

Construction Contracts – Key Issues and Practical Checklist

This note provides a practical overview of the key issues school clients should consider when entering into construction contracts for works to their estates (new build, refurbishment, fire safety or remedial works). While the principles are broadly consistent with other sectors, schools often face particular pressures around safeguarding, land ownership, operational continuity and funding constraints, which should inform how contracts are procured and negotiated.

1. USING THE RIGHT CONTRACT FOR THE JOB

A common starting point is ensuring the chosen form of contract properly reflects the nature and complexity of the works.

- Standard forms: Consider whether a recognised standard form (e.g. JCT or NEC) is appropriate. These are generally balanced and familiar to the market.
- Procurement route:
 - Traditional (design by consultants)
 - Design & build (single point responsibility)
 - Construction management or management contracting (less common in schools)
- Size and complexity: Avoid over-complicating smaller projects with heavily amended contracts or, conversely, under-specifying more complex projects.

Key risk: Using a “one size fits all” contract or overly amended standard forms can introduce unintended risk or create gaps in responsibility.

2. SCOPE OF WORKS AND DESIGN RESPONSIBILITY

Clarity around what is being built—and who is responsible for the design—is critical.

- Ensure the scope of works is clearly defined, including:
 - Specifications
 - Drawings
 - Performance requirements (particularly for fire safety and compliance works)
- Where design is involved:
 - Confirm who holds design responsibility
 - Ensure appropriate professional indemnity insurance is in place

- Avoid vague or incomplete Employer’s Requirements—these often give rise to disputes.

CHECKLIST:

- Is the scope fully documented and coordinated?
- Does the contractor explicitly accept responsibility for design (if applicable)?
- Are performance standards clearly defined (not just implied)?

3. PROGRAMME AND COMPLETION

Works at schools are often time-sensitive (e.g. completion before term starts).

- Ensure the programme is realistic and aligned with term dates and access constraints.
- Consider:
 - Sectional completion (e.g. phased works)
 - Extension of time mechanisms (what events justify delay?)
- Include liquidated damages (LDs) for delay:
 - Must be a genuine pre-estimate of loss
 - Should reflect operational disruption costs (temporary accommodation, reputational risk, etc.)

Key risk: Inadequate delay provisions can leave the school exposed if works overrun critical periods. Make sure there is time for any commissioning works and consider whether a delay may ultimately impact a readiness date i.e. pushing final completion and occupation until the start of the next term or half term.

4. PAYMENT AND CASH FLOW

Payment provisions must balance fairness with protection against poor performance.

- Key points:
 - Clear payment intervals and application processes
 - Mechanisms for pay less notices
 - Retention provisions (typically 3–5%)
- Consider whether:
 - Advance payments are required
 - Security is needed (e.g. performance bonds or parent company guarantees)

CHECKLIST:

- Are payment provisions compliant with the Housing Grants, Construction and Regeneration Act 1996?
- Is there sufficient leverage (e.g. retention) to ensure completion and defect rectification?

5. LIMITATION OF LIABILITY

This is one of the most heavily negotiated areas and often where schools inadvertently accept significant risk.

- Contractors frequently seek to:
 - Cap liability (often linked to contract sum)
 - Exclude certain losses (e.g. indirect or consequential losses)
- Points to consider:
 - The level of the cap (is it adequate for potential losses?)
 - Carve-outs (e.g. fraud, personal injury, insurance-backed risks)
 - Alignment with insurance coverage

Key risk: Accepting a low liability cap that does not reflect the potential cost of rectifying defects or safety issues.

6. INSURANCE

Insurance provisions should be carefully reviewed and, where necessary, aligned with the school's existing cover. Care should be taken where the obligation to insure is passed back to the school. The Department for Education's risk protection arrangements (RPA) cover does not allow joint insurance or named parties and so additional insurance may be required.

- Typical requirements:
 - Public liability
 - Employer's liability
 - Contract works insurance
- For design elements:
 - Professional indemnity (PI) insurance
 - Check level, duration, and any exclusions (e.g. fire safety cladding exclusions)

CHECKLIST:

- Are insurance levels appropriate for the project value and risk profile?
- Are there any exclusions relevant to the works (particularly for fire safety)?

7. DEFECTS AND WARRANTIES

Schools should ensure they have adequate protection if issues arise after completion. Contract rights attach to the legal entity that enters into the build contract (the employer under the contract). This should be the

governing body, academy trust or registered proprietor, with the approval of the landowner if that's not the employer. Warranties should be obtained if a third party is carrying out the works on behalf of the school, i.e. the local authority or the Secretary of State for Education.

- Include a defects liability period (typically 12 months)
- Require:
 - Collateral warranties from contractors and key consultants/subcontractors
 - In favour of the school, funders and (where relevant) tenants, academy trusts and trustees or foundation bodies
- Check whether a latent defects insurance policy is appropriate

Key risk: Lack of direct contractual recourse against key parties (e.g. designers or specialist subcontractors).

8. CHANGE CONTROL (VARIATIONS)

Changes are common, particularly in live school environments.

- Ensure a clear variation mechanism, covering:
 - Instruction process
 - Valuation method
 - Impact on time and cost
- Avoid informal instructions—these often lead to disputes.

CHECKLIST:

- Are variations required to be in writing?
- Is there a clear method for valuing changes?

9. DISPUTE RESOLUTION

Even well-managed projects can give rise to disputes.

- Standard mechanisms:
 - Adjudication (statutory right)
 - Litigation (often TCC)
 - Arbitration (less common in this sector)
- Consider whether:
 - Early resolution mechanisms (e.g. negotiation or mediation) should be encouraged
 - The contract sets out a clear escalation process

Key risk: Poorly drafted dispute provisions can delay resolution and increase costs.

10. SITE MANAGEMENT AND SAFEGUARDING

Schools present unique operational risks.

- Ensure provisions address:
 - Safeguarding requirements

- Access and noise restrictions during term time, particularly when exams are being held
- Segregation of works areas
- Contractors should be required to comply with:
 - School safeguarding policies
 - DBS requirements where appropriate

11. COMPLIANCE AND REGULATORY ISSUES

Particularly relevant in the current building safety environment.

- Ensure compliance with:
 - Building Regulations
 - Fire safety requirements
 - Duties under the Building Safety Act 2022 (where applicable)
- Clarify responsibility for:
 - Approvals
 - Certification
 - Record-keeping (golden thread information where required)
- Key risk: Unclear allocation of responsibility for compliance can lead to gaps and potential liability exposure.

12. TERMINATION AND EXIT

Finally, schools should consider how they can exit the contract if things go wrong.

- Grounds for termination:
 - Contractor insolvency
 - Persistent breach
 - Failure to proceed diligently
- Ensure:
 - Rights to step in or complete the works
 - Clear payment and valuation provisions on termination

CONCLUSION

While many of these considerations are common across all construction projects, schools should place particular emphasis on timing, safeguarding, and ensuring that liability and insurance provisions adequately reflect the potential impact of defects or delay on their operations.

A well-structured contract, with appropriate risk allocation and clear processes, remains the most effective way to minimise disputes and protect the school's position throughout the lifecycle of the project.

If helpful, we would be happy to provide a more detailed review of any proposed contract or assist in tailoring amendments to reflect your specific project and risk profile. Please contact either of the authors or our School Support helpdesk on **0345 070 7437** or email us at schoolsupport@wslaw.co.uk.



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This briefing note is not intended to be an exhaustive statement of the law and should not be relied on as legal advice to be applied to any particular set of circumstances. Instead, it is intended to act as a brief introductory view of some of the legal considerations relevant to the subject in question.