

KITCHEN & BATHROOM CONTRACT

Estimated Contract Period

Suitable for the manufacture and installation of a kitchen and/or bathroom unit under a lump sum contract price, where the time limit within which the project must be completed is estimated, as covered under the *Home Building Act 1989 (NSW)*

Owner Name: _____

Site Address: _____

Date: _____

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Checklist for Owners entering into building contracts

CHECKLIST

- | | | | |
|----|--|------------------------------|-----------------------------|
| 1 | Does the contractor hold a current contractor licence? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 2 | Does the licence cover the type of work included in the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 3 | Is the name and number on the contractor's licence the same as on the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 4 | Is the work to be undertaken covered in the contract, drawings or specification? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 5 | 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"/> |
| 6 | 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"/> |
| 7 | Are you aware of the cooling off provisions relating to the contract? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 8 | 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 <input type="checkbox"/> | NO <input type="checkbox"/> |
| 9 | Is the procedure for variations understood? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 10 | Are you aware of who is to obtain any council or other approval for work? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |
| 11 | Do you understand that the contractor must have a policy of home warranty insurance under the <i>Home Building Act 1989</i> 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 <input type="checkbox"/> | NO <input type="checkbox"/> |
| 12 | Has the contractor given you a document that explains the operation of the <i>Home Building Act 1989</i> and the procedures for the resolution of contract and Insurance disputes? | YES <input type="checkbox"/> | NO <input type="checkbox"/> |

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.

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

SIGNED COPY OF THE CONTRACT

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

HOME WARRANTY INSURANCE

The contractor must provide the owner with a certificate of home warranty insurance (for work over \$12,000) before commencement of work and before demanding or receiving payment.

OWNER'S ACKNOWLEDGEMENT

I/We have been given a copy of the Consumer Information Brochure 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 _____

Signature _____

Name [print] _____

Name [print] _____

Capacity [print] _____

Capacity [print] _____

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Schedule 1 – Contract Details

ITEM

1. Owner(s)

Name: _____

Address: _____

Phone (H): _____ (W): _____

Fax: _____ Mobile: _____

Email: _____ A.B.N: _____

2. Contractor(s)

Name: _____

Address: _____

Phone (H): _____ (W): _____

Fax: _____ Mobile: _____

Email: _____ A.B.N: _____

Contractor's Licence No. _____

Category of work shown on licence: _____

3. Contract Price

Price excluding GST: \$ _____

GST on the above amount: \$ _____

The contract price is _____ (in words)

\$ _____ (the contract price is GST inclusive)

WARNING: The contract price may vary under this contract due to possible changes including

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8. Allowances for Prime Cost and Provisional Sum Items

Table A	Description of Each Prime Cost Item	Contractor's Allowance	Quantity	Prime Cost Allowances
1				
2				
3				
4				
5				
6				
7				

Table B	Description of Each Provisional Sum Item	Estimated quantity of components or materials	Contractor's allowance (including labour)	Total Provisional Sum Allowance for Labour and Materials
1				
2				
3				
4				
5				
6				
7				

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ACCEPTANCE OF CONTRACT

1. This contract is made between the owner and the contractor.
2. The Schedules form part of this contract.
3. The Checklist does not form part of this contract.
4. The owner acknowledges that it has received the Checklist and the Consumer Building Guide before signing this contract.
5. The owner has read and understood this contract.

Owner(s) Signature: _____

Contractor's Signature: _____

Date: _____

STATEMENT SETTING OUT THE OWNER'S RIGHT TO TERMINATE THIS CONTRACT UNDER SECTION 7BA OF THE HOME BUILDING ACT

This contract may be subject to a cooling-off period that entitles the owner to rescind this contract by giving a notice in writing as required by Section 7BA of the Home Building Act 1989:

- (a) If the owner has been given a copy of the signed contract – at any time before the expiration of 5 clear business days after the owner is given a copy of the signed contract; or
- (b) If the owner has not been given a copy of the signed contract within 5 days after the contract has been signed – at any time before the expiration of 5 clear business days after the owner becomes aware that the owner is entitled to be given a copy of the signed contract.

If the owner terminates this contract under Section 7BA of the Home Building Act 1989, the contractor is entitled to a reasonable price for the work carried out under the contract up to the date this contract is rescinded.

