Professional Certificate in Construction Law and Contract Law (United Kingdom)

Contract Law Principles

Offer is the first step in the creation of a legally enforceable contract. In construction law an offer may be made by a client, developer or contractor when they propose a price, scope of work or timetable. For example a contractor submits a tender to build a school. The tender is an offer that, if accepted, creates a binding agreement. The key characteristics of an offer are that it must be clear, definite and communicated to the other party. An offer can be revoked at any time before acceptance, unless it has been made irrevocable by a option contract or a firm offer under the Sale of Goods Act.

Acceptance must be a final and unqualified assent to the terms of the offer. In construction projects acceptance is often conveyed through a signed contract, a written notice, or an electronic confirmation. The "mirror image" rule requires that the acceptance match the offer exactly; any deviation amounts to a counter-offer. For instance, if a client accepts a contractor's tender but adds a new clause about early completion bonuses, that new clause is a counter-offer, not an acceptance.

Consideration is the value exchanged between the parties. In a construction contract the consideration is typically the contractor's promise to perform the works in exchange for the client's promise to pay the contract sum. Consideration need not be monetary; it may consist of a promise to provide materials, grant a licence, or refrain from suing. The doctrine of consideration excludes "past consideration," meaning a promise to pay for work already performed is generally unenforceable unless a new contract is executed.

Intention to create legal relations distinguishes social or domestic arrangements from commercial agreements. In the construction sector, the presumption is that the parties intend to create legal relations, especially when they sign a formal document such as a JCT or NEC contract. However, a memorandum of understanding (MoU) that merely records the parties' intention to negotiate may be deemed non-binding if it lacks the requisite intention.

Capacity refers to the legal ability of a party to enter into a contract. In the UK, individuals must be at least 18 years old and of sound mind. Corporate entities must be duly incorporated and have the authority to bind the company. A construction company whose directors are disqualified under the Company Directors Disqualification Act 1986 lacks capacity, rendering any contract they enter into voidable.

Legality requires that the contract's purpose be lawful. A construction contract that requires the use of prohibited building materials or that contravenes planning regulations would be illegal and unenforceable. Illegality also arises when a contract seeks to evade statutory duties, such as the health and safety obligations imposed by the Construction (Design and Management) Regulations 2015.

Privity of contract traditionally limited enforceability to the parties who signed the agreement. In construction law, this principle is softened by statutes and case law that allow third parties, such as subcontractors, to claim rights in certain circumstances. The Contracts (Rights of Third Parties) Act 1999 enables a third party to enforce a term if the contract expressly provides for it, or if the term purports to confer a benefit on that third party.

Terms are the provisions that define the rights and obligations of the parties. They are divided into conditions and warranties. A condition is a fundamental term; breach of a condition allows the innocent party to terminate the contract and claim damages. A warranty is a less essential term; breach gives rise only to a claim for damages, not termination. For example, a clause that the works must be completed by a fixed date is usually a condition, whereas a clause concerning the colour of the paint may be a warranty.

Express terms are those expressly written into the contract, either in the main body or in annexes such as specifications, drawings and schedules. In a design-and-build contract, the design specifications are express terms that bind the contractor to deliver the design in accordance with the client's requirements. Implied terms, on the other hand, are not written but are read into the contract by law, custom or the courts. The Sale of Goods Act implies a term that goods will be of satisfactory quality; similarly, the Construction Act 1996 implies a term that payment must be made within the statutory period unless a different period is agreed.

Representations are statements made before the contract is formed that induce the other party to enter the agreement. If a client tells a contractor that the site is free of underground services, and this turns out to be false, the contractor may claim misrepresentation and seek rescission or damages. Distinguishing a representation from a term is crucial because remedies differ: Misrepresentation can rescind the contract, whereas breach of a term generally leads to damages.

Exclusion clauses attempt to limit or exclude liability for certain breaches. In construction contracts, parties often include clauses that limit liability for consequential loss or for delays caused by force majeure events. However, under the Unfair Contract Terms Act 1977, exclusion clauses are subject to a reasonableness test. A clause that attempts to exclude liability for personal injury or for breach of a condition will be invalid.

