

MY PATIO

Sybex Ptd Ltd Trading ABN: 20082254108
8 St Thomas Loop, Iluka WA 6028, Australia PH: 0420 361 450

CONTRACT TERMS AND CONDITIONS OF SALE

1. Sybex Pty Ltd trading as MY PATIO agrees to build and complete for the purchaser the patio(s) drawn in accordance with the terms and conditions of this contract, inclusive of all standard specifications as detailed in writing on this contract form between both parties for the contract price.
2. These contract terms and conditions of sale do not exclude any conditions or warranties which are implied in to this contract by Federal or State legislation and which may not legally be executed.
3. The purchaser acknowledges having received a duplicate of this contract form, and understands that this document does not become legally binding until signed and accepted by management at MY PATIO.
4. This contract shall be deemed to have been made on the date of execution by My Patio or its duly authorised representative.
5. All measurements are shown in metric units as overall from house fascia / wall to outside edge of patio gutter.
6. My Patio will endeavor at all times to commence the contract as soon as possible however no guarantee will be given on completion dates, approximate time frames are given as a guide only and My Patio will accept no responsibility whatsoever for any costs or consequential expenses incurred by the purchaser due to a delay in delivery or installation of the product.
7. All parties to this written agreement acknowledge that the whole agreement between them is expressed herein and that no employee, agent or representative of My Patio has any authority to make or has any representation other than contained in writing within.
8. The execution by My Patio or its duly authorised representative of this agreement shall be sufficient for My Patio to proceed with the work itemised in accordance with the terms of this contract.
9. No plumbing, drainage, electrical work, plastering, carpentry, painting or removal of rubbish from site is included in the work to be carried out by My Patio unless specifically listed on this contract the purchaser acknowledges that My Patio will provide down pipes to ground level only the purchaser shall be responsible to direct all rainwater into soak wells, stormwater drainage system or other approved method on the property.
10. My Patio will only reposition whole pavers around patio columns cutting of pavers is the sole responsibility of the purchaser unless otherwise specified on the contract.
11. The purchaser acknowledges that solar panels on the house roof are not to be installed prior to the installation of the patio or carport, as this may impede or make impossible the attachment of the patio or carport to the house roof with solar panels in place.
12. It is the purchaser's responsibility for removal of existing solar panels from the house roof prior to installation of the patio and/or carport, and any costs incurred for removal and reinstallation of the solar panels are solely the responsibility of the purchaser.
13. Unless specifically included in the contract, no site works whatsoever are quoted for. Any costs for site works required to support the patio shall be borne by the purchaser. The definition of site works generally applies to but not limited to digging, levelling, retaining, earthmoving, cutting, filling and drainage.
14. The purchaser agrees to provide the area in which the patio is to be constructed clean and clear of all obstructions (trees, branches, existing pergolas, overhead power lines, personal artefacts and the like), or the costs to clear the area will be borne by the purchaser if delays in commencement of works are incurred.
15. It is solely the purchaser's responsibility to ensure that the existing building(s) to which the patio is to be attached are free from faults or deterioration and can withstand the additional loads that the patio may impose My Patio shall not be responsible for damage to the building or any part thereof on which the job is being carried out nor accept any damage claims to the materials supplied by My Patio resulting from faults or deterioration already existing within the building.
16. My Patio shall insure against liability, loss, claim or proceedings due to personal injury or death of any person or damage to property arising out of or in conjunction with or in the course of the works other than that due to a negligent act or omission by the purchaser. Notwithstanding the foregoing should any portion of the works to be occupied or used by the purchaser or tenant during the progress of the work without My Patio express written consent, My Patio shall not be liable for any injury to or in the death of any person, or loss or damage to property or personal effects which may be occasioned by reason of such occupancy of such portion of the works by any such person or persons.

