



Passive House Brisbane

ECBDD Pty Ltd t/as Passive House (PassivHaus) Brisbane & East Coast Building Design & Drafting



Document last updated January, 2024.

This is a blanked out version of our contract, which is adapted from the standard industry BDAQ contract. It is a two way contract to protect the designer and the client equally. In the spirit of full transparency, we offer up this contract in blank form on our website so that potential clients can be sure they will be happy signing this contract in advance. Any help, concerns or comments will be gratefully received, especially if it helps you feel comfortable.

Items shown in GREEN are notes - items in BLACK/RED are the contract

CONTRACT DOCUMENT EXPLANATION

Welcome to East Coast Building Design / Passive House Brisbane. It is our sincere wish to make your design and drafting experience as quick and painless as possible. The attached documents will explain clearly what we do, what is included and what is expected from you as the most important stake holder to ensure your projects comes out right.

The contract clearly spells out what happens if we default on our obligations, or if there are changes that fall outside of the original defined scope of works. We cannot rip you off and if we don't do what you ask, then you have the right to demand an immediate remedy, which we promise to carry out diligently.

Please take the time to review our "Five Way Guarantees" downloadable from our website.

<http://eastcoastbuildingdesign.com.au/guarantees/>

Why we have a contract:

It is a legal requirement within Australia to have a written "Contract" or "Agreement" for all building work, including building design work. A verbal or partial agreement can leave you unprotected or with no way to prove your case should your designer inadvertently make a mistake or give you wrong or incomplete advice.

Our Professional Indemnity insurers require us to have an approved contract. The attached "Contract of Engagement" and associated "Schedules" is a combination of the mandatory content from the Building Designers Assoc of Qld standard contract and other information often found in a client's project brief.

The contract protects both the Designer and the Client in the event of a failure or problem, and ensures access to Professional Indemnity Insurance where there is a clear breach of the brief or agreement.

PI insurance is essential to protect both the designer & the client. "We are only human"!

What to do with the contract:

1. Read it through and ask questions if you are not sure.

We will happily explain it to you if you need help or just want to be sure of what you're signing.

If you need an extra meeting to go through the fine details, we are only too happy to come out.

2. Fill in any blanks on the first page that are relevant.

3. Sign the first page of the contract, scan / photo, and email or sms it back to us.

By signing the whole contract, you are NOT agreeing to the full scope of works. You still have the ability to vary the scope or opt out, by sending written notification – refer clauses 3.2 and 9.3.

**This contract is a living document, so all feedback will be gratefully received.
Our number one wish is that you are happy and comfortable to move forward.**

Thanking You,

Owen Batchelor (Principal Building Designer).



CLIENT AND DESIGNER AGREEMENT



DETAILS & SCHEDULE 1

THIS AGREEMENT is deemed to be made on the date signed documents are received by the Designer.

BETWEEN:

The "Designer":

Name: **ECBDD Pty Ltd T/as
East Coast Building Design & Drafting
And Passive House Brisbane**

Address: **198 Clear Mountain Rd.
Clear Mountain, Qld, 4500.**

ABN: **86 101 135 077**

QBCC Lic. No: **1010190**

License Class: **Building Design – Open Class.**

Phone: **0408 751 755 (Owen)**

Mobile **0408 751 755 (Owen)**

AND:

The "Client":

Name:

Address

Mail Address

ABN:

Contact Person

Client Phone

Mobile

Email

Email

Referred by

Name of Owner

(If different from client)

Address of owner

Phone no. of owner

Builder's Details (if known):

Name

Address

Phone

The Client is:

(Please check appropriate box/s)

- An owner of a property where the Project will take place**
- A nominated representative of the owner of the property or a lessee**
- A building contractor**
- Other.....**

List of Included Schedules:

- **Schedule 1 – General project details**
- **Schedule 2 – Scope of Works**
- **Schedule 3 – Fee Proposal**
- **Schedule 4 – Consultants & Other Info**

Optional schedules:

- **Schedule 5 – Variations may be required during the period of this contract.**
- **Schedule 6 – Company Guarantor/s**

SCHEDULE 1:

PROJECT DETAILS:

Project Address **insert**.....

Local Govt. **Brisbane City Council**.....

General Description **addits to residence**.....

Project Budget **\$ refer Schedule 2**

Name on Plans **(Client – unless noted otherwise)**.....

SUMMARY OF APPROX. FEES FROM SCHEDULE 3:

Design & Drafting (Sketch / DA stage)	\$
Development Assessment (if req'd)	\$
Consultants (prelim stage)	\$
Design & Drafting (BA stage)	\$
Consultants (BA stage)	\$

(please refer to schedule 3 for full breakdown)

By executing this Agreement the Client and Designer agree to be bound by the Agreement which incorporates the Terms and Conditions (three pages) and all Schedules attached to this Agreement (listed above).

SIGNED by the Client:

Print Name

Signature:

Date:

SIGNED by the Designer:

Print Name **Owen Batchelor for ECBDD Pty Ltd**

Signature:

Date: **01 January 2024**.....

**CLIENT TO FILL IN ALL RELEVANT BLANKS ON THIS PAGE
PLEASE SEND BACK THIS PAGE, SIGNED WHERE INDICATED**



Passive House Brisbane

ECBDD Pty Ltd t/as Passive House (PassivHaus) Brisbane & East Coast Building Design & Drafting



SCOPE OF WORK

Issue Date.

Name of Client

Project Address

General Description:

General:

Desired Use

Details of Occupants / users

Special Site features

Local climate issues

Client Expectations:

Space requirements

Budget requirements

Building style requirements

Material preferences

Fittings & Fixtures

Access Requirements **Yes / No disabled access required**
(adaptable housing principals may be reasonably easy to incorporate if required)
(liveable housing standards will be included as required by NCC – BCA 2022)

Scope of Work:

Design and documentation:

- Provide design guidance, plans and construction drawings for the following client scope of works:
- Full brief yet to be established - the following is the clients wish list:
- *Here I insert a reasonable list of the items that will be included in the drawings or design, and if possible, nominate the extent of the detail complexity of these items to ensure that there is a clear understanding of the brief for the project. This helps justify extras later and disputes if there are any during the project.*
- *Any notes about the brief can be included here as well.*
- *This section can become the brief if the client has provided enough information about what they want and expect from the completed project, however in most cases, the brief is not set in stone prior to commencement and often is negotiated out through the initial design phases. Whether the prices listed in Schedule 3 can be considered as a FIXED PRICE depends on the detail here and whether the scope changes or creeps.*
- These items are not part of the scope of works unless specifically included above:
 - Detailed design of Pool, landscaping, retaining, fences etc.
 - Wet area elevations and detailing or other interior design works.
 - Driveways, paths, fences, gates, etc. (apart from required information)
- Please note that this is not a proper brief, but is a guide established from a meeting or phone conversation.
- As the brief becomes fully known, the parameters of the work may change, and the scope of works may change.
- The fees quoted are based on the premise that the early sketch process will establish the design outcome, and that the outcome will be no more complex than scope of works listed above.

- The design shall conform to planning scheme constraints where reasonable and possible. Any non-compliance shall be discussed with the client during the initial design process, where reasonably known.

Prepare and manage applications:

- Refer to the description under stage two below for planning related advice.
- Refer to stage two for optional town planning services.
- Required application for building work assessable against planning scheme.
- Required boundary setback variation applications assessable against QDC.
- Coordinate Building Approvals, engineers, and associated consultants, where required, including electronic lodgement of documents for building permits. Refer advice section for further clarification on service inclusions.
- Assist client with project requirements, and advise only where appropriate.
- This firm generally does not get involved with full contract administration, project management, and we generally will not get involved with conditions of development approval unless specifically instructed.
- Limited builder introduction and liaison services are available with selected builders in the Brisbane region only.

Property Details



Property details and development history listed below are those that are currently available from Council's property and application management system.

