



NEW ZEALAND STANDARD

**Agreement for
SMALL BUILDING CONTRACTS
(INCLUDING SUPPLY OF LAND)**

UDC 347.44 : 693+694

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Standards Association of New Zealand

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NEW ZEALAND STANDARD

**AGREEMENT FOR
SMALL BUILDING CONTRACTS
(INCLUDING SUPPLY OF LAND)**

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CONTENTS

	PAGE
Committee representation	4
Foreword	5
Instructions for filling in agreement	6
<i>Clause</i>	
1 Date and parties	7
2 Scope	7
3 Interpretation	7
4 Title to section	8
5 Contract price and progress payments	8
6 Finance	10
7 Commencement and completion of works	11
8 Right to withdraw	11
9 Insurance	12
10 Discrepancies	12
11 Occupier's liability and access	12
12 Substitutions	13
13 Variations	13
14 Wage and price changes	13
15 Suitability of site	14
16 Completion certificate	14
17 Use or occupation by owner	14
18 Release of final payment	15
19 Failure of builder or owner	15
20 Arbitration	15
21 Additional clauses	16
22 Execution of agreement	16

COMMITTEE REPRESENTATION

This standard was prepared under the supervision of the Conditions of Contract Sectional Committee (39) for the Standards Council established under the Standards Act 1965. The committee consisted of representatives of the following:

Building Research Association of New Zealand
Insurance Council of New Zealand
Municipal Association of New Zealand
New Zealand Contractors Federation
New Zealand Counties Association
New Zealand Electrical Contractors Federation
New Zealand Guild of Master Painters, Decorators & Signwriters
New Zealand Institute of Architects
New Zealand Institute of Clerks of Works
New Zealand Institute of Surveyors
New Zealand Institution of Engineers
New Zealand Master Builders Federation
New Zealand Government Railways Department
New Zealand Society of Master Plumbers
Quantity Surveyors Institute of New Zealand

The Small Building Contracts Committee (39/2) was responsible for the preparation of the standard and consisted of the following persons:

Messrs. K. L. Hogg (chairman), F. A. Cree, C. Crothers, K. Donald, D. M. Forsell, F. Soeterik, and T. A. Yates.

FOREWORD

Ordinary dwellings, not requiring structural calculations, account for over half the annual value of all New Zealand building construction. Only a small percentage of house building contracts is controlled by an architect or other professional supervisor appointed by the owner. In most cases, the owner arranges the building contract direct with a builder and also arranges mortgage finance to cover part of the cost.

This standard is one of a pair, NZS 3901* and NZS 3902*, intended to provide a form of building contract agreement suitable for owners who are making their own building arrangements. It should not be used where the owner employs a professional expert to design the works and administer the contract. In the latter case, the appropriate standard is NZS 623*.

"Small" in the title has no specific limits. It is assumed that the owner will dispense with professional supervision only for jobs that are straightforward and not over-large.

Although house construction with loan assistance is expected to be the principal use of this standard, the text refers only to "the works". Hence it can be used without amendment for any other small building job, such as a garage, a farm building or small commercial premises. The agreement provides for use of loan moneys, but these provisions need not apply where the owner is not a borrower.

NZS 3901 should be used where the owner provides the section, which he has already purchased or leased, and engages the builder solely to build thereon.

NZS 3902 should be used for a combined contract where the builder, who may also be a land developer, offers a section on which, as part of the same transaction, he undertakes to erect a building to the purchaser's requirements.

Other types of transaction are possible. Sometimes a builder will offer a section with a partly built house to be altered or finished to suit the purchaser. Since the appropriate arrangements greatly depend on the stage of construction already reached, in such a case the purchaser should not use a standard agreement. He should engage a solicitor to write one for the specific circumstances.

Users of this standard should note that it generally recites only those rights and obligations which require agreement between the parties. Both parties have many other rights given them and duties imposed on them by the law. To keep the document reasonably short, provisions which would just repeat ordinary legal rights and duties have mostly been omitted.

If any dispute arises, each party should therefore consult a solicitor to ascertain his full rights in the matter. The parties are particularly cautioned against taking any kind of direct action, such as refusing a payment or stopping construction, except under legal advice.

The agreement provides for retention of 5 percent of the contract price to encourage prompt rectification of defects. Owners should note that some Master Builders' Associations offer guarantees which an owner may elect to accept in lieu of retaining money.

