

# YarraBend



**Building Contract**

# PLAIN ENGLISH NEW HOMES BUILDING CONTRACT

**JANUARY 2005**

## GLENVILL PROJECTS

480 CHURCH STREET RICHMOND VIC 3121  
TEL: (03) 9573 8393 FAX: (03) 9572 8696

### HOUSING INDUSTRY ASSOCIATION

OWNER:

JOB LOCATION: YarraBend Lot

of Proposed Subdivision PS. PS 747685W

HIA Membership No. 522526 .....Expiry Date: 30 June 2017 .....

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Glenvill Projects Pty Ltd ACN 147 526 074

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

## **COOLING OFF PERIOD**

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

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

.....✂.....  
DETACH ALONG DOTTED LINE

## **NOTICE THAT CONTRACT IS ENDED**

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

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

To .....(Builder)

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

Building Owner's signature .....

Date:        /        /

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

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

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

**If you answer 'no' to any of the following questions you are not ready to sign the Contract**

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

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

Read, signed and dated by the Building Owner .....

Date:        /        /

**SIGN HERE**

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# PARTICULARS OF CONTRACT

## **THIS CONTRACT IS BETWEEN:**

### **NOTE**

If the Owner is a company, a Directors' Guarantee must be signed before this Contract is signed. See Attachment 2.

## **OWNER/S**

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

Of

ACN N/A

Telephone N/A Fax N/A

## **BUILDER** Glenvill Projects Pty Ltd

ACN 147 526 074 HIA Membership No. 522526

of 480 Church Street

City Richmond State Victoria Postcode 3121

Telephone (03) 9573 8393 Fax (03) 9572 8696

Registered Building Practitioner

Leonard Warson

Reg. No. DB-U 15733

## **THE BUILDING WORKS:**

### **NOTE**

These documents must be signed and dated with the Contract.

Dwelling and Garage

as set out in the Specifications and Plans.

The **SPECIFICATIONS** include pages that were prepared and supplied by Glenvill Projects Pty Ltd

There are sheets of **PLANS** and they were prepared AND supplied by Glenvill Projects Pty Ltd

## **LENDING DETAILS:**

The **LENDING BODY** is a recognised lending body to be determined by the Owner

.....  
of .....  
.....

**WARRANTY/  
PROFESSIONAL  
INDEMNITY INSURER**

INSURER: QBE Australia.....  
of c/- HIA Insurances Services,  
Level 4 / 70 Jolimont Street Jolimont Vic 3002  
Telephone (03) 9666 0273 ..... Fax (03) 9211 3815 .....

**THE LAND**

Lot No.                      on Proposed Plan of Subdivision No PS 747685W

The PARENT TITLE PARTICULARS are:

Certificate of Title Reference	Being Lot(s)	On Plan
Volume 4247 Folio 246 Volume 3581 Folio 198 Volume 4468 Folio 576 Volume 4935 Folio 969 Volume 9189 Folio 426 Volume 4602 Folio 366 Volume 8250 Folio 161 Volume 5108 Folio 460 Volume 4475 Folio 803 Volume 4804 Folio 659 Volume 3869 Folio 662 Volume 5851 Folio 168 Volume 3586 Folio 197 Volume 4159 Folio 798 Volume 3738 Folio 583 Volume 4282 Folio 337 Volume 3653 Folio 527 Volume 5308 Folio 499 Volume 3780 Folio 842 Volume 3888 Folio 511 Volume 8519 Folio 930 Volume 3744 Folio 714 Volume 3599 Folio 653 Volume 3900 Folio 920 Volume 3910 Folio 988 Volume 3910 Folio 989 Volume 3679 Folio 793 Volume 3796 Folio 141 Volume 8636 Folio 106		747685W, 801752K, 801753H, 801754F



**SIGNED OWNER/S**

**NOTE**

Only sign this Contract when:

- All the required Contract Documents, including the Specifications and the Plans, are attached and signed; and
- All the details in the Schedules have been filled in.

**SIGNED OWNER/S:**

.....  
.....

(If more than one owner, all must sign)

**SIGN HERE**

**SIGNED WITNESS:** .....

Name .....

Address .....

**SIGNED BUILDER**

**NOTE**

The Builder must give the Owner a readily legible signed copy of this Contract within 5 clear Days after it is signed

**SIGNED BY OR ON BEHALF OF THE BUILDER:**

.....  
.....

**SIGNED WITNESS:** .....

Name .....

Address .....

**CONTRACT DATE**

**NOTE**

Insert date when Contract is signed by both parties.

**DATE OF CONTRACT**

/ /

# SCHEDULE 1

## 1. Time for completion - building period (Clause 11)

### NOTE

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

420 Days including the following estimates for delays:

- Inclement weather and the effects of inclement weather  
10 days
- Weekends, public holidays, rostered days off and other foreseeable breaks in the continuity of the work  
65 days
- Other days that are reasonable having regard to the nature of the **Building Work** 1 days

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

	Item	Estimate
1	Conveying connection or installation of	
	(a) Gas	\$ NIL
	(b) Electricity	\$ 350
	(c) Telephone to one point	\$ 400
	(d) Water	\$ NIL
	(e) Sewerage	\$ NIL
2	Issue of Planning Permit	\$ NIL
3	Issue of Building Permit	\$ NIL
4	Other	
	(a) .....	\$.....
	(b) .....	\$.....

## 2. Contract Price (Clause 12)

Price excluding GST \$  
 GST on the above amount \$  
**Contract Price** including GST \$

The **Contract Price** is GST inclusive.

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

- variations requested by the **Owner** and agreed by the **Builder** (Sub-clauses 23 and 24); and
- interest on overdue payments (Sub-clause 31).

**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)

\$

(5% of Contract Price )

#### **4. Person responsible for obtaining and paying for planning approval and or siting consents and number of days to obtain planning and or siting consents approval**

(Clause 18 and 19)

The Developer (Vendor) pursuant to the Contract of Sale of Land is responsible for obtaining and paying for all planning approval prior to the **Land Settlement Date**.

#### **5. Person responsible for obtaining and paying for the Building permit and number of days to obtain Building Permit**

(Clause 18 and 19)

The Builder within 90 days of the later of:

- i) the **Land Settlement Date**; and
- ii) receipt of the essential information from the **Owner** referred to in Sub-clause 13.0

#### **6. Number of Days to make Progress Payments after stage completed and notice received**

(Clause 30)

7 days

- |   |                |
|---|----------------|
| <b>8. Agreed interest for late Progress Payments</b><br>(Clause 31)               | 10% per annum  |
| <b>9. Agreed damages for late completion of the Building Works</b><br>(Clause 40) | \$350 per week |
| <b>10. Percentage applicable to extra work</b><br>(Clauses 12.2, 17.2 and 21.2)   | N/A            |
| <b>11. Lending Body Finance</b><br>(Clause 8.0)                                   | N/A            |
| <b>12. Agreed damages for delays</b><br>(Clause 34.4)                             | N/A            |

EXAMPLE

# SCHEDULE 2

## PRIME COST 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 Sums** 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				
DETAILED DESCRIPTION OF THE ITEM	QTY	\$ PER UNIT	\$ ALLOWANCE	MARGIN ON EXCESS (if nothing stated 25%)

PROVISIONAL SUM ITEMS LABOUR AND MATERIALS				
DETAILED DESCRIPTION OF THE WORK	QTY	RATE	\$ ALLOWANCE	MARGIN ON EXCESS (if nothing stated 25%)

# SCHEDULE 3

## CONSTRUCTION STAGES APPLICABLE TO METHOD 1 PROGRESS PAYMENTS

### 'Base stage' means

- 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;
- in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;
- in the case of a home with a suspended concrete slab floor, the stage when the concrete reinforcement is poured;
- in the case of a home with a concrete floor, the stage when the floor is completed;
- 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.

