



*Helping Queenslanders
Build Better*

*Recommended
for domestic building
projects with a
contract price exceeding
\$40,000
including construction
of an entire home.
(ie Designated Stages
Contracts)*

BSA's MAJOR WORKS CONTRACT KIT

THIS DOCUMENT CONTAINS:

- 1 copy General Conditions of Contract booklet*
- 1 copy BSA's Consumer Guide*
- 1 copy of each of :*
 - Form 1 - Extension of Time Claim and Owners Response to Claim.*
 - Form 2 - Progress Claim*
 - Form 3 - Defects Document*
 - Form 4 - Notice of Dispute of Progress Claim*
 - Form 5 - Variation Document*
 - Form 6 - Schedule of Prime Cost Items*
 - Form 7 - Schedule of Provisional Sums.*



www.bsa.qld.gov.au

IMPORTANT!

The *Domestic Building Contracts Act 2000* requires the **contractor** to give copies of all contract documentation, completed and signed, to the **building owner** as soon as practicable (**but within 5 business days**) after the contract is entered into.

The contractor is requested to photocopy each of the four (4) pages of the Contract Schedule, once it has been completed and signed, and give two (2) legible copies to the **building owner** (the second copy is for the owner's lender, if applicable).



MAJOR WORKS CONTRACT

FOR DOMESTIC BUILDING WORK.

Recommended for domestic building projects with a contract price over \$40,000. To better understand your rights and obligations under this contract, please read the accompanying BSA Consumer Guide and General Conditions of Major Works Contract, both dated December 2006

THE OWNER

Name/s _____
 Telephone _____ Facsimile _____ Email _____
 Address _____

OWNER'S AUTHORISED REPRESENTATIVE (if any)

Name/s _____
 Telephone _____ Facsimile _____ Email _____
 Address _____

The Owner IS IS NOT a resident Owner (Tick appropriate box) **Note:** An Owner is a resident Owner if he / she intends to live in the Works on completion or within 6 months after completion.

THE CONTRACTOR

(being a licensed Contractor)

Name of Contractor _____
(must be as shown on licence)
 Licence Number _____
 Address _____

Telephone _____ Facsimile _____ Email _____

A.C.N.

CONTRACTOR'S AUTHORISED REPRESENTATIVE (if any)

Name/s _____
 Telephone _____ Facsimile _____ Email _____
 Address _____

"COOLING-OFF" PERIOD

Notice to Owner

Under the Domestic Building Contracts Act 2000 you may have the right to withdraw from this Contract during the cooling-off period of 5 business days. You should refer to Condition 1 of the enclosed General Conditions booklet if you want to exercise this right. There are time limits that apply and procedures that must be followed. If you do not understand Condition 1 you should obtain legal advice.

THE OWNER AND THE CONTRACTOR AGREE THAT THE CONTRACTOR SHALL CARRY OUT THE WORK DESCRIBED IN THIS CONTRACT FOR THE PRICE IT PROVIDES AND UPON ITS TERMS.

THIS CONTRACT INCLUDES:

- MAJOR WORKS CONTRACT SCHEDULE
- CONTRACT DOCUMENTS DESCRIBED IN THE CONTRACT SCHEDULE, ITEM 17; AND
- GENERAL CONDITIONS OF MAJOR WORKS CONTRACT.

MAJOR WORKS CONTRACT SCHEDULE

ITEM	SUBJECT	PARTICULARS
1. <i>Note: Insert a description of what is to be built. For example: construction of a new home; renovations to the kitchen of an existing home; extensions to the verandah of an existing home; construction of a boundary fence or swimming pool, etc. Include as much information as possible.</i>	Brief Description of the Works:	_____ _____ _____ _____ _____

ITEM NO.	SUBJECT	PARTICULARS
2. (Condition 7)	Site:	Address of Site: ----- ----- ----- Real Property Description: ----- ----- Lot No: ----- R.P. No: ----- Local Authority: -----
3. (Condition 12)	Starting Date:	----- / ----- / ----- (Note: If the Starting Date is not known, the Contractor must ensure that the work under this Contract starts as soon as it is reasonably possible for it to be started.)
4. (Condition 13) <i>Note: Complete one only of these and delete the other</i>	Date for Practical Completion:	----- / ----- / ----- OR ----- calendar days from the date when the Contractor must commence building under Condition 12 of the General Conditions.
5. (Condition 13) <i>Note to the Contractor: You must state here the allowances you have made for these delays.</i>	Delays Allowed For: <i>Note: Increment weather allowance does not include non-working days.</i>	Non-working days allowance ----- (calendar days) Increment weather allowance ----- (working days) Other allowances (working days) ----- (description)
6. <i>Note to the Contractor: If you reasonably believe that a delay will happen but you cannot estimate the number of days of the delay, complete this item. An example of such a delay may be a delay in the delivery of imported items.</i>	Delays Not Allowed For:	(state the reason for the likely delay) ----- ----- ----- (state the general effect the delay is likely to have on the carrying out of the work under this Contract) ----- ----- -----
7. (Condition 15) <i>Note: For Prime Cost Items and Provisional Sums see Condition 15. A separate schedule for these items must be attached.</i>	Price: <i>(WARNING: The Price is subject to variation in accordance with Condition 15 and Condition 21)</i>	Lump Sum Component: \$..... Prime Cost Items: \$..... Provisional Sums: \$.....

8.	Total Price:	\$ _____
9. (Condition 16)	Deposit: Amount of Deposit:	Note: Not to exceed 5% of the Total Price if the Total Price is \$20,000 or more. Not to exceed 10% of the Total Price if the Total Price is less than \$20,000. \$ _____
10. (Condition 16)	Progress Payments applicable to Lump Sum Component: Other Progress Payments:	<p>Base Stage (excluding deposit) 10% \$ _____</p> <p>Frame Stage 15% \$ _____</p> <p>Enclosed Stage 35% \$ _____</p> <p>Fixing Stage 20% \$ _____</p> <p>Practical Completion Balance \$ _____</p> <p>[Note: The stages set out above are appropriate for the construction of a new home. If the work to be done does not involve the construction of a new home, the agreed stages should be set out below and should not consist of payment by the Owner in advance of work done. An explanation of the work to be completed in each of these stages must be attached].</p> <p>Stage 1 ___% \$ _____</p> <p>Stage 2 ___% \$ _____</p> <p>Stage 3 ___% \$ _____</p> <p>Final Payment Balance \$ _____</p>
WARNING: BSA Insurance protection may be reduced if payments are made in advance of contract terms and construction progress.		
11. (Condition 17)	Amount to be deposited in Security Account:	\$ _____ <i>(Optional – may be used when contract is not subject to loan approval)</i>
12. (Condition 18)	Liquidated Damages: <i>Note to the Owner: It is important that you carefully consider and complete this section.</i>	\$ _____ per day for each calendar day of delay in achieving Practical Completion. <i>Note to Owner: Liquidated damages is a genuine pre-estimate of the costs you will incur in the event the work under this Contract is not completed by the Date for Practical Completion e.g. rental and/or storage costs, finance costs, etc.</i>
13. (Condition 19)	Interest Rate on overdue payment: % per annum (The rate will not exceed the CBA Standard Variable Rate for home loans + 5% p.a.)
14. (Conditions 2, 6 and 17)	Loan Approval:	Contract is / is not subject to Loan Approval. (State which applies) Lender: _____ Address of Lender: _____ _____ _____ Amount of Loan: _____ Loan Approval Date: ____ / ____ / ____
15. (Condition 5)	Party responsible for obtaining Plan Approvals:	_____ (State whether Owner or Contractor)

16. (Condition 21)	Party responsible for extra excavations and foundations:	----- (State whether Owner or Contractor)
17.	Contract Documents <i>Leave blank if document not yet received or document not relevant.</i>	<p>(a) PLANS supplied by Contractor <input type="checkbox"/> Owner <input type="checkbox"/> N/A <input type="checkbox"/> on/...../.....</p> <p>(b) SPECIFICATIONS supplied by Contractor <input type="checkbox"/> Owner <input type="checkbox"/> N/A <input type="checkbox"/> on/...../.....</p> <p>(c) PRIME COST ITEMS/PROVISIONAL SUMS Are Prime Cost Items/ Provisional Sums applicable? YES <input type="checkbox"/> No <input type="checkbox"/> If YES Complete Part A and/or Part B of the Appendix Date Schedule signed/...../.....</p> <p>(d) FOUNDATIONS DATA supplied by: Contractor <input type="checkbox"/> Owner <input type="checkbox"/> N/A <input type="checkbox"/> on...../...../.....</p> <p>Note (1): <i>If a footing or slab design is required for Building Approval it must be based upon the Foundations Data and included in the Plans before entering the Contract. Unless the Contractor has received a copy of the Foundations Data from the Owner, the Contractor is required to obtain the Foundations Data and provide a copy to the Owner upon payment of costs incurred in obtaining the data.</i></p> <p>Note (2): <i>Any subsequent amendments or variations to this Contract must be recorded in writing by using the BSA Form 5 Variation Document which will then form part of the Contract documents.</i></p>
18.	Signatures: Note: <i>The Contractor must give the Owner a signed copy of this contract within 5 business days of both parties signing and before work commences.</i>	Dated this.....day of.....20..... SIGNED by the Owner/s in the presence of (Witness)..... SIGNED by the Contractor in the presence of (Witness).....

IMPORTANT!

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The contractor is requested to photocopy all pages of the General Conditions document and give two (2) legible copies to the **building owner** (the second copy is for the owner's lender, if applicable).

GENERAL CONDITIONS OF BSA's MAJOR WORKS CONTRACT.

ISSUED DECEMBER 2006 -

TO BE READ IN CONJUNCTION WITH BSA's
MAJOR WORKS CONTRACT CONSUMER GUIDE

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PAGE	SUBJECT	PAGE	SUBJECT	
2.	Contract checklist.	13.	Assignment and subcontracting.	
3.	Withdrawal during "cooling-off" period.	14.	Copyright.	
	Loan approval.		Termination for lack of approval or lack of owner's consent.	
4.	Warranties under the DBC Act.		Termination for insolvency.	
	Workplace health & safety.	15.	Termination after notice of default.	
	Plan approval.		18.	Dispute resolution.
5.	Owner to provide evidence of title and capacity to pay.		Definitions.	
	The site.	17.	Notices.	
	Care of the work.			
6.	The contractor's indemnity in favour of the owner.			
	Contractor to effect insurances.			
	Communication between the owner and the contractor.			
	Commencement and performance of building.			
7.	Time for practical completion.			
8.	Practical completion.			
	Price.			
10.	Payment.			
	Security account money.			
	Liquidated damages.			
12.	Interest on overdue payments.			
	Defects after completion.			
	Variations.			



Helping Queenslanders Build Better

Note: **Bold** type words and phrases are defined in Condition 28.

1 WITHDRAWAL DURING "COOLING-OFF" PERIOD

The Owner may withdraw from the Contract within the times noted below:

- (a) within five (5) **business days** of receiving from the Contractor a copy of the signed Contract and the BSA Consumer Guide; or
- (b) if the Contract is given to the Owner separately from the BSA Consumer Guide, then within five (5) **business days** of receiving the second document.

Further, if the Contractor fails to give both the above documents to the Owner within five (5) **business days** of the parties making the contract then in addition, the Owner can withdraw at any time up until five (5) **business days** after the Owner receives those documents in accordance with (a) or (b).

If the Owner wishes to withdraw relying on any of these circumstances, the Owner must give the Contractor a written notice stating that the Owner withdraws from the Contract under section 72 of the *Domestic Building Contracts Act 2000*.

If the Owner withdraws from the Contract pursuant to this condition, the Owner must pay to the Contractor the amount of \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred by the Contractor before the Owner withdrew from the Contract.

The Owner may not withdraw from the Contract under section 72 of the *Domestic Building Contracts Act 2000* if:

- ▲ the Owner and the Contractor had entered a previous Contract in substantially the same terms and relating to the same home or land; or
- ▲ the Owner received formal legal advice about the Contract before entering into the Contract; or
- ▲ the Owner, at the time of entering into the Contract or after entering into the Contract,

tells the Contractor that the Owner had received formal legal advice about the Contract before entering into the Contract.

2 LOAN APPROVAL

Unless Schedule Item 14 states that this Contract is not subject to Loan Approval, this Contract is subject to the Owner obtaining from the Lender, on or before the Loan Approval Date, approval of a Loan not less than the Amount of the Loan stated in Schedule Item 14.

The Owner must apply to the Lender for Loan Approval within five (5) **business days** from the date of this Contract.

The Owner must give the Contractor written notice within three (3) **business days** from the Loan Approval Date stating whether the Owner has obtained Loan Approval.

If the Owner gives the Contractor written notice that the Owner has obtained Loan Approval, or if the Owner fails to give the written notice within three (3) **business days** from the Loan Approval Date, this Contract continues and the parties must perform it.

If, within three (3) **business days** from the Loan Approval Date, the Owner gives the Contractor written notice that the Owner has not obtained Loan Approval this Contract is at an end.

If this Contract is ended under this Condition, the Contractor must immediately refund to the Owner any deposit or other money paid by the Owner to the Contractor.

The Contractor may deduct from the refund only those costs incurred or paid with the Owner's previous authorisation as follows:

- ▲ fees paid by the Contractor to another person for the **Foundations Data**;
- ▲ fees paid by the Contractor to another person for the provision of plans, drawings or engineering design for the **Works**;
- ▲ fees paid to an **Assessing Certifier** for

development approval;

- ▲ fees previously agreed with the Contractor for the provision of plans for the **Works**.

The Contractor must hand over to the Owner all documents relevant to such deductions. Each party is otherwise under no further liability to the other.

3 WARRANTIES UNDER THE DBC ACT

The Contractor must build the **Works** in compliance with this Contract and with all Acts of Parliament (including the *Domestic Building Contracts Act 2000*), Regulations and By-laws which apply to the **work under this Contract** and the **Works**.

The Contractor must build the **Works**:

- ▲ in an appropriate and skillful way and with reasonable care and skill;
- ▲ using materials which comply with this Contract and which are of good quality and suitable for the purpose for which they are used (having regard to generally accepted practices or standards in the industry and any instructions or recommendations of manufacturers or suppliers). All materials used by the Contractor must be new unless this Contract expressly provides otherwise;
- ▲ in accordance with all relevant laws and legal requirements;
- ▲ in accordance with the plans and specifications and any other Contract Documents described at Schedule Item 17 of the Contract Schedule; and
- ▲ so that the **Works** are suitable for occupation when the **work under this Contract** is finished and the **Works** conform with the requirements of this Contract.

The Contractor must, unless the Contract expressly provides otherwise, supply at the Contractor's cost and expense everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**.

The Owner must pay the Contractor the price for the **Works** in accordance with this Contract.

4 WORKPLACE HEALTH & SAFETY

The Contractor acts as "principal contractor" for the purposes of and pursuant to Section 13 of the *Workplace Health and Safety Act 1995* for the duration of this Contract. The parties must execute all such instruments as may be required pursuant to that Act.

The Contractor must require all persons at the Site to comply with all applicable requirements pursuant to the *Workplace Health and Safety Act 1995* and may exclude or remove from the Site any person who fails so to comply.

