

Building contracts and consumer protection

A TRADIE'S GUIDE



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buildingpeople

ACKNOWLEDGEMENTS

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- ✦ www.lbp.govt.nz
- ✦ www.standards.govt.nz

PUBLISHED BY

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BUILDING CONTRACTS

Residential building contracts

The building contract is an essential part of a building project. A contract is between two parties, generally the building owner (or the owner's agent) and the builder or contractor who is going to do the work. It is a legally binding agreement between the parties involved in the building project, confirming that the contractor will complete the work and the owner will pay for it.

Contracts for building work are required under the Building Act 2004. The Act was amended in 2013 to provide increased protection to home owners for residential building projects. The amended Act includes the requirement for a written contract for any residential building work where the total cost of the work is more than \$30,000 including GST.

The main purposes of the contract are to protect the building owner and provide guidance on aspects that should be considered when entering into the building project. It is based on the assumption that home owners generally have little or no knowledge of building processes or what should or should not be included in a building contract.

Defining the parties to the contract

THE CONTRACTOR	The person or company contracted by the building owner to do work on their building. The contractor may be a builder, a plumber, an electrician or any other tradesperson acting as the main contractor and dealing directly with the owner or agent.
THE OWNER	The person or organisation which owns the building that the contractor is employed to carry out work on. The owner may be represented by an agent.

REQUIRED CONTENT

The contract must include information about the building project such as who the parties are, the timeframe, how payments will be made and how changes to the contract and disputes will be dealt with. It must contain:

- ✦ the names, contact details and addresses of both parties.
- ✦ the dates the contract is signed by both parties.
- ✦ the address where building work is to occur.
- ✦ a description of the building work.
- ✦ the contract price, or how the price is to be calculated.
- ✦ the expected start and completion dates.

The contract must be in writing, be dated and comply with all relevant regulations. A contract is mandatory (required by law) for work worth \$30,000 or more. This means that the parties can't decide to opt out of the process (referred to as "contracting out").

It should also include information about compliance requirements, standards of workmanship, the insurances held by the contractor and the guarantees and warranties for building products and systems.

ROLES AND RESPONSIBILITIES

THE WRITTEN CONTRACT PROTECTS BOTH PARTIES BY DEFINING THE RIGHTS AND OBLIGATIONS OF EACH INCLUDING:

- who will be responsible for obtaining building and any other consents required.
- who will be carrying out and supervising the work.
- how communications, notices and certificates will be given by one party to the other.

The contract does not include subcontracting agreements between a building contractor and subcontractor, or when a subcontractor has a separate contract with the owner. It also does not include the design work for the project.

While building work less than \$30,000 does not require a contract, it is good practice to still have one in place.

DEALING WITH ISSUES

THE CONTRACT SHOULD CONTAIN PROVISIONS FOR DEALING WITH SPECIFIC ISSUES SUCH AS HOW:

- payments will be claimed, made and receipted, including dates and stages for payment.
- variations will be dealt with.
- delays will be dealt with.
- defects in the building work will be remedied.

A dispute resolution process must be described for use in the event of a disagreement between the parties.

Pre-contract information

Before entering into a building contract, the contractor must provide a disclosure statement and a checklist, prescribed in the Building (Residential Consumer Rights and Remedies) Regulations 2014.

The disclosure statement information and the checklist are based on the assumption that most homeowners have little or no knowledge of what should be included in a building contract, or how to manage a construction project. The information is therefore to provide guidance to the owner about building contracts and what should be considered when undertaking a building project.

Sub-contractors do not need to provide a disclosure statement or checklist unless they have entered into a separate building contract with an owner.

DISCLOSURE STATEMENT

The disclosure statement contains information about the contractor and their business operation. It should state:

- ⊗ the contractor's name and the name of the business.
- ⊗ whether the contractor is trading as an individual, is in a partnership or is a limited liability company.
- ⊗ addresses and contact details.
- ⊗ the skills, qualifications and licensing status of the building practitioners who will be carrying out and/or supervising the work.
- ⊗ the contractor's insurance policies including the amount of the cover and any exclusions.
- ⊗ the guarantees or warranties in relation to the work including the type, time frames and any limits or exclusions to the guarantees or warranties.
- ⊗ if applicable, the disputes history of the contractor.

