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# Victorian New Homes Contract

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(THIS CONTRACT IS AVAILABLE ONLY FOR USE BY CARLISLE HOMES PTY LIMITED. SOME STANDARD HIA TERMS AND CONDITIONS HAVE BEEN MODIFIED.)

**OWNERS:**

**JOB:**

**SITE:**



**To verify your builder is a HIA member email [enquiry@hia.com.au](mailto:enquiry@hia.com.au)**

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

## COOLING OFF PERIOD

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

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



DETACH ALONG DOTTED LINE

## NOTICE THAT CONTRACT HAS ENDED

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

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

To ..... (Builder)

I/We .....

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

Building Owner's signature .....

.....

Date: .....



# Director of Consumer Affairs Victoria

## Approved Domestic Building Contracts Checklist

### Section 31(1)(r) of the *Domestic Building Contracts Act 1995*

This checklist must be included in major domestic building contracts entered into from 1 September 2016 in substantially the same form or to the same effect as follows.

#### Before signing this legally binding contract, check this list:

If the cost of the building work 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?  
(Note: If not, the contract is conditional upon you receiving either an insurance policy or a certificate of currency for domestic building insurance.)

Yes

No

If this contract is conditional upon you receiving written approval for finance, have you obtained such approval?

Yes

No

Have you appointed a private building surveyor or has a municipal building surveyor been engaged?

(Note: If not, you will need to choose and engage a building surveyor before your building work starts so that a building permit can be issued for your building work.)

Yes

No

#### If you answer 'NO' to any of the following questions that apply to your building project, you are not ready to sign the contract:\*

Have you had this contract long enough to read and understand it?

Yes

No

Have you been provided with evidence that the builder named in this contract is registered with the Victorian Building Authority?

Yes

No

Are the price and progress payments clearly stated?

Yes

No

Do you understand how the price is calculated and 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 *Domestic Building Contracts Act 1995* is:

1. 10% if the price is less than \$20,000, or
2. 5% if the price is \$20,000 or more.

Yes

No

Is the work shown and described clearly in the contract, plans and specifications and any other relevant documents (such as engineering computations or soil report)?

Yes

No

Are your special requirements or standards of finish included in the plans and 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 schedules and understood by you?	Yes		No	
Do you understand the procedure for variations of 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?	Yes		No	
If yes, insert the date on which you were given a copy of this guide dd/mm/yyyy				
Have you read the Domestic Building Consumer Guide and the related information at <b>consumer.vic.gov.au/buildingguide</b> ?	Yes		No	

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

**I/we have read and completed this checklist:**

Signature/s

Date  
dd/mm/yyyy


\* **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.

(4 August 2016)

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# Particulars of contract

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## Date

*Insert date when contract is signed by both parties*

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This contract is dated the:

## Owners

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

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NAME			
ADDRESS			
SUBURB		STATE	POSTCODE
ABN		ACN	
WORK	HOME		
MOBILE			
EMAIL			

## Builder

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NAME	CARLISLE HOMES PTY LTD			
ADDRESS	631 Springvale Road			
SUBURB	Mulgrave	STATE	VIC	POSTCODE 3170
ABN	86 106 263 209	ACN	106 263 209	
WORK	8561 4777			
EMAIL				
BUILDER'S REGISTRATION NUMBER	CDB-U 50143			
REGISTERED BUILDING PRACTITIONER	Carlisle Homes Pty Ltd			
HIA MEMBER NUMBER	870492			

### BANKING DETAILS

**Account Name:** Carlisle Homes Pty Ltd

**BSB:** 083-266

**Account No:** 565491054

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

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

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BRICK VENEER DWELLING

The **Specifications** include 52 pages that were prepared and supplied by the Builder

There are sheets of **Plans** that were prepared by and supplied by the Builder

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

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## Building Surveyor (Clause 19)

**BUILDING SURVEYOR** DJM Building Consultants

**ABN** 35 066 974 427

**ADDRESS** Suite 6, 24 Lakeside Drive

**SUBURB** Burwood East

**STATE**

**VIC**

**POSTCODE** 3151

**PHONE** 9887 7990

**EMAIL** djm@djmbc.com.au

**REG. NO.** CBSU 60948

I/we acknowledge that the building surveyor was appointed by me/us before this contract was signed.

## Owner

**NAME**

**SIGNATURE** .....

NOTE: Under the Building Act 1993 the owner of the land on which domestic work is to be carried out must choose and appoint the building surveyor.

## Lending details

### Lender 1

**LENDER**

**ADDRESS**

**SUBURB**

**STATE**

**POSTCODE**

## Domestic building insurer

**INSURER** Victorian Managed Insurance Authority (VMIA)

**ADDRESS** Level 10 South, 161 Collins Street

**SUBURB** MELBOURNE

**STATE**

**VIC**

**POSTCODE** 3000

**PHONE** 1300 363 424

**NAME OF INSURED**

## The land

**LOT NO (IF APPLICABLE)**

**Street Address**

**ADDRESS**

**SUBURB**

**STATE**

**POSTCODE**

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**The Title Particulars are:**

VOLUME NO

FOLIO NO

PLAN OF SUBDIVISION NO

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

As noted on the Title and Plan of Subdivision

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# Schedule 1

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## 1. Time for completion (Clause 10)

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

The building period includes days of actual building work and the following estimates for delays:

- Inclement weather and the effects of inclement weather: **5 days**
- Weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work: **75 days**
- Other days that are reasonable having regard to the nature of the **Building Works: 28 days**, being the Christmas shut down period, commencing 7 days before Christmas and 21 days after Christmas

The building period is 108 days.

Note - the building period is the total of the days of actual building work and the estimates for delays.

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

Item		Estimate
1.	Conveying connection or installation of	
(a)	Gas	N/A
(b)	Electricity	\$50.00
(c)	Telephone to one point	\$500.00
(d)	Water	N/A
(e)	Sewage	N/A
(f)	TV Antenna	\$300.00
2.	Issue of Planning permit	N/A
3.	Issue of building permit	N/A
4.	Other	
(a)		N/A

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## 2. **Contract Price** (Clause 12)

THE CONTRACT PRICE IS: \$

**The contract price is GST inclusive.**

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

- additional costs caused by any deficiency or conflict within the Contract Documents (Refer to Clause 16);
- additional building permit fees (Refer to Clause 18);
- variations including those required by the council/registered building surveyor (Refer to Clause 21);
- the cost of providing access where applicable (Refer to Clause 26);
- interest on overdue payments (Refer to Clause 31);
- the actual cost of Prime Cost Items and work for which Provisional Sums have been specified exceeding the estimates set out in the Contract (Refer to Clause 33);
- variation fees (Special Condition 1);
- credit card fees (Special Condition 2);
- additional costs caused by private inspectors raising non-genuine defects of breaches (Special Condition 9);
- additional costs caused by power not being available to the Land (Special Condition 12);
- site start delays (Special Condition 15).

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

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

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

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

## 3. **Deposit** (Clause 9)

\$.05 (5.00 % of Contract Price)

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

**PERSON RESPONSIBLE FOR OBTAINING AND PAYING FOR PLANNING APPROVAL:** the Owner

**NUMBER OF DAYS TO OBTAIN PLANNING APPROVAL:** within 21 days of the date of this Contract (if applicable)

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

**PERSON RESPONSIBLE FOR OBTAINING AND PAYING FOR BUILDING PERMIT ON BEHALF OF THE OWNER:** the Builder

**NUMBER OF DAYS TO OBTAIN BUILDING PERMIT:** within 28 days of:

- (a) if planning approval is required the date that the planning approval is received by the person responsible for obtaining the Building Permit; or
- (b) if planning is not required, the Owner providing the essential information pursuant to Clause 13

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

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

25.00%

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

7 days

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

13.90% per annum

9. **Agreed damages for late completion of the Building Works**  
(Clause 41)

\$250.00 per week

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

25.00%

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

Finance approval to be within days from the date of this Contract

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

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

\$250.00 per week

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## Schedule 2

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

(Refer to procedures in Clauses 12 and 33)

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

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

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

#### Provisional sum items - labour and materials

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

## Schedule 3

### CONSTRUCTION STAGES APPLICABLE TO METHOD 1 PROGRESS PAYMENTS

<b>'Base Stage' means</b>	<p>(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;</p> <p>(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;</p> <p>(c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured;</p> <p>(d) in the case of a home with a concrete floor, the stage when the floor is completed;</p> <p>(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;</p>
<b>'Frame stage' means</b>	the stage when a home's frame is completed and approved by a building surveyor;
<b>'Lock-up stage' means</b>	the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary) but excludes garage lock-up;
<b>'Fixing stage' means</b>	the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position;
<b>'Completion' means</b>	the Building Works are complete in accordance with the Contract Documents.

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

**TABLE**

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



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# Schedule 3 Method 1

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## PROGRESS PAYMENTS

### Note

Use Method 1 unless the Building Works differ from the usual. If Method 2 is to be used the Owner must read and sign Form 1 and Form 2 in Schedule 3 Method 2. Delete whichever method is inapplicable.