5 PLAN APPROVAL

If this Contract is subject to Loan Approval, then within ten (10) **business days** from the Loan Approval Date, but otherwise within ten (10) **business days** from the date of this Contract, the party named in Schedule Item 15 (or if no party is named, then the Contractor) must lodge all plans and other documents necessary for permission, consent or approval required for the commencement of building, with the relevant **Assessing Certifier** and any other body having relevant jurisdiction.

The responsible party must do all such things as may be reasonably necessary to obtain all permissions, consents or approvals required for the commencement of building.

6 OWNER TO PROVIDE EVIDENCE OF TITLE AND CAPACITY TO PAY

Within ten (10) **business days** from the date of this Contract, the Owner must give the Contractor evidence of the Owner's title to the Site described in Schedule Item 2;

If the Contract is subject to Loan Approval, then within ten (10) **business days** from the Loan Approval Date the Owner must give the Contractor a bank reference or other evidence satisfactory to the Contractor of the Owner's capacity to pay the Total Price.

7 THE SITE

The Owner gives the Contractor a licence to enter and occupy the Site for the purpose of performing the **work under this Contract**. This Contract does NOT give the Contractor an interest in the land comprising the Site.

The Contractor shall so occupy the Site from the **Starting Date** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**.

The Contractor may exclude persons from the Site other than:

- ▲ the Owner;
- ▲ any person authorised by the Owner;
- ▲ the Lender;
- ▲ the **Assessing Certifier**;
- ▲ any officer of the relevant Local Authority; and
- ▲ any officer of the Queensland Building Services Authority.

The Contractor must permit the Owner or any person authorised by the Owner to, under the Contractor's supervision:

- ▲ have reasonable access to the Site; and
- ▲ view any part of the **work under this Contract**.

Except in the case of emergency, attendance at the Site by the Owner, any person authorised by the Owner and the Lender must be by prior arrangement with the Contractor and must be during working hours or at such other times as the Owner and the Contractor agree.

The Owner must not interfere with the performance of the **work under this Contract** when at the Site and must ensure that any person authorised by the Owner to attend at the Site does not so interfere. If the Owner or any person authorised by the Owner causes such an interference and:

- ▲ the interference causes a delay to the work or causes the Contractor to incur additional costs;
- and
- ▲ the Contractor gives the Owner written notice of the delay or the additional costs within 5 calendar days of becoming aware of the interference,

then the Owner is liable to the Contractor for the delay or the additional costs.

The provisions of this Condition are subject in all respects to the provisions of Condition 4 of this Contract.

8 CARE OF THE WORK

The Contractor is responsible for the care of the **work under this Contract** from the **Starting Date** until the Contractor hands over the **Works** to the Owner on the **Date of Practical Completion**. The Contractor must promptly make good loss or damage to that work occasioned by any act, neglect or default of the Contractor or the Contractor's employees, agents or subcontractors and must also make good any such loss or damage which is or which ought to have been the subject of any insurance required by this Contract.

9 THE CONTRACTOR'S INDEMNITY IN FAVOUR OF THE OWNER

The Contractor indemnifies the Owner against any legal liability to pay damages or compensation for damage to property or personal injury or death arising out of the **work under this Contract** except to the extent that such damage, injury or death results from or is contributed to by the neglect or default of the Owner.

The Contractor must indemnify the Owner in respect of damage to the property or person of the Owner arising out of the **work under this Contract** except to the extent that such damage results from or is contributed to by the neglect of the Owner.

10 CONTRACTOR TO EFFECT INSURANCES

The Contractor must, at its cost, effect and maintain during the course of this Contract the following insurances:

- ▲ all insurance required to comply with the *WorkCover Queensland Act 1996*;
- ▲ all insurances required to comply with the *Queensland Building Services Authority Act 1991*; and
- ▲ Contract Works and Public Liability Insurances with a reputable and financially sound insurer in the names of the Owner and the Contractor for their respective rights and interest and upon usual and reasonable terms.

Contract Works Insurance must be for the full insurable value of the **Works under this Contract** and must extend until 4.00 pm on the **Date of Practical Completion**.

Public Liability Insurance must be for at least the amount of five (5) million dollars and must:

- ▲ cover the liabilities of the Contractor and the Owner to third parties in respect of personal injury, death

or damage to property arising out of or in connection with the **work under this Contract**; and

- ▲ include cross-liability provisions by which the insurer waives all rights of subrogation or action which the insurer may have against any of the persons comprising the insured and by which each person comprising the insured is deemed to be the subject of a separate policy of insurance.

Prior to commencement of and, upon request by the Owner, during the **work under this Contract**, the Contractor must provide to the Owner copies of the Contract Works and Public Liability Insurances effected by the Contractor in compliance with this Condition.

11 COMMUNICATION BETWEEN THE OWNER AND THE CONTRACTOR

The Owner or the **Owner's Representative** must communicate and deal with the Contractor personally or with the **Contractor's Representative**. The Owner must not give directions to the Contractor's employees or subcontractors.

The Owner is not entitled to rely on any statements made or representations given by the Contractor's employees or subcontractors other than those made or given by the Contractor personally or by the **Contractor's Representative**.

All written communications between the Owner and the Contractor must be in the English language and must be clearly legible.

12 COMMENCEMENT AND PERFORMANCE OF BUILDING

The Contractor must commence work at the Site on the **Starting Date**.

The Contractor must diligently carry out the **work under this Contract** and must not, except as permitted by this Contract, delay, suspend, or fail to maintain reasonable progress in the performance of that work.

13 TIME FOR PRACTICAL COMPLETION

The Contractor must achieve **Practical Completion** of the **Works** by the **Date for Practical Completion** stated or calculated in accordance with Schedule Item 4 or any extended date under this Condition or under Condition 7.

The Contractor may claim and is entitled to a reasonable extension of the **Date for Practical Completion** to the extent contemplated by and subject to the provisions of the remaining paragraphs of this Condition, if the Contractor is or will be delayed in achieving **Practical Completion** of the **Works** by any of the following causes:

- ▲ events occurring on or before the **Date for Practical Completion** which are beyond the reasonable control of the Contractor, including, but not limited to, general industrial action (excluding contractor-specific action) and inclement weather (subject to the provisions of the remaining paragraphs of this Condition);
- ▲ delays occasioned by the Owner, the **Owner's Representative**, the Owner's employees or the Owner's agents (whether occurring before or after the **Date for Practical Completion**);
- ▲ a variation which is the subject of a Variation Document in accordance with the provisions of Condition 21 of this Contract so long as:
 - (a) the variation was one requested by the Owner; or
 - (b) for a variation not requested by the Owner, then only if the variation was required due to circumstances which the Contractor could not reasonably have foreseen when the Contract was made; or
- ▲ Schedule Item 5 delays if:
 - (a) there is a delay for any of the reasons listed in Schedule Item 5; and
 - (b) the number of days actually delayed is more than that provided for in Schedule Item 5.

Note: For a delay to be claimed under Schedule Item 5, the delay allowed for must be **reasonable** having regard to the circumstances.

The Contractor may not claim an extension for Schedule Item 5 delays in any other circumstance.

If the Contractor wishes to claim an extension of the **Date for Practical Completion** other than under Condition 7, the Contractor must give to the Owner a BSA Form 1 *Extension of Time Claim and Owner's Response to Claim* with the particulars completed or other written notice which must:

- ▲ be given within seven (7) **business days** of the occurrence of the relevant cause of delay;
- ▲ identify the cause of the delay; and
- ▲ state the period of time that the Contractor wishes to claim an extension of the **Date for Practical Completion**.

The Owner must then, within seven (7) **business days** of receiving the Contractor's claim, return to the Contractor the said Form 1 *Extension of Time Claim and Owner's Response to Claim* or other written notice stating that:

- ▲ the Owner agrees to the claimed extension; or
- ▲ the Owner wholly or partially rejects the claimed extension and giving the Contractor reasons for that rejection.

If the Owner fails so to respond to the Contractor's claim, the said extension of time will be deemed to be disputed by the Owner.

Delay or failure by the Owner to agree to an extension of time does not cause the **Date for Practical Completion** to be set at large, but the Contractor shall be entitled to loss, cost or expense actually incurred by the Contractor by reason of the wrongful rejection of a claim for an extension of the **Date for Practical Completion**.

14 PRACTICAL COMPLETION

The Contractor must give to the Owner three (3) **business days** prior written notice of the date upon which the Contractor anticipates that the **Works** will reach **Practical Completion**. On the date specified in that notice as the anticipated date on which the **Works** will reach **Practical Completion**, the Owner or the **Owner's Representative** must inspect the **Works**. If the Owner is satisfied that the **Works** have reached **Practical Completion** and if the Contractor produces to the Owner satisfactory evidence that all relevant inspections and approvals required by the *Integrated Planning Act 1997* and by any body having the relevant jurisdiction have been satisfactorily completed, the Contractor must complete and sign the BSA Form 3 *Defects Document* and give a copy to the Owner, and then give the Owner a Certificate of Practical Completion stating that date as the **Date of Practical Completion**. Finally, the Contractor must hand over the **Works** to the Owner on the **Date of Practical Completion**.

If the Owner considers that the **Works** have not reached **Practical Completion** the Owner must give the Contractor written notice of those matters which are required to be done for the **Works** to reach **Practical Completion**. The Contractor must carry out such matters as may be necessary for the **Works** to reach **Practical Completion** and must otherwise proceed in accordance with the preceding paragraph.

The issue of a Certificate of Practical Completion does not constitute approval of any **work under this Contract** nor does it prejudice any claim by the Owner in respect of the **work under this Contract**.

15 PRICE

The parties agree that the Total Price stated in Schedule Item 8 comprises the following:

- ▲ Lump Sum Component;
- ▲ **Prime Cost Items** Component (if any); and
- ▲ **Provisional Sum** Items Component (if any).

If the total sum allowed for **Prime Cost Items** (including the Contractor's margin) and **Provisional Sum** Items (including the Contractor's margin) exceeds 10% as a proportion of the Total Price as stated in Schedule Item 8, the Contractor must give to the Owner a written statement setting out the reasons for the inclusion of each item as a **Prime Cost Item** or a **Provisional Sum**. In any such case, the Contractor is not entitled to any payment under this Contract until such statement is given.

If amounts are shown adjacent to **Prime Cost Items** and **Provisional Sums** in Schedule Item 7, the Contractor must give the Owner a separate schedule which states for each **Prime Cost Item** or **Provisional Sum**, the following details:

- ▲ a detailed description of the **Prime Cost Item** or of the contracted services to which the **Provisional Sum** relates;
- ▲ a breakdown of the cost estimates provided for by the Contractor in the allowance for the **Prime Cost Item** or **Provisional Sum**; and
- ▲ how any amount to be charged by the Contractor above the actual amount of any increase in the cost of the **Prime Cost Item** or **Provisional Sum** is to be calculated.

The following provisions apply to the Components of the Total Price:

Lump Sum Component

The Lump Sum Component of the Total Price is the sum for which the Contractor must supply, in accordance with this Contract, everything necessary for the proper completion of the **Works** and for the performance of the **work under this Contract**, other than:

- ▲ any items set out in the **Prime Cost Items** Schedule which forms part of this Contract; and
- ▲ any amounts for any work set out in the

Provisional Sums Schedule which forms part of this Contract.

The Lump Sum Component of the Total Price must not be adjusted except as permitted by Condition 21.

Prime Cost Items stipulated by Owner

The **Prime Cost Items** Schedule must set out items which the Owner has not finally selected at the date of this Contract and which the Contractor cannot therefore price accurately as at that date. The **Prime Costs Items** Schedule must set out the Contractor's best estimate, as at that date, of the price of each such item and any margin the Contractor proposes to recover in providing the item for the purposes of the **work under this Contract**.

The Contractor warrants that each such estimate:

- ▲ has been prepared with reasonable skill and care; and
- ▲ represents the reasonable cost of supplying and delivering each such item, including the Contractor's margin.

The Owner must select each such item and notify the Contractor orally or in writing of that selection in sufficient time to ensure that the performance of the **work under this Contract** is not thereby delayed.

The Contractor, when so notified, must obtain, supply and fix the relevant item.

If the actual cost of a **Prime Cost Item** is more than the Contractor's estimate, the Owner must pay the Contractor the increase, plus the Contractor's margin (as stated in the **Prime Cost Item** Schedule) on the increase for the Contractor's overheads and profits. If the actual cost of a **Prime Cost Item** is less than the Contractor's estimate, the Contractor must deduct the difference, plus the Contractor's margin, from the Total Price.

The Contractor must provide the Owner with the invoice, receipt or other document showing the cost of the item to the Contractor before or when making the next progress

claim under the Contract. The Contractor cannot seek payment for the item until the next progress claim.

Provisional Sums stipulated by Contractor

The **Provisional Sums** Schedule must set out items of **work under this Contract** the extent of which is not known at the date of this Contract and which the Contractor, despite making all reasonable enquiries, cannot therefore price accurately as at that date.

The **Provisional Sums** Schedule must also set out the rates or prices applicable to each such item of work and the Contractor's best estimate, as at that date, of the price of each such item.

The Contractor warrants that each such estimate:

- ▲ has been prepared with reasonable skill and care; and
- ▲ represents the reasonable cost of providing the item of work.

The Contractor warrants that each such estimate has been given having regard to all those aspects of the Site which would be apparent upon an inspection of the Site by a reasonably competent Contractor and having regard to all of the information which the Contractor has regarding the Site, including the results of any contour surveys, soil testing or other geotechnical information.

If the actual value for a **Provisional Sum** Item is more than the Contractor's estimate, the Owner must pay the Contractor for the increased work valued in accordance with the rates or prices (including the Contractor's margin) stated in the **Provisional Sums** Schedule. If the actual value for a **Provisional Sum** Item is less than the Contractor's estimate in the **Provisional Sums** schedule, the Contractor must deduct the difference, plus the Contractor's margin from the Total Price.

The Contractor must provide the Owner with any invoice, receipt or other document relating to the cost to the Contractor of the work for a **Provisional Sum** Item before or when making the next progress claim under the Contract. The Contractor cannot seek payment for the item until the next progress claim.

Goods and Services Tax

The parties agree and acknowledge that all pricing, consideration and amounts otherwise payable under this Contract (including under any Variation pursuant to Condition 21) have been or will be calculated on a **GST** inclusive basis.

16 PAYMENT

The Owner must pay the Contractor the price for the **Works** calculated and adjusted as provided by this Contract in accordance with the following provisions:

- ▲ The Owner must pay the Contractor the deposit (if any) stated in Schedule Item 9 upon the signing of this Contract. The amount payable by way of deposit must not exceed:

(a) 5% of the Total Price if the Total Price is \$20,000 or more; or

(b) 10% of the Total Price if the Total Price is less than \$20,000.

If the deposit stated in Schedule Item 9 exceeds that percentage the deposit payable hereunder must be reduced to an amount equal to that percentage.

