

Trading Terms and Conditions

1.0 DEFINITIONS

- 1.1 **Act** means the *Domestic Building Contracts Act 1995*;
- 1.2 **Builder** means A.N.T. RENOVATIONS PTY LTD (ABN 18 006 596 998) of Unit 2, 603 Boronia Road, Wantirna, Victoria;
- 1.3 **Commencement Date** means the date on which the Builder commences work on the Property pursuant to this Contract;
- 1.4 **Contract** means this Contract for Works between the Builder and the Customer, including all Specifications, plans and annexures;
- 1.5 **Completion** means when the Works detailed in the Specifications have been completed on the Property or, if the Works require a building permit, then on the issuing of a Certificate of Occupancy or Certificate of Final Inspection for the Works;
- 1.6 **Customer** means the owner and registered proprietor(s) of the Property upon which the Builder is completing works and whose name and address is recorded herein;
- 1.7 **Insurer** means the Customer's insurer who has directed and authorised the Builder to complete the Works on the Property;
- 1.8 **Make Safe Works** means works which are intended to be temporary in nature and have been instructed to the Builder by the Insurer to endeavor to ameliorate immediate danger on the Property;
- 1.9 **Prime Cost** means an item (eg. a fixture or a fitting) that either has not yet been selected or whose price is not known at the time the Contract is entered into and for the cost of supply and delivery of which the Builder must make a reasonable allowance in this Contract;
- 1.10 **Property** means the property upon which the Builder has been directed to complete works;
- 1.11 **Provisions Sum** means an estimate of the cost of carrying out particular work (including the cost of supplying any materials needed for the work) under the Contract for which the Builder, after making all reasonable inquiries, cannot give a definite amount at the time the Contract is entered into;
- 1.12 **Specifications** means the specifications described in this Contract;
- 1.13 **Works** means the building works that the Builder has been directed to complete on the Property as detailed in the Specifications and any other works directly agreed between the parties in writing.

2.0 GENERAL

- 2.1 These Terms and Conditions:
- 2.1.1 apply to building works and any other services provided by the Builder to the exclusion of all other terms and conditions whatsoever, whether contained or implied in or from any other correspondence or other communication with the Customer;
- 2.1.2 shall be deemed incorporated into any contract agreed between the Builder and the Customer;
- 2.1.3 shall prevail over all other conditions or representations raised or put by the Customer to the Builder to the extent of any inconsistency (except where waived by the Builder in writing);
- 2.1.4 may be changed at any time by the Builder (in writing);
- 2.1.5 shall not be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Australia Consumer Law, the *Competition and Consumer Act 2010* or any other succeeding legislation) and which by law cannot be excluded, restricted or modified.
- 2.2 The parties acknowledge that the Builder is obliged to provide the Customer with a five-business day Cooling Off notice pursuant to s.34 of the Act and that the Builder hereby does so by referring the Customer to the following website: https://antrenovations.com.au/wp-content/uploads/2019/05/ANT_Cooling_Off_Notice.pdf and the notice shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the notice and acknowledges receipt by signing this Contract.
- 2.3 The parties acknowledge that the Builder is obliged to provide the Customer with a Checklist pursuant to s.31(1)(r) of the Act and that the Builder hereby does so by referring the Customer to the following website: https://antrenovations.com.au/wp-content/uploads/2019/05/ANT_Domestic_Building_Contract_Checklist.pdf and the checklist shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the checklist and acknowledges receipt by signing this Contract.
- 2.4 The parties acknowledge that the Builder is obliged to provide the Customer with the warranties in s.8 and s.20 of the Act pursuant to s.31(1)(q) of the Act and that the Builder hereby does so by referring the Customer to the following website: https://antrenovations.com.au/wp-content/uploads/2019/07/ANT_General_Warranties.pdf and the list shall be deemed incorporated into this Contract. The Customer hereby warrants that it has accessed the list of the Act's warranties and acknowledges receipt by signing this Contract.
- 2.5 In the event that the Builder receives any report, notice, order or other document in relation to the Works from any public statutory authority or any service provider or any person registered under the Building Act 1993, then the Builder shall provide a copy of such to the Customer, unless the Builder knows that the Customer already holds a copy. The Builder shall be deemed to have satisfied this obligation by providing an electronic copy to the Customer or by posting a copy to the Customer's address in this Contract.

