

# **CONTRACT DOCUMENTS**

A verbal contract isn't worth the paper it's written on.

- Samuel Goldwyn



# CONTRACT DOCUMENTS



construction contract basically consists of four documents:

1. **DRAWINGS**
2. **SPECIFICATIONS**
3. **AGREEMENT**
4. **CONDITIONS**

**DRAWINGS** are a graphic representation of the work to be performed consisting of a site, foundation, floor, roof, elevation, and cross section plans. They show the location, character, dimensions, and details of the work.

**SPECIFICATIONS** are a written description of the work to be performed consisting of product identification, types of finishes, and standards for performance. They explain the work to be performed in terms that are not easily displayed in graphic form.

**AGREEMENT** identifies the parties to the agreement, the date, payment schedule for the work, the basic commitment of the Trade Contractor to construct the described project in accordance with the Drawings and Specifications, the schedule on which the work is to be performed, and the signatures of the parties. Usually, this form is quite brief, but it incorporates by reference the other parts of the contract.

**CONDITIONS** clarify in detail the rights and obligations of the Owner, Trade Contractors, and those activities which will be shared by mutual agreement. These clauses deal with various subjects such as Owner, Construction Manager, Architect, disputes, change orders, schedule, liability insurance, safety, inspections, corrections, arbitration, termination, jurisdiction.

All parties will want to be familiar with all the **WRITTEN REQUIREMENTS** of an enforceable contract, including the following:

- \* Parties to the Agreement
- \* Construction Manager's responsibilities
- \* Owner's responsibilities
- \* Architect's responsibilities
- \* General Contractor's responsibilities
- \* Work to be accomplished by each of the above
- \* Drawings
- \* Specifications
- \* Budget and Allowances
- \* Payment Schedule
- \* Lien Release
- \* Reimbursable Costs
- \* Liability Insurance
- \* Bond Coverage
- \* Liquidated damages
- \* Schedule
- \* Delivery times
- \* Delays
- \* Changed Conditions
- \* Contract interpretation
- \* Bidding mistakes
- \* Change orders
- \* Trade Contractor's responsibilities
- \* Supplier's responsibilities
- \* Submittals
- \* Disputes
- \* Arbitration and Termination
- \* Safety
- \* Owner's inspections
- \* Warranties
- \* Acceptance of work

Becoming familiar with each of these issues begins with an informal meeting of all parties either together or separately to discuss the expectations of each participant. This meeting will open lines of

communication on these issues and inform all participants of what is expected of them during the course of construction. **No firm agreements should be made during information gathering meetings;** this is a time for becoming acquainted with the various issues which contribute to the overall project success. Agree to meet again to discuss the "*Conditions*" of your "*Agreement*."

**Owner's interest may best be served** by meeting separately with the principal players: Construction Manager, Architect, and Trade Contractors and Suppliers. Arranging a meeting with everyone may prove impossible given busy schedules, the difficulty of locating a room which adequately provides for the number of people the Owner may want to attend, and the variety of issues related to each participant.

One scenario which has proven effective is for the Owner and Construction Manager to initially meet and develop **an overall strategy geared specifically for the Owner's situation.** As the Owner proceeds through the Design/Build process, there is continuity in the contract documents. Drawings and Specifications are developed and end-means relationships are made clear.

At each meeting with Trade Contractors and Suppliers, there should be a prepared agenda so the discussion is organized and comments made at the appropriate time. Begin on time and take notes. Define terms, establish procedures, and stick to the agenda. Solicit opinions from all parties requiring everyone at the meeting to present their opinions and positions **at this time.** At the meeting's conclusion summarize decisions made and identify concerns that are still open for discussion. As soon as possible, type these conditions on one side of standard 8 1/2" by 11" paper (if possible use a word processor for ease of correction) and circulate the document among all participants.

