

SCHEDULE 3.

CONSTRUCTION STAGES APPLICABLE TO PROGRESS PAYMENTS

'Base stage' means

- (a) in the case of a home with a timber floor, the stage when the concrete footings for the floor are poured and the base brickwork is built to floor level;
- (b) in the case of a home with a timber floor with no base brickwork, the stage when the stumps, piers or columns are completed;
- (c) in the case of a home with a suspended concrete slab floor, the stage when the concrete footings are poured;
- (d) in the case of a home with a concrete floor, the stage when the floor is completed;
- (e) in the case of a home for which the exterior walls and roof are constructed before the floor is constructed, the stage when the concrete footings are poured;

'Frame stage' means

the stage when a home's frame is completed and approved by a building surveyor;

'Lock-up stage' means

the stage when a home's external wall cladding and roof covering is fixed, the flooring is laid and external doors and external windows are fixed (even if those doors or windows are only temporary);

'Fixing stage' means

the stage when all internal cladding, architraves, skirting, doors, built-in shelves, baths, basins, troughs, sinks, cabinets and cupboards of a home are fitted and fixed in position;

'Completion' means

the Building Works are complete in accordance with the Contract Documents.

NOTE:

This table is prescribed by Section 40 of the Domestic Building Contracts Act 1995.

TABLE

| COLUMN 1 | COLUMN 2 | COLUMN 3 |
|------------------------------------|------------------------------|---------------|
| Type of Contract | Percentage of Contract Price | Stage |
| Contract to build to lock-up stage | 20% | Base stage |
| | 25% | Frame stage |
| Contract to build to fixing stage | 12% | Base stage |
| | 18% | Frame stage |
| | 40% | Lock-up stage |
| Contract to build all stages | 10% | Base stage |
| | 15% | Frame stage |
| | 35% | Lock-up stage |
| | 25% | Fixing stage |

Schedule 3

PROGRESS PAYMENTS

NOTE

There are five stages. These are described below. Fill in the percentage of the Contract Price and the amount payable for each of the stages applicable to your Contract (for example, if the Contract is to build to lock-up stage, fill in only the first 3 stages and delete the last 2 stages; if the Contract is to complete the Building Works complete all 5 stages).

There are five different types of construction for the Base Stage – refer to Schedule 3. In the space * provided below fill in (a), (b), (c), (d) or (e) to indicate which type will be used under this Contract.

| STAGE | PERCENTAGE OF CONTRACT PRICE | AMOUNT |
|-----------------------------|------------------------------------|----------|
| Deposit (Refer to Clause 9) | 3% | \$ |
| • Base stage [d]* | 10% | \$ |
| • Frame stage | 15% | \$ |
| • Lock-up stage | 35% | \$ |
| • Fixing stage | 25% | \$ |
| • Completion | 12% | \$ |
| TOTAL CONTRACT PRICE | 100% (Including Deposit) | \$ |

SPECIAL CONDITIONS

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EXCLUDED ITEMS

Unless specifically included in the accepted building tender statement of costs documents that form part of the Contract, the following items are excluded:

- (a) Landscaping including plants, lawns, sprinkler systems, garden furniture, pergolas, paving (including steps and porches), retaining walls and AG drains;
- (b) Any brick selection other than the Northridge Homes range;
- (c) Floor coverings including carpet, polished timber flooring, ceramic or other material floor tiling outside kitchen and wet areas, security systems, door closers, deadbolts, spa bath, dishwasher, floor wastes, air conditioning, evaporative cooling system, ducted vacuum, microwave, television points, concealed music system, refrigerator and televisions;
- (d) Decorating items including all furniture, window dressings, light fittings, including low voltage downlights and external lights (except front entry); and
- (e) windows to garage.

A. INTERPRETATION

Definitions

NOTE

Throughout the Contract whenever a defined phrase or word is used it is shown in bold print.

- 1.0 • '**Builder**' means the person, partnership or company named in the Particulars of Contract.
- '**Building Period**' means the building construction time estimated by the **Builder** to carry out the **Building Works**, as stated in Item 1 of Schedule 1, subject to Clause 32.
 - '**Building Works**' means the works to be carried out by the **Builder** as shown on the **Plans** and as described in the **Specifications**, Contract conditions as varied in accordance with this Contract.
 - '**Building Site**' means the land upon which the **Building Works** are to be carried out.
 - '**Business Day**' means a day that is not a Saturday or a Sunday or a day that is wholly or partly observed as a public holiday throughout Victoria.
 - '**Commencement**' means the day on which the **Building Works** commence on the **Building Site**.
 - '**Completion**' means that the **Building Works** to be carried out under the Contract have been completed in accordance with the **Plans** and **Specifications** set out in the Contract.
 - '**Contract Documents**' means this signed Contract and the Conditions, signed **Specifications**, signed **Plans** and an **Engineer's Design**.
 - '**Contract Price**' means the amount shown in Item 2 of Schedule 1.
 - '**Days**' means calendar days.
 - '**Engineer's Design**' includes a footing design or other structural design that has been prepared by a qualified engineer for the concrete footings, stumps, piers or slab construction, or for a particular part of the **Building Works** that require a structural design, drainage design where appropriate and computations accompanying the foregoing.
 - '**Final Claim**' means the **Builder's** claim setting out the balance of the **Contract Price** due for payment by the **Owner** to the **Builder**, taking into account all monies paid by the **Owner** and all other amounts to be added to or deducted from the **Contract Price** under this Contract.
 - '**Final Payment**' means the payment of the amount of the **Final Claim**.
 - '**Foundations Data**' has the same meaning as set out in Section 30 of the Domestic Building Contracts Act 1995.

