

Notes from Managing a Small Business and Practice Documentation Seminars
given by **Graham Brown** at **Greenwich School of Architecture** on **11jan11**

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sheet 1/45

QTC: Quality Time Cost

QUALITY

QUALITY MANAGEMENT is that aspect of the overall management function that determines and implements the quality policy

A **QUALITY SYSTEM** is the organisational structure, responsibilities, procedures, processes and resources for implementing quality management

QUALITY ASSURANCE is all those planned and systematic actions necessary to provide adequate confidence that a product or service will satisfy given quality requirements

A **QUALITY PLAN** is a document setting out the specific quality practices, resources and sequence of activities relevant to a particular product, service, contract or project

(Definitions from ISO 8402 (BS4778))

INSTITUTIONAL REQUIREMENTS

Institute formation

1837 – Royal Institute of British Architects

1929 – Incorporated Institute of Landscape Architects

1934 – Architects (Registration) Act

STANDARDS

Architects Registration Board

STANDARDS OF PROFESSIONAL CONDUCT AND PRACTICE (2009)

Architects are expected to:

1. Be honest and act with integrity
2. Be competent
3. Promote their services honestly and responsibly
4. Manage their business competently
5. Consider the wider impact of their work
6. Carry out their work faithfully and conscientiously
7. Be trustworthy and look after their clients' money properly
8. Have appropriate insurance arrangements
9. Maintain the reputation of architects
10. Deal with disputes or complaints appropriately
11. Co-operate with regulatory requirements and investigations
12. Have respect for others

(ARB Architects Code: Standards of Conduct and Practice)

Royal Institute of British Architects

Code of Professional Conduct, Standard of Professional Performance and Members' Rules for Clients' Accounts

(see www.ribabookshops.com)

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The Landscape Institute

CODE OF CONDUCT

Standard 1

Landscape Architects should at all times act with integrity and avoid any action or situations which are inconsistent with their professional obligations.

Standard 2

Landscape Architects should only undertake professional work for which they are able to provide proper professional and technical competence, and resources.

Standard 3

Landscape Architects should only promote their professional services in a truthful and responsible manner and such promotion shall not be an attempt to subvert professional work from another Landscape Architect.

Standard 4

Landscape Architects shall carry out their professional work with care and conscientiously and with proper regard to relevant technical and professional standards.

Standard 5

In agreeing to carry out professional work and in the execution of that work, Landscape Architects shall have regard to the interests of those who may be reasonably expected to use or enjoy the products of their work.

Standard 6

Landscape Architects should maintain their professional competence in areas relevant to their professional work and shall provide such educational and training support to less experienced members or students of the profession over which they have a professional or employment responsibility.

Standard 7

Landscape Architects should ensure that their personal and professional finances are managed prudently and shall preserve the security of monies entrusted to their care in the course of practice or business.

Standard 8

Landscape Architects shall not undertake professional work without adequate and appropriate Professional Indemnity Insurance.

Standard 9

Landscape Architects shall organise and manage their professional work responsibly and with integrity and with regard to the interests of their clients.

Standard 10

A Landscape Architect is expected actively and positively to promote the standards set out in these Standards of Conduct and Practice.

Standard 11

A Landscape Architect is also expected actively and positively to promote and further the aims and objectives of The Landscape Institute, as set down in its Charter and to contribute to the work and activities of the Institute.

Standard 12

Complaints concerning professional work of Landscape Architects or their Practice or business should be dealt with promptly and appropriately by them.

Overriding Obligation: **To act competently and with integrity.**

(www.landscapeinstitute.org)

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COMPETENCE

A competent person is someone who is capable of doing a job and who does it capably.

or

A person who has sufficient training and experience or knowledge and other qualities (to enable him or her to assist the employer in complying with legal requirements).

(Management of Health and Safety at Work Regulations 1999).

competence is:

a state of expertise expressed and observable in performance achieved through the acquisition of knowledge understanding and skill and their application in practice the exercise of which satisfies the requirements of task job and role. Professional competence is characterised by the desire and commitment of practitioners to provide competent services to clients and society.
(Construction Industry Council CPD in Construction Group).

The high standard of competence required of professionals can be identified as the standard of competence the public has a right reasonably to expect.

Competence includes knowledge, understanding, skill and the commitment to apply these for those who might reasonably be expected to use or enjoy the product of the service. This requires the development of critical abilities and those of judgement, communication, organisation and technique together with qualities of confidence, initiative, flexibility and maturity and an understanding of obligations and responsibilities. Competence includes, moreover, the application of knowledge, the exercise of skills, and the intention to achieve success manifesting itself in the critical self-monitoring of performance.

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD is the systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional and technical duties throughout the practitioner's working life. *(Construction Industry Council CPD in Construction Group).*

CONTINUING PROFESSIONAL DEVELOPMENT (CPD)

CPD is the systematic maintenance, improvement and broadening of knowledge and skill and the development of personal qualities necessary for the execution of professional and technical duties throughout the practitioner's working life. *(Construction Industry Council CPD in Construction Group).*

DESIGN and MANAGEMENT

DESIGN is the creative organisation and arrangement of information and ideas to achieve a set of objectives, and can be drawn, written, spoken, played, sung, dressed.

MANAGEMENT is a creative activity the exercise of which is about making and maintaining dynamic cultures within and by which the objectives of people as individuals teams and organisations are achieved, or about getting things done through people.

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PROFESSIONALISM

Professionalism is:

the institutionalisation of an occupation based on skilled intellectual technique, whereby the competence and integrity of practitioners are guaranteed to prospective purchasers of their service. (*Barrington Kaye 1960*).

the distinguishing characteristics of a professional man are a specific skill and knowledge in a particular field; and commitment to using this knowledge with due care in the interest of the client, in accordance with the professions ethics. (*Sir Geoffrey Vickers 1974*).

a professional person offers competence and integrity of service based upon a skilled intellectual technique. The relationship of a professional person and his client is that of mutual trust. (*A Roderick Males 1990*).

