

Residential Building Work Contracts and Dispute Resolution Act 2016

Director's Determination – Mandatory Contract Provisions

I, Dale Edward Webster, in my capacity as Director of Building Control, and acting pursuant to section 14(2) of the *Residential Building Work Contracts and Dispute Resolution Act 2016*, hereby make the following Determination.

Determination title	Mandatory Contract Provisions
Description	For the purposes of section 14(2) of the <i>Residential Building Work Contracts and Dispute Resolution Act 2016</i> (the Act), this Determination specifies the provisions that must be included in a residential building work contract
Version	Version 1.0 December 2016
Application	For the purposes of section 14(2) of the Act, this Determination applies from the date of its approval until its revocation
Date of Director's approval	16/12/2016



Dale Webster

Director of Building Control

This Determination is issued pursuant to the anticipatory powers provision of section 11(1) of the *Acts Interpretation Act 1931*

Mandatory Contract Provisions – Residential Building Work Contracts

For the purposes of section 14(2) of the *Residential Building Work Contracts and Dispute Resolution Act 2016* (the Act), I determine that the following provisions must be included in a residential building work contract:

Description	Requirement	Explanatory Notes
General terms and conditions		
Definitions	<p>The contract must include a list of definitions for words and expressions used.</p> <p>Any other technical term referred to in the contract (which is not defined in legislation) must also be defined.</p>	<p>Definitions must be consistent with relevant legislation, including the <i>Residential Building Work Contracts and Dispute Resolution Act 2016</i> (the Act) or the <i>Building Act 2016</i>.</p> <p>For the purposes of building work contracts:</p> <p><i>Authorised representative</i> means a person identified in the contract as authorised to communicate or act on behalf of the owner or building contractor.</p> <p><i>Building contractor</i> means a person who performs, has performed, or intends to perform, residential building work.</p> <p><i>Owner</i> means a person for whom the residential building work is being, is to be, or has been, performed (this can include lessees or tenants of a residential building or land).</p>
Owner and building contractor details	<p>The contract must specify the names, addresses and contact details of the parties to the contract, including any authorised representatives.</p> <p>The contract must include the building contractor’s current licence details, under the <i>Occupational Licensing Act 2005</i>.</p>	

Description	Requirement	Explanatory Notes
<p>Withdrawal during ‘cooling-off’ period</p>	<p>The contract must include a notice detailing the owner’s rights to withdraw and the statutory cooling-off periods, provided under Part 7 of the Act.</p>	<p>This notice must clearly state the owner’s obligations to give the building contractor written notice of withdrawing from the contract under section 36 of the Act.</p> <p>The notice must also state that any costs associated with withdrawing are limited to \$100 plus an amount equal to any out-of-pocket expenses reasonably incurred before the owner withdrew from the contract.</p>
<p>Communication between owner and building contractor</p>	<p>The owner must not give directions to the building contractor’s employees or subcontractors.</p> <p>The owner is not to rely on any statements made or representations given by the building contractor’s employees or subcontractors, other than those made or given by the building contractor or an authorised representative.</p> <p>All written communications between the parties must be in English and readily legible.</p>	<p>The contract must clarify that the owner (or owner’s authorised representative) will communicate directly with the building contractor (or the building contractor’s authorised representative).</p>

Description	Requirement	Explanatory Notes
Statutory warranties	The contract must include the statutory warranties prescribed in Part 6 of the Act.	<p>Statutory warranties relate to:</p> <ul style="list-style-type: none"> - all materials supplied will be of good quality and suitable for the work to be done - all materials supplied will be new (unless otherwise stated in the contract) - the work will comply with all relevant laws and legal requirements, including the standards set out under the National Construction Code and <i>Building Act 2016</i> (Tasmania) - the work will be carried out in an appropriate and skilful way, with reasonable care and skill - all work carried out is in accordance with any plans or specifications - once the work is completed, the dwelling or home will be suitable for occupation (if applicable) - all work will be carried out with reasonable diligence - all prime cost items and provisional sums are calculated with reasonable care and skills, taking into account all information reasonably available to the building contractor at the time the contract was entered into. <p>Proceedings for a breach of a statutory warranty can be commenced within 6 years after the date of practical completion, and are transferred to new owners if the building in question is sold within the warranty period.</p>

