



Using Standardized Contract Forms

by Quenda Behler Story

I'm a great believer in using preprinted, standardized contract forms, especially for smaller jobs. Whether you buy these forms from HomeTech, NEBS, or a business supply store, as long as the forms are prepared specifically for the construction industry, they have a number of advantages. I think customers prefer the more understandable short forms and are intimidated by long contracts filled with legal boilerplate. Also, you can carry blank forms in the truck and fill them out on the spot. And you're less likely to forget an important spec — like a deposit or a payment due date — when there's a space for it on the form.

However, I do want to sound some cautionary notes. While preprinted forms are cheaper than hiring a lawyer to write a contract for you, it's a good idea to have your lawyer review a preprinted contract before you use it. Also, preprinted short forms may not be adequate for more complicated jobs or contracts. For example, if you have to use allowances so you can lock into a contract even though the customers have not yet decided what kind of material they want on their kitchen countertop, or if you have a complicated payment system linked to a punchlist and quality standards, you will want to use either a custom contract or an addendum to the preprinted one to provide for these circumstances. It's possible, for instance, to use a punchlist form with the contract, and to refer to it in the blanks left in the payment section of the preprinted contract form. Use language like this: "Final payment is due upon completion of the attached punchlist."

Also, different states have different rules for contracts, particularly with regard to consumer protection laws. Your state might have a local requirement that's not reflected on your form. Check with your state attorney general or with whatever state agency enforces consumer protection laws in your state.

Know What You're Signing

It is vital that you fully understand the terms presented in a preprinted contract, because once the customer signs on, you will be bound by it. It's also important that these form contracts include some key provisions.

Who and where? The form should specify clearly who the parties in the agreement are, because every contract must identify who is bound by it. If the property owners are a husband and wife, the contract should include both names. The form should also have a separate space for the address of the job site, because it may not be

sidered a usual part of the job you've taken on. Where appropriate, use terms like "paint-ready" or "drywall only" or "owner to reinstall carpet" or "electrical work is not included." Otherwise, you may be held responsible for work the owner agreed to do, should a dispute over the job put you in court.

Limit warranties. The law implies certain warranties from the very act of completing a job and getting paid for it (see *The Legal Column*, 6/96). You can limit or change most implied warranties, but only if you do so specifically in the contract.

Preprinted contracts usually include a limitation-of-warranty clause, so check your form to see what warranties it makes or limits. Some forms limit the warranty on materials to only the manufacturer's warranty, protecting you from inadvertently giving the customer a warranty stronger than the manufacturer's. You're not in the business of making roofing material, for instance, so you don't want to guarantee the roof material.

To keep from sticking my neck out too far, I usually insert the line "All warranties, implied or express, are limited to one year."

Procedure for change orders. A change order is not the same as an additional work order. For additional work outside the scope of the original contract, you can just make out a new form with additional payment terms. But if the customer asks for something that changes the terms of the original contract and the cost of the job, such as deciding they want solid-surface countertops rather than laminate, you need to write a change order. To do so, you can use a preprinted change order form with blanks left for the change to be made, the change in price, and any time extension; or use one of your regular preprinted contract forms and cross out the words "Contract Proposal" at the top and substitute the

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the same as the customer's address. The job site may be on rental property or in an office or in a house the customer has bought but not yet occupied.

Job terms and specs. The job specs must be clear and complete so that there's no disagreement later over what you promised to do. Any ambiguities in the contract will be construed against you, the contractor, because you "wrote" the contract. (Yes, I know you didn't really write it, but in the eyes of the law, the fact that you offered it to the customer makes it your "writing.")

When writing job specs, don't forget to include concrete information about what you are *not* doing. If the owner is separately contracting other parts of the job or has said he or she will do certain parts of it, define the limits of your work and exclude those parts of the job that might otherwise be con-

words "Change order to contract dated such and such." In either case, the blanks for scope of work and price should specify the change in specs, the extra cost (or savings) the change will create, and any extra time the change will require.

Subcontractor agreements. Some forms include language that says that any agreements the customer makes separately with other contractors or subs are not a part of the agreement between the customer and you. That language may protect you if the homeowner has a dispute with a sub he hires directly. (In some states, the language may also protect the homeowners from subcontractors' mechanics liens.)

Payment terms. Like most contractors, I think it's a bad idea to structure payment terms so that the customer still owes you a lot of money at the end of the job — though it's understandable that customers are reluctant to pay for the whole job until it's done. This is an area that can create a lot of conflict, and for which there are many strategies available (see "Putting Your Punchlist to Work," 11/92, and

"Payment Schedules Everyone Can Live With," 1/93). On jobs of any size, I like to require partial payments to be made as specific parts of the work are completed, with about 10% left as a final payment on completion of the job. For smaller jobs, a common arrangement is to have three roughly equal payments due at the signing of the contract, the start of work, and the completion of work.

Payment is an issue on which state laws vary. Some states, such as California, limit the amount of money a contractor can require up front. This can be particularly hard on smaller remodelers, because in effect it requires the contractor to advance the money for materials. In cases such as these, it makes sense to have payment terms that let you bill for a substantial payment once work is underway or at completion of one of the early stages of work. Again, make sure any such language complies with your own state's laws.

Expiration or withdrawal date. Like a custom contract, a preprinted contract form is a binding offer once

you've given it to the customer to consider. Unless you include language stating otherwise, you will be bound by its terms — even if the customer waits three months to sign it — possibly exposing you to substantial increases in material or other costs. (I remember one spring when the price of lumber increased every single day; and there have been several times in the last few years when lumber prices rose 50% or more in only a few weeks.) To protect yourself from the effects of what many contracts refer to as "escalation," set a reasonable time limit on the offer. I prefer a straightforward "This offer is good for fifteen days from [the date of signing]." If prices have changed, when your customer calls you after 14 days to ask for more time, you can send him or her a new contract with a new price reflecting the changes. ■

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