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# Victorian New Homes Contract

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OWNERS:

JOB:

EXAMPLE HIA CONTRACT



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

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**NOTICE APPROVED BY THE DIRECTOR OF  
FAIR TRADING AND BUSINESS AFFAIRS  
PURSUANT TO SECTION 31(n)  
OF THE DOMESTIC BUILDING CONTRACTS ACT 1995**

## COOLING OFF PERIOD

NOTICE TO BUILDING OWNER: YOU MAY END THIS CONTRACT WITHIN FIVE CLEAR BUSINESS DAYS AFTER RECEIPT BY YOU OF A SIGNED COPY OF THE CONTRACT BY FILLING IN THE NOTICE BELOW AND GIVING IT TO THE BUILDER IN ONE OF THE FOLLOWING WAYS:

- (1) PERSONALLY;
- (2) LEAVING IT AT HIS OR HER ADDRESS SET OUT IN THE CONTRACT WITH A PERSON WHO APPEARS TO BE AT LEAST 16 YEARS OLD;
- (3) SENDING IT BY PRE-PAID REGISTERED POST TO THE ADDRESS SET OUT IN THIS CONTRACT;
- (4) SENDING IT BY FACSIMILE TO THE FACSIMILE NUMBER (IF ANY) SET OUT IN THIS CONTRACT.



.....  
DETACH ALONG DOTTED LINE

## NOTICE THAT CONTRACT IS ENDED

A Building Owner cannot withdraw from a contract under the Act if:

1. The Builder and the Building Owner have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of the work in relation to the same home or land; OR
2. The Building Owner received independent legal advice from a practicing solicitor concerning the contract before entering into the contract.

To ..... (Builder)

I/We .....

..... give notice under our contract with you that the Contract is ended. Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I/we have previously approved.

Building Owner's signature .....

.....

Date: .....

**NOTICE APPROVED BY THE DIRECTOR OF  
FAIR TRADING AND BUSINESS AFFAIRS  
PURSUANT TO SECTION 31(r)  
OF THE DOMESTIC BUILDING CONTRACTS ACT 1995**

## **CHECKLIST**

### **BEFORE SIGNING THIS LEGALLY BINDING CONTRACT CHECK THIS LIST**

- Has an insurance policy or certificate of currency for builder's insurance been issued and provided to you? If not, the Contract is conditional upon you receiving either an insurance policy or a certificate of currency for builder's insurance. YES or NO
- If this Contract is conditional upon the Building Owner receiving written approval for finance, has the Building Owner obtained such approval? YES or NO

**If you answer "NO" to any of the following questions you are not ready to sign the Contract:**

- Has the Building Owner had this Contract long enough to read and understand it? YES or NO
- Has the Building Owner been provided with evidence that the Builder named in this Contract is registered with the Building Practitioners Board? YES or NO
- Are the price and progress payments clearly stated? YES or NO
- Does the Building Owner understand how the price is calculated and may be varied? YES or NO
- Has the Builder assessed the suitability of the site for the proposed works and if tests are necessary have they been carried out before signing the Contract. YES or NO
- If a Deposit is payable, is it within the legal limit? YES or NO  
The maximum under the Domestic Building Contracts Act is:
  - (i) 10% if the Price is less than \$20,000 or;
  - (ii) 5% if the Price is \$20,000 or more.
- Is the work shown and described clearly in the Contract, plans or specifications and any other relevant documents such as engineering computations or soil report? YES or NO
- Are the Building Owner's special requirements or finishes included in the plans or specifications? YES or NO
- Are the commencement date and completion date clearly stated or capable of being ascertained? YES or NO
- Is the procedure for extensions of time understood? YES or NO
- Are any "provisional sums" or "prime cost items" clearly stated in the schedules and understood? YES or NO
- Is the procedure for variations of plans or specifications understood? YES or NO
- Do you understand the circumstances in which you can end the Contract? YES or NO

**NOTE:** This checklist does not form part of the Contract.  
Read, signed and dated by the Building Owner

.....  
.....

Date: .....

---

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Date	1
Owners	1
Builder	1
The Building works	1
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## Particulars of contract

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### Date

---

This contract is dated the:

### Owners

*If the Owner is a company, a Director's Guarantee must be signed before this Contract is signed. See Deed of Guarantee and Indemnity*

---

NAME  
ADDRESS  
SUBURB STATE POSTCODE  
ABN ACN  
WORK HOME  
FAX MOBILE  
  
EMAIL

### Builder

---

NAME QNV Constructions (VIC) Pty Ltd  
ADDRESS PO Box 3435  
SUBURB Helensvale Town Centre STATE Qld POSTCODE 4212  
ABN 63 109 048 339 ACN 109 048 339  
WORK 07 5556 1200 HOME  
FAX 07 5556 1299 MOBILE

EMAIL kmccowan@qnv.com.au  
BUILDER'S LICENCE NUMBER DBU 33709  
REGISTERED BUILDING PRACTITIONER Shane Sharpin  
HIA MEMBER NUMBER 922055 HIA MEMBERSHIP EXPIRY 31/12/2015

### The Building works (Brief description) as set out in the Specifications and Plans

*These documents must be signed and dated with the Contract.*

---

Low set home constructed from a combination of AAC Rendered Panels and light weight cladding for external walls.

Contract Plans, Internal and External finish schedules are supplied.

The **Specifications** include pages that were prepared and supplied by

There are 5 sheets of **Plans** that were prepared by and supplied by QNV Constructions (VIC) Pty Ltd

There are sheets in the **Engineer's Design/s** and it/they was/were, prepared by for the Builder

### Lending details

---

**Lender 1**  
LENDER



---

ADDRESS  
SUBURB

STATE

POSTCODE

## Warranty/professional indemnity insurer

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INSURER QBE Insurance (Australia) Pty Ltd

ADDRESS 628 Bourke Street

SUBURB Melbourne

STATE

VIC

POSTCODE 3000

PHONE 03 9246 2666

FAX 03 9246 2611

NAME OF INSURED QNV Constructions (VIC) Pty Ltd

1. (a) Except for the Builder's interest in this Contract and the legal requirement for it to be arranged in respect of the **Building Works**, the Builder receives no benefits in relation to arranging such insurance.  
(b) The **Builder** further confirms that such insurance may be arranged with an insurer of the Owner's choice.
2. The cost to the Owner for this insurance is

## The land

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LOT NO (IF APPLICABLE)

Street Address

ADDRESS

SUBURB Cranbourne

STATE

VIC

POSTCODE 3977

The Title Particulars are:

VOLUME NO

FOLIO NO

PLAN OF SUBDIVISION NO

**Covenants, Restrictions and/or Easements of the Land**



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# Schedule 1

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## 1. Time for completion (Clause 10)

*Building works to be carried out by the Owner or the Owner's agent are as listed in Schedule 5.*

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**168 Days** including the following estimates for delays:

- Inclement weather and the effects of inclement weather **7 days**
- Weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work **42 days**
- Other days that are reasonable having regard to the nature of the **Building Work days**

The **Builder** has excluded from the **Contract Price** amounts payable to third parties in relation to the **Building Works**. The work or things listed below are not included in the **Contract Price** and the Builder's reasonable estimate of the amount payable in respect to them are listed as follows:

Item		Estimate
1.	Conveying connection or installation of	
	(a) Gas	
	(b) Electricity	
	(c) Telephone to one point	
	(d) Water	
	(e) Sewage	
2.	Issue of Planning permit	
3.	Issue of building permit	
4.	Other	
	(a)	

## 2. Contract Price (Clause 12)

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**PRICE EXCLUDING GST:** \$ .00  
**GST ON THE ABOVE AMOUNT:** \$ .00  
**THE CONTRACT PRICE IS:** \$ .00

**The contract price is GST inclusive.**

The price of this Contract is not fixed, and may be altered as a result of:

- additional costs caused by any deficiency or conflict within the Contract Documents (Refer to Clause 16);
- additional building permit fees (Refer to Clause 18);
- variations including those required by the council/registered building surveyor (Refer to Clause 21);
- the cost of providing access where applicable (Refer to Clause 26);
- interest on overdue payments (Refer to Clause 31);
- the actual cost of Prime Cost Items and work for which Provisional Sums have been specified exceeding the estimates set out in the Contract (Refer to Clause 33).

