

Guernsey Construction Industry Forum

Small Works Form of Agreement 2020

Guidance Notes:

Outline Purpose

The Construction Industry Forum and Chamber Construction industry Group believes it is important that when any work is undertaken the terms of the proposed work are set out in a form of agreement. This ensures that all parties are clear on their responsibilities and liabilities to each other, both during the project and after all work is completed.

In addition, and in today's climate of regulations and conditions with which contractors must comply, we set out in this document some of the standards that should be evident on a modern, well-managed project.

This document is provided free of charge and whilst the Construction Industry Forum accepts no liability relating to the use of this document, we do hope you will find it useful and an aid to promoting a positive and enjoyable relationship with your contractor during the time span of your project.

Please note that this contract is intended for all types of work up to £150,000 in value.

A1 Records the customer's details. These details may relate to an individual, a company or an association; however, in all cases the main point of contact should be recorded here along with clear contact details. It is also useful to indicate here which contact method is preferred. If your contractor can get hold of you easily, he can often ensure that you are involved in decisions that require attention.

A2 This section records the contractor's details in the same way as the customers. Again, clear contact details, including preferred contact method, should be recorded. It is also a good idea to agree certain times of availability or preferred contact times to which you both can adhere. Communication is key, and clarity here at an early stage will help both parties feel involved and listened to.

Please note on both A1 and A2 the parties should be fully named as legal entities and the address recorded should be a legal address suitable for service of legal documents.

A3 It is important to record the full details of the project, so "Building work" or "Decorate bedroom" will not suffice as a description. In most, but not all, cases the contractor will have to provide some type of price estimate. If this is itemised, e.g. including services such as joinery, plastering etc., then do write some or all of the details in this section. However, section A4 contains more detailed information so a summary here will be adequate. You may also wish to attach an additional sheet to include further information. This is acceptable provided you both initial any additional sheet and note it as attached to the form of agreement.

A4 Contract documents. As mentioned in the previous section, some, but not all, works usually have been priced to some degree. You may have architect's drawings or a designer's impression of the finished product or simply your own sketches. Any or all of these add some clarity to what it is you are both agreeing to do together. If at this stage you agree to make changes, e.g. amending the plans from what an architect has drawn up, then record those details in this section. This section should aim to clarify exactly as much as possible what is due to be done and how it is to be done. You can also attach photos that you have both agreed represent your mutual expectations, and these will essentially form your jointly created specification. Smaller works, such as decoration or tiling, for example, can be recorded more simply, but use this section to set out details such as how many coats of paint you expect, or the colour or size of tiles.

A5 Most building work these days requires some form of statutory permission and it is illegal for either you or your contractor to start work without such conditions being satisfied. Use this section to ensure both parties have seen and are in possession of copies of the relevant permissions. Commonly planning and building control permissions can be granted with conditions attached. These can cover areas such as the requirement to supply samples of materials, colours or greater details of specific points. Do ensure copies attached to this contract include all of these conditions so both parties are fully aware of the requirements.

Remember, planning permission is not permission to begin work. A separate building control licence is required and only then can work commence.

Bournement: this is an old Guernsey-specific requirement. Essentially, it means that if any construction work requires you to work within five metres of a public right of way then a bournement could be required. Your Parish Constables' office is responsible for administering these and an early application or consultation can avoid a delayed start to your project, or even worse, a fine.

Asbestos: asbestos is a form of insulation and building product that was used some years ago. It has since been proven to be deadly in some situations, and strict rules exist to protect you, your contractor and their workforce from its potential effects. If you or your contractor suspect the presence of asbestos a full asbestos survey should be carried out prior to the commencement of any works. This may be requested even when no obvious signs are present since some common materials such as floor tiles contained asbestos in years gone by.

A6 Although their individual requirements may vary due to the specific terms and conditions of a particular insurance policy, it is always important for the householder to inform their insurers when any building work is about to commence. Some insurers like to see additional cover put in place, for example when a home is less secure due to open working areas. Always seek the advice of your insurer or brokers, they're there to help. Remember also to heed their advice; it's too late to wish you had cover after an uninsured event has occurred.

A7 All contractors are mandated to hold public liability insurance as a minimum and employer's liability if they employ any staff. These forms of cover are for the client's protection should something unexpected occur, and it is critical both parties share insurance details honestly and openly. The extent of cover can vary, however normally you would expect to see a minimum of

£2million public liability cover. It's always wise to ask for copies of insurance and never sensible to just take someone's word that cover is in place.

A8 Clients who have little or no knowledge of what is involved in the work being undertaken can choose to instruct an agent to oversee the work on their behalf. By doing so they may delegate decision-making powers and thus the contractor can find themselves in a three-way relationship. Set out the details of whom and what is expected of the client agent if you nominate one.

N.B. Instructing an independent project manager, your architect or a quantity surveyor to manage the work on your behalf can have benefits in terms of costs, time and quality but is obviously not without costs itself. However, the benefits should not be underestimated, as a well-managed and run project can be a relaxed and enjoyable experience from which you can emerge to enjoy the fruits of everyone's labour.

Terms of agreement

This section of the contract sets out the details that shall be applied to the works being carried out, the payment terms and any specific restrictions that the client wants put in place.

