

KITCHEN CONTRACT FOR WORK OVER \$20,000

CONTRACTOR NAME:

ADDRESS:

DATE:

CONTRACT PRICE:

Please read all attached information and terms.

Note: This contract is to be used where the total value of the Contract is over \$20,000 or more (including any applicable GST amount) and only where Home Building Compensation Fund insurance is required.

This Contract should only be used where other trades are included as part of the whole job and work is being performed under the one contract.

Warning + Note to Owner: Please read clause 10 on Asbestos




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OWNER CHECKLIST

(To be completed by the Owner prior to signing the Contract)

1. OWNER CHECKLIST

A. Have you checked that Contractor holds a current Contractor licence?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
B. Does the licence cover the type of Work included in the Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C. Is the name and number on the Contractor's licence the same as on the Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
D. Is the Work to be undertaken covered in the Contract, drawings or specifications?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
E. Does the Contract clearly state a Contract Price or contain a warning that the Contract Price is not known?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
F. If the Contract Price may be varied, is there a warning and an explanation about how it may be varied?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
G. Are you aware of the cooling-off provisions relating to the Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
H. Is the deposit within the legal limit of 10%?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
I. Does the Contract include details of the progress payments payable under the Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
J. Do you understand the procedure to make a Variation to the Contract?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
K. Are you aware of who is to obtain any council or other approval for the Work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
L. 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 cover under Part 6 or 6B of the Home Building Act 1989 (except where the Work is of a kind that does not require insurance)?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
M. Does the contract include either of the following? a. The cost of the insurance under Part 6 of the Home Building Act 1989? b. The cost of the alternative indemnity product under Part 6B of the Home Building Act 1989?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
N. Does the Contract include a statement about the circumstances in which the Contract may be terminated?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
O. 	Yes <input type="checkbox"/>	No <input type="checkbox"/>

2. SIGNATURES

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

If you have answered “**No**” to any question in the checklist, you may not be ready to sign the Contract.

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

3. SIGNED COPY OF CONTRACT

Under the *Home Building Act 1989* the Owner must be provided with a signed copy of the Contract within 5 working days after the Contract is entered into.

4. OWNER’S ACKNOWLEDGEMENT

I/We have been given a copy of the 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, e.g. director, must be inserted.

Signature:	Signature:
Name [print]:	Name [print]:
Capacity [print]:	Capacity [print]:
Date	Date

PART A: CONTRACT DETAILS

1. THE OWNER:

Name(s):		
Address:		
Suburb:	State:	Postcode:
Phone:	Mobile:	
Fax:	Email:	

2. THE CONTRACTOR:

Name(s):		
Qualified Supervisor: <i>(if applicable)</i>		
Address:		
Suburb:	State:	Postcode:
Business Address: <i>(if different from address on licence)</i>		
Suburb:	State:	Postcode:
Phone:	Mobile:	
Fax:	Email:	
ABN/ACN:		
Licence No:	Licence Expiry Date:	
Licence Category:		

3. CONTRACT PRICE (Amount in Words)

Price (excluding GST):
GST on price:
Cost of HBC cover (Home Building Compensation): <i>Include brokerage, fees and taxes if applicable</i>
Total Contract Price (including GST and HBC Cover):

WARNING: The Contract Price may vary in accordance with the Conditions of Contract. The reasons for possible increases include: increases in taxes eg: GST, Variations, prime cost items, Unforeseen Circumstances and provisional sum allowances, interest on overdue payments.

4. SITE DETAILS (Where Work is to be done)

Address:		
Suburb:	State:	Postcode:

5. DESCRIPTION OF WORK/MATERIALS *(this must be completed)*

NOTE [Redacted]

6. PRIME COST ITEMS

[Redacted]

Description of items or Work to be done:	Quantity	Prime Cost/ Provisional Sum Amount including GST
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
Total: <i>(If space is insufficient, attach a sheet referring to this schedule)</i>		\$

7. RECORD OF ADJUSTMENTS AND VARIATIONS

This is not part of the Contract Price stated in Contract on page 1 and page 3 (Clause 3)

ADJUSTMENTS (If Any)

(Prime Cost and Provisional Items - Part A Clause 6 page 4 and Part B Clause 10 page 9)

ITEMS	CLAUSE 6	SUM ALLOWED	ACTUAL SUM	ADJUSTMENT (+ OR - AMOUNT)
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
		\$	\$	\$
TOTAL:				\$

8. VARIATIONS (Part B Clause 8 page 9)

DATE AGREED	BRIEF DETAILS	ADDITIONAL OR DELETED COST (+ OR - AMOUNT)
1		\$
2		\$
3		\$
4		\$
5		\$
6		\$
7		\$
8		\$
9		\$
10		\$
TOTAL:		\$

The Checklist and Consumer Building Guide do not [REDACTED]

All terms and conditions of this Contract have been explained to the Owner and, in accepting the terms and conditions of this Contract, the Owner acknowledges that they have read and understood the Contract.

Owner(s) Signature:	
Date:	

Owner(s) Signature:	
Date:	

Contractor Signature:	
Date:	

Contractor Signature:	
Date:	

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.

