

Plain English Domestic Building Contract



This contract does not guarantee that the user is a member of the Federation of Master Builders.

**On page 9 we explain your right to cancel this contract.
Please read this carefully before you sign the contract on page 8.**

Date:

This contract is between

I Limited **(we, us, our)**(the builder)
of and

2 **(you, your)**(the client)
of and

..... **(your authorised representative)**

[If you do not have an authorised representative, please cross this out. You and we must put our initials next to it. Please see items 1 and 2 in the checklist.]

of

**(Your authorised representative is your agent, who you have authorised to give instructions to us.)
(You may change your authorised representative, but you must tell us in writing about this).**

Fill in this contract twice. **We** and **you** must both sign the two contracts. **We** will keep one and **you** will keep the other.

This contract has guidance notes to help **you** and **us** understand it.

Use this contract if **you** want to choose a **named subcontractor** or **named supplier** or both.
[You can still use this contract even if there are none.]

You can get more copies of this contract from:
Federation of Master Builders Limited (FMB)
a company limited by guarantee. Company no: 368163 (England)
Gordon Fisher House, 14/15 Great James Street, London WC1N 3DP.
Phone: 020 7242 7583 Fax: 020 7404 0296
or Email: central@fmb.org.uk Website: www.fmb.org.uk.



Checklist of items to be put in or crossed out.

Item number	Page number	Relevant term or condition (or other)	Items to be put in or crossed out
1	1	(Cover page)	Cross out your authorised representative, if you do not have one.
2	1	(Cover page)	Put in the name and address of your authorised representative, if you have one.
3	3	Contract period	Put in the relevant period.
4	3	Defects liability period	If there is a defects liability period, cross out 'or None'. If there is no defects liability period, cross out 'Six months from the completion date. or'. Both you and we must put initials next to anything crossed out. Please also see item 21 in this checklist if there is no defects liability period.
5	3	Interim bill	Put in the frequency of the necessary payment [for example, seven or 14 days].
6	3	Price	Put in the relevant amount (in words and figures).
7	3	Rates	Put in all the relevant amounts and our normal working hours.
8	3	Site	Put in the relevant address.
9	3	Start date	Put in the relevant date.
10	3	Work	If there is no design element, cross out 'does/'. If there is a design element, cross out '/does not'. You and we must put initials next to whatever is crossed out.
11	4	Condition 1.1 Insurance-backed guarantee	If there is no insurance-backed guarantee on the work , cross out will/. If there is an insurance-backed guarantee on the work , cross out / will not and put the name of the person or company providing the guarantee. You and we must put our initials next to the crossing out.
12	4	Condition 2.1.4 and 2.2.4	Put in the amount you and we have agreed you will keep. You and we must put initials next to that amount.
13	4	Condition 7	Cross out condition 7 if it does not apply.
14	4	Condition 7	(If condition 7 applies) if you have a right to a local authority grant, cross out paragraph 'b'.
15	4	Condition 7	(If condition 7 applies) if you have a right to receive insurance money, cross out paragraph 'a'.
16	4	Condition 8	Cross out condition 8 if it does not apply.
17	4	Condition 8.1	(If condition 8 applies) put in condition 8.1 the relevant figure or percentage.
18	5	Condition 14 Supplying services	Cross out any of the specified services which are not available.
19	6	Condition 15 Limits on how or when the site is used	Cross out the version you do not want. Put in details of all relevant limits if condition 15.2 applies.
20	6	Condition 19 Labour only services	Cross out condition 19 if we are providing full building services. You and we must put initials next to condition 19 if it is crossed out.
21	7	Condition 25 Defects liability period	Cross out condition 25 if there is no defects liability period [see the special meaning of that phrase and see also item 4 in the checklist]. You and we must put initials next to condition 25 if it is crossed out.
22	8	The benefit of the contract	If the contract is only intended to benefit you and us , cross out 'or This contract will also benefit anyone who later buys or leases the site from you '. If the contract is intended to benefit other people as well as you and us , cross out 'This contract is only for the benefit of you and us , and no one else. You and we must put initials next to whatever is crossed out.
23	10	Schedule A The documents	Put in details of all relevant documents.
24	11	Schedule B The client's named suppliers	Put in all details as shown; or put in 'none'.
25	11	Schedule C The client's named subcontractors	Put in all details as shown; or put in 'none'.
26	12 and 13	Schedule D Transfer	Put in all relevant details of names and addresses, and so on. You need to sign this part of the contract in front of an independent witness.

Both you and we must put initials alongside anything crossed out or put in.

Special meaning of words

Certain words used in this contract have particular meanings, shown below. Every time we use this word, with this particular meaning, it is printed in **bold**. If the word is not in bold, we are using it in its ordinary English sense – for example, the **work** and the work both appear in this contract.

CDM

The Construction (Design and Management) Regulations 2007.

Changes (or changing)

Refers to **changes** to the **work**. This includes anything added or left out.

Contract period

[See Item 3 in the checklist.]

Months / weeks / days

This may change under condition 24.

Completion date

The date on which the **work** will be substantially completed, so that the **site** is ready to be handed back to **you** ready for use, even if there are some minor defects (faults).

Defects liability period

[See Item 4 in the checklist.]

Six months from the **completion date**.

or

None

[If there is a defects liability period, cross out 'or None'. If there is no defects liability period, cross out 'Six months from the completion date. or'. Both you and we must write initials next to anything crossed out. Please see item 4 in the checklist. Please also see item 21 in the checklist if there is no defects liability period.]

Documents

The **documents** referred to in Schedule A.

Due date or date on which payment becomes due:

The date **you** receive any interim bill or the final bill.

Final bill

The final price, including any changes to the **price** under conditions 16 and 21. **We** will add VAT to this new figure.

Interest rate

3% a year above the Bank of England base rate.

