

Your building contract explained

We know that it can be a shock and very stressful when your home is damaged by an unexpected event. There is a lot to take in if your home needs extensive repairs and it is natural that you will have concerns. This information guide is to help you understand your building contract and answer some common questions.

What is a building contract?

This is a legally binding agreement between you and the main builder repairing or rebuilding your house. It records the scope of the work your builder will do. It also details your rights and obligations to the builder and the builder's rights and obligations to you.

Why do I need a building contract?

Under the Building Act 2004, all building work that costs \$30,000 (including GST) or more must have a written and signed building contract. Builders are not allowed to do work worth \$30,000 or more without a building contract that is signed by you and your chosen builder. Before any building work starts, please ask your builder about the likely cost of the work. Depending on the nature of the work, your builder should be able to provide a fixed price quote or a reasonably accurate estimate of the likely cost of the work.

Also, even when repair work seems straight forward, it is always best to protect yourself with a written contract to make sure you and the builder understand the obligations, expectations and rights relating to the work, even if it will cost less than \$30,000. A written contract helps to protect you and can make your life easier if something unforeseeable happens during the work or a dispute arises in the future.

Do I have to use one of the contracts supplied by IAG?

Yes, if you are hiring one of our aligned builders. We require our aligned builders to meet certain service, quality, and health and safety standards whenever they carry out building work for our customers. Your property assessor or case manager will let you know which of our aligned builders are available for you to choose from.

When you use one of our aligned builders, we will pay for the work covered by your insurance claim and the contract sets out the process for those payments. We have agreed these arrangements with all our aligned builders.

You don't need to use one of our contracts if you want to use your own builder and you are paying them directly.

What are the contract options?

A 'one size fits all' approach doesn't really work. It is important to have a contract that matches the size, complexity and risks associated with the building work. The contract that applies depends on the value and/or type of work the builder will be doing.

To ensure you have a contract that best suits the value and nature of your building repair work, we have created three contract options for you if you hire one of our aligned builders. We refer to these in this information guide as the *Minor Works Contract*, *Medium Works Contract* and *Major Works Contract*. They are used as follows:

1. The Minor Works Contract is used if the total price for all the work under the contract is less than \$30,000 (including GST);
2. The Medium Works Contract is used if the total price for all the work under the contract is between \$30,000 (including GST) and \$249,999.99 (including GST); and
3. The Major Works Contract is used if the total price for all the work is \$250,000 (including GST) or above, or if the work involves more than one unit in a multi-unit complex.

As mentioned above, depending on the nature of the work, your builder should be able to provide a fixed price quote or a reasonably accurate estimate of the likely cost of the work before work starts. You are also free to engage a quantity surveyor (at your cost) to review any quote or estimate that your builder provides. If, during the building work, the builder discovers damage that the builder did not include in the original contract price, we will pay for that damage provided it is covered by your insurance policy (subject to your policy terms and limits). You will be required to pay for any damage or defects that are not covered by your insurance policy, whether known about before work starts or discovered during the work.

There may be some jobs that do not easily fit in one of the three contracts, and we have to be flexible. For example, building work that could risk the weather-tightness of an existing building or complex structural work may justify the use of a contract of a higher value.

Very low value building work may not need a Minor Works Contract.

We'll let you know before work is commenced which contract should be used.

Can I make changes to clauses I don't like?

No.

Each contract has a section where terms specific to your property and the work are to be inserted.

Can I carry out other work on my home at the same time using the same builder?

Yes. You may choose to carry out work that doesn't relate to the insured damage using the same builder and same contract under which the building is repairing damage that is covered by your insurance policy.

You will first need to obtain our agreement before engaging the builder to carry out work that is not covered by your insurance policy. You will also need the builder's agreement on the scope of work the builder will carry out and the price of that work.

Even if you don't plan on using the same builder or contract to carry out building work that is not covered by your insurance policy, you will need to advise us of that work if it may impact on the building work required to reinstate the damage that is covered by your insurance policy.

For any work you choose to carry out on your home that is not agreed to be covered by your insurance policy, you will be responsible for paying the builder directly from your own money.

Who are the parties to the building contract?

The contract will be signed by the homeowner and the main builder.

The builder may also sign other contracts with their subcontractors and suppliers. A subcontractor will not be a party to the contract, but the main contractor is responsible to you for their work. You should review the subcontractors proposed by the builder to ensure you are comfortable with them.

Our aligned builders are independent building contractors. They do not represent IAG and they are not agents of IAG.

Why is IAG not a party to the building contract?

IAG is not the builder or the homeowner. IAG's obligations are to pay money for your insurance claim. Your contract with us is your insurance policy. Because you are the homeowner, the builder is hired by you and is doing the work for you and has obligations to you. IAG will pay the cost of the work that is covered by your insurance policy but the builder will not be working for IAG.

Also, you might want additional work done by the builder that is not part of your insurance claim, that you will be paying for.

IAG may also appoint an IAG Representative or a Property Assessor (called a Loss Adjuster in the contracts) to act on our and your behalf for the purposes set out in the contract. The IAG Representative and the Property Assessor are not parties to the contract.

What is in my building contract?