7 HENCHMAN ST, NUNDAH

Details

Property Number: 453227
 Lot/DP: 4RP34070
 Land Number(s): 10677124
 Description: L.4 RP.34070 PAR TOOMBUL
 Ward: NORTHGATE

Status

CURRENT

Area

Area: 395 sq.m

Applications

There are no Development Assessment applications against this property

Zoning

QPP-MU2 - MIXED USE (CENTRE FRAME) ZONE

Neighbourhood Plans and Overlays

QPP-SHO - STREETSCAPE HIERARCHY OVERLAY
 QPP-TNO - TRANSPORT NOISE CORRIDOR OVERLAY
 QPP-TNNP-5 - TOOMBUL-NUNDAH NP - NUNDAH NORTH PRECINCT
 QPP-CIO - CRITICAL INFRASTRUCTURE AND MOVEMENT NETWORK (CIMN) OVERLAY
 QPP-AEO-PANS - AIRPORT ENVIRONS OVERLAY - PROCEDURES AIR NAV SERVICES-AIRCRAFT OPS SURFACES SUB-CATEGORIES
 QPP-CIO-CIM - CRITICAL INFRASTRUCTURE AND MOVEMENT NETWORK (CIMN) OVERLAY - CIMN PLANNING AREA SUB-CATEGORY
 QPP-AEO-S8 - AIRPORT ENVIRONS OVERLAY - BBS SUB-CATEGORIES - DISTANCE FROM AIRPORT 3-8KM SUB-CATEGORY
 QPP-TAO - TRANSPORT AIR QUALITY CORRIDOR OVERLAY
 QPP-AEO-LI - AIRPORT ENVIRONS OVERLAY - LIGHT INTENSITY SUB-CATEGORIES
 QPP-TNNP - TOOMBUL-NUNDAH NEIGHBOURHOOD PLAN
 QPP-AEO-OLS - AIRPORT ENVIRONS OVERLAY - OBSTACLE LIMITATION SURFACES (OLS) SUB-CATEGORIES
 QPP-AEO-OCL - AIRPORT ENVIRONS OVERLAY - CONICAL LIMITATION SURFACE CONTOURS SUB-CATEGORY
 QPP-ASSO-P - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY-POTENTIAL AND ACTUAL ACID SULFATE SOILS SUB-CATEGORY
 QPP-ASSO-L2 - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY - LAND ABOVE 5M AHD AND BELOW 20M AHD SUB-CATEGORY
 QPP-RHO - ROAD HIERARCHY OVERLAY
 QPP-AEO - AIRPORT ENVIRONS OVERLAY
 QPP-IAO - INDUSTRIAL AMENITY OVERLAY
 QPP-AEO-BBS - AIRPORT ENVIRONS OVERLAY - BIRD AND BAT STRIKE ZONE SUB-CATEGORIES
 QPP-AEO-L6 - AIRPORT ENVIRONS OVERLAY - WITHIN 6KM MAX INTENSITY OF LIGHT SOURCES 3 DEGREES ABOVE HORIZON SUB-CAT
 QPP-IAO-A - INDUSTRIAL AMENITY OVERLAY - INDUSTRIAL AMENITY INVESTIGATION AREA SUB-CATEGORY
 QPP-TNO-QD2 - TRANSPORT NOISE CORRIDOR OVERLAY - QUEENSLAND DEVELOPMENT CODE MP4.4 NOISE CATEGORY 2 SUB-CATEGORY
 QPP-ASSO - POTENTIAL AND ACTUAL ACID SULFATE SOILS OVERLAY

Property details will be added to each proposal as required to suit the project.



Any constraints and problems identified will be described where necessary.

Designer's Comments and advice:

Character

- Not identified in a character area

Bushfire

- Not identified in a character area

Transport noise corridor overlays:

- Not identified in a transport noise corridor
- Does not apply to renovations / additions unless built 2010 or later

Waterway/Flooding/overland flow:

- Not identified in the hazard area

Other Planning Issues:

- The site is included in the "Low Density" residential does not have character controls.

General advice:

- Advice
- Advice
- advice

The comments section is a follow on from advice given during the design consultation phase or telephone interview. This section allows me to pass on my advice on such matters that may influence the design, and feedback on the client's specific requirements.

Sometimes clients have unrealistic expectations of budgets, building outcomes, or are just not aware of council regulations, and there may sometimes be a simpler way of achieving the same outcome with reduced impact. This can be described in this section also.

This section often takes up a whole page, and can be quite detailed in the descriptions.

Budget: (subject to further consideration)

- Client has a starting budget of \$ xxx, which will be monitored during the design phase.
- We will monitor this closely in the early design stage so you have control over the project and its cost outcomes.
- The best way to determine your project costs is to draw some plans, work out what is needed to meet your brief, and family requirements, and then have it costed by a couple of builders. If all our gut-feel numbers align, you will have some confidence that we are in the ballpark before going to the next stage?

Construction Cost Estimate:

- We take our obligation under the Competition and Consumer Act 2010 very seriously, and intend to work with you to provide a product that is "fit for purpose" and meets your expectation of finished product and budget.
- Often we are asked to estimate construction costs before we have drawn anything or to design a building to a specific budget, even though we might not fully understand how you will finish or fit-out the final product.
- For these reasons, the process of estimating the final construction budget can only be done once we have something tangible to estimate from and a good idea of the finished product. Early estimates should be considered possible indications, however, as we develop the design and work with the client, we can start to provide better guarantees of the final cost vs budget allowances.
- We take care to apply "gut-feel" estimates and rough square metre indications as we design, but the only true way to estimate building work is by breaking it down into parts and adding the costs up one by one. This is not part of the scope of works that this firm provides, however, we do pride ourselves on providing cost effect design work.

Budget Guarantee:

- To provide a budget guarantee will in most cases require the engagement of an interior designer, and somebody to accurately cost out the work, such as a builder or project estimator, etc. If a budget guarantee is required, please indicate this as part of the scope of works, and we will ensure that feedback is provided in the appropriate form at an appropriate time to enable proper monitoring.
- It will also be important for the client to provide a detailed description of what the budget will include, so that we can tailor the design outcome to suit the client's expectations.

I don't like disclaimers of this nature, but at the start of the project, we rarely have all of the facts needed to give accurate advice, and sometimes, the design process will need to be undertaken before any of us know what we are estimating the costs for. Very often what the client starts off wanting changes during the design process, meaning that the budget or scope of works needs to change or evolve accordingly.

On the other hand if we have a formal or detailed brief already, we can give relative guarantees to that set of documents, on the premise that they do not change, or that the client contributes to discussions regarding the impact on probable contract value.

REFER TO OUR WEBSITE FOR OUR GUARANTEES, INCLUDING BUDGET GUARANTEE, BRIEF SATISFACTION, SERVICE AND COMMUNICATION GUARANTEE, AS WELL AS INFO ABOUT THE "COMPETITION AND CONSUMER ACT 2010", OBLIGATIONS AND STATUTORY WARRANTY REQUIREMENTS.

Builder's Referrals:

- When we have sketch drawings and know the classification of building, we can help source a suitable builder.
- The builders we work with have been sourced after careful selection and often with multiple projects done.
- Most of my house builders are geared towards quality work, and therefore can be relied upon for a good finish.

We do not generally do contract administration. A simple referral implies that the client will do their own research and make their own informed decision. In general I only refer builders that have a track record on projects for my clients or that come from trusted sources. Or I will be open about the source of the builder that we refer.

Note that builder referral is not to be construed as a warranty that they will perform 100% every time. The owner must do their own research to determine whether these individuals will be suited to their project and personal requirements.

