

Checklist when Contracting for Construction Work



Agree on key terms

When engaging or being engaged for construction work, it is typically advisable to ensure that you and your contractor, designer or supplier, or client or customer, agree on certain key terms, and record the agreement in writing. Doing so should help minimise the risk and the scope of disputes.

10 key terms for you to consider

1 Identity of the contracting parties



- This is typically a necessary term for the formation of a binding and commercially workable contract.
- If you are contracting with a Singapore-incorporated or registered corporate entity, you may wish to check the website of the Accounting and Corporate Regulatory Authority (ACRA) to ensure the entity is 'live', and that the entity's name, unique entity number (UEN) and address are accurately stated in the contract.

2 Scope and description of work

- It is recommended that parties stipulate the scope and description of work in their construction contracts.
- Effectively, terms relating to price and date for completion (see points 3 and 4 below) can only be properly understood in relation to the works to be performed.



3 Price

- It is recommended that parties stipulate the relevant price(s) in their construction contracts.
- You should generally avoid leaving the price 'to be agreed'.



4 Date for completion



- It is typically prudent for you to specify a date for completion of the works under the contract.
- If specifying a time period, it is a good idea to clearly specify the date or event from which the time period is to start running (for example, "six months from the date of the contract").
- However, if no date or time for completion is specified, a court or tribunal may imply a requirement to perform the contract, works, etc, within a reasonable time.
- As the client or customer, you may also carefully consider agreeing a term which provides for compensation to you in case of late completion. It is not uncommon for construction contracts to contain a liquidated damages clause, that is, a provision that specifies a fixed amount per day payable as compensation by the party in delay in completing the works.

5 Due date and method for payment

- It is typically prudent to specify the due date(s) for payment. This could be pegged to certain milestones or stages of completion that are met.
- As the contractor, designer or supplier, you may also carefully consider agreeing a term which provides for compensation, payment of interest, etc, in case of late payment.
- Many construction contracts contain a provision entitling the client to retain a percentage of any payments due to the contractor. This is known as the retention sum and is used by the client to remedy any defects that the contractor may fail to address after the works are completed.



6

Mechanism for changes



Variations to the work

- Most modern construction contracts contain a process by which work may be varied, that is, added or omitted.
- For example, a contract may say that the process may be triggered by a formal instruction by the client, customer, or his or her representative, and contain a mechanism by which the contract price would then be adjusted.
- The process may also be triggered by the contractor, designer or supplier informing the client or customer or his or her representative about additional work, and the latter agreeing that the additional work should be performed.
- There is nothing to stop parties from entering into a separate contract for any additional work.

Extensions of time

- Most modern construction contracts contain a process for the extension of the time for completing the work.
- The process is typically activated by the contractor giving a notice that more time is needed, followed by the client or customer determining whether the cause(s) of delay fall within a list of events set out in the contract and, if so, whether the event did cause delay.

7

Governing law and dispute resolution mechanism

- Clauses specifying the governing law of the contract and the mode and place for the resolution of disputes are usual in construction contracts, though not typically essential for the formation of a contract.
- It is generally prudent to specify the governing law of the contract. This must be the law of a country, for example, "Singapore law". The law of the country stated will then apply when the contract needs to be interpreted.
- It is also generally prudent to specify litigation or arbitration as the chosen mode for final resolution of disputes.
- Litigation simply means that any disputes will be resolved in national courts. Arbitration is a private mode of dispute resolution where the dispute is resolved by one or more arbitrators, who are individuals appointed by agreement of the parties or by an appointing body.
- Parties should also be aware of a process known as 'statutory adjudication', which serves to facilitate payments for construction work done, or for related goods or services supplied. (A copy of the Building and Construction Industry Security of Payment Act (Chapter 30B) can be accessed at <https://sso.agc.gov.sg/Act/BCISPA2004>.) In addition, parties may wish to consider mediation, which can result disputes being resolved more efficiently.
- For links to the websites of the Singapore courts and various arbitration and mediation centres, see the 'Helpful References' section at the end of this brochure.

8 'Entire agreement' clauses

- An 'entire agreement' clause is typically intended to prevent either party from claiming that anything during negotiations for the contract has contractual effect.
- A typical entire agreement clause states that particular document(s) set forth the entire agreement and understanding between the parties in connection with the matters dealt with and described in those document(s). The contract may further specify that any modification of the contract must be in writing.
- An entire agreement clause is typically not essential for the formation of a contract, but helps to make the contract more certain by limiting the parties' rights and obligations to what is stated in the documents referred to.



9 'Hierarchy of precedence' clauses

- While typically not essential for the formation of a contract, a well-drafted contract normally specifies a hierarchy of contractual document(s) or clause(s), stating which document(s) or clause(s) prevail over others in the event of inconsistency between them. This is particularly relevant where the agreement is not recorded in a single document.
- In the absence of an express hierarchy, generally speaking, more specific documents prevail over standard-form documents, and express terms can override terms incorporated by reference to another document (see point 10).

10 Incorporation clauses



- In construction contracts, it is not uncommon for parties to include clauses incorporating the terms of other contracts. Such clauses are generally valid and have the effect of binding a party to terms it may not have had sight of.
- Accordingly, it is important that a party inspects the incorporated terms contained in other documents.

Helpful References

1. Building and Construction Authority | <https://www.bca.gov.sg> | 1800-3425222 (1800-DIAL BCA), +65.6534.0219
2. Urban Redevelopment Authority | <https://www.ur.gov.sg> | +65.6221.6666
3. Real Estate Developers' Association of Singapore | <http://www.redas.com> | +65.6336.6655
4. The Law Society of Singapore | <https://www.lawsociety.org.sg> | +65.6538.2500 | represent@lawsoc.org.sg
5. Law Society Arbitration Scheme | <https://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Arbitration-Scheme>
6. Law Society Mediation Scheme | <https://www.lawsociety.org.sg/For-Public/Dispute-Resolution-Schemes/Mediation-Scheme>
7. Singapore International Arbitration Centre | <http://www.siac.org.sg> | +65.6713.9777
8. Singapore International Mediation Centre | <http://simc.com.sg> | +65.6635.2460
9. Singapore Mediation Centre | <http://www.mediation.com.sg> | +65.6332.4366
10. State Courts of Singapore | <https://www.statecourts.gov.sg>
11. Supreme Court of Singapore | <https://www.supremecourt.gov.sg>

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