PART B: CONDITIONS OF CONTRACT

1. CONTRACTOR'S MAIN OBLIGATIONS

[REDACTED]

[REDACTED]

[REDACTED]

2. PAYMENT

The Contract Price includes all matters (including GST) that could be reasonably expected to be necessary for the completion of the Work.

The Owner must pay the Contractor:

[REDACTED]

3. OWNER'S JOINT AND SEVERAL LIABILITY

If there is more than one Owner:

- (a) the obligations in this Contract apply to each Owner individually and to all Owners collectively;
- (b) a quote, notice, claim or any other constitute effective service on all Owners;
- (c) if this Contract has been signed by each Owner (whether this document or in counterpart), unless the Contractor has been notified otherwise, only one Owner is required to sign a document (including a quote, sketch, plan, specifications, notice, instruction, direction or other communication) or to give an instruction, direction or other communication, to legally bind all of the Owners.

4. ACCESS TO THE SITE

The Owner must give the Contractor uninterrupted access to the Site to check measure or for installation or any other purpose to complete the contracted job. 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.

The Owner must give the Contractor and the Contractor's workers and subcontractors adequate access to any available water, electricity, toilet and washing facilities when working or delivering to Site.

If the Contractor requests access to deliver the Product/s and the Owner does not give access within 7 Days the Contractor can then claim payment for the delivery stage, as defined in Clause 9 of Part A or otherwise the Owner must pay the Contractor for Work performed and cost incurred up to the point of delivery.

5. CHECK MEASURING + APPROVALS

The Contractor will attend the Site and perform the check measure on or before the check measure date.

The Contractor may make minor modifications to the plans and specifications agreed to the checked measurements. The Contractor will notify the Owner of any modifications made.

Any additional Work necessary to comply with the modified plans and specifications is a Variation and Clause 8 Part B applies.

If applicable the Owner must prior to the date of the Contract, promptly apply for, and bear the cost of, all necessary application fees for approval of the Work. The Owner 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 to be paid for by the Owner.

6. OUR RIGHT TO FIX

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.

- (a) If at any time the Owner claims the Product is defective, they must notify the Contractor in writing, as soon as possible.
- (b) If the Owner fails to notify the Contractor of a claim within a reasonable time of becoming aware of an alleged defect, the Contractor will not be responsible for any damage that results from the Owners delay in notification.
- (c) If the Contractor accepts responsibility, they have the right to fix the defect. Any defects that in the Contractors reasonable opinion may affect the safety of the Works or may lead to it being damaged will be fixed as soon as practicable. The Owner must give the Contractor access to do the in accordance with Clause 4, Part B.

When the Contractor completes the Work, the Contractor must notify the owner in writing certifying that the Work has been completed in accordance with this Contract. Within 14 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 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 14 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 in clause 30.

7. DELAYS

[REDACTED]

8. PLANS & VARIATIONS

The Work including materials may be varied by written agreement between the Owner and the Contractor. The Contractor may claim payment for a Variation as soon as the Variation is completed.

[REDACTED]

9. UNFORESEEN CIRCUMSTANCES

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. ASBESTOS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Any asbestos will be managed and controlled in accordance with SafeWork NSW Government's policies and codes of practice, <http://www.safework.nsw.gov.au/health-and-safety/safety-topics-a-z/asbestos> http://www.safework.nsw.gov.au/_data/assets/pdf_file/0014/50081/how-to-manage-control-asbestos-workplace-code-of-practice-0916.pdf and any other legislation that governs and regulates the safe removal of asbestos.

11. PRIME COST AND PROVISIONAL SUM ITEMS

Except as otherwise agreed between the Owner and the Contractor in this Contract, the Contractor is not responsible for the supply or installation of any appliances or connection to any services.

Unless the Owner and the Contractor agree otherwise, such Work shall be listed as prime cost or Provisional Sum Items.

Each prime cost or Provisional Sum Item shall be listed in Clause 6 Part A (to be attached) with a stated allowance specifying the estimated cost of supplying the item and/or providing the Work.

Where the actual cost of supplying the item and/or providing the Work is less than the prime cost or provisional sum allowance set out in Clause 6 Part A, the Contract Price will be reduced by an amount equal to the difference.

Where the actual cost of supplying the item or providing the Work is more than the prime cost or provisional sum allowance set out in Clause 6 Part A, the difference (plus GST) and plus a % surcharge will be added to the Contact Price.

When required by the Contractor, the Owner must promptly make all selections relating to prime cost or Provisional Sum Items.

The Contractor must provide [REDACTED]

[REDACTED]

12. MATERIALS

The Contractor will make every reasonable effort to ensure that Work methods and materials used correspond with sample products selected and/or provided by the Owner. However, the Contractor will not be responsible for Variations in the colour or grain of products such as timber, granite and other natural materials.

To the extent permitted under law, the Contractor will not be responsible for the suitability of material used to manufacture a Product if specified by the Owner. This clause does not limit clause 35 (*statutory rights*).

13. SURPLUS MATERIALS

Unless otherwise agreed between the Owner and the Contractor in this Contract, surplus materials will at all times remain the property of the Contractor.

