



BSA NEW HOME CONSTRUCTION CONTRACT

This Contract is recommended for the construction of an entire home.

- For the renovation, extension, improvement and routine repair of a home, the BSA Renovation, Extension and Repair Contract should be used.
- For repairs arising from natural disasters, the BSA Natural Disaster Repairs Contract is recommended.

THIS PACK CONTAINS:

- Consumer Guide for BSA New Home Construction Contract
- General Conditions of BSA New Home Construction Contract (2 copies)
- BSA New Home Construction Contract Schedule
- Prime Cost Items Schedule
- Provisional Sums Schedule
- Form 1 – *Commencement Notice*
- Form 2 – *Extension of Time Claim & Owner's Response to Claim*
- Form 3 – *Progress Claim*
- Form 4 – *Notice of Dispute of Progress Claim*
- Form 5 – *Variation Document*
- Form 6 – *Defects Document*
- Form 7 – *Certificate of Practical Completion*

DO NOT ACCEPT THIS PACK IF CONTENTS ARE
INCOMPLETE



IMPORTANT

The *Domestic Building Contracts Act 2000* requires the building contractor to give copies of all contract documentation, completed and signed, to the building owner as soon as practicable (but within 5 business days) after the contract is entered into.

For this contract (the *BSA New Home Construction Contract*), to satisfy the above requirements the contractor must provide the owner with the following copies:

- **Contract Schedule, Prime Cost Items Schedule and Provisional Sums Schedule** (if the contract includes PC and PS allowances) – **2 signed copies:**
 - 1 copy for owner, and
 - 1 for lender
- **Forms 1 to 7** – **2 completed and signed copies of each form as used:**
 - 1 copy for owner, and
 - 1 for lender
- **General Conditions** – **1 extra copy** (2 copies of the General Conditions – 1 each for the owner and contractor - are already included in this contract pack. The extra copy is required for the owner's lender).

NOTE: The Contract Information Statement ('Consumer Guide') is not formally part of the contract. **The contractor is required to give the owner 1 copy of the Consumer Guide** as soon as practicable (but **within 5 business days**) after the contract is entered into. This obligation is best satisfied by simply giving the owner, at or before the time of signing the contract, a copy of the enclosed Consumer Guide.



BSA NEW HOME CONSTRUCTION CONTRACT

CONSUMER GUIDE

(This document is a Contract Information Statement approved for use with the BSA New Home Construction Contract or other contracts for building a home. The Consumer Guide is not part of the contract but should be read before you sign it, or at least before the 'cooling-off' period expires, as it provides helpful general information about your contract and the building process).

DISCLAIMER

This Contract Information Statement contains information of a general nature and should not be interpreted or relied upon as providing specific legal advice. For advice on particular circumstances, especially contractual matters, you should consult a practising lawyer.

AUGUST 2011

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NEW LEGISLATION

Although every effort has been made to ensure the accuracy of the information provided in this Consumer Guide at the time of printing, Commonwealth legislation called the *Australian Consumer Law* which came into effect from July 2010 and January 2011 may impact on some of the matters covered in this Consumer Guide. For the latest information check the BSA website or obtain formal legal advice on the new Commonwealth legislation.

WARNING

AGAINST USING COST PLUS CONTRACTS

BSA strongly recommends against the use of cost plus contracts for domestic building work. Their use frequently results in large cost blowouts, reduced BSA insurance protection, a high risk of disputes, and a reduction in your legal rights and protection in the event a dispute arises.

Cost plus contracts are easily identified because they do not state a total price for the work to be done. Instead the amount you have to pay is the actual cost incurred by the contractor plus a percentage of that cost, or the costs incurred plus an hourly rate for the contractor.

NOTE: Cost plus contracts have added risks for homeowners and contractors and their use is not permitted under the *Domestic Building Contracts Act 2000* unless certain strict conditions set out in section 55 of the Act are met.

Because of the uncertainty about the total price homeowners will pay under cost plus contracts, and the high risks associated with their use, BSA strongly recommends homeowners obtain formal legal advice before signing any cost plus contract.

PART 1 – BEFORE YOU START

PURPOSE OF THIS GUIDE

The *Domestic Building Contracts Act 2000* (the 'DBC Act') requires the contractor to provide you with a 'Contract Information Statement' to accompany all contracts for domestic building work where the contract price exceeds \$3,300.

This Consumer Guide covers all the information contractors are required to provide in an Information Statement. It is designed to inform you about domestic building contracts and the building process generally. The contractor must give you a copy of either this booklet or an alternative Information Statement approved by BSA before you sign a contract or within 5 business days after entering the contract. This booklet contains important information, including a checklist of items you should go through before you sign any contract for construction of a home or for alterations, extensions, renovations or repairs where the contract price exceeds \$3,300.

WHAT IS BSA?

The Queensland Building Services Authority ('BSA') is a statutory authority established under the *Queensland Building Services Authority Act 1991* with primary responsibility for regulating domestic building work in Queensland.

HOW CAN BSA HELP YOU?

INFORMATION

BSA provides information and advice to consumers and contractors throughout Queensland. This assistance is provided through:

- Customer Service Centres in all BSA offices;
- media releases and articles;
- information booklets and fact sheets for homeowners and contractors;
- the Building Links magazine for contractors;
- seminars in Brisbane and regional centres;
- participation in trade and industry shows; and
- BSA's website – www.bsa.qld.gov.au.

BSA produces a useful booklet for homeowners called *Facts for Smart Building and Renovating*. This booklet contains information you should know before building or renovating in Queensland.

Topics covered include:

- project homes;
- display homes;
- individually designed homes;
- reducing the risk of things going wrong;
- dealing with your BSA-licensed contractor;
- about your building contract;
- BSA insurance;
- termite management and treatment;
- recommended deposits and progress payments;
- dispute prevention and resolution;
- the *Domestic Building Contracts Act 2000*; and
- information for Owner Builders.

This information is available free of charge from BSA offices and BSA's website at www.bsa.qld.gov.au.

Customer Service Officers at all BSA offices are able to provide information ranging from licence checks and details about licence holders, to information about BSA's Queensland Home Warranty Scheme, dispute handling procedures, and requirements for building contracts. Telephone 1300 272 272 statewide if you need information or advice on any of these matters.

LICENSING

BSA is also responsible for licensing all builders, building designers and most trade contractors in Queensland. A licence is required where building work is valued at more than \$3,300 (or any value in the case of building design, site classification, plumbing and draining, gas fitting, pest control or fire protection).

Ask to see the contractor's BSA licence card.

HOME WARRANTY INSURANCE

BSA operates the Queensland Home Warranty Scheme which offers you protection when you use a BSA-licensed contractor for insurable residential construction work with a commercial value exceeding \$3,300, including the construction or renovation of a home. The insurance policy provides protection against non-completion of the work covered by the contract, defective construction, and subsidence or settlement of the footings.

WARNING! Some domestic building projects are not covered by the Queensland Home Warranty Scheme. Examples include the construction of a swimming pool or the repainting of an existing home where this work is carried out as a separate project. If you are unsure whether the home warranty protection applies to your building project, check the BSA booklet titled 'Insurable Residential Construction Work' (link: <http://www.bsa.qld>).

gov.au/SiteCollectionDocuments/Builders_Contractors/Publications/Insurable%20Residential%20Construction%20Work.pdf) or contact BSA.

HELP WITH DISPUTES

BSA also has a Resolution Services Division which provides information and assistance in dealing with disputes between consumers and contractors regarding defective or incomplete building work. If you have a problem or concern about some aspect of the work that has been done for you, you should follow the steps under the heading *Dispute Resolution* in Part 3 of this Guide.

NOTE: Time limits apply for the lodgement of disputes with BSA, so make sure you act promptly.

CONTRACTS

BSA publishes and sells five different contracts which, together, cover the full range of domestic building and demolition projects. These include the **BSA New Home Construction Contract** (recommended for the construction of an entire home), the **BSA Renovation, Extension and Repair Contract** (recommended for renovations, extensions and routine repairs of a home, duplex or home unit), the **BSA Natural Disaster Repairs Contract** (specifically intended for repairs arising from damage caused by natural disasters), the **BSA Contract for Small Building Projects up to \$3,300** (recommended for small renovation, maintenance and repair jobs with a contract price up to \$3,300) and the **BSA Demolition Contract for Residential Premises** (recommended for the demolition of homes severely damaged by a natural disaster). **With the exception of the Demolition Contract which is only available online, these contracts may be purchased in hard copy from your nearest BSA office or downloaded for free from the BSA website.**

BSA LICENCE

Under the *Queensland Building Services Authority Act 1991*, all builders, building designers and most trade contractors must be licensed by BSA to carry out building work (there are a few exceptions e.g. electricians who have their own licensing system). You should deal only with someone who has a BSA licence card. **Ask to see the contractor's licence card** (note that some trades, such as electricians, are licensed by a different authority but you should still ask to see their licence card).

You can confirm whether the licence is current and appropriate for your particular building work **by visiting BSA's website and using the free Online Licence Search facility.**

This facility will give you access to a report containing details of the contractor's past performance which you may download. It includes the number and value of BSA-insured projects completed in recent years and some information about the contractor's dispute history, including the number of 'directions' – or orders to rectify defective work – if any, issued by BSA against the contractor.

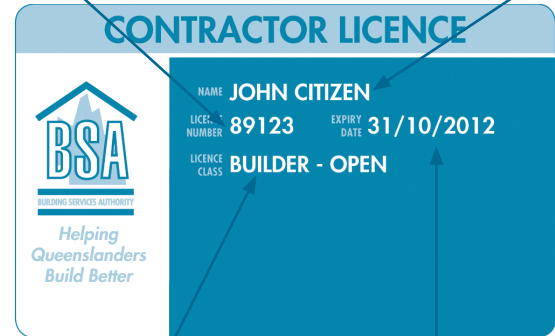
You can request a certified copy of the report from BSA for a small fee. Alternatively you can confirm the licence details by telephoning BSA on 1300 272 272.

LICENCE NUMBER

Identifies the licensee and allows you to check their history by visiting BSA's website or calling BSA.

LICENSEE'S NAME

Ensure the name of the person or company you are contracting with appears on the licence card and on the contract.



EXPIRY DATE

The licence holder must not undertake work if their licence has expired.

LICENCE CLASS

Indicates the work the holder is allowed to undertake. If the type of work you want done is not listed here, DO NOT PROCEED. Check immediately with BSA or find a licensee who has your type of work listed.

CONTRACT CHECKLIST

BSA produces a range of domestic building contracts which are fair to both parties. If you don't use one of these BSA contracts, check that your contract has similar terms and complies with the requirements set out in this section. The BSA contract documents are available for comparison on BSA's website.

NOTE: A more detailed Contract Checklist is also provided on BSA's website.

WHAT DOES THE DBC ACT COVER?

If your building work has a contract price exceeding \$3,300 (including labour, materials and GST) and involves:

- the erection or construction of a detached dwelling (including a single detached dwelling or duplex), or associated work;
- removal or resiting of a detached dwelling intended to be used as a residence, or associated work;
- the renovation, alteration, extension, improvement or repair of a home (including a single detached dwelling, duplex or home unit), or associated work (including, for example, kitchen or bathroom refurbishment);

- other associated work including landscaping, paving, and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
- the provision of services or facilities (e.g. lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage) relating to the erection or construction of a detached dwelling or the renovation, alteration, extension, improvement or repair of a home; or
- site work relating to any of the domestic building work referred to above,

then your project comprises 'domestic building work' under the DBC Act and you must put your contract in writing.

The DBC Act requires that your contractor provide a complete copy of the written, signed contract to you as soon as practicable (but within 5 business days) after entering into the contract and before commencing work.

Throughout this Guide any reference to 'domestic building work' includes all of the above types of building activities where the contract price for the work is more than \$3,300.

BEFORE SIGNING THE CONTRACT, CHECK FOR EACH OF THE FOLLOWING:

- The contract contains a conspicuous notice advising you, the building owner, of the right you may have to withdraw from the contract under the 'cooling-off' provisions of the DBC Act.
- The contract should state whether or not you are a 'resident owner' (i.e. intend to live in the house within 6 months of completion of the contracted works).
- The contract is in English and legible.
- The names and addresses of you and your contractor are included.
- The contractor's licence number is noted on the contract before work starts.
- The contract sets out in full all of the terms of your agreement with your contractor together with a detailed description of the contracted work.
- The date the contract is made is stated.
- The date the subject work is to start, or how the date is to be decided, is stated.
- If the starting date is not yet known, the contract must state that the building contractor will ensure that the work starts as soon as is reasonably possible.
- The contract states the date the contracted work is to be finished or, if the start date is not yet known, the number of days required to finish the work once it is started.

- The contract details the allowances made by the contractor for any likely delays (e.g. for non-working days, inclement weather, etc.).
- The precise location of the building site, including lot-on-plan or similar description, is stated.
- The total price and payment provisions (including the deposit and progress payments) are clearly stated and in accordance with the DBC Act (refer to the section in Part 2 of this Guide titled *Payments – When and How Much?*).
- **If your contract is for less than \$20,000 the deposit you pay cannot exceed 10% of the total contract price. If your contract is for \$20,000 or more, the maximum deposit you have to pay is 5%.**

NOTE: Any fixtures or fittings shown in plans and specifications for the work are taken to be included in the contract unless they are listed as being excluded and you have signed or initialled next to the exclusion list.

WARNING! If you instruct the contractor to do something and the contractor has advised against it in writing, then you may lose your right to have a defect corrected.

NOTE: If you appoint an architect to administer the project and the architect stipulates materials, you may not be entitled to the warranties relating to those materials. Similarly, if you choose to nominate materials yourself you may not be entitled to these warranties.

- If the contract price is subject to change, there must be a warning located near the contract price referring you to any clause in the contract which may have the effect of changing the price (e.g. variation clauses and prime cost item or provisional sum clauses).
- Prime cost items and provisional sums, if included in the contract, are listed on separate schedules.
- Definitions of key terms are included.
- Appropriate plans and specifications are included if required for the contracted work. These must be sufficiently detailed to enable you to obtain any necessary approvals or authorisations from building certifiers or other relevant authorities. Any special requirements you may have (for example the number of coats of paint required) should be stated in the specifications.
- The contract lists and describes any fixtures or fittings which are not included (e.g. because you are supplying them separately).
- If the work includes, alters or may adversely affect footings or a concrete slab, the contractor must obtain appropriate 'foundations data' before entering the contract. This includes soil test data, contour surveys and other geotechnical information. The contractor must provide you with a copy of this information. The cost for this is normally covered by a **Preliminary Agreement** or included in your deposit payment (check with the contractor).

- The statutory warranties are set out (see the section titled *Warranties* in Part 4 of this Guide for further details). **NOTE:** These statutory warranties expire in 6½ years from the date of completion.

WARNING – ‘SPECIAL CONTRACTS’

The contract formats listed below, which are becoming increasingly common, involve added responsibility and risk and reduced BSA insurance protection for homeowners. **BSA strongly recommends you obtain formal legal advice before agreeing to use either of these contracts for the performance of domestic building work.**

CONSTRUCTION MANAGEMENT CONTRACTS

The main distinguishing feature of these contracts is that whereas under a normal domestic building contract to build a home you would sign a single contract with a builder who then contracts with trade contractors and manages and supervises their work on your behalf, under the construction management method in addition to engaging a construction manager you will also be required to contract directly with a multitude of trade contractors (e.g. plumbers, carpenters, electricians, etc.) and you will ultimately be responsible for their performance. A breakdown in your construction management contract or one of the trade contracts may have a collateral impact on your other contracts, potentially leaving you exposed to delays and even legal action.

Insurance protection under BSA’s Queensland Home Warranty Scheme is less comprehensive, especially for non-completion, under a construction management contract than it is for a normal domestic building contract under which the owner contracts solely with a licensed builder as principal contractor.

For more details on the differences and risks associated with construction management contracts you should **read the Contract Information Statement for Construction Management Contracts available for free download from BSA’s website.**

COST PLUS CONTRACTS

The use of these contracts for domestic building work is prohibited under the DBC Act unless certain strict conditions set out in section 55 of that Act are met. Cost plus contracts are especially dangerous for homeowners because of the total lack of certainty regarding the final cost of their project and the very high incidence of serious disputes associated with their use. In addition, BSA’s ability to assist you in the event of a dispute is greatly reduced where a cost plus contract is involved, especially if the builder takes you to the Tribunal (e.g. for allegedly underpaying).

LIQUIDATED DAMAGES

BSA strongly recommends that homeowners include provision for appropriate ‘liquidated damages’ in their domestic building contracts.

The term ‘liquidated damages’ refers to an amount per day written into the contract that is intended to compensate the owner for any costs/losses they are likely to suffer if the work is not completed by the contractor within the time allowed for in the contract. Normally liquidated damages would only be relevant to full home construction and fairly major renovations and extensions, especially those affecting occupancy of the house.

Liquidated damages may apply to a rental property (e.g. if the delay may result in lost rent) as well as an owner’s main place of residence.

It is very important for your protection that before you sign the contract you carefully consider and discuss with your contractor whether liquidated damages are relevant to your building project and, if so, what amount is appropriate to cover your anticipated costs/losses in the event of a blowout in the construction period. In some circumstances (e.g. pool construction) no liquidated damages may be justifiable, in which case you should insert the word ‘NIL’ in the space provided in the Contract Schedule (Item 12 in the BSA New Home Construction Contract Schedule).

NOTE: The relevant Queensland legislation (the *Domestic Building Contracts Act 2000*) does not deal with liquidated damages or set any maximum or minimum amounts.

The appropriate amount for liquidated damages will vary from contract to contract depending on the nature of the work and the owner’s individual circumstances. The owner must be able to substantiate the figure and it must not be punitive (i.e. it must represent the owner’s genuine estimate, at the date of signing the contract, of the actual costs/losses they believe they are likely to suffer, without adding any extra cost to ‘punish’ the contractor).

The liquidated damages calculation would typically include a daily allowance for any additional rent charges (if the project involves home construction or major renovations which necessitate moving out), or loss of rental income (in the event of an investment property), storage of furniture/personal effects, finance costs, etc. which are directly attributable to the delay in the completion date. **It is important that something is written into the relevant section of the Contract Schedule** (even if just the word ‘NIL’ in circumstances where no loss/cost for the owner is anticipated).

The BSA New Home Construction Contract, like several other industry contracts, contains a default provision whereby if the Schedule is left blank an amount (currently \$50 per day) is deemed to apply to the delay period (i.e. the period in calendar days between the Date for Practical Completion provided for under the contract, including any legitimate extensions of time, and the final Date of Practical Completion when the work is finally handed over to you).

NOTE: Condition 19 of the General Conditions of the BSA New Home Construction Contract authorises owners to deduct valid, accurately calculated liquidated damages amounts from the final payment due under the contract at the Practical Completion Stage. Many contracts do not have such a provision which clearly authorises the deduction of liquidated damages from the final contract payment. You must check your contract carefully, and if necessary obtain formal legal advice, before seeking to deduct liquidated damages.

Great care should be taken when calculating the number of days for liquidated damages as you will need to allow for any legitimate extensions of time (EOT) which may have extended the Date for Practical Completion beyond the date which appeared in the original contract. If the builder was seeking an extension of time (e.g. for more than normal wet weather or for delays caused by authorised variations to the contracted work) they should have presented you with an EOT claim in writing on an EOT form soon after the cause of the delay.

If you have any questions or concerns about your liquidated damages entitlements under your contract you should obtain formal legal advice from a practising lawyer.

BEFORE SIGNING

- Be wary of clauses allowing for price or cost increases. These are known as ‘cost escalation clauses’. Legislation makes some of these types of clauses invalid.
- If your contract says that any disputes are to be referred to arbitration, that clause is invalid. For more information on disputes refer to Part 3 of this Guide titled *What To Do If Problems Develop*.
- You are entitled to receive a reasonable estimate of the cost of any items not given a fixed price in the contract. For example:
 - you have not finally selected the specific tiles that you want in the bathroom, but you know the general quality and style of the tile you would like. Alternatively, the contractor may not be able to give you a fixed price for the tiles when the contract is signed because they may be temporarily out of stock and the price of new stock is uncertain. In both of these cases the tiles

should be included in the contract as a **prime cost item**. The contractor must make a reasonable estimate of the cost of supplying the tiles. That estimate must be stated in the contract. Prime cost items do not include labour as this should already be included in the contract price.

- sometimes, it may not be possible for the contractor to provide a definite price for a particular contracted service at the time the contract is entered into. For example, it might be the case that the contractor is expecting (based on a geotechnical report) to encounter rock when he/she does the excavation work for footings, but it is not possible in advance to say how much rock will be struck. In that case, the contractor should price that work as a **provisional sum**, stating in the contract a reasonable estimate for the cost of doing that work.
- **Prime cost items and provisional sums must be listed in a separate schedule.** These schedules are included in contracts produced by BSA and some industry associations. For each item on the schedule there must be an estimated cost, an amount for the contractor’s margin (or an indication of the method to be used to calculate the contractor’s margin, for example, the cost of the item plus 10%) and a total dollar amount. This total amount is an estimate only. The contractor must prepare such an estimate carefully, taking into account the information reasonably available at the time of contracting. But when the price for the item or work is finally determined, it may be higher or lower than the original estimate in the contract.

