

COMMERCIAL BUILDING CONTRACT GENERAL CONDITIONS

1. WORKS AND CONTRACT SUM

- (a) The Contractor shall carry out and complete the *Works*:
- (i) in an appropriate and skilful way;
 - (ii) with reasonable care and skill;
 - (iii) in accordance with the *Contract Documents*; and
 - (iv) using materials that are suitable, new and free of defects.

2. EVIDENCE OF CAPACITY TO PAY AND TITLE

- (a) The Owner shall give the Contractor evidence satisfactory to the Contractor of the Owner's:
- (i) ability to pay the *Contract Sum*; and
 - (ii) right to have the *Works* carried out at the *Site*,
- two *Business Days* prior to the *Date for Commencement* or within 10 *Business Days* after the *Contract Date*, whichever is the earlier.
- (b) From time to time, the Contractor may give the Owner a written notice requiring that the Owner give the Contractor evidence satisfactory to the Contractor of the Owner's ability to pay the unpaid balance of the *Contract Sum*.
- (c) If the Contractor gives a notice under Clause 2(b), the Owner shall give the Contractor evidence satisfactory to the Contractor of the Owner's ability to pay the unpaid balance of the *Contract Sum* within 10 *Business Days* after the giving of the notice.

3. ASSIGNMENT & SUBCONTRACTING

- (a) Neither party to the *Contract* may assign the *Contract* or any right, benefit or interest under the *Contract* without the other party's written consent.
- (b) The Contractor may engage subcontractors to carry out any part of the *Works* but is not relieved from the Contractor's obligations under the *Contract*.

4. CONTRACT DOCUMENTS

- (a) The Owner warrants to the Contractor:
- (i) the accuracy and suitability of the *Contract Documents* and any other document or data that the Owner may give to the Contractor;
 - (ii) that the *Contract Documents* and any other document or data that the Owner may give to the Contractor comply with all *Statutory Requirements* relating to the *Works*; and
 - (iii) that use of the design, materials, documents and methods specified in all documents and data given by the Owner does not infringe copyright, moral rights or any other intellectual property right.
- (b) The Owner indemnifies the Contractor against any claim, loss, expense or liability arising out of a breach of Clause 4(a).
- (c) Subject to Clause 4(d), any ambiguity, inconsistency or error in or between the *Contract Documents* shall be resolved by applying the following order of precedence:
- (i) special conditions;
 - (ii) these general conditions of Contract including the *Schedule*;
 - (iii) specification;
 - (iv) drawings; and
 - (v) other *Contract Documents*,

provided that figures shall always prevail over scaled dimensions in the event of any ambiguity or inconsistency between them.

- (d) The Contractor may take any steps necessary to resolve any ambiguity, inconsistency or error in or between the *Contract Documents* and, where a relevant *Contract Document* was given by the Owner, the cost to the Contractor in taking any such steps, together with the *Contractor's Margin* on that cost, shall be added to the *Contract Sum*.

5. COMPLIANCE WITH STATUTES

- (a) The Contractor shall:
- (i) comply with all *Statutory Requirements* relating to the *Works*; and
 - (ii) unless otherwise agreed, obtain all consents, approvals and permits necessary for the carrying out of the *Works*.
- (b) The Contractor shall give any notice or report and pay any fee in order to comply with Clause 5(a).
- (c) If the cost to the Contractor:
- (i) in complying with any *Statutory Requirement* increases after the *Contract Date*; or
 - (ii) in carrying out the *Works* increases after the *Contract Date* as a result of the introduction or increase of any tax, charge, levy or regulation,
- the amount of the increase shall be added to the *Contract Sum*.
- (d) If the Contractor's compliance with a *Statutory Requirement* requires a *Variation* to the *Works*, the Contractor shall give the Owner a written notice setting out the reason for, and the details of, the *Variation*.

- (e) On the giving of a notice under Clause 5(d), the *Works* are deemed to be varied to that extent necessary to permit the Contractor to comply with the *Statutory Requirement* and the cost to the Contractor of the *Variation*, together with the *Contractor's Margin* on that cost, shall be added to the *Contract Sum*.

6. COMMENCEMENT

- (a) The Owner shall give the Contractor possession of the *Site* on the *Date for Commencement*.
- (b) The Contractor shall commence carrying out the *Works* on the *Date for Commencement* or within 14 *Days* after receiving all necessary consents, approvals, permits and access to carry out the *Works*, whichever is the later.

7. ACCESS

- (a) The Contractor is entitled to:
- (i) non-exclusive licence to enter upon the *Site* for the sole purpose of carrying out the *Works*;
 - (ii) vacant possession of that part of the *Site* on which the *Works* are being carried out,

from the *Date for Commencement* until the Contractor gives the Owner possession of the *Site* and the *Works* under Clause 21(g).

