

# DSB TILING

Legislation obliges a contractor to give a copy of the Consumer building guide to consumers before entering into a home building contract.

*Home Building  
Contract for work  
over \$1000 up to  
\$5000*

# DSB Tiling

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*This publication can be viewed or printed from our website  
at [www.dsbtiling.com.au/contracts.php](http://www.dsbtiling.com.au/contracts.php).*

*This contract is recommended for trade work (such as carpentry/painting/ tiling),  
minor additions and renovations, repairs, maintenance and improvements to residential  
properties up to a value of \$5,000.*

*For home building work such as a new home or major renovations, valued at over  
\$5,000, you should use the Home Building Contract for work over \$5,000.*

*This contract complies with the requirements of the Home Building Act 1989.*

### **Disclaimer**

*This publication is a plain language guide to your rights and responsibilities.  
It must not be relied on as legal advice. For more information please refer  
to the appropriate legislation or seek independent legal advice.*

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Revised January 2012



# Contract: Owner's copy

## Contract conditions

### Owner

#### 1. Plans and specifications

1. All plans and specifications for work to be done under this contract, including any variations to those plans and specifications, are taken to form part of this contract.
2. Any agreement to vary this contract, or to vary the plans and specifications for work to be done under this contract, must be in writing signed by or on behalf of each party to this contract.

#### 2. Quality of construction

All work done under this contract will comply with:

1. (a) the Building Code of Australia to the extent required under the *Environmental Planning and Assessment Act 1979* (including any instrument made under that Act)  
(b) all other relevant codes, standards and specifications that the work is required to comply with under any law  
(c) the conditions of any relevant development consent or complying development certificate and any construction certificate.
2. This contract may limit the liability of the contractor for a failure to comply with (1) if the failure relates solely to:
  - (a) a design or specification prepared by or on behalf of the owner (but not by or on behalf of the contractor), or
  - (b) a design or specification required by the owner, if the contractor has advised the owner in writing that the design or specification contravenes (1).

#### 3. Payment by owner

The owner must pay the Contract Price in the manner shown in the Payment Schedule. The Contract Price includes all matters (including GST) that could be reasonably expected to be necessary for the completion of the work. The work will be complete when it is finished in accordance with this contract, free of apparent defects and all rubbish and surplus material removed from the site. The owner must pay the amount due on satisfactory completion of the work, or each stage of the work if applicable, within 5 business days of receipt of written notice from the contractor.

#### 4. Statutory approval

If the approval of the local council or other statutory authority is required to carry out the work and that approval has not been sought at the date of this contract, the contractor must apply for and pay all fees for such approval. If any approval required is not obtained within 60 business days from the date of this contract either party may terminate the contract by notice in writing. If the contract is terminated in accordance with this clause the contractor is entitled to be paid all reasonable costs associated with applying for approval.

#### 5. Time for completion

The contractor must complete the work within the Completion Period which runs from the date of this contract or, if any approval for the work is to be obtained, from the date of written notification of that approval whichever is later. The contractor will be entitled to a reasonable extension of time in the event of delays to the work where the cause of the delay is beyond the contractor's control including but not limited to, inclement weather, industrial disputes or variations to the work. The contractor must take all reasonable steps to minimise any delay to the work. Any claim for an extension of time must be notified in writing to the owner within 10 business days.

#### 6. Variations to work

The work including materials may be varied by written agreement between the owner and the contractor. A notice describing the variation, the cost of the additional or omitted work and any change to the Completion Period must be provided to the owner, and the notice must then be signed and dated by both parties to constitute acceptance. The price of extra work, which includes GST, will be added to the Contract Price. The cost of omitted work will be deducted from the Contract Price.

#### 7. Prime cost items and provisional allowances

The Contract Price includes the items described in the Prime Cost Items Schedule and the Provisional Allowance Schedule (to be attached) for which a definite price is not known. The installation of prime cost items and connection to services, unless otherwise specified, is included in the Contract Price. If the actual cost of the prime cost item or provisional allowance item is less than the amount allowed, the Contract Price shall be reduced by the difference. The contractor's

### Description of work/materials

- (b) employer's liability and workers' compensation insurance to cover any employees (if requested the contractor must provide the owner with proof that all such insurances have been taken out and are current),
- (c) property damage insurance for the work (including work in progress and materials) for the full reinstatement and replacement cost, and
- (d) home warranty insurance to cover defective and incomplete work (a certificate of home warranty margin to cover overheads, supervision and profit for those items shall be \_\_\_\_\_% (if not completed 10% is deemed inserted). This amount will be added to the Contract Price.

### Acceptance of contract

Owner's  
signature

Contractor's  
signature

Date

insurance must be provided before work starts or before any payment is made under the contract).

## 9. Contractor's indemnity in favour of owner

The contractor will indemnify the owner against any loss or liability for death, personal injury or property damage arising out of the work under this contract, except to the extent that the owner or, owner's representative contributed to the loss or liability.

## 10. Damage to property

The contractor must make good any loss or damage to the work or property of the owner caused by the contractor or the contractor's employees, agents or subcontractors. The owner must remove any furniture or personal goods from the vicinity of the work to minimise the risk of damage.

## 11. Access for contractors

The owner must provide access for the contractor and any employee or subcontractor of the contractor to carry out the work as required during work hours allowed by relevant statutory authorities. The owner must remove any personal property likely to impede the work.

