

Construction Management Contract in NSW

As a homeowner in New South Wales, understanding the basics of a Construction Management Contract (CMC) is essential to ensuring a successful construction project. This article will provide insights into the benefits, risks, and working of CMCs and the key differences between CMCs and traditional building contracts. By the end of this article, you will clearly understand what a CMC is, how it works, and the factors you should consider before engaging in one.

What is a Construction Management Contract?

A Construction Management Contract (CMC) is an alternative to a traditional building contract with a builder. The CMC involves the owner engaging a construction manager to manage and supervise the construction work.

The parties involved in a CMC are the owner, the construction manager, and, in certain cases, a client's representative (CR). The CR may be in charge of making decisions about the construction manager's requests for more time, giving the construction manager instructions, and going to the site to check on progress before the construction manager submits each progress claim.

There are two options for engaging subcontractors in a CMC. The first option involves the subcontractors entering into individual trade contracts with the principal to carry out the required work. Alternatively, the subcontractors may enter into individual trade contracts with the construction manager.

Each trade contract with the subcontractors will contain provisions relating to defect liability periods and warranties for work performed. The CMC may also contain a provision expressly stating that the construction manager will not be liable to the owner for any acts or omissions by the subcontractors. However, the construction manager can still be liable to the owner for any breach of the CMC or for failing to properly manage and arrange the carrying out of the works by the subcontractors.

AS 4916 Construction Management Contract

The most common form of construction management contract in Australia is AS 4916. Principals who opt to use AS 4916 will often seek to make amendments to ensure the construction manager's interests are aligned as closely as possible with the principal's.

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the right legal advice.

A CMC can be an effective way to manage a construction project, but it is important to weigh the advantages and disadvantages carefully. AS 4916 is a widely used standard for CMCs, and principals should consider seeking legal advice to ensure the contract is drafted to suit their needs.

How Does a Construction Management Contract Work?

A construction management contract involves engaging a construction manager to manage and supervise the project on behalf of the owner. Here's a closer look at how the contract works:

The construction manager is responsible for managing and supervising the construction of the project. They work closely with the owner and the client's representative to ensure the project is completed on time, within budget, and to the required quality standards.

A construction management contract is a form of 'cost plus' engagement. This means that the owner pays the actual cost of the project, plus a fee to the construction manager. This is in contrast to a lump sum contract, where the owner pays a fixed price for the entire project.

What are the Advantages and Disadvantages of a Construction Management Contract?

Construction management contracts (CMCs) can offer several benefits, such as fast-tracking projects, complete control and visibility over trade contractors, and lower exposure in the event of a solvency event. However, there are also disadvantages, such as a lack of natural incentive to manage the cost, a lack of a competitive tender process, and the potential for the final cost to remain unknown until late in the project.

Advantages of a CMC

1. Well-suited for fast-track projects. The construction manager can be engaged before the design has been finalised, allowing for a more flexible timeline.
2. Complete visibility over amounts payable to trade contractors. The principal has complete control and visibility over trade contractors, which allows for better cost control.
3. Retention of control by the principal. The principal retains control at all times and benefits from the expertise of a construction manager whose interests align with its own.
4. Lower exposure in the event of a solvency event. The principal is less exposed in the event of a solvency event affecting the construction manager (in comparison with a lump sum head contractor).

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Disadvantages of a CMC

1. Less incentive to tightly manage costs. The construction manager has less of a natural incentive to tightly manage the cost of the works than under a lump sum arrangement.
2. Lack of competitive tender process. The principal does not have the benefit of a competitive tender process at the head contractor level and is therefore more reliant on the construction manager.
3. Late project cost disclosure: The final overall cost may not be known to the principal until relatively late in the project.

Principals will sometimes seek to introduce financial incentives into a construction management contract to try to bridge the gap.

What are the Main Differences Between a Construction Management Contract and a Lump Sum Contract?

When it comes to construction contracts, two of the most common types are lump sum and construction management. These two types of contracts differ significantly, especially when it comes to the allocation of risk and cost management.

Liability for acts and omissions of trade contractors

Under a lump sum contract, the head contractor is responsible for the acts and omissions of the trade contractors. In contrast, the construction manager under a construction management contract is usually not accountable to the principal for the acts and omissions of the trade contractors, as their role is limited to managing and supervising trade contractors.

Cost management incentives

In a lump sum contract, the head contractor has a strong financial incentive to manage the cost of the works, as their profit on the project will depend on the final amount they are required to pay to the trade contractors. On the other hand, a construction manager has less of a natural incentive to tightly manage the cost of the works since they are engaged on a "cost plus" basis. This difference can impact the final cost of the project.

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Final overall cost disclosure

In a lump-sum contract, the final overall cost is usually known to the principal upfront. In contrast, in a construction management contract, the final overall cost may not be known to the principal until relatively late in the project. This can lead to uncertainty about the final cost and make budgeting and planning more difficult.

Understanding the differences between the two types of contracts is crucial for a property owner who is deciding on the best contract for their construction project.

How an Expert Construction Lawyer Can Help

When considering a Construction Management Contract (CMC), seeking expert legal advice can help ensure the success of your project. A construction lawyer can provide valuable guidance throughout the CMC process, including contract negotiation and review, risk analysis, dispute resolution, and more. With their knowledge and experience in the field, a construction lawyer can help you navigate potential legal pitfalls and ensure that your project stays on track.

If you're considering a CMC for your project, don't hesitate to seek the advice of an expert construction lawyer to protect your interests and ensure a successful outcome.

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