- (b) Subject to Clause 11(c), possession of that part of the *Site* on which the *Works* are being carried out entitles the Contractor to exclude, or remove from that part of the *Site* on which the *Works* are being carried out persons other than the Owner, the Owner's consultants, agents and Contractors.
- (c) Where the *Schedule* states that the Owner is responsible for ensuring adequate access to the *Site*, the Owner shall ensure that access to the *Site* and to the areas surrounding the *Site* is adequate for the Contractor and the Contractor's vehicles, machinery and labour to carry out and complete the *Works*.
- (d) If the Owner fails to ensure adequate access to the *Site* in accordance with Clause 7(c), the Contractor may carry out all necessary work to permit adequate access and the cost to the Contractor in carrying out any such necessary work, together with

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the *Contractor's Margin* on that cost, shall be added to the *Contract Sum*.

8. LATENT CONDITIONS

- (a) On becoming aware of the existence of a *Latent Condition*, the *Contractor* shall promptly give the *Owner* a written notice:
- (i) setting out details of the *Latent Condition*; and
 - (ii) the work that the *Contractor* considers is required to carry out to remedy or otherwise overcome the *Latent Condition*.
- (b) On the giving of a notice under Clause 8(a), the *Owner* shall within 2 *Business Days* give the *Contractor* a written *Direction* setting out full details of the work that the *Contractor* is required to carry out to remedy or otherwise overcome the *Latent Condition*, together with all necessary specifications, drawings and other design documents for that work. If no *Direction* is given by the *Owner* within the time required in this Clause the notice under Clause 8(a) is deemed to be the *Direction*.
- (c) On the giving of a *Direction* under Clause 8(b):
- (i) the *Works* are deemed to be varied to include the work that the *Contractor* is required to carry out under the *Direction*; and
 - (ii) the cost to the *Contractor* in carrying out the *Variation* required under the *Direction* together with the *Latent Condition Margin* stated in the *Schedule* on that cost, shall be added to the *Contract Sum*.

9. INSURANCE

Contract/Construction Works Insurance

- (a) The party named in the *Schedule* shall maintain a policy of contract works or construction works insurance over the *Works*, from the *Date for Commencement* or the *Start Date*, whichever is the earlier, until the *Works* reach, or are deemed to reach, *Practical Completion*, that:
- (i) is in the name of the *Contractor*;
 - (ii) is for an amount not less than the *Contract Sum* (inclusive of GST) stated in the *Schedule*; and
 - (iii) covers the *Owner*, the *Contractor* and the *Contractor's* subcontractors for the carrying out of the *Works* for their respective rights, interest and liabilities.

Owner to Insure

- (b) If the *Works* comprise the alteration, renovation, addition, extension or repair of an existing building or other structure, the *Owner* shall effect and maintain a policy of insurance over the existing building or other structure, and any contents that may be contained in the existing building or other structure from the *Date for Commencement* or the *Start Date*, whichever is the earlier, until the expiration of the *Defects Liability Period*.

Public Liability Insurance

- (c) The *Contractor* shall maintain a policy of public liability insurance in respect of third party personal injury or property damage, from the *Date for Commencement* or the *Start Date*, whichever is the earlier, until the expiration of the *Defects Liability Period*, that:
- (i) is in the name of the *Contractor*;
 - (ii) is for an amount not less than \$5,000,000.00 per occurrence; and
 - (iii) includes a cross-liability provision or term where the insurer waives all rights of subrogation or action that the insurer may have against any of the persons named in the policy as the insured.

WorkCover and Other Statutory Insurances

- (d) The *Contractor* shall effect and maintain the following insurance policies:
- (i) *WorkCover* or any other workers' compensation insurance required by a *Statutory Requirement* relating to the *Works*; and
 - (ii) any other insurance required by a *Statutory Requirement* relating to the *Works*.

General Requirements

- (e) A party required to effect and maintain a policy of insurance under this Clause shall:
- (i) effect and maintain the policy of insurance with an insurer; and
 - (ii) if the other party gives a written notice requiring a copy of the policy of insurance, give the other party a copy of the current policy of insurance within 5 *Business Days* after the giving of the notice.

10. INDEMNITY

- (a) The *Owner* indemnifies, and will keep indemnified the *Contractor* against any claim, loss, expense or liability arising out of:
- (i) any negligent act or omission of the *Owner*, the *Owner's* consultants, agents or *Contractors*;
 - (ii) any breach of *Contract* or statutory duty by the *Owner*, the *Owner's* consultants, agents or *Contractors*;
 - (iii) damage which is the unavoidable result of the construction of the *Works* in accordance with the *Contract*;
 - (iv) any claim in respect of the *Owner's* right to have the *Works* carried out;
 - (v) where the *Owner* has provided the design of the *Works*, any defect in the design of the *Works*; and
 - (vi) any costs, however incurred by the *Contractor* as a result of the *Owner's* failure to comply strictly with the *Care Guide*.
- (b) The *Contractor* shall take reasonable steps to mitigate any loss or damage caused, or contributed to, by the causes listed in Clause 10(a).