### Method 1

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

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

Stage	Percentage of contract price	Amount
Deposit (Refer to Clause 9)		\$
Base Stage [d]*		\$
Frame Stage		\$
Lock-up Stage		\$
Fixing Stage		\$
Completion		\$
<b>Total</b>	<b>100.00%</b>	\$

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# Schedule 3 Method 2 Acknowledgment

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WHEN METHOD 2 IS TO BE USED FOR PROGRESS PAYMENTS ALL OWNERS MUST SIGN THIS FORM AND FORM 2 (NEXT PAGE) AND THE BUILDER MUST SIGN FORM 2 BEFORE THE CONTRACT IS SIGNED.

## FORM 1

Regulation 13(1)(a)

### WARNING TO OWNER - CHANGE OF LEGAL RIGHTS

Under Section 40 of the **Domestic Building Contracts Act 1995** (the **Act**) a **Builder** cannot, under a major domestic building contract, 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 major domestic building 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 major domestic contract can vary from the normal and which might mean that different stages and percentages to those fixed in Section 40 of the Act are appropriate for that contract. These are exceptional cases. Some examples of these cases may include:

- where it is very expensive to prepare the land for building, for example, where the site is steep or rocky;
- where the home 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 significant work is required on a later stage of the contract before an earlier stage can be fully completed;
- where an architect is engaged to independently assess the value of the completed work for **Progress Payments**.

You should not agree to **Progress Payments** that differ from those set out in Section 40 of the Act unless your home 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 home.

If you have any doubts, you could contact:

- Consumer Affairs Victoria; or
- Law Institute of Victoria; or
- Royal Australian Institute of Architects

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

Signature of building owner: .....

Date: .....

## Schedule 3 Method 2 Progress Payments

**NOTE:** Before forwarding your progress payment invoice to your **Lending Body**, ensure the **Builder's** BSB and Account number match the account details in this HIA contract. See account details under Builder in Particulars of Contract.

**NOTE:** Under Method 2 the **Builder** and the **Owner** must agree on stages at which **Progress Payments** must be made. **Progress Payments** are due and payable after completion of the stages of the **Building Works** as listed below. Remember, the **Owner** must read and sign Form 1 (previous page) and Form 2.

### FORM 2

Regulation 13(1)(b)

The parties agree –

(i) that the **Progress Payments** fixed by Section 40 of the **Domestic Building Contracts Act 1995** do not apply; and

(ii) instead the stages and percentages of the **Contract Price** and amounts payable are as follows:

Name of stage	Work involved in stage <i>(If this stage is not the same as a stage defined in Section 40(1) of the Domestic Building Contracts Act 1995, describe the work that is involved in this stage.)</i>	Percentage of total contract price	Amount of progress payment
DEPOSIT	The same as defined in section 40(1) of the Domestic Building Contracts Act 1995	5.00%	\$
	When either one of the following events have been completed	.00%	\$
BASE	The same as defined in section 40(1) of the Domestic Building Contracts Act 1995 or 20% of total building works completed	15.00%	\$
FRAME	The stage when a home's frame is completed, excluding garage roof trusses on double storey homes and the building surveyor has been booked to inspect the building works or 45% of total building works completed	30.00%	\$
LOCK-UP	As defined in section 40(1) of the Domestic Building Contracts Act 1995 excluding garage doors, flooring, timber cladding to the facade and parapet/pier cappings or 65% of total building works completed	19.00%	\$
FIXING	As defined in section 40(1) of the Domestic Building Contracts Act 1995 excluding: garage doors, baths or spas, built in shelves to robes, pantry and linen cupboards and, where contracted, CaesarStone, marble, granite or similar benchtops, feature sliding robe doors, feature pantry doors, sinks and basins, perspex doors, kitchen handles and any other built in furniture or flooring or 85% of total building works completed	21.00%	\$

COMPLETION	As defined in section 40(1) of the Domestic Building Contracts Act 1995 including garage doors, baths or spas, built in shelves to robes, pantry and linen cupboards and, where contracted, CaesarStone, marble, granite or similar benchtops, feature sliding robe doors, feature pantry doors, sinks and basins and any other built in furniture or flooring	10.00%	\$
	<b>Total</b>	<b>100.00%</b>	<b>\$</b>

Signature of building owner: .....

Date: .....

**AND**

Signature of builder: .....

Signed for and on behalf of: CARLISLE HOMES PTY LTD

Date: .....

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# Schedule 4

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## SPECIAL CONDITIONS

### 1. Variation Fees

Any requested variations by the Owner in accordance with Clause 23, after the date that this Contract is executed, will result in an administration fee of \$500.00 (incl GST) payable to the Builder for each such variation item. The Builder may charge and be paid this administration fee even if the Owner decides not to proceed with the requested variation. The amount of the administration fee may be claimed by the Builder in the next relevant progress payment claim or in the Final Claim.

### 2. Credit Cards

If the Owner wishes to pay a progress payment by way of Visa, Bankcard or Mastercard (the Builder does not accept any other bankcard), a payment processing fee of up to 1.5% applies as this represents the fee that the Builder is charged by the Bank for the transaction.

### 3. Substitution

The Owner accepts that the Builder may (in its sole discretion and acting reasonably) substitute a specification, material, supplier, contractor and/or product (at no cost to the Owner) to complete the Building Works where such a substitution is of equivalent or better specification and will not materially alter the quality or aesthetic of the Building Works. For any substitution that will materially alter the quality or aesthetic of the Building Works, the Builder must claim a variation in accordance with Clause 34.

### 4. Fencing

(a) Where the Builder has agreed to provide fencing, as noted in the Tender and on the Plans, the Owner must:

(i) obtain signed agreement from each of the registered proprietors of the land immediately adjoining the Owner's land with such adjoining neighbours also agreeing to pay half of the cost of the new fence; and

(ii) provide to the Builder the signed agreement from the adjoining neighbours, referred to in Clause 4(a)(i) of these Special Conditions prior to the Builder commencing the fencing works.

(b) If the Owner fails to provide the required agreement stated in Clause 4(a)(i) of these Special Conditions, the Builder is not required to provide fencing and may delete the obligation from the Contract and provide a credit to the Owner for the portion of the fencing not installed.

### 5. Appliances

The following appliances (if included in the Tender or Building Variation) are to be installed by the Builder after the Owner takes possession of the Property pursuant to Clause 38:

- (a) Oven(s)
- (b) Range Hood
- (c) Cook Top
- (d) Dishwasher
- (e) Microwave

- 
- (f) Hot Water Service
  - (g) Spa Motor
  - (h) Ducted Vacuum
  - (i) Fireplace(s)
  - (j) Home Theatre System
  - (k) Security Camera(s)
  - (l) Decorative Lighting

## 6. Copyright

The copyright and any intellectual property rights in all of the Contract Documents between the Owner and the Builder shall remain the property of the Builder.

## 7. Contact Details

The Owner agrees to allow the Builder to release the Owner's contact details (including name, address and telephone number) and any necessary information regarding the Building Works and defects to any supplier and Sub-Contractor as required for the carrying out of the Building Works and for any warranty works after handover has occurred.

## 8. Confidentiality

The Owners acknowledge they must keep the Contract Documents confidential and must not disclose or permit to be disclosed to any person the content of the Contract Documents, save as described below at Special Condition Clause 8.1.

8.1 A Party may only make disclosure:

- (a) with the prior written consent of the other Party; or
- (b) to those of its employees, officers, professional or financial advisers, bankers and creditors, as reasonably necessary, but only on a strictly confidential basis; and
- (c) to the extent that the Party is compelled to disclose them by law.

## 9. Owner's Consultant

(a) In the event that the Owner engages a private building consultant or building inspector to act as the Owner's agent in carrying out inspections of the Building Works from time to time and to attend the Building Site for this purpose, then the Owner acknowledges and agrees that the Owner's Consultant must:

(i) not hinder or interfere with the progress of the Building Works, the Builder or the Builder's subcontractors;

(ii) comply with all obligations of the Owner in respect of providing prior notice to the Builder of any inspections of the Site;

(iii) comply with all Occupational Health and Safety requirements as directed by the Builder;

(iv) be a registered building practitioner in the appropriate category for the nature of the Building Works and be able to provide evidence to the Builder of such current registration;

(v) agree to read the Builder's Contract Specifications and visit the Builder's display homes prior to carrying out the first site inspection by that Consultant; and

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(vi) provide, if requested by the Builder, a valid copy of its current insurance policies and insurance certificates including, (without limitation):

- Professional Indemnity Insurance for a minimum of \$5 million;
- Public Liability Insurance for a minimum of \$10 million; and
- WorkCover Insurance.

(vii) provide any written report to the Builder within 48 hours of an inspection. This Clause does not apply to the inspection and report prepared by a consultant pursuant to Clause 37 of the Contract.

(b) If the Owner or the Owner's Consultant does not comply to the Builder's satisfaction with any of the requirements in Special Condition Clause 9(a), then the Builder is entitled to refuse access to the Site to the Owner's Consultant. If access is refused the Builder must provide confirmation in writing to the Owner that such access has been refused and the reasons for the refusal.

(c) The Owner acknowledges and agrees that the Builder shall be entitled to claim for:

(i) any additional time incurred by the Builder on an hourly rates basis in responding to queries or alleged defects raised by the Owner's Consultant following any inspection of the Building Works, to the extent that such queries or allegations relate to defects or incomplete items and it is subsequently found that no genuine defect or breach of Contract exists;

(ii) an extension of time in accordance with Clause 34.0 if an inspection performed or a report prepared by the Owner's Consultant causes delay for any reason, including without limitation:

- the availability of the Owner's Consultant;
- the time taken by the Owner's Consultant to produce a report, and/or
- the time taken by the Builder to consider a report prepared by the Owner's Consultant.