Definitions

Continued

- **'Land'** means the land containing the **Building Site**.
- **'Lending Body'** means a person or corporation which has agreed or agrees to make a loan to the **Owner** to enable the **Owner** to pay monies which become payable to the **Builder** under this Contract.
- **'Notice of Completion'** means a notice given by the **Builder** pursuant to Clause 34 informing the **Owner** that the **Building Works** have reached **Completion**.
- **'Owner'** means the person, partnership or company named in the Particulars of Contract and wherever appearing in this Contract includes their agents, executors and administrators.
- **'Plans'** means the drawings showing the layout and design details of the **Building Works** with dimensions and elevations, including **Engineer's Design**.
- **'Possession'** includes occupancy, use or control.
- **'Prime Cost Item'** means an item (for example, a fixture or fitting) that either has not been selected or whose price is not known at the time which this Contract is entered into and for the cost of supply and delivery which the **Builder** has made allowance for in the **Contract Price**.
- **'Progress Payment'** means a payment that the **Builder** may claim on the completion of a construction stage as detailed in Schedule 3.
- **'Provisional Sum Item'** means an item of work (including labour and materials) for which the **Builder**, after making all reasonable inquiries, cannot give a definite price at the time that this Contract is entered into and which the **Builder** has made allowance for in the **Contract Price**.
- **'Site Access'** means access for delivery and tradesmen's vehicles from the roadway to the **Building Site** on the **Land**.
- **'Site Drainage'** means drains deemed by the **Soil Test Report** that are necessary to protect the **Building Works** from water damage.
- **'Soil Test Report'** means an investigation of the **Building Site** to seek evidence of filling on the **Land**, concealed rock and to establish a depth for the footing excavations.
- **'Specifications'** means the Contract document that shows the full details of the **Building Works** and includes the details of the materials to be supplied.

Definitions

Continued

- '**Statutory or Other Authority**' means the Local Government, State or Federal Government, or any Government Agency or authorised private certifier that has the power to affect the **Building Works**.
- '**Sub-Contractor**' means a person, partnership or company who contracts with the **Builder** to carry out part of the **Building Works**.

Headings, footnotes, etc.

2.0 The headings (but not the boxed explanatory or side notes) form part of this Contract.

Contract complete in itself

3.0 This Contract is complete in itself and overrides any earlier agreement, whether made verbally or in writing.

Joint and several obligations

4.0 If there is more than one **Owner** under this Contract, their obligations are joint and several.

Assignment and sub-letting

5.0 Either party may assign their rights and duties under this Contract with the written consent of the other.

Notices

6.0 A notice is given to the person when:

- it is delivered in person;
- 2 clear **Business Days** have passed after it has been sent by prepaid post to the person; or
- sent by facsimile (where this service is available).

6.1 The parties must notify each other promptly of a change of address.

6.2 The notice shall be deemed to have been served if sent to the address, or facsimile, which the party sending the notice reasonably believes to be the current address, or facsimile, of the other party.

B. MAIN OBLIGATIONS OF THE PARTIES

Building Act Insurance

NOTE

The insurance policy is all of the terms and conditions of the insurance policy and not just the certificate of insurance.

7.0 Where an insurance policy is required under Part 3 of Division 9 of the Building Act in relation to this Contract and it is not issued before this Contract is entered into then until such an insurance policy is issued:

- the **Builder** is not able to enforce any provision of this Contract;
- the **Building Works** must not commence; and
- no money (including the deposit) is payable under this Contract.

7.1 The **Builder** is to ensure that a copy of that insurance policy is given to the **Owner** within 7 **Days** after it is issued.

Finance

8.0 If an amount is inserted in Item 11 of Schedule 1 then this Contract is conditional upon the **Lending Body** providing to the **Owner** written approval of a loan of at least that amount in order to enable the **Owner** to pay to the **Builder** the monies which become payable under this Contract, such approval unless otherwise stated in Item 11 of Schedule 1 to be provided within 14 **Days** of the date of this Contract. The **Owner** promises diligently to pursue such written approval.

8.1 Should such written approval not be obtained within the time provided, this Contract will be voidable within 7 **Days** at the option of the **Owner** to be exercised by notice in writing to the **Builder**, whereupon all monies paid by the **Owner** to the **Builder** will be refunded except for a sum calculated in accordance with Clause 17.4.

Deposit

9.0 The **Owner** must pay to the **Builder** the deposit set out in Item 3 of Schedule 1 on the later of:

- the signing of this Contract; or
- the issue of an insurance policy in relation to this Contract under Part 3 of Division 9 of the Building Act.

9.1 The amount of the deposit must not be

- more than 5%, if the **Contract Price** is \$20,000 or more; or
- more than 10%, if the **Contract Price** is less than \$20,000.

Commencement and Building Period

NOTE

The Building Period may be extended in accordance with Extensions of Time, Refer to Clause 32.

10.0 **Commencement** must occur within 31 **Days** after the **Builder** receives:

- the essential information from the **Owner** (Refer to Clause 13);
- all necessary building permits and planning approvals. (Refer to Clause 17); and
- payment of the deposit under Clause 9.

10.1 The **Building Period** starts on the actual day of **Commencement**.

10.2 The **Builder** will do everything that is reasonably possible to ensure the **Building Works** will start as soon as possible.

10.3 When the **Builder** commences the **Building Works** the **Builder** must give written notice to the **Owner** to that effect.

Statutory Warranties

NOTE

The Building Period may be extended due to further unforeseen delays as set out in Clause 32.

