

SUBJECT RESOURCE GUIDE

If You Build it, They Will Come: Collection Management of Construction Contracts

Abstract: Working with construction contracts can be a real challenge for information professionals due to the confusing way in which they are often named, the sheer number of editions and amendments, the differing terminology that's employed and many other factors. Here **Debra O'Malley**, Senior Information Services Officer at Pinsent Masons, threads her way through the labyrinth of construction law while providing an overview of the vast range of contracts available and where they can be found.

Keywords: collection management; classification; construction contracts

As information professionals we are usually involved in the purchasing, organisation and recovery of construction contracts with little understanding of what they do and how the lawyers use them. Many are referred to by code names or colours. There are contracts with similar names, lots of editions and even more amendments. Different publishers use different terminology for the same thing: conditions or core clauses; schedules or secondary options; contract data, articles of agreement and contract particulars or particular conditions. All these issues lead to one thing, the fear of construction contracts. And what happens when a lawyer comes to the library looking for a contract? Well, often requests have come from a client or have been taken from an old contract which leads to titles getting muddled and dates getting confused and of course they are usually urgent and requested in a format not available, so panic sets in! But hopefully this article will provide a useful overview of the range of contracts available and where to find them.

WHAT ARE THEY?

Construction contracts are the various standard forms that have been developed by different professional institutions and trade bodies to reflect the different procurement methods, risk profiles, sizes of project and any other requirements of the parties involved. Over the past century many standard forms have been developed, some tailored for specific types of construction or engineering works, while others are intended for a wider range of projects.

Many of the forms are not actually construction contracts but professional appointments or collateral warranties but generally is it easiest to deal with them all as construction contracts. A professional appointment is used to appoint a consultant to a project. A collateral

warranty is an agreement, that is associated with a primary contract, and extends the duty of care of one of the original contracting parties to a third party.

HOW DO LAWYERS USE THEM?

Most construction projects are complex, often with multiple parties involved, and it would be time-consuming and complicated to draft and negotiate a bespoke contract for every project. The use of an appropriate standard form provides a model which is familiar to all parties. Users can then adapt the standard form to fit the project. Amendments are usually set out in a separate document called a schedule of amendments. The schedule of amendments will set out each clause that is to be amended and how it is to change. This document must then be read against the standard clauses to gain a full understanding of the contract. In some cases, a licence can be purchased from the publisher to produce a consolidated version, usually in Word. This offering varies from publisher to publisher, and we will cover that in more detail later in the article.

THE A-Z OF CONTRACTS

The **Association of Consultant Architects (ACA)**¹ contracts include the project partnering contract, PPC2000, first published in September 2000, which has been amended with the current edition, PPC2000 Amended 2013. It has published other domestic partnering contracts including the TPC2005, FAC-I and TAC-I as well as the Standard Form of Appointment for an Architect 2012. The contracts can be purchased in hard copy and several of the main contracts can be purchased electronically for completion through its special website – Electronic Building Contracts from the ACA.² You must



The variety and the many different colours of construction contracts can lead to confusion

complete the form on the contract page after which you will be sent a payment link. Once paid the ACA will send a watermarked PDF copy of the contract that allows you to input the specific details of your programme for completion.

The **Association for Consultancy and Engineering (ACE)**³ contracts were first published in 1963 with newer editions in 1981, 1995 and 2002. An updated suite of Agreements and Schedules of Services was published in 2009, and revised in 2011, to comply with regulatory changes. Separate agreements for Scotland were also published. The suite changed again with new Professional Services and Sub Consultancy agreements publishing in 2017 and 2019 along with Schedules of Services. These replaced the 2009 Agreements 1-5 and 9. The other 2009 Agreements are still current. Hard copies can be purchased through the ACE Store⁴ along with digital versions through its online platform. These versions can be edited, printed, and shared ready for completion within six months of the purchase date.