This is calculated:

- from the date the amount was due, until the date of payment;
- daily; and
- at the **interest rate** in force on each day.

Interim bill

[See item 5 in the checklist.]

A written interim bill every _____ days [for example, seven or 14 days].

Your named suppliers

The suppliers, chosen by **you**, referred to in Schedule B.

Your named subcontractors

The subcontractors, chosen by **you**, referred to in Schedule C.

Price

[See item 6 in the checklist.]

_____ pounds (£ _____) plus VAT.

This figure may change under conditions 16 and 21.

Provisional sum

Part of the **price**. This is an amount **we** have estimated to help **you** work out **your** costs. At the date of this contract, **we** cannot tell **you** what the final cost will be because **you** have not decided which particular items **you** want. When **you** do decide, this will be a **change** to this contract. [See condition 16 and guidance note 11.] In **our final bill**, **we** will adjust this to the actual cost plus **our** profit.

Prime cost (or prime cost sum)

Part of the price. **We** will only use this for **your named subcontractors** or **your named suppliers**. This is an amount

we have estimated because, at the date of this contract, **we** do not know the final cost.

2 **We** will adjust this in the final bill to:

- the actual cost of the work or item; plus
- an amount **you** must pay, which is equal to **our** discount from **your named suppliers** or **named subcontractors** for prompt payment. This is 5.27% for goods or materials and 2.57% for **your named subcontractors** (or any other discount shown in the **documents**).

Rates [see item 7 in the checklist]		
	During our normal working hours _____ am to _____ pm	Outside normal working hours
Hourly labour rate for:		
1 building craftsmen we employ		
2 other craftsmen we employ [please give details]:		
2.1		
2.2		
2.3		
3 general operatives we employ		
4 specialist subcontractors: market rate plus _____ %.		
Materials at cost plus _____		_____ %
Plant hire and haulage at cost plus _____		_____ %

Scheme for Construction Contracts

The Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment)(England) Regulations 2011 or the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment)(Wales) Regulations 2011 as appropriate.

Site

[See item 8 in the checklist.]

Set off and abatement

Any contra charge (where a builder can charge another builder for putting right a fault) and reduction in the value of work because of a reduced quality of work or the materials used.

Start date

[See item 9 in the checklist.]

Value added tax or VAT

VAT applies at the rate of []% /VAT does not apply (**delete as appropriate**).

We, us, our

The builder (see the contract cover page).

Work

[See item 10 in the checklist.]

The **work we** will carry out, set out in the **documents**. The **work** does/does not include a design obligation by **us**.

[If there is no design element, cross out 'does/'. If there is a design element, cross out '/does not'. You and we must put initials next to that crossing out. Please see item 10 in the checklist.]

You, your

The client (see the contract cover page).

Interpretation

This contract is written in plain English.

- In this contract references to a statute or statutory provision include any changes which are made to it.
- If any term, condition, paragraph or sub-paragraph is invalid, it does not make any other term, condition, paragraph and sub-paragraph invalid.
- If there is more than one of **us** or **you**, this contract applies to all of those people together, and to each of them on their own.
- This contract is governed by the law of England and Wales.

Contract conditions

1 Our main obligation – to do the work

We will carry out the **work**:

- with reasonable care and skill and to a reasonable standard;
- by the end of the **contract period** (as extended under condition 24, if it applies), but this term does not make time an essential condition. [See guidance note 3;]
- and keep to all building regulations;
- and keep to all legal requirements, which **we** would need to keep to in the course of carrying out the **work**, but only if **you** have told us in writing about these requirements in line with condition 9;
- and at the end of the contract, as long as you pay all amounts due, **we** will give **you** any guarantees, test certificates and so on which apply to the **work**. **You** should keep these in a safe place in case you need them in the future.

1.1 Insurance-backed guarantees

The **work** will/will not be covered by an insurance-backed guarantee provided by [put in name of provider if it applies].

[If there is no insurance-backed guarantee on the **work** cross out will/. If there is an insurance-backed guarantee on the **work**, cross out /will not. **You** and **we** must put initials next to the crossing out.]

[See item 11 in the checklist.]

2 Your main obligation – to pay us

You will pay us the **price**.

2.1 Interim payments

- 2.1.1 When the **contract period** is more than 28 days **we** will be entitled to send **you** **interim bills**.
- 2.1.2 **We** will send **you** **interim bills** for the value of any work **we** have carried out up to that date, together with the cost of all goods and materials delivered to the **site**.
- 2.1.3 **You** must pay **us** within [] days (**insert period, for example, 'seven' or '14' days**) of receiving an **interim bill**.
- 2.1.4 **You** will take and keep % from all **interim bills** (the retention). [See condition 2.2.4.]

[Put in the amount you and we have agreed you will keep. Both you and we must put initials next to that amount. See item 12 in the checklist.]

2.2 Final payment

- 2.2.1 When **we** have finished the **work** (at the completion date), **we** will send **you** the **final bill**.
- 2.2.2 **You** must pay **us** the **price** within 21 days of receiving the **final bill**.
- 2.2.3 **We** will give **you** credit, in the **final bill**, for all **interim bills** **you** have paid.
- 2.2.4 **You** will take and keep % from the **final bill**. **You** must pay **us** this amount at the end of the **defects liability period**, unless there are defects which still need action.

[Put in the amount you and we have agreed you will keep. Both you and we must put initials next to that amount. See item 12 in the checklist.]

2.3 Valuations

Unless **you** have employed a third-party certifier and they have issued a payment certificate, the value due under condition 2.1.2 or condition 2.2.1 will be the value (valuation) we have given to the **work** carried out up to that date.

2.4 Payment

Within five days of receiving any **interim bill** or the **final bill** you must give us written notice showing how much you plan to pay as long as:

- **we** have met **our** obligations under the contract; and
- no set-off or abatement was allowed to be claimed.

