

MINOR CONSTRUCTION WORKS CONTRACT

Suitable for any type of 'smaller scale' residential building work under a lump sum contract price, where that price is not more than \$12,000 and does not require Home Warranty Insurance, as covered under the *Home Building Act 1989 (NSW)*

Owner Name: _____

Site Address: _____

Date: _____

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Checklist for Owners entering into building contracts

CHECKLIST

- | | | | |
|----|--|------------------------------|-----------------------------|
| 1 | Does the contractor hold a current contractor licence? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | Does the licence cover the type of work included in the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | Is the name and number on the contractor's licence the same as on the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | Is the work to be undertaken covered in the contract, drawings or specification? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | Does the contract clearly state a contract price or contain a warning that the contract price is not known? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 6 | If the contract price may be varied, is there a warning and an explanation about how it may be varied? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 7 | Are you aware of the cooling off provisions relating to the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | 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 <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | Is the procedure for variations understood? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | Are you aware of who is to obtain any council or other approval for work? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 11 | Do you understand that the contractor must have a policy of home warranty insurance under the <i>Home Building Act 1989</i> 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 <input type="checkbox"/> | NO <input type="checkbox"/> |
| 12 | Has the contractor given you a document that explains the operation of the <i>Home Building Act 1989</i> and the procedures for the resolution of contract and Insurance disputes? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

SIGNATURES

Do not sign this contract unless you have read and understand the clauses as well as the notes and explanations contained in this document.

If you have answered "no" to any question in the checklist, you may not be ready to sign the contract.

Both the contractor and the owner should retain an identical signed copy of this contract including drawings, specifications and other attached documents. Make sure that you initial all attached documents and any attachments or deletions to the contract.

SIGNED COPY OF THE CONTRACT

Under the *Home Building Act* a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

HOME WARRANTY INSURANCE

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving payment.

OWNER'S ACKNOWLEDGEMENT

I/We have been given a copy of the Consumer Information Brochure and I/We have read and understand it.

I/We have completed the check list and answered "Yes" to all items on it.

Note: Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted

Signature _____

Signature _____

Name [print] _____

Name [print] _____

Capacity [print] _____

Capacity [print] _____

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Contract Details

Owner(s)

Name(s): _____

Address: _____

Phone (W): _____ (H): _____

Contractor(s)

Name(s): _____

Address: _____

Licence No: _____ A.B.N: _____

Phone (W): _____ (H): _____

Site: _____

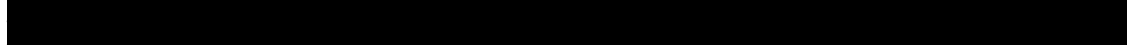
Contract Price (includes GST)

Price (excluding GST): _____

GST on the above amount: _____

Contract Price (including GST): _____

WARNING: The contract price may vary under this contract due to



Progress Payment Schedule

Stage / Date: _____ Amount: _____

Stage / Date: _____ Amount: _____

Stage / Date: _____ Amount: _____

WARNING: The deposit cannot exceed 10% of the Contract Price

Description of the Works (the "works")

All plans and specifications must be attached to this contract

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Building Period

The works must reach practical completion within _____ days / weeks of commencement.

Contractor's margin _____% (if nothing stated, then **■**%)

ACCEPTANCE OF CONTRACT

1. This contract is made between the owner and the contractor.
2. The Checklist does not form part of this contract.
3. The owner acknowledges that it has received the Checklist and the Consumer Building Guide before signing this contract.
4. The owner has read and understood this contract.

Owner(s) Signature: _____

Contractor's Signature: _____

Date: _____

SAMPLE - COPYRIGHT

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CONTRACT TERMS

1. PRIMARY OBLIGATIONS

The contractor will carry out and complete the works in accordance with this contract. The owner must pay the contractor the contact price in accordance with the progress payments schedule, and any other amount which is payable under this contract, on demand after the contractor has carried out the work or incurred the cost.

2. JOINT AND SEVERALLY LIABLE

If there is more than one owner:

- (a) each person's obligations are [REDACTED];
- (b) the contractor only has to [REDACTED] for all persons to be bound.

3. ACCESS TO THE SITE

The owner must give the contractor [REDACTED] to carry out the works. The owner must give the contractor adequate access to any available [REDACTED].

4. COMMENCEMENT

Before the contractor is obliged to commence the works, the owner must give the contractor written evidence:

- (a) that the owner holds the legal title to or is otherwise entitled to have the building works carried out on the site;
- (b) of any easements, covenants and / or encumbrances that may affect the building works on the site;
- (c) of the owner's ability to pay the contract price; and
- (d) of all necessary building and planning approvals having been received.

The building period commences on the date the contractor commences the works.

5. DELAYS

The contractor is entitled to a reasonable extension of the building period if the works are delayed from a cause, thing or matter beyond the sole control of

the contractor, including (but not limited to) any failure by the owner to:

- (a) [REDACTED]; or
- (b) [REDACTED].

The building period will be reasonably extended if the contractor notifies the owner in writing of an entitlement to an extension of time, within a reasonable time.

6. VARIATIONS

If the owner requests a variation, the contractor may give the owner a written quote detailing the work.

If the owner agrees to the variation by signing the quote and returning it to the contractor, the contractor will then do the variation in the time agreed.

7. PRIME COST AND PROVISIONAL SUM ITEMS

When required by the contractor, the owner must promptly select all items that relate to a prime cost or provisional sum item. Each prime cost or provisional sum item must have an allowance stated next to it for the estimated price of the item or providing the work. Where the actual price is more than the allowance, the difference plus the contractor's margin applied to that difference is added to the contact price, and is payable by the owner.

8. SURPLUS MATERIALS

Unless otherwise stated in this contract, any demolished and / or surplus materials will [REDACTED].