---

**Ensure that you fully understand how the clauses dealing with these matters affect the Contract Price**

**WARNING TO OWNER AS TO PRIME COST ITEMS**

It is always better to get a fixed price for all work, However, some fixtures and fittings may need to be selected after the contract is signed e.g. a stove, type of taps etc. If these items are specified as Prime Cost Items the Builder will allow an amount in the Contract Price which should cover the expected cost of the item.

**NOTE:** If the actual cost is more than the amount allowed you will have to pay the extra amount. You may also have to pay the Builder's margin in the extra amount. If this is intended, the margin should be specified, or cannot be claimed unless the Owner agrees in writing to such additional amount. If the Prime Cost is less than that allowed for in the Contract, the difference should be deducted from the Contract Price.

3. **Deposit** (Clause 9)

\_\_\_\_\_  
\$.00 (5.00 % of contract price)

4. **Planning approval** (Clause 19)

\_\_\_\_\_  
**PERSON RESPONSIBLE FOR OBTAINING AND PAYING FOR PLANNING APPROVAL** The Builder  
**NUMBER OF DAYS TO OBTAIN PLANNING APPROVAL** within 7 days of the date of this Contract

5. **Building permit** (Clause 19)

\_\_\_\_\_  
**PERSON RESPONSIBLE FOR OBTAINING AND PAYING FOR BUILDING PERMIT ON BEHALF OF THE OWNER**

The Builder

**NUMBER OF DAYS TO OBTAIN BUILDING PERMIT** within 21 days of:

(a) if planning approval is required the date that the planning approval is received by the person responsible for obtaining the Building Permit; or

(b) if planning is not required, the date of this contract

6. **Percentage if contract is ended** (Clauses 19.4, 21.4)

*(if no percentage stated then 20% to cover the Builder's overheads, supervision and profit)*

\_\_\_\_\_  
20.00%

7. **Number of days to make Progress Payments after stage completed and notice received** (Clause 30)

\_\_\_\_\_  
7 days

8. **Agreed interest for late Progress payments** (Clause 31)

\_\_\_\_\_  
10.00% per annum



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9. **Agreed damages for late completion of the Building Works**

(Clause 40)

*(if nothing stated then \$250 per week)*

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\$250.00 per week

10. **Percentage applicable to extra work** (Clauses 12.2, 17.2, 21.2)

*(if no percentage stated then 20% to cover Builder's overheads, supervision and profit)*

---

20.00%

11. **Lending body finance** (Clause 8.0)

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Finance with approval to be within days from the date of this Contract (14 days unless otherwise agreed)

12. **Agreed damages for delays** (Clause 34.3)

*(if nothing stated then \$250 per week)*

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\$250.00 per week

DRAFT ONLY  
DO NOT SIGN

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## Schedule 2

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### Prime cost items and provisional sum items and allowances

(Refer to procedures in Clauses 12 and 33)

The parties agree that the following allowances are included in the **Contract Price**. The allowances included in the **Contract Price** by the **Builder** for **Prime Cost Items** and **Provisional Sum Items** must be a reasonable estimate of the price for the supply of the item and/or the work to be performed, in accordance with Sections 20, 21 and 22 of the Domestic Building Contracts Act 1995.

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

Item	Quantity	Rate	Allowance	Margin (if nothing stated 20%)

#### Provisional sum items - labour and materials

Item	Quantity	Rate	Allowance	Margin (if nothing stated 20%)

# Schedule 3

## CONSTRUCTION STAGES APPLICABLE TO METHOD 1 PROGRESS PAYMENTS

<b>'Base Stage' means</b>	(a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level; (b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed; (c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured; (d) in the case of a home with a concrete floor, the stage when the floor is completed; (e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured;
<b>'Frame stage' means</b>	the stage when a home's frame is completed and approved by a building surveyor;
<b>'Lock-up stage' means</b>	the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);
<b>'Fixing stage' means</b>	the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position;
<b>'Completion' means</b>	the Building Works are complete in accordance with the Contract Documents.

**NOTE:** This table is prescribed by Section 40 of the Domestic Building Contracts Act 1995. In the case of a Domestic Building Contract that is not listed in the Table, a Builder must not demand or receive any amount or instalment that is not directly related to the progress of the Building Works being carried out under the Contract.

**TABLE**

Type of contract	Percentage of Contract Price	Stage
Contract to build to lock-up	20%	Base Stage
	25%	Frame Stage
Contract to build to fixing stage	12%	Base Stage
	18%	Frame Stage
	40%	Lock-up stage
Contract to build all stages	10%	Base Stage
	15%	Frame Stage
	35%	Lock-up Stage
	25%	Fixing Stage

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# Schedule 3 Method 1

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## PROGRESS PAYMENTS

### Note

Use Method 1 unless the Building Works differ from the usual. If Method 2 is to be used the Owner must read and sign Attachment 1. Delete whichever method is inapplicable.

### Method 1

There are five stages in Method 1. These are described below. Fill in the percentage if the Contract Price and the amount payable for each of the stages applicable to your Contract (for example, if the Contract is to build to lock-up stage, fill in only the first 3 stages and delete the last 2 stages; if the Contract is to complete the Building Works complete all 5 stages).

There are five different types of construction for the Base Stage - refer to Schedule 3. In the space \* provided below fill in (a), (b), (c), (d) or (e) to indicate which type will be used under this Contract.

Stage	Percent
Deposit	
Base Stage	10.00%
Frame Stage	15.00%
Lock-up Stage	35.00%
Fixing Stage	25.00%
Completion	

---

# Schedule 3 Method 2

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## PROGRESS PAYMENTS

### NOTES

Under Method 2 the Builder and the Owner must agree on stages at which Progress Payments must be made. Remember, the Owner must read and sign Form 1 of the Regulations (refer to Attachment 1) before using Method 2.

### FORM 2 OF THE REGULATIONS – REGULATION 12(B)

The parties agree –

- (i) that the Progress Payments fixed by Section 40 of the Domestic Building Contracts Act 1995 do not apply; and
- (ii) that instead the percentage of the Contract Price and amounts payable are as follows:

Stage	Percent	Amount
Deposit	5.00%	\$ .00
Base Stage*	10.00%	\$ .00
Frame Stage	15.00%	\$ .00
Lock Up Stage	35.00%	\$ .00
Fixing Stage	20.00%	\$ .00
Substantial Completion Stage (Including tiling, painting & tapware)	12.50%	\$ .00
Practical Completion Stage	2.50%	\$ .00
<b>Total</b>	<b>100.00%</b>	<b>\$ .00</b>

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# Attachment 1

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## FORM 1 OF THE REGULATIONS - REGULATION 12(A) WARNING TO OWNER - CHANGE OF LEGAL RIGHTS

Section 40 of the Domestic Building Contracts Act 1995 provides that a **Builder** cannot charge more than a fixed percentage of the total **Contract Price** at the completion of each stage of building a home.

The Act also allows the parties to agree in writing to change the stages and the percentage of the **Contract Price** to be paid at the completion for each stage.

