



Contract for Certification Work Terms & Conditions

Modern Certification

PART 1. INTRODUCTION

- 1.1 The Certifier is a registered certifier and is authorised to carry out the certification work which is the subject of this Agreement.
- 1.2 The Client seeks to engage the Certifier to perform certification work on the terms set out in this Agreement.

PART 2. INTERPRETATION

- 2.1 Words and terms used in this Agreement are defined in Part 13 Definitions.

PART 3. PARTIES

- 3.1 The Certifier is Ripp Stewart BDC2292.
- 3.2 The Client is detailed on page 2 of the Fee & Service proposal provided by Modern Certification Pty Ltd and/or on the Statement of Consent.

PART 4. ERECTION OF CONTRACT

- 4.1 This contract supersedes and overrides any other documents or oral representations upon which the parties may seek to rely to generate any legal effect or to imply any contractual obligation.

PART 5. INSURANCE

- 5.1 The RC/PC shall maintain an insurance policy in accordance with the Building and Development Certifiers Act 2018 and shall provide a copy of that policy to the Client upon request.
- 5.2 The extent of any claim or otherwise against the policy held by the RC or PC or against the RC or PC in any way shall be limited to five times (5x) the value of the service fee paid to the RC or PC for the services provided and no more.

PART 6. OBLIGATION OF THE CERTIFIER

- 6.1 Issuing of Construction Certificates or Complying Development Certificates
- 6.2 The RC shall issue a Construction Certificate or Complying Development Certificate and endorse plans, specifications and other documentation used to determine the application:
 - a) Once the Client pays the RC any money owed for work associated with the issuing of a Construction Certificate or Complying Development Certificate.
 - b) The design and construction of the Building complies with the Development Consent and the Regulations or any prescribed complying development criteria by either the State Government or Local Council.
 - c) The designs comply with the NCC.
- 6.3 The RC shall provide the Council with a Notice of Determination within 2 days of the determination.
- 6.4 When the RC issues a Construction Certificate or Complying Development Certificate, the RC may issue as many Certificates or statements from any Certifying Authority or any other party that the PC considers necessary in addition to those nominated in the Inspection Schedule.
- 6.5 The PC shall carry out as many inspections as the PC considers necessary in addition to those nominated in the Inspection Schedule.
- 6.6 The PC shall issue an Occupation Certificate for the Building Works when the PC is satisfied that:
 - a) A Development Consent has been complied with or a Complying Development Certificate is in force for the Building Works, and
 - b) The Building Works are suitable for occupation or use in accordance with their classification under the NCC, and
 - c) The Building does not pose any danger to the occupants in the case of an Interim Occupation Certificate.
- 6.7 The RC/PC shall maintain an insurance policy in accordance with the Building and Development Certifiers Act 2018 and shall provide a copy of that policy to the Client upon request.

PART 7. OBLIGATION OF THE CLIENT

The client shall:-

- 7.1 Not engage any other PC after the PC appointed pursuant to this contract has been engaged. Breach of this condition will entitle the PC to recover any losses or costs of whatsoever nature that flow from such breach.
- 7.2 Apply for a Construction Certificate, Complying Development Certificate or Occupation Certificate through the NSW Planning Portal.
- 7.3 The set fees and charges for the determination of a development certificate must be paid to the Certifier before, or at the time, an application for the development certificate is lodged with the Certifier.
- 7.4 The set fees and charges for the carrying out the functions of the PC must be paid to the Certifier before, or at the time of PC appointment. Ensure that the site is available for the PC to carry out its contractual obligations.
- 7.5 Use Competent People for all aspects of the Building Works.
- 7.6 Provide the PC with evidence of Home Building Compensation Fund insurance or Owner Builder Permit (if applicable) not less than 48 hours prior to the commencement of the Building Work.
- 7.7 Provide all relevant drawings, plans, statutory plans and documentation associated with but not limited to the Development Consent, the Construction Certificate or Complying Development Certificate and any Occupation Certificate at the request of the PC.
- 7.8 Attend any meetings if required by the PC to do so.
- 7.9 Comply with any Written Direction Notices that the PC issues.
- 7.10 Provide Compliance Certificates as requested by the PC.
- 7.11 Provide all information that the client reasonably can obtain to enable the PC to fulfill its contractual obligations.
- 7.12 Provide the PC with the date of practicable completion.
- 7.13 Act in good faith, in accordance with the Act and in a cooperative fashion.

