

THE JCT CONTRACTS UPDATE FOR THE CONSTRUCTION PROFESSIONAL

MUSEUM OF THE HOME

The Museum of the Home (MotH) in Hoxton, London, is open after three years of redevelopment. The project included the renovation of a 300 year old almshouse and the creation of newly built elements to reimagine the visitor experience. The transformation was designed by Wright & Wright Architects and used a JCT Standard Building Contract.

The original building that houses the MotH started life in the 18th Century as an almshouse. Its career as a museum began in 1914 when the almshouse was converted to the Museum of Furniture, linking it to the industry in the East End. Various expansions and additions have occurred over the years, including a 1988 project by Branson Coates. The museum had been looking to upgrade for some time, but a proposal by David Chipperfield failed to pass planning due to the requirement to demolish an existing pub building on the site's edge. A new competition in 2014 resulted in the appointment of Wright & Wright Architects.

The objectives of the redevelopment were to expand the gallery space, provide new facilities, increase public space, and make the flow through the museum more organic and visitor driven. This has been achieved by stabilising and renovating the existing buildings, including the almshouse and pub, creating two new pavilions, and re-orienting the building to make sense of its location and the natural flow of visitors to and around the space. The result is an 80% increase in gallery space and a 50% increase in public space.

A major stipulation was that the expansion could not encroach on the museum's existing gardens,



Museum of the Home

themselves a much-loved feature and one of the museum's most prized assets. At one time it represented 14% of all open space across Shoreditch. The project team took the approach of maximizing the connection between the internal and external spaces and the way that visitors could move between and interact with them.

Much of the space increase has been achieved through the renovation and rediscovery of the building's existing structure. Previous modifications to the almshouse's east wing had caused weaknesses through openings made to the front wall. The decision was made to switch the circulation route to the other side of the building to

alleviate pressure, and further stabilise the building by adding a full first floor, replacing the existing lightweight mezzanines. Trial pits revealed that the foundations were deep enough to dig down by a further metre across the lower ground floor. This excavation unlocked a whole floor plate to be used as additional gallery space. These stabilising measures generated usable space across all three floors of the 100m long building.

The temptation to create the classic 'white box' gallery was avoided, instead the inherent domesticity of the building was celebrated to link into the museum's subject matter. Across the

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Back to the Future: JCT's 90-Year History Provides Platform for Next Generation of **Digital Contracts**

Debating Digital Richard Saxon CBE – Past Chair, JCT JCT Training Online -2021 dates

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JCT Home Owner Contracts 2021 Edition Launched

Increasing Costs and Fluctuations Provisions Peter Hibberd

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lower-ground floor, which contains the new 'Home' galleries, architectural features of the building have been highlighted, and any elements that needed to be removed had their outlines traced with a brass line on the floor. Bricked up windows have been opened up to reconnect with the gardens, but the light was mapped by service engineers so that blinds can be closed at times when sunlight would cause damage to the collection.

The ground floor of the almshouse is the area where most of the original interior features have been preserved, including the original wall panelling and timber floor. Wright & Wright consulted with Historic England and conservationists, the Georgian Group, in working on preserving and treating these features. The fully added and stabilised first floor provides the collection's storage facilities which are up to modern standards, as well as new, light-finished, double-height library in the roof. Elsewhere, the almshouse chapel and undercroft provide their own distinct exhibiting opportunities. The undercroft's brick arches, for instance, have been left exposed which contrasts with the colourful lime-plastered walls of the 'Home' gallery. Further connecting visitors to the outside space, new benches allow views out into garden and the ability to listen to a specifically created sound exhibition.

The existing ground-floor rooms contain the renamed 'Rooms Through Time' and display reconstructed living areas of typical middleclass homes dating from the 1630s to the 1990s. The lower-ground floor 'Home' galleries have displays ranging from tastes and changing family structures, to the role of women in the home, to displays developed with charity groups that reflect migration stories and experiences of those suffering from, or at risk of, homelessness. The curatorial approach is intended to reflect the design of the project - which mixes the old and new and broadens the museum's appeal by addressing contemporary issues. The aim of the layout is that by the time visitors have moved through the Home gallery, they are able to reflect on the Rooms Through Time with a more nuanced understanding of the home and its meaning within society. However, the route is not prescriptive and the reconfigured circulation of the building, designed around a new reception space with flexible entry and exit points, enables visitors to create their own experience.

