NSW GOVERNMENT | Fair Trading

Home building contract for work over $20,000

Legislation obliges a contractor to give a copy of the *Consumer building guide* to consumers before entering into a home building contract.

This contract includes a copy of the Guide or it can be downloaded from our website.

This publication can be viewed or printed from our website at
www.fairtrading.nsw.gov.au

This contract is recommended for home building work over $20,000 such as a new home, large additions and residential swimming pool installations or tradework which exceeds $20,000.

For home building work over $5,000 and up to the value of $20,000, such as minor additions, repairs, improvements or tradework, like electrical, plumbing, carpentry or brickwork the NSW Fair Trading *Home Building Contract for work over $5,000 and up to $20,000* should be used.

The contractor is required to attach a certificate of insurance under the Home Building Compensation Fund to this contract if the value of the work is $20,000 or more.

This contract complies with the requirements of the *Home Building Act 1989*.

You must obtain permission from NSW Fair Trading if you wish to copy this Home building contract other than downloading, printing or distributing it in order to use it as intended as a home building contract.

Important: For full details, see NSW Fair Trading's copyright policy at *www.fairtrading.nsw.gov.au/ftw/Copyright.page* or email *publications@finance.nsw.gov.au*

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This contract starts here

Introduction

Before signing, the owner should carefully go through all of the items in the checklist overleaf. If you answer 'no' to any of the questions in the checklist you may not be ready to sign the contract. Both parties should take time to read and understand all the contract documents.

This contract should have been available to both parties in sufficient time to allow for reading and for advice to be obtained if necessary, prior to signature.

References to costs and prices throughout the contract are inclusive of GST where applicable (Goods and Services Tax levied by the Federal Government).

Note: *In this contract:*

C *Refers to explanatory notes of primary interest to contractors.*

O *Refers to explanatory notes of primary interest to owners.*

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. It is always advisable to seek independent legal advice before signing a contract.

O ***Warning:*** *The contract price may increase in accordance with the contract terms. This is because not all costs can be absolutely determined at the outset although the contractor is obliged to make reasonable estimates given known conditions. The reasons for possible increases include:*

- *Increase in taxes, eg. GST (Clause 3)*
- *Provisional Sums (Clause 10)*
- *Prime Cost Items (Clause 11)*
- *Variations, including those due to unforeseen matters or required by council (Clause 13)*
- *Interest on overdue payments (Clause 14)*
- *Boundary Survey (Clause 20).*

O ***Note:*** *Where the owner or the contractor 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.*

Contract price

(including GST)

Amount in words	Nine Hundred and Fifty Thousand Dollars	
		$ 950,000.00

Owner's signature

Owner's signature	
Name (print)	Testing Person
Date	20/02/2017

Owner's signature

Owner's signature	
Name (print)	Testing person
Date	20/02/2017

Contractor's signature

Contractor's signature	
Name (print)	Another Person
Date	20/02/2017

Checklist for owners entering building contracts

1)	Have you checked that contractor holds a current contractor licence?	Yes ✔	No ☐
2)	Does the licence cover the type of work included 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, drawings or specification?	Yes ✔	No ☐
5)	Does the contract clearly state a contract price or contain a warning that the contract price is not known?	Yes ✔	No ☐
6)	If the contract price may be varied, is there a warning and an explanation about how it may be varied?	Yes ✔	No ☐
7)	Are you aware of the cooling-off provisions relating to the contract?	Yes ✔	No ☐
8)	Is the deposit within the legal limit of 10%?	Yes ✔	No ☐
9)	Does the contract include details of the progress payments payable under the contract?	Yes ✔	No ☐
10)	Do you understand the procedure to make a variation to the contract?	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 you are not required to pay the contractor a deposit or any progress payments until the contractor has given you a certificate of insurance under the Home Building Compensation Fund (except where the work is of a kind that does not require insurance)?	Yes ✔	No ☐
13)	Has the contractor given you a copy of the *Consumer building guide*, which provides key information about your rights and responsibilities under NSW's home building laws and where to get more information?	Yes ✔	No ☐
14)	Does the contract include a statement about the circumstances in which the contract may be terminated?	Yes ✔	No ☐

Signed copy of contract

A signed copy of the contract must be given to the owner within 5 clear business days after the contract is entered into. This is a requirement under the *Home Building Act 1989*.

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

Insurance under the Home Building Compensation Fund

Previously known as Home Warranty Insurance

If the builder or tradesperson does not provide the consumer with a valid certificate of insurance under the Home Building Compensation Fund where the contracted work is valued over $20,000 (including the cost of materials supplied by the contractor), they are committing an offence under the *Home Building Act 1989*. They also commit an offence if they demand or receive payment before providing the insurance certificate. Consumers can check the validity of a certificate provided by the builder or tradesperson by visiting www.hbcf.nsw.gov.au.

Owners acknowledgment

I/we have been given a copy of the fact sheet *Consumer building guide* and I/we have read and understand it.

I/we have completed the checklist 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	
Name (print)	Testing Person
Capacity (print)	Owner

Signature	
Name (print)	Another Person
Capacity (print)	Owner

Insurance under the Home Building Compensation Fund

OK! You have completed the checklist and you may be ready to sign the contract. But before your contractor starts work, and before you pay any money, make sure that you have been given a certificate of insurance under the Home Building Compensation Fund if your project is valued over $20,000. Attach the certificate to this contract with the other contract documents. You will need to produce this certificate if you need to claim for any defective or incomplete work. Make sure the name and licence number of the contractor as shown on the certificate are exactly the same as those on the contract. You can check the validity of a certificate provided by the builder or tradesperson by visiting the Home Building Compensation Fund website www.hbcf.nsw.gov.au

Notes, Explanations and Warnings

The notes, explanations and warnings that follow do not form part of the contract.

Note: *The owner should check these details by contacting Fair Trading before signing the contract.*

Explanation: *A qualified supervisor is applicable unless the contractor's licence has the letter 'Q' shown in the right hand bottom corner.*

Warning: *If a payment is made by a business to another business when the payer has not received notification of the recipient's ABN (Australian Business Number) then the payer will be obliged to withhold tax as required by the ATO (currently 48.5%) and send it to the ATO.*

Warning: *The contract price may increase in accordance with the contract terms. This is because not all costs can be absolutely determined at the outset although the contractor is obliged to make reasonable estimates given known conditions. The reasons for possible increases include:*

- *Increase in taxes, eg. GST (Clause 3)*
- *Provisional Sums (Clause 10)*
- *Prime Cost Items (Clause 11)*
- *Variations, including those due to unforeseen matters or required by council (Clause 13)*
- *Interest on overdue payments (Clause 14)*
- *Boundary Survey (Clause 20).*

Owner and Contractor details

Owner

Name(s)	Testing Person		
Address	23 An Address		
	A.C.T	**Postcode**	2602
Home phone	62000000	**Work phone**	
Fax number		**Mobile**	0411 111 111
Email	Person@Gmail.com		

Owner

Name(s)	Testing Person		
Address	23 An Address		
	A.C.T	**Postcode**	2602
Home phone	62000000	**Work phone**	
Fax number		**Mobile**	0400 000 000
Email	Person@Gmail.com		

Contractor

Name (as shown on licence)	Another person		
Licence number	666666	**Expiry date**	6 / 6 / 2020
Category of work shown on licence	Builder		
Australian Company Number (if applicable)	66666666511		
Address (as shown on licence)	30 Address, Kaleen		
	A.C.T	**Postcode**	2617
Business address and address for service documents (if different from address on licence)			
		Postcode	
Home phone	6200 0000	**Work phone**	
Fax number		**Mobile**	047777777
Email	Testing@Gmail.com		
Qualified supervisor (if applicable)			
ABN			

Address

Where work has to be done (site)	36 Address St, Queanbeyan		
	N.S.W	**Postcode**	2620

Title details

Lot number	282	**Deposited plan no.**	746842
Certificate of Title-Folio identifier	2848888888		

Contract price*

*(including GST)

Amount in words	Nine Hundred and Fifty Thousand Dollars		
		$	950,000.00

Contractor initials _____ **Owner initials** _____

Clause 1
Contract documents

__Note:__ This contract is a legally binding agreement. The following 30 clauses set out the parties' rights and obligations.