The **Civil Engineering Contractors Association (CECA)** publish a range of subcontracts that can be used with many of the main forms of contract. These include the GC/Works, the ICE Measurement and Design

and Construct Versions, the ICC Measurement and Design and Construct Versions and most recently in 2020, a Generic Form of Subcontract. All the CECA subcontracts are commonly referred to as the Blue Form as they are all published in a similar blue colour. Hard copies can be purchased from the CECA publications page.⁵

The **DOM/1 and DOM/2** were first published by Construction Industry Publications (CIP) in 2011. DOM/1 is for use with the JCT main contract forms and DOM/2 the Design and Build form. The current edition was published in 2018. Earlier editions of the DOM/1 and DOM/2 in 1980 and 1998 were published by the Construction Confederation. Hard copies of the CIP contracts can be purchased from its online bookshop.⁶

FIDIC is the Fédération Internationale des Ingénieurs-Conseils, or International Federation of Consulting Engineers. It produces a range of standard forms used in international construction projects. The first, the Form of Contract for Works of Civil Engineering Construction, was published in 1957 and became more commonly known as the Red Book. FIDIC has published many standard forms since and most are generally known by the colour of their cover: Red, Yellow, Silver, Green, Pink, Gold, Blue, Emerald and

White! The fourth (and last) edition of the 'old' Red Book was published in 1987 and in 1999 FIDIC published a completely new suite of contracts known as the Rainbow Suite. The main versions of which (the Red, Yellow and Silver) were republished in 2017 and revised in 2022. Each contract follows a similar format and include the General Conditions, Particular Conditions and Forms.

FIDIC contracts are available to purchase in hard copy and digital format through the FIDIC Bookshop.⁷ The digital versions are offered in different formats, Practitioner and Educational, and can be purchased for single or multiple users. The Practitioner Version provides an encrypted PDF file of the General Conditions and editable word files of the Particular Conditions and forms for completion. The Education Version provides an encrypted PDF file which cannot be printed. Both formats are licensed for one year. Another option is an annual subscription to one of the Watermarked collections which provide access to PDF files that can be downloaded and stored on the company network and accessed firmwide by unlimited users. A further option is the Bespoke licence which allows the user to licence a Word version of the contract for project use.⁸

The **General Conditions of Government Contracts for Building and Civil Engineering Works (GC/Works)** was first published in 1973. The latest edition of the suite was published in 1998 by the Stationery Office for the Property Advisors for the Civil Estate (PACE). The suite comprises of several contracts (GC Works/1 to GC Works/4) along with a range of supporting documents such as: sub-contracts, forms of tender, invitation to tender, performance bonds, parent company guarantees, retention bonds, notices and certificates. These are no longer updated or used by the Government as they have endorsed the NEC suite of contracts for public procurement. The GC/Works are no longer available to purchase from the TSO but it is possible to obtain copies from online bookshops second-hand.

The **ICE (Institution of Civil Engineers) Conditions of Contract** were first published in 1945 in conjunction with ACE and CECA. Several editions were published over the years with the final edition, the Measurement Version, publishing in 1999. Additional contracts including Ground Investigations Works, Minor Works, Design and Construct, Term Version, Archaeological Investigation and Target Cost Version were published and updated over the years. The entire ICE suite of contracts was withdrawn in August 2011 as part of a strategic drive by ICE to focus on the NEC form.⁹

The **Infrastructure Conditions of Contract (ICC)** suite was first published in 2011 and included: Archaeological Investigation, Design and Construct, Ground Investigations Works, Measurement, Target Cost and Term Versions as well as a Partnering Addendum. They are jointly sponsored by ACE and CECA and

intended to replace the ICE forms. The With Quantities Version was published in 2014, a Sub-Contract in 2017 and updated editions of the Target Cost and Design and Construct contracts in June 2018. Hard copies can be purchased through the ACE Store and certain versions are available digitally through the ACE Store.¹⁰

The **Institution of Chemical Engineers (IChemE)** contracts were first published in 1968. The IChemE are another suite of contracts that tend to be known by their colours. The main contract, the Model Form of Conditions of Contract for Process Plants suitable for Lump Sum Contracts is known as the Red Book. IChemE have published additional contracts in the UK suite known as the Green, Burgundy, Yellow, Brown, Orange, Silver, Blue, Pink, White and Grey Books. They also produced a series of international contract forms in 2007. The UK suite was updated in February 2013 with the Silver Book 1st Edition publishing in 2017, Orange Book 3rd Edition in 2018 and the latest, the Blue Book 1st Edition in 2023. The contracts can be purchased from the IChemE online shop.¹¹ They are available in hard copy and electronically either as view or print PDFs or as Word versions. The view-only PDFs are available on a 12 month licence. Each secure PDF can be accessed on up to 10 different devices over the licence period and can be used with one contract only in the 12 months. The print licence is the same but allows unlimited printing over the same period.