3.0 WORKS

- 3.1 The Builder shall complete all works set out in the Contract as detailed herein and instructed to it by the Customer or the Insurer or otherwise agreed with the Customer in writing. The Works to be completed shall be subject to all necessary preconditions, limits and exclusions as set out in this Contract.
- 3.2 The parties agree that the Works shall not be varied without the express written agreement of the Builder and, where necessary, the due written authorisation of the party who has instructed the Builder to complete the Works.
- 3.3 In the event that the Builder has completed Make Safe Works on the Property, then the Customer acknowledges and agrees that such works are wholly temporary in nature and, upon the completion of such Make Safe Works, that the Customer shall forthwith arrange for the issues addressed by the Make Safe Works to be permanently remedied in liaison with the Insurer. The Customer agrees that it is the Customer's obligation to permanently resolve the Make Safe Works and hereby releases the Builder from any liability associated with the Make Safe Works completed by the Builder.
- 3.4 The parties agree that the Builder shall commence the Works within twenty-eight days of receiving and agreeing on full instructions and specifications from the Insurer or the Customer, subject to any necessary permits and other preconditions set out in this Contract being met and the reasonable availability of the Builder's employees and contractors.
- 3.5 The Builder shall do all things that it is reasonably possible for the Builder to do to ensure that the Works will start as soon as possible and shall provide the Customer with two days' notice prior to the actual commencement of works.
- 3.6 The Builder shall, on notifying the Customer of the date of the actual commencement of works, provide the Customer with the number of days, weeks or months which may be required to complete the Works. This completion date is hereby incorporated into the Contract pursuant to s.31(1)(i) of the Act. The parties further agree that, pursuant to s.32(3) of the Act, the completion date may be delayed by inclement weather, practical operational issues, the requirements of the Insurer (if applicable), the requirements of government authorities and any practical issues or discoveries made at the Property by the Builder once works have commenced.
- 3.7 In the event that, during the course of completing the Works, the Builder discovers additional damage to or issues with the Property which were not addressed by the Works, then the Customer acknowledges and agrees that the Builder shall be entitled to cease works pending either the Customer liaising with its Insurer to address such additional damage as a variation by the Insurer or the Customer otherwise agreeing that the Builder should address the additional damage or issues as a variation to the Works (subject to a separate written variation) at the Customer's cost.