PRIME COST ITEMS AND PROVISIONAL SUMS

Evidence before payment

If the contractor receives any evidence of the amount actually expended on prime cost items or provisional sums, such as invoices or receipts, the contractor must give you copies of these documents before seeking payment for the items from you. Any adjustment to the price of a prime cost item or provisional sum (due to the final cost being more or less than the original allowance) must be reflected in an increase or decrease in the related progress payment. You should only pay for these items when the particular progress payment falls due.

OTHER DOCUMENTS THAT SHOULD BE INCLUDED IN YOUR CONTRACT

- *Prime Cost Items Schedule* and/or *Provisional Sums Schedule* (where relevant).
- Plans and specifications detailing what work is to be done (the construction work must be carried out in accordance with these plans and specifications).

THE COOLING-OFF PERIOD

WITHDRAWING FROM THE CONTRACT

Under section 72 of the DBC Act you may have a right to withdraw from the contract during what is known as a cooling-off period. Time limits apply and a written notice has to be given to the building contractor if you exercise this right. You should be sure that you understand your rights before you exercise them. If in doubt contact a practising lawyer or BSA. Be aware too that there will be certain costs in withdrawing. **You may withdraw from the contract within 5 business days of receiving from the contractor a copy of both:**

- the signed, complete contract; and
- the BSA Consumer Guide (or other BSA-approved contract information statement).

REPAIR CONTRACTS

In the case of repair contracts only, you and your contractor may agree to sign a notice waiving your cooling-off rights.

If you agree to this you will not be entitled to the cooling-off period. BSA advises you not to do this unless the work is urgent.

OTHER RIGHTS TO TERMINATE

In addition to the right to withdraw during the cooling-off period, you may have the right to terminate the contract at a later date. Refer to the section titled *Other Options* in Part 3 of this Guide.

IF YOU DON'T RECEIVE A COPY OF THE CONTRACT AND INFORMATION STATEMENT

Once the contract is made, you must allow the contractor 5 business days to provide you with a signed copy of the contract and BSA Consumer Guide or other BSA-approved information statement. If after 5 business days you still have not received your copies, you may withdraw from the contract under section 72 of the DBC Act.

NOTE: If your contractor later provides you with the copies of these items, you may still withdraw from the contract but you have only 5 business days from the date you receive both documents in which to exercise this right.

IF NO COOLING-OFF PERIOD NOTICE

If your contract does not contain a notice advising you of your right to withdraw during the cooling-off period, then under section 74 of the DBC Act you are entitled to withdraw from the contract within 7 calendar days after you become aware that the contract should have contained a cooling-off notice.

HOW TO WITHDRAW

You don't have to provide any reason for withdrawing but you must notify the contractor by delivering a written notice to the contractor or to the contractor's address as shown on the contract before the cooling-off period expires. **The notice must state under which section of the DBC Act you are withdrawing** (i.e. section 72 or 74).

EXAMPLE OF NOTICE OF WITHDRAWAL:

Withdrawal Notice

To _____
[insert the full name of the contractor as it appears on the contract]

Please be advised that I am withdrawing from my contract with you signed on *[insert date]* under section *[insert the appropriate section number, section 72 or 74]* of the *Domestic Building Contracts Act 2000*. The withdrawal is effective from the date of this notice.

Please provide evidence of your out-of-pocket expenses to date in relation to my contract and kindly refund any excess money, beyond your entitlement under section 76(8) of the *Domestic Building Contracts Act 2000*, by cheque to my address as given in the contract.

Signed by Owner/s:

Name of Owner/s: (print)

Address of building work:
.....

Date:/...../.....

COST OF WITHDRAWING

Under the DBC Act if you exercise your right to withdraw during the cooling-off period, the contractor is entitled to receive \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the date of withdrawal. If, at the time of withdrawal, the contractor has already received a deposit greater than this entitlement, the excess must be promptly refunded to the homeowner.

YOU MAY NOT WITHDRAW UNDER THE COOLING-OFF PROVISIONS IF:

- you and your contractor had a previous contract on similar terms, for similar work, and relating to the same detached dwelling, home or land; or
- before entering the contract, you received formal legal advice about the contract; or
- when or after entering into the contract, you tell the contractor that before entering the contract you received formal legal advice about the contract.

BUILDING APPROVALS & INSPECTIONS

WHO CAN DO BUILDING APPROVALS AND INSPECTIONS?

Approvals for building work must be obtained from a *building certifier*, who can be either a local government building certifier or a private certifier. Building inspections to ensure the construction complies with the building approval and the Building Code of Australia (BCA), which are required at certain stages (see details later in this section), must be carried out by a building certifier or a competent person authorised by them. All building certifiers must be licensed by BSA. Check their licence by calling BSA or using the Online Licence Search facility at www.bsa.qld.gov.au.

WHAT IS A 'PRIVATE CERTIFIER' AND WHAT IS THEIR ROLE?

A *private certifier* is a building certifier who is licensed with BSA to operate anywhere in Queensland. Whilst the building contractor has statutory and contractual obligations regarding the approval and inspection process, if a contractor fails in this capacity, the homeowner is ultimately responsible for ensuring that approvals are obtained and inspections carried out. You should discuss and agree on arrangements for certification with your building contractor and record your agreement in your contract.

Normally the builder will engage the building certifier on your behalf. If you wish to engage a private certifier you should check their accreditation details with BSA, ask them about their past experience, and contact past clients. The *Building Act 1975* requires that the engagement must be in writing and must state the certification fee.

There are 3 different levels of accreditation for building certifiers related to the size of projects they can undertake. Within these levels building certifiers are able to perform the following work:

- assessing building applications;
- issuing building approvals;
- inspecting and certifying construction;
- issuing notices (e.g. stop work or rectification notices) on building work they are directly involved with; and
- issuing certificates to allow the lawful occupation of certain classes of buildings.

Private certifiers are required to have at least \$1 million Professional Indemnity insurance. There are a number of matters over which private certifiers have no authority and which can only be decided by the local government.

These matters include:

- assessing town planning matters;
- reviewing the capacity and location of public utilities (e.g. sewer mains, water supply, etc.);

- exercising discretion on the siting of buildings (e.g. reducing the setback requirements); and
- granting exemptions to the installation of swimming pool fences.

It is unlawful for any building certifier to certify or approve work with which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

APPROVED PLANS

Plans and specifications should be included in the contract documents. Make sure that, along with a signed copy of the contract itself, you obtain a copy of the plans from the contractor when they are ready for submission to the building certifier. **Check the plans for accuracy ensuring any variations you may have made are included** and advise the contractor immediately of any errors or omissions.

Obtain a copy of the final approved plans and keep it in a safe place (this is very important if you later wish to sell the house).

INSURANCE DURING CONSTRUCTION

INSURANCE FOR CONSTRUCTION OF A NEW HOME

Your contract should require the contractor to produce evidence that they have arranged and paid for appropriate construction insurance (including for Contract Works and Public Liability) for the duration of the construction (i.e. up to the Date of Practical Completion).

In addition to Public Liability protection, this insurance should cover your building site against such things as fire, storm and tempest, flood, theft, vandalism, etc. while the contractor is in control of the site.

INSURANCE FOR RENOVATIONS OR EXTENSIONS TO AN EXISTING HOME

Before work commences on site, advise your existing home and contents insurer of the details of the work to be done, including the total value of the work, the approximate start and completion dates, etc.

Your normal home property insurance policy may be inoperative while renovations or extensions are in progress.

Discuss this with your insurance company. If this is the case make sure your contractor insures the renovation and/or extension work and, if necessary, the pre-existing home for the full duration of the building work.

QUEENSLAND HOME WARRANTY SCHEME

For residential construction work valued at more than \$3,300 (inclusive of GST), the Queensland Home Warranty Scheme operated by BSA provides up to \$400,000 cover (i.e. up to \$200,000 up to Practical Completion and up to a further \$200,000 for defective work or subsidence) for a period of 6 years and 6 months from the date of the contract provided a licensed contractor performs the work.

The Queensland Home Warranty Scheme insures *residential construction work* which is primarily:

- the construction of a dwelling or unit (provided the building is not over 3 storeys in height) and residential outbuildings (e.g. garage, pool change room, etc.); and
- certain replacements of, or extensions to, part or all of a residential building (including refitting bathrooms and kitchens).

The policy insures homeowners when:

a. during the course of the contract:

- the licensed contractor becomes bankrupt or goes into liquidation; or
- the licensed contractor fails to complete the contracted works for reasons that are not the homeowner's fault.

b. after completion of the work:

- the licensed contractor fails to fix defects that have been the subject of a BSA direction, or, for various reasons (e.g. bankruptcy or liquidation, death, etc.), the licensed contractor can't attend to rectification.

c. the building suffers from the effects of subsidence or settlement.

For non-completion claims, the policy also includes additional cover for events such as vandalism, forcible removal, fire and storm or tempest. **Further details of the insurance cover are provided in the policy booklet which you should read carefully.**

The contractor is required to pay the premium directly to BSA before the plans can be approved by the building certifier. **When you receive your Certificate of Insurance** in the mail from BSA (normally within 2 weeks of signing the contract), **check that the Notified Contract Value agrees with your contract price.** If these amounts vary you should contact BSA to amend your cover.

If you pay before the contract requires and in advance of work progress, you may not be covered for those pre-payments under the Queensland Home Warranty Scheme. **Do not pay a progress payment for a contract stage until that stage of construction has been completed.**

PART 2 – DURING CONSTRUCTION

COMMENCEMENT NOTICE

In domestic building contracts uncertainty about the precise Commencement Date, which often determines the Date for Practical Completion (i.e. the scheduled date for completion of the contracted work), is a common cause of dispute between homeowners and building contractors. To address this problem, the BSA New Home Construction Contract and some other industry contracts now require the building contractor to provide you with a written Commencement Notice which must state both the Commencement Date (the date work actually commenced on site) and the Date for Practical Completion.

NOTE: The Date for Practical Completion shown in the Commencement Notice may still be subject to change due to legitimate extension of time (EOT) claims from the building contractor for such things as abnormal wet weather (above and beyond the reasonable allowance for inclement weather stated in the contract) and variations you have authorised which increase the work to be done. You should be mindful of this when, for example, you make accommodation arrangements for the construction period.

PAYMENTS – WHEN AND HOW MUCH?

It is important to know what rights you have under the DBC Act with respect to when you should make payments and how much they should be. Check the following list to make sure your contract complies:

- **Deposit of no more than 5% where the total contract price is \$20,000 or more. If the contract price is between \$3,300 and \$20,000 the deposit may be up to 10% of the price.**
- If your contract is to be paid in instalments, the amount of each instalment ('Progress Payment') is directly related to the work completed when you are requested to pay.
- For the construction of a home the DBC Act sets out the following instalment schedules:

PAYMENT SCHEDULES FOR BUILDING A NEW HOME			
Type of Contract		Stage	Maximum percentage of original contract price payable
1	Contracts to build to enclosed stage	Deposit	5%
		Base Stage	20%
		Frame Stage	25%
		Completion of Contract	Balance
2	Contracts to build to fixing stage	Deposit	5%
		Base Stage	12%
		Frame Stage	18%
		Enclosed Stage	40%
		Completion of Contract	Balance
3	Contracts to build all stages	Deposit	5%
		Base Stage	10%
		Frame Stage	15%
		Enclosed Stage	35%
		Fixing Stage	20%
		Practical Completion	Balance

NOTE: BSA recommends that for home construction you stick to the progress payment schedules outlined in the table on this page. Unless you intend to complete the house yourself, under an Owner-Builder Permit, **the third schedule above is the one applicable to you for full home construction.** You and your contractor may agree to vary this payment schedule (but not the maximum deposit amounts) but there should be a good reason for doing so (e.g. the nature of the site and construction involves greater than normal costs for the builder in the early stages). **If you do vary the standard schedule, the agreed alternative schedule must be clearly noted in the contract and must not require payments in advance of work progress.** Progress payments must be linked to identifiable stages of construction. Never pay in advance of, or more than, what the contract authorises.

SUMMARY OF CONSTRUCTION STAGES

(For more detail, refer to the DBC Act).

Base stage is:

1. For buildings with a timber floor with base brickwork, when:
 - concrete footings for the floor are poured;
 - base brickwork is built to floor level; and
 - bearers and joists are installed.

OR

2. For buildings with a timber floor without base brickwork, when:
 - stumps, piers or columns are finished; and
 - bearers and joists are installed.

OR

3. For buildings with a suspended concrete slab floor, when:
 - concrete footings are poured; and
 - formwork and reinforcing for the suspended slab are installed.

OR

4. For a building with a concrete floor (not suspended), when the floor is finished.

Enclosed stage is when:

- external wall cladding is fixed;
- the roof covering is fixed;
- structural flooring is laid;
- external doors are fixed (even if only temporarily); and
- external windows are fixed (even if only temporarily).

Final stage is when:

- all internal lining, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet-area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed in position.

PROGRESS CLAIMS

At each stage when a progress payment is required under the contract, the contractor will give you a progress claim which you must pay within a certain number of days stated in the contract (in the BSA New Home Construction Contract, Form 3 – *Progress Claim* is for documenting progress claims). If you dispute all or part of the contractor's progress claim, you will need to respond quickly in writing (in the BSA New Home Construction Contract, Form 4 – *Notice of Dispute of Progress Claim* is for this purpose).

FINAL PAYMENT

When your contract is to build a new home to a stage suitable for occupation or to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, you should not make the final payment until:

- all of the contracted work is completed;
- the contractor has provided you with a 'defects document' listing minor defects and minor omissions (preferably the list should be compiled by you and the builder during the handover inspection);
- the home is reasonably suitable for habitation; and
- (if using a BSA New Home Construction Contract) the contractor has given you a completed and signed Form 7 – *Certificate of Practical Completion*. This form requires the builder to give you all relevant certificates of inspections before seeking the final contract payment.

If you are not using a BSA contract, check the terms and conditions of your contract to find out what documentation the builder must provide to you before you are obliged to make the final payment under the contract.

CHANGING THE CONTRACT ('VARIATIONS')

Any change to the scope of the work to be done under a contract, which may involve an increase, decrease or substitution in the contracted work, is known as a **variation**. For example:

- your contract might provide for 2 power points to be installed in each room. If this is changed to 1 power point in each room, this is a variation for the omission of work; or
- your contract might not provide for any built-in cupboards to the laundry. If this is changed so that a cupboard is to be built into the laundry, this is a variation for the addition of work; or
- your contract might provide that a window is to be installed on the northern wall of the family room. If this is changed to the southern wall, this is a variation that is a change to the work.

You should note that just because a variation may involve deleting some work that was included in the original contract, it doesn't automatically follow that the price will go down, or that there won't be extra costs involved.

Unfortunately, **variations are frequently the cause of disputes (particularly where there is a lack of adequate documentation to support them)**.

Certain requirements have been set down by legislation to help prevent these disputes. These requirements are summarised below.

THERE MUST BE A WRITTEN VARIATION DOCUMENT

If you wish to request a variation, you should put your request in writing to the contractor.

The DBC Act requires contractors to record all variations (whether initiated by the contractor or owner) in writing as soon as practicable and, if the variation means additional work, it must be documented before the work is carried out. The contractor must give you a copy of the variation document as soon as practicable but within 5 business days of when the variation is agreed to.

REQUIREMENTS FOR A VARIATION DOCUMENT

Ensure all documentation detailing contract variations is clear, complete and signed and dated by both parties. The variation document must:

- be in English and legible;
- describe the variation;
- state the reason for the variation (if the variation is being sought by the contractor);
- provide a reasonable estimate of any delay to the work which may result from implementing the variation;
- state the change to the contract price or at least set out the method for calculating the price change. If this is not stated the contractor may still be entitled to the cost of carrying out the variation plus a reasonable profit;
- indicate when any increase in the price as a result of the variation is to be paid or when any decrease is to be taken into account. For example, if the price is decreased due to the variation, the variation document must indicate which progress payment is to be reduced as a result. When the progress payment falls due, make sure that you only pay the decreased amount; and
- be signed by the contractor. The contractor must also take reasonable steps to have you sign the document. If you agree with the contents of the document, you should sign it. If you do not understand it, or it does not contain sufficient information, you should ask the contractor to clarify the document in writing or provide further information in writing.

You may not receive the variation in writing before work commences if the work is urgent and it is not practicable to get it in writing first. However, in these cases the variation must still be documented and copied to you afterwards. **A building contractor may not be able to enforce payment for an unauthorised variation.**

WHEN THE CONTRACTOR REQUESTS A VARIATION

If the contractor asks you to agree to a variation and it involves additional work, you are only liable to pay for that extra work if it is work the contractor could not reasonably have foreseen at the time of contracting. In any case, the contractor must still provide the written documentation as detailed above and must not demand payment before the work is commenced.

If the variation involves an increase in the work to be performed, do not make any additional payment until:

- the variation is fully recorded in a variation document which you and the contractor have signed; and
- work has commenced on the variation.

CAVEATS

The contractor cannot lodge a caveat on your property if you are a 'resident owner' (i.e. if you live in the house or intend to live in the house within 6 months of completion of the work). A caveat is a notice on the register of land titles. Caveats have the effect of preventing the owner of the land from selling the land or transferring it into someone else's name.

ACCESS TO THE SITE

The contractor is entitled to occupy the site for the purposes of carrying out the contracted work. Bear in mind that the contractor has important responsibilities under the *Workplace Health and Safety Act 1995* which include ensuring that all persons at the site comply with the requirements of that Act. For this and other reasons, under most contracts the contractor is entitled to exclude people from the site other than the owner or any person authorised by the owner to be on site. Depending on the provisions of the contract, other people who may be entitled to visit the site include bank officers (if you have taken out a loan for the work), the certifier, local authority officers and BSA staff. You and your authorised representative are entitled to reasonable access to the site to view the work under the contractor's supervision but you must not interfere with the work. Any interference could mean that you become liable to the contractor for resulting costs or delays.

You may want to view the works as they progress. You should contact the contractor or their supervisor several days in advance to arrange a mutually convenient time to visit the site accompanied by the building contractor or their supervisor. For your own safety, you should not go on site unaccompanied when work is underway, particularly if heavy plant and equipment is being used. Remember, a construction site is a potentially dangerous place. Appropriate clothing (including protective footwear) should be worn and care taken at all times.

DISPUTE PREVENTION

WHAT CAUSES DISPUTES?

Disputes between builders, trade contractors, building designers and consumers occur for many reasons including:

- inaccurate or incomplete documentation (especially for variations);
- poor communication;
- unsatisfactory work;
- delays; and
- lack of knowledge of building practices.

HOW TO AVOID DISPUTES

You should ensure that:

- the builder, trade contractor or building designer has a current licence for the work to be done (check BSA's website www.bsa.qld.gov.au for a free Online Licence Search);
- the builder, trade contractor or building designer's work is recommended by past customers (ask for names) and, where possible, you have inspected past work;
- the contract clearly specifies the extent and timing of work to be done, total price and payment details (including deposit amount and the timing and amount of any progress payments – refer to the section in Part 2 of this Guide titled *Payments – When and How Much?*);
- your rights and responsibilities are detailed in the contract and understood;
- you have received and read carefully this BSA Consumer Guide (or other BSA-approved Contract Information Statement);
- the contract and any variations are signed by both parties (and copies kept on file);
- regular contact is maintained with the contractor (**Note:** ask your contractor about anything you are unsure of or don't understand); and
- you are aware of upcoming progress payment requirements as detailed in your contract.

Carefully follow the payment arrangements in your contract making sure that you never pay in advance of, or more than, the agreed amount.

NOTE: Seek formal legal advice before signing if you are uncertain or concerned about any contract provisions.

KEEP A 'CONSTRUCTION DIARY'

Record key events, for example dates and details of meetings, phone calls, etc. in a diary. These notes, together with photos, can be very useful in avoiding or resolving disputes.

MANDATORY BUILDING INSPECTIONS

WHAT IS THE PURPOSE OF THESE INSPECTIONS?

The primary function of the mandatory on-site building inspections performed by the building certifier is to ensure that construction work complies with approved plans and recognised building standards including the Building Code of Australia (BCA).

It is not the role of the certifier to ensure compliance with the terms of the contract or specifications, or to assess the quality of the work.

WHEN MUST THE INSPECTIONS BE PERFORMED?

Building inspections for the construction of a complete dwelling must be performed at the following stages:

- footings;
- slab;
- frame; and
- final.

In addition to these building inspections, there are also mandatory plumbing and drainage inspections which are carried out by inspectors from the local government. For renovations and alterations some of the inspections above may not be required. Check the requirements for your building project with your local government or building certifier.

Where the building contractor has engaged the building certifier, the contractor must provide you with copies of each certificate of inspection as soon as practicable after the building contractor receives them. As soon as is practicable after the work is completed, the contractor must also provide you with copies of other contract-related documents such as reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water or sewerage.

