

## INTRODUCTORY GUIDE TO BUILDING & CONSTRUCTION CONTRACTS

Master Builders have a range of widely recognised building and construction contracts which you may wish to consider using for your project. The type of contract appropriate for a given project will largely be determined by the parties' requirements and the specific nature of the work being undertaken.

The advantages of using a standard form contract are that it may minimize the parties' risks, reduce the likelihood of building disputes and it ensures that the parties are meeting any legislated compliance requirements under the *Construction Contracts Act 2004* and *Home Building Contracts Act 1991*. Standard form contracts also provide a readily available and widely used option when engaging with another party on a range of building projects.

### Residential Construction Contracts

Home Building work or associated work on a project between \$7,500 and \$500,000 carry certain contractual compliance obligations under the *Home Building Contracts Act 1991*.

The contracts below are available for residential construction projects depending on the value of the works:

- **Small Works Contract:** suitable for home building work under \$7,500 in value.
- **Home Building Works Contract:** suitable for homebuilding work between \$7,500 and \$500,000 in value.
- **Small Home Building Works Contract:** suitable for renovations, alterations, additions or associated works on a home between \$7,500 and \$500,000 in value.
- **Residential Building Works Contract:** suitable for home building work over \$500,000 in value.
- **Cost Plus Contract:** suitable for home building work of any value where the value of the works cannot be reasonably pre-estimated. A cost-plus contract is one under which the builder is entitled to recover actual costs incurred plus an extra amount for profit.
- **Preliminary Plans Agreement:** A stand-alone contract for preparatory work to be undertaken prior to construction such as site inspections, preparation of plans, budgets, estimates and specifications, arranging sites surveys and engineering drawings and obtaining relevant approvals.

### Commercial Construction Contracts

Depending on the scope and nature of the commercial project you are undertaking, the following contracts may be suitable:

- **Small Works Contract:** appropriate for commercial projects up to \$100,000 in value.
- **Medium Works Contract:** appropriate for medium to large commercial projects.
- **Cost Plus Contract:** suitable for commercial projects where the value of the works cannot be reasonable pre-estimated.

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- **Design and Construction Lump Sum Contracts** may be appropriate where the design and construction aspects are both being undertaken by the one builder or contractor (companion subcontract also available).

### **Subcontractor Agreements**

Formalising contractual arrangements between a builder/contractor and subcontractor in writing enables the parties to have a clear understanding of one another's duties and obligations under the terms of their agreement. This can minimize the risk of dispute and assist in legal proceedings in the event disputes are unavoidable.

The following contracts can assist with ensuring that the scope and all relevant details concerning a project are accurately recorded and detailed by the parties:

- **Subcontracts Works Contract:** suitable for arrangements between a principal contractor or builder and subcontractor on a project by project basis.
- **Period Trade Contract:** suitable for intermittent engagement of subcontractors on known terms and conditions and to be used in conjunction with a quotation and works order.

### **Project and Construction Management Agreements**

These contracts may be appropriate where a Principal is seeking to engage a Project or Construction Manager with the relevant skills and expertise to control, manage and co-ordinate an entire project or specific parts of it:

- **Construction Management Contract:** suitable for projects where a principal engages a construction manager to act as agent to monitor and control the project through construction programs and budgeted costs plans. The construction manager also arranges separate contracts between the principal and trade contractors and suppliers. The principal is responsible for all payments to the builder, contractors and suppliers. There is also a companion trade contract available (Trade Contract 2012) where the parties are able to set out the terms and conditions on which the construction manager engages trade contractors on behalf of the principal.
- **Project Management Agreement:** suitable in circumstances where the project manager assumes responsibility for controlling, managing and coordinating the project as agent for the principal. The project manager is typically responsible for duties such as location of the site, design approval, engaging consultants, arranging finance and preparation of plans.

### **Australian Building Industry Contracts (ABIC Contracts)**

The Australian Building Industry Contracts (ABIC) are jointly published by Master Builders Australia Ltd and the Australian Institute of Architects. They are intended for use in building projects where an architect administers the contract. In this case the architect will act as the owner's agent as well as an independent expert certifier while authorized to administer the contract on the owner's behalf. The following may be appropriate in those circumstances:

- **Major Works Contract** (companion subcontract also available);
- **Simple Works Contract** (companion subcontract also available);

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- **Basic Works Contract** (companion subcontract also available);
- **Commercial Cost Plus Contract.**

### **Australian Standard Contracts**

Commonly used on Government projects, Standards Australia have produced the following for construction projects:

- AS2124- General Conditions of Contract & Tendering.
- AS4000-1998-General Conditions of Contract.
- AS2545- Subcontract Conditions are a set of compatible subcontractor conditions involving site work on projects where ASA2124 is in use as the head contract between the Main Contractor and the Principal.
- AS4901-1998 – Subcontract Conditions.

### **Supporting Administrative Documentation**

The following are supporting administrative documents which you may need to consider using during the course of a construction project:

- Variation Order Form
- Site Report Forms
- Quotation Document
- Brick Construction Specification
- Framed Construction Specification
- Home Buyers Construction Guide

To purchase Master Builders contracts, please contact us on 9476 9800 or [mba@mbawa.com](mailto:mba@mbawa.com).

Our contracts team can also assist with your contract queries on [contracts@mbawa.com](mailto:contracts@mbawa.com).

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