

A Simple Contract for a Simple Job

by Gary Ransone



Most construction disputes happen because the contractor and the owner have different expectations about how a job will be handled and how it will look when it's done. The best way to avoid misunderstandings is to furnish the owner with a descriptive construction contract that is appropriate for both the size of the job and the personality of the owner. In other words, the simpler the job and the better you know the owner, the simpler the contract ought to be. You need to provide an adequate level of contract language to govern the business relationship, but you don't want to overwhelm people with long contracts for small jobs.

Short Form Contract

What follows is a summary of the first part of our short form contract for small jobs (I'll discuss the rest of the contract next month). It's not meant to be adequate for larger jobs, and as always, you should consult your attorney before using a contract based on ours because laws vary from state to state. But it will help to give you an idea of what to include in a contract and why.

Title page. The first page of a contract should clearly identify the parties to the contract, establish the date, and set forth the basic agreement. For example, the first sentence of our contract reads like this:

Ransone Construction, a licensed and bonded California General Contractor, in consideration of the mutual promises contained below, agrees to perform the following work:

This statement not only tells the owner we are licensed and bonded, it also incorporates the legal concept of "consideration." This is essentially a "bargained for exchange" in which one party agrees to do the specified work in exchange for specified payments from the other party. If you will be following plans or other written documents, add a phrase like this one: "in accordance with 3 pages of plans drawn by Joe Architect dated April 1, 1993."

Scope. Describe the scope of the work in a numbered list, roughly following the order of construction, and detailing exactly what you plan to do and the materials and fixtures you plan to use. This description is especially important on small jobs where you're working without plans because it helps to avoid misunderstandings over what work will be done. But most owners really appreciate a full description of the work even when there are detailed drawings. Sometimes, we get jobs on which we are not low bidder simply because the owner likes our thorough description of the scope.

Amount. Provide a separate section that shows what the work will cost. I sometimes break down the cost to show my overhead and profit, but this is not necessary. What's important is to be clear about exactly how much the owner is paying for the work.

General Conditions

Every contract, no matter how small the job, should include what

is commonly known as *General Conditions*. These describe in detail a variety of issues that commonly occur in construction.

Exclusions. Contractors often end up doing a lot of additional work without pay because they fail to exclude work that the owner thinks is included in the contract price. We avoid misunderstandings over items we have not included in our bid by listing them as exclusions. The exclusions section of our contract is just as important as our description of the scope of the work. Together, they help the owner get the full picture of what a job will cost.

We divide exclusions into *standard* exclusions and *project specific* exclusions. Standard exclusions are pretty much the same for all jobs, and include things like temporary sanitation and power facilities, custom milling, blockage of pipes due to loosened rust, and final cleaning (we leave the site "broom clean"). We also exclude removing and disposing of asbestos and "other hazardous materials as defined by the EPA."

Project specific exclusions should include items that could easily be assumed by the owner to be included in the price but which, in fact, are not. For example, by the end of a bathroom remodel, the owners may have forgotten that they said they would purchase and install the towel bars, and expect you to do it at no extra cost. If you specifically exclude this work, you're covered.

This is also the place to exclude the cost of any permits or fees required by city, county, or other governmental agencies if you haven't accounted for those expenses in your price.

Start and finish. Specify particular calendar dates for starting and finishing the job, or simply state that the job will commence on a date mutually agreed upon, and will be completed in a specific number of weeks (see Figure 1, previous page). But be careful about promising the owner that you will perform the work in an unreasonably short period of time. Give yourself some room for Murphy's Law to spoil your schedule.

Also, allow for reasonable delays caused by things like holidays, inclement weather, accidents, shortages of labor or materials, and additional time required for performance of change order work. Protect your-

self as well from delays caused by the owner, and from other unavoidable delays beyond your control.

In some states, such as California, failing to commence work within a certain number of days of the date specified in your contract violates the terms of your license (Figure 2). So be realistic about both ends of the schedule you set.

Acceptance. Set a limit, such as 15 to 30 days, on the amount of time the owner has to accept and sign the contract (Figure 3). Otherwise, the owner can sign the contract nine months after you prepared it, by which time prices may have increased.

Expiration of This Contract

This contract will expire 30 days after the date at the top of page one of the contract if not first accepted in writing by owner.

Figure 3. Don't give the owner an indefinite period of time to accept the contract. If the owner signs after a long delay, you may lose money because of pricing changes.

Warranty and Disputes

Many states have laws governing the minimum warranty period for construction work, but your contract should explicitly state the length and coverage of your warranty, as long as they conform to the state's limits. A convenient time for the warranty to kick in is at substantial completion because it coincides with the time when the owner begins to use the structures you are warranting. You should also state that the warranty is void if the owner fails to make the final payment, and specify that the warranty does not apply to materials and labor supplied by the owner.

Disputes. My contract provides for small disputes (under \$5,000) to be settled in the local small claims court. For larger disputes, I include a standard clause specifying arbitration. Arbitration language is usually determined by law, so consult your attorney for the exact wording and placement of the clause in your contract.

Both arbitration and litigation will be expensive, and the outcome will probably be unfortunate for you, win or lose. If you can avoid the dispute by using better contracts and improving your ability to enforce them, you're ahead of the game. If you end up with a real dispute, a small claims court is your cheapest and fastest way to go. Your chances for success will be increased by briefly consulting a construction attorney prior to the hearing. ■

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Date of Work Commencement and Substantial Completion

Commence work: June 1, 1993. **Completion time through substantial completion:** Approximately 2 to 3 weeks, not including delays and adjustments for delays caused by: holidays, inclement weather, accidents, shortages of labor or materials, additional time required for performance of change order work (as specified in each change order), delays caused by the owner, and other delays unavoidable or beyond the control of the contractor.

Figure 1. Be as specific as you can about when the project will start and finish. But be careful about promising the owner that you will perform the work in an unreasonably short period of time.

NOTICE: FAILURE OF CONTRACTOR, WITHOUT LAWFUL EXCUSE, TO SUBSTANTIALLY COMMENCE WORK WITHIN 20 DAYS FROM THE APPROXIMATE DATE SPECIFIED IN THE CONTRACT WHEN WORK IS TO BEGIN IS A VIOLATION OF THE CONTRACTOR'S LICENSE LAW.

Figure 2. This language is required by the California State Contractor's Licensing Board. Check to see if your state requires special language in your contract.