

GENERAL CONDITIONS

1 DEFINITIONS

In this **Contract**, except where the context otherwise requires:

Business Day means any day other than a Saturday, Sunday, public holiday in the state in which the Site is located or 27 – 31 December.

Claim means any action, suit, claim, proceeding, demand or loss whatsoever including without limiting the generality of the foregoing any claim howsoever arising out of, relating to or connected with the Contract including:

- (i) present, unascertained, immediate, future or contingent;
- (ii) in contract or in tort including negligence or under statute or for breach of fiduciary duty or statutory duty, by reason of any other principle whether legal, equitable or statutory;
- (iii) asserted by action, claim, suit, proceeding, deduction, set-off or counterclaim or otherwise;
- (iv) for breach of any provision, warranty, representation, obligation, indemnity or undertaking (express or implied); or
- (v) for costs whether ordered or not or assessed or taxed in relation to any proceedings or otherwise.

Client means the person as stated in **Schedule 1**.

Commencement Date means the date stated in Schedule 1 or any other such date as may be determined in accordance with this Contract.

Completion Date means the date evidenced by the Contractor's written notice in accordance with Clause 10(f).

Confidential Information means all plans, samples, models, patterns, financial, business, technical and other information of whatever kind regarding the Works or the Contractor (including without limitation any research, diagrams, plans or other documents whatsoever whether or not belonging to the Contractor) disclosed to or obtained by the Client before or after the execution of this Contract by the Client.

Contract means the documents identified as part of the Contract stated in Schedule 1.

Contract Sum means the sum stated in Schedule 1 or that sum as may be adjusted and payable under this Contract.

Contractor means the person as stated in Schedule 1 and includes permitted assignees and transferees.

Date for Completion means:

- (i) where Schedule 1 provides a Date for Completion, the date;
- (ii) where Schedule 1 provides a period of time for Practical Completion, the last day of the period,

but if any EOT is allowed by the Contract or granted by the Client or allowed in any expert determination or arbitration it means the date resulting therefrom.

Days means calendar days.

Defects Liability Period means the period commencing at 4pm on the Completion Date and continuing until the date specified in Schedule 1.

Deposit means the deposit amount as identified in Schedule 1.

EOT (from 'Extension Of Time') means an adjustment to the Date for Completion in accordance with Clause 10(b).

GST means the tax payable on taxable supplies under the GST Legislation.

GST Legislation means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Home Building Laws means the Queensland Building and Construction Commission Act 1991 (Qld), Queensland Building and Construction Commission Regulation 2018 (Qld) and any associated acts or regulations.

Incalculable Delays means the delays as stated in Schedule 1 where it is not possible for the Contractor to adequately estimate the period of the likely delay.

Liquidated Damages means the pre-agreed amount stated in Schedule 1 which may be payable by the Client to the Contractor in accordance with this Contract.

OHS Law means the Work Health and Safety Act 2011 (Qld) and the Work Health and Safety Regulation 2011 (Qld) and any other associated Acts or Regulations.

Payment Period means the period in which the payment must be made to the Contractor by the Client as identified in Schedule 1.

PPSA means the Personal Property Security Act 2009 (Cth).

Progress Claim means each claim for a part or whole of the Contract Sum made by the Contractor to the Client under this Contract.

Practical Completion is the day when the Works is completed:
(a) in compliance with the Contract, including all plans and specifications for the Works and all statutory requirements applying to the Works; and
(b) without any defects or omissions, other than minor defects or minor omissions that will not unreasonably affect occupation; and
(c) if the Client claims there are minor defects or minor omissions, the Contractor gives the Client a defects document for the minor defects or minor omissions.

Reference Date means the reference date as specified by clause 13(a).

Relevant Criteria means, for materials:

- (i) Generally accepted practices or standards applying in the building industry for the materials; or
- (ii) Specifications, instructions or recommendations of manufacturers or suppliers of the materials.

Site means the Site identified in Schedule 1.

Statutory Warranties means those warranties referred to in Clause 6.

Submission Date means the date for submission of a Progress Claim by the Contractor as identified in Schedule 1.

