

A guide to price increases for home building work contracts

This information relates to 'domestic building work contracts' for building, extending or renovating a home in South Australia. It does not apply to contracts under \$12,000.

The *Building Work Contractors Act 1995* (the Act) sets out requirements for contracts, including that the contract must be in writing and set out all the terms of the contract. The Act allows for a price stated in a contract to change, but only in certain circumstances.

Fixed price contracts

These are the most common type. The cost of the work is fixed, although the cost of some items may vary depending on the actual cost.

Unless the owner agrees to a price increase, the price in a fixed price contract can only be increased in limited circumstances.

Variations

Variations requested by the owner should be agreed in writing. These can change the price of the contract.

At times, variations can be made without the owner's consent if the contract allows for this. These are generally where there is a change required to meet regulatory requirements.

Certain items may be designated 'prime cost' or 'provisional sums' which may also lead to a change in the total amount that the owner can be charged.

Prime cost items

These are items included in contracts like tiles, taps or other fittings that the owner has not decided upon when they signed the contract.

The contract price will increase if the owner chooses more expensive items than allowed for by the builder.

Provisional sums

These are allowances in the contract for an item of work that cannot be priced by the builder at the time of entering the contract. For example, footing costs if a soil report and engineer's design has not been completed. The 'provisional sum' is an amount the builder has determined to be a best estimate of the cost of doing the item of work.

The price can increase if these costs are above the estimated amount.

Contracts containing a 'rise and fall clause'

Where the contract specifies that the work is to be completed within an agreed period, the contract can include a clause that allows for the price to change in-line with any changes in the cost of labour and materials.

If the contract does not include a 'rise and fall' clause, the price cannot be increased for changes in costs to the builder.

If the contract does include a rise and fall clause, any price increases cannot be made for work done after the agreed period unless:

- The contract allows for an extension of time to do the work;
- The delay was the fault of the home owner or due to some cause beyond the control of the builder that the builder could not have expected; and
- The builder gave notice to the owner that an extension of time was required as soon as they became aware of this, and the work was completed as soon as practicable.

The contract must contain 'This Price May Change' or 'Estimate Only' immediately alongside or below any prices subject to change.

Cost plus contracts

These contracts provide that a builder can charge the owner the actual cost of acquiring the materials and performing work plus an agreed margin, not exceeding 15%. If the contract specifies an hourly rate of charge, the builder can also charge the amount determined by applying the rate to the work actually performed.

Cost plus contracts may be used when it is difficult to assess overall project requirements and costs.

Prices can vary significantly from initial estimates and any increased costs from price rises in labour or materials are passed on to the owner.

The contract must contain 'This Price May Change' or 'Estimate Only' immediately alongside or below any prices subject to change.

If the building work is unlikely to be completed within the timeframe specified in the contract

If the building work is not completed within the time specified in the contract, the home owner should discuss their concerns with the builder. If the parties are unable to reach an acceptable arrangement, the home owner may contact Consumer and Business Services (CBS) for assistance.

See the section 'Assistance from CBS' for more information.

Excessive or unjustified price increases

If the owner considers that a price increase is excessive or unjustified, they should raise their concerns with the builder.

The owner may ask the builder to confirm the clause of their contract or the section of the Act which allows the price to be increased, and if relevant, what the builder believes is the reason for the delay in completing the building work.

If the owner agrees to a price increase but then later believes the increase was excessive or unjustified they may contact CBS for advice.

If the owner cannot satisfactorily resolve the issue with the builder, they can seek assistance from CBS.

See the section 'Assistance from CBS' for more information.

Assistance from CBS

CBS encourages owners and builders to work cooperatively to resolve any issues that arise. Many issues can be resolved through open communication and clarification of each party's obligations.

CBS can provide owners with advice to assist them to avoid or resolve any building disputes.

If an owner is still not able to resolve a dispute with a builder, CBS offers a free dispute conciliation service which works with both parties to help achieve a solution acceptable to all.

In some cases, CBS may arrange a compulsory conciliation conference where CBS acts as a neutral third party. Any agreement entered into with the owner is enforceable in the Magistrates Court.

Contact

Consumer and Business Services

Tel 131 882

www.cbs.sa.gov.au/contact

Translating and Interpreting Service (TIS)

Tel 131 450

www.tisnational.gov.au



Government of South Australia
Attorney-General's Department