NSW Residential Building Contract for New Dwellings

OWNERS:

JOB:

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

© HIA Contracts Online (based on paper copy version dated May 2017)
All rights reserved. No part of this document may be reproduced, stored, copied, distributed or transmitted in any form or by any means without the prior written consent of HIA.
Clause 18. Variations
Clause 19. Delays and Extensions of Time
Clause 20. Prime Cost and Provisional Sum Items
Clause 21. Practical Completion
Clause 22. Final Certificate
Clause 23. Notices
Clause 24. Defects Liability Period
Clause 25. Suspension
Clause 26. Early Possession
Clause 27. Ending the Contract - Breach
Clause 28. Ending the Contract - Insolvency
Clause 29. Effect of the Builder Ending the Contract
Clause 30. Effect of the Owner Ending the Contract
Clause 31. Charge on the Site
Clause 32. Liquidated Damages
Clause 33. Interest on Late Payments
Clause 34. Debt Collection Costs
Clause 35. Dispute Resolution
Clause 36. Risk
Clause 37. Indemnity
Clause 38. Insurances
Clause 39. Statutory Warranties
Clause 40. Mandatory Conditions
Clause 41. Assignment and Subcontracting
Clause 42. No Waiver
Clause 43. Severance
Schedule 1. Particulars of Contract

Item

1. **Date**
   
   This contract is dated the:

2. (a) **Contract price**
   
   | PRICE EXCLUDING GST: | $.00 |
   | GST ON THE ABOVE AMOUNT: | $.00 |
   | THE CONTRACT PRICE IS: | $.00 |

   The contract price is GST inclusive.

   WARNING - The contract price may vary under this contract. The reasons for variations to the contract price include:

   - Clause 5 - planning and building approvals;
   - Clause 6 - a survey being required;
   - Clause 14 - a consultant being engaged to report on the site conditions;
   - Clause 15 - an increase in a tax, charge or levy after this contract is signed;
   - Clause 18 - variations to the building works;
   - Clause 20 - an adjustment for prime cost items and provisional sum items.

   The contract price does not include the costs that the owner will have to pay to a third party for conveying services to the site or connecting or installing services for use at the site.

   Note: The builder cannot demand or receive any of the contract price (including the deposit) until warranty insurance is in force and the owner is provided with a certificate of insurance.

(b) **Deposit** (Clause 17.1)

   THE DEPOSIT IS: $.00
   
   *(The deposit must not exceed 10% of the contract price)*

3. **Owners**
   
<table>
<thead>
<tr>
<th>NAME</th>
<th>ADDRESS</th>
<th>SUBURB</th>
<th>STATE</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABN</td>
<td>WORK</td>
<td>FAX</td>
<td>ACN</td>
</tr>
<tr>
<td>EMAIL</td>
<td>HOME</td>
<td>MOBILE</td>
<td>POSTCODE</td>
</tr>
</tbody>
</table>

© Copyright
4. **Builder**

   NAME: Montgomery Homes Pty Ltd  
   ADDRESS: 471 Pacific Highway  
   SUBURB: BELMONT  
   ABN: 57 069 964 236  
   ACN: 02 4945 4000  
   FAX: 02 4945 4022  
   EMAIL: build@montgomeryhomes.com.au  
   WORK: 02 4945 4000  
   HOME: 02 4945 4000  
   MOBILE:  
   BUILDER’S LICENCE NUMBER: 68655C  
   HIA MEMBER NUMBER: 385408  
   HIA MEMBERSHIP EXPIRY: 30/08/2019

5. **The Land**

   THE LAND IS:  
   LOT:  
   CERTIFICATE OF TITLE:  
   STREET ADDRESS:  
   SUBURB:  
   POSTCODE:  
   STATE:  

6. **Building period** (Clause 12)

   The building works must reach the stage of practical completion no more than working days/weeks after the building period commences, subject to Clause 19.

7. **Initial Period**

   The owner must satisfy the essential matters in Clause 4 within the initial period being a period of 15 working days (If nothing stated then 15 working days)  
   Note: The builder does not need to commence on site until the essential matters are satisfied and may terminate the contract if the essential matters are not satisfied.

8. **Encumbrances, covenants and easements** (Clause 4)

   The land is affected by the following encumbrances, covenants, easements and caveats. Please specify the substance of each encumbrance, covenant, easement and caveat and give details of any registrations where registered at the Titles Office.
9. **Sources of funds**  (Clauses 4 and 7)

The contract price will be funded by:

<table>
<thead>
<tr>
<th>OWNER</th>
<th>$0.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL FUNDS</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

Note: The total funds are to equal the contract price.

**Lending Body 1**

LENDING BODY
BRANCH
CONTACT NAME

10. **Development application and complying development certificate**  (Clause 5)

The person to make and pay for all applications for development consent and/or a complying development certificate is: Owner  *(If no person stated then the owner)*

11. **Liquidated damages**  (Clause 32)

$70.00 per working day calculated on a daily basis.  *(If nothing stated, then $1)*

12. **Interest**  (Clause 33)

Interest on late payment is: 10.00%  *(If nothing stated then the post judgement interest rate applicable to judgements in the NSW Supreme Court from time to time.)*

13. **Builder's margin**

The builder's margin is: 27.50%  *(If nothing stated then 20%)*

14. **Guarantors**

*(refer to Deed of Guarantee and Indemnity)*

<table>
<thead>
<tr>
<th>NAME</th>
</tr>
</thead>
<tbody>
<tr>
<td>ADDRESS</td>
</tr>
<tr>
<td>SUBURB</td>
</tr>
<tr>
<td>STATE</td>
</tr>
<tr>
<td>POSTCODE</td>
</tr>
</tbody>
</table>
## Schedule 2. Progress Payments

<table>
<thead>
<tr>
<th>Stage</th>
<th>Percent</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commencement Fee/Deposit</td>
<td>2.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Commencement fee of $1,000 is payable on signing of building contract. Balance of 2% deposit is due at the end of the 10 business day cooling off period.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PP1</td>
<td>18.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Footings and/or waffle pod slab complete. (Does not include any suspended or infill slabs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PP2</td>
<td>25.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Joists, flooring, lower &amp; upper wall frames complete.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PP3</td>
<td>25.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Windows, brickwork and/or sheeting, fascia, gutter, trusses and roof complete.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PP4</td>
<td>20.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Electrical and plumbing services roughed in, internal linings and entry doors.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PP5</td>
<td>10.00%</td>
<td>$.00</td>
</tr>
<tr>
<td>Completion</td>
<td>10.00%</td>
<td>$.00</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>100.00%</td>
<td>$.00</td>
</tr>
</tbody>
</table>

Note:

- The total amount must be the same as the **contract price**.
- The deposit is brought to account in the first progress payment.
- Progress stages must be stated in clear and plain language.
Schedule 3. Excluded Items (Clause 9)

The owner acknowledges that the builder is not responsible for the supply and installation of materials, goods or the provision of services that are listed below:

As per tender.

Schedule 4. Description of Work

Insert brief description of the building works:

Dwelling.

The building works are described in detail in the plans and specifications.