(d) In regard to any such charges by the Builder for additional time (as referred to in Special Condition Clause 9(c)), the parties acknowledge that it is not possible to provide any pre-estimate of the additional charges that may be incurred at the time of signing this Contract.

(e) If a pre-slab inspection is required by the Owner, an independent inspector or any other person engaged or appointed by the Owner, it must be scheduled and completed with the Builder's concrete subcontractor present, no later than 3pm on the day prior to the scheduled concrete slab pour to avoid significant delays to the Building Period. Due to prior bookings, the Builder will not delay the concrete slab pour if the relevant building surveyor's inspector has issued the necessary approval(s).

(f) For the avoidance of doubt, Special Condition Clauses 9(a) to 9(d) inclusive shall only apply to building consultants or inspectors engaged privately by an Owner for the purposes described at Special Condition Clause 9(a), and shall not apply to any quantity surveyor engaged by the Owner's financier or lending institution or to any building inspector appointed by a relevant building surveyor to perform the mandatory inspections referred to in the building permit.

## 10. Owner's Inspection

(a) In the event that the Owner requests an inspection of the Building Works pursuant to Clause 25.1, the Owner acknowledges and agrees that the Owner, or an agent acting on behalf of the Owner or an officer of the Lending Body must, for each inspection:

(i) provide reasonable notice to inspect the Building Works at a time mutually agreed between the Owner and the Builder; and

- 
- (ii) comply with all Occupational Health and Safety requirements;
  - (iii) comply with the reasonable directions of the Builder, if any; and
  - (iv) take reasonable care for their own safety and the safety of others.

#### 11. Utilities

(a) In addition to the matters set out in Clause 34.0, the Builder is entitled to an extension of the building period for any delay caused by a utility provider (including, without limitation, gas provider, water authority, electricity provider, Council and/or NBN provider), as the Owner(s) is responsible for ensuring the Land is ready for construction with all services available prior to the Commencement of Building Works. The Owner(s) acknowledges and agrees it is not entitled to any damages against the Builder, whether direct or indirect, for any delay (whether direct or indirect) caused by a utility provider.

(b) The Owner agrees that the location of the water meter on the Land is not the responsibility of the Builder and the Builder will not advise the relevant water authority of any matter regarding the proximity of the water service to the proposed dwelling. The Owner may make enquiries with the water authority direct and advise of any concerns prior to construction. The Builder will not be responsible for the cost or relocation of the water meter, and any associated delay to the Building Works and/or handover of the home will entitle the Builder to an extension of the Building Period under Clause 34.0. The Owner may arrange for the tapping to be relocated by a licensed plumber or request that the Builder carry out the work by way of variation, at cost plus 25% margin. Any delay to the Building Works and/or handover of the home will entitle the Builder to an extension of the Building Period under Clause 34.0 or damages as applicable.

#### 12. Power to the Land

The Owner is responsible to ensure power is available to the Land to allow the Builder to carry out the Building Works. Where power is unavailable, the Owner may elect one of the following:

(a) Where the works have not commenced, the Owner may direct the Builder not to commence the Building Works and agrees to pay the Agreed Damages (as defined in the Contract) to the Builder for the Builder's inconvenience in not being able to commence the Building Works; or

(b) Where the works have commenced the Owner acknowledges and agrees that the Builder:

(i) is entitled to suspend the Works, and the Owner is liable to pay to the Builder the Agreed Damages (as defined in the Contract) from the date the Building Works are suspended until the date the Building Works are able to recommence; or

(ii) may hire a generator to continue to carry out the Building Works and the Builder may charge the Owner \$200 per day for each day that a generator is required to enable the Building Works to be carried out up until the day power is available.

#### 13. Manufacturer and Supplier Warranties and Guarantees

(a) When the Owner takes possession of the property pursuant to Clause 38 of the Contract, the Builder will provide the Owner with the details of any warranties and guarantees (in the Builder's possession) issued by the manufacturers or suppliers of appliances, fixtures or fittings installed in the property.

(b) The Owner is responsible for organising warranty service for faults in appliances, fixtures and fittings which were supplied as part of the Building Works under the Contract, where the Builder has provided the warranty documents pursuant to Clause 13(a) above and/or where the appliance, fixture or fitting has been supplied by an independent supplier or manufacturer.



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(c) The Owner agrees and acknowledges that, except as required by law:

(i) the Builder is not providing the warranty or guarantee in relation to the appliances, fixtures and fittings supplied by independent suppliers or manufacturers; and

(ii) the Builder is not providing any warranty or guarantee in relation to any service outside the warranty period provided by an independent supplier or manufacturer; and

(iii) damage to an appliance and/or fitting supplied as part of the Building Works under the Contract, is defective only if it is due to the Builder's workmanship.

In Clause 13 "Appliances, Fixtures and Fittings" shall mean:

- Tapware
- Kitchen appliances
- Hot water service
- Spa bath
- Garage motors
- Fireplace
- Heating / Cooling systems
- Alarms / Intercoms / Cameras
- Ducted vacuum
- Toilet systems

#### 14. Delayed Handover Damages

The term "Delayed Handover Damages" shall mean agreed damages in the amount of \$500 per week (or part thereof), to compensate the Builder for the expense of securing, maintaining and insuring the Building Site in the circumstances described at Clause 38.5

#### 15. Commencement Delays

Specific details relating to the "land title registration date" and the "commencement date" are set out in the Tender. If the commencement of the Building Works cannot be achieved by the nominated commencement date (as detailed in the Tender) due to land title registration delays, the Owner not being the registered owner of the Land or delays beyond the Builder's control, the Builder will be entitled to an extension of time and delay damages pursuant to Clause 34 of the Contract.

#### 16. National Construction Code 2022

The Owner acknowledges and agrees that unless expressly stated in the sales quotation, contract tender or contract documents, the price for the construction of the dwelling does not include the changes to the National Construction Code 2022 (NCC 2022), including energy efficiency (7 star rating) and accessible housing requirements. Subject to the building permit date and/or Building Surveyor's certification that the building design is substantially complete, compliance with the NCC 2022 may not be required. Any changes required to comply with the NCC 2022 will be raised by the Builder by way of Building Variation and the Builder will be entitled to additional costs and extensions of time as required.

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17. Designs with Atrium Voids (if applicable)

The Owner acknowledges and agrees that if any works are required in the void area after handover of the home, such as painting or plastering the ceiling above the void, for the duration of the works:

1. Carlisle Homes may be required to erect a scaffold;
2. The Owner will arrange to protect, remove and/or store their furniture and goods, as directed by Carlisle Homes;
3. The Owner may elect to stay in alternative accommodation; and
4. All costs associated with alternative accommodation and the protection, removal and storage of furniture and goods will be borne by the Owner.

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# Schedule 5

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## EXCLUDED ITEMS (Clause 49)

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

The **Owner** must ensure that, when required by Victorian legislation, a person engaged by them to complete excluded building work is registered as a building practitioner, uses a major domestic building contract, and provides domestic building insurance.

Unless specifically included in the accepted Building Tender Document that forms part of the Contract, the following items are excluded:

- (a) landscaping including plants, lawns, sprinkler systems, garden furniture, pergolas, paving (including steps for porches), retaining walls and AG drains;
- (b) any brick selection other than the Carlisle Home range;
- (c) floor coverings including carpet, polished timber flooring, ceramic or other material floor tiling (except wet areas), security systems, door closers, deadbolts, spa bath, dishwasher, floor wastes, air-conditioning, evaporative cooling system, ducted vacuum, microwave, telephone points, concealed music system, refrigerator and televisions;
- (d) decorating items including all furniture, window dressings, light fittings including low voltage downlights and external decorator lights;
- (e) windows to garage;
- (f) all weather site access (if required) is to be provided at the expense of the Owner; and
- (g) fencing.

**Owner**

NAME

SIGNATURE .....

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# Signatures

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

Owner

NAME

SIGNATURE .....

Builder

NAME

SIGNATURE .....

Signed for and on behalf of: CARLISLE HOMES PTY LTD

**Please note**

- 1. Where a company is signing: 'by A. Smith, director' or 'Signed for and on behalf of XYZ Pty Ltd'.
  - 2. Where a partnership is signing: 'B. Bloggs in partnership with A. Bloggs and C. Bloggs'
- NOTES:** 1. Only sign this Contract when: All the Contract Documents required including Specifications and Plans are attached and signed; All the details in the Schedules have been filled in. 2. The Builder must give the Owner a readily legible signed copy of this Contract within 5 clear Days after it is signed.



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# Deed of guarantee and indemnity

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## Interpretation

BUILDER IS  
OWNER IS

### Guarantors

ADDRESS LINE 1  
ADDRESS LINE 2  
SUBURB

STATE

POSTCODE

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

## Background

The **Guarantor** executed this Deed at the **Owner's** request.

The **Guarantor** is aware of the **Owner's** obligations under the **Contract**.

