

“If It Isn’t Broken...”: A Practical Guide To The Effective Use Of Standard Forms Of Contract

Thursday, February 21, 2019

Standard form building contracts play an important role in many construction and engineering projects. There are various advantages to using standard form contracts (as further detailed below), with a wide array of standard forms available to suit the particular types of parties, works and procurement routes involved in virtually all construction and engineering projects.

Tried and tested wording aims to reduce negotiation time, cost and subsequent disputes, and most practitioners are familiar with them.

Although a standard form will always need to be tailored to include project-specific details or requirements, amending a standard form will provide an opportunity to achieve this while still benefitting from the generally accepted ‘standard’ wording in the rest of the contract.

It is often the case that the only changes needed are completion of the ‘Contract Particulars’, ‘Contract Data’ or ‘Particular Conditions’ i.e. the portion of the standard form allocated to details such as party names, prices, completion dates, liquidated damages rates, insurance details and the like.

In other cases, a more extensive revision to the standard form terms may be needed to suit the parties’ specific requirements.

Take care, however, to amend only what is completely necessary. It is also advisable to check whether an amendment already exists that meets your particular requirement as similar projects are likely to have encountered similar issues.

The main standard forms used in the construction industry include the JCT standard forms of contract (particularly across UK domestic projects), the NEC3/4 forms (across both UK and international construction and engineering projects) and the FIDIC forms (primarily for international infrastructure projects). These are supplemented by a range of other forms with a narrower focus, such as the Association of Consulting Engineers forms and Infrastructure Conditions of Contract.

Why use a standard form of contract?

The most commonly cited reasons for using standard forms and the reasons for their long-standing popularity include:

- reduced drafting time;
- provision of a checklist of items to be agreed between the parties;
- provision of a negotiation benchmark;
- to benefit from case law on the interpretation of terms and/or the impact of legislative change; and
- to benefit from familiarity.



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Evolving forms

As touched on in the list of benefits above, one of the attractions of using standard forms is the fact that they are produced by major industry bodies, often representing the viewpoints of a number of stakeholders, and which have the resources to keep the content of a suite of standard form contracts under constant review.

That review role means that new editions of contract suites are published periodically, addressing statutory and case law changes, as well as addressing any perceived gaps or ambiguities in the drafting. The recent overhaul of the New Engineering Contract from NEC3 (last updated in 2013 to reflect the impact of the Local Democracy Economic Development Act 2009) with the publication of NEC4 in June 2017 provides a recent example. The updated suite aimed to “*support the on-going drive for further collaboration and integration of teams, greater use of modern work methods, better avoidance of disputes and more effective identification and management of risk and opportunity*”.

New editions also enable completely new forms to be published to address market demand. A Design, Build and Operate Contract and an Alliance Contract were included in the NEC suite for the first time in NEC4, for example.

Further, the JCT began to publish an updated suite of contract documents in 2016 following industry-wide consultations. This was intended to consolidate the updates and supplements released since 2011 and ensure that they are in line with current market practice.

FIDIC has also recently started to update its suite of contracts, which is the first major update since 1999, in order to reflect current industry best practice. For further information, the 2017 FIDIC Red, Yellow, Silver and White Books are all available [online](#).

Key tips on amending a standard form

When amending standard forms regard should be had to the following:

- only make amendments which are strictly necessary to comply with the parties' requirements;
- if the guidance notes to the standard form recommend a particular way of making amendments, follow the recommended practice wherever commercially possible;
- check whether the relevant industry body has already drafted an amendment which meets the particular requirement and, if it is appropriate, follow their recommended wording;
- if the employer is making amendments, remember these may have the effect of increasing the contract price;
- amendments to one clause may have a consequential effect on other clauses including the clause-numbering;
- amendments to the conditions of contract may necessitate amendments to ancillary documents such as agreements for lease, financing documents, bonds and guarantees where the same terminology including and for example, contract periods should be referred to throughout;
- always attach to the contract copies of the agreed forms of ancillary documents;
- avoid letters of intent wherever possible and, if it is not possible to do so for commercial reasons, make sure the letters are preliminary or interim contracts which can be enforced subject to a financial cap;
- if amending a subcontract, remember to delete inappropriate main contract terms which may otherwise be incorporated by reference;
- make sure the subcontract contains appropriate limitations of liability, normally by reference to the subcontract price;
- take legal advice on complex amendments or when unsure of the effect of an amendment;
- make sure that the Appendix or Contract Particulars and other essential contract documents are properly completed, otherwise, the contract may be unworkable or ineffective;
- always ensure that the contract is signed properly by duly authorized persons, and resist the temptation to sign contracts before all the detailed terms have been agreed;
- if a contract has to be varied after it has been signed, make sure the variation is made by authorized

representatives of the parties in accordance with the requirements, if any, specified in the contract;

- if there are no specified requirements for varying the contract, make them by way of a Deed of a Variation to avoid any argument over lack of consideration;
- check all ancillary documents such as bonds and guarantees to see whether they are affected by the variation and notify bondsmen/guarantors; and
- make sure each party to the contract has a copy of the signed contract documents and any subsequent variations to the contract.

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