11. WORKPLACE HEALTH, SAFETY & ENVIRONMENTAL PROTECTION

- (a) The *Contractor* where applicable shall ensure that any person carrying out the *Works* complies with the relevant:
- (i) workplace health and safety legislation;
 - (ii) environmental legislation.
- (b) The *Contractor* shall:
- (i) ensure all requirements of any Act or Regulation relevant to their work is complied with;
 - (ii) shall prepare a jobsite hazard identification form or a Workplace Health & Safety Plan in respect of the *Works*; and
 - (iii) ensure that every obligation holder (whether an employer, self-employed person, persons conducting a business or undertaking etc) conducting a high risk construction activity provides the Principal Contractor a copy of their Work Method Statements prior to commencing work;
 - (iv) ensure that all common plant, plant, housekeeping, inductions, hazardous substances, work at height, falling objects and other regulatory requirements are identified and managed to prevent or minimise exposure to the risk of injury or illness;

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- (v) ensure the relevant obligation holder provides adequate information, instruction, training and supervision to prevent or minimise exposure to the risk of fatality, injury or illness.
- (c) The Principal Contractor may exclude or remove from the *Site* any person who in the Principal Contractor's opinion fails to comply with this Clause.
- (d) Where the Contractor is appointed as Principal Contractor by the Owner, that appointment shall remain in place until *Practical Completion* or where the *Contract* is terminated under either Clause **16** or **17**.

12. PAYMENT

- (a) The Contactor shall submit payment claims to the Owner from the following reference dates:
 - (i) on and from:
 - A. the times stated in the *Schedule* or the last *Business Day* of each *Month*, whichever is the earlier; or
 - B. completion of the milestones or stages stated in the *Schedule*, and
 - (ii) on the *Works* reaching *Practical Completion*; and
 - (iii) on the expiration of the *Defects Liability Period* under clause **22**.
- (b) A payment claim shall set out:
 - (i) details of:
 - A. the work carried out by the Contactor for which the payment claim relates;
 - B. the amount that the Contactor claims for payment by the Owner for that work; and
 - C. any other amount arising out of, or in connection with the *Contract* that the Contractor claims for payment by the Owner; and
 - (ii) the total amount that the Contactor claims for payment by the Owner.
- (c) On the submission of a payment claim under clause **12(a)**, the Owner shall:
 - (i) pay to the Contractor the total amount of the payment claim, or the final claim by the time stated in the *Schedule* for payment or the date *15 Business Days* after the *Submission Date*, whichever is the earlier; or
 - (ii) if the Owner disputes all or any part of the total amount of the payment claim or the final claim:
 - A. give the Contractor a written notice setting out the amount in dispute and details of the dispute by the time stated in the *Schedule* for payment or the date *10 Business Days* after the *Submission Date*, whichever is the earlier; and
 - B. pay to the Contractor the amount of the payment claim or the final claim that is not disputed by the Owner by the time stated in the *Schedule* for payment or the date *15 Business Days* after the *Submission Date*, which ever is the earlier.
- (d) If the Owner fails to give the Contractor a notice under Clause **12(c)(ii)A** by the time required under Clause **12(c)(ii)A**, the Owner shall pay to the Contractor under clause **12(c)(i)** the total amount of the payment claim or the final claim without any deduction.
- (e) The Owner shall pay interest, calculated on a daily compounding basis, to the Contactor on any overdue amount under this Clause including any part of the amount of a payment claim or the final claim wrongly withheld by the Owner, up to and including the date

on which the overdue amount is paid by the Owner at the rate stated in the *Schedule* or the rate comprising the annual rate as published from time to time by the Reserve Bank of Australia for 90 *Day* bills plus 10% whichever is the higher.

- (f) Payment other than payment of the Contractor's final claim is payment on account only.
- (g) Subject to any relevant Special Condition the Owner is not entitled to set-off against, or in reduction of, any amount due to the Contractor under this Clause any claim including any claim for an amount due by the Contractor to the Owner under the *Contract* that the Owner may have against the Contractor for any amount.

13. SECURITY

- (a) The Owner:
 - (i) charges the Owner's interests in the *Site* with due payment to the Contractor of all amounts that may become due to the Contractor arising out of, or in connection with the *Contract*;
 - (ii) shall, if requested by the Contractor, promptly deliver an executed mortgage in registrable form to secure the charge;
 - (iii) consents to the Contractor lodging a caveat over all or any part of the *Site* to secure the Contractor's interest in the *Site*;
 - (iv) shall, if requested by the Contractor, do all things and sign all documents necessary to enable the Contractor to lodge a caveat; and
 - (v) shall pay to the Contractor on demand all stamp duty and registration fees that are payable or paid on the lodgment, withdrawal or release of any caveat or mortgage under this Clause.
- (b) For the purposes of the *PPSA*:
 - (i) the Owner shall do all things necessary to enable the Contactor's interest in the goods, materials or equipment that have been supplied by the Contractor in performing the *Works* to be registered under the *PPSA* and will comply with all requirements of the *PPSA*;
 - (ii) the Owner acknowledges that this *Contract* is a security agreement for the purposes of the *PPSA*;
 - (iii) if the Contactor seizes or takes possession of the goods, materials or equipment in accordance with his rights under this Contact the *PPSA* or at law, the Contactor shall not be required to dispose of or sell the goods, materials or equipment to satisfy any amounts owed by the Owner to the Contractor or return the goods, materials or equipment to the Owner (or any other party) upon the amounts owed by the Owner to the Contractor being satisfied; and
 - (iv) the Contractor is not required to give any notices to the Owner or amount to the Owner under or in relation to the *PPSA* unless the requirement to give the notice or the account cannot be excluded under the terms of the *PPSA*.

