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MAJOR DOMESTIC CONTRACT

Suitable for Domestic Contracts \$5,000 and over

REF No: _____

DATE: _____

A. Owner's Details

Name/s: _____

Address: _____

Post Code: _____

Home Phone: _____ Work Phone: _____

Fax: _____ Mobile: _____

Are you a resident *Owner*? YES/NO (Delete one)

B. Contractor's Licence

Registration certificate No: _____ Expiry Date: _____

Category shown on licence: _____

C. Description of the Works (brief description)

Note: a full description including plans and specifications must be attached as a separate Schedule

D. Site details

Site Address: _____

Post Code: _____

Lot: _____ on RP/SP Number: _____

Owner's Initials

Contractor's Initials

E. Dates

Start date: _____ (Or intended start date if not known)

Completion Date: _____

Building Period (Days): _____ (if the completion date is not known)

If the start date is not known the intended start date is decided as follows:

The Building Period includes the following allowances for:

Calculable Delays: Inclement weather or the effects thereof: _____
Weekends, public holidays: _____
Rostered days off: _____
Other foreseeable breaks in the continuity of the Works: _____
Any other delays: _____

Incalculable Delays: The *Works* may be delayed due to the following reasons where the period of delay cannot be adequately estimated. (Reasons to include specific causes and general effects that the delay is likely to have on the carrying out of the *Works*)

Reasons: _____

F. Price

Price (Exc GST): \$ _____

GST: \$ _____

Price (Inc GST): \$ _____

This *Price* does not include the following costs payable to a third party:

| Excluded services or permit | Estimated cost |
|------------------------------|----------------|
| (a) gas | \$ |
| (b) electricity | \$ |
| (c) telephone | \$ |
| (d) water | \$ |
| (e) sewerage | \$ |
| (f) | \$ |
| (g) | \$ |
| (h) issue of planning permit | \$ |
| (i) issue of building permit | \$ |

G. Building Permit

Person responsible for obtaining permit: _____

Person liable for costs incurred in obtaining permit: _____

Number of Days to obtain permit from acceptance of this contract: _____

Owner's Initials

Contractor's Initials

Warning: Changes to the Price

The price of this contract is not fixed, but may be altered as a result of:

- the actual cost of prime cost items and work for which provisional sums have been specified exceeding the estimates set out in the contract
(Refer box I)
- withdrawal under the cooling off provisions
(Refer clause 2)
- variations including those required by the council/registered building surveyor
(Refer clause 3)
- cancellation
(Refer clause 16)

Ensure that you fully understand how the clauses dealing with these matters affect the contract price.

Warning to Building Owner as to Prime Cost Items

It is always better to get a fixed price for all the work. However, some fixtures and fittings may need to be selected after the contract is signed e.g. a stove, type of taps, etc. If these items are specified as prime cost items the Contractor will allow an amount in the contract price which should cover the expected cost of the item.

Note: If the actual cost is more than the amount allowed you will have to pay the extra amount. You may also have to pay the Contractor's margin in the extra amount. If this is intended, the margin should be specified, or cannot be claimed unless the building owner agrees in writing to such additional amount. If the prime cost is less than that allowed for in the contract, the difference should be deducted from the contract price.

H. Payment Schedule

| Type of Contract | % of Price | Stage | \$ (Exc GST) |
|-------------------------------|------------|---------------|--------------|
| Build to lock up stage | See below | Deposit | _____ |
| | 20% | Base Stage | _____ |
| | 25% | Frame Stage | _____ |
| | | Balance | _____ |
| Build to fixing stage | See below | Deposit | _____ |
| | 12% | Base Stage | _____ |
| | 18% | Frame Stage | _____ |
| | 40% | Lock-up Stage | _____ |
| | | Balance | _____ |
| Build all stages | See below | Deposit | _____ |
| | 10% | Base Stage | _____ |
| | 15% | Frame Stage | _____ |
| | 35% | Lock-up Stage | _____ |
| | 25% | Fixing Stage | _____ |
| | | Balance | _____ |

Owner's Initials

Contractor's Initials

Note: Where the *Price* is \$5,000 or more:

- (a) The deposit, by law, cannot exceed 10% if the *Price* is under \$20,000, or 5% if the *Price* is \$20,000 or more.
- (b) The Domestic Building Contracts Act 1995 generally prohibits the *Contractor* under a regulated contract from demanding or receiving an amount under that contract, other than a deposit, unless the amount is directly related to the progress of the subject *Works*. If the progress payments do not directly relate to the progress of the *Works* a reason must be given in a separate schedule in the following form: Name of stage, What this stage means, Percentage of total *Price*, \$ (exc GST).