Limitation periods prescribe the time within which a claim must be brought. The Limitation Act 1980 sets a six-year period for contract claims, but the Construction Act 1996 modifies this for construction contracts, providing a one-year period for payment claims after a payment notice is served. Failure to serve a notice within the statutory time can bar a claim for interest or liquidated damages.

Assignment transfers the rights under a contract to a third party. A contractor may assign the right to receive payment to a factoring company. Assignment does not transfer the obligations unless the parties expressly agree. The assignor remains liable for performance unless a novation occurs.

Novation is the substitution of one party for another, with the consent of all original parties. In a construction context, a client may novate the contract from an original contractor to a new contractor if the original contractor is unable to continue due to insolvency. The new contractor assumes all rights and obligations, and the original contractor is released.

Variation refers to a change to the scope, quality, or timing of the works after the contract has been formed. Most construction contracts contain a formal variation procedure, requiring a written notice, a cost assessment and, where appropriate, a revised programme. Failure to follow the variation procedure can result in disputes over payment and extensions of time. A classic example is a client requesting additional structural reinforcement after the foundation has already been poured; the contractor must submit a variation claim to cover the extra work and materials.

Termination ends the contractual relationship. Grounds for termination include breach of a condition, insolvency, frustration, or mutual agreement. In construction, termination clauses are often complex, specifying the notice period, the steps for handing back the site, and the calculation of final accounts. A termination for convenience clause, common in public sector contracts, allows the client to end the contract without fault, but usually requires payment of termination compensation.

Breach occurs when a party fails to perform a contractual obligation. In construction contracts, breaches may be material (e.G., Failure to complete the works) or minor (e.G., Delayed submission of a progress report). The consequences of breach depend on whether the breached term is a condition, a warranty, or an intermediate term. Courts will assess the seriousness of the breach, the loss suffered and the possibility of remedy.

Remedies are the legal solutions available to an aggrieved party. The principal remedies in construction law are:

* Damages – monetary compensation for loss. The measure is usually "the amount which would put the claimant in the position they would have been in had the contract been performed." In construction, damages may be calculated on a "cost of cure" basis (the cost to rectify defective work) or "loss of profit" basis (the profit the contractor would have earned on the project).

* Specific performance – an order requiring a party to perform their contractual duties. Courts are reluctant to grant specific performance in construction because the work is often complex and supervision intensive. However, specific performance may be ordered for the delivery of design documents or for the provision of a piece of equipment that is unique.

* Injunction – an order to refrain from doing something. An injunction may be used to stop a contractor from demolishing a structure that the client claims is protected by a covenant.

* Quantum meruit – a claim for the value of services rendered where no contract exists or the contract is unenforceable. A subcontractor who performs work after a contract is terminated may claim quantum meruit for the work done up to the termination date.

* Liquidated damages – a pre-agreed sum payable for breach of a time-related condition, such as late completion. The sum must be a genuine pre-estimate of loss; otherwise it will be treated as a penalty and be unenforceable.

Force majeure clauses allocate risk for events beyond the parties' control, such as natural disasters, war, or strikes. The clause will set out the steps the affected party must take, such as giving notice, and may provide for extensions of time or relief from performance. The effectiveness of a force majeure clause depends on its wording; a vague clause may be interpreted narrowly by the courts.

Frustration occurs when an unforeseen event renders performance impossible or radically different from what was contemplated. In construction, frustration may arise from a change in law that makes the planned building illegal, or from the destruction of the site by fire. The doctrine of frustration discharges both parties from future obligations, but the party that caused the frustrating event may still be liable for damages incurred before the event.

Standard form contracts dominate the UK construction market. The most widely used are the Joint Contracts Tribunal (JCT) suite, the New Engineering Contract (NEC), and the International Federation of Consulting Engineers (FIDIC) forms. Each has its own structure, terminology and risk allocation. For instance, the JCT Standard Building Contract includes a “Clause 2 – The Contractor’s Obligations” which sets out the duty to execute the works in accordance with the specifications. The NEC 3 Engineering and Construction Contract emphasises collaborative working and includes a “Compensation Event” mechanism for dealing with variations and delays.

