



**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 party is in substantial breach of this Contract; and
 - 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
 - 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:
- 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;
 - failing to pay any money due and owing to the Contractor for 5 **business days**; and
 - 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:
- failing to perform the **work under this Contract** competently;
 - failing to provide materials which comply with this Contract;
 - unreasonably failing to replace or remedy defective work or materials;
 - unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress;
 - failing to effect or maintain any insurance required by this Contract; and
 - 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:
- "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		
		
		

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