NOTE: It is important for you to retain copies of certificates of inspection and other contract-related documents in a safe place. These documents will help you establish that all building work has been properly performed when you sell your home.

QUALITY CONTROL

WHO IS RESPONSIBLE FOR SUPERVISION AND QUALITY CONTROL?

While the contractor has the obligation to ensure that all building work is carried out in accordance with all laws and legal requirements (including the Building Code), it is the responsibility of the contractor and the owner, working together, to ensure that the dwelling is constructed to an acceptable standard of quality and finish.

Building certifiers are required to act in the public interest and do not perform an ongoing supervisory role on behalf of individual homeowners. Day-to-day supervision on site is the responsibility of the building contractor.

HOW CAN CONSTRUCTION STANDARDS AND QUALITY BE CONFIRMED?

If you have specific requirements with regard to quality and finish (e.g. type and number of coats of paint, materials to be used, etc.), these details should be discussed and written into the contract. The next step is to carry out regular on-site inspections, by appointment, with the contractor or contractor's supervisor (not an individual tradesperson as they cannot speak with authority about the whole job). Any concerns should be raised directly with the contractor with whom you have contracted or their supervisor and, if necessary, confirmed in writing.

Do not give instructions direct to the subcontractors because this will cause confusion.

If you are going to be away during construction, or you are not confident that you have the experience or time to sufficiently safeguard quality, then you may wish to engage a Building Consultant.

If you intend to engage a Building Consultant, you should advise the contractor and check the Consultant's relevant experience and qualifications, fees and services, and past clients.

Discuss and write down exactly what role the Consultant is to play (e.g. accompany you on fortnightly building inspections and provide a written report on quality of work performed within 7 days of the inspection, etc.), as well as precise payment arrangements.

HOME PROPERTY INSURANCE

NEW HOME

Before handover you should contact your insurance company and arrange Home Property and Contents Insurance effective from the date of handover.

RENOVATIONS OR EXTENSIONS

Contact your insurer before work commences to arrange an endorsement to your existing Home Property Policy to increase the sum insured and to find out what insurance they require the contractor to have. In particular check that your policy includes adequate Public Liability Insurance to cover the presence of workers on site.

ON COMPLETION / HANDOVER

When your contractor advises you of the handover date (usually 2 or 3 weeks in advance) it is recommended that you arrange a final pre-handover inspection about a week before handover to identify any last minute issues. On the actual day of handover you should:

- check the house thoroughly for defective or missing items;
- make sure you and your contractor prepare a list of minor defects and minor omissions (a 'defects document') including details of any items missing, damaged or unfinished (refer to the heading *Defects Document* in Part 2 of this Guide);
- obtain copies of any outstanding documents (e.g. certificates of inspection, warranties relating to appliances, etc.);
- receive a Practical Completion Certificate from the contractor where this is required under the contract (**Note:** Form 7 is the *Certificate of Practical Completion* required under the BSA New Home Construction Contract); and
- if all the above points are satisfied, immediately hand over the final progress payment.

Do not withhold the final payment without first obtaining formal legal advice!

DEFECTS DOCUMENT

If you believe there are minor defects or minor omissions at the practical completion stage then the contractor should provide you with a list of these (called a 'defects document') when you conduct your final inspection. The list must state by when the contractor is to correct each agreed minor defect or minor omission. You and the contractor must sign the list. **Do not make the final payment until the defects document has been provided to you.**

The defects document must also list separately any minor defects or minor omissions which you believe exist but that are not agreed by the contractor to exist. See the section headed *Dispute Resolution* in Part 3 of this Guide for details of what to do if your contractor fails to address the matters listed in your defects document or which become apparent in the first 6 months after handover.

PART 3 – WHAT TO DO IF PROBLEMS DEVELOP

DISPUTE RESOLUTION

ADVISE THE CONTRACTOR

If during the work or upon completion of the work you become concerned about a problem relating to the contracted work, you should first convey your concern to the contractor in writing asking them to address the matter within a reasonable timeframe (say 7 to 14 days) and provide you with a written response. Ensure you date, sign and retain a copy of your letter/s and the responses from the contractor.

Your contract may provide legal remedies for breaches of the contract which occur during construction. You may need formal legal advice from a practising lawyer to explore these options.

For larger domestic building projects, including full home construction and major renovations or additions, the DBC Act requires building contractors to provide you with a signed defects document at practical completion before you hand over the final payment under the contract. The defects document (such as the Form 6 – *Defects Document* associated with the BSA New Home Construction Contract) must include a list of any agreed minor defects and minor omissions and state by what date the building contractor will correct those listed minor defects and minor omissions.

If the listed matters are not addressed within the timeframe stated by the building contractor in the defects document you should follow up with a letter to the contractor referring specifically to the unresolved minor defects and minor omissions and asking them to address the matters promptly, by a particular date, and provide you with a written response (as detailed in the first paragraph above).

In addition to addressing these minor defects and minor omissions which were identified at handover, building contractors must positively respond to complaints relating to minor defects (referred to by BSA as 'Category 2' defects – see definition below) which become apparent during the first 6 months after the building work was completed. **If the building contractor is still operating, complaints relating to minor defects during this initial period of 6 months after completion of the contracted work should be addressed to the contractor in writing.**

Except for urgent matters, it is suggested that rather than approaching the contractor week-by-week you should compile a list of minor defects as they arise and submit the list to the contractor just prior to the 6 months deadline (say 5½ months after practical completion). **Be sure you diarise and do not miss the 6 month deadline for notifying the builder or BSA may be unable to assist you under the Home Warranty Scheme.**

Please note: Because the contractor has responsibility for defects during this period, BSA does not normally progress complaints relating to minor defects until this 6 month period has expired.

CONTACT BSA

BSA is generally able to assist with domestic building disputes concerning defective work, subsidence or the contractor's inability or unwillingness to complete the contracted work. **Please note, however, BSA is not able to assist where the contract is still afoot or where the dispute is of a purely contractual nature or before the Queensland Civil and Administrative Tribunal (QCAT).**

With regard to the rectification of defective building work (e.g. where the work has failed to meet objective standards of construction or workmanship, such as the Building Code), BSA's Rectification of Building Work Policy classifies defective building work as either being Category 1 or Category 2 defective work.

Category 1 defects are more significant building defects that generally require prompt attention as they are of a structural nature, or could allow water penetration, etc. At any time in the first 6 years after practical completion you may contact BSA to assist with Category 1 defects provided you have first advised the contractor in writing (as per the above section headed 'Advise the Contractor') and they have failed to promptly address the matter. If the contractor is uncontactable or no longer operating you may contact BSA immediately about these more serious Category 1 defects.

Category 2 defects are, in broad terms, those of a minor or cosmetic nature related to poor finish or workmanship. As mentioned in the above section headed *Advise the Contractor*, these minor defects which occur during the first 6 months should be taken up with the building contractor who performed your work (if they are still operating). Matters which are unresolved after this period should be referred to BSA using the Complaint Form available from the BSA website. However, if the contractor is unavailable or ceases to operate during this initial 6 month period, you should document all minor defects which arise during the first 6 months after practical completion and submit details to BSA no later than 7 months after practical completion.

After you have completed and lodged a BSA Complaint Form together with supporting documentation including a copy of all of your contract documents, including any variations, a BSA technical representative may meet you and your contractor on site to inspect the work. Prior to the site inspection, you and your contractor will have further opportunity to resolve the dispute. At the site inspection BSA will make a determination as to who is responsible for the defects and, where appropriate, direct your contractor to rectify any defects or complete

the works. If your contractor is directed to rectify the works you must allow them reasonable access to the site.

To contact BSA, call 1300 272 272 statewide or visit BSA's website at www.bsa.qld.gov.au. Address and fax details for BSA offices throughout Queensland are available on BSA's website under 'Contact Us'.

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

You are also entitled to take any disputes in relation to your domestic building project to the Queensland Civil and Administrative Tribunal (QCAT). The QCAT provides cost effective resolution for domestic building disputes, particularly those of a contractual nature. Further information about the QCAT and its procedures can be obtained by visiting www.qcat.qld.gov.au, or calling 1300 753 228.

OTHER OPTIONS

Depending on the terms of your contract, other options may be available to you, including:

Liquidated damages

The contract may give you other rights such as liquidated damages (there is provision for these in the BSA New Home Construction Contract). You should read your contract carefully and if unsure of your rights or obligations, seek legal advice from a practising lawyer.

Contract termination generally

Under certain circumstances you may have the right to terminate the contract. This is a serious decision to make and would usually be a last resort. It will involve some costs to you. **Formal legal advice is essential if you are considering ending the contract for any reason.** If you terminate the contract without being entitled to do so, you may create serious difficulties for yourself (e.g. you could be sued by the contractor for breach of contract and you may lose your protection under the Queensland Home Warranty Scheme).

Contract termination under section 90 of the DBC Act

Under section 90 of the DBC Act homeowners may, under certain circumstances, have the right to terminate the contract in the event of blowouts in:

- the cost (if the contract price rises by 15% or more after the contract is entered into because of the operation of a cost escalation clause in the contract); or
- the duration of the contracted work (if it is not finished within a period that is 1.5 times the period allowed for in the contract) provided that –
 - the reason for the rise in price, or increase in time, could reasonably have been foreseen by the contractor when the contract was entered into; and
 - for a rise in price, the rise is not caused by a delay for which the building owner is responsible.

Before terminating your contract under section 90 of the DBC Act, it is essential that you first obtain formal legal advice to ensure that the proposed termination is lawful so that you will not lose your entitlement to insurance under the Queensland Home Warranty Scheme operated by BSA.

PART 4 – AFTER MOVING IN

WARRANTIES

MANUFACTURERS' WARRANTIES

As mentioned in the section in Part 2 of this Guide titled *On Completion/Handover*, you should obtain from your contractor, at handover, copies of the manufacturers' warranties for each of your new household appliances (these warranties are commonly of 12 months duration). Keep these documents in a safe place.

STATUTORY WARRANTIES

The DBC Act provides homeowners with a number of implied warranties that cover domestic building work for 6 years and 6 months from the date of completion.

BSA's ability to direct rectification by a contractor ceases if the defect is not notified to BSA within 6 years and 3 months of completion.

These statutory warranties must be stated in the contract. If you believe the contractor has breached any of these warranties and you have been unable to resolve the issue with them, you may be entitled to take legal action against the contractor.

If you instruct the builder to use a particular material or product and the builder has advised against it in writing, then you may lose your right to have a defect corrected.

Refer to the section in Part 1 of this Guide titled *Contract Checklist* for an explanation of what is included in 'domestic building work'.

STATUTORY WARRANTIES

MATERIALS - SUITABLE FOR PURPOSE

All materials will be good and suitable for the purpose for which they are used.

Applies to:

All domestic building work where contract price exceeds \$3,300. Only applies where the contractor is responsible for supplying the materials. Be aware that the warranty does not apply where:

- (a) You have engaged an architect to administer the contract and the building contractor is subject to the direction of the architect regarding the supply of the materials; or
- (b) The contract states that you are responsible for nominating the materials and, without any recommendation, suggestion or other approach being made to you by the contractor, you specifically nominate certain materials and either:
 - i. there are no reasonable grounds for not using those materials; or
 - ii. there are reasonable grounds for not using those materials but you insist on using them despite written advice to the contrary from the contractor.

In determining the suitability of materials regard must be had to the generally accepted practices or standards applied in the building industry for the materials and the specifications, instructions or recommendations of manufacturers or suppliers of the materials.

MATERIALS – NEW

Unless otherwise stated in the contract, all materials used in the work will be new.

Applies to:

All domestic building work where contract price exceeds \$3,300. This warranty will not apply if you state in your contract that the particular materials do not have to be new.

COMPLIANCE WITH LAW

The contractor will comply with all relevant laws and legal requirements, including the *Building Act 1975*.

Applies to:

All domestic building work where contract price exceeds \$3,300.

SKILL AND REASONABLE CARE

The work will be carried out in an appropriate and skilful way and with reasonable care and skill.

Applies to:

All domestic building work where contract price exceeds \$3,300.

PLANS AND SPECIFICATIONS

The work will be carried out in accordance with the plans and specifications.

Applies to:

All domestic building work where contract price exceeds \$3,300 if plans and specifications form part of the contract.

SUITABILITY FOR OCCUPATION

The home must be suitable for occupation when the work is finished.

Applies to:

All domestic building work where contract price exceeds \$3,300 if the work:

- (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or
- (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.

REASONABLE DILIGENCE

The work will be carried out with reasonable diligence.

Applies to:

All domestic building work where contract price exceeds \$3,300, if:

- (a) the contract is a cost plus contract; and
- (b) the contract does not have a stated completion date or period.

CALCULATION OF PROVISIONAL SUMS

The contractor warrants that the provisional sum has been calculated with reasonable care and skill.

Applies to:

All domestic building work where the contract price exceeds \$3,300 and includes provisional sum items.

Reasonable care and skill requires consideration by the contractor of all information reasonably available when the contract is entered into (including information about the nature and location of the building site).

HOME MAINTENANCE

FOUNDATIONS AND FOOTINGS

Many serious foundation problems are caused by reactive soil types and trees and gardens being planted too close to the house. Most clay soils are reactive soils but you should seek professional advice from either your contractor or soil engineer on this point. Your local government building section may also be able to advise you about soil characteristics in your area.

Large trees use huge amounts of water and can very quickly draw moisture out of the ground during dry periods. This may result in destabilised moisture content of the soils around your home which can eventually cause foundation problems.

Over-watering gardens around your home can also change the moisture content of clay, resulting in heaving of foundations adjacent to the garden. When watering around your home you should avoid 'ponding' of water in a particular area as this also affects the moisture content of the soil, which in turn can cause damage to footings and foundations.

Remember, too much or too little water near the perimeter of your home can cause serious problems with foundations and footings. Damage to foundations and footings can cause major structural problems, resulting in costly repairs.

HINTS FOR AVOIDING PROBLEMS AND COSTLY REPAIRS

- water evenly around your home and don't over-water;
- ensure the ground is graded away from the walls of your home and that your property has adequate drainage;
- promptly repair broken downpipes, leaking taps, sewerage pipes and other water services;
- toilet cistern overflows and hot water system overflows should be directed away from the immediate area adjacent to the foundations and those services maintained to ensure excessive leakage does not occur;
- ensure garden beds are not located up against the house; and
- to minimise the risk of future foundation damage, obtain professional advice when selecting and planting trees according to their mature height and root structure (on normal suburban blocks of 600 to 800 sq. metres, trees that grow higher than about 8 to 9 metres would usually be inappropriate).

SOURCES OF FURTHER ADVICE

- licensed builders;
- professional soil engineers;
- landscape gardeners; and
- your local government building section.

You can also obtain the CSIRO information sheet titled *Foundation Maintenance and Footing Performance: A Homeowner's Guide* (Building Technology File 18).

WARNING! Home warranty protection may not apply if your action or lack of maintenance has contributed to any foundation problems.

TERMITE MANAGEMENT

NOTE: This subject is covered in more detail in the Termite Management Fact Sheets on BSA's website.

If you are building a new home, it is very important that you discuss the termite management options with your builder and that your requirements (together with any cost implications) are accurately and fully detailed in your contract.

The Building Code of Australia (BCA), which applies throughout Queensland, requires that 'primary building elements' of all new buildings at risk of attack from termites be protected. Primary building elements include roof, ceiling, floor, stairway or ramp and wall framing members including bracing and door jambs, window frames and reveals, architraves and skirtings.

The BCA sets out the minimum requirements only and you may wish to seek a higher level of protection. If you do, talk to your contractor or designer during the planning stage and ensure that your building contract provides for, and includes the cost of, the higher level of protection. Your contractor will then be obliged to provide that protection.

TERMITE MANAGEMENT METHODS

(see the diagrams provided later in this section)

A number of options are available at variable costs including:

- using a monolithic concrete slab as the barrier and another approved method to protect any penetration such as waste pipes, etc. (the slab edge may be exposed in this method);
- where chemicals are used they must be regularly replenished or have an expected life similar to that of the building. Generally where chemicals are used under a concrete slab, path or driveway a reticulation system will be required;
- reticulation of an approved chemical under the slab with chemical perimeter treatment covered by a concrete mowing strip;
- graded stone barrier under the slab either full area or penetrations only and protection at the perimeter;
- stainless steel mesh, either full or partial installation with perimeter protection;
- use of termite resistant or treated timbers; or

- a combination of the above, especially with composite construction.

It is recommended that you have your house inspected at least annually by a BSA-licensed termite management contractor (check the contractor's licence before engaging them). More frequent inspections may be necessary in high risk areas. High risk areas include:

- virgin bush nearby;
- large number of trees nearby;
- anywhere north of the Tropic of Capricorn; and
- infestations in other houses nearby.

Chemical systems have a limited life and therefore require a higher degree of maintenance and replenishment. Physical systems (concrete slabs, exposed slab edge, metal shielding, stainless steel mesh or graded stone) are generally designed to last for the lifetime of the building but require more frequent inspection.

FACTORS CONSIDERED BY BSA IN ASSESSING A TERMITE COMPLAINT

In the case of complaints about termite damage to a building, consideration will be given to issues such as the means of entry, the method of protection used, whether or not the builder advised the owner about the different methods and the maintenance requirements for each, and whether the owner observed the necessary maintenance and inspection procedures.

KEYS TO AVOIDING DAMAGE BY SUBTERRANEAN TERMITES

- choose a method to suit your needs;
- determine if you want whole or partial protection;
- understand the method of protection chosen for your individual building and observe maintenance requirements; and
- inspect the home regularly yourself, and each 12 months (more often in high hazard areas) have a BSA-licensed termite management contractor inspect and re-treat if necessary.

The most frequent cause of termite infestation is where a chemical system has been breached thus rendering it ineffective.

Be aware that you may compromise or disturb the system around the home by:

- placing turf, paving, concrete paths, bark and garden beds up against the house wall;
- obstructing 'weep' holes (vertical joints between bricks close to ground level that are left open to allow any moisture to escape outside the house). 100mm clearance is recommended from the bottom of any weep hole to the top of the garden bed, or 75mm clearance in the case of concrete or unit paving;

- leaving loose timber stacked up or leaning against the house;
- the installation of new services involving underground connections to the house (e.g. pay TV) after the original termite protection has been applied;
- construction of a pergola (75mm clearance is recommended between the finished ground or pavement level and the bottom of the timber posts); or
- construction of fences, carports, or garages attached to the house after the termite protection has been installed.

CHECKING FOR TERMITES AFTER YOU MOVE IN

You should be particularly vigilant in checking:

- skirting boards;
- architraves;
- timber door and window frames;
- for blistered and bubbled paint, rippled or bulging wall skirting and architraves, and coarse, sandy pellet residues known as 'frass' (termite excreta); and
- outside the house look for mud galleries (small mud tunnels) against the walls, and tell-tale paths leading up foundation posts into the home.

NOTE: If you find any sign of termite activity in your regular checks, contact a BSA-licensed termite management contractor.

WHAT TO DO IF YOUR HOME IS INFESTED BY TERMITES

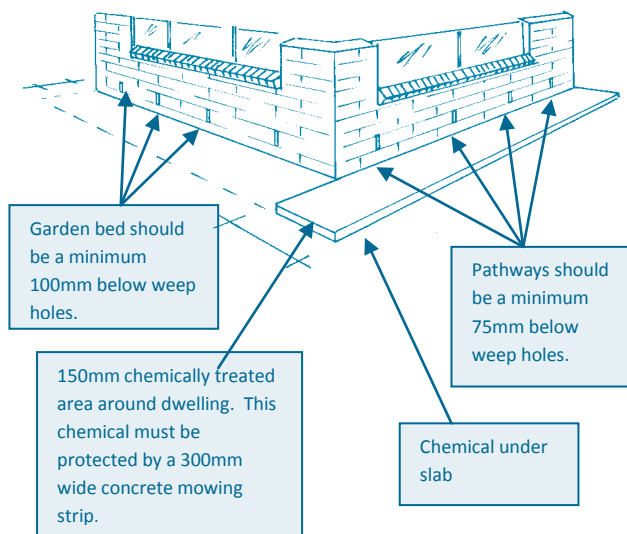
- do not disturb the nest;
- immediately arrange a thorough inspection by a licensed pest controller (ask them to locate the point of entry);
- inform your neighbours because one termite colony can affect several homes; and
- if the pest controller indicates there may be a fault in the installation of the barrier, contact the contractor and if your contractor does not respond to the termite infestation, contact BSA on 1300 272 272 regarding the Queensland Home Warranty Scheme operated by BSA. The Scheme provides protection against defective building work (including faulty termite barrier installation) for 6 years and 6 months from the date the building contract is signed or the premium paid, whichever is earlier. For 'spec' homes, the 6 years and 6 months insurance period applies from the date when work commenced on site. Home warranty protection does not apply if your action or lack of maintenance has contributed to the infestation.

