

CONSTRUCTION CONTRACT



Construction Contract Overview

WHAT IT IS: This is an agreement between you and your client that outlines the terms of your relationship.

WHAT IT DOES: This agreement sets expectations and outlines terms for you and your client. By signing this agreement, you and your client are literally “on the same page” when it comes to working together. Among other things, this agreement:

- Contains details about your project specifics, payment terms, material allowances, timelines, and other expectations of the parties
- Limits your liabilities (that is, it protects you and your business legally and financially)
- Provides protocols for changing the scope of work, termination of the agreement, and more
- Provides you recourse (e.g., in the event you need to collect payments)
- Ensures that any legal action brought against you will be handled in the state in which you reside so that you’re not required to fly across the country if a client on the other coast sues you and you have to appear in court

WHY YOU NEED IT: To help prevent misunderstandings and disagreements with your clients. When you’re both crystal clear about what to expect, there’s less chance of confusion, and if there is a disagreement, you can refer back to the agreement to determine what to do about it. Without a signed agreement like this in place, you may not be able to call collect attorney’s fees or even enforce basic provisions of the deal.

WHEN TO USE IT: Every time you sign on a new client.

Clause-By-Clause Explanations and Instructions

Editing Instructions: The first time you go through the template, customize it to your business according to the instructions below. Sections that should be filled in, altered to suit your needs, or deleted if they're not applicable to you are in **red**. Leave the signature section at the bottom and the **[Client Name]** in the recitals (the part between the title and the sections) blank for now. Then save the document – this will be *your* template going forward. Each time you bring on a new client, use your template and update the recitals with the client's name where it says **[Client Name]**.

THE TITLE

On the top of the page, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line.

THE RECITALS

In the part between the title and the numbered sections, insert your business name in **[Company, LLC or Individual]**. The remainder of the Agreement uses the word “Company” so that you only need to change your business name here and at the signature line. When you bring on a new client, insert the client's name where it says **[Client Name]**. Client Name can be an individual, business name, or LLC. The remainder of the Agreement uses the word “Client” throughout.

1. Services

Purpose: The Services clause explains what you will be providing to your client. Since many contractors provide an estimate to clients first, we are simply incorporating that Estimate as the services.

Instructions: You can keep customize this if needed or it is fine if it is generic as it is. See alternate language at the end if you use cost-plus.

2. Fees

Purpose: The fees clause expressly states your monetary rate in exchange for Programs or a product and how often that fee is due.

Instructions: This may vary from project to project. It is set at 50% paid up front. Edit so that it is consistent with your typical billing practices.

3. Expenses, Materials, and Supplies

Purpose: This clause provides that customer must pay for materials and expenses except for equipment.

Instructions: None unless you want to alter how this is handled.

4. Permits and Licenses

Purpose: This makes clear that you are responsible for obtaining necessary requirements.

Instructions: None.

5. Capacity as an Independent Contractor

Purpose: This clause expressly states that your company serves as an independent contractor of the customer. This is needed to clarify that you are not working as an employee of the customer.

Instructions: None.

6. Employees and Subcontractors

Purpose: Sometimes you need a little extra help on a project. This clause allows you to utilize subcontractors, as well as company employees, on Company projects if needed without having to get customer approval.

Instructions: None.

7. Termination Fee

Purpose: This clause provides you recourse if the Customer changes their mind after hiring you. It calls for them to forfeit their initial fee, pay for work done, and then pay 25% of remaining estimate.

Instructions: Switch out [25%] for your Company's preferences. Review to ensure it matches your desires. There are no legal limitations other than keeping good faith and fairness in mind. Don't make the termination fee unreasonable, or it could jeopardize the enforceability of the fee. .

8. Portfolio

Purpose: To allow you to use before-and-after photos or other photos of your work in your advertising.

Instructions: None.

9. Limitation of Liability

Purpose: The limit of liability clause ensures that your customer will not bring any claims against your company related to your company's participation in contracted services. This clause is extremely friendly to the protection of your company and serves as a release from liability against your customer. These are designed to protect you but nothing can completely insulate you, but this helps a lot!

Instructions: None.

10. Failure to Perform

Purpose: As a business owner, you can potentially run into situations where you are not able to fulfill your end of the deal with your customer. As listed in the contract, sometimes illness or acts of God (earthquake, flooding, pandemic, etc.) make it impossible to complete your obligations. This protects you from being sued for failure to perform based on one of the reasons listed. This is also known as the force majeure.

Instructions: None.

11. Severability

Purpose: The severability clause allows the main part of the contract to remain in effect even if certain clauses are illegal or unenforceable. On the off chance that a clause is unenforceable, this provision guarantees that one bad clause does not break or “sever” the deal completely. This is one of those “boilerplate” clauses that’s really important.

Instructions: None.

12. Waiver

Purpose: In the case that your company or your client desires to waive or modify a section within this contract, you may do so, but it must be in writing and signed by both parties. This prevents the failure to enforce a section of the agreement one time from coming back to undermine its enforceability later on. This is another boilerplate clause that’s very important to include in a Client Agreement.

Instructions: None.

13. Punchlist & Acceptance of Work

Purpose: This clause provides a protocol for when your work is deemed accepted by client. It prevents your client from coming back months later and requesting changes.

Instructions: None, unless you want to change the 15 days.

14. Indemnification

Purpose: An indemnification clause assures that your customers will defend your company against all claims brought against you related to the Programs performed for your customer. To indemnify means to “defend” or “hold harmless,” so here, the customer agrees to cover your losses if they do something that causes you harm or causes a third party to sue you. Think of this clause as your safety net against claims brought against your company.

Instructions: None.

15. Prevailing Party

Purpose: If there's a dispute that requires retaining attorneys, whoever prevails from the dispute will be reimbursed for their attorneys' fees. This clause is incredibly important, as it makes it more cost effective should you need to retain an attorney because now your customer may have to reimburse you for legal fees. For example, if you're required to hire an attorney to collect an outstanding fee of \$5,000, this clause empowers you to potentially collect not only the \$5,000 but also the attorneys' fees you paid to do so. Pro tip: it also gives leverage when negotiating with customers since they can either pay the \$5,000 now or \$15,000 later on once attorneys' fees have been required.

Instructions: None.

16. Governing Law

Purpose: This clause clarifies what laws will govern this contract. Contract laws vary state-to-state, so the contract must clarify what state laws govern this particular agreement.

Instructions: Replace [State] with your state and county of your company's primary location.

17. Entire Agreement

Purpose: The purpose of this clause is to ensure that all of the terms and conditions of your agreement with your customer are set out in a single contractual document. An entire agreement clause promotes certainty of obligations and prevents either party from relying on conversations or preconceived notions outside this contract.

Instructions: None.

18. Dispute Resolution

Purpose: This sets out a detailed protocol if there is a dispute. This scheme is designed to start with mediation (a voluntary negotiation process) and then end in arbitration (where an arbiter is used to make the final determination instead of a jury using the normal court system). This can save you lots of money on legal fees.

Instructions: Replace [County, State] with your state and county of your company's primary location. This is where your mediation or arbitration will take place.

19. Electronic Signature and Counterparts

Purpose: To allow you and your client to sign this agreement with the same power and authority as signing in person.

Instructions: None.

Schedule A Estimate

Purpose: This allows you to keep your normal estimating process and simply attach the terms for each client. You will treat the template like a master agreement that only edits the names but this estimate is for each individual client.

Instructions: Be as detailed as possible in your estimate and make sure there is a single final statement that is agreed upon. We recommend that you send the agreement via docusign with the estimate attached at the end.

SIGNATURE BLOCK

Purpose: To clarify who is obligating themselves to these terms and also to actually take the final step in reaching agreement. All of your hard work does little good when you go to collect on an unpaid invoice if you do not have a signed copy of this agreement, so be sure to **get it signed and keep a copy.**

Instructions: Lastly, insert your business name, name of owner/president, and name of client in the signature block. For job title, be sure to include your title (e.g. Member, President, Manager, CEO, etc) as it denotes that you are signing on behalf of the company and not individually.

Pro Tip: Every time you sign something for the business, it is important to always sign your name as a representative of the LLC and not just individually. This maintains the liability protection you're getting with your LLC. For example, sign: "Wesley Henderson, Member" (or otherwise designate you are signing on behalf of the LLC and not as an individual). Finally, have your client sign and date.

Alternate Language

Note: *This language is alternate meaning it can be used instead of the existing language in the template.*

Fees

“Client agrees to pay Company at a rate of [\$_____] per [hour/session]. Client agrees to pay [\$__] upfront at the commencement of the services (“Initial Fee”). Once the Initial Fee has been exhausted, Client shall make payment to Company on a monthly basis according to time and expenses incurred by Company as detailed on monthly invoices. Company shall deliver an invoice within the [first five (5) business days] of each month describing the fees for the preceding month. Failure to make timely payment within 15 days of the receipt of the invoice shall result in a [late fee that recurs every 30 days thereafter until paid in full].”

Purpose: This is an alternate fee agreement for hourly rates and monthly billing. This would replace Section 2 in the template.

Instructions: Input your billing details in red to customize to your practice. Then replace the language in Section 2 in the Agreement template with this language.