11.0 To the extent required by the Domestic Building Contracts Act the **Builder** warrants that:

- the **Building Works** will be carried out in a proper and workmanlike manner and in accordance with the **Plans** and **Specifications** set out in this Contract;
- all materials to be supplied by the **Builder** for use in the **Building Works** 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;
- the **Building Works** will be carried out in accordance with, and will comply with, all laws and legal requirements including, without limiting the generality of this warranty, the Building Act 1993 and the regulations made under that Act;
- the **Building Works** will be carried out with reasonable care and skill and will be completed by the end of the **Building Period**;
- if the **Building Works** consist of the erection or construction of a home, or are **Building Works** intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the **Building Works** are completed; and
- if this Contract states the particular purpose for which the **Building Works** are required, or the result which the **Owner** wishes the **Building Works** to achieve, so as to show that the **Owner** relies on the **Builder's** skill and judgement, the **Building Works** and any material used in carrying out the **Building Works** will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.

**Owner Must Pay
the Contract Price**

12.0 The **Owner** must pay the **Builder** the **Contract Price** set out in Item 2 of Schedule 1 and other amounts to be paid by the **Owner** under this Contract in accordance with Clause 29 or as otherwise stated in this Contract.

The **Owner** may be required to pay more if:

- a survey of the **Land** is needed to determine the correct boundaries of the **Land** (Refer to Clause 15);
- there is a variation to the costs of complying with changed laws (Refer to Clauses 19 and 20);
- there is an additional amount to pay for an agreed variation (Refer to Clauses 21 and 22);
- interest charges apply by operation of Clause 29; or
- there are additional costs associated with **Prime Cost Items** or **Provisional Sums** in Schedule 2 (Refer to Clause 31).

**Owner Must Provide
Essential Information**

13.0 The **Owner** must give the **Builder** written evidence of the following within **Days** of the date of this Contract to enable **Building Works** to commence:

- satisfactory evidence of the **Owner's** title to the **Land**;
- full details of any easements, restrictions or covenants which affect the **Land**;
- satisfactory evidence of the **Owner's** capacity to pay the sum of the **Contract Price** and where monies are to be borrowed, satisfactory written evidence that any loan has been approved by the **Lending Body** and that the mortgage documents have been signed;
- details of any inspections required by the **Lending Body**;
- copies of any town planning approval and proof of payment of the relevant fees, where the **Owner** is responsible for obtaining the approval; and
- all pre-commencement variations, final drawings and fully completed colour fittings selection sheets all signed by the **Owner**.

C. BEFORE WORK BEGINS

Interpretation of Contract Documents

- 14.0 If there is any difference between scaled dimensions and figures on the **Plans**, the figures prevail. If there is any inconsistency between these Contract conditions and related **Contract Documents** they take priority in the following order:
- these Contract conditions;
 - the Building Tender/Statement of Costs;
 - the **Specifications**; then
 - the **Plans**.
- 14.1 If the **Builder** finds any deficiency in the **Plans** or any conflict between the **Plans** and the **Specifications**, the **Builder** must promptly notify the **Owner** in writing. The **Owner** must then advise the **Builder** in writing how to resolve the problem or which document to follow. If the **Owner** does not do so within 7 **Days**, the **Builder** may decide what to do, and must notify the **Owner** in writing within 7 **Days** of the decision or the document that will be followed.
- 14.2 Should the **Owner's** consent required by the **Builder** pursuant to Clause 21.4 not be provided by the **Owner** within 7 **Days** of the **Builder's** notice given pursuant to Clause 21.2, then either party may end this Contract within 14 **Days** of the expiration of such 7 **Day** period by written notice given to the other.
- 14.3 If this Contract is ended under this Clause then the **Builder** shall be entitled to a reasonable amount calculated in the manner set out in Clause 17.2.
- 14.4 The **Builder** is not entitled to claim for extra costs for errors in **Plans** and/or **Specifications** that the **Builder** has prepared.

Owner Must Identify the Land

- 15.0 The **Owner** must show the **Builder** the boundaries of the **Land** and warrants that they are correct and put up a sign on the **Land** showing the **Owner's** name and the lot or street number.
- 15.1 If the **Builder** has a reasonable doubt about whether the boundaries are correct, the **Builder** must notify the **Owner** in writing and the **Owner** must obtain a survey within 7 **Days**.
- 15.2 If the **Owner** does not do so within 7 **Days**, the **Builder** may, as the **Owner's** agent, obtain the survey. The **Owner** must pay to the **Builder** the price of the survey, including an amount for the **Builder's** profit and overheads being the percentage as shown in Item 10 of Schedule 1 applied to the cost of the survey, with the next **Progress Payment**.

Building Permit Fees

- 16.0 Unless shown otherwise in Items 4 or 5 of Schedule 1 the **Builder** has included in the **Contract Price** fees payable for the building permit and planning approvals.

Planning Approvals and Building Permits

NOTE

Some Councils have Planning laws and special requirements that may affect the building of a new home within their municipality. There may be special restrictions on the positioning of the home on the land and/or restrictions on the type and/or colour of exterior building materials.

- 17.0 The **Owner** is responsible for obtaining and paying for any planning approval that is required unless stated otherwise in Item 4 of Schedule 1. The party obtaining such planning approvals must take all reasonable steps to do so within the time period shown in Item 4 of Schedule 1.
- 17.1 Subject to the receipt of the planning approval and if the **Owner** has not already got the necessary building permits, the **Builder** must apply for them within 14 **Days** after receiving evidence of the **Owner's** title to the **Land** and ability to pay under Clause 13.
- 17.2 When the **Builder** obtains the building permits, the **Builder** must give copies of the permit documents to the **Owner**, if requested to do so.
- 17.3 If the necessary planning approval and/or building permits are not obtained within the time specified in Items 4 or 5 of Schedule 1, then if:
- neither party is at fault, either party may bring this Contract to an end by giving written notice to the other;
 - the **Builder** is at fault, the **Owner** may bring this Contract to an end by giving the **Builder** written notice; or
 - the **Owner** is at fault, the **Builder** may bring this Contract to an end by giving the **Owner** written notice,
- provided that the party who wishes to end this Contract under the conditions of this Clause must do so within 14 **Days** of the expiration of the period set out in Items 4 or 5 of Schedule 1.
- 17.4 If this Contract is ended under this Clause and the **Builder** is not at fault, the **Builder** is entitled to a reasonable price for work performed including costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied those costs. This price:
- may include an amount for the preparation of **Plans** and **Specifications**, the **Engineer's Design** and **Soil Test Report** – unless these have been allowed for in a separate contract; and
 - must not include an amount for work on the **Building Site** for which planning or building approval was not obtained.

