Plain English
Domestic Building Contract

The sign of building quality

Date: .....

This contract is between

1 ..... Limited **(we, us, our)**(the builder)

of ..... and

2 ..... **(you, your)**(the client)

of ..... and

..... (your authorised representative)

[If you do not have an authorised representative please cross this out. You and we must put our initials next to it. Please see items 1 and 2 in the checklist.]

of .....

(**Your** authorised representative is **your** agent who has authority to give instructions to **us**.
(**You** may change your authorised representative at any time but **you** must tell **us** in writing about this).

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Fill in this contract twice. **We** and **you** must both sign the two contracts. **We** will keep one and **you** will keep the other.

This contract has guidance notes to help **you** and **us** understand it.

By using this contract, it does not necessarily mean that **we** are a member of the Federation of Master Builders.

Use this contract if **you** want to choose a **named subcontractor** or **named supplier** or both.
[**You** can still use this contract even if there are none.]

You can get more copies of this contract from:
Federation of Master Builders Limited (FMB)
a company limited by guarantee. Company no: 368163 (England)
Gordon Fisher House, 14/15 Great James Street, London WC1N 3DP.
Tel: 020 7242 7583 Fax: 020 7404 0296
or email: central@fmb.org.uk Website: www.fmb.org.uk.

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Crystal Mark 4348 Clarity approved by Plain English Campaign

Checklist of Items to be put in or crossed out.

Item number	Page number	Relevant term or condition (or other)	Items to be put in or crossed out
1	1	**(Cover page)**	**Cross out your** authorised representative, if **you** do not have one.
2	1	**(Cover page)**	**Put in** the name and address of **your** authorised representative (if **you** have one).
3	3	**Contract period**	**Put in** the relevant period.
4	3	**Defects liability period**	If there is a defects liability period, **cross out** 'or None'. If there is no defects liability period, **cross out** 'Six months from the completion date. or'. Both **you** and **we** must put initials next to anything crossed out. Please also see item 19 in this checklist if there is no defects liability period.
5	3	**Interim bill**	**Put in** the frequency of the necessary payment [at least every 14 days, but may be longer].
6	3	**Price**	**Put in** the relevant amount (in words and figures).
7	3	**Rates**	**Put in** all the relevant amounts and **our** normal working hours.
8	3	**Site**	**Put in** the relevant address.
9	3	**Start date**	**Put in** the relevant date.
10	3	**Work**	ere element, cross out 'does/'. If there is a design element, cro out '/does not'. **You** and **we** must put initials next to whatever crossed out.
11	4	**Conc on 2 4 and 2.2.4**	Put in the a unt **you** and **we** have agreed **you** will keep. **You** and **we** must put initials next to that amount.
12	4	**Condition 6**	**Cross out** condition 6 if it does not apply.
13	4	**ion 6**	(If c ion 6 ap you to a local authority grant – **c s ut** pa raph .
14	4	**Condi n 6**	(ndi n 6 lies) if **you** have ight to receive insurance ney – **oss** par aph 'a'.
15	4	**Condition 7**	**Cross out** condition 7 if it does not apply.
16	4	**Condition 7.1**	(If condition 7 applies) **put** in condition 7.1 the relevant figure or percentage.
17	5	**ondition upplying s e**	**Cr ut** an not avail .
18	5	**ondition ow or w n t site is use**	**C** the ver **you** d **ot** want. **ut in** de s of all evant li ondition 14.2 applies.
19	6	**Condition 21** **Defects liability period**	**Cross out** condition 21 if there is no defects liability period [see the special meaning of that phrase and see also item 4 in the checklist.] **You** and **we** must put initials next to condition 21 if it is crossed out.
20	7	**The benefit of the contract**	If the contract is only intended to benefit **you** and **us** cross out 'or This contract will also benefit anyone who later buys or leases the site from **you**'. If the contract is intended to benefit other people as well as **you** and **us**, cross out 'This contract is only for the benefit of **you** and **us**, and no one else. **You** and **we** must put initials next to whatever is crossed out.
21	8	**Schedule A** **The documents**	**Put in** details of all relevant documents.
22	9	**Schedule B** **The client's named suppliers**	**Put in** all details as indicated; **or** **Put in** 'none'.
23	9	**Schedule C** **The client's named subcontractors**	**Put in** all details as indicated; **or** **Put in** 'none'.
24	10 and 11	**Schedule D** **Transfer**	**Put in** all relevant details of names and addresses, and so on. **You** need to sign this part of the contract in front of an independent witness.

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Both you and we must put initials alongside anything crossed out or put in.

Special meaning of words

Certain words used in this contract have particular meanings, shown below. Every time we use this word, with this particular meaning, it is printed in **bold**. If the word is not in bold, we are using it in its ordinary English sense – for example the **work** and the work both appear in this contract.

CDM:

The Construction (Design and Management) Regulations 1994.

Changes (or **changing):**

Refers to **changes** to the **work.** This includes anything added or left out.