There are several ways in which a particular Contract can vary from the normal, and it is these exceptional cases which have caused the law to allow for these changes. Examples would include:

- where it is very expensive to prepare the land for building, for example, where the site is steep or rocky;
- where the house is so large that it will take a long time to complete, and intermediate **Progress Payments** are therefore required;
- where exceptionally expensive finishes are required, meaning that the final stage will represent a much larger portion of the whole price;
- where an architect is engaged to independently assess the value of the completed work for **Progress Payments**.

You should not agree to **Progress Payments** different from that provided in the Act unless your house is unusual in some way and you are **SURE THAT DIFFERENT PROGRESS PAYMENTS ARE NECESSARY** and you understand clearly why the change is needed in the case of your particular house. If you have any doubts, you could contact:

- Housing Industry Association
- The Master Builders' Association of Victoria
- Consumer Affairs Victoria
- Royal Australian Institute of Architects

**I acknowledge that I have read this warning before signing the Contract.**

**Owner**

NAME

SIGNATURE .....

**WHEN METHOD 2 IS TO BE USED FOR PROGRESS PAYMENTS ALL OWNERS MUST SIGN.**



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## Schedule 4

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### SPECIAL CONDITIONS

The Client acknowledges that the Contract Price is based on the information available at the time of producing the contract and is subject to review once upon issue of the Certificate of Title to the Lot.

**DRAFT ONLY  
DO NOT SIGN**



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## Schedule 5

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### EXCLUDED ITEMS

The **Owner** acknowledges that the Contract **Building Works** do not include those items of building work and materials listed below and accepts full responsibility for this work and building materials

**Owner**

NAME

SIGNATURE .....

DRAFT ONLY  
DO NOT SIGN

---

# Signatures

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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

SIGNATURE .....

WITNESS'S  
SIGNATURE .....

WITNESS'S NAME AND ADDRESS

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

## Builder

NAME

SIGNATURE .....

Signed for and on behalf of: QNV Constructions (VIC) 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'

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# Deed of guarantee and indemnity

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## 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 .....

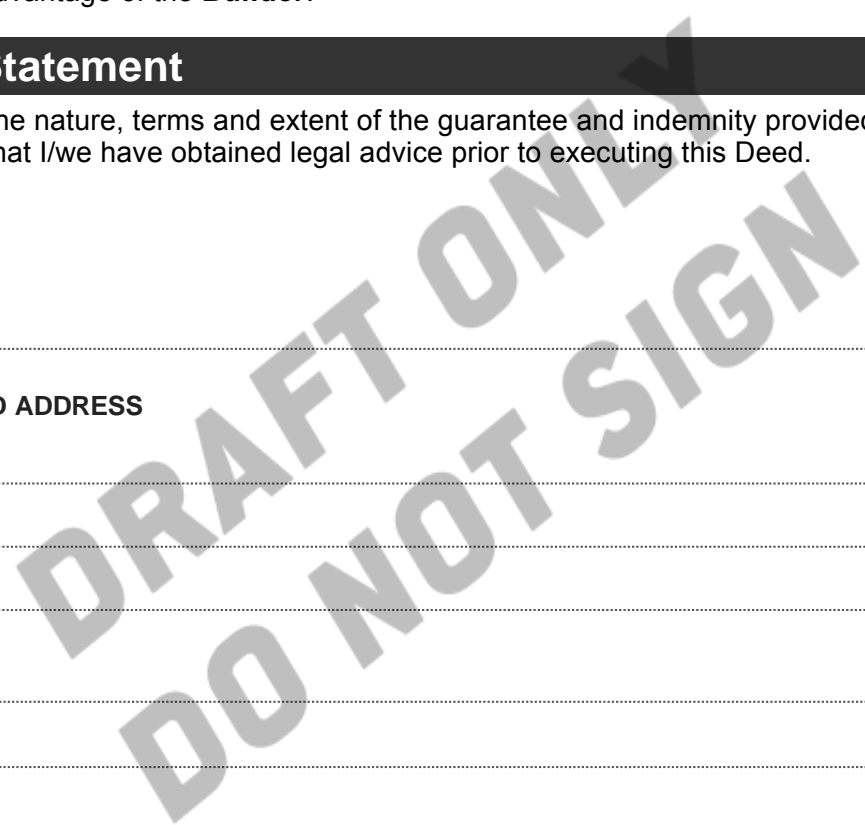
.....

.....

.....

SIGNATURE .....

DATE .....



---

# A. Interpretation

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## Definitions

**NOTE**

Throughout the Contract whenever a defined phrase or word is used it is shown in bold print.

1.0

- '**Builder**' means the person, partnership or company named in the Particulars of Contract.
- '**Building Period**' means the building construction time estimated by the **Builder** to carry out the **Building Works** as stated in Item 1 of Schedule 1, subject to Clause 34
- '**Building Works**' means the works to be carried out and completed by the **Builder** as shown in the **Contract Documents** and as varied in accordance with this Contract.
- '**Building Site**' means the land upon which the **Building Works** are to be carried out.
- '**Business Day**' means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.
- '**Commencement**' means the day on which the **Building Works** commence on the **Building Site**.
- '**Completion**' means that the **Building Works** to be carried out under the Contract have been completed in accordance with the **Plans** and **Specifications** set out in the Contract.
- '**Contract Documents**' means this signed Contract and the Conditions, signed **Specifications**, signed **Plans** and an **Engineer's Design**.
- '**Contract Price**' means the amount show in Item 2 of Schedule 1.
- '**Days**' means calendar days.
- '**Engineer's Design**' includes a footing design or other structural design that has been prepared by a qualified engineer for the concrete footings, stumps, piers or slab construction, or for a particular part of the **Building Works** that require a structural design, drainage design where appropriate and computations accompanying the foregoing.
- '**Final Claim**' means the **Builder's** claim setting out the balance of the **Contract Price** due for payment by the **Owner** to the **Builder**, taking into account all monies paid by the **Owner** and all other amounts to be added to or deducted from the **Contract Price** under this Contract.
- '**Final Payment**' means the payment of the amount of the **Final Claim**.
- '**Foundations Data**' has the same meaning as set out in Section 30 of the Domestic Building Contracts Act 1995.
- '**Land**' means the land containing the **Building Site**.
- '**Lending Body**' means a person or corporation which has agreed or agrees to make a loan to the **Owner** to enable the **Owner** to pay monies which become payable to the **Builder** under this Contract.
- '**Notice of Completion**' means a notice given by the **Builder** pursuant to Clause 36 informing the **Owner** that the **Building Works** have reached **Completion**.

- '**Owner**' means the person, partnership or company named in the Particulars of Contract and wherever appearing in this Contract includes their agents executors and administrators.
- '**Plans**' means the drawings showing the layout and design details of the **Building Works** with dimensions and elevations, including **Engineer's Design**.
- '**Possession**' includes occupancy, use or control.
- '**Prime Cost Item**' means an item (for example, a fixture or fitting) that either has not been selected or whose price is not known at the time which this Contract is entered into and for the cost of supply and delivery which the **Builder** has made allowance for in the **Contract Price**.
- '**Progress Payment**' means a payment that the **Builder** may claim on the completion of a construction stage as detailed in Schedule 3.
- '**Provisional Sum Item**' means an item of work (including labour and materials) for which the **Builder**, after making all reasonable inquiries, cannot give a definite price at the time that this Contract is entered into and which the **Builder** has made allowance for in the **Contract Price**.
- '**Site Access**' means access for delivery and tradesmen's vehicles from the roadway to the **Building Site** on the **Land**.
- '**Site Drainage**' means drains deemed by the **Soil Test Report** that are necessary to protect the **Building Works** from water damage.
- '**Soil Test Report**' means an investigation of the **Building Site** to seek evidence of filling on the **Land**, concealed rock and to establish a depth for the footing excavations.
- '**Specifications**' means the Contract document that shows the full details of the **Building Works** and includes the details of the materials to be supplied.
- '**Statutory or Other Authority**' means the Local Government, State or Federal Government, or any Government Agency or authorised private certifier that has the power to affect the **Building Works**.
- '**Sub-Contractor**' means a person, partnership or company who contracts with the **Builder** to carry out part of the **Building Works**.