The building contract covers everything connected with the building work. It sets out the parties (you and the builder) and their respective rights and obligations, the work that must be done, and the timeframes.

For you, the building contract will record when payments are due to the builder, when you agree to provide the builder access to your home, and any other responsibilities you may have.

For the builder, the building contract will describe the building work to be completed, when they get paid, and their obligations to you as the homeowner, for things like the quality of the work and the timeframe for completing the work. Under the building contract, the builder who signs it is responsible to you for all the work including work by subcontractors they hire.

Under the Building Act 2004, some of the builder's obligations to you (called warranties) are automatically part of your contract, these include:

- the work will be carried out in a proper and competent manner and in accordance with the plans and specifications set out in the contract and any building consent;
- all materials will be fit for purpose and new (unless stated otherwise); and
- the work will meet all legal requirements and be carried out with reasonable care and skill.

Appendix 1 to this information guide summarises what is contained in each of the Minor Works, Medium Works and Major Works Contracts.

What are my obligations under the building contract?

Your main contract obligations are to:

- make your property available to the builder to carry out the work (which may involve you being prevented from accessing parts or all of your property for some or the entire duration of the work);
- comply with the health and safety directions relating to the site;
- pay the builder for any work not covered by the policy and/or respond to any payment claims issued by the builder in relation to such work; and
- endeavour to obtain material damage insurance cover for any parts of your property which are not anticipated to be subject to or affected by the work and which therefore may not be covered by the builder's contract works insurance policy (not applicable to the Minor Works Contract). Please discuss your insurance arrangements with your home insurer to see whether your current home policy can be extended to cover any parts of your property that are not covered by the contract works insurance policy.

How will I know when the work is complete?

The work is complete when the physical work has been completed and all warranties, documents and other information required by the contract have been provided. The builder will let you know when the builder considers the work has been completed. You will be given an opportunity to inspect the work and confirm the work has been completed to your satisfaction.

Do I need to read the building contract carefully?

Yes, you do.

What we say in this information guide is only a brief description of the sorts of things that are in the contract. You should read your contract carefully and make sure you understand it. You may want to contact a lawyer to give you advice on anything that concerns you.

Before signing the building contract, we recommend that you get your own independent legal advice.

What do some of the key terms in my building contract mean?

Appendix 2 to this information guide sets out what some of the key terms in the building contracts mean.

What if I have further questions or concerns not covered in this information guide?

If a property assessor has been assigned to your claim please contact them in the first instance, otherwise please contact us directly and we will ensure that you speak to the right person to help or resolve your concerns.

Disclaimer

This information guide is not legal advice. It is provided for your general information only and is not a complete explanation of your building contract or your cover under your insurance policy. Please read your building contract carefully for all terms and conditions that apply to your building work and read your insurance policy carefully to know what is covered by your policy and what terms and conditions apply to your claim.

Appendix 1 – What is in my building contract?

What is in the Minor Works Contract?

The Minor Works Contract has the following sections:

- **Signature section:** This is the section where you and the builder sign the contract.
- **Specific Terms:** This is the section where terms specific to your property and the work are to be inserted. For example, the specific terms will set out the work to be carried out by the builder (including any work not covered by your policy), when the work will begin and end, the price of the work (including the price of any work not covered by your policy), and any further contractual documents (for example, plans, drawings or specifications).
- **General terms and conditions.** This section has the general terms and conditions that apply, including:
 - the builder's obligations, such as the manner in which the builder will carry out the work and the builder's health and safety obligations;
 - the payment process;
 - how changes to the work are to be decided;
 - the builder's responsibility for getting insurance;
 - how completion of the work is to be decided;
 - the time period to notify the builder about any defects;
 - how the contract may be terminated; and
 - other general terms.

What is in the Medium Works Contract?

The Medium Works Contract has the following sections:

- **Cover page.** The cover page lists the names of the parties to the contract and sets out a checklist of items to be completed before the contract is signed. This section is not part of the contract.
- **Contract Agreement.** The Contract Agreement lists the documents that are part of the contract, some general terms, and a signature section, which is where you and the builder sign the contract.
- **Specific Conditions.** This is the section where terms specific to your property and the work are to be inserted. For example, the specific terms will record for you and the IAG Representatives, the price of the work (including the price of any work not covered by your policy), when the work will begin and end, the retention amount, insurance requirements, and the defects notification period.

- **The Work.** This section will set out what work the builder will do, including any work that is not paid for under your insurance policy, any subcontractors that will carry out work, and the name of the person supervising the work.
- **General Conditions.** This section has general terms and conditions that apply, including:
 - the builder's obligations, for example: the way the builder will do the work; health and safety obligations; looking after the building work; looking after your property and your neighbours' properties; and to get all required government consents for the work;
 - how subcontractors can be hired and the builder's obligations to you for the subcontractors and their work;
 - what happens if the builder finds pre-existing defects or damage that may affect the building work;
 - the contract price and how it might change;
 - the payment process, including the process for any payments you have to make for work not covered by the policy;
 - how variations to the work are to be decided;
 - the builder's responsibility for getting insurance;
 - your responsibility for getting insurance;
 - what happens if the builder runs into any physical conditions of your property that the builder could not have known when the contract was signed;
 - how completion of the work is decided and the builder's obligations on completion and during the defects notification period;
 - how any disputes between you and the builder are to be sorted out;
 - how the contract may be terminated;
 - IAG's rights under the contract; and
 - the form of Notice of Practical Completion.

