

## Office of Fair Trading Home Building Contract: A Quick Guide

The Office of Fair Trading in NSW issues standard form residential building contracts, such as the Home Building Contract for Work Over \$20,000. This article shows you which clauses to pay special attention to, as they significantly affect essential risks associated with construction.

### Office of Fair Trading Contracts

NSW Fair Trading Home Building Contract for Work Over \$20,000 is issued by the NSW government. As such, you can be sure it is more objective and fair to both yourself and your builder, as opposed to other standard form contracts like those issued by the Master Builders Association NSW or the Housing Industry Association, which are generally skewed more towards the builder's favor.

Nevertheless, it would still be prudent to go over your contract and be mindful of important clauses, to make sure your home building project proceeds smoothly, and that you have a recourse should you hit a bump in the road at any point during the build.



*For illustration purposes only*

You Can Be Confident That You Are Getting  
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Important Clauses You Need to Watch Out For

Here are the top clauses you need to look into, as they affect essential risks relating to time, cost, and quality.

### Clause 5 Commencement of work

What it is	:	Sets out the date when works are to be begun
Purpose	:	Determines the project's timeline
Risk minimised	:	Time and Cost

**Note:** The contractor must give you proof of home building compensation insurance or cover before starting work or requesting or receiving any payment (including the deposit).

**Note:** The contractor should check that the owner's name stated on the contract is the same as that appearing on the certificate of title for the land. A letter from the lending authority or owner's bank may be requested in relation to capacity to pay.

The contractor must obtain home building compensation insurance or cover and provide proof of this to the owner before starting work or requesting or receiving payment. Failure to take out insurance or cover may affect the contractor's right to payment.

### Clause 5 Commencement of work

The contractor must commence the work within 28 working days from:

- the date of this contract, or
- if the approval of the local council or other statutory authority has still to be obtained for the work, the date of written notification of that approval, or
- if the consent of the lending authority is required, the date of written notification of consent that the work may proceed whichever is latest.

The contractor may, by written notice, request the owner to provide satisfactory evidence of the owner's title to the land and capacity to pay the contract price and for any variations agreed to after the contract is signed.

If the owner fails to provide such evidence within 10 business days from receipt of such notice, the contractor may suspend the work under the contract in accordance with **Clause 24** or take action to end it in accordance with **Clause 26**.

*For illustration purposes only*

### Clause 6 Time for completion

What it is	:	Sets out the deadline for the building project
Purpose	:	Determines when works must be completed
Risk minimised	:	Time and Cost

You Can Be Confident That You Are Getting  
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

**Explanation:** The time allowed for completion should be realistic. The contract time should allow for any public holidays or periods when it is known the work will not be performed, for example the building industry shutdown over the Christmas period and industry rostered days off. Instances can occur when the time for completion has to be adjusted. See Clause 7.

## Clause 6

### Time for completion

The contractor must diligently proceed and complete the work within 50 calendar weeks from the date the work is due to commence as referred to in Clause 5. The period of time allowed for completion has taken into account any public holidays and other days when it is known that work will not be performed. The time for completion may be subject to amendment in accordance with Clause 7.

*For illustration purposes only*

### Clause 7 Extension of time

- What it is : Sets out the instances when delay may be allowed
- Purpose : This affects other matters such as completion and payment
- Risk minimised : Time, Cost

**Explanation:** Delays can occur during the course of the work. The contractor is entitled to apply for a reasonable extension of time for completion.

*In order to qualify for an extension of time the contractor must comply with the requirements set out in this clause.*

**C Note:** Disagreements may occur if a contractor fails to correctly claim for justified extensions of time. The contractor should ensure that the procedure set out in Clause 7 is always followed.

## Clause 7

### Extension of time

If the work is delayed by:

- inclement weather or conditions resulting from inclement weather
- any order of a court or tribunal that the work be suspended, unless that order resulted from the fault of the contractor
- any act or omission of the owner
- any industrial dispute affecting the progress of the work (not being a dispute limited to the site or limited to employees of the contractor)
- the unavailability of materials necessary for the continuation of the work, unless due to the fault of the contractor
- a variation to the work
- a suspension of the work by contractor under Clause 24, or
- any other matter, cause or thing beyond the control of the contractor, the contractor will be entitled to a reasonable extension of time to complete the work. **Both the contractor and owner (if applicable) must take all reasonable steps to minimise any delay to the work.**

If the contractor wishes to claim an extension of time, the contractor must notify the owner in writing of the cause and estimated length of the delay within 10 business days of the occurrence of the event or, in the case of a variation, from the date of agreement to the variation.