Virtues

Professional service is founded upon the virtues of:

- Quality
- Care
- Duty
- Commitment
- Integrity
- Honesty
- Responsibility
- Reliability
- Trustworthiness

which lie alongside:

- Professional maturity
- Commonsense
- Sound judgment

RESPONSIBILITY

Balcomb v Wards Construction (Medway) Ltd (1981) 259 EG 765 35

A consultant engineer was expected to be familiar with (all) published knowledge concerning the time taken for clay sub-soil to recover from the removal of trees.

LAW is a mechanism for regulating society: for establishing order out of chaos. The rule of law implies a measure of restriction upon individual freedom. A legal system brings certain rights but requires acceptance of certain obligations. Civil law includes tort and contract.

Tort is an act or omission by one person unauthorised by law and independent of contract for which another person who has suffered therefrom has an action for damages. Examples: Trespass, Nuisance, Negligence, Strict Liability, Defamation, Conspiracy.

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CAVEAT EMPTOR Let the buyer beware. Common law rule regarding the sale of goods. The buyer purchases goods or services at their own risk and relies on their own judgment as to their suitability or quality. For most purchases by ordinary consumers the Sale of Goods Act 1979 implies a condition that goods are of merchantable quality and will be reasonably fit for their intended purpose. (Roman law allowed a seller of property to keep quiet about defects in that property).

CREDAT EMPTOR Let the buyer trust. Describes the relationship between a professional person and their client. The client can trust the opinions and skills of the professional who has an ethical duty to put the interests of the client ahead of their own. Imposes upon professionals an assortment of ethical duties including the duty of veracity (to tell the truth), the duty of fidelity (to comply with the reasonable expectations of the client as to competence, keeping to promises and the maintenance of up-to-date knowledge). (Stephen Perle 2003)

TIME

Professional designers and managers sell **time**. The basic currency of our business is time, expressed in hours or minutes. Many professionals charge their time out to clients in 6 minute or 15 minute units. The value of a professional's time to a client is in its quality ie the expertise it contains. Time's value to the professional providing the service is **money**.

So: Don't waste it!

The Practical Alternative To Work

Are you lonely? Do you work on your own? Do you hate having to make decisions? Then **HOLD A MEETING**. At a meeting you can see other people, sleep in peace, offload decisions, feel important, and impress your colleagues, all at the same time.

TIME EXPENDITURE

The time of a full-time designer is spent in five principal ways:

- a. carrying out project work;
- b. looking for new business;
- c. management and administration;
- d. training and development; and
- e. legitimate absence.

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PRODUCTIVITY as % of all hours

	a	b	c	d	e
Principal	45	20	25	3	7
Associate	60	10	20	5	5
Designer	75	nil	10	10	5
Assistant	85	nil	3	7	5

- a: Projects (fee earning)
- b: Promotion/business development
- c: Management/administration
- d: Training/CPD
- e: Personal/absences

FEE EARNING HOURS per annum

Assumptions:

Working week = 5 days. Working day = 7.5 hours. Annual Leave = 20 days.
Public holidays = 8 days.

Total Hours per Annum: 52 weeks x 5 days x 7.5 hours = 1,950.00

Less: Annual leave 20 days x 7.5 hours (150.00)
 Public holidays 8 days x 7.5 hours (60.00)
 Sick leave (say) 6 days x 7.5 hours (45.00)

FEE EARNING HOURS PER ANNUM PER MEMBER OF STAFF = 1,695.00

HOURLY RATE CALCULATION Example

LABOUR

Gross salary per annum = £25,000
On costs @ 20% = £5,000
Total employment cost = £30,000

Fee earning hours per year = 1695 hours

Hourly cost = £17.70

FIXED OVERHEADS

Number of staff = 10 persons
Total cost (say) = £281,480
Overhead per staff member = £28,148

Fee earning hours per year = 1695 hours
Hourly cost = £16.60

TOTAL HOURLY COST RATE = £34.30

Profit @ 20% = £6.86

AVERAGE HOURLY CHARGE RATE = £41.16

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Thus: HOURLY CHARGE RATE for:

Principal @ 45% fee earning hours = £91.50
Associate @ 60% fee earning hours = £68.50
Designer @ 75% fee earning hours = £55.00
Assistant @ 85% fee earning hours = £48.50

To generate sufficient income to cover salaries, expenses, profit, a sole practitioner will need to spend about 4 hours average per day on fee paying work.

PROJECT is a combination of resources organised to achieve a specific purpose and with the following characteristics: specific purpose, non-routine, interdependent, complex, risky and uncertain, changeable, needs sensitive management.

PEOPLE make designs, buildings, solutions, problems. People have ambitions, commitments, loyalties, interests, limitations, frailties, conflicts, and strengths. People are different, irrational, unreasonable, self-interested, complex, difficult, clever, frustrating, and essential. People need agreements, procedures, rules, supporting, motivating, managing, and leading.

ROLES: any one or more of which can be included in a project:

Client: Client, Employer, Project Manager, Clerk of Works, Planning Supervisor, Agent, Bank, Developer, Solicitor, Cost Consultant.

Designers: Architect, Landscape Architect, Quantity Surveyor, Planner, Land Surveyor, Geotechnical Surveyor, Structural Engineer, Civil Engineer, Highways Engineer, M&E Engineer, Site Architect, Interior Designer.

Approvers: Planning Officer, Conservation Officer, Building Control Officer, Fire Officer, Environmental Health Officer, Highways Engineer, Nature Conservancy, English Heritage, Health and Safety Executive, Statutory Undertakers.

Builders: Main Contractor, Contract Manager, Site Agent, Manufacturer, Supplier, Nominated Supplier, Domestic Subcontractor, Nominated Subcontractor, Craftsman, Operative, Statutory Undertakers.

Office: Staff, Partners, Directors, Associates, Project Architects, Students, Technologists, Draughtsmen, CAD Technicians, Perspective Artists, Model Makers, Managers, Secretaries, Accountant, BookKeeper, Solicitor, Clerks, Cleaners, Suppliers.