ALTERNATIVE PAYMENT METHOD

WARNING TO OWNER—CHANGE OF LEGAL RIGHTS

Section 40 of the Domestic Building Contracts Act 1995 provides that a *Contractor* cannot charge more than a fixed percentage of the total *Price* at the completion of each stage of building a home. The Act also allows the parties to agree in writing to change the stages and the percentage of the *Price* to be paid at the completion of each stage. There are several ways in which a particular contract can vary from the normal, and it is in these exceptional cases that the law allows for these changes:

Examples include—

- where it is very expensive to prepare the land for building for example, where the site is steep or rocky;
- where the house is so large that it will take a long time to complete, and intermediate progress payments are therefore required;
- where exceptionally expensive finishes are required, meaning that the final stage will represent a much larger proportion of the whole *Price*;
- where an architect is engaged to independently assess the value of completed *Works* for progress payments.

You should not agree to progress payments that are different from those provided for in the Act unless your house is unusual in some way and you are SURE THAT DIFFERENT PROGRESS PAYMENTS ARE NECESSARY and you understand clearly why the change is needed in the case of your particular house.

If you have any doubts, you could contact either the Housing Industry Association, the Master Builders Association of Victoria, Consumer Affairs Victoria, or Royal Australian Institute of Architects.

I/we acknowledge that I/we have read the above warning before signing this contract

Owner: _____ Owner: _____

The parties agree —

- (i) that the progress payments fixed by section 40 of the **Domestic Building Contracts Act 1995** do not apply; and
- (ii) that instead the percentages of the contract price and amounts payable are as follows—

| Name of stage | If this stage is not the same as a stage defined in section 40(1) of the Domestic Building Contracts Act 1995 , what does this stage mean? | Percentage of total contract price | \$ |
|---------------|---|------------------------------------|----|
| | | | |

Owner's Initials

Contractor's Initials

The Contractor warrants that any *Provisional Sum* has been calculated with reasonable care and skill taking account of all the information reasonably available at the date the contract is made, including the nature and location of the building site.

| Detailed description of <i>Works</i> , item or sum | Estimated quantity | Estimated Rate | Allowance \$ | Contractor's charge (if nothing stated, 20%) |
|--|--------------------|----------------|--------------|--|
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Detail below all *Materials* to be supplied or *Works* to be undertaken by the *Owner* (Note: No warranties are given or implied by the *Contractor* in relation to any *Materials* or *Works* listed in this section. Any *Materials* supplied by the *Owner* must comply with clause 12.1(b))

[illegible]

In the event that the *Price* of the *Works* is \$12,000 or greater then the *Contractor* holds the following insurance as required under the Building Act 1993 and warrants that such insurance applies and is sufficient to the *Works* being carried out under this contract.

COOLING OFF PERIOD

Notice to the Building Owner:

You may end this contract within five clear business days after receipt by you of a signed copy of the contract by filling in the notice at the back of this contract and giving it to the *Contractor* in one of the following ways:

1. Personally
2. Leaving it at his/her address set out in this contract with a person who appears to be at least 16 years old
3. Sending it by pre-paid certified mail to the address set out in this contract
4. Sending it by facsimile to the facsimile number (if any) set out in this contract

L. Special Conditions Applicable To This Contract

(Specify if the provision of any services is included in the contract *Price*)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____
9. _____
10. _____

NOTES TO THIS CONTRACT

This Agreement is not suitable for use as a 'mixed contract' by reason of section 12 of the Domestic Building Contracts Act 1995. A 'mixed contract' is one that combines domestic building *Works* with other *Works*.