If the owner does not, within a further 10 business days, notify the contractor in writing that the extension of time sought is unreasonable, the completion date for the contract will be extended by the period notified to the owner.

If the owner gives the contractor written notice disputing the extension of time claimed, and no agreement can be reached on the time to be allowed, the dispute must be dealt with in accordance with the dispute resolution procedure (Clause 27).

*For illustration purposes only*

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 8 Completion of work

What it is	:	Sets out the instance when the work is to be deemed completed
Purpose	:	To set the obligations of the parties as well as their rights in relation to project completion
Risk minimised	:	Time, Cost, Quality

**Q** *Explanation: Should any defects or omissions become apparent after completion, refer to the Defects Rectification clause (Clause 23).*

**E** *Explanation: Under the Home Building Act 1989 the contractor is required to give the warranties set out in this clause.*

*The statutory warranties in the contract are as printed in the Home Building Act. They require the contractor to provide a product as agreed, in a suitable state, fit for its intended purpose, complying with all relevant laws and within the agreed time, or if not agreed a time that is reasonable*

**C** *Paragraph (f) on this page relates to work where the owner makes known to the contractor the intended purpose of the works or the result the owner expects to achieve with the work. This warranty requires the contractor to*

### Clause 8 Completion of work

The work will be complete when the contractor has finished the work in accordance with the contract documents and any variations, there are no omissions or defects that prevent the work from being reasonably capable of being used for its intended purpose, any damage of the kind referred to in **Clause 19** has been repaired, and all rubbish and surplus material has been removed from the site.

When the contractor believes the work is complete, the contractor must notify the owner in writing certifying that the work has been completed in accordance with this contract. Within 10 business days of receipt of written notice from the contractor, the owner must advise the contractor in writing of any items of work the owner considers to be incomplete or defective. If the owner does not so notify the contractor, the work will be taken to be complete.

The contractor must complete any outstanding work promptly and again notify the owner in writing. Unless the owner notifies the contractor in writing that any item is still incomplete or defective within a further 10 business days from receipt of notification by the contractor, the work will be taken to be complete.

Should there be any dispute between the parties as to whether the work has been completed, it must be dealt with in accordance with the dispute resolution procedure (**Clause 27**).

*For illustration purposes only*

## Clause 12 Progress payments

What it is	:	Sets out the schedule when payments should be made
Purpose	:	To concretise the owner's obligation to pay and the builder's right to claim payment
Risk minimised	:	Time, Cost, Quality

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

### Clause 12 Progress payments

The owner must pay the contract price by progress payments within 5 business days of the completion of the stages of the work nominated in the schedule of progress payments. The contractor must notify the owner in writing when a stage of the work has reached completion. A stage of work has reached completion when it has been finished in accordance with the contract documents and any variations agreed to and there are no omissions or defects that prevent that stage of the work from being reasonably capable of being used for its intended purpose. Any deposit paid is deducted from the first progress payment.

Despite the preceding paragraph, if the owner's lending authority (if applicable) is to make all or any progress payments, then the contractor agrees to accept the usual payment terms (including the need for inspections and certifications required by the lending authority) in place of the requirements specified in the preceding paragraph.

#### Schedule of progress payments (to be completed by parties)

**Stages of work**  
(Note that there does not need to be 10 stages and payments to be made at the completion of the stage)

Stages of work	Amount (including GST)
1 Deposit	33,500.00
(less deposit: \$ 0.00 )	\$ 33,500.00
2 Slab	\$ 33,500.00
3 Frame	\$ 100,500.00
4 Enclosed	\$ 67,000.00
5 Fixing	\$ 67,000.00
6 Practical Completion	\$ 33,500.00
7	\$ 0.00
8	\$ 0.00
9	\$ 0.00
10	\$ 0.00
<b>Total</b>	<b>\$ 335,000.00</b>

(If space is insufficient, attach a sheet referring to this schedule)

Payment of a progress payment is not to be regarded as acceptance by the owner that the work has been completed satisfactorily or in accordance with the contract documents.