Insurance

NOTE

Re Clause 18.4

The Owner should note that the Owner will be liable for loss caused by the Owner or someone for whom the Owner is responsible. i.e. Any Sub-Contractors, employees etc working on the site for the Owner to perform any Building Works which are not included in the Building Works. The Owner should therefore consider insuring against this Public Liability risk.

18.0 The **Builder**:

- must insure in the names of the **Builder**, the **Owner** and the **Lending Body** (as stated on Page 4), against liability for physical loss, destruction or damage to the **Building Works** and the goods and materials on the **Land** as described in the **Contract Documents**; and
- must indemnify the **Owner** in respect of and insure against liability for personal injury, death, property loss or damage arising out of the **Building Works**.

18.1 The **Builder** must maintain the insurance from the date the **Owner** gives the **Builder Possession** of the **Land** under Clause 23 to the earlier of:

- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
- the date the **Builder** hands over **Possession** of the **Land**.

The **Owner** must pay the **Builder** a reasonable amount to cover the pro-rata cost of the insurance for any period during which the **Final Payment** is unreasonably withheld from the date the money is due.

18.2 The **Builder** must provide the **Owner** with a current 'Certificate of Currency' within 7 **Days** of **Commencement** of the **Building Works**. The Certificate must show the names of the **Builder**, **Owner**, **Lending Body** and the job address.

18.3 The cover for personal injury, death, property loss or damage arising out of the **Building Works** must be for an amount which is not less than \$5 million for any one claim and the **Builder** must include as parties to be insured under the policy, any **Sub-Contractors** who do not provide the **Builder** with evidence of adequate and continuing insurance cover.

18.4 The **Builder** is not responsible for, and does not indemnify the **Owner** or the **Owner's** employees or agents or any person claiming through the **Owner** against, any loss or liability that arises out of something done or not done by the **Owner** or any person for whom the **Owner** is responsible. The **Owner** indemnifies the **Builder** in relation to such claims.

18.5 The **Builder** must be registered with WorkCover to protect any person employed by the **Builder** in carrying out the **Building Works**.

D. DURING WORK

Variations to Statutory Laws

NOTE

Refer to Clause 22 for information relating to Variations requested by the Owner or the Builder

- 19.0 If the **Plans** and/or the **Specifications** have to be varied to comply with either a change in the law or statutory requirements after this Contract is entered into the **Builder** must not give effect to any variation unless the following circumstances apply:
- a building surveyor or other authorised person under the Building Act 1993 requires in a building notice or building order under that Act that the variation be made;
 - the requirement arose as a result of circumstances beyond the **Builder's** control;
 - the **Builder** included a copy of the building notice or building order in the notice required by the Act; and
 - the **Owner** does not advise the **Builder** in writing within 5 **Business Days** of receiving the notice required by the Act that the **Owner** wishes to dispute the building notice or building order.
- 19.1 The **Owner** and the **Builder** may then agree to vary the **Plans** and the **Specifications** to make them comply or to avoid the need to comply. The variation must be in writing and signed by the **Owner** and the **Builder**. If the **Builder** and the **Owner** do not agree within 7 **Days** to vary the **Plans** and the **Specifications**, they are varied in accordance with the **Builder's** notice under Clause 19.
- 19.2 If the variation involves additional cost, the **Owner** must pay it, plus the percentage specified in Item 10 of Schedule 1. If the variation involves a saving, the saving is to be deducted from the **Contract Price**. In each case, the adjustment is to be made to the next **Progress Payment** to the **Builder**.
- 19.3 If the cost of the variation is greater than 15% of the total of the **Contract Price** and other amounts to be added to or deducted from the **Contract Price** under this Contract:
- the **Owner** may bring this Contract to an end by giving the **Builder** a written notice either personally or by registered post; or
 - the **Builder** may bring this Contract to an end by giving the **Owner** a written notice either personally or by registered post if the **Owner** fails to give written evidence of ability to pay for the variation within 14 **Days** after receiving the **Builder's** notice.
- 19.4 If the Contract is brought to an end by either the **Builder** or the **Owner** under this Clause, the **Builder** is entitled to a reasonable price for work performed to the date this Contract is ended, including costs incurred and an amount for the **Builder's** profit and overheads being the percentage shown in Item 6 of Schedule 1 applied to that cost.

**Variations to State
or Commonwealth
Tax Laws**

- 20.0 The **Owner** must pay to the **Builder** a sum equal to any increase in any tax, duty or charge which takes effect after the date of the Contract and which causes an increase in the cost to the **Builder** in complying with the Contract. Such sum shall be paid by the **Owner** to the **Builder** with the **Final Payment**.

