**Special Conditions (Queensland)**

In Schedule 1, Item 10 is deleted and replaced with "Not used," and new items are added as follows:

|  |  |  |
| --- | --- | --- |
| **4A. Architect** | **Name:**  **Registration number:**  **Representative:**  **Address for notices:**  **Email:**  **Mobile:**  **Telephone:**  **Facsimile:** | |
| **17. Security** (Clause 8A)  Is the **building contractor** to give security to the **owner:** | | Yes  No  (*check box as applicable)* |
| **Owner's** nominated type of security: | | Unconditional Guarantee  Retention  (*check box as applicable, if neither selected, cash retention is default)* |
| If cash retention is selected, percentage of the **contract price** for cash retention: | | % of the **contract price**  (*if nothing stated, 5%)* |
| If unconditional guarantee is selected, the **building contractor** gives 2 unconditional guarantees each of: | | % of the **contract price**  (*if nothing stated, 2.5%)* |

|  |  |
| --- | --- |
| **18. Period for payment of certificates and for release of security** (Clause 8A): | Period for payment of certificates:  No later than 15 **business days** after receipt of the claim for payment  Period for release of security calendar days  (*if nothing stated, 7 calendar days)* |

|  |  |
| --- | --- |
| **19. Public liability insurance** (Clause 14):  Is the **owner** or the **building contractor** required to take out and maintain public liability insurance: | **building contractor**  **owner**  (*if nothing stated, the* ***building contractor****)* |
| Amount of insurance for injury, illness, disease or death | $  (*if nothing stated, $20,000,000)* |
| Amount of excess for public liability insurance | $  (*if nothing stated, $1,000)* |

|  |  |
| --- | --- |
| **20. Contract works insurance** (Clause 14A):  Is the **owner** or the **building contractor** required to take out and maintain contract works insurance: | **building contractor**  **owner**  (*if nothing stated, the* ***building contractor****)* |
| Amount of insurance to cover fees of the **architect** and other consultants: | % of the **contract price**  (*if nothing stated, 10% of the* ***contract price****)* |
| Amount to cover demolition and cost of removal of debris: | % of the **contract price**  (*if nothing stated, 10% of the* ***contract price****)* |
| Amount of excess for contract works insurance | $  (*if nothing stated, $1,000)* |

|  |  |
| --- | --- |
| **21. Official Documents** (Clause 3.2): |  |
| **Official Documents** required to begin the **works** but to be obtained by the **building contractor** |  |
| **Official Documents** required to complete the **works** but to be obtained by the **owner** |  |

|  |  |
| --- | --- |
| **22. Commissioning tests for practical completion** (Clause 25.1): |  |

|  |  |
| --- | --- |
| **23. Defects liability period for the works** (Clause 27.1): | months  (*if nothing stated, 12 months* |

|  |  |
| --- | --- |
| **24. Information to be included in a progress claim**  (Clause 4.7): |  |

|  |  |
| --- | --- |
| **25. Items to be supplied by the owner for incorporation in the works** (Clause 4.6): |  |
| Items to be installed by the **building contractor** (and only the costs of installation are included in the **contract price**): |  |
| Items to be installed by the **owner** (and no allowance has been included in the **contract price** for supply and installation): |  |
| **26. Percentage on provisional sums and prime cost Items** (Clause 21) |  |
|  |  |
| **27. Agreed damages for delays** (Clause 16.2) | $ per calendar day |

New Schedules 5 and 6 are inserted as set out in Attachment 1 to these Special Conditions.

Clause 2 is deleted and replaced with "Not used".

Clause 3.1 and 3.2 are deleted and replaced with the following:

3.1 The **building contractor** must bring the **works** to **practical completion** by the end of the **building period** as adjusted in accordance with this **contract**.

3,2 The **building contractor** must:

* commence the **works** within 10 **working days** after being given possession of the site;
* diligently carry out all **Necessary Work** and complete the **works** to the standard set out in the **contract documents**;
* keep the site and any area affected by the **works** clean and tidy at all times;
* comply with all instructions issued under this **contract** by the **architect**;
* obtain all official documents required under this **contract** to complete the **works**, and any shown in Item 21 of Schedule 1;
* comply with all other obligations under this **contract**;
* comply with all relevant legislation; and
* bring the **works** to **practical completion** in accordance with Clause 3.1.

A new Clause 3A is inserted as follows:

**3A Building contractor's program**

3A.1 If requested by the **architect,** the **building contractor** must provide a program within 10 **working days**after receiving such a request. The program must include each of the following:

* the dates of commencement and completion of the major stages of the **works**;
* the **date for** **practical completion**;
* the start and completion dates of all trades; and
* a critical path.

3A.2 The program is not part of this **contract**.

3A.3 The **building contractor** must give the **architect** an updated program when the date for **practical completion**has been adjusted by 5 **working days**or more or such other period as agreed. The updated program must indicate how the previous program has been affected by any adjustments of time.

Clauses 4.3 to 4.9 are deleted and replaced with the following clauses:

4.3 The **building contractor** must give the **architect** a written claim for each **progress payment** when each **stage** has been completed, as set out in Schedule 2. The claim must set out each of the following:

* the amount paid or to be paid for the **stage** or **stages** completed to date;
* the amount paid or to be paid for, and details of, any **variations** made and other amounts paid or to be paid by the **owner** under this **contrac**t;
* the sum of those amounts;
* payments that have already been made by the **owner**; and
* the total claimed, taking into account the payments already made.

4.4 Not used.

4.5 The **contract price** is a lump sum and the **building contractor** represents that the **contract price** allows for:

* everything reasonably required in accordance with this **contract** to complete the **works**;
* all **Provisional Sum Items** and **Prime Cost Items** shown in Schedule 3;
* installation of any items shown in Item 25 of Schedule 1 to be supplied by the **owner** and installed by the **building contractor**;
* rise and fall;
* all statutory taxes and charges applying 5 **working days** before the closing of tenders;
* import duties and tariffs on imported materials or equipment to be incorporated in or used in the completion of the **works** applying 5 **working days** before the closing date for tenders;
* exchange rates applying 5 **working days** before the closing date for tenders;
* relevant industrial awards and work place agreements, site allowances, building industry superannuation levies and long service leave levies; and
* GST.

4.6 The **contract price** does not include any items to be supplied and installed by the **owner** shown in Item 25 of Schedule 1 or specifically identified elsewhere in the **contract documents**.

4.7 The written claim for a progress paymentis not a tax invoice, but must identify any amount of GST that has been included in the claim. The claim must be supported by any information shown in Item 24 of Schedule 1 and a declaration made by the **building contractor** that:

* all wages and other entitlements including building industry superannuation and long service leave levies due at the date of the declaration have been paid to or on behalf of all employees of the **building contractor**;
* all monies due to subcontractors at the date of the declaration have been paid; and
* all insurances required to be maintained by the **building contractor** are in force.

4.8 The **architect** must assess a claim for a progress payment submitted by the **building contractor** following completion of a stage and issue to the **building contractor** and to the **owner** a certificate setting out any payment due within 10 **business days** after receiving a claim for a progress payment.

4.9 When assessing a claim for a progress payment the **architect** must take account of each of the following:

* any adjustments to the **contract price** since any previous assessment;
* whether or not the stage of completion set out in Schedule 2 claimed to be completed has been completed;
* any claim by the **owner** for a set off of monies due under this **contract**;
* the **owner's** entitlement to agreed damages, in accordance with Clause 32, since any previous certificate, calculated up to the date of the certificate;
* any other matter to be taken into account in accordance with this **contract**;
* GST;
* the amount of the deposit paid by the **owner**.

4.10 The certificate must:

* identify the amount of GST that has been included;
* identify the percentage of the **contract price**, as adjusted applicable to the amount certified for payment; and
* give any written reasons for any difference between the amount certified and the (GST exclusive) amount claimed.

4.11 If the **architect** reasonably needs additional information to assess the claim, the **architect** must promptly ask the **building contractor** for it.

4.12 On receiving a certificate from the **architect**, the party to be paid must deliver the certificate to the other party for payment. If the party to be paid is registered for GST, it must, at the same time, deliver a tax invoice equal in value to the certificate to the other party.