The **Institution of Mechanical Engineers (IMechE)** and the **Institution of Engineering and Technology (IET)** publish several model forms (MF/1 to MF/4) along with three commentaries. These contracts are specifically for use with electrical and mechanical work. They are all still available to purchase although it is only the MF/1 that is currently updated, being on its sixth revision from 2014. The contracts are available in hard copy from the IET Store¹² and the MF/1 is available in two electronic forms: an e-book that is available on a three-month licence for either single or multiple users and a downloadable PDF that can be completed online using a pre-filled selector.

The **Joints Contracts Tribunal (JCT)** forms of contract are the most common standard form construction contract used in the UK. The JCT was established in 1931 and is made up of seven member associations. They produce standard forms of contract, guidance notes and other standard documentation, such as collateral warranties and sub-contracts for use in the building and construction sectors. The current suite was published in 2016 and a new edition is expected in 2024. Contracts from previous versions of the JCT suite are still in use (2011, 2005, 1998, 1980 etc.). The last suite was published in a piecemeal fashion over the course of a year and a half and confirmation is still pending on how the new edition will publish. There are over 70 contracts, associated documents and guidance notes published as part of the suite. Over the editions some contracts have been renamed or in some cases discontinued.



A well organised collection is vital for lawyers who need to retrieve specific contracts quickly

The JCT forms have been published by Sweet & Maxwell since 2005. It produces their contracts in hard copy and electronically. Hard copies can be purchased through the JCT webstore.¹³ If you are lucky enough to have a subscription to the Practical Law Construction or Lexis PSL Construction modules, you can access specimen PDF copies of the JCT. Otherwise, the JCT has two digital options available, and both are based online. The first, JCT On Demand¹⁴ allows contracts to be purchased as required. Users complete the contract following a Q&A process. The second option is a subscription to JCT Construct,¹⁵ which has additional functionality allowing users to edit the contract text itself or add their own amendments or clauses. The contracts can be shared or printed in draft before being completed. There are two subscription options for JCT Construct: Complete or Small Works. Pricing depends on the number of users

and there is also an additional charge payable on completion of each contract, which is based on the current JCT On Demand pricing. One of the main issues with both JCT On Demand and Construct is that they do not allow for collaboration between users. Contracts are locked to a single log-in which cannot be shared as it may corrupt the files and the user would have to start again. For additional licensing agreements you can contact Suzanna Wong (suzanna.wong@thomsonreuters.com) at Sweet & Maxwell.

The **New Engineering Contract (NEC)** is a suite of standard form construction contracts created by the Institution of Civil Engineers (ICE) and published by Thomas Telford. They were first published in 1993, followed by the NEC2 in 1995, NEC3 in 2005 and the most recent fourth edition – NEC4 – was published in June 2017. Amendments are regularly published freely on the

NEC website. The suite has expanded over the editions and now encompasses over 50 contracts and associated guidance notes and flowcharts. The contracts are all constructed in a similar fashion and are made up of the Core Clauses, Main Options (A-F), Dispute Resolution (W), Secondary Clauses (X or Y) and the Z clause (which forms the schedule of amendments).

The NEC can be purchased both in hard copy and electronically through the website.¹⁶ The electronic offerings range from its eView, ePrint, eCorporate licences to its Digital Library. The eView and ePrint licences can be purchased for the whole suite (NEC3 and NEC4) or by individual contracts. These options allow single users the option to download the Core Clauses in secure PDF and have unlimited access to view and search (and print) their contract for a period of 12 months. The Contract Data and Forms are available in Word form and allows users to complete the contract for project work. The eCorporate option can be negotiated to cover multiple users. The Digital Library is an online platform which offers a similar facility to view, search and print for the NEC4 only. The NEC will licence its contracts in Word but only with the client directly and so we have had to settle for being a conduit between the two. On a positive note, the NEC is clearer now about the Word licence offering and will provide pricing detail when asked so we can get the ball rolling.

The **Royal Incorporation of Architects in Scotland (RIAS)** was founded in 1914. It initially produced documentation to work alongside the RIBA Standard form of agreement for the appointment of an architect (SFA) but in 1998 it began to publish the Scottish Conditions of Appointment of an Architect (SCA). It also produces various versions of the SCA including a Sub-consultant; Design and Build Contractor Client; Employer Client and Small Project versions. The current editions were published in 2018 and are available to purchase from the online bookshop.¹⁷

The **Royal Institute of British Architects (RIBA)** publishes a range of forms of appointment and contracts. The forms of appointment have gone through several iterations since they were first published in the 1960s. From early forms known as the Appointment of an Architect and Architect's Appointment, through to the SFA/92 and the overhaul of the forms to produce the RIBA Agreements in 2007. The current suite is known as RIBA Professional Services and the current version was published in 2020. They are suitable for appointing a range of services, across domestic and commercial projects. The RIBA Building Contracts were first published in 2014 and come in two versions: Concise and Domestic. The current second edition was published in 2018. They can be purchased in hardcopy from the RIBA Bookshop¹⁸ and electronically through RIBA Contracts Digital.¹⁹ The Digital version allows the user to complete the forms online.

