

COURSE IN
OWNER
BUILDER
COMPLIANCE

MODULE 2

ADMINISTER CONTRACTS

NTIS 91509NSW



CONTENTS

Contracts

| | |
|--|----|
| What is a Contract? | 3 |
| Types of Building Contracts | 9 |
| Contract Documentation | 14 |
| Contract Checklist When Entering a Contract with a Builder | 17 |
| Contract Checklist When Entering a Contract with a Subcontractor | 18 |
| Fundamentals of Contract Administration | 24 |
| Contracts Administration | 26 |
| Prior to Raising the Contract | 27 |
| Raising the Contract | 28 |
| Contract Terms | 30 |
| Self Test Questionnaire 09 | 40 |

Administration

| | |
|---------------------------------------|----|
| Introduction | 45 |
| Job Reporting & Site Progress Reports | 46 |
| Business Forms | 48 |
| Materials & Plant Administration | 54 |
| The Order System | 55 |
| Memo & Credit Request | 57 |
| Self Test Questionnaire 10 | 63 |

Job File

| | |
|-----------------------|----|
| Setting up the File | 65 |
| Job File Sections | 66 |
| Documentation Summary | 71 |

Site Diary

| | |
|----------------------------|----|
| Introduction | 74 |
| Sample Diary | 75 |
| Self Test Questionnaire 11 | 78 |

Further Reference

80

CONTRACTS

WHAT IS A CONTRACT?

A contract is a *legally binding* agreement between two or more people or companies (called 'the parties'). It is an agreement that the parties intend to be legally binding – or that they would have intended to be legally binding if they had stopped to think about it. A contract is made when promises are exchanged to do something in exchange for something, for example, to supply goods or services for payment of a specified sum of money.

Each party to a contract is legally obliged to carry out her or his part of the bargain and a party who fails to do so is in *breach of contract*. A court can require that person to put things right either by fulfilling the contract (called 'performance') or paying compensation for any loss (called 'damages').

What does a contract require?

- Express Terms
- Implied Terms.

A contract will require each party to do something. Some of the requirements will be spelled out in the contract (called 'Express Terms'), while others are never mentioned, but are still part of the agreement (called 'Implied Terms').

EXPRESS TERMS

Where the contract is written down and signed, both parties are bound to do what it says (subject to some exceptions). Where some terms are in writing but are not signed by the parties, they are only binding if the party concerned knew about them, or the other one at least took reasonable steps to bring them to their attention before the contract was made. For instance, if you buy a car-parking ticket, there may be printed conditions on the back of the ticket. If nothing is done to bring these to your attention and you do not see them before the contract is made, they may not form part of your contract. On the other hand, if the carpark staff tell you about the conditions first, you can be bound by them, even if you chose not to read them or ask about their meaning.

It is also possible for oral statements to form part of the contract. If an intelligent bystander, listening to your discussions would have thought that a party was giving their word that the statement was true, it can be a term of the contract. If it turns out to be false, they may be in breach and liable to pay damages.

IMPLIED TERMS

Sometimes, terms which are never mentioned at all are, just the same, part of the contract. They may be implied by the circumstances. For instance, when you visit your doctor, you probably do not discuss whether the doctor will agree to keep your medical details confidential, or whether you will have to pay the doctor's bill. There is no need to, because these things are understood. Your doctor is still legally bound to keep your confidence, and you are still legally bound to pay the bill.

Terms can also be automatically implied into a contract by law, even if the parties do not know this. For instance, the Sale of Goods Act, requires that when goods are sold, they must be of *merchantable quality* and reasonably fit for their purpose. If they are not, the buyer is entitled to a refund or substitute goods, even though nothing was said about this at the time of the sale, or even if the seller said that they do not give refunds. Most terms that are implied by the *common law* are now stated in *legislation* such as the Trade Practices Act which provide for certain basic terms to be part of the contract. These terms are known as *statute implied terms*.

When a term is implied by an Act of Parliament, the Act will also say whether the parties have a choice to exclude that term. If it says that they cannot do that, then the term will still be part of the contract, even if both parties agree that it will not apply. For example, the parties cannot agree that the Trade Practices Act will not apply to them. Such an agreement would have no effect.

In a building contract typical implied terms could be:

1. That the contractor warrants that the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications. All materials will be suitable for the purpose and new unless specified. The work will be done under and will comply with the Home Building Act or any other law. The work will be done with due diligence and within the time stated in the contract or within a reasonable time. If the work involves construction of a dwelling, the work will result in a dwelling which is fit for occupation as a dwelling. The work and materials used will be reasonably fit for the purpose or result which you made known to the tradesperson so as to show that you rely on the tradesperson's skill and judgement.
2. That the contractor warrants to carry out the work with proper skill.
3. That the work will be completed within a reasonable time if no time for completion is agreed.
4. That the contractor will be given possession of the site within a reasonable time.
5. That the site possession will not be revoked.
6. That instructions, decisions and certificates will be given to the contractor within a reasonable time;
7. That progress payments will be made on long-term contracts.

Making a contract

For an arrangement to be a contract it must have three identifiable features:

1. An agreement between the parties to do or to refrain from doing certain things.
2. An intention to make the agreement *legally binding*.
3. An exchange of value, known as consideration.

AGREEMENT

Agreement occurs when one person accepts the other's offer. This can be done in a number of ways. There can be verbal negotiations resulting in agreement. There may be an exchange of letters in which the parties agree on something. An agreement can be made by one or both persons signing a document, such as a *lease* or *mortgage*. It can be made by the parties themselves, or through a third person such as an agent or broker. Or it can happen without any real formalities, as when you buy something from a shop. By presenting the goods and your money at the counter, you are *offering* to buy the items, and by taking your money, the shopkeeper is *accepting* your offer. You become the legal owner of the goods.

Sometimes, an offer does not get a simple 'yes', but is met with a counter-offer. For example, a car dealer might offer a particular vehicle for a stated price, and the *consumer*, instead of accepting the offer, might make a counter-offer to take the vehicle at that price if it includes free air conditioning. This is not an acceptance but a counter-offer. It is then up to the dealer whether they will accept this counter-offer, by including air conditioning, or not. If the dealer declines, there is no contract. (Even if the counter-offer is described as a 'conditional acceptance', if it is proposing something different from what was offered, it is a counter-offer, and there is no contract until it is accepted.)

Any counter-offer cancels out (rejects) the previous offer. It is then up to the other person whether they want to accept the counter-offer, making a contract, or not. So when the consumer makes the counter-offer to buy the car with air conditioning thrown in, he or she is rejecting the offer to buy the car without air conditioning at the price previously offered. That offer then no longer exists and is not available to be accepted, unless the dealer makes it again.

During the negotiations numerous offers may be exchanged. A party may at some point argue that a definite contract exists. If you are not sure whether a contract was made, or if you are in dispute with the other person over just what was agreed, seek legal advice. In deciding whether a contract was made, the court will look at all the circumstances. Evidence of money passing between them or of some expense being incurred would suggest a contract.

A contract becomes *legally binding* the moment the acceptance is communicated. This can be done by telling the other person that you agree, or demonstrating this to them by your actions, or, in some circumstances, just by carrying out the contract. For instance, if a bank advertises that it will *waive* the application fee on any loan application made before a certain date, you accept this offer by making the application before the date. (There are special rules about offers which are accepted by post, facsimile and the like, and you should seek legal advice if you are unsure whether an acceptance was communicated.)

Up until an offer is accepted, the person making it can withdraw it at any time, by letting the other person know that they are no longer willing to do that, but if the offer is not withdrawn, it becomes binding as soon as accepted. Once there is agreement, any change needs the agreement of both parties.

INTENTION

For there to be a legally enforceable contract, the parties must have intended to enter into a *legally binding* agreement. This intention is seldom stated, but is usually inferred from the circumstances surrounding the agreement. For example, when you buy something in a shop, you and the seller both intend that once the goods are purchased, they will be legally yours to do what you like with, and the seller will be legally entitled to keep your money. You do not need to discuss this, because it is understood.

On the other hand, agreements between friends or members of a family are not usually intended to be legally binding unless the contract is one of a commercial type, for example selling a car or providing a loan to a friend or relation. One common indication that the parties intend an agreement to be legally binding is if one pays money to the other.

CONSIDERATION

Making a contract involves an exchange of something of value to each party. Most often, one person pays money to another, and in return gains a benefit, such as goods or services. Whatever is given (or paid) is called *consideration*. The presence of consideration is usually the difference between a 'commercial' contract and an agreement between friends or family members which is not meant to be *legally binding*. The presence of consideration indicates an intention that an agreement is legally binding. A one-sided arrangement in which one person gets a benefit at the other's expense (such as in the giving of a gift) will not usually be a contract.

However, although the law demands that on each side the price must be of some real value, what is paid by one need not be comparable in value to what the other party is giving. So there can still be a contract, for example, where a person lease a house to a friend for a nominal rent. As long as there is an exchange of some kind the courts will usually *enforce* the contract.

When a contract **MUST** be in writing

Generally, contracts do not have to be written down to be *legally binding*. Most of the everyday contracts we make, such as buying a ticket for a movie or going to the doctor, are not put in writing, but they are still *legally binding*. There is no need for a written agreement, because everyone understands what their obligations are.

However, if a contract is of special importance, involves a substantial sum of money, or if there is a possibility of a dispute about it in the future, it is wise to have a written agreement. A lawyer can prepare this for you, and advise you about your obligations and any pitfalls. The written agreement can be helpful in case of a dispute, in proving that there was a contract, and just what was agreed. Without a written agreement, if the dispute has to go to court, the court will only have each party's word to assist it in working out what happened.

There are also some special contracts which are *legally required to be in writing*. Some of these are:

- **Credit contracts and consumer leases**, for example, contracts supplying credit or consumer mortgages
- Contracts for the performance of **domestic building work** to the value of \$12,000 or more
- Contracts for the sale of **second hand motor vehicles by dealers**
- Contracts for the **sale of land**, or any interest in or concerning land
- **Door to door sales** contracts where the total *consideration* payable by the consumer cannot be ascertained at the time that the contract is made or where the amount of the contracts exceeds \$50.

Otherwise, an oral contract is just as legal and binding as a written one, although it can be harder to prove exactly what was agreed.

It is also important to note that there are some agreements which will not be legally enforceable, even if written down and signed. These include agreements where there was no consideration, or agreements to do things that are illegal.



INTERPRETING THE CONTRACT TERMS

LEARNING
ACTIVITY
09

You are considering an extension to your home – adding a family room to the rear of your house. If you were to enter into a contract with a tradesman who was going to erect the frames and trusses for your extension what would be your expectations in relation to the following terms:

Expressed terms

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Implied terms

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

TYPES OF BUILDING CONTRACTS

As an owner-builder, you will probably be entering into several contracts with different tradespeople.

Tradespeople (whether contracting directly with owners or subcontracted through a builder) must hold a licence from the Office of Fair Trading for the type of work they are to do. Go to the Office of Fair Trading Website and look up the licence details of the tradespeople you are thinking about using or call 13 32 20 and one of the customer service officers will search the public register for you.

