



210618

JOB No:.....

OWNER:..... Cathy Maree O'Connell

BUILDER:..... Lentelle Homes T/A Jim's Construction Essendon

OWNER'S COPY / BUILDER'S COPY *(circle)*

VICTORIAN DOMESTIC BUILDING CONTRACT



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This Contract has been prepared after the enactment of the Building Legislation Amendment (Consumer Protection) Act 2016 (No. 15 of 2016) (Vic) (the "Building Legislation Amendment"). Whilst some provisions of the Building Legislation Amendment are now in force, the date of commencement of the remaining provisions has not yet been proclaimed. Section 2(2) of the Building Legislation Amendment prescribes a commencement date of no later than 1 July 2017. It is your responsibility to confirm whether the relevant provisions are now in force. You may do so by contacting Registered Builder Network on (03) 9580 0800, visiting www.rbn.com.au, or contacting MurdockCheng Legal Practice on (03) 8899 7870.

COOLING OFF PERIOD

Notice pursuant to Section 31(1)(n) of the Domestic Building Contracts Act 1995

Notice to Building Owner: You may end this **Contract** within five (5) **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 sixteen (16) years old;
3. Sending it by pre-paid registered post to the address set out in the **Contract**; or
4. Sending it by facsimile to the facsimile number (if any) set out in the **Contract**.

The **Owner** cannot withdraw from a contract under the Act if:

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

NOTICE THAT THE CONTRACT IS ENDED

To.....**(Builder)**

I/We.....**(Owner)**

give notice pursuant to the **Contract** with you that the **Contract** is ended.



Owner's Signature:.....

Date: / /

Please refund the **Deposit** less \$100 and any out of pocket expenses incurred by you which I have previously approved.

Signature
Required



Owner(s) Initials / Builder's Initial

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PARTICULARS OF CONTRACT

ITEM 1 – OWNER(S)

Name of First **Owner**: **Cathy Maree O'Connell**

ABN:.....

ACN:.....

Address: **3/11 Lincoln Place**.....

Suburb: **Windsor**..... State: **Vic**..... Postcode: **3181**.....

Telephone No. (Work):..... Telephone No. (Mobile): **0411 113 505**.....

Telephone No. (Home):..... Fax:.....

Email: **catocmelm@hotmail.com LeLe**.....

Name of Second **Owner**:.....

ABN:.....

ACN:.....

Address:.....

Suburb:..... State:..... Postcode:.....

Telephone No. (Work):..... Telephone No. (Mobile):.....

Telephone No. (Home):..... Fax:.....

Email:.....



NOTE: Where the **Owner** is a Company, the Deed of Guarantee and Indemnity on page 60 must be signed by the Directors of the company.

ITEM 2 – BUILDER

Name: **Lentelle Pty Ltd T/A Jim's Construction Essendon**

ABN: **11505253245**

ACN: **077486492**

Address: **21 Anthony Drive**.....

Suburb: **Mount Waverly**..... State: **Vic**..... Postcode: **3149**.....

Telephone No. (Work):..... Telephone No. (Mobile): **0403 531 662**.....

Telephone No. (Home):..... Fax:.....

Email: **deniz.aldemir@jimsconstruction.com.au**.....

Registered Builder Practitioner Licence Number: **DBU 17911**.....

ITEM 3 – WARRANTY INSURANCE

Refer to clause 9.

Insurer providing Domestic Building Insurance (DBI): **VMIA**.....

DBI Policy number (If not available, see clause 9 of the **Contract**):.....

Date of issue of policy:.....



NOTE: The **Builder** must take out Domestic Building Insurance if the **Contract Price** is more than \$16,000.00.



WARNING! From no later than 1 July 2017, a **Builder** is taken not to be covered by the insurance if the name and registration number of that **Builder** specified in the **Contract** is not identical to the name and registration number of the **Builder** specified in the certificate of insurance relating to the **Works**.

ITEM 4 – LAND

Refer to clause 5.

Unit number (if applicable): **3**.....

Street address number: **11**.....

Street name: **Lincoln Place**.....

Suburb: **Windsor**.....

Postcode: **3181**.....

Title details: **Land Description – Lot 3B on Plan of Subdivision 407052N.**.....

Volume: **12210**.....

Folio number: **369**.....

Lot/plan number:.....

Plan of Subdivision Number):.....

Covenants, Restrictions, Easements?

.....
.....

The Owner/s are the registered proprietors of the Land (circle)	<input checked="" type="checkbox"/> YES	NO
---	---	----

Name of registered proprietors:
.....

If the **Owner(s)** are not the registered proprietors of the **Land**, the registered proprietors of the **Land** must grant consent to the **Works** on the **Land** in writing before entering into the **Contract**.

ITEM 5 – FINANCE

Refer to clause 8.

The **Contract** is subject to loan approval (Yes or No): **No**

Name of Lender:.....

Address:.....

Suburb:..... State:..... Postcode:.....

Loan amount:.....

Loan Approval Date:.....

ITEM 6 – DESCRIPTION OF WORKS

New Home

Specify any additional Works: **Demolition of part of existing dwelling, insertion of new structural elements, addition of 2 storeys to existing dwelling and a new carport with living space above.**

ITEM 7 – SPECIFICATIONS

Prepared by	Supplied by	Title or Drawing No	No. of Pages	Date	Revision No.
		Included as attached supplied by builder.			

ITEM 8 – PLANS

Prepared by	Supplied by	Title or Drawing No	No. of Pages	Date	Revision No.
		Included as attached supplied by owner.			

Prepared by	Supplied by	Title or Drawing No	No. of Pages	Date	Revision No.

ITEM 9 – ENGINEER’S DESIGNS

Prepared by	Supplied by	Title or Drawing No	No. of Pages	Date	Revision No.
		Included as attached supplied by owner.			

ITEM 10 – FOUNDATIONS DATA

Refer to clause 13.

Description	Supplied by	Date	Expiry Date
Included as attached supplied by owner.			



NOTE: If the **Works** under a major domestic building contract require the construction or alteration of the footings of a building, or may adversely affect the footings of a building, before entering into the **Contract**, the **Foundations Data** must be obtained in relation to the **Land** as a change to the structural integrity of the building can result in a time and cost blow-out.

ITEM 11 – DEMOLITION WORKS

Refer to clause 12.

Required (<i>circle</i>)	YES <input checked="" type="checkbox"/>	NO
Forms part of the Contract (<i>circle</i>)	YES <input checked="" type="checkbox"/>	NO
Description: <i>Demolition of existing roof and internal plasterboard linings.</i>		

ITEM 12 – COMMENCEMENT DATE

Refer to clauses 6.5 and 22.

Agreed Commencement Date (If no date specified, Commencement Date determined in accordance with clause 22):	
--	--

ITEM 13 – CONSTRUCTION PERIOD

Refer to clauses 23, 24, 25.2 and 28.5.

In calculating the **Construction Period**, the **Builder** has made the following allowances:

CONSTRUCTION PERIOD		CALENDAR DAYS
A.	Inclement Weather and its effect	7
B.	Weekends	56
C.	Public Holidays	6
D.	Rostered Days Off	0
E.	Other Foreseeable Breaks in the continuity of the Works	0
F.	Builder's Holidays	21
G.	Delay that is reasonable having regard to the nature of the Contract OR It is not possible for the Builder to adequately estimate the period of a particular likely delay however the Builder identifies a likely cause of delay to be: possible shortage of materials.	20
H.	Total delay Days (total of A to G)	110
I.	Allowance for Construction Period not including H	107
J.	Total Construction Period (total of A to I)	217



WARNING! The **Builder** is required by section 32 of the *Domestic Building Contracts Act 1995* to set out how many **Days** it has allowed under each of these categories. Penalties apply for not complying with this legislative requirement.



WARNING! The **Builder** must not commence the **Works** prior to the expiry of the Cooling Off Period.

ITEM 14 – CONTRACT PRICE

Refer to clauses 14, 20.1, 21, 25, 26, 27 and 31.

WARNING! CHANGES TO THE CONTRACT PRICE

The **Contract Price** may be adjusted as a result of the following:

- costs incurred as a result of rectifying any deficiency in a **Contract Document** or discrepancy between **Contract Documents** (refer to clause 3.4);
- the cost of a boundary survey (refer to clause 5.4);
- any increase in the fees for planning approvals and building permits (refer to clause 6.7);
- an additional amount for the construction or alteration of the footings where the need for such an amount could not have been ascertained by the **Foundations Data** (refer to clause 13.1);
- the cost of any and all reports obtained and any variation necessitated by **Latent Conditions** (refer to clause 14).
- an amount arising from a delay caused by the **Owner** (refer to clause 18.3);
- an amount for the provision of access to the **Land** which is beyond the reasonable cost which has already been included in the **Contract Price** (refer to clause 20.2);
- interest for late **Progress Payments** (refer to clause 21.8);
- the increase in the price of **Materials** where such increase is more than 10% (refer to clause 21.9);
- variations (refer to clause 25);
- additional costs for **Prime Cost Items** where the actual cost exceeded the amount estimated (refer to clause 26.5); and
- additional costs for **Provisional Sums** where the actual cost exceeded the amount estimated (refer to clause 27.5)



Ensure that you fully understand how these clauses affect the Contract Price.

The **Contract Price** includes **GST** and is:

(amount in words): Four hundred and ninety thousand dollars	\$: 490,000
--	--------------------

ITEM 15 – DEPOSIT

Refer to clause 21.4.

The **Deposit** is [5% or 10% (circle one)] of the **Contract Price**, includes **GST** and is equal to:

(amount in words): Twenty four thousand five hundred dollars.	\$: 24,500
---	------------



WARNING! The sum of the **Deposit** must not be more than 5% of the **Contract Price** if it is \$20,000 or more; OR 10% of the **Contract Price** if it is less than \$20,000.

ITEM 16 – ITEMS INCLUDED IN CONTRACT PRICE

The **Owner** must pay for those items for which amounts are payable to third parties for the **Works** which are not included in the **Contract Price**.

16.1 CONVEYING, CONNECTING OR INSTALLING SERVICES:			
Item	Included in Contract Price (circle Yes or No)	Estimated Cost of Excluded Services (\$)	
Gas	Yes ✓	No	
Electricity	Yes ✓	No	
Telephone	Yes ✓	No	
Water	Yes ✓	No	
Sewerage	Yes ✓	No	
Stormwater	Yes ✓	No	
Other:	Yes	No	

16.2 PERMITS AND APPROVALS:

Refer to clause 6.

Item	Obtained by (circle Owner or Builder)		Included in Contract Price (circle Yes or No)		Estimated Amount if not included in the Contract Price (\$)
Planning	Owner <input checked="" type="checkbox"/>	Builder	Yes	No <input checked="" type="checkbox"/>	
Building	Owner <input checked="" type="checkbox"/>	Builder	Yes	No <input checked="" type="checkbox"/>	

16.3 FIXTURES OR FITTINGS NOT INCLUDED IN THE CONTRACT PRICE BUT SHOWN IN PLANS AND/OR SPECIFICATIONS

Item	Reference to Plans or Specifications and page numbers
See specifications	

ITEM 17 – BUILDER'S MARGIN

Refer to clauses 5.4, 6.3, 13.1, 16.1, 20.3, 26.5, 27.5, 29.5, 30.5 and 31.4.

Margin	If nothing stated
20%	20%

ITEM 18 – PERIOD FOR PAYMENT OF PROGRESS CLAIMS

Refer to clause 21.7.

Number of Days	If nothing stated
7 Days	7 Days

ITEM 19 – PERIOD FOR FINAL PAYMENT

Refer to clause 33.

Number of Days	If nothing stated
7 Days	7 Days after Completion

ITEM 20 – PROGRESS PAYMENT TABLE

Refer to clause 21.6, 21.7 and 21.8.



WARNING! The **Builder** must not demand or recover or retain under a major domestic building contract of a type listed in column 1 of the Table more than the percentage of the **Contract Price** listed in column 2 at the completion of a stage referred to in column 4.

Method 1

Type of contract	% of Contract Price	Amount \$	Payments and stages
Contract to build to Lock-up Stage	5%		Deposit
	20%		Base Stage
	25%		Frame Stage
			Final Payment
	100%		Total
Contract to build to Fixing Stage	5%		Deposit
	12%		Base Stage
	18%		Frame Stage
	40%		Lock-up Stage
			Final Payment
	100%		Total
Contract to build all stages	5%		Deposit
	10%		Base Stage
	15%		Frame Stage
	35%		Lock-up Stage
	25%		Fixing Stage
	10%		Final Payment
	100%		Total

Method 2 – Alternative Progress Payments Table to Section 40 of the Act

FORM 1

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 a contract to agree in writing to change the stages and the percentage of the contract price to be paid at the completion of 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 proportion of the whole price;
- where an architect is engaged to independently assess the value of 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



Signature of Owner.....

You can also contact the **Registered Builder Network**
on (03) 9580 0800 or visit our website at www.rbn.com.au.