You must also tell **us** how you worked out the amount you are planning to pay.
[See also clause 6.]

If **you** do not give **us** written notice under this condition 2.4, **we** will give **you** written notice showing the amount **we** think is due and the basis on which that amount was worked out. **We** will delay the final date for payment of this amount by the number of days between the date when **you** should have given **us** written notice and the date of **our** written notice to **you**.

3 Access to the site

You must allow **us** enough access to the **site** and keep the **site** clear of all obstructions so **we** can carry out the **work**.

4 Interest

You must pay **us** interest, at the **interest rate**, on any amounts overdue.

5 Starting the work, length of the work and the site

- 5.1 **We** will start the **work** on the **start date**.
- 5.2 **You** must make the **site** available to **us** on the **start date** and for the time it takes **us** to carry out the **work**.

6 Withholding payment

If you plan to pay less than the amount shown in our interim or final bill or in our notice given under clause 2.4, no later than one day before the final date for payment you must give us notice to say you plan to pay less than the amount of our bill and tell us the amount you consider to be due at the date you give the notice and the basis on which you have worked out that amount.

[Cross out the following condition 7 if it does not apply. Both you and we must write initials next to that. Please see item 13 in the checklist.]

7 Transferring your right to insurance money or a local authority grant

You have the right to receive insurance money or a local authority grant. **You** must transfer to **us** **your** right to that money or the grant. **We** will use this amount towards the **price**. **You** must sign the transfer in Schedule D.

[If you have a right to a local authority grant, cross out paragraph 'b'.]

[If you have a right to receive insurance money, cross out paragraph 'a'.]

[You and we must put initials next to anything crossed out. Please see items 14 and 15 in the checklist.]

[Cross out the following condition 8 if it does not apply. Both you and we must write initials next to that. Please see item 16 in the checklist.]

8 Paying the price into a joint account

- 8.1 Before the **work** starts, **you** must pay £ plus VAT [the **price**] or percentage of the **price** into an interest-bearing account in joint names (the account), which requires **your** and **our** signatures.

[The figure must either be the same as the price or a specified % of the price. Please cross out the version you do not want to apply. Both you and we must write our initials next to anything put in or crossed out. Please see item 17 in the checklist.]

- 8.2 Before **we** start any **change** under condition 16 or if we need to adjust the **price** under condition 21, **you** must immediately increase or reduce the amount in the account (including **VAT**).

- 8.3 Under condition 2, **you** must pay **us** from the account.

- 8.4 **You** will receive any money left in the account, after paying the **final bill**.

9 Permission

Unless **we** agree otherwise in writing, **you** must get all permissions **you** need before **we** start the **work** and keep to any conditions relating to the work (including paying all the relevant fees). If **you** break this condition 9, **you** must pay **us** any losses and damages **we** suffer. When the **work** is completed, whoever is responsible for getting building regulations approval or planning permission is also responsible for getting formal written confirmation that the **work** meets those regulations or permission. [See guidance note 6.]

10 Materials or goods

- 10.1 Any materials or goods **we** supply will be:
- new, unless **you** agree otherwise in writing;
 - of satisfactory quality;
 - of the description you give for their type, as far as possible;
 - of the appropriate British standard and codes of practice in force at the date of placing the order; and
 - fit for their normal purposes.
- 10.2 **We** will get any materials or goods **you** ask **us** to, as long as they are available, within a reasonable period. If shown in Schedule B, **we** will get these from **your named supplier**.
- 10.3 **We** will not be liable for:
- the satisfactory quality of any materials or goods **you** provide; or
 - the satisfactory quality or whether they are fit for purpose (or both) of any materials or goods if condition 25.2 applies.
- 10.4 If, instead of any normal purposes, **you** have told **us** about a special purpose for any materials or goods (whether under condition 10.1 or 10.2 or 10.3), **you** should preferably confirm this in writing within 14 days.
[See guidance note 7.]
- 10.5 **We** will send **you**, at least 24 hours before the **start date**, a written list of any goods, materials and fixtures at the **site** which **we** need to remove, for the **contract period**, to carry out the **work**. **We** will return these at the **completion date**, unless **you** tell **us**, preferably in writing, to get rid of any items.

11 Who owns materials or goods

You will not own any materials or goods delivered to the **site** until **you** have paid **us**.

12 Responsibility for the documents

- 12.1 **You** are responsible for making sure that the details shown in the **documents**:
- 12.1.1 meet all legal requirements (including planning and building regulations); and
 - 12.1.2 are fit for the intended purposes.
- Unless condition 12.4 applies:
- 12.2 **you** must pay all relevant fees under this condition 12; and
- 12.3 **we** are not responsible for the details shown in the **documents** being fit for the intended purposes, if **we** did not prepare those **documents**. **Our** obligation is simply to build to the details shown in those **documents**. [See guidance note 8.]
- 12.4 **We** will be responsible for the details of any **documents we** produce being fit for the intended purposes.

13 Responsibility for loss and damage and insurance

- 13.1 **Your** obligations
- 13.1.1 Existing structures and contents
You are responsible for any loss of and damage to any existing structures and contents, unless it falls within our obligations in condition 13.2.1
 - 13.1.2 The **work**
You are not responsible for insuring the **work**.
 - 13.1.3 Evidence of insurance
You must take out and keep an adequate insurance policy for **your** liability under condition 13.1.1.
We will be entitled to see this policy.
- 13.2 **Our** obligations
- 13.2.1 Existing structures and contents.
We will only be responsible for any loss of and damage to any existing structures and contents, if the loss and damage is caused by **our** negligence or by the negligence of any person **we** are responsible for. If part of the loss and damage is caused by someone else, **we** will only pay **our** share.

13.2 The work

We will be responsible for insuring against any loss of and damage to the **work** until **practical completion** or **you** end **our** employment, whichever happens first.