4.13 The amount stated as owing in any certificate must be paid within the number of days set out in Item 18 of Schedule 1.

4.14 The **architect** may issue a certificate for payment at any time up until the final certificate is issued.

4.15 Before the **owner** is obliged to make the first progress payment, the **building contractor** must:

* have in place the security by unconditional guarantee in accordance with Clause 8A.1;
* have in place the insurances in accordance with Clauses 14 to 14I; and
* have given the **architect** the program in accordance with Clauses 3A.1 and 3A.3.

4.16 If the **architect** fails to issue a certificate on time the **building contractor** may issue a notice in writing to the **owner**, copied to the **architect**, requesting the **owner** to ensure that the **architect** issues the certificate within 5 **business days** after the date the notice is delivered.

4.17 If the **architect** fails to issue the certificate within 5 **business days** after the date the notice is delivered, the **building contractor** is entitled to payment of the full amount of the progress claim within 7 calendar days after the date the notice was delivered.

4.18 The **building contractor** is entitled to submit to the **architect** a final claim for payment when:

* all defects liability periods have ended;
* the **building contractor** has rectified all defects and finalised all incomplete work it became aware of by instruction from the **architect** or from the **building contractor's** own observations during the defects liability period; and
* the **works** have been completed in accordance with this **contract**.

4.19 The **building contractor's** final claim must identify any GST included in the claim.

4.20 The **building contractor** must submit a final claim within 20 **working days** after receiving a written request to do so from the **architect**.

4.21 If the **building contractor** fails to comply with a written request made under Clause 4.20 the **architect** may determine the final claim.

4.22 After a final claim has been made under Clause 4.18 or is treated as having been made under Clause 4.20, the **building contractor** is not entitled to make any further claims under this **contract**.

4.23 The **architect** must promptly assess the final claim. If the **architect** reasonably needs additional information to do so, the **architect** may ask the **building contractor** for it. The **building contractor** must promptly give the **architect** any additional information the **architect** requests. The **architect** must, within a reasonable time (not exceeding 10 **business days**) after receiving the final claim (or the additional information if requested) issue to the **building contractor** and to the **owner** a final certificate setting out the amount due for payment.

4.24 The certificate must:

* identify the amount of GST that has been included;
* give written reasons for any difference between the (GST exclusive) amount certified and the (GST exclusive) amount claimed; and
* notify the **owner** of its obligation to release any remaining security under Clauses 8A.14 to 8A.16.

4.25 If the **building contractor** fails to give the **architect** any additional information the **architect** asks for within a reasonable time, the **architect** must promptly assess the claim on the basis of the information the **architect** has.

4.26 On receiving the final certificate from the **architect**, the party to be paid must deliver the final certificate to the other party for payment. If the party to be paid is registered for GST, it must, at the same time, deliver a tax invoice equal in value to the final certificate to the other party.

4.27 The amount stated as owing in the final certificate must be paid within the period shown in Item 18 of Schedule 1 after delivery of the certificate and the tax invoice (if applicable).

4.28 The final certificate must state the **architect**'s assessment of all outstanding entitlements under this **contract**. The final certificate is evidence of the parties' entitlements under this **contract** and that the **building contractor** has performed its obligations under this **contract** subject to any matter already in dispute under Clause 37.

4.29 The fact that the **owner** or a **lending body** has made a progress payment does not prevent the **owner** from later claiming that a stage is incomplete. This condition does not apply to the final paymentunder Clause 4.

Clause 6.2 is deleted and replaced with the following:

6.2 If the **owner** does not own the property on which the **works** are to be carried out, written permission from the property owner for the **works** to be carried out must be provided by the **owner** to the **building contractor**. The **building contractor** is released from any obligations under the **contract** if the **owner** fails to provide this written permission).

Clause 7.1 is deleted and replaced with the following:

7.1 If the **owner's** financial position alters to the extent that it may be unable to meet its obligations under this **contract,** it must immediately inform the **building contractor** and the **architect** in writing.

Clause 7.3 is deleted and replaced with "Not used".

Clause 8 is deleted and replaced with "Not used".

New Clause 8A is added as follows:

**8A Security**

8A.1 If the **building contractor** is required by Item 17 of Schedule 1 to provide security for performance of its obligations under this **contract**, the **building contractor** must:

* allow the **owner** to withhold a cash retention sum; or
* provide the **owner** with the unconditional guarantees,

according to the alternative required by Item 17 of Schedule 1.

8A.2 If the security provided by the **building contractor** is cash retention, the **owner** may withhold up to 10% of each progress payment until the value held equates to the percentage shown in Item 17 of Schedule 1 of the **contract price**.

8A.3 The **owner** must hold the cash retention, including interest earned on it, less any bank fees or charges on the account, as trustee for the **building contractor** in a separate bank account.

8A.4 A legal or accounting practice's trust account will not discharge the **owner's** obligations under Clause 8A.3.

8A.5 If the security provided by the **building contractor** is unconditional guarantees, the **building contractor** must within 10 **business days** after this **contract** is executed, give to the **owner** two unconditional guarantees each equal in value to the percentage shown in Item 17 of Schedule 1 of the **contract price**.

8A.6 An unconditional guarantee is an unconditional undertaking or a performance undertaking from a recognised financial institution approved by the **owner**. The guarantees must be of an approved type. The type shown in Schedule 5 is approved.

8A.7 If the **owner** is registered for GST and able to claim an input tax credit, the value of the unconditional guarantees which must be provided to the **owner** is exclusive of the GST component of the **contract price**.

8A.8 The **owner** may draw on the security provided by the **building contractor** under this Clause 8A only if:

* a certificate issued by the **architect** in favour of the **owner** under this **contract** is not paid by the **building contractor** within the period shown in Item 18 of Schedule 1;
* the **building contractor** has not disputed the relevant certificate under Clause 12D; and
* the **owner** has complied with the procedure set out in Clauses 8A.9 to 8A.11.

8A.9 To draw on the security under Clause 8A.7 the **owner** must first notify the **building contractor** and the **architect** in writing of the basis and amount of its entitlement.

8A.10 If the security is cash retention, the **owner** may then draw on the cash retention to the extent of its entitlement.

8A.11 If the security is by unconditional guarantees, the **owner** must first give to the security provider a written demand for payment stating the amount of its entitlement.

8A.12 When the **architect** issues the notice of **practical completion**, the **building contractor** is entitled to the release of 50% of the amount of the security then held.

8A.13 If the security is cash retention:

* the **architect** must give to the **building contractor** a certificate equal to 50% of the amount of the security then held at the same time that the notice of **practical completion** is issued;
* the **building contractor**, on receiving the certificate, must prepare a tax invoice in accordance with Clause 4.26 and give both documents to the **owner** for payment; and
* the amount stated in the certificate must be paid in accordance with Clause 4.27.

8A.14 If the security is by unconditional guarantees, the **owner** must return one of the guarantees to the **building contractor** within the period shown in Item 18 of Schedule 1.

8A.15 When the **architect** issues a final certificate for the **works** under Clause 4.23, the **owner** must release to the **building contractor** any remaining security for the **works** less any amount owing to the **owner** under the certificate.

8A.16 If the security is cash retention, the **architect** must take into account any remaining security when preparing the final certificate.

8A.17 If the security is by unconditional guarantee and:

* the certificate is in favour of the **building contractor**, the **owner** must give to the **building contractor** the remaining unconditional guarantee within the period shown in Item 18 of Schedule 1;
* the certificate is in favour of the **owner**, the certificate is evidence of the basis and amount of the **owner's** entitlement, and the **owner** may draw on the security under Clause 8A before returning the unconditional guarantee to the **building contractor** within the period shown in Item 18 of Schedule 1.

Clauses 9.2 and 9.3 are deleted and replaced with the following:

9.2 If, in the **building contractor**'s opinion, the boundaries of the **site** or the siting of the **works** are unclear, the **building contractor** must notify the **architect** in writing. The **architect** must promptly issue an instruction to the **building contractor**.