With regard to insurance (section 9), the parties should note two points:

- (1) The builder is warned that certain works which clause 9.4 requires him to reinstate may not be covered by the standard forms of policy specified in clause 9.1. (An earthquake-damaged retaining wall is an example.) He should therefore check with his insurer whether any extensions are necessary to ensure his full protection.
- (2) When the owner signs the completion certificate referred to in clause 16.1, the builder's insurance normally ceases and the risk passes to the owner. Before signing this certificate, the owner should therefore arrange his own insurance cover.

*The full titles of the standards referred to above are as follows:

NZS 3901 : 1974 *Agreement for small building contracts (excluding supply of land).*
 NZS 3902 : 1974 *Agreement for small building contracts (including supply of land).*
 NZS 623 : 1964 *Conditions of contract for building and civil engineering construction.*

INSTRUCTIONS FOR FILLING IN AGREEMENT

At least two copies of the agreement are required, each identically filled in and signed. One copy is then kept by the Owner and the other by the Builder, as his record of the contract. To complete his record, each party should also have a fully initialled copy of the drawings and the specification.

In addition to the two master sets of documents referred to above, further copies of all or some documents, signed or unsigned, will be required for the office records of solicitors, mortgagees, the local authority or for use on the job. The number and nature of such further copies should be discussed and arranged with the persons concerned.

The numbered blank spaces in the agreement should be filled in as follows:

- [1] Date to be inserted by *last* party who signs.
- [2] Insert full name of Owner. If there are joint Owners (commonly husband and wife) insert both names.
- [3] Insert full name of Builder, if a person, or name of firm, if a partnership, or company name.
- [4] Insert particulars, which are obtainable from the certificate of title of the section.
- [5] Insert street number and name of street, or "N.A." ("not applicable") for a country or other property having no such description.
- [6] Insert price agreed between Owner and Builder. Since certain fees and charges are based on each, separate prices for the section and for the works must be shown.
- [7] Write any other agreed arrangement in the blank space for additional clauses in section 21 at the end of the agreement, give it a clause number and write this number in clause 5.2.
- [8] Insert the agreed progress payments in the table. These must add up to a total [8] which is the same amount as [6].
- [9] Insert minimum amount. This will possibly be less than the total loans actually applied for, shown below under [10].
- [10] Insert names of first, second, third mortgagees or other prospective lenders and amount sought from each; or "N.A." if not a borrower.
- [11] The blanks in this certificate, as printed in the agreement, should not be filled in. This is only a specimen for the Owner to *copy* at the end of the contract, not the actual certificate.
- [12] Rule a line under last clause added (or under clause 21.1 if none is added) and write initials above the line.
- [13] Insert usual signatures (not full names) in the places indicated. Both joint Owners must sign. One partner only need sign for a partnership. Witnesses to signatures are not required.

A company shall affix its common seal, attested as prescribed in its Articles of Association. Each signatory for a company should also state his office (Director, Secretary, or the like).

Finally, each person signing under [13] must initial (in the bottom margin) each page of the agreement and also any alteration of the text. (Filling in a blank space is not an "alteration", but any words crossed out must be initialled.)

Also initial every page of the drawings and the specification and separately initial any alterations. If some general form of printed specification is used, many parts will probably be crossed out; initial each of these deletions.

Stamp duty is payable on this agreement, by the Owner, within three months after the date stated in clause 1.1. An Owner not employing a solicitor should take the agreement (his own record copy only) to the local office of the Inland Revenue Department, who will assess and receive payment.

NEW ZEALAND STANDARD

AGREEMENT FOR SMALL BUILDING CONTRACTS

(INCLUDING SUPPLY OF LAND)

1 Date and Parties

1.1 This agreement is made on [1]* between

[2]

(hereinafter called "the Owner") and [3]

(hereinafter called "the Builder").

2 Scope

2.1 By this agreement the Builder undertakes to sell to the Owner the section described in clause 3.1 and to construct thereon the works described in the drawings and specification attached hereto and the Owner undertakes to make payment, each in the manner specified herein.

2.2 As at the date of this agreement, the matters specified herein shall constitute the whole arrangement between the parties. Any subsequent alteration of such arrangement shall be valid only if made in writing.

3 Interpretation

3.1 In this agreement, unless inconsistent with the context—

COMPLETION OF THE WORKS means the date on which the Owner signs the completion certificate referred to in clause 16.1.

DRAWINGS means the drawings showing the works, attached hereto and initialled by the parties.

PARTY means the Owner or the Builder.