PART 8. CONTRACTUAL VARIATIONS

- 8.1 If the Building Works do not commence within 60 days from the date of the execution of this contract; or
- 8.2 If any Competent Person used by the Client in respect of the Building Works causes a delay in the progress of the Building Works for more than 21 days; or
- 8.3 If any part of the Building Works are redesigned by the Client or the client's representative; or
- 8.4 If any part of the Building is designed pursuant to a Deemed To Satisfy Provision and is subsequently changed by way of an Performance Solution; or
- 8.5 If additional Construction Certificates or Complying Development Certificates are required to be issued by the PC other than those listed in the Schedule (which shall be determined by the PC); or

- 8.6 If an amendment to the Act, the NCC or any other law that requires any aspect of the Building Works or the PC's work to be varied; or
- 8.7 If the PC is required to undertake more inspections than those listed in the Inspection Schedule; or
- 8.8 If the Client does anything that causes a delay to the Building Works or does anything that delays the ability of the PC to carry out its obligations under this contract; or
- 8.9 If any written directions notice is issued by the PC, then the PC may:
 - a) Vary this contract to the extent that the PC will be able to carry out its contractual obligations; and
 - b) Increase the contract price, such increase to be made by way of Notice to the Client stating the reason/s for the increase and the amount of the increase.
- 8.10 The variation will permit the PC to claim all costs associated with that delay as reasonably determined by the PC.
- 8.11 Notice must be given to the Client in writing when the PC becomes aware that a variation or unforeseen contingencies within 21 days after the completion of that work.

PART 9. CONTRACTUAL TERMINATION

- 9.1 If the Client fails to pay any money owing to the PC after 7 days of that money becoming payable; or
- 9.2 If the Client has an execution levied against it, assigns or attempts to assign its estate for the benefit of its creditors, intends to or attempts to or makes a composition or Scheme of Arrangement with creditors, has a winding up order made against it, intends to or attempts to pass a resolution for winding up, goes into liquidation, has an Official Manager or Receiver appointed, has a Mortgagee taking possession of any part of its property, has an Administrator or a Provisional Liquidator appointed, becomes insolvent or bankrupt; or
- 9.3 If the Client breaches the contract in any respect; or
- 9.4 If the Construction Certificate or Complying Development Certificate is not capable of being issued 6 months from the date of execution of this contract; or
- 9.5 If the Building Works do not commence within 60 days from the date the Construction Certificate or Complying Development Certificate was issued; or
- 9.6 If the Client does not permit the private certifier to issue the Occupation Certificate within 60 days from the date of practicable completion; or
- 9.7 If the Building Works have commenced without the issuing of a Construction Certificate or Complying Development Certificate, then:-
- 9.8 The PC may terminate this contract by sending a written Notice of Termination, stating the breach/s, to the Client. Termination will take effect as soon as the client receives the Notice of Termination.
- 9.9 If the PC terminates the contract, then the PC is entitled to payment of Termination Money.
- 9.10 Unless the Client disputes the Notice of Termination, the Client must pay all Termination Money to the PC within 14 days of receiving a Notice of Termination.
- 9.11 If the PC terminates the contract, the PC is entitled to carry out a final termination.
- 9.12 As from the date of final inspection, the Client must indemnify the PC for any liabilities, including but not limited to professional liability and public liability, of whatsoever nature that emanate from:
 - a) The need to terminate this contract or the Building Contract;
 - b) Any matters of non-compliance with the Act on the part of the Client or any other contractors.

PART 10. DISPUTE RESOLUTION

- 10.1 Any dispute of whatever nature to do with this contract must be referred to mediation.
- 10.2 If either party believes there is a dispute under this contract it must give Notice of the dispute to the other party.
- 10.3 The mediator must be appointed by the AIBS.
- 10.4 The mediation will be invoked by either party serving Notice on the AIBS and the other party within 7 days of a party being notified of a dispute.
- 10.5 Both parties must attend the mediation and must co-operate with the mediator and each other and shall give the mediator whatever the mediator requests.
- 10.6 If the mediator resolves the dispute, the resolution must be evidenced by a written agreement that is signed by the mediator and the parties.
- 10.7 If the mediation fails, then either party may take action to resolve the dispute in a court of competent jurisdiction.
- 10.8 Both parties will remunerate the mediator on a 50 / 50 % basis, regardless of any alleged fault and regardless of the outcome.
- 10.9 The AIBS may request mediation funds to be placed into an AIBS trust account before the mediation commences and may request payment of additional moneys from time to time until the mediation is concluded.