Schedule 5. Other Contract Documents

In addition to these general conditions, any special conditions, the plan and specifications, the following documents form part of this contract.

1. Tender No.xx dated xx/xx/xxxx.

2. Plans

3. Specifications
Schedule 6. Warranty Insurance

NOTE: The builder must not carry out any building work or demand or receive any part of the contract price until warranty insurance is in force and the owner is provided with the certificate of insurance.

INSURER QBE

ATTACH CERTIFICATE HERE.
Except for the builder’s interest in this contract and the legal requirement for warranty insurance to be arranged in respect of the building works, the builder receives no benefit in relation to arranging such insurance.
Schedule 7. Prime Cost and Provisional Sum Items (Clause 20)

Prime cost items

<table>
<thead>
<tr>
<th>Detailed description of the Item</th>
<th>Estimated quantity allowed for</th>
<th>Estimated $ per item</th>
<th>Allowance $</th>
</tr>
</thead>
<tbody>
<tr>
<td>As per tender</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Provisional sum items

<table>
<thead>
<tr>
<th>Detailed description of the Item</th>
<th>Estimated quantity allowed for</th>
<th>Estimated $ per item</th>
<th>Allowance $</th>
</tr>
</thead>
<tbody>
<tr>
<td>As per tender</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Special Conditions

**General Information**

- Special Conditions override clauses in the Contract
- No verbal commitments will be met.
- It is agreed that notification in writing also includes both facsimile and e-mail to build@montgomeryhomes.com.au.

**Commencing the Building Works**

Clause 12 has been replaced in full and now reads

The owner must provide written evidence that the contract amount (less any amounts already paid) can be financed and/or funded. Failure to provide this written evidence within 15 working days of the contract signing date will result in a contract price adjustment of 0.15% of the contract price per fortnight overdue.

The builder has the right to schedule construction to commence on a date that is conducive to an efficient construction program in consideration of the site being part of a small lot subdivision.

**Fixed Price Excavation**

- The fixed price excavation (if applicable) does **not** include: rock removal, removal or importation of any surplus soils (if applicable), shoring, collapses or remediation or handling of hazardous, contaminated or deleterious materials, tree removal, stump removal, excavation and removal of all vegetation including grass within 1-2 metres of new proposed building envelope to a depth of 50-75mm or any hidden and/or problem site conditions.

**Provisional Sums (If applicable)**

- Clause 20 has been replaced in full and now reads as follows

  20a – A Provisional Sum is the price allowed for providing the work and includes an amount for the builder’s margin & GST. In relation to each Provisional Sum item, if the price (including builder’s margin and GST) is either more or less than the Provisional Sum, the difference is adjusted against your Provisional Sum.

  20b – Any adjustment to the Provisional Sum item is due and payable with the next progress payment invoice.

- Provisional Sums are based on the historical average costs for the applicable design.

- No Provisional Sum has been made in the tender/quotation for any shoring, temporary retaining or support of adjoining properties to stabilize the excavation and/or earthworks. If the builder is required to carry out any stabilization works, the costs shall be borne by the owner at invoice cost plus builder’s margin plus GST.
• No Provisional Sum has been made in the tender/quotation for any tie beams or other problem site conditions such as rock (or shale), springs, tree stumps or anything that can be classified by engineers as unforeseen work.

• Should Traffic Control be required due to, but not limited to, difficult or limited street access and/or busy highway exposure, the cost shall be borne by the Owner at invoice cost plus builder’s margin plus GST less any Provisional Sum for traffic control if applicable.

• Should the electricity provider be required to isolate or protect any overhead power lines that pose a safety threat during construction, the cost shall be borne by the Owner at invoice cost plus builder’s margin plus GST less any Provisional Sum for power line protection if applicable.

**Dilapidation Reports**

• If a report/s is carried out it/they will be charged out at invoice cost plus builder's margin plus GST.

**Piering of Slabs and/or Footings**

• 400mm diameter mass concrete pier holes, maximum depth of 3m, at $130.00 (incl. GST) per lineal metre plus engineers inspection fee.

• Provisional Sums for piering are based on the historical average costs for the applicable design.

• **Note**: This rate does not include the following: timber plies, screw piles, formatube shoring, steel reinforcement, reaming and/or pumping out of foreign material, crane hire associated with lifting steel reinforcement and any dump/tip fees associated with any of the above.

• **Note**: Any piering that exceeds 3m in depth will be inspected by an engineer to give directions of the construction of these piers. Any costs associated with the design and construction of these piers will be charged out at invoice cost plus builder’s margin plus GST.

**Variations – By Builder**

The owner acknowledges that the building contract has been signed prior to:

• Obtaining full regulatory approvals
• Registration of the land
• Completion of site works including all engineering reports and surveys

The owner must not withhold consent to any variation as a result of signing the building contract prior to the above items.

**Variations – Internal Selections**

The owner will be entitled to an appointment at our Sydney office with our selections personnel within 7 days of the contract signing date to finalise the internal selections.

Requests for variations to internal selections will be completely at the discretion of the builder.
Variations – General

In addition to Clause 18:

• Any Variation to drawings, tender/quotation or selections requested by Owners after contract signing must be notified in writing to the office of Montgomery Homes Pty Ltd for processing as a Variation.

• Each & every item in a Variation requested by an Owner will incur an additional $500.00 Administration Fee over & above the cost of the Variation itself.

Site Visits

• Pursuant to Clause 13.3 (c), access to the building works must be authorised prior to the visit and the visitor/s must be accompanied by a Montgomery Homes’ authorised representative at all times, no exceptions. Children are not permitted on-site at any time.

Delays and Extensions of Time

• The builder is entitled to claim a Delay or Extension of Time if the Commencement of the building works is delayed as defined in Clause 19.1.

Manufacturer’s Warranty

• Any manufacturer’s warranties and/or guarantees extending outside regulatory requirements are offered entirely by that manufacturer and are not covered by Montgomery Homes in the Contract nor in our maintenance responsibilities.

Owner Responsibilities

• It is the Owner’s responsibility to ensure that the builder has included all construction and/or special requirements in the tender/quotation or on architectural drawings.

• The Owner indemnifies the builder for damage caused to existing footpaths, battleaxe driveways/driveways or existing fences and/or retaining walls.

• Retaining walls to be completed by Owner as required by council after handover unless noted otherwise.

• All council requirements as per the Conditions of Approval are to be completed by the Owner unless otherwise stated in the contract documents.

• The Owner is responsible for obtaining an Occupation Certificate after handover.

• The Owner is responsible for surface & sub-surface drainage, specific to the building works, which should be undertaken in consultation with landscape design and completed after handover.
If tree/vegetation removal is not carried out in a satisfactory manner when Montgomery Homes commences earthworks, additional costs will apply. Montgomery Homes will carry out these works on the owners behalf without notification charging invoice cost plus builders margin.

**Confidential Information**

Except in the circumstances described below, the Owner must keep the Confidential Information confidential and not disclose the Confidential Information to any third party.