## Operative

### 1. Guarantee

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

### 2. Indemnity

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

### 3. Principal Debtor

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

### 4. No Merger

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

### 5. No Release

The **Guarantor** is not discharged by:

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

### 6. Severability

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

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7. **When More Than One Guarantor**

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

8. **Waiver of Rights**

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

## Guarantor's Statement

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

### Signed as a Deed

SIGNATURE .....

WITNESS'S NAME AND ADDRESS

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

SIGNATURE .....

DATE .....

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# GENERAL CONDITIONS

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## A. Interpretation

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### Clause 1. Definitions

#### NOTE

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

1.0

- '**All Weather Access**' means reasonable access to the **Building Site** to enable the carrying out of the **Building Works** including in conditions resulting from **Restricted Access**.
- '**Builder**' means the person, partnership or company named in the Particulars of Contract.
- '**Building Period**' means the building construction time estimated by the **Builder** to carry out the **Building Works** as stated in Item 1 of Schedule 1, subject to Clause 34
- '**Building Works**' means the works to be carried out and completed by the **Builder** as shown in the **Contract Documents** and as varied in accordance with this Contract.
- '**Building Site**' means the land upon which the **Building Works** are to be carried out.
- '**Building Surveyor**' means the person, partnership or company named in the Particulars of Contract.
- '**Business Day**' means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.
- '**Colour Selection**' means the **Contract Document** that specifies the details of the colour schemes and selections chosen by the **Owner** as entitled and attached to this Contract.
- '**Commencement**' means the day on which excavation works for the **Building Works** commence on the **Building Site**.
- '**Completion**' means that the **Building Works** to be carried out under the Contract have been completed in accordance with the **Plans** and **Specifications** set out in the Contract and is the day on which the **Builder** provides the **Owner** with the **Notice of Completion** (as issued pursuant to Clause 36.0).
- '**Contract Documents**' means this signed Contract and the Conditions, signed **Specifications**, signed **Plans**, an **Engineer's Design, Tender, Colour Selection**, CSIRO Document, VBA Document, standard inclusions and any other documents attached to the **Contract Documents**.
- '**Contract Price**' means the amount show in Item 2 of Schedule 1.
- '**Days**' means calendar days.
- '**Engineer's Design**' includes a footing design or other structural design that has been prepared by a qualified engineer for the concrete footings, stumps, piers or slab construction, or for a particular part of the **Building Works** that require a structural design, drainage design where appropriate and computations accompanying the foregoing.

The definition of Commencement differs from the standard HIA contract.  
The definition of Completion differs from the standard HIA contract.

The definition of Contract Documents differs from the standard HIA contract.

- 
- '**Final Claim**' means the **Builder's** claim setting out the balance of the **Contract Price** due for payment by the **Owner** to the **Builder**, taking into account all monies paid by the **Owner** and all other amounts to be added to or deducted from the **Contract Price** under this Contract.
  - '**Final Payment**' means the payment of the amount of the **Final Claim**.
  - '**Foundations Data**' has the same meaning as set out in Section 30 of the Domestic Building Contracts Act 1995.
  - '**Land**' means the land containing the **Building Site**.
  - '**Lending Body**' means a person or corporation which has agreed or agrees to make a loan to the **Owner** to enable the **Owner** to pay monies which become payable to the **Builder** under this Contract.
  - '**Notice of Completion**' means a notice given by the **Builder** pursuant to Clause 36 informing the **Owner** that the **Building Works** have reached **Completion**.
  - '**Owner**' means the person, partnership or company named in the Particulars of Contract and wherever appearing in this Contract includes their agents executors and administrators.
  - '**Plans**' means the drawings showing the layout and design details of the **Building Works** with dimensions and elevations, including **Engineer's Design**.
  - '**Possession**' includes occupancy, use or control.
  - '**Prime Cost Item**' means an item (for example, a fixture or fitting) that either has not been selected or whose price is not known at the time which this Contract is entered into and for the cost of supply and delivery which the **Builder** has made allowance for in the **Contract Price**.
  - '**Progress Payment**' means a payment that the **Builder** may claim on the completion of a construction stage as detailed in Schedule 3.
  - '**Provisional Sum Item**' means an item of work (including labour and materials) for which the **Builder**, after making all reasonable inquiries, cannot give a definite price at the time that this Contract is entered into and which the **Builder** has made allowance for in the **Contract Price**.
  - '**Restricted Access**' has the meaning in Clause 26.1.
  - '**Site Access**' means access for delivery and tradesmen's vehicles from the roadway to the **Building Site** on the **Land**.
  - '**Site Drainage**' means drains deemed by the **Soil Test Report** that are necessary to protect the **Building Works** from water damage.
  - '**Soil Test Report**' means an investigation of the **Building Site** to seek evidence of filling on the **Land**, concealed rock and to establish a depth for the footing excavations.
  - '**Specifications**' means the Contract document that shows the details of the **Building Works** and includes the details of the materials to be supplied.
  - '**Statutory or Other Authority**' means the Local Government, State or Federal Government, or any Government Agency or registered building surveyor that has the power to affect the **Building Works**.
  - '**Sub-Contractor**' means a person, partnership or company who contracts with the **Builder** to carry out part of the **Building Works**.



- **'Tender'** means the **Contract Document** specifying the **Builder's** offer to construct and includes the details of the materials to be supplied as entitled and attached to this Contract.

## Clause 2. Headings, footnotes, etc.

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

## Clause 3. Contract complete in itself

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

## Clause 4. Joint and several obligations

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

## Clause 5. Assignment and sub-letting

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

## Clause 6. Notices

- 6.0 Unless otherwise stated in this Contract, a notice given under this Contract must be in writing and in English.
- 6.1 Notices may be given:
- personally;
  - by sending it by prepaid post to the party's address shown in the Particulars of Contract or the address that is last notified in writing; or
  - by sending it by email to the party's email address shown in the Particulars of Contract or that is last notified in writing.
- 6.2 Notice is deemed to be received:
- if given personally, by handing it to the other party;
  - if sent by prepaid post, 5 Business Days after posting;
  - if sent by facsimile, at the time and on the day shown in the sender's transmission report;
  - if sent by email, at the time of transmission unless the sender's server or email indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete or illegible transmission.
- 6.3 If the notice is deemed to be received on a day which is not a Business Day or after 5pm, it is deemed to be received at 9am on the next Business Day.
- 6.4 If two or more people comprise a party, notice to one is effective notice to all.

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## B. Main obligations of the parties

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### Clause 7. Building Act 1993 insurance

**NOTE**

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

- 7.0 Where an insurance policy is required under Division 3 of Part 9 of the Building Act 1993 in relation to this Contract and it is not issued before this Contract is entered into then until such an insurance policy is issued:
- the **Builder** is not able to enforce any provision of this Contract;
  - the **Building Works** must not commence; and
  - no money (including the deposit) is payable under this Contract.
- 7.1 The **Builder** is to ensure that a copy of that insurance policy is given to the **Owner** within 7 **Days** after it is issued.

### Clause 8. Finance

*This clause differs from the standard HIA contract.*

- 8.0 This Contract is conditional upon the **Lending Body** providing to the **Owner** written approval of a loan of at least that amount in order to enable the **Owner** to pay to the **Builder** the monies which become payable under this Contract, such approval to be provided within the timeframe stated in Item 11 of Schedule 1. If no amount is stated in Item 11 of Schedule 1, then such approval is to be provided within 30 **Days** from the date of this Contract. The **Owner** promises diligently to pursue such written approval.
- 8.1 Should such written approval not be obtained within the time provided, this Contract will be voidable within 7 **Days** at the option of the **Owner** to be exercised by notice in writing to the **Builder**, whereupon all monies paid by the **Owner** to the **Builder**, will be refunded except for a sum calculated in accordance with Clause 19.4.
- 8.2 If required by the **Builder**, the **Owner** must deposit that part of the **Contract Price** not being supplied by the **Lending Body** into a separate trust account nominated by the **Builder**, with interest received on the money in the trust account belonging to the **Owner**.

*This clause differs from the standard HIA contract.*

### Clause 9. Deposit

- 9.0 The **Owner** must pay to the **Builder** the deposit set out in Item 3 of Schedule 1 on the later of:
- the signing of this Contract; or
  - the issue of an insurance policy in relation to this Contract under Division 3 of Part 9 of the Building Act 1993.
- 9.1 The amount of the deposit must not be:
- more than 5%, if the **Contract Price** is \$20,000 or more; or
  - more than 10%, if the **Contract Price** is less than \$20,000.

## Clause 10. Commencement and Building period

*This clause differs from the standard HIA contract.*

**NOTE**

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

10.0 **Commencement** must occur within 45 **Days** after the **Builder** receives:

- the essential information from the **Owner** (refer to Clause 13);
- all necessary building permits and planning approvals (refer to Clause 19); and
- payment of the deposit under Clause 9.

10.1 The **Building Period** starts on the actual day of **Commencement**.

10.2 The **Builder** will do everything that is reasonably possible to ensure the **Building Works** will start as soon as practicable.

