

Construction Contract

For works between \$3300 to \$20000

SCHEDULE

ITEM 1: CONTRACTOR:

Name	
Trading As	
ABN	
Address	
Phone	
Email	
QBCC License Number	
Authorised Representative	

ITEM 2: CLIENT:

Name	
Address	
Phone	
Email	
Authorised Representative	

ITEM 3: CONTRACT PRICE: \$ _____

ITEM 4: DEPOSIT: The deposit amount of \$ _____ shall be paid upon execution of this Agreement.

Note: The maximum deposit permitted by the QBCC Act is:

- a. 5% where the contract price is \$20,000 or more
- b. 10% where the contract price is less than \$20,000
- c. 20% where more than 50% of the value of the works to be performed is offsite

ITEM 5: INVOICES: Invoices are to be submitted as follows:

ITEM 6: WORKS: The scope of the Works subject to this Agreement, together with any drawings, plans and specifications are described and particularised in Appendix 1 hereto.

ITEM 7: SITE: _____

SIGNATURES:

Executed as an Agreement on this _____ day of _____ 20____

Executed by the Contractor

in accordance with section 127 of the

Corporations Act 2001:

.....

Director Name:

.....

Director/Secretary Name:

Executed by the Client

.....

Name:

APPENDIX 1

Scope of Works

GENERAL TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 Definitions

In this Agreement, unless the context or subject matter otherwise require:

Agreement means this Agreement including the General Terms and Conditions, the Schedule and any Appendix thereto;

Authorised Representative means those individuals listed in Item 1 and Item 2 respectively of the Schedule as authorised representatives;

Business Day means a day, not being a Saturday, Sunday or gazetted public holiday in Queensland;

Client means that party specified in Item 2 of the Schedule;

Completion Notice means the notice issued by the Contractor to the Client upon completing the Works or part of the Works, specifying that the Works or part of the Works are complete;

Consequential Loss means any loss or damage suffered by a Party or any other person which is indirect or consequential, or which relates to loss of revenue, loss of income, loss of business, loss of profits, loss of goodwill or credit, loss of business reputation, future reputation or publicity, loss of use, loss of interest, damage to credit rating, or loss or denial of opportunity;

Contract Price means the sum of money stated in Item 3 of the Schedule;

Contractor means that Party and any personnel of that Party specified in Item 1 of the Schedule;

Deposit means the amount set out at Item 4 of the Schedule;

Extension of Time means where the Contractor is entitled to extend the time for commencing, undertaking or completing the Works, for a Qualifying Cause of Delay;

Force Majeure means the occurrence of an event or circumstances beyond the reasonable control of the Party affected by it including (without limitation):

- (a) a war (declared or undeclared), insurrection, civil commotion, military action, or an act of sabotage;
- (b) a strike, lockout or industrial action, dispute or disturbance of any kind;
- (c) an act of a Government Authority;
- (d) an act of God;
- (e) an epidemic event, a pandemic event or lock downs or any other restrictions mandated by a Government Authority that has an impact on the Contractor's performance of this Agreement;
or
- (f) a storm, tempest, fire, flood, earthquake or other natural calamity;

Government Authority means any local, State or Federal government, a Minister or government department of each of those governments, a corporation or authority constituted for a public purpose, the holder of an office for a public purpose, a local authority and any agent or employee of any of them;

Installation Date means the date for the installation of the garage door as notified by the Contractor to the Client in writing;

Latent Condition means any physical conditions on or near the Site (including the physical condition or performance of any existing works, electrical installations or structures on Site) which differ materially from the physical conditions reasonably expected by a competent Contractor;

Notice means a written notice, consent, approval, direction, order or other communication;

Party means either the Contractor or Client;

Parties means both the Contractor and the Client;

QBCC Act means the *Queensland Building and Construction Commission Act 1991*;

Qualifying Cause of Delay means:

- a. a Force Majeure event;
- b. an act, default or omission of the Client, its consultants, agents or other contractors (not being engaged by the Contractor);
- c. any change to the plans and specifications or to the Works;
- d. a suspension of the Works in accordance with this Agreement;
- e. a latent condition;
- f. a Variation;
- g. inclement weather;
- h. changes to any laws and regulations;
- i. any act, default or omission of a Government Authority;
- j. any shortages or delays in procuring a garage door or any other parts, materials or consumables required for the Work;
- k. any labour shortages or any labour constraints that may be experienced by the Contractor from time to time;
- l. any event beyond the Contractor's control such as, but not limited to an epidemic or a pandemic event, shut downs, lock downs or other restrictions imposed by any Government Authority;
- m. any other matter that is outside of the control of the Contractor;
- n. any right to claim and extension of time as provided for in this Agreement.