Contract period

[see Item 3 in the checklist]:

Completion date:

The date on which the **work** will be substantially completed, so that the **site** is ready to be handed back to **you** ready for use, even if there are some minor defects (faults).

Defects liability period

[see Item 4 in the checklist]:

Six months from the **completion date.**

or

None

[If there is a defects liability period, cross out 'or None'. If there is no defects liability period, cross out 'Six months from the completion date. or'. Both you and we must put initials next to anything crossed out. Please see item 4 in the checklist. Please also see item 19 in the checklist if there is a defects liability period.]

Documents:

The **documents** referred to in Schedule A.

Final bill:

The final price, including any changes to the price under conditions 15 and 17. **We** will add VAT to this new figure.

Interest rate:

3% a year above the Bank of England base rate.
This is calculated :

- from the date the amount was due, until the date of payment;
- daily; and
- at the **interest rate** in force on each day.

Interim bill:

[see item 5 in the checklist]

A written Interim bill every days [14 days or more].

Named suppliers:
The suppliers, chosen by **you**, **referred to in** Schedule B.

Named subcontractors:
The subcontractors, chosen by **you**, **referred to in** Schedule C.

Price

[see item 6 in the checklist]

pounds (£) plus VAT.

This figure may change under conditions 15 and 17.

Provisional sum

Part of the **price**. This is an amount **we** have estimated, to help **you** work out **your** costs. At the date of this contract, **we** cannot tell **you** what the final cost will be, because **you** have not decided which particular items **you** want. When **you** do decide, this will be a **change** to this contract. [See condition 15 and guidance note 11.] In **our final bill, we** will adjust this to the actual cost plus **our** profit.

Prime cost (or Prime cost sum):

1 Part of the price. **We** will only use this for **your named subcontractors** or **your named suppliers**. This is an amount **we** have estimated because **we** do not know the final cost, at the date of this contract.

2 **We** will adjust this in the final bill to :

- the actual cost of the work or item;
- plus an amount, **you** must pay, equal to **our** discount from **your named suppliers** or **named subcontractors** for prompt payment. This is 5.27% for goods or materials and 2.57% for **your named subcontractors** (or any other discount shown in the **documents**).

Rates [see item 7 in the checklist]		
	During **our** normal working hours _____ am to _____ pm	Outside normal working hours
Hourly labour rate for:		
1 building craftsmen **we** employ		
2 other craftsmen **we** employ [please give details]: 2.1 2.2 2.3		
3 [illegible]		
4 [illegible] subcontractors: [illegible] plus %.		
Materials at cost plus %		
Plant hire and haulage at cost plus %		

Site

[see item 8 in the checklist]

Start date

[see item 9 in the checklist]

Value added tax or VAT: at the rate in force at the date of each of **our** bills.

We, us, our: the builder (see the contract cover page).

Work:

[see item 10 in the checklist]: The **work we** will carry out, set out in the **documents**. The **work** does/does not include a design obligation by **us.**

[If there is no design element, cross out 'does/'. If there is a design element, cross out '/does not'. You and we must put initials next to that crossing out. Please see item 10 in the checklist.]

You, your: the client (see the contract cover page).

Interpretation:

This contract is written in plain English.

- In this contract references to a statute or statutory provision include any changes which are made to it.
- If any term, condition, paragraph or sub-paragraph is invalid, it does not make any other term, condition, paragraph and sub-paragraph invalid.
- If there is more than one of **us** or **you,** this contract applies to all of those people together, and to each of them on their own.
- This contract is governed by the law of England and Wales.

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Contract conditions

1 Our main obligation – to do the work

We will carry out the **work** :

- with reasonable care and skill and to a reasonable standard;
- by the end of the **contract period** (as extended under condition 20, if it applies), but this term does not make time of the essence [see guidance note 3].

2 Your main obligation – to pay us

You will pay us the **price**.

2.1 **Interim payments**

2.1.1 When the **contract period** is more than 28 days **we** will be entitled to send **you interim bills.**

2.1.2 **We** will send **you interim bills** for the value of any work **we** have carried out up to that date, together with the cost of all goods and materials delivered to the **site**.

2.1.3 **You** must pay **us** within 14 days of receiving an **interim bill**.

2.1.4 **You** will take and keep % from all **interim bills** (the retention). [see condition 2.2.4]

[Put in the amount you and we have agreed you will keep. Both you and we must put initials next to that amount. See item 11 in the checklist.]

2.2 **Final payment**

2.2.1 When **we** have finished the **work** (at the completion date), **we** will send **you** the **final bill**.

2.2.2 **You** must pay **us** the pri... within 21 d... of receiving the **final bill**.

2.2.3 **We** will give **you** credit, ...he fi... bil... ...cerin **bills you** have paid.

2.2.4 **You** will take and keep ...% from th... **final b...** **You** must pay **us** this amount at the end of the **defects liability period**, unless there are defects which still need action.

[P...n th... ...mo...t yo... ...nd ... ...hav... ...greed ...u w... ...keep. Both ...u and ...e n... ...us ...nitials ...t to ...at amoun... ...ee it... ...11 ... t... ...ecklist.]