The Owner may only disclose Confidential Information:

- if it has obtained the builder’s prior written consent to the disclosure
- if the disclosure is required by law, and then only if the Owner has notified the builder of its obligation to disclose the Confidential Information and limits its disclosure to the minimum extent required by law
- to its solicitors, auditors, insurers and accountants for the sole purpose of receiving advice on this Contract and its subject matter, or
- to NSW Fair Trading, the Consumer, Trader and Tenancy Tribunal, the Home Building Advocacy Service and other government operated organisations to obtain assistance in connection with a dispute with the builder.

The obligations of the Owner in relation to Confidential Information survive, and will continue to apply for a period of 7 years following, the expiration, termination or frustration of this Contract.

For the purposes of this Contract, “Confidential Information” means any data, information, correspondence, documents, electronic files, images or other material in whatever form, including any reports, specifications and subject matter of any intellectual property rights, provided or made available to the Owner in connection with this Contract, including material that:

- relates to the builder’s performance of its obligations under this Contract
- is by its nature confidential
- is designated as confidential, or
- the Owner knows or ought to know is confidential

but does not include information which:

- is or becomes public knowledge other than by breach of this Contract
- is in the possession of the Owner without restriction in relation to disclosure before the date of receipt from the builder; or
- has been independently developed or acquired by the Owner.

The Owner must not disclose or publish any information related to this Contract:

- through the Internet or any other communications media, or
- to any members of the media

without the builder’s prior written approval (which may be granted or withheld (including with conditions) at the builder’s sole discretion).

The Owner must refer all enquiries from any media regarding the Contract to the builder and must not make any statement, or give any interview or information, about this Contract or the builder without consulting the builder and obtaining its prior written consent.
Signatures

This **contract** is made between the **Owner** and the **Builder**.  
The **schedules** form part of this **contract**.  
The Consumer Building Guide in Attachment B does not form part of this **contract**.  
The parties have signed this **contract** on the date stated in Item 1 of Schedule 1.  
The **Owner** has received the Checklist in Attachment A and the Consumer Building Guide in Attachment B before signing this **contract**.  
The **Owner** has read and understood this **contract**.

### Owner

<table>
<thead>
<tr>
<th>NAME</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>WITNESS’S</td>
<td>SIGNATURE</td>
</tr>
<tr>
<td>WITNESS’S NAME AND ADDRESS</td>
<td></td>
</tr>
</tbody>
</table>

### Builder

<table>
<thead>
<tr>
<th>NAME</th>
<th>SIGNATURE</th>
</tr>
</thead>
<tbody>
<tr>
<td>WITNESS’S</td>
<td>SIGNATURE</td>
</tr>
<tr>
<td>WITNESS’S NAME AND ADDRESS</td>
<td></td>
</tr>
</tbody>
</table>

Signed for and on behalf of: Montgomery Homes Pty Ltd
Note: The Builder must not demand or receive any part of the contract price until warranty insurance is in force and the Owner is provided with the certificate of insurance.

Please note

1. Where a company is signing: 'by A. Smith, Director' or 'Signed for and on behalf of XYZ Pty Ltd'.
2. Where a partnership is signing: 'Enterprises by Andrew Smith, Partner. Signed for and on behalf of Andrew Smith and Jane Smith.'

STATEMENT SETTING OUT THE OWNER’S RIGHT TO WITHDRAW FROM THIS CONTRACT UNDER SECTION 7BA OF THE HOME BUILDING ACT

This contract may be subject to a cooling off period that entitles the owner to rescind this contract by giving a notice in writing as required by Section 7BA of the Home Building Act:

(a) If the owner has been given a copy of the signed contract – at any time before the expiration of 5 clear business days after the owner is given a copy of the signed contract; or;

(b) If the owner has not been given a copy of the signed contract within 5 days after the contract has been signed – at any time before the expiration of 5 clear business days after the owner becomes aware that the owner is entitled to be given a copy of the signed contract

If the owner exercises the right to cool off then this contract is rescinded and the builder is entitled to a reasonable price for the work carried out under the contract until the date the contract is rescinded.
**Interpretation**

**Builder is**

**Owner is**

**Guarantors**

ADDRESS LINE 1
ADDRESS LINE 2
SUBURB STATE POSTCODE

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

**Background**

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

**Operative**

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

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

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

4. **No Merger**
   The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. **No Release**
   The **Guarantor** is not discharged by:
   - any variation to the **Contract** including a variation to the building works;
   - any delay or claim by the **Builder** to enforce a right against the **Owner**; and
   - any forbearance given to the **Owner** to perform the **Owner's** obligations under the **Contract**.

6. **Severability**
   Any provision of this Deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate any other provision of this Deed.
7. **When More Than One Guarantor**
   If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any of them.

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

---

**Guarantor's Statement**

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

**Signed as a Deed**

---

**SIGNATURE**

**WITNESS'S NAME AND ADDRESS**

---

**SIGNATURE**

**DATE**
Clause 1. Interpretation

1.1 In this contract:

'adverse weather' means any weather condition that, in the reasonable opinion of the builder, prevents work from being carried out in the usual manner;

'all weather access' means access in all weather conditions as required by the builder for carrying out the building works;

'builder' means the party named in Item 4 of Schedule 1 and, where appropriate, includes a representative appointed by the builder;

'builder's margin' means the percentage stated in Item 13 of Schedule 1;

'building period' means the number of calendar weeks or working days stated in Item 6 of Schedule 1 as extended by Clause 19;

'building works' means the building works to be carried out, completed and handed over to the owner in accordance with this contract as shown in the contract documents and includes variations.

'contract' means the agreement between the builder and the owner set out in the contract documents;

'contract documents' means these general conditions, any special conditions, the plans, the specifications and other documents specified in Schedule 5;

'contract price' means the amount stated in Item 2(a) of Schedule 1, as changed by this contract;

'contract price adjustment' means an amount that is added to or deducted from the contract price under this contract;

'date of practical completion' means the date that is deemed to be the date of practical completion under Clause 21 except where the date is determined by dispute resolution (including litigation) then it is that date;

'initial period' means the period stated in Item 7 of Schedule 1;

'lending body' means any corporation or institution that lends to the owner part of or the whole of the contract price;

'notice of practical completion' means the notice given by the builder to the owner under Clause 21;

'owner' means the party named in Item 3 of Schedule 1 and includes the owner's agents, employees and invitees;

'practical completion' means when the building works are complete except for minor omissions and defects that do not prevent the building works from being reasonably capable of being used for their usual purpose;

'prime cost item' means an item (for example a fixture or fitting) that either has not been selected or cannot be costed exactly at the time that the contract is entered into and for which the builder has made allowance in the contract price;

'provisional sum item' means an item of work (including labour and materials) which cannot be costed exactly at the time that the contract is entered into and for which the builder has made allowance in the contract price;

'rock' means material, other than clay or soil, that cannot, in the builder's opinion, be readily removed by hand;
Clause 2. Builder's Obligations

2.1 The builder must carry out and complete the building works in accordance with this contract.

Clause 3. Owner's Obligations

3.1 The owner must pay the contract price and other money that becomes payable under this contract in the manner and at the times stated in this contract.

3.2 If there is more than one owner:

(a) the obligations in this contract apply to each of them individually and to all of them as a group;

(b) a quote, notice, claim or any other communication to the owners has only to be given to one of the owners; and

(c) only one of the owners has to sign a quote, notice, instruction, direction or other communication to bind all of the owners.

