

JCT Intermediate Building Contract 2005

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Purpose

The role and purpose of the Intermediate Form of Building Contract remains unchanged. It is a contract aimed at the fully designed and detailed project where the works involve the normal basic trades and the nature of the works are simple in content.

Structure

Definitions that used to be scattered liberally throughout the form have been collected together in a definitions section.

The drafting committee have finally separated out and at the same time simplified the rules for valuing variations.

Issues relating to Assignment and collateral warranties are now collected in section 7.

Across the board the JCT have revised the provisions for termination. The phrase "Determination" has been dropped.

"Naming" now forms a Schedule rather than main provisions.

Insurances have also been placed in a Schedule.

Principle Changes

- Standardised layout for signing and executing the contract.
- Standardisation of provisions for carrying out the work in sections.
- Changes to Relevant Events and EOT
- Clear provisions for Collateral Warranties
- Simplified "Statutory Requirements"
- Simpler Valuation rules
- Rationalisation of Insurance provisions.
- Termination rather than Determination
- Adoption of the Scheme for Construction Contracts.
- Opt in rather than opt out of Arbitration.
- Omission of the price adjustment formulae
- Electronic Communications rather than EDI

Terminology

- **“Business Day”**. This phrase needs to be contrasted with the definition of “Reckoning period of days” in clause 1.5. They are different. The clause 1.5 definition is used predominantly throughout the contract.
- **“Contractor’s Persons”**. Previously we only had the Contractor’s Person in charge. Now anyone who is lawfully on the site who is not the Architect, QS, Employer, Employer’s person clerk of Works or Statutory Undertaker is known as the Contractor’s Persons.
- **“Employer’s Persons”**. Persons employed by the Employer!
- **“Listed Items”**. Not new but now capitalised for clarity. It is basically a list of materials, goods and components to be supplied by the Employer for inclusion in the works.
- **“the Priced Document”** is either the Bills of Quantities or the Specification or the Work Schedule as appropriate. In the 98 edition they were known as the Contract Bills.
- **“Provisional Sums”**. Again not new but look carefully at the definition.
- **“Rectification”**. Gone is “Defects liability”. We now have an obligation to make good defects, shrinkages or faults in the materials or workmanship.
- **“Rectification Period”**. The equivalent of the Defects Liability Period.
- **“Sections”**. Whilst sections are not new to JCT provisions they are new as a standard part of the Intermediate form.
- **“Scheme”**. Means Part I of the Statutory Instrument known as the Scheme for Construction Contracts (England and Wales) Regulation 1998 No 649.

Issues to consider

- **Articles of Agreement.**
- **Arbitration.**
- **Addresses for service of Notices.**
- **Electronic communications.**
- **Adjustment of Completion Date.**
- **Relevant Events.** The list of Relevant Events have changed. Lets start with some easy changes.
 - The inability to secure labour or materials has been deleted.
 - Civil commotion added to the terrorism provision.
 - The addition of the exercise of Statutory Power by UK Government.
- Now for one that as a Lawyer, I would say is quite a radical change at clause 2.20.6:
 - *“any impediment, prevention or default, whether by act or omission, by the Employer....”* The JCT do not say much about this change, but it is fundamental.
- The other significant change that effects time and completion of the Works is the standardisation of Sections into this Intermediate Form.
- The JCT have maintained the IFC98 position that in the period from the current Completion date up to Practical Completion the Architect or Contract Administrator can only give an extension of time for events for which the Employer is responsible (namely the first 6 events only).

- **Named Sub Contractors.**
- **Interim Payment.** The JCT have changed the default provision for the payment to be made on Practical Completion (Clause 4.9).
- **Retention.**
- **Relevant Matters.** Have been revised in line with the changes to Relevant Events.
- **Variations and Valuation Rules.** Section 5.
- These rules could not be clearer. They are well set out and easy to follow.
- One point to mention this is very subtle but very important for Employer and Contractor alike. The old rules said “*The amount to be added to or deducted from the Contract Sum for [variations] may be agreed between the Employer and the Contractor prior to the Contractor complying with any such instruction....*” The new rules say at 5.2 “*The value of [all variations] shall be such amount as is agreed between the Employer and the Contractor or where not agreed [valued by the QS in accordance with the Valuation Rules].*”
- **Collateral Warranties.** These are new provisions within the Intermediate form. All I will say is do not go around signing collateral warranties without taking legal advice. I could write a book on the subject.
- **Termination.** These provisions have been substantially redrafted but with the intention that the actual rights and remedies remain largely unchanged. However the changes to note are:
 - There is no automatic termination upon insolvency
 - There are no requirements for “Novation” of sub contractors.
 - There are no direct payment provisions
 - Changes to set off and withholding provisions.
- It can only be for the good that the parties have greater freedom upon insolvency.
- **Dispute Resolution.** Some changes include:
- **Mediation.** The contract provides that the parties may mediate. Frankly this is a waste of ink. The contract should either mandate mediation or be silent. In this day and age your lawyer should be suggesting early mediation regardless of the contract.
- **Adjudication.** The adoption of the Scheme rather than JCT rules is a good move.
- **Arbitration.** Other than the opt in rather than opt out there are no significant changes.

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