Explanation of Stages referenced in Document:

(For clarity of what is and is not included in the stages generally)

Stage 1: (Preliminary Works)

- Establish client's brief and discuss project accordingly.
- Site investigation and check measure of existing features on and surrounding the site.
- Measure and redraw the existing house in Revit format (as-constructed), where relevant to the project.
- A contour and detail survey is generally required prior to commencement of any drawings being completed. This information will include detailed topography as well as features, services and adjoining property information including locations of buildings and features which might impact or be impacted by the proposed development.
- **A full contour and detail survey will be required for this project prior to finalisation of sketches.**
- **From 01 Sept 2021 A full identification survey will also be required prior to commencement of construction.**
- **It is very rare we do a job that does not need contours. Small jobs and elevated extensions notwithstanding.**
- **We will start the design process with very rough outline sketches. From there we can work back and forth with you to provide a concept design that will suit your expectations and reflect the unique nature of the site, surrounding views and local weather patterns.**
- On all projects, the design concepts will be delivered using "Autodesk REVIT" – 3D visualisation software, in varying levels of detail and completion. The initial concepts will be external shells with roof and floor plates shown, then we will progressively fill in the detail with your consultation at every step of the way. An example of these 3D visualisation tools are shown below for your consideration.
- When a reasonable concept is arrived at, you will have received a complete set of plans, external views and multiple 3D orbital and camera type views, which will hopefully show you every facet of the proposed works, such that there will be no surprises later in the process.
- External consultants should be engaged at this point, so the project flows quickly and smoothly.
- Any changes required at this stage will need to be considered against the original brief, and may trigger additional costs, where applicable.
- If budget constraints outweigh other requirements, feedback should be sought from a local builder or estimator at this stage, to ensure that the completed drawings will fit within budget expectations.
- We may also need to discuss the final configuration of any staging that may occur during the construction phase of the works, so that the construction drawings reflect the works to be carried out.

Examples of 3D visualisation tools:

These drawings have been sampled from previous projects, and give you an idea of the benefit that the use of 3D software can bring to the consumer, for visualisation purposes. It is not intended to be a perfect representation, though with enough time (and money), perfect results can be obtained.

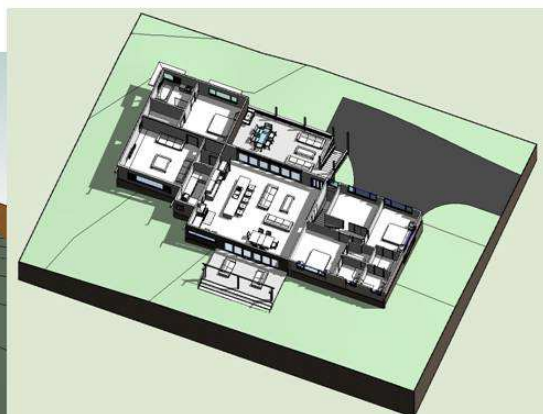


Above – finished concept – Bribie Island

Below – finished concept - Aspley



Finished concept Warwick



PassivHaus (*passive house*) requirements:

Designing a passive house is not too different from a normal house, however there are special considerations that need to be taken into account for a passive house that are not required in a standard house that is not being validated for performance. Things that need to be checked and researched, which inevitably add time and outlay to the project.

If we are going to evaluate the homes performance, we need to start collating information, and preferably inputting data into the PHPP (passive house planning package) software as early as possible. The PHPP is the only way to validate a passive house, even if it is not going to be certified by PHI in Germany. And it is the only way to provide guarantees about the projected performance of the home and the myriad of components we are going to specify.

Standard homes with high leakage rates of 10 or more air changes per hour cannot be validated, and generally there is no guarantee of performance of the building or the structure. Below 10 ach we need to start evaluating the structure to make sure the building does not trap moisture in the wrong places, and to ensure it performs to the occupants desired needs.

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Standard homes with high leakage rates of 10 or more air changes per hour (ach) cannot be validated, and generally there is no guarantee of performance of the building or the structure. Below 10 ach we need to start evaluating the structure to make sure the building does not trap moisture in the wrong places, and to ensure it performs to the occupants desired needs. The PH standard seeks an ach of 0.6 or less. Validation is critical.

Stage 2: (Development Approvals)

The property is zoned “character residential”, and is not located in the traditional building character overlay. The additions discussed should be accepted or exempt development.

The level of assessment will most likely be “Self Assessment”.

Assessment Requirements:

Basic Application – We will need to prepare full plans and elevations, streetscapes, reports, checklists, etc, to demonstrate how the proposed development will satisfy all the requirements of the various codes and planning policies, and where they don't, how the development will integrate satisfactorily into the neighbourhood. Code assessment applications do not require notification.

Advertising (Code Assessment) – This type of application does not require public notification. There may however be a requirement to approach neighbours for boundary setback relaxations under the Queensland Development Code, if the property is not a small lot.

Risks – Any application that requires planning assessment has an element of insecurity. Council can ask for any number of things to be altered or addressed differently, and often exercise this power. Additional works cannot reasonably be quoted in advance, therefore may incur additional costs, where required.

Relaxations – There may be a requirement to apply to council for a prescribed boundary setback variation under the “Queensland Development Code”. This process will require the Client to approach neighbours that are affected and obtain their comments. This process is generally in addition to the D/A processes explained above, as they are assessed against different legislation.

We will take out items which are not relevant to the specific project.

Stage 3: (Building Approval)

Preparation of the final drawings ready for Building Approval and construction. The drawings supplied at this stage will have sufficient information for us to obtain the necessary building approvals, and detailed to a level for tradesmen to complete the works. If errors are found during the approval process, they will be rectified free of charge. I am available (when reasonable) for telephone support if problems are encountered during the approval and construction stages.

This firm uses proprietary design software, to design the structural timber framing elements, tie-down connections, and bracing elements of your building. Using this software increases the time it takes to produce a set of construction documents marginally, but vastly improves the accuracy of design, while also allowing us to manage and eliminate in many cases, excessive sag or bounce that might otherwise not be known if standard tabular information is relied upon. Engineer endorsed certificates from this software ensure compliance with codes and enable certifiers to confidently rely upon results.

Please note that where a cost estimate is provided for stage 3 of the works, it will be based on the Designer's expectation of what will be involved to complete that work when the time comes, and may not be reflective of the actual work involved. We indicate these costs based on previous projects of a similar nature and 20 years of experience, however, no two projects are the same, and therefore we need to allow provision for stage 3 to be properly quoted at a time when we know the exact scope of works and drawing complexity to be addressed.

If percentage cost indicators have been provided in the initial quote, the designer will provide firm costs for stage 3 prior to commencement, which will then be based on the actual time and cost to deliver the completed documentation required.

Additional works, such as interior design, colour & finish selections, window & door schedules, electrical, landscape & pool design, and specific detailing of wet areas, kitchens and the like are normally considered separately. We have not included any of these items in our quotation at this stage, and will engage or advise of a suitable professional at the required time.

If the project is a PassivHaus, some of these items will be included and nominated in the stage 3 quote section for reference.

As a general rule, the works will follow the stages shown above, however this does not prevent a cross-over from occurring for any number of reasons to ensure the project flows smoothly for the client.

We generally don't charge a percentage-based fees, unless we do not have a proper brief or understanding of the complexity of the project at the quoting stage. In some cases, there will be a set number of hours for prelim design, which then forms the basis of subsequent work stages. Or we may establish a fee based on hourly rate with a percentage indicator used to establish a maximum cap.

The fees below are estimated based on 30 years of experience, estimating the time and consumables involved in making sure that your project comes out right. If a proper brief has been established and nothing changes, these estimates can be considered as **FIXED PRICE** fees.

Please refer to the standard conditions of contract for clarity on when a legitimate variation may apply for works that are outside of the scope of works or where the scope of works may change.

The following consultants may be engaged on your behalf.

As per clause 5 in the contract conditions, ECBDD cannot guarantee the performance of these consultants, though in most cases, we have worked with them many times before and have found them to provide a professional and prompt product. If you wish to use a different consultant then please let us know. See clause 5 of our Terms and Conditions.