For the purposes of section 13 of the Domestic Building Contracts Act 1995 this contract is not a cost plus contract.

For the purposes of section 15 of the Domestic Building Contracts Act 1995 this contract does not include a cost escalation clause.

The *Contractor* is required to give the *Owner* a copy of any invoice or receipt relevant to any *Provisional Sum* item or *Prime Cost Item* as soon as practicable after the *Contractor* receives the invoice or receipt for such items under Section 23 of the Domestic Building Contracts Act 1995.

1. Definitions

- 1.1 "*Contractor*" shall mean B.J. & K.L. Sims Pty Ltd T/A Daylesford Builders its successors and assigns or any person acting on behalf of and with the authority of B.J. & K.L. Sims Pty Ltd T/A Daylesford Builders.
- 1.2 "*Owner*" shall mean the *Owner* or any person acting on behalf of and with the written authority of the *Owner*.
- 1.3 "*Work*" shall mean all *Works* (including the supply of *Materials*) undertaken by the *Contractor* and described in this contract and includes any advice or recommendations.
- 1.4 "*Materials*" shall mean *Materials* required to complete the *Works*.
- 1.5 "*Prime Cost Item*" shall mean an item that either has not been selected, or whose *Price* is not known, at the time this contract is entered into and for the cost of supply and delivery of which the *Contractor* must make a reasonable allowance in the contract.
- 1.6 "*Provisional Sum*" shall mean an estimate of the cost of carrying out particular *Works* under this contract for which the *Contractor*, after making all reasonable inquiries, cannot give a definite *Price* at the time this contract is entered into.

Owner's Initials

Contractor's Initials

- 1.7 "Price" shall mean the *Price* of the *Works* as agreed between the *Contractor* and the *Owner*.
1.8 Whenever the words and phrases defined above are used in this Agreement, they have the above definition.

2. Acceptance/Cooling off Period

- 2.1 Any instructions received by the *Contractor* from the *Owner* (including the acceptance of a Domestic Quotation) for the supply of *Works* and/or the *Owner's* acceptance of *Works* undertaken by the *Contractor* shall constitute acceptance of the terms and conditions contained herein subject to the *Owner* being able to terminate this contract (subject to clause 2.2) within five (5) business days following the later of;
(a) receipt from the *Contractor* of a signed copy of this agreement; or
(b) receipt from the *Contractor* of a copy of the appropriate contract information sheet.
- 2.2 To terminate this contract the *Owner* must complete a withdrawal notice within the timeframe specified in clause 2.1 above, and;
(a) give it to the *Contractor*; or
(b) leave it at the *Contractor's* address in this contract; or
(c) serve it on the *Contractor* in accordance with any provision in the contract providing for delivery of notices on the *Contractor* by the *Owner*; and
(d) pay to the *Contractor* the sum of \$100.00 plus any out-of-pocket expenses reasonably incurred by the *Contractor* before the date of withdrawal from this contract.
- 2.3 Where more than one *Owner* has entered into this agreement, the *Owners* shall be jointly and severally liable for all payments of the *Price*.
- 2.4 Subject to clauses 2.1 and 2.2 upon acceptance of this contract by the *Owner*, this contract is binding and can only be rescinded in accordance with this contract or with the written consent of the *Contractor*.
- 2.5 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.