## 12. Cleaning up

On completion of the work, the contractor must remove from the site all plant and equipment and dispose of all rubbish, excavated material, vegetation, demolished or dismantled structures and surplus material relating to the work. All demolished, dismantled and surplus material will be the property of the contractor unless otherwise specified in the description of work.

## 13. Defects

The contractor must make good any omissions or defects in the work or materials which become apparent within the period of 13 weeks from the date the work is completed. The owner must notify the contractor in writing of any work or materials to be rectified or replaced no later than 10 working days after the expiry

## 8. Insurance of work and personal injury

Before the contractor commences any work under this contract or is given access to the site, the contractor must have current insurance cover for:

- (a) public liability insurance to cover liabilities to third parties for death or personal injury or damage to property for an amount not less than \$5 million,

of the 13 week period. The contractor must promptly make good the work or materials at the contractor's own expense.

## 14. Disputes

If the owner or contractor considers a dispute has arisen in relation to any matter covered by this contract, that party must promptly give the other party written notice of the items of dispute. The parties may confer with a mutually agreed third party to assist to resolve the dispute by mediation. If the dispute cannot be resolved the owner may notify Fair Trading that a building dispute exists and seek Fair Trading's assistance to resolve the dispute. If the contractor has provided you with home warranty insurance, the home warranty insurer should be notified of any dispute which may be a prospective claim on the insurer.

## 15. Terminating contract

If the contractor becomes bankrupt or goes into liquidation, administration or is otherwise without full capacity; fails to complete the work within the completion period, or if no completion period is agreed, within a reasonable time; fails to remedy defective work or replace faulty or unsuitable materials then the owner may, where such default can be remedied, issue a written notice requiring the contractor to remedy the default within 10 business days of receipt of the notice by the contractor or within such other reasonable period as may be agreed. If the default is not remedied within the 10 business days or other reasonable period as agreed, or is not capable of being remedied, the owner may terminate the contract by written notice to the contractor.

If the owner fails to make payment due under the contract or denies access to the site to the contractor to prevent the work from proceeding, the contractor may issue a written notice requiring the owner to remedy the default within 10 business days of receipt of the notice by the owner. If the default is not remedied, the contractor may terminate the contract by written notice to the owner.

## 16. Giving of notices

Any written notice required to be given under the contract or under the cooling off provisions under the Home Building Act 1989 may be served by:

- (a) giving it to the party personally,
- (b) leaving it at the party's address shown in the contract, or
- (c) sending it by registered post to the party's address shown in the contract.

# Contract: Contractor's copy

## Owner

Name(s)

Address

Home phone

Work phone

Fax

Email

## Contractor

Name (as shown on Contractor licence)

Address (as shown on Contractor licence)

Home phone

Work phone

Fax

Email

Australian Company Number (if applicable)

Licence number

Expiry date

Category of work shown on licence

## Address where work is to be done (site)

## Completion period

The completion period for the work will be

## Description of work/materials

*Any plans or specifications that are part of the contract should be signed by both parties, dated and attached.*


## Contract price

Contract price (including GST)

\$

**Note:** You should keep a copy of the statutory warranties outlined on the last page of this contract. These warranties apply to this contract under the Home Building Act.

**Warning:** The contract price may vary in accordance with contract conditions. The reasons for possible increases include variations, prime cost items and provisional allowances.

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## Description of work/materials

- (a) giving it to the party personally,
- (b) leaving it at the party's address shown in the contract, or
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## Acceptance of contract

Owner's  
signature

Contractor's  
signature

Date



## Statutory warranties

**Explanation:** Under the Home Building Act 1989, the contractor is required to give the warranties set out in this part. Each of the warranties forms part of the contract.

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 time agreed, or if not agreed, a time that is reasonable.

Paragraph (f) 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 use appropriate expertise to provide the stated and expected results.

Any legal action for a breach of statutory warranties must be taken before the end of the warranty period for the breach ie 6 years for a breach resulting in a structural defect (as defined in the regulations) or 2 years in any other case.

The warranty period starts on completion of the relevant work to which it relates (but this does not prevent proceedings from being commenced before completion of the work). However, if the work is not completed, the warranty period starts on:

- (i) the date the contract is terminated, or
- (ii) if the contract is not terminated – the date on which work under the contract ceased, or
- (iii) if the contract is not terminated and work under the contract was not commenced – the date of the contract.

If the breach of warranty becomes apparent within the last 6 months of the warranty period, proceedings may be commenced within a further 6 months after the end of the warranty period.

The contractor warrants that:

- (a) the work will be performed in a proper and workmanlike manner and in accordance with the plans and specifications set out in the contract
- (b) all materials supplied by the contractor will be good and suitable for the purpose for which they are used and, unless otherwise stated in the contract, those materials will be new
- (c) the work will be done in accordance with, and will comply with, the Home Building Act or any other law
- (d) the work will be done with due diligence and within the time stipulated in the contract, or if no time is stipulated, within a reasonable time
- (e) if the work consists of the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the work will result, to the extent of the work conducted, in a dwelling that is reasonably fit for occupation as a dwelling
- (f) the work and any materials used in doing the work will be reasonably fit for the specified purpose or result, if the owner expressly makes known to the contractor or another person with express or apparent authority to enter into or vary contractual arrangements on behalf of the contractor, the particular purpose for which the work is required or the result that the owner desires the work to achieve, so as to show that the owner relies on the contractor's skill and judgment.

These warranties form part of the contract. No provision of this contract can restrict or remove these warranties.

**Note:** No terms, conditions or provisions in this contract can restrict or remove the statutory warranties applying to this contract under the Home Building Act.