4.0 PAYMENT



- 4.1 The parties confirm and agree that the cost of the Works carried out by the Builder pursuant to this Contract shall be paid by the party directing the Works (being the Customer or the Insurer), excluding any variation works agreed between the Builder and the Customer in writing which shall be paid by the Customer pursuant to this Clause 4.0.
- 4.2 The Customer shall pay the Builder the cost of agreed variation works, which are not the responsibility of the Insurer (where applicable), within seven (7) days of being issued with a Tax Invoice by the Builder.
- 4.3 In the event that Customer variation works are agreed, the Builder may in its absolute discretion require payment of a deposit at the time the Customer instructs the Builder to proceed with such works subject to the Act.
- 4.4 The Customer agrees that all payments are to be made without retention or set off and warrants that the Customer has adequate funds to pay for such variation works.
- 4.5 In the event of there being any payments, in whole or in part, remaining unpaid beyond the terms for payment in Clause 4.2, then the Builder in its absolute discretion may charge interest on that outstanding amount at a rate of two (2) per cent per annum above the rate set out pursuant to Section 2 of the *Penalty Interest Rates Act 1983* during the period such unpaid balance remains unpaid and such interest will be added to the said balance due from the Customer and calculated on a daily basis.
- 5.0 PRIME COST AND PROVISIONAL SUM**
- 5.1 The Customer acknowledges that this Contract may contain Prime Cost or Provisional Sum items as detailed herein and identified separately in the specifications for the Works.
- 5.2 Where relevant, the Customer shall provide the Builder with written instruction with respect to Prime Cost and Provisional Sum items as requested by the Builder. Failing the provision of written instructions, the Customer acknowledges and agrees that the Builder shall make a selection at its discretion on such items and the Customer releases the Builder from any liability associated with that selection.
- 5.3 The parties agree that once Customer or the Builder has made all selections required for Prime Cost or Provisional Sum items, then the cost of the Works shall be deemed varied by the impact of those items.
- 6.0 INSURANCE**
- 6.1 In the event that this Contract is a major domestic building contract which requires complying warranty insurance (as required by the Act, any Regulation of the Act or Ministerial Order under the Act), then but not otherwise this Clause 6.0 shall apply. The parties agree that this Clause 6.0 shall be struck out and agreed as left blank in all other circumstances.
- 6.2 Where the Builder is required to obtain complying warranty insurance, then the parties agree that prior to the commencement of any works the Builder shall obtain such complying insurance for the Works and shall provide a copy of the insurance policy to the Customer. In providing the policy to the Customer, the type of policy, the policy number and the details of the insurer shall be deemed incorporated into the terms of this Contract in compliance with the Act.
- 7.0 ACCESS**
- 7.1 The Customer hereby grants the Builder an irrevocable license to assess the Property and remain therein to complete the Works for such time and until such time as the Builder requires to complete the Works.
- 8.0 WARRANTIES AND LIABILITY**
- 8.1 The parties acknowledge the warranties provided pursuant to the Act and agree that the Builder shall not be liable for any breach of warranty if the breach was known or reasonably should have been known by the Customer when this Contract was executed.
- 8.2 The only conditions and warranties which are binding on the Builder in respect of the state, quality or condition of the goods or services provided to the Customer are those imposed and required to be binding by statute (including the Act and the Australian Consumer Law, the *Competition and Consumer Act 2010* or any other succeeding legislation). Except as expressly provided herein, the Builder shall not be liable to the Customer for any liability, (including liability in negligence) loss or damage of whatsoever nature, consequential or otherwise, howsoever suffered or incurred by the Customer, caused by or resulting directly or indirectly from the goods or services provided.
- 9.0 DISPUTE RESOLUTION**
- 9.1 In the event that the Builder has been directed to complete the Works by the Insurer and the Customer has any dispute with the Builder with respect to this Contract, the Works or any other matter, the Customer agrees and warrants that, prior to taking any action, the Customer shall contact its Insurer to discuss the issues in dispute and the Builder shall have the right to address the notified issues with the Insurer.
- 9.2 In the event that the Insurer does not address the dispute or in any other circumstance, then the parties agree that the dispute shall be referred to Domestic Building Disputes Resolution Victoria for conciliation. This provision shall not prevent a party from applying to a competent court for urgent injunctive or other relief nor shall it limit the Builder from pursuing any debt owed to it as it sees fit.
- 10.0 AUTHORITY TO VARY TERMS**
- 10.1 No manager, employee, servant, agent or representative, other than a Director or Directors, of the Builder has any authority to vary this Contract and without limiting the generality of the foregoing no warranty, representation, promise, agreement, term or condition whether express or implied made by any such person shall be deemed to be included in or form part of this Contract or operate in any way collateral to this Contract other than those warranties, representations, promises, agreements, terms or conditions which expressly appear herein or which are implied by law and not excluded under Clause 8.0.
- 11.0 MISCELLANEOUS**
- 11.1 Any delay in or failure by the Builder to insist upon strict performance of any term, warranty or condition of this Contract shall not be deemed a waiver thereof or of any rights the Builder may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
- 11.2 If any provision of this Contract shall be determined by any statute or any court having jurisdiction in relation thereto to be illegal, invalid, void, voidable or unenforceable the legality validity or enforceability of the remainder of this Contract shall not be affected and the illegal, invalid, void, voidable or unenforceable provision shall be deemed deleted here from to the same extent and effect as if never incorporated herein but the remainder of this Contract shall continue in full force and effect.
- 11.3 This Contract shall survive any accepted repudiation or other termination of the contract to supply goods or services existing between the Builder and the Customer.

This Contract shall be governed and interpreted according to the laws of Victoria and the parties agree to submit to the non-exclusive jurisdiction of the courts of Victoria.



Director of Consumer Affairs Victoria

Approved Domestic Building Contracts Checklist

Section 31(1)(r) of the *Domestic Building Contracts Act 1995*

This checklist must be included in major domestic building contracts entered into from 1 September 2016 in substantially the same form or to the same effect as follows.

Before signing this legally binding contract, check this list:

If the cost of the building work is more than \$16,000, has an insurance policy or certificate of currency for domestic building insurance covering your project been issued and provided to you?

(Note: If not, the contract is conditional upon you receiving either an insurance policy or a certificate of currency for domestic building insurance.)

Yes

No

If this contract is conditional upon you receiving written approval for finance, have you obtained such approval?

Yes

No

Have you appointed a private building surveyor or has a municipal building surveyor been engaged?

(Note: If not, you will need to choose and engage a building surveyor before your building work starts so that a building permit can be issued for your building work.)

Yes

No

If you answer 'NO' to any of the following questions that apply to your building project, you are not ready to sign the contract:*

Have you had this contract long enough to read and understand it?

Yes

No

Have you been provided with evidence that the builder named in this contract is registered with the Victorian Building Authority?

Yes

No

Are the price and progress payments clearly stated?

Yes

No

Do you understand how the price is calculated and may be varied?

Yes

No

Has the builder assessed the suitability of the site for the proposed works? If tests are necessary, have they been carried out?