9.3 Not used.

Clause 10 is deleted and replaced with the following:

**Site possession and access**

10.1 The **owner** must give the **building contractor** exclusive possession of the **site** to carry out the **works.** The **building contractor** right to possession of the **site** is under a contractual licence only.

10.2 The **owner** must give the **building contractor** possession of the **site** within 10 **working days** after the **owner**:

* has received, or the **architect** as the agent of the **owner** has received, a copy of the **contract** executed by both parties;
* is satisfied that all of the insurances required under this **contract** to be provided by the **building contractor**, are in place;
* has received, or the **architect** as agent of the **owner** has received, any **Official Document** required to begin the **works** that is required under Item 21 of Schedule 1 to be obtained by the **building contractor**.

10.3 In relation to the **site**, the **building contractor** must give the **owner**, the **architect**, separate contractors, consultants and, if applicable, a representative of the **owner**'s lending institution, access on reasonable terms to the **site** and all other places at which the **Necessary Work** is carried out in relation to the **works** by or on behalf of the **building contractor**, after being given reasonable notice.

10.4 If access to the **site** is given for the purposes in Clause 10.3, the **building contractor** may exclude from the **site**, without prior notice, any person on the **site** who does not comply, or in the **building contractor**'s reasonable opinion may have not complied, with the **building contractor**'s work health and safety policies and procedures.

Clause 11.2 is deleted and replaced with the following:

11.2 If, after this **contract** is signed, a **statutory or other authority** introduces or increases any tax, charge, levy or other regulation that causes any cost increase in the cost of the **works,** there is an adjustment of the **contract price**.

11.2A If the **building contractor** is required to do more or less work to comply with a change to a requirement of a **statutory or other authority** that is introducedafter this **contract** is signed,the **building contractor** must promptly notify the **architect** in writing giving details of the effect of the change on the **works.** The **architect** must promptly issue an instruction to the **building contractor.**

11.2B If an instruction under Clause 11.2A causes the **building contractor** to incur more or less cost in carrying out the **works**, the **building contractor** must ask for a **variation** and Clause 20 applies.

Clause 11.4 is deleted and replaced with "Not used".

A new Clause 11A is added as follows:

**11A Official Documents**

11A.1 The **building contractor** and the **owner** must promptlygive to the **architect** or the **architect** must promptly give to the **building contractor**, a copy of any **Official Document** either in or coming into its possession in relation to the **works***.*

11A.2 An **Official Document**is:

* any report, notice, order, permit, licence, approval or other document required or issued by an **Authorised Person**in relation to the **works**;
* any statutory approval;
* an approval for provision of infrastructure services to the **site**; and
* any other document required under any relevant law or statutory requirement.

11A.3 An **Authorised Person**is a building inspector or certifier or other person authorised under any relevant law or statutory requirement having jurisdiction over the **works**.

Clauses 12.2 to 12.5 (inclusive) are deleted and replaced with "Not used".

New Clauses 12A to 12F are added as follows:

**12A Owner to appoint an architect**

12A.1 The **owner** must:

* appoint the **architect** to administer this **contract**;
* indemnify the **building contractor** for any liability incurred by the **building contractor** to the extent that the liability is a result of any default or negligence of the **architect**; and
* issue instructions to the **building contractor** only through the **architect**.

12A.2 If the **owner's** financial position alters to the extent that it may be unable to meet its obligations under this **contract**, it must immediately inform the **building contractor** and the **architect** in writing.

**12B Architect to administer contract**

12B.1 The **architect** for the purposes of this **contract** is shown in the Particulars of Contract.

12B.2 The **architect** is appointed to administer this **contract** on behalf of the **owner** and the **owner** warrants that the **architect** has authority to administer this **contract**.

12B.3 The **architect** is the **owner's** agent for giving instructions to the **building contractor**. However, in acting as assessor, valuer or certifier, the **architect** acts independently and not as the agent of the **owner**.

12B.4 The **owner** must ensure that the **architect**, in acting as assessor, valuer or certifier, complies with this **contract** and acts fairly and impartially, having regard to the interests of both the **owner** and the **building contractor**. The **owner** must not compromise the **architect's** independence in acting as assessor, valuer or certifier.

12B.5 If the **architect** resigns, or becomes incapable of acting as **architect**, or if the **owner** terminates the engagement of the **architect**, the **owner** must immediately nominate another **architect** and give written notice of the name and address of the **architect** to the **building contractor**. If the **building contractor** has no reasonable objection to the nominated **architect**, that person will be appointed as the **architect** for the purposes of this **contract**. The newly appointed **architect** is bound by the written decisions of any previous **architect**.

12B.6 The **building contractor** must comply with all instructions issued under this **contract** by the **architect**.

12B.7 If the **building contractor's** capacity to complete the **works**is altered to the extent that it may be unable to meet its obligations, it must immediately inform the **architect** and the **owner** in writing.

**12C Architect's Instruction**

12C.1 The **architect** may issue an instruction at any time during this **contract** provided that the instruction is given in writing.

**12D Disputing architect's certificate or written decision**

12D.1 If a partywishes to dispute a certificate, notice, written decision or written assessment issued by the **architect**, the partymust give the **architect** written notice under this Clause within 20 **business days** after receiving the certificate, notice, written decision or written assessment.

12D.2 If the party fails to give a notice under Clause 12D.1,that party will not be entitled to dispute the matter at all.

12D.3 The **architect** must assess a notice given under Clause 12D.1 and give a written decision to the partyand the other partywithin 10 **business days***.*

12D.4 If a partywishes to dispute a written decision given under Clause 12D.3, the requirements of Clause 37apply.

**12E Disputing architect's failure to act**

12E.1 If a partywishes to dispute the failure of the **architect** to issue something, the party must give the **architect** written notice under this Clause 12E promptlyafter becoming aware of the failure of the **architect** to issue something.

12E.2 The **architect** must assess a notice given under Clause 12E.1 and give a written decision to the partyand the other party within 10 **business days**.

12E.3 If a partywishes to dispute a written decision given under Clause 12E.2, or the **architect's** failure to give that decision, the requirements of Clause 37 apply.

**12F Failure to give certificate, written decision or notice is not acceptance**

12F.1 If the **architect** fails to issue a certificate, notice, written decision or written assessment required under this **contract** in respect of a claim, this does not mean that the claim has been accepted or is valid.

Clause 13 is deleted and replaced with the following:

**13 Discrepancy or error in documentation**

13.1 If there is any inconsistency between these general conditions and the **contract documents**, the order of precedence is:

* any special conditions;
* these general conditions;
* the specifications;
* the plans; then
* other documents listed in the order listed in Item 16 of Schedule 1.

13.2 If either party discovers a discrepancy, an ambiguity, or an omission in, or between, any of the **contract documents**, that party must promptly give written notice to the a**rchitect**. The **architect** must promptly resolve the discrepancy, the ambiguity, or the omission by giving a written instruction to the **building contractor** and a copy to the **owner** and the **building contractor** must comply with this discrepancy and shall have no entitlement to claim in relation to the instruction unless Clause 13.3 applies.

13.3 An instruction from the **architect** to resolve a discrepancy, an ambiguity, or an omission that is not in accordance with the order of precedence referred to in Clause 13.1, is an instruction for a **variation** under Clause 20.

Clause 14 is deleted and replaced with the following:

**14 Public liability insurance**

14.1 From the time the **building contractor** is given possession of the **site** until 4.00pm on the day the **architect** issues the final certificate to the **building contractor** and to the **owner**, the party nominated in Item 19 of Schedule 1 must take out and maintain insurance naming the **building contractor**, its subcontractors and the **owner** as insureds, against:

* injury to or illness, disease or death of, any person occurring directly as a result of the **Necessary Work**, on or in the immediate vicinity of the **site** (excluding liability in respect of worker's compensation and employer's liability); and
* loss of, or damage to the property of, any person occurring directly as a result or the **Necessary Work**, on or in the immediate vicinity of the **site** (except the **works**, or materials or equipment on the **site** that are intended to be incorporated in the **works** or plant, tools and equipment used on the **site**).

