



# Commercial Construction Contract

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FOR COMMERCIAL BUILDING WORK IN QUEENSLAND

## Schedule 1- Reference Schedule

### PARTIES

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**Item 1 Contractor**

**Name(s):** \_\_\_\_\_  
**QBCC Licence No:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Contractor's Representative** \_\_\_\_\_

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**Item 2 Principal**

**Name(s):** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Email:** \_\_\_\_\_

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**Item 3 Principal's Agent / Representative**

**Name(s):** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Email:** \_\_\_\_\_

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### PROJECT DETAILS

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**Item 4 Project Description**

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**Item 5 Additional Services**

\_\_\_\_\_ excludes the supply and installation of fixtures and fittings noted in in Schedule 3.

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**Item 6 Site Address**

**Address** \_\_\_\_\_  
**Lot on Plan Details** \_\_\_\_\_  
**Title Reference** \_\_\_\_\_

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**Item 7 Site Access**

**Date for Site Access** \_\_\_\_\_  
**Party responsible for Site access** \_\_\_\_\_

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**Item 8 Construction Period**

**(a) Allowance for construction** \_\_\_\_\_ Days

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**(b) Allowance for Inclement Weather** \_\_\_\_\_ Days

**(c) Allowance for non-working Days** (Saturdays, Sundays, Public Holidays, Christmas Shutdown) \_\_\_\_\_ Days

**Construction Period (in Days)** ((a) + (b) + (c)) \_\_\_\_\_ Days

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**Item 9 Construction Dates**

**Commencement Date:** On or before \_\_\_\_\_

**Completion Date:** \_\_\_\_\_

**Date For Practical Completion** \_\_\_\_\_

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**Item 10 Defects Liability Period**

The period commencing on the day following the Date of Practical Completion and ending on the day twelve (12) months after the Date of Practical Completion

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**Item 11 Party responsible for Building Approval**

Contractor  Principal (if blank, the Contractor is responsible for Building Approval)

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**Item 12 Party responsible for development approval**

The Principal is responsible for obtaining all development approvals if applicable to the Works.

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**Item 13 Principal Supplied Items**

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Any items in Schedule 3 which are noted as being Principal Supplied Items.

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**Item 14 Documents**

**Drawings** (see Schedule 3)  Contractor supplied  Principal supplied

**Specifications** (see Schedule 3)  Contractor supplied  Principal supplied

**Foundations Data**  Contractor supplied  Principal supplied

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**FEEES, SECURITY AND FINANCE**

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**Item 15 Price & Payment**

**Total Contract Sum (incl. GST):** \$ \_\_\_\_\_

**Deposit % ():** \_\_\_\_\_ %

**Deposit \$** \$ \_\_\_\_\_ inclusive of GST

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**Item 16 Payment Terms**

\_\_\_\_\_ Business Days of receipt of the relevant Progress Claim or Final Claim (if nothing stated, 5 Business Days)

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**Item 17 Costs Escalation**

Does the Costs Escalation clause apply?  YES  NO

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**Item 18 Contractor's Margin**

\_\_\_\_\_ % (if nothing stated, 20%)

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**Item 19 Bill of Quantities**

Included in Contract  Not included in Contract

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**Item 20 Delay Costs**

\$\_\_\_\_\_ per Day (if nothing stated, \$0 per Day)

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**Item 21 Liquidated Damages**

\$\_\_\_\_\_ per Day (if nothing stated, \$50 per Day)  
Capped at \_\_\_\_\_ % of the Contract Sum (if nothing stated, 10% of the Contract Sum).

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**Item 22 Default Interest Rate**

\_\_\_\_\_ % per annum (if nothing stated 10% per annum, calculated on a daily basis)

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**Item 23 Security**

**Required**  Yes  No  
**Security Amount** \_\_\_\_\_ If nothing stated, 5% of the Contract Sum  
**Form of Security** \_\_\_\_\_ (cash deposit, bank guarantee or retention moneys) If nothing stated retention amount  
**Security upon Practical Completion is reduced by** \_\_\_\_\_ If nothing stated, 50% of the Security Amount

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**Item 24 Finance**

**Required**  YES  NO  
**Finance Approval Date:** \_\_\_\_\_  
**Lender** \_\_\_\_\_  
**Loan Amount** \$\_\_\_\_\_

[if any item above is blank Finance approval is not required]

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**MISCELANEOUS ITEMS**

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**Item 25 Jurisdiction**

The state of Queensland in the Commonwealth of Australia

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**Item 26 Special Conditions**



## Schedule 2- Allowances

### Prime Cost Items (if applicable)

Prime Cost Item	Quantity	Allowance per unit (GST inclusive)	Total Allowance (GST inclusive)
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
<b>Total of allowances* for Prime Cost Items (GST inclusive)</b>			

### Provisional Sum Items (if applicable)

Provisional Sum Item	Total allowance for the Provisional Sum Item (GST inclusive)
1.	
2.	
3.	
4.	
5.	
<b>Total of allowances* for Provisional Sum Items (GST inclusive)</b>	

## **Schedule 3- Drawings and Specifications**

### **Drawings**

### **Specifications**

### **Other Documents**

### **Principal Supplied Items**

### **Second Hand Materials**

### **Fixtures and Fittings**

The following fixtures and fittings above are not included in the Contract Sum but are shown on the Drawings and Specifications.



### Schedule 4- Payment Schedule

**WARNING**

The Contractor must not submit any claim under the Contract unless the claimed amount directly corresponds to the progress of the Works at the Site and is strictly proportionate to the value of the related work.

<b>Staged Progress Claims</b>				
<b>Progress Claim No.</b>	<b>Milestone / Trigger Event</b>	<b>%</b>	<b>Amount (GST inclusive)</b>	<b>Claim Date</b>
1				
1				
2				
3				
4				
5				
6				
<b>Total</b>		<b>100%</b>		

\* Unless the relevant stage or amount invoiced is disputed in accordance with clause 25

In addition to the above any amount payable with respect to Variations is payable by no later than the time stated in Item 16 of such variation being completed. See clause 15 for further information.

**OR**

<b>Periodic Progress Claims</b>	
<b>Claim Date</b>	On the ___ day of the selected period: <input type="checkbox"/> Weekly <input type="checkbox"/> Fortnightly <input type="checkbox"/> Monthly

**DO NOT SIGN IF:**

- Foundations data has not been obtained (if applicable).

**Executed as an agreement**

**Executed** by \_\_\_\_\_ **ACN** )  
\_\_\_\_\_ in accordance with section )  
127 of the Corporations Act 2001 )

.....  
Director

.....  
Director/Secretary

.....  
Name (please print)

.....  
Name (please print)

**Signed, sealed and delivered** by )  
\_\_\_\_\_ Under power of attorney no )  
\_\_\_\_\_ dated \_\_\_\_\_ in )  
the presence of: )

.....  
Witness

.....  
By executing this deed the attorney states that  
the attorney has received no notice of revocation  
of the power of attorney.

.....  
Name (please print)

**Signed, sealed and delivered** by )  
\_\_\_\_\_ in the presence of: )  
 )

.....  
Witness

.....  
Name (please print)

## Table of Contents

<b>Schedule 1 - Reference Schedule .....</b>	<b>2</b>
<b>Schedule 2 - Allowances.....</b>	<b>7</b>
<b>Schedule 3 - Drawings and Specifications .....</b>	<b>8</b>
<b>Schedule 4 - Payment Schedule .....</b>	<b>9</b>
<b>1. Definitions and interpretations.....</b>	<b>15</b>
1.1 Definitions .....	15
1.2 Reference Schedule .....	21
1.3 Interpretation .....	21
<b>2. Conditions Precedent.....</b>	<b>22</b>
2.1 Conditions .....	22
2.2 Rescission by Contractor .....	22
2.3 Rescission by Principal .....	22
2.4 Rights on rescission .....	23
2.5 Right to terminate lapses .....	23
2.6 Debt due and payable.....	23
2.7 Cooperation of parties.....	23
<b>3. Contract documents .....</b>	<b>23</b>
3.1 Discrepancies and Ambiguities .....	23
3.2 Principal Supplied Documents .....	24
3.3 Bill of Quantities .....	24
3.4 Construction only Contract.....	25
<b>4. Commencement.....</b>	<b>25</b>
4.1 Commencement Date .....	25
4.2 Contractor to give Commencement Notice to Principal .....	25
4.3 Approvals .....	25
<b>5. Practical Completion .....</b>	<b>26</b>
5.1 Time for practical completion .....	26
5.2 Contractor's notice .....	26
5.3 Attendance at final inspection .....	26
5.4 Remedy of agreed minor defects and minor omissions .....	26
5.5 Deemed acceptance of Works .....	26
5.6 Handover of Works .....	27
5.7 Possession where no entitlement .....	27
<b>6. The Land.....</b>	<b>27</b>
6.1 Unfettered access and use .....	27
6.2 Principal's right to inspect Works .....	27
6.3 Evidence of title and Identification .....	28
6.4 Principal's failure to provide information .....	28
<b>7. Statutory Requirements .....</b>	<b>28</b>
7.1 Compliance with Statutory Requirements.....	28
7.2 Increased cost of compliance .....	29
7.3 Copies of reports.....	29
7.4 Variation due to compliance with Statutory Requirements .....	29
7.5 Principal's failure to agree to Variation .....	29
7.6 Cost of additional statutory inspections .....	29

- 8. Health, Safety and Environmental Protection..... 29**
- 9. Payment..... 30**
  - 9.1 Payment..... 30
  - 9.2 Progress Claims..... 30
  - 9.3 Final Claim..... 31
  - 9.4 Process for Disputing Progress Claims or the Final Claim..... 31
- 10. Goods and Services Tax..... 32**
- 11. Prime Cost and Provisional Sums ..... 32**
  - 11.1 Directions as to Prime Cost Items or Provisional Sum Items..... 32
  - 11.2 Unavailability of Prime Cost Item..... 32
  - 11.3 Adjustment where allowance more than costs..... 32
  - 11.4 Adjustment where allowance less than costs..... 32
- 12. Latent Conditions ..... 32**
- 13. Delays ..... 33**
  - 13.1 Entitlement to Delay Costs..... 33
  - 13.2 Payment of Delay Costs..... 34
  - 13.3 Right not subject to claim for extension of time..... 34
- 14. Extension of time..... 34**
  - 14.1 Contractor’s claim for an extension of time..... 34
  - 14.2 Notice of extension of time..... 35
  - 14.3 Extension for delays involving Inclement Weather..... 35
  - 14.4 Principal’s assessment of claim..... 35
  - 14.5 Consequence of Principal’s rejection or failure to accept..... 35
- 15. Variations..... 36**
  - 15.1 Variation Process..... 36
  - 15.2 Payment for Variations..... 36
- 16. Cost escalation ..... 36**
  - 16.1 Application of clause..... 36
  - 16.2 Escalation of costs..... 37
  - 16.3 Cost escalation monetary limitation..... 37
- 17. Security..... 37**
  - 17.1 Security..... 37
  - 17.2 PPSA..... 39
  - 17.3 Title to demolished materials or materials, goods, plant and equipment..... 39
  - 17.4 Caveat..... 39
- 18. Principal Obligations..... 40**
  - 18.1 General obligations..... 40
  - 18.2 Connection of services..... 40
  - 18.3 Principal Supplied Items new, good and suitable for their purposes..... 40
  - 18.4 Principal not to interfere with the carrying out of the Works..... 41
- 19. Insurance..... 41**
  - 19.1 Contractors insurance obligations..... 41
  - 19.2 Responsibility for loss caused by Principal..... 42
  - 19.3 Principal Insurances..... 42
  - 19.4 Evidence of Insurance..... 42