PART 11. MISCELLANEOUS

- 11. Occupation Certificates
- 11.1 An Occupation Certificate must be applied for, and issued, within two years of the date of the construction approval. Failure to comply with this requirement shall entitle the PC to terminate the contract, or to charge additional fees for any inspections, including the Final inspection and issue of any Occupation Certificate.
- 11.2 If, for whatever reason, an Occupation Certificate is not issued whether it be on account of the insolvency of the Client, the disappearance of the Client or the termination of the Contract, the PC's responsibilities under the Contract cease forthwith. With respect to any liabilities that may be occasioned under Part 6 of the Act, the PC will be able to give evidence that no action can be brought 10 years after the date upon which the act that evidenced the ending of the Contract occurred.
- 11.3 Upon an application being made for a construction certificate or complying development certificate, the Applicant (not being entitled to copyright) is taken to have indemnified all persons using the application and any accompanying documents in accordance with the Act against any claim or action in respect of breach of copyright.

PART 12. ADDRESS FOR NOTICES

- 12.1 Where any Notice is to be forwarded to the client, the address for such Notice shall be the address stated in the Application for a Construction Certificate or Complying Development Certificate, or to any other address that is notified in writing by the Client to the PC.

PART 13. DEFINITIONS

Registered Certifier (RC) means the holder of a certificate of registration as a registered certifier under the Building and Development Certifiers Act

The Act means the Environmental Planning and Assessment Act 1979 (NSW). All amendments and references to the Act also mean amendment and references to the Regulations.

AIBS means the New South Wales Chapter of the Australian Institute of Building Surveyors.

Performance Solution has the same meaning as the term in the National Construction Code

Applicable environmental planning instrument means the State Environmental Planning Policy, or the Local Environmental Plan nominated by the Client as the instrument against which an application for a complying development certificate is to be assessed.

BASIX means the Building Sustainability Index

NCC means the National Construction Code.

B&DC Act means the Building & Development Certifiers Act 2018

Certification work means:

- a) the determining of an application for a development certificate.
- b) the issue of a development certificate.
- c) carrying out the functions of a PC.
- d) carrying out of inspections for the purposes of section 6.5 of the EP&A Act.
- e) carrying out inspections under section 22 Swimming Pools Act 1992 and issuing certificates of compliance under that Act

Complying Development Certificate means a Complying Development Certificate within the meaning of the Act.

Contractor license means a license issued under the Home Building Act 1989.

EP&A Act means the Environmental Planning and Assessment Act 1979 EP&A

Inspection Schedule means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.

Written Directions Notice includes any notice issued under the Act or this contract.

Occupation Certificate means an Occupation Certificate within the meaning of the Act.

Owner-builder permit has the meaning given to it by the Home Building Act 1989

Principal Certifier (PC) means a principal certifier appointed under section 6.6 of the EP&A Act

Building Contract means the contract to construct the Building Works that the client enters into with the builder.

Building Works means the building works for which a Construction Certificate / Complying Development Certificate is to be issued in accordance with this contract and is referred to in the Address of the Building Works and the Title Particulars of the site.

Certificates mean statutory certificates and non-statutory certificates.

Certifying Authority means a Certifying Authority within the meaning of the Act.

Client means the owner or the owner's agent.

Construction Certificate means a Construction Certificate within the meaning of the Act.

Development Consent means a Development Consent within the meaning of the Act.

Inspection Schedule means the Inspection Schedule provided in the Notice of Inspections within the meaning of the Act.

Practical Completion means the date the builder has completed the Building Works in accordance with the Building Contract.

Regulations means the Environmental Planning and Assessment Regulation 2021 or Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

Residential building work has the meaning given to it by the Home Building Act 1989

Termination Money means the money owing to the PC if the PC terminates the contract in accordance with this contract, being money for work done (with interest if applicable) and for cost incurred (with interest if applicable) and any money that the Client would have been bound to pay to the PC if the contract had been totally completed.

End of Terms and Conditions