17. Goods and materials supplied by My Patio that are constructed within one kilometre or less of the coast, estuary, river or within close proximity of swimming pools or spas shall have no corrosion warranty. My Patio recommends Inter on Meta pre primer coating to the complete patio frame where the proposed installation of the structure is less than three kilometres from the coast or near pools or spas. Standard powder coating of the patio frame does not include primer coating. Additional cost for primer coating will be charged if required by the client.
18. The purchaser shall keep insured against fire, burglary, storm and tempest (under the provisions of the householders normal policy for buildings and contents) to cover all materials introduced to site by My Patio which remain on site during the course of construction.
19. My Patio will take such reasonable steps as may be required on their part to prevent damage to existing gardens, trees, lawns, existing paths and drive ways but does not undertake to restore areas affected to original condition save for general tidiness. My Patio will not accept responsibility for any damage to those already existing.
20. For the purpose of obtaining building approval from the necessary authorities, the purchaser appoints My Patio as their agent.
21. Unless it is part of the contract, compliance with any building permit conditions imposed by the purchaser's local authorities shall remain the sole responsibility of the purchaser. This contract shall be deemed to have been made on the date of execution by My Patio or its duly authorised representative. All measurements are shown in metric units as overall from house fascia / wall to outside edge of patio gutter.
22. Should the purchaser's local authority require certification by a structural engineer, independent site survey or any other services in addition to standard engineered details supplied by My Patio; the cost of plans, certification, site survey or any additional service(s) shall be borne entirely by the purchaser.
23. In the event that the application for a building permit is rejected by the purchaser's local authority, My Patio will refund to the purchaser any monies received as deposit, less costs incurred by My Patio in the preparation and submission of plans, engineering drawings, plus administration and selling costs when applicable.
24. The cancellation of this contract for any reason must be tendered in writing to My Patio. All expenses and costs incurred to date of cancellation in processing of the contract, including but not limited to engineering, shire approval, sales and administrative costs shall be borne by the purchaser.
25. The acceptance of any cancellation will be notified to the purchaser in writing with the balance of any monies received as a deposit refunded to the purchaser less costs incurred as per Clause NOTE: Cancellation of contract by the purchaser will not be accepted by My Patio once manufacturing of materials has commenced.
26. At the purchaser's request, should manufacturing of the goods described in this contract be placed on hold for any reason, My Patio reserves the right to pass on any material or labour cost increases incurred by way of variation of contract form.
27. The purchaser acknowledges and agrees that stage payments in accordance with Section 10 (1)(a)(b) of the Home Building Contracts Act 1991 are to be made as follows:
 - a. Initial deposit (due payable upon acceptance of quote – not to exceed 6.5% of total contract value if total amount exceeds \$7,500)
 - b. Shire/Engineering (due payable upon submission of plans/drawings to Shire)
 - c. Materials (due payable prior to delivery of materials to site – prior to commencement of onsite works)
 - d. Final Payment (due payable upon practical completion)
28. The purchaser acknowledges that practical completion has been reached when the patio can be used for its intended purpose not withstanding any minor omissions and or defects and; where applicable, My Patio has done all that the builder is required to do under the contract to enable the purchaser to use the patio for its intended purpose. Any leaks are considered maintenance under this contract agreement.
29. The purchaser understands and agrees that final payment must be paid in full prior to My Patio arranging or scheduling maintenance.
30. If the purchaser defaults in payment of any stage payment when due, the purchaser shall indemnify My Patio from and against any and all costs and disbursements incurred in pursuing the debt including legal, solicitor, and debt collection agency costs incurred by My Patio.
31. Any changes required by the purchaser to this contract need to be made in writing on My Patio contract variation form. All changes will incur a \$150.00 administration fee. It is at My Patio's discretion to accept any changes.
32. Soil conditions such as rock, hard clay, limestone, etc which require mechanical digging equipment to excavate for suitable footings, the purchaser agrees to pay all hire costs and extra labour costs associated with the excavation.



Home Building Contracts Regulations 1992 - Schedule 1

[Home Building Contracts Act 1991](#)

NOTICE FOR THE HOME OWNER

This notice

A builder must give a copy of this notice to you, as the owner, before you sign a contract for home building work that is covered by the [Home Building Contracts Act 1991](#).

This notice explains relevant provisions of that Act as required by section 4(2). The Act itself should be referred to for the exact text. A copy of the Act can be obtained from the State Law Publisher (check the White Pages for the current address).

Who are "owners" and "builders"?

In this notice "owner" means the person for whom the home building work is to be done and "builder" means the person who, in the course of business, is to do the work or arrange for it to be done.

What the act covers

The Act deals with contracts for home building work where the contract price is above \$7,500 and below \$500,000. The Act also applies to contracts, within that price range, for associated work (e.g. swimming pools, carports and landscaping) and for alterations. It makes some provisions that are implied in all contracts, and also states what is not allowed in any contract.

Under the Act a builder must not do anything in connection with a contract that is "unconscionable, harsh or oppressive". Furthermore, neither you nor the builder may do anything that is "misleading or deceptive".

The Act deals with "cost plus" contracts only to a limited extent — see later in this notice under "Special rules for cost plus contracts".

You may seek appropriate redress through the Building Commissioner for breaches of the contract and the Act, including for unconscionable or misleading conduct — see later in this notice under "Disputes". The builder's rights are similar, but do not extend to any unconscionable behaviour by you.

A person can be prosecuted or fined for not complying with some provisions of the Act. Some of these provisions apply to owners as well as builders.

Rights conferred by the Act cannot be taken away, diminished or waived and it is forbidden to make any agreement or arrangement to by-pass the Act.