INDICATION OF RECOMMENDED CONSULTANTS:

Preliminary works stages:

- SURVEYING (contour and detail) (if required) www.ajssurveys.com.au
- SURVEYING (natural ground & ht certs) www.ajssurveys.com.au
- SURVEYING (identification survey) recommended by design
- ENGINEERING (soil testing) depends on the project reqmts
www.geoserve.com.au or www.expressoiltesting.com
- HYDRAULIC DESIGN (if needed) to be determined as required

Optional (subject to change over time):

- LANDSCAPE ARCHITECT Paul Stein www.seedlandscapes.com
- INTERIOR DESIGN Carolyn Cunningham www.inchstudio.com.au
- Smart Wiring (if required) Digital Residence www.d-res.com.au
- PassivHaus consultant (if required) Luc Plowman www.detailgreen.com.au

Construction Approvals Stage:

- Engineer will be appointed based on availability and suitability to project nature.
- ENGINEERING (slab & footing design) Depends on the project
- ENGINEERING (structural design) to be quoted as needed
- ENGINEERING (retaining design)
- ENGINEERING (Pools)
- ENERGY EFFICIENCY REPORTS (new rooms) www.greenatheart.com.au
- BUILDING APPROVALS (to be quoted when time comes)
- Residential approvals usually by www.pcggroup.com.au or
www.buildingcertificationgroup.com.au

During Construction:

- SURVEYING (setout survey) usually by builder
- UPGRADE OF SERVICES (if required) usually by builder
- OPERATIONAL WORKS APPROVALS usually by Builder

Not all consultants above are needed for every project.

There may also be other consultants required along the way.

Our chosen consultants may change over time, depending performance and availability.

Surveying will be engaged immediately upon receipt of contract signing, where required.

Other consultants will be engaged on an as needed basis to suit the project progress.



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FEE PROPOSAL

Issue Date.

Name of Client

Project Address

The fee proposal is based on a selection of micro stages that are given values to represent the works involved, and at the end of each stage, a total is provided. Full transparency is provided in the quotations so that a client can see how even a small manipulation or change to the scope of works can ripple through the fee proposal. Where the scope of works have not been set or may be flexible, a percentage indicator may be used instead of a number. This will revert to a properly quoted number as soon as the scope of works and budget are known.

Changes and variations to the scope of works are always quoted in advance, most often using a Schedule 5 variation form. These contracts and conditions have been taken from the BDAQ standard industry contract of engagement, and while some clauses have been altered, it is still a full two way contract, protecting both the client and the designer equally. Note that the client always has rights to a remedy under the "Competition and Consumer Act 2010", irrespective of the contents of this document, and this document cannot over-ride common law rights.

The main purpose of a contract is to provide contractual certainty to both parties, and to set out what happens in the event of a change or default, and rest assured, we have been in business for over 30 years and have never once unfairly charged a client for something we have not been contracted to do, and let's face it, the client won't pay for something that is not fair and reasonable under the terms and conditions of the contract itself.

Stage 1. (Preliminary Works)

On projects where the design outcome is not known, we break down our fee into components and assign estimates to each part, with a view to re-quoting each stage as we go. To give my customers confidence that the fees will not simply snow-ball into a never-ending fee grab, I also put an overall percentage on as a maximum.

The items below in purple are specific to a PassivHaus project and depending on what happens in the early design process, can be omitted or changed if the decision is made to abandon (or include) the PassivHaus process. Further discussions will occur during the design phase to ensure you are making informed decisions.

Design Consultation	invoiced separately
Facilitate surveying and soil testing (if needed)	
Administration, basic searches and file set-up costs	
Prepare 3D modelling program with required components and set up files	\$
Site Measure existing house layouts and assess structure	\$
Redraw existing house and ancillary structures as they exist now	\$
Allowance for design development stage (based on estimate of time to complete)	
• Allowance for standard client meetings, phone calls and email interactions	\$
• Design development – chosen option estimated time	\$
• Design development – garden features, fences, pool, etc	\$
• This estimate includes a number of minor design changes as needed	
• Explore additional options after commencement of design development	\$
• Reworking and alterations other than minor bits and pieces	\$
• Completion of concept stage estimated (finishing off)	\$

It's very hard to accurately estimate the time it will take to design some buildings, because there are options to consider and it will be an interactive process.

I have assumed that the chosen design will be simple in nature in line with budget.

Additional drawings where a council Development Assessment (DA) is required \$

PassivHaus fees (if project is heading down PH process)

Additional drawings for passive house measures (not much needed at sketch stage) \$

PassivHaus PHPP prelim analysis and component research \$

Allowance to liaise with Luc Plowman (PH certifier) for PH specific questions \$

Where a DA is required, we have to produce drawings to a specified level, with information that demonstrates compliance with certain codes. This always increases the drawing costs, however, the core drawings produced will be recycled into the construction drawings set later, reducing those costs to a degree

Facilitate relaxation with BCC (standard charge) \$

Obtain feedback and advice from building certifier and builders tba

Obtain feedback and advice from PH consultants tba

Copying file materials and incidentals allowance \$

Admin charges - typical \$

Additional works will be charged at the nominated rate at the end of Schedule 3.

East Coast Building Design:	\$
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Expected Time Frame Stage 1:

From receipt of signed agreements

Preliminary sketches 1 to 4 weeks

Client liaisons and reworking may affect time frames

Full presentation drawings 1 to 4 weeks

This process will need to be flexible, depending on how easily we achieve a desired outcome for all concerned. This process must be given the right amount of attention, as you may not be able to change it later, once the D/A has been issued. Consultants will heavily impact on timeframes as required.

Stage 2. (Development Assessment – by ourselves)

This is based on an application that conforms to the “Acceptable Solutions” of the planning scheme.

If there are items that require additional justification or council liaison, additional costs will apply.

An option will be selected based on project requirements

Prepare reports, lodge and manage application (minor building work) \$

Prepare reports, lodge and manage application (single detached house) \$

Prepare reports, lodge and manage application (single detached house with minor demolition) \$

Dealing with information requests will be charged at the nominated hourly rate in Schedule 3.

BCC Fee –Assessment (domestic new house) \$

BCC Fee –Assessment (domestic addition) \$

BCC Fee –Assessment (domestic minor) and (domestic minor demolition) \$

BCC Fee –Assessment (demolition major) \$

BCC Fee –Assessment (demolition minor) \$

East Coast Building Design & Drafting	\$
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Council Fees	\$
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Expected Time Frame Stage 2: 1 to 2 weeks

Reports are generally prepared at same time as drawings

BCC code Assessment 6 to 8 weeks

Information requests by council will delay this timeframe

BCC Fees current till mid year – subject to quotation by BCC

Stages 1 & 2 must be paid in full prior to lodgement of DA

Stage 3. (Construction Drawings)

At this early stage, we do not fully know the extent of detailing that will be required to properly document the proposed works. Once we have agreed upon a concept and any staging that may be required, this stage of the works may be adjusted or re-quoted. The following figures should be used as a guide only, based on our previous experience with this type of project.

Where percentage indicators are used on stage 3, they will be re-quoted properly prior to commencement of stage 3 to suit the actual project and complexity / work involved.

This clause allows the designer to re-quote stage 3 if the scope of works is different from the original scope of works, or if the level of detailing has changed. Clients want to know approx costs, but until we do a sketch, we may not know the actual work involved in fulfilling the contract. If the project is simple, a fixed fee will be provided at quote stage.

This whole stage will be re-quoted once the design is completed and any DA approvals gained. Decisions about whether the project continues with PassivHaus will also be made at this stage. Here is what I think will be fair initial allowances for this stage.

