

Contract conditions

1. Plans and specifications

- (1) All plans and specifications for work to be done under this contract, including any variations to those plans and specifications, are taken to form part of this contract.
- (2) Any agreement to vary this contract, or to vary the plans and specifications for work to be done under this contract, must be in writing signed by each party to this contract

2. Quality of construction

All work done under this contract will comply with.

- 1 (a) the Building Code of Australia to the extent required under the Environmental Planning and Assessment Act 1979 (including any Instrument made under that Act), and
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law, and
 - (c) the conditions of any relevant development consent or complying development certificate and any construction certificate.
- 2 This contract may limit the liability of the contractor for a failure to comply with (1) if the failure relates solely to:
- (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor); or
 - (b) a design or specification required by the owner, if the contractor has advised the owner In writing that the design or specification contravenes (1)

3. Payment by owner

The owner must pay the Contract Price in the manner shown in the Payment Schedule. The Contract Price includes all matters (including GST) that could be reasonably expected to be necessary for the completion of the work. The work will be complete when it is finished in accordance with this contract, free of apparent defects and all rubbish and surplus material removed from the site The owner must pay the amount due on satisfactory completion of the work, or each stage of the work if applicable, within 5 business days of receipt of written notice from the contractor.

4. Statutory approval

If the approval of the local council or other statutory authority is required to carry out the work and that approval has not been sought at the date of this contract, the contractor must apply for and pay all tees for such approval. If any approval required is not obtained within 60 business days from the date of this contract either party may terminate the contract by notice In writing. If the contract is terminated in accordance with this clause the contractor is entitled to be paid all reasonable costs associated with applying for approval.

5. Time for completion

The contractor must complete the work within the Completion Period which runs from the date of this contract or. if any approval for the work is to be obtained, from the date of written notification of that approval whichever is later. The contractor will be entitled to a reasonable extension of time in the event of delays to the work where the cause of the delay is beyond the contractor's control including but not limited to, inclement weather, industrial disputes or variations to the work. The contractor must take all reasonable steps to minimise any delay to the work. Any claim for an extension of time must be notified In writing to the owner within 10 business days.

6. Variations to work

The work including materials may be varied by written agreement between the owner and the contractor. A notice describing the variation, the cost of the additional or omitted work and any change to the Completion Period must be provided to the owner, and the notice must then be signed and dated by both parties to constitute acceptance. The price of extra work, which includes GST, wd be added to the Contract Price. The cost of omitted work will be deducted from the Contract Price.

7. Prime cost items and provisional allowances

The Contract Price includes the items described in the Prime Cost Items Schedule and the Provisional Allowance Schedule (to be attached) for which a definite price is not known. The installation of prime cost items and connection to services, unless otherwise specified, is included in the Contract Price. If the actual cost of the prime cost item or provisional allowance item is less than the amount allowed, the Contract Price shall be reduced by the difference. The contractor's margin to cover overheads, supervision and profit for those items shall be _____% (if not completed 10% is deemed inserted). This amount will be added to the Contract Price.

8. Insurance of work and personal injury

Before the contractor commences any work under this contract or Is given access to the site, the contractor must have current insurance cover for:

- (a) public liability insurance to cover liabilities to third parties for death or personal injury or damage to property for an amount not less than \$5 million,

- (b) employer's liability and workers compensation insurance to cover any employees (if requested the contractor must provide the owner with proof that all such insurances have been taken out and are current.
- (c) property damage insurance for the work (including work in progress and materials) for the full reinstatement and replacement cost and
- (d) home warranty insurance to cover defective and incomplete work (a certificate of home warranty insurance must be provided before work starts or before any payment Is made under the contract).

9. Contractor's indemnity in favour of owner

The contractor will indemnify the owner against any loss or liability for death, personal injury or property damage arising out of the work under this contract, except to the extent that the owner or owner's representative contributed to the loss or liability.

10. Damage to property

The contractor must make good any loss or damage to the work or property of the owner caused by the contractor or the contractor's employees, agents or sub contractors. The owner must remove any furniture or personal goods from the vicinity of the work to minimise the risk of damage.