NOTE: If an infestation occurs more than 6 years and 3 months after completion, and the problem can be traced to faulty installation, you may be able to take legal action against the builder. Formal legal advice is required. There are three basic methods of protecting buildings from termite damage.

1. Chemical systems
2. Termite resistant materials
3. Physical systems

CHEMICAL SYSTEMS

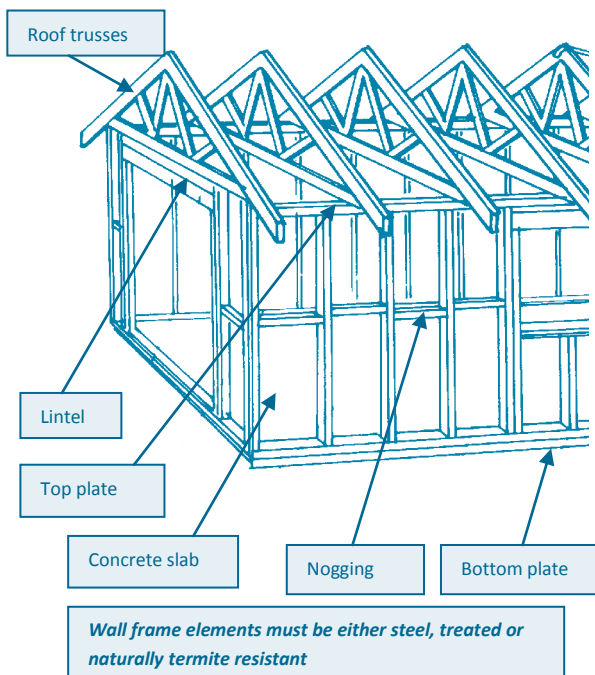
Chemical systems are generally installed beneath and around a building.



TERMITE RESISTANT MATERIALS

All primary building elements consist of masonry (brick or concrete block), steel, naturally resistant timber or treated timber.

STEEL FRAME OR TERMITE RESISTANT TIMBER PRIMARY ELEMENTS



‘Primary building element’ means: (a) a structural element of a building designed specifically to take part of the building loads and includes roof, ceiling, floor, stairway or ramp and wall framing members including bracing members designed for the specific purpose of acting as a brace to those members; and (b) door jambs, window frames and reveals, architraves and skirtings.

Termite resistant materials will not deter termite entry, but they will minimise damage to the treated elements.

PHYSICAL SYSTEMS

Physical systems can consist of:

Concrete slab

A concrete slab can, under certain circumstances, be used as a termite management system e.g. if the edge of the slab is exposed for a minimum of 75mm and the slab has been constructed to Australian Standards.

Termite shielding

Generally most recognisable, this form of protection consists of a continuous metal barrier along the walls and on top of piers under a house.

Stainless steel mesh

This is installed in various locations including under an on-ground concrete slab or around penetrations to the slab and around the perimeter wall cavity.

Graded stone

Used under and around buildings. The size and shape of the stones prevents the transportation of particles by termites as well as termite activity in the void spaces between the particles.

Termite management systems are designed to deter concealed termite entry into buildings.

It is important for you to know what method or combination of methods has been used on your property to enable you to schedule appropriate maintenance and inspections.

In any building there should be two durable labels fixed in prominent locations, usually in the electrical meter box and one other location such as the kitchen cupboard. The label describes the life expectancy of chemicals and the manufacturer’s recommendations for the scope and frequency of inspections. Competent inspections should be carried out at least on an annual basis by a BSA-licensed termite management contractor.

The most common cause of termite infestation is where a building owner or occupier has inadvertently bridged or bridged a perimeter system.

For example, placing brick or concrete paving up against a building where a chemical system has been installed may bridge the system unless additional control elements were installed as part of the paving process. If bridging has occurred there is an open highway for termites to gain entry to the building.

Similarly, if gardens are installed or turf placed up against a building without consideration or reinstatement of the system, an opportunity will exist for termites to enter the building.

The addition of a fence, carport or pergola against an existing building can also provide an opportunity to bridge or breach the termite management system.

IN SUMMARY:

- Know what system is in place;
- Have a BSA-licensed termite management contractor inspect at least on an annual basis;
- If gardens, turf or paving has been or is to be placed against the building, ensure that reinstatement of the termite management system/s forms part of the work; and
- If a concrete mowing strip has been installed to protect a chemical system, do not disturb it without consulting a BSA-licensed termite management contractor.

OBTAINING MORE INFORMATION ABOUT TERMITES

Australian Environmental Pest Managers Association (AEPMA)

Phone: 02 9232 8929 or 1800 252 772

Web: www.aepma.com.au

Timber Queensland

Phone: 07 3254 1989

Web: www.timberqueensland.com.au

Queensland Master Builders Association

Phone: 07 3225 6444

Web: www.masterbuilders.asn.au

Housing Industry Association

Phone: 07 3846 1298

Web: www.hia.com.au

Department of Employment, Economic Development and Innovation

Phone: 13 25 23

Web: www.deedi.qld.gov.au

Building Codes Queensland

Phone: 07 3239 6369

Web: www.dip.qld.gov.au

Standards Australia (AS3660.1)

Phone: 1300 654 646

Web: www.saiglobal.com/store

CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Make sure you keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS FOR GENERAL INFORMATION REGARDING YOUR BUILDING PROJECT:

	Name	Contact Details
Contractor		P:
		F:
		E:
Site Supervisor		P:
		F:
		E:
Building Certifier		P:
		F:
		E:
Local Government		P:
		F:
		E:
Solicitor		P:
		F:
		E:
Building Designer		P:
		F:
		E:
Finance Institution		P:
		F:
		E:
Insurance Company		P:
		F:
		E:
Neighbours (if relevant)		P:
		F:
		E:
Building Consultant		P:
		F:
		E:



**GENERAL
CONDITIONS
of
BSA NEW HOME
CONSTRUCTION CONTRACT**

*To be read in conjunction with the Consumer Guide for
BSA New Home Construction Contract*

AUGUST 2011

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CONTRACT CHECKLIST

This brief checklist is for guidance only and does not form part of the Contract. It is not intended for use in interpreting the Contract. A more detailed checklist is available on BSA's website at www.bsa.qld.gov.au.

Have you read and do you understand the Contract Documents?

Before you sign this Contract, you need to be sure you understand the Contract Schedule, the General Conditions of Contract and the other documents that are listed in the Schedule at Item 17. If you do not understand any part of them, you should seek formal legal advice.

Does the Contractor have a current BSA licence which is the right one for this work?

There are different classes of building licences for different work. **Telephone 1300 272 272 or visit the Online Licence Search on BSA's website www.bsa.qld.gov.au to confirm the contractor has a current and appropriate licence and to obtain details of the Contractor's past performance**, including the number and value of past projects and any dispute history.

Is the Contractor's licence number shown on the first page of the Contract Schedule?

Are the Works clearly defined at Schedule Item 1?

The description of the **Works** should be as detailed as possible and refer to the plans and specifications which show what work is to be done. An example of what you might say here is:

- construction of a new double storey cavity brick home in accordance with the attached plans and specifications and other contract documents; or
- construction of a timber deck, stairs and handrail in accordance with the attached plans and specifications and other contract documents.

Is the period for completion of the work realistic?

For example, does the Total Construction Period in Schedule Item 4 or the **Date for Practical Completion** in Schedule Item 6 include appropriate allowances for bad weather and non-working days?

Is the Total Price shown at Schedule Item 8?

The **Total Price** will be the amount arrived at by adding up the lump sum component and any **Prime Cost Items** and **Provisional Sums**. You should note that this price can be varied in accordance with the terms of the Contract. If there are **Prime Cost Items** or **Provisional Sums**, has the *Prime Cost Items Schedule* or the *Provisional Sums Schedule* been fully completed?

Prime Cost Items or **Provisional Sums** should be kept to a minimum and only included where:

- the particular item to be included has not yet been finally chosen;
- or where it is not possible for the Contractor to give a fixed price;
- or where the amount of work to be done cannot be precisely calculated when the contract is signed.

The Contractor must make reasonable allowances for **Prime Cost Items** and **Provisional Sums**. The Owner should make enquiries or consult with the Contractor to ensure that the allowances are realistic.

Does the Owner want compensation for extra costs if the Contractor finishes late ('Liquidated Damages')?

If the Owner wants to receive compensation ('liquidated damages') in the event the Contractor fails to finish the contracted work within the time allowed for in the Contract, then the Owner should insert an amount per day to be recovered in the space provided in Item 12 of the Contract Schedule. The amount should represent what the Owner realistically calculates he or she will be out-of-pocket if the work finishes late. For example, it might include extra rental and or storage costs, lost rent (for rental properties), additional mortgage costs, etc.

NOTE: The BSA New Home Construction Contract now contains a default provision whereby if Item 12 of the Schedule is left blank an amount (currently \$50 per calendar day) is deemed to apply to the period of delay beyond what is authorised under the Contract.

Are appropriate plans and specifications included in the Contract?

The Owner and the Contractor should carefully check the plans and specifications which, if required for the **Works**, must be included in the Contract Documents. This documentation should clearly set out all the work that is to be done. Both the Contractor and the Owner must be sure that they clearly understand the plans and specifications, and any other special Contract Documents listed at Schedule Item 17. The Owner should also receive a copy of any **Foundations Data** required for the **Works** obtained by the Contractor.

Do you have all the documents for the BSA New Home Construction Contract?

Before you sign the Contract, you should check that you have received, read and understood the:

- BSA Consumer Guide;
- Contract Schedule, with all relevant details completed;
- General Conditions of Contract;
- *Prime Cost Items Schedule*, fully completed (if applicable); and
- *Provisional Sums Schedule*, fully completed (if applicable).

In addition to the above documents, the Contractor is required to give you 2 copies of any forms you are asked to sign (e.g. Form 3 – *Progress Claim*, Form 5 – *Variation Document*, etc.). You should retain 1 copy for your files and give 1 copy to your Lender (if any).

Do you understand the Contract procedures which apply during the building process?

The Contract sets out the procedures and documentation which apply to:

- recording variations or changes to the work;
- payment claims by the Contractor; and
- the arrangements for commencement on Site, extensions of time and Practical Completion.

The standard forms included in the BSA New Home Construction Contract Pack are designed to help you and the Contractor implement the Contract. These forms should be used to document and record your response to variations, progress claims and claims by the Contractor for extensions of time.

Have you received written confirmation that the Contractor has paid for the Contract Works, Public Liability and the Queensland Home Warranty Scheme insurances?

From the day of handover, the house or other work is at the Owner's risk. You should arrange appropriate cover with your insurance company well in advance of **Practical Completion** and handover.

Have you read and do you understand the Contract Documents?

If you have any questions or concerns about the Contract documents you should obtain formal legal advice from a practising lawyer.

NOTE: Bold type words and phrases throughout this booklet are defined in Condition 29 on pages 14 to 16

GENERAL CONDITIONS

1. WITHDRAWAL DURING 'COOLING-OFF' PERIOD

- 1.1 The Owner may withdraw from the Contract within the times noted below:
 - (a) within 5 **business days** of receiving from the Contractor a copy of both the signed Contract and the BSA Consumer Guide; or
 - (b) if the Contract is given to the Owner separately from the BSA Consumer Guide, then within 5 **business days** of receiving the second document.
- 1.2 Further, if the Contractor fails to give both the above documents to the Owner within 5 **business days** of the parties making the Contract then, in addition, the Owner may withdraw at any time up until 5 **business days** after the Owner receives those documents in accordance with (a) or (b) above.
- 1.3 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 72 of the *Domestic Building Contracts Act 2000*.
- 1.4 If the Owner withdraws from the Contract pursuant to this condition, the Owner must pay to the Contractor the amount of \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract. If the Owner has already paid more than this amount at the time they withdraw, the Contractor must promptly refund the excess.
- 1.5 The Owner may not withdraw from the Contract under section 72 of the *Domestic Building Contracts Act 2000* if:
 - (a) the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
 - (b) the Owner received formal legal advice about the Contract before entering into the Contract; or
 - (c) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

2. LOAN APPROVAL

- 2.1 Unless Schedule Item 14 states that this Contract is not subject to Loan Approval, this Contract is subject to the Owner obtaining from the Lender, on or before the **Loan Approval Date**, approval of a Loan not less than the Amount of the Loan stated in Schedule Item 14 on terms satisfactory to the Owner.
- 2.2 The Owner must apply to the Lender for Loan Approval within 5 **business days** from the date of this Contract. The Owner must give the Contractor written notice on or before the **Loan Approval Date** stating whether the Owner has obtained Loan Approval.

If, on or before the **Loan Approval Date**, the Owner:

 - (a) gives the Contractor written notice that the Owner has obtained Loan Approval; or
 - (b) fails to give the Contractor written notice,

this Contract continues and the parties must perform it.
- 2.3 If, on or before the **Loan Approval Date**, the Owner gives the Contractor written notice that the Owner has not obtained Loan Approval on terms satisfactory to the Owner, this Contract is at an end.
- 2.4 If this Contract is ended under this Condition, the Contractor must immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 2.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
 - (a) fees paid by the Contractor to another person for the **Foundations Data**;
 - (b) fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - (c) fees paid to an **Assessing Certifier** for development approval; and
 - (d) fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 2.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.

3. WARRANTIES UNDER THE DBC ACT

- 3.1 The Contractor must build the **Works** in compliance with this Contract and with all Acts of Parliament (including the *Domestic Building Contracts Act 2000*), Regulations and Bylaws which apply to the **work under this Contract** and the **Works**.
- 3.2 The Contractor must build the **Works**:
- (a) in an appropriate and skilful way and with reasonable care and skill;
 - (b) using materials which comply with this Contract and which are of good quality and suitable for the purpose for which they are used (having regard to generally accepted practices or standards in the industry and any instructions or recommendations of manufacturers or suppliers). All materials used by the Contractor must be new unless this Contract expressly provides otherwise;
 - (c) in accordance with all relevant laws and legal requirements;
 - (d) in accordance with the plans and specifications and any other Contract Documents described at Schedule Item 17 of the Contract Schedule; and
 - (e) so that:
 - (i) where the **Works** consist of the erection or construction of a detached dwelling or construction of a detached dwelling to a stage suitable for occupation, or the renovation, alteration, extension, improvement or repair of a home to a stage suitable for occupation, the **Works** are finished and conform with the requirements of this Contract and the detached dwelling or home is reasonably suitable for occupation and habitation; and
 - (ii) in all other cases, the **work under this Contract** is finished and the **Works** conform with the requirements of this Contract.
- 3.3 The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.
- 3.4 The Owner must pay the Contractor the price for the **Works** in accordance with this Contract.

4. WORKPLACE HEALTH & SAFETY

- 4.1 The Contractor acts as 'principal contractor' for the purposes of and pursuant to section 13 of the *Workplace Health and Safety Act 1995* for the duration of this Contract. The parties must execute all such instruments as may be required pursuant to that Act.
- 4.2 The Contractor must require all persons at the **Site** to comply with all applicable requirements pursuant to the *Workplace Health and Safety Act 1995* and may exclude or remove from the **Site** any person who fails so to comply.

5. PLAN APPROVAL

- 5.1 If this Contract is subject to Loan Approval, then within 10 **business days** from the date the Owner has given the Contractor written confirmation from the Lender or other evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**, but otherwise within 10 **business days** from the date of this Contract, the party named in Schedule Item 15 (or if no party is named, then the Contractor) must, subject to the Owner providing the written evidence required in the first paragraph of Condition 6, lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building, with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.
- 5.2 The responsible party must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.

6. EVIDENCE OF TITLE, BOUNDARIES AND CAPACITY TO PAY

- 6.1 Within 10 **business days** from the date of this Contract, the Owner must give the Contractor written evidence satisfactory to the Contractor of the Owner's title to the **Site** described in Schedule Item 2 and of the boundaries and position of the **Site**.

6.2 If the Contract is subject to Loan Approval, then within 10 **business days** from the **Loan Approval Date**, or upon a reasonable written request from the Contractor, the Owner must give the Contractor written confirmation from the Lender or other evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**. If the Contract is not subject to **Loan Approval**, the Owner must, within 10 **business days** from the date of this Contract, or upon a reasonable written request from the Contractor, provide the Contractor with written evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**.

7.6 The Owner must not interfere with the performance of the **work under this Contract** when at the **Site** and must ensure that any person authorised by the Owner to attend at the **Site** does not so interfere. If the Owner or any person authorised by the Owner causes such an interference and:

- (a) the interference causes a delay to the work or causes the Contractor to incur additional costs; and
- (b) the Contractor gives the Owner written notice of the delay or the additional costs within 5 calendar days of becoming aware of the interference,

then the Owner is liable to the Contractor for the delay or the additional costs.

7.7 The provisions of this Condition are subject in all respects to the provisions of Condition 4 of this Contract.

7. THE SITE

7.1 The Owner gives the Contractor a licence to enter and occupy the **Site** for the purpose of performing the **work under this Contract**.

7.2 The Contractor shall so occupy the **Site** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**. This Contract does NOT give the Contractor an interest in the land comprising the **Site**. The Contractor acknowledges that the licence granted by the Owner provides it with sufficient site access to perform the **work under this Contract**.

7.3 The Contractor may exclude persons from the **Site** other than:

- (a) the Owner;
- (b) any person authorised by the Owner;
- (c) the Lender;
- (d) the **Assessing Certifier**;
- (e) any officer of the relevant Local Authority; and
- (f) any officer of the Queensland Building Services Authority.

7.4 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:

- (a) have reasonable access to the **Site**; and
- (b) view any part of the **work under this Contract**.

7.5 Except in the case of emergency, attendance at the **Site** by the Lender, the Owner, or any person authorised by the Owner, must be by prior arrangement with the Contractor and must be during working hours or at such other times as the Owner and the Contractor agree.

8. CARE OF THE WORK

8.1 The Contractor is responsible for the care of the **work under this Contract** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**. The Contractor must promptly make good loss or damage to that work occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

9. CONTRACTOR'S INDEMNITY IN FAVOUR OF THE OWNER

9.1 The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by the neglect or default of the Owner.

9.2 The Contractor must indemnify the Owner in respect of damage to the property or person of the Owner arising out of the **work under this Contract** except to the extent that such damage results from or is contributed to by the neglect of the Owner.

10. CONTRACTOR TO EFFECT INSURANCES

- 10.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
- (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) all insurances required to comply with the *Queensland Building Services Authority Act 1991*; and
 - (c) Contract Works and Public Liability Insurances with a reputable and financially sound insurer which names or includes as an insured the Owner and the Contractor for their respective rights and interests upon usual and reasonable terms.
- 10.2 Contract Works Insurance must be for the full insurable value of the **Works** and must extend until 4.00 pm on the **Date of Practical Completion**. Public Liability Insurance must be for at least the amount of 5 million dollars and must:
- (a) cover the liabilities of the Contractor and the Owner to third parties in respect of personal injury, death or damage to property arising out of or in connection with the **work under this Contract**; and
 - (b) include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.
- 10.3 Prior to commencement of the **work under this Contract**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract Works and Public Liability Insurances required under this Condition are current.

11. COMMUNICATION BETWEEN THE OWNER & THE CONTRACTOR

- 11.1 The Owner or the **Owner's Representative** must communicate and deal with the Contractor personally or with the **Contractor's Representative**. The Owner must not give directions to the Contractor's employees or subcontractors.

- 11.2 The Owner is not entitled to rely on any statements made or representations given by the Contractor's employees or subcontractors other than those made or given by the Contractor personally or by the **Contractor's Representative**.
- 11.3 All written communications between the Owner and the Contractor must be in the English language and must be clearly legible.

12. COMMENCEMENT AND PERFORMANCE OF THE WORKS

- 12.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.
- 12.2 Within 10 **business days** after the date on which **work under this Contract** commences on **Site** the Contractor must give a written notice to the Owner (such as BSA Form 1 - *Commencement Notice*) stating:
- (a) the date on which **work under this Contract** commenced on **Site**; and
 - (b) the **Date for Practical Completion**.
- 12.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

13. TIME FOR PRACTICAL COMPLETION

- 13.1 The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated in or calculated in accordance with Schedule Item 6 or any extended date under Condition 14 or under Condition 7.