Requested Variations

- 21.0 Either the **Owner** or the **Builder** may ask for the **Building Works** to be varied. The request must be in writing, must be signed and must set out the reason for and details of the variations sought.
- 21.1 If the **Owner** requests the variation and the **Builder** reasonably believes the variation will not require a variation to any permit and will not cause any delay and will not add more than 2% to the **Contract Price** the **Builder** may carry out the variation.
- 21.2 If the **Builder** requests the variation, the notice given by the **Builder** must state the following further particulars:
- what effect the variation will have on the **Building Works**;
 - if the variation will result in any delays, the **Builder's** estimate of such delays; and
 - the cost of the variation and the effect it will have on the amount payable by the **Owner** under this Contract.
- 21.3 If the **Owner** requests a variation and if the **Builder** has not agreed to carry out the variation under Clause 21.1, the **Builder** must give the **Owner**, within a reasonable time of receiving the notice under Clause 21.0, a notice:
- setting out the particulars listed in Clause 21.2; or
 - stating that the **Builder** refuses or is unable to carry out the variation and stating the reasons therefore.
- 21.4 Subject to Sub-Clause 21.1 the **Builder** must not give effect to any variation unless the **Owner** gives the **Builder** a signed consent to or request for the variation attached to a copy of the notice referred to in Clauses 21.2 or 21.3.
- 21.5 If, within 7 **Days** of the **Builder** giving the **Owner** the notice of particulars under Clause 21.3, the **Owner** does not give the **Builder**:
- a signed request to the variation under Clause 21.4; and
 - written evidence of the **Owner's** ability to pay for the variation,
- the request by the **Owner** for the variation is deemed withdrawn.

Effect of Variations

22.0 When a variation has been effected under Clauses 12, 21 or 36:

- if the variation increases the amount to be paid by the **Owner** under this Contract the amount is added to the next **Progress Payment** after the work is done. If it decreases the amount to be paid by the **Owner** under this Contract the amount is subtracted from the next **Progress Payment**;
- the **Contract Documents** are read as if so varied; and
- the **Completion Date** or the number of **Days** required to finish the work are read as that date or number of **Days**, as adjusted to take account of the variation.

Possession

23.0 The **Owner** must, within 7 **Days** of receiving a request from the **Builder**, give the **Builder** exclusive **Possession** of the **Land** to carry out the **Building Works**. The **Builder's** right to **Possession** of the **Land** is under a contractual licence only. The **Builder** has the **Owner's** authority to allow or refuse anyone access, and may remove unauthorised people from the **Land**.

23.1 The **Owner** or an authorised officer of the **Lending Body** is entitled, after giving the **Builder** reasonable prior notice, to go on the **Land** to inspect the **Building Works** at reasonable times provided that such inspection does not delay or interfere with the progress of the **Building Works**.

Vehicular Site Access

24.0 The cost of providing access to the **Building Site** for any vehicle or machinery needed for the delivery of materials and for the construction of the **Building Works** is included in the **Contract Price**.

**Owner Must Not Direct
Builder's Workers**

- 25.0 The **Owner**, or an agent acting on behalf of the **Owner** or an officer of the **Lending Body**, must not make inquiry of or give directions to the **Builder's** workers or **Sub-Contractors** on the **Site** or elsewhere.

**Owner Must Arrange
Lending Body
Inspections**

- 26.0 The **Owner** must notify the **Builder** in writing if and when the **Lending Body** will want to inspect the **Building Works** before making a **Progress Payment**. The **Builder** must do everything reasonable to assist the **Lending Body** to inspect the **Building Works**. This includes sending a notice that a stage has been completed to the **Lending Body** at the same time as one is sent to the **Owner**.

**Builder to Claim
Progress Payments**

- 27.0 The **Builder** must give the **Owner** a written claim for each **Progress Payment** when each stage has been completed, as set out in Schedule 3. The claim must set out each of the following:
- the amount paid or to be paid for the stage or stages completed to date;
 - the amount paid or to be paid for, and details of, any variations made and other amounts paid or to be paid by the **Owner** under this Contract;
 - the sum of those amounts;
 - payments that have already been made by the **Owner**; and
 - the total claimed, taking into account the payments already made.

Owner Must Make Progress Payments

28.0 The **Owner** must pay the amount of a **Progress Payment** set out in Schedule 3 within the number of **Days** set out in Item 7 of Schedule 1 after both:

- the stage has been completed; and
- the **Owner** has received a written claim for the **Progress Payment**.

28.1 If the **Owner** is getting finance from a **Lending Body**, the **Owner** must give the **Lending Body** an authority, while this Contract lasts, to make payment direct to the **Builder** of any amount the **Owner** agrees has become due under this Contract. The **Owner** must notify the **Lending Body** when each stage is completed and the payment is due.

28.2 The fact that the **Owner** or **Lending Body** has made a **Progress Payment** does not prevent the **Owner** from later claiming that the stage is incomplete. This condition does not apply to the **Final Payment**. (Refer to Clauses 34 and 35)

Builder's Right to Agreed Damages

NOTE

Section 27 of the Act provides that if the Owner fails to pay the Builder any amount due under the Contract a Domestic Building Dispute exists between the parties.

29.0 If the **Owner** does not pay the amount of a **Progress Payment**, or the **Final Payment**, within 7 **Days** after it becomes due, the **Builder** is entitled to interest on the unpaid amount, at the rate set out in Item 8 of Schedule 1, from the date the payment becomes due until the date the payment is made.

Unfixed Materials on Site

30.0 Any unfixed goods or materials on the **Building Site** are the property of the **Builder**.

Prime Cost Items and Provisional Sum Items

NOTES

Prime Cost Items – Certain fixtures and fittings may need to be selected after the signing of the Contract. These items may include the stove or special kitchen and bathroom products. The Builder will allow in the Contract Price an amount which should cover the expected cost, subject to the Owners final selection.

Provisional Sum Items – Are items of work (labour and materials) included in the Contract Price for which the Builder cannot give a definite price, for example, site excavation, rock removal and concrete footings.