3. Variations

- 3.1 In the event that the *Owner* requests a variation all such requests shall be made in writing. If the *Contractor* believes the variation will not require a variation to any permit and will not cause any delay, and will not add more than two percent (2%) to the *Price* then the *Contractor* may carry out the variation otherwise the *Contractor* will give the *Owner* a written variation document detailing the *Works*, the amended *Price*, the estimated time to undertake the variation, and the likely delay, if any, and require written acceptance by the *Owner* of the variation before commencing *Work* on the variation.
- 3.2 In the event that the *Contractor* requests a variation, the *Contractor* will, in writing;
(a) state the reason for the variation; and
(b) provide a full description of the variation; and
(c) state any effect the variation will have on the contract, including but not limited to, the *Price*, completion date and whether further permits or authorisations are required.
- 3.3 Other than for the events outlined in clause 3.4 the *Contractor* shall obtain written acceptance by the *Owner* of any variation submitted by the *Contractor* before commencing *Work* on the variation.
- 3.4 In the event of;
(a) unforeseeable problems with the site which are only revealed when undertaking the *Works* which the *Contractor* considers should be immediately rectified for the safe completion of the *Works*; or
(b) the *Contractor* being instructed to undertake extra *Works* by any person authorised by the Building Act 1993;
then the *Contractor* may carry out any *Works* needed to fix any such problem/s or carry out any such instructions. Any such additional *Works* necessary are to be treated as a variation. However if a *Price* is not agreed upon then the *Owner* will be charged at the *Contractor's* actual cost plus twenty percent (20%) for the *Works*.

4. Price And Payment

- 4.1 Time for payment for the *Works* shall be of the essence and will be stated on the invoice. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.2 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the *Owner* and the *Contractor*.
- 4.3 The *Price* shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the building contract schedule.

5. Delivery Of Works

- 5.1 Subject to clause 5.2 it is the *Contractor's* responsibility to do everything that it is reasonably possible for the *Contractor* to do to ensure that the *Works* start as soon as it is reasonably possible.
- 5.2 The *Works* commencement date will be put back and the building period extended by whatever time is reasonable in the event that the *Contractor* claims an extension of time (by giving the *Owner* written notice)

Owner's Initials

Contractor's Initials

where completion is delayed by an event beyond the *Contractor's* control, including but not limited to any failure by the *Owner* to:

- (a) make a selection; or
- (b) have the site ready for installation; or
- (c) notify the *Contractor* that the site is ready.

5.3 The *Works* shall be deemed to be completed when:

- (a) the *Works* carried out under this contract have been completed in accordance with the plans and specifications set out in this contract; and
- (b) the *Owner* is given either:
 - (i) a copy of the occupancy permit under the Building Act 1993, if the building permit for the *Works* requires the issue of an occupancy permit; or
 - (ii) in any other case, a copy of the certificate of final inspection.

5.4 The failure of the *Contractor* to deliver shall not entitle either party to treat this contract as repudiated.

5.5 The *Contractor* shall not be liable for any loss or damage whatever due to failure by the *Contractor* to deliver the *Works* (or any of them) promptly or at all, where due to circumstances beyond the control of the *Contractor*.

6. Owner's Responsibility

6.1 It is the intention of the *Contractor* and agreed by the *Owner* that;

- (a) any building/construction sites will comply with all Victorian occupational health and safety laws relating to building/construction sites and any other relevant safety standards or legislation; and
- (b) the *Contractor* is not responsible for the removal of rubbish from or clean up of the building/construction site/s. This is the responsibility of the *Owner* or the *Owner's* agent.
- (c) the Buyer shall ensure that the Seller has clear and free access to the work site at all times to enable them to undertake the works. The Seller shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of the Seller.

7. Risk

7.1 If the *Contractor* retains ownership of the *Materials* nonetheless, all risk for the *Materials* passes to the *Owner* on completion.

8. Underground Locations

8.1 Prior to the Seller commencing any work the Buyer must advise the Seller of the precise location of all underground services on the site and clearly mark the same. The underground mains & services the Buyer must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be on site.

8.2 Whilst the Seller will take all care to avoid damage to any underground services the Buyer agrees to indemnify the Seller in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 8.1.

9. Surplus Materials

9.1 Unless otherwise stated elsewhere in this contract;

- (a) only suitable new *Materials* will be used;
- (b) demolished *Materials* remain the *Owner's* property; and
- (c) *Materials* which the *Contractor* brings to the site which are surplus remain the property of the *Contractor*.

10. Foundations & Footings, Excavations

10.1 Whenever the *Owner* provides foundations data to the *Contractor*, the *Owner*:

- (a) warrants that the foundations data provided is accurate and correct; and
- (b) acknowledges that it is reasonable for the *Contractor* to rely on the foundations data provided and that the *Contractor* intends to rely on it for the purpose of carrying out the *Works*.