Another impact of the new circulation route is that the main public entrance is now at the rear of the building. This provides a more direct route from Hoxton station across the street. The aim, besides being a more direct, natural route for the public, was to erode the barrier between museum and public land. The new Hoxton station visitor entrance encourages pedestrians to enter through a series of sculptural ramps and steps framed by plants. The extended entrance creates areas for people to meet and sit. The adjacent existing pub building has been converted to the museum's café.

With its own entrance, it provides another distinct public space and has its own additional entry into the museum.

The rear entry elevation presents a view to the visitor of the museum's history and the modifications to the building that have happened over the years. Into this fabric are woven the project's two new-build elements - the Pavilions - which whilst being contemporary in design, continue the existing materials palette of dark brick, timber, and metalwork. The position of the pavilions is designed to minimise impact on the green space. The Learning Pavilion is constructed against an existing wall to tie it into the site whilst preserving an existing herb garden. The Studio Pavilion is located where the gardener's compound was. The Pavilions are a low-impact way of expanding the museum's functional spaces and help to expand its programme of education and other activities. The Learning Pavilion contains light-filled rooms that can cater for two school groups, whilst the multi-function Studio Pavilion with a capacity of 80, can host lectures, debates, performances, and a social event called the Sunday Roast.

The gardens – already such an important asset, are considered a vital part of the museum's visitor experience. The 'Gardens Through Time' explores the history of English residential garden design. Changes have been made to improve the connections between the museum buildings, so that the gardens are accessible from all internal spaces, as well as directly from the street entrance. Landscaping elements include widened brick paths, seating, and vibrant planters set along the rear wall of the almshouse. Further expanding the green space is the addition of a green roof to the Studio Pavilion. Designed to be resilient and low maintenance, the green roof features an assortment of Mediterranean plant species commonly found in dry gardens. The plant choices encourage wildlife and provide a nectar source for pollinators. The roof attenuates rainwater running into the public system through its bucket-like drainage layer, purifies air, and improves thermal mass of the building, helping to passively regulate internal temperature and reduce energy footprint.

The use of the JCT Standard Building Contract perfectly ties into the project's ethos of combining old and new. The traditional form of contract enables users to capture a complex set of requirements, backed by a tried-and-trusted set of provisions. Where a number of specialist requirements and a mix of building techniques are needed to both renovate existing structures and complete new building elements, the JCT Standard Building Contract equips the parties with the contractual tools to successfully complete a timeless and sensitively thought-out project.

PROJECT DATA

START: COMPLETION:

PROJECT TEAM

CLIENT: **STRUCTURAL ENGINEER &** HERITAGE CONSULTANT:ALAN BAXTER LTD

JULY 2018 ..APRIL 2021

.....MUSEUM OF THE HOME

SERVICES, LIGHTING & ACOUSTIC ENGINEER: .. **QUANTITY SURVEYOR &** PROJECT MANAGER:

MAIN CONTRACTOR: . PRINCIPAL DESIGNER ADVISOR:THE STROMA GROUP LTD EXHIBITION DESIGNER:ZMMA LTD EXHIBITION CONTRACTOR:ELMWOOD PROJECTS WAYFINDING CONSULTANT:DN&CO FURNITURE PROCUREMENT:COLLABORATE FURNITURE

.....MAX FORDHAM LLP

..GARDINER & THEOBALD LLP FIRE ENGINEER:MENZIES PARTNERS LTD LANDSCAPE ARCHITECT:DOMINIC COLE LANDSCAPE ARCHITECTS LTDQUINN LONDON LTD



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BACK TO THE FUTURE: JCT'S 90-YEAR HISTORY PROVIDES PLATFORM FOR NEXT GENERATION OF DIGITAL CONTRACTS

2021 marks the 90th year since the formation of JCT. 1931 was in many respects a ground-breaking year for the construction industry. Whilst mention of the use of standard forms of construction contract goes back to the 19th Century, the creation of JCT formally recognised the need within the building industry for a standard process of entering into a contract that minimised the outlay of costly bespoke provisions, fairly apportioned risk, and included benchmark sets of provisions that reflected precedent. Such was this cultural shift that ninety years on, and despite the myriad additions of procurement methods, other forms of contract, and providers, a standard form of contract remains the way in which almost all building projects are procured. JCT was there at the start and continues to adapt, add, refine, and develop to set the standard for construction contracts, focusing on providing modern contract products and services for a modern construction industry.

