



CONSTRUCTION CONTRACTS:
YOU SET THE STANDARD



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CONSTRUCTION CONTRACTS:

YOU SET THE STANDARD

Do you understand the roles and responsibilities of various parties involved in a building project? Where would you seek information on the standard documentation used under a contract for building work? How do you set the standard on your contract and the service you receive?

WHEN IS A CONTRACT NECESSARY?

A building contract is an agreement between two parties (the client and a contractor) to undertake an agreed amount of work, to a pre-arranged standard for a fixed sum of money and within a certain time frame. Small projects such as re-decoration or a small number of window replacements warrant the use of less formal contracts in order to keep costs down. For minor works, a quotation from a contractor accompanied by their terms and conditions may be acceptable, but treat them with care. If you're an *Every* customer, you can find guidance on these topics in your online Guidance Library.

For more involved and extensive building works like an extension, new roof covering or refurbishment, a formal building contract is often deemed more appropriate. Which contract to use will depend on the nature of the works being carried out and will be decided by the consultant architect or building surveyor. Should you wish to go it alone without professional support, the Federation of **Master Builders (FMB)** has a free to use contract for building projects. Having a contract in place means that if something goes wrong it's a lot easier to have the problem rectified or receive some form of compensation.

There are a variety of contract types which depend on how the building work is being procured. Under the "traditional" procurement route a building surveyor or architect will carry out the design and specification, put the work out to competitive tender and act as the contract administrator. See **RIBA** for their Plan of Work, advice on which contract to use and standard contract forms at www.architecture.com. The Plan of Work is an industry-recognised process for managing and designing building projects and administering the building contract. The process broadly comprises stages of work, beginning with a design brief and then proceeding to design development, preparation of tender documents, construction and practical completion.



ALTERNATIVE PROCUREMENT ROUTES

Alternative procurement routes include 'management procurement' (for large projects such as rebuilding a school) and 'design and build' (DB). The latter is a method to deliver a project in which the design and construction services are contracted by a single entity known as the design-build contractor for an agreed lump sum price. The DB contractor will be responsible for all the work on the project. They employ the architect and design team, therefore minimizing the risks for the client and speeding up the construction process. Compare this approach with the traditional method for construction projects involving the appointment of a designer on one side and the contractor on the other. This dissociates the designers from the contractors' interests. With the 'design and build' method the employer has control over any design elements of the project that are included in their requirements but once the contract is let, responsibility over design passes to the contractor meaning that the employer has no direct control over the contractor's detailed design. This increases risk related to design and quality, particularly if the employer's requirements were not properly gathered and if insufficient time was allowed for examining the contractor's proposal.

KEY CONTRACT PARTIES

The principal parties to a building contract and their supporting teams include:

- **The employer**
 - The school as represented by the trust, diocese, LA governors
- **Project manager**
 - Appointed by the employer
- **Architect/building surveyor (contract administrator)**
 - Appointed by the employer
- **Contractor**
 - Main and sub-contractors
- **Quantity surveyor (QS)**
 - Measures and costs the work on larger projects
- **Structural engineer**
 - Designs and specifies loadbearing aspects of design
- **Mechanical and electrical engineer**
 - Design and specify all building services
- **CMD Co-ordinator**
 - Monitors health and safety during design/construction under CDM regulations

When engaging the services of a building surveyor or architect, the terms and conditions of appointment are set out by their respective professional bodies, the Royal Institution of Chartered

Surveyors (RICS) and the Royal Institute of British Architects (RIBA). Appointing a professional qualified adviser gives you the comfort and assurance provided by these bodies.

The **contract administrator** (CA) manages the contract between the employer and building contractor. The CA will act as the agent of the employer in some circumstances but will be required to make independent, impartial and fair decisions for both the employer and contractor on other occasions. The key tasks they perform are:

- Chairing meetings
- Periodically inspecting the works
- Giving instructions, including variation or change orders
- Determining any applications for extensions of time by the contractor
- Authorising interim payments to the contractor
- Certifying the date for completion of the work
- Settling the adjusted contract sum (final account)

Typically a building surveyor's appointment with the client (employer) will provide for the roles of both designer and CA, but there is a clear distinction between the two. There may be other members of the professional team with design responsibilities such as the structural engineer. It is the contract administrator's duty to ensure that correct contractual procedures and good practices are followed and the building contract is accurately and completely recorded. Records will include notes of inspections, minutes of meetings, product details, plans, statutory consents, office files and photographs. The frequency of site inspections will be largely determined by the complexity of the project, the calibre of contractor and site personnel and progress of the works.

The CA should keep the employer up to-date with what is happening generally and specifically on the likely adjusted contract sum as the work proceeds. They may need to issue instructions to change works in the event of additional or unforeseen works or if the employer changes their mind.

Under the contract the CA is to ensure that all valuations (monthly payments to contractor) are carried out impartially and fairly. There are then time limits within which the employer has to make payment against the valuation certificate. The contractor has undertaken the task to deliver the completed works by a date specified in the contract. The CA is responsible for issuing the correct notices and certificates relating to an extension of time, early or partial possession and practical completion of the work. There are 'loss and expense' provisions provided for the contractor to be reimbursed for deferment of possession of the site or for the regular progress of the works having been affected by certain specified circumstances, and where the contractor will not be reimbursed by other provisions of the building contract. You can familiarise yourself with the terminology used in building contract administration by downloading the **FMB Commercial and Industrial Building**

Contract. Other standard forms of contract, such as those issued by the Joint Contracts Tribunal are written in more technical language.

In the FMB form of contract the conditions applicable to both parties are set in plain English. Terms such as 'liquidated and ascertained damages' are explained and a dispute resolution procedure is included. There is the opportunity within the terms of this contract to appoint your own suppliers and sub-contractors as well as suspend or end the contract. Insurance cover, health and safety responsibilities, interim and final payment procedures are clearly set out. The form comes with a checklist of items to be inserted or crossed out and guidance notes for completing and administering the contract. Standard certificates, notices and forms used in administering a building contract are published by the RICS and RIBA.



CONTRACT DOCUMENTS

Documents form the legal contract and consist of drawings (plans), the specification, bill of quantities or schedule of prices, the general conditions of contract and a legal deed making these all binding on the contractor and client. A bill of quantities, produced by the QS on larger projects, comprises of a list of items showing the quantity of work involved which is priced by the contractor. The specification is a detailed description prepared for the contractor or supplier of the workmanship and materials required, which cannot be shown on plans. Specifications comprise of:

- **Preliminaries**
 - E.g. Associated costs such as the site office or hoarding, rather than the costs of the actual building work or materials
- **Works sections and schedules**
 - E.g. Details of windows and doors

Examples of specifications and CAD (Computer-aided design) drawings can be viewed and downloaded from suppliers' websites.

Plans are necessary so that the ideas and proposals of architects or surveyors can be set down on paper (created on CAD) and become part of the communication process by which buildings or building works are commissioned and designed. They also provide the information for premises to be approved by the planning and building control authorities, to be costed, built and managed. The stages from commissioning to completion are part of a progressive and often overlapping process and plans are only one element in the information package. Working or production drawings are the plans (often large scale) and details that provide information will be used to construct the building



and should include full dimensions. Floor plans, elevations and sections through the building are produced at various scales to demonstrate how components are to be constructed and assembled. See Thorpe below and YouTube for further information on how to read drawings.

FURTHER INFORMATION

“Reading and Using Plans” Stephen Thorpe, published by Centre for Accessible Environments.

Joint Contracts Tribunal is an industry body which produces standard forms of construction contracts: www.jctltd.co.uk