- 31.0 Where the **Owner** is to select any item for a **Prime Cost Item** or a **Provisional Sum Item**, the **Owner** must make the selection within **7 Days** of receiving a written request to make the selection from the **Builder**.
- 31.1 An allowance for a **Prime Cost Item** does not include amounts for installation, **Builder's** profit and overheads and cartage. These are included in the **Contract Price**.
- 31.2 An allowance for a **Provisional Sum Item** does not include an amount for the **Builder's** profit and overheads. The amount for the **Builder's** profit and overheads is included in the **Contract Price**.
- 31.3 If a **Prime Cost Item** selected by the **Owner** is unavailable, then the **Owner** must specify an alternative item within **7 Days** of the **Builder's** request to do so, and if the **Owner** fails to comply the **Builder** shall be entitled to select an alternative as near as practical in quality to the original item selected by the **Owner**.
- 31.4 In relation to each **Prime Cost Item** and **Provisional Sum Item**, if the actual price of supplying the item or providing the work is
- less than the allowance, the difference is deducted from the **Contract Price**; or
 - more than the allowance, the total of the difference plus the relevant margin or excess stated in Schedule 2 applied to that difference is added to the **Contract Price** and is payable with the **Progress Payment** in which the amount for that item or work is included.
- 31.5 Where there are no further **Progress Payments** to be made, the **Builder** must calculate the amount and notify the **Owner** as soon as possible. The amount of the difference must be paid or allowed with the **Final Payment** as the case may be.
- 31.6 In calculating the amount spent, the **Builder** must pass on normal trade discounts to the **Owner**. This does not include cash or special discounts for bulk purchasing or personal reasons.
- 31.7 The **Builder** must give the **Owner** a copy of any invoice, receipt or other document that shows the cost to the **Builder** of any **Prime Cost Item** or labour and materials that relate to a **Provisional Sum Item**, as soon as practicable after receiving same.
- 31.8 The **Builder** warrants that any allowance for a **Provisional Sum Item** included by the **Builder** in the Contract has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the Contract is made, including the nature and location of the **Building Site**.

**Builder's Right to
Extensions of Time**

NOTES

The amount to be stated in Item 12 of Schedule 1 is negotiable and is to reflect the damage the Builder will suffer as a result of a delay.

- 32.0 The date for **Commencement** is put back or the **Building Period** is extended if the carrying out of the **Building Works** is delayed due to:
- a variation or a request for a variation by the **Owner** in accordance with Clauses 14, 19, 21 and 22;
 - a suspension of work in accordance with Clause 33;
 - inclement weather or conditions resulting from inclement weather in excess of the **Days** nominated in Schedule 1;
 - disputes with neighbouring owners or residents, or proceedings brought or threatened by them, that are not the **Builder's** fault;
 - civil commotion or industrial action affecting the work of tradespeople or the work of a manufacturer or supplier of materials;
 - anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**;
 - a delay in getting any approval, provided that it is not the **Builder's** fault. Refer to Clause 17; or
 - any other cause that is beyond the **Builder's** direct control.
- 32.1 The **Builder** is to give the **Owner** a written notice informing the **Owner** of the extension of time. The written notice must state that cause and the extent of the delay.
- 32.2 To dispute the extension of time the **Owner** must give the **Builder** a written notice, including detailed reasons why the **Owner** disputes the claim, within 7 **Days** of receiving the **Builder's** notice.
- 32.3 If there is an extension of time due to anything done or not done by the **Owner** or by an agent, contractor or employee of the **Owner**, the **Builder** is, in addition to any other rights or remedies, entitled to delay damages worked out by reference to the period of time that the **Building Period** is extended and that amount set out in Item 12 of Schedule 1. Delay damages will accrue on a daily basis.
- 32.4 The **Owner** must pay any delay damages with the next **Progress Payment**.

Suspension of Work

- 33.0 The **Builder** may suspend the **Building Works** if the **Owner**:
- does not make a **Progress Payment** that is due within 7 **Days** after it becomes due; or
 - is in breach of this Contract.
- 33.1 If the **Builder** suspends the **Building Works**, the **Builder** must immediately give notice in writing by registered post to the **Owner**. The **Owner** must remedy the breach within 7 **Days** after receiving the notice. The **Builder** must recommence the **Building Works** within 21 **Days** after the **Owner** remedies the breach and gives notice of this to the **Builder**.
- 33.2 The date on which the **Building Works** are to be completed is changed and extended to cover the period of suspension.

E. COMPLETION OF WORKS

Final Inspection

NOTE

Section 42 of the Act requires the Builder to give the Owner a copy of the occupancy permit, if applicable, or otherwise a copy of the certificate of final inspection at the time of demanding final payment.

- 34.0 When the **Builder** considers that the **Building Works** have reached **Completion** the **Builder** is to give to the **Owner**:
- a **Notice of Completion**; and
 - the **Final Claim**.
- 34.1 Notwithstanding any other provision of this Contract, the **Builder** must not demand **Final Payment** until after the **Builder** has given to the **Owner** either:
- a copy of the occupancy permit under the Building Act 1993, if the building permit for the **Building Works** requires the issue of an occupancy permit; or
 - in any other case, a copy of the certificate of final inspection
- 34.2 The **Builder** and the **Owner** must meet on the **Building Site** within 7 **Days** of the **Owner** receiving the **Notice of Completion** and **Final Claim** to carry out an inspection in accordance with Clause 35.
- 34.3 If the **Owner** does not meet with the **Builder** to inspect the **Building Works** as required by clause 34.2, the **Owner** must pay the amount of the **Final Claim** within a further period of 7 **Days**.
- 34.4 If within 7 **Days** after service of the **Notice of Completion** the **Owner** fails to attend an inspection of the **Building Works**, the **Final Payment** is due and payable at the expiration of a further period of 7 **Days**.