Concepts that are well known nowadays within the industry, such as 'collaboration', 'best practice', 'modernisation', can be traced through JCT's history. It was recognised that for a form of contract to accurately reflect the requirements of the industry, the input of all sectors of the industry that contributed to the contract process was crucial. In perhaps one of the earliest examples of a specifically ratified collaborative project, JCT's organisation, which includes clients, contractors, specialists, consultants, and sub-contractors, works together to ensure that the changing needs of the industry are met with each edition of the JCT contract suite. This collaborative effort is vital to JCT's identity and function, and makes it unique within the industry as a contract authoring body.

Throughout its ninety years, JCT has retained its status as the UK's leading provider of contract documentation, by continually modernising, developing, and reflecting changing industry practices. The current edition (JCT 2016) includes some 90 documents, encompassing standard forms of main and sub-contract for each of the key procurement methods used by the industry, as well as guidance documents, homeowner contracts, partnering documentation, collateral warranties, and agreements. Alongside the contracts, JCT plays an important role to provide information, education, and training resources in respect of the contract process, improving the use and understanding of contracts at all levels of the industry.

Today, one of JCT's primary objectives is assisting the industry with its transition to digital working, and ensuring that a flexible range of options is available for construction professionals working with contracts. Currently, the entire suite of the JCT 2016 Edition is available via the *JCT* On Demand digital service. *JCT* On Demand has revolutionised

the digital approach to construction contracts, providing ease of access and use, security, transparency, and convenience. It is designed for users who want instant access to their JCT contract, to be guided through each section to make sure it is completed comprehensively, but are not looking to make bespoke changes or amendments to the contract text. The system also enables the saving and printing of drafts, the printing out of a professional plain copy for signing, and the ability to generate a comparison document, clearly identifying the user's input text against the published JCT text, always ensuring full transparency between the parties to the contract. The JCT Online Store – the gateway to JCT's digital services, enables customers to purchase *JCT* On Demand contracts just as easily as ordering the traditional, hard-copy document.

JCT's other digital service, JCT Construct, is a powerful, feature-rich digital contract subscription service that combines one of the most comprehensive and complex sets of legal documents with the ability to make bespoke changes and amendments. JCT Construct's tools enable the editing of the JCT contract text itself, with the ability for users to add their own clauses, or other customised text. Guest sharing functionality supports collaborative working amongst those involved in the contract drafting to share and edit drafts. Version-to-version comparison allows any changes between draft versions and against the published JCT text to be seen. Utilising the same intuitive system as JCT On Demand, JCT Construct offers the same ease of use, security, transparency between parties, and ability for printing final clean copies for signature. JCT Construct is the ultimate digital tool for experienced contract users who have their own specific schedules of amendments and bespoke changes. It enables parties to the contract to be able to rely on JCT expertise and be able to work flexibly and collaboratively to define their project.

The impact of Brexit and the Covid-19 pandemic presents one of the most challenging times for the construction industry in JCT's 90-year history. However, JCT is committed to continuing its legacy of excellence and supporting the industry with reliable contract products backed by all those years of expertise. At the same time, we continue to support a modern industry through our collaborative approach – listening to the industry and making sure that our products and services play a key role in delivering the future of the built environment.

More information about JCT's digital services is available at www.jctltd.co.uk/jct-digital.



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DEBATING DIGITAL

RICHARD SAXON CBE - PAST CHAIR, JCT

Debates are as much a form of entertainment as a way of reaching decisions. But they can still reveal true opinion usefully if the protagonists are so minded. At my school, we were allocated the 'for' and 'against' roles randomly, to sharpen our wits. As debates progress, positions can become more nuanced.

An example of this was the online debate held recently by Infrastructure Intelligence magazine on the proposition: "That digital transformation is dependent on new forms of contract." In the Yes corner were Richard Robinson, CEO of Atkins and sponsor of the event, supported by Dev Amratia, CEO of nPlan. In the No corner were Keith Waller, programme director of the Construction Innovation Hub and Martin Perks, commercial programme director of Highways England. A large audience of people interested in the subject of contracts were online and asked many questions.