By law, any home (including garage and swimming pool) building, renovation, addition or maintenance is to be covered by a written contract between the licensed tradesperson and you, the owner-builder, where the contract price exceeds \$1,000, or if the cost of the labour and materials supplied by the contractor exceeds \$1,000.

What information must be included in a contract?

By law, the written contract that you sign must contain:

- The date that it was signed by both you and the builder or tradesperson
- Your name and the address of the premises being built or renovated
- The name on the builder's or tradesperson's contractor licence card and the licence number
- A sufficient description of the work to be carried out including any plans and specifications for the work
- The contract price, which must be prominently displayed on the front page or if the contract price is not known or may be changed, a warning to that effect and an explanation of the effect of the provision allowing the price to be changed
- Any statutory warranties applicable to the work.

The Office of Fair Trading recommends its series of plain English home building contracts. Four different contracts have been produced to cover all types of residential building work.

These contracts may be purchased by phone using Bankcard, Mastercard, Visa, American Express or Diners Club on the toll free number 1800 639 722.

Alternatively, they are available at Fair Trading Centres or from most Australia Post outlets across NSW and some local council offices.

The types of contracts available are:

- **Home Building contract**
Suitable for new homes, major alterations and additions which are likely to cost more than \$25,000
- **Renovations contract**
Suitable for maintenance and alterations over \$12,000 and up to \$25,000
- **Minor Works contract**
Suitable for maintenance and alterations likely to cost \$12,000 or less
- **Swimming Pool contract**
For any new pool installation.

Other types of contracts

HEAD CONTRACT

This is the Contract between the Proprietor and the Builder. Even though the works may be supervised by an Architect, this is still the Head Contract.

The Builder agrees to complete a defined amount of work for an agreed sum of money.

The Head Contract may contain a clause indemnifying the proprietor for any claim the Subcontractor(s) may make against the proprietor.

Subcontractors should be bound by the same conditions as the Principal Contractor.

SUB-CONTRACTS

Made between the Principal Contractor and Subcontractor(s)

Standard, printed sub-contract forms are available from the same organisations which produce Head Contracts.

In most cases the sub-contract has been prepared to 'marry' up with the Head contract. This enables the Principal Contractor to more readily apply the same conditions as are in the Head Contract.

LUMP SUM

The Contractor agrees to do the work for a Lump Sum.

A Lump Sum contract may also be:

- Fixed Fee – (No provision for increases)
- Rise and Fall – (Provision for increases labour/materials).

COST PLUS

The Proprietor agrees to pay the Contractor a Sum plus:

- A fee; or
- A percentage of the cost of the works.

SCHEDULE OF RATES

An arrangement for jobs where the extent (and cost) of the works is unknown, or ongoing in stages.

The work is measured and payment is made according to an agreed schedule of rates.

For example

| | |
|--------------------|------------------------|
| Concrete | \$200 m ³ . |
| Brickwork | \$500 per 1000 |
| Labour – Carpenter | \$40 per hour |
| Labourer | \$30 per hour |

LABOUR ONLY

Contractor hires out labour at an hourly rate.

DO AND CHARGE

Used primarily when the Client is not too sure of the scope of works or there are disruptive elements – such as work which is likely to be slowed down through other intrusive activities.

DESIGN AND CONSTRUCT

The builder agrees to Design and Construct a Building Project, in accordance with a 'brief' which the Client provides, and which sets out the Client's needs.

The builder may also be required to select and/or purchase the site.

The builder prepares a total price for the complete project in accordance with the brief and the subsequent contract agreement and conditions. This tender price will include the cost of engaging an Architect, Engineer or other consultants and an allowance for professional indemnity insurance.

Design and Construct contracts may be put to tender for alternative bids or may be negotiated with one Builder based on their expertise in the area required.

PROJECT MANAGEMENT CONTRACTS

This is the Contract between the Proprietor (Client) and the Project Manager.

Standard, printed sub-contract forms are available from various organisations which produce Contracts eg: Master Builders Association.

A Project Management Contract is established either on a Lump Sum or % Basis where the Project Manager offers his skills under that contract to manage the project on behalf of or for the Proprietor (Client).

PERIOD CONTRACTS

A period contract is one where a client enters a contract with a Contractor for the provision of services or materials, or both, for an established period of time and for an established cost.

This may be a simple agreement where, for example, a government department who have responsibility for the maintenance of a sewer main, may request expressions of interest from interested Contractors.

The concept of period contracts could also be extended to incorporate more responsibility for the Contractor. For example where an organisation owns and is responsible for a number of buildings and other facilities which will require maintenance on a regular basis (such as painting and cleaning) and unprogrammed maintenance and repair (such as window breakage) this work could be contracted to a Contractor on a period contract.



TYPE OF CONTRACT

LEARNING
ACTIVITY
10

Consider your own project. Read through the various types of Building Contracts provided on the previous pages. Determine what type of contract you would want to enter into and why.

Type of contract

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

Why have you decided to enter into this type of contract?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

CONTRACT DOCUMENTATION

Tender Documentation and Purpose

As well as providing an explicit description of the subject matter, every written contract must define exactly the rights and obligations of the parties. With building contracts virtually each project is more or less unique and therefore requires a special technical description – this can take the form of drawings, specifications and schedules detailing the work to be undertaken.

The legal rights and obligations of the owner and the builder may, however, remain unaltered as between projects, and consequently can be clearly defined in a standard document, suitable for a great variety of projects. The great advantage of such a standard set of conditions covering rights and obligations is that they apply throughout the industry, thereby simplifying legal proceedings.

A written contract therefore comprises a number of documents.

The General Conditions of Contract

These define the legal rights and obligations of the parties, and may be described as the rules and regulations under which the contract will be performed. They set the pattern for the administration of the contract.

Topics covered vary in detail, but the basic requirements include the nature of the contract, the definition and interpretation of terms used, securities and insurances required, subcontract provisions, the Builder's rights and responsibilities, the owner's obligations and rights, the powers and duties of the Superintendent or Architect, provisions regarding order and supervision of the work, arrangements for variations to the contract work, extensions of time, method and time for payment, retention money, alteration of the contract price with changes in basic costs of labour and materials, procedures on default or bankruptcy, and settlement of disputes.

SPECIAL CONDITIONS

Any set of standard general conditions will require supplementation or modification from time to time to suit particular projects. These supplementary and modified conditions may, in some cases, be found as annexures to the standard general conditions, or they may be incorporated in a special section of the specification. They cover such matters as the time allowed for the execution of the contract, the damages payable for late completion, the defects liability period following completion, any unusual administrative arrangements, provision of specific things by the owner, special restrictions on the Builder, and so forth.

Such special conditions must be prepared individually for each project, or for each area covering several projects. They are in effect simply an extension of the general conditions of contract.

The Drawings

These are a pictorial representation of the project, showing the extent of the works to be done under the contract. They should be clear, simple and complete. As much detail commensurate with clarity should be provided, with legible and adequate dimensions; as far as possible they should be fully completed working drawings.

Accuracy is essential. The drawings are indispensable to conveying the owner's requirements to the Builder; the better their quality and completeness the less likely will be disputes and misunderstandings. They should therefore portray all the site information known to the owner at the time. They are the only illustrations of the owner's requirements.

The drawings must be read in conjunction with the specification. If any discrepancy exists between them, then there should be a formal mechanism for resolution of that ambiguity.

The Specification

This document sets out the technical requirements of the work. It is a direct explanation of the drawings, and with them serves three purposes; first, as a full description of the project, so that bids may be properly compiled; second, as a mandatory requirement for materials and quality of workmanship during construction; and third, as legal evidence in the event of litigation. The specification is therefore a most important document and must be prepared individually for each project.

Legal language is not required. Use should be made of clear, concise and simple phraseology, intelligible to foremen and tradesmen, so that there is no doubt what is required or prohibited. Either the method or the result, but not both, should be specified. Requirements should always be mandatory, but alternative provisions may be given when necessary. Above all, the wording must be explicit, and specific to the particular project.

The Bill of Quantities or Schedule of Rates

This is really an appendix to the specification. It lists the quantities of the various classes of work to be done, and is therefore of great value to a Builder preparing a bid. However, it must be clearly understood that (unless they are guaranteed by the owner), the estimated quantities provided do not form part of the contract.

This is because in a Lump Sum Contract the price is for the whole of the work shown on the drawings irrespective of quantity, while in a Schedule of Rates Contract the actual quantity of work to be paid for will be measured on completion. The Schedule is not necessary in a Lump Sum Contract, but it is an essential document in a Schedule of Rates Contract.

Apart from its use in preparation for a bid, the Bill of quantities or Schedule of Rates has two other uses: it forms the basis for valuation of variations and extra work, and it facilitates computation of progress payments. It is therefore generally provided, and must be compiled as accurately as possible so as not to be misleading. Nevertheless, most contracts permit adjustments to be made to the Contract Price for major errors in quantities.

SUPPORTING DOCUMENTS OF THE CONTRACT

LEARNING
ACTIVITY

11

Refer to the type of contract you have chosen in *Learning Activity No. 2*. List and determine the purpose of each supporting document you would expect to be aligned with this type of contract.

| TYPE OF CONTRACT | |
|------------------|---|
| NAME OF DOCUMENT | DESCRIPTION AND PURPOSE OF THE DOCUMENT |
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |

CONTRACT CHECKLIST WHEN ENTERING A CONTRACT WITH A BUILDER

Information provided to the consumers by the office of fair trading

Your chosen builder or tradesperson must give you a written contract if the cost of the contractor's work is over \$1,000.

By law, the written contract you sign must contain:

- The date that it was signed by both you and your contractor
- Your name and the exact name on your contractor's licence card and the licence number to make sure the details are correct before you sign a contract)
- A sufficient description of the work to be carried out
- Plans and specifications attached
- Relevant warranties required by the *Home Building Act 1989*
- The contract price, which must be prominently displayed on the first page and a warning with an explanation if the contract price is subject to change or if the price is not known
- A clear statement setting out the cooling-off period of five clear business days after being given a copy of the contract (where it is valued over \$12,000), or if no contract five days after signing, you may cancel the contract
- A checklist of 12 items
- A caution about signing the contract if you cannot answer yes to **all** items in the check list
- A note about your entitlement to a copy of the signed contract within five days of signing
- A note that the contractor must give you home warranty insurance if the contract is valued over \$1,000
- A statement of acknowledgment by you that you have:
 - i. Read and understood the Consumer building guide
 - ii. Completed the check list and answered yes to all items on it
- A clause that states that all plans and specifications to be done under the contract (including variations) are taken to form part of the contract
- A clause that states that any agreement to vary the contract or any plans and specifications must be in writing and signed by you and your contractor
- A clause that states that the work will comply with:
 - i. The Building Code of Australia, to the extent required under the *Environmental Planning and Assessment Act 1979*.
 - ii. All other relevant codes, standards and specifications that the work is required to comply with under any law.
 - iii. The conditions of any relevant development consent or complying development certificate.