Clause 4. Essential Matters

4.1 The owner must, within the initial period, give the builder:

(a) written proof that the owner owns or is otherwise entitled to build on the site;

(b) written details of any encumbrances, covenants, easements and caveats affecting the site;

(c) if required written evidence that the security account has been established and the amount required to be paid into the security account is held in clear funds;

(d) if the owner is obtaining finance from a lending body, written advice from the lending body that:

(i) the amount of finance, when added to the owner's own available funds, is sufficient to pay the contract price; and
(ii) the building works may commence;
(e) written evidence of development consent for the building works;
(f) if required, written proof that the owner has obtained any building approvals and has satisfied any conditions imposed by a statutory or other authority where required prior to commencement of work; and
(g) if required, written proof that the owner has appointed the principal certifying authority and has paid any costs associated with such appointment.

4.2 If the owner fails to satisfy all of the above within the initial period the builder may end this contract, by giving the owner a written notice to that effect, at any time prior to physical commencement of the building works.

4.3 If the builder so ends this contract, the owner must pay to the builder the price of the services provided and works carried out to the date that this contract is ended. The price includes the builder’s margin applied to the costs incurred by the builder which costs include the cost of materials on site or already ordered from suppliers that are non-returnable.

Clause 5. Planning and Building Approvals

5.1 The party named in Item 10 of Schedule 1 must obtain and pay for all applications for development consent and/or a complying development certificate for the building works.

5.2 If the builder is named in Item 10 of Schedule 1, the owner must provide a signed statement to the effect that the owner consents to the builder making any application for development consent and/or a complying development certificate in relation to the building works.

5.3 Notwithstanding that the builder may be named in Item 10 of Schedule 1, unless otherwise stated in this contract, at all times the owner is responsible for the payment of any and all additional fees, charges, taxes, costs and levies, however described, associated with:
   (a) inspections conducted by the principal certifying authority or its agents, employees and invitees;
   (b) registrations relating to title to the site;
   (c) planning and building approvals for the building works;
   (d) complying with the conditions of the development consent, including but not limited to payment of infrastructure contributions.

For variations refer to Clause 18.

5.4 If the requirements of a statutory or other authority necessitate a change to the building works the builder must inform the owner of the change required and ask for a variation for the building works to comply with the requirements.

Clause 6. Survey of the Site

6.1 If, in the builder's opinion, the boundaries of the site are unclear, the builder must give the owner a written notice asking the owner to provide a survey of the site.

6.2 If the owner does not provide a survey within 5 working days of the builder giving notice the builder may, as the owner's agent, obtain the survey. The owner must pay to the builder on demand the total of the price of the survey plus the builder's margin applied to that price.
Clause 7. Security Account and Ability to Pay

This is an essential matter. Refer to Clause 4.

7.1 The owner, when requested by the builder at any time, must deposit that part of the contract price not being supplied by a lending body into an account at a bank, building society or a similarly recognised financial institution (to be known as a security account). The security account must be in the joint names of the owner and the builder with:

(a) the owner receiving interest, if any, on the money deposited in the account; and

(b) the builder as joint signatory for any withdrawal from the account.

7.2 The owner must, within 2 working days of being requested by the builder at any time, give the builder written evidence, to the builder’s satisfaction, of the owner’s ability to pay all money that is or may become payable to the builder under this contract.

Clause 8. Accuracy of Contract Documents

8.1 Where the owner supplies any contract document, the owner warrants:

(a) that contract document is accurate; and

(b) the suitability of the design, materials and methods of working each specified therein.

8.2 If either party becomes aware of any error, ambiguity or inconsistency in or between the contract documents, that party must, within 2 working days of becoming aware, give the other party written notice detailing the problem.

8.3 The owner must, within 2 working days of receiving a notice or becoming aware of a problem, give the builder written instructions as to how the builder is to proceed with the building works.

8.4 If the owner fails to give the builder such written instructions within 2 working days, the builder may proceed with the building works applying the following order of precedence:

(a) any special conditions;

(b) these general conditions;

(c) the specifications;

(d) the plans, then

(e) other documents.

8.5 If:

(a) compliance with the owner’s instructions or the order of precedence, as applicable, involves more or less cost than a reasonable builder would have anticipated on the signing of this contract; and

(b) the problem is caused by documents other than those provided by the builder,

the owner is deemed to have asked the builder for a variation to carry out that work and the procedure for variations in Clause 18 will apply.

8.6 In relation to a document that is:

(a) supplied by;

(b) prepared under instruction of; or

(c) prepared from sketches provided by,
Indemnity is a legal concept requiring the payment to the other party of all costs and expenses. A party, that party indemnifies the other party for all costs, expenses, losses or damages that are incurred by the other party relating to or as a consequence of any claim for breach of copyright or moral right arising from the builder carrying out the building works in accordance with that document.

8.7 The builder owns the copyright in any document prepared by the builder.

Clause 9. Excluded Items

9.1 The owner and the builder agree that the items set out in Schedule 3 are excluded from this contract.

Clause 10. Specified Materials

For variations refer to Clause 18.

10.1 If any material specified to be used in the building works is unavailable when required by the builder, the builder may ask the owner for a variation to substitute the use of similar material.

Clause 11. Materials Supplied by Owner

These items should be listed in a contract document.

11.1 The goods and services to be provided by the owner must be:
   (a) suitable for inclusion into the building works;
   (b) supplied or completed in the time required by the builder; and
   (c) completed to the satisfaction of the builder.

For variations refer to Clause 18.

11.2 If the owner breaches the above condition the builder may elect to either:
   (a) carry out the building works without incorporating the goods or services; or
   (b) do either or both of the following:
       (i) suspend the carrying out of the building works under Clause 25;
       (ii) give to the owner a notice of default under Clause 27.

11.3 The builder is not responsible for the performance and suitability of goods and services provided by the owner.

Clause 12. Commencing the Building Works

12.1 The builder is to commence the building works within 20 working days after the day that:
   (a) the builder receives all necessary building permits and planning approvals for the building works to commence; or
   (b) the owner satisfies all of the requirements of Clause 4, whichever is later.

12.2 The building period commences on the date the builder starts performing the building works on the site.

Clause 13. Site Possession and Access

13.1 The owner gives the builder exclusive possession of the site to carry out the building works.

For variations refer to Clause 18.

13.2 The owner must provide all weather access. If the owner does not provide all weather access and the builder will be required to carry out further work to achieve such access the owner is deemed to have asked the builder for a variation to carry out that extra work and the procedure for variations in Clause 18 applies.
13.3 The owner, the owner’s agents and officers of the lending body:
(a) must not hinder;
   (i) the builder’s access or possession of the site; or
   (ii) the progress of the building works;
(b) must not:
   (i) make inquiry of;
   (ii) issue directions to; or
   (iii) give instructions to,
the builder’s workers or subcontractors. Communication must only be
with the builder’s nominated person; and
(c) may only have access to the building works at reasonable times
and after giving reasonable prior notice for the purposes of inspecting
the progress of the building works.