In the chair was Lisa Kelvey, partner for major projects delivery at KPMG. Lisa set the scene by pointing to how slow the construction industry was to adopt digital processes. One excuse made to KPMG in a recent survey was that contracts stood in the way. But was this true?

Richard Robinson started with three points: Firstly, we have a history of flat productivity and poor digital uptake; surely these are interconnected as manufacturing shows the opposite pattern. Secondly, we must change to a value-capturing way of contracting or there will be no reward for productivity. That means new business models, presumably digitally enabled. Thirdly, digital technologies shift the boundaries of responsibility, making traditional contractual ideas of intellectual property a barrier to investment.

Dev Amratia pointed to all the historic reports about construction which call for collaboration, yet we still hold back. Transfer of risk has been impossible to measure until digital tools like nPlan emerged. New contracts are needed to exploit this measurability fairly. Keith Waller compared contracts to cars: When crashes occur, blame the driver, he said, not the car which is only to blame 1% of the time. It is lack of skill and poor behaviours that inhibit digital uptake, not the contract. We need to focus on training. Martin Perks pointed to the confused handling of digital and paper systems typical of contract practice. The procollaboration NEC contract came out of the Latham Review but is often crippled by amendments designed to defeat collaboration. Poor behaviour is the core issue. These are all human choices, not the fault of the contract. Another form of contract would only complicate the scene further.

The debate then swung over to questions from the chair and audience. Can we really change behaviour without a new form of contract? Keith Waller pointed to the policy context in the Construction Playbook with its emphasis on value-creating behaviour. New contracts could help performance, but it is not dependent on them. Richard Robinson asked Keith what he drove, surely a modern car. Yes, said Keith but a Model T would get me there. It is all driver skill. No, said Dev, the behaviour is driven by the flawed contract. Arcadis shows that 75% of disputes stem from behaviours, said Keith. We need to build human capability.

As the debate progressed it became clear that those in the No corner would welcome new, digital-friendly forms of contract. Using the car analogy again, the arrival of self-driving cars would be welcome. They put the emphasis for success on the human factors however, aided by aligning interests and improving procurement. Value capture by the supply side would be transformative.

The closing vote by the audience went to the Yes side, by 58 to 35, with 6 undecideds. As Keith Waller is to be the JCT Povey Lecturer for 2021, it will be interesting to hear his views on cars and contracts in a less artificial context. Over to you, JCT.





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JCT is adding to its expanding range of JCT Training services with a new range of video modules, accessible via the JCT website. The current range of JCT Training includes face-to-face training day sessions, and our popular range of 3-hour, interactive webinar sessions. The Training Video Modules will provide an alternative service, for those looking for smaller, easier to access chunks – ideal for brushing up on a certain area of a contract over a lunch break.

About JCT Training Video Modules

Ideal for those not looking to embark on a full day face-to-face, or shorter webinar course. Short, modular videos can be viewed at the user's convenience or purchased together to form a larger, more complete picture.

The modules give an introductory overview to JCT contracts in an easy to access format – perfect for brushing up on a particular contract area or gaining an overview of a specific JCT contract.

The videos feature the same JCT expert trainers as the full day and webinar courses, but do not contain the same level of detail as the face-to-face or webinar courses.

JCT's new Training Video Modules are coming soon! Make sure you are signed up to the JCT Network, <u>www.jctltd.co.uk/network-signup</u>, to be first to hear about their availability.

JCT Training Online dates available to book:

October 2021

Tuesday, 19 October 2021: JCT Design and Build Contract 2016, John Littler, member, JCT Council

November 2021

Wednesday, 17 November 2021: JCT Intermediate Building Contract 2016, Peter Barnes, past-member, JCT Council

Wednesday, 24 November 2021: JCT Minor Works Building Contract 2016, John Littler, member, JCT Council