13.2.3 Insurance for design or specification

If the **work** involves a material design element or specification by **us**, **we** will:

- take out suitable insurance cover for, at least, the final estimated value of the work; and
- continue to keep that insurance until the end of the period during which legal action for any claim can be started.
[See guidance note 9.]

13.2.4 Evidence of insurance

We will take out and keep adequate insurance policies for **our** liability under conditions 13.2.1 and 13.2.2 and 13.2.3 and 13.3 and 13.4.

If **you** ask, **we** will provide details of the policies.

13.3 Liability for personal injury

13.3.1 **We** will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for personal injury to, or the death of, any person arising out of or in the course of, or caused by carrying out, the work. This does not apply if condition 13.3.2 applies.

13.3.2 **You** will be responsible for personal injury or death caused by **your** negligence or the negligence of any person **you** are responsible for.

13.4 Liability for damage to any property of another person

We will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for loss of or damage to any property of another person. This only applies if :

- it arises out of, or in the course of, or is caused by carrying out, the **work**; and
- it is caused by **our** negligence or the negligence of any person **we** are responsible for.

13.5 **We** will include **you** as an insured person under **our** insurance policies.

All insurance policies which **we** must have under **our** obligations under this condition 13 will include **you** as an insured person. In the insurance industry this is called an *indemnity to principals clause*.

You or **we** must immediately let the insurers know about any claims. **You** and **we** must keep to the terms and exclusions of the insurance policy. If **you** or **we** fail to do this, the insurance may no longer be valid.

14 Supplying services

You agree to provide for **us**:

- toilet and washing facilities;
- water;
- electricity; and
- storage space.

[Please cross out any services which are not available. Both you and we must write initials next to that. Please see item 18 in the checklist.]

15 Limits on how or when the site can be used

- 15.1 **You** are not putting any limits on how or when the **site** can be used.
- 15.2 **You** are putting the following limits on how or when the **site** can be used.

Contract conditions (continued)

15.2.1 Working hours [please give details]

15.2.2 Other [please give details]

[Please cross out the version of condition 15 you do not want to apply. Put in details of relevant limits if condition 15.2 applies. In particular, you should say in condition 15.2 if you will still be living on all or any part of the site. Both you and we must write initials next to anything crossed out or put in. Please see item 19 in the checklist and guidance note 10.]

16 Changing the work

16.1 If **you** want to **change** the **work**, **you** must:

- confirm this in writing; and
- do so within 14 days, if **you** first tell **us**.

We will then adjust the **price**.

[See guidance note 11.]

16.2 16.2.1 **We** will carry out any **change** instructed by an appropriate local authority or public utility officer, but only after giving **you** written notice.

16.2.2 However, if **you** can change those requirements, while still meeting **your** obligations under condition 12, **you** may do so. But **you** must tell **us** in writing before **we** start carrying out that **change**.

Whichever applies, **we** will adjust the **price** accordingly.

16.3 The **price** will be adjusted by:

- written agreement beforehand, if possible; or if not then
- later written agreement; or if not then
- referring to any priced **documents**, if this applies; or if not then
- referring to the **rates**, if this applies; or if not then
- a reasonable amount for the work done or goods supplied.

16.4 Every **change** which requires extra or revised **work** (as opposed to a change leaving something out) may mean extra costs.

17 Unexpected work

If unexpected **work** arises, **we** will tell **you** and ask how **you** want **us** to go ahead. If so, condition 16 will apply.

[See guidance note 11]

18 Our employees, subcontractors or tradesmen

You may not use or instruct **our** employees, subcontractors or tradesmen. If **you** do, **you** will have to pay **us** as if **we** had carried the **work** out.

19 Labour-only services

We are providing labour-only services, **You** are to provide all products, materials, fittings and similar, which are needed for the **work**. If **you** do not provide these or ask **us** to transport or collect these items, this may result in extra charges under condition 16. **Cross out** this condition 19 if **we** are providing full building services. [Please see item 20 in the check list.]

20 Health and safety

20.1 **We** will be responsible for all health-and-safety issues relating to the **work**.

20.2 If **CDM** applies, **we** must keep to **our** obligations and **you** must keep to **your** obligations.

21 Delay or disruption

If the **work** is delayed or lasts longer than expected for any reason (other than **our** fault), **we** will adjust the **price** accordingly, as shown in condition 16.3. If it is **your** fault, **we** will be entitled to claim for any losses and expenses caused.

22 Your right to end this contract

Without affecting **your** other legal rights and remedies, **you** can end this contract in one (or more) of the following circumstances.

22.1 If, without reasonable cause, **we**:

- stop work for 14 days in a row; or
- fail to work steadily; and

you send **us** a written notice, telling **us** to restart work or work steadily and **we** do not do this within seven days of receiving **your** notice. [See guidance note 12.]

22.2 If **we** become bankrupt.

22.3 If **we** go into liquidation.

22.4 If **we** make a composition or arrangement with **our** creditors.

22.5 If **we** are wound up.

22.6 If a receiver or manager is appointed over **our** business, unless this is to amalgamate or reorganise the business.

However, **we** can still use all **our** legal rights and remedies.

23 Our right to suspend or end this contract

Without affecting **our** legal rights and remedies, **we** can end all or suspend all or part of our obligations under the contract in one (or more) of the following circumstances.

23.1 If **you** fail to pay any amount due and still fail to pay for seven days after receiving a written notice **we** send demanding payment and warning you of our intention to end all or suspend all or part of our obligations under the contract. [See guidance note 12.]

23.2 If **you**, or anyone **you** employ or **your** agent, interfere with or obstruct the **work** or fail to make the **site** available for **us** (without good reason) for the **contract period** (or any one or more of these).

23.3 If **you** become bankrupt or go into liquidation, or make a composition or arrangement with **your** creditors (or any one or more of these).

