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The construction & energy law specialists

Tendering? Know your contract!

by David Bebb

1. My work tends to focus on the non-contentious aspects of construction and engineering projects. I have the unenviable task of trying to balance the competing requirements of progress of the work with the need to document what the parties have agreed. As many of you will know from experience, when disputes arise on projects the contract is King. It will be the first piece of the paper trail your solicitor will ask you for. Without a formal contract the first chunk of your legal budget may well be spent on trying to ascertain precisely what the legal relationship is between client and contractor. So a properly documented contract can save a huge amount of time and effort in the long run.

2. Given the importance of a formal contract it is surprising the number of projects that still progress without contracts or with part negotiated contracts. Those thorny issues which, perhaps understandably, fail to excite the interests of project teams (insurance springs to mind as an obvious example) tend to get put to the bottom of the pile and often never resolved. Fortunately, of course, the insurance clauses are rarely relied upon. But when a subcontractor fails to tighten that valve and floods the client's new fit-out (and that of his neighbours on the floor below), that unresolved insurance issue rears its ugly head.

3. In addition to projects where there is no contract or a part negotiated contract, there are, of course, projects where the contract is finalised. The parties choose their procurement route, choose their standard form, fill in the blanks and they're off. However, at this point the legal bits of the contract are frequently cast aside, only to be called upon if necessary later on down the line. But do the parties really understand what they have signed up to? Does the contract administrator know the contract he is supposed to administer? Do the parties really know their contract?

4. The purpose of this paper is not to take you through each clause in a standard contract and explain their particular nuances. The parties do not need to know this level of detail and in many cases even the courts are still telling us what the clauses mean. However, this paper should act as a reminder of some of the more common provisions of which the parties should be aware. Given the plethora of standard form contracts in use, it would be impossible to summarise the important provisions of each. However, given the widespread use of JCT and the fact that many of you come from a public sector background, I intend to cover the following:

    - The important changes in JCT 2009 Revision 2 contracts.
    - Some of the less well known clauses in the GC/Works contracts.
    - The effect of some of the common amendments; so even if you did *know your contract* you may no longer know it.

JCT 2009: THE IMPORTANT CHANGES

5. In May 2009 JCT began to publish Revision 2 of its 2005 suite of contracts. If this launch escaped some of you, one of the main drivers behind the revamp was to incorporate principles from OGC's *Achieving Excellence in Construction* initiative.[1] For those of you who have not yet set aside a week or so to read the OGC's recommendations then, in a nutshell, its aim was to *improve the performance of the Government as a client of the construction industry.*[2] This included looking at areas such as partnering, the use of KPIs and whole-life costing of projects.

6. However, in addition to adopting the OGC principles JCT also took the opportunity to make a number of other changes to the contracts. In fact, they took the opportunity to dabble quite a lot. In writing this paper I came across one article which took 56 pages to describe in detail all the changes in the Standard Building Contract. Needless to say, this is at the more thorough end of the scale and this level of detail is unnecessary for most users of the contract. However, given that approximately 70% of UK building contracts[3] entered into are on the JCT form then some of these changes clearly affect a great number of clients, contractors and contract administrators.

7. I suspect many of you may now be switching off, safe in the knowledge that you can continue to use the old 2005 forms (or even the 1998 forms) for your projects. After all, you have been using those contracts for years without any problems. Well, here's the rub. Firstly, you have not been able to buy the 1998 forms of contract for some time now.[4] Secondly, you can no longer buy the old 2005 form if it has been replaced by a Revision 2 version. [5] I have tried in vain for some clients to get hold of old contracts but without success. If you want to use a JCT contract for your project, and Revision 2 of the contract has been released, then you have no choice but to use that Revision.[6] But there's a further rub. Remember too that the amendments to the Housing Grants, Construction and Regeneration Act 1996[7] are likely to come into force in early 2011. This will mean that the payment and adjudication provisions of each contract will need amending again. Enter Revision 3 of the contracts.[8]

8. So users are potentially required to invest in a new contract that will be out of date in a few months. Unsurprisingly, JCT has come in for some criticism here. Users are expected to buy the new contract, familiarise themselves with the changes, update their standard amendments, only to have to do the same exercise again in a few months. And part of the OGC's stated aims? To increase efficiency in construction projects.[9]

9. As noted above, there are numerous changes in the Revision 2 contracts. Many are introduced to adopt a more 'plain English' style of drafting but others are more significant and users should be aware of the potential pitfalls that may lie in wait. I have no intention of analysing every change but the key ones for users to be aware of are summarised below.