14.2 The policy must contain all terms required by law and the following terms:

* the insurance covers the interests of the **owner**, the **building contractor** and any other person involved in the **Necessary Work**; and
* the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

New Clauses 14A to 14I are added as follows:

**14A Contract works insurance**

14A.1 From the time the **building contractor** is given possession of the **site** until 4.00pm on the day the **architect** issues the final certificate to the **building contractor** and to the **owner**, the party nominated in Item 20 of Schedule 1 must take out and maintain insurance naming the **building contractor**, its subcontractors and the **owner** as insureds against loss of or damage to the items referred to in Clause 14I.1.

14A.2 The policy must contain any term required by law and each of the following:

* the insurance covers the interests of the **owner** and the **building contractor**;
* notice of a claim given by any one insured is effective in relation to each of the insureds; and
* the insurer's rights of subrogation against any insured are excluded (although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy).

**14B Entitlement to Input Tax Credit**

14B.1 The parties must each notify their insurer of their respective entitlement to an input tax credit on the insurance premium within 20 **business days** of the insurance being taken out. Each party must indemnify the other for any loss arising out of the party's failure to notify the insurer. On request by a party, the other party must provide evidence that it has complied with this Clause.

**14C Insurance cover**

14C.1 The insurance against loss of or damage to the items referred to in Clause 14A must cover:

* the full reinstatement or replacement cost of the **works**, materials and equipment on the **site** that are intended to be incorporated in the **works**, and plant, tools and equipment used on the **site;**
* additional consultants' fees including the **architect's** fees, relating to the reinstatement or replacement for the amount shown in Item 20 of Schedule 1;
* any necessary demolition and removal of debris, for the amount shown in Item 20 of Schedule 1; and
* all GST associated with reinstatement and replacement of the **works**.

14C.2 The insurance against liability for injury, illness, disease or death must be at least for the amount shown in Item 19 of Schedule 1.

**14D Building contractor and owner not to affect insurance**

14D.1 The **building contractor** and the **owner** must not do or fail to do anything, or allow anything to be done or not be done, which might affect any insured's right to recover from the insurer in respect of damage or liability covered by an insurance.

**14E Worker's Compensation and employer's liability insurances**

14E.1 The **building contractor** must maintain worker's compensation or employer's liability insurance in accordance with the statutory scheme that applies under this **contract** until the final certificate for the **works** is issued. If that scheme does not provide for an indemnity against a common law damages claim by a worker, the **building contractor** must also maintain insurance against that risk.

14E.2 The **building contractor** must ensure that each of its subcontractors maintains similar insurances.

**14F Insurance claims**

14F.1 Subject to Clause 14F.3, the **building contractor** has the primary responsibility to make any claim under an insurance policy required by this **contract**.

14F.2 The **owner** must make a claim if the **owner**, its agents, employees or licensees directly causes the event giving rise to the loss.

14F.3 The following are the obligations of either the **owner** or the **building contractor** when making an insurance claim for any loss or damage arising from an insured event:

* the insurance claim must be made promptly;
* the party making the insurance claim must provide all information which is required under the relevant insurance policy;
* the party making the insurance claim must promptly notify the **architect** in writing on becoming aware of the event giving rise to the insurance claim;
* the notice must contain details of the insurance claim; and
* the party making the insurance claim must promptly give the **architect** any additional information the **architect** reasonably requests.

**14G Payment of excess**

14G.1 The party making a claim under an insurance policy arranged under Clause 14 or 14A must pay the excess.

14G.2 The party paying the excess may recover the excess cost from the other party in proportion to the extent to which the personal injury, illness, disease or death or loss or damage is the result of negligence, or breach of contract or breach of statutory duty by the other party. The excess paid under Clause 14G.1 that is to be reimbursed, is the amount shown in Item 19 of Schedule 1.

**14H Warranty insurance**

14H.1 If required by Part 5 of the *Queensland Building and Construction Commission Act 1991* (Qld) ('Act'), the **building contractor** must:

* take out and maintain home warranty insurance which complies with the Act;
* give the owner and **architect** a copy of a completed certificate in respect of the insurance and any other document in the form and as required by the Act.

14H.2 If the required home warranty insurance policy has not been issued before this **contract** is executed, then until the **architect** receives satisfactory evidence that the warranty insurance policy has been issued, the **building contractor**:

* may not enforce any provision of this **contract**; and
* may not carry out any work under this **contract**.

14H.3 Satisfactory evidence for the purpose of Clause 14H.1 may be either a copy of the appropriate policy or a satisfactorily completed Certificate of Currency in the form set out in Schedule 6.

14H.4 If Clause 14H.3 applies, the **building contractor** must provide satisfactory evidence to the **owner** within 7 days after the policy is issued.

**14I Risk**

14I.1 Subject to Clauses 14I.6 to 14I.8, from the time the **building contractor** is given possession of the **site** until 4.00pm on the day the **architect** issues the **notice of** **practical completion**, the **building contractor** bears the risks described in the following subclauses.

* The risk of injury to or illness, disease or death of any person occurring as a result of the **works**, on or in the immediate vicinity of the **site**.
* The risk of loss of, or damage to, the property of any person occurring as a result of the **works**, on or in the immediate vicinity of the **site**.
* The risk of loss of, or damage to any of the following items on or in the immediate vicinity of the **site**:
* the **works**;
* any **Necessary Work**;
* any structure on the site before the time the **building contractor** is given possession of the site;
* on-site materials or equipment intended to be incorporated in the **works**, including any items shown in Item 25 of Schedule 1; and
* plant, tools and equipment.

14I.2 While the **building contractor** bears the risks described in Clauses 14I.1, the **building contractor** must indemnify the **owner** in respect of any liability arising from negligence or breach of contract or breach of statutory duty by the **building contractor** or any of the **building contractor's** employees, agents, licensees or subcontractors.

14I.3 The amount of the **building contractor's** indemnity to the **owner** is reduced to the extent to which the **owner** or any of its employees, or agents is responsible for the personal injury, illness, disease, death or loss or damage.

14I.4 Except if expressly provided otherwise in this **contract**, if the **building contractor** is to indemnify, reimburse, pay a contribution or pay damages to the **owner** under this or under any other Clause, the amount the **building contractor** must pay the **owner** is:

* reduced by any input tax credit directly obtained or obtainable by the **owner**; and
* increased by GST the **owner** has paid or will pay on that indemnity, reimbursement, contribution or damages.

14I.5 Subject to Clauses 14I.6 to 14I.8, from 4.00pm on the day the **architect** issues the notice of **practical completion**, the **owner** bears the risks described in the following subclauses.

* The risk of injury to, or illness, disease or death of any person on or in the immediate vicinity of the **site**.
* The risk of loss of, or damage to, the property of any person on or in the immediate vicinity of the **site**.
* The risk of loss of, or damage to, any of the following items on or in the immediate vicinity of the **site**:
* the **works**; and
* materials or equipment intended to be incorporated into the **works**, including any items shown inItem 25 of Schedule 1.

14I.6 While the **owner** bears the risks described in Clauses 14I.5, the **owner** must indemnify the **building contractor** in respect of any liability arising from negligence or breach of contract or breach of statutory duty by the **owner** or any of the **owner's** employees, agents, or licensees.

14I.7 The obligation of the **owner** to indemnify the **building contractor** is reduced to the extent to which the **building contractor** or any of its employees, agents or subcontractors is responsible for the personal injury, illness, disease, death or loss or damage.

14I.8 Except if expressly provided otherwise in this **contract**, if the **owner** is to indemnify, reimburse, pay a contribution or pay damages to the **building contractor** under this Clause or under any other Clause, the amount the **owner** must pay the **building contractor** is:

* reduced by any input tax credit directly obtained or obtainable by the **building contractor**; and
* increased by GST the **building contractor** has paid or will pay on that indemnity, reimbursement, contribution or damages.

14I.9 If an event occurs which causes loss or damage during that period when the **building contractor** bears the risk, the **building contractor** must promptly reinstate, at its own expense, the lost or damaged items referred to in Clause 14I.1

14I.10 The **owner** must indemnify the **building contractor** for the cost of reinstatement under this Clause to the extent to which the **owner**, its employees or agents was responsible for the event which caused the loss or damage.