## Clause 11. Statutory warranties

**NOTE**

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

11.0 To the extent required by the Domestic Building Contracts Act the **Builder** warrants that:

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

## Clause 12. Owner must pay the Contract Price

*This clause differs from the standard HIA contract.*

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

- there are additional costs payable by operation of Clause 12.1;
- additional costs are caused by a deficiency or conflict within the **Contract Documents** (refer to Clause 16);

- a survey of the **Land** is needed to determine the correct boundaries of the **Land** (refer to Clause 17);
- additional building permit fees are payable by operation of Clause 18;
- there is a variation to the costs of complying with changed laws (refer to Clauses 21 and 22);
- there is an additional amount to pay for an agreed variation (refer to Clauses 23 and 24);
- the **Owner** is to pay the cost of providing access (refer to Clause 26);
- the **Owner** is to pay extra costs that result from the **Owner**, their agent, or an officer from a **Lending Body** making inquiries of or give directions to the **Builder's** workers or sub-contractors (Clause 27.1);
- interest charges apply by operation of Clause 31;
- there are additional costs associated with **Prime Cost Items** or **Provisional Sum Items** in Schedule 2 (refer to Clause 33);
- variation fees (Special Condition 1);
- credit card fees (Special Condition 2);
- additional costs caused by private inspectors raising non-genuine defects of breaches (Special Condition 9);
- additional costs caused by power not being available to the Land (Special Condition 11); or
- site start delays (Special Condition 15).

12.1 Should the following circumstances arise:

- that the authorised person under the Building Act 1993 properly requires that a variation to the **Building Works** be made;
- the variation requirement arose as a result of circumstances beyond the **Builder's** control;
- the **Builder** gave a notice pursuant to Clause 23 including a copy of such requirement; and
- the **Owner** does not within 5 **Business Days** of receipt of such notice advise in writing that such variation requirement is disputed,

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

12.1.1 Where the requirement relates to costs associated with excavations and/or footings, the **Builder** must make no charge unless the **Builder** has obtained the **Foundations Data** including having:

- carried out a full site inspection including levels;
- obtained an Engineer's **Soil Test Report**, and an **Engineer's Design**;
- examined all information provided in writing by the **Owner**; and
- made all inquiries that were reasonable in the circumstances from the local and other authorities who have jurisdiction over the proposed buildings on the **Land**.

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

*This clause differs from the standard HIA contract.*

- 12.2 The price for additional excavations and footings, if any, including an amount for the **Builder's** profit and overheads, being the percentage stated in Item 10 of Schedule 1 applied to the cost of that work, is payable with the next **Progress Payment**.
- 12.3 If there are additional charges associated with Sub-Clause 12.1 which when added to the **Contract Price** increases the **Contract Price** by 15% or more the **Owner** may bring this Contract to an end by giving the **Builder** a written notice, either personally, by email or by registered post.
- 12.4 If the Contract is brought to an end by the **Owner** under Sub-Clause 12.3, the **Builder** is entitled to a reasonable price for the work carried out under the Contract to the date the Contract is ended.

## Clause 13. Owner must provide essential information

*This clause differs from the standard HIA contract.*

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

*This clause differs from the standard HIA contract.*

## C. Before work begins

### Clause 14. Owner to supply documents

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

### Clause 15. Copyright

- 15.0 If the **Builder** constructs the **Building Works** in accordance with **Plans** which may incorporate designs which are:
- supplied by the **Owner**;

- prepared under instruction from the **Owner**; or
- prepared from sketches supplied by the **Owner**,

then:

- the **Owner** warrants that the **Owner** has the right to use the design and **Plans** and that no breach of copyright is involved in constructing the **Building Works** in accordance with the **Plans**; and
- the **Owner** indemnifies the **Builder** in relation to any claim for breach of copyright.

15.1 A claim for breach of copyright brought against the **Builder** is a breach of this Contract by the **Owner**.

## Clause 16. Interpretation of Contract Documents

16.0 If there is any difference between scaled dimensions and figures on the **Plans**, the figures prevail. If there is any inconsistency between these Contract conditions and related **Contract Documents** they take priority in the following order:

- these Contract conditions;
- the **Specifications**;
- the **Tender**;
- the **Colour Selection**; then
- the **Plans**.

16.1 If the **Builder** finds any deficiency in the **Plans** or any conflict between the **Plans** and the **Specifications**, the **Builder** must promptly notify the **Owner** in writing. The **Owner** must then advise the **Builder** in writing how to resolve the problem or which document to follow. If the **Owner** does not do so within **7 Days**, the **Builder** may decide what to do, and must notify the **Owner** in writing within **7 Days** of the decision or the document that will be followed.

16.2 If additional costs will be incurred by reason of the operation of Clause 16.1 the **Builder** must request a variation pursuant to the provisions of Clause 23.2 and the procedure in relation to such variation as set out in Clauses 23 and 24 will apply.

16.2.1 Should the **Owner's** consent required by the **Builder** pursuant to Clause 23.4 not be provided by the **Owner** within **7 Days** of the **Builder's** notice given pursuant to Clause 23.2, then either party may end this Contract within **14 Days** of the expiration of such **7 Day** period by written notice given to the other.

16.2.2 If this Contract is ended under this Clause then the **Builder** shall be entitled to a reasonable amount calculated in the manner set out in Clause 19.4.

16.3 The **Builder** is not entitled to claim for extra costs for errors in **Plans** and/or **Specifications** that the **Builder** has prepared. For the purpose of this clause, inconsistencies in Contract Documentation are not errors.

*This clause differs from the standard HIA contract.*

## Clause 17. Owner must identify the Land

17.0 The **Owner** must show the **Builder** the boundaries of the **Land** and warrants that they are correct and put up a sign on the **Land** showing the **Owner's** name and the lot or street number.



- 17.1 If the **Builder** has a reasonable doubt about whether the boundaries are correct, the **Builder** must notify the **Owner** in writing and the **Owner** must obtain a survey within 7 **Days**.
- 17.2 If the **Owner** does not do so within 7 **Days** of being notified, the **Builder** may, as the **Owner's** agent, obtain the survey. The **Owner** must pay to the **Builder** the price of the survey, including an amount for the **Builder's** profit and overheads being the percentage as shown in Item 10 of Schedule 1 applied to the cost of the survey, with the next **Progress Payment**. The **Builder** may charge the **Owner** damages in accordance with Clause 34.3 if the **Owner** causes any delay in obtaining a survey.

## Clause 18. Building permit fees

- 18.0 Unless shown otherwise in Items 4 and 5 of Schedule 1 the **Builder** has included in the **Contract Price** fees payable for the building permit and planning approvals.
- 18.1 In the case of multiple dwellings where additional fees may be applicable, such as for head works, open space allowances and planning fees, these are not included in the **Contract Price** unless specified in Schedules 1 or 4.
- 18.2 If a building permit fee increases or decreases after the date of this Contract the **Owner** must pay any increase and the **Builder** must credit any decrease and the next **Progress Payment** will be varied accordingly.

## Clause 19. Planning approvals and building permits

### NOTE

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

- 19.0 The **Owner** is responsible for obtaining and paying for any planning approval that is required unless stated otherwise in Item 4 of Schedule 1. The party obtaining such planning approvals must take all reasonable steps to do so within the time period shown in Item 4 of Schedule 1.
- 19.1 Subject to the receipt of the planning approval and if the **Owner** has not already obtained the necessary building permits, the **Builder** must apply for them within 14 **Days** after receiving evidence of the **Owner's** title to the **Land** and ability to pay under Clause 13.
- 19.2 If the **Builder** obtains the building permits, the **Builder** must give copies of the permit documents to the **Owner**, if requested to do so.
- 19.3 If the necessary planning approval and/or building permits are not obtained within the time specified in Items 4 or 5 of Schedule 1, then if:
- neither party is at fault, either party may bring this Contract to an end by giving written notice to the other;
  - the **Builder** is at fault, the **Owner** may bring this Contract to an end by giving the **Builder** written notice; or
  - the **Owner** is at fault, the **Builder** may bring this Contract to an end by giving the **Owner** written notice,

provided that the party who wishes to end this Contract under the conditions of this Clause must do so within 14 **Days** of the expiration of the period set out in Items 4 or 5 of Schedule 1.

- 19.4 If this Contract is ended under this Clause and the **Builder** is not at fault, the **Builder** is entitled to a reasonable price for the work performed, including the costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied to the cost of that work. The price:

- may include an amount for the preparation of **Plans** and **Specifications**, the **Engineer's Design** and **Soil Test Report** - unless these have been allowed for in a separate contract; and
- must not include an amount for work on the **Building Site** for which planning or building approval was not obtained.

*This clause differs from the standard HIA contract.*

- 19.5 If the **Builder** is identified in Item 5 of Schedule 1 as the party responsible for the building permit, then the **Builder** is responsible for paying for fees of the **Building Surveyor** appointed by the **Owner** and this cost is included in the **Contract Price**. The **Owner** authorises the **Builder** to make applications, appeals or referrals under the Building Act 1993 for the **Building Works**. For the avoidance of doubt, this authority includes the **Owner** authorising the **Builder** to make any application, appeal, referral or representation for the purpose of section 240 of the Building Act 1993.
- 19.6 The **Owner** must otherwise sign all documents and do all acts as required by the **Builder** to obtain all permits, consents and certificates from the **Building Surveyor** or any Statutory or other authority that has the power to affect the **Building Works**.