13.4 The builder’s unused materials on the site are the property of the
builder.

Clause 14. Hidden Site Conditions

14.1 If:
(a) either party believes that the surface or sub-surface conditions of
the site may not support or are likely to affect the building works, or
(b) rock is found at the site,
the builder may, or must at the owner’s written request, as the owner’s
agent, retain consultants to report on the site conditions and their effect on
the building works and the cost of every consultant is to be paid by the
owner as a contract price adjustment.

For variations refer to Clause 18.

14.2 The builder must promptly give the owner a notice detailing the
details of any extra work required and the estimated cost of that work. The builder
must attach a copy of any report to that notice.

14.3 Subject to sub-clause 14.6, the owner must:
(a) within 5 working days of receiving the notice under sub-clause
14.2, confirm in writing that the builder is authorised to proceed with
the extra work as detailed by the builder under sub-clause 14.2;
(b) pay the builder the sum of the total cost of all extra work plus the
builder’s margin applied to that cost at the next progress payment
after the work is carried out unless a different time is agreed.

14.4 If the owner does not give the builder written notice under sub-clause
14.3 the builder may do either or both of the following:
(a) suspend the carrying out of the building works under Clause 25;
(b) end this contract and Clause 29 applies.

14.5 The builder is only entitled to payment for such extra work if the actual
site conditions differ from those either:
(a) disclosed or known to the builder prior to this contract being
signed; or
(b) shown in the contract documents,
and if the effect of that difference requires more or less work than that
which a reasonable builder would have anticipated on the signing of this
contract.
14.6 If the estimated price of the extra work exceeds 5% of the contract price, the owner may end this contract by giving the builder a written notice to that effect within 5 working days of receiving the estimated cost from the builder under sub-clause 14.2 and sub-clause 14.7 applies.

14.7 If the owner so ends this contract, the owner must pay to the builder the price of the works carried out to the date that this contract is ended. The price includes the builder's margin applied to the costs incurred by the builder which costs include the cost of materials on site or already ordered from suppliers that are non-refundable.

Clause 15. Other Costs

The contract price may change due to an increased cost.

15.1 If, after this contract is signed, a statutory or other authority introduces or increases:

(a) any tax, charge, levy or other regulation; or
(b) any requirement that affects the building works,

that causes any cost increase in the cost of the building works there is a contract price adjustment.

For variations refer to Clause 18.

Clause 16. Contract Price Adjustments

16.1 A contract price adjustment is due and payable at the next progress payment after it arises unless a different time is agreed.

16.2 When there is a deletion to the building works or substitution of materials resulting in a contract price adjustment, the contract price will be adjusted at the progress payment of the stage where the building works would have been carried out, unless a different time is agreed in writing.

Clause 17. Progress Payments

17.1 The owner must pay the deposit stated in Item 2(b) of Schedule 1 on the later of the day that:

(a) this contract is signed by the owner; and
(b) warranty insurance described in Schedule 6 is in force and the owner is provided with a certificate of insurance for such insurance.

The deposit is brought to account with the first progress payment.

17.2 The owner must pay the contract price progressively as claimed by the builder.

17.3 The builder must give the owner a written claim for a progress payment for the completion of each stage.

17.4 A progress claim is to state:

(a) the amount claimed and not paid for the stage substantially completed;
(b) the amount claimed and not paid for contract price adjustments;
(c) the amount claimed and not paid for variations; and
(d) the sum of the above amounts.
17.5 The owner must pay a progress claim within 5 **working days** of the builder giving the claim.

17.6 Other than in relation to the final progress claim:
   (a) payment of a progress claim is on account only; and
   (b) the owner has no right of set off.

**Clause 18. Variations**

Variations may change the contract price.
Refer to Clause 40 for Mandatory Conditions.

The builder may ask the owner for evidence of ability to pay for the variation. See Clause 7.2.

18.1 **A variation** must be in writing and signed by or on behalf of the **builder** and the **owner**. Either the **owner** or the **builder** may ask for a **variation**.

18.2 If the **owner** asks for a **variation**, the **builder** must reply in writing as soon as is reasonable.

18.3 The reply is to be either:
   (a) a signed written offer to carry out the **variation** detailing:
      (i) the work required to carry out the **variation**;
      (ii) the price of the **variation**; and
      (iii) any extension of time to the **building period** as a result of carrying out the **variation**; or
   (b) a refusal to carry out the **variation**. The **builder** does not have to give any reasons for refusing to carry out a **variation**.

18.4 If the **owner** does not give to the **builder** signed written acceptance of the **builder's** offer within 5 **working days** of the **builder** giving the reply, the **builder's** offer is deemed to be withdrawn.

18.5 If the price of a **variation** is not agreed prior to it being carried out that price includes:
   (a) the deduction of the reasonable cost of all deletions from the **building works**; and
   (b) the addition of the total cost of all extra work plus the **builder's** margin applied to that cost.

18.6 The price of a **variation** is due and payable at the next progress payment after it is carried out unless a different time is agreed.

18.7 The **owner** must not unreasonably withhold consent to any **variation** which is required for the **building works** to comply with the law or a requirement of any **statutory or other authority**.

18.8 The **owner** acknowledges that the colour and grain of timber, granite and other natural materials can vary. The **builder** is to use reasonable endeavours to match the colour or grain of any sample selected by the **owner** but is under no liability if there is a difference and such difference is not a **variation**.

**Clause 19. Delays and Extensions of Time**

19.1 The **builder** is entitled to a reasonable extension of the **building period** if the **building works** are delayed by the **builder** suspending the **building works** under Clause 25 or from a cause beyond the sole control of the **builder** including:
   (a) a **variation** or a request for a **variation** by the **owner**;
   (b) an act of God, fire, explosion, earthquake or civil commotion;
   (c) **adverse weather**;
(d) an industrial dispute;
(e) a dispute with adjoining or neighbouring residents or owners;
(f) anything done or not done by the owner;
(g) delays in getting any approvals;
(h) a delay in the supply of materials selected by the owner;
(i) the need for a survey of or other report in relation to the site; or
(j) the industry shutdown being a 3 week period commencing on or about 22 December in each year if construction during the Christmas period could not have been reasonably foreseen at the date of this contract.

19.2 The builder is to give the owner written notice of an entitlement to an extension of time detailing both:
(a) the cause of the delay; and
(b) the extension of time,
within 10 working days after becoming aware of both the cause and the extent of the delay.

19.3 If the owner wishes to dispute the builder's entitlement to an extension of time the owner must, within 5 working days of receiving the builder's notice, give the builder a written notice:
(a) disputing the extension of time; and
(b) detailing the reasons why the extension of time is disputed.

The builder is entitled to extra costs where the owner is responsible for a delay.

19.4 For every day the subject of an extension of time caused by an act, default or omission of the owner, delay damages, being the total of the actual increase in cost to the builder to carry out the building works plus the builder's margin applied to that cost is due and payable to the builder on demand.

Clause 20. Prime Cost and Provisional Sum Items

Refer to Schedule 7 or other contract documents for prime cost items.

20.1 The owner must give the builder written notice of the owner's selection of a prime cost item within 5 working days after the builder's request to do so.