### 'Frame stage' means

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

### 'Lock-up stage' means

the stage when the home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (any doors or windows are only temporary).

### 'Fixing stage' means

the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position.

### 'Completion' means

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 of payment that is not directly related to the progress of the Building Works being carried out under the Contract.

TABLE

COLUMN 1	COLUMN 2	COLUMN 3
Type of Contract	Percentage of Contract Price	Stage
Contract to build to lock-up stage	20% 25%	Base stage Frame stage
Contract to build to fixing stage	12% 18% 40%	Base stage Frame stage Lock-up stage
Contract to build all stages	10% 15% 35% 25%	Base stage Frame stage Lock-up stage Fixing stage

## Schedule 3 - METHOD 1

### 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 understand Attachment 1 on page 10. Delete whichever method is inapplicable.

#### Method 1

There are five stages in Method 1. These are described below. Fill in the percentage of 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 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

#### METHOD 1

STAGE	PERCENTAGE OF CONTRACT PRICE	AMOUNT
Deposit (Refer to Clause 9)	.....%	\$ .....
• Base stage [ * ]	.....%	\$ .....
• Frame stage	.....%	\$ .....
• Lock-up stage	.....%	\$ .....
• Fixing stage	.....%	\$ .....
• Completion	.....%	\$ .....
<b>TOTAL CONTRACT PRICE</b> (Including variations)	100% (Including Deposit)	\$ .....

## SCHEDULE 3 - METHOD 2

### PROGRESS PAYMENTS

### NOTE

Under Method 2 the Builder and the Owner must agree on stages at which Progress Payments must be made.

Remember, the Owner must read and sign Form 1 of the Regulations (refer to Attachment 1 on page 10) before using Method 2.

### FORM 2 OF THE REGULATIONS

#### Regulation 6(b)

The parties agree –

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

NAME OF STAGE	If this stage is not the same as a stage defined in section 40(1) of the Domestic Building Contracts Act 1995, what does this stage mean?	PERCENTAGE OF TOTAL PRICE	AMOUNT
<b>1</b>	Deposit On signing of contracts	5%	\$
<b>2</b>	Set-Out	5%	\$
<b>3</b>	Completion	90%	\$
<b>TOTAL CONTRACT PRICE (Excluding Variations)</b>		<b>100% (Including Deposit)</b>	0



# ATTACHMENT 1

## FORM 1 OF THE REGULATIONS

Regulation 6(a)

### WARNING TO OWNER - CHANGE OF LEGAL RIGHTS

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

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

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

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

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

Housing Industry Association  
The Master Builders' Association of Victoria  
Office of Fair Trading and Business Affairs  
Royal Australian Institute of Architects

**SIGN HERE**

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

Signature of Building Owner.

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

## SCHEDULE 4

### SPECIAL CONDITIONS

#### REFER SPECIAL CONDITIONS ADDENDUM

.....

.....

.....

.....

.....

.....

.....

.....

## SCHEDULE 5

### EXCLUDED ITEMS

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

Window furnishings

Free standing appliances

Furniture

.....

.....

.....

.....

.....

.....

.....

.....

# A. INTERPRETATION

## Definitions

1.0

### NOTE

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

- '**Builder**' means the person, partnership or company named in the Particulars of Contract.
- '**Building Period**' means the building construction time estimated by the **Builder** to carry out the **Building Works**, as stated in Item 1 of Schedule 1, subject to Clause 34.
- '**Building Works**' means the works to be carried out and completed by the **Builder** as shown in the **Contract Documents** and as varied in accordance with this Contract.
- '**Building Site**' means the land upon which the **Building Works** are to be carried out.
- '**Business Day**' means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.
- '**Commencement**' means the day on which the **Building Works** commence on the **Building Site**.
- '**Completion**' means that the **Building Works** to be carried out under the Contract have been completed in accordance with the **Plans** and the **Specifications** set out in the Contract.
- '**Contract Documents**' means this signed Contract and these Conditions, signed **Specifications**, signed **Plans** and an **Engineer's Design**.
- '**Contract Price**' means the amount shown in Item 2 of Schedule 1 as varied by the Contract.
- '**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 requires a structural design, drainage design where appropriate and computations accompanying the foregoing.
- '**Final Claim**' means the **Builder's** claim setting out the balance of the **Contract Price** due for payment by the **Owner** to the **Builder**, taking into account all monies paid by the **Owner** and all other amounts to be added to or deducted from the **Contract Price** under this Contract.
- '**Final Payment**' means the payment of the amount of the **Final Claim**.
- '**Foundations Data**' has the same meaning as set out in Section 30 of the Domestic Building Contracts Act 1995.

**Definitions**  
*Continued*

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

<i>Headings, footnotes, etc.</i>	2.0	The headings (but not the boxed explanatory or side notes) form part of this Contract.
<i>Contract complete in itself</i>	3.0	This Contract is complete in itself and overrides any earlier agreement, whether made verbally or in writing. Any other collateral or prior agreement, negotiations, representations or arrangements and statements of any nature whatsoever have been superseded by this Contract and may not be relied on by any party.
<i>Joint and several obligations</i>	4.0	If there is more than one <b>Owner</b> under this Contract, their obligations are joint and several.
<i>Assignment and sub-letting</i>	5.0	Either party may assign their rights and duties under this Contract with the written consent of the other.
<i>Notices</i>	6.0	A notice is given to the person when: <ul style="list-style-type: none"> <li>• it is delivered in person;</li> <li>• 2 clear Business Days have passed after it has been sent by prepaid post to the person; or</li> <li>• sent by facsimile (where this service is available).</li> </ul>
	6.1	The parties must notify each other promptly of a change of address.
	6.2	The notice is deemed to have been served if sent to the address, or facsimile, which the party sending the notice reasonably believes to be the current address, or facsimile, of the other party.

## B. MAIN OBLIGATIONS OF THE PARTIES

### ***Building Act Insurance***

7.0

Where an insurance policy is required under Division 3 of Part 9 of the Building Act in relation to this Contract and it is not issued before this Contract is entered into then until such an insurance policy is issued:

#### **NOTE**

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

- the **Builder** is not able to enforce any provision of this Contract;
- the **Building Works** must not commence; and
- no money (including the deposit) is payable under this Contract.

7.1

The **Builder** is to ensure that a copy of that insurance policy is given to the **Owner** within 7 **Days** after it is issued.

### ***Finance***

8.0

If an amount is inserted in Item 11 of Schedule 1 then this Contract is conditional upon the **Lending Body** providing to the **Owner** written approval of a loan of at least that amount in order to enable the **Owner** to pay to the **Builder** the monies which become payable under this Contract, such approval unless otherwise as stated in Item 11 of Schedule 1 to be provided within 14 **Days** of the date of this Contract. The **Owner** promises diligently to pursue such written approval.

8.1

Should such written approval not be obtained within the time provided, this Contract will be voidable within 7 **Days** at the option of the **Owner** to be exercised by notice in writing to the **Builder**, whereupon all monies paid by the **Owner** to the **Builder** will be refunded except for a sum calculated in accordance with Sub-Clause 19.4.

### ***Deposit***

9.0

The **Owner** must pay to the **Builder** the deposit set out in Item 3 of Schedule 1 on the later of:

- the signing of the contract; or
- the issue of an insurance policy in relation to this Contract under Division 3 of Part 9.

9.1

The amount of the deposit must not be:

- more than 5% if the **Contract Price** is \$20,000 or more; or
- more than 10% if the **Contract Price** is less than \$20,000.