Schedule means the schedule attached to this Agreement which sets out certain details of this Agreement;

Site means that place identified in Item 7 of the Schedule, where the Works are to be carried out by the Contractor;

Variation means an omission, addition or change to the Works;

Variation Notice means a notice outlining a Variation which must:

- (a) describe the Variation;
- (b) if applicable, set out the Contractor's reasonable estimate of any delay which might result from the Variation; and
- (c) state the price of the Variation.

Works means any services rendered, products or material delivered or work performed by the Contractor as specified in Item 6 of the Schedule and the Appendix to the Schedule or as agreed in writing between the Parties from time to time;

1.2 Interpretation

In the interpretation of this Agreement, unless the context or subject matter otherwise require:

- a. references to a person includes an individual, firm or a body, whether incorporated or unincorporated;
- b. clause headings are for references only and shall not form part of this Agreement nor used in the interpretation of this Agreement;
- c. if the time of doing an act or thing under this Agreement falls on a day which is not a Business Day, then the time of doing that act or thing shall be deemed to be the next Business Day;
- d. words in the singular include the plural and vice versa in accordance with the context of which that word is used;
- e. words importing a gender include other genders;
- f. a reference to a clause is a reference to a clause in this Agreement;
- g. a reference to any of the words 'include', 'includes' and 'including' is to be read as if followed by the words "without limitation";
- h. a reference to a statute or law includes regulations and other instruments under it and any consolidations, amendments, re-enactments or replacements of any of them;
- i. a reference to any party includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Contract Formation

- 2.1 The Client and the Contractor agree to be bound by this Agreement.
- 2.2 These General Terms and Conditions, the Schedule and any Appendix forms part of this Agreement and the General Terms and Conditions, the Schedule and the Appendix shall be read with this Agreement.

- 2.3 The Parties agree that the Contractor is to carry out the Works and the Client is to pay the Contractor the Contract Price for the Works adjusted by any Variations in accordance with this Agreement.

3. Discrepancies, Ambiguities, Errors and Order of Precedence

- 3.1 If either Party becomes aware of any discrepancy, error or ambiguity in or between the documents forming part of this Agreement, that Party must, as soon as reasonably practicable, notify the other Party in writing, of the discrepancy, error or ambiguity.
- 3.2 Upon receipt of the notification referred to in clause 3.1 above, the Parties agree to consult with each other in a genuine attempt to resolve the discrepancy, ambiguity or error.
- 3.3 If the Parties are unable to find a resolution to a discrepancy, error or ambiguity or if the Parties have not attempted to resolve the discrepancy, error or ambiguity within three (3) days of receipt of the notification referred to in clause 3.1, then the discrepancy, error or ambiguity is to be resolved in accordance with clause 12.2.
- 3.4 If there is any inconsistency between any of the documents that form part of this Agreement, then the following order of precedence is to be applied to resolve any inconsistency:
- a. Appendix 1 attached to the Schedule;
 - b. the Schedule; and
 - c. these General Terms and Conditions.

4. The Works

- 4.1 The Works are more fully described and particularised in Item 6 of the Schedule and Appendix 1.
- 4.2 Upon receipt of the Deposit, the Contractor must take steps to order the required garage door and/or parts for the Works.
- 4.3 The Contractor shall make all reasonable efforts to perform the Works and install the garage door on the Installation Date. If the Contractor is entitled to an Extension of Time, the Contractor must provide the Client a Notice, as soon as practical after becoming aware of the delay in the Installation Date, or undertaking and/or completing the Works. Upon such notification, the Contractor shall be entitled to the requested Extension of Time for the Installation Date or undertaking and/or completing the Works.
- 4.4 Upon completing the Works or part of the Works as required, the Contractor shall provide the Client with a Completion Notice.

5. Variations to the Scope of Works

- 5.1 Subject to this clause 5:
- a. the Contractor must not vary the Works except as directed in writing by the Client or approved or permitted in writing by the Client; and
 - b. the Client must not decrease or omit any part of the Works.