Achieving Excellence in Construction Challenges

10. There are a host of provisions introduced in new Schedule 8 to the contract.[10] These deal with:

[1] The various guides that have been produced following this initiative can be downloaded at http://www.ogc.gov.uk/guidance_achieving_excellence_in_construction.asp

[2] See http://www.ogc.gov.uk/guidance_achieving_excellence_in_construction.asp

[3] DLA Piper *Construction and Engineering E-Alert*, 11 June 2009

[4] According to the JCT website (www.jctcontracts.com) the 1998 versions were no longer available after Spring 2009. However, PDF versions, albeit containing an "outdated" watermark, can still be obtained.

[5] As with the 1998 forms, PDF versions containing an "outdated" watermark can still be obtained. There is no reason from a legal perspective that an outdated contract cannot be used (although users should note that some elements may be out of date (e.g. CDM aspects) and will require an amendment to deal with it).

[6] The most common forms of JCT contract (e.g. SBC, D&B, Intermediate, Minor Works) have all been updated to Revision 2 form.

[7] Amendments will be introduced by the Local Democracy, Economic Development and Construction Bill.

[8] JCT acknowledge that the amendments to the HGCRA 1996 will result in a Revision 3 of the JCT suite.

[9] In fairness to JCT, there has been talk of amending the HGCRA for a number of years and only now do these amendments seem close to reaching the statute book. JCT may simply have taken the view that it could wait no longer to update the suite of contracts.

[10] References in the remainder of this paper are to the Standard Building Contract 2005 Without Quantities Revision 2 unless otherwise stated.

- Collaborative working
- Health and safety
- Cost savings and value improvements
- Sustainable development and environmental considerations
- Performance indicators
- Notification and negotiation of disputes.

11. A few interesting observations on Schedule 8:

Collaborative Working

12. The first point to note is that this is optional (as are all the provisions in Schedule 8). So you can either opt in to acting:

> in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect

or you can opt out. Even if the parties opt in, note that the wording does not apply to others involved in the contract such as the Architect/Contractor Administrator or the Quantity Surveyor.[11] This is a departure from the equivalent clause in NEC.[12] So those of you acting as contract administrators can, it would seem, continue to adopt an old school and hard-nosed approach to contract administration, although it is suggested that if the employer has embraced the spirit of mutual trust and respect then your days as a contract administrator may be numbered. A disgruntled contractor may also argue that, as agent of the employer, the contract administrator is bound by the duty of good faith in any event.

Cost Savings and Value Improvement

13. In the spirit of the OGC's *Achieving Excellence in Construction* initiative, Schedule 8 encourages the contractor to suggest changes that reduce costs (both in terms of the cost of construction and lifecycle costs). You may query why this is an optional provision, given that all employers would want to benefit from the contractor's input in this respect. The reason would appear to be that if the employer accepts the contractor's suggestion then the employer pays the contractor an agreed share of the employer's saving. To avoid any sharp practice on the part of the employer in not paying its share, the contractor's idea can only be instructed under this provision. It cannot be instructed as a variation thereby entitling the contractor only to his mark-up on the cost of the variation. However, there is nothing preventing the employer from engaging others to carry out the suggested changes after practical completion, but in most cases the savings will be greatest if implemented during construction rather than as a bolt-on at a later date.

Sustainable Development and Environmental Considerations

14. The contractor is encouraged to suggest:

> economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance.

[11] "Parties" in paragraph 1 of Schedule 1 is a defined term and means the Employer and the Contractor together.

[12] Clause 10.1 of NEC 3 says "The *Employer,* the *Contractor,* the *Project Manager* and the *Supervisor* shall act … in a spirit of mutual trust and co-operation." Concepts of mutual trust and good faith are not concepts recognised by English law. However, where they are contained in a contract then the courts are bound and willing to take notice of them. In *Birse v St David* [1999] BLR 194 the parties signed a partnering charter which contained an obligation of "trust and co-operation".

15. This is similar to the value engineering provisions noted above except that the contractor is not entitled to share in any savings. This is a rather unusual approach in that the contractor may be incentivised to offer cost savings which may not be the most sustainable or environmentally advantageous approach. Some contractors may be inclined to dress up a suggestion as value engineering under paragraph 3 where it may actually be caught by paragraph 4 (or indeed covered by both paragraphs which simply results in uncertainty).