### ***Commencement and Building Period***

10.0

**Commencement** must occur within **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);
- payment of the deposit under Clause 9; and confirmation of **Settlement Date** and proof capacity to pay.
- the **Owner** showing the **Builder** the boundaries of the **Land** as required by Clause 17.1.

10.1

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

#### **NOTE**

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

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

### **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 the **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** consists of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is 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 **Builder** warrants that the **Building Works** and any material used in carrying out the **Building Works** will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

### **Owner Must Pay the Contract Price**

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

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

- there are additional costs payable by operation of Sub-Clause 12.1;
- additional costs are caused by a deficiency or conflict within the **Contract Documents** (Refer to Clause 16);
- a survey of the **Land** is needed to determine the correct boundaries of the **Land** (Refer to Clause 17);
- additional building permit fees are payable by operation of Clause 18;
- there is a variation to the costs of complying with changed laws (Refer to Clauses 21 and 22);
- there is an additional amount to pay for an agreed variation (Refer to Clauses 23 and 24);

- the **Owner** is to pay the cost of providing access (Refer to Clause 26);
- interest charges apply by operation of Clause 31; or
- there are additional costs associated with **Prime Cost Items** or **Provisional Sums** in Schedule 2 (Refer to Clause 33).

12.1 Should the following circumstances arise:

- that the authorised person under the Building Act properly requires that a variation to the **Building Works** be made;
  - the variation requirement arose as a result of circumstances beyond the **Builder's** control;
  - the Builder gave a notice pursuant to Clause 23 including a copy of such requirement; and
  - the **Owner** does not within 5 **Business Days** of receipt of such notice advise in writing that such variation requirement is disputed,
- the **Building Works** are varied by operation of this sub-clause in accordance with that requirement and the price for the variation will be charged and paid in accordance with Clause 24.

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

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

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

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

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



***Owner Must Provide  
Essential Information***

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

EXAMPLE

## C. BEFORE WORK BEGINS

### *Owner to Supply Documents*

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

### *Copyright*

- 15.0 If the **Builder** constructs the **Building Works** in accordance with the **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 the **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**.

- 16.0 If there is any difference between scaled dimensions and figures on the **Plans**, the figures prevail.

If there is any inconsistency and/or difference between these Contract conditions and related **Contract Documents** they are to take priority in the following order:

- the special conditions;
- these Contract conditions;
- the **Specifications**; then
- the **Plans**.

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

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

***Interpretation of  
Contract Documents***

- 16.2.1 Should the **Owner's** consent required by the **Builder** pursuant to Sub-Clause 23.4 not be provided by the **Owner** within 7 **Days** of the **Builder's** notice given pursuant to Sub-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** is entitled to a reasonable amount calculated in the manner set out in Sub-Clause 19.4
- 16.3 The **Builder** is not entitled to claim for extra costs for errors in **Plans** and/or **Specifications** that the **Builder** has prepared.

***Owner Must Identify  
the Land***

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

***Building Permit  
Fees***

- 18.0 Unless shown otherwise in Items 4 and 5 of Schedule 1 the **Builder** has included in the **Contract Price** fees payable for the building permit and planning approvals.
- 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 Schedule 1 or 4.
- 18.2 If a building permit fee increases or decreases after the date of this Contract the **Owner** must pay any increase and the **Builder** must credit any decrease and the next **Progress Payment** will be varied accordingly.

***Planning Approvals  
and Building Permits***

**NOTE**

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

- 19.0 The **Owner** is responsible for obtaining and paying for any planning approval that is required unless stated otherwise in Item 4 of Schedule 1. The party obtaining such planning approvals must take all reasonable steps to do so within the same time period shown in Item 4 of Schedule 1.
- 19.1 Subject to the receipt of the planning approval and if the **Owner** has not already got the necessary building permits, the **Builder** may apply for them within 21 **Days** after receiving evidence of the **Owner's** title to the **Land** and ability to pay under Clause 13.
- 19.2 If the **Builder** is to obtain the building permits, the **Owner** appoints the **Builder** as the **Owner's** agent for this purpose. After 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 overheads, the costs incurred and an amount for the **Builder's** profit applied to the cost of that work.
- may include an amount for the preparation of the **Plans** and the **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.

## 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 Building Site for the Owner to perform any building works which are not included in the Building Works. The Owner should therefore consider insuring against the public liability risk.

20.0 The **Builder** must

- insure in the names of the **Builder**, the **Owner** and the **Lending Body** (as stated on Page 1), against liability for physical loss, deconstruction or damage to the **Building Works** and the goods and materials on the **Land** as described in the **Contract Documents**; and
- indemnify the **Owner** in respect of and insure against liability for personal injury, death, property and loss or damage arising out of the **Building Works**.

The **Builder's** obligation is only to insure goods and materials supplied by the **Builder**. The **Builder** is not liable for and is under no obligation to have insurance cover for goods and materials supplied by or on behalf of the **Owner** whether or not such goods and materials are fixed to 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**.

20.2 The **Builder** must provide the **Owner** with a current 'Certificate of Currency' within 7 **Days** of **Commencement** of the **Building Works**. The Certificate must show the names of the **Builder**, **Owner**, **Lending Body** and the job address.

20.3 The cover for personal injury, death, property loss or damage arising out of the **Building Works** must be for an amount which is not less than \$5 million for any one claim and the **Builder** must include as parties to be insured under the policy, any **Sub-Contractors** who do not provide the **Builder** with evidence of adequate and continuing insurance cover.

20.4 The **Builder** is not responsible for, and does not indemnify the **Owner** or the **Owner's** employees or agents or any person claiming through the **Owner** against, any loss or liability that arises out of something done or not done by the **Owner** or any person for whom the **Owner** is responsible. The **Owner** indemnifies the **Builder** in relation to such claims.

20.5 The **Builder** must be registered with WorkCover to protect any person employed by the **Builder** in carrying out the **Building Works**.

## D. DURING WORK

### *Variations to Statutory Laws*

#### **NOTE**

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

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

- a building surveyor or other authorised person under the Building Act 1993 requires in a building notice or building order under that Act that the variation be made;
- the requirement arose as a result of circumstances beyond the **Builder's** control;
- the **Builder** included a copy of the building notice or building order in the notice required by the Act; and
- the **Owner** does not advise the **Builder** in writing within 5 **Business Days** of receiving the notice required by the Act that the **Owner** wishes to dispute the building notice or building order.

21.1 The **Owner** and the **Builder** may then agree to vary the **Plans** and the **Specifications** to make them comply or to avoid the need to comply. The variation must be in writing and signed by the **Owner** and the **Builder**. If the **Builder** and the **Owner** do not agree within 7 **Days** to vary the **Plans** and the **Specifications**, they are varied in accordance with the **Builder's** notice under Sub-Clause 21.0.

21.2 If the variation involves additional cost, the **Owner** must pay it, plus the percentage specified in Item 10 of Schedule 1. If the variation involves a saving, the saving is to be deducted from the **Contract Price**. In each case, the adjustment is to be made to the next **Progress Payment** to the **Builder**.

21.3 If the cost of the variation is greater than 15% of the total of the **Contract Price** and other amounts to be added to or deducted from the **Contract Price** under this Contract:

- the **Owner** may bring this Contract to an end by giving the **Builder** a written notice either personally or by registered post; or
- the **Builder** may bring this Contract to an end by giving the **Owner** a written notice either personally or by registered post if the **Owner** fails to give written evidence of ability to pay for the variation within 14 **Days** after receiving the **Builder's** notice.