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SOCIAL EXCHANGE

Social Comparison Theory: We form groups to gain comparative information in order to protect ourselves from inappropriate decisions and judgments

Exchange Theory: We form groups to provide us with some form of psychological, physical or spiritual gain.

Structures:

- communication
- centralised
- adjacent
- centralised and adjacent
- decentralised network
- heirarchic network

Leaders:

- task oriented
- people oriented

Performance:

- efficiency
- effectiveness
- process loss

PROCEDURES are the means by which a temporary team of people co-operate to achieve a common objective. They describe rights, responsibilities and rewards for each person, penalties if anyone lets the others down, practical framework for trust and fallback position if that fails.

PROJECT BASIS At the basis of every successful project is a good contract: one that defines clearly what work is to be done, by whom, when, to what standards and at what cost. It records the obligations of the signatories, allocates risk in the most appropriate way, and is seen as fair by all parties. When anticipated and unanticipated problems arise, when variations are necessary and when schedules overrun, a well drawn up contract is invaluable in ensuring the difficulties are resolved as painlessly as possible. (APM Contract strategy for successful project management).

LAW is a mechanism for regulating society: for establishing order out of chaos. The rule of law implies a measure of restriction upon individual freedom. A legal system brings certain rights but requires acceptance of certain obligations. Civil law includes tort and contract.

Tort (*See above*)

Contract is a legally enforceable agreement privately and freely entered into by two or more parties for an agreed purpose granting rights to and imposing obligations upon the parties, the essential ingredients in the formation of which are an offer, an acceptance, consideration, intent to create legal relations and the absence of vitiating factors.

Consideration is an act or forbearance of one party or the promise thereof is the price for which the promise of the other is bought and the promise thus given for value is enforceable. (*Dunlop v Selfridge (1951) AC 847 at 855*).

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USEFUL DEFINITIONS

Contra Preferentem:

A principle of contract interpretation. It arises 'If there is an ambiguity in a document which all the other methods of (interpretation) have failed to resolve so that there are two alternative meanings to certain words, the court may construe the words against the party seeking to rely on them and give effect to the meaning more favourable to the other party'. (*Keating on Building Contracts*)

It follows that where there is a failure of communication, the communicator is likely to be responsible for the failure so, for example, if a client misinterprets what the architect says, it is probably the fault of the architect. (*Arbitral Award*)

Subrogation:

Substitution of one person for another. An insurer who compensates policyholder for loss is entitled to stand in the place of the policyholder and recover from the person who caused the loss. It is important that an employer's PII includes a clause of non-subrogation, ie waiving rights of subrogation against employees.

CONTRACTS

Professional designers are primarily concerned with two categories of contract: those under which professional services are provided and those under which construction work is carried out. The authority and obligations of the professional acting for a client during the construction period will be significantly conditioned by the wording of the building contract.

For the majority of building contracts standard printed forms are available and these should be used without alterations. By far the greatest number of forms of building contract is published by the Joint Contracts Tribunal (JCT). A whole family of documents is available covering building work ranging from jobbing or maintenance and repair work to management contracting.

JCT forms have the unique distinction that they are produced by a tribunal on which there is representation of the professions, the industry, and client bodies. Decisions at the Tribunal must be by consensus and the documents can consequently be regarded by all to be fair and balanced in the interests of the parties.

There are three types of contract under the traditional procurement method: lump sum, measurement and cost reimbursement. Under lump sum contracts the contractor or builder undertakes to carry out a defined amount of work for an agreed sum. Lump sum contracts 'with quantities' are priced on the basis of drawings and a firm bills of quantity. The JCT Standard Building Contract 2005 Edition (JCT05 SBC) is the most widely used form for major building contracts of a lump sum type.

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Employment: Ensure an employee is protected by PII clause of non-subrogation and by insurance covering accidents at work and on travels to and from work.

Consultant: RIBA S-Con-07-A, RIBA C-Con-07-A, ASI Agreement for the Appointment of Professional Advisor, The Landscape Consultant's Appointment, ICE Conditions of Engagement 95 2nd Edition 1998 Agreement B (1) (Struct), ICE Conditions of Engagement 95 2nd Edition 1998 Agreement B (2) (M+E), ACA Appointment of a Consultant Architect for Small Works, RICS Form of Agreement for the Appointment of a QS.

Building: JCT05 Minor Works Building Contract, JCT05 Intermediate Building Contract, JCT05 Standard Building Contract, JCT05 Design and Build Contract, JCT05 Management Contract, ACA Form of Building Agreement, ASI Building Contract, ASI Minor Works Contract, ASI Small Works Contract.

Appointing a Landscape Architect

(Downloaded from www.landscapeinstitute.org on 07jan08 by GB)

Chartered landscape architects offer a wide range of general and specialist services, sometimes working as members of multi-disciplinary teams, but commonly acting as the sole adviser to their client.

Generally, landscape architects are willing to discuss a potential appointment with a prospective client without obligation. Both parties can benefit from an early understanding of the location and type of project that might be involved, the budget for the proposed works, the various needs for consultancy services, the timescale for the works and the involvement of other professional advisers that may be working on the client's behalf.

Design competitions are an alternative way of discovering the range of design options that may be available on major projects. Drawing up a select list of 3-5 competitors is an efficient way of developing participants' enthusiasm for producing a satisfactory outcome of quality. Clients who can agree to cover some of the costs of each competing practices output, recognise that this is a fair and reasonable compensation for valuable creative work. The Landscape Institute has an established procedure for initiating and regulating competitions which may be held on a local or national scale. Please contact the Institute for details.

Landscape architects have a standard form of appointment, The Landscape Consultant's Appointment, which helps clients identify the services they may require and a simple Memorandum of Agreement and Schedule of Service and Fees is also available to confirm matters in writing. The Landscape Institute also publishes a Guide to Procedure for Competitive Tendering which offers advice on the various methods of appointing a landscape architect, together with detailed guidelines for competitive tendering.

