

WRITTEN CONTRACTS ARE A MUST

It's a big deal, building a new house – there's plenty of things to think about even before construction gets under way. One of those things is the building contract. Master Builders contracts manager Charles Anderson explains.

MOST homebuilding contracts will be for an agreed price, sometimes called a 'lump sum' or 'fixed price' contract.

Occasionally, the contract will be 'cost plus', where the builder charges the direct cost of work as it is incurred and a fee for overheads and profit.

Regardless of the type of contract, it should always be in writing. If an architect designed the home and is to oversee the project on the owner's behalf, the 2018 Australian Building Industry Contracts (ABIC) suite includes ideal contracts.

ABIC contracts, jointly developed by builders and architects, are designed to be simple and clear, reducing the chances of disputes and confusion that cause costly delays.

In addition to putting the contract in writing, lump-sum contracts for homebuilding work up to \$500,000 must meet consumer protection requirements set by the Home Building Contracts Act. These protections include fixing the maximum deposit the builder can claim at 6.5 per cent of the contract sum, requiring that progress claims during construction are only for the value of work done and ensuring owner-requested variations to original contract works are agreed and priced before changes are commenced.

The ABIC Simple Works Housing WA contract, ABIC SW-2018 H WA, fulfils these requirements and for architect-administered residential work of \$500,000 or more, ABIC SW 2018 is the go.

All ABIC contracts are available through Master Builders, which has several agreements suitable for use directly between owners and builders, that is, where there is no architect in the picture. The association's Home Building Works Contract (HBW) is an agreed sum contract which complies with Home Building Contracts Act rules and so is used for homes up to \$500,000.

Though the contract sum is agreed when

the contract is signed, it is important to know that, despite the common descriptions 'lump sum' or 'fixed price', the price can be adjusted up or down in certain circumstances. Variations can change the contract sum, there might be circumstances where the builder can recover extra costs where the project is delayed and, most contracts will include 'provisional sums' and 'prime cost items' which are estimates of the value of work or materials which cannot be firmly established at the time the contract is signed. These 'PS' and 'PC' amounts need to be adjusted as true costs are established.

Master Builders' HBW contract was introduced about 25 years ago – coinciding with enacting of the Home Building Contracts Act. HBW is updated periodically to meet new legislative requirements, for example, but remains true to Master Builders' original aim, to produce a clear and concise contract, fair to both owner and builder.

The 2017 HBW edition, and its companion for projects of \$500,000 or more, the Residential Building Works Contract (RBW) are available in both hard copy and online forms.

There is also a 2017 edition of Master Builders' Cost Plus Contract. As mentioned, cost plus contracts provide for the builder to pass on the 'actual cost of the work' at regular intervals during construction. They are a perfectly acceptable form of agreement, particularly suited to projects such as renovations where the exact scope of the building work is difficult to define, but it is crucial to remember that neither builder nor owner will know the final cost of the building until the very end.

Master Builders has contracts for most building projects. Visit the Association's website, www.mbawa.com, for information.