If there is any bona fide dispute in relation to the value or quality of work done, the dispute must be dealt with in accordance with the dispute resolution procedure set out in Clause 27. In those circumstances, the parties agree as follows:

(a) the owner may withhold from the progress payment, an amount estimated by the owner, acting reasonably, equal to the owner's estimate of the value of the disputed item

(b) the contractor must continue to carry out its obligations under this contract pending resolution of the dispute.

**Explanation:** Progress payments are usually made at specified stages as the work proceeds. These payments, which include GST, should equate to the value of work done. Note, a lending authority may have certain requirements for progress payments and the parties should check these. If the lending authority has any special requirements for progress payments there may be a need to include an additional clause in the contract covering them.

**Note:** If the owner makes a progress payment but is concerned with any aspect of the work the owner should promptly advise the contractor in writing of these concerns. If the owner has any doubt, they should consider obtaining independent advice from a building consultant, architect or quantity surveyor.

Should there be a dispute in relation to any part of the work the parties should try to agree on an appropriate amount to be deducted from the progress claim until the dispute is resolved.

As this is a fixed price contract it will provide for the authorised progress payments in (a). However this contract can also provide for a progress payment in (b)-(This may be the case if there are variations that cannot be costed before they are carried out).

(a) a progress payment of a specified amount or specified percentage of the contract price that is payable following completion of a specified stage of the work, with the work that comprises that stage described in clear and plain language.

(b) a progress payment for labour and materials in respect of work already performed or costs already incurred (and which may include the addition of a margin), with provision for a claim for payment to be supported by such invoices, receipts or other documents as may be reasonably necessary to support the claim and with payment intervals fixed by the contract or on an "as invoiced" basis.

*For illustration purposes only*

### Clause 13 Variations

- What it is : Sets out when changes are allowed to be made by the parties
- Purpose : To determine whether a variation is allowable, and to determine when penalties may be imposed, if not
- Risk minimised : Time, Cost, Quality

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 13 Variations

**Explanation:** If, after work has commenced, the owner decides to delete, alter or add to the work to be done, a variation to the contract may be required. The work also may be varied at the request of the contractor, due to a requirement of the council or other authority, or a matter which could not be foreseen at the time of signing the contract.

**Note:** Copies of letters and notices relating to variations should be kept by both parties.

**Explanation:** "Building cover contract" is defined in Clause 30 and relates to insurance or cover under the Home Building Compensation Scheme. The Variations Clause provides for the contractor to adjust the contract price to account for changes in the cost of this insurance or cover compared to the amount stated on page 5 of this contract.

**Explanation:** Contractors normally include in the price for all work a margin to cover overheads, supervision and profit. The margin to be applied to the adjustment of prime cost items is to be inserted in the box opposite. You should question any margin that exceeds 20% and seek further advice if necessary.

The work to be done or materials used under this contract may be varied:

- at the request of the owner, or
- at the request of the contractor. If the necessity for the variation is due to the fault of the contractor the owner will not be liable for any increase in the contract price, or
- due to such other matters that could not reasonably be expected to be foreseen by an experienced, competent and skilled contractor for the completion of the work at the date of the contract, or
- due to a requirement of a council or other statutory authority relating to the work, if at the date of this contract such requirement could not reasonably have been foreseen by the contractor.

### Procedure for variations

Before commencing work on a variation, the contractor must provide to the owner a notice in writing containing a description of the work and the price (including separate disclosure of the GST and the component of the price attributable to any consequential increase in the cost of the building cover contract entered into by the contractor in respect of the work to be done under this contract). If not otherwise specified the price will be taken to include the contractor's margin for overheads, supervision and profit. The notice must then be signed and dated by both parties to constitute acceptance.

If the time for completion will be delayed by the variation the contractor must include in the notice an estimate of the additional time required. Any extension of time must be dealt with in accordance with Clause 7.

The requirement for variations to be in writing does not apply where, if the work were not to be done promptly there is likely to be a hazard to the health or safety of any person or to the public or to be damage to property and the work could not be done promptly if the variation had to be put in writing before commencing the work.

Variations shall be subject to the overall conditions of this contract.

### Adjustment of contract price

The contract price may be adjusted as a consequence of:

- (a) variations to work or materials agreed in accordance with this Clause 13; and
- (b) any variation to the cost of the building cover contract entered into by the contractor in respect of the work to be done under this contract.