Yes

No

If a deposit is payable, is it within the legal limit?
The maximum under the *Domestic Building Contracts Act 1995* is:

10% if the price is less than \$20,000, or

5% if the price is \$20,000 or more.

Yes

No



Is the work shown and described clearly in the contract, plans and specifications and any other relevant documents (such as engineering computations or soil report)?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Are your special requirements or standards of finish included in the plans and specifications?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Are the commencement date and completion date clearly stated or capable of being worked out?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Do you understand the procedure for extensions of time?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Are any 'provisional sums' or 'prime cost items' clearly stated in the schedules and understood by you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Do you understand the procedure for variations of plans and specifications?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Do you understand the circumstances in which you can end the contract?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Did your builder give you a copy of the Domestic Building Consumer Guide?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If yes, insert the date on which you were given a copy of this guide dd/mm/yyyy	<input type="text"/>			
Have you read the Domestic Building Consumer Guide and the related information at www.consumer.vic.gov.au/buildingguide ?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

This checklist does not form part of the contract.

I/we have read and completed this checklist:

Signature/s	<input type="text"/>
Date dd/mm/yyyy	<input type="text"/>

*** Note:** Not all of these questions will apply to a domestic building contract that covers a limited scope of work, for example, a contract that is limited to the preparation of building plans and specifications.



Cooling Off Notice

Domestic Building Contracts Act 1995

Director of Consumer Affairs Victoria

Approved notice

The following notice is hereby approved by the Director of Consumer Affairs Victoria. This version of the notice replaces the version published in the Victorian Government Gazette of 16 May 1996. The notice must be included in major domestic building contracts in substantially the same form or to the same effect as follows:

Notice pursuant to Section 31(n)

Cooling off period

Notice to Building Owner: You may end this contract within five clear business days after receipt by you of a signed copy of the contract by filling in the notice below and giving it to the builder in one of the following ways:

1. Personally
2. Leaving it at his or her address set out in the contract with a person who appears to be at least 16 years old
3. Sending it by pre-paid certified mail to the address set out in this contract
4. Sending it by facsimile to the facsimile number (if any) set out in this contract.

Notice that contract has ended

A **Building Owner** cannot withdraw from a contract under the Act if:

1. The **Builder** and the **Building Owner** have previously entered into a **major domestic building contract** that is in substantially the same terms for the carrying out of the work in relation to the same home or land; OR
2. The **Building Owner** received independent legal advice from a practicing solicitor concerning the contract before entering into the contract.

To

--

(Builder)

I/We

--

give notice under our contract with you that the contract is ended.

Please refund the deposit less \$100 and any out of pocket expenses incurred by you which I have previously approved.

Building Owner's
signature:

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Domestic Building Consumer Guide

Mandatory contract information statement for consumers

Your builder must give you a copy of this guide before you sign a major domestic building contract. A major domestic building contract is required for most building projects to build, renovate or extend a home, such as a house or unit, where the cost of the work is over \$10,000.

Reading this guide will help you to know your rights and responsibilities and understand the roles and responsibilities of your builder and building surveyor.

Learn more about the topics in this guide, and domestic building contracts and work generally, at consumer.vic.gov.au/buildingguide.

Before your building project starts

You will usually need to appoint building practitioners when you build, renovate or extend a house or unit, or do other building work. Other work includes work such as landscaping, fencing or building a swimming pool, driveway or a garage. You may need a builder to complete the building work, and if you need a building permit you will need a building surveyor.

The Victorian Building Authority (VBA) registers building practitioners. If you are concerned about the conduct of a building practitioner, you should contact the VBA.

You can check the registration and disciplinary history of a building practitioner via the links at consumer.vic.gov.au/buildingguide.

Your builder must also take out Domestic Building Insurance (DBI) for your project, if the building work costs more than \$16,000. This covers defective or incomplete work for up to six years if your builder dies, disappears or becomes insolvent. You can also claim on DBI with the Victorian Managed Insurance Authority if your builder fails to comply with a final order from the Victorian Civil and Administrative Tribunal or a court.

Check when you may make a claim via the links at consumer.vic.gov.au/buildingguide.

Appointing your builder

You appoint your builder by signing a major domestic building contract.

Your contract must be in writing and include details such as:

- the contract price
- the deposit and progress payments required by law for completed stages of work
- a description of the building work to be carried out
- the plans and specifications, and



- advice on the five-day cooling-off period.

The contract price should be a fixed amount. Cost-plus contracts, for example where your builder charges you by the hour, are only allowed for projects over \$1 million, or for renovation projects in limited circumstances.

