



# Guidance Note

## Minor Works Contract

This Minor Works Contract has been developed by the Ministry of Education (**Ministry**) for the engagement of contractors for low value property construction projects. It is suitable for use for Board of Trustees (**Board**) engaged projects. These guidance notes are intended to provide guidance to Boards and to those managing projects on their behalf.

These guidance notes, as well as those guidance notes included within the contract, will help Boards choose an appropriate contract with the right terms and conditions for each engagement, and give certainty to contractors providing construction services to Boards.

These construction contract templates should be used instead of the Government Model Contracts, which are not designed to be used for construction projects.

This Minor Works Contract is designed so that Schedule 2 contains the standard terms and conditions, with all the specific project details contained in the Schedule 1 and the applicable Appendices. You should not change the standard terms and conditions as they have been tailored specifically to Ministry requirements.

### When to use the Minor Works Contract template

#### The following are guidelines for when you should use the Minor Works Contract

<b>Type of work</b>	Simple construction or building works.
<b>Value</b>	Up to \$100,000 excluding GST and disbursements.
<b>Suitable for</b>	<p>Low value construction or building works. Can be used for projects requiring building consent and / or projects that involve work that could compromise the weather-tightness of the building. A weathertightness warranty is provided for in the contract and must be used where the work being undertaken could compromise the weathertightness of the building, for example: replacement of, or substantial repairs to the roof or external walls. The only exception to this requirement is where the work is emergency “patch repair” type work.</p> <p>Weathertightness Requirements:</p> <p><a href="https://www.education.govt.nz/school/property-and-transport/projects-and-design/design/design-standards/weather-tightness-and-durability-design/">https://www.education.govt.nz/school/property-and-transport/projects-and-design/design/design-standards/weather-tightness-and-durability-design/</a></p>
<b>Further information</b>	<p>Health and Safety Management Requirements:</p> <p><a href="https://www.education.govt.nz/school/property-and-transport/health-and-safety-management/">https://www.education.govt.nz/school/property-and-transport/health-and-safety-management/</a></p> <p>Asbestos Handling Requirements:</p> <p><a href="https://www.education.govt.nz/school/property-and-transport/health-and-safety-management/asbestos/">https://www.education.govt.nz/school/property-and-transport/health-and-safety-management/asbestos/</a></p>

## Questions?

**For Board led projects:** Any queries raised by the Board in relation to the terms and conditions of this Minor Works Contract and its use should be directed in the first instance to the School Property Advisor. If legal assistance is required, the School Property Advisor will provide guidance on obtaining legal advice through the New Zealand School Trustees Association.

## Getting Started

Because you are acting on behalf of the community and using public money, you need to use processes that ensure responsible use of funds. Even when you know and trust the person or company doing the contract works, there are certain basics that you need to cover when setting up a building contract for your school.

## Who are the Parties?

### Principal to the contract:

The Contract uses the word “Principal” to refer to the entity engaging the Contractor to carry out the works. The Board is the legal body that has the authority to enter into the contract on behalf of the school and will be the “Principal” under the contract.

### Contractor:

It is important to use the full legal name of the Contractor. Is it a company, individual, or a company trading under a different name? If the Contractor is a company (or some other legal entity such as a registered Limited Partnership) then check the New Zealand Companies Office to ensure that the Contractor entity actually exists. Entities can be searched at: <https://www.business.govt.nz/companies>.

## Legal Authority – Board of Trustees

The only “person” with the legal authority to enter into a contract on behalf of the school is the Board, or someone the Board has formally appointed at a Board meeting to act on behalf of the Board.

The person or people authorised to deal with the building project by the Board should be recorded in the Board minutes for the meeting at which the Board made the decision to appoint the authorised person or people.

## When should the Contract be prepared?

Check that you have the most up to date version of the Minor Works Contract available from: <https://www.education.govt.nz/school/property-and-transport/projects-and-design/procurement/contracts/#SchoolLed>

The contract should be prepared and issued as part of the quoting process. The contract includes important information that will be required by the Contractor in preparing its quote (e.g. price and programme) for the project. It is also important that the Contractors have this information up front to ensure they understand the terms and conditions upon which they will be appointed. Providing this information at quote stage will avoid any potential surprises further down the line.

It is important to have details of the construction work agreed and the contract signed before the Contractor starts any work on the project.

## Contract Works Insurance

The Ministry provides contract works insurance at a minimal cost to the construction project at state schools. The contract works insurance covers accidental loss and damage to the works being undertaken (including temporary works) under the contract including off-site materials, subject to certain limits specified by the policy. It does not cover damage to existing property or contents. If the project involves a building or other asset that is, or will be, owned or partly owned by the Ministry, then you must use the Ministry's contract works insurance. If the project is wholly funded by the Board on a school site, you can choose to use the Ministry's contract works insurance at no cost to the Board.

To obtain contract works insurance for your project, the Ministry requires that the details of the contract are entered into the Ministry's contract works insurance broker's website. The Ministry's insurance broker's website can be accessed via: <https://www.education.govt.nz/school/property-and-transport/projects-and-design/procurement/insurance/>

The insurance is effected jointly in the names of the Principal, the Contractor and its Subcontractors. Damage to the contract works caused by the Contractor will be subject to "nominal deductibles". Nominal deductibles are specified amounts equal to, or less than, the sum of any excess required to be applied under the policy (**Nominal Deductibles**).

## Existing Structures Insurance

The contract requires that any Principal owned property (i.e. property owned by the Board) is insured by the Principal. This is because the Principal will have existing insurance policies and will be better placed to assess the level of cover required to protect existing structures. It also avoids duplicating insurances which can increase the costs of a project. These structures needs to be listed in the contract, and where Board owned structures are involved you should ensure that your insurance provider is made aware of the construction work to ensure that the policy is extended to cover damage arising from construction activity. Damage to Principal owned property caused by the Contractor will result in the Contractor being liable for payment to the Principal of Nominal Deductibles.

## Contents Insurance

This will typically apply to Board led projects. The contract requires that any Principal owned contents are insured by the Principal following the same principles as those outlined above for existing structures. Any damage to contents caused by the Contractor will result in the Contractor being liable for payment to the Principal for any specified Nominal Deductibles. The insurance provider must be notified of the construction work taking place to ensure that the policy is extended to cover damage arising from construction activity.

## Weathertightness Warranty

A weathertightness warranty will be required if the works impact the building envelope and therefore may present weathertightness issues. It is not required for works that are entirely within the envelope of the building, or for emergency "patch repairs" to the envelope.

If you feel that the works may pose a weathertightness risk then you must make it a requirement in the contract that the contractor provides a weathertightness warranty.

## When are the Works completed?

The works are completed when the physical works are completed to the satisfaction of the Principal. This means free of defects, tested and commissioned (as appropriate), and all required documentation is provided by the Contractor for the safe use of the works (e.g. operational and maintenance manuals, warranties, and any test certificates that may be required). Payment for the works becomes due upon satisfactory completion.

### Substituted materials

The Contractor may recommend that a product or material that your design consultant has specified could be substituted with an alternative product or material. You must consult your design consultant to establish whether any substitution of products or materials would result in a deficiency in the design – as they are responsible for the design, they will need to sign off that any alternative product or material will not compromise the design, and you may need to consider any potential design variation costs resulting from your consultant having to spend additional time and effort in validating alternative products or materials. The Contract includes a clause that sets out the process that should be followed in the event that the Contractor recommends an alternative product or material.

### Conflicts of Interest

The Contractor and all members of the Board are required to disclose any actual or likely conflicts of interest in writing before signing the contract.

A conflict of interest includes any family or business relationship between the Contractor (including the Contractor's directors and senior managers) and any member of the Board or any staff at the school.

In the contract itself, the Contractor is also required to declare:

- that they are not aware of any further conflict of interest that has not already been disclosed in writing to the Principal;
- any conflict of interest that arises after signing the contract; and
- any claims by the Ministry or any school board of trustees against the Contractor (including any claims against a majority shareholder or director of the Contractor) for defective work.

## Completing the Minor Works Contract details

### Overview of the Minor Works Contract

It is important that you read over the whole contract to ensure you understand what you are committing to, and what you are entitled to expect from your Contractor.

You should keep a copy of the properly signed contract stored for reference during the time that the Contractor carries out the work. You should also safely store the original (or a copy of) the contract (and all associated documents such as product warranties) for ten years (or longer if one or more of the warranty periods is more than 10 years), in case any defects in the work are discovered later. As there is a high probability that key people in the school will change over that time, it is important to make sure that all property documentation is kept together, and that the Board and the school principal have clear records of where they are stored and how to access them. This should include any passwords or other security measures.

The Minor Works Contract is divided into four parts:

- **Contract Agreement:** This section lists the documents forming the contract and is signed by both the Principal and the Contractor to legally bind the parties to the contract. The contract should be signed by the Contractor before the Board signs.
- **Schedule 1 – Reference Schedule:** this section requires you to complete specific details and requirements for the project.
- **Schedule 2 – Contract Terms and Conditions:** this section provides the Ministry's standard terms and conditions of contract which should not be amended.
- **Appendices 1 – 5**

The following section provides further guidance on some of the key terms of the contract.

### What are the project details?

<b>Works</b>	Provide a description of the works to be delivered in sufficient detail. If you need to provide more details, drawings can be annexed at Appendix 1, and/or specifications can be annexed at Appendix 2, and any other documents (such as a scope of works) can be annexed at Appendix 5 to the contract.
<b>Contract Price</b>	Insert the agreed Contract Price that the Contractor will charge for the works provided under the contract. Payment of the Contract Price is due to the Contractor when the Contract Works are completed to the satisfaction of the Principal.
<b>Principal's Authorised Representative</b>	Insert the name and contact details of the Principal's Authorised Representative. This is usually the Project Manager or a person formally appointed by the Board.
<b>Contract Term</b>	The Commencement Date is the date that the Contractor is to commence the works. The Completion Date is the date by which the Contractor must complete the works (subject to any agreed extensions).