



Contract Language for Change Orders

by Gary Ransone

A short construction contract is a good match for a small job. Still, every contract should include a detailed description of the scope of the work and its cost, and a section called "General Conditions" that covers exclusions, start and finish times, and dispute resolution (see last month's *Legal Column*).

To complete your short-form contract, include a payment schedule and some provision for handling changes.

Change Orders

The General Conditions should address all changes that affect both the scope of work and the contract price.

Concealed conditions. In remodeling, you always end up

correcting a problem, like an underframed header or a rotted sill, that wasn't factored into your price because it was hidden until you started the work. To establish your right to be paid for this type of work, include a concealed conditions clause in your contract (see Figure 1).

The clause we use establishes that our price is based on observations we were able to make before construction began. It also sets up the procedure to be followed when additional concealed conditions are discovered, including stopping work and executing a change order for the additional work.

If you include similar procedures, be sure to follow them. Above all, be sure to get the owner to sign the change order

before you proceed. Do not simply do the work and surprise the owner later with a bill.

Changes in the work. The change order section of your contract should also set up a procedure for writing change orders when the owners change their minds about some part of a project, or when you or your subcontractors discover a cheaper way of doing things (Figure 2). Explain how the cost will be determined, including your overhead and profit, for both additions and deletions.

We add a percentage over and above the cost of materials and labor to all change order work. Sometimes this percentage is greater than that applied to the scheduled work because of the administrative time required to write up and execute the change order. However, we do not credit back any profit and overhead when the owner decides to delete portions of the work after signing the contract. This helps cover the time we have already invested bidding the work, and also discourages the owner from chipping away at the work we are in the process of performing.

Additional work. Also include contract language that requires a change order for additional work requested by the owner that is not part of what was described in the scope of the work (Figure 3, previous page). In practice, you don't have to charge for every little item. But if the owner wants to add another base cabinet to the kitchen layout, for instance, this additional work language allows you to write a change order. Again, establish a procedure that includes putting the change order in writing, and avoid doing additional work until you have a signed change order.

Required changes. Sometimes, during a plan check or field inspection, the building department will make you tear something out and build it in a way that varies from the plans. If you weren't negligent, you should be paid for complying. In other words, the work becomes an automatic change order (Figure 4, previous page).

Rates. We also use this section of our contract to inform the owner of the labor rates and profit and overhead percentages we will charge for work done on allowance

Concealed Conditions

This contract is based solely on observations the contractor was able to make with the structure in its current condition at the time the work was bid. If additional concealed conditions are discovered once work has commenced which were not visible at the time this proposal was made, contractor will stop work and point out these unforeseen concealed conditions to the owner so that the owner and contractor can execute a Change Order for any additional work.

Figure 1. Extra work required by conditions that were not visible before work began should be handled with a change order.

Changes in the Work

During the course of the project, the owner may order changes in the work (both additions and deletions). The cost of these changes will be determined by the contractor. The contractor will add profit and overhead at the rate of 20% to the cost of additional work to arrive at the net amount of any additional work. The contractor's profit, overhead, and any supervisory labor will not be credited back to the owner with any deductive Change Order.

Figure 2. Be sure to specify overhead and profit charges for additional work. The author does not credit overhead and profit for deleted work.

Deviation from Scope of Work in Contract Documents

Any alteration or deviation from the scope of work referred to in the contract documents involving extra costs of materials or labor will be executed upon written change order issued by the contractor and should be signed by contractor and owner prior to the commencement of additional work by the contractor. This Change Order will become an extra charge over and above the lump sum contract amount referred to at the beginning of this contract.

Figure 3. Change orders should also be used to handle work that extends beyond the original scope of the project.

Changes Required by Plan Check or Field Inspector

Any increase in the scope of work set forth in these contract documents which is required by plan check or field inspectors with city or county Building/Planning Departments will be treated as additional work to this contract.

Figure 4. Changes required by inspectors and other regulatory agencies are automatic change orders, as long as you were not negligent.

Rates Charged for Allowance-Only & Time-and-Materials Work

Journeyman carpenter: \$28/hour
Carpenter: \$22/hour
Laborer: \$18/hour
Contractor: \$45/hour
Subcontractor: Amount charged by subcontractor

NOTE: Contractor profit and overhead at the rate of 20% will be charged on all work performed on a Time-and-Materials basis and on all costs that exceed the Allowance Only estimate in the primary contract.

Figure 5. Include a labor rate schedule to avoid problems when billing for time-and-materials work.

Final Payment

Balance of contract amount is due upon Substantial Completion of all work under contract. "Substantial Completion" is defined as the point at which the building/work is suitable for its intended use, or the issuance of an occupancy consent or final permit sign-off from the Building Department, whichever one of the aforementioned events occurs first. Owner may hold back 150% of the value of all punchlist work from final payment to contractor to assure that all punchlist work is performed in a timely manner.

Payment of Change Orders: Payment for each Change Order is due upon completion of change order work and submittal of invoice by contractor.

Figure 6. Set up a clearly defined payment schedule that doesn't leave too much owing at the end. Also, describe when change orders will be paid for.

and for time-and-materials work (Figure 5).

Payment Schedule and Terms

One of the most important parts of a contract is the payment schedule. To avoid leaving a lot of money owing at the end of the job, break up the total price into a number of payments that is appropriate for the size of the job. Tie payments to specific events, like material deliveries or the commencement or completion of particular phases of the work. Check with an attorney to see if your state governs the amount of your initial payment (California allows a deposit of no more than 10% of the contract amount or \$1,000, whichever is less).

You can schedule a payment for materials delivered to the site and not yet installed, but it's bad business to request money for work you have not performed. On the

other hand, don't allow the owner to owe you more than about 25% of the contract amount at any time (the bigger the contract, the smaller this percentage should be). If you leave a huge final payment, you may never see it.

Final payment should come due at substantial completion (Figure 6). Our contract allows the owner to withhold from the final payment 150% of the value of all punchlist work. This helps to assure that all punchlist work is performed in a timely manner.

Our payment schedule also specifies that payment for each change order is due when the change order work is completed and an invoice for this work has been submitted. ■

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