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CONTRACT TERMS

1. OUR MAIN OBLIGATIONS

We agree to:

- make and / or supply the product, and
- install the product at the site, according to this contract.

2. PAYMENT

You must pay us the contract price by way of the progress payments stated in Item 6.

You must pay us any other amount which is payable under this contract on demand after we have carried out that work or incurred the cost.

3. ACCESS AND USE OF FACILITIES

You must give us uninterrupted access to

_____.

If we ask for access to deliver the product, and you cannot give that access within _____ days, you must pay us the _____ progress payment immediately.

You must provide to us, while we are at the site, with adequate access to available water, electricity, toilet and washing facilities.

4. CHECK MEASURING

We will check-measure the location at the site where the product is to be installed, and we may modify the plans and the specifications that we had agreed upon to conform to the checked measurements.

We will check-measure the above location within _____ days of when you tell us the site is ready.

5. OUR WARRANTY

We will carry out the work of making and installing the product in a proper manner.

In addition to your rights under law, we warrant that our work of making and installing the product is, and that materials supplied by us are, free of defects at the time of completing the installation. However, subject to law, we do not have to fix:

- any problem caused by

_____;

• _____; or

• _____.

6. OUR RIGHT TO FIX

If at any time you claim the product or the work is defective, you must tell us by written notice, as soon as possible.

We are only to fix defects for which clauses 5 and 31 make us responsible.

If we accept responsibility, we have the first right to fix the defect, but we must do so within _____ days.

7. COLOUR VARIATION

It is important you note that the colour and grain of timber, granite and other natural materials can vary.

We will use our best efforts to match the colour or grain of the product to any sample selected or provided by you, but _____.

8. SURPLUS MATERIALS

Unless you and we have a different agreement somewhere else in this contract:

- only suitable new materials or your reclaimed timber will be used;
- demolished materials remain our property; and
- materials we bring to the site which are surplus remain our property.

9. PROVISIONAL SUMS AND APPLIANCES

Unless you and we have a different agreement somewhere else in this contract, we are not responsible to install any appliances or to connect anything to any services.

You must pay for appliances and for work that is the subject of a provisional sum at the cost amount plus _____%.

10. DELAYS

We are not responsible for any delay caused by something beyond our control, including any failure by you to:

- make a selection;
- have the site ready for installation; or
- notify us that the site is ready.

The estimated installation date will be put back or the estimated completion period will be extended, by whatever time is responsible, if there is such a delay.

11. SAMPLE PRODUCTS

Work methods and materials used will correspond with the sample product provided to you, so far as appropriate.

12. VARIATION ON REQUEST

If you or we request a variation, we will give you a signed written quote detailing the price and estimated time to do it. If you accept the quote by signing our quote, and returning it to us, we will then do the variation in the time agreed. If the price of the variation is more than _____% of the contract price, you must first pay us an agreed deposit.

We can claim payment for a variation as soon as we have completed it.

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13. PRIME COST AND PROVISIONAL SUM ITEMS

When required by us, you must promptly select all items that relate to a prime cost or provisional sum item.

Each prime cost or provisional sum item must be listed in item 8, and have an allowance stated next to it, specifying the estimated price of supplying the item or providing the work. Where the actual price of supplying the item or providing the work is more than the allowance, the difference plus the margin specified in item 8 applied to that difference is added to the contract price, and is payable by you.

14. UNFORSEEN CIRCUMSTANCES

We are not responsible for any problems with the site which are only revealed when installing the product.

If any additional work is necessary due to a hidden problem, we may request a variation. You will be charged our actual cost to do this additional work, plus another █%.

15. WORK BY YOU

If you are to provide plumbing and electrical services, or to supply or install appliances, you must have the site ready and appliances available, at least █ hours before the time we tell you we will install the product.

If you do not have the site ready, then we may request a variation.

You will be charged our actual cost, plus another █% for the provision, supply or installation.

16. SUBCONTRACTING

We may subcontract any of our obligations. You must not give instructions to our subcontractors or to workers on the site.

17. RISK

The product is at your risk once it is delivered to the site.

18. INSURANCE

We will have public liability insurance of at least \$5m. You will ensure that you are similarly insured.