List of Defects and Final Payment

- 35.0 When the **Owner** and the **Builder** meet on the **Building Site** to inspect the **Building Works**, the **Owner** is to give the **Builder** a written list of all known defects and incomplete work. The **Builder** and the **Owner** are to sign the list and each must keep a copy.
- 35.1 If the **Owner** does not give the **Builder** a written list or does not list any known defects or incomplete work, the **Owner** must pay the **Final Claim** within a further period of 7 **Days**.
- 35.2 If the **Owner** gives the **Builder** a list of known defects and incomplete work the **Builder** must carry out the work required to rectify any defects or to do any incomplete part of the **Building Works** for the **Building Works** to reach **Completion**.
- 35.3 The **Builder** is to give the **Owner** a written notice when the work under Clause 35.2 has been done.
- 35.4 The **Owner** must pay the **Final Claim** within a further period of 7 **Days** after the **Owner** receives the **Builder's** notice under Clause 35.3.
- 35.5 The fact that the **Owner** pays the **Final Claim** is not evidence that there are no defects or incomplete work nor a waiver of any rights under a statutory warranty.
- 35.6 The fact that the **Builder** signs the list is not an admission that the defects exist or there is incomplete **Building Works**.
- 35.7 'Defect' does not include a defect arising from the fact that something has to be supplied or done by the **Owner**.

Handover and Final Payment

- 36.0 When the **Owner** pays the **Final Claim** the **Builder** must hand over **Possession** of the **Land** to the **Owner** together with all keys, certificates and warranties in the **Builder's** possession.
- 36.1 If the **Owner** takes **Possession** of the **Land** or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent the **Owner** commits a substantial breach of this Contract entitling the **Builder** to elect to either:
- treat the **Owner's** action as a repudiation of this Contract and accept that repudiation;
 - give the **Owner** a notice to remedy breach of contract under Clause 40; or
 - accept the **Owner's** actions as a variation of the **Building Works** to omit that part of the **Building Works** not carried out and completed as at the date the **Owner** takes **Possession**.
- 36.2 If the **Owner** breaches (including repudiates) this Contract, nothing in this Clause 36 prejudices the right of the **Builder** to recover damages or exercise any other right or remedy.

**Handover and
Final Payment**
Continued

- 36.3 If the **Builder** accepts the variation of the **Building Works** under the third paragraph of Clause 36.1, the **Builder** is to give the **Owner** written notice to that effect and the **Builder** may give a **Notice of Completion** and a **Final Claim** under Clause 34.

**Defects Within the
12 Month Period**

- 37.0 Subject to Sub-Clause 37.5, the **Owner** may give one written notice to the **Builder** of any additional defects in the **Building Works** not less than 3 months and not more than 3 months from the earlier of:
- the date that the **Owner** takes **Possession** of the **Land** or any part of the **Land**; or
 - the date the **Builder** hands over **Possession** of the **Land**.
- 37.1 Subject to Sub-Clause 37.5, the **Builder** must fix any additional defects in the **Building Works**:
- within 21 **Days** after receiving a notice given under Sub-Clause 37.0;
 - without cost to the **Owner**; and
 - during normal working hours or at any time agreed between the **Builder** and the **Owner**.
- 37.2 The **Owner** must provide reasonable access to the **Builder** for the **Builder** to fix such additional defects.
- 37.3 If the **Builder** does not fix the defects as required by Sub-Clause 37.1 and such failure is not due to a breach by the **Owner** of Sub-Clause 37.2, the **Owner** may give the **Builder** a further written notice listing the outstanding defects and stating that a claim will be lodged with the Building Advice and Conciliation Service.
- 37.4 The **Owner** may only give one written notice to the **Builder** under this Clause 37 and once the additional defects notified in that notice have been rectified then the **Builder's** obligations under this Clause 37 will be satisfied.
- 37.5 If, in the **Builder's** sole opinion, a defect affects the safety or security of the **Building Works** or may lead to the **Building Works** being damaged, the **Builder** will fix it as soon as practicable after the **Builder** is notified. Notice of a defect under this Sub-Clause 37.5 is not a notice under Sub-Clause 37.0.

**Owner's Claim
for Agreed Damages**

NOTES

Re Clause 38.

The amount used to calculate agreed damages takes into account the expenses that will be incurred by the Owner if the Building Works are not completed on time (for example, rent for alternative housing or interest payments).

The amount to be stated in Item 9 of Schedule 1 is negotiable and should accurately reflect the Owner's estimated expenses.

The Building Period shown in Item 1 of Schedule 1 may be extended due to unforeseen delays. Refer to Clause 32.

38.0 If the **Building Works** have not reached **Completion** by the end of the **Building Period** the **Owner** is entitled to agreed damages in the sum set out in Item 9 of Schedule 1 for each week after the end of the **Building Period** to and including the earlier of:

- the date the **Building Works** reach **Completion**;
- the date this Contract is ended; and
- the date the **Owner** takes **Possession** of the **Land** or any part of the **Land**.

38.1 The **Owner** may deduct the amount of any such damages from the **Final Payment**.

**Ending this Contract
Under Bankruptcy
or Liquidation**

39.0 Either the **Owner** or the **Builder** may bring this Contract to an end by giving written notice to the other by registered post, if the other becomes bankrupt or assigns his or her estate for the benefit of his or her creditors, or makes a composition or arrangement with them, or, being a corporation goes into liquidation (except for the purposes of reconstruction), or has a receiver, manager, mortgagee in possession, administrator, or provisional liquidator appointed.