- A clause that states that the contract may limit the liability of the contractor for failure to comply with the above work compliance clause if the failure relates solely to:
 - i. A design or specification prepared by or on your behalf of the owner or a design or specification required by the owner if the contractor has advised the owner in writing that it contravenes the clause referred to immediately above.
- **Caution.** Contact the insurance company shown on the home warranty certificate to check that the certificate is valid
- **Important.** The builder or tradesperson must give you a copy of the contract within five business days after you sign it (the weekend, NSW public holidays and 27 – 31 December [inclusive] do not count).

CONTRACT CHECKLIST WHEN ENTERING A CONTRACT WITH A SUB CONTRACTOR

Provided by the Office of Fair Trading

Checklist for owners entering a building contract

By law, a written home building contract you sign must contain the following checklist for owners:

- Does the contractor hold a current contractor licence?
- Does the licence cover the type of work included in the contract?
- Is the name and the number on the contractor's licence **exactly** the same as on the contract?
- Is the work to be undertaken covered in the contract, drawings or specifications?
- Is the contract price clearly stated? If not, is there a warning that the contract price is not known?
- If the contract price may be varied, is there a warning and an explanation about how it may be varied?
- Are you aware of the cooling off provisions relating to the contract?
- 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
- Is the procedure for variations understood?
- Are you aware of who is to obtain any council or other approval for the work?
- Do you understand that the contract 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?
- Has the contractor given you a document that explains the operation of the *Home Building Act 1989* and the procedures for the resolution of contract and insurance disputes?

If you answer NO to any of the questions in the checklist, you may not be ready to sign a contract.

Other things to know before you sign a contract

Before you sign any contract with the builder or tradesperson you should:

- Make sure there's nothing in your contract which makes you responsible for termite control instead of the builder or tradesperson
- Ensure that progress payments listed on the contract are for work actually done and not time on the job
- Make sure the dollar value placed on each stage of work is realistic
- Get more information about insurance
- Be clear about the duration of warranties
- Discuss anything you don't understand with the builder or tradesperson
- Do not sign if you're unhappy as you have the right to request changes to the contract
- Get legal advice before you make a change to a standard contract or if the builder or tradesperson has amended a standard contract, or included any special conditions.

Arbitration clauses are not permitted in a home building contract and are deemed void.

Important. A licence in the name of an individual does not permit the individual's company or partnership to make the contract, even if the individual is a director of the company or member of the partnership.

If the company or partnership is making the contract, the company or partnership needs to be licensed in the company name. Go to our Home Building online licence check and look up the details of the contractor you are dealing with before you sign the contract.

Don't sign any contract if it doesn't meet all the above criteria. Contact your nearest Fair Trading Centre for general enquiries, but check with your solicitor for legal advice.

Statutory warranties

The following warranties by builders and tradespersons are implied by law into contracts, even if they are not written into the contract:

- The work will be performed in a proper and workmanlike manner
- The work will be in accordance with any plans and specifications set out in the contract
- All materials supplied will be suitable for the purpose for which they are to be used
- Materials will be new, unless otherwise specified
- The work will be done in accordance to, and will comply with, the *Home Building Act 1989* or any other law
- The work will be done with due diligence and within the time stated in the contract, or otherwise in a reasonable time
- The work will result in a dwelling that is reasonably fit to live in, if the work includes:
 - i. construction of a dwelling
 - ii. making of alterations or additions to a dwelling
 - iii. repairing, renovation, decoration or protective treatment of a dwelling
- The work and any materials used in doing the work will be reasonably fit for the specified purpose or result that the owner has advised the contractor, while indicating that the owner relies on the contractor's skill and judgement.

Watch out for danger signs

Be wary of:

- A builder or tradesperson who encourages you to sign a contract quickly to avoid a price increase – this is usually just a sales pitch
- A builder who suggests you get an owner-builder permit while they organise all the building work for you. This can be a ploy used by builders who don't have the right kind of licence, or can't get home warranty insurance. Sometimes, it's simply to avoid responsibility. If you become an owner-builder, you take on added responsibilities and place yourself at greater risk if the work is not done properly. See the page called; Becoming an owner-builder on this website for more information
- A builder or tradesperson who gives you a quote which seems extremely low compared with the others.

Prime cost items

Choose fittings and appliances before you sign. Make sure you give enough details about products you want, so prices quoted in the contract can be accurate. Where possible, list the brand names and models of all fittings, tiles, appliances, etc that you want used.

While it is best to get a fixed price for all work under a contract, certain fixtures such as a stove or special fittings may need to be selected after you sign the contract.

These items cannot be costed exactly before the work begins and are listed as 'prime cost' items (PCs) in the contract. The builder or tradesperson should allow a price, which covers their expected cost.

Deposits

For smaller jobs, such as changing a power point or unblocking a pipe, it's unlikely you'll be asked to pay a deposit. However, bigger jobs where a large component of the cost is in the materials, the builder or tradesperson may ask for a deposit.

Under NSW home building law, there is a maximum deposit that you can be asked to pay.

- If the contract price is \$20,000 or less, you cannot be asked to pay more than 10% deposit
- If the contract price is more than \$20,000, you cannot be asked to pay more than 5% deposit
- If the work is required to be covered by home warranty insurance, it is illegal for the contractor to ask for a deposit or other payment under the contract unless home warranty insurance has been taken out, and a certificate of the insurance is given to you.

Variations and additions to a contract

Before you sign a contract, be confident that you've thought of everything. Changing something later could blow out your budget.

ADDITION

An addition would be something you may have thought about after signing the original contract and wish to add to the building project.

VARIATION

A variation is a change or adjustment to what has already been agreed in the contract.

The builder or tradesperson may need to vary the contract because of a council requirement or unforeseen circumstances. If the reason for variation is the builder's or tradesperson's fault, you do not have to pay for any extra work to rectify the problem.

Variations must be in writing and attached to the contract and signed by both you and the contracting builder/tradesperson, or their nominated supervisor or agent.

How to make a variation

Before the work commences on the variation, the builder or tradesperson should give you:

- A written description of the work
- Any plans or specifications for the work
- The extra cost, and any extra time required to complete the work.

Both of you should sign this written notice if you agree on the work and price. Once this is done, the work may commence.

If the variation is needed because there is likely to be danger to someone or damage to property, there may not be time to put the details in writing. In this case, the written variation may be done after the work has been carried out. In all other instances, variations must be in writing.

Progress payments

For minor work the builder or tradesperson will probably be happy if you pay within a week of the job being finished.

However, if the job is several thousand dollars or more, it is reasonable for the builder or tradesperson to ask you to make progress payments. This is usually so they can pay for materials and labour as the job progresses.

Important. The rule is you only pay for work that has already been done. Sometimes the bank lending you the money will have special requirements for progress payments. This may need to include an additional clause in the contract.

Progress inspections

For large projects such as building a new home, you may consider getting a progress inspection done by an independent building consultant or architect before each payment is made.

If you do, it will be the consultant's job to make sure all the work set out in the contract has been done and meets the appropriate standards. However, defective work may have been covered up with paint or internal wall cladding and may not be picked up by a building consultant.

Ideally, the consultant should inspect the work at times when problems can be identified. Be prepared to pay between \$250 – \$500 for each inspection.

Access to the site

BY THE CONTRACTOR

Most contracts allow the builder to be given access to the site for the purpose of carrying out the works. You shouldn't interfere with this as it may interfere with the plan of work and incur extra costs. If you think the builder has breached your contract, get legal advice.

BY THE OWNER

The builder should give you access to the site for the purpose of inspecting and viewing the works.

Persons needing access may include

- Lending authorities
- Owner's agents
- Inspectors from statutory authorities regarding supply of gas, electricity and water
- Council officers or private certifiers.

ENDING THE CONTRACT

The contract normally contains provisions about ending the contract and these must be followed.

Ending the contract should be undertaken as a last resort and only after:

- Careful consideration
- Reasonable negotiation between both parties
- Obtaining specific legal advice.

INFORMATION WITH THE CONTRACT

LEARNING
ACTIVITY
12

Again, refer to the type of contract you have chosen in *Learning Activity No. 2*. Consider the following:

What information would you expect the contract to contain?

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

What should you consider PRIOR to signing the contract?

.....

.....

.....

.....

What Statutory Warranties would you expect to be provided with this type of contract?

.....

.....

.....

.....

.....

.....

.....

.....

Do you need to pay a deposit – if so how much would you expect to pay (in %'s)?

.....

.....

.....

.....

FUNDAMENTALS OF CONTRACT ADMINISTRATION

**Source: Extracts – Fundamentals of Building Contract Administration Authors T. E. Uher & Philip Davenport
Publishers Ticaw Pty Ltd Chapter 1 Topic 1.8**

An efficient contract administration process relies on the effectiveness of the communication between all the parties involved.

As the principal contractor you must ensure that the lines of communication are established and kept open throughout the whole construction period.

Fundamentals of contract administration for principals

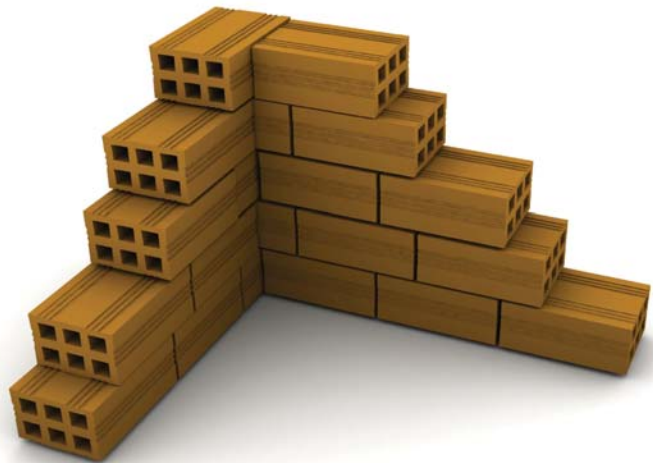
The fundamentals are:

1. To minimise the overall project cost, after allowing for interest, project income, project overheads etc.
2. To reduce the programmed time of critical path.
3. To produce a pre-tender construction program complete with notes and sketches on construction methods, sequences, resources, etc. to assist the contractor(s) to tender in the shortest practical time.
4. To carefully select the most appropriate form of contract and to allocate duties and responsibilities.
5. To tighten administration of the contract to ensure that the contractors performs the contract to the letter.
6. To monitor progress, review actions and talk to the contractors early if any problems exist.
7. To avoid changes unless being aware of the eventual cost implications. The principal should be prepared to negotiate a higher price for agreement to include a change and should document or omit the changed work from the required project completion date.
8. To document actual progress, resources, etc. in case of a possible arbitration and dispute. The settlement of any pending disputes with the contractor(s) should not be left until the end of the contract.
9. To advise the contractor(s) in writing of any deviation from contract conditions and to request compliance with same within a specified period.

Fundamentals of contract administration for contractors

The fundamentals are:

1. To minimise overall project time, thus reducing site overheads.
2. To balance increased direct costs of additional resources on critical activities, against possible saving in site overheads.
3. To advise the principal early in the project that the program is arranged to maximise use of resources and any additional work will require:
 - Sufficient time to re-arrange activities, acquire additional resources, perform additional planning, fabrication, etc
 - Extensions of time and prolongation of overhead costs.
4. To recommend to the principal not to make any changes to the design;
Not necessarily as a hard rule – there is a need to be reasonable – perhaps something more balanced with the appropriate emphasis on preventing the ‘design phase’ from encroaching into the ‘building phase’.
5. To document the actual progress compared with a program to identify areas of progress loss.
To take immediate action on contractor-caused problems and immediately advise the principal of other problems.
6. To instruct all internal staff to carry out work as specified in the contract document unless written instructions have been given by the principal’s representative.



CONTRACTS ADMINISTRATION

It is important to set up a job file beginning with the drawings and specifications.

The file then accumulates the following necessary information relating to the size of the project:

- Tenders/Building Agreements/Contracts
- Statutory Requirements
- Plans, Specifications, Schedule of Works
- Correspondence and Faxes to
- Correspondence and Faxes from
- Site Minutes
- Memos
- Variation Submissions
- Variation Approvals
- Progress Claims
- Council Information
- Engineering
- Surveyor
- Trade and Costing Information
- Trade Costing Information – variations
- Guarantee
- Subcontractors/Suppliers Quotes (active)
- Sub Contract Agreements
- PC Information
- Extension of Time
- Certificate of Practical Completion
- Authority for Final Payment
- Site Files and General Data.

As the job progresses the file grows and is often a valuable tool for referral, review and can be called upon as evidence in the case of a dispute.

What is usually left out of this file is the information acquired prior to the job commencing. This information is usually spread between the correspondence, tender/quotation or worse still mixed up in the *'what's not important anymore'* file.

Refer to Module 5 – Managing the Work for information regarding scheduling and Job File Management.

PRIOR TO RAISING THE CONTRACT

While the plans are at Council waiting approval

- Clear up any queries
- Set up the Job File
- Prepare the Construction Program
- Decide on the type of contracts to be used
- Decide on who will prepare the contracts
- Have the contracts prepared
- Prepare any supporting documents that must accompany each Contract
- Decide the following:
 - What information or documents does each contractor keep
 - What information or documents do you keep
 - Where are the documents filed/stored
 - What meetings should be carried out
 - What inspections need to be completed.

When plans are returned from Council – before construction commences

- Check any condition to approval with cost implications
- Have Contractors/Suppliers readjust their price if it is necessary.

RAISING THE CONTRACT

Do not commence any works without a written contract. The *Home Building Act* – clearly states all contracts and agreements in the Housing Industry **must** be in writing.

A contract/agreement will set out the rules for both parties to follow and gives each party confidence the principal contractor (owner-builder) is committed to finish the works.

Building Industry Contracts are available from:

- Office of Fair Trading (OFT)
- Master Builders Association (MBA)
- Housing Industry Association (HIA).

Communication

The critical part of any building project is the documentation. Ensure all communication is in writing, regardless of how trivial the event – keep a record.

If there is a verbal conversation of any kind that is in relation to the construction – keep a record of the conversation in writing. It may be an entry in a diary (we recommend a separate Site Diary) a letter of confirmation, email or facsimile. These records are meant to support any changes or events that may occur throughout the building process.

What may seem trivial at the time could end up being critical in a dispute.

DOCUMENTS

As the owner-builder you may not need to issue the documents listed on the following pages – however you may receive them from the Subcontractors that are carrying out specific tasks on your project. Each document is aligned with a specific clause in each contract. It is important you understand their purpose and why you need to record and possibly signoff as acknowledging their content and intent **and** keep as a record against the project.

If your project is being financed – your financier may also require a copy of the documents for their own records.

Examples of these documents are provided at the end of this topic.

EXTENSION OF TIME (EOT)

This document may be sent to you from the subcontractor if a delay occurs and changes the completion time outlined in their contract. It will state clearly what has caused the delay and what extended period the contract will require. You will need to acknowledge the document and agree/disagree with the time extension.

Take care with this document. The delay will have an affect on the next trade commencing their work. Make sure you communicate the delays (in writing) to each trade.

Refer to the clause in your contract for timeframes for the notice to be lodged and acknowledged.

VARIATIONS

Variations may be issued to you or you may issue a variation to your subcontractor.

If the subcontractor issues a variation notice to you it should contain a description of the variation/works, its costs and possible extension of time. You are to acknowledge the advice by approving or disapproving.

If **you** wish to change a contract condition – by all means discuss the change with your subcontractor/supplier verbally **but** ensure you support the request by confirming your conversation in writing either by facsimile, email or letter. Keep a copy of all correspondence in your job file.

The Subcontractor should then provide a variation advice as noted above.

Refer to the clause in your contract for timeframes for the notice to be lodged and acknowledged

PROGRESS CLAIMS/INVOICING

Also refer to Page 35 of this topic. For larger projects where the subcontractors work extends over a period of time and materials are also provided by the contractor the subcontractor will lodge progress claims at intervals nominated in your contract. Always check the claim against the works completed and your contract terms. Do not pay for works that have not been carried out or materials that have not been delivered to site.

Refer to the clause in your contract for timeframes for the notice to be lodged and acknowledged.

If the work conducted by the Subcontractor is minor or over a short period the contractor may only lodge an **Invoice** for the completed works. Again check the invoice amount against the works completed and do not pay in advance for work that has not been carried out or for materials that have not been delivered and installed.

It is critical to have had a written quotation from which you have acknowledged in writing that you accept the terms and conditions of the quotation eg: inclusions, exclusions, payment terms etc. (Refer to Module 4 on Page 50 for what should be included in the original quotation.)

It is important to remember not to short pay claims/invoices or refuse to pay claims/invoices, this is a clear breach of contract when an agreement or contract has been entered into. It could lead to:

- a. The job being suspended or terminated.
- b. Being exposed to damages for breach of contract; or
- c. Long delays due to disputes.

SUSPENSION OF WORKS

The right to suspend the works is normally given when the other party is in breach of the contract and allows the aggrieved party to protect its position and prevent further expenditure without determining the contract.

The Contractor/Subcontractor may be permitted to determine (suspend – terminate) the Contract if the Owner-builder/Principal Contractor defaults.

On the other hand the Owner-builder/Principal Contractor may be permitted to determine (suspend – terminate) the Subcontractors contract if the Subcontractor defaults.

*(Note: Contracts usually specify time periods to remedy defaults and procedures to terminate which must be followed – **play safe and seek advice.**)*

There is normally a requirement for either party to issue a show cause notice.

Evidence is essential in both cases. Keep accurate records of payments, photos if necessary, seek advice, read the clause in your contract carefully.

CONTRACT TERMS

Adjusted Contract Sum

The adjusted contract sum is the contract sum but adjusted to take into account any additions or deductions pursuant (according) to the Contract.

Arbitration (not applicable to domestic disputes)

A method of dispute resolution in which an independent umpire, called an 'arbitrator', considers the matter in dispute. An arbitrator may be selected by the parties or a court or a person nominated by the parties.

Assignment

The transfer of a right, interest or title, or the instrument of transfer.

Bank Guarantee

Certification by a financial institution that a set sum of money is set aside as a guarantee of available funds to pay a builder, for example, for a housing contract sum. The funds are set aside and not able to be accessed by the proprietor or without the builder's consent, or by the builder until his contractual obligations are met.

Bill of Quantities

A list of numbered or coded items describing quantities and materials required to carry out the contract work that is divided into sections corresponding with their usual building trade classification.

Breach of Contract

Whenever one of the contracting parties fails in his obligations under the contract, the other is entitled to claim damages for the breach, unless the terms of the contract provide otherwise. To be recoverable, however, damages must be real, and must be valued as the actual loss arising as a natural and probable result of the breach; but the damaged party must take all reasonable steps to mitigate his loss.

Consequently, except as provided otherwise in the contract itself, the Builder is entitled to compensation for all acts or defaults of the Proprietor, and vice versa.

Building Contract

The document or articles of agreement and general conditions binding two or more parties together, including any drawings or specifications etc.

Building Documents

All documents related to the construction as stated in the Articles of Agreement and order of preference.

Conditions of Contract, Specification, Drawings and may include the Bill of Quantities.

Conciliation

A dispute resolution process whereby a mediator discusses the matter in despite with both parties and attempts to bring them together in agreement.

The mediator has no power to force an agreement and the outcome is not legally binding, although it is hoped that because the parties have both been involved in the decision and have reached agreement, they will in fact adhere to the agreement.

Conciliator

A person, preferably with meaningful expertise in the matter of the dispute and due procedure and natural justice, who convenes a conciliation session.

Consumer, Trader & Tenancy Tribunal (CTTT)

A statutory tribunal operating within the Department of Fair Trading in NSW and acting as a dispute resolution body under consumer legislation.

Contingency Sum

Is a monetary sum allowed in the tender/contract for unforeseen expenses and is adjusted in the final account.

Contract

An agreement enforceable at law resulting from a proposal by one party followed by acceptance by another party(s) and consideration (usually money). The agreement usually takes the form of a written document but can be verbal, though the latter is more difficult to enforce at law.

Contract Works Insurance

Insurance, usually taken out by the builder to protect against loss should the project under construction suffer damage prior to final completion (e.g. storm damage, fire vandalism, etc).

Contractor

Person or persons who, by agreement under a contract, are required to perform certain work.

Contractor Licence

Means a contractor licence in force under the *Home Building Act 1989*.

Contract Sum

The contract sum, in respect of most building contracts means:

- a. Where the Proprietor accepted a lump sum, the lump sum;
- b. Where the Proprietor accepted rates, the sum determined by calculating the products of the rates and the corresponding quantities in the bills of quantities or schedule of rates;
- c. Where the Proprietor accepted a lump sum and rates, the aggregate (average) of the sums referred to in a) and b) above.

Including provisional sums but excluding any additions or deductions which may be required to be made under the Contract.

The adjusted contract sum is as above but adjusted to take into account any additions or deductions pursuant (according) to the Contract.

Cost Plus

A type of contract where the proprietor agrees to pay the contractor a sum plus a fee, or a percentage of the cost of the works.

Defects Liability Period

In addition to the obligation to remedy all defective work which may occur during construction, most contracts contain a clause which requires the Builder, on being called on to do so, to rectify all defects which may appear during a fixed period after completion of the work (the Defects Liability Period).

Design and Construct

A term used to describe a contract where a builder is required to both design and construct a project in accordance with a specific set of requirements set out in the contract.

Determination

Determination of the Contract is the ultimate right of each party to that Contract. This right is normally only allowed when the other party defaults in respect of certain aspects of the contract and things need to be 'brought to a head' often short of, but not excluding, termination of the contract.

Direct Labour

Site labour employed directly by the builder.

Dispute

In respect of a building contract, a dispute occurs when the parties to a Contract cannot reach agreement in respect of the construction of the Contract or as to any other matter or thing of whatsoever nature arising under the Contract or in connection therewith.

Do and Charge

A type of contract used primarily when the Client is not too sure of the scope of works or there are disruptive elements – such as work which is likely to be slowed down through other intrusive activities. The builder completes the works and then presents the client with the bill.

Drawings

A pictorial representation of the project to be constructed.

Escalation

A provision in a contract allowing for adjustments up or down under specific economic conditions.

Estimating/Budget

Forecasting the cost of construction based on the drawings and specifications.

Extension of Time

An extension of time, when applied to a building contract, is a change in the date for completion of the project, brought about by some change in the project circumstances beyond the control of the Builder.

General Conditions of Contract

Those conditions constituting the contract as a whole covering all matters excepting so called 'special conditions' which may be needed to cater for any particular circumstances of an individual project.

Head Contract

This is the Contract between the Proprietor and the Builder. Even though the works may be supervised by an Architect, this is still the Head Contract.

Implied Terms

Legally sustainable terms and conditions may exist in a contract as implied terms although they are not expressed in writing. Such terms, however, remain as obligations on the parties to the contract and arise out of common law, tort law and statute law.

Inclement Weather

When work is prevented from being carried out due to any severe weather conditions including rain, wind, heat and cold.

Independent Expert Appraisal

In the context of building contracts, an appraisal sought by one or both parties, usually to assist in dispute resolution, by a person sufficiently qualified in the relevant field to offer meaningful advice and genuinely independent of the matter and parties involved i.e. free of any conflict of interest.

Indirect Labour

Management/clerical work employed by the Builder and involved in managing or controlling the process of building.

Labour Only

A type of contract where the contractor hires out labour at an hourly rate.

Latent Conditions

Physical conditions on site or affecting the site which differ materially from the physical conditions which should have reasonably been anticipated at the time of contracting.

Lien

A type of security over property whereby a creditor has the right to retain possession of a debtor's property until the debt is paid.

Liquidated Damages

Simply put; liquidated damages is monetary compensation.

For example; failure by the Builder to complete the contract within the specified time, or any valid extension thereof, will expose him to a claim by the Proprietor for damages.

Lock-up

The time when the building works may be fully secured by physical means to prevent entry other than forced entry; ie when the external shell of the building is complete.

Lump Sum

A type of contract where the Contractor agrees to do the work for a Lump Sum.

A Lump Sum contract may also be:

- Fixed Fee – (No provision for increases)
- Rise and Fall – (Provision for increases labour/materials)

Mediation

A means of dispute resolution akin to that of conciliation.

Mediator

A person, preferably with meaningful expertise in the matter of the dispute and due procedure and natural justice, who convenes a mediation session.

Negotiation

To discuss and exchange ideas and/or proposals as a means of reaching an agreement such as in dispute resolution or preceding a business agreement.

Nominated Subcontractor

A Subcontractor who is nominated by the client to perform a separate or specialised section of the work, the cost of which is allowed as a provisional sum in the contract.

Period Contract

A period contract is one where a client enters a contract with a Contractor for the provision of services or materials, or both, for an established period of time and for an established cost.

Practical Completion

In most contracts Practical Completion can be defined as the stage where:

- a. the work under the Contract has been completed except for minor omissions and minor defects –
 - i. which do not prevent the Works being reasonably capable of being used for the purpose for which it was designed, and
 - ii. in relation to which the Builder has reasonable grounds for not promptly rectifying, and
 - iii. rectification of which will not prejudice the convenient use of the works, and
- b. those tests which are required to be carried out before Practical Completion have been carried out and passed, and
- c. documents and other information required under the Contract and essential for the operation and maintenance of the building have been handed over to the Proprietor.

Preliminaries

Those items required for building which cannot be easily included within any trade; e.g. scaffolding, shedding, electricity, cost of supervision, craneage, testing of materials, quality assurance costs.

Prime Cost Item (P.C)

A monetary allowance for net trade price of articles (supply only) of a tentative nature at the time of tender. Articles may be completely stated (brand, type, quality, etc) or left for the selection by the Client or Architect.

Principal

Is a term used in building contracts in lieu of the word client or owner.

Progress Claim

Fixed Price Contracts are financed by the Builder, who receives regular progress payments (usually fortnightly or monthly) from the Proprietor; for materials delivered and work done on the site.

Project Management (Contract)

This is the Contract between the Proprietor (Client) and the Project Manager.

A Project Management Contract is established either on a Lump Sum or % Basis where the Project Manager offers his skills under that contract to manage the project on behalf of or for the Proprietor (Client).

Provisional Quantities

A monetary allowance for certain components of the works when the exact quantities are unknown at the time of tendering and adjusted according to agreed rates on performance of the work.

Provisional Sum

A provisional sum is included in a contract where the Proprietor has been unable to finalise a specific detail or material and sets a figure that the Builder is to include in the Contract Sum.

During the progress of the Works the Proprietor, or Superintendent, will issue instructions to the Builder in respect of the works covered by the provisional sum.

Schedule of Rates

A list of unit rates prepared and submitted by the Builder to be used for the preparation of progress claims or for use by an Architect or Client to adjust Builder's claims for variations.

Security/Retention

Both security and retention are money held back by the Proprietor for the purpose of ensuring the due and proper performance of the Contract by the Builder.

Special Conditions of Contract

Often added to the general conditions of generic contracts, for example, special conditions are added when a particular circumstance relating to a particular project requires inclusion in the contract.

Specification

The written description of the works or project accompanying the drawings.

Sub-Contract

A practical abbreviation of the words 'subordinate contract'. A contract let to a subcontractor for work within the scope of another contract.

Subletting

The letting of a contract of tenancy, for example, to another party by the party to the original letting. There can, of course, be further subletting, in theory, but some subletting is prevented by law and other subletting is regulated or prohibited altogether by specific contract conditions.

Superintendent

Superintendents are representatives of, and are paid by, the client. They are often Architects but can be other suitably qualified personnel such as a Clerk of Works or Building Consultant.

Suspension

Under certain contracts the Superintendent may direct that the works be suspended at any time and he may allow the Builder to suspend the works. In those cases the Superintendent is to direct recommencement as soon as possible and to rule on costs, which are normally borne by the Builder except where the suspension is the fault of the Proprietor or his agents.

Tort

1. A civil injury, actionable by a private individual, as opposed to a criminal wrong, actionable by the State.
2. The branch of law concerned with civil injuries and their remedies.

Tort Law

The decisions of courts arising out of civil (tort) cases; i.e. precedents.

Trustee

Refers to either the official trustee employed by the Government or a Registered Trustee (usually a Chartered Accountant).

Unliquidated Damages

Damages paid in the form of something of value in other than liquid funds (money).

Variation

The word 'Variation' in the context of a building and construction contract will generally be employed in one of two senses. In the first place it may denote a change in the contractual terms upon which the relevant work is to be performed.

Secondly, the word may signify an alteration, whether by addition or omission, to the work content specified in the contract documents but which the contract, or some separate agreement between the contracting parties, nevertheless requires the Builder to perform.

INTERPRETING THE CLAUSES WITHIN THE CONTRACT

LEARNING
ACTIVITY
13

Again, refer to the type of contract you have chosen in *Learning Activity No. 2*. Be able to describe the following clauses within the contract and explain how and when it would affect your building project.

| CLAUSE | HOW AND WHEN IT WILL APPLY TO YOUR CONTRACT? |
|---------------------------------|--|
| <i>Extension of Time</i> | |
| <i>Variation</i> | |
| <i>Progress Claim</i> | |
| <i>Inclement Weather</i> | |
| <i>Practical Completion</i> | |
| <i>Liquidated Damages</i> | |
| <i>Defects Liability Period</i> | |

| QUESTIONS | REF. PAGE |
|--|---------------------|
| <p>7. What documents MUST accompany a building contract?</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>vii.</p> | <p>14-15</p> |
| <p>8. What information should be contained in a building contract? List 8</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>vii.</p> <p>viii.</p> | <p>17-18</p> |
| <p>9. What information should be contained in a trade contract? List 8</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>vii.</p> <p>viii.</p> | <p>19</p> |

| QUESTIONS | REF. PAGE |
|--|-----------|
| <p>10. What should you consider before signing a contract with a builder or tradesman?</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> | 19 |
| <p>11. What Statutory Warranties are implied by law whether the contract is in writing or not? List 5</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>vii.</p> <p>viii.</p> | 19 |
| <p>12. What danger signs should you be wary of when signing a contract?</p> <p><i>Answers</i></p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> | 20 |

| QUESTIONS | REF. PAGE | | |
|---|------------------|------------------|------------------|
| <p>13. What are the rules relating to Deposits?</p> <p><i>Answers</i></p> | <p>20</p> | | |
| <p>14. What is a Variation and how will it affect the Contract Value?</p> <p><i>Answer</i></p> | | <p>21</p> | |
| <p>15. What is the purpose of documenting an Extension of Time?</p> <p><i>Answer</i></p> | | | <p>28</p> |
| <p>16. What is the purpose of documenting a Variation?</p> <p><i>Answer</i></p> | | | |

| QUESTIONS | REF. PAGE |
|---|--------------|
| 17. When should you expect to receive a progress claim/ invoice from a contractor? | |
| <i>Answer</i> | |
| | 29 |
| 18. Be able to describe the following terms: | |
| <i>Breach of Contract</i> | |
| | |
| <i>Contingency Sum</i> | |
| | |
| <i>Contract Sum</i> | |
| | |
| <i>Inclement Weather</i> | |
| | 30-37 |
| <i>Practical Completions</i> | |
| | |
| <i>Prime Cost (P.C)</i> | |
| | |
| <i>Provisional Quantities</i> | |
| | |
| <i>Tort</i> | |
| | |

ADMINISTRATION

INTRODUCTION

The first role of the Owner-builder is usually perceived as the role of hands on labourer, but the second may be less obvious, that of the administrator.

The administration role is one by which most owner-builders will make or break the potential savings of being an owner-builder.

The owner-builder must be capable of running the job at the highest level of efficiency and do all the tasks that would normally be carried out by a builder.

The owner-builder must become four people in one:

- Owner
- Builder
- Labourer
- Contracts Administrator.

The key to good administration is good planning and the owner-builder should devote as much time as is necessary at the beginning of the project to make sure all the paper work is in place and an appropriate plan of action and control is produced. For further administration information, see Module 5 – Managing the Work.

Money Control

Owner builders should keep an accurate set of financial records associated with the project. Constant vigilance on comparing the actual cost against the original budget is critical. Any extra costs should be identified and dealt with immediately.

If money is being borrowed for the project then it is wise to keep the lending body informed of any increase in the cost of the project as soon as it becomes apparent so that a decision on whether extra funds can be advanced or not can be made.

Discuss strategies with your accountant and finance advisor regarding the most effective method of financing your project.

Conclusion

A well controlled and administered owner-builder home building project is one where the owner-builder knows at any point in time how much has been spent on the project, has placed all necessary material and trades orders and is closely monitoring the time control.

JOB REPORTING AND SITE PROGRESS REPORTS

Building works vary in size from a patio on the back of a house to a high rise office complex. Site administration offices could vary from the back of your car to a complex of offices. The supervisor of the site works and/or the foreman have a lengthy list of activities which they must perform.

ADMINISTRATION TASKS

- Interpretation of drawings and specifications
- Drawing control
- Variation control
- Job history recording
- Setting out
- Planning
- General supervision
- Coordination of trades
- Cooperating with consultants
- Compliance with council regulations
- Quality control
- Temporary services and works
- Insurance
- Progress claims
- Union negotiations
- Cost-control systems recording
- Site meetings
- Construction scheduling
- Cooperating with the architect
- Movement of plant.

LABOUR CONTROL

- Continuity of on-site labour force
- Subcontractor management
- Hiring and firing
- Payment authorisation
- Hours recording
- First aid
- Insurances
- Award conditions provision
- Safety
- Amenities
- Welfare.

MATERIALS

- Ordering
- Receiving
- Measurement
- Authorising payment
- Storage
- Security
- Quality control
- Monitoring of standards as specified
- Control of waste
- Rubbish disposal.

On the following pages are some examples of standard forms. These forms are the communication record of the site activities. The information recorded in these documents and forms is vital for processing claims, inspections, quality control, subcontractor payments, material and equipment movements. Complying with WorkCover, Council, OH&S, and other legislation's and regulations, contract conditions and when a dispute arises could and will stand up for you in court.

ADMINISTRATION PROCEDURES

LEARNING ACTIVITY 14

Again, refer to the type of contract you have chosen in *Learning Activity No. 2* – and your lists set out in *Learning Activity 3 & 4*. Determine what you need to do during the construction phase of your project. Refer to the previous 2 pages – how many of these activities would you need to carry out for your size project?

| ACTIVITIES | <input checked="" type="checkbox"/> |
|------------|-------------------------------------|
| 1 | |
| | |
| 2 | |
| | |
| 3 | |
| | |
| 4 | |
| | |
| 5 | |
| | |
| 6 | |
| | |
| 7 | |
| | |
| 8 | |
| | |
| 9 | |
| | |
| 10 | |
| | |

BUSINESS FORMS

ORDER

A request to supply and deliver goods and/or services

DELIVERY DOCKET

Proof of delivery of the goods and/or services

TAX INVOICE

Charge for the goods and/or services

ADJUSTMENT NOTE

Adjustment to the charge for the goods and/or services

STATEMENT

Summary of all the months transactions

PAYMENT

Payment for the goods and/or services

RECEIPT

Proof of receipt of the payment for the goods and/or services

Order Form

- The order form is the *request* for the goods or services needed to complete the job.

Delivery Docket

- This form is sent with the delivery of the goods as *proof* all the goods supplied are as you ordered them. The receiver signs they have received the goods. Many suppliers do not use this system any more. They send the full invoice with the goods.

Tax Invoice

- The tax invoice is the *charge* for the goods and services supplied.

Credit Request

- If there is a *shortage in delivery*, an *overcharge* on the invoice, an error in the calculations of the invoice, request a credit by recording the request formally on a Credit Request Form. Do not trust everything to the verbal request.

Adjustment Note/Refund Notice

- An *adjustment* to the original charge on the tax invoice.

Statement

- *Summary* of all the transactions for the month between the supplier and the buyer, advises the buyer of the amount owing for the goods purchased through the month.

SAMPLE OF A TAX INVOICE SHOWING THE GST SEPARATELY

1. The words *Tax Invoice* stated prominently
2. The Australian Business Number of the Supplier
3. The Suppliers Name and Address
4. The date of issue of the tax invoice
5. The name of the recipient
6. The address or ABN of the recipient
7. The quantity of the goods or the extent of the services supplied
8. A brief description of each thing supplied
9. The individual price of the goods
10. The total price before GST
11. The GST amount
12. The total amount payable for the supply
13. The name of the supplier

| TAX INVOICE ¹ | | | |
|--|--------------------------|--------------------------------|----------------------|
| Tools n Trade Pty Ltd ¹³ | | 5 Burshag Road | |
| ABN: 32 123 456 789 ² | | Fester NSW ³ | |
| Date: 1 August 2000 ⁴ | | | |
| To: Builders & Building ⁵ | | | |
| 2 Newhouse Road ⁶ | | | |
| Fester NSW | | | |
| Qty | Desc of Supply | Price | Total |
| 10 ⁷ | Solid doors ⁸ | \$150 ⁹ | \$1500 ¹⁰ |
| GST | | | \$150 ¹¹ |
| TOTAL AMOUNT PAYABLE | | | \$1650 ¹² |

SAMPLE OF A TAX INVOICE SHOWING THE GST INCLUSIVE

| TAX INVOICE | | | |
|-------------------------------|----------------|------------------------|-------|
| Any Supplies | | 80 Burshag Road | |
| ABN: 32 123 456 000 | | Fester NSW | |
| Date: 1 August 2000 | | | |
| To: Big Constructions Pty Ltd | | | |
| 79 Construction Road | | | |
| Fester NSW | | | |
| Qty | Desc of Supply | Price | Total |
| 150 | Roof Tiles* | \$5.50 | \$825 |
| 50 | Bottled Water | \$1 | \$50 |
| TOTAL AMOUNT PAYABLE | | | \$875 |
| Total Includes GST of \$75 | | | |
| * Indicates Taxable Supply | | | |

1. The words *Adjustment Note* in a prominent place
2. The name and ABN of the supplier
3. The issue date of the adjustment note
4. The name of the recipient
5. The address and (ABN if necessary) of the recipient
6. The original tax invoice number and issue date
7. Description of the goods being returned
8. The price of the taxable supply in the tax invoice or previous adjustment note, the corrected price, and the difference between these amounts
9. The Amount of the Refund/Adjustment

| REFUND NOTICE ADJUSTMENT NOTE ¹ | |
|--|---------------------------------------|
| Windows to Fit Pty Ltd ABN: 32 123 456 623 ² | 15 Burshag Road Fester NSW |
| Date: 1 October 2000 ³ | |
| Building Company ⁴ 254 Burshag Road ⁵ Fester NSW | |
| Original Tax Invoice No. (XXXXX) Original Tax Invoice Date: (XXXXXX) ⁶ | |
| 10 Damaged window frames returned ⁷ | |
| Original Price | \$825 |
| Adjusted Price | \$660 ⁸ |
| AMOUNT REFUNDED | \$165 ⁹ |



THE STATEMENT

Made out by the seller

Summarises all transactions for the month between the seller and the buyer, and advises the buyer of the amount owing to the seller for goods he has purchased on credit throughout the month.

Follow the numbers 1 to 7 to see the function of a **Statement**.

1. The seller.
2. The buyer of goods on credit.
3. The amount outstanding from the previous month, i.e. still owed by the buyer to the seller.
4. All transactions between buyer and seller are listed on the statement in date order.
5. Debit- any amount in this column is added to the balance column to increase the amount owing by the buyer to the seller for goods supplied (invoices).
6. Credit- any amount in this column is subtracted from the balance column to decrease the amount owing by the buyer to the seller (credit notes & cheques received in payment and cash discount).
7. Amount owing by the buyer to the seller at end of month's transactions.

| Myart Company Pty. Ltd | | | | |
|--|--------------------------|---------------------|------------------|---------------|
| 82-84 Dickson Avenue, Artarmon, NSW, 2066 | | | | |
| Statement for the month of | | | | |
| S.Willams & Sons | | | | |
| 99 Sussex Street Willoughby, 2068 | | | | |
| Date | Reference | Debit | Credit | Balance |
| | | | Account Rendered | \$15.75 |
| 10th Mar | Inv - 17763 | 9.75 | | \$25.50 |
| 12th Mar | C/N - 5311 | | 1.15 | \$24.65 |
| 13th Mar | Cash - In69 | | 15.75 | \$8.60 |
| Memo | Past Due Analysis | | | |
| | Outstanding 2mths & over | Outstanding 1 month | Current | Balance Owing |
| | | | | \$8.60 DR |

Remember: The *buyer* is in *debt* to the seller until he has paid for all goods purchased on credit.

THE ORDER FORM

This type of form would be completed by the buying firm or retailer who already has established in the store the supplier's stock line. Stock is getting low and so is re-ordered by posting the order to the supplier.

Follow the numbers 1 to 7 to see the function of an ORDER FORM sent by the buyer to the seller.

1. Request for the supply of goods.
2. Purchasing or buying company – The company which will have to pay for goods supplied.
3. Supplying or selling company.
4. Headings vary according to business needs. FULL description is necessary to ensure correct goods will be delivered.
5. Order forms are numbered consecutively.
6. Date of order.
7. Price need not be listed if not known.

| S. Willams & Sons | | | |
|--|--|-------------|--------|
| 99 Sussex Street Willoughby, 2068 | | | |
| To MyArt Co, P/L PO Box 245 Artarmon, NSW, 2066 | | | |
| Quantity | Description | Unit | Price |
| 5 Pkts | Ap7 40mm Wooden Beads – Red | .70 pack 10 | \$3.50 |
| 4 | 'Knit' Crochet Ribbon Strand Book (No.8) | 25 | \$1.00 |
| 6 Boxes | Rug Hooks – Latchet | .85 per box | \$5.10 |
| Special Instructions/Comments: Urgent | | | |

MATERIALS AND PLANT ADMINISTRATION

It is absolutely vital the correct procedures are followed when ordering, receiving, using and returning materials and plant to and from a site.

Record the purchase or request for materials and plant by using:

- An Order or Requisition System
- Record the receipt of the goods, materials and plant
- Record the use of goods, materials and plant
- Record the accounting functions necessary to process the paper work to final payment
- Record the return of unused materials, plant, etc., to store or the supplier.

The Site Supervisor will record the coming and going of materials and plant on the Daily Report Sheet

A separate records system must accompany the details shown on the Daily Site Diary.

BEGIN WITH THE ORDER SYSTEM

Note: When there is a need for large quantities of bulk materials (eg concrete) a contract for the supply of these bulk quantities of materials, at a negotiated discount rate, form an integral part of the order system. The quantities are confirmed at the time the order is placed by raising a purchase order for each portion as it is required. Eg. One project may have 400m³ plus of concrete, and any one slab may only be a maximum of 80m³. These contracts ensure the negotiated rate remains throughout the project.

The system begins with an order book. This book can be either a standard duplicate or triplicate book with consecutively numbered pages which can be purchased from any newsagent or stationery outlet.

It is extremely important that the sheets are consecutively numbered and kept in strict numerical order. The whole system is centred around these numbers and keeping them in order is **vital**.