Book your place here, www.jctltd.co.uk/jct-training

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CLIMATE CONTRACTING FOR THE CONSTRUCTION INDUSTRY

BECKY ANNISON - DIRECTOR OF ENGAGEMENT, THE CHANCERY LANE PROJECT

The opportunity: It is estimated that the built environment contributes 39% of global greenhouse gas emissions, with the operation (energy consumption) of buildings responsible for 28% and the embodied carbon associated with the materials and construction process throughout the whole building life cycle accounting for 11%. The construction industry is also notorious for its tight profit margins and onerous risk allocations, with precious little room to manoeuvre. However, it is an industry with great potential and opportunity to innovate to meaningfully contribute to the global response to the climate crisis, in fact, it is a very necessary part of our transition to net zero emissions. Regulation would be the best way to achieve it by levelling the playing field, however regulation is slow and the window of opportunity on climate is running out. The next best thing is using contractual frameworks and the existing body of law on contractual enforcement to bring in tangible solutions. Tangible solutions need to be practical though, which brings us right back to the initial problem - what can a high risk, low margin industry do?

The Net Zero Toolkit: The Chancery Lane Project has just published a Net Zero Toolkit. This is a curated collection of peer reviewed and free to use contract clauses and tools to assist corporations in understanding net zero and decarbonising their projects and operations across the value chain. The Project's construction and infrastructure model clauses and tools can be used to help construction companies meet their climate goals. A number of the clauses are amendments to the standard JCT Design and Build fitting seamlessly into existing ways of working.

Why Net Zero? Because that is the science-based goal agreed by 196 countries in the Paris Agreement to ensure that greenhouse gases produced would not be greater than the greenhouse gases removed from the atmosphere by 2050. A target (which if achieved) would limit global warming to 1.5 degrees and prevent the most catastrophic impacts of climate change.

Setting a net zero target is easy, but preparing and executing a plan to achieve that target is complex. Contracts provide a familiar mechanism to achieve those plans because they are such well trodden ground. If a company decides a certain risk position or profit position is necessary, that strategy eventually ends up in the contract in some form. That is one of the most powerful levers companies have to make things happen. Climate goals are the same.

Over Spring and Summer 2021, the Chancery Lane Project brought together international construction, infrastructure, project finance and real estate lawyers as well as industry experts and professionals to create a set of construction specific clauses and tools to get climate goals into construction contracts. The clauses are all named after children to reflect the impact they will have on the lives of the next generation.

Clause ideas generated at the event and developed collaboratively by a group of diverse multidisciplinary experts, include:

- How to incentivise (rather than penalise) Employers, Consultants and Contractors to design and build construction projects in a climate aligned way with practical solutions and commercially viable approaches; and
- Clauses to include in a development agreement where modular construction is contemplated.

Two of the new construction clauses published by the Chancery Lane Project are:

Robyn's Due Diligence Questionnaire which is a selfassessment questionnaire for suppliers and subcontractors to determine their ability to deliver on climate goals, both their own and the Contractor's goals.

Rose's clause which uses a Construction and Operations GHG Emissions Management Plan as a condition for obtaining finance for significant construction projects including built infrastructure assets.

The Project's clauses are already being used in contracts internationally impacting multiple sectors and supply chains. A significant success for the Project is the Environment Agency who has been using clauses influenced by the work of the Project since September 2020. The Environment Agency's Team 2021 initiative used clauses inspired by Alex's clause and Aatmay's clause to require subcontractors to use a certain amount of materials certified under, for example **cradle-tocradle certified® certification**; and deliver against wider sustainability objectives, including carbon reduction. This has embedded the principles of the circular economy into their supply chain and decreases waste.

The Chancery Lane Project was established in 2019 to bring together lawyers and industry experts to create contract clauses to tackle climate change. All the clauses are free to use and download from their website **here**, together with case studies on how the clauses are being used and their impact.

Becky Annison is the Director of Engagement at The Chancery Lane Project where she works to inspire people to use all the tools that contracts provide in order to fix climate change. Prior to her role at The Chancery Lane Project she was a senior solicitor at Carillion plc for 12 years.



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JCT HOME OWNER CONTRACTS 2021 EDITION LAUNCHED



JCT has launched the latest edition of its contracts for Home Owners, JCT Home Owner Contracts 2021.

The new edition of the contracts includes the **Building Contract for a Home Owner/Occupier who has not appointed a consultant to oversee the work (HO/B) 2021** and the **Building Contract and Consultancy Agreement for a Home Owner/Occupier (HO/C and HO/CA) 2021**.