**Remember:** Each profession/business produces standard form contracts which favor their particular interests. For instance, most Trade Contractors have a boilerplate contract to divert Owners from bringing their own, and then customize any special conditions for a particular client. Similarly, Architects usually subscribe to the contracts generated by the American Institute of Architects. There may also be a suggestion to take what's been generated at your meeting and attach it to a standard contract labeled "*Addendum*," "*Rider*," "*Contingency*," "*Option*." **Consider this arrangement carefully.**

After the "rough draft" contract documents have been reviewed by all parties ask for comments, suggestions, deletions, or problems to be identified and arrange a final meeting to formalize the Agreement. Keep an open mind to alternatives and solutions. Discussing problems **without proposing viable solutions** wastes time and may cause dissention needlessly. If possible, complete the "Conditions" of your "Agreement" in its entirety and create a clean copy to be circulated among all parties for review. At any point in this process, all participants may **take the document to a Lawyer familiar with construction contract law for review.**

Contract documents will be unique to each Owner's requirements and lifestyle. This is why standardized forms should be avoided but this doesn't mean something cannot be gained from examining documents from the American Institute of Architects and the Associated General Contractors (See Cushman's Construction Management Form Book in the "Recommended Reading" section). A useful approach is to take standard contracts. . . . **cut them up** into the various clauses. . . . **group clauses together** so you can **compare and contrast** similar issues. . . . adapt standard contracts to your situation by addition or deletion. . . . **arrange the clauses** to form "Agreement" and "Conditions" statements which fit your situation. Be sure this activity is completed **PRIOR TO** any meetings with Architects, Trade Contractors, or Suppliers in order to become familiar with the many issues which need to be considered.

Keep in mind that whoever writes the contract often controls the terms of agreement so the point is for all parties to participate in contract formation so that all parties are fairly represented. A good beginning point is to consider **HOW** the contract is written. Standard forms are to be avoided. Convince all parties that documents will be written in plain, easily understood English. This means eliminating legally correct but professional language which belongs in the domain of lawyers.

Here are some examples of common legal phrases and their plain English substitutes:

- \* **This agreement is made and entered into this \_\_\_ day of \_\_\_\_\_,**  
by and between "This agreement is made (date) between"
- \* **Sometime before** "Before"
- \* **Exhibit A attached hereto** "Exhibit A" On behalf of "For"

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- \* **Forebearance** "Delay or Refrain"
- \* **In the event that** "If"
- \* **Of even date herewith** "Today"
- \* **The law of the State of** \_\_\_\_\_ "(Your State) law"
- \* **Heretofore** "Before now"
- \* **Hereunder** "Below"
- \* **Previty** "Relationship"
- \* **Aforementioned** omit most of the time
- \* **Herein** omit most of the time
- \* **Said** "The"
- \* **Such** "The"
- \* **Performance** "Fulfill"
- \* **Cease and desist** "Stop"
- \* **Clear and unambiguous** "Clear"
- \* **Covenant and agree** "Agree"
- \* **Made and entered into** "Made"
- \* **Full force and effect** "Effect"
- \* **Above and foregoing** "Above"
- \* **Consent and approval** "Consent"

Written Contract Documents should be required for all construction jobs. Of course, the cost and scope of the project will determine the complexity of the contract so be prepared for creating documents which are proportionate to the size of your project.

**Remember:** Too much detail in a contract may lead to poor feelings between Owner and Trade Contractors. If you're "*comfortable*" with a person's reputation sometimes a handshake will suffice! A contract whether verbal or written expresses the clarity of communication between the Trade Contractor and Owner; it's an opportunity to describe what is to be accomplished, how long it will take, determine the costs, and state under what conditions the work will occur.

The "*Sample Agreement and Conditions Document*" which follows is provided as an example of how terms may appear using plain, easily understood English, and how a variety of issues might be systematically organized. This document describes the relationship possible between an Owner and General Contractor. ***Owners should carefully review their situation, and tailor Contract Documents to fit their project when acting as the General Contractor. You may wish to consult a Lawyer familiar with construction contract law.***

**SAMPLE AGREEMENT AND CONDITIONS DOCUMENT**

The Construction Work of this contract is between \_\_\_\_\_, \_\_\_\_\_, (the Contractor), License No. \_\_\_\_\_, \_\_\_\_\_ (address), and \_\_\_\_\_, (the Owner), \_\_\_\_\_ (address), for completion of a residential project.