Clause 15 is deleted and replaced with the following:

**15 Site Information and Latent Conditions**

15.1 The **owner** warrants that it has given the **building contractor** all the **Site Information** in its possession at least 5 **business days** before the closing of tenders.

15.2 **Site Information** includes any reports, surveys, test results, plans, specifications, computations or other information such as foundations data, soils tests or geotechnical tests and any other information regarding the **site** and the physical conditions on and underlying the **site**.

15.3 Before executing this **contract**, the **building contractor** must have examined the **Site Information** and have inspected the **site** and its surroundings and, having done so, is entitled to rely on the **Site Information** to the extent that it is reasonable to do so, having regard to the nature of the **site** and its surroundings.

15.4 The **building contractor** must indemnify the **owner** against a claim for any loss, expense or damage incurred by a subcontractor engaged by the **building contractor** or any other person as a result of the **building contractor** failing to examine the **Site** **Information** or inspect the **site**.

15.5 The **building contractor** must notify the **architect** in writing and seek instructions within 5 **business days** if the **building contractor** discovers:

* a **Latent Condition** affecting the **site** which the **building contractor** considers may result in it incurring loss, expense or damage, or may affect its ability to bring the **works** to **practical completion** by the end of the **Building Period** as adjusted; or
* a **Valuable Item** on the **site**.

15.6 A **Latent Condition** is a physical condition on, underlying or adjacent to the **site** which a competent **building contractor** would not have anticipated if the **building contractor** had examined the **Site Information** and inspected the **site** before executing this **contract**.

15.7 A **Valuable Item** includes minerals, money, treasure, fossils, archaeological remains, historic objects or relics.

15.8 Any **Valuable Item** remains the property of the **owner** and the **building contractor** must take all necessary steps to avoid removal of, loss of, or damage to, any **Valuable Item**.

15.9 The **architect** must promptly give the **building contractor** a written instruction regarding a **Latent Condition** or **Valuable Item**.

15.10 The **building contractor** is entitled to make a claim for a **variation** under Clause 20 in relation to a written instruction given by the **architect** regarding the discovery of a **Latent Condition** or a **Valuable Item**.

Clause 16.1 is deleted and replaced with "Not used".

Clause 16.2 is deleted and replaced with the following:

Where, after **commencement**, the carrying out of the **works** are delayed by a cause for which the **owner** is responsible, the **owner** must pay to the **building contractor** delay damages in the amount set out in Item 27 of Schedule 1.

Clauses 17.2 to 17.8 (inclusive) are deleted and replaced with the following:

17.2 A claimable delay means any of the following causes of delay:

* a **variation** requested by the **owner** or a request by the owner for a **variation**;
* a **variation** requested by the **building** **contractor** if the need for the **variation** could not have been reasonably foreseen at the date of this **contract**;
* a **time** **allowance** in excess of the allowance for that cause of delay stated in **item** 13;
* an act of God, fire, explosion, earthquake or civil commotion;
* an industrial dispute;
* a dispute with adjoining or neighbouring residents or owners;
* anything done or not done by the **owner**;
* delays in getting any approvals;
* a delay in the supply of materials selected by the **owner**;
* the need for a survey of or other report in relation to the **site**; or
* the industry shutdown being a 3 week period commencing on or about 22 December in each year, if construction during the Christmas period could not have been reasonably foreseen at the date of this contract.

17.3 The **building contractor** is entitled to make a claim to adjust the **building period** only if the **building contractor**:

* promptly notifies the **architect** in writing of its intention to make a claim after receiving an instruction or, if no instruction is issued, promptly notifies the **architect** after becoming aware of an event that will result in a claim; and
* submits the detailed claim to adjust the **building period** to the **architect** within a time agreed in writing between the **building contractor** and the **architect** or, if no time is agreed, within 20 **working days** after receiving an instruction or, if no instruction is issued, within 20 **working days** after becoming aware of the event that has resulted in the claim and, for these purposes, an event is not a consequence of an instruction.

17.4 The **architect** must promptlyassess the claim to adjust the **building period** and in so doing the **architect** must consider the detailed claim submitted by the **building contractor** and any further information the **architect** requests the **building contractor** to supply.

17.5 If the **architect** needs additional information to assess the claim, the **architect** must issue a written request to the **building contractor**.

17.6 The **building contractor** must promptlygive to the **architect** any additional information the **architect** reasonably requests.

17.7 The **architect** must, within 20 **working days** after receiving the claim, issue to the **building contractor** and to the **owner** its written decision specifying any adjustment to the **building period**, or both.

17.8 The **building contractor** may dispute the **architect's** decision or a failure to issue a decision issued under this Clause in accordance with Clause 12D but must continue to perform its contractual obligations.

17.9 The **building contractor's** sole entitlement to damages for delays is the rate set out in Clause 16.2.

17.10 If the **building contractor** has not made a claim to adjust the **building period**, the **architect** may adjust the **building period** at any time up to the issue of the notice of **practical completion**.

17.11 The **building contractor** must take all reasonable steps to minimise the impact of the delay on the progress of the **works***.*

17.12 If one overlapping cause of delay further extends the delay resulting from another overlapping cause, the **building contractor** is entitled to:

* an adjustment of the **building period** equal to the time from the commencement of the first occurring delay to the end of the last overlapping delay; and
* damages under Clause 17.9for that part of any delay due to an event described in Clause 17.2 that is not simultaneous with another delay event and to the extent not caused or contributed to by the **building contractor**.

17.13 If one overlapping cause of delay does not further extend the delay resulting from another overlapping cause, the **building contractor** is entitled to:

* an adjustment of time equal to the period of time from the first occurring overlapping delay; and
* damages under Clause 17.9for that part of any delay due to an event described in Clause 17.2 that is not simultaneous with another delay event and to the extent not caused or contributed to by the **building contractor***.*

Clause 19 is deleted and replaced with the following:

19.1 The **building contractor** may by written notice to the owner suspend the carrying out of the works if:

* the **owner** does not pay a progress claim as required by Clause 4;
* any dispute or difference between the **owner** and the **building contractor** has been referred to the Queensland Building and Construction Commission, and/or the Queensland Civil and Administrative Tribunal under Clause 37;
* the **owner** is otherwise in breach of this **contract**.

Clause 19.3 is deleted and replaced with "Not used".

Clause 20 is deleted and replaced with the following:

**20 Variations**

20.1 Without limiting the remainder of this Clause, the **building contractor** may ask for the **works** to be varied. The request must be in writing, must be signed and must set out the reason for and details of the **variation**s sought.

20.2 The **architect** may give to the **building contractor** a written instruction for a **variation** at any time before the **date of practical completion**. However, except if Clause 20.7 applies, the **building contractor** must continue to perform the **works** in accordance with the **contract documents** until it receives an instruction to proceed under Clause 20.10.

20.3 The instruction for a **variation** may include an instruction to provide within 20 **working days**, or longer period if stated in the instruction, the following:

* a detailed estimate of the whole, or any part, of the cost of, or any saving, as a result of the **variation** and its effect on the **contract price**; and
* an estimate of the effect of the **variation** on the **date for practical completion**.

20.4 The **building contractor** may request an instruction to proceed from the **architect** if it considers that a **variation** may be required. The request must be in writing and state:

* the reason for and scope of, the **variation**;
* its effect on the **works** and any effect on any permit for the **works**;
* its effect on the **date for practical completion**; and
* the full cost of the **variation** and its effect on the **contract price**.

20.5 A **variation** is a change to:

* the scope of the **works** as contemplated by the **contract documents** and capable of being executed under this **contract**;
* a dimension or level of the **works**;
* the materials, workmanship or quality of any part of the **works**;
* a detail of the **works**; or
* the order of precedence of the **contract documents** referred to in Clause 13.1.

