

Assessment task 1 – Essential elements of a contract for a low-rise construction

CPCCBBC4003A

Contents

Introduction	2
Assessment task – Essential elements of a contract for a low-rise construction	3
1. Types of building and construction contracts.....	3
2. what constitutes a valid contract and the essential terms and elements of the contract	3
3. Legal requirements and relationships as defined by the contract	5
4. The rights and responsibilities of parties under a contract	6
5. Circumstances that may bring about a breach of contract	6
6. Legislative requirements as identified in the contract and applied to the carrying out of the contract.....	7
Conclusion.....	8
Reference.....	8

Introduction

Purpose of assessment

To provide evidence that various types of building contracts can be identified and essential elements, sections and clauses can be analyzed.

This assessment task accounts for 30% of total assessment.

Assessment task

Choose an actual construction project/site that has access to a range of building contracts, for the purposes of providing evidence of various types of building contracts appropriate to low rise construction.

You must provide sufficient evidence that meets the purpose of assessment as described. As a minimum, discussion must cover:

- types of building and construction contracts
- what constitutes a valid contract and the essential terms and elements of the contract
- legal requirements and relationships as defined by the contract
- the rights and responsibilities of parties under a contract
- circumstances that may bring about a breach of contract
- legislative requirements as identified in the contract and applied to the carrying out of the contract.

Assessment for this task will require demonstrating an understanding of all aspects by submitting a written report, such as report may include diagrams, photographs, etc.

Assessment task 1 – Essential elements of a contract for a low-rise construction

1. Types of building and construction contracts

In our case: Low rise Residential --- lump sum contract

2. what constitutes a valid contract and the essential terms and elements of the contract

- 1) legal responsibilities: Every builder has the legal responsibility for the work and duty they perform.

**NOTICE APPROVED BY THE DIRECTOR OF
FAIR TRADING AND BUSINESS AFFAIRS
PURSUANT TO SECTION 31 (n)
OF THE DOMESTIC BUILDING CONTRACTS ACT 1995**

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 REGISTERED POST TO THE ADDRESS SET OUT IN THIS CONTRACT;
- (4.) SENDING IT BY FACSIMILE TO THE FACSIMILE NUMBER (IF ANY) SET OUT IN THIS CONTRACT.

DETACH ALONG DOTTED LINE

- 2) Parties: A construction contract involves two parties: the proprietor (principal/owner) and the builder (contractor/head contractor).

Some contracts allow for a third entity to act as the contract administrator, although this party is not privy to the construction contract. Contracts typically refer to the contract administrator as architect, engineer or superintendent.

PARTICULARS OF CONTRACT

THIS CONTRACT IS BETWEEN:

NOTE

If the Owner is a company,
a Directors' Guarantee
must be signed before this
Contract is signed. See
Attachment 2.

OWNER/S <i>Tia Zhao Liang</i>	
<i>37 Springfield Rd Berrill NSW</i>	
of _____	
Postcode <i>3129</i>	State <i>Vic</i>
Telephone <i>0433 883133</i>	ACN _____ Fax _____

BUILDER <i>M.T. Corporation Int'l P/L</i>	
ACN <i>550216047</i> HIA Membership No <i>919381</i>	
of <i>429 Celeste St</i>	
<i>DONCASTER VIC</i>	
Postcode _____	Telephone <i>88382067</i>
Fax <i>88382067</i>	Registered Building Practitioner
<i>Martin Ming Jao</i>	
Reg. No. <i>1805 DB-11</i>	

3) Contract laws:

- ☐ Legislation (statutes, acts and regulations)
- ☐ Tort law
- ☐ Criminal law
- ☐ Contract law
- ☐ Basic contract law

In our case, these laws are applied as well.

4) The following elements are necessary for the existence of a binding, enforceable contract, in our case, the same, we attached a checklist to double check the requirement as well)

- ☐ offer
- ☐ acceptance
- ☐ consideration
- ☐ an intention to create legal relations
- ☐ formalities
- ☐ certainty
- ☐ capacity
- ☐ legality.

PARTICULARS OF CONTRACT	4, 5
SCHEDULE 1	6, 7 8
SCHEDULE 2 Prime Cost Items and Provisional Sum Items	9
SCHEDULE 3 Construction Stages and Table	10
Method 1 Progress Payments.....	11
Method 2 Progress Payments.....	12
ATTACHMENT 1	13
SCHEDULE 4 Special Conditions	14
SCHEDULE 5 Excluded Items	14
SECTION A INTERPRETATION	
Clause 1 Definitions	15,16,17
Clause 2 Headings, Footnotes, etc.....	17
Clause 3 Contract Complete in Itself	17
Clause 4 Joint and Several Obligations	17
Clause 5 Assignment and Sub-letting.....	17
Clause 6 Notices.....	17

**NOTICE APPROVED BY THE DIRECTOR OF
FAIR TRADING AND BUSINESS AFFAIRS
PURSUANT TO SECTION 31 (r)
OF THE DOMESTIC BUILDING CONTRACTS ACT 1995**

CHECKLIST

**BEFORE SIGNING THIS LEGALLY BINDING CONTRACT
CHECK THIS LIST**

- Has an Insurance policy or certificate of currency for builder's Insurance been issued and provided to you? If not, the Contract is conditional upon you receiving either an insurance policy or a certificate of currency for builder's Insurance. **YES or NO**
 - If this Contract is conditional upon the Building Owner receiving written approval for finance has the Building Owner obtained such approval? **YES or NO**
- If you answer 'no' to any of the following questions you are not ready to sign the Contract:**
- Has the Building Owner had this Contract long enough to read and understand it? **YES or NO**
 - Has the Building Owner been provided with evidence that the Builder named in this Contract is registered with the Building Practitioners Board? **YES or NO**
 - Are the price and progress payments clearly stated? **YES or NO**
 - Does the Building Owner understand how the price is calculated and may be varied? **YES or NO**
 - Has the Builder assessed the suitability of the site for the proposed works and if tests are necessary have they been carried out before signing the Contract. **YES or NO**
 - If a Deposit is payable, is it within the legal limit?
The maximum under the Domestic Building Contracts Act is: **YES or NO**

3. Legal requirements and relationships as defined by the contract

Legal liability within the building industry and associated professions involves four main areas:

1) Legislation

Legislation is law by the government.