- 20. Warranties ..... 42**
  - 20.1 Contractor Warranties ..... 42
  - 20.2 Principal or architect responsible selection of materials ..... 43
- 21. Indemnities and Liability ..... 43**
  - 21.1 Principal Indemnity ..... 43
  - 21.2 Contractor Indemnity ..... 43
  - 21.3 Release of Contractor ..... 43
  - 21.4 No entitlement to start a proceeding after expiration of limitation period ..... 44
  - 21.5 No limitation for certain statutory warranties and guarantees ..... 44
- 22. Post Completion Defects ..... 44**
- 23. Suspension ..... 45**
  - 23.1 Notice of suspension ..... 45
  - 23.2 Recommencement ..... 45
- 24. Termination ..... 45**
  - 24.1 Principal's right to give notice of intention to terminate Contract ..... 45
  - 24.2 If Contractor fails to remedy the breach, Principal may terminate Contract ..... 46
  - 24.3 Principal's right to engage another contractor to complete the Works ..... 46
  - 24.4 Contractor entitled to reasonable remuneration if Contract terminated ..... 46
  - 24.5 Contractor's right to give notice of intention to terminate the Contract ..... 46
  - 24.6 If Principal fails to remedy the breach, Contractor may terminate the Contract ..... 47
  - 24.7 No termination right where a party in Serious Breach ..... 47
  - 24.8 Contractor's right to recover on termination ..... 47
  - 24.9 Right to Terminate for Insolvency or Bankruptcy ..... 47
- 25. Dispute Resolution ..... 48**
- 26. Liquidated Damages ..... 48**
  - 26.1 Principal's entitlement to Liquidated Damages ..... 48
  - 26.2 Contractor's obligations on receipt of claim for Liquidated Damages ..... 48
  - 26.3 The Principal agrees that the Principal's entitlement to Liquidated Damages from the Contractor is its sole remedy for delays caused by the Contractor under this Contract... 49
- 27. Copyright and Confidentiality ..... 49**
- 28. Force Majeure ..... 49**
  - 28.1 Excuse from performance of Obligation ..... 49
  - 28.2 Notification ..... 49
- 29. Proper Law, Jurisdiction ..... 49**
  - 29.1 Choice of law ..... 49
  - 29.2 Jurisdiction ..... 50
  - 29.3 Submission to jurisdiction ..... 50
  - 29.4 Service of process ..... 50
- 30. General Provisions ..... 50**
  - 30.1 Assignment ..... 50
  - 30.2 Costs ..... 50
  - 30.3 Counterparts ..... 50
  - 30.4 Delivery as a deed ..... 51
  - 30.5 Entire agreement ..... 51
  - 30.6 Further assurances ..... 51
  - 30.7 Independent Advice ..... 51
  - 30.8 Liability of parties ..... 51

30.9 Multi Capacity..... 52

30.10 No Adverse Construction ..... 52

30.11 Non-merger ..... 52

30.12 Notices ..... 52

30.13 Severability..... 52

30.14 Subcontracting ..... 52

30.15 Variations ..... 53

30.16 Voluntarily Execution ..... 53

30.17 Waiver ..... 53

30.18 Warranty of authority..... 53

30.19 Special conditions ..... 53

## General Conditions

### 1. Definitions and interpretations

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#### 1.1 Definitions

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

**Access Date** means the date in Item 5.

**Act** means *Queensland Building and Construction Commission Act 1991*.

**Additional Services** means the services listed in Item 5.

**Application** means:

- (a) an application to a Governmental Authority for any Approval; and
- (b) the amendment of any application for Approval following lodgement of the application.

**Approval** means:

- (a) an approval, consent, permit, licence authorisation, declaration, exemption, notarisation or waiver, however it is described, including any renewal or amendment; and
- (b) in relation to anything that could be prohibited or restricted by Law if a Governmental Authority acts in any way within a specified period, the expiry of that period without that action being taken.

**Bill of Quantities** means the document titled “Bill of Quantities” as issued to tenderers by or on behalf of the Principal, stating the estimated quantities of Work to be carried out.

**Building Act** means the *Building Act 1975* (Qld).

**Building Approval Date** means the date which is 3 months after the Contract Date.

**Building Product** means any material, substance, or other thing that is associated with, or could reasonably be associated with, the construction, alteration, repair, or maintenance of a building;

**Business Day** means a day, not being a Saturday, Sunday or gazetted public holiday, on which banks are open for commercial business at Brisbane and in the place or places where performance of a relevant Obligation is or is required to take place;

**Christmas Shutdown** means any Day between 22 December to 10 January (inclusive);

**Claim** means, in relation to a person, a claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, chose in action, claim for compensation or reimbursement or liability incurred by or to be made or recovered by or against the person, however arising and whether ascertained or unascertained, or immediate, future or contingent.

**Commission** means the Queensland Building and Construction Commission;

**Conditions Precedent** means the conditions listed in clause 2.1 which need to be satisfied before the Works are commenced.

## Commercial Construction Contract – General Conditions

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**Contract** means this agreement, (including the recitals, special conditions, the schedules, appendices and exhibits to it), as it may later be amended or supplemented by the parties in writing;

**Contract Date** means the date specified as such in Reference Schedule, or if not specified in that place, the date of execution or signature (as the case may be) by the last party to execute or sign (as the case may be) this Contract;

**Contract Sum** means the amount noted in Item 15 as adjusted in accordance with this Contract.

**Cost Escalation Notice** has the meaning given in clause 16.2(c).

**Date for Practical Completion** means the date stated in, or otherwise determined in accordance with, Item 9 by which the Works must reach Practical Completion, as may be adjusted from time to time in accordance with the Contract.

**Date of Practical Completion** means the date on which the Works reach Practical Completion;

**Days** means calendar days;

**Defects Document** means a document that:

- (c) lists all minor defects and minor omissions agreed by the Contractor and the Principal to exist;
- (d) states the timeframe within which the Contractor is to remedy those agreed minor defects and omissions;
- (e) lists any minor defects or omissions that the Principal claims exist but which the Contractor does not agree exist; and
- (f) is signed by or on behalf of the Contractor.

**Delay Costs** means the cost calculated in accordance with Clause 13;

**Deposit** means the amount stated in Item 15;

**Designs** means the design of the Works comprising the Drawings, Specifications and Plans.

**Direction** includes, but is not limited to, any agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request, or requirement.

**Drawings** means the plans and designs relating to the Works, including but not limited to elevations, sections, and detailed drawings attached to this Contract in Schedule 3.

**Final Claim** means a claim for payment made in accordance with Clause 9.3;

**Event of 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 or a Government Authority;
- (d) an act of God;



## Commercial Construction Contract – General Conditions

---

- (e) an epidemic/pandemic including related acts of a Government or a Government Authority (such as a lockdown); or
- (f) a storm, tempest, fire, flood, earthquake or other natural calamity.

**Finance Approval Date** means the date specified in Item 24 of the Reference Schedule.

**Foundations Data** means the information about the Land or the Site that a building contractor, exercising reasonable care and skill, requires to prepare an appropriate footings design and, if applicable, a concrete slab design for the Land, as well as to provide an adequate estimate of the cost of constructing the footings and, if applicable, the concrete slab.

**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;

**GST** means the goods and services tax as imposed by the GST Law.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing or relating to the imposition of goods and services tax in Australia.

**GST Law** has the meaning given to that term by the GST Act.

**Inclement Weather** means the presence of weather phenomena, including but not limited to rain, wind, heat, cold, humidity, hail, snow, sleet, dew, fog, storm, dust, or flood, and their after-effects, which adversely affect the diligent, usual, or safe carrying out of the Works by the Contractor or the Contractor's subcontractors

**Intellectual Property Rights** means:

- (a) jointly and severally any Rights as they relate to the Confidential Information, and any copyright, trade mark Rights, design Rights, the patent Rights, the Improvements and the Future Rights; and
- (b) all the Rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields; and
- (c) any application or Right to apply for registration of any of the Rights referred to in the subclause (a);
- (d) where applicable the Patent and Trade Mark,
- (e) and **Intellectual Property** shall have the same meaning.

**Item** means an item in the Reference Schedule.

**Jurisdiction** means the jurisdiction specified in Item 25.

**Land** means the land noted in Item 6.

**Land Owner** means the registered owner of the Land as identified on the relevant Certificate of Title.

**Latent Condition** means any physical condition, including artificial structures, on or around the Land (whether on the surface and or below) that materially differs from those reasonably expected by the Contractor as at the date the Contract was formed and includes (without limitation) unforeseen manmade objects, defects or services, rock, asbestos and unforeseen soil or drainage issues.

## Commercial Construction Contract – General Conditions

---

**Lender** means the lender noted in Item 24 or such other financier from whom the Principal obtains finance for the payment of the Contract Sum.

**Legal Practitioner** means a lawyer authorised under a law of the State to practise as a lawyer for purposes including the giving of advice, including without limitation advice about domestic building contracts.

**Liquidated Damages** means the liquidated damages payable under clause 26.

**Lodging Party** means the party specified in Item 10 responsible for the lodging with the Certifier (and any other relevant authority) all plans, submissions and other documents required to obtain the consent, approval or permission necessary to commence building works.

**Non-Conforming Building Product** is a Building Product if:

- (a) its association with a building for the intended use:
  - (i) is not, or will not be, safe; or
  - (ii) does not, or will not, comply with the relevant regulatory provisions; or
- (b) it does not perform, or is not capable of performing, for that use to the standard it is represented to perform by or on behalf of a person in the chain of responsibility for the product.

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

**Notice Address** means in respect of a party:

- (c) the address or email specified as such in Reference Schedule; or
- (d) where a party gives Notice to all other parties of another address or number, the last address or email address so notified.

**Obligation** means any legal, equitable, contractual, statutory or other obligation, agreement, covenant, commitment, duty, undertaking or liability;

**Personal Property** has the meaning given to that term in the PPSA.

**Possession** means the point at which the Works, or any part of the Works, are taken over, occupied, or used by the Principal, or by the Principal's employees, other contractors, or agents

**PPSA** means the *Personal Property Securities Act 2009* (Cth);

**PPSA Property means:**

- (a) all of the Principal's present and after-acquired Personal Property in which the Principal can be a grantor of a Security Interest including property in which the Principal has, or may in the future have, rights or the power to transfer rights;
- (b) all of the Principal's PPSA Retention of Title Property; and
- (c) the Proceeds.

**PPSA Retention of Title Property** means all the Principal's present and future PPSA retention of title property as defined in Section 51F of the *Corporations Act 2001* (Cth).

**Practical Completion** means the stage of the Works when:

## Commercial Construction Contract – General Conditions

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- (a) the Works are complete in accordance with the Contract, including all Drawings, Specifications, and applicable statutory requirements, except for minor defects or minor omissions that do not unreasonably affect the Principal's ability to occupy or use the Works; and
- (b) if the Principal identifies any minor defects or minor omissions, the Contractor provides the Principal with a Defects Document listing those items.

**Prime Cost Item** means an item (including fixtures or fittings) that, at the date of formation of the Contract, has either not been selected or the price of which is not yet known, and for which the Contractor has made a reasonable allowance in the Contract for its supply and delivery.

**Principal's Agent** means the person stated in Item 3.

**Proceeds** has the meaning given to that term under the PPSA.

**Progress Claim** means a claim for payment made in accordance with Schedule 4 and clause 9.2.

**Provisional Sum** means the Contractor's estimate of the cost of carrying out a Provisional Sum Item;

**Provisional Sum Item** means particular work under the Contract (including the supply of any necessary materials) for which the Contractor, despite having made all reasonable enquiries, is not able state a definite amount at Contract Date.

**Purchase Money Security Interest** has the meaning given to that term in the PPSA.

**Reference Schedule** means the details and descriptions specified as such and set out in Schedule 1.

**Required Information** means information about a Building Product that, for each intended use of the product:

- (a) states or otherwise communicates the product's suitability for that use, including any particular circumstances or conditions under which the product is suitable;
- (b) provides instructions for how the product must be incorporated or associated with a building to ensure it is not a Non-Conforming Building Product for the intended use;
- (c) provides instructions for how the product must be used to ensure it is not a Non-Conforming Building Product for the intended use; and
- (d) complies with any requirements for such information as prescribed by a Statutory Requirement.

**Right** includes a legal, equitable, contractual, statutory or other right, power, authority, benefit, privilege, remedy, discretion or cause of action.