- 5.2 The Parties agree that if the Contractor determines that further work, falling outside of the scope of the Works is required, then:
- a. the Contractor must notify the Client in writing of the proposed Variation by way of Variation Notice; and
 - b. the Contractor shall be entitled to proceed with the works subject to the Variation Notice, provided that the Client agrees to the Variation Notice, in writing in any form, including by email or text message.
- 5.3 If the Client does not agree to the Variation Notice and/or does not provide the Contractor with acceptance of the Variation Notice in writing within 3 Business Days of receipt of the Variation Notice, then:
- a. the Contractor may elect to suspend the Works; or
 - b. the Contractor may elect to terminate the Works.
- Any dispute relating to a Variation Notice must be resolved in accordance with clause 12.2.
- 5.4 The Parties agree that the Contractor shall, regardless of whether or not the Client agrees to a Variation Notice, be nevertheless entitled to payment for any Variation which is necessary because of circumstances that could not have been reasonably foreseen by the Contractor when this Agreement was formed, by way of example and without limitation, a Latent Condition or a defect in the existing amenities or installation or a requirement of any Government Authority.
- 5.5 The Client must make payment of any Variation within the time specified on the invoice.
- 5.6 The Contractor shall be entitled to an Extension of Time for any works carried out pursuant to this clause 5.

6. Contract Price, Deposit and Payment

- 6.1 The Client must pay the Contractor:
- a. the Deposit upon execution of this Agreement; and
 - b. each invoice within 3 Business Days of the date of each invoice.
- 6.2 The Parties agree that time is of the essence with respect to the Client's payment obligations.
- 6.3 If the Client does not make payment of an invoice as required by this Agreement, then:
- a. the Client shall be in substantial breach of this Agreement;
 - b. the Contractor may elect to suspend the provision of the Works; and/or
 - c. the Contractor may elect to terminate this Agreement;
 - d. the Contractor shall be entitled to interest on the overdue amounts at the rate provided in section 67P of the QBCC Act.

- e. the Contractor shall be entitled to payment by the Client of any debt collections costs, including but not limited to, any legal costs on a full indemnity basis and disbursements associated with recovering, or the attempted recovery of any outstanding amounts.
- 6.4 The Client is not entitled to set-off against, or in reduction of any amount due to the Contractor under this Agreement, any claim that the Client may have against the Contractor.
- 6.5 If the Client disputes an invoice or any part of it, the Client must, within 3 Business Days of receipt of the relevant invoice, give the Contractor a Notice stating the reasons for disputing the invoice or a part of it.
- 6.6 If during the performance of this Agreement, the price of a garage door or any parts, materials or consumables required to perform the Works significantly increases, through no fault of the Contractor, the Contract Price shall be equitably adjusted by an amount reasonably necessary to cover any such price increases in the costs of a garage door or any parts, materials or consumables required to perform this Agreement.
- 6.7 As used in clause 6.6, a significant price increase in the costs of a garage door or any parts, materials or consumables required to perform the Works shall mean any increase in price equal to or exceeding 5% experienced by the Contractor from the date of this Agreement. Such significant price increase shall be evidenced through quotes, invoices or receipts from the Contractor's suppliers.
- 6.8 Where there is a significant price increase, the Contractor shall, as soon as practicable after becoming aware of a significant price increase, provide a Variation Notice to the Client. The Variation Notice, must:
 - a. specify the materials, parts or consumables required for the performance of this Agreement that have been subject to a significant price increase;
 - b. attached or contain evidence of the Significant Price Increase; and
 - c. set out the corresponding increase to the Contract Price.
- 6.9 Upon receipt of the Variation Notice pursuant to clause 6.8, the Client must assess the Variation Notice and provide a written Notice agreeing to the Variation within five (5) business days of receiving the Variation Notice.
- 6.10 If the Client does not provide the Contractor with a written Notice as required by clause 6.9, the Contractor, may on notice to the Client and without prejudice to any other rights it may have, suspend the Works.
- 6.11 Any dispute with respect to a Variation Notice for a significant price increase shall be resolved in accordance with clause 12.2.
- 6.12 Where the delivery or supply of a garage door or any materials, parts or consumables are required for the performance of this Agreement are delayed, through no fault of the Contractor as a result, for example but not limited to a shortage or unavailability of a garage door or any materials, parts or consumables required for the performance of this Agreement, the Contractor shall:
 - a. not be liable for any additional costs or damages associated with such delay(s);
 - b. be entitled to an Extension of Time; and
 - c. be entitled to substitute a garage door or those parts, materials or consumables that are not available with a garage door or parts, materials or consumables that are available.