**1. Description of Work and Contract Price**

**1.1** Contractor agrees to furnish all labor, materials, supplies, equipment, services, machinery, tools, and other facilities required for the prompt and efficient completion of work described: to construct, according to the Drawings and Specifications, a house located at \_\_\_\_\_ (address). Drawings and Specifications were prepared by \_\_\_\_\_ (Construction Manager, Architect, Designer, Plan Service). Contractor will provide additional as-built sketches and depictions that describe work performed.

**1.2** The Work will be done in strict accordance with applicable codes and ordinances and to the full satisfaction and acceptance of the Owner for the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) to be paid in accordance with the Payment Schedule provisions of the lender’s construction loan documents **(or state other terms)**.

**2. Owner’s Responsibilities**

**2.1** The Owner will fully develop Drawings and Specifications with Construction Manager or Architect prior to issuance of permit in a manner which allows Contractor ninety (90) days to complete bidding process. The Owner will provide full information regarding requirements for Work including all covenants and restrictions which apply to site. Code alterations or changes made by inspecting agency during approval process will be considered Changes according to Paragraph 5.

**2.2** The Owner will furnish the Contractor with a legal survey and description of the project site, and obtain and pay for the necessary permits, approvals, easements, and variances required for Work.



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**2.3** The Owner will furnish all necessary documents for water service, electrical service, natural gas or propane, sewer or septic, telephone, and television cable, and obtain and pay for installation of utility services to project site when required by Permit Application and Work Schedule.

**2.4** The Owner will be fully acquainted with the Work and has budget authority to authorize payment to Contractor in accordance with the Payment Schedule provisions of the lender's construction loan documents, to make Changes in the Work by mutual agreement with the Contractor, to render decisions promptly consistent with Work Schedule and furnish information expeditiously.

**2.5** The Owner will communicate with Trade Contractors and Suppliers through the Contractor.

### **3. Contractor's Responsibilities**

**3.1** The Contractor will carefully study all Drawings and Specifications and will at once report to the Owner any error, inconsistency or omission the Contractor may discover. The Contractor will do no Work without Drawings, Specifications, or Change Order with Owner's written approval.

**3.2** The Contractor will supervise and direct the Work using the most professional skill and attention, and be solely responsible for all construction methods, techniques, sequences, and procedures for completing all Work. The Contractor will coordinate Trade Contractors and Suppliers to be in harmony with one another, and conform to Project Schedule.

**3.3** The Contractor will provide and pay for all labor, materials, equipment, tools, equipment, machinery, transportation, facilities, and services necessary for the proper execution and completion of the Work, except as provided in Paragraph 9.

**3.4** All materials and products furnished for the Work will be new and free from faults, defects, and conform with the Drawings and Specifications. In the event there are any discrepancies from the Drawings and Specifications, the Contractor will arrange for the correction of such discrepancies and will notify the Owner on completion of the work

performed to eliminate any such discrepancies. All Work not so conforming to these standards will be considered defective. If required by the Owner, the Contractor will furnish satisfactory evidence to the kind and quality of materials and products. The Contractor will make no deviation from the Drawings and Specifications unless requested by the Owner to do so. The Contractor will cause any Work to conform strictly to the Drawings and Specifications unless the Contractor receives written authorization from the Owner describing in detail what Changes are to be made. Minor deviations may be made by the Contractor from the Drawings and Specifications as are normal in standard practices of the construction industry and the practical application of materials.

**3.5** The Contractor will pay all sales, business, consumer, use, and other similar taxes required by law.

**3.6** The Contractor will provide all notices to comply with all laws, ordinances, rules, regulations, and orders of any public authority bearing on the performance of the Work. The Contractor will also comply with any conditions, covenants, and restrictions which may be applicable to the Project.

**3.7** The Contractor will employ a competent Superintendent to supply necessary assistance, and be in attendance at the Project site during the progress of the Work to insure correct performance of the Work. The Superintendent will be satisfactory to the Owner and not be changed except with Owner's consent, unless the Superintendent proves to be unsatisfactory to the Contractor and is in his employ. The Owner will at all times deal with the Contractor's employees, Trade Contractors, and Suppliers through the Superintendent. The Superintendent will represent the Contractor and all communication given to the Superintendent will be binding as if given to the Contractor. All significant communications will be confirmed in writing. The Contractor will be responsible to and answer directly to the Owner for the acts or omissions of the Contractor and of all of the Contractor's employees, Trade Contractors, and Suppliers, as well as the wages of all employees and all other persons directly or indirectly employed or retained by the Contractor in connection with the Work.

