

JCT Building Contracts

Revision 2 (2009)



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The JCT recently published a revision to its suite of building contracts. The stated purpose of revision 2 is:

- 1 to introduce provisions reflecting the principles adopted by the Office of Government Commerce in its "Achieving Excellence in Construction" (AEC) initiative;
- 2 to simplify the payment provisions; and
- 3 to recognise the importance of sustainability in construction projects.

The JCT has also announced that a Revision 3 will be required once the new construction act (the Local Democracy Economic Development and Construction Act ("the LDEDC")) is in force. Set out below is a brief description of the main changes incorporated into the Revision 2 contracts:

1. LIQUIDATED DAMAGES

The terminology used in clause 2.29.2.2 of the Design and Build Contract and in clause 2.32.2.2 in the Standard Building Contract has been amended so that they refer to liquidated damages being deducted "from *sums*" due to the Contractor rather than "from *monies*" due to the Contractor.

The reason for the change is not clear as the word *monies* had not been problematic. However, any standard letters and notices which are used to deduct liquidated damages should be amended to reflect this new wording.

2. PROFESSIONAL INDEMNITY INSURANCE

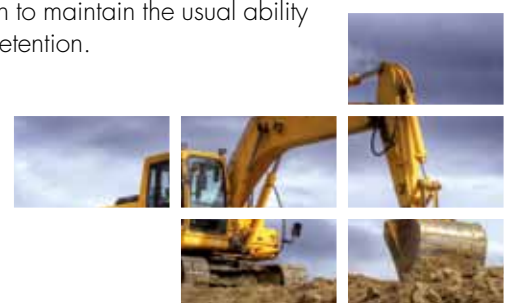
Reflecting the changing requirements of the insurance market, the Revision 2 contracts anticipate that sub-limits to the general level of PI cover will be required in respect of claims for pollution and contamination. The contract also requires the parties to separately state whether cover is required for fungal mould and asbestos claims.

3. INTERIM PAYMENTS AFTER PRACTICAL COMPLETION

Revision 2 provides that interim payments after practical completion are to be made at intervals of 2 months (or at other agreed intervals) rather than simply as and when further amounts are ascertained.

4. RETENTION BOND

A new entry has been included allowing a retention bond to be provided in lieu of a retention being deducted. The retention bond option can be deleted should the parties wish to maintain the usual ability to deduct the retention.



5. MEDIATION

New wording has been added obliging the parties to “give serious consideration” to any request to refer disputes to mediation.

6. FRAMEWORK AGREEMENT

A new recital has been included allowing the contract parties to specify whether the contract is supplemented by a framework agreement, i.e. a framework agreement already entered into by the parties which is intended to cover more than one project or package of work.

7. SUPPLEMENTAL PROVISIONS

New Supplemental Provisions have been added in Part 2 of the Contract Particulars. This new Part 2 is designed to make the contracts more acceptable to the public sector. It adopts the principles of the Office of Government Commerce’s AEC initiative and applies unless stated otherwise. It includes the following:

- a) where the employer wishes to encourage early completion an acceleration quotation is to be submitted by the contractor;
- b) a collaborative working provision to encourage the parties to work with each other “in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect”;
- c) an obligation on the parties to create and maintain a culture and working environment in which health and safety are given paramount attention;
- d) the contractor is encouraged to propose changes to designs and specifications that may result in a benefit to the employer in terms of cost of works or life cycle costs;
- e) the contractor is encouraged to suggest economically viable alterations to the work which may result in improved environmental performance;
- f) performance indicator and monitoring provisions; and
- g) a provision for senior executives to meet in order to avoid or resolve disputes.

CONCLUSION

The LDEDC was enacted on 12th November 2009 and Part 8 sets out the long anticipated amendments to the Housing Grants Construction and Regeneration Act (“HGCRA”). Secondary legislation, which will take the form of a revised Scheme for Construction Contracts, must be drafted before the amendments to the HGCRA come into effect. It is not clear at this stage how long this will take, or whether it will be abandoned completely if there is a change of government.

In some respects it is disappointing that the JCT did not wait until the LDEDC was in force before publishing Revision 2 which may turn out to be only an interim revision. Nonetheless, until Revision 3 is published it is obviously important to consider the amendments that have been included in Revision 2.

We will continue to monitor the progress of the LDEDC and any further JCT revisions and provide further updates in due course.

Disclaimer

This is published as a general guide only and it is not intended to contain definitive legal or professional advice, which should be obtained as appropriate in relation to a particular matter. This publication relates to matters prevailing at the date of its original publication and may not have been updated to reflect subsequent developments.



For any further information or advice on the new construction bill, adjudication or other construction related matters please contact **Tim Barwick** on **020 7003 8104** or **Paul Bradley** on **020 7003 8106**.

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