Works means the whole of the work described in the Contract, including all reasonable incidental or usual works.

and like words have a corresponding meaning.

2 SCOPE AND STANDARD OF WORK

- (a) The Contractor shall in consideration of the Contract Sum carry out the Works:
 - (i) in a proper and workmanlike manner;
 - (ii) using materials which are new (unless expressly stated otherwise and of merchantable quality);
 - (iii) In accordance with the relevant Australian Standards;
 - (iv) in compliance with any relevant development consent or complying development certificate, any construction certificate and any other requirement of the relevant local council and any

- statutory authority whose approval or consent is required with respect to the work; and
- (v) In accordance with the Building Code of Australia to the extent required by legislative requirements.
- (b) A Bill of Materials ("BOM") does not form part of this Contract and if one is provided it is not warranted by the Contractor to be correct.
- (c) Instruction by the Client to commence work or deliver materials to the Site constitutes an unqualified acceptance of the Contract by the Client.
- (d) Unless expressly included within this Contract, any costs incurred by transmission or distribution network supply providers or other statutory authorities are payable by the Client and are not included in the Contract Sum.
- (e) Within two (2) Business Days after acceptance of this Contract by the Client, the Client shall give the Contractor possession of sufficient of the Site to enable the Works to commence. Thereafter the Client shall give the Contractor possession of further parts of the Site as and when required by the Contractor to enable the Contractor to execute the Works in accordance with the Contract.
- (f) Should the Contractor encounter defective or unsafe areas or works, the Contractor shall isolate the same and report to the Client. In order to carry out the Works, the Contractor may be required to rectify such defective or unsafe areas or works, and the Client shall authorise such additional work in writing, which shall be a deemed variation.
- (g) If the Client is to carry out any work and / or supply any materials, the Client must diligently carry out the work and supply the materials to avoid delay to the Works. The Contractor shall not be liable for any materials or workmanship carried out by the Client.
- 3 CONTRACTOR'S WARRANTIES**
- (a) The Contractor warrants that all materials and workmanship comprising the Works shall conform to relevant legislation, regulation, Australian Standards and the requirements of any authority regulating the supply and use of such installations in force on the date of the performance of the Works.
- (b) The Client acknowledges that the Contractor in entering this Contract has relied on the information and documentation supplied by the Client to the Contractor.
- (c) Where any warranty has been given by a third-party in respect of the materials and workmanship supplied by that third-party to the Contractor and incorporated into the Works, and such warranty imposes less obligations on the third-party than those imposed by this Contract, the Contractor shall give a like warranty to the Client which shall apply to the third-party materials or workmanship to the exclusion of other warranties under this Contract and assign to the Client the benefit of the warranty on the Client meeting the Contractor's costs on an indemnity basis. This clause shall not reduce, restrict or remove the Statutory Warranties in Clause 6.
- 4 PRIOR WORK ACCEPTED**
- (a) The Contractor shall not be liable for any contractor's prior work or any defect in prior work.
- (b) The Contractor shall be entitled to recover any costs incurred as a result of any defect in any prior work.
- 5 CONTRACT DOCUMENTS**
- (a) If the Contractor finds any ambiguity, discrepancy or inconsistency between any Contract documents, it will promptly give written notice thereof to the Client.
- (b) The Client shall notify the Contractor of the interpretation to be followed and, the Contractor shall be entitled to payment of its reasonable variation and / or Extension of Time for any necessary correction.
- (c) The Client shall supply to the Contractor drawings and or other information as is requested.
- (d) The Client warrants that all materials and equipment supplied by the Client and / or to which the Contractor is required to interface or connect its Works, conform with the relevant Australian Standards and legislative and regulatory requirements.
- (e) When reasonably requested to do so, the Contractor will provide shop drawings and the Client shall accept in writing such drawings (amended if necessary) prior to the Contractor commencing Works. Such acceptance shall form part of the Contract.
- 6 STATUTORY WARRANTIES**
- (a) To the extent required by the Home Building Laws, the Contractor warrants that:
- (i) the Works will be carried out in an appropriate and skilful way and with reasonable care and skill;
- (ii) all materials to be supplied for us in the Works will be good and having regard to the Relevant Criteria suitable for the purpose for which they are used, and that all materials used will be new unless this Contract expressly provides otherwise;
- (iii) the Works will be carried out in accordance with all relevant laws and legal requirements, including for example the Building Act 1975 (QLD);
- (iv) the Works will be carried out in accordance with the plans and specifications and any other Contract documents described in Annexure C;
- (v) if the Works consists of the erection or construction of a detached dwelling to a stage suitable for occupation or is intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, that the detached dwelling or home will be reasonably suitable for occupation when the Works are finished;
- (vi) where the Contract is a cost plus contract or does not have a stated completion date or period, the Contractor warrants the Works will be carried out with reasonable diligence; and
- (vii) Where the Contract includes a provisional sum or prime cost item, the Contractor warrants the provisional sum or prime cost item has been calculated with reasonable care and skill and having regard to all the information reasonably available when the Contract is entered into (including information about the nature and location of the Site).
- 7 INSURANCE & INDEMNITY**
- (a) *Workers Compensation* – The Contractor shall insure against liability for death of or injury to the Contractor's employees including liability by statute and at common law and shall ensure that any subcontractors including their employees are similarly insured.
- (b) *Public Liability* – The Contractor shall take out a policy of insurance, noting the Contractor as an insured, insuring against any Claim (excluding liability which is required by law to be insured under a workers' compensation policy of insurance) in respect of or in connection with the death of or injury to any person or any loss of or damage to any property arising out of or in any way connected with or caused by the execution of the Works. Such insurance shall be for such amount as specified in Schedule 1 for each event and in the aggregate.
- (c) *Construction Risk* – The party specified in the Schedule shall insure against all usual risks in respect of the Works which shall cover any loss of, damage or injury to or in respect of (inter alia) part of or the whole of the Works and any variation or extensions thereto to the extent of their full value.
- (d) *Home Warranty Insurance* – The Contractor shall ensure that Home Warranty Insurance is obtained in accordance with relevant law.
- (e) Such insurances as described in this clause shall cover the Contractor's interest only.
- (f) Evidence of currency of all insurances may be provided to the Client prior to the commencement of the Works and at any reasonable time thereafter upon reasonable request.
- (g) If the Client is entitled to make a claim under any insurance policy effected by the Contractor, the Client shall be liable for any excesses in connection with the claim.
- (h) The Contractor shall not be liable in Contract or in or tort, or for any consequential, special or contingent loss or cost which may be claimed or incurred as a result of the Contractor's failure to perform any obligation under the Contract, except to the extent this clause would reduce, restrict or remove the Statutory Warranties.