- ▲ The Contractor is entitled to claim a Progress Payment when the Contractor has achieved completion of each of the stages set out in Schedule Item 10 or in any separate document setting out payment stages.
- ▲ A progress claim must:
 - (a) be in writing using a BSA Form 2 *Progress Claim* or other appropriate written notice;
 - (b) certify that the **work under this Contract** has been completed to the relevant stage; and

- (c) be accompanied by invoices, receipts or other documents showing the cost to the Contractor of any **Prime Cost Item** or **Provisional Sum** in respect of which a claim for payment is made.

- ▲ The Progress Claim for the **Practical Completion Stage** must, in addition to the requirements listed above, be accompanied by a completed and signed BSA Form 3 *Defects Document*.

- ▲ The Progress Payment for each stage shall consist of:

- (a) the percentage of the Lump Sum Component or other progress payment applicable to that stage as stated in Schedule Item 10 or in any separate document setting out payment stages;
- (b) the amount payable for any **Prime Cost Items** completed to that stage and not included in a previous Progress Payment;
- (c) the value of any **Provisional Sum** Item completed to that stage and not included in a previous Progress Payment but if the value of any **Provisional Sum** Item exceeds by 10% the amount allowed for that Item in the **Provisional Sums** Schedule the Contractor is entitled to payment of so much of the amount in excess as is reasonable. If there is a dispute between the parties as to reasonableness of the whole or part of the amount in excess that dispute must be referred for resolution in accordance with Condition 27; and
- (d) any other amount then payable to the Contractor in respect of variations pursuant to and in accordance with Condition 21.

- ▲ The Owner must pay the Contractor the Progress Payment, or so much of the relevant claim for Progress Payment as is not disputed by the Owner,

within five (5) **business days** of receipt of the relevant claim.

- ▲ If the Owner disputes the relevant claim for Progress Payment or any part of it, the Owner must within five (5) **business days** of receipt of the relevant claim give to the Contractor a BSA Form 4 *Notice of Dispute of Progress Claim* with the particulars completed or other appropriate written notice, stating the reasons for so disputing the claim or part of it. If that dispute is not resolved by the parties within five (5) **business days** of the receipt by the Contractor of the notice of that dispute, the dispute must be referred for resolution in accordance with Condition 27.

17 SECURITY ACCOUNT MONEY

If this Contract is not subject to Loan Approval and if Schedule Item 11 is completed, the Owner must, within five (5) **business days** of the date of this Contract deposit in an interest bearing account in a bank or other financial institution nominated by the Owner, the amount stipulated in Schedule Item 11 as Security Account Money.

The account must be in the joint names of the Owner and the Contractor and withdrawal requires the authority of each of the Owner and the Contractor. Security Account Money must be held until the Contractor or the Owner becomes entitled to it.

The Owner and the Contractor may agree at any time that Security Account Money is to be paid to the Contractor in whole or part satisfaction of any payment due to the Contractor under this Contract.

If the Owner fails to pay any money due and owing to the Contractor for five (5) **business days**, or if the Contractor terminates the Contract pursuant to Condition 25 or Condition 26, the Contractor is entitled to Security Account Money to the extent of any payment then due to the Contractor and the value of **work under this Contract** then performed and any other entitlement of the Contractor under or in connection with this Contract.

Upon payment of the last Progress Payment due to the Contractor as provided by Condition 16, the Owner is entitled to any remaining Security Account Money (including interest).

If there is a dispute between the parties as to the entitlement to Security Account Money, the Security Account Money must be dealt with in accordance with any order or direction of the Commercial and Consumer Tribunal. The parties hereby authorise the relevant bank or other financial institution to pay any Security Account Money in accordance with any such order or direction and acknowledge that the relevant bank or other financial institution is under no liability whatsoever to either party on account of any such payment.

18 LIQUIDATED DAMAGES

If the Contractor fails to achieve **Practical Completion** of the **Works** by the **Date for Practical Completion**, then the Contractor must pay to the Owner liquidated damages calculated at the rate provided in Schedule Item 12.

19 INTEREST ON OVERDUE PAYMENTS

The Owner must pay the Contractor interest on overdue payments at the rate set out in Schedule Item 13 or at the Commonwealth Bank of Australia Standard Variable Rate applicable to home loans at the time the payment becomes overdue plus 5 per centum per annum (the 'default rate'), whichever is the lesser rate. If no amount is entered in Schedule Item 13 the default rate shall apply.

20 DEFECTS AFTER COMPLETION

The Contractor must make good defects or omissions in the **work under this Contract** which become apparent within six (6) months of the **Date for Practical Completion**.

If there are any such defects or omissions, the Owner must give the Contractor written notice to make good such defects or omissions not later than one (1) month after that six (6) months period and must give the Contractor reasonable access to the Site for that purpose.

The Contractor must make good such defects or omissions promptly.

The Contractor must correct the agreed minor defects or minor omissions listed in the BSA Form 3 *Defects Document* by the date or within the time stated in that document.

This Condition does not exclude the Contractor from any liability otherwise arising under this Contract or under the *Queensland Building Services Authority Act 1991* or the *Domestic Building Contracts Act 2000*.

21 VARIATIONS

The work under this Contract may be varied by way of an increase, decrease or deletion of work under this Contract between the Contractor and the Owner provided that the details of the variation are put in writing in a Variation Document signed by both the parties and initialled as necessary by the Owner.

The Variation Document may be a BSA Form 5 *Variation Document* with the particulars completed in accordance with the requirements of the *Domestic Building Contracts Act 2000*, signed by both parties and initialled as necessary by the Owner, or any other written document which complies with the requirements of the *Domestic Building Contracts Act 2000*.

The **work under this Contract** may be varied in any of the following ways:

▲ Variations by Agreement

Either party may give to the other written notice requesting a variation of the **work under this Contract**.

The Contractor shall give to the Owner the Contractor's calculation of the change to the price consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the Variation Document signed by the parties and initialled as necessary by the Owner.

If the Contractor has requested the variation, the Contractor is only entitled to additional payment if the variation was necessary because of circumstances that could not have been reasonably foreseen by the Contractor when the contract was entered into.

▲ Variations required by Law

If a variation is required by reason of the lawful requirements of the **Assessing Certifier**, Local Authority or other body having relevant jurisdiction, the Contractor shall, with the prior written consent of the Owner, vary the **work under this Contract** accordingly.

The Owner shall not unreasonably withhold such consent, but the Owner's consent is deemed to be reasonably withheld if the Owner withholds consent because the relevant variation will cause the Total Price stated in Schedule Item 8 to increase by more than 10%.

If the necessity for the relevant variation has been occasioned by the neglect or default of the Contractor, the Contractor shall not be entitled to payment in that respect and must carry out the variation at the Contractor's expense.

In any other case, the Contractor shall give to the Owner the Contractor's calculation of the change to the price consequent upon the proposed variation and the **work under this Contract** shall be varied when the Owner agrees with the Contractor as to the relevant variation in the *Variation*

Document signed by the parties and initialled as necessary by the Owner.

▲ Variations for Extra Excavations and Foundations

If the Owner is named in Schedule Item 16 as the party responsible for extra excavations and foundations and if it becomes apparent that extra work or materials are required in respect of excavations or foundations then the Contractor may, with the prior written consent of the Owner, vary the **work under this Contract** to include the provision of such extra work or materials.

The Owner shall not unreasonably withhold such consent, but the Owner's consent shall be deemed to be reasonably withheld if the Owner withholds consent because the relevant variation will cause the Total Price stated in Schedule Item 8 to increase by more than 10%. In any such case, the Contractor shall give to the Owner written notice of the necessity for such variation within three (3) **business days** of the Contractor becoming aware of that necessity, together with the Contractor's calculation of the change to the price consequent upon the proposed variation and the work under this Contract shall be varied when the Owner agrees with the Contractor as to the relevant variation in the *Variation Document* signed by the parties and initialled as necessary by the Owner.

The Contractor cannot seek additional payment for a variation in respect of extra excavations and foundations from the Owner where the need for the variation has arisen because:

- (a) the Contractor failed to obtain the appropriate **Foundations Data** before entering the Contract and, had the Contractor obtained the appropriate **Foundations Data**, the need for the additional amount could reasonably have been established; or
- (b) the Contractor obtained the appropriate

Foundations Data, and the need for the extra work or materials could reasonably have been established from the **Foundations Data**.

22 ASSIGNMENT AND SUBCONTRACTING

The Contractor must not assign this Contract or the **work under this Contract** without the prior written consent of the Owner.

The Contractor may subcontract parts of the **work under this Contract** to licensed tradespersons, but the Contractor remains liable to the Owner for the **work under this Contract**.

23 COPYRIGHT

A party supplying plans for use in the performance of this Contract warrants that those plans may be so used and indemnifies the other party against any action by any person claiming ownership or copyright in respect of these plans.

Where plans are drawn by the Contractor, the Owner agrees that, as between the Owner and the Contractor, the Contractor has copyright in those plans but the Owner has the right to cause the completion of the **Works** in accordance with those plans.

24 TERMINATION FOR LACK OF APPROVAL OR LACK OF OWNER'S CONSENT

Either party may give a written notice to the other terminating this Contract if:

- ▲ any permission, consent or approval necessary for the commencement of building has not issued within three (3) months of the date of this Contract; or
- ▲ the Owner reasonably withholds consent as provided by Condition 21.

If the Contract is terminated pursuant to this Condition the Owner must pay the Contractor the reasonable value of any work properly carried out by the Contractor prior to that termination and which has not been the subject of previous payment.

25 TERMINATION FOR INSOLVENCY

If a party to this Contract:

- ▲ becomes insolvent or unable to pay their debts; or
- ▲ commits an act of bankruptcy; or
- ▲ is made bankrupt; or
- ▲ assigns assets for the benefits of creditors generally; or
- ▲ makes a composition or other arrangement with creditors; or
- ▲ being a company goes into liquidation or receivership,

then the other party may forthwith, or as soon thereafter as that other party thinks fit, terminate this Contract.

If the Contractor terminates the Contract under this Condition, the Contractor may, in any such case, remove from the Site and retain all unfixed materials, goods, plant and equipment previously provided at the Site by the Contractor and is entitled to recover all damages, loss, cost or expense occasioned to the Contractor by such termination or to set off such claim against any payment otherwise due by the Contractor to the Owner.

If the Owner terminates the Contract under this Condition,

the Owner may in any such case, complete or employ any other person to complete the **Works** and may take possession of all unfixed materials, goods, plant and equipment previously provided at the Site by the Contractor and may use the same in the completion of the **Works**. Until completion of the **Works** the Contractor is not entitled to any further payment under this Contract. Upon completion the Owner must calculate the total cost to complete the **Works** including amounts previously paid to the Contractor. If the total cost to complete together with all damages, loss, cost or expense occasioned to the Owner by such termination exceeds the Price which would have been payable under this Contract the difference is payable by the Contractor to the Owner and if the total cost to complete is less than such Price, the difference is payable by the Owner to the Contractor.

26 TERMINATION AFTER NOTICE OF DEFAULT

If:

- ▲ a party is in substantial breach of this Contract; and
- ▲ the other party gives a notice to the party in breach stating the intention of the party giving notice to terminate the Contract if the breach is not remedied within seven (7) **business days** from the giving of the notice; and
- ▲ the breach is not so remedied,

then, the party giving that notice may terminate this Contract by a further written notice given to the party in breach and may recover from the party in breach all damages, loss, cost or expense occasioned to the party so terminating by or in connection with the breach or that termination and may set off such claim against payment otherwise due by the party so terminating.

The right to terminate under this Condition is in addition to any other powers, rights or remedies the terminating party may have.

Substantial breach by the Owner includes, but is not limited to:

- ▲ failing to produce evidence of the Owner's title or of the Owner's capacity to pay the Total Price in compliance with Condition 6 of this Contract;
- ▲ failing to pay any money due and owing to the Contractor for five (5) **business days**; and
- ▲ substantially or persistently obstructing the Contractor in the performance of the **work under this Contract**.

Substantial breach by the Contractor includes, but is not limited to:

- ▲ failing to perform the **work under this Contract** competently;
- ▲ failing to provide materials which comply with this Contract;
- ▲ unreasonably failing to replace or remedy defective work or materials;
- ▲ unreasonably failing to perform the work diligently or unreasonably delaying, suspending or failing to maintain reasonable progress; and
- ▲ failing to effect or maintain any insurance required by this Contract.

27 DISPUTE RESOLUTION

Any dispute between the Owner and the Contractor arising under or in connection with the Contract and which requires proceedings for resolution must be referred to the Commercial and Consumer Tribunal.

28 DEFINITIONS

In this Contract, unless the context otherwise requires:

- ▲ Expressions defined or explained in the Contract Schedule have the meaning so defined or explained.
- ▲ "**Assessing Certifier**" means the private certifier or Local Government Authority responsible for granting the relevant building approvals and authorisations for the **Works**.
- ▲ "**Base Stage**" means that stage when footings, base brickwork, base walls, stumps, piers, columns, formwork and reinforcing for a suspended slab, concrete slab, bearers, joists or flooring (as the case requires) have been completed ready for erection of the walls.
- ▲ "**business day**" means a day that is not:
 - (a) a Saturday or Sunday; or
 - (b) a public holiday, special holiday, or bank holiday in Queensland.
- ▲ "**Contractor's Representative**" means the person identified on the first page of the Contract Schedule (or other person notified to the Owner as the **Contractor's Representative**) as the person empowered by the Contractor to communicate with the Owner, including giving or receiving instructions as to variations.
- ▲ "**Contract Period**" means the period from the **Starting Date** to the original **Date for Practical Completion** as stated in Schedule Items 3 and 4 or the period stated in Schedule Item 4.
- ▲ "**Date for Practical Completion**" means the date calculated by reference to Schedule Item 4 or any extended Date pursuant to this Contract.

- ▲ **“Date of Practical Completion”** means the Date certified as such in a certificate under Condition 14.
- ▲ **“Enclosed Stage”** means that stage when the external wall cladding and roof covering is fixed, the structural flooring laid and the external doors and windows fixed (excluding the fixing of soffit linings, the pointing of a tile roof or the scribbing and final screwing of a metal roof).
- ▲ **“Fixing Stage”** means that stage when all internal linings, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed in position.
- ▲ **“Foundations Data”** means information about the building site required to prepare footings design and, if required, concrete slab design for the site.
- ▲ **“Frame Stage”** means that stage when the building frame is completed and ready for inspection by the **Assessing Certifier**.
- ▲ **“GST”** means any tax imposed by or through the GST Legislation on supply (without regard to any input tax credit).
- ▲ **“GST Legislation”** means *A New Tax System (Goods and Services Tax) Act 1999* (“Act”) and any related tax imposition Act (whether imposing tax as a duty of customs excise or otherwise) and includes any legislation which is enacted to validate recapture or recoup the tax imposed by any of such Acts.
- ▲ **“Owner’s Representative”** means the person identified on the first page of the Contract Schedule (or other person notified to the Contractor as the **Owner’s Representative**) as the person empowered by the Owner to communicate with the Contractor, including giving instructions as to variations.
- ▲ **“Practical Completion”** means the date upon which the **Works** are completed in accordance with the requirements of Condition 3 of this Contract, apart from minor omissions or minor defects.
- ▲ **“Practical Completion Stage”** means that stage when the **Works** are complete in accordance with this Contract and all relevant statutory requirements (apart from minor omissions or minor defects), inspections have been satisfactorily completed and the **Works** are reasonably suitable for habitation.
- ▲ **“Prime Cost Item”** means any item noted in the **Prime Cost Items** Schedule to this Contract and as contemplated by Condition 15.
- ▲ **“Provisional Sum”** means any item noted in the **Provisional Sums** Schedule to this Contract and as contemplated by Condition 15.
- ▲ **“Starting Date”** means whichever of the following dates occurs later:
 - the **Starting Date** stated in Schedule Item 3; or
 - the day which is seven (7) **business days** after the issue of the plans duly approved by the **Assessing Certifier**.
- ▲ **“work under this Contract”** means all that work necessary to build the **Works** in accordance with the plans and specifications and this Contract, and, unless expressly excluded, includes:
 - work to make the Site accessible to the Contractor;
 - provision of any special equipment;
 - work to clear the Site for building;
 - set out of the **Works** and survey if necessary;
 - necessary structural retaining walls;

- sewerage, draining and electrical connections;
- provision of temporary water and power during construction; and
- provision of clean up and disposal of waste materials from the Site.