14. PROVISIONAL SUMS AND PRIME COST ITEMS

- (a) Where a *Provisional Sum* or *Prime Cost Item* is included in the *Contract*, the Owner shall give the Contractor all necessary *Directions* regarding the selection and supply of materials, goods or work comprising the *Provisional Sum* or *Prime Cost Item* in sufficient time to ensure that the progress of the *Works* is not delayed.
- (b) If the actual cost to the Contractor in carrying out the work or supplying the item comprising the *Provisional Sum* or *Prime Cost Item* is less than that estimated and included in the *Contract Sum*, the difference shall be deducted from the *Contract Sum*.

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- (c) If the actual cost to the Contractor in carrying out the work or supplying the item comprising the *Provisional Sum or Prime Cost Item* is greater than that estimated and included in the *Contract Sum* the difference together with the *Provisional Sum or Prime Cost Item Margin* on the difference shall be added to the *Contract Sum*.

15. VARIATIONS

- (a) Subject to the *Contract*, the parties may agree to a *Variation* of the *Works*.
- (b) If the parties agree to a *Variation* of the *Works*, the Contractor shall within a reasonable time, give the Owner a written notice setting out:
- (i) details of the scope of the work which is the subject of the *Variation*; and
 - (ii) any agreed price for or methodology for calculating the price of the *Variation*.
- (c) On the giving of a notice under Clause **15(b)** the *Contract Sum* shall be adjusted by:
- (i) if the parties agree to a price for or methodology for calculating the price of the *Variation*, the agreed prices; or
 - (ii) in the absence of any agreement on, or in calculating, price:
 - A. the reasonable valuation of the *Variation*;
 - B. the *Variation Margin* on that reasonable valuation; and
 - C. if the *Variation* increases, or will increase, the cost to the Contractor of carrying out the *Works* to complete the increased *Variation*.

16. TERMINATION BY OWNER

- (a) A substantial breach of the *Contract* by the Contractor includes, but is not limited to:
- (i) suspension of the *Works* by the Contractor otherwise than in accordance with Clause **18** or Clause **21(f)**; and
 - (ii) failure by the Contractor to carry out the *Works* with reasonable diligence or in a competent manner.
- (b) If the Contractor is in substantial breach of the *Contract*, the Owner may give the Contractor a written notice by registered post or delivery to the Contractor:
- (i) set out full details of the substantial breach;
 - (ii) requiring the Contractor to substantially remedy the substantial breach within 21 *Days* after the giving of the notice; and
 - (iii) stating the Owner's intention to terminate the *Contract* if the Contractor fails to substantially remedy the substantial breach within 21 *Days* after the giving of the notice.
- (c) If the Contractor fails to substantially remedy the substantial breach set out in the notice given by the Owner under Clause **16(b)** within 21 *Days* after the giving of the notice, the Owner may, without prejudice to any other right or remedy, terminate the *Contract* by giving a written notice of termination by registered post or delivery to the Contractor.
- (d) The Owner is not entitled to exercise a right to terminate the *Contract*, under this Clause or otherwise, if:
- (i) the exercise of the right to terminate would be unreasonable or vexatious; or
 - (ii) the Owner is in breach of the *Contract*.

17. TERMINATION BY CONTRACTOR

- (a) A substantial breach of the *Contract* by the Owner includes, but is not limited to:
- (i) failure by the Owner to pay to the Contractor any amount due to the Contractor under the *Contract* by the time for the payment of the amount due under the *Contract*;
 - (ii) failure by the Owner to give the Contractor possession of the *Site* in accordance with Clause **7(a)**;
 - (iii) unreasonable interference with, or obstruction of, the carrying out of the *Works* by the Owner, the Owner's consultants, agents or Contractors;
 - (iv) failure by the Owner to comply with Clause **2(a)** or Clause **2(c)**; and
 - (v) any delay in the carrying out of the *Works* caused by:
 - A. a claim or proceeding being taken, or threatened to be taken, by a third party; or
 - B. a dispute with an adjoining or neighbouring owner or occupier,that did not arise as a result of any act or omission of the Contractor.
- (b) If the Owner is in substantial breach of the *Contract*, the Contractor may give the Owner a written notice:
- (i) setting out full details of the substantial breach;
 - (ii) requiring the Owner to remedy the substantial breach within 7 *Days* after the giving of the notice; and
 - (iii) stating the Contractor's intention to terminate the *Contract* if the Owner fails to remedy the substantial breach within 7 *Days* after the giving of the notice.
- (c) If the Owner fails to remedy the substantial breach set out in the notice given by the Contractor under Clause **17(b)** within 7 *Days* after the giving of the notice, the Contractor may, without prejudice to any other right or remedy, terminate the *Contract* by giving a written notice of termination to the Owner.