All referral questions, job costing, invoicing, filing etc., would start with the order number. By keeping these numbers in order, you make the finding and tracking of information very easy. It is the same as finding a letter in a file by having the files in alphabetical order.

THE ORDER SYSTEM

1. When ordering goods it is best to get into the habit of writing out the order form first. Using the form, you then either phone the order to the supplier or pick up the goods personally (you or an employee) and give the order form to the supplier.

- a. **Ordering by Telephone**

First quote the order number.

Then present the details of the order giving the supplier the list of goods you require.

If and when possible, obtain a price for the order from the supplier and write this price on the order form.

This price is then used as a check against the value given on the corresponding invoice sent to you by the supplier. It also helps with any job costing you may need to process before the invoice arrives.

- i. Give **precise** delivery instructions.
- ii. Send the original copy to supplier.

- b. **Personal Collection of Goods**

Always keep an order book with you at all times.

Follow the same procedure as a telephoned order.

Ensure that the order form is completed with as much detail as possible.

Give the original copy to the supplier.

2. On receipt of the goods, check off the delivery docket to see that all goods listed on the docket have actually been delivered. Check prices as well (if possible).

3. Once found to be correct, enter the stock on the relevant stock cards. (if applicable)

4. If your order book is in triplicate, then the copies are distributed as follows:

Original Copy Given/sent to the supplier.

Duplicate copy Attached to invoice or delivery docket upon arrival.
This copy may also be filed in the job file for job costing purposes.

Triplicate Copy Remains in order book as backup/permanent copy.

Attaching the duplicate copy to the delivery docket/invoice would only save you the time of referring to the book if a query were to arise between you and the supplier (or delivery to a subcontractor).

5. The delivery docket is then married up with the invoice when it arrives and checks against the goods listed, values and pricing, additions of the invoice.

(Always check the additions. Mistakes are often made here and it can pay to doublecheck them).

6. Job costing can now take place.

7. File the invoice under the suppliers/subcontractors name.

MEMO AND CREDIT REQUEST

Each day the goods, materials and plant are delivered to site. The receiver (usually the Site Supervisor) of the goods must check the delivery against the original Order and the Delivery Docket. If there is a discrepancy a request for an adjustment to the Invoice/Delivery Docket must be made.

In the case of a short delivery, the receiver will ring the supplier immediately and organise a replacement. A record of this request must be in writing in Memo form, and a copy kept for your records.

Or

If the supplier cannot replace the missing goods a Credit Request Form must be completed.

This can be a Memo to the main office set out as follows:

MEMO EXAMPLE

| | |
|---|---|
| | MEMO NO. |
| Date | 1 January 2010 |
| To | Main office, Local Construction Company |
| From | Site Supervisor – S. Smith |
| Site | Town Houses – Lambton (Queens Road) |
| Subject | Credit request/Adjustment to delivery |
| Materials received on Del. Docket No | |
| Our Order No have been delivered 2 pallets short. | |
| The supplier is unable to deliver the missing goods. | |
| Another order has been placed with (name of supplier) on Order No | |
| A Credit Request is required for the 2 pallets to be deducted from Tax Invoice No | |
| | |
| Signed | |

The office will process the Credit Request — see example overleaf

EXAMPLE CREDIT REQUEST

CREDIT REQUEST

Date **Memo No.**

To (Suppliers Name and Address)
.....
.....

Our Order No. **Del. Dkt. No.**

Tax Invoice No.

Please credit the following

2 x Pallets of ABC @ \$ (Amount if known). Short delivered on (Date)

Your early attention to this request would be appreciated.

.....
Signed

If the receiver of the goods completes the Credit Request form from site, it should be in Duplicate.
One copy to the supplier, one copy in the Job File and one copy could be kept in the book (optional).

EXAMPLE ADJUSTMENT NOTE

| ADJUSTMENT NOTE | |
|--|----------------------------------|
| NAME/LOGO | Adjustment Note No. |
| | Date |
| | Your Order No. |
| Tax Invoice No. | Dated |
| To | Local Construction Company |
| | (Address) |
| Please credit the following | |
| Credit the supply of 2 pallets short delivered on the above Invoice No. on (Date of Delivered) | |
| <i>ORIGINAL PRICE</i> | \$ |
| <i>ADJUSTED PRICE</i> | \$ |
| <i>AMOUNT REFUNDED</i> | \$ |

As the goods are delivered the information is recorded onto a Stock Progress Record Card.

It is necessary to have one card for each type of materials or goods.

EXAMPLE BRICKS, TIMBER, P.C. ITEMS, ETC.

On some projects the goods may be delivered prior to that section of the job is ready for the materials. The classification is *'Materials delivered unfixed or not fixed'*.

The receiver will place the goods in store until they are *fixed or fitted*. Some suppliers will hold the goods in their store until they are needed, however they will charge for the supply and the invoice is marked and dated at the date the manufacture was completed. This is classified as *'Goods manufactured not fixed'*.

All this must be recorded correctly.

PLANT HIRE

Plant when hired must be 'off hired'

| | | | | | |
|----------------------------|-----------------------|----------------------------------|--------------------|------------------|---------------------------|
| Type of plant | | Job Site/Name | | | |
| Supplier | | Suppliers Reference | | | |
| Date Received | Date Off Hired | Collect Details | Hire Period | Hire Date | Break Down Remarks |
| | Date | Contact | Dehire No. | Date | |
| | | | | | |
| | | | | | |
| | | | | | |

Something as common as the off-hire of plant and equipment can be overlooked. The supplier will charge you from the day it is 'hired' until it is 'off-hired'. There are times the supplier will not pick up the plant on the day you called and will charge you from the pick up date. Unless you have a record of the date the supplier was called and the name of the person the advice was given to, you have no grounds to contest the charge.



SELF TEST QUESTIONNAIRE

SELF TEST
10

| QUESTIONS | REF. PAGE | | | | | | | | | | | | | | | | |
|--|--------------------|--------------------|---|--|---|--|---|--|---|--|---|--|---|--|---|--|---------------------|
| <p>19. What activities would a Site Supervisor need to perform throughout the duration of the project in the following areas?</p> <p><i>Administration Tasks – List 8</i></p> <p>i. _____ v. _____</p> <p>ii. _____ vi. _____</p> <p>iii. _____ vii. _____</p> <p>iv. _____ viii. _____</p> <p><i>Labour Control – List 5</i></p> <p>i. _____ iv. _____</p> <p>ii. _____ v. _____</p> <p>iii. _____</p> <p><i>Materials</i></p> <p>i. _____ iv. _____</p> <p>ii. _____ v. _____</p> <p>iii. _____</p> | <p>46</p> | | | | | | | | | | | | | | | | |
| <p>20. List and describe the business forms you would expect to encounter throughout the duration of the project</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 15%;"><i>Name</i></th> <th><i>Description</i></th> </tr> </thead> <tbody> <tr><td>1</td><td></td></tr> <tr><td>2</td><td></td></tr> <tr><td>3</td><td></td></tr> <tr><td>4</td><td></td></tr> <tr><td>5</td><td></td></tr> <tr><td>6</td><td></td></tr> <tr><td>7</td><td></td></tr> </tbody> </table> | <i>Name</i> | <i>Description</i> | 1 | | 2 | | 3 | | 4 | | 5 | | 6 | | 7 | | <p>48-53</p> |
| <i>Name</i> | <i>Description</i> | | | | | | | | | | | | | | | | |
| 1 | | | | | | | | | | | | | | | | | |
| 2 | | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | | |
| 4 | | | | | | | | | | | | | | | | | |
| 5 | | | | | | | | | | | | | | | | | |
| 6 | | | | | | | | | | | | | | | | | |
| 7 | | | | | | | | | | | | | | | | | |

| QUESTIONS | REF. PAGE | |
|--|------------------|------------------|
| <p>21. What is the purpose of the Order System?</p> <p><i>Answer</i></p> | <p>55</p> | |
| <p>22. What is the purpose of recording the coming and going of plant on hire?</p> <p><i>Answer</i></p> | | <p>60</p> |
| <p><i>Answer</i></p> | | |
| <p><i>Answer</i></p> | | |



JOB FILE

It is essential to have an individual job file set up for each project. The file itself can be as small as a manilla folder, in the form of a lever arch file with separate sections, a concertina file with a pocket for each section of the project, or as large as a filing cabinet drawer with hanging files for each section.

SETTING UP THE FILE

In the front, or attached to the inside cover, place a 'Job File Index'. See example.

Job File Index

- | | |
|--|--|
| <ul style="list-style-type: none"> a. Subcontractors/Suppliers Quotes (active) b. Sub Contract Agreements c. Statutory Requirements d. Plans, Specifications, Schedule of Works e. Correspondence and Faxes to f. Correspondence and Faxes from g. Site Minutes h. Memos i. Variation Submissions j. Variation Approvals k. Progress Claims l. Council Information m. Engineering n. Surveyor o. Trade and Costing Information p. PTrade Costing Information – variations q. Guarantee r. PC Information s. Extension of Time t. Certificate of Practical Completion u. Authority for Final Payment w-x-y-z: Site Files and General Data | <p>Separate each section with a cardboard dividers, (or strong backing paper), marked clearly on each tabulator what each section is called. Each section has a specific task. Some projects will not need all the sections. Design the sections to meet the needs of the project.</p> |
|--|--|

JOB FILE SECTIONS

Plans, Specification, Schedule of Work

A copy of the plans and specifications and the schedule of works should be kept on file. Where some plans and specifications can be too cumbersome to place in a file a reference to be placed here as to where the plan copies are located. For example (1) Office (2) Site, etc.

Subcontractors and Suppliers Quotes (Active)

A copy of the successful subcontractor or supplier quotations should be kept on file and comparison made against each claim made or invoice issued by them.

Subcontract Agreements

A copy of the Sub Contract agreements with all the details of the subcontractor and the terms of their contract is essential.

Statutory Requirements

Permits and certificates required to start as well as during a project. For example Development Application, Consents, Water Authority, Mine Subsidence, Home Warranty Insurance, etc.

Correspondence and Faxes To

It is imperative that an original or copy of any form of written correspondence or instruction be kept on file. A back up copy of each form should also be kept in the correspondence file in your general filing system.

Correspondence and Faxes From

As with "Correspondence" and "Faxes To", it is imperative that an original or copy of any form of written correspondence or instruction be kept on file. A back up copy of each form should also be kept in the correspondence file in your general filing system.

Site Minutes

A minuted copy of every meeting held on site along with a copy of every site inspection should be kept on file, supported by any reports or instructions issued on site by the, inspectors, trades, etc.

Memos

These are usually brief internal reports from site to your office. It is wise to keep a copy of all memos on file.

Variation Submission

A copy of any variation submission must be kept on file in variation order.

Variation Approvals

It is absolutely necessary to have a copy of the variation being approved. Either a formal variation approval (see examples in Module 2 – Administer Contracts) or letters of confirmation.

Progress Claim

A copy of each progress claim along with any supporting documentation. For example trade break up, variation approvals.