21.4 If the Contract is ended under this Clause and the **Builder** is not at fault, the **Builder** is entitled to a reasonable price for the work performed, including overheads, the costs incurred and an amount for the **Builder's** profit applied to the cost of that work.

***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 the Contract and which causes an increase in the cost to the **Builder** in complying with the Contract. Such sum must be paid by the **Owner** to the **Builder** with the **Final Payment**.

***Requested Variations***

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

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 Despite anything to the contrary contained in this Contract, the **Builder** is under no obligation to, and is at liberty not to, agree to a variation requested by the **Owner**. If the **Owner** requests a variation and the **Builder** does not agree to the variation under Clause 23.1, the **Builder** must, within a reasonable time of receiving the notice from the **Owner** under Clause 23.0, give the **Owner** a notice stating that the **Builder** refuses or is unable to carry out the variation and 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 Sub-Clauses 23.2 and 23.3.

23.5 If, within 7 **Days** of the **Builder** giving the **Owner** the notice of particulars under Sub-Clause 23.2, the **Owner** does not give the **Builder**:

- a signed request to the variation under Sub-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.

<i>Effect of Variations</i>	24.0	<p>When a variation has been effected under Clause 12, 23 or 38:</p> <ul style="list-style-type: none"> <li>• If the variation increases the amount to be paid by the <b>Owner</b> under this Contract the amount is added to the next <b>Progress Payment</b> after the work is done. If it decreases the amount to be paid by the <b>Owner</b> under this Contract the amount is deducted from the next <b>Progress Payment</b>;</li> <li>• The <b>Contract Documents</b> are read as if so varied; and</li> <li>• The <b>Completion Date</b> or the number of <b>Days</b> required to finish the work are read as that date or number of <b>Days</b>, as adjusted to take account of the variation.</li> </ul>
<i>Possession</i>	25.0	The <b>Owner</b> must, within 7 <b>Days</b> after the date of this Contract, give the <b>Builder</b> exclusive <b>Possession</b> of the <b>Land</b> to carry out the <b>Building Works</b> . The <b>Builder's</b> right to <b>Possession</b> of the <b>Land</b> is under a contractual licence only. The <b>Builder</b> has the <b>Owner's</b> authority to allow or refuse anyone access, and may remove unauthorised people from the <b>Land</b> .
	25.1	The <b>Owner</b> or an authorised officer of the <b>Lending Body</b> is entitled, after giving the <b>Builder</b> reasonable prior notice, to go on the <b>Land</b> to inspect the <b>Building Works</b> at reasonable times provided that such inspection does not delay or interfere with the progress of the <b>Building Works</b> .
<i>All Weather Access</i>	26.0	The <b>Owner</b> must, at the <b>Owner's</b> cost, provide the <b>Builder</b> with all weather access to the <b>Building Site</b> for any vehicle or machinery required for the delivery of materials and for the continued construction of the <b>Building Works</b> . The <b>Owner</b> acknowledges that the cost of all weather access is not included in the <b>Contract Price</b> .
<i>Owner Must Not Direct Builder's Workers</i>	27.0	The <b>Owner</b> , or an agent acting on behalf of the <b>Owner</b> or an officer of the <b>Lending Body</b> , must not make inquiry of or give directions to the <b>Builder's</b> workers or <b>Sub-Contractors</b> on the <b>Building Site</b> or elsewhere.
<i>Owner Must Arrange Lending Body Inspections</i>	28.0	The <b>Owner</b> must notify the <b>Builder</b> in writing if and when the <b>Lending Body</b> will want to inspect the <b>Building Works</b> before making a <b>Progress Payment</b> . The <b>Builder</b> must do everything reasonable to assist the <b>Lending Body</b> to inspect the <b>Building Works</b> . This includes sending a notice that a stage has been completed to the <b>Lending Body</b> at the same time as one is sent to the <b>Owner</b> .
<i>Builder to Claim Progress Payments</i>	29.0	<p>The <b>Builder</b> must give the <b>Owner</b> a written claim for each <b>Progress Payment</b> when each stage has been completed, as set out in Schedule 3. The claim must set out each of the following:</p> <ul style="list-style-type: none"> <li>• the amount paid or to be paid for the stage or stages completed to date;</li> </ul>



- the amount paid or to be paid for, and details of, any variations made and other amounts paid or to be paid by the **Owner** under this Contract;
- the sum of those amounts;
- payments that have already been made by the **Owner**; and
- the total claimed, taking into account the payments already made.

***Owner Must Make Progress Payments***

30.0 The **Owner** must pay the amount of a **Progress Payment** set out in Schedule 3 within the number of **Days** set out in Item 7 of Schedule 1 after both:

- the stage has been completed; and
- the **Owner** has received a written claim for the **Progress Payment**.

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

***Builder's Right to Agreed Damages***

**NOTE**

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

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

***Unfixed Materials on Site***

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

***Prime Cost Items and Provisional Sums***

33.0 Where the Owner is to select any **Prime Cost Item** or a **Provisional Sum Item**, the **Owner** must:

- make the selection within 21 **Days** of the date of this Contract; and
- confirm that selection in writing within that time to the **Builder**.

**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.

33.1 Allowances for **Prime Cost Items** do not include amounts for installation, **Builder's** profit and overheads and cartage. These are included in the **Contract Price**.

The Builder will allow in the Contract Price an amount which should cover the expected cost, subject to the Owner's final selection.

33.2 Allowances for **Provisional Sum Items** do 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**.

continued.

Provisional Sums-Are estimates of the cost of 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.

- 33.3 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 on 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 into account all of the information reasonably available at the date the Contract is made, including the nature and location of the **Building Site**.

***Builder's Right to Extensions of Time***

- 34.0 The date for **Commencement** is put back or the **Building Period** is extended if the carrying out of the **Building Works** is delayed due to:
- a variation or a request for a variation by the **Owner** in accordance with Clauses 16, 21, 23 and 24;
  - a suspension of work in accordance with Clause 35;
  - inclement weather or conditions resulting from inclement weather in excess of the **Days** nominated in Schedule 1;
  - disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are not the **Builder's** fault;
  - civil commotion or industrial action affecting the work of tradespeople or the work of a manufacturer or supplier of materials;

- anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**;
- a delay in getting any approval, provided that it is not the **Builder's** fault; (Refer to Clause 19); or
- any other cause that is beyond the **Builder's** direct control.

34.1 The **Builder** is to give the **Owner** a written notice informing the **Owner** of the extension of time. The written notice must state the 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 the 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, being the greater of \$250 per week or that amount set out in Item 12 of Schedule 1. Delay damages will accrue on a daily basis.

34.4 The **Owner** must pay any delay damages with the next **Progress Payment**.

***Suspension of Work***

35.0 The **Builder** may suspend the **Building Works** if the **Owner**:

- does not make a **Progress Payment** that is due within 7 **Days** after it becomes due; or
- is in breach of this Contract.

35.1 If the **Builder** suspends the **Building Works**, the **Builder** must immediately give notice in writing by registered post to the **Owner**. The **Owner** must remedy the breach within 7 **Days** after receiving the notice. The **Builder** must recommence the **Building Works** within 21 **Days** after the **Owner** remedies the breach and gives notice of this to the **Builder**.

35.2 The date on which the **Building Works** are to be completed is changed and extended to cover the period of suspension.

