

# CONSUMER BUILDING GUIDE

## **YOUR CONTRACTOR MUST GIVE YOU THIS GUIDE BEFORE YOU SIGN A CONTRACT PRICED AT OR OVER \$20,000**

This guide has been developed by the QBCC in accordance with Schedule 1B of the *Queensland Building and Construction Commission Act 1991* ('the Act') to assist home owners undertaking domestic building work with a contract price of \$20,000 or more. **NOTE:** Unless otherwise stated, section references in this guide (e.g. s33) refer to provisions in Schedule 1B of the Act.

### **QBCC LICENCE**

You should **only deal with a QBCC-licensed contractor**. If you engage an unlicensed contractor, your building work may not be covered under the Queensland Home Warranty Scheme. **Before committing, check the contractor's licence and history via the QBCC Online Licence Search or by calling the QBCC.**

### **WARNING – COST PLUS AND CONSTRUCTION MANAGEMENT CONTRACTS**

QBCC strongly recommends home owners obtain formal legal advice before signing either of these types of contracts which increase your legal risk, reduce your Home Warranty Scheme protection and often result in disputes and cost overruns.

### **CONTRACT PRICE (s2)**

For contracts priced at \$20,000 or more, the contract price, if fixed, must be shown prominently on the first page of the contract schedule. If the contract price is not fixed, the method for calculating it, including any allowances, must be stated in the contract schedule. Allowances (items or services for which the price is not fixed when the contract is signed) should be kept to a minimum as the final cost often exceeds the estimate in the contract. The contract must also contain a warning about any provisions that may alter the contract price. Refer to warning, page 1 of contract schedule.

### **COOLING-OFF PERIOD (ss35-39)**

You may withdraw from the contract within 5 business days after the day you receive copies of both the signed contract (including any plans and specifications) and this guide. However, there are costs for home owners in withdrawing (generally \$100 plus any out-of-pocket expenses reasonably incurred by the contractor up to the time of withdrawal). You must advise the contractor in writing that you are withdrawing under the cooling-off provisions in section 35 of Schedule 1B of the QBCC Act.

### **QLD HOME WARRANTY SCHEME**

Residential construction work valued at more than \$3,300 is covered by the Qld Home Warranty Scheme. The Scheme provides protection for home owners against non-completion, defective work and subsidence for up to 6 years from completion, provided a licensed contractor performs the work. The building contractor must collect the premium from the owner and pay it to the QBCC within 10 business days after the date the contract was entered into or before the contracted work is started (whichever is earlier). You should receive an email with a Notice of Cover and links to important information within 2 weeks of signing the contract.

### **DEPOSITS AND PROGRESS PAYMENTS (ss33,34)**

The maximum deposit allowed (before work starts on site) is:

- 10% where the total contract price is less than \$20,000
- 5% where the price is \$20,000 or more
- 20% for a contract of any price where the value of the work to be performed off-site is more than 50% of the contract price.

After the deposit is paid, owners and contractors are free to choose the number and timing of progress payments (if any) for their project, provided the amount claimed is directly related to work progress on site and proportionate to (or less than) the value of the work that relates to the claim (e.g. You should not pay 50% until at least half of the work is completed on site).

### **COMMENCEMENT NOTICE (s16)**

For contracts priced at \$20,000 or more, the contractor must give the owner a signed Commencement Notice within 10 business days of work commencing on site. The Notice must state the date work started on site and the Date for Practical Completion.

### **BUILDING APPROVALS AND INSPECTIONS (ss124A, 143A, 143B of the *Building Act 1975*)**

Building approvals and inspections are the responsibility of a building certifier who may be engaged by you or, more commonly, your builder. Mandatory building inspections may be required at certain stages of construction. If your contractor has engaged a building certifier for certain certification functions, you can ask the certifier (via a notice given to your contractor) to perform additional certifying functions which will be at your expense and must be carried out by the certifier within agreed timeframes.

The contractor must give you copies of any certificates of inspection as soon as practicable after they receive them from the certifier. You can also ask the certifier, by written notice, for copies of any inspection documentation and the certifier must provide the documents within 5 business days. You can check a certifier's licence via QBCC's OnLine Licence Search.

For more information on additional inspections, go to [www.business.qld.gov.au](http://www.business.qld.gov.au) search 'Form 18 Notice to owner' and read the Appendix to this form. .

### **VARIATIONS (ss40,41)**

Any change to the materials used or work to be performed under the contract is known as a 'variation'. Variations are frequently the cause of cost overruns and building disputes. **All variations must be agreed in writing by the home owner before the variation work commences** and any price increase due to the variation can not be required to be paid until the variation work is started.

