

GENERAL CLEANING & RESTORATION CONTRACT PACKAGE

PART ONE: INSTRUCTIONS

INSTRUCTIONS

Read This First Before Using The Forms

Dear Restorer,

Thank you very much for purchasing our general *Cleaning and Restoration Contract Forms Package*! It contains the latest and greatest strategies we've developed to protect restorers!

Laws vary by jurisdiction, and we are working hard with lawyers licensed in various states to bring more state-specific products online as quickly as possible. However, to keep pace with the demand in states where we have not yet developed products, we have prepared this set of general forms to give lawyers in other states a head start in preparing restoration contracts in their jurisdictions. These forms are not ready for use; they must be modified to add state-specific requirements by a qualified lawyer licensed in every jurisdiction where you intend to work. Modification may also be appropriate to ensure that the forms are suitable for your specific business model.

We add new products to our catalog regularly, so before you dive in, please check EdCross.com/contracts to see if we have released a package that is specific to the state where you work. If so, please send an email to Ed@EdCross.com and we will send you a free set of forms for one state if that those forms were first released after your purchase of this Package. This general package is not for use in California, Texas, or Florida. We have packages specific to those states.

We highly recommend that restorers consider obtaining Assignments of Insurance Rights if not prohibited by your franchise agreement, TPA agreement, or other contract. Assignments are a great tool to help enforce the insurer's obligation to pay real fair market value for work, rather than outdated prices from a standardized price list. Assignments also help prevent policyholders from running off with your money because the insurance company is required (in most states) to put your name on the check. If it fails to put your name on the check, you may be able to force the insurance company to pay a second time. We have done this multiple times with major insurance companies. Assignments are not included with this package. They are so important, I wrote an entire book about them, *The Book on the Assignment of Benefits*, which you can find at www.EdCross.com/aob.

The contracts do not include arbitration clauses because we believe that the expense of arbitration often outweighs the benefits. However, your attorney may believe that adding an arbitration clause is in your best interest.

Mechanics' lien rights are very important to restorers. Lien laws vary widely from state to state. There was no way to standardize a lien provision, so be very careful to include all language required with respect to liens and notices of the right to record a lien.

This package does not include coronavirus disinfection contracts because the coronavirus presents unique legal issues, particularly because the virus cannot be seen or smelled, and buildings

are rarely tested for it. It also spreads very easily, and is lethal, which creates significant liability concerns for many restorers. Services to control the spread of the coronavirus are therefore expressly excluded from the scope of both contracts.

If coronavirus is the target of the work, we recommend the use of a contract specifically tailored for that purpose, which you can read about here: EdCross.com/COVID-19. Our Coronavirus Service Contracts include extensive provisions about the special challenges cleaning and restoration companies face when they address the novel coronavirus in buildings. They have been very well received and more independent companies use our forms for coronavirus cleanup projects than any other.

Here's how to use the forms included in this package:

1. Home Improvement Contract with Terms and Conditions

When you bring these forms to your local lawyer to finalize, ask whether your state has “home improvement” laws that apply to your work. These are consumer protection laws that apply to residential work, including emergency mitigation services, even if the project does not include reconstruction.

Become well versed in your state’s home improvement laws, as they may dictate many of the details of how your contract should be set up. Be on the lookout for requirements to provide residential customers with a notice that they can cancel the contract, a notice of your rights to record a lien, and notices about how to file a claim against a contractor’s license.

Some states that have home improvement laws require residential contracts to have the phrase “home improvement” the title of the document, so we included that here in an abundance of caution. But if it is not required in your state, I think a better title is “Restoration Service Contract,” and if you like, add “and Work Authorization” to the end of that, although it adds nothing legally. Just don’t use the phrase “Work Authorization” as a title standing alone because you want much more than “authorization,” you want a “contract.” Always refer to it as a “contract” when speaking to customers, never call it a “Work Authorization.” They need to understand they are bound to pay (unless you have a written commitment from someone else, e.g., a TPA, to pay).