## E. COMPLETION OF WORKS

### *Final Inspection*

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

### *List of Defects and Final Payment*

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

- 37.6 The fact that the **Builder** signs the list is not an admission that the defects exist or there is incomplete **Building Works**.
- 37.7 'Defect' does not include a defect arising from the fact that something has to be supplied or done by the **Owner**.
- Handover and Final Payment**
- 38.0 When the **Owner** pays the **Final Claim** the **Builder** must hand over **Possession** of the **Land** to the **Owner** together with all keys, certificates and warranties in the **Builder's** possession.
- 38.1 If the **Owner** takes **Possession** of the **Land** or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent the **Owner** commits a substantial breach of this Contract entitling the **Builder** to elect to either:
- treat the **Owner's** action as a repudiation of this Contract and accept that repudiation;
  - give the **Owner** a notice to remedy breach of contract under Clause 42; or
  - accept the **Owner's** actions as a variation of the **Building Works** to omit that part of the **Building Works** not carried out and completed as at the date the **Owner** takes such **Possession**.
- 38.2 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.
- 38.3 If the **Builder** accepts the variation of the **Building Works** under the third paragraph of Clause 38.1, the **Builder** is to give the **Owner** written notice to that effect and the **Builder** may give a **Notice of Completion** and a **Final Claim** under Clause 36.

**Defects Within the 3 Month Period**

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

39.4 The **Builder** is not obliged to fix any defect which the **Builder** is not responsible for. The **Builder** may agree to fix such a defect and the parties may agree upon the cost for the **Builder** to fix the defect.

***Owner's Claim  
for Agreed Damages***

**NOTE**

Re Clause 40.

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

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

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

40.0 If the **Building Works** have not reached **Completion** by the end of the **Building Period** the **Owner** is entitled to agreed damages in the sum set out in Item 9 of Schedule 1 for each week after the end of the **Building Period** to and including the earlier of:

- the date the **Building Works** reach **Completion**;
- the date this Contract is ended; and
- the date the **Owner** takes **Possession** of the **Land** or any part of the **Land**.

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

***Ending this Contract  
Under Bankruptcy  
or Liquidation***

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

***Builder's Right to  
End this Contract***

42.0 If the **Owner** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Builder** to recover damages or exercise any other right or remedy.

42.1 The **Owner** is in substantial breach of this Contract if the **Owner**:

- does not give the **Builder** any of the essential information required by Clause 13;
- does not pay a progress payment as required by Clause 30;
- takes **Possession** of all or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent; or
- is otherwise in substantial breach of this Contract.

***Owner's Right to  
End this Contract***

- 42.2 If the **Owner** is in substantial breach of this Contract the **Builder** may give the **Owner** a written notice to remedy the breach:
- specifying the substantial breach;
  - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Owner**; and
  - stating that if the substantial breach is not remedied as required, the **Builder** intends to end the Contract.
- 42.3 If the **Owner** does not remedy the substantial breach stated in the notice to remedy breach within 10 **Days** of receiving that notice, the **Builder** may end this Contract by giving a further written notice to that effect.
- 42.4 The **Builder** is not entitled to end this Contract under this Clause when the **Builder** is in substantial breach of this Contract.
- 42.5 If the **Builder** brings this Contract to an end under this Clause, the **Builder** is entitled to the **Contract Price** and other amounts payable by the **Owner** under this Contract, less the cost to the **Builder** of performing the remainder of the **Building Works**. The **Builder** is also entitled to reasonable compensation for any other loss caused by the **Owner's** breach.
- 42.6 Any sum payable by the **Owner** to the **Builder** pursuant to the operation of this Clause is due and payable upon the **Builder** bringing this Contract to an end.
- 43.0 If the **Builder** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Owner** to recover damages or exercise any other right or remedy.
- 43.1 The **Builder** is in substantial breach of this Contract if the **Builder**:
- suspends the carrying out of the **Building Works**, otherwise than in accordance with Clause 35;
  - has the **Builder's** licence cancelled or suspended; or
  - is otherwise in substantial breach of this Contract.
- 43.2 If the **Builder** is in substantial breach of this Contract the **Owner** may give the **Builder** a written notice to remedy the breach:
- specifying the substantial breach;
  - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Builder**; and
  - stating that if the substantial breach is not remedied as required, the **Owner** intends to end the Contract.

	43.3	If the <b>Builder</b> does not remedy the substantial breach stated in the notice to remedy breach within 10 <b>Days</b> of receiving that notice, the <b>Owner</b> may end this Contract by giving a further written notice to that effect.
	43.4	The <b>Owner</b> is not entitled to end this Contract under this Clause when the <b>Owner</b> is in substantial breach of this Contract.
<i><b>Owner May Get Another Builder to Finish Work</b></i>	44.0	If the <b>Owner</b> brings this Contract to an end under Clause 43, then the <b>Owner's</b> obligations to make further payment to the <b>Builder</b> are suspended for a reasonable time to enable the <b>Owner</b> to find out the reasonable cost of completing the <b>Building Works</b> and fixing any defects.
	44.1	The <b>Owner</b> is entitled to deduct that reasonable cost calculated under Clause 44.0 from the total of the unpaid balance of the <b>Contract Price</b> and other amounts payable by the <b>Owner</b> under this Contract if this Contract had not been terminated and if the deduction produces: <ul style="list-style-type: none"> <li>• a negative balance - the <b>Builder</b> must pay the difference within 7 <b>Days</b> of demand; or</li> <li>• a positive balance - the <b>Owner</b> must immediately pay the difference to the <b>Builder</b>.</li> </ul>
<i><b>Subcontracting</b></i>	45.0	The <b>Builder</b> may sub-contract any part of the <b>Building Works</b> but such subcontracting does not relieve the <b>Builder</b> from the <b>Builder's</b> obligations under this Contract.
<i><b>No Waiver</b></i>	46.0	Except as provided at law or in equity or elsewhere in this Contract, none of the provisions of this Contract may be varied, waived, discharged or released, except with the prior written consent of the parties.
<i><b>Severance</b></i>	47.0	Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Contract.

## F. DISPUTES, CONCILIATION and TRIBUNAL

### EXPLANATORY NOTES

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

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



# ATTACHMENT 2

## DEED OF GUARANTEE AND INDEMNITY

### INTERPRETATION

“**Builder**” is \_\_\_\_\_  
“**Owner**” is \_\_\_\_\_  
“**Guarantor**” is \_\_\_\_\_  
“**Contract**” is that between the **Builder** and the **Owner** dated \_\_\_\_\_

### BACKGROUND

The **Owner** executed the **Contract** at the **Guarantor**’s request.  
The **Guarantor** is aware of the **Owner**’s obligations under the **Contract**.

### OPERATIVE

#### 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 money’s arising out of the subject matter of the **Contract**.

#### 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 referred to in Clause 1.

#### Principal Debtor

The **Guarantor** is deemed to be a principal debtor jointly and severally liable with the **Owner** to discharge the obligations referred to in Clause 1.

#### 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.

#### No Release

This **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**.

#### 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.

#### Where 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 one of them.

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 independent legal advice prior to executing this Deed.