- (i) Excluding any Claim in respect of the Statutory Warranties but notwithstanding anything else to the contrary, the Contractor shall not be liable upon any Claim by the Client arising out of or in connection with the Contract, any alleged breach of the Contract, in tort, under any statute, for payment or compensation on the basis of restitution, or for payment or compensation on any other legal or equitable basis in an amount exceeding 10% of the Contract Sum.

8 LEGISLATIVE REQUIREMENTS

- (a) The Contractor and the Client shall comply with the provisions of all Commonwealth, State, Territory and municipal statutes, regulations, by-laws, ordinances, orders, rules, standards and other legal requirements in force from time to time and affecting or in any way relating to the Works.
- (b) If, due to such a requirement, the Works must be amended, the Contractor shall promptly provide written notice to the Client setting out the reasons for the change, and any agreement to vary the Works shall be considered a variation (provided the change is not the fault of the Contractor) and considered under Clause 12.
- (c) The Contractor will:
- (i) Ensure that the Contractor's employees and subcontractors and their employees have completed such induction and training as is necessary to enable the employees and subcontractors to perform their work in a manner that is safe in accordance with the OHS Law;
 - (ii) Exercise reasonable care to ensure that its employees, agents and subcontractors exercise necessary precautions for the safety of all persons engaged in the performance of the Works or otherwise on Site and the public generally;
 - (iii) Comply with legislative requirements and the OHS Law and other requirements of the Contract for occupational health and safety;
 - (iv) Comply with any site safety requirements set out in the Contract.
- (d) The Client shall ensure that where the Contractor is required to work on the Site, such site is maintained as a place of work which complies with the OHS Law, and should the Client fail to do so and cause the Contractor to incur costs, then such costs shall be added to the Contract Sum.