For the first time, the Home Owner contracts are available via the JCT On Demand digital service. Users will be able to purchase their contract via the JCT Online Store and complete the contract digitally using JCT On Demand's user-friendly service. The interactive Q&A will help home owners ensure their document is completed correctly and comprehensively.

Hard copy versions of the new contracts are also available. The HO/B pack includes two copies of the contract, one each for the client and their contractor. The HO/C and HO/CA pack includes two copies each of the contract and consultancy agreement – one of each for the client and one contract for their contractor and one consultancy agreement for their consultant.

The updated 2021 Home Owner web pages also include a helpful sample page, a sample enquiry letter for sending to potential contractors, and updated Adjudication Rules.

A free-to-download update of the Home Repair and Maintenance Contract (HORM) 2021 is also available.

JCT Home Owner Contracts are designed specifically for people looking for the benefits and protection of a contract when appointing consultants or contractors to carry out their building work. They are suitable for small, domestic building works, such as extensions and alterations.

The advantage of using the JCT Home Owner Contract is that home owners are able to get peace of mind in knowing that the obligations of all the parties employed – contractors, architects, surveyors, etc. are clearly set out and defined.

Features of the JCT Home Owner Contracts 2021:

- Simple and clear no technical or legal jargon, JCT's Home Owner Contracts are written in plain English and are easy to fill in.
- Project Management building work can be easily managed by recording costs and scheduling all in one document
- Legal certainty the JCT Home Owner Contract gives all parties greater certainty should any difficulties arise

For more information, see www.jctltd.co.uk/category/homeowner-contracts.



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INCREASING COSTS AND FLUCTUATIONS PROVISIONS

PETER HIBBERD

Recently, the Bank of England governor claimed that his ex-chief economist's view that inflation may reach 4% was alarmist and that we should not overreact to rising prices. Overreacting is one thing but making sensible provision is another.

Fluctuations in labour and material prices in relation to construction projects can, and do, quickly erode a contractor's margin. Over recent years, price inflation has been benign, which has led to those entering building contracts giving less consideration to its impact and to the need to incorporate fluctuation provisions in their contracts.

Inflation since 1992 has only exceeded 5% on one occasion, so perhaps that is not surprising. However, during the previous twenty years (1971-1991) it was seldom below 5% and reached a peak of over 24%. Maybe that is history, never to be repeated, maybe not. The problem is we do not know.

What we do know is that over the past few months there has been increasing concern about inflation because of monetary policy both here and abroad. Furthermore, inflation can be exacerbated because of shortages, both of materials and labour, and which could also lead to project delay. I would not wish to make any prediction about future inflation rates, except to say that the risk of inflation has increased, and it would be prudent to make provision for it in building contracts. Not just simply by increasing the tender price by some arbitrary figure. There is now also an increased risk of changes to the types and rates of contractor's contributions, levy and taxes payable as an employer, which arises because of the need to redress government finances following the cost of support provided during the coronavirus pandemic.

The other factor that urges consideration of the incorporation of fluctuation provisions is that even in a low inflationary climate there can be significant volatility in the cost of materials. Construction material's inflation frequently diverges from the general inflation level which is around 2%. For example, the World Construction Industry Steel Purchasing Price Indices show a 40% increase between April 2020 and February 2021, or the oil price that has risen by close to 400% since April 2020. Consequently, where there is a high content of certain items in a building project, profit margins can be quickly eroded, unless there is protection under the contract.

JCT provides for three approaches to fluctuations, namely Option A (which deals only with contribution, levy, and tax payable as an employer), Option B (which additionally covers labour and materials costs) and Option C (formula adjustment using the Formula Rules).

The principal 2016 editions of JCT contracts that refer to all three Options are: Design & Build Contract (including sub-contracts), Standard Building Contract (including sub-contracts), Intermediate Named Sub-Contract, Construction Management Trade Contract, and the Management Works Contract. Option A is in the printed text and digital versions; Options B and C are available from the JCT website at https://www.jctttd.co.uk/useful-documents/fluctuations-options-b-and-c

Option A is the default position and provides only for changes to contribution, levy, and tax fluctuations, which occur after the Base

Date. The other Options only become operative by completing the Contract Particulars.