18. SUSPENSION

- (a) If the Owner:
- (i) fails to comply with an order of a court or tribunal given in favour of the Contractor in relation to any issue arising out of, or in connection with, the *Contract*; or
 - (ii) is in substantial breach of the *Contract*,
- the Contractor may give the Owner a written notice:
- (iii) setting out details of the Owner's failure or substantial breach;
 - (iv) stating the Contractor's intention to suspend the *Works* if the Owner fails to remedy the failure or substantial breach within 7 *Days* after the giving of the notice.
- (b) If the Owner fails to remedy the failure or substantial breach set out in the notice given by the Contractor under Clause **18(a)** within 7 *Days* after the giving of the notice, the Contractor may, without prejudice to any other right or remedy, suspend the *Works* by giving a written notice of suspension to the Owner.
- (c) The Contractor shall recommence the *Works* within 7 *Days* after the Owner:
- (i) remedies the failure or substantial breach set out in any notice given by the Contractor under Clause **18(a)**; and
 - (ii) gives the Contractor a written notice:
 - A. stating that the failure or substantial breach has been remedied; and

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B. requiring the Contractor to recommence the *Works*.

19. INSOLVENCY

If either party:

- (a) becomes insolvent, bankrupt or makes an assignment of that party's estate for the benefit of that party's creditors; or
- (b) being a company, goes into liquidation, provisional liquidation, receivership or administration, the other party may terminate the *Contract* by giving a written notice of termination,

the other party may terminate the *Subcontract* by giving a written notice of termination.

20. EXTENSION OF TIME

- (a) The Contractor is entitled to an extension of the *Date for Practical Completion* if the progress of the *Works* is delayed as a result of any of the following causes:
 - (i) an act or omission of the Owner, the Owner's consultants, agents or Contractors;
 - (ii) a *Variation* of the *Works*;
 - (iii) a *Latent Condition*;
 - (iv) a breach of the *Contract* by the Owner;
 - (v) a suspension of the *Works* in accordance with Clause 18 or Clause 21(f);
 - (vi) inclement weather or conditions resulting from inclement weather, including a 7 Day "dry-out" period following any inclement weather;
 - (vii) a claim or proceeding being taken, or threatened to be taken, by a third party;
 - (viii) a dispute with an adjoining or neighbouring owner or occupier;
 - (ix) a strike, lockout, civil commotion or industrial action affecting:
 - A. any person in the carrying out of the *Works*; or
 - B. the manufacture or supply of materials to be used in the *Works*;
 - (x) a shortage, or delay in the delivery, of materials to be used in the *Works*;
 - (xi) the unavailability of any labour (whether under a subcontract or a contract of employment) necessary for the Contractor to carry out the *Works* with reasonable diligence;
 - (xii) an act of prevention by the Owner not otherwise covered by this Clause; or
 - (xiii) any other matter, cause or thing beyond the control of the Contractor.
- (b) If, at any time prior to the *Works* reaching *Practical Completion*, the Contractor believes that the progress of the *Works* was delayed as a result of a cause set out in Clause 20(a), the Contractor shall give the Owner a written notice setting out:
 - (i) the cause of the delay;
 - (ii) the time during which the carrying out of the *Works* was delayed; and
 - (iii) the extension of the *Date for Practical Completion* that the Contractor claims as a result of the delay, within 28 Days after the Contractor becomes aware of the conclusion of the delay or 21 Days after *Practical Completion*, whichever is the earlier.

(c) On the giving of a notice under Clause 20(b), the Owner shall:

- (i) give the Contractor a written notice granting the extension of the *Date for Practical Completion* that the Contractor claims in the notice; or
- (ii) if the Owner disputes the Contractor's entitlement to all or any part of the extension of the *Date for Practical Completion* that the Contractor claims in the notice, give the Contractor a written notice:
 - A. stating that the Owner disputes the Contractor's claim for an extension of the *Date for Practical Completion*;
 - B. setting out full details of the dispute; and
 - C. granting any part of the Contractor's claim for an extension of the *Date for Practical Completion* that is not disputed by the Owner,

within 2 Days after the giving of the notice under Clause 20(b).

- (d) If the Owner fails to give the Contractor a notice under Clause 20(c) by the time required under Clause 20(c), the Owner is deemed to have accepted the Contractor's entitlement to, and granted, all of the extension of the *Date for Practical Completion* that the Contractor claims in the notice given by the Contractor under Clause 20(b).
- (e) Notwithstanding that the Contractor is not entitled to an extension of the *Date for Practical Completion* under this Clause, the Owner may, at any time prior to the submission by the Contractor of a final claim in accordance with Clause 23(a), extend the *Date for Practical Completion* for any reason by giving the Contractor a written notice setting out the extension of the *Date for Practical Completion*.
- (f) Where the progress of the *Works* is delayed as a result of any of the causes set out in Clause 20(a), any increase in the cost to the Contractor in carrying out the *Works*, including supervision and off-site overheads, arising directly or indirectly out of the delay shall be added to the *Contract Sum*.