**Builder's Right to
End this Contract**

- 40.0 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.
- 40.1 The **Owner** is in substantial breach of this Contract if the **Owner**:
- does not give the **Builder** any of the essential information required by Clause 13;
 - does not pay a **Progress Payment** as required by Clause 28;
 - takes **Possession** of all or any part of the **Land** before paying the **Final Claim** and without the **Builder's** prior written consent; or
 - is otherwise in substantial breach of this Contract.
- 40.2 If the **Owner** is in substantial breach of this Contract the **Builder** may give the **Owner** a written notice to remedy the breach:
- specifying the substantial breach;
 - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Owner**; and
 - stating that if the substantial breach is not remedied as required, the **Builder** intends to end the Contract.
- 40.3 If the **Owner** does not remedy the substantial breach stated in the notice to remedy the breach within 10 **Days** of receiving that notice, the **Builder** may end this Contract by giving a further written notice to that effect.
- 40.4 The **Builder** is not entitled to end this Contract under this Clause when the **Builder** is in substantial breach of this Contract.
- 40.5 If the **Builder** brings this Contract to an end under this Clause, the **Builder** is entitled to the **Contract Price** and other amounts payable by the **Owner** under this Contract, less the cost to the **Builder** of performing the remainder of the **Building Works**. The **Builder** is also entitled to reasonable compensation for any other loss caused by the **Owner's** breach.
- 40.6 Any sum payable by the **Owner** to the **Builder** pursuant to the operation of this Clause is due and payable upon the **Builder** bringing the Contract to an end.

**Owner's Right to
End this Contract**

- 41.0 If the **Builder** breaches (including repudiates) this Contract, nothing in this Clause prejudices the right of the **Owner** to recover damages or exercise any other right or remedy.
- 41.1 The **Builder** is in substantial breach of this Contract if the **Builder**:
- suspends the carrying out of the **Building Works**, otherwise than in accordance with Clause 33;
 - has the **Builder's** licence cancelled or suspended; or
 - is otherwise in substantial breach of this Contract.
- 41.2 If the **Builder** is in substantial breach of this Contract the **Owner** may give the **Builder** a written notice to remedy the breach:
- specifying the substantial breach;
 - requiring the substantial breach to be remedied within 10 **Days** after the notice is received by the **Builder**; and
 - stating that if the substantial breach is not remedied as required, the **Owner** intends to end this Contract.
- 41.3 If the **Builder** does not remedy the substantial breach stated in the notice to remedy the breach within 10 **Days** of receiving that notice, the **Owner** may end this Contract by giving a further written notice to that effect.
- 41.4 The **Owner** is not entitled to end this Contract under this Clause when the **Owner** is in substantial breach of this Contract.

**Owner May Get
Another Builder to
Finish Work**

- 42.0 If the **Owner** brings this Contract to an end under Clause 41, then the **Owner's** obligations to make further payment to the **Builder** is suspended for a reasonable time to enable the **Owner** to find out the reasonable cost of completing the **Building Works** and fixing any defects.
- 42.1 The **Owner** is entitled to deduct that reasonable cost calculated under Clause 42.0 from the total of the unpaid balance of the **Contract Price** and other amounts payable by the **Owner** under this Contract if this Contract had not been terminated and if the deduction produces:
- a negative balance – the **Builder** must pay the difference within 7 **Days** of demand; and
 - a positive balance – the **Owner** must immediately pay the difference to the **Builder**.

Subcontracting

43.0 The **Builder** may subcontract any part of the **Building Works** but such subcontracting does not relieve the **Builder** from the **Builder's** obligations under this Contract.

No Waiver

44.0 Except as provided at law or 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.

Severance

45.0 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 will not invalidate any other provision of this Contract.

F. DISPUTES, CONCILIATION AND TRIBUNAL

If you have a dispute you should first discuss the matter with the other party. Serious disputes can often be avoided by good communication. It is suggested that in the event of a dispute the parties meet as soon as possible and try to resolve the matter through discussions.

Make sure that you understand your obligations under the Contract. If necessary obtain independent advice. If the dispute cannot be resolved informally then either party may refer the dispute to the Building Advice and Conciliation Service (Phone: 1300 557 559) for assistance in negotiating a resolution or for determination by an independent inspector. Alternatively either party may, at any time, make application to the Victorian Civil and Administrative Tribunal (Phone: 9628 9999) for a determination.

ATTACHMENT 2

DEED OF GUARANTEE AND INDEMNITY

Interpretation

'Builder' is

'Owner' is

'Guarantor' is

'Contract' is that between the **Builder** and the **Owner** dated

Background

The **Owner** executed the Contract at the **Guarantor's** request.

The **Guarantor** is aware of the **Owner's** obligations under the **Contract**.

Operative

1. Guarantee

The **Guarantor** guarantees to the **Builder** the fulfilment of the **Owner's** obligations under the **Contract** including but not limited to the due payment of all money's arising out of the subject matter of the **Contract**.

2. Indemnity

The **Guarantor** indemnifies the **Builder** against any claim, loss or damage arising out of the subject matter of the **Contract** caused by or resulting from any non-fulfilment of the **Owner's** obligations referred to in Clause 1.

3. Principal Debtor

The **Guarantor** is 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

The **Guarantor** agrees that this Deed does not merge on completion or on the ending of the **Contract** by either party and continues notwithstanding that the **Owner**, if a corporation, is placed in liquidation or if a person, is declared bankrupt.

5. No Release

The **Guarantor** is not discharged by:

- any variation to the **Contract** including a variation to the building works;
- any delay or claim by the **Builder** to enforce a right against the **Owner**; and
- any forbearance given to the **Owner** to perform the **Owner's** obligations under the **Contract**.

6. Severability

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

8. Where More Than One Guarantor

If the **Guarantor** consists of more than one person, this guarantee and indemnity is not affected by the failure of all persons comprising the **Guarantor** to sign this guarantee and indemnity or this Deed being unenforceable against any one of them.

9. Waiver of Rights

The **Guarantor** waives all rights as surety inconsistent with any of the terms of 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 executing this Deed.

Signed as a Deed

Guarantor's name:

Guarantor's signature:

Witness's name:

Witness's signature:

Date: