** are:
- more than the unpaid balance of the **contract price** the **builder** must pay the difference to the **owner** within 7 **working days** of receiving the notice from the **owner**; or
  - less than the unpaid balance of the **contract price** the **owner** must pay the difference when giving the notice as a debt due and payable.

## Clause 37. Debt collection costs

- 37.1 The **owner** must pay to the **builder** any debt collection costs, including any legal fees and costs associated with recovering or attempted recovery of an amount under this **contract**.

## Clause 38. Warranties

*These are the warranties that are set out in the Home Building Act.*

- 38.1 To the extent required by the Home Building Act, the **builder** warrants that:
- the **building works** will be performed in a proper and workmanlike manner and in accordance with the plans and the specifications

attached to this **contract**;

(b) 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 this **contract**, those materials will be new;

(c) the **building works** will be done in accordance with, and will comply with, the Home Building Act or any other law;

(d) the **building works** will be done with due diligence and within the time stipulated in this **contract**, or if no time is stipulated, within a reasonable time;

(e) if the **building works** 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 **building works** will result, to the extent of the **building works** conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and

(f) the **building works** and any materials used in doing the **building works** will be reasonably fit for the specified purpose or result, if the **owner** expressly makes known to the **builder**, or other person with express or apparent authority to enter into or vary contractual arrangements on behalf of the **builder**, the particular purpose for which the **building works** are required or the result that the **owner** desires to be achieved, so as to show that the **owner** relies on the **builder's** skill and judgment.

## Clause 39. Dispute resolution

- 39.1 If a dispute arises then a party must give written notice to the other party setting out the matter in dispute.
- 39.2 The **builder** and the **owner** must meet within 10 **working days** of the giving of the notice to attempt to resolve the dispute or to agree on methods of so doing.
- 39.3 If the dispute is resolved the parties must write down the resolution and sign it.
- 39.4 The parties agree that anything done or said in the negotiation cannot be revealed in any other proceeding.

## Clause 40. Notices

- 40.1 Unless otherwise stated in this **contract**, a notice is deemed to be given if the notice is:
- (a) delivered by hand to the other party;
  - (b) posted by ordinary pre-paid mail to the other party's last known address on the day following the day it was posted; and
  - (c) sent by facsimile transmission to the party's last known facsimile number on receiving confirmation of transmission.

## Clause 41. No waiver

- 41.1 Except as provided at law or in equity or elsewhere in this **contract**, none of the provisions of this **contract** may be varied, waived, discharged or released, except with the prior written consent of the parties.

## Clause 42. Severance

- 42.1 Any provision in this **contract** which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this **contract**.

## Clause 43. Mandatory conditions

- 43.1 To the extent required by the Home Building Act and subject to sub-clause 43.2, the **building works** 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);
  - (b) all other relevant codes, standards and specifications that the **building works** are required to comply with under any law; and
  - (c) the conditions of any relevant development consent or complying development certificate.
- 43.2 The **builder** is not liable if the **building works** do not comply with the requirements of sub-clause 43.1 if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of the **owner** (but not by or on behalf of the **builder**); or
  - (b) a design or specification required by the **owner**, if the **builder** has advised the **owner** in writing that the design or specification contravenes sub-clause 43.1.
- 43.3 To the extent required by the Home Building Act:
- (a) all plans and specifications for the **building works** including any **variations** to those plans and specifications form part of this **contract**;
  - (b) any agreement to vary this **contract**, or to vary the plans and specifications for the **building works**, must be in writing and signed by the parties.

# Representation by Agent

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**THIS ONLY APPLIES WHEN ALL PARTIES HAVE COMPLETED AND SIGNED THIS PAGE**

The **owner** and the **builder** agree that:

\_\_\_\_\_

(name)

of

\_\_\_\_\_

(company)

is appointed as agent for the owner.

The agent must provide instructions to the **builder** on behalf of the **owner** as required by this **contract**.

Dated: \_\_\_\_\_

Signed:

Owner

\_\_\_\_\_  
\_\_\_\_\_

Builder

\_\_\_\_\_

Agent

\_\_\_\_\_

# Attachment A

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## Form 1

### Checklist for owners entering building contracts

#### 1 Checklist

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

#### 2 Signatures

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

If you have answered "**No**" to any question in the checklist, you may not be ready to sign the contract.

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

#### 3 Signed copy of contract

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

#### 4 Home warranty insurance

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

#### 5 Owners acknowledgement

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

I/we have completed the checklist and answered "Yes" to all items on it.