Signed as a Deed

Insert signing provisions for a Deed

Guarantor's name: \_\_\_\_\_  
Guarantor's signature: \_\_\_\_\_  
Witness's name: \_\_\_\_\_  
Witness's signature: \_\_\_\_\_  
Date: \_\_\_\_\_

EXAMPLE

## GLENVILL PROJECTS PTY LTD SCHEDULE 4 - SPECIAL CONDITIONS

Clause Reference	Amendments / Special Conditions
<b>General</b>	To the extent of any ambiguity, discrepancy or inconsistency between these Special Conditions and the conditions of contract, these Special Conditions will prevail.
<b>Clause 1.0</b>	<p><b>The definitions are amended or added to as follows:</b></p> <p><b>Completion</b> means that stage in the carrying out and completion of the works under the contract when:</p> <ul style="list-style-type: none"> <li>(a) the works are completed in accordance with the <b>Plans</b> and <b>Specifications</b> set out in the contract except for minor defects: <ul style="list-style-type: none"> <li>i) which do not prevent the works from being reasonably capable of being used for their intended purposes; and</li> <li>ii) which the <b>Builder</b> has reasonable grounds for not promptly rectifying; and</li> <li>iii) the rectification of which will not prejudice the convenient use of the works; and</li> <li>iv) which do not cause any legal or physical impediment to the use of the works by the <b>Owner</b> or others;</li> </ul> </li> <li>(b) an occupancy permit or certificate of final inspection, as the case may be, has been issued for the works under the Building Act 1993 and given to the Owner; and</li> <li>(c) the <b>Builder</b> has given to the <b>Owner</b> a <b>Notice of Completion</b>; and</li> <li>(d) the <b>Builder</b> has removed all of its plant and equipment and the <b>Building Site</b> is in a clean and tidy condition.</li> </ul> <p><b>Deed of guarantee and indemnity</b> means the attachment to these special conditions which replaces Attachment 2 to the contract.</p> <p><b>Land Contract of Sale</b> means the contract of sale of real estate made between the <b>Vendor</b> and the <b>Owner</b> in respect of the <b>Land</b> made on or about the date of this contract.</p> <p><b>Land Settlement Date</b> means the due date of completion of the <b>Land Contract of Sale</b>, being the date the <b>Owner</b> is obliged to effect settlement in order to become entitled to be registered as proprietor of the <b>Land</b>.</p> <p><b>Notice of Commencement</b> means a written notice issued by the <b>Builder</b> to the <b>Owner</b> and the <b>Vendor</b> stating the day on which the <b>Building Works</b> commence on the <b>Building Site</b>.</p>

	<p><b>Set-Out</b> means that stage when the Builder has set-out the position of the proposed structure within the legal boundaries of the <b>Land</b>.</p> <p><b>Vendor</b> means Alphington Developments Pty Ltd ACN 164 529 864.</p> <p><b>Vendor's Solicitor</b> means Kalus Kenny Intalex.</p> <p><b>Works Commencement Notice</b> means a notice to commence works in relation to the <b>Land</b> issued by the <b>Vendor</b> following the <b>Land Settlement Date</b>.</p>
<b>Clause 1.0</b>	<p><b>Delete the following definitions:</b></p> <p>"Prime Cost Item"</p> <p>"Provisional Sum Item"</p>
<b>Clause 6A</b>	<p><b>Insert a new Clause 6A as follows:</b></p> <p>6A The <b>Owner</b> must at the time of signing this contract, sign the <b>Deed of guarantee and indemnity</b>.</p>
<b>Clause 7.0</b>	<p><b>Delete and replace Clause 7.0 with the following:</b></p> <p>7.0 The <b>Builder</b> shall obtain an insurance policy required under Division 3 of Part 9 of the Building Act in relation to this contract within <b>7 Days</b> of receiving confirmation from the <b>Owner</b> of the <b>Land Settlement Date</b>.</p>
<b>Clause 8.0</b>	<p><b>Delete Clauses 8.0 and 8.1</b></p>
<b>Clause 9.0</b>	<p><b>Delete and replace Clause 9.0 with the following:</b></p> <p>9.0 Upon the signing of the contract, the <b>Owner</b> will pay to the <b>Builder</b> the deposit stated in Item 10.2 of the <b>Appendix</b> to be held in the <b>Vendor's Solicitor's</b> trust account on trust for the <b>Owner</b>. The <b>Owner</b> irrevocably directs the <b>Vendor's Solicitor</b> to pay the deposit to the <b>Builder</b> Upon issue of the <b>Notice of Commencement</b> or in accordance with SC1.1.</p>
<b>Clause 10.0</b>	<p><b>Delete and replace Clause 10.0 with the following:</b></p> <p>10.0 <b>Commencement</b> must occur within <b>45 Days</b> after the latest of the following to occur:</p> <ul style="list-style-type: none"> <li>• the <b>Land Settlement Date</b>;</li> <li>• the <b>Owner</b> providing the <b>Builder</b> the essential information required by Sub-Clause 13.0;</li> <li>• the deposit being released by the <b>Vendor's Solicitor</b> to the <b>Builder</b> under Sub-Clause 9.0;</li> <li>• the <b>Vendor</b> issuing the <b>Works Commencement Notice</b>; and</li> <li>• any necessary planning approval and/or building permits as required by Sub-clause 19 being obtained.</li> </ul>
<b>Clause 10.3</b>	<p><b>Add a new Clause 10.3 as follows:</b></p> <p>The <b>Builder</b> may subcontract the entirety of the <b>Building Works</b> without consent from the <b>Owner</b>.</p>
<b>Clause 11.1</b>	<p><b>Add new Clause 11.1 as follows:</b></p>

	11.1 The <b>Builder</b> further warrants that it and its employees, subcontractors and agents will carry out the <b>Building Works</b> 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, and the Occupational Health & Safety Act 2004 and the regulations made under that Act.
<b>Clause 12.0</b>	<b>Delete and replace Clause 12.0 with the following:</b> The <b>Owner</b> must pay the <b>Builder</b> the <b>Contract Price</b> set out in Item 2 of Schedule 1 and other amounts to be paid by the <b>Owner</b> under this Contract in accordance with Clause 30 or as otherwise stated in this Contract. The <b>Owner</b> may be required to pay more if: <ul style="list-style-type: none"> <li>• there is an additional amount to pay for an agreed variation (Refer to Clauses 23 and 24); and</li> <li>• interest charges apply by operation of Clause 31.</li> </ul>
<b>Clause 12</b>	<b>Delete Clauses 12.1, 12.1.1, 12.1.2, 12.2, 12.3 and 12.4</b>
<b>Clause 13.0</b>	<b>Delete and replace Clause 13.0 with the following:</b> 13.0 The <b>Owner</b> must give the <b>Builder</b> written evidence of the following on the <b>Land Settlement Date</b> to enable <b>Building Works</b> to commence: <ul style="list-style-type: none"> <li>• satisfactory evidence of the <b>Owner's</b> title to the <b>Land</b>;</li> <li>• satisfactory evidence of the <b>Owner's</b> capacity to pay the <b>Contract Price</b> and where monies are to be borrowed, satisfactory written evidence that any loan has been approved by the <b>Lending Body</b> and that the mortgage documents have been signed; and</li> <li>• details of any inspections required by the <b>Lending Body</b>.</li> </ul>
<b>Clause 14</b>	<b>Delete Clause 14.0</b>
<b>Clause 15</b>	<b>Delete Clauses 15.0 and 15.1</b>
<b>Clause 16</b>	<b>Delete Clauses 16.1, 16.2, 16.2.1, 16.2.2 and 16.3</b>
<b>Clause 17</b>	<b>Delete Clauses 17.0, 17.1 and 17.2</b>
<b>Clause 18</b>	<b>Delete and replace Clause 18 with the following:</b> 18.0 The <b>Builder</b> has included in the <b>Contract Price</b> fees payable for the building permit and planning approvals.
<b>Clause 19</b>	<b>Amend Clauses 19.0, 19.1 and 19.3 as follows:</b> 19.0 The <b>Builder</b> 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 same time period shown in Item 4 of Schedule 1.  19.1 Subject to the receipt of the planning approval, the <b>Builder</b> may apply for the necessary building permits within 21 <b>Days</b>