**Security Amount** means the amount noted in Item 23 to be held as security for the Principal's obligations.

**Security Interest** has the meaning given to that term in the PPSA.

**Serious Breach** means a party's failure or refusal to perform a substantial obligation under the Contract and includes without limitation:

- (a) the Principal' failing to comply with its obligation under
- (b) the Principal failing to give the Contractor access to the Site;

## Commercial Construction Contract – General Conditions

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- (c) the Principal failing to make payments on time; or
- (d) Where the Principal fails to comply with a Court or Tribunal order, or an adjudicator's decision made under the *Building Industry Fairness (Security of Payment) Act 2017* (Qld), in favour of the Contractor regarding any matter arising out of or connected with this Contract.

**Significant Price Increase** means any increase in the cost of any building product, materials, parts or consumables or remuneration of trades or other parties required for the Works under the Contract, through no fault of the Contractor, equal to or exceeding 5% of the Contract Sum. Evidence of a significant price increase may include and is not limited to quotes, documents, financial records, invoices or receipts from the Contractor's suppliers or subcontractors or other relevant parties required for the Works from the date of this Contract

**Site** means as the context requires the Land or that part of the land to be used by the Contract in the construction of the Works as specified in Item 6;

**Specifications** means the specifications relating to the Works as described in the Contract, including any documents, schedules, or written requirements that detail the standards, materials, workmanship, and methods to be used in carrying out the Work as noted in Schedule 3.

**Statutory Requirements** includes, but is not limited to, any requirement or Direction required under legislation (including delegated or subordinate), permit, approval, or other law or legal requirement, a local government or any other authority (including, without limitation, a building certifier or the Commission) having jurisdiction over the carrying out of the Works.

**Submission Date** means the date on which the Contractor submits a Progress Claim or the Final Claim to the Principal, as applicable.

**Tribunal** means the Queensland Civil and Administrative Tribunal established under the *Queensland Civil and Administrative Tribunal Act 2009*.

**Variation** means a variation of the Works agreed by the parties in accordance with clause 15 or as otherwise permitted or deemed under this Contract.

**Variation Document** means a document that:

- (a) is readily legible;
- (b) describes the Variation and details the scope of work included in the Variation;
- (c) notes the date of the Variation request;
- (d) includes an estimate of any delay to the progress of the Works caused by the Variation;
- (e) specifies any adjustment to the Contract Sum due to the Variation, or the method for calculating such adjustment; and
- (f) states when any adjustment to the Contract Sum is to be:
  - (i) accounted for if the Variation decreases the Contract Sum; or
  - (ii) paid if the Variation increases the Contract Sum.

**WHS Act** means (separately and together) the *Work Health and Safety Act 2011* (Qld) as amended from time to time and includes related acts or regulations.

**WHS Management Plan** means a documented plan prepared by the Contractor that outlines the policies, procedures, and measures to be implemented to ensure compliance with WHS Act

## Commercial Construction Contract – General Conditions

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during the carrying out of the Works. The plan must include risk assessments, safety controls, emergency procedures, and responsibilities to manage health and safety risks on the Site.

**Works** means all of the work at the Site the Contractor is required to undertake per this Contract as noted Item 4 including:

- (a) any Variations agreed between the parties;
- (b) the supply and installation of any Prime Cost Items;
- (c) carrying out any Provisional Sum Items;
- (d) where applicable the supply and installation of the Second Hand Materials;
- (e) the installation of any Principal Supplied Items; and
- (f) the carrying out of the Additional Services.

### 1.2 Reference Schedule

Capitalised words not defined in clause 1.1 have the meaning given to them in the corresponding Item in Schedule 1.

### 1.3 Interpretation

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

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) a reference to a person includes corporations, trusts, associations, partnerships, a Government Authority, and other legal entities, and where necessary, include successor bodies;
- (d) references to writing include printing, typing, facsimile and other means of representing or reproducing words, figures, drawings or symbols in a visible and tangible form, in English;
- (e) references to signature and signing include due execution of a document by a corporation or other relevant entity;
- (f) references to months mean calendar months;
- (g) references to statutes include statutes amending, consolidating or replacing the statutes referred to and all regulations, orders-in-council, rules, by-laws and ordinances made under those statutes;
- (h) references to sections of statutes or terms defined in statutes refer to corresponding sections or defined terms in amended, consolidated or replacement statutes;
- (i) headings and the table of contents are used for convenience only and are to be disregarded in the interpretation of this Contract;
- (j) where any word or phrase is given a defined meaning, another grammatical form of that word or phrase has a corresponding meaning;
- (k) each paragraph or sub-paragraph in a list is to be read independently from the others in the list;

## Commercial Construction Contract – General Conditions

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- (l) a reference to an agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time: and
- (m) a reference to a party includes that party's executors, administrators, substitutes, successors and permitted assigns.

## 2. Conditions Precedent

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### 2.1 Conditions

The performance of this Contract is subject and conditional on the following Conditions Precedent being satisfied:

- (a) **Finance** – The Principal providing the Contractor with written evidence satisfactory to the Contractor that the Principal is able to pay the Contract Sum by the Finance Approval Date.
- (b) **Financier Notice** – The Lender providing a notice to the Contractor that the Works may commence; and
- (c) **Building Approval** – All necessary Approvals being granted by the Building Approval Date, including:
  - (i) all information, evidence and consents required to be given by the Principal under clause 16; and
  - (ii) satisfactory evidence of the Principal's capacity to pay the Contract Sum pursuant to clause 13.1;

### 2.2 Rescission by Contractor

If the Conditions Precedent have not been fully satisfied or waived by within 5 Business Days of the required date noted for that Conditions Precedent, the Contractor may rescind this Contract by giving the other party written Notice of rescission at any time after the relevant date. Any such rescission is without prejudice to any other right that the Contractor may have against the Principal.

### 2.3 Rescission by Principal

- (a) Subject to clause 2.3(b), if the Conditions Precedent have not been fully satisfied or waived by the required date noted for that Conditions Precedent, the Principal may rescind this Contract by giving the other party written Notice of rescission within 5 Business Days of the relevant date.
- (b) The Principal may not rescind this Contract under clause 2.3(a) in respect of the Condition Precedent contained in clause 2.1(a) unless the Principal has also provided satisfactory evidence to the Contractor that the Principal has taken all reasonable steps to apply for finance in a timely manner and that either:
  - (i) such application has been rejected; or
  - (ii) no response to the Principal's application has been received by the relevant date.
- (c) On a valid rescission of the Contract by the Principal as a result of a condition precedent not being satisfied, any deposit (if received) held by the Contractor must be refunded to the Principal after deducting any reasonable costs and remuneration incurred by the Contractor up to the date of the termination of the Contract.
- (d) The reasonable remuneration referred to in clause 2.3(c) includes without limitation:

## Commercial Construction Contract – General Conditions

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- (i) The cost of any work carried out under the Contract up to the date of termination;
- (ii) a reasonable allowance for supervision, overheads and profit, for any work carried out under the Contract up to the date of termination;
- (iii) the costs incurred for materials ordered by the Contractor under the Contract and which are unable to be returned. On receipt of payment for these materials ownership passes to the Principal and the Principal may collect these from the Contractor from a place nominated by the Contractor acting reasonably.

### 2.4 Rights on rescission

If this Contract is rescinded under clause 2.2, the parties will have no further Rights or Obligations under this Contract, except in respect of any breach of this Contract occurring before the date of rescission.

### 2.5 Right to terminate lapses

If the Principal fails to give notice by the relevant date that Finance approval has been obtained in accordance with clause 2.3, the Principal does not have a right to terminate the Contract for a failure to obtain finance approval by the Finance Approval Date.

### 2.6 Debt due and payable

Any amount payable under clause 2 must be paid on written demand by the party entitled to the payment and all such amounts will be deemed to be a debt due and payable by the other party.

### 2.7 Cooperation of parties

Each party must:

- (a) co-operate with the other party and use reasonable endeavours to ensure that the Conditions Precedent are satisfied as soon as reasonably possible, but in any event prior to the required date (as applicable);
- (b) sign and deliver all documents, provide copies of all Applications made and information supplied to third parties and do everything necessary or desirable to assist the other party in satisfying the Conditions Precedent; and
- (c) take no action that might prevent or hinder the satisfaction of the Conditions Precedent.

A failure by the Principal to comply with this clause will be a Serious Breach of the Contract.

## 3. Contract documents

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### 3.1 Discrepancies and Ambiguities

- (a) If either party finds any discrepancy or ambiguity in the Contract, that party must notify the other party in writing. The discrepancy or ambiguity is to be resolved in accordance with clauses 4.1(b) through to 4.1(d). If those clauses do not resolve the ambiguity the parties agree to resolve the discrepancy or ambiguity between themselves and in the event an agreement can't be reached the discrepancy or ambiguity will be dealt with in accordance with the dispute resolution process noted in clause 25.
- (b) Subject to clause 3.1(a), any discrepancy or ambiguity in or between any documents comprising the Contract is to be resolved by adopting the following order of precedence:
  - (i) any Special Conditions;

## Commercial Construction Contract – General Conditions

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- (ii) the terms of this Contract;
  - (iii) the Specifications;
  - (iv) the Drawings; and
  - (v) any other schedules and annexures annexed to this Contract.
- (c) Where any discrepancy exists between figured and scaled dimensions, the figured dimensions prevail.
- (d) All dimensions derived from estimates of existing structures on the Land are approximate. The Contract Sum shall not be adjusted due to any discrepancies between these estimated dimensions and the actual measurements.
- (e) The Principal is not entitled to rely on any statements made or representations given by the Contractor's employees or subcontractors other than those made in writing.

### 3.2 Principal Supplied Documents

If the Principal supplies any documents, Drawings, Designs, Specifications or Information to the Contractor (**Documents**), the Principal:

- (a) agrees:
- (i) that if more or less costs are incurred by the Contractor as a result of any discrepancy or ambiguity in the Documents which the Contractor could not reasonably have anticipated at the Contract Date, the variation in costs is deemed to be a Variation for the purposes of clause 15.
  - (ii) to supply the Contractor with as many copies of the Documents as are required for the Contractor to perform the Works and obtain the Approvals which the Contractor is required to obtain under this Contract; and
  - (iii) if applicable, that its engineer provides the Contractor with such certified specifications and other documents with respect to any footing or slab works as required by the Contractor. The Principal's engineer must be an experienced registered professional engineer within the meaning of that phrase under the *Professional Engineers Act 2002* (Qld).
- (b) warrants that:
- (i) the Documents are fit for purpose concerning the Land, Site and comply with all Statutory Requirements relating to the Works;
  - (ii) except to that extent the Contractor is required to obtain and pay for an Approval under this Contract, all Approvals for the Works have been obtained all associated costs, fees and charges have been paid for such Approvals; and
  - (iii) the Contractor may reasonably rely on the Documents for the purposes of this Contract (including without limitation for the purpose of entering into this Contract).

### 3.3 Bill of Quantities

- (a) If Item 19 is marked "Included in Contract", the Bill of Quantities forms part of this Contract and will be priced at the prices set by the Contractor (such prices to be provided within 30 days of the tender being accepted) which were accepted by the Principal for carrying out the whole of the Works.



## Commercial Construction Contract – General Conditions

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- (b) If Item 19 is marked “Not included in Contract” or if nothing is marked in Item 19, the Bill of Quantities forms part of this Contract this clause does not apply unless the parties otherwise agree in writing.
- (c) An adjustment will be made to the Contract Sum based on the actual quantities of items required with the resulting Variation being priced at:
  - (i) the difference in values where the relevant item was priced as lump sum; otherwise
  - (ii) the value of the difference in the quantity of the items multiplied by the accepted rate for that Item.
- (d) Quantities listed in a Bill of Quantities are estimated quantities only. The Principal or Principal’s Agent is not required to give a Direction if the actual quantity of the items is less than or greater than that listed in a Bill of Quantities included in this Contract.
- (e) Where an item is not included in the Bill of Quantities the inclusion of the Item will be deemed a Variation.

### 3.4 Construction only Contract

Unless expressly agreed otherwise elsewhere in the Contract, the Contract is a construct only contract (not a design and construct contract) and any design consultant is the design consultant of the Principal notwithstanding that the Contractor may pay the design consultant and regardless of whether or not the Principal reimburses the Contractor for any such payment made by the Contractor.