Collateral Warranties

16. Collateral warranties tend to be required on larger projects (unless the parties adopt third-party rights, which have not really caught on to the extent it was hoped they would). The reality is that most parties also insist on using their own wording for warranties. JCT does have its own standard warranty but it tends not to be acceptable to many beneficiaries as it contains too many limits on liability, restrictions of types of loss recoverable and the like. JCT 2005 recognised this and the contracts allowed the parties to tag their own form of warranty to the back of the contract. This satisfied beneficiaries and reflected the reality of larger projects. There was also a helpful reminder in the contract which allowed the parties to indicate whereabouts in the contract their warranties were included. This position has changed and there is no longer an obvious part of Section 2 in which to specify the form of warranty required. As a result, it would seem necessary to amend the Revision 2 contract whereas the old 2005 version worked perfectly well.[13] This does seem an unusual move on the part of JCT. Funders in particular (more so now than ever before) will want to ensure suitable security is in place in the form of step-in rights, etc. Those carrying out projects where specific forms of warranty are required need to bear this in mind. Simply including that form within the contract documents will not be effective.

Payment

17. There are numerous changes to the payment provisions and these will have to be revised again when the amendments to HGCRA are brought into force. As noted above, JCT has already acknowledged that any changes to the payment provisions will be incorporated in Revision 3.

18. One part of the payment clause that has changed is in relation to certificates due after practical completion. The old 2005 version used to allow for interim certificates to be issued after practical completion:

> As and when further amounts are ascertained as payable to the Contractor by the Employer ... But the Contract Administrator shall not be required to issue an Interim Certificate within one calendar month of a previous Interim Certificate.

19. Under Revision 2 Interim Certificates are to be issued at intervals of two months unless otherwise agreed. Although unlikely to be a problem in practice, any of you who act as contract administrators should be aware of this. In practice it may be the case that the parties simply agree to revert to the old 2005 position whereby certificates are simply issued as and when sums are due to the contractor.

[13] The JCT Standard Building Contract Guide (paragraph 48) suggests that if the parties do wish to use their own form of warranty then an appropriate entry can be made in Table A in Section 2. However, it is suggested there is more scope for error if adopting this approach with the result that the only warranty obtainable is in standard JCT form.

Conclusion

20. There are clearly some significant changes that clients, contractors and contract administrators need to be aware of. Given the number of projects that use standard JCT, coupled with the fact that Revision 1 forms are no longer published, the parties seem to be left with little choice but to get up to speed with the main changes. Clients should also be aware that simply "bolting on" their standard amendments may lead to some interpretation issues on the basis that clause numbering has also been altered in some cases.

GC/WORKS CONTRACT

21. This form of contract remains very popular with public sector clients. I have been involved in a range of projects from office refurbishments for government departments to the construction of sports centres using this form. However, what becomes apparent during the projects – and unfortunately more likely at final account stage and beyond - is that the contracts contain a number of quirks not found in JCT or many other standard forms. Contractors more familiar with using JCT in particular are often surprised to learn for example that the contract contains "time bars".[14] It is these types of provision of which both the contractor and the employer need to be aware.

Variations

22. GC/Works[15] contains two types of instruction: *Instructions* and *Variation Instructions*. The mechanism for valuation of *Variation Instructions* is fairly straightforward and adopts procedures similar to many standard forms. If a lump sum is not agreed in respect of the VI then the QS values using the procedure set out in Condition 42(5).[16] However, Condition 42 provides:

> (8) The QS shall, not later than 28 Days from the receipt of the information mentioned in paragraph (7), [information requested by QS to value VI] notify the Contractor of his valuation of the VI.
>
> (9) If the Contractor disagrees with the whole or part of the QS's valuation he shall, within 14 Days of the QS's notification under paragraph (8), give his reasons for disagreement and his own valuation. In any other case he shall be treated as having accepted the notification under paragraph (8), and no further claim shall be made by him in respect of the VI.