## Headings, footnotes, etc.

- 2.0 The headings (but not the explanatory notes) form part of this Contract.

## Contract complete in itself

- 3.0 This Contract is complete in itself and overrides any earlier agreement, whether made verbally or in writing.

## Joint and several obligations

- 4.0 If there is more than one **Owner** under this Contract, their obligations are joint and several.

## Assignment and sub-letting

- 5.0 Either party may assign their rights and duties under this Contract with the written consent of the other.

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## Notices

- 6.0 A notice is given to the person when:
- it is delivered in person;
  - 2 clear **Business Days** have passed after it has been sent by prepaid post to the person; or
  - sent by facsimile (where this service is available).
- 6.1 The parties must notify each other promptly of a change of address.
- 6.2 The notice shall be deemed to have been served if sent to the address, or facsimile, which the party sending the notice reasonably believes to be the current address, or facsimile, of the other party.

## B. Main obligations of the parties

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### Building Act insurance

*NOTE*

*The insurance policy is all of the terms and conditions of the insurance policy and not just the certificate of insurance.*

- 7.0 Where an insurance policy is required under Division 3 of Part 9 of the Building Act in relation to this Contract and it is not issued before this Contract is entered into then until such an insurance policy is issued:
- the **Builder** is not able to enforce any provision of this Contract;
  - the **Building Works** must not commence; and
  - no money (including the deposit) is payable under this Contract.
- 7.1 The **Builder** is to ensure that a copy of that insurance policy is given to the **Owner** within **7 Days** after it is issued.

### Finance

- 8.0 If an amount is inserted in Item 11 of Schedule 1 then this Contract is conditional upon the **Lending Body** providing to the **Owner** written approval of a loan of at least that amount in order to enable the **Owner** to pay to the **Builder** the monies which become payable under this Contract, such approval unless otherwise stated in Item 11 of Schedule 1 to be provided within **14 Days** of the date of this Contract. The **Owner** promises diligently to pursue such written approval.
- 8.1 Should such written approval not be obtained within the time provided, this Contract will be voidable within **7 Days** at the option of the **Owner** to be exercised by notice in writing to the **Builder**, whereupon all monies paid by the **Owner** to the **Builder**, will be refunded except for a sum calculated in accordance with Clause 19.4.

### Deposit

- 9.0 The **Owner** must pay to the **Builder** the deposit set out in Item 3 of Schedule 1 on the later of:
- the signing of this Contract; or
  - the issue of an insurance policy in relation to this Contract under Division 3 of Part 9 of the Building Act.



- 9.1 The amount of the deposit must not be:
- more than 5%, if the **Contract Price** is \$20,000 or more; or
  - more than 10%, if the **Contract Price** is less than \$20,000.

## Commencement and Building period

**NOTE**

*The Building Period may be extended in accordance with Extensions of Time. Refer to Clause 34.*

- 10.0 **Commencement** must occur within 21 **Days** after the **Builder** receives:
- the essential information from the **Owner** (refer to Clause 13);
  - all necessary building permits and planning approvals (refer to Clause 19); and
  - payment of the deposit under Clause 9.
- 10.1 The **Building Period** starts on the actual day of **Commencement**.
- 10.2 The **Builder** will do everything that is reasonably possible to ensure the **Building Works** will start as soon as practicable.

## Statutory warranties

**NOTE**

*The Building Period may be extended due to further unforeseen delays as set out in Clause 34.*

- 11.0 To the extent required by the Domestic Building Contracts Act the **Builder** warrants that:
- the **Building Works** will be carried out in a proper and workmanlike manner and in accordance with the **Plans** and **Specifications** set out in this Contract;
  - all materials to be supplied by the **Builder** for use in the **Building Works** 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;
  - the **Building Works** will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act 1993 and the regulations made under that Act;
  - the **Building Works** will be carried out with reasonable care and skill and will be completed by the end of the **Building Period**;
  - if the **Building Works** consist of the erection or construction of a home, or are **Building Works** intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the **Building Works** are completed; and
  - if this Contract states the particular purpose for which the **Building Works** are required, or the result which the **Owner** wishes the **Building Works** to achieve, so as to show that the **Owner** relies on the **Builder's** skill and judgement, the **Building Works** and any material used in carrying out the **Building Works** will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

## Owner must pay the Contract Price

- 12.0 The **Owner** must pay the **Builder** the **Contract Price** set out in Item 2 of Schedule 1 and other amounts to be paid by the **Owner** under this Contract in accordance with Clause 30 or as otherwise stated in this

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Contract. The **Owner** may be required to pay more if:

- there are additional costs payable by operation of Clause 12.1;
- additional costs are caused by a deficiency or conflict within the **Contract Documents** (refer to Clause 16);
- a survey of the **Land** is needed to determine the correct boundaries of the **Land** (refer to Clause 17);
- additional building permit fees are payable by operation of Clause 18;
- there is a variation to the costs of complying with changed laws (refer to Clauses 21 and 22);
- there is an additional amount to pay for an agreed variation (refer to Clauses 23 and 24);
- the **Owner** is to pay the cost of providing access (refer to Clause 26);
- interest charges apply by operation of Clause 31; or
- there are additional costs associated with **Prime Cost Items** or **Provisional Sum Items** in Schedule 2 (refer to Clause 33).

12.1 Should the following circumstances arise:

- that the authorised person under the Building Act properly requires that a variation to the **Building Works** be made;
- the variation requirement arose as a result of circumstances beyond the **Builder's** control;
- the **Builder** gave a notice pursuant to Clause 23 including a copy of such requirement; and
- the **Owner** does not within 5 **Business Days** of receipt of such notice advise in writing that such variation requirement is disputed,

the **Building Works** are varied by operation of this Sub-Clause in accordance with that requirement and the price for the variation will be charged and paid in accordance with Clause 24.

12.1.1 Subject to Clause 12.1.2, where the requirement relates to costs associated with excavations and/or footings, the **Builder** must make no charge unless the **Builder** has obtained the **Foundations Data** before entering this Contract and the cost could not reasonably have been ascertained from the **Foundations Data**. For the purposes of this Clause, the **Builder** does not have to commission the preparation of **Foundations Data** to the extent that such data exists and it is reasonable for the **Builder** to rely on that data.

12.1.2 Notwithstanding Clause 12.1.1, the **Builder** is entitled to make an extra charge for an amount not already provided for in this Contract if the need for the additional amount could not have been reasonably foreseen had the **Builder** obtained the **Foundations Data**.

12.2 The price for additional excavations and footings, if any, including an amount for the **Builder's** profit and overheads, being the percentage stated in Item 10 of Schedule 1 applied to the cost of that work, is payable with the next **Progress Payment**.

12.3 If there are additional charges associated with Sub-Clause 12.1 which when added to the **Contract Price** increases the **Contract Price** by 15% or more the **Owner** may bring this Contract to an end by giving the **Builder** a written notice, either personally or by registered post.

12.4 If the Contract is brought to an end by the **Owner** under Sub-Clause 12.3, the **Builder** is entitled to a reasonable price for the work carried out under the Contract to the date the Contract is ended.

