

BUILDING CONTRACT OBLIGATIONS AND RESPONSIBILITIES

Contractor's Obligations

Under the various JCT documents, the Building Contractor is obliged to construct the Works in accordance with the plans, drawings, bills and specifications which define the work in written and graphic form. The building documents will be attached to or referred to in the building contract. The make up of the building documents will depend on the nature of the work.

The workmanship is as described in the building documents. Where there is no specified standard, the standard is to be appropriate to the works and materials. The contractor must comply with statutory obligations, including in particular the planning permission (which will be reflected in the building documents) and the Building Regulations which set out minimum building standards.

The contractor controls the site and all persons on it. The employer's obligation is to pay for work done and under certain circumstances to compensate for loss and expense.

Employer's Obligations

The employer must not hinder the contractor and must co-operate with it. The employer must make any necessary nominations within a reasonable time. The contractor will generally have a right to object to employer's nominations on reasonable grounds.

The employer appoints the contractor administrator who will generally be an architect. Some architect's obligations under the contract are carried out by the architect on behalf of the employer and must be carried out with due care and skill. This means the architect's negligence could render the employer liable.

Other obligations under the contract must be carried out by the architect or contractor administrator independently. The employer must not obstruct or interfere with such functions. An example is the issue of certificates for payment.

The site conditions will generally be the contractor's risk under the contract documentation. There may be situations where the employer takes the risk because there is a warranty that the tendering documentation is fully accurate in all respects. There would need to be clear wording to shift this risk to the employer.

The employer must ensure that a competent construction design and management co-ordinator is appointed. He must ensure that no construction work commences until a Health and Safety Plan is put in place.

Design

Traditionally, responsibility for the design of the works rested with the employer's design team. This would normally consist of an Architect and Civil Engineer backed up with other necessary consultants such as a Services Engineer. Construction was the responsibility of the contractor whose obligation is to undertake the work in accordance with the contract documentation. However in practice, in all but the simplest project, the design process demands continuing interaction between design and construction teams until the project is completed.

Generally, a designer is obliged to take due care to achieve the result required by the design process. The designer does not generally guarantee the result but undertakes to exercise due care appropriate to his profession.

In a "design and build" project, there is more likely to be a stricter unconditional obligation on the single contractor and designer to achieve the required purpose. Responsibility may include superintending the design and construction process.

It is increasingly common for nominated sub-contractors to design their own work or bring some kind of proprietary system. Where the main contract is a conventional build

type contract only, it is unlikely that the main contractor will be held responsible for the nominated sub-contractor's design. In these circumstances, the employer should enter a direct collateral agreement with the sub-contractor.

In practice contractors always take on a measure of design responsibility. The contract documents cannot give sufficiently fine detail in every respect and a contractor must exercise discretion in certain areas. Sub-contractors are often asked for their opinions on particular problems as the process proceeds. Contractors, sub-contractors and suppliers may provide documents for particular purposes for approval by the architect.

Completion

Practical completion is usually specified as completion to an extent that the building or project can be taken over without inconvenience. It does not necessarily mean that all aspects of the work have been fully completed. Generally contracts will specify a specific completion date with provision for liquidated damages (being a fixed sum for every late day or week) until the works achieve practical completion. If an extension of time is given (and the contract administrator/architect may be obliged to grant an extension for a variety of reasons) the practical completion date is moved forward in time.

The contract administrators (usually the architect) certificate that the works are complete has a number of consequences. The site is handed back to the employer. A Health and Safety Plan for the building must be delivered. Depending on the contract, insuring responsibility may also pass back. The contractor is usually entitled to one half of the accumulated retention monies. The rectification period or the defects correction period begins.

Under the various contracts, the rectification period usually lasts six months, unless otherwise specified. During this period any defects, shrinkages or faults must be put right by the contractor at his own expense. The contract administrator must issue a schedule of defects not later than 14 days after the end of the defects liability period and the contractor then has a reasonable time to put them right.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.

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