Description	Requirement	Explanatory Notes
Contract price	<p>The contract price, or the method for calculating the contract price and a reasonable estimate, must be clearly stated in the contract.</p> <p>The contract must clearly state all prime cost items and provisional sum components (if any), including the method by which they have been calculated, in the contract price.</p>	<p>The contract price is taken to mean the total amount payable under the contract, including:</p> <ul style="list-style-type: none"> - an amount in relation to labour and materials - an amount the building contractor is entitled to receive and keep under the contract - an amount the building contractor is entitled to receive under the contract for payment to another person.
Prime cost items and provisional sums	<p>If allowances for prime cost items and provisional sums are included in the contract price, the total amounts must be appropriately listed and detailed in Prime Cost Item and Provisional Sum Schedules, which are to form part of, or be annexed to, the contract.</p>	<p>See below for <i>example</i> Prime Cost Item and Provisional Sum Schedules.</p> <p>These examples provide guidance as to how the costs of these allowances are to be listed in the contract, and how they are to be calculated with reasonable care and skill.</p>
Contract price warning	<p>The contract must include a warning as to potential changes or increases to the contract price.</p>	<p>The possible reasons for alterations to the contract price include:</p> <ul style="list-style-type: none"> - the actual costs of prime cost items and provisional sums differing from the estimates - variations (including unforeseen matters or as required by the building surveyor or permit authority) - increases in taxes or duties (eg. GST) - interest on overdue payments.

Description	Requirement	Explanatory Notes
GST	All pricing calculations and amounts payable under the contract, including variations (if any), are to be inclusive of GST.	
Contract documents	The contract must include a statement that the contract is taken to include all agreed documents detailing the contract terms and clearly describing the work to be performed.	This includes all plans, drawings, specification lists and any other documents referred to in the contract.
Insurance	The contract must clearly state all applicable insurance responsibilities of the building contractor.	<p>The building contractor is to insure against all required insurances, including:</p> <ul style="list-style-type: none"> - Public Liability (death or personal injury of persons or damage to property) - Property loss or damage appropriate for the work - Workers Compensation - Professional Indemnity (as applicable)
Indemnity	The contract must include a statement that indemnifies the owner in respect of any legal liability, loss, claim or proceedings whatsoever arising under any Statute or at common law, in respect to personal injury or death of any person arising out of the course of the work undertaken, or damage to property, unless it is due to any act or negligence of the owner or the owner’s authorised representative.	

Description	Requirement	Explanatory Notes
Signature warning	<p>The contract must include a warning that states the building contractor’s obligation to provide the owner a copy of all contract documents as soon as practicable (but within 5 business days) after the contract is entered into.</p> <p>The warning must also state that a copy of the <i>Residential Building Consumer Guide</i> must be given to the owner prior to signing the contract.</p>	<p>Failure to provide the owner a copy of the Consumer Guide may result in the owner withdrawing from the contract or compliance action by CBOS.</p>
Payments		
Deposit	<p>The contract must clearly state the deposit amount, in both dollar (\$) and percentage (%) terms of the contract price.</p>	<p>The deposit must not exceed the maximum allowable amounts under Part 8 of the Act.</p> <p>The maximum deposit amounts are:</p> <ul style="list-style-type: none"> - 10% for contracts between \$20,000 and \$50,000 - 5% for contracts of \$50,000 or more - 20% for contracts of any price, where the value of the work to be performed off-site is more than half of the total price.

Description	Requirement	Explanatory Notes
Progress payments	If progress payments are to be claimed, the contract must clearly specify and detail the stages related to the progress of the work performed, and the percentage (%) of the contract price applicable to that stage.	<p><i>Example 1 - Progress Payment Stages:</i></p> <ul style="list-style-type: none"> - Deposit 5% - Base Stage 10% - Frame Stage 15% - Lock-up/enclosed Stage 35% - Fixing Stage 20% - Practical Completion 15% <p><i>Example 2 - Progress Payment Stages:</i></p> <ul style="list-style-type: none"> - Deposit 5% - Base Stage 20% - Lock-up Stage 45% - Practical Completion 30% <p>Note: the total stage payments plus the deposit must equal the total contract price.</p>
Progress payments warning	The contract must include a warning that states that under section 42 of Act, all progress payments must directly relate to the progress of the work performed under the contract at the building site.	The total value of the progress payment claim, plus the deposit, cannot exceed 50 per cent (%) of the contract price until at least 50 per cent (%) or more of the work has been completed.
Interest on overdue payments	The contract must clearly state the interest payable for overdue payments.	
Description	Requirement	Explanatory Notes

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Commencement, performance of work, practical completion and variations		
Commencement of work	The contract must clearly state the date the work is to commence.	Work can either commence on a specified date, or within a certain number of business days after a certain event (such as receiving building approval or lending approval).
Practical completion of work	The contract must state the date of practical completion, or the method for estimating the date of practical completion.	<p>Practical completion is when the work is completed:</p> <ul style="list-style-type: none"> - in accordance with the contract, including all plans, specifications and statutory requirements - without any defects or omissions (other than minor defects or omissions) that affect occupation. <p>The building contractor must give to the owner written notice of the date of practical completion, within 10 business days of it occurring.</p>
Extension of time	The contract must list the circumstances for claiming a reasonable extension of the date for practical completion.	<p>Reasons for extension may include:</p> <ul style="list-style-type: none"> - variations to the contract - sufficiently inclement weather or conditions - instructions by the owner - unforeseeable delays that cannot be reasonably controlled by the building contractor (supplier delays, disputes, etc).