CHECKLIST

The checklist contains information about the processes and procedures involved in managing a building project including aspects such as costs, timeframes, dealing with sub-contractors and the local council, and resolving disputes.

It should:

- explain** the legal obligations of both the owner and the contractor with regard to the building project.
- outline** the risks associated with payment before the completion of the building work.
- summarise** the disputes resolution process.
- provide** other sources of advice and information.

The roles and responsibilities of those involved in the building project should be clear and understood by all parties involved at the start of the project.

When the value of the building work is more than \$30,000 pre-contract information must be provided. For building work less than \$30,000, if information is requested by the owner it must be provided. In either case, if information that is knowingly false or misleading is provided, the contractor may be fined up to \$20,000 under the Building Act.

The owner must acknowledge receipt of the disclosure statement and checklist from the contractor by signing.

Default clauses and implied warranties

If there is no written contract between the builder and the owner, or if the written contract does not include the minimum content required under the Act, specified or default clauses and implied warranties are assumed to apply.

Default clauses apply to both written and verbal contracts and are for the protection of both parties involved in the contract. They are automatic, cover almost all aspects of residential building work and cannot be contracted out of or removed by any other clauses in the contract.

DEFAULT CLAUSES

The Building (Residential Consumer Rights and Remedies) Regulations 2014 specify that default clauses contained in the Building Act automatically apply if:

- ⊗ the project costs \$30,000 or more including GST.
- ⊗ there is no written contract.
- ⊗ the contract lacks content specified by the regulations.
- ⊗ The default clauses do not override existing clauses but they are assumed to be included in the contract even if there are no clauses specifically related to the topic concerned.

EXAMPLES OF THE DEFAULT CLAUSES ARE THAT THE CONTRACTOR IS:

- ⊗ responsible for obtaining all necessary approvals, such as building consents, before starting building work.
- ⊗ responsible for providing the code compliance certificate to the owner before the final payment claim is submitted.
- ⊗ entitled to progress payments made under the contract.

IMPLIED WARRANTIES

The Building Act sets out implied warranties which are generally about workmanship. They require that work is carried out competently, as set out in the plans and specifications and the building consent, and complying with all relevant legislation.

They also require that the materials used are suitable for the purpose for which they will be used. They must be new unless otherwise specified. The work must be fit for purpose and completed by the date (or within the timeframe) specified in the contract. When the work is finished, if it is a residential building, it must be suitable for occupation.

The warranties apply for up to 10 years regardless of whether there is a contract, either written or verbal, or what the terms of the contract or the value of the building project are. Warranties for subcontractors' work are covered by the contract between the owner and the main contractor except when there is a separate contract between the owner and a sub-contractor.

A breach of an implied warranty or a default clause is a breach of the building contract. The Building Act provides procedures for situations where the implied warranties have not been met. These apply both where a warranty breach can be fixed and also where it is so substantial that it can't be fixed.

12-month defect repair period

As well as the implied warranties, the Building Act prescribes a 12-month defect repair period. Any defects in the building work that emerge within the first 12 months after the contract is completed must be fixed by the contractor. Defects include poor workmanship by the contractor or subcontractors, and defective materials.

If a contractor is notified within 12 months of completion that work is defective, repairs must be done within a reasonable time. This applies both for the owner at the time the work was done, or for a new owner if the building has been sold in the meantime. The 12-month defect repair period may also involve the contractor compensating the owner for any loss or damage which resulted from the defective building work.

The Ministry of Building, Innovation and Employment's (MBIE) publication, *Guide to tolerances, materials and workmanship in new residential construction*, defines defects in terms of the Building Act. It deals mostly with aesthetic issues in both new building and renovation work and not with issues of non-compliance with the Building Code which are dealt with in other ways. The publication is available online.

The 12-month defect repair period starts from the date when all the building work agreed to by the owner and the contractor is completed. The 12-month period applies to all residential building work, regardless of the value of the work.

TYPES OF BUILDING CONTRACTS

Building contracts generally consist of two parts:

- 1 The general conditions of the contract setting out the obligations and responsibilities of each party, the start and finish times for the work to be done, payment procedures and how disputes will be dealt with.
- 2 The specific conditions of contract defining the scope and quality of the work, time frames, how disbursements will be made and penalties for delays.

Contradictions between the general and specific conditions must be identified and avoided as they can result in contractual problems and additional costs.