Take time to read and understand the various clauses and do not sign unless you have read the checklist and answered 'yes' to all questions.

__Explanation:__ The general conditions of contract contain the terms upon which the work is to be carried out and payment made.

The purpose of the specifications is to describe the materials to be used and standard of workmanship to be observed. The plans are the pictorial representation of the work.

The parties may also wish to include other documents, such as a final tender, an engineer's drawing, geotechnical report, council conditions of approval, sewer diagram, survey certificate, if applicable, as part of the contract and these need to be specified opposite.

C *__Note:__ The contract must contain a sufficient description of the work. This is required under the Home Building Act 1989. If there are plans and specifications, these must be attached as part of the contract.*

O *__Note:__ You can check the validity of your certificate of insurance on the certificate register at www.hbcf.nsw.gov.au*

O *__Note:__ The owner should check that the contractor is aware of any special finishes, appliances or materials required by the owner and that the specifications and plans incorporate those requirements.*

C *If insurance under the Home Building Compensation Fund is not taken out before work begins, this is a breach of the Home Building Act and will affect a contractor's right to receive payment.*

This contract consists of owner, contractor, site and price details, the **Clauses 1** through to **30** (hereafter referred to as 'the contract conditions') and any additional conditions agreed to by the owner and contractor which must be in writing, together with the section for signatories and contract date appearing after the contract conditions.

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.

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. The documents listed below also form part of this contract and must be attached:

Specifications: prepared by	No. of pages	Date
		/ /
		/ /
		/ /

Plans: prepared by	No. of pages	Date
		/ /
		/ /
		/ /

Other documents: prepared by	No. of pages	Date
		/ /
		/ /
		/ /

Certificate of insurance under the Home Building Compensation Fund:	Certificate date or annual period
Yes	15/02/2017

In the event of any difference or inconsistency between the above documents, the contractor must discuss the matter with the owner and attempt to seek agreement on the work to be performed or the materials to be used.

See dispute resolution procedures in **Clause 27**.

The additional conditions shall take precedence over the printed contract conditions where there is any inconsistency or ambiguity.

All items shown in the plans form part of the work to be performed under this contract unless specifically excluded by the contract conditions, including any additional conditions, specifications or other documents listed above.

Items listed in the Excluded items schedule (opposite) are not included in this contract. The Schedule should be completed or marked 'Not Applicable'.

If the Excluded items schedule is not completed it will be deemed to be not applicable.

Contractor initials _____ **Owner initials** _____

Exluded items schedule
(items not included in contract)

Note: *This schedule lists those items which are not included in the contract. You should carefully check the plans, specifications and other documents if applicable to ensure that there is no inconsistency between this schedule and those documents. (If space is insufficient attach a sheet referring to this schedule).*

Clause 2
Quality of construction

The contract price may need to be amended for the reasons listed in the warning at the start of the contract. The owner should discuss these matters with the contractor prior to signing this contract to clarify what additional costs, if any, may be involved.

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 regulation or other 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.

2. Despite subclause (1), this contract may limit the liability of the contractor for a failure to comply with subclause(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).

No alterations, additions or deletions to the clauses contained in this contract should be made unless reasons for such changes are provided in writing and both parties agree to the changes. If the changes are unclear, seek appropriate legal or technical advice. Where there are any changes to the clauses or where information is inserted in any of the boxes provided, the parties should initial their amendments or additions.

Clause 3
General conditions of contract

It is agreed, subject to this and the other clauses of this contract, that:

(a) the contractor will:

- comply with the statutory warranties in section 18B of the *Home Building Act 1989* and complete the work in accordance with the requirements of this contract; and
- comply with all relevant Australian Standards, laws and the requirements of the relevant local council and all statutory authorities with respect to the work.

(b) the owner will pay the contract price in the manner specified in this contract.

Contractor initials _____ **Owner initials** _____

The contractor must provide you with a certificate of insurance under the Home Building Compensation Fund (for work over $20,000) applicable to the contracted work before commencement of work and before demanding or receiving any payment.

The contract price includes all taxes (including GST) associated with the work. References to costs and payments are inclusive of GST where applicable. The contract price may be increased by the amount of any increase in tax or duty which is imposed after the date of this contract and which directly relates to work done or materials supplied under this contract.

The contractor warrants that as at the date of this contract, the contract price is based upon site inspections and all other investigations which would usually be undertaken by an experienced and competent contractor and includes all matters including equipment that could be reasonably expected to be necessary for the completion of the work covered by this contract. The contract price may be adjusted after the date of contract only in accordance with this contract.

The cooling off period may be shortened or deleted from the contract by an additional condition of the contract, provided the owner gives to the contractor a certificate by a legal practitioner that complies with s.7BA(5) Home Building Act. You should seek legal advice if the owner's rights to a cooling off period is sought to be changed in any way.

The cooling off provisions do not apply to contracts:

(i) between parties who each hold a contractor licence and is for work that each party's contractor licence authorises the contractor to do;

(ii) between a licensed contractor and a developer;

(iii) where, if the work were not to be done promptly there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property and the work could not be done promptly if the cooling off provisions were to be complied with before commencing the work;

(iv) that are supplied and fully prepared by or on behalf of the person who contracts with the holder of the contractor licence and no part of which is supplied or prepared by or on behalf of the holder of the contractor licence.

Cooling off period
for contracts with price over $20,000

Under the Home Building Act the owner may rescind the contract under the following provisions. The contract may be rescinded even if work has commenced under the contract.

The notice of rescission must be given to the contractor:

(a) where the owner has been given a copy of the signed contract – within 5 clear business days after being given a copy of the signed contract, or

(b) where the owner has not been given a copy of the signed contract within 5 days after the contract was signed – within 5 clear business days after the owner becomes aware of being entitled to be given a copy of the signed contract.

The notice of rescission must state that the owner rescinds the contract, and must be given to the contractor by leaving it at the address shown as the contractor's address, or by any method of service provided by **Clause 28** of this contract.

If a notice of rescission is given to the contractor:

(a) the contract is taken to be rescinded from the time it was signed, subject to (b), (c), (d) and (e) below

(b) the contractor may retain out of any money already paid to the contractor the amount of any reasonable out of pocket expenses that the contractor incurred before the rescission

(c) the contractor must refund all other money paid to the contractor under the contract by, or on behalf of, the owner at or since the time the contract was made

(d) the owner is not liable to the contractor in any way for rescinding the contract

(e) the contractor is entitled to be paid a reasonable price for any work carried out under the contract to the date the notice of rescission is given.