### **DISPUTE PREVENTION**

To reduce the risk of a dispute, carefully check and be sure you understand the contract, including any plans and specifications, before signing. Discuss any questions with your contractor and seek independent legal advice if you still have concerns. Once construction starts, maintain regular communication and, where possible, site inspections with your contractor and pay promptly when required under the contract.

## DISPUTE RESOLUTION

If a dispute with your contractor occurs, firstly advise them in writing giving them a reasonable time to respond. If this doesn't resolve the problem, explore QBCC's free Early Dispute Resolution (EDR) service and your legal options. A QBCC letter advising the outcome of the QBCC dispute resolution process is required before you can commence a QCAT application. **QBCC recommends you obtain independent legal advice before terminating the contract.** **WARNING: Incorrect termination may have serious legal and financial consequences and reduce your protection under the Old Home Warranty Scheme.**

## EXTENSIONS OF TIME (EOTs) (s42)

The contract must state the Date for Practical Completion for your project, or how the date is to be determined (e.g. 180 days from commencement). The Act sets out circumstances in which a contractor may seek to extend this date (e.g. if you cause a delay, approve a variation to the contract which involves extra work, or the work is interrupted by more rain than could reasonably have been anticipated). The contractor must give you a written EOT claim which you should carefully consider (not unreasonably reject) and respond to promptly in writing. If you approve the claim, the Date for Practical Completion will be extended by the period claimed. If you do not approve the claim, the extension is deemed 'disputed'.

## LIQUIDATED DAMAGES (LDs)

LDs are contractual payments to compensate a home owner for extra costs/losses they are likely to incur (e.g. extra rental costs) if the contractor fails to complete the work within the time allowed for in the contract (after allowing for legitimate extensions of time). Carefully consider what, if any, LD amount is appropriate for your project and ensure it is recorded in the contract.

## PRACTICAL COMPLETION (PC) AND HANDOVER (See definitions of 'PC' & 'defects documents' - s1)

You are not required to pay the final contract payment until all of the contracted work has been completed in accordance with the contract including any plans and specifications, all legal requirements, and either without any defects or omissions, or with only minor defects or minor omissions that will not unreasonably affect occupation. If you believe there are any minor defects or minor omissions, the contractor must give you a 'defects document' (listing agreed and non-agreed matters). This document should be compiled by you and the contractor during a handover inspection. Check your contract to see if it imposes any extra requirements on the contractor for practical completion.

**WARNING: Strict timeframes apply for notifying QBCC about defects. For more information please refer to the Regulatory Guide on the following QBCC website address [qbcc.build/rectify-building-work](http://qbcc.build/rectify-building-work)**

## IMPLIED WARRANTIES (ss19-29)

Schedule IB of the Act sets out statutory warranties which are deemed to be part of all regulated domestic building contracts, even if not stated in the contract. The warranty period is 6 years from completion, termination or cessation of the work for breaches resulting in structural defects; 1 year for all other breaches. Legal proceedings for any breach must be started within the warranty period or a further 6 months if the breach becomes apparent within the last 6 months of the warranty period.

## FOR FURTHER INFORMATION

- Read the booklet, *'Domestic Building Contracts – General Information for owners and contractors'* on the QBCC website.
- Refer to the relevant legislation: Schedule 1B of the QBCC Act and ss124A, 143A and 143B of the *Building Act 1975*.

### QUICK CHECKLIST (Ensure you are able to tick all relevant boxes below before signing the contract)

- I have read and **checked all contract documents**, including the contract schedule, general conditions and special conditions (if any) and any plans and specifications. **(DO NOT SIGN THE CONTRACT before receiving these documents)**
- I have **checked the building contractor's licence** and licence history on the QBCC Online Licence Search
- I note and **understand my cooling-off rights** (including how and when I may withdraw from the contract if I choose to)
- I have **checked the total contract price** (including what proportion is comprised of allowances) and I **understand the deposit and progress payments** set out in the contract schedule and when they must be paid
- I have **checked the start and finish dates and practical completion requirements** in the contract
- (If applicable) I have **discussed my questions/concerns about the contract with a practising solicitor**

### OWNER'S ACKNOWLEDGEMENT

**Complete and sign the section below to acknowledge that you have received this guide from your building contractor. Once signed, the building contractor will return a copy of this guide to you. You should refer to it from time to time.**

NAME(S):

SIGNATURE(S):

DATE:

For further building information visit [qbcc.qld.gov.au](http://qbcc.qld.gov.au) or call QBCC on 139 333.