FORM 2

Regulation 12(b)

PROGRESS PAYMENTS

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 percentages of the **Contract Price** and amounts payable are as follows—

Name of stage	If this stage is not the same as a stage defined in section 40(1) of the Domestic Building Contracts Act 1995 , what does this stage mean?	Percentage of total Contract Price	\$
Deposit		5%	24,500
Demolition	Demolition works to existing dwelling.	5%	24,500
Base		10%	49,000
Frame Existing Extension	Frame within and above existing dwelling.	10%	49,000
Frame above Carport	Frame above new carport.	10%	49,000
Roof Complete	Completed roof components.	15%	73,500
Cladding Complete	Cladding fixed in place.	15%	73,500
Fixing		20%	98,000
Final		10%	49,000
	Total Contract Price	100%	\$490,000

ITEM 21 – INTEREST RATE APPLICABLE TO LATE PAYMENTS

Refer to clause 21.8.

Rate	If nothing stated
..... 20.....%	The rate fixed pursuant to section 2 of the <i>Penalty Interest Rates Act 1983</i>

ITEM 22 – RATE FOR LIQUIDATED DAMAGES FOR LATE COMPLETION

Refer to clause 34.

Amount Per Week	If nothing stated
\$ 450	\$50.00 per week

ITEM 23 – RATE FOR LIQUIDATED DAMAGES FOR DELAYS CAUSED BY OWNER

Refer to clauses 18.3 and 24.1.

Amount Per Week	If nothing stated
\$ 450	\$50.00 per week

ITEM 24 – MATERIALS TO BE SUPPLIED BY OWNER

Refer to clause 16.

The **Owner** will supply to the **Builder** each of the following items:

1.	See specification.
2.	
3.	
4.	
5.	
6.	

7.	
8.	
9.	
10.	

ITEM 25 – WORK CARRIED OUT BY THE OWNER

Refer to clause 16.

The following **Works** are to be performed by the **Owner**:

1.	None
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

ITEM 26 – SECOND-HAND MATERIALS TO BE SUPPLIED BY BUILDER

Materials supplied by the **Builder** for the **Works** will be good and suitable for the purpose for which the **Materials** are to be used and, unless otherwise stated here, those **Materials** will be new.

Insert below details of any **Materials** to be used that are not new:

1.	None
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

ITEM 27 – PRIME COST ITEMS

WARNING TO THE OWNER AS TO PRIME COST ITEMS!



This is a fixed price **Contract**, however, some items are selected after the date of the **Contract**. These items are called **Prime Cost Items**. Below is a list of the **Builder's** reasonable estimate of the costs to purchase the “builders range” of the **Prime Cost Items**. This has been included in the **Contract Price**. The builders range are the fixtures and fittings normally used in building works. If you have any doubt that the allowance provided is reasonable, you should ask the **Builder** for a sample of a **Prime Cost Item** or ask the **Builder** for its supplier of the **Prime Cost Item**.



NOTE: In some cases, the **Owner** may select **Prime Cost Items** which are of a greater value than the allowance provided. In this case the **Contract Price** will increase and the **Owner** will be required to pay to the **Builder** the increase and the **Builder's Margin** on the increase in the next **Progress Claim**. In other instances, the selected **Prime Cost Item** may be less than the allowance. In this case, the **Builder** is required to deduct the difference between the allowance and the actual cost of the **Prime Cost Item** and provide the **Owner** with a credit in the next **Progress Claim**.

Refer to clause 26.

Description of the Prime Cost Item	Builder's Allowance for Unit cost	Quantity	Total Allowance for Prime Cost Item	Builder's Margin (if nothing stated 20%)

ITEM 28 – PROVISIONAL SUM ALLOWANCES



WARNING! Unless the **Owner** has indicated otherwise (i.e. a preference for a higher grade product), allowances are based on “builders range” products – standard quality items that the **Builder** may buy for a wholesale price. Upgrading from “builders range” selections will incur additional cost to the **Owner** and the **Builder** does not usually buy the higher end product at the same discounted rate.

Refer to clause 27.

Description of the Provisional Sum	Builder's Allowance for Unit cost	Quantity	Total Allowance for Provisional Sum	Builder's Margin (if nothing stated 20%)

ITEM 29 – PUBLIC LIABILITY INSURANCE INDEMNITY

Refer to clause 11.

Amount	If nothing stated
\$ 5 Million	\$ 5 million

ITEM 30 – DEFECTS LIABILITY PERIOD

Refer to clause 35.

Calendar Weeks	If nothing stated
	No Period

OPERATIVE PROVISIONS

1. DEFINITIONS

- 1.1.** Whenever used in the **Contract**, capitalised terms shall have the following meanings ascribed to them:

“AFI” or “Australian Financial Institution” means any of the following Australian entities:

- (a) a body corporate that is an ADI (authorised deposit-taking institution) for the purposes of the *Banking Act 1959*;
- (b) a person who carries on State banking within the meaning of paragraph 51(xiii) of the Constitution;
- (c) a registered entity under the *Financial Sector (Collection of Data) Act 2001*;
- (d) a life assurance company.

“Base Stage” means:

- (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.

“Builder” means the person stated in Item 2 of the **Particulars** as well as assignees and transferees of the **Builder**.

“Builder’s Margin” means the percentage specified in Item 17 of the **Particulars**.

“Business Day” means a day that is not:

- (a) a Saturday or a Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria.

“Commencement Date” means the date specified in Item 12 of the **Particulars** or otherwise determined in accordance with clause 22, on which construction of the **Works** commences.

Completion means the **Works** carried out under the **Contract** have been completed in accordance with the **Plans** and **Specifications** set out in the **Contract**; and the **Owner** is given either a copy of the occupancy permit under the *Building Act 1993* if the **Works** require the issuance of an occupancy permit or a copy of the certificate of final inspection.

"Construction Stage" means the stages of the **Works** being **Base Stage**, **Frame Stage**, **Lock-up** and **Fixing Stage** under the **Progress Payment** method in Item 20 of the **Particulars**.

"Contract" means this signed contract.

"Contract Documents" means the **Contract**, **Plans**, **Specifications**, Engineering Designs, **Foundations Data** and any other documents incorporated by the **Particulars**.

"Construction Period" means the period calculated in Item 13 of the **Particulars**.

"Contract Price" means the total amount payable to the **Builder** by or on behalf of the **Owner** under the **Contract** and is **GST** inclusive.

"Days" means calendar days.

"Defects Liability Period" means the period stated in Item 30 of the **Particulars**.

"Deposit" means the initial sum the **Owner** must pay the **Builder** as stated in Item 15 of the **Particulars** and is **GST** inclusive.

"Electronic Communication" means:

- (a) a communication of information in the form of data, text or images by means of guided and/or unguided electromagnetic energy, which includes email correspondence and short text messaging services; or
- (b) a communication of information in the form of speech by means of guided and/or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

For the avoidance of doubt, **Electronic Communication** includes communication by email and facsimile.

"Final Claim" means the claim made by the **Builder** to the **Owner** at **Completion** for the balance of the **Contract Price** adjusted for all other amounts to be added or deducted pursuant to the **Contract**.

"Final Payment" means the monies due and payable to the **Builder** by the **Owner** for the **Final Claim**.

"Fixing Stage" means 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.

"Foundations Data" means:

- (a) the information concerning the **Land** that a **Builder** exercising reasonable care and skill would need to prepare:
 - (i) a proper footings design for the **Land**; and
 - (ii) an adequate estimate of the cost of constructing those footings; and
- (b) any reports, surveys, test results, **Plans, Specifications**, computations or other information required by the regulations for the purposes of the *Domestic Building Contracts Act 1995*.

"Frame Stage" means the stage when a home's frame is completed and approved by a building surveyor.

"GST" means the goods and services tax as provided for by the **GST Law**.

"Hazardous Building Materials" means:

- (a) asbestos;
- (b) synthetic mineral fibres;
- (c) lead-based paint systems; and
- (d) polychlorinated biphenyls.

"Hazardous Substance" means a substance that:

- (a) is listed on the Hazardous Substance Information System and the concentration of the substance or its ingredients equals or exceeds the concentration cut-off levels listed on the Hazardous Substance Information System that relate to health effects; or
- (b) meets the criteria for a hazardous substance set out in the Approved Criteria for Classifying Hazardous Substances declared by the National Occupational Health and Safety Commission; or
- (c) meets the criteria for hazard classification set out in Part 3 (Health Hazards) of the most recent Globally Harmonized System of Classification and Labelling of Chemicals.

"Inclement Weather" means weather which renders the construction of the **Works** either unreasonable or unsafe.

"Information System" means a system for generating, sending, receiving, storing or otherwise processing electronic communications.

"Land" means the land described in Item 4 of the **Particulars** on which the **Works** are to be carried out.

"Latent Conditions" means physical conditions in the surface or subsurface of the **Land** and its near surrounds; including artificial or man-made obstructions but excluding abnormal weather conditions; which differ materially from the physical conditions that the **Builder** should have expected to encounter based on:

- (a) the examination of the **Contract Documents** and the **Foundations Data**; and
- (b) the inspection of the **Land** and its surroundings.

"Liquidated Damages" means the amount which the **Owner**, where applicable, shall be entitled to recover at the rate specified in Item 22 of the **Particulars** determined in accordance with clause 34, or the amount the **Builder**, where applicable, shall be entitled to recover at the rate specified in Item 23 of the **Particulars**.

"Lock-up Stage" means 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)

"Materials" means the materials necessary for the construction of the **Works**.

"Owner" means the person(s) stated in Item 1 of the **Particulars** as well as a person appointed as an agent of the **Owner**, whose appointment may be made pursuant to Schedule 5 of the **Contract**, and heirs, executors, administrators, assignees and transferees of the **Owner**.

"Particulars" means the **Particulars** forming part of the **Contract** on pages 4 to 22.

"Plans" means the plans listed in Item 8 of the **Particulars**.

"Possession" means when the **Works** are occupied, used or controlled by the **Owner** or by the **Owner's** tenant or agent.

"Prime Cost Item" means an item (for example, a fixture or fitting) that either has not been selected, or the price is not known, at the time the **Contract** is entered into and for the cost of supply and delivery of which the **Builder** must make a reasonable allowance for in the **Contract**.

"Progress Claim" means a claim made by the **Builder** to the **Owner** at the completion of a **Construction Stage**.

"Progress Payment" means the monies due and payable to the **Builder** by the **Owner** for a **Progress Claim**.

"Provisional Sum" is an estimate of the cost of carrying out particular work (including the cost of supplying any **Materials** needed for the work) under the **Contract** for which the **Builder**, after making all reasonable inquiries, cannot give a definite amount at the time the **Contract** is executed.

"Relevant Building Surveyor" means:

- (a) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a municipal building surveyor, means the municipal building surveyor; and

- (b) in relation to an application to, or permit, approval, inspection, direction, notice or order issued or given by, a private building surveyor, means the private building surveyor; and
- (c) in relation to the carrying out by the Victorian Building Authority of the functions of a municipal building surveyor or a function specified in section 205P of the *Building Act 1993*, means the Victorian Building Authority; and
- (d) in relation to the carrying out by a building surveyor authorised under section 191, 192 or 221 of the *Building Act 1993* of the functions of a municipal building surveyor, means the authorised building surveyor.

"Relevant Council" means the council of the municipal district in which the **Land** is situated.

"Specifications" means the specifications listed in Item 7 of the **Particulars**.

"Works" means the work to be carried out under the **Contract** by the **Builder** as shown in the **Plans** and **Specifications** and as varied pursuant to the **Contract**.

2. INTERPRETATION

- 2.1.** In the interpretation of the **Contract**, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of the **Contract**.
 - (b) If the day on which any act, matter or thing is to be done under the **Contract** is not a **Business Day**, the act, matter or thing must be done on the next **Business Day**.
 - (c) A reference in the **Contract** to dollars or \$ means Australian dollars and all amounts payable under this **Contract** are payable in Australian dollars.
 - (d) A reference in the **Contract** to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (e) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to the **Contract**.
 - (f) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (g) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - (h) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.

- (i) References to the word 'include' or 'including' are to be construed without limitation.
- 2.2.** Warnings and Notes contained in the **Contract** are not operative provisions but are inserted as guidelines for the benefit of the respective parties.

3. DISCREPANCIES AND AMBIGUITIES

- 3.1.** In the event that there is a discrepancy, conflict or ambiguity between the **Contract Documents** then the order of precedence in the interpretation of the documents is:
- (a) Special Conditions (if any);
 - (b) the **Contract** including the **Particulars**;
 - (c) **Specifications**;
 - (d) **Plans**; and
 - (e) any other documents specified in the **Particulars**.
- 3.2.** If the **Builder** determines that notwithstanding the operation of clause 3.1, there is a discrepancy between the documents nominated in clause 3.1, or any deficiency or ambiguity in those documents, the **Builder** must provide the **Owner** with written notice specifying such discrepancy, deficiency or ambiguity and the recommendations on how to rectify the discrepancy, deficiency or ambiguity, together with the estimated costs and delay for each recommendation within seven (7) **Business Days** of discovering the discrepancy, deficiency or ambiguity.
- 3.3.** Within seven (7) **Days** of receipt of the notice, the **Owner** must respond to the **Builder** by written notice specifying the preferred recommendation, failing which, the **Builder** may determine the appropriate outcome subject to clause 3.1.
- 3.4.** The **Owner** will be responsible to pay for any costs incurred as a result of rectifying any discrepancy, deficiency or ambiguity in a document nominated in clause 3.1, except where that document was prepared by the **Builder**.
- 3.5.** Where the operation of this clause necessitates a variation, the **Builder** must request a variation pursuant to clause 25. If the **Owner** does not consent to this variation in writing, the **Builder** will be entitled to terminate the **Contract** in accordance with the **Contract**.

4. COOLING OFF PERIOD

- 4.1.** The **Owner** acknowledges that the statutory cooling off period does not apply to the **Contract** if:
- (a) the **Owner** and the **Builder** have previously entered into a major domestic building contract that is in substantially the same terms for the carrying out of work in relation to the same home or land; or
 - (b) the **Owner** received independent advice from an Australian legal practitioner concerning the **Contract** before entering the **Contract**.
- 4.2.** Where the **Contract** is ended within the cooling off period, the **Owner** must pay to the **Builder** any out-of-pocket expenses which the **Builder** has incurred.

5. TITLE TO LAND AND BOUNDARIES OF THE LAND

- 5.1.** The **Owner** must provide to the **Builder** within fourteen (14) **Days** of signing the **Contract**:
- a current copy of the Certificate of Title;
 - where relevant to the **Land**, all **Plans** of Subdivision; and
 - full details of all easements, covenants, interests and/or other restrictions and encumbrances which affect or may affect the **Land**.
- 5.2.** The **Owner** must provide to the **Builder** written documentation showing the boundaries of the **Land** and must erect a sign on the **Land** showing the **Owner's** name and the lot or street number.
- 5.3.** The **Owner** warrants that the evidence of the boundaries of the **Land** is correct and indemnifies the **Builder** accordingly.
- 5.4.** Where the **Owner** does not identify the boundaries of the **Land**, the **Builder** may obtain a survey and the **Owner** is liable to the **Builder** for the price of the survey plus the **Builder's Margin** within fourteen (14) **Days** of the survey having been obtained.

6. PERMITS

- 6.1.** The **Owner** must appoint a private building surveyor or engage a municipal building surveyor and provide the **Builder** with written evidence of such appointment or engagement within fourteen (14) **Days** of the execution of the **Contract**.

WARNING! A **Builder** who has entered into a major domestic building contract or who acts or proposes to act as a domestic builder in relation to domestic building work must not appoint a private building surveyor on behalf of the **Owner** of the **Land** on which the domestic building work is to be carried out.

- 6.2.** The **Owner** is responsible for obtaining and paying for the requisite planning approvals and building permits unless stated otherwise in Item 16.2 of the **Particulars**.
- 6.3.** The party responsible for obtaining the planning approvals and building permits must take all reasonable steps to do so including without limitation giving all necessary documentation to the **Relevant Building Surveyor**.
- 6.4.** If the requisite planning approvals or building permits are not obtained within thirty (30) **Days** of the execution of the **Contract**, then:
- either party may give written notice to the other terminating the **Contract**;
 - the **Owner** must pay to the **Builder** any out-of-pocket expenses which the **Builder** has incurred to the date of the termination, including the **Builder's Margin**; and
 - where the **Owner** has paid the **Builder** the **Deposit**, the **Builder** will refund the excess amount of the **Deposit** within fourteen (14) **Days** of termination.
- 6.5.** The obligation of the **Builder** to commence construction of the **Works** is subject to and conditional upon the requisite planning approvals and building permits having been obtained.

- 6.6.** Where the requisite planning approvals and building permits have been obtained after the **Commencement Date** as specified in Item 12 of the **Particulars**, then the **Construction Period** and date of **Completion** will be extended by the number of **Days** between the **Commencement Date** and the date on which they were obtained.
- 6.7.** The **Owner** is liable to pay to the **Builder** any increase in the fees for planning approvals and building permits after the execution of the **Contract** which the **Builder** will add to the next **Progress Claim**.

7. CONTRACT DOCUMENTS

- 7.1.** Where the **Owner** supplies the **Plans, Specifications**, or other **Contract Documents** specified in the **Particulars**, the **Owner** acknowledges that it is reasonable for the **Builder** to rely on them, and warrants that they are correct. The **Owner** must further supply a sufficient number of copies such documents at no cost to the **Builder**.
- 7.2.** Unless otherwise specified in Item 19 of the **Particulars**, any marketing material or Architectural designs do not form part of the **Contract**.



WARNING! The **Owner** shall provide the **Builder** with all documents held in the **Owner's** possession which may touch or concern the **Land** or the **Works**. This includes any heritage reports and geotechnical reports. Failing to provide essential reports prior to entering into the **Contract** may constitute negligent misstatement.

8. FINANCE

- 8.1.** This clause applies where a sum is specified in Item 5 of the **Particulars**.
- 8.2.** The **Owner** must provide the **Builder** written evidence of having obtained a loan or approval for a loan from an **AFI** for at least the sum specified in Item 5 of the **Particulars** within seven (7) **Days** of the execution of the **Contract**.
- 8.3.** The obligation of the **Builder** to commence the **Works** is subject to having received such evidence.
- 8.4.** Where necessary, the **Owner** must provide to the **Builder** written details of the stage(s) at which the **AFI** will inspect the **Works**. Following this:
- (a) the **Builder** will give notice to both the **Owner** and the **AFI** when such stage(s) have been reached; and
 - (b) the **Owner** will arrange for the inspection of the **Works** by the **AFI**.



WARNING! Where the **Owner** fails to duly arrange for inspections resulting in delay the **Builder** will be entitled to an Extension of Time.

- 8.5.** For the purposes of this clause, the **Works** are not to be assessed by the **AFI** in terms of the value of the **Works** performed, but rather, the **Works** are only assessed against whether the relevant **Construction Stage** has been reached.

9. WARRANTY INSURANCE

- 9.1.** The **Builder** warrants that the insurance required under the *Building Act 1993*, the *Domestic Building Contracts Act 1995*, the **Regulations** and the **Ministerial Orders** has been obtained by the **Builder** and that the policy covers the **Works** to be carried out pursuant to the **Contract**.



- 9.2.** The **Builder** will provide a copy of the insurance policy under this clause to the **Owner** within seven (7) **Days** of the insurance policy being issued.
- 9.3.** The **Builder** will not commence the **Works** or demand payment until the insurance under this clause has been obtained.

10. INSURANCE FOR THE WORKS

- 10.1.** The **Builder** must insure the **Works** and the **Materials** in the name of the **Builder** and the **Owner** against liability for loss or damage.
- 10.2.** The insurance policy under this clause shall be maintained by the **Builder** from no later than the date on which the **Builder** is given access to the **Land** until:
 - (a) the date on which the **Contract** is terminated;
 - (b) **Completion**; or
 - (c) until **Possession** of the **Land** and the **Works** by the **Owner**,
whichever is earlier.
- 10.3.** The insurance policy under this clause will be of an amount equal to the full insurable value of the **Works**.

11. PUBLIC LIABILITY INSURANCE

- 11.1.** The **Builder** must insure against any liability, loss, claim or proceedings for personal injury, death, and loss or damage to property arising out of the **Works** and indemnifies the **Owner**, and all sub-contractors, accordingly.
- 11.2.** Notwithstanding clause 11.1, any act or omission of the **Owner**, the **Owner's** employee or agent, or any person claiming through the **Owner**, occasioning personal injury, death, or loss or damage to property, is an act or omission for which the **Builder** is not liable and for which the **Owner** indemnifies the **Builder**.
- 11.3.** The insurance policy under this clause shall be maintained by the **Builder** from no later than the date on which the **Builder** is given access to the **Land** until:
 - (a) the date on which the **Contract** is terminated;
 - (b) **Completion**; or
 - (c) until **Possession** of the **Land** and the **Works** by the **Owner**,
whichever is earlier.

12. DEMOLITION WORKS

- 12.1.** Where there are existing structures on the **Land**, and it is the **Owner's** responsibility to remove such structures, as set out in Item 11 of the **Particulars**:
 - (a) evidence that such structures have been removed and all debris has been removed must be provided to the **Builder**; and

- (b) such demolition works must be completed as a pre-condition to the **Builder** commencing construction of the **Works**.

12.2. Where **Hazardous Building Materials** and/or **Hazardous Substances** have been removed:

- (a) it is the **Owner's** responsibility to obtain any and all relevant clearance certificates;
- (b) the provider of the clearance certificates must be accredited by the National Association of Testing Authorities Australia; and
- (c) the clearance certificates must be provided to the **Builder** on the **Builder's** request.

13. FOOTINGS AND FOUNDATIONS

13.1. If the **Works** require the construction or alteration of the footings of a building, or may adversely affect the footings of a building, the following applies:

- (a) Before entering into the **Contract**, the **Builder** must obtain **Foundations Data** in relation to the **Land**.
- (b) It is not necessary for the **Builder** to commission the preparation of **Foundations Data** under this clause to the extent that such data already exists and it is reasonable for the **Builder** to rely on that data.
- (c) Notwithstanding clause 13.1(b), where the **Builder** acting reasonably believes that pre-existing **Foundations Data** is incorrect, the **Builder** may provide the **Owner** with a written request to obtain new **Foundations Data** and the **Owner** must provide the **Builder** with such **Foundations Data** within twenty-one (21) **Days**.
- (d) Where the **Owner** supplies the **Foundations Data** to the **Builder**, the **Owner** warrants that the data is accurate and correct, and acknowledges that it is reasonable for the **Builder** to rely on such data.
- (e) The **Builder** must give a copy of any **Foundations Data** obtained by the **Builder** to the **Owner** on payment by the **Owner** of the amount owing in relation to the obtaining of that data by the **Builder**.
- (f) The **Builder** cannot seek from the **Owner** an amount of money not already provided for in the **Contract** if the additional amount could reasonably have been ascertained had the **Builder** obtained all the foundations data required by this clause.
- (g) Nothing in this clause prevents the **Builder** from claiming an amount of money not already provided for in the **Contract** if the need for the additional amount could not reasonably have been ascertained from the **Foundations Data** required by this clause. Where an additional amount could not have reasonably foreseen, the **Builder** will also be entitled to the **Builder's Margin**.

14. LATENT CONDITIONS

14.1. If, during the construction of the **Works**:

- (a) **Latent Conditions** are discovered, or
- (b) the **Builder** reasonably believes that the surface or sub-surface conditions of the **Land** may not support the **Works** such that their structural integrity will be compromised;

then the **Builder** must promptly provide the **Owner** with notice thereof.

14.2. Within three (3) **Days** of receipt by the **Owner** of the notice given under clause 14.1, the **Owner** must advise the **Builder** in writing that the **Owner** wishes to obtain further **Foundations Data**, geotechnical reports, soil tests, and/or other reports on the conditions in the **Land** and the effect of the conditions on the **Plans** and/or **Specifications**.

14.3. The **Owner** must pay the cost of any and all reports obtained for the purposes of this clause and such cost constitutes an increase in the **Contract Price**.

14.4. Where the **Plans** and **Specifications** need to be varied, the **Builder** must request a variation pursuant to clause 25 within seven (7) **Days** or the receipt of all such reports.

14.5. Within seven (7) **Days** of receipt of the notice under clause 14.4, the **Owner** must provide the **Builder** with written notice confirming approval of the variation.

14.6. Where the **Owner** fails to respond within seven (7) **Days** of receipt of the notice under clause 14.4, the **Builder** will be entitled to terminate the **Contract** in accordance with clause 29.

14.7. If the cost of the variation increases the **Contract Price** by 15% or more, the **Owner** may advise the **Builder** through written notice sent by registered post that it wishes to terminate the **Contract** in accordance with clause 31.

15. STATUTORY WARRANTIES

15.1. The **Builder** warrants to the **Owner** as required by section 8 of the *Domestic Building Contracts Act 1995* the following:

- (a) That the **Works** will be carried out in a proper and workmanlike manner and in accordance with the **Plans** and **Specifications** set out in the **Contract**;
- (b) That all **Materials** to be supplied by the **Builder** for use in the **Works** will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the **Contract**, those **Materials** will be new;
- (c) That the **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;
- (d) That the **Works** will be carried out with reasonable care and skill and will be completed by the date (or within the period) specified by the **Contract**;

- (e) That if the **Works** consist of the erection or construction of a home, or is work 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 **Works** have reached **Completion**;
- (f) That if the **Contract** states the particular purpose for which the **Works** are required, or the result which the **Owner** wishes the **Works** to achieve, so as to show that the **Owner** relies on the **Builder's** skill and judgement, the **Builder** warrants that the **Works** and any **Materials** used in carrying out the **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.

15.2. The **Owner** cannot recover from the **Builder** for loss and damage arising from a breach of a warranty where that breach was known, or ought reasonably to have been known, to the **Owner** to exist at the time the **Contract** was executed.

16. MATERIALS SUPPLIED AND INSTALLED BY THE OWNER

16.1. Where the **Owner** arranges for any works to be performed which are additional to the **Works** pursuant to the **Contract**, the **Owner** acknowledges that:

- (a) where such works are not performed by the **Builder**, the **Owner** indemnifies the **Builder** and it is the **Owner's** responsibility to ensure that the **Works** are performed in compliance with the relevant laws, regulations, and codes, including without limitation: Workers Compensation; Public Liability and WorkCover Occupational Health and Safety Laws; and
- (b) where such works are performed by the **Builder**, the **Owner** must pay to the **Builder** the actual cost of those works and the **Builder's Margin**.

16.2. Where the **Owner** supplies any **Materials** for the **Works**, as specified in Item 24 of the **Particulars**, the Owner warrants that the **Materials** are:

- (a) of a merchantable quality;
- (b) fit for their proper purpose;
- (c) compliant with the relevant laws, regulations, and codes; and
- (d) delivered within a reasonable time and in accordance with the **Builder's** construction programme, failing which, any delay in delivery will entitle the **Builder** to an Extension of Time.



WARNING! The **Builder** must give the **Owner** sufficient notice of the due date of delivery for **Materials** supplied by the **Owner**. Where the **Builder** fails to give sufficient notice, the **Owner** is not liable for the delay to the **Works**.

16.3. The warranty under clause 15.1(b) does not apply to items to be supplied by the **Owner**.

16.4. The **Owner** indemnifies the **Builder** against all and any liability with respect to the **Materials** supplied by the **Owner** which are in breach of the warranty provided in clause 16.2.



- 16.5.** Nothing in this clause relieves the **Builder** of its obligations pursuant to section 8 of the *Domestic Building Contracts Act 1995*.

17. BUILDER'S LICENCE

- 17.1.** The **Owner** grants the **Builder** a licence to exclusive possession and occupation of the **Land** to construct the **Works** until the **Builder** has received all monies payable for the **Final Claim**.
- 17.2.** The **Builder** may allow persons required to deal with the **Builder** access to the **Land** in relation to the **Works** including without limitation: sub-contractors; suppliers and employees; or agents of the **Builder**.
- 17.3.** The **Owner** warrants and indemnifies the **Builder** where the **Builder** is unable to obtain access to adjoining properties to the **Land** where access is required for the construction of the **Works**. If the **Builder** cannot reasonably access the **Land** for the construction of the **Works**, then the **Contract** will be deemed frustrated and the **Builder** is entitled to terminate the **Contract**.



WARNING! The **Owner** shall ensure that the adjoining neighbours consent to their property being accessed if access is necessary for the construction of the **Works**. If the **Owner** is uncertain whether access is required, this shall be discussed with the **Builder** before signing the **Contract**.

18. OWNER'S ACCESS TO LAND

- 18.1.** The **Owner**, or a person authorised by the **Owner**, will be granted reasonable access to the **Land** to view any part of the **Works**, subject to the **Owner** or the **Owner's** agent after giving the **Builder** notice.
- 18.2.** A person who is exercising a right of access granted under this clause must not interfere with the construction of the **Works**, including without limitation giving directions or instructions to sub-contractors; suppliers; and employees or agents of the **Builder**.



WARNING! The **Owner** is not permitted to access the **Land** without the consent of the **Builder**. Access to the **Land** without the **Builder's** supervision is a serious breach of the **Builder's** work health and safety insurance policy and can seriously disrupt the progression of the **Works**.

- 18.3.** The **Builder** is not liable for any costs or delays that result from a breach of clause 18.2 where the **Builder** notifies the **Owner** in writing within five (5) **Business Days** of the breach occurring.



Clause 18.3 is a cost escalation clause. Pursuant to section 15 of the *Domestic Building Contracts Act 1995*, the **Owner** must acknowledge that the **Builder** has explained the effect of this clause and place its signature, seal or initials below.

Owner's signature/seal/initial.....



WARNING! The **Owner** should provide the **Builder** with reasonable notice for access to the **Land** in order that the **Builder** may arrange for a site supervisor to meet the **Owner** and the **Owner's** agent to ensure their safety on the **Land**.

- 18.4.** A breach of this clause will constitute a material breach by the **Owner**.

19. SERVICES AND AMENITIES DURING CONSTRUCTION

- 19.1.** Where there are pre-existing services and amenities on the **Land**, the **Builder** shall have the benefit of access to such services and amenities, including without limitation access to water; gas; electricity; and bathrooms during the construction of the **Works**.
- 19.2.** The **Builder** shall have access to such services and amenities free of charge.

20. ALL WEATHER ACCESS

- 20.1.** The **Owner** and the **Builder** acknowledge that the reasonable cost of providing the **Builder** with all weather access to the **Land** for any vehicle or machinery required for the delivery of **Materials**, and for the continued construction of the **Works**, is included in the **Contract Price**.
- 20.2.** Nothing in this clause prevents the **Builder** from claiming an amount of money from the **Owner** for the provision of access to the **Land** which is beyond the estimated reasonable cost, including without limitation the cost incurred due to extreme weather.
- 20.3.** Where an amount is claimed by the **Builder** pursuant to this clause the **Builder** will also be entitled to the **Builder's Margin**.

21. PAYMENT

OWNER'S OBLIGATION TO PAY CONTRACT PRICE

- 21.1.** The **Owner** must pay to the **Builder** the **Contract Price** in accordance with the **Contract**.

ABILITY TO PAY

- 21.2.** The **Owner** must provide the **Builder** with written evidence of the ability to pay the **Contract Price** within 7 (seven) **Days** of execution of the **Contract**.

CONTINUING OBLIGATION OF ABILITY TO PAY

- 21.3.** The **Builder** is entitled to request from the **Owner** evidence of the **Owner's** ability to pay the **Contract Price** at any time during the construction of the **Works**. Any failure or refusal by the **Owner** to provide such evidence constitutes a material breach of the **Contract** by the **Owner**.



WARNING! The **Owner** will be liable to provide evidence of the ability to pay the full **Contract Price** as adjusted in accordance with the **Contract**. The **Owner** should refer to the Warning contained in Item 14 of the **Particulars** listing the possible changes in the **Contract Price**.



OWNER'S OBLIGATION TO PAY DEPOSIT

- 21.4.** The **Owner** must pay the **Builder** the **Deposit** as set out in Item 15 of the **Particulars** upon the execution of the **Contract**.
- 21.5.** The **Builder** cannot receive the **Deposit** until the **Owner** has been provided with a copy of the insurance policy pursuant to clause 9.

PROGRESS PAYMENTS

- 21.6.** The **Builder** must provide the **Owner** with a written **Progress Claim** for a **Progress Payment** after a stage has been completed in accordance with Item 20 of the **Particulars**. The **Progress Claim** must include the following:
- (a) the sum paid or payable by the **Owner** for all stages completed to date;
 - (b) the sum paid or payable by the **Owner** for any variations to the **Contract** to date and details of such variations;
 - (c) the total sum of (a) and (b);
 - (d) the total sum paid by the **Owner**; and
 - (e) the total sum claimed by the **Builder** minus the total sum paid by the **Owner**.
- 21.7.** Upon receipt of the **Progress Claim**, the **Owner** will pay to the **Builder** the sum of the **Progress Claim** as set out in Item 20 of the **Particulars** within the number of **Days** set out in Item 18 of the **Particulars**.
- 21.8.** If the **Owner** fails to make the **Progress Payment** in accordance with this clause, then interest at the rate specified in Item 21 of the **Particulars** on the outstanding amount will accrue from the date that the **Progress Payment** was due until the date that payment has been made in full.

MATERIAL COST INCREASES

- 21.9.** Where the price of **Materials** increases by more than 10% between the date of the execution of the **Contract** and **Completion**, the **Owner** will be liable to pay such increase.



Clause 21.9 is a cost escalation clause. Pursuant to section 15 of the *Domestic Building Contracts Act 1995*, the **Owner** must acknowledge that the **Builder** has explained the effect of this clause and place its signature, seal or initials below.

Owner's signature/seal/initial.....



- (c) unforeseen shortages of **Materials** or Labour;
- (d) proceedings threatened, or taken, by neighbouring owners or residents;
- (e) public works or construction or works being undertaken by neighbouring owners or residents;
- (f) fire, floods or other Acts of God;
- (g) a direction to fix building work issued pursuant to Part IV Div 2 of the *Building Act 1993*;
- (h) unforeseen requirements of the **Relevant Council**, a **Relevant Building Surveyor** or public authority, including without limitation any delay or refusal of any authority to grant or issue any necessary permit;
- (i) an order by the Victorian Civil and Administrative Tribunal pursuant to section 58 of the *Domestic Building Contracts Act 1995*;
- (j) anything else that is beyond the reasonable control of the **Builder** and is not the result of an act or omission on the part of the **Builder**;
- (k) variations or a request for a variation in accordance with clause 25;
- (l) **Completion** has been reached, except for minor defects that do not prevent the **Works** being used for its purpose and for which it is not practical for the **Builder** to rectify for the time being, or as to which the **Builder** has reasonable grounds for delaying the rectification;
- (m) a suspension of the Work by the **Builder** in accordance with clause 28; and/or
- (n) provided that the **Builder** gives notice to the **Owner** as required by clause 18.3, any act or omission on the part of the **Owner**, including the failure to comply with any clause of the **Contract** or any interference with the construction of the **Works** by the **Owner** or by an agent or employee of the **Owner**.

WARNING! It is an offence for the **Builder** to recover from the **Owner** any payment for or in respect of any costs arising from anything done for the purpose of complying with a direction to fix building work issued pursuant to Part IV Div 2 of the *Building Act 1993*.

- 24.2.** The **Builder** must give written notice to the **Owner** within a reasonable time informing of the nature and number of **Days** by which the **Construction Period** will be delayed. The estimated duration of the delay must be fair and reasonable in the circumstances.



NOTE: Schedule 3 of the **Contract** can be used by the **Builder** when issuing a Notice of Extension of Time.

- 24.3.** Within fourteen (14) **Days** of receiving a notice issued under clause 24.2, the **Owner** must respond in writing, stating that the **Owner**:
- (a) accepts the Extension of Time; or
 - (b) rejects the Extension of Time, either wholly or partly, and explain with sufficient detail the basis upon which it is rejected.

- 24.4.** Acceptance by the **Owner** of the Extension of Time will automatically extend the **Construction Period** by the number of **Days** specified in the notice.

22. COMMENCEMENT OF WORKS

- 22.1.** A **Commencement Date** for construction of the **Works** may be specified in Item 12 of the **Particulars**.
- 22.2.** Where no date is specified, the **Builder** will commence construction of the **Works** within twenty-one (21) **Days** of the **Builder's** receipt of the **Deposit** and possession of all of the documents required by the **Contract** being:
- (a) written evidence of the **Owner's** appointment of a private building surveyor or municipal building surveyor;
 - (b) all necessary building permits and planning approvals;
 - (c) written evidence of title to the **Land** and details of any easements, restrictions or covenants which affect the **Land**;
 - (d) written evidence of the **Owner's** ability to pay;
 - (e) demolition of pre-existing structures and removal of all debris; and
 - (f) where applicable, details of any inspections required by an **AFI**.
- 22.3.** The **Builder** must give notice to the **Owner** of the **Commencement Date** within seven (7) **Days** of the commencement of the **Works**.

23. CONSTRUCTION PERIOD

- 23.1.** The **Construction Period** as set out in Item 13 of the **Particulars** will begin on the **Commencement Date** as specified in Item 12 of the **Particulars** or pursuant to the operation of clause 22.2.
- 23.2.** The **Construction Period** may be extended when the **Builder** is entitled to an Extension of Time pursuant to clause 24.
- 23.3.** In calculating the **Construction Period**, the **Builder** has included estimates of the number of **Days** by which **Completion** will be delayed by the categories set out in Item 13 of the **Particulars**.
- 23.4.** Notwithstanding anything to the contrary, where the **Commencement Date** occurs any time between 11-25 December, the **Commencement Date** will be deemed instead to occur on the second Monday of January the following year, unless otherwise agreed by the parties.

24. EXTENSION OF TIME

- 24.1.** The **Builder** is entitled to an Extension of Time where **Completion** is delayed by one or more of the following:
- (a) **Inclement Weather** and its effect over and above the number of **Days** estimated by the **Builder** in Item 13 of the **Particulars**;
 - (b) lock outs, strikes or industrial disputes affecting the **Works**; including without limitation, the **Builder's** employees, or manufacturers and suppliers of **Materials**;

- 24.5.** Failure by the **Owner** to respond to the notice in accordance with clause 24.3 will automatically extend the **Construction Period** by the number of **Days** specified in the notice.
- 24.6.** Rejection by the **Owner** of the Extension of Time will constitute a Dispute which may be referred to the Dispute Resolution Procedure in the **Contract**.
- 24.7.** Where the **Owner** rejects the Extension of Time, and the cause of the delay is due to an event mentioned in this clause, the **Builder** is entitled to a fair and reasonable extension of time.



WARNING! Where the Extension of Time is due to a variation pursuant to clause 25 and the **Owner** rejects the Extension of Time, the **Builder** may not perform the variation.

25.VARIATIONS

- 25.1.** Either the **Owner** or the **Builder** may request a variation of the **Plans or Specifications**.
- 25.2.** When a variation has been effected pursuant to this clause:
- the **Plans or Specifications** is to be read as a reference to them as varied; and
 - the **Contract Price** is to be read as a reference to the **Contract Price** as adjusted to take account of the variation; and
 - the **Construction Period**, is to be read as a reference to that date, or number of **Days**, as adjusted to take account of the variation.
- 25.3.** If the variation increases the **Contract Price**:
- payment will fall due at the next **Progress Payment**; and
 - the **Builder** reserves the right prior to the signing and carrying out of any variation to have the **Owner** provide satisfactory evidence of the ability to pay such variation.
 - The **Builder** may request a deposit of no more than:
 - 5% of the cost of a variation where the **Contract Price** is \$20,000 or more;
 - 10% of the cost of a variation where the **Contract Price** is less than \$20, 000.
- 25.4.** If the variation decreases the **Contract Price** the amount is to be deducted from the next **Progress Payment**.
- 25.5.** The provisions of this clause do not apply to **Prime Cost Items** or **Provisional Sum Items**.



NOTE: Schedule 4 of the **Contract** can be used by the **Builder** or **Owner** for the purposes of this clause.



VARIATIONS REQUESTED BY THE OWNER

25.6. If the **Owner** wishes to vary the **Plans or Specifications**, the **Owner** must give the **Builder** a written notice outlining the variation.

25.7. If the **Builder** reasonably believes the variation will:

- (a) not require a variation to any permit;
- (b) not cause any delay; and
- (c) not add more than 2% to the original **Contract Price** specified in Item 14 of the **Particulars**,

then the **Builder** may carry out the variation.

25.8. In any other case to that described in clause 24.7, the **Builder** must give the **Owner** within a reasonable time of receipt of the notice, either

- (a) a notice that states:
 - (i) the effect the variation will have on the work as a whole being carried out under the **Contract**;
 - (ii) whether a variation to any permit will be required;
 - (iii) whether the variation will result in any delays, the **Builder's** reasonable estimate of the duration of such delay;
 - (iv) the cost of the variation; and
 - (v) the effect of that cost will have on the **Contract Price**;
- or
- (i) a notice that states that the **Builder** refuses, or is unable, to carry out the variation and states the reason for the refusal or inability.



NOTE: It is good practice to have all variations in writing, even if the variation is less than 2% of the **Contract Price**.

25.9. The **Builder** must not give effect to any variation requested by the **Owner** unless the process set out in this clause is followed.

VARIATIONS REQUESTED BY THE BUILDER

25.10. If the **Builder** wishes to vary the **Plans or Specifications**, the **Builder** must give the **Owner** a written notice that:

- (a) describes the variation;
- (b) states why the **Builder** wishes to make the variation;
- (c) states what effect the variation will have on the **Works**;
- (d) states whether a variation to any permit will be required;

- (e) if the variation will result in any delays, the **Builder's** reasonable estimate of the duration of such delay;
- (f) states the cost of the variation; and
- (g) the effect that cost will have on the **Contract Price**.

25.11. The **Builder** must not give effect to any variation unless:

- (a) the **Owner** gives the **Builder** a signed consent to the variation attached to a copy of the notice required by clause 25.10; or
- (b) the following circumstances apply:
 - (i) 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;
 - (ii) the requirement arose as a result of circumstances beyond the **Builder's** control;
 - (iii) the **Builder** included a copy of the building notice or building order in the notice required by clause 25.10; and
 - (iv) the **Owner** does not advise the **Builder** in writing within 5 **Business Days** of receiving the notice required by clause 25.10 that the **Owner** wishes to dispute the building notice or building order.

25.12. If the cost of a variation requested by the **Builder** increases the **Contract Price** by 15% or more, and the reason for the increased time or cost was something that could not have been reasonably foreseen by the **Builder** on the date the **Contract** was executed, the **Owner** may terminate the **Contract** in accordance with clause 31.

26. PRIME COST ITEMS

26.1. The **Builder** warrants that the amount or estimated amount for each **Prime Cost Item** listed in Item 27 of the **Particulars** is no less than the reasonable cost of supplying the items. This warranty is based on information that the **Builder** had, or reasonably should have had, at the time of making this **Contract** and given the **Builder's** knowledge of the nature and location of the **Land**.

26.2. For each **Prime Cost Item** listed in Item 27 of the **Particulars**, the **Builder** has set out:

- (a) a detailed description of the **Works** to which the **Prime Cost Item** relates;
- (b) a breakdown of the cost estimate for each **Prime Cost Item**, including showing the estimated quantities of **Materials** involved and the unit cost to the **Builder**; and
- (c) where the **Builder** proposes to charge more than the actual amount of any increase to the **Prime Cost Item**, how that excess amount will be determined.

26.3. Where the **Owner** is to select a **Prime Cost Item**:

- (a) The **Builder** must provide to the **Owner** a written request to make a selection; and
- (b) Within (7) seven **Days**, the **Owner** must provide to the **Builder** the necessary selection.
- (c) Where the **Prime Cost Item** selected (by the **Owner**) is unavailable, the **Owner** must select an alternative item within seven (7) **Days** of the **Builder's** request to do so. Where the **Owner** fails to duly select an alternative item, the **Builder** will select an item as near as practicable in quality to the original item selected by the **Owner**.

26.4. The **Builder** must give the **Owner** a copy of any invoice, receipt or other document that relates to any **Prime Cost Item**, and must do so as soon as practicable after receiving the invoice, receipt or document.

26.5. If the actual cost to the **Builder** is greater than the **Prime Cost Item** allowance, the excess amount, together with the **Builder's Margin**, will be added to the **Contract Price**, along with the additional **GST**.

26.6. If the actual cost to the **Builder** is less than the **Prime Cost Item** allowance, the **Contract Price** will be reduced by the difference between the **Prime Cost Item** allowance and the actual cost.

26.7. The allowance for a **Prime Cost Item** as stated in Item 27 of the **Particulars** does not include the costs of cartage, installation, nor does it include the **Builder's Margin** and overheads. The above mentioned are included in the **Contract Price**, except where clause 26.5 applies, that is, the actual cost is greater than the **Prime Cost Item** allowance.

27. PROVISIONAL SUM ITEMS

27.1. The **Builder** warrants that any **Provisional Sum** 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 executed, including the nature and location of the **Land**.

27.2. For each **Provisional Sum** listed in Item 28 of the **Particulars**, the **Builder** has set out:

- (a) a detailed description of the **Works** to which the **Provisional Sum** relates;
- (b) a breakdown of the cost estimate for each **Provisional Sum**, including showing the estimated quantities of **Materials** involved and the unit cost to the **Builder**; and
- (c) where the **Builder** proposes to charge more than the estimated quantities or a higher unit cost with respect to the **Provisional Sum** stated in Item 28 of the **Particulars**, then the **Builder** must describe how the increased unit cost or actual quantities have been determined.

27.3. Where the **Owner** is to select a **Provisional Sum**:

- (a) the **Builder** must provide to the **Owner** a written request to make a selection; and

- (b) within seven (7) **Days**, the **Owner** must provide to the **Builder** the necessary selection.
- 27.4.** The **Builder** must give to the **Owner** a copy of any invoice, receipt or other document that relates to any **Provisional Sum** and must do so as soon as practicable after receiving the invoice, receipt or document.
- 27.5.** If the actual cost to the **Builder** is greater than the **Provisional Sum** allowance, the excess amount, together with the **Builder's Margin**, will be added to the **Contract Price**, along with the additional **GST**.
- 27.6.** If the actual cost to the **Builder** is less than the **Provisional Sum** allowance, the **Contract Price** will be reduced by the difference between the **Provisional Sum** allowed, and the actual cost.
- 27.7.** The allowance for a **Provisional Sum** as stated in Item 28 of the **Particulars** does not include the **Builder's Margin** and overheads, rather these are included in the **Contract Price**, except where clause 27.5 applies, that is, the actual cost is greater than the **Provisional Sum** allowance.

28. SUSPENSION OF WORKS

- 28.1.** The **Builder** may suspend the **Works** if the **Owner** breaches the **Contract**, including without limitation, where the **Owner**:
- (a) fails to provide satisfactory evidence of title to the **Land**;
 - (b) fails to pay any amount due and payable to the **Builder**;
 - (c) fails to provide satisfactory evidence of its ability to pay the **Contract Price**, including any variations, after being required to do so;
 - (d) fails to provide the **Builder** or the **Builder's** sub-contractors access to the **Land**;
 - (e) fails to provide information requested by the **Builder** in relation to **Prime Cost Items** or **Provisional Sums**;
 - (f) takes **Possession** of the **Land** or the **Works** without giving the **Builder** notice; or
 - (g) obstructs, interferes with or hinders the construction of the **Works**.



NOTE: From no later than 1 July 2017, a stop work notice may be issued to the **Builder** pursuant to Part IV Div 4 of the *Domestic Building Contracts Act 1995*. The issuance of a stop work notice will automatically result in a suspension of **Works** pursuant to section 47C (this clause refers to Domestic Building Work which is the subject of dispute resolution order)

- 28.2.** The **Builder** must provide written notice of the Suspension of **Works** specifying the **Owner's** failure or breach of the **Contract** that caused the Suspension of **Works**.

- 28.3.** The **Owner** must remedy the failure or breach of **Contract** stated in the notice issued under clause 28.2 within seven (7) **Days** of receipt of such notice.
- 28.4.** The **Builder** must recommence the **Works** within fourteen (14) **Days** of the **Owner** providing the **Builder** with written notice that the failure or breach has been remedied.
- 28.5.** If the **Builder** suspends the **Works** pursuant to this clause:
- (a) the **Construction Period** will automatically be extended by the number of **Days** of the suspension including the number of **Days** of consequential delays; and
 - (b) the **Builder** will be entitled to recover from the **Owner** any cost, loss, expense or damages caused by the suspension.
- 28.6.** The right to suspend under this clause is in addition to any other powers, rights or remedies the **Builder** may have under common law and does not restrict them in any way.



Clause 28.5 is a cost escalation clause. Pursuant to section 15 of the *Domestic Building Contracts Act 1995*, the **Owner** must acknowledge that the **Builder** has explained the effect of this clause and place its signature, seal or initials below.

Owner's signature/seal/initial.....

29. TERMINATION BY BUILDER

- 29.1.** The **Builder** is entitled to terminate the **Contract** if the **Owner**:
- (a) defaults in payment of monies payable pursuant to the **Contract** by the due date of such payment;
 - (b) fails to provide satisfactory evidence of the ability to pay the **Contract Price** including the ability to pay for any variations;
 - (c) fails to provide evidence of title to the **Land** and boundaries of the **Land**;
 - (d) fails to obtain necessary permits or approvals;
 - (e) fails to provide the **Builder** or persons required to deal with the **Builder** access to the **Land** in relation to the **Works**;
 - (f) interferes with the construction of the **Works**;
 - (g) takes **Possession** of the **Land** or the **Works** before the **Builder** has received all monies payable for the **Final Claim**;
 - (h) fails to remedy any breach specified in a notice of suspension of **Works** within seven (7) **Days** of receipt of such notice;
 - (i) fails to provide information required by the **Contract** including the selection of **Provisional Sums** or **Prime Cost Items**;



- (j) fails to consent to a necessary variation without reasonable cause; or
- (k) is otherwise in material breach of the **Contract**.



NOTE: From no later than 1 July 2017, the **Builder** will have a right to terminate the **Contract** pursuant to section 49X of the *Domestic Building Contracts Act 1995* (this clause refers to Domestic Building Work which is the subject of dispute resolution order).

- 29.2.** The **Builder** may, if such default is capable of remedy, provide the **Owner** with a written notice by registered post that:
- (a) specifies the default giving rise to the notice;
 - (b) requires that the default be remedied within fourteen (14) **Days** of receipt of such notice; and
 - (c) states that unless the default is remedied within fourteen (14) **Days** or such longer period as the **Builder** may specify, then the **Builder** will terminate the **Contract**.
- 29.3.** If such default continues after fourteen (14) **Days** of receipt by the **Owner** of the notice given under clause 29.2, the **Builder** may terminate the **Contract** by issuing a further notice by registered post to that effect.
- 29.4.** The **Builder** may not terminate the **Contract** due to the default of the **Owner** where the **Builder** is in material breach of the **Contract**.
- 29.5.** Where the **Builder** terminates the **Contract** in accordance with this clause, the **Builder** is entitled to recover from the **Owner**:
- (a) all loss, loss of opportunity, damages and expenses incurred by the **Builder** resulting from the default which gave rise to the termination;
 - (b) payment in accordance with the **Contract** for the balance of outstanding **Progress Claims** invoiced or variations claimed;
 - (c) the value of **Works** completed which have not been the subject of a **Progress Claim** including incomplete variations, **Materials on the Land**, and **Materials** ordered from suppliers and the expenses incurred since the last **Progress Claim** together with the **Builder's Margin**,
- less the value of the remainder of the **Works**.
- 29.6.** The **Builder's** failure or delay on one or more occasions to exercise or enforce any right conferred by this clause shall not be deemed to be a waiver thereof.



WARNING! Section 81 of the *Building Act 1993* requires the **Owner** to notify the Victorian Building Authority and the Relevant Municipal Authority where the appointment of a private building surveyor is terminated before **Completion**, but it is good practice for the **Builder** to notify the **Relevant Building Surveyor**.

30. TERMINATION BY OWNER DUE TO BUILDER'S DEFAULT

BUILDER'S DEFAULT

30.1. The **Owner** is entitled to terminate the **Contract** where the **Builder**:

- (a) is unable or unwilling to complete the **Works** or fails to perform or progress the **Works** in accordance with the **Contract**;
- (b) suspends the construction of the **Works** otherwise than in accordance with clause 28;
- (c) fails to provide **Materials** that comply with **Contract**;
- (d) unreasonably fails to replace or remedy defective **Works** or **Materials**;
- (e) fails to obtain or maintain insurance as required by the **Contract**;
- (f) has the **Builder's** licence cancelled or suspended;
- (g) fails to comply with an order or direction issued pursuant to Part IV of the *Domestic Building Contracts Act 1995* or the **Relevant Building Surveyor** without reasonable cause;
- (h) fails to comply with a stop order of the Victorian Civil and Administrative Tribunal; or
- (i) is otherwise in material breach of **Contract**.



NOTE: From no later than 1 July 2017, the **Owner** will have a right to terminate the **Contract** pursuant to section 49W of the Domestic Building Contracts Act 1995.

30.2. The **Owner** may, if such default is capable of remedy, provide the **Builder** with a written notice by registered post that:

- (a) specifies the default giving rise to the notice;
- (b) requires that the default be remedied within fourteen (14) **Days** of receipt of such notice; and
- (c) states that unless the default is remedied within fourteen (14) **Days** or such longer period as the **Owner** may specify, then the **Owner** will terminate the **Contract**.

30.3. If such default continues after 14 (fourteen) **Days** of receipt by the **Builder** of the notice given under clause 30.2, the **Owner** may terminate the **Contract** by issuing a further notice by registered post to that effect.

30.4. The **Owner** may not terminate the **Contract** due to the default of the **Builder** where the **Owner** is in material breach of the **Contract**.

30.5. If the **Owner** terminates the **Contract** pursuant to this clause, and wishes to complete the **Works**, or engage another builder to do so, the following steps must occur:

- (a) The **Owner** must give notice to the **Builder**.

- (b) The **Owner** must pay in accordance with the **Contract**:
 - (i) the balance of outstanding **Progress Claims** invoiced or variations claimed; and
 - (ii) the value of **Works** completed which have not been the subject of a **Progress Claim** including incomplete variations, **Materials** on the **Land** and **Materials** ordered from suppliers, and the expenses incurred since the last **Progress Claim** together with the **Builder's Margin**.
- (c) Upon completion of the **Works**, the **Owner** must submit to the **Builder** the reasonable cost to complete the **Works**, including the method by which this cost was calculated, together with copies of all relevant invoices and documents in support.
- (d) If the reasonable cost exceeds the outstanding amount owed to the **Builder** pursuant to the **Contract**, the **Builder** must pay the difference to the **Owner**.
- (e) If the reasonable cost is less than the outstanding amount owed to the **Builder** pursuant to the **Contract**, the **Owner** can set off this amount from monies due and payable to the **Builder**.

31. SECTION 41 TERMINATION

- 31.1.** The **Owner** may also terminate the **Contract** in accordance with Section 41 of the *Domestic Builder's Contract Act 1995* if:
- (a) the **Contract Price** increases by 15% or more after the **Contract** was entered into, excluding any increase in the **Contract Price** caused by the increase in the allowance for a **Prime Cost Item** or **Provisional Sum**, or a variation requested by the **Owner**; or
 - (b) the **Works** have not been completed within one and a half (1.5) times the period by which they were to have been completed, where such period means the **Construction Period** specified in Item 13 of the **Particulars** as extended or increased under clauses 24 or 25; and
 - (c) the reason for the increased time or cost was something that could not have been reasonably foreseen by the builder on the date the **Contract** was executed.
- 31.2.** The notice issued by the **Owner** pursuant to this clause must:
- (a) be signed by the **Owner**;
 - (b) state that the **Owner** is terminating the **Contract** pursuant to section 41 of the *Domestic Builder's Contract Act 1995*; and
 - (c) specify the grounds relied upon by the **Owner**.
- 31.3.** If the **Contract** is terminated pursuant to this clause, the **Builder** is entitled to a reasonable price for the **Works** carried out under the **Contract** to the date the **Contract** is terminated.
- 31.4.** The reasonable price for the **Works** includes:

- (a) payment in accordance with the **Contract** for the balance outstanding for **Progress Claims** invoiced or variations claimed;
- (b) the value of **Works** completed which have not been the subject of a **Progress Claim** including incomplete variations; and
- (c) in the alternative to clauses 31.4(a) and 31.4(b), the value of all **Works**, **Materials** and the expenses incurred by the **Builder** since the last **Progress Claim**, together with the **Builder's Margin**.

32. TERMINATION BY EITHER PARTY DUE TO BANKRUPTCY OR LIQUIDATION

32.1. If either the **Owner** or the **Builder**:

- (a) being a natural person, becomes bankrupt, has committed an act of bankruptcy or a receiver or manager has been appointed in respect of any of his or her assets or affairs or makes any arrangement or assignment with or for the benefit of creditors; or
- (b) being a corporation, goes into liquidation or voluntary administration or is wound up otherwise than for the purpose of reconstruction or any meeting is called with a view to considering the appointment of a liquidator or voluntary administrator,

then the other party may terminate the **Contract** by providing written notice served by registered post.

33. COMPLETION OF THE WORKS

33.1. The **Builder** must not demand **Final Payment** until **Completion** has been reached.

NOTICE OF COMPLETION OF WORKS

33.2. When the **Builder** believes that **Completion** has been achieved, the **Builder** must provide the **Owner** with:

- (a) notice of **Completion**, stating the date on which the **Builder** believes that **Completion** has been reached and requesting an inspection of the **Works**;
- (b) a copy of the Occupancy Permit under the *Building Act 1993* if the building permit for the **Works** required the issue of an occupancy permit or in any other case a copy of the certificate of final inspection; and
- (c) the **Final Claim**.



NOTE: Schedule 6 of the **Contract** can be used by the **Owner** and the **Builder** for the purposes of this clause.

INSPECTION OF WORKS AND FINAL PAYMENT

33.3. The **Owner** must immediately arrange an inspection of the **Works** with the **Builder** to take place within fourteen (14) **Days** of receipt of the notice of **Completion**.

33.4. If the **Owner** fails to arrange the inspection or attend the inspection, then the **Owner** must pay the **Final Claim** within the time period specified in Item 19 of the **Particulars**.

- 33.5.** When the **Owner** inspects the **Works** with the **Builder**, the **Owner** may compile a list specifying defects and incomplete **Works**.
- 33.6.** The **Owner** and the **Builder** must both sign the list of defects and incomplete **Works** and each retain a copy.



NOTE: Schedule 7 of the **Contract** can be used by the **Owner** and the **Builder** for the purposes of this clause.

- 33.7.** The **Builder's** signature on the list of defects and incomplete **Works** does not constitute an admission as to the existence of such defects and incomplete **Works**.
- 33.8.** If the **Owner** does not provide the **Builder** with a list of defects and incomplete **Works**, the **Owner** acknowledges that the **Works** have reached **Completion** and must pay the **Final Claim** within the time period specified in Item 19 of the **Particulars**.
- 33.9.** The **Builder** must rectify the defects and incomplete **Works** within a reasonable period of receipt of the list provided to the **Builder** under clause 33.5.
- (a) For the purposes of this clause, a reasonable period depends on the number and nature of the defects and incomplete **Works** specified in the list, including the availability of the necessary **Materials**.
 - (b) The **Builder** is not required to rectify defects and incomplete **Works** which are the responsibility of the **Owner** in accordance with Items 24 and 25 of the **Particulars**.
- 33.10.** The **Builder** must provide the **Owner** with further notice of **Completion** upon the rectification of the defects and incomplete **Works** specified in the list provided to the **Builder** under clause 33.5, and the **Owner** must pay the **Final Claim** to the **Builder** within seven (7) **Days** of receipt of such notice.



NOTE: Schedule 8 of the **Contract** can be used by the **Owner** and the **Builder** for the purposes of this clause.

HANNOVER

- 33.11.** Subject to the **Owner's** payment of the **Final Claim**, the **Builder** must handover **Possession** of the **Works** and the **Land** to the **Owner**.
- 33.12.** The **Builder** must handover the **Land** and the **Works** in a reasonable condition.
- 33.13.** The **Builder** must further provide the **Owner** with all keys, certificates and warranties for the **Works**.
- 33.14.** If the **Owner** takes **Possession** of the **Land** or any part of the **Works** before payment of the **Final Claim** and without the **Builder's** consent, such action constitutes a material breach. The **Builder** may provide the **Owner** with notice requiring the remedy of such breach pursuant to clause 29.2.

UNFIXED ITEMS ON LAND

- 33.15.** Any unfixed items supplied by the **Builder** remain the property of the **Builder**.

34. LIQUIDATED DAMAGES

- 34.1.** Where the **Works** have not reached **Completion** by the end of the **Construction Period**, the **Owner** shall be entitled to recover an amount of **Liquidated Damages** at the rate specified in Item 22 of the **Particulars** from the end of the **Construction Period** until **Completion** or the date that the **Owner** takes **Possession** of the **Works** and the **Land**, whichever is earlier.
- 34.2.** The sum of **Liquidated Damages** calculated pursuant to clause 34.1 may be deducted from the **Final Payment** and where this sum exceeds **Final Payment**, the balance will be a sum due and payable to the **Owner** by the **Builder**.

35. DEFECTS LIABILITY PERIOD

- 35.1.** The **Defects Liability Period** is specified in Item 30 of the **Particulars** and begins from the date handover occurs, or the date that the **Owner** takes **Possession** of the **Works** and the **Land**, whichever is earlier.
- 35.2.** Where the **Owner** provides written notice to the **Builder** of all alleged defect(s) in the **Works** prior to the expiry of the **Defects Liability Period**, the **Builder** must, subject to the requirements of this clause, rectify such defect(s) within the **Defects Liability Period** specified in Item 30 of the **Particulars**.
- 35.3.** Where the **Builder** does not agree to rectify the alleged defect, the **Builder** must provide the **Owner** with a written response detailing those items which the **Builder** rejects and the reasons for such rejection.
- 35.4.** The **Builder** must rectify those defects for which the **Builder** is responsible pursuant to the **Contract**, at no cost to the **Owner** and within twenty-one (21) **Days**, or as soon as reasonably practicable, from receiving the notice from the **Owner** pursuant to clause 35.3.
- 35.5.** For the purposes of this clause, a reasonable period depends on the number and nature of the defects and incomplete **Works** detailed in the list, including the availability of the necessary **Materials**.
- 35.6.** The **Builder** is not liable to rectify defects which result from the **Owner** taking **Possession** of the **Works** before **Final Payment** and handover, or where the **Owner** has failed to pay the **Final Payment** or any other monies due and owing pursuant to the **Contract**.
- 35.7.** The **Builder** is not liable to rectify defects which do not arise from the **Builder's** defective workmanship or **Materials** supplied by the **Builder** in accordance with the **Contract**, including without limitation:
- (a) **Works** performed or to be performed by the **Owner**;
 - (b) **Materials** supplied or to be supplied by the **Owner**; or
 - (c) an act or default of the **Owner** in relation to the maintenance of the **Works** or the **Land**.
- 35.8.** The **Builder** is not liable to rectify items which arise from normal wear and tear, or the **Owner's** failure to maintain the **Works** and the **Land**. This shall be taken to include without limitation the deterioration of:

- (a) gardens;
- (b) drains;
- (c) gutters;
- (d) pipes; or
- (e) sewers.

- 35.9.** Any obligation of the **Builder** to rectify defects pursuant to this clause is subject to the **Owner** providing reasonable access to the **Land** and the **Works** for the purposes of rectification.
- 35.10.** Where the **Builder** fails to duly rectify defects for which the **Builder** is responsible without reasonable cause, the **Builder** will be liable to the **Owner** for the reasonable cost of rectification of such defects.

36. MAINTENANCE OF THE WORKS

- 36.1.** The **Owner** must maintain the **Works** in a proper condition for ten (10) years after taking **Possession** of the **Works**.
- 36.2.** Maintenance of the **Works** shall include appropriate landscaping.

37. DISPUTE RESOLUTION

- 37.1.** If a dispute arises in connection with the **Contract**, either the **Owner** or the **Builder** may make an application to the Victorian Civil and Administrative Tribunal pursuant to the *Domestic Building Contracts Act 1995*.



NOTE: From no later than 1 July 2017 the **Owner** or the **Builder** may refer a dispute in connection with the **Contract** to *Domestic Building Dispute Resolution Victoria*. The **Owner** or the **Builder** will not be able to take the dispute to the Victorian Civil and Administrative Tribunal without first referring the dispute to *Domestic Building Dispute Resolution Victoria* for conciliation.

38. NOTICES

- 38.1.** Any notice or document which is required to be served under the **Contract**, unless explicitly required to be sent by registered post, may be served upon the other party by:
- (a) delivery in person;
 - (b) facsimile;
 - (c) email; or
 - (d) ordinary pre-paid post,
- 38.2.** A notice or document shall be deemed to have been served:
- (a) on the day of delivery when delivered in person;

- (b) two (2) **Business Days** after the day of posting when sent by registered or ordinary pre-paid post; or
 - (c) the time when the **Electronic Communication** enters the **Information System** is deemed as the time of receipt of **Electronic Communication**.
- 38.3.** A party to the **Contract** must immediately notify the other party of change of address or contact detail.

39. GST

- 39.1.** Any consideration identified as payable by one party (the “payer”) to the other party (the “payee”) under the **Contract** is expressed as a **GST** exclusive amount.
- 39.2.** In addition to any consideration payable by the payer to the payee under the **Contract**, the payer must pay to the payee a sum equivalent to the **GST** payable, if any, by the payee in respect of that consideration, at the same time and in the same manner as the consideration is payable.
- 39.3.** The payee’s right to payment under this clause is subject to a tax invoice being delivered to the payer.
- 39.4.** The following denote **GST** inclusive values:
- (a) **Contract Price**;
 - (b) **Progress Payments**;
 - (c) the **Deposit**;
 - (d) **Final Payment**;
 - (e) **Prime Cost Items**;
 - (f) **Provisional Sums**;
 - (g) variations; and
 - (h) **Liquidated Damages**.
- 39.5.** Where a Guarantee Agreement is signed in respect of any sum payable pursuant to the **Contract**, the guarantor is also liable for the **GST** applicable to that sum or payment.

40. COPYRIGHT

- 40.1.** Where **Plans** are supplied by the **Owner** or incorporate designs which were prepared under the **Owner’s** instructions, the **Owner**:
- (a) warrants that they may be used without breach of any legal or equitable right;
 - (b) indemnifies the **Builder** against any action, claim, demand, suit, or proceeding connected with, arising from or incidental to any alleged or actual breach of copyright by the **Builder** in performing the **Contract**; and to the extent that the **Owner** has Moral Rights in the **Plans** or designs, the **Owner** gives a Moral Rights Consent under the *Copyright Act 1968* (Cth); and

- (c) acknowledges that a claim for infringement of intellectual property brought against the **Builder** constitutes a breach of the **Contract** by the **Owner**.
- 40.2.** Where the **Plans** are drawn by the **Builder**, the **Owner** acknowledges that the **Builder** retains copyright in them.

41. MISCELLANEOUS

GOVERNING LAW

- 41.1.** The **Contract** takes effect, is governed by, and shall be construed in accordance with the laws from time to time in force in the State of Victoria, Australia.

CHANGE IN LAW

- 41.2.** The adoption, promulgation, modification or re-interpretation of laws or regulations by any Federal, State or Municipal authority, after the execution of the **Contract**, which results in any additional amount incurred by the **Builder** incidental to or arising from the **Builder's** performance of the **Contract**, is payable by the **Owner** to the **Builder** at the next **Progress Payment**.
- 41.3.** Where GST payable increases to reflect increased costs of labour or **Materials** or increased costs caused by delays in carrying out the **Works** to be carried out under the **Contract**, the **Owner** is liable to pay such increase in the GST to the **Builder**.



Clause 41.3 is a cost escalation clause. Pursuant to section 15 of the *Domestic Building Contracts Act 1995*, the **Owner** must acknowledge that the **Builder** has explained the effect of this clause and place its signature, seal or initials below.

Owner's signature/seal/initial.....

OWNER'S AGENT

- 41.4.** Where the **Owner** appoints an **Owner's Agent**, any act or omission by the **Owner's Agent** shall be deemed the act or omission of the **Owner**.

JOINT AND SEVERAL OBLIGATIONS

- 41.5.** Where more than one person signs the **Contract** as the **Owner**, all such persons shall be jointly and severally liable for the obligations of the **Owner** pursuant to the **Contract**.

BUILDER'S RIGHT TO SUBCONTRACT

- 41.6.** The **Builder** may subcontract any part of the construction of the **Works**.
- 41.7.** The **Builder** shall not be relieved of any obligations pursuant to the **Contract** and will remain responsible to the **Owner** for the construction of the **Works**.



ASSIGNMENT

- 41.8.** Neither party may assign, novate, or otherwise transfer any or all of its rights and obligations under the **Contract** without the prior written agreement of the other party which shall not be unreasonably withheld.
- 41.9.** A party that wishes to assign a right or obligation under the **Contract**, must provide written notice to the other party specifying the reasons for this request.
- 41.10.** Where the **Owner** wishes to assign a right or obligation, attached to the notice provided to the **Builder** should be evidence of the assignee's ability to pay in accordance with the **Contract**.

ENTIRE AGREEMENT

- 41.11.** The **Contract** and the documents which it incorporates pursuant to the **Particulars** constitute the entire agreement between the **Owner** and the **Builder** with respect to the **Works** and shall supersede and override all previous communications, either oral or written, between them.
- 41.12.** This clause does not restrict or remove any rights conferred upon the **Owner** and the **Builder** by the *Domestic Building Contracts Act 1995*.

SEVERANCE

- 41.13.** The parties agree that a construction of the **Contract** that results in all provisions being enforceable is to be preferred to any other construction.
- 41.14.** If, notwithstanding the operation of clause 41.11, a provision of the **Contract** is illegal or unenforceable:
- (a) where possible, the provision is amended by omitting a word or words which make the provision illegal or unenforceable; and
 - (b) in any other case, the whole provision is omitted, and the remainder of the **Contract** continues in force.

CHECKLIST FOR THE OWNER

Checklist pursuant to section 31(1)(r) of the *Domestic Building Contracts Act 1995*
BEFORE SIGNING THIS LEGALLY BINDING CONTRACT CHECK THIS LIST

If the cost of the Works is more than \$16,000, has an insurance policy or certificate of currency for domestic building insurance covering your project been issued and provided to you?	YES	NO
<p>Note: If not, the Contract is conditional upon you receiving either an insurance policy or a certificate of currency for Domestic Building Insurance.</p>		
If the Contract is conditional upon you receiving written approval for finance, have you obtained such written approval?	YES	NO
Have you appointed a private building surveyor or has a municipal building surveyor been engaged?	YES	NO
<p>Note: If not, you will need to choose and engage a building surveyor before the Works start so that a building permit can be issued for the Works.</p>		
If you answer "NO" to any of the following questions that apply to the Works - you are not ready to sign the Contract:		
Have you had the Contract long enough to read and understand it?	YES	NO
Have you been provided with evidence that the Builder named in the Contract is registered with the Victorian Building Authority?	YES	NO
Are the Contract Price and Progress Payments clearly stated?	YES	NO
Do you understand how the Contract Price is calculated and how it may be varied?	YES	NO
Has the Builder assessed the suitability of the site for the proposed Works ? If tests are necessary, have they been carried out?	YES	NO
If a Deposit is payable, is it within the legal limit?		
The maximum under the <i>Domestic Building Contracts Act 1995</i> is:	YES	NO
(i) 5% if the Contract Price is \$20,000 or more; or (ii) 10% if the Contract Price is less than \$20,000.		



Is the work shown and described clearly in the Contract, Plans, Specifications and any other relevant documents such as engineering computations or soil reports?	YES	NO
Are your special requirements or standards of finish included in the Plans or Specifications ?	YES	NO
Are the Commencement Date and Completion date clearly stated or capable of being worked out?	YES	NO
Do you understand the procedure for extensions of time?	YES	NO
Are any Provisional Sums or Prime Cost Items clearly stated in the Particulars and understood by you?	YES	NO
Do you understand the procedure for variations of the Plans and Specifications ?	YES	NO
Do you understand the circumstances in which you can end the Contract ?	YES	NO
Did your Builder give you a copy of the Domestic Building Consumer Guide? If yes, insert the date on which you were given a copy of this guide Date:/...../.....	YES	NO
Have you read the Domestic Building Consumer Guide and the related information at https://www.consumer.vic.gov.au/buildingguide ?	YES	NO

This checklist does not form part of the **Contract**.

I/we have read and completed this checklist:



Owner's Signature:

Date: / /



NOTE: Not all of these questions will apply to a domestic building contract that covers a limited scope of work, for example, a contract that is limited to the preparation of building plans and specifications.

INSTRUMENT OF AGREEMENT

DECLARATION BY OWNER

I/We acknowledge that we have read, understood, and agree to the terms and conditions of the **Contract**.

Where the Owner/s an individual

EXECUTED BY THE OWNER/S:

SIGNED SEALED AND DELIVERED BY:.....

IN THE PRESENCE OF:

Owner's Signature:.....



Owner's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /

and

SIGNED SEALED AND DELIVERED BY:.....

IN THE PRESENCE OF:

Owner's Signature:.....



Owner's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /

Where the Owner is a company

EXECUTED BY:.....

IN ACCORDANCE WITH S 127 OF THE CORPORATIONS ACT 2001 (CTH):

Director/Secretary's Signature:.....



Director's Name (Block Letters):.....

Date: / /

Director's Signature:.....



Director's Name (Block Letters):.....

Date: / /



Where the Builder is an individual

EXECUTED BY THE BUILDER:

SIGNED SEALED AND DELIVERED BY:.....
IN THE PRESENCE OF:

Builder's Signature:.....



Builder's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /

Where the Builder is a company

EXECUTED BY:.....

IN ACCORDANCE WITH S 127 OF THE CORPORATIONS ACT 2001 (CTH):

Director/Secretary's Signature:.....



Director's Name (Block Letters):.....

Date: / /

Director's Signature:.....



Director's Name (Block Letters):.....

Date: / /



DEED OF GUARANTEE AND INDEMNITY

INTRODUCTION

I/We, the signatories to this document (the “**Guarantor**”), hereby guarantee to the **Builder** the due and punctual payment of the **Contract** which I/we have read and understood. In addition I/we agree, undertake and acknowledge that this Deed of Guarantee and Indemnity is given upon and subject to the terms and conditions stated herein.

1. GUARANTEE

- 1.1** The **Guarantor** unconditionally and irrevocably guarantees payment to the **Builder** of the Guaranteed Monies.
- 1.2** For the purposes of clause 1.1, the Guaranteed Monies includes all monies due and payable under the **Contract**, and for the avoidance of any doubt, the Guaranteed Monies include the **Contract Price** and all debts, losses, payments, damages and other expenses to which the **Builder** is entitled (the “**Guaranteed Monies**”).

2. INDEMNITY

- 2.2** The **Guarantor** unconditionally and irrevocably indemnifies the **Builder** against any action, claim, demand, suit, or proceeding connected with, arising from or incidental to the **Owner's** non-fulfilment of its obligations pursuant to the **Contract** or breach of the **Contract**.

3. EXTENT OF GUARANTEE AND INDEMNITY

- 3.2** The **Guarantor** hereby agrees that the Guarantee and Indemnity shall be a continuing one in favour of the **Builder** and that each signatory hereto shall be jointly and severally liable.
- 3.3** The **Guarantor** shall be deemed to be jointly and severally liable with the **Owner** (in lieu of being merely a surety for it) for the payment of **Guaranteed Monies** and for the discharge of the **Owner's** obligations under the **Contract**.
- 3.4** The **Guarantor** waives any right to first require the **Builder** to commence proceedings or enforce any other right against the **Owner** or any other person before the **Builder** can claim from the **Guarantor** under this Deed of Guarantee and Indemnity.
- 3.5** The **Guarantor** is not discharged of any liability under this Deed of Guarantee and Indemnity due to:
 - (a) any omission or delay on the part of the **Builder**;
 - (b) any variation to the **Contract**;
 - (c) the fact that the **Guaranteed Monies** or any part of those monies may cease to be payable by the **Owner** or any other guarantor;
 - (d) the failure of any other person named as a party to this Deed of Guarantee and Indemnity, including another **Guarantor**, to execute this Deed;

- (e) any claim the **Owner** or the **Guarantor** may have against the **Builder**;
 - (f) an increase in the **Guaranteed Monies**; or
 - (g) the granting of any time, waiver, credit, indulgence, concession to or composition with, release or discharge by novation of the **Owner**, any guarantor or any other person whatsoever by the **Builder**.
- 3.6** The **Guarantor** agrees that it must pay to the **Builder** all expenses and legal costs that the **Builder** may incur in enforcing this Deed of Guarantee and Indemnity.
- 3.7** The **Guarantor** agrees that until the **Builder** has received one hundred cents in the dollar in respect of the **Guaranteed Monies**, if the **Owner**:

- (a) being a natural person, becomes bankrupt, has committed an act of bankruptcy or a receiver or manager has been appointed in respect of any of his or her assets or affairs or makes any arrangement or assignment with or for the benefit of creditors; or
- (b) being a corporation, goes into liquidation or voluntary administration or is wound up otherwise than for the purpose of reconstruction or any meeting is called with a view to considering the appointment of a liquidator or voluntary administrator,

the **Guarantor** will not without the prior consent of the **Builder**, lodge any proof of debt or similar claim in respect of any debt or liability to the **Guarantor** on any account whatsoever nor enforce any security held by the **Guarantor** in respect of the **Owner**, and shall hold any such debt, liability or security and any rights or benefits in respect thereof on trust for the **Builder**.

4. SEVERABILITY

If a provision of this Deed of Guarantee and Indemnity is illegal or unenforceable:

- (a) where possible, the provision is amended by omitting a word or words which make the provision illegal or unenforceable; and
- (b) in any other case, the whole provision is omitted, and the remainder of this Deed of Guarantee and Indemnity continues in force.

5. COUNTERPARTS

- 5.1** This Deed of Guarantee and Indemnity may be executed by executing identical documents. It comes into effect when all identical documents have been executed and the parties agree to accept a duly executed electronic scan as a true copy of the original.

6. GOVERNING LAW

- 6.1** This Deed of Guarantee and Indemnity shall be construed in accordance with and be governed by the laws of the State of Victoria and the parties agree that the court system of that State shall be the forum of choice in relation to this Deed of Guarantee and Indemnity.

EXECUTED BY THE SAID GUARANTORS AS A DEED:

If the **Owner** is a Company, the **Builder** requires the **Owner's** Company's Directors to be the **Guarantor**:

EXECUTED BY THE COMPANY DIRECTOR:

SIGNED SEALED AND DELIVERED BY:.....

Company Director's Signature:.....



Company Director's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /

EXECUTED BY THE COMPANY DIRECTOR:

SIGNED SEALED AND DELIVERED BY:.....

Company Director's Signature:.....



Company Director's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /

EXECUTED BY THE COMPANY DIRECTOR:

SIGNED SEALED AND DELIVERED BY:.....

Company Director's Signature:.....



Company Director's Name (Block Letters):.....

Date: / /

Witness' Signature:.....



Witness' Name (Block Letters):.....

Date: / /



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SCHEDULE 1 – SPECIAL CONDITIONS

SCHEDULE 1 – SPECIAL CONDITIONS (CONT.)

Owner(s) Initials /

Builder's Initial

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SCHEDULE 2 – NOTICE OF COMMENCEMENT DATE

I hereby give notice to the **Owner**, pursuant to clause 22.3 of the **Contract** that the construction of the **Works** situated at:

Insert address of Land	
-------------------------------	--

commenced on:

Insert Date	
-------------	--

	Builder's Signature:
	Date: / /
	Owner's Signature:
	Date: / /



Owner(s) Initials /

Builder's Initial

Signature
Required



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SCHEDULE 3 – EXTENSION OF TIME NOTICE

I hereby give notice to the **Owner**, pursuant to clause 24 of the **Contract** that the construction of the **Works** situated at:

Insert address of Land	
-------------------------------	--

will be delayed and claim an Extension of Time of the **Construction Period**.

The reason for the delay (circle the cause which applies and provide further detail):

Inclement Weather and its effect	
Lock outs, strikes or industrial disputes affecting the Works ; including without limitation, the Builder's employees, or manufacturers and suppliers of Materials	
Unforeseen shortages of Materials or Labour	
Proceedings threatened, or taken, by neighbouring owners or residents	
Public works or construction or works being undertaken by neighbouring owners or residents	
Fire, floods or other Acts of God	
A direction to fix building work issued pursuant to Part IV Div 2 of the <i>Building Act 1993</i>	



Owner(s) Initials /

Builder's Initial

Unforeseen requirements of the Relevant Council , a Relevant Building Surveyor or public authority	
An order by the Victorian Civil and Administrative Tribunal pursuant to section 58 of the <i>Domestic Building Contracts Act 1995</i>	
An event that is beyond the reasonable control of the Builder and is not the result of an act or omission on the part of the Builder	
Variations or a request for a variation in accordance with clause 25	
Minor defects that do not prevent the Works being used for its purpose and for which it is not practical for the Builder to rectify for the time being, or as to which the Builder has reasonable grounds for delaying the rectification	
A suspension of the Work by the Builder in accordance with clause 28	
An act or omission on the part of the Owner or an interference with the construction of the Works by the Owner or by an agent or employee of the Owner + (NOTE: the Builder must notify the Owner within five Business Days of the Owner's breach)	

Due to the abovementioned cause of delay, the Extension of Time claimed is:

(Insert number of **Days**):.....

 **Builder's Signature:**.....

Date: / /

SCHEDULE 4 – REQUEST FOR VARIATION

PART A – COMPLETED BY OWNER OR BUILDER

I hereby give written notice pursuant to clause 25 of the **Contract**, for a variation to the **Works** situated at:

Insert address of Land	
-------------------------------	--

Party requesting the variation (circle):	Owner	Builder
If Builder circled, what is the reason for the variation?		

Description of variation

Documents incorporating the requested variation to the Works					
Prepared by	Supplied by	Title or Drawing No.	No. of Pages	Date	Revision No.



Owner(s) Initials /

Builder's Initial

Documents incorporating the requested variation to the Works					
Prepared by	Supplied by	Title or Drawing No.	No. of Pages	Date	Revision No.

 Signature:
Date: / /

PART B – COMPLETED BY BUILDER

The effect the variation will have on the Works as a whole being carried out under the Contract		
Variation to permit(s) required? (circle and provide further detail)	YES	NO
Reasonable estimate of the number of Days of delay as a result of variation		
Cost of variation	\$(insert amount including GST)	

Effect of cost of variation on the Contract Price (circle and provide further detail)	no change in Contract Price
	decrease in the Contract Price of: \$(insert amount) %(insert percentage increase)
	increase in the Contract Price of: \$(insert amount) %(insert percentage increase)

OR

Builder refuses or is unable, to carry out the variation	
State reason for refusal or inability	

Builder's Signature:



Date: / /



Owner(s) Initials /

Builder's Initial

Signature
Required



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SCHEDULE 5 – AGENT'S AUTHORITY FORM

COMPLETED BY THE OWNER

I hereby appoint the agent specified below to act on my behalf in relation to the **Contract**:

Name:.....

ABN:.....

ACN:.....

Address:.....

Suburb:..... State:..... Postcode:.....

Telephone No. (Work):..... Telephone No. (Mobile):.....

Telephone No. (Home):..... Fax:.....

Email:.....

AGENT DETAILS

Please ensure that both the Owner and the agent sign below. Should the Owner cancel the authority the Owner must immediately inform the Builder in writing.

WHERE THE OWNER/S AN INDIVIDUAL

	Owner's Signature:.....
Date: / /	

WHERE THE OWNER IS A COMPANY

	Director/Secretary's Signature:.....
Date: / /	
	Agent's Signature:.....
Date: / /	



Owner(s) Initials /

Builder's Initial /

Signature
Required



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SCHEDULE 6 – NOTICE OF COMPLETION PRE-INSPECTION

I hereby give notice to the **Owner**, pursuant to clause 33.2 of the **Contract** that the construction of the **Works** situated at:

Insert address of Land	
-------------------------------	--

have reached **Completion** on:

Insert Date	
-------------	--

	Builder's Signature:
	Date: / /
	Owner's Signature:
	Date: / /



Owner(s) Initials /

Builder's Initial

Signature
Required



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SCHEDULE 7 – LIST OF DEFECTS

The following are perceived defective items for rectification in accordance with clause 33:				
	Item and reference to Plans or Specifications and page numbers	Owner's Description of Defect	Builder's Comment (agree/disagree and reason)	Completed at Reinspection (Owner to Initial if Completed)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				



Owner(s) Initials /

Builder's Initial

The following are perceived defective items for rectification in accordance with clause 33:

	Item and reference to Plans or Specifications and page numbers	Owner's Description of Defect	Builder's Comment (agree/disagree and reason)	Completed at Reinspection (Owner to Initial if Completed)
17				
18				
19				
20				
21				
22				



NOTE: If the item listed in Schedule 5 is within the *Guide to Standards and Tolerances*, then it may not be a defect.

Owner's Signature:.....



Date: / /

Builder's Signature:.....



Date: / /

Reinspection Date:..... / /

Owner's Signature:.....



Date: / /

Builder's Signature:.....



Date: / /

SCHEDULE 8 – NOTICE OF COMPLETION POST INSPECTION

I hereby give notice to the **Owner**, pursuant to clause 33.10 of the **Contract** that the construction of the **Works** situated at:

Insert address of Land	
-------------------------------	--

have reached **Completion** on:

Insert Date	
-------------	--

	Builder's Signature:
	Date: / /
	Owner's Signature:
	Date: / /



Owner(s) Initials /

Builder's Initial


Signature
Required


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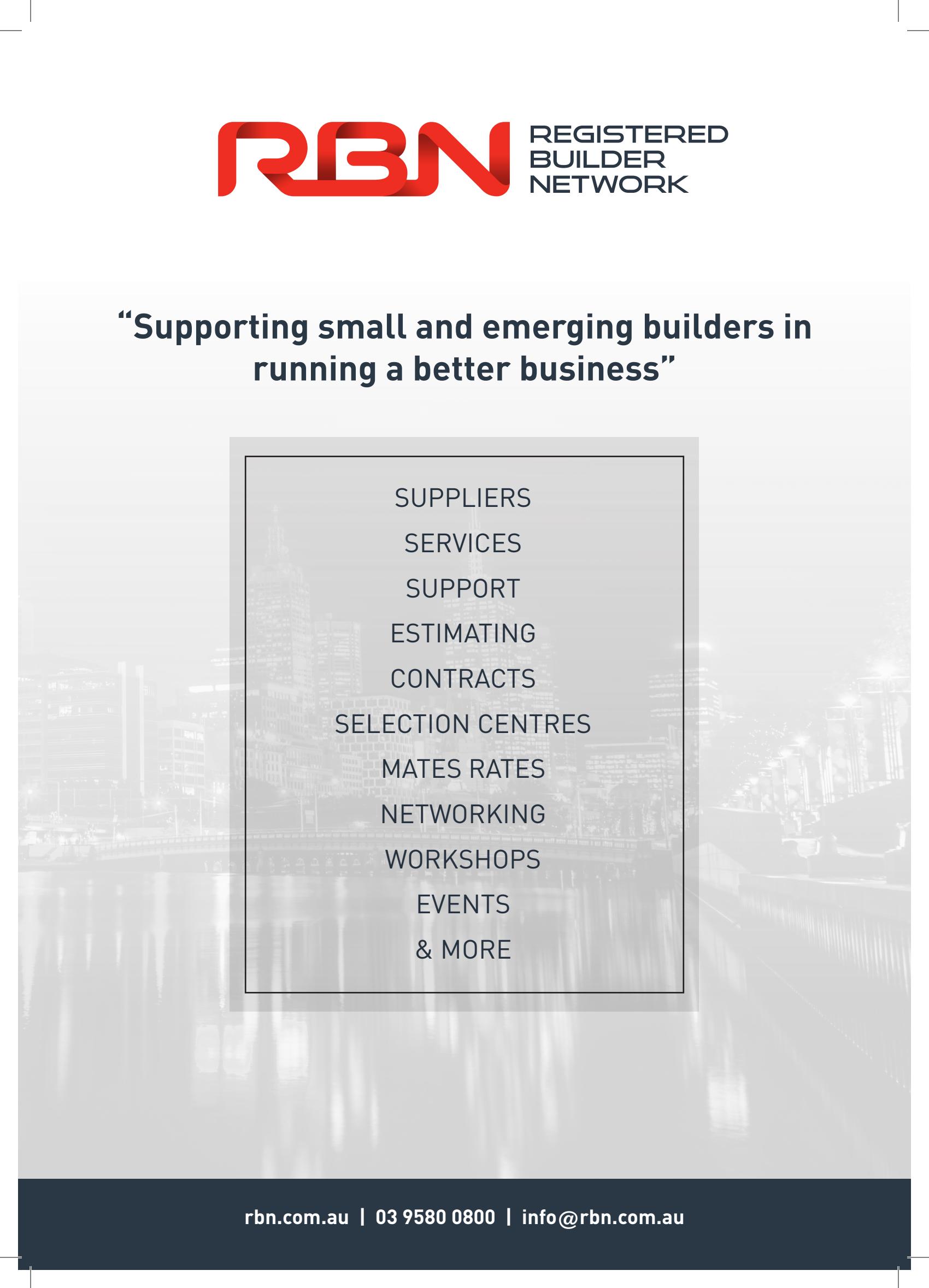
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“Supporting small and emerging builders in running a better business”

A grayscale photograph of a city skyline at night, featuring numerous skyscrapers and illuminated windows.

SUPPLIERS
SERVICES
SUPPORT
ESTIMATING
CONTRACTS
SELECTION CENTRES
MATES RATES
NETWORKING
WORKSHOPS
EVENTS
& MORE