SECTION means the land on which the works are to be constructed, namely—

[4] Lot No. on Deposited Plan No.,

..... Registry, commonly known as—

[5]

If at the date of this agreement a separate statutory title for such land is not yet created, SECTION shall mean the land which the Builder undertakes to sell to the Owner and which is identified as to location, dimensions and area on the drawing attached hereto and initialled by the parties.

* At each numeral in square brackets refer to "Instructions for filling in agreement", on p. 6.

SITE means the portion of the section containing the works.

SPECIFICATION means the written document describing the works, attached hereto and initialled by the parties.

WORKS means the building and all related materials and services to be provided by the Builder.

3.2 Reference to the Owner or to the Builder includes reference to his authorized agent. Reference to his solicitor shall be read as reference to the appropriate party, if he does not employ a solicitor.

3.3 Reference to the singular, to the masculine, or to a person includes respectively reference to the plural, to the feminine, or to a company and vice versa.

3.4 Times stated are calendar periods, but include the first business day thereafter if such period expires on Saturday, Sunday, or a business holiday. All times run from midnight following the starting event.

3.5 Reference to any clause by its number includes reference to any additional clause on the same matter in section 21.

4 Title to section

4.1 The Builder shall deliver to the Owner a memorandum of transfer of the section, executed in favour of the Owner and (subject to any necessary stamping) immediately registrable by the Owner under the provisions of any appropriate statute.

4.2 The Builder shall not be obliged to deliver the memorandum of transfer to the Owner nor shall the Owner be entitled to register it until after this agreement has become a firm contract as specified in clause 8.5.

4.3 The title to the section and the memorandum of transfer shall not include any easement, restriction, covenant, or encumbrance except as stated in section 21.

4.4 The Builder shall not be entitled to receive any progress payment referred to in section 5 until he has complied with the requirements of this section.

5 Contract price and progress payments

5.1 The contract price [6] shall be as follows:

(a) For the section	...	...	...	...	...	...	\$.....
(b) For the works	...	...	...	...	...	...	\$.....

Total contract price	...	...	...	...	...	...	\$.....
							=====

5.2 The contract price shall be paid by progress payments at the following times, unless otherwise agreed in terms of additional clause [7]

Time	Progress Payment
(a) On delivery of the memorandum of transfer to the Owner, contract price for the section	\$
(b) On completion of foundations and floor joists	\$
(c) On completion of wall framing and roof framing	\$
(d) On completion of exterior sheathing, window frames, and roof	\$
(e) On completion of flooring, interior walls, and ceiling linings	\$
(f) On completion of the works (see definition in clause 3.1)	\$
Sub-total (which must add up to 85 percent of the contract price for the works)	\$
(g) Thirty-one days after completion of the works 10 percent of the contract price for the works, being money retained in compliance with the Wages Protection and Contractors Liens Act 1939*	\$
(h) On rectification of defects (see section 18) 5 percent of the contract price for the works	\$
Contract price for the works	\$ \$
Total contract price [8]	\$ =====

*For the protection of certain creditors of the Contractor, who may claim against the Owner if the Contractor does not pay them, the Wages Protection and Contractors Liens Act 1939 requires the Owner to retain a portion of the contract price for 31 days after completion of the works. For works up to \$200,000 this portion is 10 percent.

5.3 At the time stated in each item (a) to (h) of clause 5.2, the Builder shall deliver to the Owner a written claim for the amount shown or for any amended amount permitted by clause 5.4.

5.4 The contract price for the works at the date of this agreement, as stated in clause 5.1, shall be subject to later adjustments for substitutions (section 12), variations (section 13) and wage and price changes (section 14).

5.5 Each party claiming such an adjustment shall notify the other party in writing as soon as particulars of the claim are known.

5.6 All such adjustments shall accumulate unpaid until completion of the works. When the final contract price is known, the amounts (f), (g), and (h) stated in clause 5.2 shall be amended accordingly.

5.7 The Owner shall make each payment within 14 days after receiving the claim referred to in clause 5.3.

5.8 If any amount remains unpaid after the time specified in clause 5.7 —

- (a) The Builder may charge interest on such amount at the rate of 10 percent per annum.
- (b) Without prejudice to any other right to which he may be entitled, after giving three days written notice to the Owner, the Builder may suspend the works until all amounts overdue, including interest, are paid.

5.9 The offering, making, or accepting of any payment shall not prejudice any other right to which either party may be entitled.