Description	Requirement	Explanatory Notes
Additions or deductions due to unreasonable delay	The contract must clearly state the set amount or liquidated damages to be added or deducted from the contract price due to unreasonable delay caused by the owner or the building contractor.	The amount is to be a reasonable estimation of the costs which would be incurred due to delay or failure to achieve practical completion by the agreed date specified in the contract.
Variations	The contract must state that work under the contract may be varied when there is agreement by both parties. Details of the variations must be in writing and signed <i>before</i> any work commences (unless the variation required is urgent or unforeseeable).	<p>Variation documents will comply with Part 5 of the Act if:</p> <ul style="list-style-type: none"> - it is in English and readily legible - describes the variation - states the reason for variation (when initiated by the building contractor) - states an estimate for the period of delay (if applicable) - clearly states the change of contract price or method of calculation (for fixed price contracts) or a fair and reasonable estimate of costs (for cost-plus contracts) - clearly states the changes to progress payments (if applicable) <p>The building contractor must provide a copy of the variation to the owner as soon as practicable (but within 5 business days) after a variation is agreed.</p>

Description	Requirement	Explanatory Notes
Possession and site access	<p>The contract must state that the owner is to grant the building contractor possession of the site to perform the work under the contract.</p> <p>The building contractor must permit the owner or authorised representatives reasonable access to the site in order to inspect or view any part of the work performed under the contract.</p>	
Termination	<p>The contract must state the circumstances in which the contract can be terminated by either party.</p>	
Remedies for breach of contract	<p>The contract must clearly state the remedies that are available to either parties if there is breach of the contract.</p>	<p>Remedies may include:</p> <ul style="list-style-type: none"> - liability for damages - termination of contract - modification of contract terms
Minor defects or omissions	<p>The contract must state that at the time on or after practical completion (such as handover), a defects document listing any minor defects or omissions, is to be agreed upon and a copy is to be provided to the owner as soon as practicable.</p>	<p>The defects document must:</p> <ul style="list-style-type: none"> - list the agreed minor defects or omissions, including any defects or omissions claimed by the owner - state when the building contractor is to remedy the defects or omissions - be signed by both parties. <p>The building contractor must take all reasonable steps to correct the defects or omissions listed in the defects document, as soon as practicable (but within 6 months) after the defects document is agreed to at handover or practical completion.</p>

Description	Requirement	Explanatory Notes
Dispute resolution procedure	The contract must clearly state the process for resolving disputes.	Such a provision is of no effect if it purports to restrict or remove a person’s right to access the dispute resolution process available under the mediation and adjudication processes detailed under Parts 9 and 10 of the Act.
Notices	The contract must clearly state the process for serving notices.	<p><i>Example</i> notice requirements:</p> <ul style="list-style-type: none"> - delivered to the other party by hand - delivered by prepaid post to the address noted in the contract - sent by facsimile, email or sms text message to the number or address noted in the contract

PROVISIONAL SUMS SCHEDULE (EXAMPLE)

Provisional sums are estimates of the cost of performing work (including the cost of supplying materials needed for the work) under the contract for which the building contractor, after making all reasonable enquiries, cannot state a definite amount at the time the contract is entered into.

The building contractor must calculate each sum included in this schedule with reasonable care and skill, taking into account all of the information reasonably available at the date of this contract, including the nature and location of the building site.

Description of contracted service covered by the Provisional Sum	Building contractor’s best estimate of cost of providing the contracted service (excl. GST) <i>Include the estimated quantity and unit cost of materials (if any), estimated labour cost, and any other costs (eg. equipment hire)</i>	PLUS Contractor’s margin (State \$ amount or % to be added)	Total for Provisional Sum (incl. margin & GST)
Rock removal	Excavator hire 5 hrs @ \$160/hr = \$800 Float hire = \$400 Other fees = \$200 Total Cost = \$1,400	+ 10% margin = \$1,400 + \$140 = \$1,540 excl. GST	\$1,540 + 10% GST = \$1,694.00
TOTAL:			\$ (incl. GST)

(These totals are to be included in the Contract Price)