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

Signature

---

Name *[print]*

---

Capacity *[print]*

---

Signature

---

Name *[print]*

---

Capacity *[print]*

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# Consumer Building Guide

## Mandatory information for consumers

*This information applies from 15 January 2015, when the majority of the new home building laws commence. A new version of this guide will apply from 1 March 2015 when the provisions related to contracts and progress payments come into effect.*

Builders and tradespeople must give you a copy of this guide before entering into a contract for residential building work costing more than \$5,000.

Read this guide to help protect your rights, carry out your responsibilities and get the most from your building project.

## Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency that regulates residential building work under the *Home Building Act 1989*. Residential building work includes building or trade work on single dwellings, villas, houses and home units.

## What to consider before work starts

### Licensing

Licensing requirements include:

- Tradespeople and builders carrying out residential building work valued at more than \$5,000 must be licensed by NSW Fair Trading.
- Specialist work - like plumbing, air conditioning and refrigeration, electrical work and gasfitting - requires a licence regardless of the value of the work.
- If more than one tradesperson is needed for the work, you need a builder to manage the building project and co-ordinate tradespeople (such as plumbers, painters and carpenters).

Do a licence check by visiting the Fair Trading website or by calling 13 32 20.

## Home Building Compensation Fund

Where work is worth more than \$20,000 (including labour and materials), the builder or tradesperson must not start work until they give you a copy of the Home Building Compensation Fund certificate for your job.

## Approvals

To help your building project go smoothly:

- Check with your local council or an accredited private certifier on approvals your building work needs.
- Engage a building certifier. This is your responsibility, not the builder's. Find or check a certifier at the Building Professionals Board website: [www.bpb.nsw.gov.au](http://www.bpb.nsw.gov.au)

## The contract and payments

The two main types of contract are:

- Fixed price or lump sum - where the builder or tradesperson agrees upfront to a fixed amount for the whole job. Unforeseen changes during construction may affect the final cost.
- Cost plus contract - there is not a final guaranteed cost for the job and the consumer reimburses the builder for direct and indirect costs and fees as the job progresses. This contract should include an estimated budget, timetable for reporting of actual costs and a way of tracking actual costs against the budget.

Residential building work worth more than \$5,000 requires a full home building contract. It must include all of the requirements of the 'small jobs' contract as well as other comprehensive information, including details of the statutory warranties the builder must provide, and the contract price or warning that the contract price is not known. A complete list of contract requirements can be found on our website.

You will generally be required to make progress payments over the course of the construction so the builder can pay for materials and labour as they go.



Any change you need to make to a contract is known as a variation. Variations must be in writing and include the signature of both parties to the contract. Almost all variations impact the contract price.

The maximum deposit you can be asked to pay is 10% if the work is under \$20,000 and 5% if the work is over \$20,000. You should agree with the builder when these are payable before work starts. It is a good idea to include them in the contract.

### Common traps and tricks

Beware of:

- An extremely low quote compared with others; this may indicate that corners are being cut, compromising the quality of the job. It may also indicate that the builder doesn't fully understand what is required.
- 'Sales pitches' putting pressure on you to sign a contract quickly to avoid a price increase.
- A builder who recommends you get an owner-builder permit while they organise all the building work. The builder may be trying to avoid responsibility and may lack the right kind of licence or Home Building Compensation Fund certificate. Note: the Home Building Compensation Fund is the new name for the Home Warranty Insurance scheme.

### When things go wrong

#### Statutory warranties

Builders and tradespeople must guarantee that their work is fit-for-purpose, performed diligently and delivered in a reasonable timeframe, in line with plans and specifications in the contract. Unless otherwise specified, materials should be new and appropriately used. These warranties can be enforced through dispute resolution.

### Resolving a dispute

These steps can help you resolve a dispute:

- Discuss concerns with your builder or tradesperson once you become aware of a problem to clarify any misunderstanding. Follow up with an email or letter.
- Understand acceptable work standards by downloading the *Guide to Standards and Tolerances* from our website
- Contact Fair Trading for free dispute resolution if you and your builder or tradesperson are unable to resolve the dispute.
- Lodge a claim with the NSW Civil and Administrative Tribunal if you remain unsatisfied with the dispute resolution outcome.
- To safeguard your position under the Home Building Compensation Fund let your insurer know as soon as you become aware of defective or incomplete work.

### More information

Browse the Home Building and Renovating section on the Fair Trading website to:

- learn more on your rights and responsibilities
- check a builder or tradesperson's licence details
- find out about dispute resolution
- download free home building contracts
- access Fair Trading publications, and
- subscribe to enews and information, and to access Fair Trading on social media.