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Publications:

Appointing a Chartered Landscape Architect: Guidelines for Best Value

These Guidelines are aimed at assisting client bodies, in private or public sector, in selecting a Chartered Landscape Architect, based on a method which is open, fair, efficient, economical and which represents best value.

Engaging a Landscape Consultant: Guidance for Clients on Fees

A guide designed to improve the working relationships between clients and landscape consultants by providing information for clients about how fees may be calculated, charged and paid. An invaluable guide to agreeing fees by negotiation that are fair to both parties.

Guide to Procedure for Competitive Tendering

Advice on commissioning a Landscape Consultancy by tender including Form of Tender, Schedule of Services and Fees and Memorandum of Agreement.

The Landscape Consultant's Appointment

Intended for issue to potential clients by Landscape Consultants, this publication gives general advice on the relationship between landscape consultant and client. It is intended to assist clients and landscape consultants reach agreement on the terms of appointment of the consultant by setting out the range of services which may be provided and a Memorandum of Agreement.

JCLI Landscape Maintenance Works Contract (2008 Edition)

A Standard Form of Agreement and Conditions of Contract for Landscape Maintenance Works. The JCLI Landscape Maintenance Works Contract (JCLI LMWC 2008) replaces all previous editions and revisions of the JCLI Agreement for Landscape Maintenance Works and is appropriate for all types of landscape maintenance project of any value. It includes considerable flexibility and is appropriate as a back-to-back contract with a landscape construction contract. JCLI Practice Note No. 9 is issued with it.

JCLI Landscape Works Contract 2008

A Standard Form of Agreement and Conditions of Contract for Landscape Works. The JCLI Landscape Works Contract (JCLI LWC 2008) replaces all previous editions and revisions of the JCLI Agreement for Landscape Works. The Contract has been updated to follow the format and changes in the JCT Minor Building Works Contract 2007. JCLI Practice Note No 8 is issued with it.

JCLI Landscape Works Contract with Contractors Design 2008

The JCLI Landscape Works Contract with Contractor's Design (JCLI LWCD 2008) is very similar to the JCLI LWC 2008 but incorporates provisions for discrete elements of the work to be designed by the Contractor. It is not appropriate as a Design and Build Contract. JCLI Practice Note No 8 is issued with it.

The Landscape Consultant's Appointment

Intended for issue to potential clients by Landscape Consultants, this publication gives general advice on the relationship between landscape consultant and client. The Memorandum of Agreement outlines the range of services which may be provided and sets out the approved Work Stages.

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JCT05 FORMS (According to procurement route)

TRADITIONAL LUMP SUM (conventional procurement)

Standard Building Contract With Quantities (SBC/Q)
Standard Building Contract Without Quantities (SBC/XQ)
Intermediate Building Contract (IC)
Intermediate Building Contract (IC)
Minor Works Building Contract (MW)
Housing Grant Works Building Contract (HG)
Building Contract for a Home Owner/Occupier (HOCpack)

TRADITIONAL LUMP SUM (conventional procurement, but with some design by contractor)

Standard Building Contract with Quantities (SBC/Q)
Standard Building Contract without Quantities (SBC/XQ)
Standard Building Contract With Approximate Quantities (SBC/AQ)
Intermediate Building Contract with contractor's design (ICD)
Intermediate Building Contract with contractor's design (ICD)
Minor Works Building Contract with contractor's design (MWD)
Measured Term Contract (MTC)
Prime Cost Building Contract (PCC)

DESIGN & BUILD

Major Project Construction Contract (MP)
Design and Build Contract (DB)

MANAGEMENT

Management Building Contract (MC)
Construction Management Agreement (CM/A)
Construction Management Trade Contract (CM/TC)

JCT JOINT CONTRACTS TRIBUNAL

- Standard Building Contract (SBC)
- With Quantities (SBC/Q)
- Without Quantities (SBC/XQ)
- With Approximate Quantities (SBC/AQ)

- Intermediate Building Contract (IC)
- IC with Contractor's Design (ICD)
- IC Sub contracts (IC/ICD)

- Minor Works Building Contract (MW)
- MW with Contractor's Design (MWD)

- Design & Build Contract (DB)

- Major Project Construction Contract (MP)

- Prime Cost Building Contract (PCC)

- Management Works Contract (MC)
- Contract agreement (MCWK/A)

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- Works contract conditions (MCWK/C)
- Construction Management Agreement (CM/A)
- Measured Term Contract (MTC)
- Standard Form of Tender & Agreement for Building Works of a Jobbing Character (JA 90)
- Jobbing Agreement Tender (JA/T/90)
- Conditions (JA/C/90)
- Building Contract for a home owner/occupier (HOC)
- Home Repairs & Maintenance Contract (HO/RM)

ACA ASSOCIATION OF CONSULTANT ARCHITECTS

- Form of Building Agreement
- Form of Sub contract
- Standard Form of Contract for Project Partnering (PPC2000)

ICE INSTITUTION OF CIVIL ENGINEERS

- New Engineering Contract (NEC)

RIBA PLAN OF WORK

- A Appraisal
- B Strategic Briefing
- C Outline Proposals
- D Detailed Proposals
- E Final Proposals
- F Production Information
- G Tender Documentation
- H Tender Action
- J Mobilisation
- K Construction to Practical Completion
- L After Practical Completion

RESOURCES and KNOWLEDGE

See Balcomb v Wards above

Specification: NBS National Building Specification.