14. SECURITY INTEREST

The legal title in the Product does not pass to the Owner until all amounts payable under this Contract have been paid in full.

The Owner grants to the Contractor a security interest (and where applicable, a Purchase Money Security Interest) in the Products (including all related proceeds) supplied under this Contract as security for all or part of the amount payable by the Owner to the Contractor under this Contract. The Owner authorises the Contractor to register a financing statement with respect to this security interest on the PPSR and agrees to provide any information to the Contractor necessary to register this security interest.

[REDACTED]

[REDACTED]

15. WARRANTY

Contractor warrants that Work will be performed with due care and skill and in accordance with the plans and specifications set out in the contract. The materials and workmanship of the Products shall be free from defects for a period of [] from the date the Products are installed at the Site (Warranty Period). **The benefits given to the Owner under this warranty are in addition to other rights and remedies the Owner has under law.** This warranty should be read in conjunction with any other warranties accompanying the Products.

To make a claim under this Warranty [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

16. SUSPENSION

[REDACTED]

[REDACTED]

17. TERMINATION

[REDACTED]

[REDACTED]

[REDACTED]

18. EFFECT OF ENDING THIS CONTRACT

[REDACTED]

19. INSOLVENCY

If a party to this Contract becomes, at any time insolvent, then the other party may terminate this Contract by giving written notice to that effect.

To be insolvent means:

[REDACTED]

20. RISK

[REDACTED]

21. INSURANCE

Before the Contractor commences any Work under this Contract or is given access to the Site, the Contractor must have current insurance cover for:

[REDACTED]

[REDACTED]

[REDACTED]

22. CHARGE OVER LAND

[REDACTED]

23. COPYRIGHT

[REDACTED]

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.

24. DEFAULT INTEREST

[Redacted]

25. DEBT COLLECTING COST

[Redacted]

26. WHOLE AGREEMENT

Subject to law, Part A: Contract Details and Part B: Conditions of Contract and the sketches, quotations, plans and the specifications, including any Variations to those plans and specifications;

[Redacted]

27. PREVAILING DOCUMENTS

[Redacted]

28. ASSIGNMENT + SUBCONTRACTING

[Redacted]

[Redacted]

29. GST

[Redacted]

30. DISPUTES

[Redacted]

31. REMOVAL OF ITEMS

[Redacted]

[Redacted]

32. GIVING OF NOTICES

Where this Contract requires written notice to be given to a party for any reason, or notice is required to be given under the *Home Building Act 1989* such notice may be served by:

[Redacted]

33. DEFINITIONS

Unless otherwise stated in this Contract:

[Redacted]

All monetary amounts are in Australian currency.

34. SEVERABILITY

Each provision of this Contract shall be read as separate and severable so that if any provision is held by a court of competent jurisdiction to be void or unenforceable for any reason, that provision will be severed from the Contract and the remainder of the Contract will be construed as if the severed provision had never existed.

35. APPLICABLE LAW

This Contract will be governed by, and construed in accordance with, the laws of New South Wales.

36. STATUTORY RIGHTS

The *Australian Consumer Law, Competition and Consumer Act 2010* and the *Home Building Act 1989 (NSW)* contain statutory guarantees and warranties that cannot be excluded. These Acts also prescribe remedies available to consumers and customers in circumstances where there is a breach of such warranties and guarantees or there is a defect. Nothing in this Contract operates to exclude or limit those statutory guarantees and remedies insofar as they apply to the Contractor, the Owner and the Products under this Contract.

37. MANDATORY CONDITIONS

To the extent required by the *Home Building Act 1989* and subject to this clause, the Works will comply with:

- (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);
- (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.

The Contractor is not liable if the Works do not comply with the above requirements if the failure relates solely to:

- (a) A design or specification prepared by or on behalf of the Owner (but not by or on the Contractor's behalf);
- (b) A design or specification required by the Owner, if the Contractor has advised the Owner in writing that the design or specification contravenes the above requirements.

To the extent required by the *Home Building Act 1989*:

- (a) All plans and specifications for the Works including any Variations to those plans and specifications form part of the Contract.
- (b) Any agreement to vary this Contract, or to vary the plans and specification for the Works, must be in writing and signed by the parties.

38. LIMITATION OF LIABILITY

To the fullest extent permitted by law, the following are hereby excluded:

- (a) all express or implied representations and warranties relating to this Contract not contained in it; and
- (b) any liability arising in relation to the Products and the Works that the Contractor supplies to the Owner however arising.

The Contractor's total liability for breach of this Contract is limited at the Contractor's option to:

- (a) the replacement of the Products or Works or the supply of equivalent Products or Works;
- (b) the repair or rectification of the Products or Works;
- (c) the payment of the cost of replacing or acquiring equivalent Products or Works; or
- (d) the payment of the cost of the repair or rectification of the Products or Works.

Subject to the provisions of the Australian Consumer Law, neither party shall be liable to the other for any indirect or consequential loss.

ATTACHMENTS TO CONTRACT

LIST ANY ATTACHMENTS HERE (including other documents, plans, specifications and designs)