9 WORKING HOURS AND WORK SCHEDULE

- (a) The Contractor shall be entitled to carry out the Works during normal working hours, and should the Client require the Contractor to work at times which would oblige the Contractor to pay overtime costs, then the cost of such overtime shall be added to the Contract Sum.

10 TIME

- (a) The Contractor shall commence the Works within ten (10) Business Days from the latest of:
- (i) The Commencement Date; or
 - (ii) If the approval of the local council or other statutory authority has still to be obtained for the work, the date of written notification of that approval, which shall be obtained by the Client; or
 - (iii) If the consent of the lending authority is required, the date of written notification to the Contractor of that consent and shall proceed with the Works with reasonable due diligence, in accordance with the Contractor's current construction programme as varied from time to time and bring the Works to Practical Completion by the Date for Completion. Within ten (10) business days of starting the Works at the building site, the Contractor will give the Client a commencement notice signed by the Contractor and stating:
 - (i) the date the subject work started at the building site; and
 - (ii) the date for practical completion.
- (b) When it becomes evident to the Contractor that anything, including any breach, act or omission of the Client, may delay the progress of the Works, the Contractor shall promptly notify the Client in writing with details of the possible delay and the cause.

- (c) If the progress of the Works is delayed by any cause or causes not reasonably foreseeable by and beyond the reasonable control of the Contractor (including any breach, act or omission of the Client) in a manner which might reasonably be expected to delay Practical Completion of the Works until a date later than the Date for Completion, the Contractor shall give notice to the Client in writing setting out details of the delay.
- (d) Provided that the Contractor has provided the Client with a written claim for Extension of Time within 10 Business Days of becoming aware, or reasonably ought to have become aware, of the cause and extent of the delay and the Client has approved the claim in writing, the Contractor shall be entitled to a reasonable Extension of Time to complete the Works and the Client shall be liable to the Contractor for its reasonable additional costs for materials, labour, administration and overheads incurred by reason of such delay. The Contractor will provide the Client with a signed copy of its claim for Extension of Time within 5 Business Days of the Client approving the claim.
- (e) The Contractor may, at any time due to a failure by the Client to:
- (i) Maintain a safe place of work at the Site;
 - (ii) Make payment within two Days of the due date in accordance with the terms of the Contract;
 - (iii) Advise the Contractor promptly of any requirement or notice from a statutory authority or lending authority (if any) that affects the Work;
 - (iv) Supply any materials or perform any work that is to be carried out by the Client which prevents the Contractor from continuing with the Work;
- suspend the whole or any part of the Works by giving written notice to the Client and the Contractor shall be entitled to a reasonable Extension of Time, and the Client shall be liable to the Contractor for its reasonable delay costs. If the Client remedies the default, the Contractor must recommence the Work promptly, except where the Contract has been terminated.
- (f) Where in the opinion of the Contractor the Works have reached Practical Completion, the Contractor shall give written notice of this to the Client. The Client shall within two (2) Business Days of the Contractor's notice either notify the Contractor of the reasons why Practical Completion has not been reached, in which case:
- (i) The Contractor will promptly attend to the same and this clause shall reapply; or
 - (ii) The Client shall issue a certificate of Practical Completion which evidences the Completion Date.

In the event of the Client not complying with the provisions of this clause, the Works shall be deemed to have reached Practical Completion on the date of the Contractor's notice.

11 SITE INSTRUCTIONS

- (a) The Client may issue written instructions to the Contractor in respect of the Work and the Contractor may comply with such instructions, but if such instruction causes the Contractor to incur more or less cost than the Contractor shall be entitled to an increase in the Contract Sum and a reasonable Extension of Time.
- (b) If the Contractor receives from the Client an instruction which it considers constitutes a variation the Contractor shall give a written notice to the Client setting out details of the claim.
- (c) The Contractor shall employ on site a competent English speaking foreman.
- (d) The Client shall attend meetings as reasonably requested by the Contractor in order to facilitate completion of the Works.

12 VARIATIONS

- (a) If the Client instructs the Contractor at any time before Practical Completion to amend, increase, omit or change the nature, quality, character or extent of the Works or to execute additional work, the Contractor shall, in accepting the variation, be entitled to increase or decrease the Contract Sum to allow for the reasonable costs of the varied works (including an allowance for materials already manufactured or procured, or work already done, but not required),

and shall be entitled to claim a reasonable Extension of Time to complete the Works.

- (b) The Contractor shall not vary the Works except as instructed in writing by the Client and shall not carry out any work the subject of a variation until the Client agrees to the variation in writing, except if the variation is required to be carried out urgently and it is not reasonably practicable, in the particular circumstances, to provide a written variation before carrying out the work. The Contractor shall give to the Client a copy of the variation in writing before carrying out the work subject of the variation and in any case within 5 Business Days from the date the Contractor and the Client agree to the variation.
- (c) If the cost to the Contractor of carrying out or having carried out the Works increase because of changes in statutory, government or regulatory fees, charges, levies, taxes or other imposts with respect to the Works, the Contract Sum shall be increased to the extent of the additional or reduced costs.
- (d) The Client shall respond to the Contractor's variation claims reasonably and promptly, and in any case within ten (10) Business Days of receiving the claim. If the Client does not do so, there shall be a deemed assessment and agreement to the variation and Extension of Time as claimed.

13 CLAIMS AND PAYMENTS

- (a) Subject to the provisions of the Contract the Contractor is entitled to make claims for payment for work completed on Site ("Progress Claim"), supported by evidence of the amount due to the Contractor on the Submission Date, or as set out in Annexure D, or at such other periods as agreed in writing ("the Reference Date").
- (b) Unless otherwise stated Progress Claims shall be paid within the Payment Period from the Reference Date specified in Clause 13(a). Variations which have been agreed or determined under this Contract may be included in the Contractor's Progress Claim to the extent that they have been completed.
- (c) If the Client disagrees that the Contractor is entitled to be paid a Progress Claim, within ten (10) Business Days of receipt of a Progress Claim the Client shall issue to the Contractor a payment schedule stating the amount of the payment which in the opinion of the Client is to be made by the Client to the Contractor.
- (d) If the Client fails to issue a payment schedule within time, the Progress Claim amount shall be deemed to be agreed and shall be the payment schedule amount.
- (e) The Client shall be obliged to pay for materials, plant or equipment which have not been delivered to the Site or incorporated into the Works but have been procured by the Contractor for the purposes of the Works.
- (f) The method chosen for payments made by the Client to the Contractor pursuant to this Contract will be at the sole discretion of the Contractor.
- (g) Should the Client delay or fail to make payments pursuant to this Contract, the Contractor shall be entitled to charge interest on the outstanding amount at 15 percent per annum, accrued from and including the payment due date to (but excluding) the date of payment. The Client shall also be liable to pay all expenses that are incurred by the Contractor in the recovery of any payment, including legal costs on a solicitor / own client basis.

14 SITE SERVICES, CRANEAGE, PLANT AND SCAFFOLD

- (a) The Contractor shall provide the on-site services set out in the Contract, or which are reasonably required by the Contractor to carry out the Works.
- (b) Services provided by the Client shall comply with all relevant legislation, regulations, rules, standards and other legal requirements in force from time to time.
- (c) If the Contractor notifies the Client that it intends to store on the Site materials to be used in the Works, or plant, equipment or tools to be used in the performance of the Works, the Client shall designate an area for storage and shall take all reasonable precautions to protect any such materials, plant, equipment or tools stored on Site from destruction, damage or theft.

15 CLEAN SITE AND MAKING GOOD

- (a) The Contractor shall keep the Site clean and tidy and shall regularly remove to a place nominated by the Contractor all rubbish & surplus material.
- (b) Unless otherwise agreed in writing, the Contractor's responsibilities with respect to commissioning the Works shall be limited to proving conformance of the Works with any specification forming part of this Contract.

16 SITE SETOUT, CO-ORDINATION AND ACCESS

- (a) The Client shall be responsible for setting out all setout points, recovery marks and datum levels as required by the Works.
- (b) The Client shall attend all co-ordination meetings as requested by the Contractor and shall supply all necessary time and resources to co-ordinate the Works with the Contractor and all other subcontractors.

17 LABOUR, SUBCONTRACTING AND ASSIGNMENT

- (a) Neither party shall assign the Contract or any right, benefit or interest there under without the prior written approval of the other party, but the Contractor may subcontract the Works wholly or in part.

18 MAINTENANCE MANUALS AND GUARANTEES

- (a) The Contractor shall prepare and obtain during the carrying out of the Works and shall submit at Practical Completion as-built (work as executed) drawings and required testing results, operational and maintenance manuals, warranties and guarantees to the Client.

19 DEFECTS

- (a) The Contractor shall make good any defect which appears in the Works within the Defects Liability Period.
- (b) The Contractor shall have a reasonable time to remedy any defect following instruction by the Client and the right to remedy and defects.
- (c) The Contractor is not obliged to rectify any defects or carry out any Works, where the defect or need for the work is due to:
 - (i) A failure by the Client to properly maintain the Works;
 - (ii) Fair wear and tear caused by use of the Works;
 - (iii) A design-related matter where the design was not provided by the Contractor;
 - (iv) A matter beyond the control of the Contractor.
- (d) Where a property or item of workmanship or materials performed by the Contractor satisfies the requirements of the *Guide to Standards & Tolerances May 2014* ("the Guide"), that property or item will not cause the workmanship or materials to be defective. However, failure of a property or item to satisfy the requirements of the Guide is not by itself sufficient to determine such item to be defective, with such matters to be considered in the context of the Works.

20 TERMINATION

- (a) Upon or any time after the happening of any of the following events:-
 - (i) default by the Client in the performance or observance of any of the provisions of the Contract;
 - (ii) the Client, without reasonable cause, suspends the whole or any part of the Works or indicates its intention to do so;
 - (iii) the Client assigns or attempts to assign all or any part of the Works without the prior written consent of the Contractor;
 - (iv) the Client:-
 - (A) if an individual, has a bankruptcy petition presented against him, or commits an act of bankruptcy, or makes a proposal for a scheme of arrangement or a composition, or has a deed of assignment or deed of arrangement made, or accepts a composition, or is required to present a debtor's petition, or has a sequestration order made under Part X of the Bankruptcy Act 1966 (Cth), or enters into a personal insolvency agreement, or calls a meeting for the consideration of a personal insolvency agreement as defined by the Bankruptcy Act 1966 (Cth) or dies; or
 - (B) if a corporation, has a controller or administrator or liquidator appointed or enters into a deed of company

arrangement with its creditors or has a receiver or receiver and manager appointed to any of its property or has a mortgagee take possession of any of its property or has a winding up order made against it, or is insolvent;

then the Contractor may by notice in writing and without prejudice to any other right it may have:-

- (v) Terminate this Contract; or
 - (vi) Suspend the Works under this Contract; or
 - (vii) Retake possession of any goods supplied by the Contractor.
- (b) If the Contractor terminates the Contract under Clause 20(a), the rights and liabilities of the parties shall be the same as they would be if the Client had repudiated the Contract and the Contractor had elected to treat the Contract as at an end and recover damages.
- (c) Without prejudice to any of the Contractor's other rights or entitlements or powers under this Subcontract, the Contractor may in its absolute discretion or for its sole convenience by five (5) Business Days' written notice to the Client terminate the Contract, in which case the Contractor shall be entitled to payment for:-
- (i) the value of work carried out and the materials supplied to the date of termination (less amounts previously paid to the Contractor in respect thereof); and
 - (ii) the cost of materials reasonably ordered by the Contractor for the Works which the Contractor is liable to accept, but only where the materials will become the sole property of the Client upon payment.
- (d) The parties agree that any purported termination in accordance with Clause 20(a) which is held to be invalid shall be deemed a termination in accordance with Clause 20(c).
- (e) Upon termination of the Contract, the Client acknowledges and consents to the Contractor's materials, plant and equipment remaining on the Site at its cost until the Contractor is able to remove the same at standard market hourly rates to the Client.

21 DAMAGES

- (a) If the Contractor fails to complete the Works by the Date for Completion, the Contractor shall be indebted to the Client for Liquidated Damages at the rate stated in Schedule 1 for every day after the Date for Completion up to and including the Completion Date or the date the Contract is terminated under Clause 20, whichever first occurs, up to the maximum Liquidated Damages stated in Schedule 1.
- (b) The Contractor's indebtedness under Clause 21(a) is the full and final compensation payable by the Contractor to the Client for any failure to complete the Works by the Date for Completion.

22 DISPUTES

- (a) Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under the Contract.
- (b) A party claiming that a dispute has arisen under this Contract shall give written notice to the other party providing particulars of the dispute and nominating a person with authority to settle the dispute and the other party shall within five (5) Business Days give written notice to the first party of its representative with authority to settle the dispute.
- (c) The authorised persons shall within five (5) Business Days of giving the notice of the dispute meet at least once, in good faith and without prejudice, and seek to resolve the dispute.
- (d) If the dispute is not resolved within ten (10) Business Days of giving the notice of dispute, a party may refer the dispute to expert determination for resolution, conducted by a suitably qualified, independent expert being a barrister of at least 10 but not more than 15 years standing nominated by the President of the Bar Association of the State or Territory in which the Works are situated. The expert shall act as expert and not arbitrator, and make a determination within ten (10) Business Days of his appointment, with a hearing of one day and the rules of evidence shall not apply. The parties shall be represented by a practising solicitor. The expert shall award and assess costs on submissions after his determination is issued.
- (e) Nothing herein shall prejudice the right of either party to seek injunctive or urgent declaratory relief in respect of any matter arising

under the Contract, or shall operate to prevent the Contractor or Client seeking resolution of any dispute in accordance with the Home Building Laws.

23 GOODS AND SERVICES TAX

- (a) Terms defined in the GST Legislation have that meaning in this clause.
- (b) Where any supply occurs under or in connection with the Contract or the Works (other than any supply under this clause) for which GST is not otherwise provided, the party making the supply ("Supplier") shall, if registered for GST under the GST Legislation, be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Where the amount payable to the Supplier for a supply under or in connection with the Contract or the Works is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid in respect of that supply will be limited to the actual or reasonable costs incurred by the Supplier less any input tax credits available in respect of such costs.
- (d) A party will not be obliged to pay any amount in respect of GST to the other party unless and until a tax invoice that complies with the GST Legislation has been issued in respect of that GST. Each party agrees to do all things, including providing invoices or other documentation that may be necessary or desirable to:-
- (i) enable or assist the other party to claim input tax credits to the maximum extent possible; or
 - (ii) itself claim all input tax credits that might be available to it in order to reduce the amount recoverable from the other party under the Contract.
- (e) A Client who collects GST notwithstanding not being registered for GST under the GST Legislation shall be liable to repay the GST collected to the Contractor and the amount of the GST collected shall be a debt due and owing to the Contractor.