20.2 If a prime cost item selected by the owner is unavailable, the owner must give the builder written notice of an alternative selection within 5 working days of the builder advising that the item selected is unavailable.

20.3 If the owner fails to give written notice under sub-clause 20.2, the builder may select an alternative item that is similar in quality to the unavailable item.

20.4 Each prime cost item must have an allowance stated next to it. The allowance is the estimated price to supply the item and does not include an amount for the builder's margin.

Refer to Schedule 7 or other contract documents for provisional sum items.

20.5 Each provisional sum item must have an allowance stated next to it. The allowance is the estimated price of providing the work and does not include an amount for the builder's margin.

This may change the contract price.

20.6 In relation to each prime cost item and provisional sum item, if the actual price is:
(a) less than the allowance, the difference is deducted from the contract price;
(b) more than the allowance, the total of the difference and the builder's margin applied to that difference is added to the contract price.
20.7 Any adjustment to the contract price for a prime cost item or a provisional sum item is due and payable with the next progress payment, unless a different time is agreed in writing.

### Clause 21. Practical Completion

Refer to the definition of practical completion in Clause 1.

21.1 The builder must give the owner a notice of practical completion at least 5 working days prior to practical completion being reached.

21.2 The notice of practical completion is to:
   (a) state the builder's assessment of the date of practical completion;
   (b) state the date and time for the owner to meet the builder on the site to carry out an inspection of the building works; and
   (c) have attached the builder's final progress claim.

21.3 The owner must meet the builder on the site for the inspection at the date and time stated by the builder in the notice of practical completion or at a date and time otherwise agreed with the builder and either:
   (a) pay the amount of the final progress claim; or
   (b) if the owner believes that the building works have not reached practical completion give the builder a written notice detailing anything to be done to reach practical completion.

21.4 If the owner pays the amount of the final progress claim under sub-clause 21.3(a) the date of practical completion stated in the notice of practical completion is deemed to be the date of practical completion.

21.5 If the owner gives the builder a notice under sub-clause 21.3(b) of work to be completed:
   (a) the builder must carry out any work required for practical completion and give the owner a further notice of practical completion;
   (b) if the builder does not agree that there is any further work to be carried out to reach practical completion the builder:
      (i) must give the owner written notice rejecting the owner's notice. In this case, such a notice will also serve as notice of the matters in dispute for the purposes of Clause 35;
      (ii) is not obliged to carry out any further work on the site while the dispute remains unresolved.

21.6 If the owner does not pay the amount of the final progress claim under sub-clause 21.3(a) or give the builder a notice under sub-clause 21.3(b):
   (a) the amount of the final progress claim is deemed to be a debt due and owing from the owner to the builder;
   (b) the date of practical completion stated in the notice of practical completion is deemed to be the date of practical completion; and
   (c) the owner acknowledges the building works have reached practical completion.

21.7 On the owner paying the final progress claim, the builder must give the keys, certificates, warranty documentation and other documents pertaining to the building works to the owner.
Clause 22. Final Certificate

22.1 The **builder** is not required to obtain any certificate of occupancy or final inspection certificate relating to the **building works**.

Clause 23. Notices

23.1 Unless otherwise stated in this **contract**, a notice given under this **contract** must be in writing and in English.

23.2 Notices may be given:
   (a) personally;
   (b) by sending it by prepaid post to the party's address shown in Item 3 or Item 4 of Schedule 1 or the address that is last notified in writing;
   (c) by sending it by facsimile to the party's facsimile number shown in Item 3 or Item 4 of Schedule 1 or the facsimile number that is last notified in writing; or
   (d) by sending it by email to the party's email address shown in Item 3 or Item 4 of Schedule 1 or the email address that is last notified in writing.

23.3 Notice is deemed to be received:
   (a) if given personally, by handing it to the other party;
   (b) if sent by prepaid post, **5 working days** after posting;
   (c) if sent by facsimile, at the time and on the day shown in the sender's transmission report;
   (d) if sent by email, at the time of transmission unless the sender's server or email indicates a malfunction or error in transmission or the recipient immediately notifies the sender of an incomplete or illegible transmission.
   (e) If the notice is deemed to be received on a day which is not a **working day** or after 5pm, it is deemed to be received at 9am on the next **working day**.

23.4 If two or more people comprise a party, notice to one is effective notice to all.

Clause 24. Defects Liability Period

24.1 The defects liability period is a period of 13 weeks commencing on and including the **date of practical completion**.

24.2 The **owner** may, before the end of the defects liability period, give the **builder** one list of defects in the **building works** that appear after the **date of practical completion**.

24.3 The **builder** must rectify defects that are the **builder's** responsibility and which are notified to the **builder** during the defects liability period.

24.4 The **owner** must provide the **builder** with reasonable access to carry out rectification works.

Clause 25. Suspension

25.1 If the **owner** is in breach of this **contract** the **builder** may suspend the carrying out of the **building works**.

25.2 The **builder** must give to the **owner** written notice of the suspension and details of the breach.
The builder must claim an extension of time under Clause 19.

25.3 The builder must recommence the carrying out of the building works within a reasonable time after the owner remedies the breach and gives the builder written notice of that fact.

25.4 The builder's exercise of the right of suspension does not prevent the builder from exercising any right to end this contract under Clause 27 in regard to the same occurrence.

Clause 26. Early Possession

If this Clause applies the owner is in substantial breach of this contract.

26.1 If the owner:
   (a) enters enter into occupation of the site or any part of the site;
   (b) takes control of the building works or the site; or
   (c) prevents or inhibits the builder from carrying out the building work, without the builder's written consent, the owner commits a substantial breach of this contract entitling the builder to elect to either:
   (d) treat the owner's actions as a repudiation of this contract and accept that repudiation; or
   (e) do either or both of the following:
      (i) suspend the carrying out of the building works under Clause 25;
      (ii) give the owner a notice of default under Clause 27.

Clause 27. Ending the Contract - Breach

If there is a dispute consider dispute resolution. Refer to Clause 35.

27.1 A substantial breach of this contract by the builder includes but is not limited to if the builder:
   (a) has its licence cancelled;
   (b) suspends the carrying out of the building works other than under Clause 25.

27.2 A substantial breach of this contract by the owner includes but is not limited to if the owner:
   (a) fails to pay any amount by the due date;
   (b) fails to give evidence of ability to pay as requested;
   (c) fails to establish and maintain a security account if requested;
   (d) interferes with or obstructs the progress of the building works;
   (e) fails to give or interferes with the builder's possession of the site;
   (f) fails to give an instruction or direction required within the time specified.

27.3 If a party is in substantial breach of this contract the other party may give the party in breach a written notice stating:
   (a) details of the breach; and
   (b) that, if the breach is not remedied within 10 working days, that party is entitled to end this contract.

27.4 If 10 working days have passed since the notice of default is given and the breach is not remedied then the party giving the notice of default may end this contract by giving a further written notice to that effect.

27.5 All notices to be given under this Clause must be given by registered post or personally.
Clause 28. Ending the Contract - Insolvency

28.1 Either party may end this contract by giving the other party written notice by certified mail or personal service if the other party:
   (a) being a person, is or becomes bankrupt; or
   (b) being a corporation, is in or goes into liquidation.