## Clause 20. Insurance

### NOTE

#### Re Clause 20.4

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

- 20.0 The **Builder**:

- must insure in the names of the **Builder**, the **Owner** and the **Lending Body** (as stated in the Particulars of Contract), against liability for physical loss, destruction or damage to the **Building Works** and the goods and materials on the **Land** as described in the **Contract Documents**; and
- must indemnify the **Owner** in respect of and insure against liability for personal injury, death, property loss or damage arising out of the **Building Works**.

- 20.1 The **Builder** must maintain the insurance from the date the **Owner** gives the **Builder Possession** of the **Land** under Clause 25 to the earlier of:
- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
  - the date the **Builder** hands over **Possession** of the **Land**.

The **Owner** must pay the **Builder** a reasonable amount to cover the pro-rata cost of the insurance for any period during which the **Final Payment** is unreasonably withheld from the date the money is due.

- 20.2 The **Builder** must provide the **Owner** with a current 'Certificate of Currency' within 7 **Days** of **Commencement** of the **Building Works**. The



- Certificate must show the names of the **Builder**, **Owner**, **Lending Body** and the job address.
- 20.3 The cover for personal injury, death, property loss or damage arising out of the **Building Works** must be for an amount which is not less than \$5 million for any one claim and the **Builder** must include as parties to be insured under the policy, any **Sub-Contractors** who do not provide the **Builder** with evidence of adequate and continuing insurance cover.
- 20.4 The **Builder** is not responsible for, and does not indemnify the **Owner** or the **Owner's** employees or agents or any person claiming through the **Owner** against any loss or liability that arises out of something done or not done by the **Owner** or any person for whom the **Owner** is responsible. The **Owner** indemnifies the **Builder** in relation to such claims.
- 20.5 The **Builder** must be registered with WorkCover to protect any person employed by the **Builder** in carrying out the **Building Works**.

## D. During work

### Clause 21. Variations to statutory laws

**NOTE**

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

- 21.0 If the **Plans** and/or the **Specifications** have to be varied to comply with either a change in the law or statutory requirements after this Contract is entered into the **Builder** must not give effect to any variation unless the following circumstances apply:
- a building surveyor or other authorised person under the Building Act 1993 requires in a building notice or building order under that Act that the variation be made;
  - the requirement arose as a result of circumstances beyond the **Builder's** control;
  - the **Builder** included a copy of the building notice or building order in the notice required by the Act; and
  - the **Owner** does not advise the **Builder** in writing within 5 **Business Days** of receiving the notice required by the Act that the **Owner** wishes to dispute the building notice or building order.
- 21.1 The **Owner** and the **Builder** may then agree to vary the **Plans** and the **Specifications** to make them comply or to avoid the need to comply. The variation must be in writing and signed by the **Owner** and the **Builder**. If the **Builder** and the **Owner** do not agree within 7 **Days** to vary the **Plans** and the **Specifications**, they are varied in accordance with the **Builder's** notice under Clause 21.
- 21.2 If the variation involves additional cost, the **Owner** must pay it, plus the percentage specified in Item 10 of Schedule 1. If the variation involves a saving, the saving is to be deducted from the **Contract Price**. In each case, the adjustment is to be made to the next **Progress Payment** to the **Builder**.
- 21.3 If the cost of the variation is greater than 15% of the total of the **Contract Price** and other amounts to be added to or deducted from the **Contract Price** under this Contract;

*This clause differs from the standard HIA contract.*

- the **Owner** may bring this Contract to an end by giving the **Builder** a written notice either personally, by email or by registered post; or
  - the **Builder** may bring this Contract to an end by giving the **Owner** a written notice either personally, by email or by registered post if the **Owner** fails to give written evidence of ability to pay for the variation within 14 **Days** after receiving the **Builder's** notice.
- 21.4 If the Contract is brought to an end by either the **Builder** or the **Owner** under this Clause, the **Builder** is entitled to a reasonable price for work performed to the date this Contract is ended, including costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied to that cost.
- 21.5 Nothing in this Clause allows the **Builder** to charge the **Owner** for building work required as a result of a direction issued under Division 2 of Part 4 of the Building Act 1993.

## Clause 22. Variations to State or Commonwealth tax laws

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

## Clause 23. Requested variations

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

- 23.5 If, within 7 **Days** of the **Builder** giving the **Owner** the notice of particulars under Clause 23.3, the **Owner** does not give the **Builder**:
- a signed request to the variation under Clause 23.4; and
  - written evidence of the **Owner's** ability to pay for the variation,
- the request by the **Owner** for the variation is deemed withdrawn.

## Clause 24. Effect of variations

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

## Clause 25. Possession

- 25.0 The **Owner** must, within 7 **Days** of receiving a request from the **Builder**, give the **Builder** exclusive **Possession** of the **Land** to carry out the **Building Works**. The **Builder's** right to **Possession** of the **Land** is under a contractual licence only. The **Builder** has the **Owner's** authority to allow or refuse anyone access, and may remove unauthorised people from the **Land**.
- 25.1 The **Owner** or an authorised officer of the **Lending Body** is entitled, after giving the **Builder** reasonable prior notice, to go on the **Land** to inspect the **Building Works** at reasonable times provided that such inspection does not delay or interfere with the progress of the **Building Works**.

## Clause 26. All Weather Access

- 26.0 The **Owner** acknowledges that the cost of **All Weather Access** is not included in the **Contract Price**.
- 26.1 If due to conditions resulting from inclement weather access to the **Building Site** is restricted ('**Restricted Access**'):
- so as to impede the carriage of machinery and/or materials to and from the **Building Site** or the **Building Works** being carried out in a safe manner; and
  - the carrying out of the **Building Works** are, or will be delayed;
- the **Builder** may request a variation in accordance with Clause 23.2 to carry out additional **Building Works** reasonably required to include a means of **All Weather Access** to the **Building Site**.

## Clause 27. Owner must not direct Builder's workers

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

Clause 27.1 differs from the standard HIA contract.

- 27.1 The **Owner** will be liable for any extra costs that result from any failure by the Owner, their agent or an officer from a **Lending Body** to comply with this Clause.

## Clause 28. Owner must arrange Lending Body inspections

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

## Clause 29. Builder to claim Progress Payments

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

## Clause 30. Owner must make Progress Payment

- 30.0 The **Owner** must pay the amount of a **Progress Payment** set out in Schedule 3 within the number of **Days** set out in Item 7 of Schedule 1 after both:
- the stage has been completed; and
  - the **Owner** has received a written claim for the **Progress Payment**.
- 30.1 If the **Owner** is getting finance from a **Lending Body**, the **Owner** must give the **Lending Body** an authority, while this Contract lasts, to make payment direct to the **Builder** of any amount the **Owner** agrees has become due under this Contract. The **Owner** must notify the **Lending Body** when each stage is completed and the payment is due.
- 30.2 Other than in relation to the Final Claim, payment is on account only.
- 30.3 The **Owner** has no right to set off, delay or deduct payments due under a progress claim if the stage is complete.
- 30.4 The fact that the **Owner** or **Lending Body** has made a **Progress Payment** does not prevent the **Owner** from later claiming that the stage has defects or incomplete works. This condition does not apply to the **Final Payment**. (Refer to Clauses 36 and 37)

Clauses 30.2, 30.3 and 30.4 differ from the standard HIA contract

## Clause 31. Interest for late payment

*This clause heading differs from the standard HIA contract.*

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

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

## Clause 32. Unfixed materials on Site

- 32.0 Any unfixed goods or materials on the **Building Site** (apart from those supplied and paid for by the **Owner** and clearly marked accordingly) are the property of the **Builder**.

## Clause 33. Prime Cost Items and Provisional Sum Items

### NOTE

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

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

- 33.0 Where the **Owner** is to select any item for a **Prime Cost Item** or a **Provisional Sum Item**, the **Owner** must make the selection within **7 Days** of receiving a written request to make the selection from the **Builder**.
- 33.1 An allowance for a **Prime Cost Item** does not include amounts for installation, **Builder's** profit and overheads and cartage. These are included in the **Contract Price**.
- 33.2 An allowance for a **Provisional Sum Item** does not include an amount for the **Builder's** profit and overheads. The amount for the **Builder's** profit and overheads is included in the **Contract Price**.
- 33.3 If a **Prime Cost Item** selected by the **Owner** is unavailable, then the **Owner** must specify an alternative item within **7 Days** of the **Builder's** request to do so, and if the **Owner** fails to comply the **Builder** shall be entitled to select an alternative as near as practical in quality to the original item selected by the **Owner**.
- 33.4 In relation to each **Prime Cost Item** and **Provisional Sum Item**, if the actual price of supplying the item or providing the work is:

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

## Clause 34. Builder's right to extensions of time

- 34.0 The date for **Commencement** is put back or the **Building Period** is extended if the carrying out of the **Building Works** is delayed due to:
- a variation or a request for a variation by the **Owner** in accordance with Clauses 16, 21, 23 and 24;
  - a suspension of work in accordance with Clause 35;
  - inclement weather or conditions resulting from inclement weather in excess of the **Days** nominated in Schedule 1;
  - an **Owner's** refusal to agree to a variation requested by the **Builder** under Clause 26.1;
  - disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are not the **Builder's** fault;
  - civil commotion or industrial action affecting the work of tradespeople or the work of a manufacturer or supplier of materials;
  - anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**;
  - a delay in getting any approval, provided that it is not the **Builder's** fault. Refer to clause 19; or
  - any other cause that is beyond the **Builder's** direct control.
- 34.1 The **Builder** is to give the **Owner** a written notice informing the **Owner** of the extension of time. The written notice must state that cause and the extent of the delay.
- 34.2 To dispute the extension of time the **Owner** must give the **Builder** a written notice, including detailed reasons why the **Owner** disputes the claim, within **7 Days** of receiving the **Builder's** notice.