23. It is the last part of 42(9) that should raise alarm bells with a contractor. Does this act as a time bar so that any failure on the part of the contractor means he is lumbered with the QS's valuation? Under English law the courts have tended to take the view that time limits in contracts are directory and not mandatory.[17] However, time bars can bite where they set out a specific time for compliance and clearly state the consequences of any failure. At first glance 42(9) satisfies this. It refers to a specific time period of 14 days (as opposed to the use of words such as *within a reasonable period of time*) and clearly provides for the consequences of such failure.[18] So with this in mind, how should contractors, employers and contract administrators approach this clause in GC/Works?

[14] Similar time bar provisions are found in NEC and FIDIC contracts but are generally uncommon in other standard forms.
[15] GC/Works/1 With Quantities (1998) is used as an example in this paper and clause references are to that version.
[16] This provides that valuation is to be by way of (a) bill rates; (b) rates extrapolated from the bill rates; (c) fair rates; or (d) day works.
[17] *Temloc Ltd v Errill Properties Ltd* (1987) 39 BLR.
[18] Parties should not assume that because a clause does not refer to a specific time period for compliance that it will not be regarded as a time bar. In *Steria Ltd v Sigma Wireless Communications Ltd* [2007] EWHC 3454 (TCC) the court held that a requirement to give notice *within a reasonable period* could still act as a time bar.

24. The Contractor should:

- familiarise themselves with the wording of the clause. Note that in addition to Condition 42(9) time bars appear in Conditions 42(3) (valuation of other instructions), 46 (loss and expense) and 49(3) (disagreeing with the draft final account). The procedural requirements (service on whom and by when) of each relevant clause should be noted;

- be very careful of not issuing the notices to maintain goodwill unless the PM/QS agrees to relax the provisions.

25. The PM/QS should:

- be very wary of agreeing to relax the provisions. By doing so, the PM/QS is potentially in breach of his duties to the employer to administer the contract properly;

- ensure that notices given (which in turn trigger time periods requiring the contractor to respond) are clear and unambiguous. For example, the QS may wish to state in his notice to the contractor the relevant clause under which the notice is issued, the time periods that apply for any response by the contractor and the consequences of failing to do so.[19]

26. In summary, it is clear that under English law a time bar can bite where the wording of the contract is clear as to its intention. Whilst it will be necessary to consider the particular circumstances of the case, the wording in GC/Works is clear both in terms of timing and the implications of any failure by the contractor to challenge the valuation. A contractor's lack of awareness of these provisions could be a costly mistake.

Defects

27. GC/Works adopts a rather unusual approach to the making good of defects. Condition 21 says:

> 21(1) The Contractor shall without delay make good at its own cost any defects in the Works, resulting from what the Employer considers to be default by the Contractor or his agent or subcontractors or suppliers, which appear during the relevant Maintenance Period.
>
> 21(2) After completion of the remedial works by the Contractor, the Employer shall reimburse the Contractor for any cost the Contractor has incurred to the extent that the Contractor demonstrates that any defects were not caused by -
>
> (a) the Contractor's neglect or default, or the neglect or default of any agent or subcontractor of his; or
>
> (b) any circumstance within his or their control.

28. Condition 21(1) leaves the decision as to what constitutes a defect firmly with the employer (i.e. it is a purely subjective rather than objective test). This is a rather unusual approach amongst standard forms. It is then necessary to consider Condition 21(2),

[19] While there is no duty on the PM/QS to "hold the contractor's hand" ,consideration has to be had to Condition 1A (fair dealing and teamworking). There is no authority on the interpretation of this clause in the contract but the Model Forms and Commentary (page 71) suggests that "All parts of the Contract must be read against this Condition. It will not be sufficient for a party to apply the letter of the Contract, if this would amount to sharp practice or obstructionism". It is possible to see contractors arguing that where any notice issued by the QS is less than clear as to its potential effect then the employer is in breach of this provision.

and in particular paragraph (b). Having remedied the defects at his own cost the contractor has an opportunity to argue that the cause of the defect was not within his control or the control of his subcontractors. Whilst the burden of proof will be on the contractor, this does invite claims for the contractor to be reimbursed the costs of correcting defects.[20] The guidance notes give no examples of when this provision may be relied upon by the contractor but it is potentially very wide-reaching.[21]

Nominated Subcontractors

29. These provisions are tucked away towards the end of the contract in Condition 63. However, the consequences of this Condition and Condition 63A should not be underestimated.