3 Interest

You must pay **us** interest at the **interest rate**, on any amounts

4 Starting the work, ...gth of ...e work an... ...t...

4.1 **We** will start th... **ork** on ... ...dat...

4.2 **You** must make the **site** available to **us** on the **start date** and for the time it takes **us** to carry out the **work**.

5 Withholding payment

If a dispute arises, **you** can only withhold payment after the due date for any payment owed to **us**, if **you** give **us** notice:

before the final date for that payment; and

saying that **you** are going to withhold payment; and

setting out the amount **you** will withhold and the reason for withholding payment; or if there is more than one reason, each reason and the amount which applies to it. **You** must confirm any verbal notice in writing as soon as possible before or after the due date.

[Cross out the following condition 6 if it does not apply. Both you and we must write initials next to that. Please see item 12 in the checklist.]

6 Transferring your right to insurance money or a local authority grant

You have the right to receive insurance money or a local authority grant. **You** must transfer to **us your** right to that money or the grant. **We** will use this amount towards the **price**. **You** must sign the transfer in Schedule D.

[If you have a right to a local authority grant cross out paragraph 'b'.]

[If you have a right to receive insurance money cross out paragraph 'a'.]

[You and we must put initials next to anything crossed out. Please see items 13 and 14 in the checklist.]

[Cross out the following condition 7 if it does not apply. Both you and we must write initials next to that. Please see item 15 in the checklist.]

7 Paying the price into a joint account

7.1 Before the **work** starts, **you** must pay £ plus **VAT** [the **price**] or percentage of the **price** into an interest-bearing account in joint names (the account), which requires **your** and **our** signatures.

[The figure must either be the same as the price or a specified % of the price. Please cross out the version you do not want to apply. Both you and we must write their initials next to anything put in or crossed out. Please see item 16 in the checklist.]

7.2 Before **we** start any **change** under condition 15 or if we need to adjust the **price** under condition 17, **you** must immediately increase or reduce the amount in the account (including **VAT**).

7.3 Under condition 2, **you** must pay **us** from the account.

7.4 **You** will receive any money left in the account, after paying the **final bill**.

8 Consents you need

Unless **we** agree otherwise in writing, **you** must get all consents needed and ke... any conditions relating to the **work** (including paying all the r...vant fees). If **you** break this condition 8, **you** must pay **us** a... ...sses and damages **we** suffer. [See guidance ...e 6]

9 Materials or goods

9.1 Any materials or goods **we** supply will be:

- **A**...w, un... **you** ...gree oth...ise in writing;
- ...atis...ory quality;
- o... ...e d...ripti... ...ou give... their type, as far as possible;
- of the appropriate British standard and codes of practice, in force at the date of placing the order; and
- fit for their normal purposes.

9.2 **Y**...ill get any ...erials o... ...ods **you** ask **us** to, as long as they ...a...lable, with... a reaso...le period. If specified in Schedule B, **e**... w...et these ...om **you** ...ified **supplier**.

9.3 **We** w... ...ot be l...e for:

- the satisfactory quality of any materials or goods **you** provide; or
- the satisfactory quality or whether they are fit for purpose (or both) of any materials or goods if condition 21.2 applies.

9.4 If, instead of any normal purposes, **you** have told **us** about a special purpose for any materials or goods (whether under condition 9.1 or 9.2 or 9.3) **you** should, preferably, confirm this in writing within 14 days. [See guidance note 7]

9.5 **We** will send **you**, at least 24 hours before the **start date**, a written list of any goods, materials and fixtures at the **site** which **we** need to remove, for the **contract period**, to carry out the **work**. **We** will return these at the **completion date**, unless **you** tell **us**, preferably in writing, to get rid of any items.

10 Who owns materials or goods

You will not own any materials or goods delivered to the **site** until **you** have paid **us**.

11 Responsibility for the documents

11.1 **You** are responsible for the details shown in the **documents**:

11.1.1 meeting all legal requirements (including planning and building regulations); and

11.1.2 being fit for the intended purposes, unless condition 11.4 applies.

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11.2 **You** must pay all relevant fees under this condition 11.

11.3 **We** are not responsible for the details shown in the **documents** being fit for the intended purposes, if **we** did not prepare those **documents**. **Our** obligation is simply to build to the details shown in those **documents** [see guidance note 8].

11.4 **We** will be responsible for the details of any **documents we** produce being fit for the intended purposes.

12 Responsibility for loss and damage and insurance

12.1 **Your** obligations:

12.1.1 Existing structures and contents

You are responsible for any loss of and damage to any existing structures and contents, unless it falls within our obligations in condition 12.2.1

12.1.2 The **work**

You are not responsible for insuring the **work**.

12.1.3 Evidence of insurance

You must take out and keep an adequate insurance policy for **your** liability under condition 12.1.1. **We** will be entitled to see this policy.