**NOTE**

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

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

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

## Clause 35. Suspension of work

*This clause differs from the standard HIA contract.*

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

## E. Completion of the Works

### Clause 36. Final inspection

*Clause 36.0 differs from the standard HIA contract.*

- 36.0 When the **Builder** considers that the **Building Works** have reached **Completion** which, for the avoidance of doubt, does not include the appliances listed in Special Condition 5, the **Builder** is to give to the **Owner**:
- a **Notice of Completion**; and
  - the **Final Claim**.
- 36.1 Notwithstanding any other provision of this Contract, the **Builder** must not demand **Final Payment** until after the **Builder** has given to the **Owner** either:
- a copy of the occupancy permit under the Building Act 1993, if the building permit for the **Building Works** requires the issue of an occupancy permit; or
  - in any other case, a copy of the certificate of final inspection.
- 36.2 The **Builder** and the **Owner** must meet on the **Building Site** within 7 **Days** of the **Owner** receiving the **Notice of Completion** and **Final Claim** to carry out an inspection in accordance with Clause 37.

*This clause differs from the standard HIA contract.*

- 36.3 If the **Owner** does not meet with the **Builder** to inspect the **Building Works** as required by Clause 36.2, the **Owner** must pay the amount of the **Final Claim** within a further period of 7 **Days**.
- 36.4 If within 7 **Days** after service of the **Notice of Completion** the **Owner** fails to attend an inspection of the **Building Works**, the **Final Payment** is due and payable at the expiration of a further period of 7 **Days**.
- 36.5 If the **Owner** intends to rely on an inspection by an independent consultant for the purpose of listing defects and incomplete work pursuant to Clause 37 of the Contract, the **Owner** acknowledges and agrees that it must:
- (a) arrange for the independent consultant to inspect the property with the **Builder** at least two **Business Days** prior to the inspection with the **Builder** pursuant to Clause 36.2; and
  - (b) provide the independent consultant's written report to the **Builder** at least one (1) **Business Day** prior to the Clause 36.2 inspection.
- No reports from the **Owner's** independent consultant will be considered for the purpose of Clauses 36 and 37 after the **Builder's** inspection and the written list is prepared in accordance with Clause 37.

## Clause 37. List of defects and Final Payment

*Clause 37 differs from the standard HIA contract.*

- 37.0 When the **Owner** and the **Builder** meet on the **Building Site** to inspect the **Building Works**, the **Builder** will prepare a written list of all known defects and incomplete work which, for the avoidance of doubt, does not include the appliances listed in Special Condition 5. Items identified by the **Owner's** private consultant will be added to the list if the **Builder** determines these items are defective or incomplete (at the **Builder's** discretion). The **Builder** and the **Owner** are to sign the list and each must keep a copy.
- 37.1 If the **Owner** does not sign the written list of items or there are no items to list as defective or incomplete (pursuant to Clause 37.0), the **Owner** must pay the **Final Claim** within a further period of 3 **Business Days**.
- 37.2 The **Builder** agrees to complete all works required to rectify any defects or to complete any works noted on the list prepared pursuant to Clause 37.0.
- 37.3 The **Builder** is to give the **Owner** a written notice when the work under Clause 37.2 has been done.
- 37.4 The **Owner** must pay the **Final Claim** within a further period of 3 **Business Days** after the **Owner** receives the **Builder's** notice under Clause 37.3.
- 37.5 The fact that the **Owner** pays the **Final Claim** is not evidence that there are no defects or incomplete work nor a waiver of any rights under a statutory warranty.
- 37.6 The fact that the **Builder** signs the list is not an admission that the defects exist or there is incomplete **Building Works**.
- 37.7 'Defect' does not include a defect arising from the fact that something has to be supplied or done by the **Owner**.

## Clause 38. Handover and Final Payment

*Clause 38.0 differs from the standard HIA contract.*

- 38.0 When the **Owner** pays the **Final Claim** in cleared funds, and the payment of the **Final claim** is received by the **Builder**, the **Builder** must hand over **Possession** of the **Land** to the **Owner** together with all keys, certificates and warranties in the **Builder's** possession.



- 38.1 If the **Owner** takes **Possession** of the **Land** or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent, the **Owner** commits a substantial breach of this Contract entitling the **Builder** to elect to either:
- treat the **Owner's** action as a repudiation of this Contract and accept that repudiation;
  - give the **Owner** a notice to remedy breach of contract under Clause 43; or
  - accept the **Owner's** actions as a variation of the **Building Works** to omit that part of the **Building Works** not carried out and completed as at the date the **Owner** takes **Possession**.
- 38.2 If the **Owner** breaches (including repudiates) this Contract, nothing in this Clause 38 prejudices the right of the **Builder** to recover damages or exercise any other right or remedy.
- 38.3 If the **Builder** accepts the variation of the **Building Works** under the third paragraph of Clause 38.1, the **Builder** is to give the **Owner** written notice to that effect and the **Builder** may give a **Notice of Completion** and a **Final Claim** under Clause 36.
- 38.4 When the **Owner** takes possession under this Clause 38, the **Owner** must give the **Builder** reasonable access to install the appliances (as applicable) listed in Special Condition 5.
- 38.5 Where either:
- (a) the **Builder** has provided the **Owner** with written notice that the works under Clause 37.2 have been completed (in accordance with Clause 37.3);
- or
- (b) the **Owner** does not list any known defects or incomplete work, and
  - (c) the **Owner** has failed to pay the **Final Claim** and take **Possession** as required under the Contract, the **Owner** is liable to pay Delayed Handover Damages as defined in the Special Conditions.
- 38.6 Where the **Owner** pays the **Final Claim** but does not take **Possession** of the **Land** or any part of the **Land**, the **Owner** agrees and acknowledges that it, the **Owner** must:
- (a) insure the property and provide such details to the **Builder**;
  - (b) authorise the **Builder** to trip the locks (so as not to open with the **Builder's** key) and the **Owner** must retain all keys, remotes and settlement pack; and
  - (c) release, discharge and indemnify the **Builder** in relation to any claim, demands and costs relating to the security of the property.

*Clause 38.4 differs from the standard HIA contract.*

*Clause 38.5 differs from the standard HIA contract.*

*Clause 38.6 differs from the standard HIA contract.*

## Clause 39. Defects within the 3 month period

- 39.0 The **Builder** must fix any additional defects in the **Building Works** that the **Owner** notifies in writing within 3 months from the earlier of:
- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
  - the date the **Builder** hands over **Possession** of the **Land**.
- 39.1 Defects that in the reasonable opinion of the **Builder** affect the safety or security of the **Building Works** or may lead to it being damaged must be fixed by the **Builder** as soon as practicable after notification by the **Owner**.

Clause 39.2 differs from the standard HIA contract.

- 39.2 Other defects must be listed by the **Owner** and given to the **Builder** at the end of the 3 month period. The **Builder** must fix those defects within 21 **Days** after the **Owner** provides the list of defects. If the **Builder** cannot rectify the items within the 21 **Day** period, the **Builder** must provide the **Owner** with written reasons and must provide the **Owner** with an estimated period to rectify these items, which must be within 3 months of receiving the list from the **Owner**.
- 39.3 The **Builder** must fix defects without cost to the **Owner**. The **Builder** must do so in normal working hours or at any time agreed between the **Builder** and the **Owner**. The **Owner** must provide reasonable access to the **Builder**.

## Clause 40. Defects within the Statutory Implied Warranties Period

- 40.0 The **Owner** must notify the **Builder** in writing of any defects in the **Building Works**.
- 40.1 Defects that in the reasonable opinion of the **Builder** affect the safety or security of the **Building Works** or may lead to it being damaged must be fixed by the **Builder** as soon as practicable after notification by the **Owner**.
- 40.2 The **Builder** must fix those defects within 21 days of notification or as soon as reasonably practicable.
- 40.3 The **Builder** must fix defects without cost to the **Owner**. The **Builder** must do so in normal working hours or at any time agreed between the **Builder** and the **Owner**. The **Owner** must provide reasonable access to the **Builder** (including arranging any tenants to provide reasonable access to the **Builder**).
- 40.4 If, in breach of Clause 40.3, the **Owner** fails, refuses or otherwise does not provide the **Builder** with reasonable access to perform the works to fix the agreed defects and engages a third party to perform the works, then the **Owner's** right to compensation and/or damages from the **Builder** shall be limited to the reasonable cost (if any) of the **Builder** performing the works, not the actual or quoted costs of the third party.

## Clause 41. Owner's claim for agreed damages

### NOTES

#### Re Clause 41

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

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

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

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

- 41.1 The **Owner** may deduct the amount of any such damages from the **Final Payment**.

## Clause 42. Ending this Contract under bankruptcy or liquidation

*This clause differs from the standard HIA contract.*

- 42.0 Either the **Owner** or the **Builder** may bring this Contract to an end by giving written notice to the other by email or by registered post, if the other becomes bankrupt or assigns his or her estate for the benefit of his or her creditors, or makes a composition or arrangement with them, or, being a corporation goes into liquidation (except for the purposes of reconstruction), or has a receiver, manager, mortgagee in possession, administrator or provisional liquidator appointed.

## Clause 43. Builder's right to end this Contract

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

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## Clause 44. Owner's right to end this Contract

- 44.0 If the **Builder** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Owner** to recover damages or exercise any other right or remedy.
- 44.1 The **Builder** is in substantial breach of this Contract if the **Builder**:
- suspends the carrying out of the **Building Works**, otherwise than in accordance with Clause 35;
  - has the **Builder's** licence cancelled or suspended; or
  - is otherwise in substantial breach of this Contract.
- 44.2 If the **Builder** is in substantial breach of this Contract the **Owner** may give the **Builder** a written notice to remedy the breach:
- specifying the substantial breach;
  - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Builder**; and
  - stating that if the substantial breach is not remedied as required, the **Owner** intends to end this Contract.
- 44.3 If the **Builder** does not remedy the substantial breach stated in the notice to remedy the breach within 10 **Days** of receiving that notice, the **Owner** may end this Contract by giving a further written notice to that effect.
- 44.4 The **Owner** is not entitled to end this Contract under this Clause when the **Owner** is in substantial breach of this Contract.

## Clause 45. Owner may get another Builder to finish work

- 45.0 If the **Owner** brings this Contract to an end under Clause 44, then the **Owner's** obligations to make further payment to the **Builder** is suspended for a reasonable time to enable the **Owner** to find out the reasonable cost of completing the **Building Works** and fixing any defects.
- 45.1 The **Owner** is entitled to deduct that reasonable cost calculated under Clause 44.0 from the total of the unpaid balance of the **Contract Price** and other amounts payable by the **Owner** under this Contract if this Contract had not been terminated and if the deduction produces:
- a negative balance - the **Builder** must pay the difference within 7 **Days** of demand; and
  - a positive balance - the **Owner** must immediately pay the difference to the **Builder**.

## Clause 46. Subcontracting

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

## Clause 47. No waiver

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

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## Clause 48. Severance

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

## Clause 49. Excluded items

- 49.0 The **Owner** and **Builder** agree that the items set out in Schedule 5 are excluded from the Contract.
- 49.1 The **Owner** must ensure that any person engaged by them to complete any building work excluded from the Contract:
- holds an appropriate licence or registration to carry out the works;
  - obtains domestic building insurance when required under Division 3 of Part 9 of the Building Act 1993; and
  - uses a "major domestic building contract" when required by the Domestic Building Contract Act 1995.

# F. Disputes, conciliation and tribunal

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

## Clause 50. Disputes

- 50.0 If either the **Owner** or the **Builder** refers a domestic building work dispute to the chief dispute resolution officer under Part 4 of the Domestic Building Contracts Act 1995 they must within 5 **Days** give a copy of the referral to the other party.

# Domestic Building Consumer Guide

## Mandatory contract information statement for consumers

Your builder must give you a copy of this guide before you sign a major domestic building contract. A major domestic building contract is required for most building projects to build, renovate or extend a home, such as a house or unit, where the cost of the work is over \$10,000.

Reading this guide will help you to know your rights and responsibilities and understand the roles and responsibilities of your builder and building surveyor.

Learn more about the topics in this guide, and domestic building contracts and work generally, at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

### Before your building project starts

You will usually need to appoint building practitioners when you build, renovate or extend a house or unit, or do other building work. Other work includes work such as landscaping, fencing or building a swimming pool, driveway or a garage. You may need a builder to complete the building work, and if you need a building permit you will need a building surveyor.

The Victorian Building Authority (VBA) registers building practitioners. If you are concerned about the conduct of a building practitioner you should contact the VBA.

You can check the registration and disciplinary history of a building practitioner via the links at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

Your builder must also take out Domestic Building Insurance (DBI) for your project, if the building work costs more than \$16,000. This covers defective or incomplete work for up to six years if your builder dies, disappears or becomes insolvent. You can also claim on DBI with the Victorian Managed Insurance Authority if your builder fails to comply with a final order from the Victorian Civil and Administrative Tribunal or a court.

Check when you may make a claim via the links at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

### Appointing your builder

You appoint your builder by signing a major domestic building contract.

Your contract must be in writing and include details such as:

- the contract price
- the deposit and progress payments required by law for completed stages of work
- a description of the building work to be carried out
- the plans and specifications, and
- advice on the five-day cooling-off period.

The contract price should be a fixed amount. Cost-plus contracts, for example where your builder charges you by the hour, are only allowed for projects over \$1 million, or for renovation projects in limited circumstances.

(1 August 2017)

Make sure you have enough time to thoroughly read the contract. You should also consider obtaining independent legal advice before you sign the contract, even though this means you no longer have the five-day cooling-off period to change your mind.

If you are asked to sign a pre-construction contract (for example, a contract for design or specification work or obtaining permits) that is for more than \$10,000, it will be a major domestic building contract.

Your contract will also include a checklist, which sets out the matters you must consider before signing the contract. You must complete and sign the contract checklist.

You can make a variation to a contract after it has been signed by using a variation notice (for example, to change the plans and specifications). You and your builder must agree in writing to the changes and put the details, including the new price and completion date, in the contract before the work is carried out.

Find more information about the contract, the checklist and contract variations via [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

### Appointing a building surveyor

Some building projects require a building permit. A building permit is written approval from a building surveyor that your plans and specifications comply with the building regulations. It allows your builder to start your building project.

If your building work requires a building permit, you must engage a building surveyor before you apply for the permit. There are penalties for you and your builder if a building permit is not obtained.

You can only engage one building surveyor, but you may choose either a private building surveyor or a municipal building surveyor. Your builder may recommend a building surveyor, but cannot appoint a private building surveyor for you.

You can choose a building surveyor via the links at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

If you want to engage a municipal building surveyor, contact your local council.



## During your building project

### Role of your builder

Your builder is responsible for completing your building project to the standard required by the building regulations and your plans and specifications. The builder may undertake the work or engage and manage tradespeople to do the work.

Your builder must also provide you with a copy of the DBI policy and a certificate of insurance for your building project, before you pay your deposit. If you are concerned about the validity of the certificate, you should check with the insurer.

### Role of the building surveyor

A building surveyor is responsible for checking that your building project meets the minimum standards of the building regulations. They will independently:

- assess your plans and issue the building permit
- require protection work to be undertaken so your building work does not damage your neighbour's property
- conduct the mandatory building inspections personally or have a building inspector conduct the inspections at the mandatory notification stages of your building project, and
- issue the occupancy permit or certificate of final inspection on completion of the building work.

Your building surveyor may issue directions and orders to the builder to fix building work or to stop work. They can also give you building notices and orders about the building work, if necessary.

The mandatory inspection stages for a house are:

- completion of excavations before placing the footings
- before pouring the concrete footings or slab
- completion of the framework, and
- completion of all of the building work.

You can ask your building surveyor to carry out additional inspections, for example, pre-plaster inspections and wet area inspections. Your building surveyor may charge more for additional inspections.

Find more information about building surveyors at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

### Your role

You are responsible for checking the progress of your building project, talking to your builder about any issues or concerns you may have and paying your builder for completed work. You have the right to reasonable access to your building site at any time during construction, to check on the progress.

Make sure you:

- choose a building surveyor, if required
- provide the builder with the items you agreed to

supply as soon as possible (for example, materials such as tiles, or a service such as a tiler to work on the flooring)

- put the details and costs of any changes in writing – you and your builder must sign off on the changes before the builder starts the work, and
- only make stage payments when the building work for each stage is complete – do not make payments in advance.

Check everything in your contract has been delivered and is in working order before you make the final payment.

Find details at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

### Tips and traps

Beware of:

- an extremely low quote compared to other builders – this may indicate a risk that the quality of the job may be compromised, that the builder may not fully understand what is required or may not be properly registered or insured
- sales pitches that put pressure on you to sign the contract quickly to avoid a price increase, and
- a builder who recommends that you get an owner builder permit while they organise all the building work.

### If things go wrong

#### Statutory warranties and guarantees

The workmanship and quality of your building project is protected by specific statutory building warranties and general consumer guarantees.

Statutory building warranties make sure that your builder uses good workmanship and delivers everything in your contract. You can take legal action for a breach of the statutory building warranties at any time, up to 10 years after the date the occupancy permit or certificate of final inspection was issued.

You are also protected by the Australian Consumer Law (ACL). The ACL provides statutory guarantees that goods and services supplied in trade or commerce, such as building work, meet certain standards. For example, building work must be carried out with due care and skill, be fit for purpose and be delivered in a reasonable time.

### Disputes

Many disputes can be avoided when there is good communication between you and your builder. If a dispute does arise, you should first try to sort it out with your builder.

If you cannot resolve the dispute, contact the Victorian government's free and independent service, Domestic Building Dispute Resolution Victoria. Find details and lodge a dispute, via the links at [consumer.vic.gov.au/buildingguide](http://consumer.vic.gov.au/buildingguide).

(1 August 2017)