## 4. Commencement

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### 4.1 Commencement Date

The Contractor must commence the Works on or before the date stated in Item 8. Where no date is stated or the words “to be determined” are inserted in Item 8 then the Contractor must commence the Works within ten Business Days of the Conditions Precedent being satisfied.

### 4.2 Contractor to give Commencement Notice to Principal

The Contractor must give written notice to the Principal Confirming:

- (a) the date the Contractor started the Works; and
- (b) the Date for Practical Completion,

within 10 Business Days of commencing the Works.

### 4.3 Approvals

The party stated in Item 16 must promptly take all reasonable steps, and pay any relevant fee, to obtain the necessary statutory consents and planning and building approvals to commence the Works. Where the Contractor is the party specified to obtain such consents and approvals the Principal must sign all documents and take all reasonable steps as requested by the Contract to obtain such consents and approvals.

### 5. Practical Completion

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#### 5.1 Time for practical completion

The Contractor must achieve Practical Completion by the Date for Practical Completion as stated in Item 9 of Schedule 1, or any extended date pursuant to the terms of this Contract.

#### 5.2 Contractor's notice

The Contractor must give to the Principal written notice of:

- (a) not less than five (5) Business Days of the Day on which the Contractor expects Practical Completion will be achieved; and
- (b) the date and time for a final inspection of the Works between the Principal, or the Principal's Agent, and the Contractor.

#### 5.3 Attendance at final inspection

- (a) The Principal must immediately notify the Contractor in writing if the Principal or the Principal's Agent, is unable to attend the final inspection of the Works as notified by the Contractor in accordance with clause 5.2. The parties must then acting reasonably agree on a time during usual business hours for the final inspection of the works provided always that the final inspection must be undertaken within 2 Business Days of the date notified in clause 5.2.
- (b) The Principal, or the Principal's Agent, and the Contractor must attend the final inspection of the Works at the time and Day set out in the Contractor's notice given in accordance with clause 5.2, or as otherwise arranged in accordance with clause 5.3(a).
- (c) During the final inspection of the Works, the Contractor must provide the Principal with a Defects Document of any minor defect in, or minor omission from, the Works which the Principal claims and with which the Contractor agrees.

#### 5.4 Remedy of agreed minor defects and minor omissions

Subject to the necessary materials or labour being available, the Contractor must remedy the defects noted in the Defects Document within the times stated in the Defects Document or within a reasonable period where the Contractor has a reasonable excuse.

#### 5.5 Deemed acceptance of Works

The Principal is deemed to have accepted that:

- (a) there are no defects or omissions in the Works; and
- (b) the Works have reached Practical Completion,

where either:

- (c) the Principal, or the Principal's Agent, does not attend the final inspection of the Works as required by clause 6.3(b); or
- (d) the Principal takes Possession of the Works when not entitled to do so under the Contract, and the Principal is liable to the Contractor for any loss or damage that the Contractor may incur or suffer as a result.

## Commercial Construction Contract – General Conditions

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### 5.6 Handover of Works

Subject to the Contractor's prior written consent, the Principal:

- (a) must not take Possession of the Works,
- (b) is not entitled to the keys or access codes to the Works,

prior to the Contract Sum being paid in full to the Contractor. Within 2 Business Days of receiving the full Contract Sum, the Contractor will hand over the Works to the Principal or the Principal's Agent, including any keys or access codes.

### 5.7 Possession where no entitlement

If the Principal takes Possession of the Works other than in accordance with clause 5.6:

- (a) the Works will be deemed to have achieved Practical Completion, free of defects or omissions, as of the date the Principal takes Possession; and
- (b) the Principal is liable to compensate the Contractor any loss or damage incurred as a result.

## 6. The Land

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### 6.1 Unfettered access and use

- (a) The Principal must provide and continue to provide the Contractor with full, free, unfettered and uninterrupted occupation of the Site, and all reasonably required access to the Site, any existing buildings on the Land necessary to carry out the Works (including any person, vehicles or machinery reasonably necessary for the carrying out of the Works), by the Access Date,
- (b) If as a result of any circumstance beyond the control of the Contractor, access to the Site is restricted or prevented, the costs incurred by the Contractor in obtaining sufficient access to the Site plus the Contractor's Margin will become payable in addition to the Contract Sum. Such costs will form part of the Contractor's Progress Claims or the Final Claim.

### 6.2 Principal's right to inspect Works

The Principal, or a person authorised by the Principal may:

- (a) access designated construction areas at the Site with reasonable supervision by the Contractor; and
  - (b) reasonably view any part of the Works,
- provided that such access and right to view:
- (c) must not obstruct or hinder the Contractor's performance of the Work;
  - (d) is subject to:
    - (i) the Principal not exercising the right more than once in a 30-day period. If the Principal requests an inspection of the Works more than once in a 30-day period, the Contractor may, without reason, decline to grant the Principal's request to inspect the Works

## Commercial Construction Contract – General Conditions

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- (ii) the Principal or authorised person complying with all reasonable Directions by the Contractor in respect of work, health and safety; and
- (iii) the parties agreeing on the date and time (during usual business hours) for such access following the Principal requesting access in writing.

### 6.3 Evidence of title and Identification

Within five (5) Business Days after the Contract Date the Principal must provide to the Contractor:

- (a) Unless previously provided a clear and accurate identification the Land to the satisfaction of the Contractor together with full details of any easements, restrictions or covenants which may affect the performance of the Works.
- (b) Either:
  - (i) satisfactory written evidence of the Principal's title to the Land; or
  - (ii) if the Principal is not the owner of the Land, written consent from all Land Owners consenting to the Works being carried out by the Contractor on the Land, together with satisfactory written evidence of their title to the Land.
- (c) satisfactory written evidence of the boundaries or position of the Land, and the Principal warrants that such evidence will be accurate.
- (d) If the Principal does not provide satisfactory evidence of title as required by this clause, the Principal shall be in Serious Breach of the Contract, and without prejudice to any other rights the Contractor may have, the Contractor may terminate this Contract by giving written notice of termination of the Contract to the Principal. If the Contractor terminates this Contract pursuant to this clause, the Contractor's rights shall be the same as if the Contractor had terminated the Contract in accordance with clause 24.6.

### 6.4 Principal's failure to provide information

If the Principal does not provide the Contractor with the information required in clause 6.3, the Contractor may arrange for a survey of the Land, conduct its own title searches and request the consent of the Land Owners. The cost of the survey, title search and request plus the Contractor's Margin will be added to the Contract Sum and included in the next or any later Progress Claim or the Final Claim.

## 7. Statutory Requirements

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### 7.1 Compliance with Statutory Requirements

The Contractor must in undertaking the Works:

- (a) comply with all relevant Statutory Requirements;
- (b) obtain any consent, approval and permit which the Contractor is expressly required to obtain under this Contract; and
- (c) give any notice or report, and pay any fee, in order to comply with this clause,

unless agreed otherwise elsewhere in the Contract. The Principal must obtain any consent, approval and permit and give any notice or report, and pay any fee except for those required of the Contractor.

## **Commercial Construction Contract – General Conditions**

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### **7.2 Increased cost of compliance**

If the cost to the Contractor:

- (a) in complying with all Statutory Requirements, increases after the date that is two (2) weeks prior to the Contract Date; or
- (b) in carrying out the Works, increases after the date that is two (2) weeks prior to the Contract Date as a result of the introduction or increase of any fee, tax, duty, charge, levy, other impost or regulation,

the amount of the increase is to be added to the Contract Sum and included in the next or any later Progress Claim or the Final Claim.

### **7.3 Copies of reports**

The Contractor or the Principal must provide to the other party a copy of any:

- (a) report, notice, order or other document given in relation to the Works by any supplier of services (such as, for example, gas, electricity, telephone, water and sewerage); and
- (b) certificate of inspection of the Works, as soon as practicable after receipt.

### **7.4 Variation due to compliance with Statutory Requirements**

Subject to clause 7.5, if a Variation is required in respect of the Contractor's compliance with a Statutory Requirement, the Principal must, within five (5) Business Days after receiving a Variation Document, give a written notice to the Contractor agreeing to the Variation.

### **7.5 Principal's failure to agree to Variation**

The Principal may object to the Variation in clause 7.4 if in relation to the Variation the stated adjustment to the Contract Sum, or method for calculating the adjustment to the Contract Sum is unreasonable having regard to the extent of the additional work required. If the Principal fails to agree in writing to a Variation submitted pursuant to clause 7.4, then the dispute as to the variation is to be resolved in accordance with clause 25.

### **7.6 Cost of additional statutory inspections**

The cost of any additional inspections in relation to the Works by the building certifier at the request of the Principal plus the Contractor's Margin on such costs will be paid by the Principal in addition to the Contract Sum and included in the next or any later Progress Claim or the Final Claim where:

- (a) section 143B of the Building Act applies;
- (b) the Contractor is the party responsible for obtaining the Building Approval under this Contract.

## **8. Health, Safety and Environmental Protection**

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- (a) For the purposes of the WHS Act the Contractor is the 'principal contractor' until the Works reach Practical Completion, or the Contract is terminated.
- (b) Without limiting the Rights and Obligations of the Contractor under the WHS Act, the Contractor:
  - (i) will ensure that any person carrying out any part of the Works complies with all relevant workplace health and safety or environmental protection laws; and

## Commercial Construction Contract – General Conditions

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- (ii) will prepare relevant safety documentation in respect of the Works; and
- (iii) may exclude or remove from the Site any person whose acts, omissions or other conduct in the Contractor's reasonable opinion does not comply with the requirements of the Contractor's safety documentation or the WHS Act.

### 9. Payment

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#### 9.1 Payment

- (a) The Principal must pay the Contractor in accordance with this clause 9:
  - (i) the Contract Sum; and
  - (ii) any other amount that may become payable to the Contractor under this Contract.
- (b) Unless the Principal genuinely disputes the Progress Claim or the Final Claim in accordance with clause 9.3(e), the Principal must pay to the Contractor the total amount of the Progress Claim or the Final Claim by no later than the time stated in Item 16.
- (c) Payment, other than payment of the Final Claim, is payment on account only.
- (d) Subject to clause 26, the Principal has no right to deduct any amount from moneys owing to the Contractor under clause 9 including any moneys due to the Principal from the Contractor under the Contract.
- (e) In the event that the Contract is terminated for any reason, a reference date for the purposes of a Progress Claim arises on the date of termination.
- (f) If the Principal fails to pay any amount due to the Contractor under the Contract by the date such payment is due:
  - (i) the Contractor is entitled to charge interest at the rate stated in Item 22 on the overdue amount. The interest is payable from the date the amount was due until the date it is paid;
  - (ii) the Principal is liable to pay the Contractor costs of collecting the debt, including without limitation legal costs on a full indemnity basis and any fees charged by agents.

#### 9.2 Progress Claims

- (a) The Contractor may submit a Progress Claim to the Principal:
  - (i) on each "Claim Date" as set out in the Schedule 4; and
  - (ii) on the completion of any work specified in a Variation agreed by the parties if, after Practical Completion but prior to the expiration of the Defects Liability Period;
  - (iii) the Date of Practical Completion;
  - (iv) on the expiry of the Defects Liability Period per clause 9.3;
  - (v) on the date this Contract is terminated (regardless of the reason for such termination).
- (b) The Progress Claim must specify:

## Commercial Construction Contract – General Conditions

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- (i) the work or where relevant the stage of the work that has been completed together with an itemised list of the work for which the Progress Claim is being made;
- (ii) the amount claimed as payment for that work;
- (iii) any other amount (e.g. Delay Costs) that the Contractor claims is payable by the Principal in connection with the Works; and
- (iv) the total amount being claimed in the form of a tax invoice.

### 9.3 Final Claim

Within fifteen (15) Business Days after the end of the Defects Liability Period, the Contractor may submit a Final Claim to the Principal detailing:

- (a) any work performed by the Contractor to which the Final Claim pertains;
- (b) any amount claimed by the Contractor for payment by the Principal in relation to such work;
- (c) any other amounts the Contractor claims for payment by the Principal arising out of or connected with the Contract; and
- (d) the total amount the Contractor claims for payment by the Principal in the Final Claim;
- (e) the total payments made by the Principal to the Contractor under the Contract up to and including the date the Contractor submits the Final Claim; and
- (f) the aggregate amount of Progress Claims submitted by the Contractor to the Principal pursuant to clause 9.1.