7. Site Access

- 7.1 The Client shall ensure that:
- a. the Contractor's access to the Site is clear, clean and uninterrupted;
 - b. all fixing points (noggins) are in place prior to the Installation Date; and
 - c. all other works that are required to be completed before the Works can proceed are completed before the Installation Date.
- 7.2 If the Client fails to comply with clause 7.1 above, the Contractor shall be entitled to charge the Client liquidated damages of \$50.00 per day for each day of delay to the Installation Date.

8. Suspending the Works

- 8.1 The Contractor may, by Notice to the Client suspend the carrying out of the Works if:
- a. the Client does not pay the invoices as required by this Agreement; or
 - b. the Client does not pay the Deposit as required by this Agreement; or
 - c. the Parties cannot agree to a Variation or the Client does not agree to a Variation Notice as provided for in this Agreement; or
 - d. the Client interferes with or obstructs the Contractor in carrying out the Works; or
 - e. otherwise provided for in this Agreement.
- 8.2 The Contractor must recommence the carrying out of the Works within a reasonable time after the Contractor gives the Client notice in writing that the reason for the suspension no longer exists.
- 8.3 The Client must, on demand, pay the Contractor, in addition to any other amounts the Contractor may have a right to claim, such as the Contractor's cost of suspending and recommencing the Works.
- 8.4 The Parties agree that the Contractor's right of suspension pursuant to this clause 8 does not prevent the Contractor from exercising any right to terminate this Agreement as provided for in clause 10.
- 8.5 The Parties further agree that the Contractor shall be granted an Extension of Time to complete the Works or part of the Works, equivalent to the days which are subject to suspension.

9. Defects After Completion

- 9.1 Upon completion of the Works, the Contractor must give the Client a Completion Notice specifying that the Works are complete.
- 9.2 If the Client considers that the Works are not complete, the Client must, as soon as practicable, give the Client written notice specifying why the Works have not reached completion and those things that must be done in order to achieve completion of the Works.
- 9.3 The Contractor shall make good any defects or omissions in the Works which become apparent to the Client within 12 months of the date of the Completion Notice.
- 9.4 If the Client discovers any defects in the Works within 12 months of the date of the Completion Notice, the Client must, as soon as practicable after becoming aware of the defects, give the Contractor written notice to make good such defects and must give the Contractor access to the Site for that purpose.
- 9.5 Upon receipt of the notice pursuant to clause 9.4, the Contractor may attend the Site to assess the defects. If the Contractor is of the opinion that the defects so notified are defects in its Works, the Contractor shall, within 28 Business Days of the notice pursuant to clause 9.4, rectify the defects.

10. Termination

- 10.1 Either Party is entitled to terminate this Agreement, by Notice to the other Party if a Party commits a substantial breach of this Agreement. The Parties commit a breach of this Agreement where, for example:
 - a. the Contractor has any required licenses cancelled or suspended;
 - b. the Client does not make payment of the Contractor's invoice by the due date;
 - c. the Client interferes with or obstructs the Contractor in carrying out the Works; or
 - d. the Parties are in otherwise breach of this Agreement.
- 10.2 If either Party commits a breach of this Agreement, the Party that is not in breach may give the breaching Party a Notice requiring it to rectify the breach. The Notice to remedy breach must specify:
 - a. the details of the breach; and
 - b. a time by which the breach is to be rectified (the time must be at least three (3) Business Days after the date of the Notice to remedy breach).
- 10.3 If the breach is not rectified within the time stipulated in the Notice to remedy breach, the Party that is not in breach may on Notice:
 - a. suspend the carrying out the Services (if the party not in breach is the Contractor); or
 - b. terminate this Agreement.

- 10.4 The Contractor may terminate this Agreement by written Notice and with immediate effect if the Works remain suspended for a period of at least 15 Business Days.
- 10.5 On this Agreement being terminated, or upon the Client repudiating this Agreement, the Contractor may without prejudice to any other rights or remedies that the Contractor may have under this Agreement or at law, recover from the Client as a debt due and owing, any loss or damages, including:
- a. the cost of all work carried out by the Contractor under this Agreement;
 - b. the cost to the Contractor of any garage door, parts, consumables or materials purchased by the Contractor for the Works;
 - c. interest on any unpaid invoices;
 - d. legal costs associated with the recovery of unpaid invoices; and
 - e. all other costs and losses incurred by the Contractor as a consequence of this Agreement being ended.

