

NEW HOME CONSTRUCTION CONTRACT

Suitable for the construction of a new home (or multi-dwelling construction) under a lump sum contract price, as covered under the *Home Building Act 1989 (NSW)*

Owner Name: _____

Site Address: _____

Date: _____

NEW HOME CONSTRUCTION CONTRACT

TABLE OF CONTENTS

CHECKLIST

- Schedule 1 – Contract Details
- Schedule 2 – Progress Payments
- Schedule 3 – Allowances for Prime Cost and Provisional Sum Items
- Schedule 4 – Excluded Items
- Schedule 5 – Warranty Insurance
- Schedule 6 – Special Conditions
- Schedule 7 – Signatures

- | | |
|-------------------------------------|--|
| 1. Definitions | 24. Indemnity |
| 2. Primary Obligations | 25. Insurances |
| 3. Preliminary Matters | 26. Practical Completion |
| 4. Security Account | 27. Final Certificate |
| 5. Ability to Pay | 28. Early Possession |
| 6. Accuracy of Contract Documents | 29. Contract Maintenance Period |
| 7. Planning and Building Approvals | 30. Defects and First Right of Rectification |
| 8. Commencing the Building Works | 31. Termite Treatment and Maintenance |
| 9. Delays and Extensions of Time | 32. Delay Damages |
| 10. Survey of the Site | 33. Charge on the Site |
| 11. Site Possession and Access | 34. Suspension |
| 12. Latent Site Conditions | 35. Termination (Serious Breach) |
| 13. Additional Costs | 36. Termination (Insolvency) |
| 14. Contract Price Adjustments | 37. Effect of the Builder Terminating |
| 15. Progress Payments | 38. Effect of the Owner Terminating |
| 16. Interest on Late Payments | 39. Debt Collection Costs |
| 17. Variations | 40. Statutory Warranties |
| 18. Excluded Items | 41. Dispute Resolution |
| 19. Materials Supplied by the Owner | 42. Notices |
| 20. Specified Materials | 43. No Waiver |
| 21. Prime Cost and Provisional Sums | 44. Severance |
| 22. Assignment and Sub-contracting | 45. Mandatory Conditions |
| 23. Risk | |

NEW HOME CONSTRUCTION CONTRACT

Checklist for Owners entering into building contracts

CHECKLIST

- | | | | |
|----|--|------------------------------|-----------------------------|
| 1 | Does the contractor hold a current contractor licence? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | Does the licence cover the type of work included in the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | Is the name and number on the contractor's licence the same as on the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | Is the work to be undertaken covered in the contract, drawings or specification? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | Does the contract clearly state a contract price or contain a warning that the contract price is not known? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6 | If the contract price may be varied, is there a warning and an explanation about how it may be varied? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 7 | Are you aware of the cooling off provisions relating to the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000. | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | Is the procedure for variations understood? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | Are you aware of who is to obtain any council or other approval for work? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 11 | Do you understand that the contractor must have a policy of home warranty insurance under the <i>Home Building Act 1989</i> and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$12,000? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 12 | Has the contractor given you a document that explains the operation of the <i>Home Building Act 1989</i> and the procedures for the resolution of contract and Insurance disputes? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

SIGNATURES

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

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

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

SIGNED COPY OF THE CONTRACT

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

HOME WARRANTY INSURANCE

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving payment.

OWNER'S ACKNOWLEDGEMENT

I/We have been given a copy of the Consumer Information Brochure and I/We have read and understand it.

I/We have completed the check list and answered "Yes" to all items on it.

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

Signature _____

Signature _____

Name [print] _____

Name [print] _____

Capacity [print] _____

Capacity [print] _____

NEW HOME CONSTRUCTION CONTRACT

Schedule 1 – Contract Details

ITEM

1. This contract is dated the _____ day of _____, 20__

2. Owner(s)

Name: _____

Address: _____

Phone (H): _____ (W): _____

Fax: _____ Mobile: _____

Email: _____ A.B.N: _____

3. Builder(s)

Name: _____

Address: _____

Phone (H): _____ (W): _____

Fax: _____ Mobile: _____

Email: _____ A.B.N: _____

Builder's Licence No: _____

4. Contract Price

Price excluding GST: \$ _____

GST on the above amount: \$ _____

The *contract price* is _____ (in words)

\$ _____ (the *contract price* is GST inclusive)

WARNING: The *contract price* may vary under this contract due to:



NEW HOME CONSTRUCTION CONTRACT

5. Deposit

The deposit is \$ _____

Note that the deposit must not be:

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

6. Sources of funds

The *contract price* will be funded by:

the *owner* \$ _____

the *lending authority* \$ _____

other \$ _____

TOTAL FUNDS \$ _____

(The total funds should be equal to the *contract price*)

7. The Site

The *site* is land at: Lot _____ DP No. _____

Certificate of Title: _____

Street Address: _____

Mortgages 1. Lending Body: _____ Amount \$ _____

Branch: _____

Contact Name: _____

2. Lending Body: _____ Amount \$ _____

Branch: _____

Contact Name: _____

8. Encumbrances, covenants and easements

The land relating to the site as identified in item 6 above is affected by the following encumbrances, covenants, easements and caveats (give the substances of each affectation, and details of any registrations where registered at the Titles Office).

NEW HOME CONSTRUCTION CONTRACT

9. Builder's Margin

The *builder's margin* is _____% (if nothing stated, then 20%).

10. Interest

Interest on late payments is _____% (if nothing stated, then 10% per annum calculated daily)

11. Planning and Building Approvals

The party to obtain and pay for all planning and building approvals is _____
(if no party is stated, then the *builder*).

12. Contract Period

The *building works* must reach the stage of *practical completion* no more than _____ weeks after the *contract period* commenced under Clause 8, as extended under Clause 9.

13. Delay Damages

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

14. Other Contract Documents

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

- 1. _____
- 2. _____
- 3. _____
- 4. _____

15. Guarantors

NEW HOME CONSTRUCTION CONTRACT

Schedule 2 – Progress Payments

	STAGE	PERCENTAGE	AMOUNT
1		_____ %	\$ _____
2		_____ %	\$ _____
3		_____ %	\$ _____
4		_____ %	\$ _____
5		_____ %	\$ _____
6		_____ %	\$ _____
	TOTAL AMOUNT	100%	\$ _____

Note: The TOTAL AMOUNT must be the same as the *contract price*.

NEW HOME CONSTRUCTION CONTRACT

Schedule 3 – Allowances for Prime Cost and Provisional Sum Items

Table A	Description of Each Prime Cost Item	Builder's Allowance	Quantity	Prime Cost Allowances
1				
2				
3				
4				
5				
6				
7				

Table B	Description of Each Provisional Sum Item	Estimated quantity of components or materials	Builder's allowance (including labour)	Total Provisional Sum Allowance for Labour and Materials
1				
2				
3				
4				
5				
6				
7				

NEW HOME CONSTRUCTION CONTRACT

Schedule 4 – Excluded Items

The *owner* acknowledges that the *builder* is not responsible for



that are listed below:

Schedule 5 – Warranty Insurance

Note: The *builder* must not carry out any of the *building works*, or demand or receive any part of the *contract price* (including a deposit) until warranty insurance is in force, and the *owner* is provided with the certificate of insurance.

Insurer Name: _____

Insurer Address: _____

Phone: _____ Fax: _____

Name of insured (*owner*): _____

Premium payable: _____

ATTACH CERTIFICATE HERE

Schedule 6 – Special Conditions

SAMPLE - COPYRIGHT

NEW HOME CONSTRUCTION CONTRACT

Schedule 7 – Signatures

1. This *contract* is made between the *owner* and the *builder*.
2. The Schedules form part of this *contract*.
3. The Table of Contents and the Checklist do not form part of this *contract*.
4. The parties have signed this *contract* on the date stated in Item 1 of Schedule 1.
5. The *owner* acknowledges that it has received the Checklist and the Consumer Building Guide before signing this *contract*.
6. The *owner* has read and understood this *contract*.

OWNER 1	OWNER 2
Name:	Name:
Owner's Signature:	Owner's Signature:
Witness' name and signature:	Witness' name and signature:
Witness' address:	Witness' address:

BUILDER	
Name:	<p>PLEASE NOTE THESE EXAMPLES</p> <p>When signing on behalf of a <u>Partnership</u>: A Smith (signed) Partner, signed for and on behalf of ABC Building</p> <p>When signing on behalf of a <u>Corporation</u>: A Smith (signed) Director, signed for and on behalf of ABC Building Pty Ltd</p>
Builder's Signature:	
Witness' name and Signature:	
Witness' Address:	

STATEMENT SETTING OUT THE OWNER'S RIGHT TO TERMINATE THIS CONTRACT UNDER SECTION 7BA OF THE HOME BUILDING ACT

This *contract* may be subject to a cooling-off period that entitles the *owner* to rescind this *contract* by giving a notice in writing as required by Section 7BA of the *Home Building Act 1989*:

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

If the *owner* terminates this *contract* under Section 7BA of the *Home Building Act 1989*, the *builder* is entitled to a reasonable price for the work carried out under the *contract* up to the date this *contract* is rescinded.

NEW HOME CONSTRUCTION CONTRACT

Clause 1 – Definitions

1.1 In this *contract*:

“*all weather access*” means

_____ by the *builder* for carrying out the *building works*;

“*builder*” means the party named in Item 3 of Schedule 1 and, where appropriate, includes the *builder’s* appointed agent / representative;

“*builder’s margin*” means the percentage stated in Item 9 of Schedule 1;

“*building works*” means the *building works* to be carried out, completed and handed over to the *owner* in accordance with this *contract* as shown in the *contract documents*, and shall include all *variations*;

“*contract*” means the agreement between the *builder* and the *owner* as set out in the *contract documents*;

“*contract documents*” means these general terms, any special conditions, the plans, the specifications, and any other documents specified in Item 14 of Schedule 1;

“*contract period*” means the amount of time specified in Item 12 of Schedule 1, which can be extended under clause 9;

“*contract price*” means the amount stated in Item 4 of Schedule 1, and this amount can change under this *contract*;

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

“*date of practical completion*” means the date that is deemed to be the *date of practical completion* under Clause 26, except where the date is determined by dispute resolution (including litigation), then it is that date;

“*inclement weather*” means any weather that, _____ work from being carried out in the usual manner;

“*preliminary period*” means a period of 15 *working days* from the date of this *contract*;

“*lending authority*” means any institution that lends the *owner* part of or the whole of the *contract price*;

NEW HOME CONSTRUCTION CONTRACT

“*notice of practical completion*” means the written notice given by the *builder* to the *owner* under sub-clause 26.1;

“*owner*” means the party named in Item 2 of Schedule 1, and includes the *owner’s* agents, employees and invitees;

“*practical completion*” means when the *building works* are complete, except for

[REDACTED];

“*rock*” means any material, other than clay or soil, that cannot, in the *builder’s* opinion, be readily removed by hand;

“*security account*” means an account described in Clause 4;

“*site*” means the land described in Item 7 of Schedule 1;

“*stage*” means any of the stages described in Schedule 2;

“*statutory authority*” means a Local, State or Federal Government, or any government agency that has the power to affect the *building works*;

“*variation*” means:

- (a) any [REDACTED] to the *building works*; or
- (b) a change in the [REDACTED] out the *building works*;

“*working days*” means any day other than a Saturday, Sunday or a public holiday;

and like words have corresponding meanings.

1.2 In this *contract*, the table of contents, general notes and clause headings do not form part of this *contract* and cannot be used in its interpretation.

NEW HOME CONSTRUCTION CONTRACT

Clause 2 – Primary Obligations of the Parties

- 2.1 The *builder* must carry out and complete the *building works* in accordance with this *contract*.
- 2.2 The *owner* must pay the *contract price* and other money that becomes payable under this *contract* in the manner and at the times stated in this *contract*.
- 2.3 If there is more than one *owner*:
- (a) the obligations in this *contract* apply to [REDACTED], and to [REDACTED];
 - (b) a quote, notice, claim or any other communication to the *owners* is only [REDACTED];
 - (c) only [REDACTED] is required to sign a document (including a quote, notice, instruction, direction or other communication) or to give an instruction, direction or other communication, to legally bind [REDACTED].

Clause 3 – Preliminary Matters

- 3.1 The *owner* must, within the *preliminary period*, give the *builder*:
- (a) written proof that the *owner* holds the legal title to, or is otherwise entitled to build on, the *site*, and written details of any encumbrances, covenants, easements and caveats affecting the *site*;
 - (b) if required by the *builder*, written evidence that the *security account* has been set up and the amount required to be deposited into the *security account* is held in clear funds;
 - (c) if the *owner* is obtaining finance from a *lending authority*, written advice from the *lending authority* that:
 - (i) the amount of finance, when added to the *owner's* own available funds, is sufficient to pay the *contract price*; and
 - (ii) the *building works* are authorised to commence.
- 3.2 If the *owner* fails to satisfy any of the above within the *preliminary period*, the *builder* may [REDACTED].
- 3.3 If the *builder* [REDACTED], the *owner* must pay to the *builder* any related costs incurred by the *builder* up to the date this *contract* is terminated, plus the *builder's margin* applied to these costs. These related costs include, but are not limited to, the cost of materials on the *site* or already having being ordered from suppliers that are not returnable.

NEW HOME CONSTRUCTION CONTRACT

Clause 4 – Security Account

- 4.1 When requested by the *builder* at any time, the *owner* must deposit that portion of the *contract price* not being supplied by a *lending authority* into an account (the “*security account*”) at a bank, building society, or a similarly recognised financial institution.
- 4.2 The *security account* must be in the joint names of the *owner* and the *builder*, with:
 - (a) the *owner* receiving interest, if any is payable, on the money deposited in the account; and
 - (b) the *builder* as a joint signatory for any withdrawal from the account.

Clause 5 – Ability to Pay

- 5.1 The *owner* must, within [REDACTED] of being requested by the *builder* at any time, give the *builder* written evidence, to the *builder’s* satisfaction, of the *owner’s* ability to pay all money that is or may become payable to the *builder* under this *contract*.

Clause 6 – Accuracy of Contract Documents

- 6.1 Where the *owner* supplies any *contract document*, the *owner* warrants that *contract document* is accurate and the suitability of the design, materials and methods of working each specified therein.
- 6.2 If either party becomes aware of an error, ambiguity or inconsistency in or between the *contract documents*, that party must, within 2 *working days* of becoming aware, give the other party a written notice detailing such an error, ambiguity or inconsistency.
- 6.3 The *owner* must, within 2 *working days* of receiving a notice or becoming aware of an error, ambiguity or inconsistency in or between the *contract documents*, give the *builder* written instructions detailing how the *builder* is to proceed with the *building works*.
- 6.4 If the *owner* fails to give the *builder* such written instructions within 2 *working days*, the *builder* may proceed with the *building works*, applying the *contract documents* in the following order of precedence:
 - (a) [REDACTED];
 - (b) [REDACTED];
 - (c) [REDACTED];
 - (d) [REDACTED]; and
 - (e) any other documents specified in Item 14 of Schedule 1.

NEW HOME CONSTRUCTION CONTRACT

- 6.5 If:
- (a) compliance with the *owner's* instructions or the order of precedence, whichever is applicable, involves more or less cost than a reasonable builder would have anticipated upon the signing of this *contract*; and
 - (b) the error, ambiguity or inconsistency is caused by documents other than those provided by the *builder*,
- the *owner* is deemed to have asked the *builder* for a *variation* to carry out the necessary work, and the *owner* must promptly sign the relevant written *variation* when produced by the *builder*.
- 6.6 If an error, ambiguity or inconsistency caused by documents other than those provided by the *builder* will most likely result in the *contract price* being increased or decreased by more than ■■■, or will result in a substantial alteration in the original nature of the *building works*:
- (a) the *builder* will be entitled to terminate this *contract*, within 15 *business days* of becoming aware of:
 - (i) the error, ambiguity or inconsistency; and
 - (ii) the likely change to the *contract price*,by giving the *owner* a written notice to that effect; and
 - (b) the *builder* will be entitled to be paid at least the cost of the *building works* completed at the date of termination, plus the *builder's margin* on that cost.
- 6.7 In relation to a document that is:
- (a) supplied by;
 - (b) prepared under instruction of; or
 - (c) prepared from sketches provided by,
- a party, that party indemnifies the other party for all costs, expenses, losses or damages that are incurred by the other party relating to or as a consequence of any claim for breach of copyright or moral right arising from the *builder* carrying out the *building works* in accordance with that document.
- 6.8 The *builder* owns the copyright in any document prepared by or on behalf of the *builder*.

Clause 7 - Planning and Building Approvals

- 7.1 The party named in Item 11 of Schedule 1 must obtain and pay for all building and planning approvals.
- 7.2 If the *builder* is named in Item 11 of Schedule 1, the *owner* authorises the *builder* to sign any document necessary to obtain the approvals.
- 7.3 If the *owner* is named in Item 11 of Schedule 1, the *owner* must both obtain and give the approvals to the *builder* promptly.
- 7.4 If the requirements of a *statutory authority* necessitate a change to the *building works*, the *builder* must inform the *owner* of the change required and ask for a *variation* for the *building works* to comply with the requirements.

NEW HOME CONSTRUCTION CONTRACT

- 7.5 If the *owner* agrees to a *variation* when asked for by the *builder* under sub-clause 7.4, the *owner* must promptly sign the relevant written *variation* when produced by the *builder*.

Clause 8 - Commencing the Building Works

- 8.1 The *builder* must commence the *building works* within [REDACTED] *working days* after the day that:
- (a) the *builder* receives all the necessary building permits and planning approvals required for the *building works* to commence; or
 - (b) the *owner* satisfies all of the requirements of sub-clause 3.1, whichever is later.
- 8.2 The *contract period* commences on the [REDACTED] *working day* after both [REDACTED] are satisfied.
- 8.3 The *contract period* will commence in accordance with sub-clause 8.2 even if the *builder* [REDACTED].

Clause 9 - Delays and Extensions of Time

- 9.1 The *builder* shall be entitled to a reasonable extension of the *contract period* if the *building works* are delayed by the *builder* suspending the *building works* under Clause 34, or from a cause, thing or matter beyond the sole control of the *builder*, including (but not limited to):
- (a) a *variation*, or a request for a *variation* by the *owner*;
 - (b) an act of God, fire, explosion, earthquake, civil commotion or an act of terrorism;
 - (c) *inclement weather*, or conditions resulting from *inclement weather*;
 - (d) an industrial dispute;
 - (e) a dispute with adjoining or neighbouring residents or owners;
 - (f) any act or omission by the *owner*;
 - (g) delays in obtaining any approvals;
 - (h) [REDACTED] by the *owner*;
 - (i) the need for a survey of or other report in relation to the *site*, including the existence of latent site conditions; or
 - (j) the industry shutdown, being a 5 week period commencing on or about 22 December in each year.
- 9.2 The *builder* is to give the *owner* written notice of an entitlement to an extension of time detailing both:
- (a) the extension of time; and
 - (b) the cause of the delay,
- within [REDACTED] after becoming aware of both [REDACTED] and the [REDACTED] of the delay.

NEW HOME CONSTRUCTION CONTRACT

- 9.3 A failure on the *builder's* part to comply with sub-clause 9.2 will not in itself [REDACTED] to a reasonable extension of the *contract period*.
- 9.4 If the *owner* wishes to dispute the *builder's* entitlement to an extension of time the *owner* must, within [REDACTED] *working days* of receiving the *builder's* notice, give the *builder* a written notice:
- (a) disputing the extension of time; and
 - (b) detailed reasons why the extension of time is disputed.
- 9.5 If the *owner* fails to give the *builder* a written notice in accordance with sub-clause 9.4, the *owner* will be [REDACTED].
- 9.6 If the carrying out of the *building works* are delayed in any way by an act, default or omission of the *owner*, damages for such a delay, being the total of the [REDACTED] the *builder* to carry out the *building works*, plus [REDACTED], are due and payable by the *owner* to the *builder* on demand.

Clause 10 – Survey of the Site

- 10.1 If, in the *builder's* opinion, the boundaries of the *site* are [REDACTED], the *builder* may give the *owner* a written notice requesting that the *owner* provide a survey of the *site*.
- 10.2 If the *owner* does not provide a survey of the *site* within [REDACTED] *working days* of the *builder* giving the written notice, the *builder* will [REDACTED] survey. The *owner* must pay to the *builder* on demand the total of [REDACTED], plus [REDACTED].

Clause 11 – Site Possession and Access

- 11.1 The *owner* gives the *builder* exclusive and uninterrupted possession of the *site* to carry out the *building works*.
- 11.2 The *owner* must provide *all weather access*. If the *owner* does not provide *all weather access*, and the *builder* is required to carry out additional work to achieve such access, the *owner* is deemed to have asked the *builder* for a *variation* to carry out that additional work, and the *owner* must promptly sign a written *variation* when produced by the *builder*.
- 11.3 The *owner* must not, or must not allow agents or officers of the *lending authority* to:
- (a) [REDACTED] *builder's* access or possession of the *site*; or
 - (b) [REDACTED] progress of the *building works*.
- 11.4 The *owner* must not, or must not allow agents or officers of the *lending authority* to:
- (c) make inquiry of; or
 - (d) issue directions to; or

NEW HOME CONSTRUCTION CONTRACT

- (e) give instructions to, the *builder's* employees, subcontractors or agents. All communication must only be with the *builder*, or the *builder's* nominated person.
- 11.5 The *owner* must not, or must not allow an officer of the *lending body*, to have access to the *site* or the *building works* for any purpose, including for the purpose of inspecting the progress of the *building works*, unless:
- (a) the *owner* has given the *builder* or the *builder's* nominated person at least [REDACTED] notice; and
- (b) access to the *site* or the *building works* is at reasonable times.
- 11.6 The *builder's* unused materials on the *site* are the property of the *builder*.

Clause 12 – Latent Site Conditions

- 12.1 If:
- (a) either party believes that the surface or sub-surface conditions of the *site* may not support or are likely to affect the *building works*, or
- (b) rock is found at the *site*,
- the *builder* may, or must at the *owner's* written request, as the *owner's* agent, engage a [REDACTED] to report on the *site's* conditions and their effect on the *building works*, and the cost of every consultant engaged is to be paid by the *owner* as a *contract price adjustment*.
- 12.2 The *builder* must promptly give the *owner* a notice specifying the details of any [REDACTED], and the [REDACTED]. The *builder* must attach a copy of any written report obtained from [REDACTED] under sub-clause 12.1, to that notice.
- 12.3 The *owner* must, within 5 *working days* of receiving such notice, give the *builder* a signed written notice instructing the *builder* to proceed with the additional work required for the *building works* as detailed by the *builder* under sub-clause 12.2.
- 12.4 If the *owner* does not give the *builder* written notice under sub-clause 12.3, the *builder* may do either or both of the following:
- (a) suspend the carrying out of the *building works* under Clause 34;
- (b) terminate this *contract*, whereby Clause 37 will apply.
- 12.5 The *builder* is only entitled to payment for such additional work if the actual *site* conditions differ from those either:
- (a) [REDACTED] prior to this *contract* being signed; or
- (b) shown in the *contract documents*
- and if the effect of that difference requires more or less work than that which a reasonably competent builder would have anticipated on the signing of this *contract*.
- 12.6 If the estimated price of the additional work exceeds [REDACTED]% of the *contract price*, the *owner* may terminate this *contract* by the giving the *builder* a written notice to that effect within [REDACTED] *working days* of receiving the estimated cost from the *builder* under sub-clause 12.2.

NEW HOME CONSTRUCTION CONTRACT

- 12.7 If the *owner* terminates this *contract* under sub-clause 12.6, the *owner* must pay to the *builder* the [REDACTED] that this *contract* is terminated. The price includes [REDACTED] the *builder*, which includes [REDACTED].

Clause 13 – Additional Costs

- 13.1 If, after this *contract* is signed, a *statutory authority* introduces or increases:
- (a) any [REDACTED]; or
 - (b) any [REDACTED] that affects the *building works*, that either directly or indirectly causes any increase in the cost of the *building works* to the *builder*, there will be a *contract price adjustment* to reflect such a cost increase.
- 13.2 If the *builder* is required to do more or less work to comply with a requirement of a *statutory authority*, the *builder* must ask for a *variation* for the change required, and the *owner* must promptly sign the relevant written *variation* when produced by the *builder*.

Clause 14 – Contract Price Adjustments

- 14.1 A *contract price adjustment* is due and payable at the next progress payment after it arises, unless a different time is agreed between the parties.

Clause 15 – Progress Payments

- 15.1 The *owner* must pay the deposit stated in Item 5 of Schedule 1:
- (a) when this *contract* is signed by the *owner*, or
 - (b) when warranty insurance described in Schedule 5 is in force, and the *owner* is provided with the relevant certificate of insurance, whichever is later, and the deposit shall be deducted from the first progress payment.
- 15.2 The *owner* must pay the *contract price* progressively as claimed by the *builder*, and it shall not be a defence that the *owner* failed to pay by the due date because the *lending authority* failed to forward payment to the *owner*.
- 15.3 In order to be entitled to a progress payment, the *builder* must give the *owner* a written progress payment claim for the substantial completion of each *stage*.
- 15.4 A progress payment claim is to state:

NEW HOME CONSTRUCTION CONTRACT

- (a) the amount claimed and not paid for the *stages* substantially completed;
 - (b) the amount claimed and not paid for *contract price adjustments*;
 - (c) the amount claimed and not paid for *variations*; and
 - (d) the sum of the above amounts.
- 15.5 The *owner* must pay the amount stated in the progress payment claim within 5 *working days* of the *builder* giving the claim.
- 15.6 Other than in relation to the final progress claim:
- (a) payment of a progress claim is on account only; and
 - (b) the *owner* has no right of set-off.

Clause 16 – Interest on Late Payments

- 16.1 The *builder* shall be entitled to interest at the rate stated in Item 10 of Schedule 1 from the day on which an amount falls due to be paid to the *builder* by the *owner*, up to and including the day that the amount is paid.

Clause 17 – Variations

- 17.1 A *variation* must be:
- (a) in writing; and
 - (b) signed by the *builder* and the *owner*.
- Either the *owner* or the *builder* may ask for a *variation*.
- 17.2 However, a failure to comply with sub-clause 17.1 will not [REDACTED] that was the subject of a *variation* verbally requested by the *owner*.
- 17.3 If the *owner* asks for a *variation*, the *builder* must reply in writing as soon as is reasonable.
- 17.4 The reply is to be either:
- (a) a signed written offer to carry out the *variation* detailing:
 - (i) [REDACTED];
 - (ii) [REDACTED]; and
 - (iii) [REDACTED]; or
 - (b) a refusal to carry out the *variation*. The *builder* is not required to give [REDACTED].
- 17.5 If the *owner* does not give to the *builder* signed written acceptance of the *builder's* offer within [REDACTED] *working days* of the *builder* giving the reply, the *builder's* offer is deemed to be withdrawn.
- 17.6 If the price of a *variation* is not agreed upon prior to it being carried out, that price will be determined by:
- (a) the deduction of the reasonable cost of all deletion from the *building works*; and/or

NEW HOME CONSTRUCTION CONTRACT

- (b) the addition of the total cost of all extra work, plus the *builder's margin* applied to that cost.
- 17.7 The price of a *variation* is due and payable at the next progress payment after it is carried out, unless a different time is agreed between the parties.
- 17.8 The *owner* must not unreasonably withhold consent to any *variation* which is required for the *building works* to comply with the law or a requirement of a *statutory authority*.
- 17.9 The *owner* acknowledges that the colour and grain of timber, granite and other natural materials can vary. The *builder* is to use reasonable endeavours to match the colour or grain of any sample selected by the *owner*, but is not liable if there is a difference, and such difference is not a *variation*.

Clause 18 – Excluded Items

- 18.1 The *owner* and the *builder* agree that the items described in Schedule 4 are excluded from this *contract*, and the *builder* is not liable for these items in any way whatsoever.

Clause 19 – Materials Supplied by Owner

- 19.1 In this Clause 19, any reference to materials, goods, labour and/or work performed, provided or supplied by the *owner*, includes materials, goods, labour and/or work performed, provided or supplied on behalf of the *owner* (but not by or on behalf of the *builder*), whether or not those materials, goods, labour and/or work are listed in Schedule 4.
- 19.2 Materials, goods, labour and/or work to be provided by the *owner* shall be:
- (a) suitable for inclusion into the *building works*;
 - (b) supplied or completed in the time required by the *builder*;
 - (c) new, unless otherwise specified; and
 - (d) completed to the *builder's* satisfaction.
- 19.3 The *builder* shall not be responsible for the performance and suitability of materials, services, labour and goods provided by the *owner*.
- 19.4 The *builder* may reject any item, good, material or work supplied by the *owner*, if the *builder* believes that item, good, material or work to be defective, and require the replacement or correction of that item, good, material or work.
- 19.5 Notwithstanding Clause 23, all works carried out by the *owner* on the *site* are at the risk of the *owner*, and the *owner* shall insure that work against damage, loss or theft until such a time that the *owner* takes exclusive possession of the *site*.

NEW HOME CONSTRUCTION CONTRACT

- 19.6 The *owner* indemnifies the *builder* against all loss, cost, damage or expense that the *builder* may suffer or incur in connection with the work or labour done by the *owner* or materials or goods supplied by the *owner*.
- 19.7 If the *owner* carries out other work on the *site* while the *building works* are being carried out, then the *owner* shall, and shall ensure that each of the *owner's* contractors:
- (a) do not interfere with the progress of the *building works*;
 - (b) if required by law, hold and maintain the same insurance coverage as the *builder* is required to hold and maintain under this *contract* in relation to their works;
 - (c) hold an appropriate licence to carry out the work as issued by the NSW Office of Fair Trading;
 - (d) observe all relevant occupational health and safety laws, and the requirements of the *builder* in regard to occupational health and safety;
 - (e) obey all directions issued by the *builder* regarding the coordination and timing of their works on the *site*;
 - (f) co-operate with all of the other workers and contractors on the *site*.
- 19.8 The *owner* shall, on request, give the *builder* evidence of all licences and insurances referred to under sub-clauses 19.7(b) and 19.7(c).
- 19.9 If the *owner*, or the *owner's* contractor, does not observe any of the requirements in sub-clauses 19.7 and 19.8, the *builder* may exclude or direct the *owner* or the *owner's* contractor to leave the site.
- 19.10 When the *owner* commences any works on the site, the *owner* is deemed to have accepted the base work as satisfactory, unless a competent builder who had examined and inspected the base work would not have detected or anticipated the unsatisfactory base work. The base work is the site conditions, including work carried out by the *builder* in, on or over which the work is to be carried out.
- 19.11 If the *owner* breaches any provision in this Clause 19 in any way, it shall constitute a serious breach of this *contract*, and the *builder* may:
- (a) carry out the *building works* without incorporating such materials, services or goods; or
 - (b) do either or both of the following:
 - (i) suspend the carrying out of the *building works* by giving the *owner* a written notice under Clause 34;
 - (ii) give the *owner* a notice of serious breach under Clause 35.

Clause 20 – Specified Materials

- 20.1 If any material specified to be used in the *building works* is unavailable when required by the *builder*, the *builder* may ask the *owner* for a *variation* to substitute the use of similar material, and the *owner* must promptly sign the relevant written *variation* when produced by the *builder*.

NEW HOME CONSTRUCTION CONTRACT

Clause 21 – Prime Cost and Provisional Sum Items

- 21.1 The *owner* must give the *builder* written notice of the *owner's* selection of a prime cost item within 5 *working days* after the *builder's* request to do so.
- 21.2 If a prime cost item selected by the *owner* is unavailable, the *owner* must give the *builder* written notice of an alternative selection within 5 *working days* of the *builder* advising that the item selected is unavailable.
- 21.3 If the *owner* fails to give written notice under either sub-clause 21.1 or 21.2 within the specified time, the *builder* may select an alternative item that is similar in quality to the unavailable item.
- 21.4 Each prime cost item must [REDACTED]. The [REDACTED] to supply the item, and does not include an amount for the *builder's margin*.
- 21.5 Each provisional sum must have an allowance stated next to it. The allowance is the estimated price of providing the work, and does not include an amount for the *builder's margin*.
- 21.6 In relation to each prime cost and provisional sum item, if the actual price is:
- (a) less than the allowance, the difference is deducted from the *contract price*;
 - (b) more than the allowance, the total of the difference, and the *builder's margin* applied to that difference, is added to the *contract price*.
- 21.7 Any adjustment to the *contract price* for a prime cost item or provisional sum item is due and payable with the next progress payment, unless a different time is agreed between the parties.

Clause 22 – Assignment and Subcontracting

- 22.1 Neither party may assign this *contract* or any of their rights, benefits or obligations under this *contract*, without the prior written consent of the other party.
- 22.2 The *builder* may subcontract any part of the *building works*, but will at all times remain responsible for all of the *building works*.

Clause 23 – Risk

- 23.1 Subject to sub-clause 23.2, while carrying out the *building works* to and including *the date of practical completion*, the *builder* is responsible for loss or damage to the *building works*, except to the extent that it is caused or contributed to by an act or omission of the *owner*.

NEW HOME CONSTRUCTION CONTRACT

- 23.2 If the *owner* takes possession of the *site*, either prior or subsequent to the *date of practical completion*, and whether it be in accordance with this *contract* or otherwise, the *builder* shall not be responsible for any loss or damage to the *building works*.
- 23.3 The *builder* is not responsible for any loss or damage to the *owner's* property or property for which the *owner* is responsible that is left on the *site*.
- 23.4 The *builder* is not responsible for personal injury, death, property loss or damage caused by war, civil commotion, or terrorism.
- 23.5 The *builder* must take all reasonable steps to mitigate any loss or damage to the *building works* caused or contributed to by an act or omission of the *owner*.

Clause 24 – Indemnity

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

Clause 25 – Insurances

- 25.1 The *builder* must insure against:
- (a) loss or damage to the *building works* and any goods and materials on the *site* relating to the *building works* against theft, fire, explosion, lightening, hail, storm and tempest, vandalism, civil commotion and earthquake; and
 - (b) public liability for an amount of \$5,000,000 for any one claim.
- 25.2 The above insurance policies must be in place before the *builder* commences the *building works*, and must be maintained:
- (a) in the case of sub-clause 25.1(a), to and including the *date of practical completion*; and
 - (b) in the case of sub-clause 25.1(b), for the duration of the *contract*.
- 25.3 If the *owner* requests so, the insurances specified in sub-clause 25.1 must note the names of the *owner* and the *lending authority* (if applicable) as being the class of the insureds under these insurance policies.
- 25.4 If the *owner* requests evidence of any of the insurance policies specified in sub-clause 25.1 being in place, the *builder* must give the *owner* a copy of the certificate of currency relating to the relevant insurance policy.
- 25.5 On the settlement of any claim under the insurance policy specified in sub-clause 25.1(a), the *builder* is to:

NEW HOME CONSTRUCTION CONTRACT

- (a) immediately be paid any part of the settlement moneys relating to loss suffered by the *builder* relating to any work that is the subject of the claim, but for which the *owner* has not paid the *builder*; and
- (b) carry out the reinstatement and/or rectification of the *building works*, and be paid the balance of the settlement moneys for the reinstatement and/or rectification works.

Clause 26 – Practical Completion

- 26.1 The *builder* must give the *owner* a *notice of practical completion* at least 5 *working days* prior to *practical completion* being reached.
- 26.2 The *notice of practical completion* is to:
 - (a) state the *builder's* assessment of the *date of practical completion*;
 - (b) state the date and time for the *owner* to meet the *builder* on the *site* to carry out an inspection of the *building works*, and the *builder's* final progress payment claim is to be attached to the *notice of practical completion*.
- 26.3 The *owner* must meet the *builder* on the *site* for the inspection at the date and time stated by the *builder* in the *notice of practical completion*, or at a date and time otherwise agreed with the *builder*, and either:
 - (a) pay the amount of the final progress payment claim; or
 - (b) if the *owner* reasonably believes that the *building works* have not reached *practical completion*, promptly give the *builder* a written notice detailing anything to be done to reach *practical completion*.
- 26.4 If the *owner* pays the amount of the final progress payment claim under sub-clause 26.3(a), the *date of practical completion* stated in the *notice of practical completion* is deemed to be the *date of practical completion*.
- 26.5 If the *owner* gives the *builder* a notice under sub-clause 26.3(b) of work to be completed:
 - (a) the *builder* must carry out any work required for *practical completion* to be reached, and give the *owner* a further *notice of practical completion*;
 - or
 - (b) if the *builder* does not agree that there is any further work to be carried out to reach *practical completion*, the *builder* must give the *owner* written notice:
 - (i) rejecting the *owner's* notice; and
 - (ii) referring the matter to dispute resolution.
- 26.6 If the *owner* does not pay the amount of the final progress payment claim under sub-clause 26.3(a), or does not, within *working days* after meeting the *builder* on *site*, give the *builder* a notice under sub-clause 26.3(b):
 - (a) the amount of the final progress payment claim is deemed to be a debt due and owing from the *owner* to the *builder*;
 - (b) the *date of practical completion* stated in the *notice of practical completion* is deemed to be the *date of practical completion*; and

NEW HOME CONSTRUCTION CONTRACT

- (c) the *owner* acknowledges the *building works* have reached *practical completion*.
- 26.7 On the *owner* paying the final progress payment claim, the *builder* must [REDACTED].

Clause 27 – Final Certificate

- 27.1 Unless provided for elsewhere in this *contract*, the *builder* [REDACTED].

Clause 28 – Early Possession

- 28.1 If the *owner*:
- (a) enters into occupation of the *site*, or any part of the *site*;
 - (b) takes control of the *building works* or the *site*; or
 - (c) prevents or inhibits the *builder* from carrying out the *building works*, without the *builder's* written consent, the *owner* shall be deemed to have committed a serious breach of this *contract*, and the *builder* shall be entitled to either:
 - (i) treat the *owner's* actions as a repudiation of its obligations under this *contract* and [REDACTED]; or
 - (ii) do either or both of the following:
 - A. [REDACTED];
 - B. give [REDACTED].
- 28.2 If the *owner* breaches (including repudiates) this *contract*, nothing in this Clause prejudices the right of the *builder* to recover damages or exercise any other right or remedy.

Clause 29 – Contract Maintenance Period

- 29.1 The contract maintenance period is a period of [REDACTED] weeks commencing on and including the *date of practical completion*.
- 29.2 The *owner* may, prior to the expiration of the contract maintenance period, give the *builder* [REDACTED] defects in the *building works* that appear after the *date of practical completion*.
- 29.3 The *builder* must rectify defects that are the *builder's* responsibility and which are notified to the *builder* during the contract maintenance period.
- 29.4 If the *owner* gives the *builder* a list of defects under sub-clause 29.2, the *owner* must provide the *builder* access to the *site* for the *builder* to carry out the maintenance work.

NEW HOME CONSTRUCTION CONTRACT

Clause 30 – Defects and First Right of Rectification

- 30.1 If the *owner* believes that any defect exists in the *building works*, whether it is during or after the contract maintenance period, the *owner* must [REDACTED].
- 30.2 If the *builder* [REDACTED].
- 30.3 The *owner* must allow the *builder* [REDACTED].
- 30.4 Nothing in this Clause 30 shall be construed as purporting to restrict or remove the rights of the *owner* in respect of any statutory warranty under the *Home Building Act 1989 (NSW)*.

Clause 31 – Termite Treatment and Maintenance

- 31.1 Where a termite treatment system is installed or forms part of the *building works*, the *owner* is responsible for and agrees to maintain such a system in the manner specified or required by the manufacturer and installer of the system.
- 31.2 The *owner* is solely responsible for having the *building works* inspected in relation to termite activity at least every 12 months, with such an inspection to be carried out by a licensed pest control person or firm.
- 31.3 No act, conduct or omission of the *builder* shall constitute an extension of the *builder's* warranty applicable to the termite treatment system used beyond the warranty period provided by the manufacturer of such treatment system.

Clause 32 – Delay Damages

- 32.1 If the *building works* do not reach *practical completion* by the end of the *contract period* (as specified in Item 12 of Schedule 1, and as extended under Clause 9), the *owner* is entitled to delay damages in the sum specified in Item 13 of Schedule 1 for each *working day* after the end of the *contract period* to and including the earlier of:
- (a) the *date of practical completion*;
 - (b) the date this *contract* is terminated; or
 - (c) the date the *owner* takes possession of the *site*, or any part of the *site*.

Clause 33 – Charge on the Site

- 33.1 The *owner* charges the *site* with due payment to the *builder* of all moneys that are or may become payable under this *contract* to the extent that a

NEW HOME CONSTRUCTION CONTRACT

court of tribunal has made an order that the *owner* pays that amount to the *builder*.

Clause 34 – Suspension

- 34.1 If the *owner* is in breach of this *contract* in any way whatsoever, the *builder* may suspend the carrying out of the *building works*.
- 34.2 The *builder* must give to the *owner* written notice of the suspension and details of the breach.
- 34.3 The *builder* must recommence the carrying out of the *building works* within 10 *working days* after the *owner* remedies the breach and gives the *builder* written notice of that fact.
- 34.4 The *builder's* exercise of the right of suspension does not prevent the *builder* from also exercising any right to terminate this *contract* under Clause 35 in relation to the same breach.

Clause 35 – Termination (Serious Breach)

- 35.1 A serious breach of this *contract* by the *builder* includes if the *builder*:
- (a) has its licence cancelled;
 - (b) suspends the carrying out of the *building works* other than under Clause 34 (a mere absence of the *builder* or its representatives from the *site* will not in itself be sufficient).
- 35.2 A serious breach of this *contract* by the *owner* includes, but is not limited to, if the *owner*:
- (a) fails to pay any amount by the due date;
 - (b) fails to give evidence of ability to pay when requested;
 - (c) fails to establish and maintain a *security account* if requested;
 - (d) interferes with, or obstructs the progress of the *building works*;
 - (e) fails to give, or interferes with the *builder's* possession of the *site*;
 - (f) fails to give an instruction or direction required within the time specified.
- 35.3 If a party is in serious breach of this *contract*, the other party may give the party in breach a written notice stating:
- (a) the details of the breach; and
 - (b) that, if the breach is not remedied within 10 *working days*, that party is entitled to terminate this *contract*.
- 35.4 If 10 *working days* have passed since the notice of serious breach is given, and the breach is not remedied, then the party giving the notice of serious breach may terminate this *contract* by giving a further written notice to that effect.
- 35.5 All notices given under this Clause must be given by certified mail or personally.

Clause 36 – Termination (Insolvency)

- 36.1 The *builder* may terminate this *contract* by giving the *owner* written notice by certified mail or personal service if the *owner*:
- (a) being a person, is or becomes bankrupt; or
 - (b) being a corporation, is or goes into liquidation.

Clause 37 – Effect of the Builder terminating the contract

- 37.1 If the *builder* terminates this *contract* under Clause 12.4(b), Clause 35 or Clause 36 then, at the election of the *builder*, the *owner* must pay, as a debt due and payable:
- (a) the greater of the cost of or the market value of the *building works* to date, including the cost of any materials on the *site* or already ordered from suppliers, and costs related to the *building works* not proceeding, less the amount already paid by the *owner* to the *builder*, or
 - (b) common law damages (including loss of bargain damages).

Clause 38 – Effect of the Owner terminating the contract

- 38.1 If the *owner* terminates this *contract* under Clause 35 and subsequently continues to complete the *building works*, the *owner* must keep records of the costs incurred.
- 38.2 The *owner* must take all reasonable steps to minimise the cost of completing the *building works*.
- 38.3 The *owner* must, within 5 *working days* of the *building works* reaching *practical completion*, give the *builder* a written detailed statement of the costs incurred (including copies of all invoices and receipts), and notice of the date when *practical completion* was reached.
- 38.4 If the costs incurred by the *owner* are:
- (a) more than the unpaid balance of the *contract price*, the *builder* must pay the difference to the *owner* within 7 *working days* of receiving the notice from the *owner*, or
 - (b) less than the unpaid balance of the *contract price*, the *owner* must pay the difference when giving the notice as a debt due and payable.

NEW HOME CONSTRUCTION CONTRACT

Clause 39 – Debt Collection Costs

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

Clause 40 – Statutory Warranties

40.1 To the extent required by the *Home Building Act 1989*, the *builder* warrants that:

- (a) the *building works* will be performed in a proper and workmanlike manner and in accordance with the plans and specifications attached to this *contract*;
- (b) all materials supplied by the *builder* will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this *contract*, those materials will be new;
- (c) the *building works* will be done in accordance with, and will comply with, the *Home Building Act 1989* or any other law;
- (d) the *building works* will be done with due diligence and within the time stipulated in this *contract*, or if no time is stipulated, within a reasonable time;
- (e) if the *building works* consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the *building works* will result, to the extent of the *building works* conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- (f) the *building works* and any materials used in doing the *building works* will be reasonably fit for the specified purpose or result, if the *owner* expressly makes it known to the *builder*, or other person with express or apparent authority to enter into or vary contractual arrangements on behalf of the *builder*, the particular purpose for which the *building works* are required or the result that the *owner* desires to be achieved, so as to show that the *owner* relies on the *builder's* skill and judgment.

Clause 41 – Dispute Resolution

41.1 If a dispute arises, then a party must give notice to the other party setting out the matter in dispute.

41.2 The *builder* and the *owner* must meet within 10 *working days* of the giving of the notice to attempt to resolve the dispute or to agree on methods of doing so.

NEW HOME CONSTRUCTION CONTRACT

- 41.3 If the dispute is resolved, the resolution must be documented and signed by both parties.
- 41.4 The parties agree that anything done or said in the negotiation cannot be revealed in any other proceedings.

Clause 42 – Notices

- 42.1 Unless otherwise stated in this *contract*, a notice is deemed to be given if the notice is:
- (a) delivered by hand to the other party;
 - (b) posted by ordinary pre-paid mail to the other party's last known address on the day following the day that it was posted; and
 - (c) sent by facsimile transmission to the party's last known facsimile number on receiving confirmation of transmission.

Clause 43 – No Waiver

- 43.1 Except as provided at law, in equity, or elsewhere in this *contract*, none of the provisions of this *contract* may be varied, waived, discharged or released, except with the prior written consent of the parties.

Clause 44 – Severance

- 44.1 Any provision in this *contract* which is illegal, void or unenforceable will be ineffective only to the extent of such illegality, voidness or unenforceability, and will not invalidate any other provision of this *contract*.

Clause 45 – Mandatory Conditions

- 45.1 To the extent required by the *Home Building Act 1989* and subject to sub-clause 45.2, the *building works* will comply with:
- (a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
 - (b) all other relevant codes, standards and specifications that the *building works* are required to comply with under any law; and
 - (c) the conditions of any relevant development consent or complying development certificate.

NEW HOME CONSTRUCTION CONTRACT

- 45.2 The *builder* is not liable if the *building works* do not comply with the requirements of sub-clause 45.1 if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of the *owner* (but not by or on behalf of the *builder*); or
 - (b) a design or specification required by the *owner*, if the *builder* has advised the *owner* in writing that the design or specification contravenes sub-clause 45.1.
- 45.3 To the extent required by the *Home Building Act 1989*:
- (a) all plans and specifications for the *building works* including any variations to those plans and specifications form part of this *contract*;
 - (b) any agreement to vary this *contract*, or to vary the plans and specifications for the *building works*, must be in writing and signed by the parties.

SAMPLE - COPYRIGHT

NEW HOME CONSTRUCTION CONTRACT

DEED OF GUARENTEE AND INDEMNITY

builder is _____

owner is _____

contract is the written agreement between the *owner* and the *builder* dated _____

BACKGROUND

The *owner* entered into the *contract* at the *guarantor's* request, and the *guarantor* is familiar with the *owner's* obligations under the *contract*.

OPERATIVE

1. Guarantee

The *guarantor* guarantees to the *builder* to fulfil all of the *owner's* obligations under the *contract*, including but not limited to, the payment of all monies in accordance with the *contract*.

2. Indemnity

The *guarantor* indemnifies the *builder*, and shall keep the *builder* indemnified, against any claim, loss, damage or expense arising out of the content of the *contract* caused by or resulting from any non-fulfilment of the *owner's* obligation referred to in Clause 1.

3. Principal Debtor

The *guarantor* shall be deemed to be a principal debtor, jointly and severally liable with the *owner*, to discharge the obligations referred to in Clause 1.

4. No Merger

Nothing in this Deed mergers, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

If the *contract* is terminated in anyway, this Deed shall nevertheless continue to operate, notwithstanding that the *owner*.

- (a) if a corporation, is placed in liquidation; or
- (b) if a person, is declared bankrupt.

5. No Release

The *guarantor* is not discharged by:

- (a) any variation to the *contract*, including a variation to the building works;
- (b) any delay or claim by the *builder* to enforce a right against the *owner*; and
- (c) any forbearance given to the *owner* to perform the *owner's* obligations under the *contract*.

6. Severability

If any part of this Deed is invalid, void or unenforceable, that part of the Deed will not invalidate the remainder of this Deed, which shall continue in full force.

7. Where More Than One Guarantor

If the *guarantor* is more than one person, this guarantee and indemnity is not affected by the failure of all of the persons consisting of the *guarantor* to sign this Deed being enforced against any one of them.

8. Waiver of Rights

The *guarantor* waives all rights as surety inconsistent with this Deed, or to the detriment or disadvantage of the *builder*.

GUARANTOR'S STATEMENT

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

Guarantor's Name (the *guarantor*)

Witness' Name

Guarantor's Signature

Witness' Signature

Date:

Date: