

Small Construction Work Contract



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This Small Construction Work Contract is suitable for use where:

- one of the parties to the contract is a **building service contractor** (registered under the *Building Services (Registration) Act 2011 (WA)*)
AND
- for, or in relation to, **construction work**
AND
- that is for a **building service**
AND
- valued between \$20,000 and \$50,000 (including GST) and including the value of any variations



This Small Construction Work Contract should **NOT** be used where:

- the contract is between the owner and the contractor;
AND
- the work to be performed is 'home building work'*;
AND
- the contract is valued between \$7,500 and \$500,000.

These contracts must comply with the Home Building Contracts Act 1991 (WA).

*'Home building work' includes the total or partial construction or re-construction of a dwelling, the placement of a dwelling on land, or any associated work/works connected to an existing dwelling. It also includes altering, improving, repairing or replacing an existing dwelling, strata titled dwelling or community title dwelling. A dwelling is a building occupied or intended for occupation solely or mainly as a place of residence.

NOTE: This contract is to assist building service contractors registered under the *Building Services (Registration) Act 2011 (WA)* in meeting their legal obligations under section 13 of the *Building and Construction Industry (Security of Payment) Act 2021 (WA)* (the **Act**). Under the **Act**, if a building service contractor contracts with another party to:

- perform construction work; or
- provide goods and services related to construction work,

that is, or is for, a **building service** and is valued at more than \$20,000 (including GST), then the building service contractor must ensure the agreement is recorded in writing and contains certain required information. A **building service** includes one or more of the following activities:

- building work (which means the construction, erection, assembly or placement of a building or an incidental structure; the renovation, alteration, extension, improvement or repair of a building or an incidental structure; the assembly, reassembly or securing of a relocated building or a relocated incidental structure; any associated changing of ground levels of land to an extent that could adversely affect land beyond its boundaries; and any associated site works (including site works associated with demolition works));
- demolition work (which means the demolition, dismantling or removal of a building or an incidental structure and the associated changing of ground levels with that demolition, dismantling or removal work);
- plumbing work (which means water supply plumbing, sanitary plumbing or drainage plumbing);
- building surveying work; and
- painting work.

This contract contains the information required by the **Act** and is provided to assist building service contractors in meeting their legal obligations under the **Act**. It is not mandatory for building service contractors to use this form of contract but if the above contractual circumstances apply, they may elect to do so.

Where a contract for a **building service** is valued at less than \$20,000 (including GST), the building service contractor may still elect to adopt this Small Construction Work Contract.

Where a contract is valued at more than \$50,000 (including GST), including the value of any variations, it is recommended that builders, subcontractors and suppliers refer to a building industry association such as the Master Builders Association, Housing Industry Association or Australian Institute of Architects, who may be able to provide advice as well as a selection of contract templates for purchase.

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It is not mandatory for builders or persons engaging subcontractors, suppliers or other persons to do construction work valued at more than \$20,000 to use this specific form of Small Construction Work Contract. This template is provided to assist builders and other persons to record the terms of their agreement and meet their obligations under section 13 of the *Building and Construction Industry (Security of Payment) Act 2021 (WA)* (the **Act**). Builders and other persons may use alternate forms of contract, however must ensure compliance with the **Act**.

Small Construction Work Contract

Part 1 – Contract Particulars

NOTE: These Part 1 – Contract Particulars must be read in conjunction with the Part 2 – General Conditions.

Contract between

The Subcontractor

Subcontractor's name: Registration Number* (only if applicable):

ABN: ACN (if applicable):

Business Address: Postcode:

Phone: Mobile: Email:

AND

The Head Contractor

Head Contractor's name: Registration Number*:

ABN: ACN (if applicable):

Business Address: Postcode:

Phone: Mobile: Email:

*Building service contractor registration number.

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Small Construction Work Contract

Address where Construction Work is to be performed

Unit No:	Street No:	Street:	Suburb/town:	Post Code:
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Construction Work

Description of work (attach and refer to any drawings and specifications)

Defects Liability Period (i.e. warranty period)

(Please tick one option. Where a selection is not made, or the period is not specified, the period of 12 months commencing on the Date of Completion will apply.)

12 months (commencing on the Date of Completion)

OR

Other (specify period) to

Note: The defects liability period is the period during which the Subcontractor is contractually obligated to rectify any defects in Construction Work (including defects that are only apparent after the Date of Completion).

Dates

Date for Commencement (on or before): / / Date for Completion: / /

Payment

TOTAL PRICE: \$

Progress Payments (if any – complete rows only as applicable)

Stage	Milestone or Date	Amount (\$ or %)
1.	<input type="text"/>	<input type="text"/>
2.	<input type="text"/>	<input type="text"/>
3.	<input type="text"/>	<input type="text"/>
4.	<input type="text"/>	<input type="text"/>
5.	<input type="text"/>	<input type="text"/>

Final payment: \$

Deposit: \$ [if nothing stated, 20%]

Due at (describe stage):

NOTE: All prices and payments include GST.