Contractor initials _____ **Owner initials** _____

Clause 4
Deposit

Note: A deposit must not be requested or paid until a certificate of insurance under the Home Building Compensation Fund has been given to the owner.

Any deposit amount must be specified opposite and must not exceed the maximum allowable under the law of 10% of the contract price.

Certain deposits could attract GST liability eg. where deposit is forfeited or part of a payment. Any amount received by the contractor prior to the commencement of work irrespective of whether the payment is described as a deposit or a payment for any other reason must not exceed the maximum allowable deposit amount.

The deposit under this contract will be:

Amount in words	Ninety Five Thousand
	$ 95,000.00

Clause 5
Commencement of work

Note: The contractor should check that the owner's name stated on the contract is the same as that appearing on the certificate of title for the land. A letter from the lending authority or owner's bank may be requested in relation to capacity to pay.

It is an offence to commence work or demand payment before taking out insurance under the Home Building Compensation Fund and providing a certificate to the owner. Failure to take out insurance may affect the contractor's right to payment.

The contractor must commence the work within 5 working days from:

- the date of this contract, or
- if the approval of the local council or other statutory authority has still to be obtained for the work, the date of written notification of that approval, or
- if the consent of the lending authority is required, the date of written notification of consent that the work may proceed whichever is latest.

The contractor may, by written notice, request the owner to provide satisfactory evidence of the owner's title to the land and capacity to pay the contract price and for any variations agreed to after the contract is signed.

If the owner fails to provide such evidence within 10 business days from receipt of such notice, the contractor may suspend the work under the contract in accordance with **Clause 24** or take action to end it in accordance with **Clause 26**.

Clause 6
Time for completion

O ***Explanation:*** *The time allowed for completion should be realistic. The contract time should allow for any public holidays or periods when it is known the work will not be performed, for example the building industry shutdown over the Christmas period and industry rostered days off. Instances can occur when the time for completion has to be adjusted. See Clause 7.*

The contractor must diligently proceed and complete the work within 30 calendar weeks from the date the work is due to commence as referred to in **Clause 5**. The period of time allowed for completion has taken into account any public holidays and other days when it is known that work will not be performed. The time for completion may be subject to amendment in accordance with **Clause 7.**

Clause 7
Extension of time

Explanation: *Delays can occur during the course of the work. The contractor is entitled to apply for a reasonable extension of time for completion.*

In order to qualify for an extension of time the contractor must comply with the requirements set out in this clause.

If the work is delayed by:

- inclement weather or conditions resulting from inclement weather
- any order of a court or tribunal that the work be suspended, unless that order resulted from the fault of the contractor
- any act or omission of the owner
- any industrial dispute affecting the progress of the work (not being a dispute limited to the site or limited to employees of the contractor)
- the unavailability of materials necessary for the continuation of the work, unless due to the fault of the contractor
- a variation to the work
- a suspension of the work by contractor under **Clause 24**, or
- any other matter, cause or thing beyond the control of the contractor, the contractor will be entitled to a reasonable extension of time to complete the work. **Both the contractor and owner (if applicable) must take all reasonable steps to minimise any delay to the work.**

C ***Note:*** *Disagreements may occur if a contractor fails to correctly claim for justified extensions of time. The contractor should ensure that the procedure set out in Clause 7 is always followed.*

If the contractor wishes to claim an extension of time, the contractor must notify the owner in writing of the cause and estimated length of the delay within 10 business days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.

If the owner does not, within a further 10 business days, notify the contractor in writing that the extension of time sought is unreasonable, the completion date for the contract will be extended by the period notified to the owner.

If the owner gives the contractor written notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure (**Clause 27**).

Contractor initials _____ **Owner initials** _____

O ***Explanation:*** *Should any defects or omissions become apparent after completion, refer to the Defects Rectification clause (Clause 23).*

Explanation: *Under the Home Building Act the contractor is required to give the warranties set out in this clause.*

The statutory warranties in the contract are as printed in the Home Building Act. They require the contractor to provide a product as agreed, in a suitable state, fit for its intended purpose, complying with all relevant laws and within the agreed time, or if not agreed a time that is reasonable

C *Paragraph (f) on this page relates to work where the owner makes known to the contractor the intended purpose of the works or the result the owner expects to achieve with the work. This warranty requires the contractor to use appropriate expertise to provide the stated and expected results.*

O ***Note:*** *Any legal action for a breach of statutory warranties must be taken before the end of the warranty period for the breach ie. 6 years for a breach resulting in a major defect (as defined in the Home Building Act) or 2 years in any other case.*

The warranty period starts on completion of the relevant work to which it relates (but this does not prevent proceedings from being commenced before completion of the work). However, if the work is not completed, the warranty period starts on:

(i) the date the contract is terminated, or

(ii) if the contract is not terminated – the date on which work under the contract ceased, or

(iii) if the contract is not terminated and work under the contract was not commenced – the date of the contract.

If the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period. A breach becomes apparent when the owner of the property becomes aware (or ought reasonably to have become aware) of the breach.

Clause 8
Completion of work

The work will be complete when the contractor has finished the work in accordance with the contract documents and any variations, there are no omissions or defects that prevent the work from being reasonably capable of being used for its intended purpose, any damage of the kind referred to in **Clause 19** has been repaired, and all rubbish and surplus material has been removed from the site.

When the contractor believes the work is complete, the contractor must notify the owner in writing certifying that the work has been completed in accordance with this contract. Within 10 business days of receipt of written notice from the contractor, the owner must advise the contractor in writing of any items of work the owner considers to be incomplete or defective. If the owner does not so notify the contractor, the work will be taken to be complete.

The contractor must complete any outstanding work promptly and again notify the owner in writing. Unless the owner notifies the contractor in writing that any item is still incomplete or defective within a further 10 business days from receipt of notification by the contractor, the work will be taken to be complete.

Should there be any dispute between the parties as to whether the work has been completed, it must be dealt with in accordance with the dispute resolution procedure (**Clause 27**).

Clause 9
Statutory warranties

The contractor warrants that:

(a) the work will be done with due care and skill and in accordance with the plans and specifications set out in the contract

(b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in the contract, those materials will be new

(c) the work will be done in accordance with, and will comply with, the Home Building Act or any other law

(d) the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time

(e) if the work consists of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling

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

These warranties do not in any way reduce or limit the contractor's obligations in relation to workmanship, materials, completion or other matters specified in **Clauses 2** and **3** or elsewhere in this contract. No provision of this contract can reduce, restrict or remove these statutory warranties.

Contractor initials _____ **Owner initials** _____

__Explanation:__ Provisional sums (including GST) are estimates of the cost of items of work included in the contract for which the contractor cannot give a definite price, for example, unforeseen rock excavation. An estimated cost is provided in the contract price which is adjusted after the work has been done. The contractor should ensure the estimate is realistic.

Provisional sums should only be used where the contractor cannot price the work before it is undertaken. If there is any doubt the owner should ask the contractor to fully explain the reasons why a fixed price cannot be given.

__Explanation:__ Contractors normally include in the price for all work a margin to cover overheads, supervision and profit. The margin to be applied to the adjustment of provisional sums is to be inserted in the box opposite. You should question any margin that exceeds 20% and seek further advice if necessary.

__Note:__ The contractor should assess the suitability of the site for the proposed works and if tests are necessary they should be undertaken so that a price for that area of work can be included in the fixed price of the contract.