14. EXTENSION OF TIME

- 14.1 The Contractor may claim and is entitled to a reasonable extension of the **Date for Practical Completion** to the extent contemplated by and subject to the provisions of the remaining paragraphs of this Condition, if the Contractor is or will be delayed in achieving **Practical Completion** of the **Works** by any of the following causes:

- (a) events occurring on or before the **Date for Practical Completion** which are beyond the reasonable control of the Contractor, including, but not limited to, general industrial action (excluding contractor-specific action) and inclement weather (subject to the provisions of the remaining paragraphs of this Condition);
 - (b) delays occasioned by the Owner, the **Owner's Representative**, the Owner's employees or the Owner's agents (whether occurring before or after the **Date for Practical Completion**);
 - (c) a variation which is the subject of a Variation Document in accordance with the provisions of Condition 22 of this Contract so long as:
 - (i) the variation was one requested by the Owner; or
 - (ii) for a variation not requested by the Owner, then only if the variation was required due to circumstances which the Contractor could not reasonably have foreseen when the Contract was made; or
 - (d) Schedule Item 4B delays if:
 - (i) there is a delay for any of the reasons listed in Schedule Item 4B; and
 - (ii) the number of days actually delayed is more than that provided for in Schedule Item 4B.
- 14.2 **NOTE:** For a delay to be claimed under Schedule Item 4B, the delay allowed for must be reasonable having regard to the circumstances. The Contractor may not claim an extension for Schedule Item 4B delays in any other circumstance.
- 14.3 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.
- 14.4 If the Contractor wishes to claim an extension of the **Date for Practical Completion** other than under Condition 7, the Contractor must give to the Owner a BSA Form 2 - *Extension of Time Claim and Owner's Response to Claim* with the particulars completed or other written notice which must:
- (a) be given within 10 **business days** of the occurrence of the relevant cause of delay;
 - (b) identify the cause of the delay;
 - (c) state the period of time that the Contractor wishes to claim an extension of the **Date for Practical Completion**; and
 - (d) attach supporting documents (supporting documents may include copies of variation documents, dates of **business days** affected by inclement weather, etc.).
- 14.5 The Owner must then, within 10 **business days** of receiving the Contractor's claim, return to the Contractor the said Form 2 - *Extension of Time Claim and Owner's Response to Claim* or other written notice stating that:
- (a) the Owner agrees to the claimed extension; or
 - (b) the Owner wholly or partially rejects the claimed extension and giving the Contractor reasons for that rejection.
- 14.6 If the Owner does not respond to the Contractor's claim, the extension of time claimed by the Contractor will be deemed to be disputed by the Owner.
- 14.7 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to loss, cost or expense actually incurred by the Contractor by reason of the wrongful rejection of a claim for an extension of the **Date for Practical Completion**.

15. PRACTICAL COMPLETION

- 15.1 The Contractor must give to the Owner 3 **business days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach **Practical Completion**. On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** must inspect the **Works**.
- 15.2 If the Owner is satisfied that the **Works** have reached **Practical Completion** and if the Contractor has provided to the Owner satisfactory written evidence (including copies of all relevant certificates of inspection) that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must complete and sign the BSA Form 6 - *Defects Document* or similar appropriate document and give a copy to the Owner, and then give the Owner a completed and signed BSA Form 7 - *Certificate of Practical Completion* stating that date as the **Date of Practical Completion**.
- 15.3 Finally, the Contractor must hand over the **Works** to the Owner on the **Date of Practical Completion** and the Owner must pay the Progress Claim for the **Practical Completion Stage** immediately to the Contractor.

- 15.4 If the Owner considers that the **Works** have not reached **Practical Completion** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.
- 15.5 The issue of a Certificate of **Practical Completion** does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.

16. PRICE

- 16.1 The parties agree that the **Total Price** stated in Schedule Item 8 comprises the following:
- Lump Sum Component;
 - Prime Cost Items** Component (if any); and
 - Provisional Sum** Items Component (if any).
- 16.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 10% as a proportion of the **Total Price** as stated in Schedule Item 8, the Contractor must give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**. In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.
- 16.3 If amounts are shown adjacent to **Prime Cost Items** and **Provisional Sums** in Schedule Item 7, the Contractor must give the Owner a separate schedule which states for each **Prime Cost Item** or **Provisional Sum**, the following details:
- a detailed description of the **Prime Cost Item** or of the contracted services to which the **Provisional Sum** relates;
 - a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**; and
 - how any amount to be charged by the Contractor above the actual amount of any increase in the cost of the **Prime Cost Item** or **Provisional Sum** is to be calculated.
- 16.4 The following provisions apply to the Components of the **Total Price**:

LUMP SUM COMPONENT

- 16.5 The Lump Sum Component of the **Total Price** is the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**, other than:
- any items set out in the *Prime Cost Items Schedule* which forms part of this Contract; and
 - any amounts for any work set out in the *Provisional Sums Schedule* which forms part of this Contract.
- 16.6 The Lump Sum Component of the **Total Price** must not be adjusted except as permitted by Condition 22.

PRIME COST ITEMS STIPULATED BY OWNER

- 16.7 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date. The *Prime Cost Items Schedule* must set out the Contractor's best estimate, as at that date, of the price of each such item and any margin the Contractor proposes to recover in providing the item for the purposes of the **work under this Contract**.
- 16.8 The Contractor warrants that each such estimate:
- has been prepared with reasonable skill and care; and
 - represents the reasonable cost of supplying and delivering each such item, including the Contractor's margin.
- 16.9 For items which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain, supply and fix the relevant item.
- 16.10 If the actual cost of a **Prime Cost Item** is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule*) on the increase for the Contractor's overheads and profits.
- 16.11 If the actual cost of a **Prime Cost Item** is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Total Price**.

16.12 The Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost of the item to the Contractor before or when making the next progress claim under the Contract. The Contractor cannot seek payment for the item until the progress claim following the incorporation of the item in the **Works**.

PROVISIONAL SUMS STIPULATED BY CONTRACTOR

16.13 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.

16.14 The *Provisional Sums Schedule* must also set out the rates or prices applicable to each such item of work and the Contractor's best estimate, as at that date, of the price of each such item. The Contractor warrants that each such estimate:

- (a) has been prepared with reasonable skill and care; and
- (b) represents the reasonable cost of providing the item of work.

16.15 The Contractor warrants that each such estimate has been given having regard to:

- (a) the information the Contractor had, or reasonably should have had, when the Contract was entered into, including the results of any contour surveys, soil testing or other geotechnical information; and
- (b) the nature and location of the **Site**, including all those aspects of the **Site** which would be apparent upon an inspection of the **Site** by a reasonably competent Contractor.

16.16 If the actual value for a **Provisional Sum** Item is more than the Contractor's estimate, the Owner must pay the Contractor for the increased work valued in accordance with the rates or prices (including the Contractor's margin) stated in the *Provisional Sums Schedule*. If the actual value for a **Provisional Sum** Item is less than the Contractor's estimate in the *Provisional Sums Schedule*, the Contractor must deduct the difference, plus the Contractor's margin, from the **Total Price**.

16.17 As soon as practicable after the Contractor becomes aware that the actual value of any **Provisional Sum** Item will be more than 10% above the Contractor's estimate for that item in the *Provisional Sums Schedule* the Contractor must provide the Owner with a written notice which:

- (a) describes the **Provisional Sum**;

(b) states the cost to the Contractor of the **Provisional Sum** Item together with the Contractor's margin, and the amount by which this amount exceeds the total allowance for that item in the *Provisional Sums Schedule*; and

(c) identifies the Progress Payment stage under this Contract at which payment for the **Provisional Sum** will be required.

16.18 The Contractor must provide the Owner with a copy of any invoice, receipt or other document relating to the cost to the Contractor of the work completed for a **Provisional Sum** Item before or when making the next progress claim under the Contract.

GOODS AND SERVICES TAX

16.19 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any Variation pursuant to Condition 22) have been or will be calculated on a **GST** inclusive basis.

17. PAYMENT

17.1 The Owner must pay the Contractor the **Total Price** for the **Works** in accordance with this Condition.

17.2 The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 9 upon the signing of this Contract. The amount payable by way of deposit must not exceed:

- (a) 5% of the **Total Price** if the **Total Price** is \$20,000 or more; or
- (b) 10% of the **Total Price** if the **Total Price** is less than \$20,000.

17.3 If the deposit stated in Schedule Item 9 exceeds the relevant maximum percentage the deposit payable hereunder must be reduced to an amount equal to that maximum percentage.

17.4 The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 10 or in any separate document setting out payment stages.

17.5 A progress claim must:

- (a) be in writing using a BSA Form 3 - *Progress Claim* or other similar written notice;
- (b) be accompanied by a BSA Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice.

- (c) certify that the **work under this Contract** has been completed to the relevant stage; and
- (d) be accompanied by invoices, receipts or other documents showing the cost to the Contractor of any **Prime Cost Item** or **Provisional Sum** in respect of which a claim for payment is made.

17.6 If the Progress Claim for the **Practical Completion Stage**:

- (a) is in accordance with the requirements listed above;
- (b) is accompanied by a completed and signed BSA Form 6 - *Defects Document* or similar appropriate document; and
- (c) the Contractor has satisfied all the requirements of Condition 15,

then the Owner must immediately pay the Contractor the Progress Claim for the **Practical Completion Stage** (as adjusted under Condition 19, if applicable).

17.7 The Progress Payment for each stage shall consist of:

- (a) the percentage of the Lump Sum Component or other progress payment applicable to that stage as stated in Schedule Item 10 or in any separate document setting out payment stages;
- (b) the amount payable for any **Prime Cost Items** incorporated in the **Works** to that stage and not included in a previous Progress Payment;
- (c) the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment provided that the Contractor has given the Owner the relevant supporting documents, and, where applicable, satisfied the relevant notice requirements, in Condition 16. If there is a dispute between the parties as to the reasonableness of any amount in excess of the Contractor's estimate for that item in the *Provisional Sums Schedule*, that dispute must be referred for resolution in accordance with Condition 28; and
- (d) any other amount then payable to the Contractor in respect of variations commenced or completed pursuant to and in accordance with Condition 22.

17.8 In respect to any progress claim other than the Progress Claim for the **Practical Completion Stage**:

- (a) the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim as is not disputed by the Owner, within **5 business days** of receipt of the relevant claim;
- (b) if the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must within **5 business days** of receipt of the

relevant claim give to the Contractor a BSA Form 4 - *Notice of Dispute of Progress Claim* with the particulars completed or other appropriate written notice, stating the reasons for so disputing the claim or part of it. If that dispute is not resolved by the parties within **5 business days** of the receipt by the Contractor of the notice of that dispute, the dispute must be referred for resolution in accordance with Condition 28.

18. SECURITY ACCOUNT MONEY

18.1 If this Contract is not subject to Loan Approval and if Schedule Item 11 is completed, the Owner must, within **5 business days** of the date of this Contract, deposit in an interest bearing account in a bank or other financial institution nominated by the Owner, the amount stipulated in Schedule Item 11 as Security Account Money.

18.2 The account must be in the joint names of the Owner and the Contractor and the authority of each of the Owner and the Contractor must be required to effect any withdrawal. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.

18.3 The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.

18.4 If the Owner fails to pay any money due and owing to the Contractor **5 business days**, or if the Contractor terminates the Contract pursuant to Condition 26 or Condition 27, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.

18.5 Upon payment of the last Progress Payment due to the Contractor as provided by Condition 17, the Owner is entitled to any remaining Security Account Money (including interest).

18.6 If there is a dispute between the parties as to the entitlement to Security Account Money, the Security Account Money must be dealt with in accordance with any order or direction of the Queensland Civil and Administrative Tribunal. The parties hereby authorise the relevant bank or other financial institution to pay any Security Account Money in accordance with any such order or direction and acknowledge that the relevant bank or other financial institution is under no liability whatsoever to either party on account of any such payment.

19. LIQUIDATED DAMAGES

- 19.1 If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 12.
- 19.2 If Schedule Item 12 is left blank, a default amount of \$50 per day shall be deemed to apply.
- 19.3 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

WARNING TO OWNER

The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract.

20. INTEREST ON OVERDUE PAYMENTS

- 20.1 The Owner must pay the Contractor interest on overdue payments at the rate set out in Schedule Item 13 or at the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the payment becomes overdue plus 5% per annum (the 'default rate'), whichever is the lesser rate. If no amount is entered in Schedule Item 13 the default rate shall apply.

21. DEFECTS AFTER COMPLETION

- 21.1 The Contractor must make good defects or omissions in the **work under this Contract** which become apparent within 6 months of the **Date of Practical Completion**.
- 21.2 If there are any such defects or omissions, the Owner must give the Contractor written notice to make good such defects or omissions not later than 1 month after that 6 months period and must give the Contractor reasonable access to the **Site** for that purpose.

- 21.3 The Contractor must make good such defects or omissions promptly. The Contractor must correct the agreed minor defects or minor omissions listed in the BSA Form 6 - *Defects Document* or similar appropriate document by the date or within the time stated in that document. This Condition does not exclude the Contractor from any liability otherwise arising under this Contract or under the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*.

22. VARIATIONS

- 22.1 The **work under this Contract** may be varied by way of an increase, decrease or substitution of **work under this Contract** agreed between the Contractor and the Owner provided that the details of the variation are put in writing in a Variation Document signed by both the parties and initialled as necessary by the Owner.
- 22.2 The Variation Document may be a BSA Form 5 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of the *Domestic Building Contracts Act 2000*, signed by both parties and initialled as necessary by the Owner. The **work under this Contract** may be varied in any of the following ways:

VARIATIONS BY AGREEMENT

- 22.3 Either party may give to the other written notice requesting a variation of the **work under this Contract**. The Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties and initialled as necessary by the Owner.
- 22.4 If the Contractor has requested the variation, the Contractor is only entitled to additional payment if the variation was necessary because of circumstances that could not have been reasonably foreseen by the Contractor when the Contract was entered into.

VARIATIONS REQUIRED BY LAW

- 22.5 If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner, vary the **work under this Contract** accordingly. If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense. In any other case, the

Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

- 22.6 If the Owner is named in Schedule Item 16 as the party responsible for extra excavations and foundations, and if it becomes apparent that extra work or materials are required in respect of excavations or foundations beyond what could reasonably be established by the required **foundations data**, then the Contractor may, with the prior written consent of the Owner, vary the **work under this Contract** to include the provision of such extra work or materials.
- 22.7 In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within 5 **business days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation, and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.
- 22.8 The Contractor cannot seek additional payment from the Owner for a variation in respect of extra excavations and foundations where the need for the variation has arisen because:
- (a) the Contractor failed to obtain the appropriate **Foundations Data** before entering the Contract and, had the Contractor obtained the appropriate **Foundations Data**, the need for the additional amount could reasonably have been established; or
 - (b) the Contractor obtained the appropriate **Foundations Data**, and the need for the extra work or materials could reasonably have been established from the **Foundations Data**.

23. ASSIGNMENT AND SUBCONTRACTING

- 23.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 23.2 The Contractor may subcontract parts of the **work under this Contract** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

24. COPYRIGHT

- 24.1 A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.
- 24.2 Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** in accordance with those plans.

25. TERMINATION FOR LACK OF BUILDING APPROVAL

- 25.1 Either party may give a written notice to the other terminating this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of building has not issued within 3 months of the date of this Contract.
- 25.2 If the Contract is terminated pursuant to this Condition the Contractor's only entitlement to payment from the Owner is for the reasonable value of any work properly carried out by the Contractor prior to that termination which has not been the subject of previous payment.

26. TERMINATION FOR INSOLVENCY

- 26.1 If a party to this Contract:
- (a) becomes insolvent or unable to pay their debts; or
 - (b) commits an act of bankruptcy; or
 - (c) is made bankrupt; or
 - (d) assigns assets for the benefit of creditors generally; or
 - (e) makes a composition or other arrangement with creditors; or
 - (f) being a company goes into liquidation or receivership,
- then the other party may forthwith, or as soon thereafter as that other party thinks fit, terminate this Contract.

- 26.2 If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the **Site** and retain all unfixed materials, goods, plant and equipment previously provided at the **Site** by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.
- 26.3 If the Owner terminates the Contract under this Condition, the Owner may, in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials and goods previously provided at the **Site** by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract.
- 26.4 Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

27. TERMINATION AFTER NOTICE OF DEFAULT

- 27.1 If:
- (a) a party is in substantial breach of this Contract; and
 - (b) the other party gives a notice to the party in breach stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within 10 **business days** from the giving of the notice; and
 - (c) the breach is not so remedied,
- then, the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.
- 27.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

- 27.3 Substantial breach by the Owner includes, but is not limited to:
- (a) failing to produce evidence satisfactory to the Contractor of the Owner's title to the **Site** or of the Owner's capacity to pay the **Total Price** in compliance with Condition 6 of this Contract;
 - (b) failing to pay any money due and owing to the Contractor for 5 **business days**; and
 - (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.
- 27.4 Substantial breach by the Contractor includes, but is not limited to:
- (a) failing to perform the **work under this Contract** competently;
 - (b) failing to provide materials which comply with this Contract;
 - (c) unreasonably failing to replace or remedy defective work or materials;
 - (d) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
 - (e) failing to effect or maintain any insurance required by this Contract; and
 - (f) failing to hold the current, active and appropriate licence required to perform the **Works**.

28. DISPUTE RESOLUTION

- 28.1 Any dispute between the Owner and the Contractor arising under or in connection with the Contract and which requires proceedings for resolution must be referred to the Queensland Civil and Administrative Tribunal.

29. DEFINITIONS

- 29.1 In this Contract, unless the context otherwise requires, expressions defined or explained in the Contract Schedule have the meaning so defined or explained below:
- (a) "**Assessing Certifier**" means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the **Works**.

- (b) **“Base Stage”** means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
- (c) **“business day”** means a day that is not:
- (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday, or bank holiday in Queensland.
- (d) **“Contractor’s Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Owner) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
- (e) **“Date for Practical Completion”** means the date stated in or calculated by reference to Schedule Item 6 or any extended date pursuant to this Contract.
- (f) **“Date of Commencement of Works on Site”** means the date the Works commenced on Site as stated in the Commencement Notice issued by the Contractor.
- (g) **“Date of Practical Completion”** means the date certified in the BSA Form 7 - *Certificate of Practical Completion* in accordance with Condition 15.
- (h) **“Enclosed Stage”** means that stage when the external wall cladding and roof covering is fixed, the structural flooring laid and the external doors and windows fixed (excluding the fixing of soffit linings, the pointing of a tile roof or the scribbling and final screwing of a metal roof).
- (i) **“Fixing Stage”** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in cabinets and built-in cupboards are fitted and fixed in position.
- (j) **“Foundations Data”** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
- (k) **“Frame Stage”** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
- (l) **“GST”** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
- (m) **“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
- (n) **“Loan Approval Date”** means the date stated in Schedule Item 14 by which the Owner must obtain Loan Approval.
- (o) **“Owner’s Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Contractor) as the person empowered by the Owner to communicate with the Contractor, including giving instruction as to variations.
- (p) **“Practical Completion”** means the date upon which the Works are completed in accordance with the requirements of this Contract, including Condition 3 and Condition 15, apart from minor omissions or minor defects.
- (q) **“Practical Completion Stage”** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
- (r) **“Prime Cost Item”** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Condition 16.
- (s) **“Provisional Sum”** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Condition 16.
- (t) **“Site”** means the Site described in Schedule Item 2 of this Contract.
- (u) **“Starting Date”** means whichever of the following dates occurs the latest:
- (i) the Starting Date stated in Schedule Item 3; or
 - (ii) the day which is 10 business days after the issue of the plans duly approved by the Assessing Certifier; or
 - (iii) the day which is 10 business days after the Owner has satisfied its obligations under Condition 6.
- (v) **“Total Price”** means the Total Price of the Works stated in Schedule Item 8 as adjusted under this Contract.
- (w) **“work under this Contract”** means all that work necessary to build the Works in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
- (i) work to make the Site accessible to the Contractor;
 - (ii) provision of any special equipment;

- (iii) set out of the Works and survey if necessary;
 - (iv) necessary structural retaining walls;
 - (v) sewerage, draining and electrical connections;
 - (vi) provision of temporary water and power during construction; and
 - (vii) provision of clean up and disposal of waste material from the Site.
- (x) **“Works”** means the work described in Schedule Item 1 to be built in accordance with this Contract, including variations authorised under the Contract, and which by the Contract is to be handed over to the Owner.

30. NOTICES

- 30.1 Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given in one of the following ways:
- (a) delivered to the other party by hand; or
 - (b) delivered by prepaid post to the address noted in the Schedule or other address subsequently notified in writing; or
 - (c) sent by facsimile to the facsimile number noted in the Schedule or other facsimile number subsequently notified in writing.
- 30.2 Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.
- 30.3 Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.

CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Make sure you keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS FOR GENERAL INFORMATION REGARDING YOUR BUILDING PROJECT:

	Name	Contact Details
Contractor		
		
		
Site Supervisor		
		
		
Building Certifier		
		
		
Local Government		
		
		
Solicitor		
		
		
Building Designer		
		
		
Finance Institution		
		
		
Insurance Company		
		
		
Neighbours (if relevant)		
		
		
Building Consultant		
		
		

GPO Box 5099
Brisbane QLD 4001

www.bsa.qld.gov.au

1300 272 272



**GENERAL
CONDITIONS
of
BSA NEW HOME
CONSTRUCTION CONTRACT**

*To be read in conjunction with the Consumer Guide for
BSA New Home Construction Contract*

AUGUST 2011

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CONTRACT CHECKLIST

This brief checklist is for guidance only and does not form part of the Contract. It is not intended for use in interpreting the Contract. A more detailed checklist is available on BSA's website at www.bsa.qld.gov.au.

Have you read and do you understand the Contract Documents?

Before you sign this Contract, you need to be sure you understand the Contract Schedule, the General Conditions of Contract and the other documents that are listed in the Schedule at Item 17. If you do not understand any part of them, you should seek formal legal advice.