The **Royal Society of Ulster Architects (RSUA)** produces adaption schedules to allow the JCT contracts

to be used in Northern Ireland. These can be purchased in hard copy by contacting the RSUA bookshop.²⁰ The bookshop also stocks a range of construction contracts including JCT, RIBA and NEC.

The **Scottish Building Contracts Committee (SBCC)** was founded in 1964. It is the Scottish College of the Joint Contracts Committee (JCT) and it amends JCT contracts to produce contracts compliant with Scottish law and practice. The SBCC also publishes additional documentation suitable to Scotland. The first contracts published were supplements to the JCT versions that allowed them to be used in Scotland. This was known as kilting. They were not contracts in their own right and had to be used alongside the relevant JCT contract.

Since the JCT 2005 edition, the SBCC has published fully adapted versions of each contract for the Scottish market. These can be purchased in hard copy from the RIAS Bookshop²¹ and many of the current editions are available through the SBCC Online platform²² although an annual subscription is required before any contracts can be bought. A digital version must be purchased for each project, the cost is the same as the hard copy. The online platform allows users to complete the contract, editing and deleting text as appropriate. Draft versions can be shared as PDFs, and the document printed as many times as required when complete. It should be noted that the versions on SBCC Online are original editions and users should check for any amendments or errata.

KEEPING UP TO DATE

It can be tricky to keep up to date with the publication of construction contracts, either amendments or new editions. There is no one service that provides an overview of all contracts. Resources such as Practical Law and Lexis PSL will add details of any new contracts, editions or amendments to their databases and these are included in their email updates, but they don't cover all publishers. Some publishers produce regular email alerts and these generally alert users to new publications (e.g. JCT,²³ FIDIC,²⁴ RIBA²⁵) but it is worth setting calendar reminders to manually check websites at regular intervals to be sure nothing is missed.

WHERE TO FIND CONTRACTS

There are fewer options now when purchasing contracts. In terms of bricks and mortar, RIBA Books²⁶ is the main choice. It stocks a range of publishers, including RIBA, JCT, NEC, FIDIC, ICC and ACE. It has bookshops in London and Belfast as well as its online store. There is also the RIAS Bookshop²⁷ in Edinburgh, which stocks SBCC contracts as well as JCT, RIAS, RIBA, APS and CIC. Wildy & Sons²⁸ in London stock the JCT. As described above, most publishers now have online shops

which allow you to purchase the contracts directly by credit card.

MAIN CHALLENGES

When it comes to storing the contracts, the challenge can be coming up with a system that works with what you already have but leaves room for growth (and in directions you might not expect!). Generally, the safest solution is to group the contracts first by publisher. It is then better to consider each publisher on its merits. For example, the JCT is better grouped by contract family than by edition. Whereas the NEC are easier to group by edition. Some publishers like to keep you on your toes, changing the names of contracts or publishing new contracts / editions almost at random.

Of vital importance is a unique identifier. Many contracts have near identical names differing only by a date or single revision number and some of the older contracts and amendment sheets have very little information. If each contract has its own code, even down to single sheet amendments or addendum, you can be sure you are directing the users to the specific version of the contract they need. After a major merger of two large

building contract collections in 2016 I can genuinely say we covered the pros and cons of most methods of sub-division and arranging the contracts in the box. In the end we went for a simple method:

- First, we assigned each publisher a code (fairly easy as most publishers already have an acronym) e.g. JCT, NEC
- We then assigned a number to each contract family or edition depending on how we sub-divided e.g. 1, 2, 3
- We then assigned the edition or revisions a letter e.g. a, b, c
- Then each contract was placed in date order and given a number e.g. 1, 2, 3

This method allows us growth. A new contract family? Easy, add a number. New edition? No problem, add a letter. And it doesn't matter how many contracts are in each box, two or fifty, the system works. Aside from the main contracts – JCT, NEC, FIDIC – the rest of the publishers were placed on the shelf in alphabetical order. We made the decision that some of the smaller boxes should run together until the box file was full to save space on the shelf, but if the box is clearly labelled it



The archive of NEC contracts at Pinsent Masons



A selection of construction contracts

doesn't cause an issue. This also works as each of our offices has slightly different collections, so they make their own decisions on what works best for them.