9. LATENT SITE CONDITIONS

The contractor shall not be responsible for any latent site conditions, which are only revealed after [REDACTED].

Any additional work necessary is to be considered a variation, and clause 5 will apply.

10. RETENTION OF TITLE

The legal title in all building materials does not [REDACTED].

11. WORK DONE BY OWNER

The owner must ensure that the condition of the site is suitable for the works to commence or continue when required by the contractor.

12. PRACTICAL COMPLETION

The contractor must:

- (a) reach practical completion by the end of the building period (as extended); and
- (b) give the owner a written notice of practical completion.

The notice of practical completion is to state the date of practical completion, and set out the contractor's final progress claim. On practical completion, the owner must:

- (a) inspect the building works with the contractor; and
- (b) if applicable, give the contractor a written, signed list of any defective or unfinished building work.

The owner must immediately pay the amount of the final progress claim upon practical completion.

13. CONTRACTOR'S RIGHT TO FIX

If the owner claims the works are defective at any time, the owner must [REDACTED].

If the contractor accepts responsibility, the contractor has the first right of rectification, but must commence rectifying such work within [REDACTED] days.

14. SUSPENSION

If the owner is in breach of this contract in any way whatsoever, the contractor may suspend the carrying out of the works. The contractor must recommence the works within a reasonable time after the owner remedies the breach, and gives the contractor written notice of that fact.

15. TERMINATION

If either party is in serious breach of this contract, the party not in breach may give the other party a written request to remedy that breach.

If the breach is not remedied within 5 days, the party not in breach may terminate this contract by giving written notice to that effect.

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16. INSOLVENCY

Should a party become insolvent, then the other party may, by giving a written notice, terminate this contract.

17. RISK

All materials shall be at the owner's risk once delivered to the site.

18. INSURANCE

The contractor is to have public liability insurance of at least \$5,000,000, and the owner must ensure that the owner has in place similar and adequate insurance.

19. CHARGE OVER LAND

The owner charges the [REDACTED] with due payment to the contractor of all moneys that are or may become payable under this contract to the extent that a court of tribunal has made an order that the owner pays that amount to the contractor.

20. COPYRIGHT

The contractor owns the copyright in all plans, specifications and workshop drawings created by or on behalf of the contractor.

If the owner provides the contractor with any sketch, plan or other documents which infringes upon another person's copyright or moral right, the owner will indemnify the contractor, and keep the contractor indemnified, against all claims and costs.

21. DEFAULT INTEREST

If the owner fails to make any payment on time under this contract, the contractor may charge the owner interest at the annual rate equal to the Commonwealth Bank overdraft index rate; quarterly charging cycle plus 5% on what is unpaid thereafter.

22. DEBT COLLECTING COST

The owner must pay to the contractor any debt collection costs, including any legal fees and costs associated with recovering or attempted recovery of any amount under this contract.

23. PREVAILING DOCUMENTS

These general terms, and attachments detailing prime costs and provisional sum items, the

plans, and the specifications, have precedence in that order, if there is any inconsistency between them.

24. WHOLE AGREEMENT

These general terms, the plans and specifications, and attachments detailing prime costs and provisional sum items comprise of the entire agreement between the parties, and supersedes any prior negotiations, discussions or understandings.

25. SUBCONTRACTING

The contractor may sub-contract any part of the building works.

26. RISK

All materials are to be at the owner's risk once delivered to the site.

27. GST

Where a price is not agreed for any additional charges or omissions from the works, the amount of Goods and Service Tax attributable to the value for that supply is to be added to the price calculated under the terms of this contract.

28. STATUTORY WARRANTIES

To the extent required by the Home Building Act, the contractor warrants that:

- (a) the works will be performed in a proper and workmanlike manner and in accordance with specifications attached to this contract.
- (b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- (c) the works will be done in accordance with, and will comply with, the Home Building Act or any other law.
- (d) the works will be done with due diligence and within the time stipulated in this contract, or if no time is stipulated, within reasonable time;
- (e) if the works consists of the construction of a dwelling, the making of alternations or additions to a dwelling or the repairing, renovation, decoration or protective

treatment of a dwelling, the works will result, to the extent of the works conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and

- (e) the works and any materials used in doing the works will be reasonably fit for the specified purpose or result, if the owner expressly makes known to the contractor, or other person with express or apparent authority to enter into a vary contractual arrangements on behalf of the contractor, the particular purpose for which the works are required or the result that the owner desires to be achieved so as to show that the owner relies on the contractor's skill and judgment.

29. MANDATORY CONDITIONS

To the extent required by the Home Building Act and subject to this clause, the works will comply with:

- (a) the Building Code of Australia (to the extent required under the Environment Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
- (b) all other relevant codes, standards and specifications that the works are required to comply with under any law; and
- (c) the conditions of any relevant development consent or complying development certificate.

The contractor is not liable if the works do not comply with the above requirements 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 the above requirements.

To the extent required by the Home Building Act:

- (a) all plans and specifications for the works including any variations to those plans and

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- specifications form part of this contract;
- (b) any agreement to vary this contract, or to vary the plans and specifications for the works, must be in writing and signed the parties.

30. DEFINITIONS

In this contract:
"building period" means the number of days or weeks stated in this contract, and as extended under clause 5;

"works" means the works described in this contract including any variations;
"contract price" means the amount stated in this contract, including any later changes;
"contractor" means the contractor identified in this contract;
"owner" means the owner named in this contract;
"practical completion" means when the building works are complete, except for minor omissions and defects that do not

prevent the building works from being reasonably capable of being used for their usual purpose;
"site" means that part of the land identified in this contract;
"variation" means any change in the works or the method of carrying out the works; and
and like words have the same meaning.

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