

# HOME BUILDING ACT 1989 (NSW) REQUIREMENTS

## 1. CONTRACT SUM

1.1 In the Contract, the Contract Sum is «OPPORTUNITY\_AMOUNT\_EXCL\_TAX» (excluding GST) as adjusted in accordance with the Contract.

1.2 The Contract Sum may be adjusted as follows:

- (a) Clause 5 (Additional Costs);
- (b) Clause 12 (Variations); and
- (c) Clause 21 (Force Majeure)

1.3 The consideration payable to MAINMARK under the Contract may, without any adjustment to the Contract Sum, vary as follows:

- (a) Clause 3 (GST); and
- (b) Clause 6 (Late Payment Charges)

## 2. STATUTORY WARRANTIES

2.1 MAINMARK warrants that:

- (a) the Services will be performed with due care and skill and in accordance with the plans and specifications set out in the Contract;
- (b) all materials to be supplied by MAINMARK will be good and suitable for the purpose for which they are used and that, unless otherwise stated in the Contract, those materials will be new;
- (c) the Services will be carried out in accordance with, and will comply with, the Home Building Act 1989 (NSW) and any other law;
- (d) the Services 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 Services consist of the construction of a dwelling, the making of alterations or additions to a dwelling or the repairing, renovation, decoration or protective treatment of a dwelling, the Services will result, to the extent of the Services conducted, in a dwelling that is reasonably fit for occupation as a dwelling; and
- (f) the Services and any materials used in doing the Services will be reasonably fit for the specified purpose or result, if the person for whom the work is done expressly makes known to MAINMARK, the particular purpose for which the work is required or the result that the Client desires the work to achieve, so as to show that the Client relies on MAINMARK's skill and judgment.

2.2 The warranties in [Clause 2.1] supplement and do not derogate from the other provisions of the Contract.

## 3. SCHEDULE 2 PART 1 REQUIREMENTS

3.1 All plans and specifications for the Services, including any variations to those plans and specifications, are taken to form part of the Contract.

3.2 Any agreement to vary the Contract, or to vary the plans and specifications for the Services, must be in writing signed by or on behalf of each party to the Contract.

3.3 [Clauses 3.1 and 3.2] do not apply to a contract of the kind referred to in clause 16 of the Home Building Regulation 2014 (NSW).

3.4 All of the Services must comply with:

- (a) the Building Code of Australia (to the extent required under the Environmental Planning and Assessment Act 1979, including any regulation or other instrument made under that Act);
- (b) all other relevant codes, standards and specifications that the Services are required to comply with under any law; and
- (c) the conditions of any relevant development consent or complying development certificate.

3.5 Despite [Clause 3.4], the Contract may limit the liability of MAINMARK for a failure to comply with Clause 3.4 if the failure relates solely to:

- (a) a design or specification prepared by or on behalf of the Client (but not by or on behalf of MAINMARK); or
- (b) a design or specification required by the Client, if MAINMARK has advised the Client in writing that the design or specification contravenes [Clause 3.4].

4. **COOLING OFF PERIOD:** Under section 7BA of the Home Building Act 1989 (NSW) the Client is entitled to rescind the Contract upon providing written notice to MAINMARK of its intention to do so within 5 clear business days of the date the Client signed the Contract.

5. **TERMINATION:** Notwithstanding any other provisions in the Contract which entitle the parties to terminate the Contract, the Contract may be terminated in the circumstances provided by the general law.

## 6. CLIENT CHECKLIST

### 6.1 Checklist:

1.	Have you checked that MAINMARK holds a current contractor licence?	Yes	No
2.	Does the licence cover the type of work included in the contract?	Yes	No
3.	Is the name and number on MAINMARK's licence the same as on the contract?	Yes	No
4.	Is the work to be undertaken covered in the contract, drawings or specification?	Yes	No
5.	Does the contract clearly state a contract price or contain a warning that the contract price is not known?	Yes	No
6.	If the contract price may be varied, is there a warning and explanation about how it may be varied?	Yes	No
7.	Are you aware of the cooling-off provisions relating to the contract?	Yes	No
8.	Is the deposit within the legal limit of 10%?	Yes	No
9.	Does the contract include details of the progress payments payable under the contract?	Yes	No
10.	Do you understand the procedure to make a variation to the contract?	Yes	No
11.	Are you aware of who is to obtain any council or other approval for the work?	Yes	No
12.	Do you understand that you are not required to pay MAINMARK a deposit or any progress payments until MAINMARK has given you a certificate of insurance under the Home Building Compensation Fund (except where the work is of a kind that does not require insurance)?	Yes	No
13.	Has MAINMARK given you a copy of the Consumer Building Guide, which provides key information about your rights and responsibilities under NSW's home building laws and where to get information?	Yes	No
14.	Does the contract include a statement about the circumstances in which the contract may be terminated?	Yes	No

6.2 **Signatures:** Do not sign the contract unless you have read and understand the clauses as well as the notes and explanations contained in the contract and this document. If you have answered "no" to any question in the checklist, you may not be ready to sign the contract. Both the contractor and the owner should retain an identical signed copy of the contract including the drawings, specifications and other attached documents. Make sure that you initial all attached documents and any amendments or deletions to the contract.

6.3 **Signed Copy of Contract:** Under the Home Building Act 1989 (NSW) a signed copy of the contract must be given to the owner within 5 working days after the contract is entered into.

6.4 **Home Building Compensation Fund:** The contractor must provide you with a certificate of insurance under the Home Building Compensation Fund before the contractor commences work and before the contractor can request or receive any payment.

### 6.5 Acknowledgements of owners:

I/We have been given a copy of the Consumer Building Guide and I/we have read and understand it.

I/We have completed the checklist and answered "Yes" to all items on it.

Note : Where the owner is a company or partnership or the contract is to be signed by an authorised agent of the owner, the capacity of the person signing the contract, eg director, must be inserted.

Signature  
Name [print]  
Capacity [print]

Signature  
Name [print]  
Capacity [print]

**mainmark**