1. **Payments:** Simply the amount of time between the presentation of an invoice and when it should be paid by the client. Remember, if a client's agent is involved, they will need to review the information and then report and seek the approval of the client. Consequently, both parties must be realistic about the time allowed.
2. **Retentions:** Often a contract will allow for the client to retain a small amount of monies owed for a set period of time to allow for any faults or remedial works to be completed. Both parties need to agree to this but it is common practice for 2.5% to be retained for six months and this section goes hand in hand with section 3. However, it's also worth noting here that the client is expected to pay and the contractor is expected to ensure any loose ends are completed to release the retained monies. It is not acceptable for either party to consider this written off. "If the client arranges for another trader to make minor repairs without the consent of the contractor and without giving the contractor a reasonable chance to put the matter right then they will still be required to pay the contractor the full amount owed."
3. **Contract commencement:** Be careful that both parties are realistic here. The permissions and permits must be fully in place and your contractor often needs a little time to prepare so that time on site is utilised effectively. A quick start can often mean a prolonged finish.
4. **Contract duration:** As above, be realistic. Encourage your contractor to provide a programme in some form, preferably a Gant chart showing the work schedules and critical items. This is good practice because it will inform you of when decisions are needed to allow your contractor to perform their side of the contract. It's important that you and your contractor work together to create a happy and enjoyable project, having measured expectations enables you both to have reasonable knowledge of where you are, also remember variations will occur and you and your contractor must work together to accommodate those effectively.
5. **Quoted sum:** Here's where you enter the amount you expect to pay.
6. **See Variations sheet note later in this document**

7. **Services to be provided by the client:** Tick the boxes to indicate what on site services you have each agreed to provide. For example, your contractor can bring a self-contained toilet on site but he will include a charge for that in his contract price, so you may wish to allow use of an existing toilet and make the saving, likewise other services such as water and electricity. It is not an option not to provide toilets unless public toilets are nearby.
8. **Access arrangements:** Will keys be handed over or will you be opening the site each day? What other access may be available, particularly, for example, if an extension is linking to an existing house area? Also, you may or may not wish to grant access to sheds or garages for storage. It's worth noting all these points here so both parties know the situation, it makes it easier for the contractor to restrict his own staff if the conditions are known from the start.
9. **Restrictions:** Without exception, it is the little things that can become annoying and cause undue pressure on you and your contractor's relationship. If you don't want smoking in your home or garden then let your contractor know here. Noise from radios can be annoying for you and your neighbour but equally may help your workforce stay motivated, so consider what you will find acceptable. Working hours are obviously of critical importance, if you don't want your contractor on site before you've got up properly or you don't want them there when you're trying to relax at the weekend then set these standards here in discussion with your contractor. Also remember there are statutory rules for noise levels which you can view and download at www.gov.gg/nuisances, compliance with these is not an option.
10. **Problems and disputes:** We hope that nobody sets out on a contract either wishing for or expecting problems, however despite this they can occur and often both parties cannot seem to find a resolution that is mutually acceptable. In this situation, seeking first the advice of the client's agent and then, if that fails, the services of an arbitrator is an important step towards finding a sensible resolution. This contract allows for both parties to agree for the dispute to be referred to the Channel Islands Branch of the Chartered Association of Arbitrators Dispute Resolution Scheme. Both parties agree to use this process and abide by their findings.
11. **Signatures:** Ensure both parties sign and enter addresses and date the agreement, in addition it is recommended each page is initialled by both parties. Should you choose to write anything specific to your own project in this document then again both parties should initial those entries.

Section B

A very important part of the contract and a section that it is critical both parties pay attention to, understand and comply with.

B1 sets out the obligations that the client is agreeing to in signing the contract. These are not negotiable because you will have worked your way through the options and notes in the previous sections making these obligations specific.

B2 sets out the contractor's obligations and it is worth ensuring you have both read these obligations in full in each other's presence. Again, these are non-negotiable and a critical element of the contract.

Appendix:

Staple together copies of all the relevant documents and ensure both parties hold a full copy. This ensures you both have all the information and documents that have built up to become the details by which you have both agreed to be bound. Even if you don't think you need this now you may need it later, not only if something goes wrong but just to refer to during your meetings together. None of us are perfect so our recollection of something said can differ, but recorded documents can help settle any misunderstandings.

Variations:

As we said earlier in these notes, it's almost certain variations will occur. They may be items you choose to add or omit yourself or design items that change by necessity. An example may be the groundworks element of a job which is almost always a little unknown at commencement. If a foundation requires additional concrete, steel or even piling then this may be instructed by your engineer or even building control and clearly this is a variation.

It is highly recommended variations are priced before acceptance but this is not always possible. However, your contractor should certainly be able to give you a reasonable idea of the costs involved verbally. You can record a variation on the attached sheets and mark as estimate but agree a timescale for that to be priced and set a ceiling cost above which the contractor cannot go without giving the full quotation or seeking additional instruction. If you instruct a client's agent then they will assist in ensuring variations are reasonable and controlled.

Remember, variations can be down as well as up, using groundworks again as an example, you may have expected to pile or include steel in your foundations only to find rock just below the surface, or a simpler situation may be that you decide to omit decoration and do that yourself to save money at the end of the project. You are entitled to remove items in agreement with your contractor, though remember he may have already incurred some costs and will be entitled to recover those as part of the variation.

And finally:

Having work done, whether small or large, complicated or simple, carries the same risks and rewards. Without doubt, a positive project outcome feels like a real achievement and you will enjoy every moment of your new space or result even more knowing the process itself was enjoyable.

It would be rare that two parties enter into this kind of arrangement without imagining a great outcome so remember that and try to establish and maintain a positive working relationship throughout your project. If problems occur deal with them early and don't let them fester or grow to become unmanageable.

Most of all, enjoy the process as well as the outcome and have fun fulfilling your projects!