The Minor Works, and the Intermediate Building Contract only contain what is Option A in the principal contracts, with no reference to other options. The logic is that those forms of contract are for small scale, short duration work and, consequently, the risk is deemed to be small. In certain circumstances, which currently prevail, it may be appropriate to consider whether this provision alone is sufficient. The Contract Particulars enable users to specify their own fluctuations provisions.

By contrast to other JCT principal contracts for large scale works, neither the Major Project Contract nor the Constructing Excellence Contract expressly contain fluctuation provisions. However, that does not mean they cannot provide for them. That can be done through the Pricing Document under the Major Project Contract, and by identifying fluctuations as a risk under the Constructing Excellence Contract. In either case, one must include or specifically identify details of how fluctuations will be determined. Such requirements may be modelled on one of the JCT Options.

Last September, I advised that 'in such circumstances those entering contracts for projects of more than a few months should consider the desirability of using a suitable fluctuation provision.' http://corporate.jctltd.co.uk/wp-content/uploads/2020/09/ Future-Projects-the-impact-of-Covid-19-and-Brexit-v1.pdf

It seems that it was timely, and what has followed, makes it equally relevant today. It is essential prior to entering a contract to carry out a risk assessment, which must include fluctuations and the timely availability of materials and labour. Such an assessment will guide the user to the most appropriate means of dealing with the risks. Current circumstances suggest that wide cover is secured in respect of fluctuations unless one is entering into cost plus type arrangements. That means the use of either Option B (Labour and materials cost and tax fluctuations) or Option C (Formula adjustment).

The time involved in preparing calculations, especially for materials, under Option B, has put some off using it, but it should not, because for materials it need only apply to a small number of high content items. The use of a prescribed list, like the basic price list, which was in common usage in earlier times, meets such an objective.

Where Formula adjustment is adopted, it is prudent to consider the Work Category method (identify in the Contract Particulars) in preference to Work Group method because of hugely variable price changes related to some materials and trades. In such circumstance it is more likely to accurately reflect the differences that arise. To operate the formula, either annotated bills of quantities, or schedules determining the work category for the items of work, must be prepared.

In current circumstances, do not overlook fluctuations and be sure to incorporate the relevant provisions following a risk assessment. General inflation is one thing, construction inflation is another.

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- JCT Adjudication Agreement Named Adjudicator (Adj/N)
- JCT Construction Management Guide (CM/G)
- JCT Construction Management Appointment (CM/A)
- JCT Construction Management Trade Contract (CM/TC)
- JCT Construction Manager Collateral Warranty for a Funder (CMWa/F)
- JCT Construction Manager Collateral Warranty for a Purchaser or Tenant (CMWa/P&T)
- JCT Trade Contractor Collateral Warranty for a Purchaser or Tenant (TCWa/P&T)
- JCT Trade Contractor Collateral Warranty for a Funder (TCWa/F)
- JCT Framework Agreement (FA)
- JCT Framework Agreement Guide (FA/G)
- JCT Major Project Construction Contract (MP)
- JCT Major Project Construction Contract Guide (MP/G)
- JCT Major Project Sub-Contract (MPSub)
- JCT Major Project Sub-Contract Guide (MPSub/G)
- JCT Management Building Contract (MC)
- JCT Management Works Contract Agreement and Conditions (MCWC/A and MCWC/C)

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- JCT Management Works Contractor/Employer Agreement (MCWC/E)
- JCT Management Building Contract Guide (MC/G)
- JCT Works Contractor Collateral Warranty for a Funder (WCWa/F)
- JCT Works Contractor Collateral Warranty for a Purchaser or Tenant (WCWa/P&T)
- JCT Management Contractor Collateral Warranty for a Funder (MCWa/F)
- JCT Management Contractor Collateral Warranty for a Purchaser or Tenant (MCWa/P&T)
- JCT Constructing Excellence Contract (CE)
- JCT Constructing Excellence Contract Guide (CE/G)
- JCT Constructing Excellence Contract Project Team Agreement (CE/P)
- JCT Consultancy Agreement (Public Sector) (CA)
- JCT Pre-Construction Services Agreement (Specialist) (PCSA/SP)
- JCT Pre-Construction Services Agreement (General Contractor) (PCSA)
- JCT Tendering Practice Note 2017
- JCT Dispute Adjudication Board Documentation 2021 (DAB 2021)