See www.thenbs.com for specification clauses and guidance:

- NBS Building
- NBS Landscape
- NBS Engineering Services

and

- NBS Scheduler
- NBS Contract Administrator
- NBS Brad (online Building Regulations)
- NBS Educator (free educational pdf downloads)

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Product Manufacturers

- RIBA Product Selector: www.productselector.co.uk
- Barbour Index
- Endat Standard Indexes: Building Products + Materials, Interior Design, External Works, Building Services, Process Engineering Compendiums and at www.endat.com

Products Materials Tools Protective Clothing Safety

- * Screwfix: www.screwfix.com
- * Key Industrial: www.keyind.co.uk
- * C&A Building Plastics: www.cabp.co.uk
- * Strauss Direct: www.strauss-direct.co.uk
- * Seton: www.seton.co.uk
- * Industrial Tool Supplies (London) Ltd: www.itslondon.co.uk

RISK and RISK REDUCTION

Fields: projects, people, public, premises, property;

Statutory Obligations;

Protect against: Fire (detection, alarm, fighting, protection, instruction and training, construction, escape, drills and tests), Burglary (detection, alarm, protection), Accidents (movement, hazards);

Precautions: information, safety equipment, inspections, testing, standby, key inventory, dangerous substances;

Professional Liability: Be careful, scrupulous and meticulous. Record everything;

Insure: for Consequential Loss, Professional Indemnity, Employer's Liability, Public Liability, Buildings and Contents.

BUSINESS INSURANCES

- Public Liability (Premises)
- Employer's Liability (Compulsory Insurance) Act 1969
- Professional Indemnity Insurance (*mandated by Landscape Institute and ARB in Codes*)

See also:

- Occupiers' Liability Acts 1957 and 1984
- Defective Premises Act 1972

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HEALTH AND SAFETY ACT and REGULATIONS

- Health and Safety at Work Act 1974
- Management of Health and Safety at Work Regulations 1999
- Workplace (Health, Safety and Welfare) Regulations 1992
- Provision and Use of Work Equipment Regulations 1998
- Health and Safety (Display Screen Equipment) Regulations 1992
- Manual Handling Operations Regulations 1992
- Personal Protective Equipment at Work Regulations 1992
- Health and Safety (First Aid) Regulations 1981
- Control of Substances Hazardous to Health Regulations 2002 (COSHH)
- Electricity at Work Regulations 1989
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR)

FIRE SAFETY

- Regulatory Reform (Fire Safety) Order 2005 (FSO)
(revokes all previous fire legislation including Fire Precautions Act and Fire Precautions (Workplace) Regulations 1997)

HEALTH AND SAFETY GUIDE

Keeping the workplace safe and your employees healthy

Importance of health and safety to your business

How protecting the welfare of employees and others and improving
environmental practices benefits your business

Your responsibilities for health and safety

Overview of a business' legal duties to protect the welfare of employees
and others

Register for health and safety

Registering with the Health & Safety Executive or your local authority,
getting and completing the form

Meet minimum workplace standards

How to make sure your workplace meets minimum standards under health and
safety law

How to manage waste effectively

Understanding the key principles of effective waste management:
reduction and disposal

Your waste responsibilities

An overview of the different laws you must comply with for different
types of waste

(www.businesslink.gov.uk)

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RECORDS

Records are critical. Here's a list of records kept by Graham Brown in his own practice:

Essential Practice Records

- Files
- Cost Groups
- Orders
- Time + Timesheets
- Expenses + Receipts
- Salaries
- Partner Drawings
- Director Loans
- Dividends
- PAYE + NIC
- Bank Account(s)
- Invoices
- Income
- VAT
- Assets
- Cashflow
- Balance Sheet
- Profit and Loss Account

Landscape Institute Short Filing Index

0. General Reference and Allied Subjects
1. The Profession
2. Organisation
3. Job Control
4. History of Landscape Design
5. Design Principles
6. Design Details
7. Landscape Design: Subjects and Examples
8. Existing Landscape and Formative Factors
9. Plants
10. Landscape Construction: General
11. Landscape Construction: Hard
12. Landscape Construction: Soft
13. Landscape Maintenance
20. Landscape in Hot Climates
21. Sub-tropical Climates (Mediterranean)
22. Tropical Climates - Humid
23. Tropical Climates - Arid

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FILING SYSTEM (Four digit system with examples) used by Graham Brown

- 1.0.0.0 PROJECTS
 - 1.1.0.0 Morrison v Arney
 - 1.2.0.0 AUCL Southsea
 - 1.3.0.0 La Font du Roc
- 2.0.0.0 OFFICE
 - 2.1.0.0 People
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 - 2.2.1.0 Legals
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 - 3.11.0.0 Marketing
- 4.0.0.0 TECHNICAL INFORMATION
 - 4.1.0.0 Standards
 - 4.2.0.0 Specifications
 - 4.3.0.0 Products (CISfb organised)
- 5.0.0.0 ORGANISATIONS
 - 5.1.0.0 ARB Architects Registration Board
 - 5.2.0.0 RIBA Royal Institute of British Architects
 - 5.3.0.0 AA Architectural Association
 - 5.4.0.0 APTAA Assn of PTAs In Architecture
 - 5.5.0.0 IoD Institute of Directors
 - 5.6.0.0 BAE British Academy of Experts
 - 5.7.0.0 CIArb Chartered Institute of Arbitrators
 - 5.17.0.0 CIC Construction Industry Council

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COST GROUPS for recording and analysis used by Graham Brown.

1.0.0.0	PAYMENTS
1.1.0.0	Salaries Etc
1.2.0.0	Inland Revenue
1.3.0.0	Director Loan Accounts
1.4.0.0	Subcontracts
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2.6.0.0	Holidays
2.7.0.0	Personal
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6.0.0.0	CONSUMABLES
6.1.0.0	Stationery
6.2.0.0	Prints Copies
6.3.0.0	Photographs
7.0.0.0	FINANCE LEGAL
7.1.0.0	Company Registration. Shares
7.2.0.0	Accountant
7.3.0.0	Solicitor
7.4.0.0	Bank

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7.6.0.0	Insurance other
8.0.0.0	PROFESSIONAL
8.1.0.0	Subscriptions
8.2.0.0	Course Fees
8.3.0.0	Library
8.4.0.0	LPA and LABC Fees
9.0.0.0	EQUIPMENT
9.1.0.0	Purchase
9.2.0.0	Maintenance Repair
10.0.0.0	PREMISES
10.1.0.0	Maintenance
10.2.0.0	Cleaning
10.3.0.0	Insurance Buildings
10.4.0.0	Insurance Contents
10.5.0.0	Utilities
11.0.0.0	VEHICLES

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EXPENSES RECORD used by Graham Brown

The following headings are for the columns in a spreadsheet. Each row under these headings describes a unique, individual expense.

