



Myerson Construction

Our guide to the
JCT Building Contracts

0161 941 4000
myerson.co.uk
lawyers@myerson.co.uk



Welcome

At Myerson we understand the complex nature of construction contracts and the need to comply with strict legislation. So, it's a deep source of satisfaction when those within the construction industry choose Myerson as their trusted advisers. From developers to consultants, sub-contractors to purchasers, our construction team works **for you and with you** to achieve your business goals.

Why Myerson?

At Myerson, we have the experience and expertise to provide dynamic contentious and non-contentious advice to those working across the construction industry.

We put our clients and their business at the heart of everything we do, establishing long term relationships acting as trusted advisers.

We are proud to be ranked as 'Top Tier' in the prestigious international directory [The Legal 500](#), and commended by The Times 'Best Law Firms 2019'. Therefore, you can be reassured you will receive a high quality and truly bespoke service.



How We Work.

Every client is different, and we are here to support you every step of the way.

Personal, Partner-led Service. Our experienced solicitors get to know you and your business inside out. We strive to become your trusted advisers, providing added value and most of all, a genuine, personal service.

The Highest Level of Expertise. Combining commerciality, practicality and legal expertise enables us to deliver every time. With more than twenty years of experience, we specialise in advising and acting on procurement strategy, contracts and disputes for building, construction and engineering projects.

A Team You Can Trust. You're in safe hands. We help clients nationwide with high-value and complex construction matters and disputes on a daily basis. You can rest assured that our expert team knows its stuff!



Your Solicitors



Neil Armstrong

Partner
Head of Construction

0161 941 4000
neil.armstrong@myerson.co.uk



Jack Duncanson

Solicitor

0161 941 4000
jack.duncanson@myerson.co.uk



Vicky Biggs

Senior Associate

0161 941 4000
vicky.biggs@myerson.co.uk

The solicitors that will be working with you are specialists.

We know within construction, decisions made early on can have significant implications during a project or development. Therefore, we ensure you have a strong team of specialist solicitors with a breadth of experience to support you. Providing practical advice and working closely with you, so you can concentrate on what's important, running your business.

You can find out more about our Construction Team by clicking [here](#).

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JCT Building Contracts

The Joint Contracts Tribunal (JCT) Guides, provide introduction to a range of JCT main contracts, sub-contracts and agreements. JCT Contracts can be complex but we have set out some basic information you need to know.

What is a JCT contract?

The mission statement of the JCT is;

“to develop, publish, procure the publication, revise and disseminate in both paper and electronic form suites of standard forms of contract and tender documentation and practice notes.”

Put simply, the JCT contracts are a set of off-the-shelf standard building contracts anyone can purchase and use to document their construction projects.

The forms help facilitate the responsibilities and obligations of all parties within the construction process, so it is transparent, who is doing the work, what work needs to be done, when they are doing it by and of course the cost.

What forms do JCT contracts take?

The JCT contracts cater for projects ranging from domestic extensions to the largest skyscrapers. The forms most used are the Minor Works Contract and the Design and Build Contract.

What is a JCT Minor Works Contract?

The JCT Minor Works Contract is drafted to suit simpler projects. One version of the JCT Minor Works Contract contains provisions allowing for the contractor to design part of the works, and the other version places all design responsibility with the developer. The JCT Minor Works Contract is typically used for projects like retail fit outs or extensions to commercial property, but there is no hard and fast rule limiting its use to a particular size or value of construction project.

What is a JCT Design and Build Contract?

The JCT Design and Build Contract is drafted so that the contractor is responsible for completing the design of works as well as carrying them out. The JCT Design and Build Contract is a lump sum contract (i.e. the total cost of constructing the works, set out in the contract) where the contractor is paid periodically. This form of contract is popular with large developers as there is a single party with design responsibility (the contractor). If the design of the works is defective, the developer only need pursue the contractor to recover all their losses related to the defective design.

Moving from the 2011 JCT forms to the 2016 JCT forms

It has been common for updated JCT forms to take a little time to filter through into everyday use.

The traditional trigger for widespread uptake is the removal from publication of the old forms. Publication of the 2011 forms ceased at the end of 2018 and so for those involved in the construction industry who have been clinging on to those 2011 forms, it is time to move on to the 2016 forms.

The next section of this guide sets out an overview of the key changes between the 2011 and 2016 forms.