12.2 **Our** obligations:

12.2.1 Existing structures and contents.

We will only be responsible for any loss of and damage to any existing structures and contents, if the loss and damage is caused by **our** negligence or by the negligence of any person **we** are responsible for. If part of the loss and damage is caused by someone else, **we** will only pay **our** share.

12.2.2 The **work**

We will be responsible for insuring against any loss and damage to the **work** until **practical completion** or **you** end **our** employment, whichever happens first.

12.2.3 Insurance for design or specification

If the **work** involves a material design element specification by **us**, **we** will:

- take out suitable insurance cover for at least the full estimated value of the work
- continue to keep that insurance until the end of the period during which legal action for any claim can be started. [See guidance note 9]

12.2.4 Evidence of insurance

We will take out and keep adequate insurance policies for **our** liability under condition 12.2.1 and 12.2.2 and 12.2.3 and 12.3 and 12.4

If **you** ask, **we** will provide details of the policies.

12.3 Liability for personal injury

12.3.1 **We** will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for personal injury to or the death of any person arising out of, or in the course of, or caused by carrying out the work. This does not apply if condition 12.3.2 applies.

12.3.2 **You** will be responsible for personal injury or death caused by **your** negligence or the negligence of any person **you** are responsible for.

12.4 Liability for damage to any property of another person

We will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for loss of or damage to any property of another person. This only applies if :

- it arises out of, or in the course of, or is caused by carrying out the **work**; and
- it is caused by **our** negligence or the negligence of any person **we** are responsible for.

12.5 **We** will include **you** as an insured person under **our** insurance policies.

All insurance policies which **we** must have under **our** obligations under this condition 12 will include **you** as an insured person. In the insurance industry this is called an *indemnity to principals clause*.

You or **we** must immediately notify the insurers of any claims. **You** and **we** must keep to the terms and exclusions of the insurance policy. If **you** or **we** fail to do this, the insurance may no longer be valid.

13 Supplying services

You agree to provide for **us**:

- toilet and washing facilities;
- water;
- electricity; and
- storage space.

[Please cross out any services which are not available. Both you and we must write initials next to that. Please see item 17 in the checklist.]

14 Limits on how or when the site can be used

14.1 **You** are not putting any limits on how or when the **site** can be used.

14.2 **You** are putting the following limits on how or when the **site** can be used :

14.2.1 working hours [please give details].

14.2.2 other [please give details].

[Please cross out the version of condition 14 you do not want to apply. Put in details of relevant limits if condition 14.2 applies. In particular, you should say at condition 14.2 if you will still be living on all or any part of the site. Both you and we must write initials next to anything crossed out or put in. Please see item 18 in the checklist and guidance note 10.]

15 Changing the work

15.1 If **you** want to **change** the **work**, **you** must :

- confirm this in writing ; and
- do so within 14 days, if **you** first tell **us**.

We will then adjust the **price** [see guidance note 11].

15.2 15.2.1 **We** will carry out any **change** instructed by an appropriate local authority or public utility officer, but only after giving **you** written notice.

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15.2.2 However, if **you** can change those requirements, while still meeting **your** obligations under condition 11, **you** may do so. But **you** must tell **us**, in writing, before **we** start carrying out that **change**.

Whichever applies, **we** will adjust the **price** accordingly.

15.3 The **price** will be adjusted by:

- written agreement beforehand, if possible; or if not then
- later written agreement; or if not then
- referring to any priced **documents**, if this applies; or if not then
- referring to the **rates**, if this applies; or if not then
- a reasonable amount for the work done or goods supplied.

16 Health and safety

16.1 **We** will be responsible for all health and safety issues relating to the **work**.

16.2 If **CDM** applies, **we** must keep **our** obligations and **you** must keep **your** obligations.

17 Delay or disruption

If the **work** is delayed or lasts longer than expected for any reason (other than **our** fault) **we** will adjust the **price** accordingly, as specified in condition 15.3, and, if it is **your** fault, **we** will be entitled to claim for any losses and expenses caused.

18 Your right to end this contract

Without affecting **your** other legal rights and remedies, **you** can end this contract in one (or more) of the following circumstances.

18.1 If, without reasonable cause, **we**:

- stop work for 7 days in a row; or
- fail to work steadily; and

you send **us** a written notice telling **us** to start work or work steadily; and **we** do not do this within seven days of receiving **your** notice [see guidance note 12].

18.2 If **we** become bankrupt.

18.3 If **we** go into liquidation.

18.4 If **we** make a composition or arrangement with **our** creditors.

18.5 If **we** are wound up.

18.6 If a receiver or manager is appointed over **our** business, unless this is to amalgamate or reorganise the business.

However, **we** can still use all **our** legal rights and remedies.

19 Our right to suspend or end this contract

Without affecting **our** other legal rights and remedies, **we** can suspend or end this contract in one (or more) of the following circumstances.

19.1 If **you** fail to pay any **interim bill** and still fail to pay for seven days after receiving a written notice **we** send demanding payment [see guidance note 12].

19.2 If **you**, or anyone **you** employ or **your** agent, interfere with or obstruct the **work** or fail to make the **site** available for **us** (without good reason) for the **contract period** (or any one or more of these).