10.2 After entering into this contract the *Contractor* cannot seek from the *Owner* an amount of money already provided for in the original contract *Price* if the additional amount could reasonably have been ascertained had the *Contractor* obtained all the foundations data required under section 30 Domestic Building Contracts Act 1995.

10.3 The *Contractor* will be entitled to claim an amount of money not already provided for in the original contract *Price* if the need for the additional amount could not reasonably have been ascertained from the foundations data.

10.4 If the *Contractor* is entitled to any additional amounts which could not reasonably have been ascertained for excavations or footings under the contract or the Domestic Building Contracts Act 1995, the *Owner* will pay to the *Contractor*, in the *Contractor's* next progress claim, the agreed cost of the additional work or, if the cost is not agreed, the cost incurred by the *Contractor* plus fifteen percent 15% for the *Contractor's* margin.

Owner's Initials

10.5 In this clause, 'foundations data' has the same meaning as in section 30 Domestic Building Contracts Act 1995.

11. Title

- 11.1 It is the intention of the *Contractor* and agreed by the *Owner* that ownership of *Materials* shall not pass until:
- (a) the *Owner* has paid all amounts owing for the particular *Materials*, and
 - (b) the *Owner* has met all other obligations due by the *Owner* to the *Contractor* in respect of all contracts between the *Contractor* and the *Owner*.
- 11.2 Receipt by the *Contractor* of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the *Contractor's* ownership or rights in respect of *Materials* shall continue.
- 11.3 It is further agreed that:
- (a) where practicable the *Materials* shall be kept separate and identifiable until the *Contractor* shall have received payment and all other obligations of the *Owner* are met; and
 - (b) until such time as ownership of the *Materials* shall pass from the *Contractor* to the *Owner* the *Contractor* may give notice in writing to the *Owner* to return the *Materials* or any of them to the *Contractor*. Upon such notice the rights of the *Owner* to obtain ownership or any other interest in the *Materials* shall cease; and
 - (c) the *Contractor* shall have the right of stopping the *Materials* in transit whether or not delivery has been made; and
 - (d) if the *Owner* fails to return the *Materials* to the *Contractor* then the *Contractor* or the *Contractor's* agent may enter upon and into land and premises owned, occupied or used by the *Owner*, or any premises as the invitee of the *Owner*, where the *Materials* are situated and take possession of the *Materials*.

12. Warranty

- 12.1 To the extent required by the Domestic Building Contracts Act 1995, the *Contractor* warrants that:
- (a) the *Works* shall be carried out in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract schedule;
 - (b) all *Materials* supplied be good and, having regard to the relevant criteria, suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those *Materials* will be new;
 - (c) the *Works* will be carried out in accordance with, and comply with, all relevant laws and legal requirements (including, but not limited to, the Building Act 1993 and regulations under that Act);
 - (d) the *Works* will be carried out with reasonable skill and care and will be completed by the date specified in Section E above;
 - (e) the *Works* will be carried out in accordance with the plans and the specifications to this contract;
 - (f) if the *Works* consist of the erection or construction of a home, or is work intended to renovate, alter, extend, improve or repair a home to a stage suitable for occupation, the home will be suitable for occupation at the time the work is completed; and
 - (g) if the contract states the particular purpose for which the *Works* are required, or the result which the *Owner* wishes the *Works* to achieve (so as to show that the *Owner* relies on the *Contractor's* skill and judgement) then the *Works* and any *Materials* will be reasonably fit for that purpose or will be of such a nature and quality that they might reasonably be expected to achieve that result.
- 12.2 For *Materials* not manufactured by the *Contractor* the warranty shall be the current warranty provided by the manufacturer of the *Materials*. The *Contractor* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturers warranty.

13. The Commonwealth Trade Practices Act 1974, Domestic Building Contracts Act 1995, Building Act 1993, and Fair Trading Acts

- 13.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act 1974, Domestic Building Contracts Act 1995, Building Act 1993, or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

14. Intellectual Property

- 14.1 Where the *Contractor* has designed, drawn or written plans or a schedule of *Works* for the *Owner*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Contractor*, and shall only be used by the *Owner* at the *Contractor's* discretion.
- 14.2 The *Owner* warrants that all designs or instructions to the *Contractor* will not cause the *Contractor* to infringe any patent, registered design or trademark in the execution of the *Owner's* order.