The cost of deletions from the contract will be deducted from the contract price. The price of any variation specified in the notice signed and dated by both parties will be added to the contract price.

The component of the increase to the contract price that is attributable to an increase in the cost of the associated building cover contract must be separately disclosed.

Any adjustment to the contract price will be taken into account at the time of the next progress payment or paid as agreed by the parties.

*For illustration purposes only*

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

### Clause 14 Time for payments

What it is	:	Sets out the schedule for payments after progress payment claims are made
Purpose	:	To determine the parties' rights and liabilities in terms of being paid and receiving payment
Risk minimised	:	Time, Cost

 **Note:** The contractor will have to account for GST 21 days after the end of the tax period in which an invoice (ie. claim for payment) is issued or the payment is received, whichever is earlier.

## Clause 14

### Time for payments

When the contractor gives the owner a written claim for a progress payment or other amount due under the contract, the owner must pay, unless the owner notified the contractor in the manner stated below, the amount of the claim within 5 business days of receipt of the claim (which must not be less than 5 business days). However, the preceding sentence is subject to any contrary term or condition specified in [Clause 12](#).

If the owner disagrees that the contractor is entitled to be paid a progress claim or other amount due under the contract, the owner must notify the contractor in writing within 5 business days of receiving the claim setting out the reasons for that disagreement. If there is any dispute between the parties relating to a payment under the contract it must be resolved according to the dispute resolution procedure set out in [Clause 27](#).

If the owner fails to pay the amount of a claim in part or in full by the due date and fails to give notice disputing the claim to the contractor, interest at the current bank rate (as defined in [Clause 30](#)) will be payable to the contractor on the amount outstanding for the period overdue. However, if the owner gives notice of a dispute in accordance with the dispute resolution clause ([Clause 27](#)), interest at the current bank rate will only be payable if the dispute is resolved in favour of the contractor and shall be calculated from the time when payment would have otherwise been due.

*For illustration purposes only*

### Clause 15 Final payment

What it is	:	Sets out when payment must finally be made
Purpose	:	To make sure that the builder does not make undue demands for payment
Risk minimised	:	Time, Cost

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 15 Final payment

When the work is complete in accordance with **Clause 8** the owner must pay the amount remaining unpaid under the contract. Payment must be made in the manner specified in **Clause 14**. If the amount is not paid, interest in accordance with **Clause 14** applies.

On receipt of the final payment, the contractor must hand over to the owner all guarantees, instruction manuals and the like unless already provided and all keys relating to the work, together with any certification or approval which may have been provided by any public authority relating to the work.

*For illustration purposes only*

### Clause 23 Defects rectification

What it is	:	Sets out the procedure for rectifying defects
Purpose	:	To establish owner's right to be compensated for damage caused by the owner
Risk minimised	:	Time, Cost, Quality

## Clause 23 Defects rectification

**Explanation:** After the work has been completed omissions and defects may become apparent.

The defects rectification period is intended to allow the owner to bring these matters to the attention of the contractor so that the contractor may attend to them.

It is not intended that the defects rectification period be used to finish items of work which should have been completed to achieve completion of the work in accordance with **Clause 8**.

This clause does not affect your rights to pursue the rectification of defects under the statutory warranties. See the Consumer building guide included as an Appendix of this contract (and available from the Fair Trading website) for more information.

The contractor must rectify omissions and defects in the work which become apparent within the period of 13 weeks from the date the work has been completed. The date of completion shall be determined in accordance with **Clause 8**.

The owner must notify the contractor in writing of any omissions or defects which need to be made good no later than 10 business days after the expiry of the 13 week period. The contractor must rectify the omissions and defects at the contractor's own cost within 30 business days from receipt of such notification and the owner must give the contractor reasonable access for this purpose.

In respect of major omissions and defects in the work, a further defects liability period of 13 weeks from the date the work has been completed will apply.

If there is a dispute between the parties as to whether any item of work is defective, has been omitted or has been satisfactorily rectified the dispute must be dealt with in accordance with the dispute resolution clause (**Clause 27**).

