

Why a good contract is so important



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LEGAL MATTERS

Good contracts are critical for avoiding disputes and debts.

It is mandatory to have written terms of trade for building projects worth more than \$50,000, but it is recommended to have them for all building work except the smallest jobs.

In addition to the minimum requirements of the Building Act set out under the Building (Residential Consumer Rights and Remedies) Regulations 2014, your building contract should have these essentials:

1. The parties to the contract. Are the contracting parties individuals, partnerships, body corporate, trusts, or societies? If this is not correct in the contract, you may not be able to enforce it.
2. The scope of the building work. It helps to be very clear on this point to avoid disputes.
3. How the building work will be carried out. As required by the Act it is important that, as well as describing what is to be done, you also describe in detail how it will

be done.

4. The cost of the building work. You need to be clear at the outset about how much it will cost. That may be an agreed quote or estimate, or a method for determining cost. Whatever the agreement, make sure it is recorded in your contract.

5. Payment. It is important that your contract is clear about when payment is due. It is not enough to include a due date for payment on an invoice when it is rendered without having a specific clause in the contract. The contract should therefore:

Identify whether payment claims will be made and, if so, how many over the course of the building work.

6. Identify when payment claims and/or invoices will be issued, when they will become due, and how they will be receipted.

For the terms of trade to be enforceable against the other party, it is best (and mandatory when the building work is more than \$50,000) to have them signed by both parties. You should have two signed copies of the building contract (or one for each party).

The contract might also:

- Require a deposit and further payments/top-ups as further work is required.
- Include a clause setting out that interest at a set rate will be payable on any amount overdue.



Substantial building work requires a good contract so both parties have a clear understanding of the terms and conditions.

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You need to be clear at the outset about how much it will cost.

- The interest rate must be reasonable for it to be enforced.
- Contain a default clause to allow recovery of any amount spent in trying to recover the debt.
- Contain a personal guarantee from the directors or trustees of a

company or trust. A valid personal guarantee will enable (in the event the company or trust defaults on its obligations under the contract or becomes insolvent) a claim against those who guaranteed the debt.

There are particular requirements for a guarantee to be valid, including that the guarantor's signature must be independently witnessed.

Once the contract is in place, both parties must ensure they

comply with their obligations and keep good records of what has been agreed, what has been done and payments made.

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733484 or raineycollins.co.nz. If you have a legal inquiry, email alanowlesley@raineycollins.co.nz. The next free public seminar for first-home buyers will be on February 18 from noon till 1.15pm. Go to the website to reserve your place.