



Home building contract for work over \$5,000 and up to \$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 trade work (such as carpentry/painting/tiling/electrical or plumbing work), building work for minor additions and renovations, repairs, maintenance and improvements to residential properties worth over \$5,000. This contract cannot be used for work requiring insurance under the Home Building Compensation Fund.

For home building work such as a new home or major renovations, and major trade work valued at over \$20,000, you must use the *Home Building Contract* for work over \$20,000.

This contract complies with the requirements of the Home Building Act 1989 for contracts valued over \$5,000 and up to \$20,000.

Fair Trading recommends that both parties seek independent legal advice prior to entering into a home building contract or reducing, restricting or removing any contract term recommended by NSW Fair Trading.

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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Revised June 2018

Contract: Owner's copy

Owner

Name(s)

Address

Home phone

Other phone

Fax

Email

Contractor

Name (as shown on Contractor licence)

Licence number

Expiry date

Category of work shown on licence

Address (as shown on Contractor licence)

Work phone

Other phone

Fax

Email

Australian Company Number (if applicable)

Address where work is to be done (site)

Completion period

The completion period for the work will be

Description of work/materials

Any plans or specifications that are part of the contract **must** be attached and should be signed and dated by both parties.

Contract price

Contract price (including GST)

Important: You can only be asked to pay a maximum deposit of 10% of the contract price before any work is done.

Note: This work is warranted for 6 years from completion for major defects and 2 years for all other defects as required under the Home Building Act 1989. No provisions in this contract can restrict or remove the statutory warranties applying to this contract under the Home Building Act 1989. See the Consumer building guide at the end of this contract for more details.

Warning: The contract price may vary in accordance with contract conditions, for example as the result of variations.

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.

Acceptance of contract

Owner's signature

Contractor's signature

Date

Contract conditions

1. Quality of construction

All work done under this contract will comply with:

1. (a) the Building Code of Australia to the extent required under the *Environmental Planning and Assessment Act 1979* (including any instrument made under that Act)
 - (b) all other relevant codes, standards and specifications that the work is required to comply with under any law
 - (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).

2. Payment by owner

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 (except for any omissions or defects that do not prevent the work from being reasonably capable of being used for its intended purpose), any damage caused by the contractor is repaired and all rubbish and surplus material are 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.

3. 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.

4. 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. If the varied contract price exceeds \$20,000, a certificate of insurance under the Home Building Compensation Fund **must** be attached to the contract and the additional requirements for contracts over \$20,000 **must** be included in this contract or a new contract entered into that complies with the requirements in the *Home Building Act 1989* for contracts over \$20,000.

5. 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) 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), and
- (c) property damage insurance for the work (including work in progress and materials) for the full reinstatement and replacement cost.

6. 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.

7. 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 subcontractors. The owner must remove any furniture or personal goods from the vicinity of the work to minimise the risk of damage.

8. Access for contractors

The owner must provide access for the contractor and any employee or subcontractor 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.

9. 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.

10. 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. If the dispute cannot be resolved the owner may notify Fair Trading that a building dispute exists by either visiting www.fairtrading.nsw.gov.au or ringing 13 32 20 and seek the assistance of NSW Fair Trading in resolving the dispute.

11. 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.

12. Giving of notices

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

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

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 that costs 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 on 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 Scheme

The State Insurance Regulatory Authority (SIRA) regulates home building compensation (HBC) cover in NSW. HBC cover is required where work is worth more than \$20,000 (including labour and materials). The builder or tradesperson must give you evidence of HBC cover before they start work on your project or you pay them any money, including a deposit. For more information or to check the validity of your cover, visit sira.nsw.gov.au or call 13 10 50.

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.

Contracts 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, the cost of any applicable HBC cover 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 that 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 HBC cover.

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 6 years for major defects and 2 years

for all other 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 with your builder or tradesperson

These steps can help you resolve a dispute:

- **you must notify your builder or tradesperson** and discuss concerns as soon as 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 (NCAT)** if you remain unsatisfied with the dispute resolution outcome
- protect your rights under the **HBC Scheme**: contact your insurer or provider as soon as you become aware of defective or incomplete work.

Home building compensation disputes

For help resolving disputes with a HBC insurer or provider, visit the SIRA website sira.nsw.gov.au or call 13 10 50.

More information

Visit the Fair Trading website 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.

Contract: Contractor's copy

Owner

Name(s)

Address

Home phone

Other phone

Fax

Email

Contractor

Name (as shown on Contractor licence)

Licence number

Expiry date

 / /

Category of work shown on licence

Address (as shown on Contractor licence)

Work phone

Other phone

Fax

Email

Australian Company Number (if applicable)

Address where work is to be done (site)

Completion period

The completion period for the work will be

Description of work/materials

Any plans or specifications that are part of the contract **must** be attached and should be signed and dated by both parties.

Contract price

Contract price (including GST)

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Warning: The contract price may vary in accordance with contract conditions, for example as the result of variations.

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Owner's signature

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Date

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 - (c) the conditions of any relevant development consent or complying development certificate and any construction certificate.
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 - (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).

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7. Damage to property

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