30. The employer is allowed to nominate subcontractors and suppliers in respect of prime cost items. Under paragraph (6) of Condition 63 the contractor can make *reasonable objection* to the employer's choice of subcontractor and the guidance notes suggest this could include competence, financial strength, refusal to accept "back to back" terms or the refusal to provide a bond and/or a parent company guarantee.[22] However, assuming the contractor has no grounds to object, the responsibility for that subcontractor's performance rests with the contractor except in limited circumstances allowed by Condition 63A. Condition 63(8) leaves no doubt as to the contractor's responsibility for the nominated subcontractor:

> Subject to Condition 63A (Insolvency of nominated subcontractors or suppliers) (if applicable), if a nominated subcontract is determined or assigned or re-nomination occurs, the Employer shall not be required to pay the Contractor any greater sums than would have been payable if such determination, assignment or re-nomination had not occurred.

31. Condition 63A entitles the contractor to the difference between the additional costs of completing the subcontracted work and the costs he should have recovered from the insolvent subcontractor. However, there are two significant stings in the tail of 63A. First, it is optional and only applies where the Abstract of Particulars says it does. Second, contractors should be aware that even where it does apply it does not give full relief for all the possible consequences of a nominated subcontractor becoming insolvent. For example, no extension of time is due and so liquidated damages may still run as the contractor tries to secure an alternative subcontractor. The contractor does not recover any prolongation in respect of this time and also remains liable for the insolvent subcontractor's defective work. So even where 63A applies, contractors are not fully compensated for the default of a nominated subcontractor. In the current climate this is a significant risk for contractors. The guidance notes suggest that in the light of "*Constructing the Team*" the relief given by 63A should not be denied to a contractor but of course there may be employers who fail to take on board this advice.[23]

COMMON AMENDMENTS; DO YOU STILL KNOW YOUR CONTRACT?

32. You may, of course, be very familiar with the standard form used on your project and so start off on the right foot. You know what is required of you and by when. However, when was the last time you signed a contract that had not been dabbled

[20] Contractors should note that Condition 21(2) is often deleted by way of an amendment. The result is that the test as to what constitutes a defect remains subjective. It is suggested that in classifying what the Employer considers to be a defect there would still be an obligation to act reasonably (particularly in light of Condition 1A: fair dealing and teamworking) but the deletion does make recovery by the contractor more difficult.
[21] GC/Works/1 Model Forms & Commentary at page 80.
[22] GC/Works/1 Model Forms & Commentary at page 105.
[23] GC/Works/1 Model Forms & Commentary at page 106.

with by the client's lawyers? The arguments for and against amending standard form contracts could form the basis of a heated debate on their own[24] but, like collateral warranties, amendments are a fact of life that both client[25] and contractor have to live with. The following are a selection of some of the common amendments to standard contracts, along with their effect.

Extensions of Time

33. The following wording is frequently added to the extension of time clause in JCT:

> Notwithstanding any other provision of this Contract the Contractor shall not be entitled to an extension of time to the extent that any delay in the progress of the Works or a Section is due to any breach of this Contract by the Contractor or any negligence or default of the Contractor, his subcontractors ...

34. At first glance the amendment seems reasonable; why should the contractor be entitled to any extension of time if it is required as a result of his own default?

35. The sting in the tail relates to insurance. Remember that Specified Perils (fire, flood, etc.) are a ground for an extension of time under JCT. [26] The restoration of damage to the works themselves is also *treated as a variation* where insurance Options B and C apply.[27] On this basis the contractor is entitled to his extension of time under the standard contract (providing he satisfies the other requirements of the clause). However, the amendment clearly states that *notwithstanding any other provision of the contract* no extension of time is due to the extent it is caused by breach etc. of the contractor or his subcontractors. This could leave the contractor with a significant amount of remedial work to carry out but with a bill for liquidated damages on the basis that no extension of time is required to be given. This amendment should always recognise the insurance regime used in the project.

Design

36. Design liability is another area which is prone to amendment and a recent case has shed some light on how these amendments may be interpreted. The case is *Costain Ltd v Charles Haswell & Partners Ltd.*[28] During a tender for the construction of a sludge treatment and water pumping station Costain engaged Haswell to provide civil engineering advice in relation to the foundation design. At tender stage Haswell advised that conventional foundations could be used provided the soil was pre-stressed which minimises any later settlement. Costain priced its tender on this basis and was successful. After Costain entered into the main contract Haswell changed its original design and said that the ground should be piled. Costain piled the ground, which was more expensive and delayed the project. Costain started proceedings to recover these costs from Haswell. The terms of the agreement between Costain and Haswell were obviously key and included the following wording:

> 7.0 Consultant's Warranties
>
> The Consultant warrants that:
>
> 7.1…

[24] See *Amending Standard Contracts: Anarchy or Commonsense?*, http://www.fenwickelliott.co.uk/articles/contract-issues

[25] Amendments are often stipulated by a client's funders and so the client does not have free rein to use an unamended form of standard contract.