20.6 The **building contractor** must review any written instruction issued by the **architect** under Clause 20.2.

20.7 If the instruction will not:

* result in an adjustment to the **contract price**;
* require an adjustment to the Building Period; or
* require an alteration to any **Official Document**,

then the **building contractor**:

* must carry out the instruction promptly;
* is not required to obtain an instruction to proceed; and
* is not entitled to any adjustment to the **contract** as a result of carrying out the instruction.

20.8 If the instruction will:

* result in an adjustment to the **contract price**;
* require an adjustment to the Building Period; or
* require an alteration to any permit for the **works**,

the **building contractor** must within 10 **working days**, unless it has received a request for information under Clause 20.3, notify the **architect** in writing, stating:

* the effect of the **variation** on the **works** and any effect on a permit for the **works**;
* its effect on the Building Period; and
* the full cost of the **variation** and its effect on the **contract price**.

20.9 Except where Clause 20.7 applies, the **building contractor** must continue to carry out the **works** in accordance with the **contract documents** until a further instruction is received under Clauses 20.10 to 20.12, and is not entitled to any adjustment to the **contract** as a result of carrying out an instruction to which Clause 20.8 applies, unless it receives an instruction to proceed following its notification under Clause 20.8.

20.10 Within 5 **working days** after receiving the requested information under Clause 20.8, the **architect** must:

* instruct the **building contractor** in writing whether or not to proceed;
* instruct or further instruct the **building contractor**, as the case may be, under Clause 20.3; or
* instruct the **building contractor** to negotiate with the **architect** as agent of the **owner** on the scope, cost or time of the **variation** and the time by which an offer in negotiation must be accepted.

20.11 If the **architect** has instructed the **building contractor** to begin negotiation on the **variation**, the **architect** may at any time before the date of **practical completion** issue a further instruction to proceed with the **variation** which confirms the details of the acceptance of any quotation to adjust the contract scope, time or cost. Any instruction issued following agreement reached in negotiation on the **variation** must be given not more than two **working days** after the agreement is reached.

20.12 Within 5 **working days** after receiving all requested or further requested information under Clause 20.3, or a request under Clause 20.4, the **architect** must instruct the **building contractor** whether or not to proceed with the **variation**.

20.13 An instruction to proceed under Clause 20.12 must confirm acceptance of, and provide a copy of, the **building contractor**'s:

* quotation for the whole of the cost of the **variation**; and
* estimate of an effect on the **date for practical completion**.

20.14 If the **architect** instructs the **building contractor** to proceed with the **variation**, the **building contractor** must:

* promptly proceed with the **variation**; and
* notify the **architect** in writing when the **Necessary Work** for the **variation** has been completed.

20.15 If the **architect** issues a written instruction to proceed that confirms acceptance of a quotation, the **architect** must adjust the **contract price** and the **date for practical completion** (if applicable) in accordance with the quotation in the next certificate.

20.16 If an Authorised Person issues an **Official Document** to the **building contractor** which requires a **variation** to the **works**, the **building contractor** must notify the **architect** in writing promptly after receiving the **Official Document**. The notification must request an instruction from the **architect** and provide a copy of the **Official Document** to the **architect**.

20.17 If the **architect** receives an **Official Document** from the **building contractor** under Clause 20.16 the **architect** must promptly issue a written instruction to the **building contractor** regarding the **Official Document** within 5 **working days** of receiving the **Official Document**.

20.18 The **building contractor** is only entitled to make a claim to adjust the **contract price** for any loss, expense or damage that results from a written instruction issued under Clauses 20.16 and 20.17 or make a claim to adjust the **building period** under Clause 17 if the circumstances giving rise to the **Official Document** being issued were beyond the **building contractor**'s control.

Clause 21 is deleted and replaced with the following:

21.0 A **provisional sum item** shown in Schedule 3 is a sum exclusive of GST included in the contract for:

* performance of foreseeable **Necessary Work**, including the supply of materials, not fully described by the **contract Documents** on the date that this **contract** was executed.
* connection of an infrastructure service to the **site**, if the detail of the infrastructure service required, or the supplier of the infrastructure service, was not known or had not been finally decided on the date that this **contract** was executed.

21.1 A **prime cost item** shown in Schedule 3 is a sum exclusive of GST included in the contract for:

* a foreseeable item of material or equipment, the precise identity of which was not known or had not been specified at the date of the contract or,
* an allowance for payment of a fee or charge to a relevant authority.

21.2 The **building contractor** agrees that it has made adequate allowance in the **Cost of works** for the **provisional sum items** and **prime cost items** set out in Schedule 3 including, but not limited to, its preliminaries, overhead and profit.

21.3 The **building contractor** agrees that the program contains an adequate allowance of time for any work to be performed under any **provisional sum item** or **prime cost item** to the extent that the work was reasonably described in the **contract Documents** at the time that the **contract** was executed.

21.4 Subject to Clause 21.9, nothing is to be done for which a **provisional sum item** or a **prime cost item** has been scheduled in the contract except in accordance with an instruction from the **architect**.

21.5 The **architect** may instruct the **building contractor** to provide a written quotation for anything for which a **provisional sum item** or a **prime cost item** has been included in the **contract**.

21.6 The quotation must be for:

* the direct cost of the contractor of performing the **Necessary Work**;
* connection of any infrastructure service;
* supplying, or supplying and installing an item of material or equipment; or
* the amount of a fee or charge to a relevant authority,

excluding any margins for preliminaries, overheads, profit or GST. The **building contractor** must notify the **architect** in writing if GST is not applicable to the fee or charge.

21.7 Except in relation to payment of a fee, or charge to a relevant authority, if the **architect** agrees with the quotation, the **architect** must issue an instruction to proceed accepting the quotation.

21.8 Except in relation to payment of a fee or charge to a relevant authority, if the **architect**:

* does not agree with the quotation or
* has not instructed the contractor to provide a quotation,

the **architect** may instruct the contractor to proceed, in which case the **architect** must issue a decision.

21.9 The **building contractor** may pay a fee or charge to a relevant authority for which a **prime cost item** has been included in the **cost of works** without first receiving an instruction from the **architect**.

21.10 Except for payment of a fee or charge to a relevant authority, the **architect** may give an instruction to the **building contractor** for a person other than the **building contractor** to perform work or to supply or supply and install an item for which a **provisional sum item** or **prime cost item** has been included in the **cost of works**.

21.11 The **architect** may only issue an instruction under this clause if the person is identified in Schedule 3, or the intention to use a particular person whose identity was not known at the time the **contract** was executed is shown in Schedule 3.

21.12 The **architect** must adjust the **cost of works** to take account of any difference between a **provisional sum item** or **prime cost item** and:

* the accepted quotation,
* the **architect**'s assessment of a claim under Clause 21.8,
* the amount of a fee or charge to a relevant authority,

as applicable. The **architect** must adjust the **cost of works** in the next progress certificate.

21.13 If the assessed cost of performance of the **Necessary Work**, connection of an infrastructure service, or supply, or supply and installation is more than the **provisional sum item** or **prime cost item**, the extra cost will be increased by the percentage shown in Item 26 of Schedule 1 and added to the **cost of works**.

21.14 If the assessed cost of performance of the **Necessary Work**, connection of an infrastructure service, or supply, or supply and installation is less than the **provisional sum item** or **prime cost item**, the difference will be deducted from the **Cost of works**.

21.15 In relation to a fee or charge paid to a relevant authority, the **architect** must adjust the **Cost of works** by deducting, or adding, the net difference between the **prime cost item** and the actual fee or charge.

Clause 24 is deleted and replaced with the following new clauses:

24.1 Materials, goods and work to be provided by the **owner** must be:

(a) suitable for including into the **works**;

(b) supplied or completed in the time required by the **building** **contractor**;

(c) new unless otherwise specified; and

(d) completed to the **building contractor's** satisfaction.

24.2 If the **owner** carries out or causes to be carried out other work on the **site** while the works are being carried out then the **owner** must, and must ensure that the **owner's** contractors:

(a) do not interfere with the progress of the **works**;

(b) hold and maintain the same insurance coverage as the **building contractor** is required to hold and maintain under this **contract** in relation to their works;

(c) hold an appropriate licence to carry out the work;

(d) observe all relevant occupational health and safety laws and the requirements of the **building contractor** in regard to occupational health and safety;

(e) obey all directions issued by the building contractor regarding the co‑ordination and timing of their works on the **site**;

(f) co‑operate with all of the other workers and contractors on the **site**.