19.3 If **you** become bankrupt or go into liquidation, or make a composition or arrangement with **your** creditors (or any one or more of these).

19.4 If **you** cause, or attempt to cause, the withdrawal or cancellation of the grant payment or insurance money referred to in condition 6.

After **we** use **our** right to suspend this contract, **we** can end it, if **you** are still at fault (as specified in conditions 19.1 – 19.4).

We will be entitled to:

- all relevant payments under condition 2.1; and
- any costs involved in suspending or ending this contract; and
- any losses **we** suffer (including loss of profit) resulting from suspending or ending this contract.

[See guidance note 15 about the duty to 'mitigate' the loss.]

However, **you** can still use all **your** legal rights and remedies (including term 5).

20 Extending the contract period

You will extend the **contract period** by a reasonable period to take into account any one (or more) of the following.

20.1 **Your** delayed instructions or lack of instructions on any one (or more) of the following:

- the **work** ;
- **changes** to the **work** (see condition 15); or
- **your** choice of materials (see condition 9.2).

20.2 If **we** suspend this contract (see condition 19).

20.3 If the **work** is obstructed by any matter **we** do not control.

20.4 Weather conditions which delay or prevent **us** continuing the **work**.

20.5 Civil commotion, wars, riots and lock-outs.

[Cross out the following condition 21 if there is no defects liability period – see the special meaning of that phrase and item 4 in the checklist. Both you and we must write initials next to this condition 21 if it is crossed out. Please see item 19 in the checklist. See also guidance note 13.]

21 Defects liability period

21.1 During the **defects liability period** we will put right any defects in the **work** due to faulty workmanship or materials, unless condition 21.2 applies. **We** will not charge **you** for this.

21.2 However, **we** will not be responsible for any one (or more) of the following defects:

21.2.1 due to the conditions of the **site** or relevant property, that existed before the work;

This condition 21.2.1 will only apply:

a) If we consider the condition of the **site** or any property next to it or the access to it may affect the **work** and **we** write and tell **you** this. We will have carried out **our** duty by giving **you** that warning. If **you** still insist that **we** carry out the work on the site or relevant property in this condition **you** should confirm this in writing and it will be at **your** risk.

b) If the condition of the **site** or any property next to it or the access to it will affect the **work** and this condition could not be foreseen before the **work** started.

21.2.2 caused by **you** or any other person or caused by any event, which happens after the **completion date**; or

21.2.3 anything excluded under condition 9.3 [see guidance note 13].

22 Subcontracting

22.1 **We** can subcontract any part of the **work**, but **we** will still be responsible for the **work**, unless condition 22.2 applies.

22.2 **We** will not be liable for any one (or more) of the following :

the satisfactory quality or fitness for purpose of any materials or goods, chosen by **you** from or selected by **your named subcontractor** or **your named suppliers** (or any one or more of these); or;

any defective design by **your named subcontractor**.

However, this does not apply if it is something that **we**, for **our** own purposes, ask **your named supplier** to supply or **your named subcontractor** to do, and which is separate from **your** instructions.

23 Clearing the site

Before the **completion date we** will remove all rubble, surplus materials, rubbish, tools and scaffolding on the **site** and leave it clean

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and tidy. **We** will not be responsible for removing any items **you**, or any person **we** don't control, place on the **site**

24 Disputes [see guidance note 14].

24.1 **Conciliation**

You and **we** must both agree to conciliation taking place. If so, then the following applies.

24.1.1 If the **work** is covered by the MasterBond insurance or similar insurance cover, any conciliation will be under the terms of that insurance.

24.1.2 If the **work** is not covered by the MasterBond insurance or similar insurance cover:

- **you** and **we** can agree who the conciliator will be; or
- **you** and **we** can ask the Federation of Master Builders to appoint the conciliator. [See condition 24.5].

24.2 **Adjudication – the Scheme for Construction Contracts**

If this contract is a construction contract, the adjudication terms of the Scheme for Construction Contracts will apply to this contract, but with the following changes.

24.2.1 The adjudicator will have the authority to deal with any dispute relating to the contract.

24.2.2 The adjudicator will have the power to open up, review, and revise certificates.

24.3 **Arbitration or court proceedings**

Any dispute or difference arising f[illegible] con[illegible] the **work** or this contract (or any [illegible]re or [illegible]re [illegible]these[illegible] ll be dealt with as follows.

24.3.1 If the **work** is covered by [illegible] M[illegible]rBon[illegible]nsura[illegible] o similar insurance cover, under the terms of that insurance.

24.3.2 If the MasterBond insurance or similar insurance cover does [illegible] and [illegible] nt in [illegible]ute wit cou[illegible] court smal[illegible]ims li[illegible] by [illegible]ty [illegible]urt pro[illegible]dings.

24.3.3 If th[illegible]oste[illegible]nd [illegible]rand[illegible]r si[illegible]ar [illegible]nce co does not apply and the amount in dispute is above the small claims county court limit, by court proceedings.

