



CCS Viewpoint - Build UK Contract Terms Recommendation

Build UK has recommended that, as a minimum, its members do not use a number of contract terms (see below). The Confederation of Construction Specialists welcomes this small step towards contractual fairness. However, as this is a non-binding recommendation and that members of Build UK must consider on an individual basis whether they wish to accept or reject all or some of the terms in their own contracts, and taking into account that Build UK and its members will not enforce the implementation of this recommendation in any way, we are sceptical that these recommendations will be endorsed by Build UK Tier 1 contractor members but are hopeful that they will be.

After many years of highlighting and being appalled by Tier 1 contractual unfairness towards its specialist contractor supply chain, the confederation is pleased to note that contractual unfairness and unscrupulous payment practices is receiving greater recognition.

Contract Terms:

Fitness for Purpose

Do not include a 'fitness for purpose' standard of care for design (except in the process sector)

Unquantifiable Risks

Do not include extension of time/loss and expense risk where not ascertainable for dealing with:

- asbestos
- fossils, antiquities and other objects of interest or value
- unexploded ordnances
- the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the works, or the failure to carry out such work

'Specified Perils'

Do not include that 'Specified Perils' (as defined in JCT) will not give rise to extension of time where caused by the (sub)-contractor

Breach of Contract

Do not include a blanket indemnity for breach of contract

Uncapped Liabilities

Do not include uncapped (sub)-contractor liability (save for certain aggregate cap carve-outs such as fraud, misrepresentation, personal injury/death, wilful default)

Performance Securities

Where the following forms of performance security are required:

- Do not use a pure on-demand performance bond
- Do not use a Parent Company Guarantee (PCG) which does not include a 'no greater liability' clause (save for legal costs) and equivalent rights of defence
- Do not use a collateral warranty which does not include a 'no greater liability' clause

Since 1983 the confederation has been campaigning; providing legal and contractual advice; and developing and delivering professional contractual training to empower its members and the wider construction community to optimise contractual arrangements when dealing with main contractors and clients.

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