Home indemnity insurance

It is compulsory for all home building work except associated work alone (e.g. swimming pools, carports, pergolas and landscaping), the cost of which is above \$20 000, to be covered by home indemnity insurance.

Home indemnity insurance is also compulsory for associated work if that work is performed under a contract that includes construction or renovation of a residence and the total cost of all the building work is above \$20 000.

Before commencing work or demanding any payment (including a deposit) from you, the builder must take out home indemnity insurance and give you a certificate confirming the existence of the insurance cover.

There may be periods when a builder is exempt from the requirement to take out home indemnity insurance. During, and in some circumstances after, one of these periods a builder must give you a notice in a prescribed form.

Home indemnity insurance will protect you and any successive owners against financial loss due to the insolvency, death or disappearance of the builder that results in —

- (a) loss of deposit (up to a limit of \$20 000);
- (b) the non-completion of the building work; or
- (c) the failure to rectify faulty or unsatisfactory building work.

Home indemnity insurance generally does not cover an owner for any money paid in advance other than a deposit. In any event it is a breach of the Act for a builder to request and receive such a payment — see later in this notice under **“Provisions that are not allowed”**.

Note that, with building work carried out under a cost plus contract, the builder is required to take out home indemnity insurance to cover only the risk specified in (c) above — see later in this notice under **“Special rules for cost plus contracts”**.

Claims may be made under a home indemnity insurance policy at any time before the end of a period of 6 years after the day of practical completion of the building work.

Some home building work is exempt from the requirement to obtain home indemnity insurance. If your work is exempt your builder should give you a notice informing you that this is so. The Building Commission staff can provide you with further information in this respect.

Contract - steps to be followed

Everything agreed to between you and the builder must be set out in a written contract. The contract must be dated and signed by both you and the builder or your respective representatives. If this is not done you may terminate the contract — see later in this notice under **“Termination of contract”**.

You must be given a copy of the contract as soon as is practicable after it has been signed and before the building work starts.

It is the builder’s duty to see that all these steps are taken.

Special rules for cost plus contracts

A “cost plus” contract is one under which the builder is entitled to recover actual costs incurred plus an extra amount for profit. A costs plus contract.

- (a) must be headed “cost plus contract”, and
- (b) must contain a statement in which both you and the builder acknowledge that it is a cost plus contract and that the Act does not apply to it, except in relation to the requirement for a builder to take out home indemnity insurance in the situation explained just below.

If the contract does not comply with these requirements you may terminate the contract — see later in this notice under **“Termination of contract”**.

As mentioned above, the Act does not in general apply to a cost plus contract. However, if you have a complaint about the building work carried out under such a contract, you can make a complaint to the Building Commissioner about the work — see later in this notice under **“Disputes”**.

The builder is required to take out home indemnity insurance in relation to a cost plus contract to cover you and any subsequent owner against financial loss where an order made against the builder is not enforceable due to the insolvency, death or disappearance of the builder.

Provisions that are not allowed

The builder cannot include in a contract a requirement for you to make a payment other than —

- (a) a deposit before the work begins of no more than 6.5% of the contract price; and
- (b) progress payments after the work begins for work done or goods supplied.

If any such provision is included you may terminate the contract - see later in this notice under **“Termination of contract”**

The builder may also be prosecuted and fined for demanding, or receiving, any payment after the work begins other than a progress payment as set out in (b) above.

The builder must not include provisions in the contract that are “unconscionable, harsh or oppressive”. If you think this has occurred, you may make a complaint to the Building Commissioner — see later in this notice under **“Disputes”**.

Prime cost/Provisional sum

Where a contract refers to “prime costs” it means fittings or equipment that may vary in price (e.g. bathroom tiles). The builder must estimate the cost of such items at or above the lowest amount that they could reasonably cost and the cost must not be understated in the contract. If it is, the builder may be prosecuted and fined. This also applies to estimates for “provisional sums” such as site works.

Contract price must be fixed

A contract must not contain a “rise and fall” clause. A rise and fall clause allows the builder to pass on price increases for labour or materials that occur after the contract is signed.

However, the builder can include a clause in the contract that allows for a price increase to cover an increase in actual costs that results from —

- (a) government taxes or charges increasing after the contract is signed;
- (b) the builder having to comply with a State or Commonwealth law; or
- (c) work not starting within 45 working days after the contract is signed if the delay is not caused by the builder.

If (c) applies and the price rise is more than 5%, you may terminate the contract within 10 working days of receiving written notice of the increase — see later in this notice under **“Termination of contract”**. You can also choose to make a complaint to the Building Commissioner within this period.

Varying the contract

1. Steps to be followed

All changes to the building work to be carried out under a contract, including the cost of the change, must be put in writing and be dated and signed by both you and the builder or your respective representatives.

A copy must be given to you as soon as is possible after both you and the builder have signed, and before the start of the work that results from the change.