Problems with “Work Authorizations.” One of the main reasons restorers have trouble collecting money is because they use “Work Authorizations” instead of *contracts*. To be enforceable, contracts must include reasonably definite descriptions of the parties’ obligations. Courts do not engage in mind-reading. They will only enforce terms that were outwardly expressed. If you want the customer do to something, get it in writing! The traditional work authorization lacks the essential terms to bind the customer to payment obligations. A Work Authorization that simply says that the customer authorizes the restorer to perform work, binds the customer to nothing! This Home Improvement Contract is a full blown payment contract that is intended to include legally enforceable terms. This contract *includes* the key points of the traditional “Work Authorization,” but does much more! This Agreement is intended for use on everything from cleaning to emergency service to reconstruction.

What is “home improvement”? Some states define “Home Improvement” very broadly to include nearly every conceivable type of restoration and repair work performed in residential property, whether it is occupied or unoccupied. These states look to the nature of the property rather than the nature of the customer to make this determination. In other words, if the property was built to be used as a residence, the state may consider any work done there to be “home improvement,” even if the property is unoccupied, and even if the customer is a developer, real estate investor, or landlord and not a “consumer”! This is where many restorers get tripped up. Do not assume that just because you are not dealing with the consumer that the consumer protection rules do not apply.

What type of property is considered a “home”? It does not mean that someone is actually living there. To avoid potential legal complications and disciplinary action against their contractor’s licenses, restorers in home improvement states should inquire with a lawyer and with the contractor’s licensing authority to determine whether work in residential investment property, apartment buildings, and homeowners associations is considered “home improvement.” If your project is not a residential project, use the Commercial Restoration Service Contract.

Your contract is your friend. A contract is much more than a legal formality. It is a selling tool. It fosters good communications and provides an opportunity to fine-tune the customer relationship. Use your contract to educate the customer about what you expect from the customer, and what the customer can reasonably expect from you. This is a great way to establish boundaries. In some instances, the discussion about expectations will reveal that you should decline the work!

Annotations, Strikeouts and Deletions. Some customers will take the liberty of deleting portions of the Agreement, or writing in additional terms. *Never* tell a customer the terms are “not negotiable.” That could render the entire contract unenforceable if a court thinks the terms are shockingly one-sided in your favor. When people write on your contract, it shows that they read it, and that it was negotiated, and that will make it harder for them to get out of it! The decision of whether to accept such changes or decline the work should be made on a case-by-case basis, considering the value of the opportunity, the referral source, and any red flags indicating future troubles with the customer. When this occurs, you have several options that you should discuss with an attorney.

Execution. Fill in every blank on the form (use “n/a” where the subject matter is truly inapplicable). **Every empty blank space is a point of legal vulnerability.** In many instances, it is preferable to have the owner of the building sign the agreement, but see the detailed discussion above about identifying the “customer.” Where there are multiple owners (e.g., husband and wife), we highly recommend getting signatures from both, even if the two cannot sign simultaneously. Each party who signs is potentially liable. Give the customer or customer’s agent a copy of the completed, signed form.

Editing and formatting. The fields can be filled in with little or no formatting problems. To check a box using your computer, double-click on the box and click “checked” under “Default Value.”

Top box. Fill in your company name, and contact information and contractor’s license number in the upper left corner and your company logo in the center field. Your state law may

require a contractor's license for work that involves demolition, including removal of baseboards and cabinets, for more than a certain dollar amount. Contact the contractor's licensing authority for more information.

"Customer." This is one of the most important fields on the form, and one that leads to lots of expensive lawsuits. Make sure every member of your staff involved in contracting and A/R understands this important definition: **"Customer": the party who will be ultimately responsible for payment of any amount not covered by insurance.**

The First Call. **Don't start work until someone with money has agreed in writing to pay you for the work.** On many projects, especially emergency service, the identity of the customer may be unclear. This must be determined in the very first phone call ("Who will be responsible for payment of any amounts not covered by insurance?"). The file should be named after the party identified in response to that question. If the caller does not know, insist that this be determined before the contract is signed and before work begins, or seriously consider this as a deal breaker. Collections problems are common where the service provider presumes that the person who placed the original call will be the "customer." The provider is disappointed to later learn that the person who signed was just the owner's neighbor, or had no ownership interest in the property, no authorization to sign and no intent to pay for the work. If the contractor files suit against the owner, the owner denies being a party to any contract and refuses to pay. The party who signed refuses to pay on grounds that it was not his or her property.