Or, **you** and **we** can deal with the dispute by arbitration. **You** and **we** mu[illegible]e t[illegible]g, [illegible]n th[illegible]spu arises.

24.4 **Arbitration**

If **you** or **we** re[illegible] a dispu[illegible]r differenc[illegible]o arbit[illegible]ior[illegible]e following will apply.

24.4.1 The arbitrator will be a person :

- agreed between **us** and **you**; or
- appointed by the Federation of Master Builders, at the request of either **you** or **us** [See condition 24.5].

24.4.2 The arbitration will be carried out under the Arbitration Act 1996 and the Construction Industry Model Arbitration Rules 1998.

24.4.3 If the arbitrator :

24.4.3.1 is unable or unwilling to act; or

24.4.3.2 becomes unable or unwilling to act; or

24.4.3.3 resigns;

- **you** and **we** can agree a new arbitrator. Or, either **you** or **we** may reapply to the Federation of Master Builders to appoint a new arbitrator. This condition 24.4.3 applies as many times as is necessary.

24.5 **Appointment of a conciliator or arbitrator by the Federation of Master Builders**

Conciliators or arbitrators appointed by the Federation of Master Builders, are chosen from the Federation's panel of members of :

- the Architects and Surveyors Institute;
- the Chartered Institute of Arbitrators;
- the Royal Institution of Chartered Surveyors (RICS);
- the Royal Institute of British Architects (RIBA); or
- the Chartered Institute of Building.

25 This contract

This contract is made up of the cover page; special meanings of words; interpretation; contract conditions; Schedule A (the **documents**); [illegible] B[illegible] **ed suppliers**); Schedule C (**your named subcontractor**[illegible] and Schedule D (transfer of local authority grant or [illegible]surance mone[illegible]

[illegible]ou [illegible] **we** agree the [illegible]ms of this contract. Signing this contract will mean [illegible]t **y**[illegible] and **we** have v[illegible]ous legal obligations to each other.

This contract is only for the benefit of **you** and **us**, and no one else.

or

[illegible]tract w[illegible]o benef[illegible] wh[illegible] or leases the **site** from **ou**.

[illegible] cont[illegible]t is[illegible]nly [illegible]benefit you an[illegible]s, cross out 'or This ont[illegible]t w[illegible]also b[illegible]efi[illegible]ryor[illegible]who la[illegible] buys or leases the site from you.' If the contract is intended to benefit other people, as well as you and us, cross out 'This contract is only for the benefit of you and us, and no one else.' or' You and we must put initials next to [illegible]hatever is cr[illegible]ed out. Pl[illegible]ease see item 20 in the checklist.]

Our signature _____

Your signature (first client) _____

Your signature (second client) _____

[**You** should be (or include) the property owner. If the property is jointly owned, **you** should all sign this contract. See the guidance notes.]

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Schedule A - The documents (Please see item 21 in the checklist.)

1 Drawings prepared by

of

and dated and numbered

2 A detailed estimate **we** have prepared and dated

3 A specification or schedule of work prepared by

of

and dated

4 The following extra [additional documents]. [Please give details, for example a MasterBond insurance document]

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[Please attach all these documents to this contract.]

Schedule B - Your named suppliers [Please see item 22 in the checklist.]

Your named supplier's name	Address	Materials or goods to be supplied	Provisional sum

[If none, say so]
(If necessary, continue on a separate sheet which **you** must attach to this contract.)

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Schedule C -
Your named subcontractors [Please see item 23 in the checklist.]

Your named subcontractor's nam	Ad re	Nature ex ent of the w rk t be do e	Provisional sum

[If none, say so]
(If necessary, continue on a separate sheet which **you** must attach to this contract.)

Schedule D

Transfer of local authority grant or insurance money

(Please see item 24 in the checklist.)

(This only applies if condition 6 applies)

Part 1: We will keep this section.

I (your name) of

transfer, forever, with full title guarantee (see the guidance notes) to (**our** name)

of

my right to receive **£**

arising from:

(a) any grant from under the Housing Grants, Construction & Regeneration Act 1996

or:

(b) a contract of insurance with

Insurance Company under insurance policy number date:

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Signed as a deed by (**you**)

(**Your** signature)

Signature of independent witness

(Full name of independent witness)

(Print in BLOCK CAPITALS)

(Address of witness)

(Occupation of witness)

(Put in relevant details. Cross out any words which do not apply.
Write your initials against anything you or we put in or cross out. Please see item 24 in the checklist.)

Schedule D

Transfer of local authority grant or insurance money
(Please see item 24 in the checklist.)

Part 2: We will send this section to the local authority or insurance company

To _____ take notice that

I (your name) _____ of _____

_____

transfer, forever, with full title guarantee (see the guidance notes) to (**our** name) _____

of _____

my right to receive **£** _____

arising from:

(a) any grant from _____ Local Authority under the Housing Grants, Construction & Regeneration Act 1996

or:

(b) a contract of insurance with _____

Insurance Company under insurance policy number _____ Date _____

Signed, as a deed by (**your** name) _____

_____ (**Your** signature)

_____ Signature of independent witness)

_____ Full name of independent witness)

(Print in BLOCK CAPITALS)

(Address of witness)

_____

(Occupation of witness)

_____

(Put in relevant details. Cross out any words which do not apply.
Write your initials against anything you or we put in or cross out. Please see item 24 in the checklist.)