**3.8** The Contractor will correct any defects in workmanship and/or materials performed or supplied by the Contractor for the Work or which fails to comply with the Drawings and Specifications, whether observed on

or after completion and whether or not fabricated, installed, or completed within the time allotted to the Owner by the lender, i.e., six (6) months **(or 8, 10, 12)** from date of start. The Contractor will bear all costs and financial responsibility for the failure to complete and have approved the construction within the six (6) month period **(or 8, 10, 12)**.

**3.9** The Contractor agrees to clean Project site and remove debris from the premises after each phase of construction. Each Trade Contractor and Supplier will be responsible for disposal of respective waste material at completion of their portion of the Work, and recycle or reuse material when feasible. The Project site must remain in a clean manner, acceptable to the Owner and consistent with the "Building Green" philosophy.

#### **4. Payment Schedule**

**4.1** The Contract price will be paid to the Contractor in accordance with the required payment schedule and incorporated by this reference are the lender's disbursement requirements to which the Contractor and Owner agree to submit **(or state other terms)**.

**4.2** With regard to a final inspection and Certificate of Occupancy from the County of \_\_\_\_\_, the Contractor agrees to indemnify and hold harmless the Owner against any and all mechanics' or materialmen's liens attaching to the property. If any liens attaching to the property have been recorded, then the Owner may use any or all of the amount of the final payment to remove such liens. Nothing in this subparagraph will limit the Contractor's liability in Paragraph 13 of this Contract.

**4.3** The Contractor agrees to complete Work in a lien-free condition for the Owner. Any payment made prior to total completion of the Work will not be construed as evidence of acceptance of any part of the Work nor a waiver of any claim by the Owner arising out of faulty workmanship or materials or for failure of the Contractor to comply strictly with the Drawings and Specifications.

**4.4** The Owner may withhold 10% of contract price or any payment which may be necessary in the Owner's reasonable discretion to protect the Owner from loss because of:

**4.4.1** Defective Work not remedied;

**4.4.2** Third-party claims filed, or reasonable evidence indicating a probable filing of such claims;

**4.4.3** Failure of the Contractor to make payments promptly to Trade Contractors, Suppliers, or for labor, materials, or equipment;

**4.4.4** Reasonable doubt that the Work can be completed for the unpaid balance of the contracted sum;

**4.4.5** Reasonable indication that the Work will not be completed within the contracted time;

**4.4.6** Unsatisfactory execution of the Work by the Contractor.

**4.5** Final payment by the Owner will not constitute a waiver or any claims by the Owner including claims for unsettled liens, faulty or defective work, failure of the Work to comply with the requirements of the Drawings and Specifications, any guarantee or warranty required by the Work.

## **5. Change Orders**

**5.1** The Owner reserves the right to perform portions of the Work on the Project by prior agreement with the Contractor. The Owner will be credited an amount equal to the sum allowed in the payment schedule for the portion of Work performed by the Owner.

**5.2** The Owner may order changes, modifications, additions, and/or deletions to the Work. Any such changes will not invalidate the Contract. The time for the Project completion and the Project cost will be adjusted by mutual agreement of Contractor and Owner.

**5.3** Changes to the Work will only be made by written order signed by the Owner and Contractor.

## **6. Arbitration and Termination**

### **6.1 Arbitration**

**6.1.1** Disputes between Owner and Contractor will be settled by mutual

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agreement. If a dispute cannot be settled within ten (10) days, the matter will proceed to binding arbitration according to procedures of the American Arbitration Association after notice and demand.

**6.1.2** If the Owner fails to begin or complete portion of Work on the Project which by prior agreement would be Owner's responsibility, the Contractor may, after five (5) days written notice, begin or complete that portion of the Work. The Contractor will be credited an amount equal to the sum allowed in the payment schedule for the portion of Work to be performed by the Owner.

**6.1.3** If the Project is stopped for a period of ten (10) days through no act or fault of the Contractor, then the Contractor may, after five (5) days written notice, receive payment from the Owner for all work performed, and proceed to binding arbitration after notice and demand.