**DEAL
BREAKER**

Agency. The customer, or an authorized agent of the customer, must sign the Contract. If an agent signs, take sufficient steps to confirm the person's authority to bind the customer to a contract. The customer may or may not be the owner of the property. If the customer is available only by telephone, call the customer, explain the nature of the damage, the type of work that will be done, the price of the work, and then confirm that the agent is authorized to sign. Then try to get an email address (or fax number) for the customer and transmit the same agreement to the customer for signature. Don't start a new contract! If there is a problem in an original contract, fix it with a change order, rather than a new contract. Executing new contracts can create issues about whether they supersede the original contract.

SECTIONS IN THE HOME IMPROVEMENT CONTRACT

Engagement. The first paragraph of text is the "engagement" paragraph. Replace the italicized text with your company name. Check either the "Cleaning" box or the "Damage" box and then check the appropriate box to identify the type of damage. Edit the paragraph as necessary to suit the job. Check the appropriate boxes to indicate the type of work, type of damage and type of structure.

Section 1 - Contract Documents: Check the appropriate boxes for all documents you intend to make part of the agreement, and be certain the customer receives a copy of each. Be especially cautious about incorporating anything written by a consultant, architect or hygienist because it may describe work you do not wish to perform, or information that is incorrect. Anything incorporated into the contract may become "law" for the project unless explicitly excluded.

To uncheck a box in any form, double-click on the box and de-select “Checked” under “Default Value.”

The “Terms and Conditions” box is pre-checked because that document must accompany all Service Agreements (it is the second page of the contract). After the list of contract documents is a list of disclosures, such as a Mold Notice and the EPA’s Renovate Right Lead Notice.

The Lead Notice is required on many residential jobs and determining when it is required can be difficult. For simplicity, our standard recommendation is to provide the Notice on all residential jobs.

Unlike the Contract, the customer need not read the Renovate Right Notice while you are standing there. It is a disclosure, rather than bona fide contract document. It is for their information to read later.

Section 2 - Scope of Work: One of the most common contracting errors by restorers is failing to write a good scope of work. The scope of work is usually the most important part of any contractor’s contract, and is often the most overlooked. The scope provides important protections to both the customer and the service provider and is an excellent way to resolve misunderstandings and prevent legal conflict. Use as much detail as reasonably possible in stating the scope of work, being sure to exclude anything of potential significance that will be performed by others, or services that the customer declines. (If the customer declines any work you recommend, determine if you should present the customer with a Refusal of Recommendations and Release of Liability.) The Agreement also includes a handy section to check boxes to identify the affected areas. This is an important risk management tool, as many environmental claims are made for damage originating from areas not affected in the subject loss. Just because the work is being performed in an emergency does not mean that a detailed scope of work cannot be written. Explain what you plan to do, and where you plan to do it, and get it in writing in section 2! See the important information regarding prices for emergency service under section 3, below.

Section 3 - Contract Price: It is often best to avoid committing to return the property to pre-loss condition for a fixed price for emergency service. The safer route is to set a price for a fixed scope of work that specifies a certain number of labor hours and a certain number of days of equipment use but without committing to return the property to pre-loss condition. When the scope is nearly complete, a change order should be executed for additional charges, as needed. The price of home improvement work to be stated in “dollars and cents” in writing before any work may begin. Of course, it can be altered at any time by Change Order. We highly recommend the liberal use of Change Orders. They are often required by state law any time there is a change in scope, price, payment terms, completion time or any other substantive term. Do not procrastinate on executing change orders. Many states require a signature on a change order before any change work can be performed on a home improvement project.

Section 4 - Approximate Start Date: / /202__; *Approximate Completion Date:* /
/202__: The law may require contractors working in residential property to state the approximate start date and end date in home improvement services. It is also highly recommended to discuss

the necessary completion times with the customer and reach a meeting of the minds before the Contract is signed.

Section 5 - Right to Cure: Many contractors face unpleasant surprise when they are served with a lawsuit for workmanship claims. They falsely assume they have a “right to repair.” California’s statutory right of repair applies to developers when they sell newly-constructed homes. Restorers have no legal right to notice of workmanship issues unless it is set forth in a binding contract. This provision is designed to create that right.

Section 6 - Performance and Payment Bond: This provision, or something like it, may be required by state law. It is extremely rare that restoration customers request bonds. This provision memorializes the customer’s waiver of a bond.

SECTIONS IN THE HOME IMPROVEMENT

TERMS AND CONDITIONS

Section 1 - Release for Third Party Professionals; Indemnity: This clarifies that the contractor is not performing the services of an indoor environmental professional and is not responsible for errors of the customer’s consultants.

Section 2 - Personal Liability: Get the customer’s (or agent’s) initials on this paragraph if insurance is involved. If you wish, you may delete this paragraph if the agreement is being used for routine carpet cleaning.

Section 3 - Down Payment and Schedule of Progress Payments: Check to see if this provision complies with the state’s statutory requirements for home improvement contracts, if any. In any event, do not leave the table empty.

Section 4 - Payment: This section is not required by law, so it is negotiable. It contains many provisions to help accelerate collections. It goes hand-in-hand with the next section regarding finance charges and interest.

Section 5 - Finance Charges and Interest: Some states require a disclosure as to whether the agreement involves finance charges. Finance charges apply when a project is financed like a loan. Interest for past due payments are not finance charges, so this provision states that there are no finance charges under this Contract.

Section 6 - Partial Lien Releases: Check to see if this provision is required by state law.

Section 7 - Extra Work and Change Orders: This paragraph includes sentences required by, with an added provision stating that the customer agrees to execute change orders to increase the price to address conditions not reasonably anticipated by the Contractor. Always get a signed change order before commencing change order work.

Section 8 - Limit of Liability and Indemnity: This includes a release of claims for COVID-19. These releases have not yet been tested in court, but are more likely to be enforceable where there is a clear understanding between the parties as to the scope of the release. We highly

recommend serious conversation with the customer about the way the coronavirus spreads, the difficulty in controlling it, and the release of COVID-19 claims. Please see the Script that accompanies the form for important information to convey to the customer.

Section 9 - Commercial General Liability Insurance: The name and telephone number of a contractor's general liability insurance carrier must be disclosed in California home improvement contracts. Replace the highlighted text with the name and telephone number of your insurance company. For projects outside California, consult with a lawyer licensed in the jurisdiction to determine whether a disclosure of insurance information is required.

Section 10 - Workers Compensation Insurance: Workers Compensation Insurance is required of all companies that have employees. If you have no employees, replace this paragraph with this statement: "This Contractor has no employees and is exempt from Workers Compensation Requirements," or the relevant language required by your state's law.

2. Commercial Restoration Service Contract with Terms and Conditions

Contractors in most states have considerably more freedom in executing commercial contracts than residential ones. Consumer protection laws, such as the right to cancel, do not apply to commercial projects. Figuring out which ones are "commercial" can be tricky, as explained above.

The same instructions for executing the residential contract apply to commercial contracts. Look for opportunities to collect significant down payments if your attorney advises you that it is permissible. This is often a major distinction from residential projects. Many states restrict or prohibit down payments or advances for residential work.

3. Change Order

Execute a Change Order any time the price, scope, or legal terms change. A Change Order is not a cause for embarrassment. As long as they are not used to bait and switch, Change Orders are a sign of professionalism. On some projects, it may be impossible to properly document an emergency service agreement without change orders.

4. Contents Disposal Authorization

List total loss contents on this form. It includes a release of liability. Be sure to carefully photograph all items before they are disposed, and make sure the insurance adjuster is aware of the plan to dispose. Try not to surprise adjusters.

5. Mold Notice & Disclaimer

When mold is discovered on a project, this form notifies customers of the risks and the need to control humidity. This form explains the crucial point that the goal of the work is not to leave the property in a "mold-free" condition. It contains a disclaimer of liability for finding or repairing leaks or for detecting mold or determining the cause of mold, but it does not contain a full release of liability. In severe cases, a release may be appropriate. It is the next item in this

Package. Use the Notice or the Release, but not both. They contain similar terms. See below for more explanation.

6. Release of Liability for Mold

This form has all the essential terms of the Mold Notice described above *plus* a release of liability for all conditions related to or caused by mold. This is inappropriate if mold remediation is part of the scope of work. This release should be used sparingly and probably not when the work involves water damage restoration or sewage cleanup.

7. Mortgage Information Release

This opens the door to allow the mortgage company to share information with you about the status of the release of funds. However, in many cases it may be best to get a contract with the mortgage company requiring it to endorse a check before you release it to the mortgage company. A full protocol for this is set out in *The Book on Restoration Collections* available at www.EdCross.com.

8. Refusal of Recommendations and Release of Liability

This releases you from liability if the customer refuses your recommendations, particularly as to work that it is intended to prohibit or remove microbial contamination. It documents the customer's refusal. If the customer refuses to sign this, send the "refusal confirmation letter" described below to create a clear paper trail of the sequence of events.

9. Refusal Confirmation Letter

If a customer refuses to allow restoration procedures to be performed, or to be performed in a proper manner, the refusal is a key event that must be documented. Ideally, the customer will release the restorer from liability. This package includes a Refusal of Recommendations and Release of Liability for this purpose. If a restorer is not permitted to work in a certain area, or remediate a certain type of damage, then the restorer should not be liable for problems that result from those issues. Attach the EPA Flood Cleanup and the Mold or Moisture In My Home documents to the Refusal if the work relates to water or mold. If a customer is unwilling to allow certain work *and* unwilling to put the refusal in writing, this may be a red flag, and the restorer may wish to consider withdrawing from the project altogether, ideally after ample written notice and after stabilizing the conditions in the structure to minimize the risk of secondary damage. If the customer refuses to sign the Refusal of Recommendations, this too should be documented. The Refusal Confirmation Form Letter is provided for this purpose. This letter is only to be used if the customer will not sign the Refusal of Recommendations.

10. Certificate of Satisfaction and Completion

In some cases, a Certificate of Completion can make or break the difference between a successful collection and an unsuccessful one. Many mortgage companies require certificates require some form of certificate from the owner before they agree to let the contractor obtain funds.

We have used Certificates to defeat belated workmanship claims. The process of obtaining a Certificate is a great opportunity to resolve any remaining issues on a job.

Part Two

Part Two of this Package includes the actual forms to present to the customer, but as explained above, not all of them are mandatory on every job.

Part Three

Part Three consists of a number of public agency publications on matters of legal relevance to the restoration community. Consumers often read these materials and have done their homework before the restorer arrives on a job. Reviewing these in advance helps a restorer be prepared for questions that may arise. The materials also address a number of safety issues, such as lead.

COVID-19

The pandemic sent a shockwave of liability concerns through the restoration industry, but I am pleased to report that we have seen very few legal claims from customers against restorers for faulty disinfection work.

So far, most of the COVID-19 legal claims we have seen against restoration companies have been filed by restoration *workers* against their employers. Many employers still do not have an organized system in place to document the steps taken to control the spread in the workplace. Many employers are under the impression that workers compensation immunizes them from all liability for worker claims, but there are exceptions in some states.

Recent headlines show major civil litigation pending against restoration companies outside the workers compensation system. The claims allege a failure to implement ***an organized system to identify and isolate workers*** who are at heightened risk of being contagious with COVID-19. Many legal issues are at play in the employee/employer context, so we wrote a robust set of explanations about potential employee claims, in plain English. It helps employers organize an effective defense strategy to minimize or prevent these claims, and you can access it **for free**, here: EdCross.com/Employer.

A good initial step is to have all employees execute an Employee COVID-19 Protection Agreement, which is part of our [Employers' COVID-19 Protection Crash Course](#). The Agreement is a written commitment from the employer to the employer that the employee will stay home if the employee is sick, that the employee will submit to health screening in the workplace, comply with company safety mandates, including masks and social distancing, if appropriate.

If you have any questions, or suggestions for future updates, please do not hesitate to call, or just send me an email at Ed@EdCross.com. If you would like any of the forms customized, or if you need help with collections, mechanic's liens, adjuster disputes and more, just let us know.

Finally, please keep an eye on TheRestorationLawyer.com for news and videos on important legal issues that can directly impact your bottom line!

The material you have purchased is for general information purposes only and is not intended to be legal advice.

Congratulations for bringing your work to the next level by using these forms. We hope they work well for you!

Thank you for the opportunity to help.

Gratefully,
EDWARD H. CROSS & ASSOCIATES, PC

A handwritten signature in blue ink, appearing to read 'Edward H. Cross', with a stylized, looping flourish extending to the right.

Edward H. Cross
TheRestorationLawyer.com

EHC/

PART TWO: FORMS

**PART THREE:
SUPPLEMENTAL
MATERIAL**