Basic Construction Drawings (based on estimate of time to complete) (This includes the whole project which may be revised down at stage 3) (price assumes prefab trusses to roof by others and minimal framing details)	\$
Included costs to detail standard framing and bracing components and connections (Other designers often outsourced this part to engineers)	\$
Specific drawings for drainage mitigation around house	n/a
Extra drawings for build over sewer application works	n/a

Additional drawings for passive house measures:

<i>PassivHaus – detailing airtightness membranes, wall junctions, thermal bridges, etc</i>	\$
<i>PassivHaus – completion of PHPP and other PH analysis</i>	\$
<i>PH Consultant liaison and behind the scene research</i>	\$
<i>Client liaison, phone calls etc</i>	\$

Extra cost will apply if alts to existing building require special detailing at this stage	tba
Extra costs may apply if unapproved structures need detailing for approvals. (It is important to make sure that the completed drawings leave no room for error or interpretation. Completeness of drawings means certainty in the contract price and limits variations and extras during the construction process and beyond. Drawings will be prepared to the level recommended by the BDAQ - Building Designers Association, as being the minimum standard for proper documentation.	tba

The complexity is not yet fully known on this project and stage 3 will be requoted once the design is known. ie: if contemporary finishes require specific detailing outside the allowances

Checking, quality control and other processes	\$0
Detailing required for features and other items provided by Interior / Landscape Designers	none allowed
Check compliance against BCA energy efficiency	by consultants
Construction Approval and consultant liaison allowance (B/A processes)	\$
Liaison with interior designers, landscape architect or builders	n/a
Copying file materials and incidentals allowance	\$
Admin charges (typical)	\$

East Coast Building Design	\$
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Expected Time Frame Stage 3:
From client's instruction to proceed min 3 to 4 weeks
Consultants will determine timeframes – pending availability
Council D/A conditions may also delay timeframes.
Stages 1 to 3 must be paid in full prior to lodgement of BA

Associated consultant's (approx):

Preliminary Stage:

Pre-lodgement Meeting with council	none allowed
Surveyor – contours and heights (incl best fit boundary location only)	\$
Surveyor – ident survey (required from 1 sept 2021 if near boundaries)	\$
Soil testing (standard charge \$495 or \$550 typical)	\$
BCC – relaxation fee 21/22 – boundary setbacks	\$
MBRC – relaxation fee 21/22 – concurrence referral	\$
Passive House Certifier liaison allowances	\$
Passive House WUFI and thermal bridge assessments	\$

Other consultants (approx.)

\$***

Construction Approvals:

Structural engineering (footings and slabs)	estimate \$
Structural engineering (retaining walls)	estimate \$
Structural engineering (steel beams)	estimate \$
Structural engineering (pool)	none allowed
Structural engineering (extra for build over sewer / stormwater)	none allowed
Engineer to certify framing outside of AS1684	none allowed
Building approvals (by Private Certifier)	estimate \$
Plumbing approvals (by plumber on renovations)	none allowed
Energy Efficiency Reports (per each 275.00 if needed)	\$
Noise report / onsite measurements (traffic, aircraft, etc)	n/a

Allowances and required consultants will vary from project to project, and wherever possible will be estimated in this section at the start of the project.

Other consultants (approx.)

\$***

***All external consultants' costs will be charged to the client at cost. The client may elect for written quotes to be obtained prior to engagement, and must request so in writing, prior to engagement of the required consultants. Surveying and soil testing are generally engaged immediately upon receipt of signed docs.

Figures shown are an indication of the expected fees that the consultant may charge, and shall not be relied upon solely as the means of determining the overall costs involved with this project.

ALL REQUIRED BA CONSULTANTS WILL BE QUOTED IN ADVANCE AND APPROVED BY THE CLIENT UNLESS OTHERWISE AGREED IN ADVANCE.

Summary of Approx Totals:

Sketch / DA stage plans	\$
<i>D/A Approval Process</i>	<i>\$</i>
SK / DA stage consultants (estimated)	\$
BA stage plans	\$
BA stage Consultants (estimated)	\$
<u><i>PassivHaus components (if selected)</i></u>	<u><i>\$</i></u>

A project variation may be issued at any time, which may be triggered by one or more of the following reasons (but not limited to).

- Changes that fall outside of the allowances set in this proposal.
- Client instructed changes to the overall concept.
- Changes as a result of the council processes (by council or client).
- Changes that have resulted in a need for a higher than expected amount of detailing to be carried out within the allowances set for stage 3 of this proposal.

This variation will clearly state the reasons and the applicable extra costs associated, and in most cases will need to be signed and returned prior to the works progressing further or to the next stage.

All variations shall take the form of a Schedule 5 Notice.

The following items may be required:

Boundary Relaxation

Location of underground infrastructure

Approvals to build over or near council pipes

Engineering (Struct cert of Const Drawings)

Surveyor - accurate location of boundaries & site setouts

Certifier – inspections during construction

Engineer – inspections during construction

Please note that there are things like engineer's inspections, height certificates, and other items, which are required during the construction stage of the works, which are not included in our scope of works, and must be addressed in the builder's contract.

Often there are other items identified by the building certifier as part of the building approval process, which result in conditions being placed on the approval. Similarly additional costs associated with these items are not included in our scope of works.

If you are in doubt about this proposal, please refer to the blank version of this agreement on our website, which also contains explanatory notes to help you understand why certain things are included in this document. Please also note that we offer a five way guarantee on the services that we provide, in line with consumer guarantee legislation.

Note: nothing in this document can over-ride the consumer's rights under law:

www.fairtrading.qld.gov.au/guarantees-warranties-refunds.htm

Conditions associated with Schedule 3:

- 1) *East Coast Building Design & Drafting (ECBDD) charge rates may be applicable for situations where the quote does not extend or where a stage is terminated before completed: All work is carried out by a Senior Designer at \$250 per hour including design, drafting, Town-planning services and advice - \$300 per hour. Administration and clerical duties - \$55/hr.*
- 2) *An allowance has been made in the quote for a typical amount of copying, file materials and incidentals, based on previous experience, for the purpose of production and forwarding of designs, drawings and documentation as required to exercise the scope of works listed in this agreement. Where it can be reasonably known, any additional costs shall be quoted and approved by the client in writing prior to commencement of that additional item.*
- 3) *All outgoing plans and information will be provided in high quality PDF format. Photocopying of plans, professional printing and the like will be quoted upon application. Typically it will be much cheaper for the client to copy from PDF instead.*
- 4) *Files are archived on-site for approx 3 years after the agreement has been completed. During this time, files can be retrieved and re-filed with little time expenditure. After that time, files are boxed, sealed and archived. Where a file is required to be retrieved for a purpose not related to the agreement, an archive retrieval and return fee may be charged. The minimum fee is currently \$250.00 and any action regarding that file will be charged at current hourly rates.*
- 5) *Files older than 10 years may be scanned for archiving, but in general, will be destroyed at the expiration of the 10th anniversary of the file's inception. Many parts of the file are retained in electronic form indefinitely.*
- 6) *All fees quoted in this document are inclusive of GST (where applicable) unless noted otherwise. All fee proposals are valid for 90 days, unless there are legislative or code changes that necessitate the need to re-evaluate the fees quoted. This must be supported by appropriate evidence from the Designer. As per clause 2.3 of the conditions, where a project extends beyond a calendar year, the fees quoted will rise by an amount equivalent to 5% per annum or part thereof, unless a variation has been issued, in which case the rise may apply to part or all as applicable to the situation.*
- 7) *Timeframes indicated in the relevant sections of this agreement shall be read as those applicable to a straight forward project. They will not include the time it takes for clients to respond to requests by the Designer, and do not apply to extra works not covered by the scope of works, or additional works requested by the Client or Designer as a result of a Schedule 5 Variation. They also do not apply where a timeframe is dependent upon an external consultant or any other third party, whether that entity has been engaged by the Client or the Designer (as an agent of the client).*
- 8) *Fees quoted in this document have been reasonably estimated from the scope of works and / or from information provided by the client at the time. Should this information remain the same, East Coast Building Design agrees to abide by the quoted sums. However, the contract contains sufficient clauses to enable extra work or variations to be fairly charged or requested as needed through the life of the contract. Generally a Schedule 5 Variation will be provided unless the sums are mutually agreed by email or in writing.*
- 9) *Pricing allowances for consultants have been estimated at the time of preparation of this document to show that there are additional costs, and may not reflect the actual costs for those consultants to complete the works. The actual costs can be quoted at the time they become required. The actual cost will be passed onto the client without mark-up or profit margin as an agent of the client. The designer will not assume any responsibility for any short-falls that occur in this process or any reduction of profit margins experienced as a result of reliance upon these figures. Builders and developers should do their own research to ensure that allowances are sufficient for their project needs.*

Schedule 4 is a standard contract schedule, which clearly defines what each party is responsible for. This can be over-ridden by the scope of works or an email discussion in general if needed.