General conditions of contract

Standardised contracts have been produced by Standards New Zealand, the New Zealand Institute of Architects, and membership organisations such as the Certified and Master Builders. Some are freely available for use; others require membership of the organisation concerned.

STANDARDS NEW ZEALAND CONTRACTS

Building contracts available from Standards New Zealand include:

- ⊗ NZS 3902: 2004 Housing, alterations and small buildings contract
- ⊗ NZS 3910: 2013 Conditions of contract for building and civil engineering construction
- ⊗ NZS 3916: 2013 Conditions of contract for building and civil engineering – Design and construct
- ⊗ NZS 3917: 2013 Conditions of contract for building and civil engineering – Fixed term.



NZS 3902: 2004 Housing, alterations and small buildings contract

NZS 3902 sets out a standard building contract that is suitable for building owners who are self-managing a building project. Although it was written mainly for homeowners and relates to residential dwellings, it can be used for other small building works such as a garages, farm buildings or small commercial premises where the building owner is going to manage the building work. It can also be used for addition and alteration work. It is not suitable for labour-only contracts.

The NZ Standard includes a copy of the contract and describes the rights and responsibilities of the parties involved, and the processes for warranties, consents, approvals and project management generally.

MBIE has sponsored free access to view and print a PDF copy of NZS 3902:2004.

NZS 3910: 2013 Conditions of contract for building and civil engineering construction

NZS 3910 can be used where a professional designer has been employed by the owner to design the building and administer the contract. It is intended for high-value, high-complexity projects and is not generally appropriate for residential building work.

NZS 3916: 2013 Conditions of contract for building and civil engineering – Design and construct

NZS 3916 is for use where a contractor is responsible for both the design and construction of a building. This is useful for fast-tracking building projects.

NZS 3917: 2013 Conditions of contract for building and civil engineering – Fixed term

NZS 3917 is for use where the contract is intended to run for a period of time rather than covering a defined scope of work. This is typically intended for maintenance, repair and renewal work.

NEW ZEALAND INSTITUTE OF ARCHITECTS (NZIA) CONTRACTS

The New Zealand Institute of Architects (NZIA) has contracts available for use by its members. These documents have been prepared collaboratively by NZIA and the Registered Master Builders Association. They include:

- ✦ *NZIA SCC 2018 – Standard Construction Contract* which is a construction contract between the architect and the contractor when the architect is to administer the contract and carry out on-site observation.
- ✦ *National Building Contract General 2018* which is a contract for larger projects between the building owner and the contractor and the architect does not administer the contract or carry out on-site observation. There is also a comparable *National Building Contract Small Works 2018*.



**New Zealand
Institute of Architects
Incorporated**

TRADE ORGANISATION CONTRACTS

Trade organisations such as New Zealand Certified Builders and Registered Master Builders Association of New Zealand provide contracts for their members. These include:

- ✦ *RBC1: 2016 Building contract* – this is a contract prepared by the Master Builders Association for use by their members.
- ✦ *Fixed Price +* – this is a contract prepared by the Certified Builders for use by their members.



BUILDSAFE CONTRACTS

BuildSafe is a New Zealand organisation set up to provide protection for building projects and a secure payment service for the building industry. It has produced contracts that are available online free of charge. These are:

- ✦ *BuildRight BCC 2016: General Conditions of Contract* which can be used for any residential construction contract or small commercial project where there is no engineer involved.
- ✦ *BuildRight BCS 2016: Subcontract Conditions of Contract* which is similar to the BCC General Conditions of Contract but is used for subcontracting situations.
- ✦ *BuildRight BSPCC 2016: Conditions of Contract* which is also similar to the BCC General Conditions of Contract but is used for smaller buildings and labour-only contracts.



ENGINEERING ASSOCIATION CONTRACTS

Engineering New Zealand and the International Federation of Consulting Engineers (FIDIC) are engineering organisations that also publish standard contracts for their members.

Contracts based on method of payment

Contracts may also be described by the method of payment and extent of responsibility and oversight of each of the parties.

COST-PLUS CONTRACTS

A cost-plus contract is where the contractor is paid for all the actual costs of a project including materials, labour and other costs incurred to complete the work, as well as an agreed percentage fee designated as profit. With a cost-plus contract, the owner assumes most of the risk. This type of contract requires closer supervision and tracking of work than other types of contracts because there is greater potential for disputes over the costs and how they are calculated. A comprehensive contract covering all contingencies is therefore essential to minimise the risk of disputes.