Does the Contractor have a current BSA licence which is the right one for this work?

There are different classes of building licences for different work. **Telephone 1300 272 272 or visit the Online Licence Search on BSA's website www.bsa.qld.gov.au to confirm the contractor has a current and appropriate licence and to obtain details of the Contractor's past performance**, including the number and value of past projects and any dispute history.

Is the Contractor's licence number shown on the first page of the Contract Schedule?

Are the Works clearly defined at Schedule Item 1?

The description of the **Works** should be as detailed as possible and refer to the plans and specifications which show what work is to be done. An example of what you might say here is:

- construction of a new double storey cavity brick home in accordance with the attached plans and specifications and other contract documents; or
- construction of a timber deck, stairs and handrail in accordance with the attached plans and specifications and other contract documents.

Is the period for completion of the work realistic?

For example, does the Total Construction Period in Schedule Item 4 or the **Date for Practical Completion** in Schedule Item 6 include appropriate allowances for bad weather and non-working days?

Is the Total Price shown at Schedule Item 8?

The **Total Price** will be the amount arrived at by adding up the lump sum component and any **Prime Cost Items** and **Provisional Sums**. You should note that this price can be varied in accordance with the terms of the Contract. If there are **Prime Cost Items** or **Provisional Sums**, has the *Prime Cost Items Schedule* or the *Provisional Sums Schedule* been fully completed?

Prime Cost Items or **Provisional Sums** should be kept to a minimum and only included where:

- the particular item to be included has not yet been finally chosen;
- or where it is not possible for the Contractor to give a fixed price;
- or where the amount of work to be done cannot be precisely calculated when the contract is signed.

The Contractor must make reasonable allowances for **Prime Cost Items** and **Provisional Sums**. The Owner should make enquiries or consult with the Contractor to ensure that the allowances are realistic.

Does the Owner want compensation for extra costs if the Contractor finishes late ('Liquidated Damages')?

If the Owner wants to receive compensation ('liquidated damages') in the event the Contractor fails to finish the contracted work within the time allowed for in the Contract, then the Owner should insert an amount per day to be recovered in the space provided in Item 12 of the Contract Schedule. The amount should represent what the Owner realistically calculates he or she will be out-of-pocket if the work finishes late. For example, it might include extra rental and or storage costs, lost rent (for rental properties), additional mortgage costs, etc.

NOTE: The BSA New Home Construction Contract now contains a default provision whereby if Item 12 of the Schedule is left blank an amount (currently \$50 per calendar day) is deemed to apply to the period of delay beyond what is authorised under the Contract.

Are appropriate plans and specifications included in the Contract?

The Owner and the Contractor should carefully check the plans and specifications which, if required for the **Works**, must be included in the Contract Documents. This documentation should clearly set out all the work that is to be done. Both the Contractor and the Owner must be sure that they clearly understand the plans and specifications, and any other special Contract Documents listed at Schedule Item 17. The Owner should also receive a copy of any **Foundations Data** required for the **Works** obtained by the Contractor.

Do you have all the documents for the BSA New Home Construction Contract?

Before you sign the Contract, you should check that you have received, read and understood the:

- BSA Consumer Guide;
- Contract Schedule, with all relevant details completed;
- General Conditions of Contract;
- *Prime Cost Items Schedule*, fully completed (if applicable); and
- *Provisional Sums Schedule*, fully completed (if applicable).

In addition to the above documents, the Contractor is required to give you 2 copies of any forms you are asked to sign (e.g. Form 3 – *Progress Claim*, Form 5 – *Variation Document*, etc.). You should retain 1 copy for your files and give 1 copy to your Lender (if any).

Do you understand the Contract procedures which apply during the building process?

The Contract sets out the procedures and documentation which apply to:

- recording variations or changes to the work;
- payment claims by the Contractor; and
- the arrangements for commencement on Site, extensions of time and Practical Completion.

The standard forms included in the BSA New Home Construction Contract Pack are designed to help you and the Contractor implement the Contract. These forms should be used to document and record your response to variations, progress claims and claims by the Contractor for extensions of time.

Have you received written confirmation that the Contractor has paid for the Contract Works, Public Liability and the Queensland Home Warranty Scheme insurances?

From the day of handover, the house or other work is at the Owner's risk. You should arrange appropriate cover with your insurance company well in advance of **Practical Completion** and handover.

Have you read and do you understand the Contract Documents?

If you have any questions or concerns about the Contract documents you should obtain formal legal advice from a practising lawyer.

NOTE: Bold type words and phrases throughout this booklet are defined in Condition 29 on pages 14 to 16

GENERAL CONDITIONS

1. WITHDRAWAL DURING 'COOLING-OFF' PERIOD

- 1.1 The Owner may withdraw from the Contract within the times noted below:
- (a) within 5 **business days** of receiving from the Contractor a copy of both the signed Contract and the BSA Consumer Guide; or
 - (b) if the Contract is given to the Owner separately from the BSA Consumer Guide, then within 5 **business days** of receiving the second document.
- 1.2 Further, if the Contractor fails to give both the above documents to the Owner within 5 **business days** of the parties making the Contract then, in addition, the Owner may withdraw at any time up until 5 **business days** after the Owner receives those documents in accordance with (a) or (b) above.
- 1.3 If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 72 of the *Domestic Building Contracts Act 2000*.
- 1.4 If the Owner withdraws from the Contract pursuant to this condition, the Owner must pay to the Contractor the amount of \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract. If the Owner has already paid more than this amount at the time they withdraw, the Contractor must promptly refund the excess.
- 1.5 The Owner may not withdraw from the Contract under section 72 of the *Domestic Building Contracts Act 2000* if:
- (a) the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
 - (b) the Owner received formal legal advice about the Contract before entering into the Contract; or
 - (c) the Owner, at the time of entering into the Contract or after entering into the Contract, tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

2. LOAN APPROVAL

- 2.1 Unless Schedule Item 14 states that this Contract is not subject to Loan Approval, this Contract is subject to the Owner obtaining from the Lender, on or before the **Loan Approval Date**, approval of a Loan not less than the Amount of the Loan stated in Schedule Item 14 on terms satisfactory to the Owner.
- 2.2 The Owner must apply to the Lender for Loan Approval within 5 **business days** from the date of this Contract. The Owner must give the Contractor written notice on or before the **Loan Approval Date** stating whether the Owner has obtained Loan Approval.
- If, on or before the **Loan Approval Date**, the Owner:
- (a) gives the Contractor written notice that the Owner has obtained Loan Approval; or
 - (b) fails to give the Contractor written notice,
- this Contract continues and the parties must perform it.
- 2.3 If, on or before the **Loan Approval Date**, the Owner gives the Contractor written notice that the Owner has not obtained Loan Approval on terms satisfactory to the Owner, this Contract is at an end.
- 2.4 If this Contract is ended under this Condition, the Contractor must immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.
- 2.5 The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:
- (a) fees paid by the Contractor to another person for the **Foundations Data**;
 - (b) fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
 - (c) fees paid to an **Assessing Certifier** for development approval; and
 - (d) fees previously agreed with the Contractor for the provision of plans for the **Works**.
- 2.6 The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.

3. WARRANTIES UNDER THE DBC ACT

- 3.1 The Contractor must build the **Works** in compliance with this Contract and with all Acts of Parliament (including the *Domestic Building Contracts Act 2000*), Regulations and Bylaws which apply to the **work under this Contract** and the **Works**.
- 3.2 The Contractor must build the **Works**:
- (a) in an appropriate and skilful way and with reasonable care and skill;
 - (b) using materials which comply with this Contract and which are of good quality and suitable for the purpose for which they are used (having regard to generally accepted practices or standards in the industry and any instructions or recommendations of manufacturers or suppliers). All materials used by the Contractor must be new unless this Contract expressly provides otherwise;
 - (c) in accordance with all relevant laws and legal requirements;
 - (d) in accordance with the plans and specifications and any other Contract Documents described at Schedule Item 17 of the Contract Schedule; and
 - (e) so that:
 - (i) where the **Works** consist of the erection or construction of a detached dwelling or construction of a detached dwelling to a stage suitable for occupation, or the renovation, alteration, extension, improvement or repair of a home to a stage suitable for occupation, the **Works** are finished and conform with the requirements of this Contract and the detached dwelling or home is reasonably suitable for occupation and habitation; and
 - (ii) in all other cases, the **work under this Contract** is finished and the **Works** conform with the requirements of this Contract.
- 3.3 The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.
- 3.4 The Owner must pay the Contractor the price for the **Works** in accordance with this Contract.

4. WORKPLACE HEALTH & SAFETY

- 4.1 The Contractor acts as 'principal contractor' for the purposes of and pursuant to section 13 of the *Workplace Health and Safety Act 1995* for the duration of this Contract. The parties must execute all such instruments as may be required pursuant to that Act.
- 4.2 The Contractor must require all persons at the **Site** to comply with all applicable requirements pursuant to the *Workplace Health and Safety Act 1995* and may exclude or remove from the **Site** any person who fails so to comply.

5. PLAN APPROVAL

- 5.1 If this Contract is subject to Loan Approval, then within 10 **business days** from the date the Owner has given the Contractor written confirmation from the Lender or other evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**, but otherwise within 10 **business days** from the date of this Contract, the party named in Schedule Item 15 (or if no party is named, then the Contractor) must, subject to the Owner providing the written evidence required in the first paragraph of Condition 6, lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building, with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.
- 5.2 The responsible party must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.

6. EVIDENCE OF TITLE, BOUNDARIES AND CAPACITY TO PAY

- 6.1 Within 10 **business days** from the date of this Contract, the Owner must give the Contractor written evidence satisfactory to the Contractor of the Owner's title to the **Site** described in Schedule Item 2 and of the boundaries and position of the **Site**.

6.2 If the Contract is subject to Loan Approval, then within 10 **business days** from the **Loan Approval Date**, or upon a reasonable written request from the Contractor, the Owner must give the Contractor written confirmation from the Lender or other evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**. If the Contract is not subject to **Loan Approval**, the Owner must, within 10 **business days** from the date of this Contract, or upon a reasonable written request from the Contractor, provide the Contractor with written evidence satisfactory to the Contractor of the Owner's capacity to pay the **Total Price**.

7.6 The Owner must not interfere with the performance of the **work under this Contract** when at the **Site** and must ensure that any person authorised by the Owner to attend at the **Site** does not so interfere. If the Owner or any person authorised by the Owner causes such an interference and:

- (a) the interference causes a delay to the work or causes the Contractor to incur additional costs; and
- (b) the Contractor gives the Owner written notice of the delay or the additional costs within 5 calendar days of becoming aware of the interference,

then the Owner is liable to the Contractor for the delay or the additional costs.

7.7 The provisions of this Condition are subject in all respects to the provisions of Condition 4 of this Contract.

7. THE SITE

7.1 The Owner gives the Contractor a licence to enter and occupy the **Site** for the purpose of performing the **work under this Contract**.

7.2 The Contractor shall so occupy the **Site** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**. This Contract does NOT give the Contractor an interest in the land comprising the **Site**. The Contractor acknowledges that the licence granted by the Owner provides it with sufficient site access to perform the **work under this Contract**.

7.3 The Contractor may exclude persons from the **Site** other than:

- (a) the Owner;
- (b) any person authorised by the Owner;
- (c) the Lender;
- (d) the **Assessing Certifier**;
- (e) any officer of the relevant Local Authority; and
- (f) any officer of the Queensland Building Services Authority.

7.4 The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:

- (a) have reasonable access to the **Site**; and
- (b) view any part of the **work under this Contract**.

7.5 Except in the case of emergency, attendance at the **Site** by the Lender, the Owner, or any person authorised by the Owner, must be by prior arrangement with the Contractor and must be during working hours or at such other times as the Owner and the Contractor agree.

8. CARE OF THE WORK

8.1 The Contractor is responsible for the care of the **work under this Contract** from the date on which **work under this Contract** commences on **Site** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**. The Contractor must promptly make good loss or damage to that work occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

9. CONTRACTOR'S INDEMNITY IN FAVOUR OF THE OWNER

9.1 The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by the neglect or default of the Owner.

9.2 The Contractor must indemnify the Owner in respect of damage to the property or person of the Owner arising out of the **work under this Contract** except to the extent that such damage results from or is contributed to by the neglect of the Owner.

10. CONTRACTOR TO EFFECT INSURANCES

- 10.1 The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:
- (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
 - (b) all insurances required to comply with the *Queensland Building Services Authority Act 1991*; and
 - (c) Contract Works and Public Liability Insurances with a reputable and financially sound insurer which names or includes as an insured the Owner and the Contractor for their respective rights and interests upon usual and reasonable terms.
- 10.2 Contract Works Insurance must be for the full insurable value of the **Works** and must extend until 4.00 pm on the **Date of Practical Completion**. Public Liability Insurance must be for at least the amount of 5 million dollars and must:
- (a) cover the liabilities of the Contractor and the Owner to third parties in respect of personal injury, death or damage to property arising out of or in connection with the **work under this Contract**; and
 - (b) include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.
- 10.3 Prior to commencement of the **work under this Contract**, or upon request by the Owner, the Contractor must provide to the Owner written evidence that the Contract Works and Public Liability Insurances required under this Condition are current.

11. COMMUNICATION BETWEEN THE OWNER & THE CONTRACTOR

- 11.1 The Owner or the **Owner's Representative** must communicate and deal with the Contractor personally or with the **Contractor's Representative**. The Owner must not give directions to the Contractor's employees or subcontractors.

- 11.2 The Owner is not entitled to rely on any statements made or representations given by the Contractor's employees or subcontractors other than those made or given by the Contractor personally or by the **Contractor's Representative**.
- 11.3 All written communications between the Owner and the Contractor must be in the English language and must be clearly legible.

12. COMMENCEMENT AND PERFORMANCE OF THE WORKS

- 12.1 The Contractor must commence **work under this Contract** at the **Site** on or before the **Starting Date**.
- 12.2 Within 10 **business days** after the date on which **work under this Contract** commences on **Site** the Contractor must give a written notice to the Owner (such as BSA Form 1 - *Commencement Notice*) stating:
- (a) the date on which **work under this Contract** commenced on **Site**; and
 - (b) the **Date for Practical Completion**.
- 12.3 The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

13. TIME FOR PRACTICAL COMPLETION

- 13.1 The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated in or calculated in accordance with Schedule Item 6 or any extended date under Condition 14 or under Condition 7.

14. EXTENSION OF TIME

- 14.1 The Contractor may claim and is entitled to a reasonable extension of the **Date for Practical Completion** to the extent contemplated by and subject to the provisions of the remaining paragraphs of this Condition, if the Contractor is or will be delayed in achieving **Practical Completion** of the **Works** by any of the following causes:

- (a) events occurring on or before the **Date for Practical Completion** which are beyond the reasonable control of the Contractor, including, but not limited to, general industrial action (excluding contractor-specific action) and inclement weather (subject to the provisions of the remaining paragraphs of this Condition);
 - (b) delays occasioned by the Owner, the **Owner's Representative**, the Owner's employees or the Owner's agents (whether occurring before or after the **Date for Practical Completion**);
 - (c) a variation which is the subject of a Variation Document in accordance with the provisions of Condition 22 of this Contract so long as:
 - (i) the variation was one requested by the Owner; or
 - (ii) for a variation not requested by the Owner, then only if the variation was required due to circumstances which the Contractor could not reasonably have foreseen when the Contract was made; or
 - (d) Schedule Item 4B delays if:
 - (i) there is a delay for any of the reasons listed in Schedule Item 4B; and
 - (ii) the number of days actually delayed is more than that provided for in Schedule Item 4B.
- 14.2 **NOTE:** For a delay to be claimed under Schedule Item 4B, the delay allowed for must be reasonable having regard to the circumstances. The Contractor may not claim an extension for Schedule Item 4B delays in any other circumstance.
- 14.3 The Contractor must take all reasonable steps to lessen the effect and duration of any delay.
- 14.4 If the Contractor wishes to claim an extension of the **Date for Practical Completion** other than under Condition 7, the Contractor must give to the Owner a BSA Form 2 - *Extension of Time Claim and Owner's Response to Claim* with the particulars completed or other written notice which must:
- (a) be given within 10 **business days** of the occurrence of the relevant cause of delay;
 - (b) identify the cause of the delay;
 - (c) state the period of time that the Contractor wishes to claim an extension of the **Date for Practical Completion**; and
 - (d) attach supporting documents (supporting documents may include copies of variation documents, dates of **business days** affected by inclement weather, etc.).
- 14.5 The Owner must then, within 10 **business days** of receiving the Contractor's claim, return to the Contractor the said Form 2 - *Extension of Time Claim and Owner's Response to Claim* or other written notice stating that:
- (a) the Owner agrees to the claimed extension; or
 - (b) the Owner wholly or partially rejects the claimed extension and giving the Contractor reasons for that rejection.
- 14.6 If the Owner does not respond to the Contractor's claim, the extension of time claimed by the Contractor will be deemed to be disputed by the Owner.
- 14.7 Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to loss, cost or expense actually incurred by the Contractor by reason of the wrongful rejection of a claim for an extension of the **Date for Practical Completion**.

15. PRACTICAL COMPLETION

- 15.1 The Contractor must give to the Owner 3 **business days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach **Practical Completion**. On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** must inspect the **Works**.
- 15.2 If the Owner is satisfied that the **Works** have reached **Practical Completion** and if the Contractor has provided to the Owner satisfactory written evidence (including copies of all relevant certificates of inspection) that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must complete and sign the BSA Form 6 - *Defects Document* or similar appropriate document and give a copy to the Owner, and then give the Owner a completed and signed BSA Form 7 - *Certificate of Practical Completion* stating that date as the **Date of Practical Completion**.
- 15.3 Finally, the Contractor must hand over the **Works** to the Owner on the **Date of Practical Completion** and the Owner must pay the Progress Claim for the **Practical Completion Stage** immediately to the Contractor.

- 15.4 If the Owner considers that the **Works** have not reached **Practical Completion** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.
- 15.5 The issue of a Certificate of **Practical Completion** does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.

16. PRICE

- 16.1 The parties agree that the **Total Price** stated in Schedule Item 8 comprises the following:
- Lump Sum Component;
 - Prime Cost Items** Component (if any); and
 - Provisional Sum** Items Component (if any).
- 16.2 If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sums** (including the Contractor's margin) exceeds 10% as a proportion of the **Total Price** as stated in Schedule Item 8, the Contractor must give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**. In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.
- 16.3 If amounts are shown adjacent to **Prime Cost Items** and **Provisional Sums** in Schedule Item 7, the Contractor must give the Owner a separate schedule which states for each **Prime Cost Item** or **Provisional Sum**, the following details:
- a detailed description of the **Prime Cost Item** or of the contracted services to which the **Provisional Sum** relates;
 - a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**; and
 - how any amount to be charged by the Contractor above the actual amount of any increase in the cost of the **Prime Cost Item** or **Provisional Sum** is to be calculated.
- 16.4 The following provisions apply to the Components of the **Total Price**:

LUMP SUM COMPONENT

- 16.5 The Lump Sum Component of the **Total Price** is the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**, other than:
- any items set out in the *Prime Cost Items Schedule* which forms part of this Contract; and
 - any amounts for any work set out in the *Provisional Sums Schedule* which forms part of this Contract.
- 16.6 The Lump Sum Component of the **Total Price** must not be adjusted except as permitted by Condition 22.

PRIME COST ITEMS STIPULATED BY OWNER

- 16.7 The *Prime Cost Items Schedule* must set out items which the Owner has not finally selected, or for which the Contractor is not reasonably able to determine the cost, at the date of this Contract and which the Contractor cannot therefore price accurately as at that date. The *Prime Cost Items Schedule* must set out the Contractor's best estimate, as at that date, of the price of each such item and any margin the Contractor proposes to recover in providing the item for the purposes of the **work under this Contract**.
- 16.8 The Contractor warrants that each such estimate:
- has been prepared with reasonable skill and care; and
 - represents the reasonable cost of supplying and delivering each such item, including the Contractor's margin.
- 16.9 For items which the Owner has not finally selected when the Contract is signed, the Owner must select each such item and notify the Contractor in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed. The Contractor, when so notified, must obtain, supply and fix the relevant item.
- 16.10 If the actual cost of a **Prime Cost Item** is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the *Prime Cost Items Schedule*) on the increase for the Contractor's overheads and profits.
- 16.11 If the actual cost of a **Prime Cost Item** is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the **Total Price**.

16.12 The Contractor must provide the Owner with a copy of any invoice, receipt or other document showing the cost of the item to the Contractor before or when making the next progress claim under the Contract. The Contractor cannot seek payment for the item until the progress claim following the incorporation of the item in the **Works**.

PROVISIONAL SUMS STIPULATED BY CONTRACTOR

16.13 The *Provisional Sums Schedule* must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.

16.14 The *Provisional Sums Schedule* must also set out the rates or prices applicable to each such item of work and the Contractor's best estimate, as at that date, of the price of each such item. The Contractor warrants that each such estimate:

- (a) has been prepared with reasonable skill and care; and
- (b) represents the reasonable cost of providing the item of work.