24 PERSONAL PROPERTY SECURITIES ACT

- (a) Terms defined in the PPSA have that meaning in this clause.
- (b) The Client acknowledges that title in any goods supplied under the Contract does not pass to the Client until the full Contract Sum for the Works has been paid, however risk in the Works passes once the Works have left the Contractor's premises.
- (c) The Contractor will be entitled to remove goods from any premises owned or occupied by the Client (whether or not the goods are affixed) following a default of the performance of the Contract by the Client and the Client agrees:
- (i) to procure appropriate acknowledgements from any owner, landlord or mortgagee of the premises, in a form reasonably required by the Contractor, to ensure that the Contractor's interest in the goods, its rights to remove the goods from the premises, and its right to enter the premises for that purpose, are acknowledged; and
 - (ii) to detach, or procure the detachment of, the goods from the premises following such a default by the Client.
- (d) The Client agrees that the terms of this Contract may constitute one or more Security Interests for the purpose of the PPSA and that:
- (i) to perfect any such Security Interest the Contractor may register a financing statement(s) on the Personal Property Securities Register;
 - (ii) the Client shall have no rights under sections 95, 118, 121(4), 125, 130, 132, 135 142 and 143 of the PPSA;
 - (iii) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPSA is contracted out of if that Part would apply by virtue of section 116(2) of the PPSA; and
 - (iv) the Client waives its right to receive notice of a verification statement under section 157 of the PPSA.
- (e) The Client must promptly on request by the Contractor provide any such information and execute and deliver any such documents as the Contractor may reasonably require to protect the Security Interests granted to the Contractor by the Client under or in relation to this Contract.

25 CONFIDENTIALITY

- (a) The Client acknowledges that by entering into this Contract certain Confidential Information may be revealed to it including the information about the Works and the Contractor. The Client shall only use the Confidential Information in connection with this Contract and not for any other purpose and shall ensure such Confidential Information is kept confidential and not disclosed to anyone else unless required by law.

26 NOTICES

- (a) Unless this Contract expressly states otherwise, the Contractor shall not be liable upon any Claim by the Client arising out of or in connection with the Contract, any alleged breach of the Contract, in tort, under any statute, for payment or compensation on the basis of restitution, or for payment or compensation on any other legal or equitable basis unless within seven (7) Days of the first day on which the Client could reasonably have been aware of the commencement of the events or circumstances on which the claim is based, the Client has given notice to the Contractor in writing including to the extent practicable particulars of the events or circumstances on which the claim is or will be based, the provision of the Contract or other basis for the claim or proposed claim, and the quantum or likely quantum of the claim.
- (b) Nothing in Clause 26(a) limits the operation or effects of any other notice provision, time-bar provision, condition precedent or limitation or exclusion clause in the Contract.
- (c) Any notice to a party shall be sufficiently served by handing the same to the other party, its employee or agent or by posting if by pre-paid mail to or leaving it at the party's address shown herein or by facsimile to the party's facsimile number or by email to the email address shown herein and shall be deemed to have been received by the other party on the date the notice was handed to it, two (2) Business Days after posting, on the date left at the address or on the date of transmission by facsimile or email (according to the method of service).
- (d) Any notice to the Contractor must be given by hand delivery, pre-paid mail or facsimile to the Contractor's registered office address contained herein. Notices served by email or delivered to the Site will not be accepted and will be invalid.
- (e) Each party requests the other for the purposes of communicating with it to use emails for the purpose of any notice or advice in relation to this Contract and an email sent to the party's email address shall be proper service on receipt.

27 GENERAL

- (a) The law governing the Contract and its interpretation is the law of the State or Territory where the Works are located.
- (b) The Contract constitutes the entire agreement between the parties with regard to the Works and supersedes all prior or contemporaneous, oral or written contracts, agreements or understandings of the parties relating to the Works. The Client acknowledges that in entering into the Contract, it has not relied upon any representation or undertaking given by or on behalf of the Contractor which is not expressly set out in the Contract.
- (c) Any provision in this Contract which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and such illegality, voidness or unenforceability will not invalidate any other provision of the Contract.
- (d) If the time for doing any act or thing under the Contract is not a Business Day the time shall be deemed to be the next day which is a Business Day.
- (e) Headings are for convenience only and do not form a part nor be used in the interpretation of this Contract.
- (f) The Contractor may, by notice in writing at any time to the Client, prescribe the form in which any claim or notice by the Client is to be submitted or any other administrative process or procedure is to be followed by the Client.
- (g) The parties agree that this Contract and any agreement in relation to this Contract may be agreed and accepted by email.