Received a notice in the form set out above on (date) _____

(Name of individual) _____

For and on behalf of _____ local authority or insurance company (Please give the name.)

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Guidance notes issued by the FMB for the FMB Plain English Domestic Building Contract

1 Using this contract

1.1 When to use it

The FMB suggest **you** and **we** use this contract:

- for work up to an original value of about £500,000;
- with or without an independent supervising officer.

1.2 Checklist of insertions and deletions

See the attached checklist.

2 The client [you] and property owner

2.1 **You** can include people who are not the property owner.

2.2 However, **all** property owners must be named as the client.

2.3 If **you** are a tenant, **your** landlord does not need to be involved in the contract as the client . If **you** hold a tenancy agreement or a lease, that is probably sufficient. However, it is important to check if landlord's (or freeholder's) approval is needed for the **work** and, if it is, whether it has been given. Under condition 8 of the contract **you** must get this consent.

3 The contract period and completing the work – see the definitions and condition 1

If **we** do not reach completion at the end of the contract period, **we** have broken the contract.

But, **you** cannot immediately end the contract. To end the contract, **you** must serve a written notice on **us**:

saying that **we** have failed to complete at the end of the contract period; and

saying that **we** must complete the work within a further, reasonable, period; and

saying that if **we** fail to do so, **you** will end the contract.

This is similar to the procedure under condition 18.1. This is also the same procedure used for selling and buying houses.

4 Condition 6 and Schedule D – Transfer of local authority grant or insurance money

The transfer is with full title guarantee. This is a technical legal term. It means that **you** have the authority to transfer and there are no legal rights which affect the transfer.

We and **you** must fill in Part 2 of Schedule D twice. **We** will send both sets to the local authority, asking them to return one set to us, confirming that they have received the transfer.

However, the FMB give an important warning about the transfer when it relates to a local-authority grant. Some local authorities do not accept transfers as legally valid. So, **we** may still have problems in getting the local authority to pay **us** direct, even if **you sign** the transfer. The FMB has been trying to get past and present governments to put the position beyond doubt, but without success so far.

5 Condition 7 – Paying the price into a joint account

This is meant to help both **you** and **us**. **We** know that **you** do have the money to pay **us**. **You** know that **we** do not get the money unless **you** are satisfied and authorise payment.

6 Consents - condition 8

If **you** do not know what consents **you** need, **you** should get advice from an architect or solicitor.

7 Fitness for purpose – condition 9.4

You can ask for particular goods or materials to be used. The FMB advise that if **we** do not consider those goods or materials are appropriate, we should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those particular goods or materials, **you** should confirm this in writing, and it will be at **your** risk.

8 Responsibility for the documents - condition 11.3

If **you** give **us** drawings made by someone else, **we** are not responsible for any errors or missing details in those drawings. **We** will follow the drawings as provided.

If **we** do not consider those drawings are correct, **we** should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those drawings, **you** should confirm this in writing, and it will be at **your** risk.

9 Design and specification – condition 12.2.3

If the **work** does not involve any design element or specification by **us**, condition 12.2.3 will not apply.

If the **work** involves a material design element or specification by **us**:

condition 12.2.3 applies; and

the FMB say the following.

You and **we** should check **our** public liability insurance policy and agree – preferably in writing – that it provides the cover **you** and **we** need.

If it does not, **we** will need separate insurance to meet condition 12.2.3.

The matter should be referred to an insurance adviser if there is any doubt as to what design or specification means.

10 Limits on how and when the site can be used – condition 14

If **you** want to add extra limits on **us** after the contract has been signed, that will be a **change**, which will mean the **price** must be adjusted accordingly.

It is particularly important that **you** state at condition 14.2 if **you** are not leaving the site empty, but will still be living on :

- all of the site; or
- any part of the site.

11 Condition 15 – changing the work

We have included a changing the work form with this contract. You can get more copies from the FMB. The FMB advise that the best procedure is :

(preferably) to confirm any **change** instructions in writing, at the time;

to write the details of the **change** twice, with both sets signed by you and us; and

(if possible) for **you** and **us** to agree the cost of any **change** (whether a fixed price or an estimate), at the time. If **you** and **we** do not agree the amount at the time, a provisional sum can be given. But, if that cannot be done, **we** and **you** should confirm in writing (on the **change** instructions) that no fixed price or estimate has been given at that time.

Local authority officers have different views on matters. **We** may find that something which has been approved on a previous job by a local authority officer is not accepted by a different local authority officer on **your work**. If so, a **change** may be needed to meet the local authority's requirements. So, that may not be due to a failure by **us**. The FMB advise that it is often quicker and cheaper to accept the local authority's requirements, but each case must be considered on its own facts.