THERE ARE A NUMBER OF VARIATIONS TO COST-PLUS CONTRACTS INCLUDING:

- ⊕ cost-plus with fixed percentage.
- ⊕ cost-plus with fixed fee.
- ⊕ cost-plus with guaranteed maximum price.
- ⊕ cost-plus with guaranteed maximum price and bonus.

These variations can help to protect and lower risk for the owner.

FIXED PRICE/LUMP SUM CONTRACTS

A fixed price or lump sum contract sets a total fixed price to be paid for the construction. The owner agrees to pay a fixed price and the contractor agrees to complete the project for the fixed price. The contractor therefore takes on a greater risk because there are potential issues that may result in increased costs, though fixed price contracts include provisions for variations and the additional rates that they attract.

In order to protect the contractor, some lump sum contracts contain allowances which allocate certain costs to the owner if the contractor goes over budget. Incentives can also be included for contractors if they finish a project early or below budget as well as penalties if they finish a project late.

UNIT PRICE CONTRACTS

Unit price contracts are based on price per unit such as an hourly rate or a cost for a specific item or certain amount of work. There are benefits for both parties, for owners because they can easily verify the rates they are being charged and for contractors because they do not have to worry about inaccurate estimates. Both parties therefore assume relatively little risk for the work.

TIME AND MATERIAL CONTRACTS

Time and material contracts require the owner to pay for the time and materials spent on a project. The owner and contractor generally agree upon rates and expenses of the project. The owner has the greater risk because they may be responsible for paying additional and overtime costs. In order to protect the owner, time and material contracts generally have a maximum price specified.

Management contracts

Contracts may be described by the method of management and oversight of the contract. They define the relationship between the owner and the contractor, how the project will be managed and the extent of each party's responsibilities.

FULL CONTRACT	Includes all labour and materials, including subcontractors' work. The contractor liaises with the architect/designer, arranges inspections, oversees the whole building project and manages the site including the health and safety plan.
LABOUR-ONLY CONTRACT	Where the contractor is responsible only for building work and the owner manages the rest of the work including purchasing materials, arranging and coordinating subcontractors, supervising the building work and managing the site.
MANAGED LABOUR CONTRACT	A combination of the full and the labour-only contract and can vary according to the arrangement between the owner and the contractor.

CONSTRUCTION CONTRACTS ACT 2002

The Construction Contracts Act (CCA) was introduced to provide a process for dealing with payments and disputes related to construction contracts. All residential and commercial building contracts are covered by the CCA, regardless of whether they are written or verbal. The parties to a construction contract cannot opt out of any of the conditions of the Act which was introduced to:

- ⊗ ensure that regular and timely payments are made.
- ⊗ provide fast and cost-effective adjudication processes to deal with disputes.
- ⊗ provide methods of enforcing the recovery of unpaid money.

Under the Act, construction work is defined as all work on any buildings or structures. It includes building services installations including heating, lighting, air conditioning and ventilation, power supply, plumbing and drainage, fire protection, security and communications systems. The CCA also covers infrastructure work such as on roads, railways, harbour works, water and services utilities and installations for land drainage and coastal protection.

Work may include construction, installation, alteration, maintenance and removal work of buildings, fittings or infrastructure. All the work integral to the construction, including excavation, scaffolding and prefabrication, as well as the design, engineering and quantity surveying work is considered construction work.

The Construction Contracts Act 2002 is available on the New Zealand legislation website: www.legislation.govt.nz.

THE 2015 CCA AMENDMENT

The CCA was amended (with effect in 2017) to provide better protection of retention money. There had been a number of cases where construction companies went into receivership and failed to pay subcontractors for materials and work already done as the retentions required to be held by the Construction Contracts Act were no longer available.

The effect of the amendment was that withheld retention money is held in trust as cash or in assets that can be quickly and easily converted into cash. Alternatively, an insurance or payment bond (referred to as a financial instrument), that provides third-party protection of retention money may be used. However, these have strict requirements on them to ensure that retention money will be paid.

Pricing

When a contractor prices building work, the price should be a total cost of all the building work including the sub-contractors' work as well as costs of materials and labour. The total cost must be inclusive of GST.

The only time subcontractors' prices are not included in the total cost of the work is where they have separate written contracts with the owner.

CONTINGENCY SUMS IN A QUOTE

A contingency sum in a quote is an amount of money included in the project budget for unknown or unresolved aspects of a design such as where a decision and/or selection of products have not been made. The contingency sum may be either a provisional sum or a prime cost sum. The term 'PC sum' is often used and it sometimes refers to either a provisional sum or a prime cost, but there are differences between the two terms.

PROVISIONAL SUM	An amount that has been included for building work when there is not enough detail to enable a fixed price to be calculated, for example where the component has not been selected so the installation costs are unknown, or where the extent of the work and therefore the price cannot be defined.
PRIME COST SUM	A fixed amount that is set aside for a specific component that has not been selected. Prime cost sums are generally to allow for components to be selected at a later stage by the owner. The prime cost sum does not include installation costs. If a product is selected that costs more than the allocated prime cost sum, the owner will have to pay extra.

AT THE END OF THE PROJECT

Record of building work

At the completion of a building project, the contractor must provide to the owner and to the council a record of all of the restricted building work. This is known as an RoW. Restricted building work includes work related to the building's primary structure, its weathertightness and its fire safety systems.

The RoW should identify all the work classified as restricted, identify the licensed building practitioner who carried out or supervised the work (name and licence number) and provide information about how the building work complies with the Building Code.



Other information to be provided

Other information the contractor must give the owner includes:

- ✦ copies of current insurance policies the contractor has for the work carried out under the contract.
- ✦ copies of guarantees or warranties for materials and/or services used in the building work.
- ✦ information about the maintenance of the building work where maintenance is needed to meet the requirements of the Building Code, or could affect any guarantee or warranty.

This information must be provided regardless of the price of the building project.

The guarantee and warranty information should describe the claim procedure including how to make a claim, whether the guarantee or warranty is transferable (ie to another owner), and if guarantees or warranties need to be signed and returned to the issuer.

Information may be supplied to the owner during the project but it is good practice to hand it over at the completion of the job as a single planned activity to reduce the possibility that some information may be overlooked. It is a fineable offence under the Building Act if the information is not provided to the owner.

ONGOING CONSUMER PROTECTION

Under the Building Act the main contractor is responsible for repairing or remediating defective work related to the build that is notified within 12 months of the completion of the building work.

After the 12-month defect period

Implied warranties under the Building Act apply for up to 10 years, so the contractor remains responsible for remediating defective work for up to 10 years once the 12-month defect repair period ends.

However, if an owner makes a claim against a contractor for defective work as a result of poor workmanship or inappropriate use of materials, the onus is on the owner to prove the claim and the contractor may dispute it.

The contract should include a dispute resolution process which identifies options available to the owner. Available options include:

COMPLAINT AGAINST A BUILDING CONTRACTOR

A complaint may be lodged with MBIE if the building contractor has not provided a disclosure statement, standard checklist or written contract, either if the building work had a cost of \$30,000 or more (including GST) or if the owner asked for any of these documents.

COMPLAINT ABOUT THE CONDUCT OF A LICENSED BUILDING PRACTITIONER (LBP)

If the contractor is an LBP and the owner considers they were negligent or incompetent, the owner can lodge a complaint with the Building Practitioners Board which can investigate, and if necessary discipline the LBP. The Building Practitioners Board does not have the power to award compensation to the owner or to require the practitioner to repair defective work.

COMPLAINT TO THE CONTRACTOR'S TRADE OR PROFESSIONAL ASSOCIATION

The owner may make a complaint against the contractor if they are a member of a trade or professional association. The associations may offer dispute resolution services and/or guarantees which cover work done by their members.



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Breaches of implied warranties

The owner may apply for adjudication when the implied warranties under the Building Act have not been met. This must be done by serving notice in writing to the contractor stating the nature of the breach of warranty and the compensation that is being sought.

ACTIVATING AN IMPLIED WARRANTY

To activate an implied warranty, the owner must go to court to prove loss or damage as a result of defective materials or workmanship. For example, if the contractor has substituted a different and possibly lower-quality material than was specified in the consent documentation without the owner's agreement, this would be regarded as a breach of contract and the implied warranty may be activated.

The building contract should contain resolution processes by which the breach of warranty can be resolved by the disputes process. If the breach of warranty is not remedied within a reasonable timeframe, a number of options are available to a building owner including:

- ✦ employing another tradesperson to carry out the remediation work which will be paid for by the contractor.
- ✦ being reimbursed by the contractor for the defective work.
- ✦ being paid out by the contractor for loss of value to the property.
- ✦ cancelling the contract.

RETAINING DOCUMENTATION

All documentation, including the contract and all other documents relevant to it, should be retained by the owner both for their own use and for use by any future owners. If defects appear in the work after the 12-month defect period has passed, the documentation will be able to provide evidence of responsibility, and warranties may still apply if the work is within the 10-year time period after completion.

Other consumer protection

The Consumer Guarantees Act and the Fair Trading Act also provide consumer protection with regard to building work.

THE CONSUMER GUARANTEES ACT

The Consumer Guarantees Act 1993 protects consumers by providing guarantees for goods and services. It states that goods that are faulty must be repaired or replaced, or money must be refunded. It also requires that services must be provided with a reasonable level of skill and care within a reasonable timeframe, and that they must be fit for the intended purpose.

In terms of building work, the Consumer Guarantees Act applies to the services supplied to buildings but it does not apply to residential buildings or parts of buildings (that is to building materials) as these are covered by the Building Act through the implied warranties.

Services guarantees under the Consumer Guarantees Act include household plumbing and gas and electricity supplies, except for non-reticulated gas supplies such as LPG cylinders which are excluded.

The supply of both gas and electricity must be safe and reliable, and the supply must be consistent for normal use. Gas and electricity supply contracts between a supplier and a consumer generally include the requirements that:

- ⊗ the property meets all the necessary regulatory requirements for connection and supply.
- ⊗ the supply complies with the supply company's obligations under the Consumer Guarantees Act.
- ⊗ it is supplied in accordance with good industry practice, relevant protocols and codes of practice.

If a tradesperson is employed to supply services such as for plumbing and drainage work or electrical or gas supply work, the work must meet the requirements of the Consumer Guarantees Act. Otherwise the tradesperson must fix their work at no extra cost or alternatively, their work may be fixed by another tradesperson and the cost passed on to the original tradesperson.

It is possible to contract out of the Consumer Guarantees Act but this may only occur between businesses and there must be written agreement between the parties.

THE FAIR TRADING ACT

The Fair Trading Act 1986 protects consumers from being misled about products or services. This means information about a product must not be withheld, it must be accurate and must not mislead or deceive a consumer. In terms of building work, services under the Fair Trading Act include construction, maintenance, alteration and repair work.

The Act applies to all aspects of the marketing and sale of goods and services in New Zealand and applies in almost all situations. With a very few exceptions, it is not possible to contract out of the Fair Trading Act.

Adjudication – dealing with disputes

The CCA provides a fast-track adjudication process for resolving disputes about rights and obligations, and also about payments under a construction contract. It is intended to be less formal and produce a faster decision (called a determination) than going to court, mediation or arbitration.

If a dispute is referred for adjudication under the CCA, a written notice or adjudication claim must be served by the claimant on the other party, who is referred to as the respondent. The notice must include information about the respondent's rights and obligations and an explanation of the adjudication process. The respondent must respond to the claim within five working days of receiving it.

An adjudicator must make a decision about the dispute that enables all parties to operate within the timeframes set out in the Act. The adjudicator's decision must be made within 20 working days and is binding and enforceable by the court if necessary.

INSURANCES

All building projects, regardless of size or cost of work should have insurance coverage as the risk of something going wrong is high. Risks can include the theft of equipment or materials, a fire on site, or a natural disaster such as flooding or an earthquake.

TYPES OF INSURANCE COVER

Both the contractor and the owner should have insurance cover. The amount and type of insurance each party may have depends on the contract between the contractor and the owner. There are three main types of insurance cover.

1	CONTRACT WORKS INSURANCE
	<p>When the work is new building work, a contract works insurance should be obtained by the contractor. The contract works insurance protects against damage to construction work, material loss from theft, vandalism or arson, and damage resulting from natural disasters such as a storm, flooding, earthquake or hail. It generally also covers subcontractors if they cause damage to the building works.</p> <p>When the work involves an existing structure, such as addition or alteration work, the building contract generally requires the owner to arrange contract works insurance.</p> <p>Contract works insurance does not generally include damage to the contractor's equipment. This should be covered by the contractor's own insurance policy for loss or damage to tools and other assets.</p>
2	PUBLIC LIABILITY INSURANCE
	<p>Every contractor should have public liability insurance, also referred to as general liability insurance. It provides protection against unexpected events that occur during the course of running a business such as loss or damage to other people's property and the legal costs that may be associated. It also covers personal injury to others where it may not be covered by ACC.</p>
3	PROFESSIONAL INDEMNITY INSURANCE
	<p>Professional indemnity insurance is for people providing a service or advice. It provides protection against financial loss or legal action where a mistake is alleged by another party. For example, if an owner takes legal action against alleged defects such as a lack of weathertightness, professional indemnity insurance provides cover where the contractor may not have sufficient funds to pay compensation.</p>

Who is responsible for insurance?

FOR A FULL CONTRACT

For a full contract, the contractor should have contract works insurance and public liability insurance to cover accidental damage to the building work or to adjacent properties, and for personal injury. Some policies also cover subcontractors under the contractor's policy.

FOR A MANAGED LABOUR-ONLY CONTRACT

For a managed labour-only contract, either the builder or the owner may have insurance. However, both parties must ensure they know who is arranging insurance and the type of insurance cover being provided. The contract should clearly state who is responsible for the insurances.

FOR A LABOUR-ONLY CONTRACT

For a labour-only contract, the insurance should be arranged by the owner. When the work is addition or alteration work, the owner should always advise their insurer that building work is being carried out.

MANAGING THE CONSTRUCTION PROJECT

All building contracts should include processes and procedures for managing the construction project.

CONSTRUCTION PROGRAMMING

The contractor is responsible for programming the construction work and for managing sub-contractors. The plan should identify and/or describe:

- ✦ the start and finish dates and duration of stages of work.
- ✦ the critical path or sequence of tasks that the overall duration of the programme depends on.
- ✦ critical parts of the programme where a task must be completed before another task can begin.
- ✦ the tasks that can be carried out simultaneously.
- ✦ when specific materials, resources, plant and services are required.

Good planning requires sequencing tasks so that one part of the project is not held up because there is a delay in another part of the project. The programme should be reviewed regularly to identify potential problems, where things have not gone according to plan and where additional work may need to be incorporated. Regular site meetings should be held.

COMMUNICATION

Good communication between the owner or owner's agent and contractor is essential to the smooth running of the project. Site meetings should be held at least weekly to keep all parties informed of progress and issues. The meetings should be recorded and any changes or variations made to the project should be documented.

ON-SITE MONITORING

Oversight and monitoring of the progress of a project is necessary to ensure the building work is carried out as set out by the documentation. Good on-site monitoring will assist in identifying issues and dealing with them as soon as they arise.

VARIATIONS TO THE CONTRACT

Variations should be in writing. They must be priced, and approved by the building consent authority, if the variation requires an amendment to the consented documents. Copies of all variations should be given to all parties involved in the contract.

RELEVANT LEGISLATION

TITLE	TYPE
Building Act 2004	Statute
Building (Earthquake-prone Buildings) Amendments Act 2016	Statute
Building (Fee for Determination) Regulations 2005	Legislative instrument
Building (Forms) Regulations 2004	Legislative instrument
Building (Infringement Offences, Fees and Forms) Regulations 2007	Legislative instrument
Building (Minor Variations) Regulations 2009	Legislative instrument
Building (National Multi-unit Approval) Regulations 2011	Legislative instrument
Building (Pools) Regulations 2016	Legislative instrument
Building Practitioners (Complaints and Disciplinary Procedures) Regulations 2008	Legislative instrument
Building Practitioners (Licencing Fees and Levy) Regulations 2010	Legislative instrument
Building Practitioners (Register of Licensed Building Practitioners) Regulations 2010	Legislative instrument
Building (Product Certification) Regulations 2008	Legislative instrument
Building (Registration of Building Consent Authorities) Regulations 2007	Legislative instrument
Building (Residential Consumer Rights and Remedies) Regulations 2014	Legislative instrument
Building (Specified Systems, Change the Use and Earthquake-prone Buildings) Regulations 2005	Legislative instrument
Construction Contracts Act 2002	Statute
Consumer Guarantees Act 1993	Statute
Fair Trading Act 1986	Statute