▲ “Works” means the work described in Schedule Item 1 to be built in accordance with this Contract, including variations provided for by the Contract, and which by the Contract is to be handed over to the Owner.

29 NOTICES

Any notice under this Contract must, unless otherwise stated, be given in writing and sent to the party to whom the notice is to be given in one of the following ways:

- ▲ delivered to the other party by hand;
- ▲ delivered by prepaid post to the address noted in the Schedule; or
- ▲ sent by facsimile to the facsimile number noted in the Schedule.

The address of the party is that stated in the Schedule to this Contract unless the party has notified some other address.

Any notice sent by post is deemed to be given at the time when by the ordinary course of post it would have been delivered.

Any notice sent by facsimile is deemed to be given at the time when a valid transmission report is received by the sender.

TELEPHONE STATEWIDE 1300 BSA BSA

BRISBANE

11 Edmondstone Street
South Brisbane QLD 4101
Facsimile 3225 2999
PMB 84 Coorparoo DC QLD 4151

GOLD COAST

Robina Super Centre
86 Robina Town Centre Drive
Robina QLD 4230
Facsimile 5575 7666
PO Box 3186 Robina Town Centre QLD 4230

SUNSHINE COAST

Cnr Baden Powell Street
and Maroochydore Road
Maroochydore QLD 4558
Facsimile 5459 9655
PO Box 218 Maroochydore QLD 4558

TOOWOOMBA

Central Mall
131A Herries Street
Toowoomba QLD 4350
Facsimile 4638 1917
PO Box 107 Toowoomba QLD 4350

MACKAY

25 River Street
Mackay QLD 4740
Facsimile 4953 4151
PO Box 1254 Mackay QLD 4740

ROCKHAMPTON

164 Berserker Street
Cnr Ephinstone Street
North Rockhampton QLD 4701
Facsimile 4926 1377
PO Box 6337
Central Old Mail Centre QLD 4702

TOWNSVILLE

287 Ross River Road
Aitkenvale QLD 4814
Facsimile 4725 3401
PO Box 140 Aitkenvale QLD 4814

CAIRNS

181 Aumiller Street
Wickham QLD 4870
Facsimile 4031 6831
PO Box 2118 Baigallow QLD 4870



Helping Queenslanders Build Better

www.bsa.qld.gov.au



IMPORTANT!

The *Domestic Building Contracts Act 2000* requires **the contractor** to give the **building owner** a copy of a BSA-approved Contract Information Statement as soon as practicable (**but within 5 business days**) after the contract is entered into.

The contractor is requested to photocopy all pages of the Contract Information Statement and give one (1) legible copy to the **building owner**.

CONSUMER GUIDE

BSA's MAJOR WORKS CONTRACT

December 2006



This Contract Information Statement contains information of a general nature and is to be read in conjunction with BSA's Major Works Contract Kit. Nothing in this booklet should be interpreted or relied upon as providing specific legal advice. For advice on particular circumstances, especially contractual matters, you should consult a practising solicitor.



Helping Queenslanders Build Better



BSA CONSUMER GUIDE

This Guide satisfies the requirements of an "Information Statement" under section 99(1) of the *Domestic Building Contracts Act 2000* ("the DBC Act").

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MAKE SURE YOU HAVE THE CORRECT INFORMATION

If you and your contractor are entering a "cost plus" contract or a display home contract, contact your nearest BSA office to obtain the cost plus or display home supplements to this Consumer Guide. Cost plus contracts are easily identified because they do not state a total price for the work to be done. Instead, the amount you have to pay is the actual cost incurred by the contractor plus a percentage of that cost, or the costs incurred plus an hourly rate. This type of contract has added risks for both homeowners and contractors.

PART ONE: BEFORE YOU START

INTRODUCTION - WHO IS BSA?

The Queensland Building Services Authority ("BSA") is a statutory authority established under the *Queensland Building Services Authority Act 1991*.

HOW CAN BSA HELP YOU?

1. INFORMATION

BSA provides information and advice to consumers and contractors throughout Queensland.

This assistance is provided through:

- ▶ Customer Service Centres in all BSA Offices;
- ▶ Media releases and articles;
- ▶ Information booklets for consumers and contractors;
- ▶ A range of Fact Sheets;
- ▶ The **Building Links** magazine for contractors;
- ▶ Seminars in Brisbane and regional centres;
- ▶ Participation in trade and industry shows; and
- ▶ BSA's website - www.bsa.qld.gov.au

Customer Service Officers at all BSA Offices are able to provide information ranging from licence checks and details about licence holders, to information about BSA's Home Warranty Insurance Scheme, dispute handling procedures, and requirements for building contracts. Telephone 1300 BSA BSA statewide if you need information or advice on any of these matters.

2. LICENSING

BSA is also responsible for licensing all builders, building designers and most trade contractors in Queensland. A licence is required where building work is valued at more than \$1100 (or any value in the case of building design, site classification, plumbing and draining, gas fitting, pest control or fire protection).

Ask to see the contractor's BSA licence card.

3. INSURANCE

BSA operates a Home Warranty Insurance Scheme which offers you protection when you use a BSA-licensed contractor for construction of a home, or for any insurable work carried out at your home for a value exceeding \$3300. The insurance policy provides protection against non-completion of the work covered by the contract, defective construction, and subsidence or settlement of the footings.

4. HELP WITH DISPUTES

BSA also has a Dispute Management Division which provides information and assistance in dealing with disputes between consumers and contractors regarding defective or incomplete building work.

If you have a problem or concern about some aspect of work that has been done for you, the first thing you should do is advise your contractor (both orally and in writing). If you are not happy with the outcome, telephone 1300 BSA BSA statewide for further advice.

Note: Time limits apply for the lodgement of disputes with BSA, so make sure you act promptly.

5. CONTRACTS

BSA publishes and sells three different contracts which, together, cover the full range of domestic building projects. These include the **Major Works Contract** (recommended for large domestic building projects including the construction of an entire home), the **Minor Works Contract** (recommended for renovations, extensions and additions with a contract price less than \$40,000), and the **Contract for Small Building Projects** (recommended for small renovation, maintenance and repair jobs with a contract price up to \$3,300). These contracts are available from your nearest BSA Office.

**READ THIS BOOKLET IN CONJUNCTION WITH
BSA's HOME BUILDING & RENOVATING FACT BOOK**

BSA's Building & Renovating Fact Book contains information about things you should know before building or renovating in Queensland.

Topics covered include:

- ▶ Project homes;
- ▶ Display homes;
- ▶ Individually designed homes;
- ▶ Seven easy steps to building or renovating;
- ▶ Reducing the risk of things going wrong;
- ▶ Dealing with your BSA licensed contractor;
- ▶ About your building contract;
- ▶ BSA insurance;
- ▶ Termite management and treatment;
- ▶ Recommended deposits and progress payments;
- ▶ Dispute prevention and resolution;
- ▶ *Domestic Building Contracts Act 2000*; and
- ▶ Information for Owner Builders.

Note: This information is also available from BSA's web site at www.bsa.qld.gov.au

PURPOSE OF THIS CONSUMER GUIDE

Legislation requires the contractor to provide you with certain written information (*the Domestic Building Contracts Act 2000* - "the DBC Act" - calls this a "Contract Information Statement") to accompany all contracts for domestic building work where the contract price exceeds \$3,300.

The BSA Consumer Guide covers all the information contractors are required to provide in an Information Statement. In fact, you may be reading this booklet having received it from your contractor on entering the contract. The contractor must give you a copy of either this booklet or an alternative Information Statement approved by BSA before you sign a contract or within 5 business days after entering the contract.

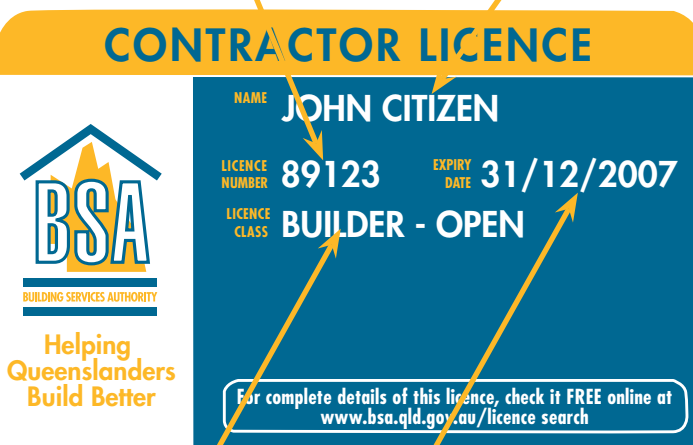
This booklet contains important information, including a checklist of items you should go through **before** you sign any contract for construction of a home or for alterations, extensions or renovations where the contract price exceeds \$3,300.

BSA recommends you read this Guide carefully before paying a deposit or signing a contract.

BSA LICENCE

LICENCE NUMBER.
Identifies the licensee and allows you to check their history by visiting BSA's web site or calling BSA.

LICENCEE'S NAME
Make sure the person you are dealing with is the person whose name appears here.



LICENCE CLASS
Indicates the work the holder is allowed to undertake. If the type of work you want done is not listed here... **DO NOT PROCEED!** Check immediately with BSA or find a licensee who has your type of work listed.

EXPIRY DATE.
The licence holder must not undertake work if their licence has expired.

Under legislation, all builders, building designers and most trade contractors must be licensed by BSA to carry out building work (there are a few exceptions e.g. electricians). You should deal only with someone who has a BSA CONTRACTOR licence card. Ask to see the contractor's licence card (note that some trades, such as electricians, are licensed by a different authority but you should still ask to see their licence card). You can confirm whether the licence is current and appropriate for your particular building work by visiting BSA's website (www.bsa.qld.gov.au) and the free on-line licence search facility. This will provide a report containing details of the contractor's past performance which you may download. It includes the number and value of BSA-insured projects completed over the previous 5 years and some information about the contractor's dispute history, including the number of "directions" - or orders to rectify defective work - if any, issued by BSA against the contractor. You can request a "certified" copy of the report from BSA for a small fee. Alternatively you can confirm the licence details by telephone.

CONTRACT CHECKLIST

BSA produces Minor Works and Major Works contracts which are fair to both parties. If you don't use one of these BSA contracts, check that *your* contract has similar terms and complies with the following: (**Note: A more detailed Contract Checklist is provided on BSA's website**)

- If your building work has a contract price exceeding \$3,300 (including labour and materials) and involves:
 - ▶ the erection or construction of a detached dwelling (including a duplex), or associated work;
 - ▶ the renovation, alteration, extension, improvement or repair of a home (including a duplex or home unit), or associated work (including kitchen or bathroom refurbishment);
 - ▶ removal or resiting of a detached dwelling intended to be used as a residence, or associated work;
 - ▶ other associated work including landscaping, paving, and the erection or construction of any building or fixture associated with a detached dwelling or home such as a garage, carport, retaining structure, driveway, fence, workshop, swimming pool or spa;
 - ▶ the provision of services or facilities (e.g. lighting, heating, ventilation, air conditioning, water supply, sewerage and drainage) relating to the erection or construction of a detached dwelling or the renovation, alteration, extension, improvement or repair of a home; and

- ▶ site work relating to any of the domestic building work referred to above,
- then your project comprises “domestic building work” under the DBC Act and you must **put your contract in writing**. The DBC Act requires that your contractor provide a copy of the written, signed contract to you as soon as practicable (but within 5 business days) after entering into the contract and before commencing work.

Throughout this Guide any reference to “domestic building work” includes all of the above types of building activities where the contract price for the work is more than \$3,300.

Before signing the contract, check for each of the following:

- ❑ The contract contains a conspicuous notice advising you, the building owner, of your right to withdraw from the contract under the “cooling-off” provisions of the DBC Act.
- ❑ The contract should state whether or not you are a 'resident owner' (i.e. intend to live in the house within 6 months of completion of the contracted works).
- ❑ The contract is in English and legible.
- ❑ The names and addresses of you and your contractor are included.
- ❑ The contractor’s licence number is noted on the contract before work starts.
- ❑ There is a detailed description of the contracted work.
- ❑ The date the contract is made is stated.
- ❑ The date the subject work is to start, or how the date is to be decided, is stated.
- ❑ If the starting date is not yet known, the contract must state that the building contractor will ensure that the work starts as soon as is reasonably possible.
- ❑ The contract states the date the contracted work is to be finished or, if the start date is not yet known, the number of days required to finish the work once it is started.
- ❑ The contract details the allowances made by the contractor for any likely delays (e.g. for non-working days, inclement weather, etc.).
- ❑ Location of building site and description of location, including lot and plan numbers, are included.

- ❑ All agreed terms have been incorporated in the written contract.
- ❑ Total price and payment provisions are clearly stated.
- ❑ Check that the deposit and any instalments (“Progress Payments”) are in accordance with the DBC Act (refer to the section in Part Two of this Guide titled *Payments - When and How Much?*).

DEPOSIT!

If your contract is for less than \$20,000 the deposit you pay cannot exceed 10% of the total contract price. If your contract is for \$20,000 or more, the maximum deposit you have to pay is 5%.

NOTE:

Any fixtures or fittings shown in plans and specifications for the work are taken to be included in the contract unless they are listed as being excluded and you have signed or initialled next to the exclusion list.

WARNING !

If you instruct the contractor to do something and the contractor has advised against it in writing, then you may lose your right to have a defect corrected.

NOTE:

If you appoint an architect to administer the project and the architect stipulates materials, you may not be entitled to the warranties relating to those materials. Similarly, if you choose to nominate materials yourself you may not be entitled to these warranties.

- ❑ If the contract price is subject to change, there must be a warning located near the contract price referring you to any clause in the contract which may have the effect of changing the price (e.g. variation clauses and prime cost item or provisional sum clauses).
- ❑ Prime cost items and provisional sums, if included in the contract, are listed on separate schedules.
- ❑ Definitions of key terms are included.
- ❑ Appropriate plans and specifications are included if required for the contracted work.
 - ▶ these must be sufficiently detailed to enable you to obtain any necessary approvals or authorisations from government authorities. Any special requirements you may have (for example the number of coats of paint required) should be stated in the specifications.