6 Finance

6.1 The Owner warrants that he is able to pay the contract price stated in clause 5.1 provided that he receives loan moneys of at least [9] \$..... and that he has applied for the following loans: [10]

- (a) From \$.....
- (b) From \$.....
- (c) From \$.....
- Total \$.....

6.2 The Owner further warrants —

- (a) That he has paid or will pay to his solicitor the balance of the contract price not covered by loan moneys.
- (b) That he has instructed his solicitor to arrange advances from lenders at appropriate times.
- (c) That he has instructed his solicitor to notify the Builder in writing on completion of all arrangements to ensure that progress payments will be punctually made.

7 Commencement and completion of works

7.1 On receiving in satisfactory terms the notification referred to in clause 6.2 (c), the Builder shall inform the Owner in writing of a date on which he undertakes (subject to availability of a building permit) to commence the works. If accepted by the Owner, such date is hereunder referred to as "the agreed starting date".

7.2 The Builder shall not be obliged to apply for a building permit before the agreed starting date is settled, but shall apply within seven days after such settlement.

7.3 The Builder shall commence the works not later than on the agreed starting date, but if a building permit is not then available and the Owner has agreed to a postponement for that reason, the Builder shall commence the works within seven days after a building permit becomes available. Thereafter the Builder shall diligently continue the works until they are completed.

8 Right to withdraw

8.1 This agreement is signed conditionally on certain later events occurring either within stated times (adherence to such times being essential) or to the satisfaction of one or other party.

8.2 The Owner may withdraw from this agreement if —

- (a) He is unable within two months of the date of this agreement to obtain the minimum loan moneys stated in clause 6.1 on terms acceptable to him; *or*
- (b) The starting date named by the Builder, as required by clause 7.1, is not acceptable to him; *or*
- (c) The Builder does not apply for a building permit within the time stated in clause 7.2; *or*
- (d) A building permit is unconditionally refused or is not issued by the agreed starting date or within any further time allowed in terms of clause 7.3; *or*
- (e) Cost increases between the date of this agreement and the date of commencing construction, referred to in clause 14.3, are not acceptable to him; *or*
- (f) The Builder does not commence the works on the agreed starting date, or within any further time allowed in terms of clause 7.3.

8.3 The Builder may withdraw from this agreement if —

- (a) He has not received in satisfactory terms and within two months of the date of the agreement the notification of availability of finance referred to in clause 6.2 (c); *or*
- (b) A building permit is unconditionally refused or is not available within six weeks of the date of application.

8.4 A party electing to withdraw from the agreement shall so inform the other party in writing within seven days after he learns of the event entitling him to withdraw, or within any further time mutually agreed. Any right to withdraw not exercised within such time shall lapse.

8.5 If neither party has withdrawn from the agreement on expiry of the latest time for withdrawal, the agreement shall become a firm contract.

8.6 If either party withdraws from the agreement in terms of this section, the agreement shall be of no further effect and the Builder shall refund to the Owner any money which the Owner has paid him.

9 Insurance

9.1 From commencement to completion of the works, the Builder shall keep in force the following insurances:

- (a) A policy of the type known as "Builder's Risk" for the full insurable value of the works, including cover against fire and against earthquake in terms of the Earthquake and War Damage Act 1944.
- (b) A policy of the type known as "Public Liability", including cover against damage to property for an indemnity figure of at least \$100,000 in any one accident, the number of accidents in any period being unlimited.

9.2 All insurances shall be with a reputable insurer carrying on business in New Zealand and policies shall be for the benefit of the Builder, the Owner, the mortgagee, and (to the extent of their participation in the works) all subcontractors.

9.3 Before commencing the works, the Builder shall deliver to the Owner's solicitor written evidence that he has effected the insurances specified in clause 9.1. Subsequently, if requested by the Owner, the Builder shall produce evidence that such insurances continue in force.

9.4 If the works are damaged by fire or earthquake the Builder shall apply the insurance proceeds to making good such damage, but no such damage shall lessen the Builder's obligations under this agreement.

10 Discrepancies

10.1 If any discrepancy or conflict between the drawings and the specification appears, the specification shall prevail.

10.2 Figured dimensions shall prevail over scaled dimensions.

11 Occupier's liability and access

11.1 From commencement to completion of the works, the Builder shall be deemed (as between Owner and Builder) always to be the legal occupier of the site and other parts of the section used for access to the site or in connection with the works.

11.2 If any part of the section or the works is enclosed or locked-up by the Builder while construction work is not in progress, the Owner or the mortgagee shall not enter such part except at reasonable times by prior arrangement with the Builder, who is entitled to be present.