Schedule 5 is a standard contract variation schedule. A copy can be provided upon request, however, it basically sets out the changes or variations to the contract and costs involved and must be agreed to by both parties.

The contract may be amended from time to time to reflect changes in business. This info is correct at date of printing. For a copy of the latest information, please request one prior to signing your contract.

BUILDING DESIGNERS ASSOCIATION OF QUEENSLAND



CLIENT AND DESIGNER AGREEMENT

TERMS AND CONDITIONS OF CONTRACT

1 THE SERVICES

- 1.1 The Designer must provide the Services for the Project.
- 1.2 If any Services have been provided by the Designer for the Project prior to the date of this Agreement, this Agreement applies to those Services retrospectively.
- 1.3 The Designer may begin the first stage of the Services outlined in Schedule 2. The Designer must obtain the Client's verbal approval before commencing work on each subsequent stage.
- 1.4 If the client does not agree that verbal approval is sufficient under clause 1.3, the Client must notify the Designer in writing of their preference.

2 FEES AND EXPENSES

- 2.1 The Client must pay the Fees and Expenses to the Designer as set out in Schedule 3, or as varied within the bounds of this agreement.
- 2.2 For the avoidance of doubt, where the Client is a company, the person that signs the agreement agrees to guarantee payment for the services provided under this agreement. Unless a Schedule 6 guarantor is provided by the Client nominating another person, the signee shall be responsible for payment of all fees and expenses.
- 2.3 The Fees may be increased on each anniversary of this Agreement as outlined in Schedule 3. If no increase is stipulated in Schedule 3, the fees may be increased by an amount of five percent (5%).
- 2.4 All fees and expenses outlined in Schedule 3 are inclusive of GST. The Designer must provide to the Client a Tax Invoice when submitting claims for fees and expenses.
- 2.5 The Designer may submit claims for Fees and Expenses at the times and/or frequencies outlined in Schedule 3. If no times for the submission of a claim for Fees and Expenses is stipulated in Schedule 3, the Designer may submit a claim for Fees and Expenses at the practical completion of each nominated stage or at any point where the project stalls for more than 10 business days, or at any other time deemed reasonable by the Designer.
- 2.6 In addition to the fees payable to the Designer, the Client must pay to the Designer any expenses reasonably incurred by the Designer in providing the Services, including those incurred with third parties.
- 2.7 The client agrees that where payments are made by the Designer to third party consultants, government departments or other entities, that the Designer is acting as an agent of the Client, as determined under Tax Law. Any GST free amounts will be passed on to the client "at cost" with no mark-up or profit margin. On this basis, these amounts will remain GST free to the Client.
- 2.8 The Client must pay any fees claimed by the Designer within the period stated in Schedule 3. If there is no period stated in Schedule 3, all fees must be paid within five (5) Business Days from the Client receiving the claim from the Designer, or as otherwise agreed with the Designer.
- 2.9 If any fee outstanding is not paid in the time required by Clause 2.8, the Designer may charge interest on overdue payments at the rate stated in Schedule 3. If no amount shown in schedule 3, interest will be charged at the rate of 10% p.a. calculated daily.
- 2.10 The Client must advise of any dispute or error regarding the invoice within the time period shown in Clause 2.8, in order for the dispute to be valid, or to have any impact on clause 2 in general.
- 2.11 In addition to the interest charges shown in clause 2.9, the Designer may request that the Client also pay any reasonable costs involved in the recovery of amounts due through legitimate debt recovery channels. This may include (but not limited to) the cost of a debt recovery firm, lawyers, QCAT or court fees, and any additional costs and expenses incurred by the Designer throughout the debt recovery process.
- 2.12 If fees are not paid within the time frame stipulated in Clause 2.8, the Designer may suspend the provision of Services to the Client by providing written notice to the Client stating:
 - (a) that the account remains outstanding; and
 - (b) if the account is not paid within five (5) Business Days from the date of the notice, the provision of the Services will be suspended.
 - (c) Any Copyright license implied by clause 6.1 is deemed not granted where an invoice remains unpaid or unresolved as described by these conditions.

3 VARIATION TO THE SERVICES AND FEES

- 3.1 The Designer must inform the Client within a reasonable time of the Designer being made aware of circumstances that may change the Services. The Designer must inform the Client in writing of:

- (a) the circumstances necessitating the change to the Services and Fees; and
- (b) any impact this change may have on the Project; and
- (c) any additional fees that will be incurred by the Client.

- 3.2 The Client may provide written instruction to the Designer varying the Services. This may include a hold on works between stages, a variation to the scope of work, or any other variation.

- 3.3 If the Services are to be varied in accordance with sub-clauses 3.1 and/or 3.2, the Designer may give a notice ("Variation Notice") in the form set out in Schedule 5 to the Client stating:

- (a) the work required to carry out the variation;
- (b) the additional fees (or reduction) that will be incurred for carrying out the variation;
- (c) the likely impact, if any, on the Project; and
- (d) if the Designer requests the variation, the reason for the variation.

- 3.4 If the Client requests the variation, the Client must provide written notice to the Designer within five (5) Business Days of receiving the Variation Notice that it accepts the extra fees to carry out the variation. If the Client provides notice that it does not accept the fees the Designer shall not be required to carry out the variation.

- 3.5 If the Designer requests the variation as a result of a requirement of an approval authority, or a circumstance that could not have reasonably been foreseen at the time of entering into the Agreement, the Designer shall be entitled to a reasonable fee for the variation to the Services.

- 3.6 If the Designer has requested a variation for matters other than those outlined in clause 3.5, the Client must provide written notice within five (5) Business Days of receiving the Variation Notice that it accepts the extra fees to carry out the variation. If the Client does not respond the Variation Notice within the five (5) Business Day period the variation and the extra fees payable will be deemed to have been accepted by the Client.

- 3.7 The client may provide a written notice via email, directly referencing the variation number and date, in lieu of signing and returning the actual variation. The Designer must provide a written confirmation.

4 CLIENT RESPONSIBILITIES

- 4.1 The Client must provide all relevant information regarding the project, including:

- (a) details of the site outlining any encumbrances or easements relating to the Project site;
- (b) any budgetary restraint requirements for the Project;
- (c) any item required or mentioned under schedule 4

- 4.2 The Client warrants the accuracy and completeness of all information provided to the Designer and acknowledges that the Designer will rely upon the accuracy of information provided.

- 4.3 If the Designer considers that any information, documents or directions provided by the Client are incomplete, inadequate or ambiguous, the Client must provide clarification of that information as requested by the Designer in writing.

- 4.4 The Client must promptly respond to any request for information or approval by the Designer with respect to the Services.

- 4.5 Where the Client is a nominated representative of a property owner, company or trust, the designer will assume unless otherwise notified by the Client that the Client has sought and continues to have authority to make decisions for the Owner of the property.

5 ENGAGEMENT OF OTHER CONSULTANTS

- 5.1 The Client authorises the Designer to act as the Client's agent in relation to the Project in all matters set out or implied in this Agreement.

