

Variations to Contract Works

Often, during the course of construction work, circumstances arise which call for a change to the design, the scope of work, or the materials which the parties to the construction contract originally agreed to.

Commonly variations arise on account of unforeseen circumstances or requirements by third parties, in particular the relevant consent authorities. Otherwise, variations also arise when contract drawings are incorrect or incomplete, materials become difficult to obtain, and the owners request design changes.

Most construction contracts contain a clause ("a variations clause") which sets out the process which the parties must undertake in order to make such changes to the contract. Where the contract provides for such a process the parties must follow that process.

Additionally, in the case of residential construction work, the Home Building Act 1989 ("Act") imposes certain requirements on the way variations to a contract are to be implemented. The Act requires variations be in writing and must be signed by each of the parties to the contract.

The variations clause in most contracts provides that, in addition to the variation being in writing and being signed by all of the parties, prior to undertaking the variation work the builder must provide the owner with:

1. Written details of the variation, which could include a description of the changes to the scope of work, revised drawings or specifications or additional contract documents.
2. Notice on how the variation will affect the contract sum.
3. Notice on how the variation will affect the contract date for completion.

In my experience, inadequate accounting of variations often leads to dispute between the parties at, or close to, the completion date. Typically, such disputes arise from insufficient detail of the work varied and the omission of some part of the cost attributable to the variation. Variations on top of variations also create significant confusion if a process of managing variations is not adopted from the commencement of the work and maintained until practical completion.

Some further points to consider when a variation is required are provided below:

- Be sure to include all of the costs associated with the variation, such as materials, consultants fees, sub-contractors costs, employee charge out rates, overheads and profit.

- Consider whether the contract specifies when and how payment claims for variations may be submitted to the owner. The contract may allow claims for variations outside of the main payment claims under the contract.
- When estimating the effect a variation will have on the contract date for completion, consider the affect on the “critical path” under which the work is being performed and whether a revised construction program should be attached to the variation.
- The consequences of failing to record a variation in writing may extend well beyond the date the contract work is completed. For example, if a variation resulting in a deviation from the contract documents is not recorded in writing, a subsequent purchaser of the building may not be aware of the variation and may consider the builder liable for the deviation. Without a written record, the builder may have trouble proving the deviation resulted from an instruction by the previous owner of the building.

CONTRACT VARIATION

The parties agree that in accordance with the contract dated.....
 between(Owner's name)
 and(Builder's name)
 for the construction of.....
 at(Address)
 is hereby varied as set out below.

Variation No.

Reference No.

Date submitted

Details

	Additional days	Price (excl. GST)
1.....		\$.....
.....		
2.....		\$.....
.....		
3.....		\$.....
.....		
	GST:	\$.....
	TOTAL:	\$.....

This contract variation must be signed and returned to the builder by

Owner's Signature

.....

Date:

Builder's Signature

.....

Date:

Points on how to complete a variation form:

- Sequentially numbering the variation forms is particularly helpful on completion or if a dispute arises and it may prevent early variations being overlooked.
- Try to provide a brief and succinct but detailed description of the variation works. Specifying particulars such as changes in materials, colours, sizes and position by reference to drawings, specifications and codes where necessary may prevent disputes from arising.
- Attached relevant documents to the variation form and make a notation in the description of the documents which are attached.
- If a variation does not affect the contract price or completion date, specifically state that there is no affect by inserting "N/A" in the relevant space on the form.
- Rule a diagonal line in any areas of the form which do not contain writing.
- Keep a copy of the original signed variation forms with the copy of the contract. Preferably keep a copy in electronic format.

Key takeaways

- Variations to construction contracts must be documented in writing and signed by all parties involved.
- The Home Building Act 1989 imposes specific requirements for implementing variations in residential construction.
- Inadequate accounting of variations can lead to disputes, especially near project completion.
- All costs associated with a variation should be included to avoid future conflicts.
- Failing to document variations can have long-term consequences for builders and subsequent property owners.

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