16.15 The Contractor warrants that each such estimate has been given having regard to:

- (a) the information the Contractor had, or reasonably should have had, when the Contract was entered into, including the results of any contour surveys, soil testing or other geotechnical information; and
- (b) the nature and location of the **Site**, including all those aspects of the **Site** which would be apparent upon an inspection of the **Site** by a reasonably competent Contractor.

16.16 If the actual value for a **Provisional Sum** Item is more than the Contractor's estimate, the Owner must pay the Contractor for the increased work valued in accordance with the rates or prices (including the Contractor's margin) stated in the *Provisional Sums Schedule*. If the actual value for a **Provisional Sum** Item is less than the Contractor's estimate in the *Provisional Sums Schedule*, the Contractor must deduct the difference, plus the Contractor's margin, from the **Total Price**.

16.17 As soon as practicable after the Contractor becomes aware that the actual value of any **Provisional Sum** Item will be more than 10% above the Contractor's estimate for that item in the *Provisional Sums Schedule* the Contractor must provide the Owner with a written notice which:

- (a) describes the **Provisional Sum**;

(b) states the cost to the Contractor of the **Provisional Sum** Item together with the Contractor's margin, and the amount by which this amount exceeds the total allowance for that item in the *Provisional Sums Schedule*; and

(c) identifies the Progress Payment stage under this Contract at which payment for the **Provisional Sum** will be required.

16.18 The Contractor must provide the Owner with a copy of any invoice, receipt or other document relating to the cost to the Contractor of the work completed for a **Provisional Sum** Item before or when making the next progress claim under the Contract.

GOODS AND SERVICES TAX

16.19 The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any Variation pursuant to Condition 22) have been or will be calculated on a **GST** inclusive basis.

17. PAYMENT

17.1 The Owner must pay the Contractor the **Total Price** for the **Works** in accordance with this Condition.

17.2 The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 9 upon the signing of this Contract. The amount payable by way of deposit must not exceed:

- (a) 5% of the **Total Price** if the **Total Price** is \$20,000 or more; or
- (b) 10% of the **Total Price** if the **Total Price** is less than \$20,000.

17.3 If the deposit stated in Schedule Item 9 exceeds the relevant maximum percentage the deposit payable hereunder must be reduced to an amount equal to that maximum percentage.

17.4 The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 10 or in any separate document setting out payment stages.

17.5 A progress claim must:

- (a) be in writing using a BSA Form 3 - *Progress Claim* or other similar written notice;
- (b) be accompanied by a BSA Form 4 - *Notice of Dispute of Progress Claim* or similar appropriate written notice.

- (c) certify that the **work under this Contract** has been completed to the relevant stage; and
- (d) be accompanied by invoices, receipts or other documents showing the cost to the Contractor of any **Prime Cost Item** or **Provisional Sum** in respect of which a claim for payment is made.

17.6 If the Progress Claim for the **Practical Completion Stage**:

- (a) is in accordance with the requirements listed above;
- (b) is accompanied by a completed and signed BSA Form 6 - *Defects Document* or similar appropriate document; and
- (c) the Contractor has satisfied all the requirements of Condition 15,

then the Owner must immediately pay the Contractor the Progress Claim for the **Practical Completion Stage** (as adjusted under Condition 19, if applicable).

17.7 The Progress Payment for each stage shall consist of:

- (a) the percentage of the Lump Sum Component or other progress payment applicable to that stage as stated in Schedule Item 10 or in any separate document setting out payment stages;
- (b) the amount payable for any **Prime Cost Items** incorporated in the **Works** to that stage and not included in a previous Progress Payment;
- (c) the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment provided that the Contractor has given the Owner the relevant supporting documents, and, where applicable, satisfied the relevant notice requirements, in Condition 16. If there is a dispute between the parties as to the reasonableness of any amount in excess of the Contractor's estimate for that item in the *Provisional Sums Schedule*, that dispute must be referred for resolution in accordance with Condition 28; and
- (d) any other amount then payable to the Contractor in respect of variations commenced or completed pursuant to and in accordance with Condition 22.

17.8 In respect to any progress claim other than the Progress Claim for the **Practical Completion Stage**:

- (a) the Owner must pay the Contractor the Progress Payment, or so much of the relevant claim as is not disputed by the Owner, within **5 business days** of receipt of the relevant claim;
- (b) if the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must within **5 business days** of receipt of the

relevant claim give to the Contractor a BSA Form 4 - *Notice of Dispute of Progress Claim* with the particulars completed or other appropriate written notice, stating the reasons for so disputing the claim or part of it. If that dispute is not resolved by the parties within **5 business days** of the receipt by the Contractor of the notice of that dispute, the dispute must be referred for resolution in accordance with Condition 28.

18. SECURITY ACCOUNT MONEY

18.1 If this Contract is not subject to Loan Approval and if Schedule Item 11 is completed, the Owner must, within **5 business days** of the date of this Contract, deposit in an interest bearing account in a bank or other financial institution nominated by the Owner, the amount stipulated in Schedule Item 11 as Security Account Money.

18.2 The account must be in the joint names of the Owner and the Contractor and the authority of each of the Owner and the Contractor must be required to effect any withdrawal. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.

18.3 The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.

18.4 If the Owner fails to pay any money due and owing to the Contractor **5 business days**, or if the Contractor terminates the Contract pursuant to Condition 26 or Condition 27, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.

18.5 Upon payment of the last Progress Payment due to the Contractor as provided by Condition 17, the Owner is entitled to any remaining Security Account Money (including interest).

18.6 If there is a dispute between the parties as to the entitlement to Security Account Money, the Security Account Money must be dealt with in accordance with any order or direction of the Queensland Civil and Administrative Tribunal. The parties hereby authorise the relevant bank or other financial institution to pay any Security Account Money in accordance with any such order or direction and acknowledge that the relevant bank or other financial institution is under no liability whatsoever to either party on account of any such payment.

19. LIQUIDATED DAMAGES

- 19.1 If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 12.
- 19.2 If Schedule Item 12 is left blank, a default amount of \$50 per day shall be deemed to apply.
- 19.3 Liquidated damages may only be deducted by the Owner from the amount payable to the Contractor in respect of the **Practical Completion Stage**. If the Owner's entitlement to liquidated damages exceeds the amount payable to the Contractor for the **Practical Completion Stage**, the excess may be recovered by the Owner as a debt due to the Owner by the Contractor.

WARNING TO OWNER

The entitlement to claim, and the amount to be deducted, for liquidated damages must be assessed carefully and in accordance with the Contract.

20. INTEREST ON OVERDUE PAYMENTS

- 20.1 The Owner must pay the Contractor interest on overdue payments at the rate set out in Schedule Item 13 or at the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the payment becomes overdue plus 5% per annum (the 'default rate'), whichever is the lesser rate. If no amount is entered in Schedule Item 13 the default rate shall apply.

21. DEFECTS AFTER COMPLETION

- 21.1 The Contractor must make good defects or omissions in the **work under this Contract** which become apparent within 6 months of the **Date of Practical Completion**.
- 21.2 If there are any such defects or omissions, the Owner must give the Contractor written notice to make good such defects or omissions not later than 1 month after that 6 months period and must give the Contractor reasonable access to the **Site** for that purpose.

- 21.3 The Contractor must make good such defects or omissions promptly. The Contractor must correct the agreed minor defects or minor omissions listed in the BSA Form 6 - *Defects Document* or similar appropriate document by the date or within the time stated in that document. This Condition does not exclude the Contractor from any liability otherwise arising under this Contract or under the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*.

22. VARIATIONS

- 22.1 The **work under this Contract** may be varied by way of an increase, decrease or substitution of **work under this Contract** agreed between the Contractor and the Owner provided that the details of the variation are put in writing in a Variation Document signed by both the parties and initialled as necessary by the Owner.
- 22.2 The Variation Document may be a BSA Form 5 - *Variation Document*, or other similar appropriate document, with the particulars completed in accordance with the requirements of the *Domestic Building Contracts Act 2000*, signed by both parties and initialled as necessary by the Owner. The **work under this Contract** may be varied in any of the following ways:

VARIATIONS BY AGREEMENT

- 22.3 Either party may give to the other written notice requesting a variation of the **work under this Contract**. The Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties and initialled as necessary by the Owner.
- 22.4 If the Contractor has requested the variation, the Contractor is only entitled to additional payment if the variation was necessary because of circumstances that could not have been reasonably foreseen by the Contractor when the Contract was entered into.

VARIATIONS REQUIRED BY LAW

- 22.5 If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner, vary the **work under this Contract** accordingly. If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense. In any other case, the

Contractor shall give to the Owner the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.

VARIATIONS FOR EXTRA EXCAVATIONS AND FOUNDATIONS

- 22.6 If the Owner is named in Schedule Item 16 as the party responsible for extra excavations and foundations, and if it becomes apparent that extra work or materials are required in respect of excavations or foundations beyond what could reasonably be established by the required **foundations data**, then the Contractor may, with the prior written consent of the Owner, vary the **work under this Contract** to include the provision of such extra work or materials.
- 22.7 In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within 5 **business days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the price, if any, consequent upon the proposed variation, and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties.
- 22.8 The Contractor cannot seek additional payment from the Owner for a variation in respect of extra excavations and foundations where the need for the variation has arisen because:
- (a) the Contractor failed to obtain the appropriate **Foundations Data** before entering the Contract and, had the Contractor obtained the appropriate **Foundations Data**, the need for the additional amount could reasonably have been established; or
 - (b) the Contractor obtained the appropriate **Foundations Data**, and the need for the extra work or materials could reasonably have been established from the **Foundations Data**.

23. ASSIGNMENT AND SUBCONTRACTING

- 23.1 The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.
- 23.2 The Contractor may subcontract parts of the **work under this Contract** to appropriately licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

24. COPYRIGHT

- 24.1 A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.
- 24.2 Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** in accordance with those plans.

25. TERMINATION FOR LACK OF BUILDING APPROVAL

- 25.1 Either party may give a written notice to the other terminating this Contract if, without fault on the part of the party giving the notice, any permission, consent or approval necessary for the commencement of building has not issued within 3 months of the date of this Contract.
- 25.2 If the Contract is terminated pursuant to this Condition the Contractor's only entitlement to payment from the Owner is for the reasonable value of any work properly carried out by the Contractor prior to that termination which has not been the subject of previous payment.

26. TERMINATION FOR INSOLVENCY

- 26.1 If a party to this Contract:
- (a) becomes insolvent or unable to pay their debts; or
 - (b) commits an act of bankruptcy; or
 - (c) is made bankrupt; or
 - (d) assigns assets for the benefit of creditors generally; or
 - (e) makes a composition or other arrangement with creditors; or
 - (f) being a company goes into liquidation or receivership,
- then the other party may forthwith, or as soon thereafter as that other party thinks fit, terminate this Contract.

- 26.2 If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the **Site** and retain all unfixed materials, goods, plant and equipment previously provided at the **Site** by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.
- 26.3 If the Owner terminates the Contract under this Condition, the Owner may, in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials and goods previously provided at the **Site** by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract.
- 26.4 Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

27. TERMINATION AFTER NOTICE OF DEFAULT

- 27.1 If:
- (a) a party is in substantial breach of this Contract; and
 - (b) the other party gives a notice to the party in breach stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within 10 **business days** from the giving of the notice; and
 - (c) the breach is not so remedied,
- then, the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.
- 27.2 The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

- 27.3 Substantial breach by the Owner includes, but is not limited to:
- (a) failing to produce evidence satisfactory to the Contractor of the Owner's title to the **Site** or of the Owner's capacity to pay the **Total Price** in compliance with Condition 6 of this Contract;
 - (b) failing to pay any money due and owing to the Contractor for 5 **business days**; and
 - (c) substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.
- 27.4 Substantial breach by the Contractor includes, but is not limited to:
- (a) failing to perform the **work under this Contract** competently;
 - (b) failing to provide materials which comply with this Contract;
 - (c) unreasonably failing to replace or remedy defective work or materials;
 - (d) unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
 - (e) failing to effect or maintain any insurance required by this Contract; and
 - (f) failing to hold the current, active and appropriate licence required to perform the **Works**.

28. DISPUTE RESOLUTION

- 28.1 Any dispute between the Owner and the Contractor arising under or in connection with the Contract and which requires proceedings for resolution must be referred to the Queensland Civil and Administrative Tribunal.

29. DEFINITIONS

- 29.1 In this Contract, unless the context otherwise requires, expressions defined or explained in the Contract Schedule have the meaning so defined or explained below:
- (a) "**Assessing Certifier**" means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the **Works**.

- (b) **“Base Stage”** means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
- (c) **“business day”** means a day that is not:
- (i) a Saturday or Sunday; or
 - (ii) a public holiday, special holiday, or bank holiday in Queensland.
- (d) **“Contractor’s Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Owner) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
- (e) **“Date for Practical Completion”** means the date stated in or calculated by reference to Schedule Item 6 or any extended date pursuant to this Contract.
- (f) **“Date of Commencement of Works on Site”** means the date the Works commenced on Site as stated in the Commencement Notice issued by the Contractor.
- (g) **“Date of Practical Completion”** means the date certified in the BSA Form 7 - *Certificate of Practical Completion* in accordance with Condition 15.
- (h) **“Enclosed Stage”** means that stage when the external wall cladding and roof covering is fixed, the structural flooring laid and the external doors and windows fixed (excluding the fixing of soffit linings, the pointing of a tile roof or the scribbling and final screwing of a metal roof).
- (i) **“Fixing Stage”** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in cabinets and built-in cupboards are fitted and fixed in position.
- (j) **“Foundations Data”** means information about the building Site required to prepare footings design and, if required, concrete slab design for the Site.
- (k) **“Frame Stage”** means that stage when the building frame is completed and ready for inspection by the Assessing Certifier.
- (l) **“GST”** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
- (m) **“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* and any related tax imposition Act.
- (n) **“Loan Approval Date”** means the date stated in Schedule Item 14 by which the Owner must obtain Loan Approval.
- (o) **“Owner’s Representative”** means the person identified on the first page of the Contract Schedule (or other person notified in writing to the Contractor) as the person empowered by the Owner to communicate with the Contractor, including giving instruction as to variations.
- (p) **“Practical Completion”** means the date upon which the Works are completed in accordance with the requirements of this Contract, including Condition 3 and Condition 15, apart from minor omissions or minor defects.
- (q) **“Practical Completion Stage”** means that stage of the Works in which Practical Completion will be attained in accordance with this Contract.
- (r) **“Prime Cost Item”** means any item noted in the *Prime Cost Items Schedule* to this Contract and as contemplated by Condition 16.
- (s) **“Provisional Sum”** means any item noted in the *Provisional Sums Schedule* to this Contract and as contemplated by Condition 16.
- (t) **“Site”** means the Site described in Schedule Item 2 of this Contract.
- (u) **“Starting Date”** means whichever of the following dates occurs the latest:
- (i) the Starting Date stated in Schedule Item 3; or
 - (ii) the day which is 10 business days after the issue of the plans duly approved by the Assessing Certifier; or
 - (iii) the day which is 10 business days after the Owner has satisfied its obligations under Condition 6.
- (v) **“Total Price”** means the Total Price of the Works stated in Schedule Item 8 as adjusted under this Contract.
- (w) **“work under this Contract”** means all that work necessary to build the Works in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
- (i) work to make the Site accessible to the Contractor;
 - (ii) provision of any special equipment;

- (iii) set out of the Works and survey if necessary;
 - (iv) necessary structural retaining walls;
 - (v) sewerage, draining and electrical connections;
 - (vi) provision of temporary water and power during construction; and
 - (vii) provision of clean up and disposal of waste material from the Site.
- (x) **“Works”** means the work described in Schedule Item 1 to be built in accordance with this Contract, including variations authorised under the Contract, and which by the Contract is to be handed over to the Owner.

30. NOTICES

- 30.1 Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given in one of the following ways:
- (a) delivered to the other party by hand; or
 - (b) delivered by prepaid post to the address noted in the Schedule or other address subsequently notified in writing; or
 - (c) sent by facsimile to the facsimile number noted in the Schedule or other facsimile number subsequently notified in writing.
- 30.2 Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.
- 30.3 Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.

CONTACT LIST

The contact list below is provided to enable you to conveniently record the names and contact details of people and organisations important to your project. Make sure you keep copies of all important papers regarding your project in a safe place.

YOUR PERSONAL CONTACTS FOR GENERAL INFORMATION REGARDING YOUR BUILDING PROJECT:

	Name	Contact Details
Contractor		
		
		
Site Supervisor		
		
		
Building Certifier		
		
		
Local Government		
		
		
Solicitor		
		
		
Building Designer		
		
		
Finance Institution		
		
		
Insurance Company		
		
		
Neighbours (if relevant)		
		
		
Building Consultant		
		
		

GPO Box 5099
Brisbane QLD 4001

www.bsa.qld.gov.au

1300 272 272



BSA NEW HOME CONSTRUCTION CONTRACT

THIS DOCUMENT CONTAINS:

Schedule for BSA New Home Construction Contract

Prime Cost Items Schedule

Provisional Sums Schedule

Form 1 - *Commencement Notice*

Form 2 - *Extension of Time Claim and Owner's Response to Claim*

Form 3 - *Progress Claim*

Form 4 - *Notice of Dispute of Progress Claim*

Form 5 - *Variation Document*

Form 6 - *Defects Document*

Form 7 - *Certificate of Practical Completion*

These forms are produced on 'No Carbon Required' (NCR) paper.

(Fold this page under the triplicate copy when filling out forms)

**When each form or Schedule is completed,
Contractor is to retain the original document and give 2 copies to the Owner.
Extra copies of forms and Schedules may be downloaded from BSA's website.**



SCHEDULE FOR BSA NEW HOME CONSTRUCTION CONTRACT

NOTE TO OWNER: To better understand your contractual rights and obligations, please read the accompanying BSA Consumer Guide and General Conditions, both dated August 2011.

NOTE TO CONTRACTOR: When completed, retain original and give 2 signed copies of this Schedule to the Owner.

THE OWNER

Page 1 of 4

Owner's name/s: _____

Address: _____

Post Code: _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

Owner has checked the Contractor's licence and history via BSA's Online Licence Search: Yes No

The Owner IS IS NOT a Resident Owner. (Tick the appropriate box)

NOTE: An Owner is a Resident Owner if he/she intends to live in the Works on completion or within 6 months after completion

Owner's Authorised Representative (if any): _____

Address: _____

Post Code: _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

NOTICE TO OWNER: 'COOLING-OFF' PERIOD

Under the *Domestic Building Contracts Act 2000* you may have the right to withdraw from this Contract during the cooling-off period of 5 business days commencing when you have received both a signed copy of this Contract and the Consumer Guide. If you wish to withdraw under the 'cooling-off' provisions you must give the Contractor a written notice stating that you withdraw from the Contract under section 72 of the *Domestic Building Contracts Act 2000* (see Condition 1 of the General Conditions for more details).

THE CONTRACTOR

Contractor's name (must be as shown on licence): _____

Licence Number: _____ ABN No: _____

Contractor confirms: My licence is current, active and appropriate for this work: Yes No

Address: _____

Post Code: _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

Contractor's Authorised Representative (if any): _____

Address: _____

Post Code: _____

Business Phone: _____ Home Phone: _____ Fax: _____

Mobile Phone: _____ Email: _____

Item	Subject	Notes	Particulars
1.	BRIEF DESCRIPTION OF THE WORKS	Insert a description of what is to be built and attach and refer to the plans and specifications e.g. <i>construction of a new home and swimming pool as per attached plans & specifications.</i>	
2.	SITE Condition 7		Site Address: _____ Real Property Description: Lot No: _____ Plan Type (e.g. RP/SP/BUP): _____ Plan No: _____ Local Authority: _____
3.	STARTING DATE Conditions 6, 12 & 29	NOTE: The Contractor must ensure that the work under this Contract starts by the latest of: <ul style="list-style-type: none"> ▪ the Starting Date stated herein; or ▪ 10 business days after the issue of approved plans by the Assessing Certifier; or ▪ 10 business days after the Owner has provided proof satisfactory to the Contractor of title to the Site, Site boundaries and financial capacity as required under Condition 6. / /	
4.	TOTAL CONSTRUCTION PERIOD Condition 13	NOTE TO CONTRACTOR: You must state here the allowances you have made for these delays, if there is a reasonable likelihood they will affect the time required to carry out the work. NOTE TO OWNER: The Contractor is not entitled to claim an extension of the Date for Practical Completion (Item 6) unless the number of days the Contractor is actually delayed is greater than those stated here for each allowance.	<div style="text-align: right;"><u>Calendar Days</u></div> A. Construction Period Days (excluding delays in B) Days required to construct the Works = <u> A </u> PLUS B. Delays allowed for which can be estimated ('calculable delays') (i) Non-working days (incl. w/ends, RDOs, public holidays, etc.) = _____ (ii) Inclement weather allowance = _____ (iii) Other delays = _____ Total delay days allowed = <u> B </u> C. TOTAL CONSTRUCTION PERIOD Days required to construct (Item 4A) <u> A + B </u> PLUS Total delay days allowed (Item 4B) _____
5.	DELAYS NOT ALLOWED FOR ('INCALCULABLE DELAYS') Conditions 13 and 14	NOTE: If you reasonably believe that a delay will happen but you cannot estimate the number of days, complete this item. An example of such a delay could be a delay in the delivery of imported materials or fittings which may affect the completion of the project..	State the reason for the likely delay: _____ _____ State the general effect the delay is likely to have on the carrying out of the work under this Contract: _____ _____
6.	DATE FOR PRACTICAL COMPLETION Conditions 13 and 14	NOTE: Complete only one of the options in the 'Particulars' column (i.e. date or number of days) and delete the other.	Date: / / OR calendar days calculated in Schedule Item 4 (Total Construction Period) from the Starting Date or the date on which the work under this contract is commenced, whichever is the earlier.