23.4 If **you** cause, or attempt to cause, the withdrawal or cancellation of the grant payment or insurance money referred to in condition 7.

After **we** use **our** right to suspend part of this contract, **we** can still end our obligations under it, if **you** are still at fault (as shown in conditions 23.1 to 23.4).

We will be entitled to:

Contract conditions (continued)

- all relevant payments under condition 2.1; and
- any reasonable costs and reasonable losses **we** suffer (including loss of profit) involved in or resulting from ending all or suspending all or part of **our** obligations under the contract within 14 days of asking for payment.

Our right to suspend performance ends when **you** pay the amount due in full unless in the meantime **we** have ended **our** obligations under the contract. [See guidance note 15 about the duty to 'mitigate' the loss.]

However, **you** can still use all **your** legal rights and remedies (including term 6).

24 Extending the contract period

You will extend the **contract period** by a reasonable period to take into account any one (or more) of the following.

- 24.1 **Your** delayed instructions or lack of instructions on any one (or more) of the following
- The **work**
 - **Changes** to the **work** (see condition 16)
 - **Your** choice of materials (see condition 10.2)
- 24.2 If **we** suspend all or part of **our** obligations under this contract (see condition 23).
- 24.3 If the **work** is obstructed by any matter **we** do not control.
- 24.4 Weather conditions which delay or prevent **us** from continuing the **work**.
- 24.5 Civil commotion, wars, riots and lock-outs.

[Cross out the following condition 25 if there is no defects liability period – see the special meaning of that phrase and item 4 in the checklist. Both you and we must write initials next to this condition 25 if it is crossed out. Please see item 21 in the checklist. See also guidance note 13.]

25 Defects liability period

- 25.1 During the **defects liability period** we will put right any defects in the **work** due to faulty workmanship or materials, unless condition 25.2 applies. **We** will not charge **you** for this.
- 25.2 However, **we** will not be responsible for any one (or more) of the following defects.
- 25.2.1 Defects due to the conditions of the **site** or relevant property, that existed before **we** began work.
- This condition 25.2.1 will only apply in the following circumstances.
- a) If **we** consider the condition of the **site** or any property next to it or the access to it may affect the **work** and **we** write and tell **you** this. **We** will have carried out **our** duty by giving **you** that warning. If **you** still insist that **we** carry out the **work** with the **site** or relevant property in this condition, **you** should confirm this in writing and it will be at **your** risk.
- b) If the condition of the **site** or any property next to it or the access to it will affect the **work** and this condition could not be expected before the **work** started.
- 25.2.2 Defects caused by **you** or any other person or caused by any event, which happen after the **completion date**.
- 25.2.3 Anything excluded under condition 10.3. [See guidance note 13.]

26 Subcontracting

- 26.1 **We** can subcontract any part of the **work**, but **we** will still be responsible for the **work**, unless condition 26.2 applies.
- 26.2 **We** will not be liable for any one (or more) of the following:
- the satisfactory quality or fitness for purpose of any materials or goods, chosen by **you** from or selected by **your named subcontractor** or **your named suppliers** (or any one or more of these); or

- any defective design by **your named subcontractor**.

However, this does not apply if it is something that **we**, for **our** own purposes, ask **your named supplier** to supply or **your named subcontractor** to do, and which is separate from **your** instructions.

27 Clearing the site

Before the **completion date**, **we** will remove all rubble, surplus materials, rubbish, tools and scaffolding on the **site** and leave it clean and tidy. **We** will not be responsible for removing any items **you**, or any person **we** don't control, place on the **site**.

28 Disputes

[See guidance note 14.]

28.1 Conciliation

You and **we** must both agree to conciliation taking place. If so, the following must apply.

- 28.1.1 If the **work** is covered by the MasterBond insurance or similar insurance cover, any conciliation will be under the terms of that insurance.
- 28.1.2 If the **work** is not covered by the MasterBond insurance or similar insurance cover:
- **you** and **we** can agree who the conciliator will be; or
 - **you** and **we** can ask the Federation of Master Builders to appoint the conciliator. [See condition 28.5.]

28.2 Adjudication [See guidance note 14.]

(Cross out condition 28.2.1 or 28.2.2, whichever does not apply. Both **you** and **we** must write **our** initials next to the text that has been crossed out.)

- 28.2.1 **You** do not live or plan to live at the site. Adjudication applies to this contract.

Or

- 28.2.2 **You** live or plan to live at the site.

(Cross out condition 28.2.3 or 28.2.4, whichever does not apply. Both **you** and **we** must write **our** initials next to the text that has been crossed out.)

- 28.2.3 Although condition 28.2.2 applies, **you** and **we** agree that adjudication under this clause will apply to this contract. **You** and **we** also agree that carrying out any adjudication does not make it an unfair contract term. The aim is to speed up a solution at a reduced cost. In any event, it will not be a final and binding decision between **you** and **us**.

Or

- 28.2.4 Adjudication does not apply to this contract.

- 28.2.5 If adjudication applies (see condition 28.2.1 or 28.2.3), **you** or **we** can refer any dispute to adjudication at any time and the adjudication terms of the Scheme for Construction Contracts will apply to this contract, but with the following changes.

(1) Adjudication will apply even if some of the contract has been arranged by discussion.

(2) The adjudicator will be entitled to sort out any dispute about their own jurisdiction.

(3) The adjudicator will be entitled to decide who will pay their costs and expenses and whether one side will pay the other side's costs as well.

(4) The adjudicator may correct their decision to remove any clerical or typographical mistakes which may have happened within five days of giving their decision to us.

(5) **You** and **we** can agree that the adjudicator's decision will be final and binding between **us** and that **our** right to have the dispute finally settled by legal proceedings or arbitration will not apply.

[See guidance note 16.]

Contract conditions (continued)

28.3 Arbitration or court proceedings

Any dispute or difference arising from or in connection with the **work** or this contract (or any one or more of these) will be dealt with as follows.