*For illustration purposes only*

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 24 Suspension of work by contractor

What it is	:	Sets out the instances when the builder or contractor may suspend the works
Purpose	:	To lay out builder's right to suspend, and home owner's obligation
Risk minimised	:	Time, Cost, Quality

<p><i>Appendix of this contract (and available from the Fair Trading website) for more information.</i></p>	<h3>Clause 24</h3> <h4>Suspension of work by contractor</h4> <p>If the owner, without reasonable and substantial cause:</p> <ul style="list-style-type: none"><li>• fails to provide satisfactory evidence of title to the land and/or capacity to pay the contract price, including any variations</li><li>• fails to pay a progress payment or any other amount due to the contractor within the time allowed, but only if the owner fails to pay the progress payment or other amount due after a written notice from the contractor requiring payment within a further period of 5 business days</li><li>• fails to advise the contractor promptly of any requirement of or notice from a statutory authority or the lending authority, if any, that affects the work</li><li>• fails to perform any work or supply materials as specified in <b>Clause 16</b> which prevents the contractor from continuing with the work under the contract</li><li>• denies the contractor or the contractor's sub-contractors access to the site so as to prevent the work from proceeding, or otherwise prevents the contractor from carrying on the work; or if the owner becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity,</li></ul> <p>the contractor may, without prejudice to any other rights under the contract, suspend the work by giving written notice to the owner in accordance with <b>Clause 28</b> (Giving of Notices) specifying the reason.</p> <p>If the owner remedies the default, the contractor must recommence the work within 10 business days unless the contractor has ended the contract under <b>Clause 26</b>.</p>
---	--

*For illustration purposes only*

## Clause 25 Termination of contract by owner

What it is	:	Sets out the owner's right to terminate
Purpose	:	So the owner will know the proper way of terminating the contract
Risk minimised	:	Time, Cost, Quality

You Can Be Confident That You Are Getting  
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 25 Termination of contract by owner

*Explanation: Clauses 25 and 26 set out the circumstances in which the contract may be ended by either the owner or contractor. The consequences for wrongfully ending the contract may be serious and you should seek independent advice if you are not sure of your right to do so.*

*Note: this contract may be terminated in the circumstances provided by the general law and this does not prevent the parties from agreeing to additional circumstances in which the contract may be terminated eg as in Clauses 25 and 26.*

### Due to the fault of the contractor

If the contractor:

- is unable or unwilling to complete the work or abandons the work
- suspends the work before completion without reasonable cause
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the contractor is a company, goes into liquidation or receivership or is otherwise without full capacity
- fails to proceed diligently with the work
- fails to remedy defective work or remove faulty or unsuitable materials, or
- without reasonable cause fails to comply with an order or direction of a public authority with respect to defective or incomplete work, which would substantially affect the quality and/or progress of the work,

the owner may, if such default can be remedied, notify the contractor in writing that unless the default is remedied within 10 business days or such longer period as specified the owner will terminate the contract.

If the contractor does not comply with the owner's request within the time allowed, or if the default cannot be remedied, the owner may terminate the contract by giving written notice to that effect to the contractor.

If the owner terminates the contract due to the fault of the contractor, any unfixated materials or fittings on the site may be retained by the owner.

Following the issue of a notice by the owner under this Clause no unfixated materials or fittings shall be removed from the site by the contractor.

If the reasonable cost of completion of the work exceeds that which would have otherwise been due under the contract the difference will be a debt payable by the contractor to the owner. Should the reasonable cost of completion be less than otherwise due under the contract the difference will be a debt payable to the contractor.

Until completion of the work the contractor will not be entitled to any further payment under this contract. However, nothing contained in this clause may take away any right the contractor may have to payment under the dispute resolution procedure in [Clause 27](#).

### Other than due to the fault of the contractor

The owner may also terminate the contract by notice in writing to the contractor in the following circumstances:

- if the owner, within the cooling off period, does not wish to proceed with the contract (see [Clause 3](#))
- if all necessary approvals for the work have not been obtained within 60 business days of the date of the contract (see [Clause 17](#)), or
- if the owner is unable to meet the cost of a variation due to a matter that could not reasonably be expected to be necessary for the completion of the work or a requirement of the council or other statutory authority (see [Clause 13](#)).

A notice required under this Clause must be given in accordance with [Clause 28](#).

If the owner ends the contract in the above circumstance, the contractor may remove from the site and retain all unfixated materials, fittings and equipment supplied by the contractor.