	<p>after receiving evidence of the <b>Owner's</b> title to the <b>Land</b> and ability to pay under Clause 13.</p> <p>19.3 If the building permit is not obtained within the time specified in Items 4 or 5 of Schedule 1, then if:</p> <ul style="list-style-type: none"> <li>• neither party is at fault, either party may bring this Contract to an end by giving written notice to the other;</li> <li>• the <b>Builder</b> is at fault, the <b>Owner</b> may bring this Contract to an end by giving the <b>Builder</b> written notice; or</li> <li>• the <b>Owner</b> is at fault, the <b>Builder</b> may bring this Contract to an end by giving the <b>Owner</b> written notice, provided that the party who wishes to end this Contract under the conditions of this Clause must do so within 14 <b>Days</b> of the expiration of the period set out in Items 4 or 5 of Schedule 1.</li> </ul>
<b>Clause 21.2</b>	<b>Delete and replace Clause 21.2 with the following:</b> 21.2 The <b>Builder</b> is not entitled to an adjustment to the <b>Contract Price</b> in having to carry out any variation under Sub-Clause 21.1.
<b>Clause 21</b>	<b>Delete Clauses 21.3 and 21.4</b>
<b>Clause 23.0</b>	<b>Delete and replace Clause 23.0 with the following:</b> 23.0 Either the <b>Owner</b> or the <b>Builder</b> may ask for the <b>Building Works</b> to be varied prior to the <b>Land Settlement Date</b> . The request must be in writing, must be signed and must set out the reason for and details of the variations sought. There will be no <b>Owner</b> requested variation to the <b>Building Works</b> after the <b>Land Settlement Date</b> .
<b>Clause 23.2</b>	<b>Delete and replace Clause 23.2 with the following:</b> 23.2 If the <b>Builder</b> requests the variation, the notice given by the <b>Builder</b> must state the following further particulars: <ul style="list-style-type: none"> <li>• what effect the variation will have on the <b>Building Works</b>; and</li> <li>• if the variation will result in any delays, the <b>Builder's</b> estimate of such delays.</li> </ul>
<b>Clause 24.0</b>	<b>Clause 24.0 is amended as follows:</b> The references to Clauses 12 and 38 are deleted.
<b>Clause 25.0</b>	<b>Clause 25.0 is amended as follows:</b> The reference to "within 7 <b>Days</b> after the date of this Contract" is deleted.
<b>Clause 26.0</b>	<b>Delete Clause 26.0</b>
<b>Clause 33</b>	<b>Delete Clause 33 in its entirety</b>
<b>Clause 34.0</b>	<b>Delete and replace Clause 34.0 with the following:</b>

	<p>34.0 The date for <b>Commencement</b> is put back or the <b>Building Period</b> is extended if the carrying out of the <b>Building Works</b> is delayed due to:</p> <ul style="list-style-type: none"> <li>• a variation or request for a variation by the <b>Owner</b> in accordance with Clauses 23 and 24;</li> <li>• a suspension of work in accordance with Clause 35; and</li> <li>• any other cause beyond the <b>Builder's</b> direct control.</li> </ul>
<b>Clause 36.3</b>	<p><b>Delete and replace Clause 36.3 with the following:</b></p> <p>36.3 The <b>Owner</b> must pay the amount of the <b>Final Claim</b> within 7 <b>Days</b> of the <b>Owner</b> receiving the <b>Notice of Completion</b> and <b>Final Claim</b>.</p>
<b>Clause 36.4</b>	<b>Delete Clause 36.4</b>
<b>Clause 37.1</b>	<b>Delete Clause 37.1</b>
<b>Clause 37.2</b>	<p><b>Delete and replace Clause 37.2 with the following:</b></p> <p>37.2 If the <b>Owner</b> gives the <b>Builder</b> a list of known defects and incomplete work the <b>Builder</b> must carry out the work required to rectify any defects or to do any incomplete part of the <b>Building Works</b> within 30 days of the notice.</p>
<b>Clause 37.4</b>	<b>Delete clause 37.4</b>
<b>Clause 38.0</b>	<p><b>Delete and replace Clause 38.0 with the following:</b></p> <p>38.0 When the <b>Owner</b> pays the <b>Final Claim</b> the <b>Builder</b> must hand over to the <b>Owner</b>:</p> <ul style="list-style-type: none"> <li>• <b>Possession of the Land;</b></li> <li>• all keys, certificates and warranties in the <b>Builder's</b> possession;</li> <li>• all maintenance, operating and training manuals and other information as may be necessary for the good, safe and efficient operation of the works and of all items of plant and equipment incorporated in the works.</li> </ul>
<b>Clause 38.1</b>	<p><b>Clause 38.1 is deleted and replaced with the following:</b></p> <p>38.1 If the <b>Owner</b> takes <b>Possession</b> of the <b>Land</b> or any part of the <b>Land</b> before paying the <b>Final Claim</b> and without the <b>Builder's</b> prior written consent, then:</p> <ul style="list-style-type: none"> <li>• the <b>Final Payment</b> immediately becomes a debt due and payable by the <b>Owner</b>; and</li> <li>• the <b>Owner</b> commits a substantial breach of this Contract entitling the <b>Builder</b> to treat the <b>Owner's</b> action as a repudiation of this Contract.</li> </ul>
<b>Attachment 2</b>	<b>Attachment 2 Deed of guarantee and indemnity is deleted in its entirety</b>

SC1	<p>SC1.0 If within 12 months of the signing of this contract the <b>Owner</b> fails to effect the <b>Land Contract of Sale</b> and the <b>Land Contract of Sale</b> is rescinded due to the default of the <b>Owner</b> under the <b>Land Contract of Sale</b>, the <b>Builder</b> may terminate this contract immediately by giving written notice to the <b>Owner</b>.</p> <p>SC1.1 If this contract is ended under Clause SC1.0, the <b>Builder</b> is entitled to retain the deposit paid under this contract.</p> <p>SC1.2 If within 12 months of the signing of this contract the <b>Owner</b> fails to effect the <b>Land Contract of Sale</b> and the <b>Land Contract of Sale</b> is rescinded due to the default of the <b>Vendor</b> under the <b>Land Contract of Sale</b>, the <b>Owner</b> may terminate this contract immediately by giving written notice to the <b>Builder</b>.</p> <p>SC1.3 If this contract is ended under Clause SC1.2, the <b>Builder</b> must within 14 days of receiving notice under Clause SC1.2 refund to the <b>Owner</b> the deposit paid under this contract less:</p> <ul style="list-style-type: none"> <li>a) \$100; and</li> <li>b) any out-of-pocket expenses or disbursements that the <b>Builder</b> may already have incurred with prior approval of the <b>Owner</b>.</li> </ul>
SC2	<p>SC2.0 If any materials, appliances, fixtures and fittings selected by the <b>Owner</b> in the <b>Specifications</b> are discontinued or unavailable, the <b>Builder</b> shall give notice to the <b>Owner</b> requesting a variation to the <b>Specifications</b>.</p> <p>SC2.1 If the <b>Builder</b> and the <b>Owner</b> do not agree within 7 <b>Days</b> to vary the <b>Specifications</b>, the <b>Builder</b> may at its sole discretion provide an alternative similar product of equal or greater value and of similar appearance and function.</p> <p>SC2.2 The <b>Builder</b> shall be entitled to an extension of time to the <b>Building Period</b> for each day that the <b>Builder</b> is delayed in making an alternative selection.</p>
SC3	<p>If the <b>Building Period</b> includes the Christmas and New Year Period, then the <b>Builder</b> is entitled to an extension of time to the <b>Building Period</b> of 21 <b>Days</b>, irrespective of whether the <b>Builder</b> carries out works during the Christmas and New Year Period or not.</p>
SC4	<p>The <b>Builder</b> reserves the right to photograph the works during and on completion of construction record and for use by the <b>Builder</b> in marketing and promotions.</p>
SC5	<p>SC5.1 The <b>Owner</b> acknowledges that:</p> <ul style="list-style-type: none"> <li>a) the plans and specifications provided in this contract are preliminary only;</li> <li>b) within 21 <b>Days</b> prior to the <b>Land Settlement Date</b>, the <b>Owner</b> will be provided copies of the final <b>Plans</b> and <b>Specifications</b>;</li> <li>c) the <b>Plans</b> and <b>Specifications</b> may vary from the plans and specifications provided in this contract but the Contract Price will remain unaffected.</li> </ul>