What is in the Major Works Contract?

The Major Works Contract comprises the following sections:

- Cover pages. The cover pages list the names of the parties to the contract and sets out a checklist of items to be completed before the contract is signed. These sections are not part of the contract.
- Contract Agreement. The Contract Agreement sets out what documents make up the Building Agreement, including listing the documents that are part of the contract, and some general terms that apply.
- Parties and execution section. This section is where you and the builder sign the contract.
- Specific Conditions. This is the section where terms specific to your property and the work are to be inserted. For example, the specific terms will record the price of the work (including the price of any work not covered by your policy), payment terms, who the Property (or Loss) assessor or IAG Representative is, when the work will begin and end, the default interest rate, the retention amount, and insurance requirements.
- The Work. This section will set out what work the builder will do, including any work that is not paid for under your insurance policy, any subcontractors that will carry out work, and the name of the person supervising the work.
- Milestones. Milestones are stages in the work when the builder can make a payment claim. This section sets out the milestones that apply to the work, when each milestone is to be completed, and the amount payable on completion of each milestone (if applicable).
- Agreement for Works. This section sets out your payment obligations and IAG's payment obligations. It also records what happens if IAG thinks that the total for the work related to the insurance claim may cost more than what you get under your insurance policy.
- General Conditions. This section contains general terms and conditions that apply, including:
 - IAG's right to appoint a Property (or Loss) assessor or a Representative for the purposes set out in the contract;
 - the contract price and how it might change;
 - your payment obligations in for any work not covered by the policy;
 - the builder's obligations, such as the way the builder will carry out the work;
 - how to decide what parts of the work are covered by your policy;
 - how subcontractors can be hired and the builder's obligations to you for subcontractors and their work;
 - the process for proposing variations to the work and how variations are to be decided;
 - payment process, including for any payments you have to make for any work not covered by the policy;
 - the builder's obligations to look after the building work, your property, your neighbours' properties, and others;
 - what happens if the builder finds pre-existing defects or damage that may affect the building work;
 - the builder's responsibility for getting insurance;
 - your responsibility for getting insurance;
 - your obligation to let the builder get into the building site;
 - health and safety obligations;
 - how completion of the work is to be decided and the builder's obligations on completion and during the defects liability period;
 - how any defaults in payment by you or IAG may be addressed;
 - how any disputes between you and the builder are to be sorted out;
 - how the contract may be terminated;
 - IAG's rights under the contract;
 - other general terms; and
 - the form of Notice of Practical Completion.

Appendix 2 – What do some of the terms in my building contract mean?

Aligned builder means a builder who has entered into an agreement with us, which includes the builder agreeing to meet certain service, quality, and health and safety standards whenever they carry out building work for you, and which allow us to make payments directly to the builder on your behalf in respect of damage covered by your insurance policy.

Contractor means the builder who will carry out the building work under the building contract.

Contract Price is the total cost of all building work to be carried out by the builder under the building contract, including the price of any works the homeowner chooses to carry out under the building contract but which is not covered by the homeowner's insurance claim.

Contractual documents means the building contract the homeowner signs with the builder, and includes any documents listed in the contract, such as specifications, scope of works, designs, drawings, and schedule of prices.

Defects Liability Period / Defects Notification Period means the period following Practical Completion during which the builder must fix any defects in the building work.

Insurance Budget is the price of the building work the builder will carry out under the building contract that is covered by the homeowner's insurance claim.

Insurance Works is the building work that the builder will carry out under the building contract which is covered by the homeowner's insurance claim.

Payment Claim is a claim made by the builder to be paid for building work carried out under the contract. It will often be an instalment of the total contract price.

Payment Schedule is a response by the homeowner to a payment claim issued by the builder. A payment schedule must be issued if the homeowner disputes any part or all of a payment claim issued by the builder.

Practical Completion is when the building work is completed, except for minor omissions and defects which do not prevent the homeowner from using the work or designated portion of the work for the use for which it was intended. The builder must remedy any errors or defects during the Defects Liability Period / Defects Notification Period.

Retention is an amount of money held back from a payment made to the builder under the building contracts as security for the performance of the builder's obligation under the contract. The retention amount is paid to the builder after Practical Completion.

Subcontractor is any person contracted directly by the main builder to perform part of the building work. The builder remains responsible for all work carried out by its subcontractors.

Variation is a change of to the work the builder will carry out under the building contract.

Your Budget (Minor & Medium Works Contracts) /

Owner's Contribution (Major Works Contract) is the price of any building work the homeowner chooses the builder to carry out under the building contract but which is not covered by the homeowner's insurance claim.

Your Works (Minor & Medium Works Contracts) /

Owner's Work (Major Works Contract) is any building work that the homeowner chooses the builder to carry out under the building contract but which is not covered by the homeowner's insurance claim.