Date
 Folio
 File #
 Cost Group #
 Item
 Payee
 Invoice
 #
 Date
 Order
 #
 Date
 Payment
 Type
 #
 By
 Receipt
 Cost
 Unit (M Q £)
 £Amount
 Rate (per mile, per unit)
 £Total
 Claim
 If
 Ref
 Date
 Paid date
 Charge
 If
 Rate
 £Amount
 Invoice
 #
 Date
 Paid
 Type
 Date
 Notes

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FINANCIAL STATEMENTS

The accounting profession has developed standardised formats for financial accounting reports.

Financial Reporting Standards (FRS)
Statements of Standard Accounting Practice (SSAP)

KEY statements are:

- **Balance Sheet**
Financial position of a firm at a given point in time.
- **Profit and Loss Account**
Revenue and expenditure over a period of time.
for companies:
Profit reinvested;
Dividends paid to shareholders;
Accumulated net profits from previous year;
Tax liabilities.
for partnerships:
Profit transferred to partners;
Drawings;
Capital.

STARTING A BUSINESS

You will suffer:

Financial insecurity, Loss of company perks, Pressure on close relationships and Isolation

You will need:

Self-confidence: a self-belief and passion about your product or service your enthusiasm should win people over to your ideas.

Self-determination: belief that outcome of events are down to own actions, not based on external factors or other people's actions.

To be a self-starter: the ability to take the initiative, work independently and to develop your ideas.

Sound judgement: the ability to be open-minded when listening to other people's advice, while bearing in mind your objectives for the business.

Commitment: the willingness to make personal sacrifices through long hours and loss of leisure time.

Perseverance: the ability to continue despite setbacks, financial insecurity and exposure to risk.

Initiative: the ability to be resourceful and proactive, rather than adopting a passive "wait and see" approach.

(from www.businesslink.gov.uk)

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TEAM SKILLS

Skills are capacities or dispositions to behave in a certain ways.

- 1 **Initiative** making the most of current assignments and promoting new ideas and following them through.
- 2 **Networking** cultivating people who are sources of useful knowledge and sharing information and expertise with them.
- 3 **Self-Management** prioritising work, using time effectively, and planning a career path.
- 4 **Perspective** understanding how one's work responsibilities relate to the goals of the organisation and being aware of the viewpoints of others such as clients, colleagues and competitors.
- 5 **Teamworking** identifying with the team, and working with colleagues to shared goals.
- 6 **Leadership** formulating, stating and building a consensus on team goals and working to accomplish them.
- 7 **Followership** assisting and supporting the leader to achieve organisational goals; thinking and acting independently rather than relying on the leader's direction.
- 8 **Organisational Diplomacy** navigating, through competing corporate interests involving individuals and groups to promote co-operation, addressing conflicts.
- 9 **Oral Presentation** preparing and presenting ideas in a clear and organised manner using effective delivery techniques.

GUIDE TO STARTING UP

Before you start

Considering starting up?

 Finding and managing the money

Forming and naming your business

 Business names & structures

 Buying a business

Your workplace

 Choosing and setting up premises

 Keeping the workplace safe and
 your employees healthy

Taxes, payroll & returns

 Taxes, records and returns - getting started
 VAT

 Income, Corporation and other business taxes
 PAYE and National Insurance

Employing people

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Becoming an employer for the first time

Managing your business

- Sales and marketing
- Financial control, operations and transport
- Contracts and suppliers
- IT and e-commerce for start ups
- Importing and exporting
- Protecting your business & ideas
- Choosing advisers and services

(from www.businesslink.gov.uk)

FORMS OF PRACTICE

(see *Architects' Legal Handbook Chapter 29*)

- **Self-employed**
- **Private Limited Company** (Companies Act 2006)
- **Partnership** (Partnership Act 1890)
- **Limited Liability Partnership** (Limited Liability Partnership Act 2000)
- Public limited company
- Service company
- Group practice
- Consortium
- Co-operative

Following notes on Self-Employment, Partnership, Limited Company and Limited Liability Partnership from www.businesslink.gov.uk

SELF-EMPLOYMENT

HMRC Newly Self-Employed Helpline: 0845 915 4515

To understand your employment status better, use the employment status indicator on the HMRC website.

Introduction

Setting up as a self-employed sole trader is the simplest and quickest way to start a business. There isn't much paperwork to do. There are no registration fees to pay, but you must register as self-employed. Record keeping and accounting is straightforward, and there are the benefits of being your own boss.

Self-employment status

If your work comes from more than one source it is possible to be employed in one or more jobs - with your employer deducting tax and National Insurance - and self-employed in others.

If you're not sure whether your work counts as self-employment, ask yourself these questions:

- Do you have the final say in how the business is run?
- Do you risk your own money in the business?
- Are you responsible for meeting the losses as well as taking the profits?
- Do you provide the main items of equipment you need to do your job, not just the small tools many employees provide for themselves?
- Are you free to hire other people on your own terms to do the work you have taken on? Do you pay them out of your own pocket?

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- Do you have to correct unsatisfactory work in your own time and at your own expense?

If you answer 'yes' to most of these questions then you are probably self-employed already, and should notify HM Revenue & Customs (HMRC) immediately. You may be charged a penalty of £100 if you fail to register within the first three full months of becoming self-employed.

Checklist: setting up as self-employed

In order to legally set yourself up as a self-employed sole trader there are several things you must do. Make sure that you:

- register as self-employed with HM Revenue & Customs (HMRC)
- obtain any permits and planning permission that you may need from your local authority
- contact your local authority to find out whether you need to pay business rates
- contact HMRC to register for VAT if you expect to have turnover of more than £68,000 a year
- set up a financial record-keeping system
- put your name on all your business stationery, including letters, invoices, receipts and cheques

PRIVATE LIMITED COMPANY

Introduction

Before your business can begin operating as a limited company, it must be registered with the Registrar of Companies - Companies House. Incorporation is the process by which a new or existing business is converted into a corporate body.