[26] See, for example, clause 2.29.9 in the Standard Building Contract.

[27] See clauses B.3.5 and C.4.5.2 in the Standard Building Contract.

[28] [2009] EWHC 2350

> 7.2 In the provision of the Services the Consultant shall exercise all reasonable professional skill, care and diligence
>
> 7.3…
>
> 7.4 Any part of the works designed pursuant to this Agreement if constructed in accordance with such design, shall meet the requirements described in the Specifications or reasonably inferred from the Tender Documents or the Contract or the written requirements of Costain and be designed in accordance with good up to date engineering practice and with all applicable laws, by laws [sic] codes or mandatory regulations and in all respects with the requirements of the Contract
>
> 7.5…"

37. Costain alleged that Haswell was in breach of contract and/or negligent in suggesting that the soil was pre-stressed. Costain argued that clause 7.4 imposed a strict liability on Haswell and therefore it was unnecessary to prove negligence under clause 7.2. In response, Haswell argued that clause 7.4 was subject to the level of reasonable skill and care referred to in clause 7.2. The Judge disagreed and found Haswell liable; clause 7.4 was not subject to clause 7.2. The Judge noted that:

> It seems to me quite plain that Clause 7.4 is adding something different to Clause 7.2, otherwise it would not be there.[29]

He went on to add:

> The wording of Clause 7.4 is expressed in mandatory terms and, in my opinion, imposes an obligation of strict liability in contrast with Clause 7.2. The words "…shall meet the requirements described in the Specification…" are quite clear.[30]

38. With this in mind consider the effect of the following common amendment made to design obligations in JCT contracts:

> 2.19 Where there is a Contractor's Designed Portion:
>
> 2.19.1 Insofar as the design of the Works is comprised in the Contractor's Proposals and in what the Contractor is to complete under clause 2 and in accordance with the Employer's Requirements and the Conditions (including any further design which the Contractor is to carry out as a result of a Variation), the Contractor warrants and undertakes to the Employer that:
>
> .1 he has exercised and will continue to exercise in such design all the skill, care and diligence to be expected of a professionally qualified and competent architect, engineer or other consultant taking into account the size, scope, nature, type and complexity of the Works;
>
> .2 the Works will, when completed, comply with any performance specification or requirement included or referred to in the Employer's Requirements or the Contractor's Proposals.

[29] Paragraph 53
[30] Paragraph 54

39. I have lost count of the number of times I have debated whether or not .2 is a fitness for purpose obligation with an employer's lawyers. Some will concede the point immediately and agree that clause .2 should be made subject to the level of skill and care referred to in .1. However, many will argue that .2 is not a fitness for purpose obligation as clearly all design obligations are addressed in .1. In light of the *Costain* case it would seem this is not the case. Clause .2 is clearly there for a reason and is a fitness for purpose obligation regardless of the reference to reasonable skill and care in .1.

40. For those of you familiar with GC/Works you will be aware that the contract contains two alternatives: a fitness for purpose obligation and one of reasonable skill and care.[31]

CONCLUSION

41. The contract remains one of the most important documents in construction projects. It ranks up there with the drawings, specifications and ERs. In many cases it ranks above.[32] And yet in practice the contract terms do not attract the same level of scrutiny as do, say, the specification and drawings. If the contractor shouts "variation" it is the drawings and specifications that the parties reach for, with the legal parts being left in the filing cabinet. But at what cost? Given the potential effectiveness of time bars, for example, this may prove a costly mistake on the contractor's part. The parties need to be familiar with their contract from the outset and that includes the legal as well as the technical parts.

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[31] See Alternatives A and B in clause 10.
[32] See, for example, clause 1.3 in the Standard Building Contract which says "The Agreement, and these Conditions are to be read as a whole but nothing contained in the Specification/Works Schedules or the CDP Documents shall override or modify the Agreement or these Conditions."