__Note:__ Provisional sums should only be used where the contractor cannot give a definite price for the work. If there is any doubt the owner should seek an explanation from the contractor. Excessive use of provisional sums should be avoided. When it is difficult for the contractor to estimate quantity, for example the extent of rock to be excavated or concrete piers required, a rate item should be provided. The allowed rate should be multiplied by the contractor's estimate of the quantity to arrive at a provisional sum allowance. When the provisional sum is adjusted the rate will be multiplied by the actual quantity and the contract price adjusted.

__Note:__ In the case of rates for excavation of rock, discuss the need for a geotechnical survey to more accurately assess the quantity. If the quantities are not carefully estimated, the contract price may vary significantly.

Clause 10
Provisional sums

The contract price includes the items of work set out in the provisional sums schedule for which the contractor cannot give a definite price. The provisional sums schedule set out the amount allowed for the cost of each item of work, including GST.

The contractor warrants that the provisional sums allowed have been estimated with reasonable care and skill, and in light of information necessary and available at the date of this contract and taking into account such factors as a competent and experienced contractor should have taken into account in estimating the provisional sums.

The contractor must also offer to the owner or the owner's representative the opportunity, with adequate written notice, to be present at the site during the performance of any work included in the provisional sums schedule in order to verify the actual cost of the work. The contractor does not have to delay the work if the owner is unable to attend at the time the work is to be performed.

If the actual cost to the contractor is greater than the provisional sum allowed, the excess amount together with the contractor's margin of 18 % on the excess, to cover overheads, supervision and profit shall be added to the contract price, along with the additional GST. If the actual cost to the contractor is less than the provisional sum allowed, the contract price will be reduced by the difference between the provisional sum allowed and the actual cost.

Any such addition or deduction will be taken into account in the next progress payment or as agreed between the parties.

The contractor must provide a copy of any relevant invoice, receipt or other document evidencing the actual cost of the work included in the provisional sums schedule at the time payment is requested.

Provisional sums schedule

Item of work	Quantity	Unit	Dollar rate per unit	Provisional sum (including GST)
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
(If space is insufficient, attach a sheet referring to this schedule)			**Total cost**	$ 0.00

Contractor initials _____ **Owner initials** _____

Clause 11
Prime cost items schedule

__Explanation:__ It is always best to obtain a fixed price for all work under the contract. However, certain fixtures and fittings may need to be selected after the signing of the contract. These items may include the stove, or special kitchen and bathroom products. Where such items are specified as prime cost items the contractor will allow in the contract price an amount which should cover the expected cost of the item.

__Explanation:__ Contractors normally include in the price for all work a margin to cover overheads, supervision and profit. The margin to be applied to the adjustment of provisional sums is to be inserted in the box opposite. You should question any margin that exceeds 20% and seek further advice if necessary.

__Note:__ The owner should ensure that the contractor is given sufficient details of the type and quality of items to be selected so that the contractor can quote accurately.

The contract price includes the items specified in the prime cost items schedule which the owner has not selected at the date of this contract and for which the contractor cannot give a definite price. The amounts allowed are for the cost of each item, including GST.

The installation of prime cost items and connection to services, unless otherwise specified is included in the contract price.

The contractor warrants that the prime cost items have been estimated with reasonable care and skill, and in light of information necessary and available at the date of this contract and taking into account such factors as a competent and experienced contractor should have taken into account in estimating the likelihood of such items being required and their likely cost.

The owner must select each item in conjunction with advice from the contractor within sufficient time so as not to cause any delay to the work. The contractor must give the owner adequate written notice as to when a selection of each item is required in order to avoid any delays.

If the actual cost to the contractor is greater than the prime cost amount allowed, the excess amount together with the contractor's margin of 18 % on the excess, to cover overheads, supervision and profit shall be added to the contract price, along with the additional GST. If the actual cost to the contractor is less than the amount allowed, the contract price will be reduced by the difference between the amount allowed and the actual cost.

The contractor must provide a copy of any relevant invoice, receipt or other document evidencing the purchase price of the item at the time payment is requested. If the contractor purchases a prime cost item, any discount for prompt payment will be allowed in favour of the contractor. All written warranties for such items must be given to the owner on completion of the work and must be enforceable by the owner.

Prime cost items schedule

Item	Prime cost amount (including GST)
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
	$
(If space is insufficient, attach a sheet referring to this schedule) **Total cost**	$ 0.00

Contractor initials _____ **Owner initials** _____

Clause 12
Progress payments

__Explanation:__ Progress payments are usually made at specified stages as the work proceeds. These payments, which include GST, should equate to the value of work done. Note, a lending authority may have certain requirements for progress payments and the parties should check these. If the lending authority has any special requirements for progress payments there may be a need to include an additional clause in the contract covering them.

__Note:__ If the owner makes a progress payment but is concerned with any aspect of the work the owner should promptly advise the contractor in writing of these concerns. If the owner has any doubt, they should consider obtaining independent advice from a building consultant, architect or quantity surveyor.

Should there be a dispute in relation to any part of the work the parties should try to agree on an appropriate amount to be deducted from the progress claim until the dispute is resolved.

As this is a fixed price contract it will provide for the authorised progress payments in (a). However this contract can also provide for a progress payment in (b)-(This may be the case if there are aspects of the contract that cannot be costed before they are carried out).

(a) a progress payment of a specified amount or specified percentage of the contract price that is payable following completion of a specified stage of the work, with the work that comprises that stage described in clear and plain language,

(b) a progress payment for labour and materials in respect of work already performed or costs already incurred (and which may include the addition of a margin), with provision for a claim for payment to be supported by such invoices, receipts or other documents as may be reasonably necessary to support the claim and with payment intervals fixed by the contract or on an "as invoiced" basis.

The owner must pay the contract price by progress payments within 5 business days of the completion of the stages of the work nominated in the schedule of progress payments. The contractor must notify the owner in writing when a stage of the work has reached completion. A stage of work has reached completion when it has been finished in accordance with the contract documents and any variations agreed to and there are no omissions or defects that prevent that stage of the work from being reasonably capable of being used for its intended purpose. Any deposit paid is deducted from the first progress payment.

Despite the preceding paragraph, if the owner's lending authority (if applicable) is to make all or any progress payments, then the contractor agrees to accept the usual payment terms (including the need for inspections and certifications required by the lending authority) in place of the requirements specified in the preceding paragraph.

Schedule of progress payments
(to be completed by parties)

Stages of work (Note that there does not need to be 10 stages and payments are made at the completion of the stage)	**Amount** (including GST)
1 Slab - 15%	
(less deposit: $ 95,000.00 **)**	**$** 142,500.00
2 Frame - 15%	**$** 142,500.00
3 Lock up - 25%	**$** 237,500.00
4 Fixing - 20%	**$** 190,000.00
5 Completion - 15%	**$** 142,500.00
6	**$**
7	**$**
8	**$**
9	**$**
10	**$**
(If space is insufficient, attach a sheet referring to this schedule) **Total**	**$** 855,000.00

Payment of a progress payment is not to be regarded as acceptance by the owner that the work has been completed satisfactorily or in accordance with the contract documents.