- 28.3.1 If the **work** is covered by the MasterBond insurance or similar insurance cover, under the terms of that insurance.
- 28.3.2 If the MasterBond insurance or similar insurance cover does not apply and the amount in dispute is within the county court small claims limit, by county court proceedings.
- 28.3.3 If the MasterBond insurance or similar insurance cover does not apply and the amount in dispute is above the small claims county court limit, by court proceedings.

Or, **you** and **we** can deal with the dispute by arbitration. **You** and **we** must both agree to this, in writing, when the dispute arises.

28.4 Arbitration

If **you** or **we** refer a dispute or difference to arbitration, the following will apply.

- 28.4.1 The arbitrator will be a person:
- agreed between **us** and **you**; or
 - appointed by the Federation of Master Builders, at the request of either **you** or **us**. [See condition 28.5.]
- 28.4.2 The arbitration will be carried out under the Arbitration Act 1996 and the Construction Industry Model Arbitration Rules 1998.
- 28.4.3 If the arbitrator:
- 28.4.3.1 is unable or unwilling to act; or
- 28.4.3.2 becomes unable or unwilling to act; or
- 28.4.3.3 resigns;
- **you** and **we** can agree a new arbitrator. Or, either **you** or **we** may reapply to the Federation of Master Builders to appoint a new arbitrator. This condition 28.4.3 applies as many times as is necessary.

28.5 Appointing a conciliator or arbitrator by the Federation of Master Builders

Conciliators or arbitrators appointed by the Federation of Master Builders are chosen from the Federation's panel of members of:

- the Chartered Institute of Arbitrators; or
- the Royal Institution of Chartered Surveyors (RICS).

29 This contract

This contract is made up of the cover page, special meanings of words, interpretation, contract conditions, Schedule A (the **documents**), Schedule B (**your named suppliers**), Schedule C (**your named subcontractors**), and Schedule D (transfer of local authority grant or insurance money).

You and **we** agree the terms of this contract. Signing this contract will mean that **you** and **we** have various legal obligations to each other.

This contract is only for the benefit of **you** and **us**, and no one else.

or

This contract will also benefit anyone who later buys or leases the **site** from **you**.

[If the contract is only to benefit you and us, cross out 'or This contract will also benefit anyone who later buys or leases the site from you.' If the contract is intended to benefit other people, as well as you and us, cross out 'This contract is only for the benefit of you and us, and no one else. or'. You and we must put initials next to whatever is crossed out. Please see item 22 in the checklist.]

Our signature _____

Your signature (first client) _____

Your signature (second client) _____

[**You** should be (or include) the property owner. If the property is jointly owned, **you** should all sign this contract. See the guidance notes.]

Contract conditions (continued)

Notice of the right to cancel

Date

Contract reference number

Or

Details of work to be done

Address of work

You have the right to cancel the contract if **you** want. You can do this by delivering by hand, posting, faxing or sending by email a cancellation notice to the person named below at any time within seven working days after the day on which the contract is signed.

Name

Firm

Address

Email address

We will not start work under the contract until after the cancellation period has come to an end, unless **you** tell us to 'start work now'. If **you** tell **us** to 'start work now', **you** still have a right to cancel the contract within the seven-working-day period, but **we** will charge **you** for any work which **we** do before **we** receive **your** cancellation notice.

We will treat notice of cancellation as being served as soon as it is sent to us or the date on which it is sent to us electronically. If it applies, any credit agreement relating to this contract will automatically be cancelled when the contract is cancelled.

You must cancel the contract in writing. **You** can use the enclosed cancellation form but **you** can send **us** a cancellation in any other form as long as it is clear that **you** want to cancel.

The right to cancel only applies if:

- you are a 'natural person' (in other words, not a limited company); and
- not acting for business purposes.

Appendix

When this contract relates to contract work carried out within Northern Ireland, the terms of contract are amended as set out in the schedule below.

Schedule

Modification of terms for work in Northern Ireland.

If work is carried out in Northern Ireland, the contract terms will be revised as set out below.

For	Read
1 Local authority	NI Housing Executive or local council
2 Construction (Design & Management) Regulations 2007	Construction (Design & Management) Regulations (NI) 1995
3 Public utility officer	Authorised official
4 Construction Industry Model Arbitration Rules 1998	Construction Industry Model Arbitration Rules
5 Local authority under the Housing Grants, Construction and Regeneration Act	NI Housing Executive or local council or organisation acting under grant-making powers
6 Local authority officer	Council official or planning officer
7 Scheme for Construction Contracts	Scheme for Contracts in Northern Ireland Regulations (Northern Ireland) 1999 in line with the Construction Contracts (Northern Ireland) order 1997

A contract for work in Northern Ireland is governed by the law of Northern Ireland.

Schedule A - The documents (Please see item 23 in the checklist.)

1 Drawings prepared by [redacted]
of [redacted]
and dated [redacted] and numbered [redacted]

2 A detailed estimate **we** have prepared and dated [redacted]

3 A specification or schedule of work prepared by [redacted]
of [redacted]
and dated [redacted]

4 The following other documents. [Please give details, for example a MasterBond insurance document.]

[Redacted area containing horizontal lines for providing details of other documents.]

[Please attach all these documents to this contract.]

Schedule B - Your named suppliers (Please see item 24 in the checklist.)

Your named supplier	Address	Materials or goods to be supplied	Provisional sum

[If none, say so.]
 (If necessary, continue on a separate sheet which **you** must attach to this contract.)

Schedule C - Your named subcontractors (Please see item 25 in the checklist.)

Your named subcontractor	Address	Nature or extent of the work to be done	Provisional sum

[If none, say so.]
 (If necessary, continue on a separate sheet which **you** must attach to this contract.)