Registration documents and forms

To set up as a limited company in the UK, you - or the agent acting for you - will need to send several documents and completed forms to Companies House:

- **Memorandum of Association**, giving the name of, and authentication by, each subscriber
- **Articles of Association**, describing how the company will be run, the rights of the shareholders, the company's objects (unless they are unrestricted) and the powers of the company's directors
- form IN01 (Application to register a company), giving details of the company's registered office and the names and addresses of its directors and company secretary

See www.companieshouse.gov.uk for model articles of association and downloadable registration forms.

Company officers

The officers of the company are the people formally appointed to run it - the company directors and company secretary. By law, companies must have officers in place at all times, and their names and addresses must be on the company's registration documents.

If officers resign or new ones are appointed, or if their personal details change, the Registrar of Companies must be informed straight away.

Private companies must have at least one director, but it is not essential to have a company secretary. If there is only one director, this must be stated in the company's Articles of Association.

Company directors must be at least 16 years of age, although there is no upper age limit.

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Every company must have at least one director who is a "natural person", ie not another company. There is a grace period until 1 October 2010 for any company that only had corporate directors on 8 November 2006. It's possible for a single person to form a so-called "single member" private company and to be the sole director of this company.

Checklist: setting up and registering a limited company

As well as registering your business as a company, there are several other things that you need to do to put it on a proper legal footing. Make sure you:

- Display your company's name so it can be clearly seen by all visitors to its offices or other places of business.
- Display your company's name clearly on all its business stationery, including letters, invoices, receipts and cheques.
- Show your company's place of registration, registered number and registered office address on all its business letters order forms, emails and faxes.
- If you have a company website, show the company's name, registered office and geographic addresses, registered company number, VAT number and the place of registration. It must also include an email address.
- If any company directors' names are included in letters (other than in the text or as the person signing it) you must include the names of all the directors.
- Send all the necessary registration documents and forms to the Registrar of Companies, completed and signed.
- Check you have received confirmation - certificate of incorporation - from the Registrar of Companies that your application for limited company status has been successful. The company comes into existence when the Registrar of Companies issues a certificate of incorporation.
- Contact HM Revenue & Customs.

Remember that the above checklist covers the basics. There are many other tax and reporting obligations that a company must meet from year to year.

PARTNERSHIP

Introduction

A partnership is a relatively simple and flexible way for two or more people to own and run a profit-making business together. Social enterprises and other non-profit making organisations should not use this business structure. Unlike the shareholders in a limited company, the members of a general partnership have no financial protection if the business runs into trouble - each partner is responsible for the debts of the partnership as a whole. This means that each partner's personal assets may be at risk if the business fails.

Disputes between partners can cause difficulties, and the partnership may have to be dissolved if one of its members resigns or dies. It's possible to resolve these issues in advance by drawing up a deed of partnership, but you will need to pay a solicitor to do this.

The officers of a partnership

Any group of people that wants to set up a profit-making business together can form a partnership. However, if a member of a partnership is under the age of 18, he or she cannot be legally bound by the terms of the partnership agreement.

It is also possible for companies to be members of a partnership, in which case they will have tax and reporting obligations on top of those of individual partners. Individual partners must register as self-employed with HM Revenue & Customs.

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How many officers can a partnership have?

Forming a partnership allows two or more people to set up in business together, sharing profits, managing burdens and risks.

The rights and responsibilities of the partnership's officers

The officers of a partnership normally share in both the responsibilities of running the business and the profits or losses that it makes. However, their precise rights and responsibilities will depend on:

- type of partner
- any partnership agreement or 'deed of partnership'

Types of partner

There are three main types of partner, each of which has different rights and responsibilities.

General partners

General partners invest in the business, take part in running it and share in its profits. Each general partner is fully liable for any debts that the partnership may have. This means that they could lose more than their initial investment in the business if it runs into trouble, and that their personal assets could be at risk. Every partnership must have at least one general partner.

Sleeping or dormant partners

Sleeping partners invest money in the business and share in its profits, but do not take part in running it. Like general partners, they are fully liable for the partnership's debts.

Companies

Companies can be officers of a partnership. If so, they have the same rights and responsibilities within the partnership as other partners, but they also have some additional tax matters and reporting obligations. Partnerships whose officers are all companies have to prepare 'partnership accounts' and send these to Companies House each year. The officers of these partnerships must attach a copy of these accounts to their own company accounts when they submit these to Companies House.

Tax matters of a partnership

The profits are shared among the partners who are each personally responsible for paying income tax on their share of these profits.

In most cases the partnership's officers will be self-employed, so each member must include details of any profits they get from the partnership on their individual self-assessment tax returns each year. Self-employed partners are responsible for paying their own National Insurance contributions (NICs). It's important that each member of the partnership should register as self-employed with HM Revenue & Customs (HMRC).

It is also possible for partnership members to be companies rather than individuals. If so, they must pay corporation tax on their profits from the partnership, and should include the profits on their self-assessment return for corporation tax.

If the partnership has - or expects to have - turnover of more than £68,000, it will need to charge VAT to its customers and pass this on to HMRC.

Partnerships with employees will need to collect and pay income tax and NICs, which will mean operating a PAYE (Pay As You Earn) system.

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What does a new partnership need to do about tax?

Contact your local HMRC office to let them know that the business exists. They'll send a Partnership Tax Return, which must be filled in to show the partnership's income and expenses for the tax year. This includes a Partnership Statement, which shows how profits or losses have been divided among the partners.

The partnership should appoint one of its officers - the nominated officer - to fill in the Partnership Tax Return and send it to HMRC. They should also ensure that all other officers are given copies of the Partnership Statement to help them complete their own personal tax returns.

Although the nominated officer has responsibility for the Partnership Tax Return, all the partners will be jointly liable for any penalties resulting from it being submitted late or incorrectly.