For a more detailed insight into 2016 JCT Contracts, [please see our blog on this subject by clicking here.](#)



An overview of the key changes in the 2016 JCT contracts.

The main drivers for creating the 2016 forms were to:

1. Simplify payment processes;
2. Incorporate the certain elements relevant to public sector procurement; and
3. Include reference to the Construction Design Management 2015 Regulations.

The 2016 updates are reforms to the 2011 JCT forms rather than large scale re-drafts, so whilst they do not include changes to the overall allocation of risks and obligations, there are several key changes to be aware of.

Payment provisions

Arguably, the most significant changes have been made to the payment terms. The intention behind these changes are;

- to implement the government's fair payment charter, to simplify the drafting
- to speed up the payment process throughout the contractual chain, so that all levels of the chain are paid within the same 30-day period.

To reflect the fair payment principles, changes have been made to the interim payment due dates. Including, the introduction of a common interim valuation date that applies throughout the contract chain, with the intent that all valuations are assessed and processed against the same period. Also, the payment period is now co-ordinated in the main contract and sub-contracts, so that there is sufficient time to process the applications and payments downstream to sub and sub-sub-contractors.

The payment provisions in all commercial construction contracts are subject to the Housing Grants, Construction and Regeneration Act 1996 (the Construction Act). Where the payment terms in a construction contract do not comply with the Construction Act, the contractual payment terms are effectively replaced by the legislative payment regime. The JCT 2016 forms have consolidated the payment notice requirements of the Act, with the intention of providing certainty with regards to payment and to help avoid falling foul of the Construction Act.

For more information regarding the payment provisions [click here](#).

CDM Regulations

The 2016 JCT forms have been updated to reflect the Construction (Design and Management) Regulations 2015, which replaced the Construction (Design and Management) Regulations 2007. The key change resulting from the updated legislation, is the replacement of the role of CDM co-ordinator with that of the principal designer.

Performance bonds and parent company guarantees

The 2016 JCT forms include provisions allowing for the contractor to provide a performance bond and /or a parent company guarantee if the developer requires, although there are no forms provided and no sanctions for a failure to comply.

Collateral warranties and third-party rights

The 2011 JCT forms dealt with collateral warranties and/or third-party rights from the contractor to beneficiaries, but only collateral warranties from sub-contractors to beneficiaries. The 2016 JCT forms include provisions requiring sub-contractors to provide third-party rights to beneficiaries, although there is little evidence that this provision has been widely used to date.

Insurance

There are widespread amendments to the insurance provisions, but they are generally not substantive.

The most important changes relate to Option C (one of the insurance options) in the JCT contracts. Option C is used in the case of alterations of, or extensions to existing structures and this provides for the developer of a project to insure both the works and existing structures to the works do not apply. However, the 2016 JCT forms have been amended to allow alternative solutions for existing structures to be adopted.

For example, where a tenant renting part of a building wants to undertake works to the part they rent, the risk of damage to other parts of the building must be insured against, during the tenant's works. A tenant is unlikely to be able to afford insurance cover for the rest of the building during their works. The drafting of the JCT 2016 forms allow the contractor to rely on its annual cover for any liability arising out of damage to existing structures during their works (obviously this subject to agreement of the contractor's insurer). This change acknowledges that many developers are in fact tenants and therefore not responsible for insuring entire buildings.

Don't just take our word for it...

"I trust the knowledge and abilities of Myerson to take care of my issues. The team are easy to work with and prompt in their responses, which is important in today's fast-paced society."

"Their communication is excellent, and I would have no hesitation in recommending Myerson in the future."

"We have used Myerson for over 20 years for all our property requirements. We have always found them to be commercial in their approach and able to offer a first rate service. I would highly recommend them."

"The growing team at Myerson handles the full range of property work, the partners are easy to get in touch with and the other members of the legal team are quick to respond."

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You're in safe hands!

If you would like further information about JCT Contracts and how we can help you, or if you have any questions, please don't hesitate to contact a member of our Construction Team today.

Call: 0161 941 4000

Click: myerson.co.uk

Email: lawyers@myerson.co.uk



Because
life is rarely
black and
white.



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Myerson Solicitors LLP

Grosvenor House, 20 Barrington Road, Altrincham WA14 1HB
Tel: 0161 941 4000 | Fax: 0161 941 4411 | DX19865 Altrincham
lawyers@myerson.co.uk | www.myerson.co.uk | [@myersonllp](https://twitter.com/myersonllp)