11. Access for contractors

The owner must provide access for the contractor and any employee or sub contractor of the contractor to carry out the work as required during work hours allowed by relevant statutory authorities. The owner must remove any personal property likely to impede the work

12. Cleaning up

On completion of the work, the contractor must remove from me site all plant and equipment and dispose of all rubbish, excavated material, vegetation, demolished or dismantled structures and surplus material relating to the work. All demolished, dismantled and surplus material will be the property of the contractor unless otherwise specified in the description of work

13. Defects

The contractor must make good any omissions or defects in the work or materials which become apparent within the period of 13 weeks from the date the work is completed. The owner must notify in writing of any work or materials to be rectified or replaced no later than 10 working days after the expiry of the 13 week period. The contractor must promptly make good the work or materials at the contractor's own expense.

14. Disputes

If the owner or contractor considers a dispute has arisen in relation to any matter covered by this contract, that party must promptly give the other party written notice of the items of dispute. The parties may confer with a mutually agreed third party to assist to resolve the dispute by mediation. If the dispute cannot be resolved, the owner may notify the Commissioner for Fair Trading that a building dispute exists and seek the Office of Fair Trading's assistance to resolve the dispute. The private home warranty insurer should be notified of any dispute which may be a prospective claim of the insurer.

15. Terminating contract

If the contractor becomes bankrupt or goes into liquidation, administration or is otherwise without full capacity; fails to complete the work within the completion period, or if no completion period is agreed, within a reasonable time; fails to remedy defective work or replace faulty or unsuitable materials then the owner may, where such default can be remedied, issue a written notice requiring the contractor to remedy the default within 10 business days of receipt of the notice by the contractor or within such other reasonable period as may be agreed. If the default is not remedied within the 10 business days or other reasonable period as agreed, or is not capable of being remedied, the owner may terminate the contract by written notice to the contractor.

If the owner fails to make payment due under the contract or denies access to the site to the contractor to prevent the work from proceeding, the contractor may issue a written notice requiring the owner to remedy the default within 10 business days of receipt of the notice by the owner. If the default is not remedied, the contractor may terminate the contract by written notice to the owner.

16. Giving of notices

Any written notice required to be given under the contract or under the cooling off provisions under the *Home Building Act 1989* may be served by:

- (a) giving it to the party personally.
- (b) leaving it at the party's address shown in the contract, or
- (c) sending it by registered post to the party's address shown in the contract.

Checklist for owners entering building contracts

Take the time to read and understand the contract documents

- 1. Does the contractor hold a current contractor licence?
Yes ☐ No ☐
- 2. Does the licence cover the type of work in the contract?
Yes ☐ No ☐
- 3. Is the name and number on the contractor's licence the same as on the contract?
Yes ☐ No ☐
- 4. Is the work to be undertaken covered in the contract, plans or specification?
Yes ☐ No ☐
- 5. Is the contract price clearly stated?
Yes ☐ No ☐
- 6. If not is there a warning the contract price is not known?
Yes ☐ No ☐
- 7. If the contract price may be varied, is there a warning and an explanation about how it may be varied?
Yes ☐ No ☐
- 8. Are you aware of the cooling off provisions relating to the contract?
Yes ☐ No ☐
- 9. Is the deposit within the legal limit? The limit is 10% for work costing \$20,000 or less or 5% for work costing more than \$20,000
Yes ☐ No ☐
- 10. Is the procedure for variations understood?
Yes ☐ No ☐
- 11. Are you aware of who is to obtain any council or other approval for the work?
Yes ☐ No ☐
- 12. Do you understand that the contractor must have a policy of home warranty insurance under the *Home Building Act 1989* and provide you with a certificate of insurance before receiving any money under the contract (including a deposit) or before doing any work for more than \$12,000?
Yes ☐ No ☐
- 13. Has the contractor given you a document that explains the operation of the *Home Building Act 1989* and the procedures for the resolution of contract and insurance disputes?
Yes ☐ No ☐