The builder must ensure that these steps are taken.

2. Exceptions

Certain changes may be made without these steps being taken, namely —

- (a) changes resulting from directions given by a building surveyor or other person acting under a written law;
- (b) changes arising from unforeseen circumstances (but this does not include unforeseen labour or material cost increases).

Note also the changes by way of price increase that are referred to above under the heading **“Contract price must be fixed”** and below under the heading **“Where approvals are delayed”**.

3. Protection that you have as an owner

If any change referred to in paragraph (a) or (b) immediately above occurs, the builder must give you certain information in writing — see section 8(1), (2) and (3) of the Act. Note that, if you and the builder have a dispute about whether particular circumstances are “unforeseen circumstances” and you wish to make a complaint to the Building Commissioner, you must do so within 10 working days after this information is given to you.

Where approvals are delayed

A contract is conditional on —

- (a) a building permit and the Water Corporation’s approval being obtained within 45 working days from the date of the contract; and
- (b) the written acceptance within that period by both you and the builder of any condition attached to the building permit or the Water Corporation approval that will vary the contract.

Note that contracts that are only for associated work (e.g. swimming pools, carports and landscaping) are not subject to these conditions.

Both you and the builder must do what you reasonably can to ensure that these conditions are met. If they are not met, the rights of the parties depend on whose fault it was that the condition was not met within the 45 day period.

Builder at fault	Owner at fault or both parties at fault
Contract remains in force on the same terms and conditions unless you and the builder agree otherwise.	Contract remains in force on the same terms and conditions until you and the builder agree otherwise but —
	(i) the builder may by written notice increase the contract price;
	(ii) if the increase exceeds 5% you may terminate the contract within 10 working days after receiving the notice provided you compensate the builder for all reasonable costs incurred up to the date of termination — see below under “Termination of contract” ;
	(iii) you may, within 10 working days after receiving the notice, make a complaint about the matter to the Building Commissioner.

Defects — making good

Any defect in work done or materials supplied under a contract must be made good by the builder if the builder is notified of the defect within 4 months (or a greater period if provided for in the contract) after practical completion of the building work.

However, you and the builder may agree in the contract that particular defects are excluded from this provision.

Inspection

A builder must not prevent you (or a person authorised in writing to represent you) or your lending institution from inspecting the building work as allowed by the contract or by regulations under the Act. A contract cannot restrict inspections except by limiting them to normal working hours or forbidding inspections that would unreasonably impede or interfere with the building work.

Termination of contract

In various places above it is stated that you can terminate the contract for a particular reason. To do this you must give notice in writing to the builder before the building work is finished.

If a contract is terminated, you may make a complaint to the Building Commissioner claiming financial adjustments between you and the builder.

Disputes

1. Contracts generally

You can make a complaint to the Building Commissioner under the [Building Services \(Complaint Resolution and Administration\) Act 2011](#) if there is a dispute between you and a builder about a contract that falls within the Act. Such a complaint to the Commissioner must be made within 3 years from when you became entitled to take legal action.

There are monetary limits on orders that can be made under that Act. The limits are \$100 000 if an order is made by the Building Commissioner and \$500 000 if the order is made by the State Administrative Tribunal following a referral by the Building Commissioner.

2. Standard of services

You can make a complaint to the Building Commissioner under the [Building Services \(Complaint Resolution and Administration\) Act 2011](#) about certain building services not being carried out in a proper and proficient manner or being faulty or unsatisfactory.

Such a complaint to the Commissioner must be made within 6 years from the time the building service is completed. The building service is completed —

- (a) if the building service is carried out under a building permit, when a notice of cessation or a notice of completion in relation to the permit has been given to the relevant permit authority;
- (b) otherwise, on the date on which the building service was last carried out.

There are monetary limits on orders that can be made under that Act. The limits are \$100 000 if an order is made by the Building Commissioner and \$500 000 if the order is made by the State Administrative Tribunal following a referral by the Building Commissioner.

3. Procedure

Before you make a complaint to the Building Commissioner about a contract that falls within this Act, written notice that you propose to make a complaint must be given to the other party together with a description of the remedy that you propose to seek and the evidence on which you propose to rely. You must provide a copy of that notice to the Building Commissioner at the time of making a complaint.

Advice on how to make a complaint to the Building Commissioner and related matters may be obtained from Building Commission staff or from the Building Commission's website at www.buildingcommission.wa.gov.au.

[Schedule 1 inserted in Gazette 2 Sep 2003 p. 3924-30; amended in Gazette 29 Jun 2007 p. 3191-2; 8 May 2012 p. 1888-91; 12 Feb 2013 p. 921.]

[Schedules 2-8 deleted in Gazette 2 Sep 2003 p. 3930.]