If there is any bona fide dispute in relation to the value or quality of work done, the dispute must be dealt with in accordance with the dispute resolution procedure set out in **Clause 27**. In those circumstances, the parties agree as follows:

(a) the owner may withhold from the progress payment, an amount estimated by the owner, acting reasonably, equal to the owner's estimate of the value of the disputed item

(b) the contractor must continue to carry out its obligations under this contract pending resolution of the dispute.

Contractor initials _____ **Owner initials** _____

Clause 13
Variations

Explanation: *If, after work has commenced, the owner decides to delete, alter or add to the work to be done, a variation to the contract may be required. The work also may be varied at the request of the contractor, due to a requirement of the council or other authority, or a matter which could not be foreseen at the time of signing the contract.*

Note: *Copies of letters and notices relating to variations should be kept by both parties.*

The work to be done or materials used under this contract may be varied:

- at the request of the owner, or
- at the request of the contractor. If the necessity for the variation is due to the fault of the contractor the owner will not be liable for any increase in the contract price, or
- due to such other matters that could not reasonably be expected to be foreseen by an experienced, competent and skilled contractor for the completion of the work at the date of the contract, or
- due to a requirement of a council or other statutory authority relating to the work, if at the date of this contract such requirement could not reasonably have been foreseen by the contractor.

Procedure for variations

Before commencing work on a variation, the contractor must provide to the owner a notice in writing containing a description of the work and the price (including GST). If not otherwise specified the price will be taken to include the contractor's margin for overheads, supervision and profit. **The notice must then be signed and dated by both parties to constitute acceptance.**

If the time for completion will be delayed by the variation the contractor must include in the notice an estimate of the additional time required. Any extension of time must be dealt with in accordance with **Clause 7**.

The requirement for variations to be in writing does not apply where, if the work were not to be done promptly there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property and the work could not be done promptly if the variation had to be put in writing before commencing the work.

Variations shall be subject to the overall conditions of this contract.

Explanation: *Contractors normally include in the price for all work a margin to cover overheads, supervision and profit. The margin to be applied to the adjustment of prime cost items is to be inserted in the box opposite. You should question any margin that exceeds 20% and seek further advice if necessary.*

Adjustment of contract price

The cost of deletions from the contract will be deducted from the contract price. The price of any variation specified in the notice signed and dated by both parties will be added to the contract price.

Any adjustment to the contract price due to an agreed variation will be taken into account at the time of the next progress payment or paid as agreed by the parties.

Contractor initials _____ **Owner initials** _____

Right to terminate the contract for variations due to unforeseen matters or a requirement of council or other statutory authority

If the work must be varied due to a matter that could not reasonably be expected to be necessary for the completion of the work or a requirement of the council or other statutory authority which was not known at the date of this contract and the owner notified the contractor in writing that the owner is unable to meet the cost of that variation, then the owner will be entitled to terminate the contract by notice in writing to the contractor (**Clause 25**).

If the contract is so terminated, the contractor is entitled to payment:

- in accordance with **Clause 12** in respect of completed stages
- the actual cost of the work done since the completion of the last stage, and for any materials on the site, together with a margin of _____ % for profit supervision and overhead on the cost of that work and materials, and GST payable.

Clause 14
Time for payments

Note: *The contractor will have to account for GST 21 days after the end of the tax period in which an invoice (ie. claim for payment) is issued or the payment is received, whichever is earlier.*

When the contractor gives the owner a written claim for a progress payment or other amount due under the contract, the owner must pay, unless the owner notified the contractor in the manner stated below, the amount of the claim within 5 business days of receipt of the claim (which must not be less than 5 business days). However, the preceding sentence is subject to any contrary term or condition specified in **Clause 12**.

If the owner disagrees that the contractor is entitled to be paid a progress claim or other amount due under the contract, the owner must notify the contractor in writing within 5 business days of receiving the claim setting out the reasons for that disagreement. If there is any dispute between the parties relating to a payment under the contract it must be resolved according to the dispute resolution procedure set out in **Clause 27**.

If the owner fails to pay the amount of a claim in part or in full by the due date and fails to give notice disputing the claim to the contractor, interest at the current bank rate (as defined in **Clause 30**) will be payable to the contractor on the amount outstanding for the period overdue. However, if the owner gives notice of a dispute in accordance with the dispute resolution clause (**Clause 27**), interest at the current bank rate will only be payable if the dispute is resolved in favour of the contractor and shall be calculated from the time when payment would have otherwise been due.

Contractor initials _____ **Owner initials** _____

Clause 15
Final payment

When the work is complete in accordance with **Clause 8** tthe owner must pay the amount remaining unpaid under the contract. Payment must be made in the manner specified in **Clause 14**. If the amount is not paid, interest in accordance with **Clause 14** applies.

On receipt of the final payment, the contractor must hand over to the owner all guarantees, instruction manuals and the like unless already provided and all keys relating to the work, together with any certification or approval which may have been provided by any public authority relating to the work.

Clause 16
Work done and/or materials supplied by owner

__Explanation:__ If the owner is to perform any of the work or provide any items or materials they must be specified in the space provided. Ensure the items are clearly and fully described.

The owner will carry out the work and supply the materials described below. The cost of that work and materials is not included in the contract price.

Work and materials by owner

__Note:__ If the work to be done by the owner requires council approval and the value of that work exceeds $10,000 an owner-builder permit will be required. Also the owner should check with his or her insurer the need to take out separate insurance.

The owner should advise the contractor when the work will be done so as to avoid any delay in the work under the contract.

The owner should check with the contractor that any materials to be supplied by the owner are suitable for their purpose.

The owner will supply the materials set out below. The cost of these materials is not included in the contract price. The cost of installation by the contractor is included in the contract price.

Materials only by owner

The owner must diligently carry out the work and supply the materials described above to avoid undue delay to the work under the contract.

Contractor initials _____ **Owner initials** _____

Clause 17
Approvals

Note: *As a general rule, all necessary building and other approvals for the work should be obtained prior to the signing of the contract. If any approvals will have to be obtained after the date of the contract the parties should carefully note the provisions of Clause 17. The Council may require a security deposit covering possible damage to kerbs. The owner should pay such deposits to ensure refunds are payable. Refer to Clause 19 regarding rectification of damage to kerbs.*

Note: *If it is agreed that the owner not the contractor will apply for and obtain, at the owner's expense, all approvals for the work, the first paragraph of Clause 17 will have to be changed to reflect this.*

Unless obtained by one of the parties prior to the date of the contract, the contractor must promptly apply for, and bear the cost of, all necessary application fees for approval of the work. The contractor must also apply for and obtain, at its expense, all approvals required from any public authority to occupy and use the completed work. The cost of doing so and all fees are included in the contract price.

The contract price does not include the cost of local government security deposits and these must be met by the owner.

If the contractor is required to obtain approvals before starting work under this contract and all necessary approvals have not been obtained within 60 business days of the date of this contract, either party may terminate the contract by notifying the other party in writing at the expiry of the 60 business day period.

If the contract is terminated in accordance with this clause, the contractor is entitled to be paid all reasonable costs associated with applying for the approvals to the date the contract is terminated together with the contractor's margin on these costs.

If a deposit has been paid by the owner which is in excess of the amount payable to the contractor, the excess must be refunded to the owner within 5 business days of the termination of the contract.

Clause 18
Compliance with requirements of local statutory authorities

In carrying out the work the contractor must comply with the codes, standards, specifications and conditions of consent as set out in **Clause 3**.