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## Owner must provide essential information

- 13.0 The **Owner** must give the **Builder** written evidence of the following within 30 **Days** of the date of this Contract to enable **Building Works** to commence:
- satisfactory evidence of the **Owner's** title to the **Land**;
  - full details of any easements, restrictions or covenants which affect the **Land**;
  - satisfactory evidence of the **Owner's** capacity to pay the sum of the **Contract Price** and where monies are to be borrowed, satisfactory written evidence that any loan has been approved by the **Lending Body** and that the mortgage documents have been signed;
  - details of any inspections required by the **Lending Body**;
  - copies of any town planning approval and proof of payment of the relevant fees, where the **Owner** is responsible for obtaining the approval; and
  - where there are existing structures on the **Land** to be removed by the **Owner**, evidence that such structures have been demolished and all debris has been removed.

## C. Before work begins

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### Owner to supply documents

- 14.0 If the **Owner** supplies the **Specifications, Plans** and/or **Engineer's Design** the **Owner** must supply a sufficient number of copies to allow the **Builder** to construct the **Building Works** and to obtain the necessary approvals.

### Copyright

- 15.0 If the **Builder** constructs the **Building Works** in accordance with **Plans** which may incorporate designs which are:
- supplied by the **Owner**;
  - prepared under instruction from the **Owner**; or
  - prepared from sketches supplied by the **Owner**,
- then:
- the **Owner** warrants that the **Owner** has the right to use the design and **Plans** and that no breach of copyright is involved in constructing the **Building Works** in accordance with the **Plans**; and
  - the **Owner** indemnifies the **Builder** in relation to any claim for breach of copyright.
- 15.1 A claim for breach of copyright brought against the **Builder** is a breach of this Contract by the **Owner**.

## Interpretation of Contract Documents

- 16.0 If there is any difference between scaled dimensions and figures on the **Plans**, the figures prevail. If there is any inconsistency between these Contract conditions and related **Contract Documents** they take priority in the following order:
- these Contract conditions;
  - the **Specifications**; then
  - the **Plans**.
- 16.1 If the **Builder** finds any deficiency in the **Plans** or any conflict between the **Plans** and the **Specifications**, the **Builder** must promptly notify the **Owner** in writing. The **Owner** must then advise the **Builder** in writing how to resolve the problem or which document to follow. If the **Owner** does not do so within 7 **Days**, the **Builder** may decide what to do, and must notify the **Owner** in writing within 7 **Days** of the decision or the document that will be followed.
- 16.2 If additional costs will be incurred by reason of the operation of Clause 16.1 the **Builder** must request a variation pursuant to the provisions of Clause 23.2 and the procedure in relation to such variation as set out in Clauses 23 and 24 will apply.
- 16.2.1 Should the **Owner's** consent required by the **Builder** pursuant to Clause 23.4 not be provided by the **Owner** within 7 **Days** of the **Builder's** notice given pursuant to Clause 23.2, then either party may end this Contract within 14 **Days** of the expiration of such 7 **Day** period by written notice given to the other.
- 16.2.2 If this Contract is ended under this Clause then the **Builder** shall be entitled to a reasonable amount calculated in the manner set out in Clause 19.4.
- 16.3 The **Builder** is not entitled to claim for extra costs for errors in **Plans** and/or **Specifications** that the **Builder** has prepared.

## Owner must identify the Land

- 17.0 The **Owner** must show the **Builder** the boundaries of the **Land** and warrants that they are correct and put up a sign on the **Land** showing the **Owner's** name and the lot or street number.
- 17.1 If the **Builder** has a reasonable doubt about whether the boundaries are correct, the **Builder** must notify the **Owner** in writing and the **Owner** must obtain a survey within 7 **Days**.
- 17.2 If the **Owner** does not do so within 7 **Days**, the **Builder** may, as the **Owner's** agent, obtain the survey. The **Owner** must pay to the **Builder** the price of the survey, including an amount for the **Builder's** profit and overheads being the percentage as shown in Item 10 of Schedule 1 applied to the cost of the survey, with the next **Progress Payment**.

## Building permit fees

- 18.0 Unless shown otherwise in Items 4 and 5 of Schedule 1 the **Builder** has included in the **Contract Price** fees payable for the building permit and planning approvals.

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- 18.1 In the case of multiple dwellings where additional fees may be applicable, such as for head works, open space allowances and planning fees, these are not included in the **Contract Price** unless specified in Schedules 1 or 4.
- 18.2 If a building permit fee increases or decreases after the date of this Contract the **Owner** must pay any increase and the **Builder** must credit any decrease and the next **Progress Payment** will be varied accordingly.

## Planning approvals and building permits

### NOTE

*Some Councils have Planning Laws and special requirements that may affect the building of a new home within their municipality. There may be special restrictions on the positioning of the home on the land and/or restrictions on the type and/or colour of exterior building materials.*

- 19.0 The **Owner** is responsible for obtaining and paying for any planning approval that is required unless stated otherwise in Item 4 of Schedule 1. The party obtaining such planning approvals must take all reasonable steps to do so within the time period shown in Item 4 of Schedule 1.
- 19.1 Subject to the receipt of the planning approval and if the **Owner** has not already got the necessary building permits, the **Builder** must apply for them within 14 **Days** after receiving evidence of the **Owner's** title to the **Land** and ability to pay under Clause 13.
- 19.2 If the **Builder** obtains the building permits, the **Builder** must give copies of the permit documents to the **Owner**, if requested to do so.
- 19.3 If the necessary planning approval and/or building permits are not obtained within the time specified in Items 4 or 5 of Schedule 1, then if:
- neither party is at fault, either party may bring this Contract to an end by giving written notice to the other;
  - the **Builder** is at fault, the **Owner** may bring this Contract to an end by giving the **Builder** written notice; or
  - the **Owner** is at fault, the **Builder** may bring this Contract to an end by giving the **Owner** written notice,
- provided that the party who wishes to end this Contract under the conditions of this Clause must do so within 14 **Days** of the expiration of the period set out in Items 4 or 5 of Schedule 1.
- 19.4 If this Contract is ended under this Clause and the **Builder** is not at fault, the **Builder** is entitled to a reasonable price for the work performed, including the costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied to the cost of that work. The price:
- may include an amount for the preparation of **Plans** and **Specifications**, the **Engineer's Design** and **Soil Test Report** - unless these have been allowed for in a separate contract; and
  - must not include an amount for work on the **Building Site** for which planning or building approval was not obtained.

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## Insurance

### NOTE

#### Re Clause 20.4

The Owner should note that the Owner will be liable for loss caused by the Owner or someone for whom the Owner is responsible, i.e. any Sub-Contractors, employees, etc working on the site for the Owner to perform any Building Works which are not included in the Building Works. The Owner should therefore consider insuring against this Public Liability risk.

- 20.0 The **Builder**:
- must insure in the names of the **Builder**, the **Owner** and the **Lending Body** (as stated in the Particulars of Contract), against liability for physical loss, destruction or damage to the **Building Works** and the goods and materials on the **Land** as described in the **Contract Documents**; and
  - must indemnify the **Owner** in respect of and insure against liability for personal injury, death, property loss or damage arising out of the **Building Works**.
- 20.1 The **Builder** must maintain the insurance from the date the **Owner** gives the **Builder Possession** of the **Land** under Clause 25 to the earlier of:
- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
  - the date the **Builder** hands over **Possession** of the **Land**.
- The **Owner** must pay the **Builder** a reasonable amount to cover the pro-rata cost of the insurance for any period during which the **Final Payment** is unreasonably withheld from the date the money is due.
- 20.2 The **Builder** must provide the **Owner** with a current 'Certificate of Currency' within 7 **Days** of **Commencement** of the **Building Works**. The Certificate must show the names of the **Builder**, **Owner**, **Lending Body** and the job address.
- 20.3 The cover for personal injury, death, property loss or damage arising out of the **Building Works** must be for an amount which is not less than \$5 million for any one claim and the **Builder** must include as parties to be insured under the policy, any **Sub-Contractors** who do not provide the **Builder** with evidence of adequate and continuing insurance cover.
- 20.4 The **Builder** is not responsible for, and does not indemnify the **Owner** or the **Owner's** employees or agents or any person claiming through the **Owner** against any loss or liability that arises out of something done or not done by the **Owner** or any person for whom the **Owner** is responsible. The **Owner** indemnifies the **Builder** in relation to such claims.
- 20.5 The **Builder** must be registered with WorkCover to protect any person employed by the **Builder** in carrying out the **Building Works**.