21. PRACTICAL COMPLETION

- (a) The Contractor shall ensure that the *Works* reach *Practical Completion* by the *Date for Practical Completion*.
- (b) On *Practical Completion* of the *Works*, the Contractor shall give the Owner, either:
 - (i) a written notice stating that the *Works* have reached *Practical Completion*; or
 - (ii) a payment claim or invoice stating that it is a claim for *Practical Completion*.
- (c) If the Owner disputes that the *Works* have reached *Practical Completion*, the Owner shall give the Contractor a written notice stating that the Owner disputes that the *Works* have reached *Practical Completion* and setting out full details of the further work that the Owner believes is required to be carried out for the *Works* to reach *Practical Completion* within 7 Days after receiving the notice or payment claim/invoice under Clause 21(b).
- (d) If the Owner does not give the Contractor a notice in accordance with Clause 21(c), the *Works* are deemed to have reached *Practical Completion* on the date of the giving of the notice under Clause 21(b).
- (e) If the Owner gives a notice under Clause 21(c) the Contractor shall:
 - (i) if the Contractor disputes that any further work is necessary for the *Works* to reach *Practical Completion*, give the Owner a written notice of dispute under Clause 25(b); or

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- (ii) if the Contractor does not dispute that further work is necessary for the *Works* to reach *Practical Completion*, carry out the further work necessary for the *Works* to reach *Practical Completion* and then give the Owner a further written notice stating that the *Works* have reached *Practical Completion* under Clause 21(b).
- (f) If the Contractor gives the Owner a written notice of dispute under Clause 25(b) in accordance with Clause 21(e)(i), the *Works* are deemed to be suspended from the date of the giving of the notice until the date 7 Days after the date on which the dispute is resolved or decided.
- (g) On:
 - (i) the *Works* reaching *Practical Completion*; and
 - (ii) the Owner paying:
 - A. any overdue amount, including interest thereon, to the Contractor under Clause 12; and
 - B. the payment claim submitted by the Contractor under Clause 12(a)(i) or 12(a)(i)B,
- (h) If, for any reason, the Owner without the prior written consent of the Contractor:
 - (i) takes possession of;
 - (ii) occupies; or
 - (iii) uses,

the *Works*, or any part of the *Works*, prior to the Contractor giving the Owner possession of the *Site* and the *Works* under Clause 21(g), the *Works* are deemed to have reached *Practical Completion* on the date that the Owner takes possession of, occupies or uses the *Works*, or any part of the *Works*, and the Owner is deemed to have accepted that the *Works* have been carried out and completed by the Contractor in accordance with Clause 1(a).

22. DEFECT LIABILITY PERIOD

- (a) If, after the *Works* have reached *Practical Completion* but prior to the expiration of the *Defects Liability Period*, the Owner becomes aware of any defective or incomplete work, the Owner shall give the Contractor a written *Direction*:
 - (i) setting out full details of the defective or incomplete work; and
 - (ii) requiring the Contractor to rectify the defective work or complete the incomplete work.
- (b) On the giving of a *Direction* under Clause 22(a), the Contractor shall within a reasonable time and at the Contractor's own cost:
 - (i) rectify any part of the *Works* that is defective; and
 - (ii) complete any part of the *Works* that is incomplete.
- (c) The Owner shall only be entitled to give a *Direction* under Clause 22(a), if the Owner has complied with its obligations under the *Care Guide*.
- (d) In the event that the Contractor investigates the defective or incomplete work the subject of a *Direction* under Clause 22(a), and discovers that the defective or incomplete work has been caused by the Owner's failure to comply with its obligations under the *Care Guide*, or has otherwise been caused by an act or omission of the Owner, the Owner is liable to pay any costs reasonably incurred by the Contractor in investigating and inspecting the works the subject of the *Direction*.

23. FINAL CLAIM

- (a) On the expiration of the *Defects Liability Period*, the Contractor shall, within a reasonable time, submit a final claim to the Owner setting out:
 - (i) the total amount of the payment claims submitted by the Contractor to the Owner under Clause 12(a);
 - (ii) the total amount of the payments made by the Owner to the Contractor under the *Contract* up to and including the date on which the Contractor submits the final claim;
 - (iii) details of:
 - A. any work carried out by the Contractor to which the final claim relates;
 - B. the amount that the Contractor claims for payment by the Owner for any such work; and
 - C. any other amount arising out of, or in connection with, the *Contract* that the Contractor claims for payment by the Owner; and
 - (iv) the total amount that the Contractor claims for payment by the Owner.
- (b) Unless the Owner gives the Contractor a notice under Clause 12(c)(ii)A within the time required under Clause 12(c)(ii)A, the Owner's payment of the final claim in accordance with Clause 12 is conclusive evidence that:
 - (i) the Contractor has carried out and completed the *Works* in accordance with the *Contract*; and
 - (ii) the Contractor has otherwise discharged the Contractor's obligations in connection with, or arising out of, the *Contract*,

except in the event of fraud, dishonesty or fraudulent concealment relating to the *Works*.

24. LIQUIDATED DAMAGES

- (a) If the Contractor fails to ensure that the *Works* reach *Practical Completion* by the *Date for Practical Completion*, the Owner may, on *Practical Completion*, give the Contractor a written notice by registered post or delivery to the Contractor:
 - (i) setting out full details of:
 - A. the date that the Owner believes to be the *Date for Practical Completion*;
 - B. the time that the Owner believes to be the time from the *Date for Practical Completion* up to and including the date on which the *Works* reached *Practical Completion* under Clause 21; and
 - C. the liquidated damages that the Owner calculates on that time at the rate stated in the *Schedule*; and
 - (ii) claiming a total amount of liquidated damages, which amount shall not be greater (but may be less) than the calculation of liquidated damages required to be set out in the notice under Clause 24(a)(i)C, for payment by the Contractor,
- provided that the Owner gives the Contractor any such notice by no later than 28 Days after the date on which the *Works* reached *Practical Completion* under Clause 21.
- (b) If the Owner gives a notice under Clause 24(a), the Contractor shall:
 - (i) pay to the Owner the total amount of liquidated damages that the Owner claims in the notice; or
 - (ii) if the Contractor disputes all or any part of the total amount of liquidated damages that the Owner claims in the notice:

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- A. give the Owner a written notice setting out the amount in dispute and details of the dispute; and
- B. pay to the Owner the amount of the liquidated damages that the Owner claims in the notice that is not disputed by the Contractor,

by the date 15 *Business Days* after the giving of the notice.