Clause 29. Effect of the Builder Ending the Contract

29.1 If the builder ends this contract under Clause 14, Clause 26, Clause 27 or Clause 28, then at the election of the builder, the owner must pay as a debt due and payable either:
   (a) the greater of the cost of or the market value of the building works to date including the cost of any materials on the site or already ordered from suppliers and the cost of quitting the site less the amount already paid by the owner; or
   (b) damages.

Clause 30. Effect of the Owner Ending the Contract

30.1 If the owner ends this contract under Clause 27 the owner must complete the building works and keep records of the cost incurred.

30.2 The owner must take all reasonable steps to minimise the cost of completing the building works.

30.3 The owner must, within 5 working days of the building works reaching practical completion, give the builder a written detailed statement of the costs incurred (including copies of all invoices and receipts) and notice of the date when practical completion was reached.

30.4 If the costs incurred by the owner are:
   (a) more than the unpaid balance of the contract price the builder must pay the difference to the owner within 7 working days of receiving the notice from the owner; or
   (b) less than the unpaid balance of the contract price the owner must pay the difference when giving the notice as a debt due and payable.

Clause 31. Charge on the Site

31.1 The owner charges the site with the due payment to the builder of all moneys that are or may become payable under this contract to the extent that a court or tribunal has made an order that the owner pays that amount to the builder.

Clause 32. Liquidated Damages

32.1 If the building works do not reach practical completion by the end of the building period the owner is entitled to liquidated damages in the sum specified in Item 11 of Schedule 1 for each working day after the end of the building period to and including the earlier of:
   (a) the date of practical completion;
   (b) the date this contract is ended; or
   (c) the date the owner takes possession of the site or any part of the site.
Clause 33. Interest on Late Payments

Interest can be charged on any amount to be paid by the owner to the builder.

33.1 The builder may charge the owner interest at the rate stated in Item 12 of Schedule 1 from the day on which an amount falls due to be paid to the builder up to and including the day that amount is paid.

Clause 34. Debt Collection Costs

34.1 The owner must pay to the builder any debt collection costs, including any legal fees and costs associated with recovering or attempted recovery of an amount under this contract.

Clause 35. Dispute Resolution

35.1 If a dispute arises then a party must give written notice to the other party setting out the matter in dispute.
35.2 The builder and the owner must meet within 10 working days of the giving of the notice to attempt to resolve the dispute or to agree on methods of so doing.
35.3 If the dispute is resolved the parties must write down the resolution and sign it.
35.4 The parties agree that anything done or said in the negotiation cannot be revealed in any other proceeding.

Clause 36. Risk

36.1 While carrying out the building works to and including the date of practical completion, the builder is responsible for loss or damage to the building works except to the extent that it is caused or contributed to by an act or omission of the owner.
36.2 The builder is not responsible for loss or damage to the owner's property or property for which the owner is responsible that is left on the site.
36.3 The builder is not responsible for personal injury, death, property loss or damage caused by war or terrorism. The owner is responsible for such injury, death, damage or loss.
36.4 The builder is not responsible for any loss and damage that the owner may incur arising from the owner taking early possession in breach of Clause 26.1.
36.5 The builder must take all reasonable steps to mitigate any loss or damage to the building works caused or contributed to by an act or omission of the owner.

Clause 37. Indemnity

Indemnity is a legal concept by which a person is to reimburse the other person for costs incurred.

37.1 Except to the extent limited by another provision of this contract, each party indemnifies the other against:
   (a) loss or damage to property (other than the building works); and
   (b) claims in respect of personal injury or death, arising out of or as a consequence of a cause or event at that party’s risk.

Clause 38. Insurances

38.1 The builder must insure against:
   (a) loss or damage to the building works and any goods and materials on the site relating to the building works against theft, fire,
explosion, lightning, hail, storm and tempest, vandalism, civil commotion and earthquake; and 
(b) public liability for an amount of $10,000,000 for any one claim.

38.2 The above insurance policies must be in place before the builder commences the building works and must be maintained: 
(a) in the case of the building works policy, to and including the date of practical completion; and 
(b) in the case of public liability policy, for the duration of the contract.

38.3 If the owner asks, the above insurances must note the names of the owner and the lending body as being in the class of the insureds under the above insurance policies.

38.4 The builder must comply with all obligations under workers compensation legislation.

38.5 If the owner asks for proof of any of the above insurance policies being in place the builder must give the owner a copy of the certificate of currency relating to the relevant insurance policy.

38.6 On the settlement of any claim under the building works policy the builder is to: 
(a) immediately be paid any part of the settlement moneys relating to loss suffered by the builder relating to any work that is the subject of the claim but for which the owner has not paid the builder; and 
(b) carry out the reinstatement of the building works and be paid the balance of the settlement moneys for the reinstatement works.

38.7 The owner must ensure that the building works are insured from the date of practical completion.

Clause 39. Statutory Warranties

These are the warranties that are set out in the Home Building Act.

39.1 To the extent required by the Home Building Act, the builder warrants that: 
(a) the building works will be done with due care and skill and in accordance with the plans and the specifications attached to this contract; 
(b) all materials supplied by the builder 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; 
(c) the building works will be done in accordance with, and will comply with, the Home Building Act or any other law; 
(d) the building works will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within a reasonable time; 
(e) if the building works consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the building works will result, to the extent of the building works conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and 
(f) the building works and any materials used in doing the building works will be reasonably fit for the specified purpose or result, if the owner expressly makes known to the builder, or other person with express or apparent authority to enter into or vary contractual arrangements on behalf of the builder, the particular purpose for
which the building works are required or the result that the owner desires to be achieved, so as to show that the owner relies on the builder's skill and judgment.

Clause 40. Mandatory Conditions

40.1 To the extent required by the Home Building Act and subject to sub-clause 40.2, the building works will comply with:
(a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
(b) all other relevant codes, standards and specifications that the building works are required to comply with under any law; and
(c) the conditions of any relevant development consent or complying development certificate.

40.2 The builder is not liable if the building works do not comply with the requirements of sub-clause 40.1 if the failure relates solely to:
(a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the builder); or
(b) a design or specification required by the owner, if the builder has advised the owner in writing that the design or specification contravenes sub-clause 40.1.

40.3 To the extent required by the Home Building Act:
(a) all plans and specifications for the building works including any variations to those plans and specifications form part of this contract;
(b) any agreement to vary this contract, or to vary the plans and specifications for the building works, must be in writing and signed by the parties.

Refer to Clause 27.

40.4 This contract may be terminated in circumstances provided by common law. This does not limit the circumstances in which the contract may be terminated.

Clause 41. Assignment and Subcontracting

41.1 Neither party may assign this contract or any of their rights, benefits or obligations under this contract without the prior written consent of the other party.

41.2 The builder may subcontract any part of the building works but remains responsible for all of the building works.

Clause 42. No Waiver

42.1 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.

Clause 43. Severance

43.1 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.
The owner and the builder agree that:

__________________________________________
(name)

of

__________________________________________
(company)

is appointed as agent for the owner.