Council Information

During the course of any project various forms of correspondence, instruction, certificates, etc. are acquired. It is important to keep all this information in one place for easy reference

Engineering

During the progress of any site several forms of engineering reports are necessary. Copy of the requests and actual reports are kept in this section.

Surveyor

As with 'Engineering' during the progress of any site several forms of surveyor reports are necessary. Copy of the requests and actual reports are kept in this section.

Trade and Costing Information

A copy of the Bill of Quantities, Original Budgets, Job Costing.

Trade Costing Information – Variation

A copy of the Bill of Quantities trade costing for any Variation in progress.

Guarantees

Several guarantees are required through a project. For example, Pest Control. These guarantees are vital for the Certificate of Completion.

Preliminaries & PC Information

A copy of all the preliminary and PC inclusions and their costs allowed must be kept on file. Any variation of supply must be approved.

Extension of Time

Any claim for extension of time must be signed as approved and kept on file as proof against legal complaint or penalty clauses in the contract.

Certificate of Practical Completion

Authority for Final Payment

-x-y-z Site Files and General Data

At the completion of each project several items of correspondence, reports, etc, relating only to the site are accumulated. All this data should be kept on file for future reference.



EXAMPLE JOB FILE – FRONT SHEET

| | |
|---|---|
| Site Address | |
| Site Foreman | Site Phone No. |
| Client Name | |
| Address | |
| Phone Number | |
| Council Name | |
| Address | |
| Phone No. | |
| Development Application No. | Building Application |
| Job File Index | |
| <ul style="list-style-type: none"> a. Subcontractors/Suppliers Quotes (active) b. Sub Contract Agreements c. Statutory Requirements d. Plans, Specifications, Schedule of Works e. Correspondence and Faxes to f. Correspondence and Faxes from g. Site Minutes h. Memos i. Variation Submissions j. Variation Approvals k. Progress Claims l. Council Information m. Engineering n. Surveyor o. Trade and Costing Information p. Trade Costing Information – variations q. Guarantee r. PC Information s. Extension of Time t. Certificate of Practical Completion u. Authority for Final Payment w-x-y-z. Site Files and General Data | |

Prepare the Job File from the outside of deciding to build. Set up a Preliminary File using the same categories. A Lever Arch File is recommended. (Depending on the size of the project it may be necessary to have several files for any one job.)

Keep records of all the discussions, quotations etc from subcontractors, suppliers – begin confirming all the details collated in the original estimate. eg: Full Trade Breakdowns, Bottom Line Costs etc.

When the estimate has been approved refine all the bottom line costs, include a contract file in each trade category.

Obtain final confirmation of all the data, scheduling, subcontractors, materials equipment and council requirements eg: construction zoning and permits.

At this point it is vital the Sub-Contract Contracts are in place before they commence the works.

The Job File is a living document and is constantly changing and always increasing in size. You can never have enough information. **Document everything**, the information may be needed as proof in a dispute or settlement.

On larger projects the Construction Manager may involve an assistant to help process the paper work.

DOCUMENTATION SUMMARY

| TYPE OF DOCUMENTATION | DESCRIPTION AND PURPOSE |
|---|--|
| <i>Site Inspection Report</i> | To be completed at the initial site inspection prior to tendering |
| <i>Short Term Construction Program</i> | To be constructed prior to project commencing – keep in mind this document is constantly changing |
| <i>Drawing Register</i> | A list of all the drawings and revised drawings relating to the project |
| <i>Site Instruction Report</i> | This is not a variation report but the confirmation of any verbal instruction issued during the construction |
| <i>Request for Information/ Confirmation of Instruction</i> | A written confirmation for the request for information or confirmation of verbal instruction received |
| <i>Document Transmittal</i> | A record of all and any documents sent or received during the construction |
| <i>Sub Contract Payment Record</i> | A record of each payment made to each Subcontractor – a separate form is required for each Subcontractor |
| <i>Progress Payment Application</i> | Progress Payment Claim as works are completed to the agreed terms of the contract |
| <i>Progress Payment Schedule</i> | To be completed and supplied at the signing of the Contract as a record of when the Progress Claims will be lodged |
| <i>Contract Variation Advice</i> | A record of the variation advice, including final costings and approval by the client/owners agent to proceed – The variation is not to commence until this form is duly signed by the Owner/Agent |
| <i>Revised Contract Value</i> | A summary of the new contract price after variations and provisional sum adjustments – This form must be completed for each change to the Contract Sum |
| <i>Extension of Time</i> | A record for the application to extend the practical completion of the works noted in the Contract. This is usually needed when unforeseen delays occur. Refer to the Contract conditions – each contract may vary regarding the conditions regarding extension of time. |
| <i>Notice of Practical Completion</i> | A formal notice that the works have reached the stage of Practical Completion and that responsibility for the Works passes to the risk of the Owner, including damage, loss or theft of the structure, fittings and fixtures |
| <i>Notice of Termination</i> | A formal notice to terminate the contract under the conditions of the contract, noting clearly how the notice was served and the details as to why the contract has been terminated |

© Copyright Back to Basics Business Training Pty Ltd

| | |
|---|---|
| <i>Job Costing Analysis</i> | A detailed cost analysis of the project comparing the original budget against the actual costs, determining a profit or loss |
| <i>Sub Contract Agreement</i> | All works over \$200 must be by a written agreement not only between client and contractor but between contractor and subcontractor. |
| <i>Notice of Suspensions of Works</i> | A formal notice to suspend the works under the conditions of the contract, noting clearly the details as to why the works have been suspended. eg delay in payment of progress claims |
| <i>Authority for Final Payment</i> | Formal authority signed by the Owner/Agent to make the final claim in accordance with the Contract conditions |
| <i>Notice of Overdue Final Payment</i> | A formal notice to state the Final Payment is overdue. This notice must be lodged before formal action can be instigated |
| <i>Schedule of Works</i> | A detailed scope of works or Bill of Materials |
| <i>Time Sheet – Day Labour (Wages Book)</i> | A record of each personnel time and activity for each day, job or week. |
| <i>Site Diary</i> | Usually kept by the Construction Manager/Project Manager/Site Supervisor. The Site Diary records the progress of the Contract |

© Copyright Back to Basics Business Training Pty Ltd

Note: The list shown on this and the previous page is very comprehensive – use it as a guide only – the type and size of the project will determine what documents will be required.

SITE DIARY

INTRODUCTION

The most important record of all is the *Site Diary*

Usually kept by the Construction Manager/Project Manager. The Site Diary records the Progress of the Contract and the day to day activities

The Site Diary should include:

- A report of the delays eg Weather Details, Weather Implications
- Applications for Extension of Time if applicable
- Variation Requests
- Costing and Follow up
- Safety Issues, Incidents and if required Accidents
- Special Deliveries – Problems with supply of goods or trades.

The example shown on the following pages incorporates all the necessary documentation to record the day to day activities of any project.

SAMPLE CONSTRUCTION COMPANY

| | |
|--------------------------|-------------------|
| Project | Day |
| Project No. | Date |

| |
|-----------------------|
| Visitors |
|-----------------------|

| | | | | | | | | | | |
|---------------------|-----------|--|------------|--|-------------|--|------------|--|-------|--|
| <i>Weather</i> | Rain | | Wind | | Heat | | Cold | | Fair | |
| <i>Time Lost</i> | Inclement | | S/contract | | Instruction | | Industrial | | Other | |
| <i>Instructions</i> | Client | | Architect | | Authorities | | Company | | Other | |
| <i>Personnel</i> | L/Hand | | Carpenter | | Labourer | | Apprentice | | Other | |

| Subcontractors | | | | | | | | | | | |
|-----------------------|------|------|-------|---------------|------|------|-------|------------|------|------|-------|
| Trade | Name | No's | Delay | Trade | Name | No's | Delay | Trade | Name | No's | Delay |
| Demolisher | | | | Plumber | | | | Painter | | | |
| Excavator | | | | Drainer | | | | Site Works | | | |
| Reo Fixer | | | | Mechanical | | | | Landscape | | | |
| Form Worker | | | | Electrical | | | | | | | |
| Concreter | | | | Fire | | | | | | | |
| Bricklayer | | | | Plaster solid | | | | | | | |
| Struct. Steel | | | | Plaster board | | | | | | | |
| Metal Worker | | | | Ceilings | | | | | | | |
| Alum. Worker | | | | Pavior | | | | | | | |
| Carpenter | | | | Tiler | | | | | | | |
| Joiner | | | | Terrazzo | | | | | | | |
| Roofer | | | | Glazier | | | | | | | |

| | | | | |
|-------------------------|-------------------------|-------------------------|--------------------|--------------------|
| Concrete Poured | Bricks Delivered | Blocks Delivered | Blocks Laid | Bricks Laid |
| Other Deliveries | | | | |

| Equipment on Site | Supplier | Hours | Off Hire Number | Returned |
|-------------------|----------|-------|-----------------|----------|
| | | | | |
| | | | | |
| | | | | |
| | | | | |

SELF TEST QUESTIONNAIRE



| QUESTIONS | | REF. PAGE |
|--|--------------------|--------------|
| 23. List and describe the sections of a Job File — List 10 | | 65-68 |
| <i>Section</i> | <i>Description</i> | |
| i. | | |
| ii. | | |
| iii. | | |
| iv. | | |
| v. | | |
| vi. | | |
| vii. | | |
| viii. | | |
| ix. | | |
| x. | | |
| 24. List and describe the documents you would expect to use if you were building a 3-Bedroom Home | | 71-72 |
| <i>Document Name</i> | <i>Description</i> | |
| i. | | |
| ii. | | |
| iii. | | |
| iv. | | |
| v. | | |
| vi. | | |
| vii. | | |
| viii. | | |
| ix. | | |
| x. | | |

| QUESTIONS | REF. PAGE |
|---|---------------------|
| <p>25. What is the purpose of a Site Diary?</p> <p><i>Answer</i></p> | <p>74</p> |
| | |
| | |
| | |
| <p>26. What should be recorded in a Site Diary? — List 10 items</p> <p>i.</p> <p>ii.</p> <p>iii.</p> <p>iv.</p> <p>v.</p> <p>vi.</p> <p>vii.</p> <p>viii.</p> <p>ix.</p> <p>x.</p> | <p>75-76</p> |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

FURTHER REFERENCE

Websites

| | |
|--|--|
| www.fairtrading.nsw.gov.au | NSW Fair Trading |
| www.lawfoundation.net.au | Law Foundation (Access to legislation and Regulations) |
| www.ato.gov.au | Australian Taxation Office |

Legislation & Regulations

- Building Code of Australia
- *Home Building Act 1989*
- Home Building Regulations 2004
- Environmental Planning and Assessment Act 1979.

Recommended Reading

- *Fundamentals of Building Contract Administration* – T E Uher, Philip Davenport
- OFT Fact Sheets
- 302 Contracts & Deposits
- 325 Fair Trading Contracts.

Your List

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

.....