- ❑ The contract lists and describes any fixtures or fittings which are **not included**. (e.g. because you are supplying them separately).
- ❑ If the work includes or may affect footings or a concrete slab, the contractor must obtain appropriate foundations data before entering the contract. This includes soil test data, contour surveys and other geotechnical information.
 - ▶ The contractor must provide you with a copy of this information. The cost for this is normally covered by a Preliminary Agreement or included in your deposit payment (check with the contractor).
- ❑ The statutory warranties are set out. (See the section titled *Warranties* in Part Four of this Guide for further details).

- ▶ sometimes, it is not possible for the contractor to work out in advance precisely how much work has to be done. For example, it might be the case that the contractor is expecting (based on a geotechnical report) to encounter rock when he/she does the excavation work for footings, but it is not possible in advance to say how much rock will be struck. In that case, the contractor should price that work as a **provisional sum**, stating in the contract a reasonable estimate for the cost of doing that work.
- ▶ **prime cost items** and **provisional sums** must also be listed in a separate schedule (see below). For each item on the schedule there must be an estimated cost, an amount for the contractor's margin (or an indication of the method to be used to calculate the contractor's margin, for example, the cost of the item plus 10%) and a total dollar amount. This total amount is an estimate only. The contractor must prepare such an estimate carefully taking into account the information reasonably available at the time of contracting. But when the price for the item or work is finally determined, it may be higher or lower than the estimate.

WARNING !
These statutory warranties expire in six and a half years from the date of completion.

LIQUIDATED DAMAGES

BSA **strongly recommends** that homeowners **include provision for liquidated damages** in the contract. The liquidated damages amount should be a genuine pre-estimate of the costs you will incur per day in the event the contracted works are not completed by the contractor by the date for practical completion (eg. rental and/or storage costs, finance costs, etc.).

MATTERS TO CHECK BEFORE YOU SIGN UP

- ❑ Be wary of clauses allowing for price or cost increases. These are known as "cost escalation clauses". Legislation makes some of these types of clauses invalid.
- ❑ If your contract says that any disputes are to be referred to arbitration, that clause is invalid. For more information on disputes refer to the section in Part Three of this Guide titled *What To Do If Things Go Wrong*.
- ❑ **You are entitled to see a reasonable estimate of the cost of any items not quantified in the contract.** For example:
 - ▶ it might be the case that you have not finally selected the tiles that you want in the bathroom, but you know the general quality and style of the tile you are after. The tiles should then be included in the contract as a **prime cost item**. The contractor must make a reasonable estimate of the cost of supplying the tiles. That estimate must be stated in the contract. Prime cost items do **not** include labour.

PRIME COST ITEMS & PROVISIONAL SUMS
Evidence before payment

If the contractor receives any evidence of the amount expended on prime cost items or provisional sums such as invoices or receipts, the contractor must give you copies of these documents before seeking payment for the items from you. Also, your contract should state which progress payment is to be increased by the addition of these items.

You should only pay for these items when the particular progress payment falls due.

OTHER DOCUMENTS THAT SHOULD BE INCLUDED IN YOUR CONTRACT

- ❑ **Prime cost item** schedule and/or **provisional sum** schedule (where relevant).
- ❑ Plans and specifications detailing what work is to be done.

THE “COOLING-OFF” PERIOD WHEN YOU MAY WITHDRAW FROM THE CONTRACT

Under section 72 of the DBC Act you have a right to withdraw from the contract during what is known as a cooling-off period. Time limits apply and certain notices have to be given if you exercise those rights. You should be sure that you understand your rights before you exercise them. If in doubt contact a practising lawyer or BSA. Be aware too that there will be certain costs in withdrawing. You may **withdraw** from the contract within **5 business days** of receiving from the contractor a copy of both:

- ▶ the **signed contract**; and
- ▶ the **BSA Consumer Guide** (or other BSA-approved Information Statement).

REPAIR CONTRACTS

In the case of repair contracts only, you and your contractor may agree to sign a notice waiving your cooling-off rights.

If you agree to this you will not be entitled to the cooling-off period.

BSA advises you not to do this unless the work is urgent.

OTHER RIGHTS TO TERMINATE

In addition to the right to withdraw during the cooling-off period, you may have the right to terminate the contract later on. Refer to the section in Part 3 of this Guide titled **Other Options**.

WHAT IF YOU DON'T RECEIVE A COPY OF THE CONTRACT AND INFORMATION STATEMENT?

Once the contract is made, you must allow the contractor **5 business days** to provide you with your copy of the contract and BSA Consumer Guide or other approved Information Statement. If **after 5 business days** you still have not received your copies, **you may withdraw from the contract**.

Note: If your contractor later provides you with the copies of these items, you may still withdraw from the contract but you have only **5 business days** from the date you receive both documents in which to exercise this right.

COOLING-OFF PERIOD NOTICE

If your contract does **not** contain a notice advising you of your right to withdraw during the cooling-off period, then under section 74 of the DBC Act you are entitled to **withdraw** from the contract **within 7 calendar days** after you become aware that the contract **should have contained a cooling-off notice**.

HOW TO WITHDRAW

You don't have to provide any reason for withdrawing but you must notify the contractor by delivering a written notice to the contractor or to the contractor's address as shown on the contract before the cooling-off period expires. The notice must state under which section of the DBC Act you are withdrawing (ie. section 72 or 74).

EXAMPLE OF NOTICE OF WITHDRAWAL:

To(insert name of contractor).....

Please be advised that I am withdrawing from this contract under section [insert the appropriate section number, section 72 or 74] of the **Domestic Building Contracts Act 2000**.

The withdrawal is effective from the date of this notice.

Signed..... Name.....

..... Date...../...../.....

WARNING: COST TO YOU OF WITHDRAWING

If you do exercise your right to withdraw during the cooling-off period, then the contractor is entitled to receive \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the date of withdrawal. If, at the time of withdrawal, the contractor has already received a deposit greater than this entitlement, the excess must be refunded to the home owner.

YOU MAY NOT WITHDRAW DURING THE COOLING-OFF PERIOD IF ...

- you and your contractor had a previous contract on similar terms for the same site or home;
- you have received, or you tell the contractor that **before** entering the contract you have received, independent legal advice about the contract from a practising lawyer.

BUILDING APPROVALS - WHO CAN DO BUILDING APPROVALS AND INSPECTIONS?

Approvals for building work must be obtained from a building certifier, who can be either a local government building certifier or a private certifier. Inspections for compliance with approved work which are required at certain stages (see details later in this section) must be carried out by a building certifier or a competent person authorised by them. All building certifiers must be accredited by BSA.

WHAT IS A “BUILDING CERTIFIER” AND WHAT IS THEIR ROLE?

A private certifier is a building certifier who is accredited with BSA to operate in any local government area in Queensland. Whilst the contractor has statutory and contractual obligations regarding the approval and inspection process, if a contractor fails in this capacity, home owners are ultimately responsible for ensuring that approvals are granted and inspections carried out. You should discuss and agree on arrangements for certification with the contractor and record your agreement in your contract.

If you wish to engage a private certifier you should check their accreditation details with BSA, ask them about their past experience, and contact past clients.

The *Integrated Planning Act 1997* requires that the engagement must be in writing and must state the certification fee.

There are two different levels of accreditation for building certifiers related to the size of projects they can undertake. Within these levels building certifiers are able to perform the following work:

- ❑ assessing building applications;
- ❑ issuing building approvals;
- ❑ inspecting and certifying construction;
- ❑ issuing notices (eg. stop work or rectification notices) on building work they are directly involved with; and
- ❑ issuing certificates to allow the lawful occupation of certain classes of buildings.

Private certifiers are required to have at least \$1 million professional indemnity insurance.

There are a number of matters over which private certifiers have no authority and which can only be decided by the local government.

These matters include:

- ▶ assessing town planning matters;
- ▶ reviewing the capacity and location of public utilities (eg. sewer mains, water supply, etc);
- ▶ exercising discretion on the siting of buildings (eg. reducing the setback requirements); and
- ▶ granting exemptions to the installation of swimming pool fences.

It is unlawful for any building certifier to certify or approve work with which they are personally involved as a contractor or designer, or from which they are able to derive a profit.

CAUTION !

Obtaining the necessary approvals and inspections is ultimately your responsibility.

NOTE:

Building certifiers (whether a local government or private certifier) are not responsible for judging the quality of the work. If, despite obtaining the relevant approvals, you think the work is below the standards required under the contract warranties (see the section in Part 4 of this Guide titled *Warranties*), discuss the problems with your contractor. If you are still dissatisfied, contact BSA for dispute resolution assistance or obtain legal advice.

WHAT IS THE PURPOSE AND TIMING OF BUILDING INSPECTIONS?

The primary function of mandatory on-site inspections is to ensure that construction work complies with approved plans and recognised building standards including the *Building Code of Australia* (BCA).

It is not the role of the certifier to ensure compliance with the terms of the contract or specifications, or to judge the quality of the work. Building inspections for the construction of a complete dwelling must be performed at the following stages:

- ❑ footing;
- ❑ slab;
- ❑ frame; and
- ❑ final.

In addition to these building inspections, there are also mandatory plumbing and drainage inspections. For renovations and alterations some of the inspections above may not be required.

WHO IS RESPONSIBLE FOR SUPERVISION AND QUALITY CONTROL?

It is the responsibility of the contractor and the owner, working together, to ensure that the dwelling is constructed to an acceptable standard of quality and finish.

Building certifiers are required to act in the public interest and do not perform an ongoing supervisory role on behalf of individual home owners.

NOTE:

If you are not confident that you have sufficient time or knowledge to ensure the quality of the work, you may wish to engage a consultant to monitor the job on your behalf. Check the consultant’s qualifications, experience and past clients.

HOW CAN CONSTRUCTION STANDARDS AND QUALITY BE CONFIRMED?

If you have specific requirements with regard to quality and finish (eg. type and number of coats of paint, materials to be used, etc.), these details should be discussed and written into the contract. The next step is to carry out regular on-site inspections, by appointment, with the contractor or contractor's supervisor (not an individual tradesperson as they cannot speak with authority about the whole job).

Do not give instructions direct to the subcontractors because this will cause confusion.

APPROVED PLANS

Plans and specifications should be included in the contract documents. Make sure that, along with a copy of the contract itself, you obtain a copy of the plans from the contractor when they are ready for submission to the building certifier. **Check the plans for accuracy ensuring all variations are included** and advise the contractor immediately of any errors or omissions. **Obtain a copy of the final approved plans** (this is very important if you later wish to sell the house). **Keep the final approved plans in a safe place. The contractor must also provide you with copies of each certificate of inspection as they are issued.** As soon as is practicable after the work is completed, the contractor must also provide you with copies of other contract-related documents such as reports, notices or orders issued by suppliers of services, including, for example, electricity, gas, telephone, water or sewerage.

NOTE:

It is important for you to retain copies of certificates of inspection and other related documents, especially if you wish to sell your home later on. Keep your copies of these documents in a safe place.

INSURANCE FOR CONSTRUCTION OF A NEW HOME

Make sure that construction insurance has been arranged and paid for by your contractor. This insurance covers your home during the construction phase against such things as fire, storm and tempest, flood, theft, vandalism, etc.

INSURANCE FOR RENOVATIONS OR EXTENSIONS TO AN EXISTING HOME

Advise your existing insurance company of the details of the work to be done, including the total value of the work, the approximate start and completion dates, etc. Your normal home property insurance policy may be inoperative while renovations or extensions are in progress.

Discuss this with your insurance company. If this is the case make sure your contractor insures the renovation and/or extension work and, if necessary, the pre-existing home for the full duration of the building work.

BSA INSURANCE

For residential construction work valued at more than \$3,300 (inclusive of GST), BSA's Home Warranty Insurance Scheme provides up to \$400,000 cover for a period of 6½ years from the date of the contract if a licensed contractor performs the work. BSA's Home Warranty Insurance Scheme insures residential construction work which is primarily:

- ▶ the construction of a dwelling or unit (provided the building is not over 3 stories in height) and residential outbuildings (eg. garage, pool change room, etc.); and
- ▶ certain replacements of, or extensions to, part or all of a residential building (including refitting bathrooms and kitchens).

The policy insures consumers when:

(a) during the course of the contract:

- ▶ the licensed contractor becomes bankrupt or goes into liquidation; or
- ▶ the licensed contractor fails to complete the contracted works for reasons that are not the consumers fault;

(b) after completion of the work:

- ▶ the licensed contractor fails to fix defects that have been the subject of a BSA direction, or, for various reasons (eg. bankruptcy or liquidation, death, etc.) the licensed contractor can't attend to rectification;

(c) the building suffers from the effects of subsidence or settlement.

The contractor is required to pay the premium directly to BSA before the plans can be approved by the building certifier. When you receive your Certificate of Insurance from BSA (normally within two weeks of signing the contract), check that the Notified Contract Value agrees with your contract price. If these amounts vary you should contact BSA to amend your cover.

PART TWO: DURING CONSTRUCTION

WARNING !

If you pay before the contract requires and in advance of work progress, you may not be covered for those pre-payments under BSA's Home Warranty Insurance Scheme. Do not pay a contract stage until that stage has been completed.

PAYMENTS - WHEN AND HOW MUCH?

It is important to know what rights you have under the DBC Act with respect to when you should make payments and how much they should be. Check the following list to make sure your contract complies:

- Deposit of no more than 5% where the total price is \$20,000 or more. If the contract price is between \$3,300 and \$20,000 the deposit may be up to 10% of the price.
- If your contract is to be paid in instalments, the amount of each instalment ("Progress Payment") is directly related to the work completed when you are requested to pay.
- For the construction of a home the DBC Act sets out the following instalment schedule:

	Stage	Percentage of original contract price
1. Contracts to build to enclosed stage	Base Stage	20%
	Frame Stage	25%
	Completion of contract	Balance
2. Contracts to build to fixing stage	Base Stage	12%
	Frame Stage	18%
	Enclosed Stage	40%
	Completion of contract	Balance
3. Contracts to build to all stages	Base Stage	10%
	Frame Stage	15%
	Enclosed Stage	35%
	Fixing Stage	20%
	Practical Completion	Balance

BASE STAGE

is:

1. For buildings with a timber floor with base brickwork, when:
 - concrete footings for the floor are poured; and
 - base brickwork is built to floor level; and
 - bearers and joists are installed;
 OR
2. For buildings with timber floor without base brickwork, when:
 - stumps, piers or columns are finished; and
 - bearers and joists are installed;
 OR
3. For buildings with suspended concrete slab floor, when:
 - concrete footings are poured; and
 - formwork and reinforcing for the suspended slab are installed;
 OR
4. For a building with a concrete floor (not suspended), when the floor is finished.

ENCLOSED STAGE

is when:

- External wall cladding is fixed;
- The roof covering is fixed;
- Structural flooring is laid;
- External doors are fixed (even if only temporarily); and
- External windows are fixed (even if only temporarily).

FIXING STAGE

- is when all internal lining, architraves, cornices, skirting, doors to rooms, baths, shower trays, wet area tiling, built-in shelves, built-in cabinets and built-in cupboards are fitted and fixed.