Owner's Initials

Contractor's Initials

15. Default & Consequences of Default

- 15.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the *Owner's* payment is dishonoured for any reason the *Owner* shall be liable for any dishonour fees incurred by the *Contractor*.
- 15.3 If the *Owner* defaults in payment of any invoice when due, the *Owner* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in pursuing the debt including legal costs on a solicitor and own client basis and the *Contractor's* collection agency costs.
- 15.4 Without prejudice to any other remedies the *Contractor* may have, if at any time the *Owner* is in breach of any obligation (including those relating to payment) the *Contractor* may suspend or terminate the supply of *Works* to the *Owner*. The *Contractor* will not be liable to the *Owner* for any loss or damage the *Owner* suffers because the *Contractor* exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to the *Contractor's* other remedies at law the *Contractor* shall be entitled to cancel all or any part of any order of the *Owner* which remains unperformed and all amounts owing to the *Contractor* shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the *Contractor* becomes overdue, or in the *Contractor's* opinion the *Owner* will be unable to meet its payments as they fall due; or
 - (b) the *Owner* becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the *Owner* or any asset of the *Owner*.

16. Cancellation

- 16.1 Subject to clauses 16.2 to 16.4 the *Owner* may cancel this contract if;
- (a) either,
 - (i) the *Price* rises by fifteen (15) percent or more after the contract was entered into; or
 - (ii) the contract has not been completed within 1½ times the period it was to have been completed by; and
 - (b) the reason for the increased time or cost was something that could not have been reasonably foreseen by the *Contractor* on the date the contract was made.
- 16.2 For the purposes of clause 16.1 any increased time or cost that arises as a result of a *Prime Cost Item* or a *Provisional Sum* or that is caused by a variation is to be ignored in calculating any *Price* rise or increase in time.
- 16.3 To end the contract, the *Owner* must give the *Contractor* a signed notice stating that the *Owner* is ending the contract under this clause and giving the details of why the contract is being ended.
- 16.4 If the contract is ended under this clause, the *Contractor* is entitled to a reasonable *Price* for any *Works* already carried out plus any other costs incurred by the *Contractor* as a result of, or prior to, the termination of the contract. However, the *Contractor* may not recover more than the *Contractor* would have been entitled to recover under the contract.

17. Privacy Act 1988

- 17.1 The *Owner* agrees for the *Contractor* to obtain from a credit reporting agency a credit report containing personal credit information about the *Owner* in relation to credit provided by the *Contractor*.
- 17.2 The *Owner* agrees that the *Contractor* may exchange information about the *Owner* with those credit providers either named as trade referees by the *Owner* or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the *Owner*; and/or
 - (b) to notify other credit providers of a default by the *Owner*; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the *Owner* is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of the *Owner*.
- 17.3 The *Owner* consents to the *Contractor* being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The *Owner* agrees that personal credit information provided may be used and retained by the *Contractor* for the following purposes and for other purposes as shall be agreed between the *Owner* and *Contractor* or required by law from time to time:
- (a) provision of *Works*; and/or
 - (b) marketing of *Works* by the *Contractor*, its agents or distributors in relation to the *Works*; and/or

Owner's Initials

Contractor's Initials

- (c) analysing, verifying and/or checking the *Owner's* credit, payment and/or status in relation to provision of *Works*; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by *Owner*, and/or
 - (e) enabling the daily operation of *Owner's* account and/or the collection of amounts outstanding in the *Owner's* account in relation to the *Works*.
- 17.5 The *Contractor* may give information about the *Owner* to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the *Owner*; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the *Owner*.