**6.1.4** If the Contractor fails to correct defective work or persistently fails to supply materials or labor or equipment sufficient to perform Work, the Owner may, after five (5) days written notice, order the Contractor to stop Work until the cause for such order has been eliminated.

## 6.2 Termination

**6.2.1** If the Owner fails to make payment under the terms of this Contract, through no fault of the Contractor, the Contractor may, after ten (10) days written notice, terminate the Contract. The Owner will pay for work completed and any proven loss with respect to materials, labor, or equipment, and reasonable profit applicable to the Work.

**6.2.2** If the Contractor fails to carry out the Work in accordance to the Agreement and Conditions Statement, and Drawings and Specifications, the Owner may, after ten (10) days written notice, terminate the Contract, and finish the Work by whatever method the Owner determines. If the cost of completing the Work exceeds the balance due under the terms of the Contract, the difference is to be paid to the Owner by the Contractor.

**6.2.3** Any Arbitration or Termination matters described in the Contract will be submitted to the American Arbitration Association according to its rules.

## **7. Project Schedule**

**7.1** Work commences when Building Permit is issued, weather conditions are favorable to excavate, and Contractor's schedule allows.

**7.2** The Contractor will continue the Work in a timely fashion, and maintain progress diligently to completion with sufficient labor and material on site at all times.

**7.3** If at any time the Contractor is delayed in performing the Work by Owner requested changes or additions, the Project Schedule will be extended by the same amount of time as caused by the additional Work.

**7.4** The Contractor will be excused from performance of Work due to riots, strikes, natural disasters, accidents, and any Act of God. In the event that any such event prevents the Contractor from performing Work, the Owner will not have the right to terminate the Contract.

**7.5** The Date of Substantial Completion or Designated Portion of Project is the date when construction is sufficiently complete in accordance with the Drawings and Specifications so the Owner can occupy or utilize the Project for the use it is intended.

## **8. Indemnification**

**8.1** The Contractor will indemnify and hold harmless the Owner and the Owner's agents and employees from all claims, damages, losses and expenses, including lawyer's fees, relating to the performance of the Work, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death or injury of any person or to damage to property, including loss of use, caused by a negligent act of the Contractor, a Trade Contractor or Supplier, or anyone employed by them.

**8.2** In all claims against the Owner or any of the Owner's agents or employees, any employee of the Contractor, any Trade Contractor or Suppliers, or anyone employed by them, or anyone for whose acts any of them may be liable, the indemnification obligation will not be limited in any way by any limitation on the amount or type of damages, compensation or

benefits payable by or for the Contractor, any Trade Contractor or Supplier under Worker's Compensation Act, Disability Benefits Act, or any other employment benefit act.

**8.3** All damage or loss to any property in whole or in part by the Contractor, any Trade Contractor or Supplier, or anyone employed by any of them, or by anyone for whose acts any of them may be liable, will be remedied by the Contractor.

## **9. Insurance**

**9.1** The Contractor will procure and maintain, during the entire term of the Project, the following insurance policies:

**9.1.1** Worker's Compensation and Employer's liability insurance;

**9.1.2** General Liability, including products and completed operations;

**9.1.3** Automobile Liability Insurance.

**9.2** Both the General Liability and Automobile Liability coverage will have coverage with limits as required by State law for Bodily Injury and Property Damage, and are to be with an insurance company with a Best Rating of AA or better. The Worker's Compensation and Employer's Liability coverage will have minimum limits as set by law.

**9.3** Certificates of insurance acceptable to the Owner pertaining to the insurance required by Paragraph 9.1 will be filed with the Owner prior to commencement of the Work. These Certificates will contain a provision that coverage provided in the policy will not be cancelled until at least ten (10) day prior written notice to the Owner.

**9.4** The insured's loss is to be adjusted with the Owner and made payable to the Owner; provided that the Owner will pay to the Contractor that portion of insurance proceeds which is attributable to Work performed by the Contractor for which the Contractor has not received payment. The Contractor waives all rights against the Owner for damages caused by fire or other perils to the extent covered by insurance. The Contractor will require similar waivers by Trade Contractors and Suppliers.