- (c) Unless the Owner gives a notice strictly in accordance with Clause **24(a)**, the Owner is not entitled to liquidated damages or any other amount, including any claim for damages at law, for any failure by the Contractor to ensure that the *Works* reach *Practical Completion* by the *Date for Practical Completion*.

25. DISPUTE RESOLUTION

- (a) Except to the extent that any litigation that may be commenced is for the recovery of an amount due under Clause **12** or for injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the *Contract*, the requirements of this Clause are a condition precedent to either party commencing (or, if wrongly commenced, continuing) litigation.
- (b) If a dispute or difference arises out of, or in connection with, the *Contract*, either party may give the other party a written notice of dispute setting out the details of the dispute including any amount in dispute.
- (c) Any notice that:
 - (i) the Owner may give under Clause **12(c)(ii)A** or Clause **20(c)(ii)**; or
 - (ii) the Contractor may give under Clause **24(b)(ii)**,is deemed to be a notice of dispute under Clause **25(b)**.

'Without Prejudice' Conference

- (d) The parties shall arrange, and participate in, a 'without prejudice' conference between them, or their authorised representatives, in an attempt to resolve the dispute or difference set out in the notice of dispute within 7 *Days* after the giving of the notice of dispute.

Mediation or Arbitration

- (e) If the parties fail to resolve all of the dispute or difference set out in the notice of dispute during the 'without prejudice' conference, or if the party given the notice of dispute fails to participate in a 'without prejudice' conference within 7 *Days* after the giving of the notice of dispute, then the parties may agree to refer all or any part of the dispute or difference to mediation or arbitration.
- (f) If the parties agree to refer all or any part of the dispute or difference set out in the notice of dispute to mediation or arbitration but fail to agree on the person to be appointed as the mediator or the arbitrator, then either party may give a written notice to the President and the other party requesting that the President appoint (as the case may be):
 - (i) a mediator to facilitate the mediation; or
 - (ii) an arbitrator to decide all or that part of the dispute or difference referred to arbitration.
- (g) If either party gives a notice under Clause **25(f)**, the President shall give to the parties a written notice setting out the name and contact details of (as the case may be):
 - (i) the mediator appointed by the President to facilitate the mediation; or
 - (ii) the arbitrator appointed by the President to decide all or that part of the dispute or difference referred to arbitration.
- (h) On the giving of a notice under Clause **25(g)**, the parties shall:

- (i) request the mediator or the arbitrator named in the notice to make suitable arrangements for (as the case may be) the mediation or the arbitration; and
- (ii) participate in (as the case may be) the mediation or the arbitration and pay the costs of the mediation (including the costs of the mediator) or the costs of the arbitration (including the costs of the arbitrator) in equal shares unless otherwise agreed by the parties or decided by the arbitrator.

- (i) If the parties fail to:

- (i) agree to refer any part of the dispute or difference set out in the notice of dispute to mediation or arbitration within:
 - A. 7 *Days* after the 'without prejudice' conference; or
 - B. if the party given the notice of dispute fails to participate in a 'without prejudice' conference, 14 *Days* after the giving of the notice of dispute, or
- (ii) resolve all of the dispute or difference set out in the notice of dispute during any mediation,

then either party may commence litigation in relation to any part of the dispute or difference set out in the notice of dispute that is not:

- (iii) agreed to be referred to mediation or arbitration under Clause **25(f)**; or
- (iv) resolved during any mediation.

- (j) Notwithstanding the giving of a notice of dispute, the parties shall, subject to the *Contract*, continue to perform the *Contract*.

26. NOTICES

- (a) Subject to the *Contract* (and, in particular, Clause **25(b)**), the giving of any notice by a party under the *Contract* is deemed to have occurred:
 - (i) if delivered personally to the other party, at the time of delivery;
 - (ii) if the other party is a company and the notice is left at its registered office or principal place of business, at the time that the notice is left at the registered office or principal place of business;
 - (iii) if sent by pre-paid or registered post to the other party at the address of the other party stated in the *Contract*, or another address notified by the other party in writing, at 9:00 am on the date 2 *Business Days* after the date of posting; and
 - (iv) if sent by facsimile to the other party at a facsimile number notified by the other party in writing, at the time set out in a written confirmation of the correct transmission of the facsimile.
- (b) If the giving of any notice occurs at a time after 5:00 pm on a *Business Day* or during a *Day* that is not a *Business Day*, the giving of the notice is deemed to have occurred at 9:00 am on the next *Business Day*.