FINAL PAYMENT

When your contract is to:

- ▶ build a new home to a stage suitable for occupation; or
 - ▶ renovate, alter, extend, improve or repair a home to a stage suitable for occupation,
- you should not make the final payment until:
- ▶ the contracted work is completed;
 - ▶ the home is suitable for occupation; and
 - ▶ the contractor has provided you with a list of minor defects and omissions.

WARNING!

For contracts to build a new home or perform major renovations to an existing home, be sure to obtain a list of minor defects and omissions before making the final payment.

DEFECTS DOCUMENT

If you and your contractor agree that there are minor defects or omissions then the contractor should provide you with a list of these (called a 'defects document') when you conduct your final inspection. The list must state by when the contractor is to correct each agreed minor defect or omission. You and the contractor must sign the list. Do not make the final payment until this list has been provided to you. The list must also state any minor defects or omissions which you believe exist but that are not agreed by the contractor to exist. If you subsequently cannot resolve these issues by discussion with the contractor, contact BSA for further assistance.

NOTE:

BSA recommends that you stick to the progress payment schedule outlined in the table on the previous page. You and your contractor can agree to vary this payment schedule (but not the maximum deposit amounts). However, if you do vary the schedule, the agreed schedule must be clearly noted in the contract and you should be careful never to pay ahead of work progress.

WHEN THE CONTRACT IS CHANGED

Any change to the scope of the work to be done under a contract is known as a **variation**. For example:

- ▶ your contract might provide for 2 power points to be installed in each room. If this is changed to 1 power point in each room, this is a variation for the **omission of work**;
- ▶ your contract might not provide for any built-in cupboards to the laundry. If this is changed so that a cupboard is to be built into the laundry, this is a variation for the **addition of work**; or
- ▶ your contract might provide that a window is to be installed on the northern wall of the family room. If this is changed to the southern wall, this is a variation that is a **change to the work**.

You should note that just because a variation involves not doing work, it doesn't automatically follow that the price will go down, or that there won't be extra costs involved.

Unfortunately, variations are frequently the cause of disputes (particularly where there is a lack of adequate documentation to support them).

Certain requirements have been set down by legislation to help prevent these disputes.

THERE MUST BE A WRITTEN VARIATION DOCUMENT

If you wish to request a variation, you should put your request in writing to the contractor.

The contractor must put any variations in writing as soon as practicable and, if the variation means additional work,

it is to be done before the variation work is carried out. The contractor must give you a copy of the variation document as soon as practicable but within 5 business days of when the variation is agreed to.

VARIATIONS

Ensure all documentation detailing contract variations is clear, complete and signed and dated by both parties.

The variation document must:

- be in English and legible;
- describe the variation;
- state the reason for the variation (if the variation is being sought by the contractor);
- provide a reasonable estimate of any delay to the work which may result from implementing the variation;
- state the change to the contract price or at least set out the method for calculating the price change. If this is not stated the contractor may still be entitled to the cost of carrying out the variation plus a reasonable profit;
- indicate when any increase in the price as a result of the variation is to be paid or when any decrease is to be taken into account. For example, if the price is decreased due to the variation, the variation document must indicate which progress payment is to be decreased as a result. When the progress payment falls due, make sure that you only pay the decreased amount.
- be signed by the contractor. The contractor must also take reasonable steps to have you sign the document. If you agree with the contents of the document, you should sign it. If you do not understand it, or it does not contain sufficient information, you should ask the contractor to clarify the document in writing or provide further information in writing.

EXCEPTION !

You may not receive the variation in writing if the work is urgent and it is not practicable to get it in writing first.

WHEN THE CONTRACTOR REQUESTS A VARIATION

If the contractor asks you to agree to a variation and it involves additional work, **you are only liable to pay for that extra work if it is work the contractor could not reasonably have foreseen at the time of contracting.**

In any case, the contractor must still provide the written documentation as detailed above and must not demand payment before the work is commenced.

WARNING !

If the variation involves an increase in the work to be performed, do not make any additional payment until:

- the variation is in writing and signed; and
- work has commenced on the variation.

- delays; and
- lack of knowledge of building practices.

HOW TO AVOID DISPUTES

You should ensure that:

- the builder, trade contractor or building designer has a current licence for the work to be done (check BSA's web site www.bsa.qld.gov.au for a free on-line licence search);
- the builder, trade contractor or building designer's work is recommended by past customers (ask for names);
- the contract clearly specifies the extent and timing of work to be done, total price and payment details (including deposit amount and the timing and amount of any progress payments - refer to the section in Part Two of this Guide titled *Payments - When and How Much?*);
- your rights and responsibilities are detailed in the contract and understood;
- you have received and read carefully this BSA Consumer Guide (or other BSA-approved Information Statement);
- the contract and any variations are signed by both parties (and copies kept on file);
- regular contact is maintained with the contractor (Note: ask your contractor about anything you are unsure of or don't understand); and
- you are aware of upcoming progress payment requirements as detailed in your contract. **Carefully follow the payment arrangements in your contract, making sure that you never pay in advance or pay more than the agreed amount.**

CAVEATS

The contractor cannot lodge a caveat on your property if you live in the house or intend to live in the house within 6 months of completion of the work. A caveat is a notice on the register of land titles. Caveats have the effect of preventing the owner of the land from selling the land or transferring it into someone else's name.

THE SITE

The contractor is entitled to occupy the site for the purposes of carrying out the contract. Bear in mind that the contractor has important responsibilities under the *Workplace Health and Safety Act 1995* which include ensuring that all persons at the site comply with the requirements of that Act. For this and other reasons, under most contracts the contractor is entitled to exclude people from the site other than the owner or any person authorised by the owner to be on site. Depending on the provisions of the contract, other people who may be entitled to visit the site include bank officers (if you have taken out a loan for the work), the certifier, local authority officers and BSA officers. **You are entitled to reasonable access to the site to view the work under the contractor's supervision but you must not interfere with the work.** Any interference could mean that you become liable to the contractor for resulting costs or delays.

WARNING !

You may want to view the works as they progress. This is fine, so long as you don't interfere with the work.

For your own safety, you should not go on site when work is underway, particularly if heavy plant and equipment is being used. Remember, a construction site is a dangerous place and care should be taken at all times.

NOTE:

Seek formal legal advice before signing if you are uncertain or concerned about any contract provisions.

DISPUTE PREVENTION

WHAT CAUSES DISPUTES?

Disputes between builders, trade contractors, building designers and consumers occur for many reasons including:

- inaccurate or incomplete documentation;
- poor communication;
- unsatisfactory work;

KEEP A "CONSTRUCTION DIARY"

Record key events, for example dates and details of meetings, phone calls, etc. in your diary. This can prove to be a very useful means of avoiding disputes.

MANDATORY BUILDING INSPECTIONS

Refer to the section in Part One of this Guide titled *Building Approvals*.

QUALITY CONTROL

It is the responsibility of the home owner, working with the contractor, to check the quality of the work. Quality control is not the purpose of inspections conducted by certifiers (or lenders). The best way to achieve the desired

PART THREE WHAT TO DO IF PROBLEMS DEVELOP

FOLLOW THESE STEPS:

If you have any concerns about your building project which cannot be resolved quickly and amicably with your contractor, follow the steps below:

Advise your contractor immediately of any problems. There are specific timeframes in which consumers must act, and within which BSA can help if things go wrong. Your first step is to convey your concerns in writing to your contractor, giving them a reasonable time (say, 14 days) in which to address the matter. Make sure you keep a copy of the letter and any response from the contractor for your records.

NOTE:

When writing to the builder, be specific about the problem(s), sign and date the letter and keep a copy.

For problems after completion, should your attempts to reach an amicable solution with your contractor break down, contact BSA (telephone **1300 BSA BSA** statewide) to discuss the matter. You may have to complete a BSA Complaint Form. BSA provides an equitable, timely and effective dispute resolution service for disputes between BSA licensees and consumers. After you have completed and lodged a Complaint Form, a BSA technical representative may arrange to meet you and the contractor on-site to inspect the work. Prior to the site inspection, the contractor and consumer will have a further opportunity to resolve the dispute. If a satisfactory outcome is not reached, BSA can help at the site inspection by:

- ❑ determining responsibility for defects; and
- ❑ where the contractor is held to be responsible, BSA may direct the contractor to rectify any defects or complete the works. If the contractor is required to rectify defects you should allow reasonable access for the contractor. A time frame will be set in which the work is to be performed. In some cases, an extension of time may be necessary. Any extension is subject to BSA approval.

Should a contractor not comply with a direction to rectify issued by BSA, action may be initiated in the Commercial and Consumer Tribunal (CCT) or the Magistrates Court, or through the issue of an infringement notice.

quality is to conduct regular inspections of the work (at roughly the progress payment stages), by appointment, with the contractor or contractor's representative (ie. the supervisor). If you are going to be away during construction, or you are not confident that you have the experience or time to sufficiently safeguard quality, then you may wish to engage a Building Consultant. If you intend to engage a Building Consultant, you should advise the contractor and check the Consultant's relevant experience and qualifications, fees and services, and past clients. Discuss and write down exactly what role the Consultant is to play (eg. accompany you on fortnightly building inspections and provide a written report on quality of work performed within 7 days of the inspection, etc.) as well as precise payment arrangements.

IF PROBLEMS ARISE...

If problems arise between you and your contractor regarding your building project, refer to Part Three of this Guide titled *What To Do If Problems Develop*.

ON COMPLETION/HANDOVER

When your contractor advises you of the handover date (usually 2 or 3 weeks in advance) you should arrange a final, pre-handover inspection. On the day of actual handover you should:

- ❑ check the house thoroughly for defective or missing items;
- ❑ make sure you and your contractor prepare a list of minor defects and omissions including details of any items missing, damaged or unfinished (refer to the heading "DEFECTS DOCUMENT" in Part Two of this Guide).
- ❑ obtain copies of any outstanding documents (eg. approval certificates, warranties relating to appliances, etc.); and
- ❑ provide the final progress payment.

WARNING !

Do not withhold the final payment without first obtaining legal advice!

HOME PROPERTY INSURANCE

NEW HOME

Before handover you should contact your insurance company and arrange Home Property and Contents insurance effective from the date of handover.

RENOVATIONS OR EXTENSIONS

Contact your insurer **before work commences** to arrange an endorsement to your existing Home Property Policy to increase the sum insured.

NOTE:

BSA is unable to provide legal advice or assist with the resolution of disputes of a purely contractual nature.

COMMERCIAL AND CONSUMER TRIBUNAL (CCT)

The CCT provides cost effective resolution for domestic building disputes, particularly those of a contractual nature. Licensed builders, trade contractors and subcontractors, building designers and consumers are entitled to take their domestic building disputes to the CCT. The CCT may require BSA to provide a technical report. More information on the CCT's procedures can be obtained by accessing the web site at www.tribunals.qld.gov.au, calling 3247 3333, or writing to GPO Box 2469, Brisbane, Qld 4001.

OTHER OPTIONS

LIQUIDATED DAMAGES

The contract may provide other rights such as liquidated damages. You should read your contract carefully and if unsure of your rights, seek formal legal advice.

Note: BSA strongly recommends that adequate liquidated damages be included in the contract.

CONTRACT TERMINATION UNDER SECTION 90 OF THE DBC ACT:

Under section 90 of the DBC Act home owners may, under certain circumstances, have the right to terminate the contract in the event of blowouts in:

- the cost (if the contract price rises by 15% or more after the contract is entered into because of the operation of a cost escalation clause in the contract); or
- the duration of the contracted work (if it is not finished within a period that is 1.5 times the period allowed for in the contract)
...provided that
- the reason for the rise in price, or increase in time, could reasonably have been foreseen by the contractor when the contract was entered into; and
- for a rise in price – the rise is not caused by a delay for which the building owner is responsible.

WARNING !

If you terminate your contract under section 90 of the DBC Act you may lose your entitlements under BSA's Home Warranty Insurance Scheme. It is essential that you obtain formal legal advice before taking this step.

TERMINATION GENERALLY

Apart from section 90 of the DBC Act there may be other grounds for terminating the contract. This is a serious decision to make and would usually only be a last resort option. It may involve some costs to you. **Formal legal advice is strongly recommended if you are considering ending the contract for any reason.** If you do not follow prescribed methods for termination, or if you terminate before being entitled to do so, you may create serious difficulties for yourself (including undermining your entitlements under BSA's Home Warranty Insurance Scheme). You may also be liable to pay for losses suffered by the contractor, such as loss of profits.

THE COURT SYSTEM

In addition to the above measures, you may have a legal right to pursue your concerns in the court system. Formal legal advice should be obtained if you wish to take this option.

PART FOUR: AFTER MOVING IN

WARRANTIES

MANUFACTURER'S WARRANTIES

As mentioned in the section in Part Two of this Guide titled *On Completion / Handover*, you should have obtained from your contractor, at handover, copies of the manufacturer's warranties for each of your new household appliances (these warranties are commonly of 12 months duration). Keep these documents in a safe place.

STATUTORY WARRANTIES

The Act provides home owners with a number of warranties that cover domestic building work for 6½ years from the date of completion.

(Note: BSA's ability to direct rectification by a contractor ceases if the defect is not notified to BSA within 6 years and 3 months of completion).

These statutory warranties must be stated in the contract. If you believe the contractor has breached any of these warranties and you have been unable to resolve the issue with them, you may be entitled to take legal action against the contractor.

NOTE!

Refer to the section in Part One of this Guide titled *Contract Checklist* for an explanation of what is included in "domestic building work"

WARRANTY	APPLIES TO	WARRANTY	APPLIES TO
<p>MATERIALS All materials will be good and suitable for the purpose for which they are used.</p>	<p>All domestic building work where contract price exceeds \$3,300. Only applies where the contractor is responsible for supplying the materials. Be aware that you will lose the advantage of this warranty if any of the 3 following situations exist:</p> <ol style="list-style-type: none"> 1. You have engaged an architect to administer the contract and part of the role of the architect is to tell the contractor what materials are to be supplied for the work. 2. (a) The contract states that you are responsible for nominating the materials; and (b) you specifically nominate certain materials (and you do this without any recommendation or criticism of the materials being made to you by the contractor); and (c) there doesn't appear to be any reason for not using those materials. 3. (a) The contract states that you are responsible for nominating the materials; and (b) you specifically nominate certain materials (and you do this without any recommendation or criticism of the materials being made to you by the contractor); and (c) there are reasonable grounds for not using those materials; and (d) the contractor has given written advice to you not to use them; and (e) despite the contractor's advice against using them you have insisted on those materials being used. <p>As to whether materials are "good", an assessment is made with regard to generally accepted practices or standards applied in the building industry or with regard to the specifications, instructions or recommendations of manufacturers or suppliers of the materials.</p>	<p>MATERIALS - NEW Unless otherwise stated in the contract, all materials used in the work will be new.</p> <p>COMPLIANCE WITH LAW The contractor will comply with all relevant laws.</p> <p>SKILL AND REASONABLE CARE The work will be carried out in an appropriate and skilful way and with reasonable care and skill.</p> <p>PLANS AND SPECIFICATIONS The work will be carried out in accordance with the plans and specifications.</p> <p>SUITABILITY FOR OCCUPATION The home must be suitable for occupation when the work is finished.</p> <p>REASONABLE DILIGENCE This has to do with carrying out the work in a prompt and efficient manner.</p> <p>CALCULATION OF PROVISIONAL SUMS The Contractor warrants that the provisional sum has been calculated with</p>	<p>All domestic building work where contract price exceeds \$3,300. This warranty will not apply if you state in your contract that the materials do not have to be new.</p> <p>All domestic building work where contract price exceeds \$3,300.</p> <p>All domestic building work where contract price exceeds \$3,300.</p> <p>All domestic building work where contract price exceeds \$3,300. if plans and specifications form part of the contract.</p> <p>All domestic building work where contract price exceeds \$3,300 if the work: (a) consists of the erection or construction of a detached dwelling to a stage suitable for occupation; or (b) is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation.</p> <p>All domestic building work where contract price exceeds \$3,300, if: (a) the contract is a cost-plus contract (obtain the BSA Consumer Guide Cost Plus Contract Supplement) ; and (b) the contract does not have a stated completion date or period.</p> <p>All domestic building work where contract price exceeds \$3,300 which includes provisional sum items. Reasonable care and skill requires consideration by the contractor of all information reasonably available when the contract is entered into (including</p>

WARRANTY	APPLIES TO
reasonable care and skill.	information about the nature and location of the building site).