The agent must provide instructions to the builder on behalf of the owner as required by this contract.

Dated: _______________________________________

Signed:

Owner

__________________________________________

__________________________________________

Builder

__________________________________________

Agent

__________________________________________
1. **Checklist**

1. Have you checked that contractor holds a current contractor licence?
   - Yes ☐ No ☐
2. Does the licence cover the type of work included in the contract?
   - Yes ☐ No ☐
3. Is the name and number on the contractor’s licence the same as on the contract?
   - Yes ☐ No ☐
4. Is the work to be undertaken covered in the contract, drawings or specification?
   - Yes ☐ No ☐
5. Does the contract clearly state a contract price or contain a warning that the contract price is not known?
   - Yes ☐ No ☐
6. If the contract price may be varied, is there a warning and an explanation about how it may be varied?
   - Yes ☐ No ☐
7. Are you aware of the cooling-off provisions relating to the contract?
   - Yes ☐ No ☐
8. Is the deposit within the legal limit of 10%?
   - Yes ☐ No ☐
9. Does the contract include details of the progress payments payable under the contract?
   - Yes ☐ No ☐
10. Do you understand the procedure to make a variation to the contract?
    - Yes ☐ No ☐
11. Are you aware of who is to obtain any council or other approval for the work?
    - Yes ☐ No ☐
12. Do you understand that you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under the Home Building Compensation Fund (except where the work is of a kind that does not require insurance)?
    - Yes ☐ No ☐
13. Has the contractor given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW’s home building laws and where to get more information?
    - Yes ☐ No ☐
14. Does the contract include a statement about the circumstances in which the contract may be terminated?
    - Yes ☐ No ☐

2. **Signatures**

Do not sign the contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document.

If you have answered “no” to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

3. **Signed copy of contract**

Under the Home Building Act 1989 a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

4. **Home Building Compensation Fund**

The contractor must provide you with a certificate of insurance under the Home Building Compensation Fund before the contractor commences work and before the contractor can request or receive any payment.

5. **Acknowledgement of owners**

I/we have been given a copy of the Consumer Building Guide and I/we have read and understand it. I/we have completed the checklist and answered “Yes” to all items on it.

**Note.** Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name [print]</td>
<td>Name [print]</td>
</tr>
<tr>
<td>Capacity [print]</td>
<td>Capacity [print]</td>
</tr>
</tbody>
</table>
Consumer Building Guide
Mandatory information for consumers

Builders and tradespeople must give you a copy of this guide before entering into a contract for residential building work costing more than $5,000. Read this guide to help protect your rights, carry out your responsibilities and support your building project.

Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency regulating residential building work (including building or trade work on single dwellings, villas, houses and home units) under the Home Building Act 1989.

What to consider before work starts

Licensing

Licensing requirements include:

- tradespeople and builders carrying out residential building work valued at more than $5,000 must be licensed by NSW Fair Trading (check a licence at the Fair Trading website or by calling 13 32 20)
- regardless of the work’s cost, a licence is always required for specialist work (like plumbing, air conditioning and refrigeration, electrical work and gasfitting)
- if the work requires more than one tradesperson, you need a builder to manage the building project and co-ordinate the tradespeople, such as plumbers, painters and carpenters.

Home Building Compensation Fund (previously called Home Warranty Insurance)

Where work is worth more than $20,000 (including labour and materials), the builder or tradesperson must not start work or ask for any money (including a deposit) until they give you a copy of the Home Building Compensation Fund certificate for your job. Certain types of work are exempt; check our Home Building Compensation Fund web page.

Approvals

To help your building project go smoothly:

- check with your local council or an accredited private certifier on approvals your building work needs
- engage a building certifier. This is your responsibility, not the builder’s. Find an accredited certifier at the Building Professionals Board site: www.bpb.nsw.gov.au

Contracts and payments

All contracts must be in writing. The two main contract types are:

- fixed price or lump sum - where the builder or tradesperson agrees upfront to a fixed amount for the whole job. Unforeseen changes during construction may affect the final cost
- cost plus contract - there is no guaranteed final cost for the job (often this contract is used where the project’s nature prevents the final cost from being calculated). The consumer repays the builder for verified direct and indirect costs and fees at regular intervals. It is good practice for the builder to give a non-binding estimate before starting, and track costs with you against the project’s budgeted estimate.

Residential building work worth less than $20,000 must be done under a ‘small jobs’ contract. The written contract must be dated and signed by, or on behalf of, each party. It may specify that work be paid for at regular intervals. It must contain:

- the parties’ names, including the name of the holder of the contractor licence as shown on the contractor licence
- the number of the contractor licence
- a description of the work
- any plans or specifications for the work, and
- the contract price, if known.

Tel: 13 32 20 www.fairtrading.nsw.gov.au
Residential building work worth more than $20,000 requires a full home building contract. As well as all of the requirements of the ‘small jobs’ contract, it must include other comprehensive information such as the details of the statutory warranties the builder must provide, and the contract price or warning that the contract price is not known. Find a complete list of contract requirements on our website.

All contracts over $20,000 in value must have a progress payment schedule. Progress payments must match the work carried out and, for cost plus contracts, be supported by receipts or other verifying documents.

Any change you need to make to a contract is a ‘variation’. Variations must be in writing and be signed by both parties to the contract. Almost all will impact the contract price.

The maximum deposit you can be asked to pay before work starts is 10%.

Common traps and tricks

Beware of:

- an extremely low quote compared with others. This may indicate the job’s quality is being compromised, or that the builder may not fully understand what is required
- ‘sales pitches’ putting pressure on you to sign a contract quickly to avoid a price increase
- a builder who recommends you get an owner-builder permit while they organise all the building work. The builder may be trying to avoid responsibility and may not have the right kind of licence or Home Building Compensation Fund certificate.

When things go wrong

Statutory warranties

Builders and tradespeople must guarantee that their work is fit-for-purpose, performed diligently and delivered in a reasonable timeframe, in line with the contract. Unless otherwise specified, materials should be new and appropriately used. These warranties are time-limited: legal proceedings to enforce them must be commenced within 2 years for all defects, and 6 years for major defects. There is another 6 months for both warranty periods if the defect only became apparent after 18 months or 5 and a half years. Find out more about these warranties on the Fair Trading website.

Resolving a dispute

These steps can help you resolve a dispute:

- you must notify your builder or tradesperson and discuss concerns as soon as you become aware of a problem. Follow up with an email or letter
- understand acceptable work standards by downloading the Guide to Standards and Tolerances from our website
- contact Fair Trading for free dispute resolution if you and your builder or tradesperson are unable to resolve the dispute
- lodge a claim with the NSW Civil and Administrative Tribunal if you remain unsatisfied with the dispute resolution outcome
- protect your rights under the Home Building Compensation Fund: contact your insurer as soon as you become aware of defective or incomplete work.

More information

Visit the Home Building and Renovating section of the Fair Trading website to:

- learn more on your rights and responsibilities and the statutory warranties
- do an online licence check to verify a builder or tradesperson’s licence details
- find out about dispute resolution
- download free home building contracts
- subscribe to enews and information, and to access Fair Trading on social media.