If, due to such a requirement, the plans or specifications have to be amended, the contractor must immediately advise the owner in writing explaining the reason for the change. Any agreement to vary the plans and specifications for the work must be in writing and signed by both parties.

Any changes to be made to the work or materials to be used, provided they are not as a result of any fault on the part of the contractor, will be dealt with as variations in accordance with **Clause 13**.

The contractor must make good, at the contractor's own cost, any damage to footpaths and kerbs to the council's satisfaction.

Standards and tolerances

The *Home Building Act 1989* stipulates that the work will be done with due care and skill, and in accordance with the plans and specifications set out in the contract. Unless otherwise stated these must comply with the Building Code of Australia, to the extent required under the *Environmental Planning and Assessment Act 1979* (including any regulation or other instrument made under that Act), Australian Standards and relevant NSW legislation.

Changes in climate or geographic conditions can cause movement and variations in building work. Not all variations are a defect. The Building Code of Australia and the relevant Australian Standards specify what are considered acceptable minimum levels of performance.

Contractor initials _____ **Owner initials** _____

Clause 19
Access to site and materials handling

C ***Note:*** *The contractor should discuss with the owner the question of access to the site and materials handling before signing the contract. If there are any special site conditions which may present problems during the course of the work, for example due to wet weather, agreement should be reached as to how to deal with this matter and who is to pay for any additional cost which may be incurred.*

The contractor must do all work necessary to provide access to the site for vehicles and other equipment required by the contractor to carry out the work, and the cost of providing such access to the site is included in the contract price.

The contractor must bear all costs involved in the delivery of materials to the work, handling of materials, the removal and disposal from the site of rubbish, surplus material, excavated material, vegetation and demolished or dismantled structures.

The contractor shall be liable to the owner for any damage to kerbs, gutters, paving, underground services, drains, structures or other property on the site caused by the negligence or default of the contractor, any employee or subcontractor of the contractor as a consequence of carrying out the work.

The contractor must allow the owner, any person authorised by the owner or an authorised officer of the lending authority, if any, access to the site to view and inspect the work in progress.

The owner must allow the contractor, and any employee or sub-contractor of the contractor, access to the site during the currency of this contract.

The owner or the owner's representative must communicate and deal with the contractor personally or with such person nominated by the contractor as the contractor's authorised representative.

The owner must not give directions to the contractor's employees or sub-contractors.

Clause 20
Identifying the site

C ***Note:*** *Serious consequences can arise if the work is inadvertently performed on land not belonging to the owner. If there is any doubt the contractor should arrange for a boundary survey.*

The contractor is responsible to ensure that the work is carried out on the owner's land. If there is any doubt as to the correct location of the boundaries, the contractor must take all necessary steps to determine their position. If the position of the boundaries can only be determined by a boundary survey, the contractor, at the owner's cost, must provide a boundary survey. However, the contractor must notify the owner in writing prior to obtaining the survey including a proper estimate of the cost of the survey.

Clause 21
Assignment and sub-contracting

Explanation: *It is common practice in the building industry for work to be performed by sub-contractors and the contractor is allowed to do so under this contract. Assignment is the transfer of a party's rights and obligations under the contract to a third party. The contract prohibits assignment without the consent of both the owner and contractor.*

Neither the owner nor the contractor may assign their rights or obligations under the contract without the prior written consent of the other party, such consent not to be unreasonably withheld.

The contractor may sub-contract any part (but not the whole) of the work without the owner's consent but is not relieved from the responsibility under this contract for that work.

Contractor initials _____ **Owner initials** _____

Clause 22
Insurance

Explanation: *This Clause is not concerned with insurance under the Home Building Compensation Fund (covering defective work or breach of contract). Contact Fair Trading for information on that subject.*

Note: *A certificate of insurance under the Home Building Compensation Fund, covering the work against defective work or breach of contract is required by the Home Building Act to be given to the owner before work commences or a deposit is paid. The validity of certificates can be checked at www.hbcf.nsw.gov.au*

The contractor must effect and maintain the following insurances until completion of the work:

- public liability insurance to cover liabilities to third parties resulting from death or personal injury or from damage to property for an amount not less than $5 million
- property damage insurance in respect of the work, including the work in progress, any associated temporary work and materials on the site, for the full reinstatement and replacement cost plus an amount of not less than 10% of the estimate of the full reinstatement and replacement cost to cover removal of debris, demolition, architects and other consultant's fees. The interest of the owner must be noted on the policy and the policy must where possible contain a 'cross-liability' clause. This insurance must cover loss by accident, theft, fire explosions, lightning, hail, storm and tempest, vandalism and civil commotion
- employer's liability and worker's compensation insurance.

Settlement of claim

On settlement of any claim for damage to the work the contractor must diligently proceed to rebuild, replace or repair the work. The contractor will not be entitled to any payment other than for the amount of the claim payment received from the insurer for the claim for the rebuilding, replacement or repair of the work.

Note: *If in doubt, the owner should check with his or her own insurer whether the cover to be provided under Clause 22 is adequate.*

Evidence of insurance

Prior to the commencement of the work, and on request by the owner at any time thereafter, the contractor must provide to the owner evidence in writing that insurances required by this contract have been obtained and are current. The evidence must include properly completed certificates of currency and copies of the relevant policies (unless these are not reasonably obtainable from the insurer or insurance broker). If the contractor fails to provide such evidence, or if any of the insurances required by this contract have not been taken out by the contractor, the owner may arrange the insurance and deduct the cost from payments then or subsequently due to the contractor.

Indemnity

The contractor indemnifies the owner against any liability or loss in respect of death or personal injury or property damage (including damage to or loss of goods or materials on site including the work under the contract) arising out of, or as a consequence of, the carrying out of the work. However, if such liability or loss arises in whole or in part through the negligence of the owner or owner's representative the extent of the contractor's indemnity will be reduced by the extent to which the negligence of the owner or owner's representative contributed to such liability or loss.

Contractor initials _____ **Owner initials** _____

__Explanation:__ After the work has been completed omissions and defects may become apparent.

The defects rectification period is intended to allow the owner to bring these matters to the attention of the contractor so that the contractor may attend to them.

It is not intended that the defects rectification period be used to finish items of work which should have been completed to achieve completion of the work in accordance with Clause 8.

This clause does not affect your rights to pursue the rectification of defects under the statutory warranties. See the Consumer building guide at the end of this contract (and available from the Fair Trading website) for more information.

Clause 23
Defects rectification

The contractor must rectify omissions and defects in the work which become apparent within the period of 13 weeks from the date the work has been completed. The date of completion shall be determined in accordance with **Clause 8**.

The owner must notify the contractor in writing of any omissions or defects which need to be made good no later than 10 business days after the expiry of the 13 week period. The contractor must rectify the omissions and defects at the contractor's own cost within 30 business days from receipt of such notification and the owner must give the contractor reasonable access for this purpose.

In respect of major omissions and defects in the work, a further defects liability period of 13 weeks from the date the work has been completed will apply.

If there is a dispute between the parties as to whether any item of work is defective, has been omitted or has been satisfactorily rectifified the dispute must be dealt with in accordance with the dispute resolution clause (**Clause 27**).