JCT contracts are known for their comprehensive set of conditions and a clear division of responsibilities. They contain detailed provisions on payment, extensions of time, and dispute resolution. The JCT Minor Works contract is suited for smaller projects, while the JCT Design and Build contract is appropriate when the contractor is also responsible for design.

NEC contracts are characterised by a plain-English style and a focus on partnership. The “Early Warning” process requires parties to notify each other of any matter that could affect cost, time or quality, fostering proactive problem-solving. The NEC also provides for “Target Cost” contracts, where the contractor is reimbursed for actual costs plus a fee, encouraging cost control.

FIDIC contracts are commonly used for large, complex projects, especially those involving international parties. The “Red Book” (Construction) and “Yellow Book” (Plant and Design-Build) contain detailed clauses on performance security, performance guarantees, and dispute adjudication. FIDIC’s “Dispute Adjudication Board” (DAB) provides a fast-track mechanism for resolving technical disputes.

Subcontract agreements are the contracts between the main contractor and subcontractors. Subcontracts often incorporate the main contract by reference, ensuring that the subcontractor is bound by the same obligations, such as health and safety duties. However, the subcontract may also contain special provisions, for example a “pay-when-paid” clause that links the subcontractor’s payment to the main contractor’s receipt of funds from the client.

Joint venture arrangements involve two or more parties pooling resources to deliver a project. In a construction joint venture, each party typically contributes expertise, capital or labour, and shares the profits and losses in proportion to their contribution. Joint venture agreements must address governance, decision-making, liability, and exit strategies. A common challenge is the allocation of risk for design errors that arise from the joint venture’s collaborative design process.

Partnership is a form of business organisation where two or more persons carry on a business with a view to profit. In construction, partnerships are less common for large projects but may be used for small-scale developments. Partners are jointly and severally liable for the partnership’s debts, which means a creditor can pursue any partner for the full amount.

Employer is the party that commissions the works, often the client or developer. The employer's duties include providing access to the site, supplying necessary information, and making timely payments. Failure to fulfil these duties can give rise to a breach of contract and may entitle the contractor to an extension of time and additional payment.

Contractor is the party engaged to execute the works. The contractor's obligations include delivering the works in accordance with the contract documents, complying with health and safety regulations, and obtaining any necessary consents. The contractor may also be responsible for design, as in a design-and-build contract, which adds an extra layer of risk.

Subcontractor performs a portion of the works under a contract with the main contractor. Subcontractors are subject to the same statutory duties as the main contractor, but they may have limited rights against the employer unless the contract provides a direct contractual link. Subcontractors often rely on "payment clauses" that secure their cash flow, such as the right to suspend work for non-payment.

Engineer or "contract administrator" plays a supervisory role, particularly in JCT contracts where the architect or engineer issues "architect's instructions" and certifies payments. The engineer's decisions can be pivotal in disputes over extensions of time or the quality of work. In NEC contracts, the "Project Manager" holds similar responsibilities, acting as the primary point of contact for contract administration.

Design and Build contracts combine the design and construction responsibilities in a single entity. This arrangement can lead to faster delivery and clearer accountability, but it also concentrates risk in the contractor. The contractor must ensure that the design complies with planning permission and building regulations, and any design defects may give rise to a claim for breach of the design obligations.

Lump sum contracts specify a fixed contract sum for the entire scope of works. The contractor assumes the risk of cost overruns, while the employer benefits from cost certainty. However, if the scope is not clearly defined, disputes may arise over what is included in the lump sum price. Variations become the primary mechanism for adjusting the contract price.

Cost-plus contracts reimburse the contractor for actual costs incurred plus a fee or percentage for profit. This form of contract provides greater flexibility for projects where the scope is uncertain, but it can lead to cost inflation if not properly monitored. The contract should contain provisions for cost verification, audit rights, and a ceiling price to protect the employer.

Retention is a percentage of each payment that the employer withholds to ensure the contractor completes any defects remedial work. Typically, 5 % of each interim payment is retained, with a portion released upon practical completion and the remainder after the defects liability period. Retention can create cash-flow problems for contractors, prompting the use of "retention bonds" as an alternative.

Payment notices are required under the Construction Act 1996. The employer must issue a "payment notice" stating the amount they consider payable. If the notice is not served, the contractor may issue a "pay-less notice" and claim the amount they consider due. Failure to follow the notice regime can lead to statutory interest on late payments and may affect the contractor's right to suspend work.

Interim payments are periodic payments made as the works progress. The contractor submits a payment application, usually accompanied by a schedule of values, and the employer's architect or engineer certifies the amount. The timing of interim payments is critical for maintaining cash flow, especially for subcontractors and suppliers.

Application of law determines which jurisdiction's legal rules govern the contract. Most UK construction contracts specify English law, which provides a well-developed body of case law on contract interpretation, change orders and payment. However, international projects may opt for a foreign law or a "neutral" law such as Swiss law, which can affect dispute resolution strategies.

Arbitration is a private dispute resolution mechanism where an independent arbitrator renders a binding decision. Construction contracts often contain arbitration clauses because arbitration offers flexibility, confidentiality and expertise. The Arbitration Act 1996 governs domestic arbitration, while the International Arbitration Act 1996 applies to international arbitrations.

Adjudication is a fast-track dispute resolution process established by the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act). An adjudicator issues a decision within 28 days, which is binding unless challenged in arbitration or litigation. Adjudication is widely used in the UK construction industry to resolve payment disputes quickly.

Statutory provisions shape the contractual landscape. The Construction Act 1996 introduces mandatory provisions on payment, adjudication, and the right to suspend work for non-payment. The CDM Regulations 2015 impose duties on the client, principal designer and contractor to manage health and safety throughout the project lifecycle. The Building Act 1984 and associated Building Regulations set technical standards for construction, and breach of these regulations can constitute a breach of contract.

Payment suspension is a right available to a contractor when the employer fails to make a payment. Under the Construction Act, a contractor may suspend the works after giving a "notice of suspension" and must continue to mitigate losses. The contractor must also provide a "notice of intention to suspend" if the employer does not remedy the breach within a reasonable time.

Defects liability period is a post-completion phase during which the contractor must rectify any defects identified by the employer. The period is typically twelve months for new builds, but can be extended for complex projects. The contractor's obligation to repair defects is a contractual warranty, and failure to do so may result in a breach claim.

Performance security such as a performance bond or parent-company guarantee assures the employer that the contractor will fulfil its obligations. If the contractor defaults, the employer can draw on the security. Performance securities are common in public sector contracts where the employer seeks additional protection against contractor insolvency.

Retention bond is an alternative to cash retention. The contractor provides a surety bond for the retention amount, which is released upon satisfactory completion of the defects liability period. Retention bonds improve contractor cash flow and reduce the administrative burden of managing retained sums.

Notice of breach is a formal written communication that informs the other party of a breach and demands cure within a specified time. In construction contracts, notice provisions are often strict; failure to give proper notice can forfeit the right to claim damages or terminate the contract. For instance, a contractor must give a notice of breach if the employer fails to provide site access, and must specify the remedial action required.

Extension of time (EOT) is a contractual mechanism that allows the contractor to extend the completion date when the employer causes delay. The contractor must normally give notice of the delay, provide a revised programme and demonstrate the impact on the critical path. An EOT may also affect liquidated damages, as the damages are normally linked to the original completion date.

Critical path analysis is a project-management technique that identifies the sequence of tasks that determines the overall project duration. Delays on the critical path directly affect the completion date and trigger entitlement to extensions of time. Understanding the critical path is essential when preparing a variation claim or an EOT request.

Risk allocation is the process of assigning responsibility for potential adverse events. Construction contracts allocate risk through clauses on variations, force majeure, indemnities, and insurance requirements. A well-drafted risk allocation schedule helps prevent disputes by clarifying which party bears which risk.

Indemnity clauses require one party to compensate the other for losses arising from certain events. In construction, contractors often indemnify the employer for third-party claims arising from the contractor's negligence. Indemnity clauses must be clear and not contravene statutory duties, otherwise they may be deemed unreasonable.

Insurance is mandatory for many aspects of construction. The employer typically requires the contractor to hold "contract works" insurance covering loss or damage to the works, "public liability" insurance for third-party injury, and "professional indemnity" insurance if the contractor provides design services. The contract will specify the minimum cover and may require certificates of insurance.

Professional negligence refers to a breach of the duty of care owed by a professional, such as an architect or engineer. If a design error leads to structural failure, the professional may be liable for professional negligence. The standard of care is judged against the skill and knowledge expected of a reasonably competent professional in the same field.

Design responsibility is often a source of dispute. In a design-and-build contract, the contractor assumes full design responsibility, while in a traditional contract the employer retains design responsibility and the contractor is only responsible for execution. The contract must clearly allocate design risk, including liability for design errors and the obligation to obtain approvals.

Statutory warranties are implied terms that arise from legislation. The Building Regulations impose a duty to construct buildings that meet certain standards, and failure to comply can give rise to a claim for breach of statutory duty. The statutory warranty is enforceable even if the contract does not expressly mention it.

Contractor's default can be triggered by insolvency, failure to provide a performance security, or repeated breach of health and safety obligations. The contract may provide for "termination for default" with a notice period, after which the employer can engage a replacement contractor. The defaulting contractor may be liable for the cost of re-engaging a new contractor.

Employer's default includes failure to make payments, failure to provide site access, or failure to give necessary approvals. The contractor may be entitled to suspend work, claim an extension of time, and seek compensation for additional costs. The contract should set out the procedure for giving notice of employer's default and the remedies available.

Collateral warranty is a third-party right that allows a party, such as a funder or future owner, to enforce obligations in a construction contract. Collateral warranties are commonly used in large developments where investors require direct rights against the contractor or consultant for performance of their duties.

Bankruptcy and insolvency pose significant risks in construction projects. If a contractor becomes insolvent, the employer may be able to file a "statutory demand" and seek a winding-up order. The employer may also invoke the "termination for insolvency" clause, which allows immediate termination and the appointment of a new contractor. The employer must act promptly to preserve rights.

Set-off is a right to deduct amounts owed by the other party from sums due. In construction, a contractor may set-off amounts for defective work against the payment due from the employer. However, set-off provisions must be clearly expressed in the contract; otherwise, the party may be limited to pursuing a separate claim.

Retention release occurs after the contractor has completed the works and rectified any defects identified during the defects liability period. The contract will specify the timing and conditions for releasing the retained sum, often requiring the contractor to provide a "practical completion certificate" and a "defects statement".

Contract administration is the ongoing management of the contract throughout its life cycle. It includes issuing instructions, certifying payments, monitoring progress, handling variations, and managing disputes. Effective contract administration reduces the likelihood of costly claims and helps maintain good working relationships.

Dispute resolution clause sets out the hierarchy of mechanisms for resolving disagreements, typically starting with negotiation, followed by mediation, adjudication, arbitration and finally litigation. The clause may prescribe time limits for each stage, the choice of forum and the governing law. A well-drafted clause can save time and expense by providing a clear pathway for resolving issues.

Negotiation is the first step in dispute resolution, where parties attempt to reach a mutually acceptable solution. In construction, negotiation may involve the client, contractor, architect and subcontractors, and often focuses on cost, time and quality concerns. Successful negotiation requires clear communication, documentation of the issues, and a willingness to compromise.

Mediation involves a neutral third party who facilitates discussion but does not impose a decision.

Mediation is confidential and can preserve the business relationship, which is valuable in long-term construction projects. The mediator may assist the parties in exploring creative solutions, such as adjusting the scope of work or reallocating risk.

Arbitrator's award is final and binding, subject only to limited grounds for challenge, such as serious procedural irregularity or a decision that is contrary to public policy. The award can be enforced in the courts through an "arbitration award" order, which enables the winning party to obtain a judgment and, if necessary, seize assets.

Litigation is the last resort, involving court proceedings. Construction disputes often involve complex technical evidence, requiring expert witnesses. Courts may take a long time to reach a judgment, and the costs can be substantial. Nevertheless, litigation may be necessary when a party refuses to comply with an arbitration award or adjudication decision.

Expert evidence is indispensable in construction disputes. Experts may be appointed to assess the quality of workmanship, the reasonableness of a variation claim, or the impact of a delay on the project schedule. The parties must ensure that experts are "independent" and "qualified" under the Civil Procedure Rules, and that their reports are clear, concise and supported by evidence.

Case law shapes the interpretation of contract terms. Key decisions include Hochster v. De la Tour (the doctrine of anticipatory breach), Hong Kong Fir Shipping Co Ltd v. Kawasaki Kisen Kaisha Ltd (intermediate terms), and JCT v. Balfour Beatty (the enforceability of liquidated damages). Familiarity with precedent helps learners anticipate how courts may resolve contractual disputes.

Statutory time limits for issuing a notice of claim vary. Under the Limitation Act 1980, a claim for breach of contract must be brought within six years of the breach, but the Construction Act imposes a one-year limitation for payment claims after the notice is served. Missing a deadline can extinguish a party's right to recover damages.

Payment terms are a crucial part of construction contracts. Common structures include a "pay-when-paid" clause, a "pay-upon-receipt" clause, or a "monthly payment" schedule. The choice of payment terms affects cash flow, risk allocation and the likelihood of disputes. The Construction Act discourages "pay-when-paid" clauses that make payment contingent on the employer's receipt of funds, as they are often deemed unreasonable.

Contract sum adjustments arise from variations, changes in law, or loss and expense claims. The contract should set out a clear method for calculating adjustments, such as the "schedule of rates" method, "unit price" method, or "target cost" method. Transparent calculation methods reduce the potential for disagreement over the amount payable.

Loss and expense claims are made when the contractor suffers additional costs due to the employer's breach, such as a delay caused by late provision of information. The contractor must provide detailed records, including schedules, invoices and time sheets, to substantiate the claim. The claim must be made within the time limits prescribed by the contract.

Delay analysis techniques, such as “as-planned vs. As-built” comparison, “critical path method” (CPM), and “time impact analysis” (TIA), are used to quantify the effect of delays on the project schedule. Accurate delay analysis is essential for supporting extensions of time and loss and expense claims. Courts and adjudicators scrutinise the methodology and data used in the analysis.

Payment certification is the process by which the architect or engineer confirms the amount the contractor is entitled to be paid. Certification must be based on the contract documents, the approved programme and any variation orders. Delays in certification can lead to cash-flow problems and may constitute a breach of the employer’s obligations.

Retaining owner’s risk is a strategy where the employer retains certain risks, such as site conditions or regulatory approvals, to prevent the contractor from bearing an unreasonable burden. The contract must clearly allocate these risks, often through “risk registers” that identify and assign responsibility for each identified risk.

Contractor’s default guarantee is a security provided by a parent company or a bank to assure performance. If the contractor defaults, the guarantor steps in to complete the works or pay the employer. Guarantees are common in large infrastructure projects where the financial stakes are high.

Performance measurement involves monitoring the contractor’s progress against the programme, quality standards and health-and-safety targets. Key performance indicators (KPIs) may include “percentage of works completed”, “number of safety incidents” and “quality inspection pass rate”. Regular performance measurement helps identify issues early and facilitates timely intervention.

Health and safety duties are imposed on both the employer and contractor under the CDM Regulations. The client must appoint a principal designer and principal contractor, provide a construction phase plan, and ensure that a health and safety file is maintained. Failure to comply can result in enforcement action by the Health and Safety Executive and may also be a breach of contract.

Environmental obligations are increasingly important. Contracts may contain clauses requiring compliance with environmental legislation, such as the Environmental Protection Act 1990, and may impose duties to minimise waste, control emissions and protect biodiversity. Breach of environmental obligations can lead to penalties, remediation costs and damage to reputation.

Change order is a term often used interchangeably with “variation”, but in some contracts it denotes a formal written instruction that authorises a change and sets out the revised price and time impact. Change orders must be documented, signed and attached to the contract file to provide an audit trail.