2) Tort law

Tort law covers civil wrongs that include anything that causes economic, physical or legal harm.

3) Criminal law

Criminal law involves the government as the prosecutor for crimes against the interest of the public.

4) Basic contract law

A contract is a legally binding agreement between two or more parties if it complies with specific rules of contract law. An alternative definition of a contract is a set of legally binding promises made by one party or more.

4. The rights and responsibilities of parties under a contract

As proprietor, he needs to pay the contractor the actual cost of the work plus agreed profit above the actual cost. He needs to co-operate the builder with preparation and administration related things, such as providing the necessary document and paper works, making the payment on time.

As a builder, he has a number of responsibilities established by law and the building and construction industry. The builder, as the professional adviser, needs to ensure that their advice is not biased and that they behave responsibly on the client's behalf. The code of the profession requires that a duty be held to the client. The builder also has certain legal responsibilities. These responsibilities are: Legal responsibilities, the law of tort – negligence and duty of care, the law of contract, consumer protection law and responsibility for the performance of the subcontractors.

Both of the parties have the contractual right by following the terms of the contract.

A proprietor has right to redeem liquidated damages if the project is not complete by the date nominated in the contract.

Breach of a warranty gives right to damages but does not entitle the innocent party to end the contract. Breach of a condition gives right to damages and entitles the innocent party to end the contract. Technically, any breach of a term of a contract entitles the innocent party to damages.

SECTION B	MAIN OBLIGATIONS OF THE PARTIES	
Clause 7	Building Act Insurance.....	18
Clause 8	Finance	18
Clause 9	Deposit	18
Clause 10	Commencement and Building Period	19
Clause 11	Statutory Warranties	19
Clause 12	Owner Must Pay the Contract Price	20, 21
Clause 13	Owner Must Provide Essential Information	21

5. Circumstances that may bring about a breach of contract

- Misleading: A fraud, recklessness or negligence in the misleading may bring a breach of contract.
- Mistake: A contract may be void because of a mistake by one party or both parties.
- Duress: A contract which is entered into under duress, against a person's free will and was part of the reason for entering the contract, may be rendered voidable by the injured/wronged party.
- In a relationship of trust or confidence or where one party exerts more influence, undue influence will be deemed to occur where one party takes unconscionable advantage of the other party, by virtue of the special relationship between the two.

- Unconscionable conduct: unconscionable behavior in the course of a consumer transaction.
- Lack of formalities: Although there is no general requirement for contracts to be in writing (a contract may be oral, written, partly oral and partly written), some legislation prescribes that certain contracts comply with particular formalities.
- Incapacity: An enforceable contract requires that both parties have legal capacity to enter into the contract.
- Uncertainty: A contract's essential terms must be sufficiently certain and not vague or uncertain.
- Illegality: A contract whose purpose is illegal or is against public policy will be invalid.

In our case, the potential circumstance would happen during the work, the variations, the owner's right (owner must not direct builder's work), the claim progress, payment method, builder's right to agree damages, eg, the clauses are listed to avoid the possibility of contract breach.

SECTION D	DURING WORK	
Clause 21	Variations to Statutory Laws	26
Clause 22	Variations to State or Commonwealth Tax Laws	27
Clause 23	Requested Variations	27
Clause 24	Effect of Variations	28
Clause 25	Possession	28
Clause 26	All Weather Access	28
Clause 27	Owner Must Not Direct Builder's Workers	29
Clause 28	Owner Must Arrange Lending Body Inspections	29
Clause 29	Builder to Claim Progress Payments	29
Clause 30	Owner Must Make Progress Payments	30
Clause 31	Builder's Right to Agreed Damages	30
Clause 32	Unfixed Materials on Site	30
Clause 33	Prime Cost Items and Provisional Sum Items	31
Clause 34	Builder's Right to Extensions of Time	32
Clause 35	Suspension of Work	33

6. Legislative requirements as identified in the contract and applied to the carrying out of the contract.

Beside the main laws: Tort law, Criminal law, Basic contract law, there are a few standards of the contract and additional clauses need to follow as well, such as:

- AS 2124 – General Conditions of Contract
- AS 2545 – Subcontract Conditions (companion to AS 2124)
- AS 4300 – General Conditions of Contract for Design and Construct
- AS 4303 – General Conditions of Subcontract for Design and Construct (companion to AS 4300)
- AS 4305 – Minor Works Contract Conditions
- AS 4000 – General Conditions of Contract
- AS 4901 – Subcontract Conditions (companion to AS 4000)
- AS 4902 – General Conditions of Contract for Design and Construct
- AS 4903 – General Conditions of Subcontract for Design and Construct (companion to AS 4902)

NOTE:

This table is prescribed by Section 40 of the Domestic Building Contracts Act 1995.

In the case of a Domestic Building Contract that is not listed in the Table, a Builder must not demand or receive any amount or installment that is not directly related to the progress of the Building Works being carried out under the Contract.

TABLE

Conclusion

In conclusion, this assessment demonstrates the evidence that various types of building contracts can be identified and essential elements, sections and clauses can be analyzed.

Reference

Select and prepare a construction contract CPCCBC4003A Learner Resource

MT construction Pty Ltd's contract: 37 Springfield Road, Box Hill North.