- 5.2 If the Client engages any other consultants for the Project the Client is responsible for those consultants and must pay their fees directly. Prior to engaging any other consultants, the Client must first obtain the Agreement of the Designer to engage that consultant.

- 5.3 If either the Client or the Designer engages and/or coordinates any consultants as outlined in Schedule 5, the Client indemnifies the Designer against any claims that may be made arising out of or incidental to such services provided by those consultants.

6 COPYRIGHT & INTELLECTUAL PROPERTY RIGHTS

- 6.1 The Designer retains all Intellectual Property Rights as permitted by The Copyright Act 1968. Only upon completion of the entire agreement, and Subject to Clause 6.2, the Designer agrees to provide the Client with a royalty-free non-exclusive irrevocable license to use such Intellectual Property for any purpose for which this agreement relates. This license is not transferrable and in the

event of early termination or partial completion of the agreement, no license, implied or otherwise shall be granted.

- 6.2 The rights provided or implied by clause 6.1 are revocable by the Designer on the day after the date specified in Clause 2.8 if any payment required by this agreement is not received within the specified time period or as otherwise extended or agreed in writing by the Designer.
- 6.3 The Designer will only agree to assign his/her intellectual property rights to the Client upon payment of an agreed fee. In the event that a fee is not agreed upon in advance of this agreement being commenced, the fee shall be equal to five times the total fees applicable under this agreement for each assignment, or as otherwise agreed in writing with the Designer. The Designer is not obliged to assign his/her intellectual property rights.
- 6.4 The Client is expressly forbidden from engaging third parties to prepare further drawings or to complete unfinished drawings without the express written permission of the Designer. Any permission and applicable fee payable must be provided in writing. If so agreed, a written waiver of liability must be provided to the Designer, in a format which is acceptable to the Designer, by and prior to the third party commencing their works. Where a third party is engaged by the Client under this clause 6.4, the license mentioned in clause 6.1 shall be deemed granted, or may be granted with conditions.
- 6.5 The Client grants a licence to the Designer to use and reproduce any of the documentation provided to the Designer for the express purpose of completing the Services.
- 6.6 The Client indemnifies and agrees to keep indemnified the Designer against any actions, claims or demands that may be brought against the Designer as a result of the Client providing information or documentation to the Designer by which copyright is not owned by the Client. Such indemnity includes legal costs on a solicitor and own client on an indemnity basis.
- 6.7 It is the property owner's responsibility under the Copyright Amendment Act 2000 to make a reasonable attempt to contact the original owner and/or author of any copyright works, and establish whether that person wishes to exercise the Moral Right provisions of the act for the said works, with regard to work proposed in this agreement.
- 6.8 The Client acknowledges that if they use the drawings provided by the Designer in part or in whole for any project other than the site subject to this agreement, without prior written permission, that they will be deemed to have breached the clauses of this contract. Further the Client acknowledges that such a breach of this contract will result in court action, and that the penalty sought in such court action will be five times the total fees applicable to this agreement for each such breach of contract or each unauthorised use of material.
- 6.9 The Client grants permission for the Designer to use any images or material created for the purpose of marketing and promotion, including but not limited to website, facebook, magazine advertising.
- 6.10 The Client acknowledges that Revit files including all intellectual property used in creating Revit files will not be provided to the client or released for any purpose what so ever. Where a client or consultant or authorised third party requests Revit files, they must also purchase a copy of the template which is available for separate sale and enter into a valid EULA prior to receiving any files.
- 6.11 The Client acknowledges that where ancillary software has been used such as a PHPP spreadsheets, Design PH, or the like in a PassivHaus project, that the outputs of such software also remain the intellectual property of The Designer. The Client is not permitted to have any such output remade, re-configured, or re-used without the same express permissions required by clause 6.4. Where such outputs relate to a specific design prepared by The Designer, The Client must not allow any third party to be accredited as the author of the project for any purpose without express written permission from The Designer. This includes PassivHaus Certification with PHI.
- 6.12 This Clause 6 does not merge on termination of this Agreement.
- 7 DOCUMENT CONTROL**
- 7.1 The Designer reserves the right to withhold final "Construction Set" drawings until the Designer or Client has appointed a Certifier for the project. The Certifier must agree to basic terms around document control for the project, specifically terms of use for "Construction Set" issue plans.
- 7.2 If the Client or their representative appoints a certifier that does not agree to these basic terms, the Designer may refuse to send the "Construction Set" plans. In this case, the Designer will appoint their own certifier and invoice the client accordingly for the expenses. Any such fees must be paid by the Client as per clause 2 above.
- 8 CONSTRUCTION COST ESTIMATES**
- 8.1 If the Designer provides an Estimated Building Cost of the construction costs of the Project the Client agrees that these estimates are not warranties of the cost to complete the Project. The Estimated Building Costs are estimates only and must not be relied upon by the Client, unless verified by a qualified source.

- 8.2 The Client must instruct the Designer to engage a qualified person to provide a written estimate of the construction costs, if he or she intends to rely on the estimated building cost during or after the design process.

9 EXTENT OF WARRANTY AND LIABILITY

- 9.1 The Designer does not give any warranty nor accept any liability in relation to the performance or non-performance of the Services except to the extent, if any, required by law or specifically provided for in this Agreement. If apart from this clause any warranty or liability would be implied by law, custom or otherwise, that warranty and liability is to the full extent permitted by law excluded. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of goods or services pursuant to this Agreement of all or any of the provisions of the Competition and Consumer Act 2010 or any other regulation permitted by law.
- 9.2 If any liability is implied by law, custom or otherwise, the liability of the Designer to the Client arising out of the performance or non-performance of the Services in this Agreement shall be limited to the Fees and Expenses paid, unless a further liability is agreed to in a dispute resolution process involving Professional Indemnity Insurers as permitted by law.
- 9.3 The parties agree that all exclusions, indemnities or limitations of liability contained in this Agreement:
- shall survive termination of this Agreement; and
 - will apply regardless of the form of any action (direct or indirect) whether in contract, strict liability, tort or otherwise at law and be effective regardless of the negligence or breach of duty (contractual, statutory or otherwise) of any of the parties, sub-contractors or any member of a party's group.
- 9.4 The parties will enter into such further indemnity Agreements as are reasonably necessary to grant indemnities and allocate and limit liabilities in the manner specified in this Agreement.
- 9.5 The Designer's liability in respect of errors or omissions will not extend beyond the limit of services provided by this agreement. It is the responsibility of the Client through their appointed contract administrators and builders to report any and all errors or omissions to the Designer prior to commencement of construction / work.
- 9.6 Errors or omissions reported as per 9.5 above shall be rectified on the drawings by the Designer in a timely and diligent manner, so as not to interrupt the commencement of works unduly.
- 9.7 The Designer will not take any responsibility for any loss incurred by any party, how-so-ever-caused, arising from clause 9.5 above, unless otherwise required to by a law or regulation.
- 9.8 The Designer agrees to keep an adequate level of Professional Indemnity Insurance for the tasks engaged in, and provide a copy of any certificate of currency to the Client when requested.
- 10 TERMINATION BY CLIENT OR DESIGNER**
- 10.1 If either party fails to comply with any of their obligations under this Agreement or is otherwise in substantial breach of this Agreement, the initiating party (Terminating Party) may give a notice ("the Termination Notice") to the party in breach. The Termination Notice must:
- specify the breach or breaches of the Agreement by the party in breach;
 - require the breach or breaches to be rectified within ten (10) Business Days of receiving the Termination Notice;
 - state that if the breach or breaches are not rectified within the requisite time period, the Terminating Party intends to terminate the Agreement.
- 10.2 If the party in breach fails to remedy the breach within ten (10) Business Days of receiving the Termination Notice, the Terminating Party may terminate this Agreement by giving further written notice to the party in breach.
- 10.3 Notwithstanding any other provision in this Agreement, either party may terminate this Agreement by giving five (5) Business Days notice to the other party.
- 11 TERMINATION FOR INSOLVENCY**
- 11.1 Either the Designer or the Client may terminate this Agreement immediately on giving written notice to the other party, if the other party:
- becomes insolvent or financially unable to proceed with the Agreement;
 - becomes or is bankrupt or seeks to take advantage of the laws relating to bankruptcy;
 - makes a composition or other arrangement with its creditors;
 - assigns assets for the benefit of creditors generally;
 - being a company, enters into a Deed of Company Arrangement or has a controller, administrator or receiver appointed;
 - being a company, goes into liquidation or has a Court Order made for the winding up of that party or a resolution for its winding up is made;

and as a consequence, that party is unable to perform its obligations under this Agreement.