**9.5** The Contractor agrees, at all times during the performance of the Work, to provide insurance for the full replacement cost of the house, for the perils of fire and extended coverage (not to include earthquake insurance), naming the Owner as the insured. The Contractor's insurance will only cover Work to be done by the Contractor, and will not cover any additional Work which the Owner may wish to perform on the Project. In the event the Owner will request the Contractor to extend Contractor's insurance to cover additional Work contracted independently by the Owner, the Owner agrees that the Owner will pay all additional premiums required for additional insurance to Contractor on demand.

**9.6** The Owner, at the Owner's option, may purchase and maintain other insurance as the Owner may deem appropriate.

## **10. Prevention of Liens**

**10.1** The Contractor agrees to pay, when due, all claims for labor and/or materials furnished for Work, and to prevent the filing of any liens by mechanics or materialmen, or attachments, garnishments or suits involving the title of the property on which the Work is performed. The Contractor agrees, within fifteen (15) days after written demand is mailed to the Contractor, at the address stated in this Contract by United States mail, to cause the effect of any such suit or lien to be removed from the premises. In the event the Contractor has a dispute with a Trade Contractor, Supplier, or person supplying labor or materials to the Project, the Contractor will bond the Owner against any loss from any such claim of liens and then have the right to prosecute the claim of lien to a completion at the Contractor's sole cost and expense. In the event the Contractor can cause lien to be removed from any policy of title insurance which the Owner may obtain covering the real property subject to this Contract, then the Contractor will have no obligation to bond against mechanic's lien and the Owner will accept title insurance policy as sufficient security to the Owner to permit the Contractor to litigate claim of lien, without the necessity of posting a bond.

## **11. Work Safety**

**11.1** The Contractor will be responsible for establishing, supervising, and maintaining all safety precautions and programs in connection with Work performed on the Project.



**11.2** The Contractor and Owner will comply with all federal, state, and local laws and regulations applicable to the Project.

**11.3** The Contractor will take all reasonable steps to prevent damages, injury, or loss to:

**11.3.1** All employees performing the Work and all other persons who may be affected;

**11.3.2** All of the Work and materials, equipment, or products to be used on the Project, whether in storage or on or off the site, and in the care, custody or control of the Contractor, or any Trade Contractor or Supplier;

**11.3.3** All property on the site or adjacent to the site including trees, shrubs, lawns, lots, pavements, roadways, utilities, and structures not designated for removal, relocation, or replacement.

## **12. Assignment and Subcontracting**

**12.1** The Contractor will not assign any portion of the Work to any person or other Contractor; however, the Contractor will have the right to subcontract portions of the Work to Trade Contractors of the Contractor's choosing without the necessity of obtaining permission, either written or oral, from the Owner.

**12.2** The Contractor will pay each Trade Contractor, on receipt of payment from the Owner, amounts he may determine appropriate, but consistent with lender's requirements or of this Contract.

## **13. Guarantees**

**13.1** The Contractor guarantees the Owner, and the Owner's successors in interest, against any loss or damage arising from any defect in materials furnished or workmanship performed under this Contract for a period of one (1) year from the date of Certificate of Occupancy issued by the County of \_\_\_\_\_.

**13.2** Nothing in this Contract will derogate the Contractor's liability for patent or latent defects under applicable law.

This agreement is made \_\_\_\_\_(date).

\_\_\_\_\_  
Signature of Owner

\_\_\_\_\_  
Signature of Contractor

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

***Don't use this document "as-is."*** Take the time to adapt similar ideas to your project. If you decide to act as the General Contractor, you'll need to create individual Agreement and Condition documents for each Trade Contractor. Also, a Purchase Order system will be required to coordinate Supplier activities.

By assuming the responsibilities of a General Contractor, the Owner becomes involved with a myriad of contractual details but this is the only way to gain personal control on a daily basis. **Otherwise, one must be willing to relinquish control and trust a General Contractor to build your home as if it were his/her own.** If this is the case, a single Agreement and Condition document with your General Contractor will suffice. The General Contractor will then be responsible for creation of individual Agreement and Condition documents for each Trade Contractor and a Purchase Order system to coordinate Suppliers.