24.3 If the **owner** breaches the above conditions, the **building contractor** must promptly notify the **architect** in writing giving details of the effect on the **works***.* The **architect** must promptlyissue an instruction to the **building contractor**.

24.4 The **owner** must, on request, give the **building contractor** evidence of all licences and insurances referred to under Clause 24.2.

24.5 If the **owner** or the **owner's** contractors do not observe all of the requirements in Clauses 24.2 and 24.4 the **building contractor** may exclude or direct the **owner** or the **owner's** contractors to leave the **site**.

24.6 Unless the **Contract Documents** state otherwise, the **Builder** owns and will own the following:

* all demolished materials; and
* all unfixed materials supplied by the **building contractor** but only until the **owner** has paid for the materials.

Clause 25 is deleted and replaced with the following:

25.1 The **works** are at **practical completion** when, in the reasonable opinion of the **architect**:

* they are substantially complete and any incomplete work or defects remaining in the **works** are of a minor nature and number, the completion or rectification of which is not practicable at that time and will not unreasonably affect occupation and use;
* all commissioning tests in relation to the plant and equipment shown in Item 22 of Schedule 1 have been carried out successfully; and
* any approvals required for occupation have been obtained from the relevant authorities and copies of **Official Documents** evidencing the approvals have been provided to the **architect**.

25.2 Subject to Clause 25A, the **owner** takes possession of the **works** at 4.00pm on the date the **architect** issues the notice of **practical completion.**

25.3 At least 10 **working days** before the date the **building contractor** expects that **practical completion** will be reached, the **building contractor** must inspect the **works** and prepare a detailed schedule of defects and incomplete work and give a copy of the schedule to the **architect**.

25.4 At the same time, the **building contractor** must give the **architect** a written timetable for the correction of defects and completion of incomplete work.

25.5 When the **building contractor** considers that the **works** are at **practical completion**, the **building contractor** must notify the **architect** in writing and give a copy of the detailed schedule of defects and incomplete work indicating that each item has been corrected or completed to the satisfaction of the **building contractor**.

25.6 The **architect** must commence its inspection of the **works** promptly and complete the inspection within an agreed time or, if none is agreed, within 10 **working days**. The **architect** must issue a notice or instruction under Clauses 25.8 or Clause 25.10.

25.7 Within the agreed time for the **architect**'s inspection, or if none is agreed, within 10 **working days**, the **building contractor** must give the **architect** any **Official Documents** required for occupation and evidence that all the commissioning tests shown in Item 22 of Schedule 1 have been successful.

25.8 If the **architect** decides that the **works** have reached **practical completion**, the **architect** must give written notice of **practical completion** to the **building contractor** and to the **owner** within 5 **working days** after completing the inspection. The notice must state the date when **practical completion** was reached.

25.9 The **architect** must also notify the **owner** in writing that security must be released in accordance with Clauses 8A.13 to 8A.14.

25.10 If the **architect** considers that the **works** are not at **practical completion** the **architect** must give a written notice to the **building contractor** copied to the **owner**, listing what is to be done for **practical completion** to be reached. The **architect** must give the notice to the **building contractor** within 5 **working days** after completing the inspection.

25.11 If the **architect** gives notice to the **building contractor** under Clause 25.10, the **building contractor** must promptly do whatever is necessary for **practical completion** to be reached. The **building contractor** must notify the **architect** in writing when it considers the **works** have reached **practical completion**. The procedures under Clauses 25.2 to 25.10 apply until the **architect** decides that the **works** have reached **practical completion**.

25.12 If the **architect** fails to issue a notice under Clauses 25.8 or Clause 25.10 within 5 **working days** completion of the inspection, the **building contractor** may request in writing that the **architect** issue a notice.

25.13 If the **architect** fails to issue a notice within 5 **working days** of the request:

* the **building contractor** may make a claim to adjust the **contract** for any loss, expense or damage that results from the failure of the **architect** to issue a notice and
* the date of **practical completion** will be the date identified in the **building contractor**'s notice made under Clauses 25.3 to 25.5; and
* any security must be released in accordance with Clauses 8A.15 to 8A.16.

25.14 If the **owner** takes possession of the **works** before the **architect** issues the notice of **practical completion**, the **works** are to be treated as having reached **practical completion**. The **architect** must issue to the **building contractor** and to the **owner** a notice of **practical completion** for the **works** within 5 **working days** after being notified in writing that the **owner** has taken possession, unless Clauses 25.8 applies.

A new clause 25A is inserted as follows:

**25A Building contractor to correct defects and finalise the works**

25A.1 The **building contractor** must correct any defects or finalise any incomplete work, whether before or after the **date of practical completion**, within the agreed time as stated in an instruction on or if no time is stated, within 10 **working days** after receiving a written instruction from the **architect** to do so.

25A.2 If the **building contractor** fails to correct a defect or finalise any incomplete work within the time nominated under Clause 25A.1 or fails to show reasonable cause for the failure together with a timetable for correcting the problem that is acceptable to the **architect**, the **owner** may use another person to correct the problem at the cost of the **building contractor**.

25A.3 If the **owner** is required to use another person to rectify a problem, the **owner** is entitled to make a claim for a **variation**.

25A.4 If the **owner** makes a claim to adjust the **contract** the **architect** must promptly assess the claim and may issue a certificate under Clause 4.

A new Clause 25B is inserted as follows:

**25B Testing**

25B.1 The **architect** may at any time give to the **building contractor** a written instruction to open up or carry out tests on elements of the **works**other than as required by the **contract documents**. The **building contractor** must promptly comply with the instruction.

25B.2 The **building contractor** is entitled to make a claim for a **variation** under Clause 20in relation to any loss, expense or damage that results from an instruction under Clause 25B.1, only if the opening up or testing does not reveal defects or incomplete work.

Clause 26 is deleted and replaced with "Not used'.

Clause 27 is deleted and replaced with the following:

**27 Defects liability period**

27.1 The defects liability period is shown in Item 23 of Schedule 1 and commences on the **date of practical completion**. The **owner** must give the **building contractor** access to the site for the duration of the defects liability period for the purpose of the **building contractor** fulfilling its obligations under Clause 27.3.

27.2 The **architect** may notify the **building contractor** that, in respect of any part of the **works** that has undergone significant correction within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the corrected work.

27.3 If there is any remaining defect or incomplete work, or the **building contractor** becomes aware by instruction from the **architect** or from the **building contractor**'s own observations of any defect or incomplete work during the defects liability period, it must promptly return to the **site** and correct the defect or finalise the incomplete work. This obligation continues until the defect is corrected or the incomplete work is finalised, and does not come to an end when the defects liability period is over.

24.4 The **architect** cannot give the first instruction to correct an outstanding defect or to finalise any incomplete work after the end of the defects liability period, unless it is for the rectification of a latent defect and the final certificate has not been issued.

Clause 28.2 is deleted and replaced with the following:

28.2 A substantial breach of this **contract** by the **owner** is:

* failing to pay progress payments as required by Clause 4; or
* any other substantial breach of this **contract**.

Clause 28.7 is deleted and replaced with the following:

28.7 On this **contract** being ended by the **building contractor** under Clauses 28 or 29, the **building contractor** is entitled to:

* the cost of all work carried out by the **building contractor** under this **contract**;
* the cost to the **building contractor** of any materials purchased by the **building contractor** and delivered to the **site** or ordered by the **building contractor** from suppliers and which orders cannot be cancelled; and
* the **building contractor's margin** on the total of the amounts payable under subparagraphs (i), (ii) and (iii).

New Clauses 28.9 and 28.10 are added as follows:

28.9 At any time after termination of the **building contractor**'s engagement, the **architect** may instruct the **building contractor** to remove all or some of its property from the **site***.* The **building contractor** must comply within 10 **working days***,* failing which the **owner** may remove the property identified in the **architect's** instruction and dispose of it. The **owner** must give notice in writing to the **building contractor** and the **architect** of the amount the property is disposed for. The **owner** must pay the **building contractor** the amount the property is disposed for, less the costs of removal and disposal.