The total amount claimed in the Final Claim must be set out in the form of a tax invoice.

### 9.4 Process for Disputing Progress Claims or the Final Claim

- (a) If the Principal disputes all or part of the amount claimed in a Progress Claim or the Final Claim, the Principal must:
  - (i) provide the Contractor with a written notice of dispute in accordance with Clause 25, specifying the disputed amount and the details of the dispute, by the earlier of the time stated in Item 16 or 10 Business Days after the Submission Date;
  - (ii) pay the Contractor the part of the Progress Claim or the Final Claim which is not in dispute by the time stated in Item 16.
- (b) if the Principal fails to give the Contractor a notice in accordance with clause 9.4(a), in respect of a Progress Claim, the Principal must pay the full amount required by the Progress Claim or the Final Claim, to the Contractor without any deduction.
- (c) Where the Principal does not dispute the Final Claim, this will be conclusive evidence that:
  - (i) the Contractor has performed and completed the Works in accordance with the Contract; and
  - (ii) the Contractor has fulfilled all obligations arising under or in connection with the Contract,

## **Commercial Construction Contract – General Conditions**

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except where the Contractor has fraudulently, or otherwise knowingly and deliberately, withheld from the Principal information within the Contractor's knowledge that indicates otherwise.

### **10. Goods and Services Tax**

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- (a) Defined terms used in this clause that do not appear defined in clause 1.1, have the meaning ascribed to them in the GST Law.
- (b) The Contract Sum includes GST unless noted otherwise.
- (c) If a Supply made under or in connection with this document is a Taxable Supply, then by the relevant time:
  - (i) the Principal must pay the Contractor an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
  - (ii) the Contractor must give the Principal a Tax Invoice for the Supply.

### **11. Prime Cost and Provisional Sums**

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#### **11.1 Directions as to Prime Cost Items or Provisional Sum Items**

If any Prime Cost Items or Provisional Sum Items are noted in Schedule 2, the Principal must within five (5) Business Days of the Contractor's request, give to the Contractor all necessary written and signed Directions required by the Contractor confirming the selection or supply of the item or work represented by a Prime Cost Item or Provisional Sum Item.

#### **11.2 Unavailability of Prime Cost Item**

- (a) If any Prime Cost Item is unavailable or will, unduly delay the progress of the Works (in the reasonable opinion of the Contractor), the Principal give notice to the Contractor of an alternative item to replace the Prime Cost Item within five (5) Business Days of the Contractor's request.
- (b) If the Principal fails does not select an alternative item, the Contractor may in is absolute discretion, having regard to the quality and cost of Prime Cost Item, select and supply a reasonable alternative item to the originally selected Prime Cost Item.

#### **11.3 Adjustment where allowance more than costs**

If the actual cost of a Prime Cost Item or of a Provisional Sum Item is less than the total amount allowed for that item in Schedule 2, the difference between the two amounts will be deducted from the Contract Sum and such deduction will be included in the next or any later Progress Claim or the Final Claim.

#### **11.4 Adjustment where allowance less than costs**

If the actual cost of a Prime Cost Item or of a Provisional Sum Item is more than the total amount allowed for that item in Schedule 2, the difference in that amount plus the Contractor's Margin on the difference will to be added to the Contract Sum and included in the next or any later Progress Claim or the Final Claim.

### **12. Latent Conditions**

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- (a) Upon discovering a Latent Condition, the Contractor must promptly provide the Principal with a written notice:



## Commercial Construction Contract – General Conditions

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- (i) describing the Latent Condition;
  - (ii) the Contractor's estimated scope and cost of the work needed to overcome the Latent Condition; and
  - (iii) specify the estimated time required to complete the proposed work.
- (b) Subject to clause 12(c), the Contractor must issue a Variation Document and vary the Works to address any known Latent Condition that impacts the Contractor's performance of the Works.
- (c) Unless the proposed adjustment to the Contract Sum, or the method for calculating it, is unreasonable given:
- (i) the prohibition noted in clause 12(e); or
  - (ii) the extent of the work to be added to, or omitted from, the Works,

The Principal must provide the Contractor with a written notice agreeing to the Variation necessary to address the Latent Condition within two (2) Business Days of receiving a Variation Document.

- (d) If the Principal does not agree in writing to a Variation required to overcome a Latent Condition, the dispute must be resolved in accordance with clause 25.
- (e) Unless exempt under section 31 of Schedule 1B of the Act, the Contractor cannot claim payment from the Principal for a Variation related to a Latent Condition where the need for the Variation and its amount could reasonably have been identified and/or calculated based on Foundations Data which either
- (i) was obtained by the Contractor prior to the Contract Date; or
  - (ii) could have been obtained by the Contractor prior to the Contract Date.

## 13. Delays

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### 13.1 Entitlement to Delay Costs

If the progress of the Works is delayed due to any of the causes listed in clause 14.1, the Contractor is entitled to

- (a) delay costs at the rate noted in if Item 20 for each Day that the progress of the Works is delayed as a result of the relevant cause.
- (b) if Item 20 has not been completed, the reasonable costs incurred as a result of the delay, including any additional administration, management, supervisory costs, and overhead,

provided that the Contractor submits:

- (c) a written claim to the Principal or the Principal's Agent for such delay costs, setting out the relevant cause of the delay, the period during which the progress of the Works was delayed due to that cause, and
- (d) if clause 13.1(b) applies, of the reasonable costs incurred,

by no later than the date that is twenty-five (25) Business Days after the Date of Practical Completion.

## Commercial Construction Contract – General Conditions

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### 13.2 Payment of Delay Costs

If the Contractor gives to the Principal, or the Principal's Agent, a written claim for Delay Costs in accordance with clause 13.1:

- (a) the Delay Costs claimed are added to the Contract Sum; and
- (b) the Principal must pay the Contractor the Delay Costs claimed within five (5) Business Days after receiving the written claim for Delay Costs.

### 13.3 Right not subject to claim for extension of time

To avoid doubt, the Contractor's entitlement to Delay Costs under clause 13.1 independent of whether the Contractor claims, or the Principal approves, an extension of the Date for Practical Completion under clause 14.

## 14. Extension of time

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### 14.1 Contractor's claim for an extension of time

Subject to clause 14.2, The Contractor is entitled to an extension of the Date for Practical Completion if the progress of the Works is delayed due to any of the following causes:

- (a) a Variation;
- (b) a Latent Condition;
- (c) a failure by the Principal or Principal's Agent to provide the Contractor with written notice of agreement to a Variation, as required under clauses 12(b), 7.4, 15.1(c)(ii) or 16;
- (d) any act or omission by the Principal, the Principal's Agent, the Principal's consultants, other agents or contractors, or authorised representatives of the Lender;
- (e) a breach of the Contract by the Principal;
- (f) a lawful suspension of the Works, including any suspension under clause 23;
- (g) claims or proceedings initiated or threatened by a third party, provided they did not arise from any breach of the Contract by the Contractor;
- (h) proceedings initiated or threatened by, or disputes with, adjoining or neighbouring owners or occupiers, provided they did not arise from any breach of the Contract by the Contractor;
- (i) any act of prevention by the Principal that is not otherwise addressed in this clause;
- (j) subject to clause 14.3, Inclement Weather, or any conditions arising as a direct or indirect consequence resulting from Inclement Weather;
- (k) the unavailability of:
  - (i) labour (whether subcontractors or employees) necessary for the Contractor to perform the Works with reasonable diligence;
  - (ii) any materials necessary to carry out the Works;
- (l) industrial action or civil commotion impacting the Works, the personnel employed on the Works, or the manufacture or supply of materials for the Works;

## Commercial Construction Contract – General Conditions

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- (m) any event beyond the Contractor's control such as any war, epidemic or pandemic event, shut downs, lock downs or other restrictions ordered by any authority; or
- (n) any other cause not reasonably foreseeable at the Contract Date, and beyond the reasonable control of the Contractor.

### 14.2 Notice of extension of time

- (a) If, at any time prior to the Works reaching Practical Completion, the Contractor believes the progress of the Works was or will be delayed as a result of a cause set out in Clause 14.1 then the Contractor must as soon as reasonably practical after becoming aware of the delay give the Principal a written claim for a reasonable extension of the Date for Practical Completion that sets out the cause and consequence of the delay.
- (b) Nothing in this clause 14 shall limit or prevent the Contractor from claiming more than one extension of time if a particular claimable delay has more than one effect on the carrying out of the Works.

### 14.3 Extension for delays involving Inclement Weather

The Contractor is not entitled to an extension of the Date for Practical Completion for any delays resulting from Inclement Weather until the related allowance in Item 8 has been fully exhausted.

### 14.4 Principal's assessment of claim

- (a) Within five (5) Business Days of receiving the Contractor's written claim for an extension of the Date for Practical Completion, the Principal must assess the claim and provide the Contractor with a written notice:
  - (i) accepting the claimed extension of the Date for Practical Completion; or
  - (ii) disputing the claimed extension (in whole or in part):
    - (A) stating that the Principal disputes the claimed extension of the Date for Practical Completion;
    - (B) setting out full details of the Principal's reasons for the dispute; and
    - (C) granting any part of the claimed extension of the Date for Practical Completion that is not disputed by the Principal.
- (b) The Principal must not unreasonably refuse to approve the Contractor's claim for an extension of time for the Date for Practical Completion.
- (c) If the Principal accepts, in whole or in part, the Contractor's claim for an extension of the Date for Practical Completion under clause 14.4, The Contractor must provide the Principal with a signed copy of the accepted claim within five (5) Business Days of receiving the Principal's acceptance.

### 14.5 Consequence of Principal's rejection or failure to accept

If the Principal:

- (a) fails to give written notice in accordance with Clause 14.4, then the Contractor's claim for an extension of the Date for Practical Completion will be deemed to be agreed by the Principal; or
- (b) gives a written notice in accordance with Clause 14.4(a)(ii) and rejects whole or any part of the Contractor's claim for an extension of the Date for Practical Completion, then the dispute arising as a result is to be resolved in accordance with Clause 25.

### 15. Variations

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#### 15.1 Variation Process

- (a) Either party may request a Variation so as to vary the works by:
  - (i) increase, decrease or omit any part of the Works;
  - (ii) change the nature, scope, character or quality of any material or work;
  - (iii) change the levels, lines, positions or dimensions of any part of the Works;
  - (iv) carry out additional work;
  - (v) change the manner or sequencing in which the Contractor is required to carry out the Works;
  - (vi) demolish or remove material or work no longer required by the Principal; and/or
  - (vii) overcome a discrepancy or ambiguity in Principal supplied documents comprising the Contract.
- (b) The Contractor may in its absolute discretion agree to any Variation requested by the Principal.
- (c) Before any work the subject of the Variation is started:
  - (i) the Contractor must provide the Principal with a Variation Document within 20 Business Days of the parties agreeing to a Variation; and
  - (ii) the Principal must give to the Contractor a written notice agreeing to the Variation within 5 Business Days after receiving the Variation Document provided by the Contractor under clause 15.1(c)(i).
- (d) If the Principal fails to provide the Contractor with a written notice under clause 15.1(c)(ii), the Principal is deemed to have agreed to and accepted the Variation as described in the Variation Document.

#### 15.2 Payment for Variations

- (a) The Principal must pay the Contractor the amount of any increase to the Contract Sum in accordance with the terms of the Variation Document.
- (b) The Contractor is under no obligation to commence any Variation until:
  - (i) the Principal provides satisfactory evidence that the Principal has the financial capacity to pay for the Variation; or
  - (ii) the Principal has paid for the Variation.
- (c) Notwithstanding any other clause of the Contract, if the work required by a variation is urgent or where it is not practicable, the Contractor is not required to give the Principal a copy of the Variation Document before starting the work.

### 16. Cost escalation

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#### 16.1 Application of clause

This clause 16 only applies where Item 17 is marked “yes”.