## D. During work

## Variations to statutory laws

### NOTE

Refer to Clause 24 for information relating to Variations requested by the Owner or the Builder.

- 21.0 If the **Plans** and/or the **Specifications** have to be varied to comply with either a change in the law or statutory requirements after this Contract is entered into the **Builder** must not give effect to any variation unless the following circumstances apply:

- 
- a building surveyor or other authorised person under the Building Act 1993 requires in a building notice or building order under that Act that the variation be made;
  - the requirement arose as a result of circumstances beyond the **Builder's** control;
  - the **Builder** included a copy of the building notice or building order in the notice required by the Act; and
  - the **Owner** does not advise the **Builder** in writing within 5 **Business Days** of receiving the notice required by the Act that the **Owner** wishes to dispute the building notice or building order.
- 21.1 The **Owner** and the **Builder** may then agree to vary the **Plans** and the **Specifications** to make them comply or to avoid the need to comply. The variation must be in writing and signed by the **Owner** and the **Builder**. If the **Builder** and the **Owner** do not agree within 7 **Days** to vary the **Plans** and the **Specifications**, they are varied in accordance with the **Builder's** notice under Clause 21.
- 21.2 If the variation involves additional cost, the **Owner** must pay it, plus the percentage specified in Item 10 of Schedule 1. If the variation involves a saving, the saving is to be deducted from the **Contract Price**. In each case, the adjustment is to be made to the next **Progress Payment** to the **Builder**.
- 21.3 If the cost of the variation is greater than 15% of the total of the **Contract Price** and other amounts to be added to or deducted from the **Contract Price** under this Contract;
- the **Owner** may bring this Contract to an end by giving the **Builder** a written notice either personally or by registered post; or
  - the **Builder** may bring this Contract to an end by giving the **Owner** a written notice either personally or by registered post if the **Owner** fails to give written evidence of ability to pay for the variation within 14 **Days** after receiving the **Builder's** notice.
- 21.4 If the Contract is brought to an end by either the **Builder** or the **Owner** under this Clause, the **Builder** is entitled to a reasonable price for work performed to the date this Contract is ended, including costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied to that cost.

## Variations to State or Commonwealth tax laws

- 22.0 The **Owner** must pay to the **Builder** a sum equal to any increase in any tax, duty or charge which takes effect after the date of this Contract and which causes an increase in the cost to the **Builder** in complying with the Contract. Such sum shall be paid by the **Owner** to the **Builder** with the **Final Payment**.

## Requested variations

- 23.0 Either the **Owner** or the **Builder** may ask for the **Building Works** to be varied. The request must be in writing, must be signed and must set out the reason for and details of the variations sought.

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- 23.1 If the **Owner** requests the variation and the **Builder** reasonably believes the variation will not require a variation to any permit and will not cause any delay and will not add more than 2% to the **Contract Price** the **Builder** may carry out the variation.
- 23.2 If the **Builder** requests the variation, the notice given by the **Builder** must state the following further particulars:
- what effect the variation will have on the **Building Works**;
  - if the variation will result in any delays, the **Builder's** estimate of such delays; and
  - the cost of the variation and the effect it will have on the amount payable by the **Owner** under this Contract.
- 23.3 If the **Owner** requests a variation and if the **Builder** has not agreed to carry out the variation under Clause 23.1, the **Builder** must give the **Owner**, within a reasonable time of receiving the notice under Clause 23.0, a notice:
- setting out the particulars listed in Clause 23.2; or
  - stating that the **Builder** refuses or is unable to carry out the variation and stating the reasons therefore.
- 23.4 Subject to Sub-Clause 23.1, the **Builder** must not give effect to any variation unless the **Owner** gives the **Builder** a signed consent to or request for the variation attached to a copy of the notice referred to in Clauses 23.2 or 23.3.
- 23.5 If, within 7 **Days** of the **Builder** giving the **Owner** the notice of particulars under Clause 23.3, the **Owner** does not give the **Builder**:
- a signed request to the variation under Clause 23.4; and
  - written evidence of the **Owner's** ability to pay for the variation,
- the request by the **Owner** for the variation is deemed withdrawn.

## Effect of variations

- 24.0 When a variation has been effected under Clauses 12, 23 or 38:
- if the variation increases the amount to be paid by the **Owner** under this Contract the amount is added to the next **Progress Payment** after the work is done. If it decreases the amount to be paid by the **Owner** under this Contract the amount is subtracted from the next **Progress Payment**;
  - the **Contract Documents** are read as if so varied; and
  - the **Completion Date** or the number of **Days** required to finish the work are read as that date or number of **Days**, as adjusted to take account of the variation.

## Possession

- 25.0 The **Owner** must, within 7 **Days** of receiving a request from the **Builder**, give the **Builder** exclusive **Possession** of the **Land** to carry out the **Building Works**. The **Builder's** right to **Possession** of the **Land** is under a contractual licence only. The **Builder** has the **Owner's** authority to allow or refuse anyone access, and may remove unauthorised people from the **Land**.



- 25.1 The **Owner** or an authorised officer of the **Lending Body** is entitled, after giving the **Builder** reasonable prior notice, to go on the **Land** to inspect the **Building Works** at reasonable times provided that such inspection does not delay or interfere with the progress of the **Building Works**.

## All weather access

- 26.0 The **Owner** must, at the **Owner's** cost, provide the **Builder** with all weather access to the **Building Site** for any vehicle or machinery required for the delivery of materials and for the continued construction of the **Building Works**. The **Owner** acknowledges that the cost of all weather access is not included in the **Contract Price**.

## Owner must not direct Builder's workers

- 27.0 The **Owner**, or an agent acting on behalf of the **Owner** or an officer of the **Lending Body**, must not make inquiry of or give directions to the **Builder's** workers or **Sub-Contractors** on the **Site** or elsewhere.

## Owner must arrange Lending Body inspections

- 28.0 The **Owner** must notify the **Builder** in writing if and when the **Lending Body** will want to inspect the **Building Works** before making a **Progress Payment**. The **Builder** must do everything reasonable to assist the **Lending Body** to inspect the **Building Works**. This includes sending a notice that a stage has been completed to the **Lending Body** at the same time as one is sent to the **Owner**.

## Builder to claim Progress Payments

- 29.0 The **Builder** must give the **Owner** a written claim for each **Progress Payment** when each stage has been completed, as set out in Schedule 3. The claim must set out each of the following:
- the amount paid or to be paid for the stage or stages completed to date;
  - the amount paid or to be paid for, and details of, any variations made and other amounts paid or to be paid by the **Owner** under this Contract;
  - the sum of those amounts;
  - payments that have already been made by the **Owner**; and
  - the total claimed, taking into account the payments already made.

## Owner must make Progress Payment

- 30.0 The **Owner** must pay the amount of a **Progress Payment** set out in Schedule 3 within the number of **Days** set out in Item 7 of Schedule 1 after both:
- the stage has been completed; and
  - the **Owner** has received a written claim for the **Progress Payment**.

- 30.1 If the **Owner** is getting finance from a **Lending Body**, the **Owner** must give the **Lending Body** an authority, while this Contract lasts, to make payment direct to the **Builder** of any amount the **Owner** agrees has become due under this Contract. The **Owner** must notify the **Lending Body** when each stage is completed and the payment is due.