Make sure you have enough time to thoroughly read the contract. You should also consider obtaining independent legal advice before you sign the contract, even though this means you no longer have the five-day cooling-off period to change your mind.

If you are asked to sign a pre-construction contract (for example, a contract for design or specification work or obtaining permits) that is for more than \$10,000, it will be a major domestic building contract.

Your contract will also include a checklist, which sets out the matters you must consider before signing the contract. You must complete and sign the contract checklist.

You can make a variation to a contract after it has been signed by using a variation notice (for example, to change the plans and specifications). You and your builder must agree in writing to the changes and put the details, including the new price and completion date, in the contract before the work is carried out.

Find more information about the contract, the checklist and contract variations via consumer.vic.gov.au/buildingguide.

Appointing a building surveyor

Some building projects require a building permit. A building permit is written approval from a building surveyor that your plans and specifications comply with the building regulations. It allows your builder to start your building project.

If your building work requires a building permit, you must engage a building surveyor before you apply for the permit. There are penalties for you and your builder if a building permit is not obtained.

You can only engage one building surveyor, but you may choose either a private building surveyor or a municipal building surveyor. Your builder may recommend a building surveyor but cannot appoint a private building surveyor for you.

You can choose a building surveyor via the links at consumer.vic.gov.au/buildingguide.

If you want to engage a municipal building surveyor, contact your local council.



During your building project

Role of your builder

Your builder is responsible for completing your building project to the standard required by the building regulations and your plans and specifications. The builder may undertake the work or engage and manage tradespeople to do the work.

Your builder must also provide you with a copy of the DBI policy and a certificate of insurance for your building project, before you pay your deposit. If you are concerned about the validity of the certificate, you should check with the insurer.

Role of the building surveyor

A building surveyor is responsible for checking that your building project meets the minimum standards of the building regulations. They will independently:

- assess your plans and issue the building permit
- require protection work to be undertaken so your building work does not damage your neighbour's property
- conduct the mandatory building inspections personally or have a building inspector conduct the inspections at the mandatory notification stages of your building project, and
- issue the occupancy permit or certificate of final inspection on completion of the building work.

Your building surveyor may issue directions and orders to the builder to fix building work or to stop work. They can also give you building notices and orders about the building work, if necessary.

The mandatory inspection stages for a house are:

- completion of excavations before placing the footings
- before pouring the concrete footings or slab
- completion of the framework, and
- completion of all of the building work.

You can ask your building surveyor to carry out additional inspections, for example, pre-plaster inspections and wet area inspections. Your building surveyor may charge more for additional inspections.

Find more information about building surveyors at consumer.vic.gov.au/buildingguide.



Your role

You are responsible for checking the progress of your building project, talking to your builder about any issues or concerns you may have and paying your builder for completed work. You have the right to reasonable access to your building site at any time during construction, to check on the progress.

Make sure you:

- choose a building surveyor, if required
- provide the builder with the items you agreed to

supply as soon as possible (for example, materials such as tiles, or a service such as a tiler to work on the flooring)

- put the details and costs of any changes in writing – you and your builder must sign off on the changes before the builder starts the work, and
- only make stage payments when the building work for each stage is complete – do not make payments in advance.

Check everything in your contract has been delivered and is in working order before you make the final payment.

Find details at consumer.vic.gov.au/buildingguide.

Tips and traps

Beware of:

- an extremely low quote compared to other builders – this may indicate a risk that the quality of the job may be compromised, that the builder may not fully understand what is required or may not be properly registered or insured
- sales pitches that put pressure on you to sign the contract quickly to avoid a price increase, and
- a builder who recommends that you get an owner builder permit while they organise all the building work.

If things go wrong

Statutory warranties and guarantees

The workmanship and quality of your building project is protected by specific statutory building warranties and general consumer guarantees.

Statutory building warranties make sure that your builder uses good workmanship and delivers everything in your contract. You can take legal action for a breach of the statutory building warranties at any time, up to



10 years after the date the occupancy permit or certificate of final inspection was issued.

You are also protected by the Australian Consumer Law (ACL). The ACL provides statutory guarantees that goods and services supplied in trade or commerce, such as building work, meet certain standards. For example, building work must be carried out with due care and skill, be fit for purpose and be delivered in a reasonable time.

Disputes

Many disputes can be avoided when there is good communication between you and your builder. If a dispute does arise, you should first try to sort it out with your builder.

If you cannot resolve the dispute, contact the Victorian government's free and independent service, Domestic Building Dispute Resolution Victoria. Find details and lodge a dispute, via the links at consumer.vic.gov.au/buildingguide.