Clause 24
Suspension of work by contractor

If the owner, without reasonable and substantial cause:

- fails to provide satisfactory evidence of title to the land and/or capacity to pay the contract price, including any variations
- fails to pay a progress payment or any other amount due to the contractor within the time allowed, but only if the owner fails to pay the progress payment or other amount due after a written notice from the contractor requiring payment within a further period of 5 business days
- fails to advise the contractor promptly of any requirement of or notice from a statutory authority or the lending authority, if any, that affects the work
- fails to perform any work or supply materials as specified in **Clause 16** which prevents the contractor from continuing with the work under the contract
- denies the contractor or the contractor's sub-contractors access to the site so as to prevent the work from proceeding, or otherwise prevents the contractor from carrying on the work; or if the owner becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity,

the contractor may, without prejudice to any other rights under the contract, suspend the work by giving written notice to the owner in accordance with **Clause 28** (Giving of Notices) specifying the reason.

If the owner remedies the default, the contractor must recommence the work within 10 business days unless the contractor has ended the contract under **Clause 26**.

Contractor initials _____ **Owner initials** _____

Clause 25
Termination of contract by owner

__Explanation:__ Clauses 25 and 26 set out the circumstances in which the contract may be ended by either the owner or contractor. The consequences for wrongfully ending the contract may be serious and you should seek independent advice if you are not sure of your right to do so.

Note: this contract may be terminated in the circumstances provided by the general law and this does not prevent the parties from agreeing to additional circumstances in which the contract may be terminated eg as in Clauses 25 and 26.

Due to the fault of the contractor

If the contractor:

- is unable or unwilling to complete the work or abandons the work
- suspends the work before completion without reasonable cause
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the contractor is a company, goes into liquidation or receivership or is otherwise without full capacity
- fails to proceed diligently with the work
- fails to remedy defective work or remove faulty or unsuitable materials, or
- without reasonable cause fails to comply with an order or direction of a public authority with respect to defective or incomplete work, which would substantially affect the quality and/or progress of the work,

the owner may, if such default can be remedied, notify the contractor in writing that unless the default is remedied within 10 business days or such longer period as specified the owner will terminate the contract.

If the contractor does not comply with the owner's request within the time allowed, or if the default cannot be remedied, the owner may terminate the contract by giving written notice to that effect to the contractor.

If the owner terminates the contract due to the fault of the contractor, any unfixed materials or fittings on the site may be retained by the owner.

Following the issue of a notice by the owner under this Clause no unfixed materials or fittings shall be removed from the site by the contractor.

If the reasonable cost of completion of the work exceeds that which would have otherwise been due under the contract the difference will be a debt payable by the contractor to the owner. Should the reasonable cost of completion be less than otherwise due under the contract the difference will be a debt payable to the contractor.

Until completion of the work the contractor will not be entitled to any further payment under this contract. However, nothing contained in this clause may take away any right the contractor may have to payment under the dispute resolution procedure in **Clause 27**.

Other than due to the fault of the contractor

The owner may also terminate the contract by notice in writing to the contractor in the following circumstances:

- if the owner, within the cooling off period, does not wish to proceed with the contract (see **Clause 3**)
- if all necessary approvals for the work have not been obtained within 60 business days of the date of the contract (see **Clause 17**), or
- if the owner is unable to meet the cost of a variation due to a matter that could not reasonably be expected to be necessary for the completion of the work or a requirement of the council or other statutory authority (see **Clause 13**).

A notice required under this Clause must be given in accordance with **Clause 28**.

If the owner ends the contract in the above circumstance, the contractor may remove from the site and retain all unfixed materials, fittings and equipment supplied by the contractor.

Contractor initials _____ **Owner initials** _____

Clause 26
Termination of contract by contractor

Due to the fault of the owner

If the owner:

- fails to provide satisfactory evidence of title to the land or capacity to pay the contract price including any variations (see **Clause 5**)
- fails to pay a progress payment or other amount due under the contract (see **Clause 14**)
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity
- denies access to the site to the contractor, the contractor's employees or sub-contractors so as to prevent the work from proceeding (see **Clause 19**)
- fails to perform any work or supply materials as specified in **Clause 16** which prevents the contractor from continuing with the work under the contract or otherwise obstructs the contractor from performing the work
- fails to rectify a cause of suspension under **Clause 24** within the time specified in **Clause 24**, or
- without the consent of the contractor prior to completion of the work enters into occupation or otherwise obstructs the contractor from performing the work,

the contractor may, where such default can be remedied, notify the owner in writing that unless the default is remedied within 10 business days or such longer period as specified the contractor will terminate the contract.

Unless the owner complies with the contractor's request within the time allowed, or if the default cannot be remedied, the contractor may terminate the contract by giving written notice to this effect to the owner.

If the contractor terminates the contract under this clause, the contractor may remove from the site and retain all unfixed materials, fittings and equipment supplied by the contractor and will be entitled to recover all losses and expenses arising from the termination of the contract or to offset such amounts from any amount due to the owner.

Other than due to the fault of the owner

The contractor may terminate the contract by notice in writing to the owner if all necessary approvals for the work have not been obtained within 60 business days of the date of the contract, unless failure to obtain those approvals is due to the act, omission or default of the contractor (see **Clause 17**).

A notice required under this clause must be given in accordance with **Clause 28**.

Contractor initials _____ **Owner initials** _____

Clause 27
Disputes

__Note:__ If you have a dispute you should first discuss the matter with the other party. Serious disputes can often be avoided by good communication between owner and contractor. It is suggested that in the event of a dispute the parties meet as soon as possible and by discussion endeavour to resolve the matter.

Make sure you understand your obligations under the contract. If necessary, obtain independent advice. The dispute resolution procedure is aimed at reducing the need for possible costly litigation. Fair Trading can investigate a complaint from an owner and may issue an order requiring a contractor to rectify or complete work or to rectify any damage. For further details refer to Part 3A Division 2 Home Building Act.

If the owner or contractor considers that a dispute has arisen in relation to any matter covered by this contract, either during the progress of the work, after completion of the work or after the contract has been terminated, that person must promptly give to the other party written notice of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.

If the parties do not agree to confer with a third party to assist in the resolution of the dispute, or if the dispute is not resolved following the assistance of such a third party, the owner may notify Fair Trading that a building dispute exists and seek the assistance of Fair Trading to resolve the dispute.

Even if a dispute has arisen the parties must, unless acting in accordance with an express provision of this contract, continue to perform their obligations under the contract so that the work is completed satisfactorily within the agreed time.

If the dispute cannot be resolved informally the owner may contact Fair Trading for information.

Clause 28
Giving of notices

__Note:__ A copy of any notice given under the contract should be kept.

Where a notice is given other than by handing to the other party, the person who gave notice should follow up to ensure it is received.

If the contract requires or permits a party to give a notice, consent, or other communication in writing to the other party, it must be given by either:

- handing it to the other party
- leaving it with a person, apparently over the age of 16, at the other party's business or residential address, or
- by registered post to the last known address of the other party.

Contractor initials _____ **Owner initials** _____

Clause 29
Copyright

The party supplying any plans or specifications (documents) for use under this contract warrants that they may be used for the purposes of this contract and indemnifies the other party against any liability or cause of action by any person claiming ownership or copyright in respect of the documents or arising out of their use.

If the contractor prepares the documents under the direction of the owner or from sketches supplied by the owner which may infringe the copyright of another person, the owner indemnifies the contractor against any legal action in respect of a breach of copyright by the contractor.

If the contractor prepares the documents the contractor retains copyright in those documents but the owner will, provided the contractor has been paid for those documents, be entitled to complete the work in accordance with those documents.

