



Construction Contract

JCT Minor Works Building Contract

Contract it is a written agreement between the employer and the contractor to construct the works, which sets the responsibilities and obligations of both parties. It sets the contract conditions and the legal relationship between parties to construction project- what work has to be done, who is the main contractor, when is the commencement and completion date, what is the contract price, etc.

There are three options of contracts available:

1. Bespoke contract- purpose written contract for the particular project. It might not adequately make provisions for all circumstances and might not be fully supported by a case law.
2. Standard contract- the Joint Contracts Tribunal sets standards for construction contracts.
3. Modified contract- modified version of standard contracts.

The Joint Contracts Tribunal is the UK's leading provider of standard construction contracts that are based on the established benchmark provisions to suit a wide range of projects. The JCT contracts are in sets of forms, guidance and documents that

are suitable for the majority of construction projects and procurement methods.

Main reasons to use the JCT contract are:

- It minimises the costs of entering into a contract and save time
- It includes all benchmark provisions in a standard form
- It balances the risk of the parties involved, allocates risk in fair and recognised way
- It is comprehensive and cover all aspects of building process
- It is produced by all parties involved in the construction project- clients, architects, consultants, contractors, subcontractors, etc.

- It is recognised and supported by the case law
 - It is used extensively in the building industry
- Matters that might influence the choice of contract are:
- The nature of the project
 - The scope of the works
 - Measure of control by the client
 - Appointment of the contractor
 - Final cost
 - Restrictions
 - Assessment of risk

The well known standard contract is the JCT Minor Works Building Contract. It is suitable for smaller, basic construction projects procured in the traditional way where first the design is completed and in next stage the contractor is appointed. The word 'minor' refers to construction projects that are less than £500,000 in value. It is a perfect choice for projects where the employer is responsible for design, which is provided by the architect. Moreover, the employer has to provide specification, plans and permissions at the tender stage. On the accept-

ance of the tender, these documents become contract documents, defining the Works on which the Contract Sum is based. This type of contract is not suitable for more complex projects that require control procedures, bills of quantities or where are provisions to carry out works by specialists. Usually, the client's architect is a contract administrator. It can be used by both private and local authority employers. Price is based on the lump sum with

monthly interim payments. It provides the limited fluctuations.

For the contractor, the consequences of entering into the JCT Minor Works Building Contract are that he must perform and complete works in accordance with the terms of that contract. He will be obliged to complete on or before the completion date stated in the contract. Various obligations are arising from the law- for example, responsibility for obtaining the

planning permission or building regulations approval that rests with the employer. Nevertheless, the contractor will still be liable for compliance with the legal requirements in respect of building law, health and safety law and the CDM Regulations. The JCT contract imposes statutory obligations on the employer, designers and the contractor. In addition to being legal matters, some are also incorporated as contractual obligations in JCT contracts.

BRIEF GUIDE TO TERMS COMMONLY USED IN CONTRACTUAL DOCUMENTS FOR CONSTRUCTION PROJECTS

Scope of works

The general description of the work required.

Schedule of works

Schedule list works required in a particular order and time what enables the efficient project management. It allows for valuations and interim payments.

Provisional sums

A provisional sum is an allowance that is inserted into tender documents for a specific element of the works that is not yet defined in enough detail for the contractor to quote.

Preliminaries

Preliminaries (or 'prelims') allows the contractor to assess costs which do not form any works required by the contract but are necessary by the method and circumstances of the works.

Variations

It is an alteration to the scope of works in a construction contract in the form of addition, substitution or omission from the original scope of works. Include changes in design, quantities, quality, working conditions or the sequence of works.

Fluctuations

It is an allowance for changes in taxation, changes in the cost of materials, labour and transport, or increase in administrative costs.

Liquidated damages

Liquidated damages are not penalties; they are estimated damages set at the time when a contract is signed, based on a calculation of the actual loss the client is likely to incur if the contractor fails to meet the completion date. They might include, rent on temporary accommodation, removal costs or extra running costs. They are set as a fixed daily or weekly sum.

Compensation events

Events that impact on the completion date, but are not the contractor's fault. Including delays caused by the client, or unforeseen events such as adverse weather.

Extension of time

The construction period can be extended where there are delays that are not the contractor's fault. It is described as an extension of time (EOT). The contractor gives written notice to the contract administrator identifying the relevant event that has caused the delay if approved the completion date is adjusted. Relevant events might include: variations, adverse weather conditions, failure to provide information, delays caused by sub-contractor, delays in client's supply of materials, changes in plans and specification, delays in receiving the permission.

Loss and expense

The contractor can claim direct loss or expense as a result of the progress of the works being affected by relevant matters for which the client is responsible, such as:

- Failure to give the contractor possession of the site.
- Failure to allow the contractor to access the site.
- Delays in instructions.
- Discrepancies in the contract documents.
- The disruption caused by works being carried out by the client.
- Client's failure to supply goods or materials.
- Instructions about variations and expenditure of provisional sums.
- Inaccurate forecasting of works described by approximate quantities.
- Issues relating to CDM.

Disallowed cost

Costs incurred as a result of the contractor's failure or default. For instance, amounts that should not have been paid to a subcontractor, or that are not in the contractor's records, resources that were not used, defects corrected after completion, failure to give notice that works might be delayed, etc.

Retention

It is a percentage (often 5%) of the amount certified as due to the contractor on an interim certificate, which is deducted from the amount due and retained by the client. The purpose of retention is to ensure that the contractor properly completes the activities required of them under the contract.

Defects

Defects are works that are not in accordance with the contract. Snagging is commonly used term to define the process of inspection necessary to detect minor defects or omissions in building works for the contractor to make good.

Defects liability period

It begins upon certification of practical completion and typically lasts six to twelve months. During this period, the client reports any defects that arise to the contract administrator who decides whether they are defects in the works or whether they are in fact maintenance issues. In the case of defects, instructions might be issued to the contractor to make them good within a reasonable time.

Partial possession

Allow the employer/client to occupy the property even if the works are still ongoing, and there are defects that have not been made good. The effect of partial possession is that any part to which it applies is deemed as achieved practical completion, half of the retention has to be paid, defects liability period begins for that part, liquidated damages reduce proportionally, the employer/client is responsible for that part of property.

Practical completion

It is certified by the contract administrator when all works are carried out. Practical completion allows the release of the half of the retention, ends the contractor's liability for liquidated damages, begins the defects liability period.

Final account

It is the calculation of the final payment to the contractor by the adjustment to the contract sum by all variations, fluctuations, provisional sums, liquidated damages, retention, loss and expenses, etc. It is set out in the final certificate.

Dispute resolution

It may involve the negotiation, mediation, adjudication, arbitration/litigation