Contractor’s liaison officer is a designated representative who coordinates communication between the contractor, client and other parties. The liaison officer is responsible for receiving instructions, issuing notices and ensuring that information flows efficiently. Effective liaison reduces misunderstandings and helps keep the project on schedule.

Site access is critical; the employer must provide reasonable access to the site and ensure that it is safe for work. Failure to provide access can give rise to a claim for loss and expense, as the contractor may incur additional costs to mobilise and demobilise crews. Access issues are a common source of delay in urban construction.

Site conditions clause allocates risk for unforeseen ground conditions. In many contracts, the contractor bears the risk of known site conditions, while the employer bears the risk of latent conditions discovered after commencement. The clause will set out the procedure for notifying the employer of latent conditions and for agreeing on compensation.

Time at large occurs when the contract's completion date becomes unenforceable, usually because the employer has failed to grant extensions for delays caused by the employer. When time is at large, liquidated damages for late completion cannot be enforced, and the contractor may be entitled to claim for the full loss suffered due to the delay.

Provisional sum is an estimate included in the contract for work that cannot be precisely defined at the time of signing. Provisional sums are used for items such as “specialist equipment” or “additional services”. When the work is carried out, the provisional sum is replaced by the actual cost, subject to the contract's variation procedures.

Daywork refers to work performed on a time-and-materials basis, usually at a pre-agreed hourly rate. Daywork is common for small, unplanned tasks or for works that fall outside the scope of the main contract. The contract should specify how daywork rates are calculated, how overheads are applied and how the contractor must record the work.

Retention bond provides a security alternative to cash retention. The bond is typically issued by a bank or insurance company and guarantees the release of the retained amount upon satisfactory completion of the works. The bond reduces the contractor's cash-flow constraints while still protecting the employer's interests.

Insurance certificates must be provided before commencement of the works. The employer may require a “joint names” clause, which names both the employer and the contractor on the policy, ensuring that the insurer pays the claim directly to the employer if the contractor defaults.

Design liability is a contentious issue. In a design-and-build contract, the contractor is liable for design defects. In a traditional contract, the architect or consultant may retain design liability. The contract should clearly state who is responsible for design errors, the scope of the design liability, and any indemnity provisions.

Contractor's final account summarises all payments, variations, retention, and adjustments. The final account is submitted at the end of the project and must be certified by the architect or engineer. Disagreements over the final account often lead to disputes, making accurate record-keeping essential throughout the project.

Sub-contractor's lien (or “mechanic's lien”) is a security interest that allows a subcontractor to claim an interest in the property if they are not paid. In England, the concept is limited, but the Construction Act provides a “construction contract adjudication” right that can function similarly. Subcontractors must follow strict procedural steps to preserve their lien rights.

Adjudication certificate is the decision issued by an adjudicator. The certificate is binding on an interim basis and must be complied with immediately. The adjudicator's decision may include an award of payment, an extension of time, or a determination of responsibility for a defect.

Dispute adjudication board (DAB) is a panel of experts appointed at the outset of a project to resolve disputes as they arise. The DAB provides a rapid and expert-driven resolution, often within days. Its decisions are generally final unless challenged in arbitration or litigation.

Time-related clause imposes a deadline for a particular performance, such as "completion of foundations by 30 June". Breach of a time-related clause may trigger liquidated damages, unless the breach is excused by a valid extension of time. The clause should define the method for calculating extensions and the consequences of missing the deadline.

Force majeure event is an external event beyond the parties' control, such as an earthquake or a pandemic. The clause will set out the notice requirements, the effect on the contract (e.G., Suspension of obligations), and the method for calculating any extensions of time or cost adjustments. Ambiguities in the clause can lead to litigation over whether a particular event qualifies as force majeure.

Suspension of works is a right that may be exercised by either party when the other breaches a fundamental obligation, such as failure to pay. The party exercising the right must give notice, state the reasons, and provide a reasonable period for the breach to be remedied. The suspension must be proportionate and limited to the affected area.

Reinstatement refers to the contractor's obligation to restore the site to its original condition after completing the works, where required. Reinstatement may involve removing temporary structures, reinstating landscaping, or remediating contamination. Failure to reinstate can result in a breach of contract and a claim for damages.