WARNING!

If you instruct the builder to use a particular material or product and the builder has advised against it in writing, then you may lose your right to have a defect corrected.

**HOME MAINTENANCE
FOUNDATIONS AND FOOTINGS**

Many serious foundation problems are caused by reactive soil types and trees and gardens being planted too close to the house. Most clay soils are reactive soils but you should seek professional advice from either your contractor or soil engineer on this point. Your local government building section may also be able to advise you about soil characteristics in your area.

Large trees use huge amounts of water and can very quickly draw moisture out of the ground during dry periods. This results in destabilised moisture content of the soils around your home and ultimately can cause a foundation problem.

Overwatering gardens around your home can also change the moisture content of clay, resulting in heaving of foundations adjacent to the garden. When watering around your home you should avoid “ponding” of water in a particular area as this also affects the moisture content of the soil, which in turn can cause damage to footings and foundations.

Remember, too much or too little water near the perimeter of your home can cause serious problems with foundations and footings. Damage to foundations and footings can cause major structural problems, resulting in costly repairs.

HINTS FOR AVOIDING PROBLEMS AND COSTLY REPAIRS:

- ▶ water evenly around your home and don't overwater;
- ▶ ensure the ground is graded away from the walls of your home and that your property has adequate drainage;
- ▶ promptly repair broken downpipes, leaking taps, sewerage pipes and other water services;
- ▶ toilet cistern overflows and hot water system overflows should be directed away from the immediate area adjacent to the foundations and those services

maintained to ensure excessive leakage does not occur;

- ▶ ensure garden beds are not located up against the house; and
- ▶ to minimise the risk of future foundation damage, obtain professional advice when selecting and planting trees according to their mature height and root structure (on normal suburban blocks of 600 - 800 sq. metres, trees that grow higher than 8 - 9 metres would usually be inappropriate).

FOR FURTHER ADVICE CONTACT:

- ▶ licensed builders;
- ▶ professional soil engineers;
- ▶ landscape gardeners; and
- ▶ your local government building section.

FOR FURTHER READING

Obtain CSIRO Information Sheet No. 10-91 (revised August 1996) titled *Guide To Home Owners On Foundation Maintenance And Footing Performance*.

TERMITE MANAGEMENT

(NOTE: This subject is covered in more detail in the Termite Management Fact Sheets on BSA's web site.)

NOTE:

Termite protection is required from below and around the perimeter of the building.

If you are building a new home, **it is very important that you discuss the termite management options with your builder and that your requirements** (together with any cost implications) **are accurately and fully detailed in your contract.** The *Building Code of Australia* (BCA), which applies throughout Queensland, requires that primary building elements of all new buildings at risk of attack from termites be protected. Primary building elements include roof, ceiling, floor, stairway or ramp and wall framing members including bracing and door jambs, window frames and reveals, architraves and skirtings. BCA sets out the minimum requirements only and you may wish to seek a higher level of protection. If you do, talk to your contractor or designer during the planning stage and ensure that your building contract provides for, and includes the cost of, the higher level of protection. Your contractor will then be obliged to provide that protection.

TERMITE MANAGEMENT METHODS

(see the diagrams provided later in this section).

A NUMBER OF OPTIONS ARE AVAILABLE

at variable costs including:

- ▶ using a monolithic concrete slab as the barrier and another approved method to protect any penetration such as waste pipes, etc. (the slab edge may be exposed in this method);
- ▶ from 1 January 2001 where chemicals are used they must be regularly replenished or have an expected life similar to that of the building. Generally where chemicals are used under a concrete slab, path or driveway a reticulation system will be required;
- ▶ reticulation of an approved chemical under the slab with chemical perimeter treatment covered by a concrete mowing strip;
- ▶ graded stone barrier under the slab either full area or penetrations only and protection at the perimeter;
- ▶ stainless steel mesh, either full or partial installation with perimeter protection; or
- ▶ a combination of the above, especially with composite construction.

NOTE:

Have your house inspected at least annually by a BSA-licensed termite management contractor (check the contractor's licence before engaging them).

More frequent inspections may be necessary in high risk areas. High risk areas include:

- Virgin bush nearby;
- Large number of trees nearby;
- Anywhere north of the Tropic of Capricorn; and
- Infestations in other houses nearby.

NOTE:

Chemical systems have a limited life and therefore require a higher degree of maintenance and replenishment. Physical systems (concrete slabs, exposed slab edge, metal shielding, stainless steel mesh or graded stone) are generally designed to last for the lifetime of the building but require more frequent inspection.

FACTORS CONSIDERED BY BSA IN ASSESSING A TERMITE COMPLAINT

In the case of complaints about termite damage to a building built after June 1995, consideration will be given to issues such as the means of entry, the method of protection used, whether or not the builder advised the owner about the different methods and the maintenance requirements for each, and whether the owner observed the necessary maintenance and inspection procedures.

KEYS TO AVOIDING DAMAGE BY SUBTERRANEAN TERMITES:

- Choose a method to suit your needs.
- Determine if you want whole or partial protection.
- Understand the method of protection chosen for your

individual building; and

- Inspect the home regularly yourself, and each 12 months (more often in high hazard areas) have a BSA-licensed termite management contractor inspect and re-treat if necessary.

WARNING!

The most frequent cause of termite infestation is where a chemical system has been breached thus rendering it ineffective.

Be aware that you may compromise or disturb the system around the home by:

- Placing turf, paving, concrete paths, bark and garden beds up against the house wall;
- Obstructing "weep" holes (vertical joints between bricks close to ground level that are left open to allow any moisture to escape outside the house). 100 mm clearance is recommended from the bottom of any weep hole to the top of the garden bed, or 75 mm clearance in the case of concrete or unit paving;
- Leaving loose timber stacked up or leaning against the house;
- The installation of new services involving under ground connections to the house (e.g. pay TV) after the original termite protection has been applied;
- Construction of a pergola (75 mm clearance is recommended between the finished ground or pavement level and the bottom of the timber posts); or
- Construction of fences, carports, or garages attached to the house after the termite protection has been installed (ensure that there is treatment of the soil surrounding any posts or timber members that are in contact with the ground).

CHECKING FOR TERMITES AFTER YOU MOVE IN

You should be particularly vigilant in checking:

- skirting boards;
- architraves;
- timber door and window frames;
- for blistered and bubbled paint, rippled or bulging wall skirting and architraves, and coarse, sandy pellet residues known as "frass" (termite excreta); and
- outside the house look for mud galleries (small mud tunnels) against the walls, and tell-tale paths leading up foundation posts into the home.

NOTE:

If you find any sign of termite activity in your regular checks, contact a BSA-licensed termite management contractor.

WHAT TO DO IF YOUR HOME IS INFESTED BY TERMITES

- Do not disturb the nest;

- ❑ Immediately arrange a thorough inspection by a licensed pest controller (ask them to locate the point of entry);
- ❑ Inform your neighbours because one termite colony can affect several homes;
- ❑ If the pest controller indicates there may be a fault in the installation of the barrier, contact the contractor; and
- ❑ Contact BSA on **1300 BSA BSA** regarding BSA insurance. BSA Home Warranty Insurance provides protection against defective building work (including faulty termite barrier installation) for 6 years and 6 months from the date the building contract is signed or the premium paid, whichever is earlier. For 'spec' homes, the 6 years and 6 months insurance period applies from the date when work commenced on site. Insurance protection does not apply if your action or lack of maintenance has contributed to the infestation.
- ❑ Take action to eradicate the termites.

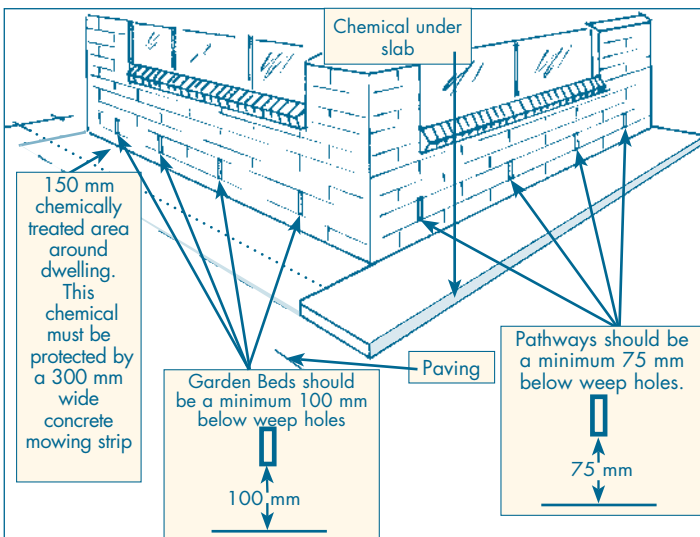
NOTE:

If an infestation occurs more than 6 years and 3 months after completion, and the problem can be traced to faulty installation, you may be able to take legal action against the builder. Formal legal advice is required.

THERE ARE THREE BASIC METHODS OF PROTECTING BUILDINGS FROM DAMAGE BY TERMITES

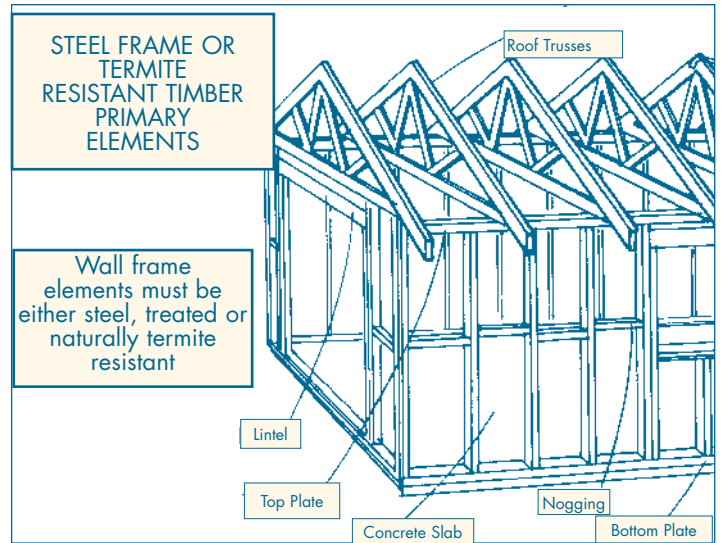
CHEMICAL SYSTEMS

Chemical systems are generally installed beneath and around a building



TERMITE RESISTANT MATERIALS

All primary building elements consist of masonry (brick or concrete block), steel, naturally resistant timber or treated timber.



Note: Primary building element means:

- a member of a building designed specially to take part of the building loads and includes roof, ceiling, floor, stairway or ramp and wall framing members including bracing members designed for the specific purpose of acting as a brace to those members; and
- door jambs, window frames and reveals, architraves and skirtings.

Termite resistant materials will not deter termite entry, but will minimise damage to the treated elements.

PHYSICAL SYSTEMS

Physical systems can consist of:

CONCRETE SLAB

A concrete slab can, under certain circumstances, be used as a termite management system.eg: If the edge of the slab is exposed for a minimum of 75mm and the slab has been constructed to Australian Standards.

TERMITE SHIELDING

Generally most recognisable, this form consists of a continuous metal barrier along the walls and on top of piers under a house.

STAINLESS STEEL MESH

This is installed in various locations including under an on-ground concrete slab or around penetrations to the slab and around the perimeter wall cavity.

GRADED STONE

Used under and around buildings. The size and shape of the stones prevents the transportation of particles by termites as well as termite activity in the void spaces between the particles.

Termite management systems are designed to deter concealed termite entry into buildings.



It is important for you to know what method or combination of methods has been used on your property to enable you to schedule appropriate maintenance and inspections.

In any building constructed after 1 January 2001 there should be two durable labels fixed in prominent locations, usually in the electrical meter box and one other location such as the kitchen cupboard. The label describes the life expectancy of chemicals and the manufacturer's recommendations for the scope and frequency of inspections. Competent inspections should be carried out at least on an annual basis by a BSA-licensed termite management contractor.



The most common cause of termite infestation is where a building owner or occupier has inadvertently breached or bridged a perimeter system.

For example, placing brick or concrete paving up against a building where a chemical system has been installed may bridge the system unless additional control elements were installed as part of the paving process.

If bridging has occurred there is an open highway for termites to gain entry to the building.

Similarly, if gardens are installed or turf placed up against a building without consideration or reinstatement of the system, an opportunity will exist for termites to enter the building.

The addition of a fence, carport or pergola against an existing building can also provide an opportunity to bridge or breach the termite management system.

IN SUMMARY:



- **Know what system is in place.**
- **Have a BSA-licensed termite management contractor inspect at least on an annual basis.**
- **If gardens, turf or paving has or is to be placed against the building, ensure that reinstatement of the termite management system/s forms part of the work.**
- **If a concrete mowing strip has been installed to protect a chemical system, do not disturb it without consulting a BSA-licensed termite management contractor**

See the list at right for organisations that can assist you with more information on termite management.

WHERE TO OBTAIN MORE INFORMATION ABOUT TERMITES

Australian Environmental
Pest Managers Association (AEPMA)
02 9281 7699
www.aepma.com.au

Timber Queensland
3254 1989
www.timberqueensland.com.au

Queensland Master Builders Association
3404 6444
www.masterbuilders.asn.au)

Housing Industry Association
3846 1298
www.buildingonline.com.au

Department of Primary Industries
3896 9780
www.dpi.qld.gov.au

Building Codes Qld
3234 1870
www.lgp.qld.gov.au

Standards Australia
(AS3660.1)
1300 654 646

DOMESTIC BUILDING CONTRACTS ACT 2000

SOME COMMON QUESTIONS ANSWERED

What does the Domestic Building Contracts Act 2000 (the DBC Act) mean for home owners?

Since 1 July 2000 consumers in Queensland entering contracts for work on new homes or existing homes where the contract price exceeds \$3,300 have enjoyed the benefits of a number of new rights and safeguards. Details are provided in this Consumer Guide.

Can I withdraw from the contract if I change my mind?

Subject to certain conditions, the DBC Act entitles you to withdraw from the contract within certain strict time frames. After the contractor has given you your copy of the contract and the mandatory Information Statement, you may withdraw within 5 business days of that date. This is called the "cooling-off" period. You may also be able to withdraw from the contract if you do not receive your copies of the contract and mandatory Information Statement. Check your BSA Consumer Guide and contract for details of when you may withdraw and the procedures you must follow if you do wish to do so. Note that certain costs and conditions apply if you do choose to withdraw.

How do I keep track of what has been agreed between myself and the contractor?

Your contract documents must record the full details of your agreement with the contractor. They must set out the work to be done, the price for the work, any fittings or fixtures which are not included in the contract, the dates for starting and completing (or other method of determining when the work will start and how long it will take), any anticipated delays and all the terms and warranties that apply to the contract.

You are entitled to receive copies of important documents including:

- ▶ the contract;
- ▶ plans and specifications;
- ▶ foundations data (where applicable); and
- ▶ a list of any items for which the cost has yet to be determined (prime cost items or provisional sums).

Make sure you keep your copies of these documents in a safe place.

What if the contract is changed later on?

You should receive written documentation detailing any variations (changes to the contract work) whether these are suggested by yourself or by the contractor. These need to be signed by both you and the contractor and a copy given to you by the contractor. If the variation results in an addition to the work, then work must not start until

the variation document is completed. If the contractor requests a variation and it is something that should have been reasonably foreseen by the contractor at the time of contracting, you are not obliged to pay for any extra work it entails. The only exception to this is if the contractor makes a successful application to the Commercial & Consumer Tribunal for the extra amount.

How can I be sure that the work will be of a high quality?

The primary responsibility for checking that the work meets your standards of quality and finish falls to you, the owner. As far as possible, include any specific requirements in your contract.

The next step is to conduct regular inspections of the work with the contractor or contractor's representative to check quality. In addition, the DBC Act requires that domestic building work where the contract price exceeds \$3,300 is covered by a number of warranties including:

- ▶ all materials will be good and suitable for the purpose;
- ▶ all materials will be new (unless otherwise stated in the contract); and
- ▶ work will be carried out in an appropriate and skilful way with reasonable care and skill.

Consult your BSA Consumer Guide for further details as to the statutory warranties and how they apply to your particular contract. All the DBC Act warranties apply regardless of what your contract may say.

What if the contractor charges me more than what is stated in the contract?

You are only required to pay those amounts stated in the contract at the time they fall due. The only reason you would have to pay extra would be for variations which have been agreed on and properly documented (see above). Of course there may be certain items for which the contractor has only provided an estimate at the time the contract was signed. These are called 'prime cost items' or 'provisional sums' and must be listed in a separate schedule in your contract. BSA recommends that these be kept to an absolute minimum because they can lead to significant increases in the total price. Your contract should state when you have to pay the amounts. Before you pay for prime cost items or provisional sums, the contractor must give you copies of any invoices, receipts or other supporting documents which show the costs they have incurred. Check that the correct amount has been charged as per the invoices, receipts and the contract. If you are in doubt about what you have been asked to pay, seek formal legal advice and be sure not to pay for work that is yet to be done.

PART FIVE: WHERE TO GET MORE INFORMATION AND ADVICE

YOUR PERSONAL CONTACTS FOR GENERAL INFORMATION REGARDING YOUR BUILDING PROJECT:

CONTACT PERSON	NAME	PHONE	FAX	EMAIL
Contractor:				
Certifier:				
Local Government:				
Solicitor:				
Building Designer:				
Finance Institution:				
Insurance Company:				

FINALLY

Make sure you keep copies of all important papers in a safe place. Contact BSA if you have any difficulties in any of the matters discussed in this booklet. We have experienced customer service operators standing by to take your call.

BRISBANE
11 Edmondstone Street
South Brisbane QLD 4101
Facsimile 3225 2999
PMB 84 Coorparoo DC QLD 4151

CAIRNS
181 Aumuller Street
Westcourt QLD 4870
Facsimile 4031 6831
PO Box 211B Bungalow QLD 4870

GOLD COAST
Robina Super Centre
86 Robina Town Centre Drive
Robina QLD 4230
Facsimile 5575 7666
PO Box 3186 Robina Town Centre QLD 4230

MACKAY
25 River Street
Mackay QLD 4740
Facsimile 4953 4151
PO Box 1254 Mackay QLD 4740

ROCKHAMPTON
164 Berserker Street
Cnr Elphinstone Street
North Rockhampton QLD 4701
Facsimile 4926 1377
PO Box 6337
Central Qld Mail Centre QLD 4702

SUNSHINE COAST
Cnr Baden Powell Street
and Maroochydore Road
Maroochydore QLD 4558
Facsimile 5459 9655
PO Box 218 Maroochydore QLD 4558

TOOWOOMBA
Clestrain Mall
131A Herries Street
Toowoomba QLD 4350
Facsimile 4638 1917
PO Box 107 Toowoomba QLD 4350

TOWNSVILLE
287 Ross River Road
Aitkenvale QLD 4814
Facsimile 4725 3401
PO Box 140 Aitkenvale QLD 4814

TELEPHONE STATEWIDE
1300 BSA BSA

WEBSITE
www.bsa.qld.gov.au



www.bsa.qld.gov.au



BRISBANE

11 Edmondstone Street
South Brisbane QLD 4101
Facsimile 3225 2999
PMB 84 Coorparoo DC QLD 4151

GOLD COAST

Robina Super Centre
86 Robina Town Centre Drive
Robina QLD 4230
Facsimile 5575 7666
PO Box 3186 Robina Town Centre QLD
4230

SUNSHINE COAST

Cnr Baden Powell Street
and Maroochydore Road
Maroochydore QLD 4558
Facsimile 5459 9655
PO Box 218 Maroochydore QLD 4558

TOOWOOMBA

Clestrain Mall
131A Herries Street
Toowoomba QLD 4350
Facsimile 4638 1917
PO Box 107 Toowoomba QLD 4350

MACKAY

25 River Street
Mackay QLD 4740
Facsimile 4953 4151
PO Box 1254 Mackay QLD 4740

ROCKHAMPTON

164 Berserker Street
Cnr Ephinstone Street
North Rockhampton QLD 4701
Facsimile 4926 1377
PO Box 6337
Central Qld Mail Centre QLD 4702

TOWNSVILLE

AAMI Building
287 Ross River Road
Attervale QLD 4814
Facsimile 4725 3401
PO Box 140 Attervale QLD 4814

CAIRNS

181 Aumuller Street
Westcourt QLD 4870
Facsimile 4031 6831
PO Box 211B Burgalow QLD 4870

TELEPHONE STATEWIDE **1300 BSA BSA**

IMPORTANT!

The *Domestic Building Contracts Act 2000* requires **the contractor** to give copies of all contract documentation, completed and signed, to the **building owner** as soon as practicable (**but within 5 business days**) after the contract is entered into.

The contractor is requested to photocopy all forms used during the course of construction and give two (2) legible copies to the **building owner** (the second copy is for the owner's lender, if applicable).



EOT Claim No:

FORM 1

EXTENSION OF TIME CLAIM AND OWNER'S RESPONSE TO CLAIM (Condition 13 of the General Conditions of Major Works Contract)

To:
.....
[insert name and address of Owner]

Re: Construction at
.....
[insert site address]

The Contractor wishes to claim an extension of time of the Date for Practical Completion.

The cause of the delay in achieving Practical Completion is
.....
.....
[insert full description of cause of the delay]

The cause of the delay
[*] tick whichever is applicable

- [*] is not a cause of delay listed in Schedule Item 5.
- [*] is a cause of delay listed in Schedule Item 5, but the number of the days that the Contractor has actually been delayed is more than that stated in Schedule Item 5.

The delay arose on
[insert date]

The period of time that the Contractor wishes to claim an extension of the Date for Practical Completion is business days
[insert total number of business days]

Dated
[insert date]

Signed by the Contractor or the Contractor's Representative
[signature]

NOTE TO OWNER

If you agree with the Contractor's claim for an extension, then the Date for Practical Completion will be extended by the amount claimed above by the Contractor. You should indicate your agreement by returning this Form to the Contractor duly completed and signed. If you do not agree with all or part of the Contractor's claim for an extension of the Date for Practical Completion, you must give the Contractor this Form duly completed and signed or other written notice advising that you reject all or part of their claim. In the notice, you must give reasons for rejecting the claim. **You must give this Form or other written notice to the Contractor within seven (7) business days** of receiving this Form from the Contractor.

OWNER'S RESPONSE TO EXTENSION OF TIME CLAIM

EOT Response No:

[Tick whichever is applicable]

- The Owner **agrees** with your extension of time claim
- The Owner **rejects** your extension of time claim
- The Owner **rejects part** of your extension of time claim. The part of the claim rejected is.....business days
[insert number of business days claimed that are rejected]

The **reason/s for rejecting** all or part of the extension of claim is/are:(state reason/s)
.....
.....
.....
.....

Dated Signed by the Owner/Owner's Representative



FORM 2 PROGRESS CLAIM

(Condition 16 of the General Conditions of Major Works Contract)

Progress Claim No:

To:

[insert name and address of Owner]

Re: Construction at

[insert site address]

The Contractor certifies that the Works have reached the:

- Base Stage
- Enclosed Stage
- Practical Completion
- Frame Stage
- Fixing Stage
- Stage[*]

[insert description]

[*] [This box can only be ticked if other progress payment stages have been set out in Schedule Item 10.]

The Contractor claims payment for:

- the completion of the works to the stage indicated above in the amount of:
[insert amount in words and figures]
(\$)

Note: The percentage of the total price that can be claimed is set out at Item 10 of the Contract Schedule

- the following prime cost items in the following amounts: [*]Delete this section if this claim does not include prime cost items

- \$
 - \$
 - \$
- [insert description of prime cost item] [insert amount claimed]

Note: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any prime cost item

- the following provisional sums in the following amounts: [*]Delete this section if this claim does not include provisional sums

- \$
 - \$
 - \$
- [insert description of provisional sum item] [insert amount claimed]

Note: The Contractor must attach to this progress claim any invoice, receipt or other document showing the cost of any provisional sum

- the following variations:

- as set out in BSA Form 5 Variation Document dated / / \$
 - as set out in BSA Form 5 Variation Document dated / / \$
 - as set out in BSA Form 5 Variation Document dated / / \$
- [insert description of variation] [insert date of Variation Document] [insert amount of increase or decrease for Variation]

Total amount of this progress claim [add amounts at 1, 2, 3 and 4 and deduct any amounts at 4 for decreases] \$

Dated

Signed by the Contractor/Contractor's Representative

If this progress claim is for the Practical Completion Stage, the Contractor must attach a Defects Document in BSA Form 3.

Note to Owner: You must pay the amount claimed by the Contractor or any part of it with which you agree within five (5) business days of receipt of this progress claim. If you dispute all or part of the Contractor's progress claim, you must give the Contractor a BSA Form 4 or other written notice stating that you dispute all or a part of the progress claim. You must give the Contractor the BSA Form 4 or other written notice within five (5) business days of receiving this progress claim.



FORM 3 DEFECTS DOCUMENT

Defects Document No:

(Condition 16 of the General Conditions of Major Works Contract)

Identify below those defects which **are** agreed between the parties and those defects which **are not** agreed by the Contractor, then sign and date this form.

AGREED DEFECTS

The Owner/Owner's Representative and the Contractor/Contractor's Representative agree that the following minor defects or minor omissions exist at Practical Completion:

Item No.	Description of minor defect or minor omission	Date for rectification

DEFECTS CONTRACTOR DOES NOT AGREE WITH:

The Owner/Owner's Representative says that the following additional minor defects or minor omissions exist at Practical Completion:

Item No.	Description of minor defect or minor omission	Contractor to identify why they do not agree that there is a minor defect or minor omission

Dated:

Dated:

.....
Signed by the Owner/Owner's Representative

.....
Signed by the Contractor/Contractor's Representative

BID-MAJWKSFRM3-081206

When form completed, contractor to retain original and give two (2) legible copies to owner.



Dispute of Claim No:

FORM 4 NOTICE OF DISPUTE OF PROGRESS CLAIM

(Condition 16 of the General Conditions of Major Works Contract)

To:
.....
.....
[insert name and address of Contractor]

Re: Construction at
.....
.....
[insert site address]

[Tick whichever is applicable]

The Owner **rejects** your progress claim dated for the
[insert date]
..... Stage.
[insert description of stage]

The Owner **rejects part** of your progress claim dated..... for the
[insert date]
..... Stage.
[insert description of stage]

The part of the claim rejected is the claim for the payment of.....
[insert amount]

The **reason/s for rejecting** all or part of the progress claim is/are
[set out reasons]

.....
.....
.....
.....

Dated:

.....
Signed by the Owner/Owner's Representative

BID-MAJWKSFRM4-081206

When form completed, owner to retain two (2) legible copies and give original to contractor.



FORM 5 VARIATION DOCUMENT

(Condition 21 of the General Conditions of Major Works Contract)

Variation No:

This document is for a Variation:

- required by law
- for extra excavations and foundations
- requested by the Owner/Owner's Representative
- requested by the Contractor/Contractor's Representative (for the following reasons)

[Tick whichever is applicable]

.....
.....

The work to be varied is as follows:

[insert description of Variation including a description of any extra work or materials required by reason of the Variation]

.....
.....
.....
.....

The Contractor's/Contractor's Representative's reasonable estimate of the period of any delay that will result from the Variation isbusiness days.

Note to Contractor/Contractor's Representative: You must still submit a BSA Form 1 - Extension of Time Claim and Owner's Response to Claim, if the Variation causes you actual delay

The Variation will change the Price payable by the Owner as follows:

[Tick whichever is applicable]

- increase the price by \$.....
[insert amount]
- decrease the price by \$.....
[insert amount]
- increase/decrease* the price by an amount that will be calculated as follows.....
[*] delete whichever is not applicable

.....
[state how the amount of the increase or decrease will be worked out]

.....
.....

The increase or decrease in the price payable by the Owner will be taken into account in the Contractor's progress claim for the following stages:

[Tick whichever is applicable]

[Owner/Owner's Representative to initial nominated stage]

- Base Stage
- Frame Stage
- Enclosed Stage
- Fixing Stage
- Practical Completion
- Other Stage (give details).

.....
.....
.....

Dated:

Dated:

.....
Signed by the Owner/Owner's Representative

.....
Signed by the Contractor/Contractor's Representative

IMPORTANT!

The *Domestic Building Contracts Act 2000* requires **the contractor** to give copies of all contract documentation, completed and signed, to the **building owner** as soon as practicable (**but within 5 business days**) after the contract is entered into.

The contractor is requested to photocopy all pages of the completed Prime Cost Items Schedule and Provisional Sums Schedule and give two (2) legible copies to the **building owner** (the second copy is for the owner's lender, if applicable).