Item	Subject	Notes	Particulars
7.	PRICE Condition 16	<p>NOTE: For Prime Cost Items and Provisional Sums see Condition 16. A separate schedule for these items must be attached.</p> <p>WARNING: The Total Price is subject to change due to Conditions 7, 14, 16, 19, 20 & 22.</p>	<p>(a) Lump Sum Component: \$ _____ (incl. GST) (includes deposit in Item 9)</p> <p style="text-align: center;">+</p> <p>(b) Prime Cost Items (if any): \$ _____ (incl. GST)</p> <p style="text-align: center;">+</p> <p>(c) Provisional Sums (if any): \$ _____ (incl. GST)</p>
8.	TOTAL PRICE	Add 7(a) + 7(b) +7(c)	TOTAL PRICE: \$ _____ (incl. GST)
9.	DEPOSIT Condition 17	<p>NOTE: The deposit must not exceed 5% of the Total Price if the Total Price is \$20,000 or more, or 10% of the Total Price if the Total Price is less than \$20,000.</p>	Amount of deposit: \$ _____ (incl. GST)
10.	PROGRESS PAYMENTS Condition 17	<p>NOTE: The designated stages set out at this Item are appropriate for the construction of a new home.</p> <p>If the work to be done does not involve the construction of a new home, the agreed stages should be set out here and the progress payments must be directly related to work progress on Site. An explanation of the work to be completed in each of these stages must be attached.</p>	<p>For construction of a new home (all prices incl. GST):</p> <p>Base stage (excluding deposit) – 10% \$ _____</p> <p style="padding-left: 100px;">Frame Stage – 15% \$ _____</p> <p style="padding-left: 100px;">Enclosed Stage – 35% \$ _____</p> <p style="padding-left: 100px;">Fixing Stage – 20% \$ _____</p> <p style="padding-left: 100px;">Practical Completion – Balance \$ _____</p> <p style="text-align: center;">OR</p> <p>For building work other than a new home (e.g. renovation):</p> <p>Stage 1 : _____ % \$ _____</p> <p>Stage 2 : _____ % \$ _____</p> <p>Stage 3 : _____ % \$ _____</p> <p>Stage 4 : _____ % \$ _____</p> <p>Final Payment – Balance \$ _____</p>
<p>WARNING: Insurance protection under the Queensland Home Warranty Scheme administered by BSA may be reduced if payments are made in advance of contract terms and construction progress.</p>			
11.	AMOUNT TO BE DEPOSITED IN SECURITY ACCOUNT Condition 18	<p>NOTE: This Item is optional – it may be relevant when the Contract is not subject to loan approval.</p>	\$ _____
12.	LIQUIDATED DAMAGES Condition 19	<p>NOTE TO OWNER AND CONTRACTOR: You must discuss whether, or what, liquidated damages (LDs) apply to this project and insert either an amount per day or 'NIL' if LDs do not apply. If this space is left blank a default amount of \$50/day shall apply.</p>	<p>\$ _____ per day for each calendar day of delay in achieving Practical Completion.</p> <p>NOTE TO OWNER REGARDING LIQUIDATED DAMAGES (if applicable): It is very important that you carefully consider and complete this section. The liquidated damages amount should be a genuine pre-estimate of the costs/losses the Owner will incur (if any) in the event the work under this Contract is not completed by the Date for Practical Completion (including any extra rental and storage costs, lost rent for rental properties, finance costs, etc. directly related to the delay in reaching Practical Completion).</p>

Item	Subject	Notes	Particulars
13.	INTEREST RATE ON OVERDUE PAYMENTS Condition 20		_____ % per annum The rate will not exceed the Commonwealth Bank of Australia Standard Variable Rate for home loans + 5%.
14.	LOAN APPROVAL Condition 2	WARNING TO OWNER: The Loan Approval Date is the date by which the Owner must obtain Loan Approval. Consult your Lender before inserting a date. Delays in providing evidence of your financial capacity may delay the start of your project or lead to termination of the Contract.	The Contract IS / IS NOT subject to Loan Approval. (Cross out whichever does not apply) Lender: _____ Lender's address: _____ Amount of Loan: \$ _____ Loan Approval Date: / /
15.	PARTY RESPONSIBLE FOR OBTAINING PLAN APPROVALS Condition 5		_____ (State whether the responsible party is Owner or Contractor)
16.	Party responsible for costs of extra excavations and foundations Condition 22	This relates to responsibility for extra excavations and foundations beyond what could reasonably be established from foundations data.	_____ (State whether the responsible party is Owner or Contractor)
17.	CONTRACT DOCUMENTS	NOTE: Any subsequent amendments or variations to this Contract must be recorded in a Variation Document (such as BSA Form 5) which then forms part of the Contract.	(a) PLANS supplied by: Contractor <input type="checkbox"/> Owner <input type="checkbox"/> on / / N/A <input type="checkbox"/> (b) SPECIFICATIONS supplied by: Contractor <input type="checkbox"/> Owner <input type="checkbox"/> on / / N/A <input type="checkbox"/> (c) PRIME COST ITEMS / PROVISIONAL SUMS Are Prime Cost Items included? YES <input type="checkbox"/> NO <input type="checkbox"/> Are Provisional Sums included? YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, complete the Prime Cost Items or Provisional Sums Schedule/s. (d) FOUNDATIONS DATA supplied by: Contractor <input type="checkbox"/> Owner <input type="checkbox"/> on / / N/A <input type="checkbox"/> NOTE: Foundations Data must be obtained if the contracted work requires the construction or alteration of, or may adversely affect, footings or a concrete slab for a building. Unless appropriate and reliable Foundation Data already exists, the Contractor is required to obtain appropriate Foundations Data and provide a copy to the Owner upon payment of the costs incurred in obtaining the data.
18.	SIGNATURES	NOTE: The Contractor must give the Owner a signed copy of this Contract and all related documents within 5 business days of both parties signing and before work commences.	Dated this: day of 20..... Signed by the Owner/s: Owner 1: _____ Owner 2: (if any) _____ In the presence of: _____ (witness) Signed by the Contractor: _____ In the presence of: _____ (witness)



PC Items Schedule No.
.....

PRIME COST ITEMS SCHEDULE

If this Schedule is used, both the Owner and Contractor must retain copies. **All prices include GST.**

Description of Item	Contractor's best estimate of price, and breakdown of estimate		ADD Contractor's margin or state how Contractor's margin is to be calculated.	Total for Prime Cost Item (incl. GST)
	Quantity of materials	Cost per unit		
Total (Transfer total to Item 7 of Contract Schedule)				\$ (incl. GST)

Signed by the Owner/Owner's Representative

DATED: / /

Signed by the Contractor/Contractor's Representative

DATED: / /

NOTE TO OWNER/S AND CONTRACTOR
These allowances should be kept to a minimum to reduce uncertainty about the Total Price of the Contract.

When this Schedule is completed, Contractor to retain original and give 2 legible copies to Owner.



PS Schedule No.

.....

PROVISIONAL SUMS SCHEDULE

If this Schedule is used, both the Owner and Contractor must retain copies. **All prices include GST.**

Description of work the subject of Provisional Sum	Contractor's best estimate of Provisional Sum services costs. Include estimated quantities of materials (if any), unit cost of those materials, estimated labour cost, and other costs (e.g. hire or equipment costs).	ADD Contractor's margin or state how Contractor's margin is to be calculated.	Total for Provisional Sum (incl. GST)
Total (Transfer total to Item 7 of Contract Schedule)			\$ (incl. GST)

Signed by the Owner/Owner's Representative

DATED: / /

Signed by the Contractor/Contractor's Representative

DATED: / /

NOTE TO OWNER/S AND CONTRACTOR

These allowances should be kept to a minimum to reduce uncertainty about the Total Price of the Contract.

When this Schedule is completed, Contractor to retain original and give 2 legible copies to Owner.



FORM 1

COMMENCEMENT NOTICE

(Condition 12 of the General Conditions of BSA New Home Construction Contract)

To: (Owner/s) _____

(insert name and address of Owner/s)

From: (Contractor) _____

(insert name and business address of Contractor)

Site address: _____

NOTICE

In accordance with Condition 12 of the General Conditions of the Contract we advise:

The date on which work under the Contract commenced on Site was:/...../.....
(day) (month) (year)

The Date for Practical Completion (stated in, or calculated in accordance with,
Schedule Item 6) is:/...../.....
(day) (month) (year)

SIGNED: _____
(Contractor to sign here)

DATED:/...../.....
(day) (month) (year)

NOTE TO OWNER

The Date for Practical Completion is subject to extensions of time authorised under this Contract.



OWNER'S ACKNOWLEDGEMENT OF RECEIPT OF COMMENCEMENT NOTICE

From: (Owner/s) _____
(insert name and postal address of Owner/s)

To: (Contractor) _____
(insert name and business address of Contractor)

Site address: _____

I/we acknowledge receipt of your Commencement Notice dated:/...../.....
(day) (month) (year)

advising that work under the Contract commenced on Site on :/...../.....
(day) (month) (year)

and that subject to extensions of time authorised under the Contract, the Works will
reach Practical Completion on:/...../.....
(day) (month) (year)

SIGNED: _____
(Owner/s to sign here)

DATED:/...../.....
(day) (month) (year)

NOTE TO OWNER

Retain the original of the entire Commencement Notice for your files.
Please complete and promptly post back to the builder a signed copy of this acknowledgement section.



EOT Claim No.
.....

FORM 2

EXTENSION OF TIME CLAIM AND OWNER'S RESPONSE TO CLAIM

(Condition 14 of the General Conditions of BSA New Home Construction Contract)

Note to Contractor: This blank form may be copied for multiple use. **You must attach any relevant supporting documents.**

To: (Owner/s) _____
(insert name and address of Owner/s)

From: (Contractor) _____

Regarding construction at: _____

(insert Site address)

The Contractor wishes to claim an extension of time of the Date for Practical Completion.

The cause of the delay in achieving Practical Completion is: _____

(insert full description of a cause of delay from Condition 14.1)

The cause of the delay: is **not** a cause of delay listed in Schedule Item 4B.
(tick whichever is applicable) is a cause of delay listed in Schedule Item 4B, but the number of days that the Contractor has actually been delayed is more than that stated in Schedule Item 4B.

The delay arose on:/...../.....
(day) (month) (year)

Number of additional business days claimed by the Contractor as a consequence of this delay: _____
(business days)

New Date for Practical Completion after allowance for this delay:/...../.....
(day) (month) (year)

SIGNED: _____ **DATED:**/...../.....
(Contractor/Contractor's Representative to sign here) (day) (month) (year)

NOTE TO OWNER

The Contractor must give you this form within 10 business days of the cause of delay. If you accept the Contractor's claim for an extension, then the Date for Practical Completion will be extended by the business days claimed by the Contractor. **You must indicate your acceptance, rejection or partial rejection of the Contractor's claim by completing, signing and returning this form, or similar written notice, to the Contractor as soon as possible but within 10 business days of receiving the claim. Keep a copy.**

OWNER'S RESPONSE TO EOT CLAIM DATED:/...../.....

EOT Claim Response No.
.....

Tick whichever is applicable: The Owner **agrees** with the extension of time claim.
 The Owner **rejects** the extension of time claim.
 The Owner **rejects part of** the extension of time claim. The part of the claim rejected is _____ business days.

The reason/s for rejecting all or part of the extension of time claim is/are: (state reasons below)

Signed by the Owner/Owner's Representative: _____ **DATED:** / /

When both parties have completed the form, Contractor to retain the original and return 2 legible copies to Owner.



Progress Claim No. _____

FORM 3

PROGRESS CLAIM

(Condition 16 and 17 of the General Conditions of BSA New Home Construction Contract)

Note to Contractor: This blank form may be copied for multiple use. Give Form 4 to Owner with this form.

To: (Owner/s) _____
(insert name and address of Owner/s)

From: (Contractor) _____

Regarding construction at: _____
(insert Site address)

The Contractor certifies that the Works have reached the:

<input type="checkbox"/> Base Stage	<input type="checkbox"/> Frame Stage
<input type="checkbox"/> Enclosed Stage	<input type="checkbox"/> Fixing Stage
<input type="checkbox"/> Practical Completion	<input type="checkbox"/> _____ Stage*

*This box can only be ticked if this progress payment stage has been set out in Schedule Item 10.

The Contractor claims payment for:

1. The completion of Works to the Stage indicated above in the amount of: \$ _____

(insert the amount in words and figures)

NOTE: The percentage of the Total Price that can be claimed is set out at Item 10 of the Contract Schedule.

2. The following Prime Cost Items in the following amounts: (Delete this section if this claim does not include Prime Cost Items)

- _____ \$ _____
- _____ \$ _____
- _____ \$ _____

(insert description of Prime Cost Item/s)

NOTE: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any Prime Cost Item.

3. The following Provisional Sums in the following amounts: (Delete this section if this claim does not include Provisional Sums)

- _____ \$ _____
- _____ \$ _____
- _____ \$ _____

(insert description of Provisional Sum Item/s)

NOTE: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any provisional sum.

4. The following variations:

- _____ as set out in BSA Form 5 - Variation Document dated: / / \$ _____
- _____ as set out in BSA Form 5 - Variation Document dated: / / \$ _____
- _____ as set out in BSA Form 5 - Variation Document dated: / / \$ _____

(insert description of variation/s)

(insert Variation Document date)

(insert amount of increase or decrease for variation)

TOTAL AMOUNT OF THIS PROGRESS CLAIM:

(add amounts at 1, 2, 3 and 4 and deduct any amounts at 4 for decrease)

\$ _____ (incl. GST)

Signed by the Contractor/Contractor's Representative: _____ DATED:/...../.....
(day) (month) (year)

NOTE TO CONTRACTOR: Where claim is for Practical Completion Stage, you must attach a Defects Document in BSA Form 6.

NOTE TO OWNER: Except for the Practical Completion Stage, you must pay the amount claimed by the Contractor or any part of it with which you agree within 5 business days of receipt of this progress claim. If you dispute all or part of the Contractor's progress claim, you must, within 5 business days of receiving this progress claim, give the Contractor a BSA Form 4 – Notice of Dispute of Progress Claim or similar written notice stating that you dispute all or part of the progress claim and your reasons for doing so. For the Practical Completion Stage you must pay the Contractor immediately upon execution of BSA Form 7 – Certificate of Practical Completion.

When form completed, Contractor to retain original and give 2 legible copies to Owner.



Dispute of Progress Claim No.
.....

FORM 4

NOTICE OF DISPUTE OF PROGRESS CLAIM

(Condition 17 of the General Conditions of BSA New Home Construction Contract)

Note to Contractor: This blank form may be copied for multiple use.

Note to Owner: This form must be returned to Contractor within 5 business days of receipt of disputed progress claim.

To: (Contractor)
(insert name and business address of Contractor)

From: (Owner/s)
(insert name and address of Owner/s)

Regarding construction at:
(insert Site address)

(tick whichever is applicable)

The Owner rejects all of your progress claim dated:
..... / / (insert date) for the
(day) (month) (year)
Stage.

OR

The Owner rejects part of your progress claim dated:
..... / / (insert date) for the
(day) (month) (year)
Stage.

The value of the part of the progress claim that is
rejected is: \$ (incl. GST)
(insert amount)

The reason/s for rejecting all or part of the claim is/are: (set out reason/s)

SIGNED: (Owner/Owner's Representative to sign here)

DATED: (day) (month) (year)

When form completed, Owner to give the Contractor the original and Owner to retain 2 legible copies.



FORM 5

Variation No.

.....

VARIATION DOCUMENT

(Condition 22 of the General Conditions of **BSA New Home Construction Contract**)

Note to Contractor: This blank form may be copied for multiple use.

To: (Owner/s) _____
(insert name of Owner/s)

From: (Contractor) _____

Site Address: _____
(insert Site address)

This document is for a variation: required by law
(tick whichever is applicable) for extra excavation and foundations
 requested by the Owner/Owner's Representative
 requested by the Contractor/Contractor's Representative for the following reasons: _____
(insert reasons)

The change to the Works is as follows: _____

(insert description of the variation including any change to the work or materials required by reason of the variation)

The Contractor's/Contractor's Representative's reasonable estimate of the period of any delay that will result from the variation is: _____ business days.

NOTE TO CONTRACTOR/CONTRACTOR'S REPRESENTATIVE:
If the variation causes you actual delay you must also submit a BSA Form 2 – *Extension of Time Claim and Owner's Response to Claim* with this form.

The variation will change the price payable by the Owner as follows: (tick whichever is applicable)
 increase the price by: \$ _____ (incl. GST)
 no change to price
 decrease the price by: \$ _____ (incl. GST)
 increase/decrease (delete whichever is not applicable) the price by an amount that will be calculated as follows:

(state how the increase/decrease will be calculated)

The increase or decrease (if any change) in the Total Price payable by the Owner as a result of the variation will be taken into account in the Contractor's progress claim for the following Stage described in Schedule Item 10:

(insert description of Stage from Schedule Item 10)

(Owner/Owner's Representative to initial here)

SIGNED: _____
(Owner/Owner's Representative to sign)

SIGNED: _____
(Contractor/Contractor's Representative to sign)

DATED:/...../.....

DATED:/...../.....

When form completed, Contractor to retain original and give 2 legible copies to Owner.



Defects Doc No.

FORM 6

DEFECTS DOCUMENT

(Conditions 15 and 21 of the General Conditions of BSA New Home Construction Contract)

Note to Contractor: This blank form may be copied for multiple use.

Identify below those minor defects or minor omissions which are agreed between the parties and those minor defects or minor omissions which are **not** agreed by the Contractor, then sign and date this form.

AGREED MINOR DEFECTS/MINOR OMISSIONS

The Owner/Owner's Representative and the Contractor/Contractor's Representative agree that the following minor defects or minor omissions exist at Practical Completion.

Item No.	Description of minor defect or minor omission	Date for rectification

MINOR DEFECTS/MINOR OMISSIONS CONTRACTOR DOES NOT AGREE WITH

The Owner/Owner's Representative says that the following additional minor defects or minor omissions exist at Practical Completion.

Item No.	Description of minor defect or minor omission	Contractor to identify why they do not agree that there is a minor defect or minor omission

Signed by the Owner/Owner's Representative

Signed by the Contractor/Contractor's Representative

DATED: / /

DATED: / /

When form completed, Contractor to retain original and give 2 legible copies to Owner.



FORM 7

CERTIFICATE OF PRACTICAL COMPLETION

(Conditions 15 and 17 of the General Conditions of BSA New Home Construction Contract)

NOTE TO CONTRACTOR/CONTRACTOR'S REPRESENTATIVE

The Contractor must complete, sign and give 2 copies of this Certificate to the Owner before demanding the Progress Claim for the Practical Completion Stage.

The Works have reached Practical Completion as:

- upon inspection of the Works, the Owner was satisfied that the Works had reached Practical Completion in accordance with the requirements of this Contract, including Condition 3 of the General Conditions of New Home Construction Contract; and
- the Contractor has provided the Owner with all written evidence (including, where the Owner has **not** engaged the building certifier, copies of all relevant certificates of inspection produced or held by the building certifier) that all relevant inspections and approvals required by the *Sustainable Planning Act 2009* and the *Building Act 1975* and any body having the relevant jurisdiction were satisfactorily completed; and
- the Contractor has completed and signed a BSA Form 6 – *Defects Document* and given 2 copies to the Owner; and
- the Contractor handed over the Works to the Owner on the Date of Practical Completion.

The Date of Practical Completion was:

..... / /
(day) (month) (year)

Signed by the Owner/Owner's Representative

Signed by the Contractor/Contractor's Representative

DATED: / /
(day) (month) (year)

DATED: / /
(day) (month) (year)

NOTE TO OWNER/OWNER'S REPRESENTATIVE

If the Contractor has completed all of the requirements listed in this Certificate, the Owner must, upon receiving a signed copy of this Certificate, immediately pay the Contractor the Progress Claim for the Practical Completion Stage (as adjusted under Condition 19, if applicable).

When form completed, Contractor to retain original and give 2 legible copies to Owner.