## Builder's right to agreed damages

### NOTE

Section 27 of the Act provides that if the **Owner** fails to pay the **Builder** any amount due under the Contract a Domestic Building Dispute exists between the parties.

- 31.0 If the **Owner** does not pay the amount of a **Progress Payment**, or the **Final Payment**, within 7 **Days** after it becomes due, the **Builder** is entitled to interest on the unpaid amount, at the rate set out in Item 8 of Schedule 1, from the date the payment becomes due until the date the payment is made.

## Unfixed materials on Site

- 32.0 Any unfixed goods or materials on the **Building Site** are the property of the **Builder**.

## Prime Cost Items and Provisional Sum Items

### NOTE

**Prime Cost Items** - Certain fixtures and fittings may need to be selected after the signing of the Contract. These items may include the stove or special kitchen and bathroom products. The **Builder** will allow in the Contract Price an amount which should cover the expected cost, subject to the **Owner's** final selection.

**Provisional Sum Items** - Are items of work (labour and materials) included in the Contract Price for which the **Builder** cannot give a definite price, for example, site excavation, rock removal and concrete footings.

- 33.0 Where the **Owner** is to select any item for a **Prime Cost Item** or a **Provisional Sum Item**, the **Owner** must make the selection within 7 **Days** of receiving a written request to make the selection from the **Builder**.

- 33.1 An allowance for a **Prime Cost Item** does not include amounts for installation, **Builder's** profit and overheads and cartage. These are included in the **Contract Price**.
- 33.2 An allowance for a **Provisional Sum Item** does not include an amount for the **Builder's** profit and overheads. The amount for the **Builder's** profit and overheads is included in the **Contract Price**.
- 33.3 If a **Prime Cost Item** selected by the **Owner** is unavailable, then the **Owner** must specify an alternative item within 7 **Days** of the **Builder's** request to do so, and if the **Owner** fails to comply the **Builder** shall be entitled to select an alternative as near as practical in quality to the original item selected by the **Owner**.

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- 33.4 In relation to each **Prime Cost Item** and **Provisional Sum Item**, if the actual price of supplying the item or providing the work is:
- less than the allowance, the difference is deducted from the **Contract Price**; or
  - more than the allowance, the total of the difference plus the relevant margin or excess stated in Schedule 2 applied to that difference is added to the **Contract Price** and is payable with the **Progress Payment** in which the amount for that item or work is included.
- 33.5 Where there are no further **Progress Payments** to be made, the **Builder** must calculate the amount and notify the **Owner** as soon as possible. The amount of the difference must be paid or allowed with the **Final Payment** as the case may be.
- 33.6 In calculating the amount spent, the **Builder** must pass on normal trade discounts to the **Owner**. This does not include cash or special discounts for bulk purchasing or personal reasons.
- 33.7 The **Builder** must give the **Owner** a copy of any invoice, receipt or other document that shows the cost to the **Builder** of any **Prime Cost Item** or labour and materials that relate to a **Provisional Sum Item**, as soon as practicable after receiving same.
- 33.8 The **Builder** warrants that any allowance for a **Provisional Sum Item** included by the **Builder** in the Contract has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the Contract is made, including the nature and location of the **Building Site**.

## Builder's right to extensions of time

- 34.0 The date for **Commencement** is put back or the **Building Period** is extended if the carrying out of the **Building Works** is delayed due to:
- a variation or a request for a variation by the **Owner** in accordance with Clauses 16, 21, 23 and 24;
  - a suspension of work in accordance with Clause 35;
  - inclement weather or conditions resulting from inclement weather in excess of the **Days** nominated in Schedule 1;
  - disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are not the **Builder's** fault;
  - civil commotion or industrial action affecting the work of tradespeople or the work of a manufacturer or supplier of materials;
  - anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**;
  - a delay in getting any approval, provided that it is not the **Builder's** fault. Refer to clause 19; or
  - any other cause that is beyond the **Builder's** direct control.
- 34.1 The **Builder** is to give the **Owner** a written notice informing the **Owner** of the extension of time. The written notice must state that cause and the extent of the delay.
- 34.2 To dispute the extension of time the **Owner** must give the **Builder** a written notice, including detailed reasons why the **Owner** disputes the claim, within **7 Days** of receiving the **Builder's** notice.

**NOTE**

The amount to be stated in Item 12 of Schedule 1 is negotiable and is to reflect the damage the Builder will suffer as a result of a delay.

The minimum amount that the Builder is entitled to is \$250 per week.

- 34.3 If there is an extension of time due to anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**, the **Builder** is, in addition to any other rights or remedies, entitled to delay damages worked out by reference to the period of time that the **Building Period** is extended and the greater of \$250 per week or that amount set out in Item 12 of Schedule 1. Delay damages will accrue on a daily basis.
- 34.4 The **Owner** must pay any delay damages with the next **Progress Payment**.

## Suspension of work

- 35.0 The **Builder** may suspend the **Building Works** if the **Owner**:
- does not make a **Progress Payment** that is due within 7 **Days** after it becomes due; or
  - is in breach of this Contract.
- 35.1 If the **Builder** suspends the **Building Works**, the **Builder** must immediately give notice in writing by registered post to the **Owner**. The **Owner** must remedy the breach within 7 **Days** after receiving the notice. The **Builder** must recommence the **Building Works** within 21 **Days** after the **Owner** remedies the breach and gives notice of this to the **Builder**.
- 35.2 The date on which the **Building Works** are to be completed is changed and extended to cover the period of suspension.

## E. Completion of the Works

### Final inspection

- 36.0 When the **Builder** considers that the **Building Works** have reached **Completion** the **Builder** is to give to the **Owner**:
- a **Notice of Completion**; and
  - the **Final Claim**.
- 36.1 Notwithstanding any other provision of this Contract, the **Builder** must not demand **Final Payment** until after the **Builder** has given to the **Owner** either:
- a copy of the occupancy permit under the Building Act 1993, if the building permit for the **Building Works** requires the issue of an occupancy permit; or
  - in any other case, a copy of the certificate of final inspection.
- 36.2 The **Builder** and the **Owner** must meet on the **Building Site** within 7 **Days** of the **Owner** receiving the **Notice of Completion** and **Final Claim** to carry out an inspection in accordance with Clause 37.
- 36.3 If the **Owner** does not meet with the **Builder** to inspect the **Building Works** as required by Clause 36.2, the **Owner** must pay the amount of the **Final Claim** within a further period of 7 **Days**.

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- 36.4 If within 7 **Days** after service of the **Notice of Completion** the **Owner** fails to attend an inspection of the **Building Works**, the **Final Payment** is due and payable at the expiration of a further period of 7 **Days**.

## List of defects and Final Payment

- 37.0 When the **Owner** and the **Builder** meet on the **Building Site** to inspect the **Building Works**, the **Owner** is to give the **Builder** a written list of all known defects and incomplete work. The **Builder** and the **Owner** are to sign the list and each must keep a copy.
- 37.1 If the **Owner** does not give the **Builder** a written list or does not list any known defects or incomplete work, the **Owner** must pay the **Final Claim** within a further period of 7 **Days**.
- 37.2 If the **Owner** gives the **Builder** a list of known defects and incomplete work the **Builder** must carry out the work required to rectify any defects or to do any incomplete part of the **Building Works** for the **Building Works** to reach **Completion**.
- 37.3 The **Builder** is to give the **Owner** a written notice when the work under Clause 37.2 has been done.
- 37.4 The **Owner** must pay the **Final Claim** within a further period of 7 **Days** after the **Owner** receives the **Builder's** notice under Clause 37.3.
- 37.5 The fact that the **Owner** pays the **Final Claim** is not evidence that there are no defects or incomplete work nor a waiver of any rights under a statutory warranty.
- 37.6 The fact that the **Builder** signs the list is not an admission that the defects exist or there is incomplete **Building Works**.
- 37.7 'Defect' does not include a defect arising from the fact that something has to be supplied or done by the **Owner**.

## Handover and Final Payment

- 38.0 When the **Owner** pays the **Final Claim** the **Builder** must hand over **Possession** of the **Land** to the **Owner** together with all keys, certificates and warranties in the **Builder's** possession.
- 38.1 If the **Owner** takes **Possession** of the **Land** or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent, the **Owner** commits a substantial breach of this Contract entitling the **Builder** to elect to either:
- treat the **Owner's** action as a repudiation of this Contract and accept that repudiation;
  - give the **Owner** a notice to remedy breach of contract under Clause 42; or
  - accept the **Owner's** actions as a variation of the **Building Works** to omit that part of the **Building Works** not carried out and completed as at the date the **Owner** takes **Possession**.
- 38.2 If the **Owner** breaches (including repudiates) this Contract, nothing in this Clause 38 prejudices the right of the **Builder** to recover damages or exercise any other right or remedy.
- 38.3 If the **Builder** accepts the variation of the **Building Works** under the third paragraph of Clause 38.1, the **Builder** is to give the **Owner** written notice to that effect and the **Builder** may give a **Notice of Completion** and a **Final Claim** under Clause 36.

## Defects within the 3 month period

- 39.0 The **Builder** must fix any additional defects in the **Building Works** that the **Owner** notifies in writing within 3 months from the earlier of:
- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
  - the date the **Builder** hands over **Possession** of the **Land**.
- 39.1 Defects that in the reasonable opinion of the **Builder** affect the safety or security of the **Building Works** or may lead to it being damaged must be fixed by the **Builder** as soon as practicable after notification by the **Owner**.
- 39.2 Other defects must be listed by the **Owner** and given to the **Builder** at the end of the 3 month period. The **Builder** must fix those defects within 21 **Days** after the expiration of the 3 month period or as soon as reasonably practicable.
- 39.3 The **Builder** must fix defects without cost to the **Owner**. The **Builder** must do so in normal working hours or at any time agreed between the **Builder** and the **Owner**. The **Owner** must provide reasonable access to the **Builder**.

## Owner's claim for agreed damages

### NOTES

#### Re Clause 40

The amount used to calculate agreed damages takes into account the expenses that will be incurred by the Owner if the Building Works are not completed on time (for example, rent for alternative housing or interest payments).

The amount to be stated in Item 9 of Schedule 1 is negotiable and should accurately reflect the Owner's estimated expenses. If no amount is stated in Item 9 of Schedule 1, the amount of \$250 per week is allowed to the Owner.

The Building Period shown in Item 1 of Schedule 1 may be extended due to unforeseen delays. Refer to Clause 34.

- 40.0 If the **Building Works** have not reached **Completion** by the end of the **Building Period** the **Owner** is entitled to agreed damages in the sum set out in Item 9 of Schedule 1 for each week after the end of the **Building Period** to and including the earlier of:
- the date the **Building Works** reach **Completion**;
  - the date this Contract is ended; and
  - the date the **Owner** takes **Possession** of the **Land** or any part of the **Land**.
- 40.1 The **Owner** may deduct the amount of any such damages from the **Final Payment**.

## Ending this Contract under bankruptcy or liquidation

- 41.0 Either the **Owner** or the **Builder** may bring this Contract to an end by giving written notice to the other by registered post, if the other becomes bankrupt or assigns his or her estate for the benefit of his or her creditors, or makes a composition or arrangement with them, or, being a corporation

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goes into liquidation (except for the purposes of reconstruction), or has a receiver, manager, mortgagee in possession, administrator or provisional liquidator appointed.

## Builder's right to end this Contract

- 42.0 If the **Owner** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Builder** to recover damages or exercise any other right or remedy.
- 42.1 The **Owner** is in substantial breach of this Contract if the **Owner**:
- does not give the **Builder** any of the essential information required by Clause 13;
  - does not pay a **Progress Payment** as required by Clause 30;
  - takes **Possession** of all or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent; or
  - is otherwise in substantial breach of this Contract.
- 42.2 If the **Owner** is in substantial breach of this Contract the **Builder** may give the **Owner** a written notice to remedy the breach:
- specifying the substantial breach;
  - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Owner**; and
  - stating that if the substantial breach is not remedied as required, the **Builder** intends to end the Contract.
- 42.3 If the **Owner** does not remedy the substantial breach stated in the notice to remedy the breach within 10 **Days** of receiving that notice, the **Builder** may end this Contract by giving a further written notice to that effect.
- 42.4 The **Builder** is not entitled to end this Contract under this Clause when the **Builder** is in substantial breach of this Contract.
- 42.5 If the **Builder** brings this Contract to an end under this Clause, the **Builder** is entitled to the **Contract Price** and other amounts payable by the **Owner** under this Contract, less the cost to the **Builder** of performing the remainder of the **Building Works**. The **Builder** is also entitled to reasonable compensation for any other loss caused by the **Owner's** breach.
- 42.6 Any sum payable by the **Owner** to the **Builder** pursuant to the operation of this Clause is due and payable upon the **Builder** bringing the Contract to an end.

## Owner's right to end this Contract

- 43.0 If the **Builder** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Owner** to recover damages or exercise any other right or remedy.
- 43.1 The **Builder** is in substantial breach of this Contract if the **Builder**:
- suspends the carrying out of the **Building Works**, otherwise than in accordance with Clause 35;
  - has the **Builder's** licence cancelled or suspended; or
  - is otherwise in substantial breach of this Contract.

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- 43.2 If the **Builder** is in substantial breach of this Contract the **Owner** may give the **Builder** a written notice to remedy the breach:
- specifying the substantial breach;
  - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Builder**; and
  - stating that if the substantial breach is not remedied as required, the **Owner** intends to end this Contract.
- 43.3 If the **Builder** does not remedy the substantial breach stated in the notice to remedy the breach within 10 **Days** of receiving that notice, the **Owner** may end this Contract by giving a further written notice to that effect.
- 43.4 The **Owner** is not entitled to end this Contract under this Clause when the **Owner** is in substantial breach of this Contract.

## Owner may get another Builder to finish work

- 44.0 If the **Owner** brings this Contract to an end under Clause 43, then the **Owner's** obligations to make further payment to the **Builder** is suspended for a reasonable time to enable the **Owner** to find out the reasonable cost of completing the **Building Works** and fixing any defects.
- 44.1 The **Owner** is entitled to deduct that reasonable cost calculated under Clause 44.0 from the total of the unpaid balance of the **Contract Price** and other amounts payable by the **Owner** under this Contract if this Contract had not been terminated and if the deduction produces:
- a negative balance - the **Builder** must pay the difference within 7 **Days** of demand; and
  - a positive balance - the **Owner** must immediately pay the difference to the **Builder**.

## Subcontracting

- 45.0 The **Builder** may subcontract any part of the **Building Works** but such subcontracting does not relieve the **Builder** from the **Builder's** obligations under this Contract.

## No waiver

- 46.0 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.

## Severance

- 47.0 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 provisions of this contract.



## F. Disputes, conciliation and tribunal

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If you have a dispute you should first discuss the matter with the other party. Serious disputes can often be avoided by good communication. It is suggested that in the event of a dispute the parties meet as soon as possible and try to resolve the matter through discussions.

Make sure that you understand your obligations under the Contract. If necessary obtain independent advice. If the dispute cannot be resolved informally then either party may refer the dispute to the Building Advice and Conciliation Service (Phone: 1300 557 559) for assistance in negotiating a resolution or for determination by an independent inspector. Alternatively either party may, at any time, make application to the Victorian Civil and Administrative Tribunal (Phone: 9628 9999) for a determination.

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