28.10 If the engagement of the **building contractor** has been terminated under Clauses 28 or 29:

* the **building contractor** must assign to the **owner** all of its rights under any subcontract relating to the supply of labour, services, materials or equipment for the **works** if directed to do so by the **architect**;
* the **owner** may contract with others to complete the **building works**; and
* the **owner** may take possession of the **site** and exclude the **building contractor** from it.

New Clauses 31.2 to 31.4 are added as follows:

31.2 The **architect** is not the **owner's** agent for giving or receiving notices under Clauses 12D, 12E, 28, 29 and 37.

31.3 The **building contractor** must provide the **architect** with a copy of all notices and documents required to be provided to the **owner** under this **contract**.

31.4 The **architect** may provide any notice required under this **contract** to be provided by the **owner** in its place and in doing so shall discharge the **owner's** obligation to do so under this Contact.

Clause 32 is deleted and replaced with the following:

**32 Liquidated damages**

32.1 If the **works** have not reached **practical completion** by the end of the **building period** as adjusted, the **architect** must promptly notify the **building contractor** and the **owner** in writing of the **owner's** entitlement to liquidated damages.

32.2 Up to 20 **working days** after the date of issue of the notice of **practical completion,** the **owner** may notify the **architect** in writing whether it will enforce its entitlement to liquidated damages against the **building contractor.**

32.3 The **building contractor** is liable to pay or allow to the **owner** liquidated damages at the rate shown in Item 15 of Schedule 1 for each **working day** after the end of the **building period** to and including the earlier of:

* the on which **practical completion** is achieved;
* the date this **contract** is ended.

32.4 If the **owner** notifies the **architect** in writing under Clause 32.2, then the **architect** must:

* notify the **building contractor** of the **owner's** decision within one **working day**; and
* deduct liquidated damages from the next and subsequent progress certificates, as applicable.

32.5 If, after the **architect** has issued a certificate in which an allowance for the **owner's** entitlement to liquidated damages has been made, an adjustment is made to the b**uilding period**, with the result that the **owner's** entitlement to liquidated damages is altered, or the **owner** has advised that it no longer wishes to enforce its entitlement to liquidated damages, the **architect** must make an appropriate adjustment in the next certificate.

Clause 33 is deleted and replaced with the following:

33.1 Each party must pay interest on any money that it owes the other but fails to pay on time. In the case of the **owner**, this includes any delay caused by the failure of the **architect** to issue a progress certificate on time.

33.2 The interest rate is shown in Item 8 of Schedule 1.

33.3 The interest is calculated daily, from the date the money should have been paid. The interest must be paid on the last day of each month. If interest due on the last day of a month is not paid, it is immediately capitalised and added to the money outstanding.

Clause 34 is deleted and replaced with "Not used".

Clause 35 is deleted and replaced with "Not used".

In Clause 37.1, after "of this **contract,´** insert "that cannot be resolved by informal agreement,"

New Clauses 37.2 and 37.3 are added as follows:

37.2 If a dispute or difference arises out of or in relation to this **contract**, the parties must continue to perform their obligations under this **contract**.

37.3 Nothing in this **contract** prevents either party from seeking resolution of any dispute under this **contract**, in accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld), at any time.

In Clause 38.1, new definitions are added as follows:

* '**architect**' means the person, partnership or company named in Schedule 1.
* '**Authorised Person**' has the meaning given in Clause 11A.3.
* '**business day'** means any day other than a Saturday, Sunday, or statutory public holiday, special holiday or bank holiday in the relevant place in Queensland.
* **'cost of work'** means the actual cost of the Works excluding any amounts for GST;
* '**Latent Condition**' has the meaning given in Clause 15.6.
* **'Necessary Work'** means all work including any temporary work necessary to complete the Work.
* '**Official Document**' has the meaning given in Clause 11A.2.
* '**practical completion'** has the meaning given in Clause 25.1.
* '**Site Information**' has the meaning given in Clause 15.2.
* '**Valuable Item**' has the meaning given in Clause 15.7.
* '**variation**' has the meaning given in Clause 20.5.
* **'working days'** means Monday to Friday excluding statutory public holidays and rostered days off and recognised industry shut down periods in Queensland.

**Attachment 1**

Schedule 5 – building contractor's unconditional guarantee to the owner

**Clause 8A.6**

for [insert amount $AUD]

in favour of [insert name of **owner**]

[Insert name of **owner**, and ABN if **owner** is a company] of [insert address] (**owner**) has entered into a written contract dated [insert contract date] with [insert name of **building contractor** and ABN] of [insert address] (**building contractor**) for the construction of the **works** described in that contract. The contract states that the **building contractor** may elect to give security for the performance of the contract in the form of an unconditional guarantee.

[Insert name of security provider] unconditionally undertakes that if the **owner** gives it a written notice stating the basis and extent of its entitlement to draw on the undertaking and the amount to which it is entitled, the security provider will pay the **owner** the amount which the **owner** declares is due, up to a maximum of the combined amount of [insert amount $AUD] (the **Amount**).

It is not the responsibility of the security provider to investigate the accuracy or the reasonableness of the contents of the notice or the declarant's capacity to give the notice. The security provider will make the payments without further reference to the **building contractor**, despite any notice by the **building contractor** or any other person to the security provider not to pay the whole or any part of the amount.

The security provider's liability under this undertaking is not affected by any variation of the contract or by any waiver by the **owner** of any default by the **building contractor**.

This undertaking remains in force until the first of the following events occurs:

* the **owner** notifies the security provider in writing that this undertaking is no longer required;
* the security provider pays the Amount to the **owner**; or
* the **owner** informs the security provider that the **building contractor** has performed all its obligations and paid all amounts required to be paid under the contract; or
* [insert date of expiry/termination of this undertaking].

This undertaking creates no rights in anyone except the **owner** and the **owner's** successors and cannot be assigned.

This undertaking is governed by the law of [insert jurisdiction].

**EXECUTED** on [insert date] as a **Deed**.

Signed, sealed and delivered on behalf of [insert name of security provider] by its attorney [insert name and address of attorney of security provider] declaring it has no notification of the revocation of the power of attorney granted to it on [insert date] under which this undertaking is executed.

*Signature of attorney*

*Signature of witness*

Schedule 6 – Certificate in respect of insurance

**QBCC Regulation 2003**

NOTICE OF COVER

QUEENSLAND HOLD WARRANTY SCHEME

SUBJECT TO THE LIMITATIONS AND EXCLUSIONS EXPRESSED IN THE TERMS OF COVER SCHEDULE 2C QBCC REGULATION 2003

|  |  |  |
| --- | --- | --- |
| **COVER COMMENCEMENT DATE** | |  |
| **CONSTRUCTION NOTIFICATION NUMBER** |  |  |
| **THE LAND** | Address: |  |
|  | Real Property Description: |  |
| **THE CONTRACTOR** | Name: |  |
|  | Address: |  |
|  | Licence Class: |  |
|  | Licence No.: |  |
| **THE INSURANCE RESIDENTIAL CONSTRUCTION WORK** | Type of Work Renovation, extension or repair |  |
|  | Insurable Value: | $ |
|  | Premium Paid: | $ |
| **OPTIONAL ADDITIONAL COVER** | |  |

**NOTE**:

This Notice is issued in respect of Residential Construction Work as described in the Queensland Building and Construction Commission Act 1991 and confirms for the assessment manager or compliance assessor that the appropriate insurance premium has been paid as required by section 68E of the Act. These particulars are current at the date of issue but may change subsequent to that date.

**IMPORTANT INFORMATION**:

Ensure you obtain and keep the following documents in case you need to make an insurance claim at any time within the 6 year 6 month insurance period:

* A complete copy of the contract, signed by all parties
* All contract variations, in writing and signed by all parties to the contract
* A copy of the building specification and approved building plans
* Receipts or other evidence of all payments made to the builder