

SERVICE AGREEMENT

INSTRUCTIONS FOR USE

(These instructions are not to be given to customers.)

***DISCLAIMER:** This product is for general information purposes only and is not a substitute for the advice of an attorney. Non-lawyers should seek the advice of an attorney licensed in Texas in all legal matters, including verification of the fitness of this material for your particular purpose. Edward H. Cross is licensed to practice law only in the States of California and Hawai'i.*

Introduction: This is a basic service agreement which replaces the traditional “Work Authorization,” but does much more! It is intended for use on everything from cleaning to emergency service to reconstruction.¹ This is the primary contract document, and should be presented first. Before proceeding, please review the Texas Attorney General Consumer Protection Bulletin about Home Repairs and the Selected Texas Statutes for Disaster Recovery Contractors provided with this package.

Maximize the Benefit: 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! All forms should be evaluated and updated as necessary at least once per year.

Icons: As you read, watch for these helpful icons:



The help button explains where to go for additional information or assistance.



Clever tips help you make the most out of your forms.

¹ We recommend customizing contracts with the assistance of a licensed attorney, especially on high risk or high stakes projects, or where the project entails complexities, conflicts or unique circumstances. A small investment in legal services at the inception of a complex project can save tremendous amounts of money later by resolving areas of ambiguity and reducing confusion. Call (760) 773-4002 or email edcross@edcross.com for help.



The caution sign reveals a significant legal issue.



Our forms are designed with your commercial success in mind. We strive for a balance between strong legal protection and customer-friendly terms. We know that at the end of the day, you must get jobs to stay in business. However, many veteran business people understand that the best jobs are often the ones you turn away. For that reason, in certain limited circumstances, we identify **DEAL BREAKERS** which, if unresolved, could be good cause to decline a job.

Get Educated: Before you proceed, familiarize yourself with the Texas statutes that dictate how these projects are handled, including without limitation Chapter 58 of the Texas Business and Commerce Code, which you can view with this link: <http://bit.ly/2DkONpw>. Violations of these laws may be cause for disciplinary action against a contractor's license, regardless of whether the contractor or its owners had actual knowledge of or participated in the violation.



Presentation: We find that one-page forms are the most user-friendly and easiest to present.

Some states require contracts to explain the principal terms of a residential contract must before the contract is signed, and the contract must be signed by the customer before any work begins. Regardless of the law, that is a good business practice.

Experience has shown that consumers respond more favorably to one-page forms presented individually, as they are less overwhelming.

We recommend presenting each document individually, then encouraging the customer to read it, giving the customer an opportunity to ask questions before signing it.

We have developed an easy-to-follow *script* for smooth presentation of the form, which is part of this package.

The contract must be printed in the same language used in the principal sales presentation (e.g., Spanish).

Fill in all the blanks on the forms prior to presentation to the customer.

Contractors should be mindful of the warning from the Texas Attorney General to consumers hiring repair contractors, shown on the next page.

Be Smart about Contracts

Most home repair and remodeling work is performed under contract. Legitimate businesses will usually insist on having a contract for their own protection, and a well written contract should protect the homeowner, too.

DO NOT sign a contract with blanks in it. It happens: the blanks get filled in later, and the new terms are not likely to be in the consumer's favor.

DO NOT sign a contract until you have carefully read and understood every word of it. Sometimes it can be difficult to get out of a signed contract.

Do not allow anyone to rush you into signing a contract. The sales person should be willing to leave the contract with you so you can read it carefully on your own time. If anyone rushes you or tries to make you sign on the spot, or will not leave a copy for you to study, you should be suspicious of that person and the contract. Make sure everything promised to you is in the written contract. Insist on a written contract that specifically states what the contractor will do, when the work will start, and when it will be completed. Make sure the contract includes everything the salesperson or contractor promised and spells out the cost of special orders and materials.

Be aware that most contractors will not allow you to change your mind for free about what you want done or how you want it done. Often a contractor will require a service charge for changing the work order, and this should be covered in the contract.

Get and keep copies of everything you sign at the time you sign it.

Explain the principal legal terms to the customer prior to presenting the forms. Then invite the customer to read each paragraph and let you know if there are questions before signing. Always provide a legible copy of all executed forms to the customer.

Editing and formatting: This form can be edited to suit your purpose. 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.”



These forms will all fit on one page on most computers. Due to formatting variations with certain printer drivers, a small amount of text may carry onto a second page on your computer.

Top box: Fill in your company name, and contact information and contractor's license number, if any, in the upper left corner and your company logo in the center field. We recommend a numbering system for your contracts starting with “SA” (for “Service Agreement”).

“Customer”: This is probably the most important field on the form, and one that leads to the most litigation. 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: 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 Agreement. 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.

Engagement: The first paragraph of text is the “engagement” paragraph. Replace the italicized text with your company name. Check either the “General Cleaning” box or the “Damage” box and then check the appropriate box to identify the type of damage and the date (or estimated date) of the 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.

1. Contract Documents: Check the appropriate boxes for all documents you intend to make part of the agreement. 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 contract unless explicitly excluded. The “Terms and Conditions” box is pre-checked because that document should accompany all Service Agreements (it is essentially 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. Some contractors provide the Notice on *all* residential jobs to avoid missing any. Unlike the Service Agreement and Terms and Conditions, the customer need *not* read the *Renovate Right* Notice while you are standing there. It is for their information to read later. Please see the instructions that accompany the Notice of

Cancellation to help you decide whether to incorporate that Notice into the Agreement.



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

2. 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, including hiring any consultants, ask the customer to sign a Refusal of Recommendations and Release of Liability. If the customer declines, send a “Refusal Confirmation.” We have provided a form letter for this purpose.

3. Contract Price: This clause gives you the option to price the job on a time and materials basis or a lump sum. Consult with Texas counsel to determine your obligation to provide a price before work commences. We highly recommend the use of lump sum (fixed price) contracts that state the total price in “dollars and cents” in writing before any work may begin (check the second box). Of course, it can be altered at any time by Change Order. We highly recommend the liberal use of Change Orders any time there is a change in scope, price, payment terms, completion time or any other substantive term. Note that the price clause states that the price is an approximation made in good faith based on currently available information from an initial visual observation and is subject to change. Don’t procrastinate on executing change orders. Obtain a signature on detailed change order before commencing change order work on all types of projects.



4. Approximate Start Date: / /201 ; Approximate Completion Date: / /201 : It is highly recommended, for legal and business reasons, to state the approximate start date and end date of the work.



5. 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.

6. Insurance Deductible Notice: Texas Insurance Code section 707.002 requires property insurance policyholders to pay any deductible applicable to first-party claims made under the policy. Business & Commerce Code section 707.004 allows property insurers to refuse to pay claims made under replacement cost policies if the insured does not pay the deductible. The insurance carrier is entitled to proof that the deductible was paid, such as a canceled check. The “Insurance Deductible Notice” provision of this contract is required by Texas Business & Commerce Code section 27.02. A violation of that section is a class B misdemeanor. The Notice in this contract is

intentionally in a larger font than the rest of the contract because Texas law requires a 12-point font for this particular provision. It is designed to ensure that contractors and insureds do not look for ways to work around the insured's obligation to pay the deductible. The deductible is the out-of-pocket amount an insured agrees to pay when filing a claim. If a single claim involves two or more property coverage components, the insured is probably only required to pay one deductible, but contractors should refrain from offering policy interpretations or legal advice to customers.

Strikeouts and Deletions: Some customers will take the liberty of deleting portions of the Agreement. *Never* tell a customer the terms are "not negotiable." 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.

Execution: Fill in every blank on the form (use "n/a" where the subject matter is truly inapplicable). Consider every empty blank as 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.

WE ARE HERE FOR YOU



The Law Offices of Edward H. Cross provides broad-based legal and consulting services to the cleaning and restoration industry. Please call (760) 773-4002 or email edcross@edcross.com if you have questions about this package.