	SC5.2 The <b>Owner</b> acknowledges that there will be no <b>Owner</b> requested variations to the <b>Building Works</b> from the <b>Land Settlement Date</b> .
<b>SC6</b>	The <b>Owner</b> acknowledges that the <b>Contract Price</b> includes all material and supplier rebates as negotiated by the <b>Builder</b> as part of its business dealings and/or are part of promotional schemes by suppliers and no further adjustments, will be made to the <b>Contract Price</b> , in relation to rebates.
<b>SC7</b>	The <b>Owner</b> acknowledges and consents to the <b>Builder</b> erecting and displaying a marketing sign upon the <b>Land</b> for a period of 13 weeks from date of <b>Completion</b> . At all times this sign remains the property of the <b>Builder</b> .
<b>SC8</b>	The <b>Owner</b> acknowledges that warranties provided by various suppliers/service providers/ for the provision of various types of works and installations (such as termite treatment for the former, and air conditioning for the latter) may require the <b>Owner</b> to pay for regular maintenance and or inspections.
<b>SC9</b>	<p>The <b>Owner</b> acknowledges and agrees that due to the unique characteristics of timber, external timber doors will malfunction in that they will warp and crack in the following instances:</p> <ul style="list-style-type: none"> <li>• Different paint colour internally to externally.</li> <li>• Doors painted a dark colour externally.</li> </ul> <p>The <b>Builder</b> will not maintain or warrant the performance of these doors.</p>
<b>SC10</b>	The <b>Owner</b> acknowledges that the use of Emporite or similar 2 pak paint finishes to external doors or other external surfaces will fade and may have visible discoloration subject to exposure to sunlight. The <b>Builder</b> will not maintain or warrant the performance of these finishes.
<b>SC11</b>	The <b>Owner</b> acknowledges that due to the unique characteristics of coloured mortar differences in colour will be apparent between mortar batches / repairs and fading over time. The <b>Builder</b> will not maintain or warrant the performance of coloured mortar.
<b>SC12</b>	The <b>Owner</b> acknowledges and accepts that due to the unique characteristics of render, differences in colour and texture may be apparent when render is applied over different substrates and differences in colour will be apparent between render and painted surfaces of the same colour.
<b>SC13</b>	The <b>Owner</b> acknowledges acceptance by the building industry that due to the unique characteristics of Timber flooring, a certain amount of timber floor shrinkage will occur. Where strip flooring is to be left as the finished product, the flooring system installed may suffer

	significant shrinkage resulting in movement leading to visually obvious gaps. Darker colours will accentuate gaps. This shrinkage and movement is not a defect but is part of a natural process.
<b>SC14</b>	The <b>Owner</b> acknowledges that the <b>Builder</b> will build in accordance with the 'Deemed to Satisfy' provisions of the BCA or adopt a suitable Alternative Solution to the Deemed to Satisfy provision as it sees fit, provided that it meets with the approval of the Building Surveyor engaged by the <b>Builder</b> at any time during or post construction including the 10 year defects liability period.

See Deed of guarantee and indemnity attached.

EXAMPLE

## DEED OF GUARANTEE AND INDEMNITY

**THIS DEED POLL** is made on the                      day of                      2016

BY:

of  
(the **Guarantor**)

### RECITALS

- A. The Owner has entered into the Contract at the Guarantor's request.
- B. The Guarantor is aware of the Owner's obligations under the Contract.
- C. The Builder has entered into the Contract in reliance on the Guarantor giving the guarantee and indemnity under this Deed.

### 1 INTERPRETATION

In this Deed, unless the context otherwise requires:

- (a) **Contract** means the contract between the Owner and the Builder dated on or about the date of this deed;
- (b) **Builder** means Glenvill Projects Pty Ltd;
- (c) **Land** means
- (d) **Owner** means
- (e) a reference to this or any other document includes a reference to that document as amended, supplemented, novated or replaced from time to time;
- (f) a reference to a recital or clause is to a recital or clause of this Deed and the recitals form part of this Deed;
- (g) the headings in this Deed do not affect its interpretation; and
- (h) nothing in this Deed is to be interpreted against a party on the ground that the party put forward this document or any part of it.

### 2 GUARANTEE AND INDEMNITY

#### 2.1 Guarantee

From the date of this Deed, the Guarantor:

- a) irrevocably and unconditionally guarantees to the Builder the Owner's performance of all of its obligations under the Contract;
- b) unconditionally agrees that if the Owner breaches any of its obligation under the Contract then the Guarantor will perform that obligation;
- c) must pay on demand any amount which the Builder is entitled to recover from the Owner under the Contract; and

- d) indemnifies and will keep the Builder indemnified against all claims, loss or damage it suffers or incurs resulting from:
  - i) the Builder having entered into the Contract;
  - ii) the Owner's failure to perform any of its obligations under the Contract;
  - iii) the Contract, or any term of the Contract, being or becoming unenforceable against the Owner; or
  - iv) being unable to enforce any of its rights under this Deed.

## **2.2 Continuing obligation**

The guarantee and indemnity in clause 2.1 are each a separate and continuing obligation. 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 is the subject of an insolvency event.

## **2.3 No release**

The liability of the Guarantor is continuing and will not be effected by:

- (a) any variation to the Contract including a variation to the works;
- (b) any delay or claim by the Builder to enforce a right against the Owner;
- (c) the Builder granting the Owner or the Guarantor time or any other indulgence to perform the Owner's obligations under the Contract;
- (d) any waiver granted by the Builder;
- (e) the death of any person who is, or who is one of the Owner or the Guarantor;
- (f) the payment of money secured by this Deed; or
- (g) any release provided by the Builder to the Owner.

## **3 PROPERTY CHARGE**

The Guarantor grants a charge in favour of the Builder over the Land in which the Guarantor has a legal or beneficial interest. The Guarantor acknowledges that the Builder is irrevocably and unconditionally entitled to lodge a caveat against the Land as valid security for all amounts due and payable to it by the Owner under the Contract. The Builder will release any caveat promptly upon the Owner's performance of its obligations under the Contract, or the Guarantor's performance of its obligations under this Deed.

## **4 GENERAL**

### **4.1 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.

#### 4.2 No waiver

Unless this Deed expressly states otherwise, a provision of this Deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

#### 4.3 Governing law

This Deed is governed by the law in force in Victoria.

#### Executed as a deed

##### \*If Guarantor is an individual

**SIGNED SEALED AND DELIVERED** by \_\_\_\_\_ )

the Guarantor in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of the Guarantor

\_\_\_\_\_  
Name of witness  
(please print)

##### \*If Guarantor is a company with sole director

**EXECUTED** by the Guarantor

in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth)

\_\_\_\_\_  
Signature of sole director and secretary

\_\_\_\_\_  
Name of sole director and secretary  
(please print)

**\*If Guarantor is a company with 2 directors or more**

**EXECUTED** by the Guarantor  
in accordance with section 127(1) of the  
*Corporations Act 2001* (Cth)

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Signature of director

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Signature of director/ company secretary

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Name of sole director and secretary  
(*please print*)

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Name of director / company secretary  
(*please print*)

EXAMPLE

\*Delete as applicable