## Commercial Construction Contract – General Conditions

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### 16.2 Escalation of costs

- (a) If during the performance of this Contract, the Contractor is subject to a Significant Price Increase, the Principal expressly agrees that the Contract Sum shall be equitably adjusted taking into account the significant price increase.
- (b) Where there is a Significant Price Increase, the Contractor will, as soon as practicable after becoming aware of the Significant Price Increase, provide the Principal with a Cost Escalation Notice pursuant to 16.2(c).
- (c) A Cost Escalation Notice under this Special Condition, must be in writing, in readily legible English and in all cases:
  - (i) specify the building product, materials, parts or consumables or remuneration of trades required for the Works under the Contract that have been subject to a significant price increase;
  - (ii) attach or contain evidence of the relevant significant price increase;
  - (iii) set out the corresponding increase to the Contract Sum; and
  - (iv) if there will be a delay because of the Significant Price Increase, a reasonable estimate of that delay.
- (d) Upon receipt of the Cost Escalation Notice pursuant to clause 16.2(c), the Principal must give the Contractor a written notice agreeing to the Significant Price Increase within five (5) working Days of receiving the Cost Escalation Notice.
- (e) If the Principal does not provide the Contractor with written notice as required by clause 16.2(d) the Contractor, may on notice to the Principal and without prejudice to any other rights it may have, suspend the Works or part of the Works.
- (f) If the Principal does not agree to the Significant Price Increase as required by Special Condition 16.2(d), the Principal and the Contractor may:
  - (i) agree in writing to omit that work subject to the Significant Price Increase from the Contract; or
  - (ii) vary the Contract pursuant to Clause 15 of the Contract.
- (g) Any dispute arising out of this clause 16 shall be dealt with in accordance with Clause 25 of the Contract.

### 16.3 Cost escalation monetary limitation

- (a) The total sum amount of all the Cost Escalation Notices cannot exceed 20% of the Contract Sum, which is adjusted with each approved variation.
- (b) If any amount claimed in a Cost Escalation Notice for a Significant Price Increase that exceeds the monetary limitation in 16.3(a), the Principal is required to provide written consent to that amount being claimed by the Contractor.

## 17. Security

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### 17.1 Security

- (a) This clause 17 only applies if Item 23 has been completed as being required.

## Commercial Construction Contract – General Conditions

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- (b) The Principal must provide the Security specified in Item 23. All Security provided (except for retention funds or cash deposit) will be transferred in escrow
- (c) Where the Security is retention moneys, the Contractor may include in each Progress Claim a request for 10% of the relevant claim until the Security Amount noted in Item 23 has been fully paid to the Contractor.
- (d) Where the Security is a cash deposit the Principal must deposit the amount noted in Item 23 into the bank account nominated by the Contractor within 5 Business days of the Contract Date.
- (e) Where the Security is a bank guarantee, the bank guarantee must:
  - (i) be drawn irrevocable and unconditional;
  - (ii) be drawn on an Australian trading bank;
  - (iii) be assignable;
  - (iv) be an original document and have the original stamp of the issuing bank; and
  - (v) have no expiry date.
- (f) If the Contract is terminated or otherwise comes to an end, the Contractor is entitled to the money held in the Security Account or as retention money to the extent of any amounts then owing to the Contractor under the Contract. The balance of the Security Account (including interest) or retention moneys after payment to the Contractor will be paid to the Principal.
- (g) If the Principal fails to pay any amount due to the Contractor under the Contract, the Contractor is entitled to claim from the Security to the extent of any amount then owing to the Contractor under the Contract provided that the Contractor gives the Principal at least 5 Business Days of its intention to have recourse to the Security. Any such action by the Contractor will not be treated as a waiver of the Principal's failure and will not limit any other right or remedy of the Contractor in respect of it.
- (h) To the extent that the Contractor claims an amount from the Security Amount under clause 17.1(g), the Principal must immediately upon written demand by the Contractor provide a replacement or additional Security for the amount so claimed.
- (i) Upon Practical Completion the Security Amount will be reduced in accordance with Item 23.
- (j) Within five (5) Business Days of the date the Final Claim is paid by the Principal, the Contractor must release any Security held by it back to the Principal.
- (k) Any portion of Security (and interest earned thereon) which is cash or retention moneys, shall be held in trust for Principal until the date the Contractor is entitled to receive payment out of that Security. Interest earned on the Security not required to be held in trust shall belong to the Contractor.
- (l) At any time a party providing retention moneys or cash Security may substitute another form of Security. To the extent that another form of Security is provided, the other party shall not deduct, and shall promptly release and return, retention moneys and cash Security.
- (m) Any dispute between the parties as to the entitlement to the funds shall be dealt with in accordance with clause 25 below.

## Commercial Construction Contract – General Conditions

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### 17.2 PPSA

- (a) As security for the due and punctual payment of the Contract Sum, the Principal grants to the Contractor
  - (i) a Security Interest over all PPSA Property;
  - (ii) a Purchase Money Security Interest over any unfixed materials, goods, plant and equipment supplied by the Contractor to the extent to which it secures payment of that part of Contract Sum which are unpaid; and
- (b) For the purposes of section 19(2) of the PPSA, the Principal:
  - (i) warrants that the Principal has rights in the Secured Property, or the power to transfer rights in the Secured Property, to the Contractor;
  - (ii) acknowledges that a Purchase Money Security Interest has arisen in the unfixed materials, goods, plant and equipment supplied by the Contractor and related Intellectual Property;
  - (iii) warrants that the Principal has rights in the Personal Property, or the power to transfer rights in the Personal Property, the Contractor; and
  - (iv) acknowledges that the Contractor has given value for its Security Interest in the Personal Property, including by its promise to perform the Works under this Contract or by providing or continuing to make available any financial accommodation to the Principal.
- (c) For the purposes of section 20(2)(b)(ii) of the PPSA, the Principal acknowledges that the Security Interest over the Personal Property is taken in all of the Principal's present and after acquired property.
- (d) The Principal must not do or permit anything to be done that may result in the Security Interests granted to the Contractor ranking in priority behind any other Security Interest.
- (e) The Principal agrees that sections 95, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA will have no application to this Contract and the Principal waives all its rights under section 157 of the PPSA to receive a notice under that section.
- (f) The Principal agrees to execute all documents and do all acts, matters and things which Contractor reasonably requires to more effectively secure its rights pursuant to the Security Interest created under this Contract.

### 17.3 Title to demolished materials or materials, goods, plant and equipment

All demolished materials or unfixed materials, goods, plant and equipment supplied by the Contractor supplied by the Contractor and not paid for by the Principal, are the property of the Contractor unless otherwise expressly stated elsewhere in the Contract.

### 17.4 Caveat

The Principal:

- (a) charges in favour of the Contractor all of its estate and interest in the Site as security for the payment of all amounts owing under this Contract;
- (b) grants the Contractor the right to place a caveat in favour of Contractor over all the Site;
- (c) must, on request by the Contractor, promptly execute a registrable mortgage as security for the payment of all amounts owing under this Contract;

## Commercial Construction Contract – General Conditions

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- (d) agrees to execute all documents and do all acts, matters and things which Contractor reasonably requires to more effectively secure its rights pursuant to this clause 17.4; and
- (e) must pay, on demand all costs, duty and registration fees to the Contractor that are payable or paid on the lodgement, withdrawal or release of any document required under this clause 17.4.

### 18. Principal Obligations

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#### 18.1 General obligations

The Principal:

- (a) must pay the Deposit to the Contractor on the Contract Date.
- (b) must pay the Contractor the Contract Sum in accordance with the Contract.
- (c) must pay all Qleave portable long service leave levy fees unless the Contractor is required to arrange pay such fees under this Contract.
- (d) must within 5 Business Days of the Contract Date within 5 Business Days of a request from the Contractor, provide evidence satisfactory to the Contractor that the Principal has the financial capacity to pay the Contract Sum or where relevant the outstanding balance of the Contract Sum.
- (e) must immediately notify the Contractor if the Principal's capacity to pay the unpaid balance of the Contract Sum (including any adjustments by a Variation) is in any way reduced or adversely affected.
- (f) must not give Directions to the Contractor's employees or subcontractors.

#### 18.2 Connection of services

Unless otherwise agreed:

- (a) the Principal is solely liable for all costs associated with, the conveyance, connection and installation of all services and facilities being brought to the Land for connection to the Works.
- (b) the Contractor is responsible for services connected from the boundary of the Land to the Works.
- (c) For the purposes of this clause, "services and facilities" include but are not limited to gas, sewerage, stormwater, water, electricity, telephone, and the National Broadband Network (NBN).

#### 18.3 Principal Supplied Items new, good and suitable for their purposes

Unless expressly stated otherwise, where Item 13 specifies that the Principal is to supply materials or Building Products for use in the Works, or where the Principal otherwise supplies materials or Building Products for use at its request, the Principal:

- (a) must ensure that all supplied materials or Building Products are new, of good quality, and suitable for their intended purpose;
- (b) must ensure that all such materials or Building Products comply with applicable Australian Standards, Codes, and Statutory Requirements, and—where requested by the Contractor—provide written evidence of such compliance;



## Commercial Construction Contract – General Conditions

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- (c) must ensure that no Building Product supplied is a Non-Conforming Building Product for its intended use;
- (d) must provide the Contractor, upon request, with all Required Information relevant to the Building Product; and
- (e) acknowledges and agrees that no warranty is given by the Contractor, either expressly or impliedly, with respect to the suitability and quality of the materials or Building Products supplied by the Principal.

### 18.4 Principal not to interfere with the carrying out of the Works

- (a) The Principal must not obstruct, interfere with, or hinder the progress of the Works. The Principal must also take all reasonable steps to ensure that no other party obstructs, interferes with, or hinders the carrying out of the Works.
- (b) If the Principal, or any person present on Site at the request of or under instructions from the Principal, obstructs, interferes with, or hinders the carrying out of the Works, the Principal must indemnify the Contractor for any resulting delay and for any additional costs incurred. This indemnity applies provided the Contractor gives the Principal written notice of the delay or additional costs within 10 Business Days of becoming aware of the obstruction, interference, or hindrance.
- (c) The Principal must, at all times:
  - (i) comply with all Directions issued by the Contractor in relation to work health and safety on the Site;
  - (ii) ensure that any person on Site at the Principal's request or under the Principal's instruction also complies with such Directions;
  - (iii) not wilfully endanger the health or safety of any person at the Site;
  - (iv) not wilfully cause self-injury;
  - (v) not wilfully or recklessly interfere with or misuse any item or system provided for work health and safety on the Site; and
  - (vi) only enter designated construction areas while under the supervision of the Contractor or the Contractor's Representative.

## 19. Insurance

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### 19.1 Contractors insurance obligations

The Contractor must take out and maintain all policies of insurance during this Contract the following insurances:

- (a) all insurance required to comply with the *Workers' Compensation and Rehabilitation Act 2003*;
- (b) Contract works insurance providing indemnity to the Contractor, the Principal, the Lender, and the Contractor's subcontractors for the full insurable value of the Works against liability for physical loss, destruction or damage to the Works, or to materials and goods on or adjacent to the Land from the Commencement Date until the date of Practical Completion or the date the Principal takes possession of the Works whichever occurs first;
- (c) a public liability insurance policy for an amount not less than \$10 million for any one occurrence that provides indemnity to the Contractor, the Principal, and the Lender (if

## Commercial Construction Contract – General Conditions

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required by the Principal), and the Contractor's subcontractors against liability for physical loss, destruction, or damage to the Works, including materials and goods located on or adjacent to the Land.

### 19.2 Responsibility for loss caused by Principal

To the fullest extent permitted by law, the Contractor will not be liable for, and is not required to indemnify the Principal, the Principal's agent, employees, or any other person for whom the Principal is responsible, in connection with any injury or death of a person, or any loss of or damage to property, that arises from any act or omission by the Principal or anyone for whom the Principal is responsible. The Principal indemnifies and holds harmless the Contractor against any claims, losses, damages, liabilities, costs, or expenses arising from or related to the acts or omissions of the Principal, the Principal's Agent, the Principal's employees or other agents and other invitees.

### 19.3 Principal Insurances

- (a) The Principal must insure the Works from the Date of Practical Completion or the date the Principal takes Possession of the Works, whichever occurs first.
- (b) Where there is either an existing building on the site or the Works are to alter, repair or renovate such building then the Principal must take out and maintain an insurance policy for the duration of the Contract which covers the full replacement value of the existing building, and the contents of such building, against any loss or damage. The Principal must provide the Contractor with the current policy of insurance within 5 Business Days after the Contractor requests in writing.

### 19.4 Evidence of Insurance

Each party must provide the other party with evidence of the insurance they are required to maintain under this Contract within five (5) Business Days of the other party giving them written notice requesting such evidence.

## 20. Warranties

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### 20.1 Contractor Warranties

The Contractor warrants:

- (a) that the Works will be carried out:
  - (i) with reasonable, diligence, care and skill;
  - (ii) in accordance with the Drawings and the Specifications;
  - (iii) in accordance with all relevant laws and legal requirements, including, without limitation, the *Building Act 1975* and the *National Construction Code*.
- (b) Subject to clause 20.2, that all materials to be supplied by the Contractor for use in the Works:
  - (i) will be suitable for the purpose for which they are used, good and free of defects, having regard to generally accepted practices or standards applied in the building industry for the materials, or the specifications, instructions or recommendations of manufacturers or suppliers of the materials; and
  - (ii) will be new, unless the parties have otherwise agreed in writing including with respect to second hand materials.

## **Commercial Construction Contract – General Conditions**

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### **20.2 Principal or architect responsible selection of materials**

Clause 20.1(b) does not apply where:

- (a) the Contract is being administered by an architect engaged by the Principal and the Contractor is subject to the Direction of the architect for supplying the materials; or
- (b) the Principal is responsible for nominating the materials to be supplied by the Contractor for use in the Works and there are no reasonable grounds for not using the materials or, if there are reasonable grounds for not using the materials, the Principal insists on the materials being used despite written advice to the contrary given to the Principal by the Contractor.

## **21. Indemnities and Liability**

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### **21.1 Principal Indemnity**

The Principal indemnifies and keeps indemnified the Contractor against any Claim arising in respect of:

- (a) any negligent act or omission of the Principal, the Principal's Agent, the Principal's consultants, other agents or contractors, or authorised officers of the Lender;
- (b) any breach of the Contract or statutory duty by the Principal, the Principal's Agent, the Principal's consultants, other agents or contractors, or authorised officers of the Lender;
- (c) damage which is unavoidable as a result of the construction of the Works in accordance with the Contract;
- (d) the Principal's right to have the Works carried out;
- (e) out of any defect in the design of the Works provided by the Principal;
- (f) a Building Product supplied by the Principal; and
- (g) any occupier or subsequent owner or occupier of the Land or any part of it.

The Contractor must take reasonable steps to mitigate any loss or damage caused, or contributed to, by the causes listed in this clause. The Principal's liability will be reduced proportionately to the extent that any negligent act, omission or default of the Contractor or any person other than the Principal for whom the Contractor is responsible may have contributed to such claim, demand, loss, damage, cost, expenses, or liability.

### **21.2 Contractor Indemnity**

The Contractor indemnifies the Principal against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the Contractor's work under this Contract except to the extent that such damage, injury or death results from or is contributed to by an act or omission of the Principal or third-party.

### **21.3 Release of Contractor**

To the maximum extent permitted by law, the Principal agrees that the Contractor is not liable to the Principal or any person claiming through or under the Principal (including any occupier or subsequent owner or occupier of the Land or any part of it), and that the Contractor is released and discharged by the Principal from all liability to the Principal, for:

- (a) any amount due to the Principal under the Contract;

## Commercial Construction Contract – General Conditions

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- (b) any breach (including any Serious Breach) of the Contract by the Contractor;
- (c) any breach of a warranty by the Contractor under the Contract, or under any statute or other law or legal requirement which a party may exclude, restrict or modify;
- (d) any tort (including negligence) arising out of, or otherwise in connection with, any act or omission of the Contractor in respect of the Works or the Contract;
- (e) any guarantee given to the Principal by the Contractor under the Contract, or under any statute or other law or legal requirement which a party may exclude, restrict or modify; and
- (f) any equitable or statutory relief arising out of, or otherwise in connection with, any act or omission of the Contractor in respect of the Works or the Contract,

on the expiration of the period of 18 months after the Date of Practical Completion unless:

- (g) the Principal (or other person described in the first paragraph of this clause 21.3) has started a proceeding against the Contractor in the Tribunal or a Court in respect of any such liability, or alleged liability, before the expiration of the period of 18 months after the Date of Practical Completion;
- (h) any such liability cannot be excluded, restricted or modified under a relevant statute or other law or legal requirement; or
- (i) the Contractor fraudulently, or otherwise deliberately, concealed from the Principal facts, matters or circumstances within the Contractor's knowledge that gave rise to any such liability by the Contractor to the Principal, and as a result of the concealment, the Principal does not become aware of the facts, matters or circumstances that gave rise to such liability until after the expiration of the period of 18 months after the Date of Practical Completion.

### 21.4 No entitlement to start a proceeding after expiration of limitation period

To the maximum extent permitted by law, the Principal agrees that on the expiration of the period of 18 months after the Date of Practical Completion, the Principal will not be entitled to start any proceeding against the Contractor in the Tribunal or a Court in respect of any liability for which the Contractor is deemed to be released and discharged by the Principal under clause 21.3.

### 21.5 No limitation for certain statutory warranties and guarantees

To avoid doubt, clauses 21.1 through to clause 21.4 do not apply to any warranty, guarantee, or other statutory requirement (including any prohibition), provided for under the Australian Consumer Law .

## 22. Post Completion Defects

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- (a) The Contractor must make good defects or omissions in the Contractor's work under this Contract which become apparent to the Principal within the Defects Liability Period.
- (b) If there are any such defects or omissions, the Principal must, as soon as practicable after becoming aware of the defects or omissions, give the Contractor written notice to make good such defects or omissions and give the Contractor reasonable access to the Site for that purpose.
- (c) Subject to reasonable access being provided, the Contractor must within 20 Business Days of the notice being given rectify any defects or omissions notified to the Contractor under Condition 29.2 during usual business hours unless:

## Commercial Construction Contract – General Conditions

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- (i) there are reasonable reasons why the defects cannot be rectified within that period in which case the Contractor will rectify those defects or omissions within an agreed time or, in the absence of an agreement, within a reasonable time; or
- (ii) the Contractor is not responsible for rectifying the alleged defects or omissions which arise from the fact that something is still to be supplied or done by the Principal, or which relate to:
  - (A) items supplied by the Principal;
  - (B) the maintenance of an item which the responsibility of the Principal; and/or
  - (C) defects that were caused by the Principal or a third party.

### **23. Suspension**

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#### **23.1 Notice of suspension**

The Contractor, may by notice to the Principal suspend the carrying out of the Works if:

- (a) the Principal does not pay a Progress Claim or any other amount due as required by this Contract;
- (b) the Principal does not give the Contractor evidence, satisfactory to the Principal, of the Principal's capacity to pay the balance of the Contract Sum when requested by the Principal pursuant to clause 18;
- (c) enters the Site in breach of this Contract;
- (d) the Principal gives a notice under clause 12(a) of the Contract and the Principal fails to agree to a variation in writing within five (5) Business Days after receiving the Variation Document;
- (e) if the Principal objects to the Contractor's selection of a Prime Cost Item under clause 11.2(b) or if the Principal does not provide notice of an alternative item in accordance with clause 11.2(a);
- (f) either party refers a dispute or difference to the Tribunal, the Commission or a Court;
- (g) the Principal unreasonably refuses to approve the Contractor's extension of time claim under clause 14; or
- (h) the Principal is otherwise in Serious Breach of this Contract.

#### **23.2 Recommencement**

The Contractor must recommence the carrying out of the Works within 10 Business Days of the Principal remedying the breaches noted in clause 23.1.

### **24. Termination**

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#### **24.1 Principal's right to give notice of intention to terminate Contract**

If the Contractor:

- (a) fails to carry out the Works with reasonable diligence, care, or skill;

## Commercial Construction Contract – General Conditions

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- (b) unlawfully suspends the carrying out of the Works;
- (c) refuses or persistently neglects to remove or rectify defective work or improper materials, resulting in significant adverse impact on the progress of the Works;
- (d) is unable to complete the Works;
- (e) fails to obtain or maintain any insurance required under the Contract;
- (f) has its licence (if applicable) issued by the Commission suspended or cancelled; or
- (g) is otherwise in Serious Breach of the Contract,

then the Principal may issue a written notice to the Contractor, delivered by hand or registered "Priority" post, which:

- (h) identifies and describes each alleged breach of the Contract; and
- (i) states the Principal's intention to terminate the Contract unless the Contractor remedies the breach or breaches within 10 Business Days of receiving the notice.

### 24.2 If Contractor fails to remedy the breach, Principal may terminate Contract

- (a) If the Contractor does not remedy the breach or breaches identified in a notice issued under clause 24.1 within the time specified in that notice, the Principal may, without prejudice to any other rights or remedies available, terminate the Contract by providing further written notice to the Contractor.
- (b) If the Contract is terminated under clause 24.2(a), the rights and liabilities of the parties will be as they would be at common law if the Contractor had repudiated the Contract and the Principal had elected to treat the Contract as terminated and seek damages.

### 24.3 Principal's right to engage another contractor to complete the Works

If the Principal terminates the Contract in accordance with clause 24.2, the Principal may engage another contractor to complete the Works.

### 24.4 Contractor entitled to reasonable remuneration if Contract terminated

If the Contract is terminated in accordance with clause 24.2, the Contractor is entitled to a reasonable remuneration for the unpaid value of that part of the Works it carried out under the Contract up to, and including, the Day on which the Contract is terminated.

### 24.5 Contractor's right to give notice of intention to terminate the Contract

If the Principal:

- (a) fails to provide the Contractor with any Direction or other information requested by the Contractor under clause 11;
- (b) fails to give the Contractor a written notice agreeing to a Variation in accordance with clause 15.1(c)(ii), 12(c), or 15 within 5 Business Days after receiving a Variation Document provided by the Contractor;
- (c) fails to comply with any of its obligations under clause 6, 9 or 18;
- (d) fails to remedy any Serious Breach of the Contract set out in a suspension notice given in accordance with clause 23 within 10 Business Days after receiving that notice; or
- (e) is otherwise in Serious Breach of the Contract,

## Commercial Construction Contract – General Conditions

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then the Contractor may give a written notice to the Principal:

- (f) describing the relevant breach or breaches of the Contract by the Principal; and
- (g) stating the Contractor's intention to terminate the Contract unless the Principal remedies the breach or breaches within 10 Business Days after receiving the Contractor's notice.

### 24.6 If Principal fails to remedy the breach, Contractor may terminate the Contract

If the Principal fails to remedy the breach or breaches of the Contract set out in a notice given to the Principal by the Contractor in accordance with clause 24.5 within the time stated in that notice, the Contractor may, without prejudice to any other rights or remedies, terminate the Contract by further written notice to the Principal.

### 24.7 No termination right where a party in Serious Breach

A party may not terminate the Contract if that party is in Serious Breach of the Contract.

### 24.8 Contractor's right to recover on termination

If the Contract is terminated in accordance with clause 24.5, the Contractor, without prejudice to any other rights or remedies is:

- (a) entitled to recover from the Principal all losses, costs, expenses and damages it incurs or suffers as a result of, or otherwise in connection with, the Principal's breach or breaches, and the termination, as if the Principal had repudiated the Contract at law, and the Contractor had accepted the repudiation and elected to terminate the Contract;
- (b) will have an irrevocable licence (including which survives termination of the Contract) to remove from the Land,
- (c) and retain, all unfixed materials, goods, plant and equipment previously provided by the Contractor provided such unfixed materials, goods, plant and equipment has not been paid for by the Principal; and
- (d) cancel all insurance policies maintained by the Contractor under clauses 19.

### 24.9 Right to Terminate for Insolvency or Bankruptcy

- (a) Notwithstanding any other clause in this agreement, if a party to this Contract:
  - (i) is made bankrupt; or
  - (ii) being a company, goes into liquidation,then the other party may forthwith by written notice terminate this Contract.
- (b) If the Contractor terminates the Contract under this clause, the Contractor may:
  - (i) remove from the Site and retain all unfixed materials, goods, plant, and equipment it previously provided; and
  - (ii) recover from the Principal all damages, losses, costs, or expenses incurred as a result of the termination, or set off any such amounts against any payment otherwise due from the Contractor to the Principal.
- (c) If the Principal terminates the Contract under this clause, the Principal may:
  - (i) engage another person to complete the Works or complete the Works itself; and

## Commercial Construction Contract – General Conditions

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- (ii) take possession of all unfixed materials and goods previously delivered to the Site by the Contractor, and use those materials and goods for the purpose of completing the Works.
- (d) If either the Contractor or the Principal is a company and enters into an arrangement, administration, or other procedure for the purpose of avoiding insolvency or being wound up, or appoints an administrator, the right to terminate the Contract under this clause may be limited or affected by the provisions of the *Corporations Act 2001* (Cth).

### 25. Dispute Resolution

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- (a) If a dispute arises between the parties in relation to this Contract, either party may give the other party a written notice of dispute setting out the details of the dispute, including any amount in dispute.
- (b) Notwithstanding the giving of a notice of dispute, the parties must, subject to the Contract, continue to perform the Contract.
- (c) Within 5 Business Days after receiving the notice of dispute, the parties must arrange, and participate in, a 'without prejudice' conference between them, or their authorised representatives, in an attempt to resolve the dispute.
- (d) If the dispute is not resolved within 10 Business Days of the receipt of the notice of dispute, either party may commence legal proceedings in relation to a dispute.
- (e) Subject to clause 25(f), neither party may commence legal proceedings in relation to a dispute unless the parties have undertaken the processes set out in this clause 25 and those processes have failed to resolve the dispute, or one of the parties attempted to follow those processes and the other party has failed to participate.
- (f) Nothing in this clause 25 prevents a party commencing legal proceedings to:
  - (i) enforce payment under clause 9; or
  - (ii) seek urgent injunctive or declaratory relief in relation to any matter arising out of, or in connection with, the Contract.

### 26. Liquidated Damages

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#### 26.1 Principal's entitlement to Liquidated Damages

Subject to clause 26.2 and the Principal giving written notice to the Contractor within 5 Business Days after the Date of Practical Completion demanding payment of liquidated damages, if the Contractor fails to achieve Practical Completion by the Date for Practical Completion, The Contractor must pay the liquidated damages at the rate stated in Item 21 until Practical Completion is achieved, or the Contract is terminated, whichever occurs first. Any Liquidated Damages amount is capped at the percentage noted in Item 21, where no percentage is noted in Item 21 the Liquidated Damages is capped at 10% of the Contract Sum.

#### 26.2 Contractor's obligations on receipt of claim for Liquidated Damages

Subject to clause 26.1 the Contractor must within 5 Business Days after receiving a written claim from the Principal for liquidated damages:

- (a) If undisputed, pay the liquidated damages to the Principal; or
- (b) If disputed, pay the liquidated damages to the Principal which are not disputed and give the Principal a written notice of dispute in accordance with clause 25, that sets out:



## Commercial Construction Contract – General Conditions

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- (i) the amount the Contractor disputes; and
- (ii) the Contractor's reasons for disputing that amount of the Liquidated Damages claimed.

26.3 The Principal agrees that the Principal's entitlement to Liquidated Damages from the Contractor is its sole remedy for delays caused by the Contractor under this Contract.

## 27. Copyright and Confidentiality

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- (a) Where the Contractor supplies or prepares any Drawings, Specifications or other design documents, the Principal acknowledges and agrees that:
  - (i) the copyright in those Drawings, Specifications or other design documents belongs to the Contractor; and
  - (ii) subject to the Principal paying all amounts owing to the Contractor in respect of those Designs and the Works, the Principal is granted a licence to use those Designs for the purpose of completing the Works on the Land and maintaining those Works once completed;
  - (iii) it will not use the Designs for any other purpose including without limitation for the purpose of providing such Designs to a 3<sup>rd</sup> party builder, building designer or architect;
  - (iv) the Designs and any information of a confidential nature in relation to the Designs obtained by the Principal must be kept confidential by the Principal.
- (b) A party supplying Designs for use in the performance of this Contract warrants that those plans may be so used, that to the best of their knowledge such use does not infringe a third party's copyright and the party indemnifies the other party against any action by any person claiming ownership or copyright in respect of those Designs.
- (c) For the avoidance of doubt, this clause 27 survives the termination or completion of this Contract.

## 28. Force Majeure

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### 28.1 Excuse from performance of Obligation

If a party is prevented, hindered or delayed from performing its Obligations under this Contract (other than an Obligation to pay money) by an Event of Force Majeure, then as long as that situation continues, that party shall be excused from performance of the Obligation to the extent it is so prevented, hindered or delayed, and the time for performance of the Obligation shall be extended accordingly, but if time is of the essence of this Contract, time shall continue to remain of the essence.

### 28.2 Notification

A party affected by an Event of Force Majeure shall immediately notify the other parties of its occurrence and its effect or likely effect, and (subject to the provisions of the next clause) use all reasonable endeavours to minimize the effect of the Event of Force Majeure and to bring it to an end.

## 29. Proper Law, Jurisdiction

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### 29.1 Choice of law

This Contract is governed by and construed in accordance with the laws of the Jurisdiction.

## Commercial Construction Contract – General Conditions

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### 29.2 Jurisdiction

Actions, suits or proceedings relating in any way to this Contract or documents or dealings contemplated by it, may be instituted, heard and determined in a court of competent jurisdiction in the Jurisdiction.

### 29.3 Submission to jurisdiction

Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.

### 29.4 Service of process

A party may by Notice appoint another person at a specified address in the Jurisdiction to receive service of process in connection with proceedings and process served on that person is taken to be served on the party making the appointment.

## 30. General Provisions

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### 30.1 Assignment

- (a) Neither party may assign, transfer or in any other manner deal with its Rights under this Contract without the prior written agreement of the other party.
- (b) Any purported assignment, transfer or dealing in contravention of clause 30.1(a) is ineffective.

### 30.2 Costs

Each party shall pay and bear its own costs of and incidental to the preparation, negotiation and execution of this Contract and the Principal will pay all stamp duty costs associated with this Contract.

### 30.3 Counterparts

- (a) This Contract 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 Contract may be entered into and becomes binding on a party upon that party signing the Contract (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, facsimile or such other electronic method agreed by the parties.
- (c) For the purposes of sections 11 and 14 of the *Electronic Transactions (Queensland) Act 2001*, the parties:
  - (i) consent to this Contract being given by electronic communication;
  - (ii) consent to this Contract being provided to each other by electronic communication;
  - (iii) if this Contract is signed using an Electronic Signature:
    - (A) agree to enter into this Contract in electronic form.
    - (B) consent to either or both parties signing this Contract using an Electronic Signature;

## Commercial Construction Contract – General Conditions

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- (C) acknowledges and agrees that the receipt by the other party of an electronically signed Contract from the signing party's last known email address identifies them and communicates their intention to be legally bound by this Contract.
- (iv) acknowledge and agree that at the time the Contract was given, it was reasonable to expect that this Contract would be readily accessible so as to be useable for subsequent reference.
- (d) For the purposes of this clause, an **Electronic Signature** means an electronic method of signing that identifies the person and communicates their intention to be legally bound by this Contract including without limitation by ticking a checkbox, placing their signature on an electronic copy of this Contract or otherwise by digitally signing this Contract.

### 30.4 Delivery as a deed

Subject to express provisions in this Contract to the contrary, each party by signing or executing this Contract is deemed to unconditionally sign, seal and deliver this Contract as a deed, with the intention of being immediately legally bound by this Contract.

### 30.5 Entire agreement

This Contract constitutes the entire agreement between the parties relating in any way to its subject matter. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Contract are merged in this Contract and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Contract or constitutes any collateral agreement, warranty or understanding.

### 30.6 Further assurances

Each party to this Contract shall do all things and sign, execute and deliver all deeds and other documents as may be legally necessary or reasonably required of it by Notice from another party to carry out and give effect to the terms and intentions of this Contract and to perfect, protect and preserve the Rights of the other parties to this Contract.

### 30.7 Independent Advice

Each party and signatory to this Contract:

- (a) acknowledges that it has had the opportunity to seek its own independent legal, accounting, financial, taxation and any other advice in relation to the meaning and full effect of this Contract prior to the execution of this Contract;
- (b) confirms by the execution and delivery of this Contract that they have either obtained such advice or waived their right to do so; and
- (c) warrants that to the extent to which any such advice has not been obtained, they have not been pressured or coerced by any person or party into executing this Contract and have executed this Contract freely and of their own volition.

### 30.8 Liability of parties

If a party consists of more than one person:

- (a) an Obligation of those parties is a joint Obligation of all of them and a several Obligation of each of them;
- (b) a Right given to those parties is a Right given jointly and severally to each of them, and if exercised by one of them, is deemed to be exercised jointly; and

## Commercial Construction Contract – General Conditions

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- (c) a representation, warranty or undertaking made by those parties is made by each of them.

### 30.9 Multi Capacity

If a party to this Contract is a party in more than one capacity, it is only necessary for that party to execute this Contract once and such execution shall bind that party in all capacities.

### 30.10 No Adverse Construction

No rule of construction applies to the disadvantage of a party on the basis that the party put forward this Contract or any part of it.

### 30.11 Non-merger

Any Rights, liabilities or Obligations of a party to this Contract to which effect is not given upon termination and which is capable of continuing after termination shall not merge or be extinguished upon or by virtue of termination and shall remain in full force and effect.

### 30.12 Notices

Any notice or other communication in connection with this Contract must be in writing addressed to the Notice Address of the other Party and the notice or other communication will be deemed to be received:

- (a) in the case of a posted letter on the 7 Business days after posting;
- (b) if the other party is a company, on the day that the notice is left at the registered office or principal place of business of the company;
- (c) in the case of delivery by generally recognised overnight courier, on the second day after dispatch with that courier;
- (d) in the case of personal delivery on the date of delivery; or
- (e) In the case of an email and provided the sender receives no failure notice in respect of the email, on the day of transmission if the machine from which the email is sent records the time the email was sent as before 5.00pm on a Business Day, otherwise on the next Business Day.

### 30.13 Severability

This Contract shall, so far as possible, be interpreted and construed so as not to be invalid, illegal or unenforceable in any respect, but if a provision, on its true interpretation or construction is held to be illegal, invalid or unenforceable:

- (a) that provision shall, so far as possible, be read down to the extent that it may be necessary to ensure that it is not illegal, invalid or unenforceable and as may be reasonable in all the circumstances so as to give it a valid operation; or
- (b) if the provision or part of it cannot effectively be read down, that provision or part of it shall be deemed to be void and severable and the remaining provisions of this Contract shall not in any way be affected or impaired and shall continue notwithstanding that illegality, invalidity or unenforceability.

### 30.14 Subcontracting

Whilst the Contractor may subcontract any part of the Works, subject to the terms of this Contract the Contractor remains liable for all of the Works and is not relieved from any Obligation or liability under the Contract or the Act for the work completed by a subcontractor.

## **Commercial Construction Contract – General Conditions**

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### **30.15 Variations**

No variation of this Contract nor consent to a departure by a party from a provision, shall be of effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation or consent shall be effective only to the extent to or for which it may be made or given.

### **30.16 Voluntarily Execution**

Each party warrants that they are entering into this Contract voluntarily and without any coercion or undue influence from any other party.

### **30.17 Waiver**

The non-exercise of or delay in exercising a Right of a party shall not operate as a waiver of that Right, nor does a single exercise of a Right preclude another exercise of it or the exercise of other Rights. A Right may only be waived by Notice, signed by the party to be bound by the waiver.

### **30.18 Warranty of authority**

Each person signing this Contract:

- (a) as attorney, by so doing, warrants to the other parties that, as at the date of signing, the signatory has not received notice or information of the revocation of the power of attorney appointing that person; and
- (b) as an agent or trustee of a party, warrants to the other parties that, as at the date of signing, the signatory has full authority to execute this Contract on behalf of that party.

### **30.19 Special conditions**

Any special conditions set out in Item 26 are binding on the parties and prevail over the terms of this Contract to the extent of any inconsistency.