11. Limit of Liability

- 11.1 The Contractor's limit of liability to the Client for any damage, loss or reliance shall be limited to the Contract Price.
- 11.2 The Client expressly understands and agrees that the Contractor shall not be liable to the Client for any Consequential Loss, direct, indirect, incidental, special consequential or exemplary damages which may be suffered by the Client, however caused and under any theory of liability; including, but not limited to: any loss of profit (incurred directly or indirectly), any loss of goodwill or business reputation, death or personal injury and any other tangible or intangible loss however so described.
- 11.3 The Contractor is not liable for any failure to perform any of the Contractor's obligations under this Agreement as a result of an event of Force Majeure. If a Force Majeure event occurs for more than thirty (30) days, the Contractor may, without liability, terminate this Agreement or any affected Works.

12. General Provisions

12.1 Insurance

The Parties must ensure that they effect adequate insurance cover and policies that they are required by law, to take out and maintain, during the execution of the Works under this Agreement.

12.2 Dispute Resolution

If a difference or dispute between the Parties arises, then a Party shall give the other Party a written Notice of the dispute which Notice must adequately identify and provide details of the dispute.

Within five (5) Business Days of a Notice of dispute being issued pursuant to this clause, the Parties shall confer to resolve the dispute. At the conference, the Parties shall be represented

by the Authorised Representative or a senior officer of each Party, having authority to agree to the resolution of disputes.

If the Parties do not hold a conference within five (5) Business Days of a Notice of dispute being issued or if the Parties hold a conference and are unable to resolve the dispute, then either Party may commence legal proceedings for the resolution of the dispute.

12.3 Workplace Health and Safety

The Contractor shall comply with all applicable requirements of the *Work Health and Safety Act 2011*.

12.4 Assignment

The Contractor may assign this Agreement or the Works without the prior written consent of the Client.

12.5 Subcontracting

The Contractor may subcontract all or any part of the Works without the consent of the Client but the Contractor remains liable to the Client for the Works under this Agreement.

12.6 Warranties under Schedule 1B of the QBCC Act

To the extent required by Schedule 1B of the QBCC Act, the Contractor warrants that:

- a. the Works will be carried out with reasonable care and skill;
- b. unless otherwise states, all materials supplied will be of good quality and suitable for the purposes for which they are intended; and
- c. the Works will be carried out in accordance with this Agreement.

12.7 Approvals

Unless otherwise agreed in writing, the Client shall obtain all permissions, consents or approvals required in connection with the Works.

12.8 Governing Law

This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Queensland and the Commonwealth of Australia.

12.9 Severance

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provisions in any other jurisdiction.

12.10 Assignment

The Client agrees that the Contractor may delegate, assign, novate and/or subcontract any obligations pursuant to this Agreement to any person without the Client's consent. The Client shall not assign its interests in this Contract.

12.11 Notices

Any notice to be given under this Agreement must be given in writing to the recipient at the physical address or the email specified in the Schedule. The giving of a notice by a Party under this Agreement is deemed to have occurred:

- a. if delivered by hand, at the time of delivery; or
- b. if sent by post, then within one (1) Business Day of the time it was delivered to the recipient's address, as evidenced by a tracking receipt;
- c. if sent by email, at the time shown on the sent email folder of the person sending the email (unless the sender receives an email notifying him that the email transmission was not successful).

12.12 Waiver

No act, omission or delay by a party will constitute a waiver of a right under this Agreement.

12.13 Entire Agreement

This Agreement shall constitute the entire agreement between the parties and shall supersede and override all previous communications, either oral or written, between the parties. No agreement or understanding varying or extending this Agreement shall be binding upon any party unless such Variation is reduced to writing and signed by both Parties.

12.14 Counterparts

- a. This Agreement may be signed or executed in any number of counterparts, with the same effect as if the signatures to or execution of each counterpart were on the same instrument.
- b. Each party acknowledges that this Agreement may be entered into and becomes binding on a party upon that party signing the Agreement (or a photocopy, electronic copy, scan or facsimile copy of the same) and transmitting a copy thereof to the other parties or to the other parties' agent or solicitors by scan, email or facsimile.
- c. The parties consent to information being given by an electronic communication for the purposes of Section 11(2)(b) of the *Electronic Transactions (Queensland) Act 2001*.

12.15 Relationship

Nothing contained or implied in this Agreement will create or constitute, or be deemed to create or constitute, an agency or partnership between the Parties or an employer/employee relationship. A Party must not act, represent or hold itself out as having authority to act as the agent of or in any way bind or commit the other Parties to any obligation.