12 Condition 18.1 – Your right to end this contract and Condition 19.1 Our right to suspend or end this contract.

If there is a dispute over **you** ending this contract or **us** suspending it, **you** or **we** will have to prove that a notice has been served. **You** or **we** may choose to send this notice by recorded delivery.

13 Period within which to bring claims and the defects liability period in condition 21

Usually **you** or **we** have six years in which to make claims. Sometimes a longer period can apply and you may need to take legal advice on this. The **defects liability period** – if you and **we** agree this – is an extra right, completely separate from this and does not in any way restrict **your** right to make a claim.

If the **defects liability period** applies, **you** should look at the special meaning of **defects liability period** and also at conditions 2.1.4 and 2.2.4.

When the **completion certificate** is received, you must pay the rest of the **price**, except that **you** can keep back the retention (see condition 2.1.4). If any defects, which will need action, arise over the **defects liability period**, the fact that you are holding this retention is **our** incentive to encourage **us** to come back and deal with them. If **we** do, then at the end of the **defects liability period**, **you** must pay the retention to **us**.

14 Condition 24 – disputes

We and **you** may sort out disputes by conciliation, adjudication, arbitration or court proceedings.

Both **you** and **we** must agree to a conciliation. Either party alone can ask for adjudication, arbitration or court proceedings.

Conciliation is a particular way of trying to sort out disputes which many believe to be quicker, cheaper and less formal than a court hearing or arbitration (if the conciliation is successful). An independent person, the conciliator, tries to help **you** and **us** reach agreement about how to settle the dispute.

Although the conciliator can make suggestions, she or he cannot force **you** or **us** to reach an agreement. If, **you** and **we** cannot reach agreement, then **you** or **we** can continue with their other, more formal, rights of adjudication, arbitration or court proceedings.

Adjudication is a quick-fix (usually 35-day) process. Adjudication, if it is used, will usually take place before arbitration or court proceedings. The right to adjudication is a legal one – and cannot be excluded, even by agreement. Adjudication only applies to 'construction contracts' (as defined in the 'Housing Grants Construction and Regeneration Act 1996'). It does not apply if **you** are living, or planning to live, on the **site**. If **you** do not live or plan to live at the **site**, this contract will be a construction contract, and so adjudication will apply.

However, because adjudication is quick and saves costs, **you** and **we** may want to use it, even if you live or plan to live on the site. This can be done either :

- by **you** and **we** agreeing to this, preferably in writing, after the dispute has arisen; or
- by amending the contract, when signing it, and adding the following condition.

'Adjudication under condition 24.2 applies to this contract, even if **you** live or plan to live on the **site**.'

You and **we** must sign next to that extra condition.

Either **you** or **we** can still issue arbitration or court proceedings, after an adjudication. Arbitration or court proceedings are a more lengthy and formal process. The adjudicator's decision must be followed by **you** and **us** until the dispute is finally decided in arbitration or court proceedings. Remember that arbitration and court proceedings are alternatives.

15 Disputes (additional)

If you or we suffer losses or damages because of the other's negligence or breach of contract, **you** or **we** can claim for that. However, the FMB advise that the person who has suffered the losses or damages (the claimant) cannot sit back and let the loss get worse. The claimant has a duty to take reasonable steps to prevent the loss from getting worse. This is called the duty to mitigate your loss.

In particular the FMB advise that the claimant must do the following.

Take all reasonable steps to mitigate the loss.

Cannot claim for any loss or damage if she or he could reasonably have avoided it, but failed to do so.

If **you** are the claimant, **you** must give **us** a reasonable opportunity to:

check the alleged defects;

put right those defects. If we do that, at **our** own cost, the loss is avoided. However this obligation (to allow **us** to put the defect right) may not apply if **you** can prove that **we** are so incompetent that we would not do the work properly, even if given the chance to do so.

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Footnotes

1 This guidance note is a general guide only. You should always get specific advice.

2 This guidance note is issued by the FMB to help **you** and **us**. While it represents the FMB's view of matters, in any dispute the adjudicator or arbitrator or court will decide.

3 The FMB would be interested to hear of any decisions of any adjudicator, arbitrator or court interpreting any term of this contract. That will help the FMB to decide whether any of the current terms need changing.

Contract reference

Change number _____

Our copy / Your copy
Cross out the one which does not apply.

Changing the work

Use this form with FMB Plan English building contracts or any other form of contract

Your name _____

Contract (site address) _____

_____

We confirm that **we** have received (verbal/written/fax/e-mail/text) instructions on

_____ (Date) From (Name) _____

To change the work on this contract as follows.

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Item number	Description of change	Price to be added to contract		Price to be deducted from contract	
	Total				
	VAT				
	Total				

We will add VAT to these prices at the rate which applies when you pay us for the changes.
Instruction to change the work confirmed. Please sign.

Your signature: _____

Our signature: _____ Date _____

Fill in this form twice
We and **You** must both sign the two forms. **We** will keep one and **You** will keep the other.

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