Schedule D - Transfer of local authority grant or insurance money (Please see item 26 in the checklist.)

(This only applies if condition 7 applies.)

Part I: We will keep this section.

I (your name) [redacted] of [redacted]
[redacted]

transfer, forever, with full title guarantee (see the guidance notes) to (our name) [redacted]
of [redacted]
my right to receive £ [redacted]

arising from:

(a) any grant from [redacted] local authority under the Housing Grants, Construction
& Regeneration Act 1996

or:

(b) a contract of insurance with [redacted]
insurance company under insurance policy number [redacted] Date: [redacted]

Signed as a deed by (you)

[redacted] (Your signature)

[redacted] (Signature of independent witness)

[redacted] (Full name of independent witness)

(Print in BLOCK CAPITALS)

(Address of witness)

[redacted]

(Occupation of witness)

[redacted]

(Put in relevant details. Cross out any words which do not apply. Write your initials against anything you or we put in or cross out. Please see item 26 in the checklist.)

Schedule D - Transfer of local authority grant or insurance money (Please see item 26 in the checklist.)

Part 2: We will send this section to the local authority or insurance company.

To

I (your name)

of

transfer, forever, with full title guarantee (see the guidance notes) to (our name)

of

my right to receive £

arising from:

(a) any grant from local authority under the Housing Grants, Construction & Regeneration Act 1996

or:

(b) a contract of insurance with

insurance company under insurance policy number

Date:

Signed, as a deed by (you)

(Your signature)

(Signature of independent witness)

(Full name of independent witness)

(Print in BLOCK CAPITALS)

(Address of witness)

(Occupation of witness)

(Put in relevant details. Cross out any words which do not apply. Write your initials against anything you or we put in or cross out. Please see item 26 in the checklist.)

Received a notice in the form set out above on (date)

(Name of individual)

For and on behalf of

local authority or insurance company (Please give the name.)

We have deliberately left this page blank.

Guidance notes issued by the FMB for the FMB Plain English Domestic Building Contract

1 Using this contract

1.1 When to use it

The FMB suggest **you** and **we** use this contract:

- for work up to an original value of about £500,000;
- with or without an independent supervising officer.

1.2 Checklist of insertions and deletions

[See the attached checklist.]

2 The client (you) and property owner

2.1 **You** can include people who are not the property owner.

2.2 However, **all** property owners must be named as the client.

2.3 If **you** are a tenant, **your** landlord does not need to be involved in the contract as the client. If **you** hold a tenancy agreement or a lease, that is probably enough. However, it is important to check if landlord's (or freeholder's) approval is needed for the **work** and, if it is, whether it has been given. Under condition 9 of the contract **you** must get this approval.

3 The contract period and completing the work [See the definitions and condition 1.]

If **we** do not reach completion at the end of the contract period, **we** have broken the contract.

But, **you** cannot immediately end the contract. To end the contract, **you** must serve a written notice on **us** saying that:

- **we** have failed to complete at the end of the contract period;
- **we** must complete the work within a further reasonable period; and
- if **we** fail to do so, **you** will end the contract.

This is similar to the procedure under condition 22.1. This is also the same procedure used for selling and buying houses.

In fixing the contract period and completing the **work**, remember to take into account any holiday date or periods such as Christmas, Easter and summer holiday breaks and any other likely holiday dates.

4 Condition 7 and Schedule D – Transfer of local authority grant or insurance money

The transfer is with full title guarantee. This is a technical legal term. It means that **you** have the authority to transfer and there are no legal rights which affect the transfer.

We and **you** must fill in Part 2 of Schedule D twice. **We** will send both sets to the local authority, asking them to return one set to us, confirming that they have received the transfer.

However, the FMB give an important warning about the transfer when it relates to a local-authority grant. Some local authorities do not accept transfers as legally valid. So, **we** may still have problems in getting the local authority to pay **us** direct, even if **you** sign the transfer. The FMB has been trying to get past and present governments to put the position beyond doubt, but without success so far.

5 Condition 8 – Paying the price into a joint account

This is meant to help both **you** and **us**. **We** know that **you** do have the money to pay **us**. **You** know that **we** do not get the money unless **you** are satisfied and authorise payment.

6 Condition 9 – Permissions

If **you** do not know what permissions **you** need, **you** should get advice from an architect or solicitor.

7 Condition 10.4 – Fitness for purpose

You can ask for particular goods or materials to be used. The FMB advise that if **we** do not consider those goods or materials are appropriate, **we** should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those particular goods or materials, **you** should confirm this in writing, and it will be at **your** risk.

8 Condition 12.3 – Responsibility for the documents

If **you** give **us** drawings made by someone else, **we** are not responsible for any errors or missing details in those drawings. **We** will follow the drawings as provided.

If **we** do not consider those drawings are correct, **we** should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those drawings, **you** should confirm this in writing, and it will be at **your** risk.

9 Condition 13.2.3 – Design and specification

If the **work** does not involve any design element or specification by **us**, condition 13.2.3 will not apply.

If the **work** involves a material design element or specification by **us**:

- condition 13.2.3 applies; and
- the FMB say the following.
 - **You** and **we** should check **our** public liability insurance policy and agree – preferably in writing – that it provides the cover **you** and **we** need.
 - If it does not, **we** will need separate insurance to meet condition 13.2.3.
 - The matter should be referred to an insurance adviser if there is any doubt as to what design or specification means.

10 Condition 15 – Limits on how and when the site can be used

If **you** want to add extra limits on **us** after the contract has been signed, that will be a **change**, which will mean the **price** must be adjusted accordingly.

It is particularly important that **you** state in condition 15.2 if **you** are not leaving the site empty, but will still be living on:

- all of the site; or
- any part of the site.

