



Home building contract

For work under \$25,000

Legislation obliges a contractor to give a copy of the *Consumer building guide* to consumers before entering into a home building contract. Copies of the guide are available by calling 13 32 20 or you can download it from our website.

www.fairtrading.nsw.gov.au

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

This contract is recommended for trade work (such as carpentry/painting/tiling), minor additions and renovations, repairs, maintenance and improvements to residential properties up to a value of \$25,000.

For home building work such as a new home or major renovations, valued at over \$25,000 and all residential swimming pool installations, you should use the *Home Building Contract for work over \$25,000*.

Work with a value more than \$12,000 requires the contractor to provide home warranty insurance to the owner.

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

Home Building Service

The Home Building Service administers all building related functions of the Office of Fair Trading including licensing, compliance, dispute resolution, building inspectors, training, education and operation of the private home warranty insurance scheme. Regional operations of the Home Building Service operate out of the state-wide network of Fair Trading Centres. You can obtain a range of publications on subjects such as building and renovating, licences, and dispute resolution procedures by calling the NSW Office of Fair Trading on 13 32 20.

Disclaimer

This publication is a plain language guide to your rights and responsibilities. It must not be relied on as legal advice. For more information please refer to the appropriate legislation or seek independent legal advice.

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New South Wales
Government

Checklist for owners entering building contracts

The owner has a right to cancel the contract within five business days of signing the contract for jobs over \$12,000

Take the time to read and understand the contract documents.

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

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.

Signed copy of contract

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

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

Home warranty insurance

If the builder or tradesperson does not have home warranty insurance where the contracted work is valued over \$12,000 (*including the cost of materials supplied by the contractor*), they are committing an offence under the *Home Building Act 1989*.

Owners acknowledgment

I/we have been give a copy of the publication *Consumer Building Guide* 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
Name (print)
Capacity (print)

Signature
Name (print)
Capacity (print)

Contract price (including GST) \$

Warning: The contract price may vary in accordance with contract conditions. The reasons for possible increases include variations, prime cost items and provisional allowances.

Note: Where the owner or 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.

Owner's Signature

Contractor's Signature

Date / /

Cooling off periods for contracts with a price over \$12,000

Under the *Home Building Act* the owner may in certain circumstances, by notice in writing, rescind the contract. 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 five (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 five (5) days after the contract was signed – within five (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 any method of service provided by clause 16 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) & (e) below, and
- (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, and
- (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, and
- (d) the owner is not liable to the contractor in any way, for rescinding the contract, and
- (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.

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.

Clause 13D of the Home Building Regulation 1997 provides that the cooling off provisions do not apply to contracts:

- (i) that are subordinate to a principal contract to do residential building work (eg. contracts between a licensed builder and a licensed sub-contractor)
- (ii) between a speculative licensed builder and a licensed trade contractor
- (iii) between a licensed contractor and a developer (as referred to in s.3A(1) of the Act)
- (iv) for work that is required to be completed urgently so as to rectify a potential hazard to the health or safety of persons or to prevent substantial damage to property
- (v) that are prepared by or on behalf of the owner, and
- (vi) where the contract price does not exceed \$12,000, or if the price is not known, the reasonable cost of labour and materials does not exceed \$12,000.

"Business day" means any day other than a Saturday, Sunday, Public Holiday or 27, 28, 29, 30 or 31 December.

Statutory warranties

The contractor warrants that:

- (a) the work will be performed in a proper and workmanlike manner 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 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 form part of the contract. No provision of this contract can restrict or remove these warranties.

Explanation: *Under the Home Building Act 1989, the contractor is required to give the warranties set out in this part. Each of the warranties must be for a period of 7 years, and form part of the contract.*

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 time agreed, or if not agreed, a time that is reasonable.

Paragraph (f) 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.

Any legal action for a breach of statutory warranties must be taken within 7 years after:

- (i) the completion of the work; or
- (ii) if the work is not completed:
 - (a) the date for completion of the work specified or determined in accordance with the contract; or
 - (b) if there is no such date, the date of contract.

Note: No terms, conditions or provisions in this contract can restrict or remove the statutory warranties applying to this contract under the *Home Building Act*.

Contract conditions

1. Plans and specifications

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

2. Quality of construction

All work done under this contract will comply with:

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

3. Payment by owner

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

4. Statutory approval

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

5. Time for completion

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

6. Variations to work

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

7. Prime cost items and provisional allowances

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

8. Insurance of work and personal injury

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

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

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

9. Contractor's indemnity in favour of owner

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

10. Damage to property

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

11. Access for contractors

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

12. Cleaning up

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

13. Defects

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

14. Disputes

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

15. Terminating contract

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

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

16. Giving of notices

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

- (a) giving it to the party personally,
- (b) leaving it at the party's address shown in the contract, or
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For information and help on fair trading issues call the Office of Fair Trading

General enquiries

13 32 20

Language assistance

13 14 50

TTY for hearing impaired

1300 723 404

Aboriginal enquiry officer

1800 500 330

Consumer, Trader & Tenancy Tribunal

1300 135 399

Registry of Co-operatives & Associations

1800 502 042

Or visit a Fair Trading Centre at:

- Albury • Armidale • Bathurst • Blacktown • Broken Hill • Coffs Harbour
- Dubbo • Gosford • Goulburn • Grafton • Hurstville • Lismore • Liverpool
- Newcastle • Orange • Parramatta • Penrith • Port Macquarie • Queanbeyan
- Sydney • Tamworth • Tweed Heads • Wagga Wagga • Wollongong

Visit our website for details

www.fairtrading.nsw.gov.au

13 32 20



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