We also made the decision not to record the contracts on our OPAC (Online Public Access Catalogue). We ran in to major issues when it came to searching the OPAC for contracts partly as the names can be so long, but mostly because many contract revisions have incredibly similar names differing only by a single digit in the date. We ended up moving to a Word list where each contract is recorded by publisher / family / edition. The contracts are listed in date order in the box, so it is easy to see where you need the original contract and an amendment sheet or what the latest revision is. The list is easy to search, and we also have hard copies of the list in the libraries as required.

Unlike book titles, older versions of construction contracts retain their value. It is worth keeping at least one copy of all previous editions, amendment sheets and errata. Immediate past editions can still be popular for use in project work as the new versions take time to bed in. Additionally, lawyers often refer to historical versions as disputes can arise years after the contract is complete. However, retaining all these contracts is not without its issues, a large amount of shelf space is required, they are often required quickly, and copyright is an issue. We are currently considering moving some of our collection offsite due to reductions in library space, but it has been difficult to decide on which contracts / editions we move and how best to store them so they can be retrieved quickly when required. If you don't have the old edition you need, it is worth contacting the publisher directly as they may be able to supply a copy in some format even if it is no longer available to purchase.

Copyright is an ongoing issue when it comes to construction contracts, as most contracts are covered by the CLA licence which limits how much of the conditions / clauses you can scan. Explaining to a lawyer that you can only copy 5% of the contract (potentially only a few clauses) when they need it urgently can be difficult. And often, when the request comes through, they ask for it to be scanned to them. This leads us nicely to the many licensing issues we face when trying to provide the access lawyers need.

Even where publishers make electronic copies available for completion, they fail to take in to account the need for reference copies. And when they do make the contract available in a PDF suitable for networking it often has security attached. Additional software may be required, there can be limits on how many users can access the document and the document itself will expire at the end of the licence period requiring every document in the suite to be replaced annually, which is time-consuming for us and causes disruption to the lawyers.

The diversity of the electronic options available from publisher to publisher makes it difficult to convey the licence requirements to the lawyers and to ensure compliance. We have overcome some of these issues by using clear and consistent messaging across each publisher using our intranet pages to illustrate this.

We have also built a bank of FAQs for each publisher answering the usual queries that come through on what we can share with clients or the availability of Word versions.

What publishers are willing to offer and how lawyers would like to use the contracts can be very different and as information services professionals we are stuck in the middle. The balance between the publisher's intellectual



It's important to make licensing information easy to access so that compliance is observed

property and its content being used in practice is a delicate one. The fear of their contracts being out there in the ether is real, but we live in a digital world and the move toward electronic marches on. We have seen changes although not necessarily improvements. For example, the JCT On Demand / Construct platforms link contracts to individual logins which doesn't allow for the collaboration required for lawyers to complete contracts. It's great when you can purchase the contract in PDF but when it is for references purposes, and it already costs several times the hard copy *and* the access is limited to one user on one machine for one year it isn't always practical. The need for software to unlock the PDFs can be onerous and frustrating for users when admin rights are limited to IT teams. Added to this, when you pay per annum you can't always budget for the ongoing costs of online access to previous editions e.g. the NEC3 and

NEC4. The reality is that often one hard copy can do an awful lot more than the online. It can be shared by many people and retained for archive purposes when it is replaced.

Over the years we have built good relationships with the product managers at the relevant bodies in relation to the digital products we subscribe to. This is invaluable as it allows us to ask the difficult questions about what we can and cannot do – which is always helpful when it comes to those tricky requests. It also allows us to provide feedback on the products and hopefully have some input on the direction of any future digital options.

Construction contracts have always been a part of our roles that we never much enjoy, but hopefully this article has helped shine a light on some of the more common issues we face.

Endnotes

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Biography

Debra O'Malley is a Senior Information Services Officer at Pinsent Masons. She is responsible for the procurement of both online and hardcopy resources. Debra has worked in the legal information profession since 2005 and has managed the construction contract collections at both McGrigors and Pinsent Masons during this time.