11.3 For the purpose of inspecting the works, the mortgagee shall be entitled to the same right of entry as the Owner.

12 Substitutions

12.1 If any material, arrangement or process required by the drawings or specification is or becomes unprocurable or prohibited by law, the Builder may substitute another reasonably equivalent material, arrangement or process, with appropriate adjustment of the contract price.

12.2 All such substitutions shall be subject to the prior written approval of the Owner and (if substantial) the mortgagee. Approval by the Owner shall not be unreasonably withheld.

13 Variations

13.1 The Builder shall make reasonable variations to the works which may be ordered by the Owner.

13.2 The Builder shall not be obliged to make any variation which increases the contract price unless he is satisfied that the Owner is able to pay such increased price.

13.3 Each order for a variation shall be in writing, shall (if substantial) be approved by the mortgagee and shall state an agreed adjustment of the contract price.

14 Wage and price changes

14.1 The Builder is deemed to have fixed the contract price for the works stated in clause 5.1 on the basis of wage rates and price of materials and services ruling at the date of this agreement in the district where the section is situated.

14.2 Either party shall be entitled to an adjustment of the contract price by the amount due to any increase or decrease in such ruling rates and prices which becomes effective before completion of the works and which relates to the Builder's obligations under this agreement.

14.3 If before commencing the works the Builder is entitled to increase the contract price in terms of clause 14.2 he shall notify the Owner in writing of the amount of such increase. The Owner may thereupon withdraw from the agreement, as specified in clause 8.2 (e).

15 Suitability of site

15.1 With respect to subsidence of the site, the Builder warrants that the ground is suitable for the works.

16 Completion certificate

16.1 When the Builder informs the Owner in writing that the works have been completed, the Owner shall without undue delay inspect the works and (if it appears to him that the works have been completed) he shall deliver to the Builder a certificate in the following form:

COMPLETION CERTIFICATE [11]

The Owner certifies that he has inspected the works described in the agreement dated made between him as Owner and as Builder, and that such works appear to him to have been completed.

Signed: Owner

Date:

16.2 Defects in the completed work, which the Builder has undertaken to rectify, shall not entitle the Owner to withhold the completion certificate.

17 Use or occupation by owner

17.1 The Owner shall be entitled to use or occupy the site and works only—

- (a) If the Builder, at the Owner's request, consents. Such consent shall not be withheld unless such use or occupation would impede the carrying out of the work still to be done; *or*
- (b) If the Builder has informed the Owner that the works are completed and the Owner has delivered to the Builder the completion certificate referred to in clause 16.1; *or*

- (c) If the Builder is in breach of any obligation under this agreement and the Owner has given to the Builder at least seven days notice in writing of his intention to use or occupy the site and works and specifying the breach.

17.2 Any such use or occupation by the Owner shall not prejudice any other right to which either party may be entitled.

17.3 If the Owner uses or occupies the site and works otherwise than in accordance with clause 17.1, all moneys payable to the Builder on completing his obligations under this agreement (except any statutorily retained amount) shall be immediately due as if claimed in terms of clause 5.3.

18 Release of final payment

18.1 Without any undue delay and at his own cost, the Builder shall make good all defects to and omissions from the works which the Owner reports to him within one month after completion of the works.

18.2 On making good all such defects and omissions the Builder shall be entitled to claim the payment marked (h) in clause 5.2.

19 Failure of builder or owner

19.1 If either party ceases to have full legal control of his affairs, unless the person acquiring such control continues to satisfy the other party that he will complete the contract, the latter party may exercise any right to which he would be entitled if the former party had refused to complete the contract.

19.2 Without exclusion of other grounds, a party shall be deemed not to have full legal control of his affairs if —

- (a) Being a person he dies, becomes insane, bankrupt or compounds with his creditors.
- (b) Being a company it goes into receivership or otherwise ceases to be fully controlled by the directors.

20 Arbitration

20.1 Any dispute between the parties shall be referred to arbitration in terms of the Arbitration Act 1908.

21 Additional clauses [12]

21.1 If any provision added in this section conflicts with any other provision in this agreement, the provision in this section shall prevail.

22 Execution of agreement [13]

22.1 As at the date stated in clause 1.1, this agreement is signed or sealed by the parties as follows:

Signature of Owner:

Signature of Builder:

The common seal of

.....
was affixed in the presence of —

(1)

(2)

(3)

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NZS 3902: 1974

NZS 3902: 1974