18. General

- 18.1 If any provision of this contract shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 18.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 18.3 The *Contractor* shall be under no liability whatever to the *Owner* for any indirect loss and/or expense (including loss of profit) suffered by the *Owner* arising out of a breach by the *Contractor* of this contract.
- 18.4 In the event of any breach of this contract by the *Contractor* the remedies of the *Owner* shall be limited to damages. Under no circumstances shall the liability of the *Contractor* exceed the *Price* of the *Works*.
- 18.5 The *Owner* shall not be entitled to set off against or deduct from the *Price* any sums owed or claimed to be owed to the *Owner* by the *Contractor*.
- 18.6 The *Contractor* may license or sub-contract all or any part of its rights and obligations without the *Owner's* consent. The *Owner* agrees and understands that they have no authority to give any instruction to any of the *Contractor's* sub-contractors without the authority of the *Contractor*.
- 18.7 The *Contractor* reserves the right to review this contract at any time. If, following any such review, there is to be any change to this contract, then that change will take effect from the date on which the *Contractor* notifies the *Owner* of such change and the *Owner* accepts such change.
- 18.8 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of either party.
- 18.9 The failure by the *Contractor* to enforce any provision of this contract shall not be treated as a waiver of that provision, nor shall it affect the *Contractor's* right to subsequently enforce that provision.
- 18.10 This contract, the plans and specifications have precedence in that order if there is any inconsistency between them.

I/we certify that the above information is true and correct and that I/we have received, read and understand this a copy of this MAJOR DOMESTIC CONTRACT. I authorise the use of my personal information as detailed in the Privacy Act clause above.

Owner/s

Signed: _____ Date: _____

Signed: _____ Date: _____

Contractor

Signed: _____ Date: _____

Owner's Initials

Contractor's Initials

CHECKLIST

BEFORE SIGNING THIS LEGALLY BINDING CONTRACT CHECK THIS LIST

- Has an insurance policy or certificate of currency for *Contractor's* insurance been issued and provided to you? If not, the contract is conditional upon you receiving either an insurance policy or a certificate of currency for *Contractor's* insurance. YES/NO
- If this contract is conditional upon the Building *Owner* receiving written approval for finance, has the Building *Owner* received such approval? YES/NO

If you answer 'NO' to any of the following questions you are not ready to sign the contract:

- Has the Building *Owner* had this contract long enough to read and understand it? YES/NO
- Has the Building *Owner* been provided with evidence that the *Contractor* named in this contract is registered with the Building Practitioners Board? YES/NO
- Are the price and progress payments clearly stated? YES/NO
- Does the Building *Owner* understand how the price is calculated and may be varied? YES/NO
- Has the *Contractor* assessed the suitability of the site for the proposed works and if tests are necessary have they been carried out before signing the contract? YES/NO
- If a Deposit is payable, is it within the legal limit?
The maximum under the **Domestic Building Contracts Act 1995** is: YES/NO
 - (i) 10% if the Price is less than \$20,000; or
 - (ii) 5% if the Price is \$20,000 or more.
- Is the work shown and described clearly in the contract, plans or specifications and any other relevant documents such as engineering computations or soil report? YES/NO
- Are the Building *Owner's* special requirements or finishes included in the plans or specifications? YES/NO
- Are the commencement date and completion date clearly stated or capable of being ascertained. YES/NO
- Is the procedure of extensions of time understood? YES/NO
- Are any 'provisional sums' or 'prime cost items' clearly stated in the schedules and understood? YES/NO
- Is the procedure for variations of plans or specifications understood? YES/NO
- Do you understand the circumstances in which you can end this contract? YES/NO

NOTE: This checklist does not form part of the contract.

Read, signed and dated by the Building Owner

_____ Date _____

Owner's Initials

Contractor's Initials

NOTICE THAT CONTRACT IS ENDED

A **Building Owner** cannot withdraw from a contract under the Act if:

1. The **Contractor** and the **Building Owner** have previously entered into a **major domestic building contract** that is in substantially the same terms for carrying out the work in relation to the same home or land;
or
2. The **Building Owner** received independent legal advice from a practicing solicitor concerning the contract before entering into the contract.

To _____ (Contractor)

I/We _____ give notice under our contract with you that the contract is ended. Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I have previously approved.

Signed: _____
Building Owner

Date _____

Owner's Initials

Contractor's Initials