*For illustration purposes only*

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 26 Termination of contract by contractor

What it is	:	Sets out the builder or contractor's right to terminate the contract
Purpose	:	So builder can terminate the contract for cause, without the risk of being in breach
Risk minimised	:	Time, Cost, Quality

### Clause 26

#### Termination of contract by contractor

**Due to the fault of the owner**

If the owner:

- fails to provide satisfactory evidence of title to the land or capacity to pay the contract price including any variations (see [Clause 5](#))
- fails to pay a progress payment or other amount due under the contract (see [Clause 14](#))
- becomes bankrupt, assigns assets for the benefit of creditors generally, makes a composition or other arrangement with creditors or, if the owner is a company, goes into liquidation or receivership or is otherwise without full capacity
- denies access to the site to the contractor, the contractor's employees or sub-contractors so as to prevent the work from proceeding (see [Clause 19](#))
- fails to perform any work or supply materials as specified in [Clause 16](#) which prevents the contractor from continuing with the work under the contract or otherwise obstructs the contractor from performing the work
- fails to rectify a cause of suspension under [Clause 24](#) within the time specified in [Clause 24](#), or
- without the consent of the contractor prior to completion of the work enters into occupation or otherwise obstructs the contractor from performing the work,

the contractor may, where such default can be remedied, notify the owner in writing that unless the default is remedied within 10 business days or such longer period as specified the contractor will terminate the contract.

Unless the owner complies with the contractor's request within the time allowed, or if the default cannot be remedied, the contractor may terminate the contract by giving written notice to this effect to the owner.

If the contractor terminates the contract under this clause, the contractor may remove from the site and retain all unfixated materials, fittings and equipment supplied by the contractor and will be entitled to recover all losses and expenses arising from the termination of the contract or to offset such amounts from any amount due to the owner.

**Other than due to the fault of the owner**

The contractor may terminate the contract by notice in writing to the owner if all necessary approvals for the work have not been obtained within 60 business days of the date of the contract, unless failure to obtain those approvals is due to the act, omission or default of the contractor (see [Clause 17](#)).

A notice required under this clause must be given in accordance with [Clause 28](#).

*For illustration purposes only*

**You Can Be Confident That You Are Getting  
the Right Legal Advice**

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.

## Clause 27 Disputes

What it is	:	Sets out the procedure that parties need to undergo in case there is dispute
Purpose	:	To save parties' time, energy, and financial resources
Risk minimised	:	Time, Cost, Quality

**Note:** If you have a dispute you should first discuss the matter with the other party. Serious disputes can often be avoided by good communication between owner and contractor. It is suggested that in the event of a dispute the parties meet as soon as possible and by discussion endeavour to resolve the matter. Make sure you understand your obligations under the contract. If necessary, obtain independent advice. The dispute resolution procedure is aimed at reducing the need for possible costly litigation. Fair Trading can investigate a complaint from an owner and may issue an order requiring a contractor to rectify or complete work or to rectify any damage. For further details refer to Part 3A Division 2 Home Building Act 1989.

### Clause 27 Disputes

If the owner or contractor considers that a dispute has arisen in relation to any matter covered by this contract, either during the progress of the work, after completion of the work or after the contract has been terminated, that person must promptly give to the other party written notice of the items of dispute.

If the dispute is not resolved informally following such notification, the parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the work.

If the parties do not agree to confer with a third party to assist in the resolution of the dispute, or if the dispute is not resolved following the assistance of such a third party, the owner may notify Fair Trading that a building dispute exists and seek the assistance of Fair Trading to resolve the dispute.

**Even if a dispute has arisen the parties must, unless acting in accordance with an express provision of this contract, continue to perform their obligations under the contract so that the work is completed satisfactorily within the agreed time.**

*For illustration purposes only*

## How We Can Help

Of course, these are only some of the important clauses in the 2018 Office of Fair Trading Home Building Contract for Work Over \$20,000. You would benefit greatly if you subject your contract to a more thorough Contract Review by a specialist construction lawyer, who will go through each clause one by one, and show you how you can negotiate the contract further, to make sure you don't run into snags later on.

You Can Be Confident That You Are Getting  
the Right Legal Advice

Contracts Specialist is a Sydney-based construction law firm that deals with Building Disputes, Construction Contracts, Debt Recovery, and Security of Payment. With Contracts Specialist, you are ensured that you are in good hands.