Clause 30
Definitions

In the printed general conditions of contract

- Words imparting the singular include the plural and vice versa.
- A reference to the male gender includes the female and a reference to a person includes a partnership and a company.
- The current bank rate is the Commonwealth Bank Overdraft Index Rate as published from time to time plus 2% per annum.
- 'Lending authority' means a bank, building society or other financial institution which lends the owner the contract price or any portion of that amount.
- 'GST' means Goods & Services Tax – a tax levied by the Federal Government on the supply of goods and services.
- 'Business day' means any day other than a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December.
- A reference to 'include' or 'including' or 'for example' in a list means that items not listed may be included.
- A reference to any legislation includes any statutory modification, re-enactment, substitution and any subordinate legislation issued under that legislation.
- A reference to any party includes that party's executors, administrators, successors and permitted assigns.
- A provision of or a right created under this contract may not be:
  - (i) waived, except in writing signed by the party granting the waiver, or
  - (ii) varied, except in writing signed by the parties.
- The rights, powers and remedies provided in this contract are cumulative with, and are not exclusive of, the rights.

Contractor initials _____ **Owner initials** _____

Consumer Building Guide

Mandatory information for consumers

Builders and tradespeople must give you a copy of this guide before entering into a contract for residential building work costing more than $5,000. Read this guide to help protect your rights, carry out your responsibilities and support your building project.

Protecting consumers under home building laws

NSW Fair Trading is the NSW Government agency regulating residential building work (including building or trade work on single dwellings, villas, houses and home units) under the *Home Building Act 1989*.

What to consider before work starts

Licensing

Licensing requirements include:

- Tradespeople and builders carrying out residential building work valued at more than $5,000 must be licensed by NSW Fair Trading (check a licence at the Fair Trading website or by calling 13 32 20).
- Regardless of the work's cost, a licence is always required for specialist work (like plumbing, air conditioning and refrigeration, electrical work and gasfitting).
- If the work requires more than one tradesperson, you need a builder to manage the building project and co-ordinate the tradespeople, such as plumbers, painters and carpenters.

Home Building Compensation Fund (previously called Home Warranty Insurance)

Where work is worth more than $20,000 (including labour and materials), the builder or tradesperson must not start work or ask for any money (including a deposit) until they give you a copy of the Home Building Compensation Fund certificate for your job. Certain types of work are exempt; check our Home Building Compensation Fund web page.

Approvals

To help your building project go smoothly:

- Check with your local council or an accredited private certifier on approvals your building work needs.
- Engage a building certifier. This is your responsibility, not the builder´s. Find an accredited certifier at the Building Professionals Board site: www.bpb.nsw.gov.au

The contract and payments

All contracts must be in writing. The two main contract types are:

- **Fixed price or lump sum** - where the builder or tradesperson agrees upfront to a fixed amount for the whole job. Unforeseen changes during construction may affect the final cost.
- **Cost plus contract** - there is no guaranteed final cost for the job (often this contract is used where the project's nature prevents the final cost from being calculated). The consumer repays the builder for verified direct and indirect costs and fees at regular intervals. It is good practice for the builder to give a non-binding estimate before starting, and track costs with you against the project's budgeted estimate.

Residential building work **worth less than $20,000** must be done under a 'small jobs' contract. The written contract must be dated and signed by, or on behalf of, each party. It may specify that work be paid for at regular intervals. It must contain:

- the parties' names, including the name of the holder of the contractor licence as shown on the contractor licence
- the number of the contractor licence
- a description of the work
- any plans or specifications for the work, and
- the contract price if known.

Residential building work **worth more than $20,000** requires a full home building contract. As well as all of the requirements of the 'small jobs' contract, it must include other comprehensive information such as the details of the statutory warranties the builder must provide, and the contract price or warning that the contract price is not known. Find a **complete list of contract requirements** on our website.

All contracts over $20,000 in value must have a progress payment schedule. Progress payments must match the work carried out and, for cost plus contracts, be supported by receipts or other verifying documents.

Any change you need to make to a contract is a '**variation**'. Variations must be in writing and be signed by both parties to the contract. Almost all will impact the contract price.

The **maximum deposit** you can be asked to pay before work starts is 10%.

Common traps and tricks

Beware of:

- An extremely low quote compared with others. This may indicate the job's quality is being compromised. Or, the builder may not fully understand what is required.
- `Sales pitches´ putting pressure on you to sign a contract quickly to avoid a price increase.
- A builder who recommends you get an owner-builder permit while they organise all the building work. The builder may be trying to avoid responsibility and may not have the right kind of licence or Home Building Compensation Fund certificate.

When things go wrong

Statutory warranties

Builders and tradespeople must guarantee that their work is fit-for-purpose, performed diligently and delivered in a reasonable timeframe, in line with the contract. Unless otherwise specified, materials should be new and appropriately used. These warranties are time-limited: legal proceedings to enforce them must be commenced within 2 years for all defects, and 6 years for `major defects´. There is another 6 months for both warranty periods if the defect only became apparent after 18 months or 5 and a half years. Find out more about these warranties on the Fair Trading website.

Resolving a dispute

These steps can help you resolve a dispute:

- **You must notify your builder or tradesperson** and discuss concerns as soon you become aware of a problem. Follow up with an email or letter.
- **Understand acceptable work standards** by downloading the *Guide to Standards and Tolerances* from our website.
- Contact Fair Trading for **free dispute resolution** if you and your builder or tradesperson are unable to resolve the dispute.
- Lodge a claim with the **NSW Civil and Administrative Tribunal** if you remain unsatisfied with the dispute resolution outcome.
- Protect your rights under the **Home Building Compensation Fund**: contact your insurer as soon as you become aware of defective or incomplete work.

More information

Visit the Fair Trading website (focussing on the Home Building and Renovating section) to:

- learn more on your rights and responsibilities and the statutory warranties
- do an online licence check to verify a builder or tradesperson´s licence details
- find out about dispute resolution
- download free home building contracts
- subscribe to enews and information, and to access Fair Trading on social media.

This fact sheet must not be relied on as legal advice. For more information about this topic, refer to the appropriate legislation.

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Use this space to keep a record of adjustments and variations to the contract.

Record of adjustments and variations

(This is not part of the contract)

Contract price stated in contract (Clause 1)
(includes amounts listed in Provisional Sums Schedule)

$

Adjustments (if any)
Provisional sums (Clause 10) and Prime Cost items (Clause 11)

Items	Clause (10 or 11)	Sum allowed	Actual amount	Adjustment (+ or - amount)
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
		$	$	$
			Total	$ 0.00

Variations (Clause 13)

Date agreed	Brief details	Additional or deleted cost (+ or - amount)
1 / /		$
2 / /		$
3 / /		$
4 / /		$
5 / /		$
6 / /		$
7 / /		$
8 / /		$
9 / /		$
10 / /		$
	Total	$ 0.00

Contractor initials _____ **Owner initials** _____

C *Use this space to keep a record of payments made. In all cases a written receipt for a payment should be obtained.*

Payments made

(This is not part of the contract)

Payments made

Date agreed	Stage	Amount
/ /	Deposit	$
/ /		$
/ /		$
/ /		$
/ /		$
/ /		$
/ /		$
/ /		$
/ /		$
/ /		$
	Total	$ 0.00

Notes

Contractor initials _____ **Owner initials** _____