PAYMENT TERMS: 25 Business Days from the date a Payment Claim is made

Note: If no progress payments/milestones are stated here, a Payment Claim may still be made on or after the last day of the calendar month in which the Construction Work was performed, in accordance with clause 2(d) of Part 2 – General Conditions.

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Execution

Head Contractor (Head Contractor or Head Contractor's Representative to sign)

Signature:

Date:

Subcontractor (Subcontractor or Subcontractor's Representative to sign)

Signature:

Date:

PART 2 - General Conditions

1. Performance

- (a) The **Subcontractor** shall perform the **Construction Work**
 - (i) in compliance with this Small Construction Work Contract (this **Contract**); and
 - (ii) so that the Construction Work is completed by the **Date for Completion**.
- (b) The Subcontractor shall commence the Construction Work on or before the **Date for Commencement**.
- (c) The Subcontractor shall perform the Construction Work:
 - (i) in the manner and to the standard to be expected of a reasonably competent subcontractor experienced in the Construction Work contemplated; and
 - (ii) using materials which comply with this Contract and which are of good quality, fit for the purpose for which they are used and which are new, unless this Contract expressly provides otherwise.
- (d) The Subcontractor warrants that:
 - (i) it holds the necessary authorisations and registrations to perform the Construction Work as required by applicable laws; and
 - (ii) all drawings and specifications provided to the **Head Contractor** by the Subcontractor have been or will be prepared with reasonable skill and care.
- (e) The Subcontractor does not give any warranty in respect of drawings and specifications provided by or on behalf of the Head Contractor.

2. Payment

- (a) The Subcontractor shall, unless this Contract expressly provides otherwise, supply at the Subcontractor's cost and expense, everything necessary for the performance of the Construction Work.
- (b) The Head Contractor shall pay the Subcontractor the **Total Price** in accordance with this Contract.
- (c) The Subcontractor may make a claim for payment for Construction Work that has been carried out or supplied (the **Payment Claim**). The Payment Claim may be in the form of an invoice.

- (d) A Payment Claim may be made on or after the last day of the calendar month in which the Construction Work was performed.
- (e) The Head Contractor must pay the Subcontractor on, or before, 25 **Business Days** from the date the Subcontractor makes the Payment Claim.
- (f) Interest is payable on the unpaid amount of a Payment Claim that has become payable at the rate prescribed under the *Civil Judgments Enforcement Act 2004* (WA) section 8(1)(a).

3. Variations and extension of Date for Completion

- (a) This Contract may be varied by changes to the Construction Work (including additions, omissions or replacements) when:
 - (i) the party requiring the variation gives the other party a notice describing the variation;
 - (ii) the Subcontractor provides a written estimate of the value of the variation and the time required to implement it; and
 - (iii) the variation notice is signed by both parties.
- (b) If a delay event occurs which has the effect of delaying the **Date of Completion** beyond the Date for Completion, provided that the Subcontractor notifies the Head Contractor of the delay event within 10 Business Days of it becoming aware of the event, the Head Contractor will extend the Date for Completion by a reasonable amount of time if:
 - (i) the delay was caused by any of the following events:
 - (A) an act or omission of the Head Contractor in breach of this Contract;
 - (B) the execution of a variation; or
 - (C) an event that was not reasonably foreseeable by the Subcontractor and was outside of the reasonable control of a reasonably competent subcontractor experienced in the Construction Work contemplated; and
 - (ii) the delay event was not caused or contributed to by an act, omission or breach by the Subcontractor or its employees, agents or subcontractors; and

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- (iii) the Subcontractor has used all reasonable endeavours to mitigate the effects of the delay event; and
 - (iv) the Subcontractor has notified the Head Contractor of the delay event in accordance with this clause 3(b).
- (c) Despite clause 3(b), the Head Contractor may, in its absolute discretion and at any time, extend the Date for Completion.

4. Compliance with laws

The Subcontractor shall comply with all applicable requirements of the *Work Health and Safety Act 2020* (WA) and with all other applicable laws and legal requirements.

5. Access

The Head Contractor:

- (a) warrants that it holds all of the necessary authorisations, licences, or control (as the case may be); and
- (b) shall give the Subcontractor access to the **Site**, as necessary to enable performance of this Contract.

6. Care of the Construction Work and title

- (a) The Subcontractor shall be responsible for the care of the Construction Work until the Date of Completion and shall promptly make good any loss or damage to the Construction Work, the Head Contractor's property and the Site caused by any act, neglect or default of the Subcontractor or the Subcontractor's employees, agents or subcontractors. The Subcontractor shall similarly keep and maintain the Site in a tidy manner and promptly make good any untidy aspects prior to the Date of Completion.
- (b) Title in any equipment, plant or materials to be incorporated into the Construction Work at the Site passes to the Head Contractor on the first to occur of:
 - (i) such equipment, plant or materials becoming affixed to the Site;
 - (ii) any new part being installed or attached to any of the Head Contractor's plant; or
 - (iii) payment by the Head Contractor of any amount in respect of such equipment, plant or materials.
- (c) Title in any equipment, plant or materials used by the Subcontractor in performance of this Contract, but which do not form part of, and are not incorporated into, the Construction Work at the Site, remains with the Subcontractor.
- (d) The Subcontractor warrants that any equipment, plant or materials to be incorporated into the Construction Work in accordance with clause 6(b) are not subject to a security interest to which the *Personal Property Securities Act 2009* (Cth) applies.