If you tell us to insure the product against loss or damage occurring after it is delivered to the site, or to similarly insure your property whilst the product is being installed on the site, you will be charged our actual cost of insuring, plus another 20% for arranging this insurance.

19. WHOLE AGREEMENT

Subject to law, these terms, the plans and the specifications comprise of the whole agreement between you and us.

20. PREVAILING DOCUMENTS

These terms, the plans, and the specifications have precedence in that order if there is any inconsistency between them.

21. DEFAULT INTEREST

If you fail to make any payment under this contract on time, we will charge you interest at █% calculated daily. A failure to pay any amount under this contract is a serious breach of your obligations.

22. DEBT COLLECTING COSTS

You must reimburse to us any debt collecting costs (and commissions) we pay to recover, or attempt to recover, any overdue payment.

23. RETENTION OF TITLE

The title in the product does not pass to you until

█. If you fail to make a due payment, we may enter the site and take reasonable action to remove the product without us being liable to you for damage to the site or the product caused by such removal.

24. CHARGE OVER LAND

You agree that the land on which the █ is charged in our favour as equitable mortgagee to secure the payment of all amounts to be paid by you under this contract to the extent that a court or tribunal has made an order that you pay the amount to us.

25. COPYRIGHT

We own all copyright created by us in the product, the plans, the specifications and the workshop drawings.

If you give us any sketch, plan or other document which infringes someone else's copyright or moral right, you indemnify us against all claims and costs.

26. YOUR JOINT AND SEVERAL LIABILITY

If there is more than one of you, then:

- all your obligations are █;
- we only have to give notice to █; and
- █ need accept a quote or sign a notice, and then █ bound.

27. TERMINATION

If you are in serious breach of your obligations, we may give you a written request to remedy the breach within 14 days.

If the breach is not so remedied within that time, we may then terminate this contract by giving you a written notice.

If we are in serious breach of our obligations, you may give us a written request to remedy the breach within 14 days.

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If the breach is not remedied within that time, you may then terminate this contract by giving us written notice.

28. INSOLVENCY

Should we become insolvent, then you may, by giving a written notice, terminate this contract. Should you become insolvent, then we may, by giving a written notice, terminate this contract. To be insolvent means:

- any act of bankruptcy under the Bankruptcy Act by a natural person;
- the appointment of a liquidator, provisional liquidator, receiver, receiver and manager or the entering into of a deed of arrangement if a corporation; or
- any act of insolvency, under the Corporations Act by a corporation.

29. GST

Where a price is not agreed for an additional charge or omission from the work, the amount of GST attributable to the value for that supply is to be added to the price calculated under the terms of contract.

30. MANDATORY CLAUSES

To the extent required by the Home Building Act and subject to this clause, the work 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.

We are not liable if the work does not comply with the above requirements if the failure relates solely to:

- (a) A design or specification prepared by or on behalf of you (but not by or on our behalf); or
- (b) A design or specification required by you, if we have advised you in writing that the design or specification contravenes the above requirements.

To the extent required by Home Building Act:

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

31. MEANINGS

In this contract:

"Estimated completion period" means the period of time stated in item 5 of schedule 1 after the estimated installation date, to carry out and complete the works as extended under Clause 10;

"contract price" means the contract price stated in item 3 of schedule 1;

"Estimated installation date" means the date stated in item 5 of schedule 1;

"Product" means the cabinets, built-ins and / or product detailed in the plans and specifications agreed;

"Site" means the address where the work is to be done as detailed at item 4 of schedule 1;

"We, our, us" means the contractor named in item 2 of schedule 1;

"Variation" means any change to the product, the work, or extra work; and

"You, your" means the owner named in item 1 of schedule 1.

32. SCHEDULE OF WARRANTIES

To the extent required by the Home Building Act, we give the following warranties:

- (a) The work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in this contract;
- (b) All materials supplied by us will be good and suitable for the purpose for which they are used and that, unless otherwise stated in this contract, those materials will be new;
- (c) The work will be done in accordance, 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 this 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 reasonable fit for occupation as a dwelling; and
- (f) The work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if you expressly make known to us or another person with express or apparent authority to enter into or vary contractual arrangements on our behalf, the particular purpose for which the work is required or the result that you desire the work to achieve, so as to show that you rely on our skill and judgment.