27. GOODS AND SERVICES TAX

- (a) For the purposes of the *Contract*, the terms "ABN", "GST", "GST law", "registered", "tax invoice" and "taxable supply" have the meanings given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) The Contractor warrants that the Contractor is:
 - (i) the holder of any ABN stated in the *Schedule*; and
 - (ii) registered and will continue to be registered until the expiration of the *Defects Liability Period*.
- (c) The *Contract Sum* includes GST.

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- (d) Where the *Works*, or any part of the *Works*, constitute a taxable supply, the Contractor shall comply in every respect with GST law.
- (e) The payment claims that the Contractor submits under Clause 12(a), and the final claim that the Contractor submits under Clause 23(a), shall be in the form of a tax invoice.

28. SPECIAL CONDITIONS

If applicable, the *Special Conditions* set out in Annexure B shall take effect as express terms of the *Contract*. The *Special Conditions* shall prevail over these general conditions of Contract to the extent of any inconsistency.

29. DEFINITIONS

In the *Contract*, unless the context otherwise requires:

Business Day has the meaning given in section 36 of the Acts Interpretation Act 1954 (Qld), but does not include 27, 28, 29, 30 or 31 December of any *Year*;

Care Guide means the care guide set out in Annexure C;

Contract means the agreement between the Contractor and the Owner recorded in the *Contract Documents*; "*Contract Documents*" means the *Special Conditions* under Clause 28, these general conditions of *Contract*, including the *Schedule* and Annexures to them, and the specification, the drawings, and any other documents set out in Annexure A;

Contract Date means the date when the last party signed the *Contract*;

Contract Sum means the Contract Sum (inclusive of GST) stated in the *Schedule* as adjusted from time to time in accordance with the *Contract*;

Contractor's Margin means the percentage on an amount in coverage of the Contractor's administration, management and supervisory costs, overheads and profit, being 20% unless otherwise agreed by the parties;

Date for Commencement means the time stated in the *Schedule*;

Date for Practical Completion means the time stated in the *Schedule* as extended from time to time in accordance with the *Contract*, or any such other date as may be determined in any arbitration or litigation;

Day means calendar day;

Defects Liability Period means the time stated in the *Schedule*, which commences on the date that the *Works* reach *Practical Completion* under Clause 21;

Direction includes, but is not limited to, any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement;

Fortnight means a time of 2 Weeks;

GST Exclusive Contract Sum means the GST Exclusive Contract Sum stated in the *Schedule* or, if no amount is stated in the *Schedule*, that amount of the *Contract Sum* that does not relate to the GST;

Latent Condition means any physical condition above, on or below the *Site*, or the areas surrounding the *Site*, or not ascertainable from a visual non-intrusive inspection of the *Site* which differs substantially from the physical conditions which could reasonably have been expected by the Contractor at the time of the entering into of the *Contract* by the parties;

Latent Condition Margin means the percentage stated in the *Schedule* in coverage of the Contractor's administration, management and supervisory costs, overheads and profit;

Month means calendar month;

PPSA means the Personal Properties Securities Act 2009;

Practical Completion means the completion of the *Works* except for minor defects or omissions which do not prevent the *Works* from being reasonably capable of being used for their intended purpose;

President means the president or chairperson from time to time of the Chapter of The Institute of Arbitrators and Mediators Australia in Queensland;

Provisional Sum or Prime Cost Item means those items listed as such in the *Schedule*.

Provisional Sum and Prime Cost Item Margin means the percentage stated in the *Schedule* in coverage of the Contractor's administration, management and supervisory costs, overheads and profit;

Schedule means the schedule forming part of the *Contract*;

Site means the land located at the *Site* address stated in the *Schedule*, any areas surrounding or near that land which are to be made available by the Owner to the Contractor under the *Contract* and any buildings or other structures on the land and any such surrounding areas;

Site Information means all information, documents and data about or describing the *Site*, or the siting of the *Works*, and includes, but is not limited to, the results of soil tests, survey drawings and details of easements, building covenants and planning restrictions;

Special Conditions means those terms set out in Annexure B;

Start Date means the date on which the Contractor physically commences the carrying out of the *Works* on the *Site*;

Statutory Requirement includes, but is not limited to, any act, regulation, by-law, permit, approval and any *Direction* from, or requirement of, a local government or other entity having jurisdiction over the carrying out of the *Works*;

Submission Date means the date on which the Contractor submits (as the case may be) the payment claim, or the final claim, to the Owner;

Variation, whether agreed by the parties, deemed under the *Contract* or otherwise, means to vary the *Works* by:

- (a) changing the nature or scope of the work that the Contractor is required to carry out under the *Contract*, including the omission of work from the *Works*; or
- (b) changing the manner or sequencing in which the Contractor is required to carry out the *Works*;

Variation Margin means the percentage stated in the *Schedule* in coverage of the Contractor's administration, management and supervisory costs, overheads and profit;

Week means calendar week;

Works means the whole of the work that the Contractor is required under the *Contract* to carry out in accordance with Clause 1(a), a brief description of which is set out in the *Schedule*, and includes *Variations* and the rectification of any part of the *Works* that is defective;

Year means calendar year.