- 11.2 In the event of insolvency by the Designer under clause 11.1;
- subject to any and all fees being settled and paid under clause 2, a license inferred under clause 6.1 will be deemed automatically provided to the Client.
 - Under this non-exclusive, perpetual, non-transferable, and royalty free license, the Client may use, modify, develop and exploit the design, drawings and documents as he/she feels necessary to expedite the works outlined in this agreement.
 - In this instance only, clauses 6.4 will also be deemed ineffective.
 - Clause 11.2 does not allow the Client to use this license for any purpose other than described, and only for the property described under "Project Details" in this agreement.
- 12 **CONSEQUENCES OF TERMINATION**
- 12.1 Upon termination, and without prejudice to the rights of either party:
- the Client shall pay to the Designer all amounts outstanding for Services rendered up to and including the date of termination. If the parties are unable to agree on the amount to be paid the amount shall be calculated by applying the hourly rate outlined in Schedule 3;
 - except where clause 11.2 applies, any licence granted by Clause 6.1 shall be deemed as not granted until clause 6.4 and 6.11 are satisfied, including payment of any required release fees.
 - nothing in this clause prejudices the right of either party to recover damages or exercise any other right or remedy under law.
- 13 **ASSIGNMENT**
- 13.1 Neither the Client nor the Designer shall assign or transfer this Agreement without the written consent of the other.
- 13.2 The Client shall not assign its licence in any intellectual property without the prior written consent of the Designer. The license shall not automatically transfer with any sale of the property / land.
- 13.3 Refer clauses 6.3 and 6.8 for prescribed penalty for misuse of materials.
- 14 **GOVERNING LAW**
- 14.1 This Agreement shall be governed by the laws of the State of Queensland and the Commonwealth of Australia as appropriate.
- 15 **AMENDMENTS TO AGREEMENT**
- 15.1 This Agreement may only be varied by prior written Agreement signed by both parties, or by exchange of written emails where both parties clearly agree on what is to be amended.
- 16 **NOTICES**
- 16.1 Any notice in relation to this Agreement must be delivered by:
- delivering it personally to the other party, in which case it will be deemed to have been served at that time; or
 - sending by pre-paid post to the address of the person to whom it is required to be given as specified in the Details Schedule, in which case it shall be deemed to have been served on the date of receipt, or in the case of registered post, two (2) clear Business Days after posting, whichever is the earlier.
 - Sending by confirmed email, where a response has been received to confirm said notice has been received.
- 17 **GUARANTEE AND INDEMNITY**
- 17.1 Where the Client is a company or trust, this Agreement may be conditional upon the directors of the company or trustees of the trust (and if the trustee is a company, the directors of that trustee company) executing the Guarantee and Indemnity in Schedule 6.
- 17.2 The client is responsible for advising ownership of the Site to the Designer where the Site is not owned by an individual or individuals, also being the Client.
- 17.3 The Designer reserves the right to waiver clause 17 at its own discretion, where the dealings are clearly being undertaken by an individual, who is also a company director and / or trustee and the property owner, and / or where clause 2.2 has not been disputed prior to the commencement of the agreement.
- 17.4 If the Client undertakes to sign this agreement as a representative of another person or entity, and has not also signed a schedule 6 Director's Guarantee, it shall be taken that the person signing this agreement is assuming personal responsibility for payment of any outstanding invoices issued under this agreement to that company or entity with no extension of due date time frames.
- 18 **DEFINITIONS**
- 18.1 "Agreement" means these Terms and Conditions of Contract along with all Schedules attached to the Agreement.
- 18.2 "Business Day" means a day that is not a Saturday, Sunday or day that is wholly or partly observed as a Public Holiday throughout Queensland.
- 18.3 "Estimated Building Cost" means the estimated cost for construction of the Project as stipulated by the Designer.
- 18.4 "Fees and Expenses" means the fees and expenses calculated in accordance with Schedule 3.

18.5 "Project" means the construction work required by the Client as outlined in Schedules 1 & 2.

18.6 "Services" means the professional services to be provided by the Designer to the Client as described in Schedule 2.

19 INTERPRETATION

19.1 In this Agreement:

- headings and explanatory notes do not form part of and cannot be used in its interpretation;
- words in the singular include the plural and vice versa;
- words imparting a gender include every gender;
- reference to a party includes its heirs, executors, administrators, permitted assignees and transferees;
- references to a person, include an individual, firm or body (whether incorporated or unincorporated);
- if the time for giving any notice, making any payment or doing any other act required or admitted by this Agreement falls on a day which is not a Business Day, then the time for giving the notice, making the payment or doing the other act shall be deemed to be the next Business Day.

20 SEVERABILITY

20.1 If any provision of this Agreement is held invalid by any Court, such provision shall be deemed modified to eliminate the invalid element and, as so modified, such provision or part shall be deemed to be part of this Agreement as though originally included. The remainder of this Agreement shall not be affected by such modification.

21 JOINT AND SEVERAL OBLIGATIONS

21.1 If a party to this Agreement consists of more than one person, such party shall be bound by the obligations undertaken by them jointly and severally.

22 NON WAIVER

22.1 No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy shall constitute a general waiver of the same or any other condition, covenant, right or remedy.

23 PRIVACY

23.1 Private information collected by the Designer will only be distributed to third parties, for the purpose of executing this agreement.

Personal details are retained as required for taxation and liability purposes. The information will be protected, as required under the privacy act 1988 and Information Privacy Act - 2009 Queensland.

23.2 The Designer will not disclose particulars of the client's dealings, methods, financial information, and related matters to any outside party, unless the client fails to meet its financial commitments in respect of this agreement, or otherwise authorises disclosure.

23.3 If the Client is in breach of any part of this contract, the Client is deemed to have waived their rights to privacy in all respects.

24 DISPUTE RESOLUTION

24.1 Objectives

- Nothing in this clause prevents either Party from exercising its rights under the Agreement, which may include commencement of court proceedings.
- Subject to sub-clause 24.1(a), the Parties shall endeavour to resolve by negotiation any dispute that arises between them under this Agreement. The Parties shall also endeavour to conduct the dispute resolution process set out in this clause as efficiently and cost effectively as possible.
- Each Party shall bear its own costs in relation to its participation in any dispute resolution process, unless otherwise agreed to by the parties during this process.
- Nothing in this clause 24 prevents a court or tribunal from imposing costs against one or more parties where applicable.

24.2 Notification

If a dispute arises (including a breach or an alleged breach) under the Agreement then the party disputing the issue shall provide the other party a written notice of the nature and details of the dispute. If the dispute is not resolved at an operational level or is sufficiently serious that it cannot be resolved at the operational level, the Parties shall endeavour to agree upon a resolution. The Parties acknowledge that it is in their respective interests to resolve disputes at this level within a period not exceeding 10 business days.

24.3 Continued Performance

Notwithstanding the existence of a dispute, each Party shall continue to perform its obligations under this agreement, wherever practicable, and or where not otherwise agreed by the parties, or unless the agreement has been lawfully terminated under clause 10 or clause 11.

24.4 Failure to resolve dispute

Should the dispute not be resolved within the 10 business days or such other period as agreed in writing between the parties, this agreement may be suspending pending the outcome of any hearings, tribunal, arbitration or court action.