11 Condition 16 – changing the work and condition 17 – unexpected work

We have included a changing the work form with this contract. You can get more copies from the FMB. The FMB advise that the best procedure is:

(preferably) to confirm any **change** instructions in writing, at the time;

to write the details of the **change** twice, with both sets signed by **you** and **us**; and

(if possible) for **you** and **us** to agree the cost of any **change**

(whether a fixed price or an estimate), at the time. If **you** and **we** do not agree the amount at the time, a provisional sum can be given. But, if that cannot be done, **we** and **you** should confirm in writing (on the **change** instructions) that no fixed price or estimate has been given at that time.

Local authority officers have different views on matters. **We** may find that something which has been approved on a previous job by a local authority officer is not accepted by a different local authority officer on **your work**. If so, a **change** may be needed to meet the local authority's requirements. So, that may not be due to a failure by **us**. The FMB advise that it is often quicker and cheaper to accept the local authority's requirements, but each case must be considered on its own facts.

Unexpected work can arise during the course of the **work**, for example, unsuitable foundations which were not expected at the time of pricing the **work**, and which will normally result in extra costs.

12 Condition 22.1 – Your right to end this contract and condition 23.1 – Our right to suspend or end this contract

If there is a dispute over **you** ending this contract or **us** suspending it, **you** or **we** will have to prove that a notice has been served. **You** or **we** may choose to send this notice by recorded delivery.

13 Condition 25 – Period within which to bring claims and the defects liability period

Usually **you** or **we** have six years in which to make a claim. Sometimes a longer period can apply and you may need to take legal advice on this. The **defects liability period** – if **you** and **we** agree this – is an extra right, completely separate from, and which does not in any way restrict, **your** right to make a claim.

If the **defects liability period** applies, **you** should look at the special meaning of **defects liability period** and also at conditions 2.1.4 and 2.2.4.

When the **completion date** is reached, **you** must pay **us** all the rest of the **price**, except that **you** can keep back the retention (see condition 2.1.4). If any defects, which still need action, arise over the **defects liability period**, the fact that **you** are holding this retention is **our** incentive to encourage **us** to come back and deal with them. If **we** do, then at the end of the **defects liability period**, **you** must pay the retention to **us**.

14 Condition 28 – Disputes

We and **you** may sort out disputes by conciliation, adjudication, arbitration or court proceedings.

Both **you** and **we** must agree to a conciliation. Either party alone can ask for adjudication, arbitration or court proceedings.

Conciliation is a particular way of trying to sort out disputes which many believe to be quicker, cheaper and less formal than a court hearing or arbitration (if the conciliation is successful).

An independent person, the conciliator, tries to help **you** and **us** reach agreement about how to settle the dispute.

Although the conciliator can make suggestions, she or he cannot force **you** or **us** to reach an agreement. If, **you** and **we** cannot reach agreement, **you** or **we** can continue with our other, more formal, rights of adjudication, arbitration or court proceedings.

Adjudication is a quick-fix (usually 35-day) process.

Adjudication, if it is used, should take place before arbitration or court proceedings. The right to adjudication is a legal one and cannot be excluded, even by agreement. Adjudication only applies to 'construction contracts' (as defined in the 'Housing Grants Construction and Regeneration Act 1996 as

amended by the Local Democracy, Economic Development and Construction Act 2009'). It does not apply if **you** are living, or planning to live, on the **site** as your residence unless **you** and **we** have agreed condition 28.2.3. If **you** do not live or plan to live at the **site**, this contract will be a construction contract, and so adjudication will apply.

However, because adjudication is quick and saves costs, **you** and **we** may want to use it, even if you live or plan to live on the site. This can be done:

- by crossing out condition 28.2.4 and including condition 28.2.3. **You** and **we** must sign next to condition 28.2.4 if it is crossed out.

Either **you** or **we** can still issue arbitration or court proceedings after an adjudication unless **you** and **we** agree to lose that right under clause 28.2.5 (5). Arbitration or court proceedings are more lengthy and formal. **We** and **you** must follow the adjudicator's decision until the dispute is finally decided in arbitration or court proceedings. Remember that arbitration and court proceedings are alternatives.

The Federation of Master Builders (FMB) can arrange adjudication under a scheme using selected members of the Royal Institution of Chartered Surveyors (RICS). **You** and **we** should check with the FMB first to find out if **our** dispute can be resolved under the terms of that scheme.

15 Disputes (additional)

If **you** or **we** suffer any losses or damages because of the other's negligence or breach of contract, **you** or **we** can claim for that. However, the FMB advise that the person who has suffered the losses or damages (the claimant) cannot sit back and let the loss get worse. The claimant has a duty to take reasonable steps to prevent the loss from getting worse. This is called the duty to mitigate your loss.

In particular, the FMB advise that the claimant must do the following.

- Take all reasonable steps to mitigate the loss.
- Cannot claim for any loss or damage if she or he could reasonably have avoided it, but failed to do so.
- If **you** are the claimant, **you** must give **us** a reasonable opportunity to:
 - check the alleged defects; and
 - put right those defects. If **we** do that, at **our** own cost, the loss is avoided. However, this obligation (to allow **us** to put the defect right) may not apply if **you** can prove that **we** are so incompetent that **we** would not do the **work** properly, even if given the chance to do so.

16. Conditions 28.2.5 (5) final and binding adjudications

There must be a separate and specific agreement that the adjudicator's decision is final and binding. If not, although adjudication still applies, **you** or **we** can go on to challenge the adjudication by arbitration or court proceedings as in condition 28.3 and 28.4.

Footnotes

- 1 This guidance note is a general guide only. You should always get specific advice.
- 2 This guidance note is issued by the FMB to help **you** and **us**. While it represents the FMB's view of matters, in any dispute the adjudicator, arbitrator or court will decide.
- 3 The FMB would be interested to hear of any decisions of any adjudicator, arbitrator or court interpreting any term of this contract. That will help the FMB to decide whether any of the current terms need changing.

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