7. Subcontractor's indemnity in favour of the Head Contractor

The Subcontractor shall indemnify the Head Contractor against any liability for loss, damage, injury or death arising out of the Construction Work under this Contract, except to the extent such loss, damage, injury or death was caused or contributed to by an act or omission of the Head Contractor, or the Head Contractor's employees, agents, other subcontractors or consultants.

8. Subcontractor to effect insurances

The Subcontractor shall effect and maintain during the performance of this Contract, and if requested, provide evidence of, the following current insurances:

- (a) all insurances required to comply with the *Workers' Compensation and Injury Management Act 1981* (WA);
- (b) motor vehicle insurance at replacement value for own damage and including third party damage cover;
- (c) contract works, and public and products liability insurances with a reputable and financially sound insurer, upon usual and reasonable terms; and
- (d) any other insurances required by law.

9. Head Contractor to effect insurances

The Head Contractor shall effect and maintain during the performance of this Contract the following current insurances:

- (a) all insurances required to comply with the *Workers' Compensation and Injury Management Act 1981* (WA);
- (b) contract works, and public and products liability insurances with a reputable and financially sound insurer, upon usual and reasonable terms; and
- (c) any other insurances required by law.

10. Defects after Date of Completion

- (a) The Subcontractor shall, without cost to the Head Contractor, make good any defects or omissions in the Construction Work which become apparent within the **Defects Liability Period**.
- (b) If there are any such defects or omissions, the Head Contractor shall, as soon as possible and within that Defects Liability Period, give the Subcontractor written notice to make good such defects or omissions and shall give the Subcontractor reasonable access to the Site for that purpose. The Subcontractor shall make good such defects or omissions within 28 days of receiving the Head Contractor's notification.
- (c) This clause 10 shall not exclude the Subcontractor from any liability otherwise arising pursuant to this Contract or under other laws including the *Building Services (Registration) Act 2011* (WA), *Building Services (Complaint Resolution and Administration) Act 2011* (WA) or the *Home Building Contracts Act 1991* (WA).

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11. Termination

This Contract may be terminated by agreement between the parties in writing.

12. Dispute resolution

- (a) If there is any dispute or difference between the parties arising out of or in connection with this Contract, then within 7 days of a party notifying the other party in writing of the dispute (**Dispute Notice**), each party (or their representative) must meet and use all reasonable endeavours to resolve the dispute by joint discussions.

If the parties (or their representative(s)) are unable to resolve the dispute within 14 days of the Dispute Notice being issued, it may be referred by either party to a court of competent jurisdiction.

- (b) Despite the existence of a dispute, each party must continue to perform this Contract.
- (c) Notwithstanding the dispute resolution process provided in this clause 12, if a dispute relates to a Payment Claim, a party may make an adjudication application under Part 3 of the **Act** if and to the extent it applies.

13. General

- (a) All amounts payable under this Contract are inclusive of GST.
- (b) If the whole or any part of a provision of this Contract is void, unenforceable or illegal, it is severed and the remainder of this Contract has full force and effect.
- (c) The rights of the parties under this Contract are in addition to any other rights of the parties at law.
- (d) This Contract is governed by the laws of Western Australia.

14. Definitions

In this Contract, unless the context otherwise requires, expressions used shall have the meaning so defined or explained below:

"Act" means the *Building and Construction Industry (Security of Payment) Act 2021* (WA).

"Business Day" means a day other than:

- (a) a Saturday, Sunday or public holiday; or
- (b) any other day that falls between 22 December in any year and 10 January in the following year (inclusive),

in Perth, Western Australia.

"Construction Work" is described in Part 1 – Contract Particulars and means all the work and supply of materials, equipment and services necessary to perform this Contract in accordance with its terms.

"Contract" means this Small Construction Work Contract and includes the Part 1 – Contract Particulars and these Part 2 – General Conditions.

"Date for Commencement" means the date specified in this Contract on which the Construction Work is to be commenced.

"Date for Completion" means the date specified in this Contract when the Construction Work is to be completed.

"Date of Completion" means the date the Construction Work is actually completed.

"Defects Liability Period" is the period specified in Part 1 – Contract Particulars (and if nothing is specified, 12 months), commencing on the Date of Completion.

"Dispute Notice" has the meaning given in clause 12, and means the written notice of dispute issued by one party to the other party. The Dispute Notice should include a brief description of the dispute.

"Head Contractor" means the person described in the Part 1 – Contract Particulars and may include either the builder or the owner.

"Payment Claim" has the meaning given in clause 2.

"Site" means the address where Construction Work is to be performed as described in Part 1 – Contract Particulars.

"Subcontractor" means the person specified in Part 1 – Contract Particulars as the subcontractor.

"Total Price" means the price specified in Part 1 – Contract Particulars, and includes the deposit, progress payments and any final payments.