Checklist: setting up a partnership

In order to set up business as a partnership there are certain things you need to do - some must be done as a group and others as individual partners. You should:

- Display all the partners' names at all your business premises together with the address to which official documents should be sent.
 - Display all the partners' names on your business website and stationery, including letters, invoices, receipts and cheques along with your principal place of business. If the partnership has more than 20 partners you need only display your principal place of business.
 - Register as self-employed with HM Revenue & Customs (HMRC). This must be done by each individual partner.
 - Contact HMRC to register your partnership's existence and register for VAT if you expect a turnover of more than £68,000 a year.
- Remember this is just a start. As an ongoing business, your partnership will have many other legal and tax obligations to bear in mind.

LIMITED LIABILITY PARTNERSHIP

Introduction

A limited liability partnership (LLP) is similar to a normal partnership - but it also offers reduced personal responsibility for business debts. Unlike sole traders and partners of ordinary partnerships, the LLP itself - not the individual members - is responsible for any debts that it runs up, unless individual members have personally guaranteed a loan to the business. LLPs are more complicated to set up and run than ordinary partnerships, as they have to meet many of the same requirements as limited companies. LLPs are designed to be used by profit-making businesses. Non-profit making organisations should not use this business structure.

The members of an LLP

Any group of two or more people who want to set up a profit-making business together can form a limited liability partnership (LLP), unless one of them has previously been disqualified as a company director or LLP member. It is also possible for companies to be members of an LLP.

How many members should an LLP have?

An LLP must have at least two members, and at least two must be 'designated' members.

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The rights and responsibilities of LLP members

The members of an LLP normally share in both the responsibilities of running the business and the profits that it makes. Exactly how their rights and responsibilities are defined and divided depends on the LLP's partnership agreement or 'deed of partnership'. Designated members have some extra responsibilities on top of those of ordinary members.

The responsibilities of designated members

Designated members have to ensure that the LLP meets various legal obligations. These include making sure that the annual accounts and returns are properly signed and delivered to Companies House. They are also responsible for appointing auditors if necessary, and they act for the LLP if it is wound up or dissolved. Designated members are legally accountable if they fail to carry out their duties properly.

Where to register your LLP and get help

To register a limited liability partnership (LLP) based in England or Wales, contact Companies House or find an application form for incorporation of a LLP on the Companies House website.

Alternatively you can register - incorporate - a LLP via a solicitor, accountant or company formation agent.

The cost of registration

Companies House charges a fee of £20 to register an LLP or £50 for same-day registration. Read about fees charged by Companies House on the Companies House website.

Deed of partnership of an LLP

A deed of partnership (or 'partnership agreement') is a legally binding agreement between the partners who are in business together. It describes how the partnership will be run and the rights and duties of the members themselves. The deed of partnership is usually drawn up by a solicitor, who will consult with the partners about exactly what should be in it. It's not absolutely necessary to have a deed of partnership in order to set up a limited liability partnership (LLP), but it's a good idea as it will help to avoid misunderstandings and disputes between members in future. If the members do not have a deed, they will be governed by the terms of the Limited Liability Partnerships Act 2000, which does not offer solutions to many of the problems that can arise and may not suit the way that you and your members want to work together. Read about the Limited Liability Partnership Act 2000 on the HMRC website.

What does the deed of partnership cover?

As well as giving basic information about the partnership, such as its business name and the names of the partners, the type of business and business address, the deed will usually set out:

- the amount of capital that each partner is to contribute to the business
- the way in which profits or losses are shared between partners, and whether any of the partners should be paid a salary
- working arrangements, such as how much time each partner should contribute to the business, who does what management tasks and what type of decisions need collective agreement between the partners
- changes to the partnership, such as how new partners can be appointed and what happens if a partner dies or wishes to leave the partnership

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Tax matters of a LLP

Profits are shared among members of a Limited Liability Partnership (LLP), and individual members - not the LLP - pay income tax on these profits. Unlike limited companies, LLPs don't have to pay corporation tax. In most cases the members will be self-employed, so they must include details of any profits they get on their individual self-assessment tax returns each year. Self-employed partners are also responsible for paying their own National Insurance contributions (NICs). It's important that each member of the partnership should register as self-employed with HM Revenue & Customs (HMRC).

It is also possible for LLP members to be companies or other LLPs rather than individuals. If so, companies that are LLP members will have to pay corporation tax on their profits from the LLP and should include details of these on their self-assessment return for corporation tax.

If the LLP has, or expects to have, turnover of more than £68,000 a year, it will need to charge VAT to its customers and pass this on to HMRC. LLPs with employees must collect and pay income tax and NICs from them, which means operating a PAYE (Pay As You Earn) system - see Business Link's guide on PAYE for employers: the basics.

What does a new LLP need to do?

When you set up you must contact your local HMRC office to let them know the business exists. HMRC will send a Partnership Tax Return, which must be filled in to show the partnership's income and expenses for the tax year. The Partnership Tax Return includes a Partnership Statement, showing how profits or losses have been divided among the partners.

The partnership should appoint one of its members - the 'nominated member' - to fill in the Partnership Tax Return and return it to HMRC. The nominated member should also make sure that other members of the partnership are given copies of the Partnership Statement, to help them complete their own personal tax returns.

Although the nominated member has responsibility for the Partnership Tax Return, all the members will be jointly liable for any penalties that result from it being submitted late or incorrectly.

Checklist: setting up and registering an LLP

As well as registering your limited liability partnership (LLP) with Companies House, there are several other things that you need to do to put it on a proper legal footing and maintain its status. Make sure you:

- send Companies House a completed and signed Incorporation Document - form LL IN01
- display your LLP's name on the outside of all its offices or other places of business
- display your LLP's name on all its business stationery, including letters, invoices, receipts and cheques
- show your LLP's place of registration, registered number and registered office address on all its business letters, order forms and electronic business communications
- check that you have received a Certificate of Incorporation from Companies House
- inform HM Revenue & Customs (HMRC)
- send an annual tax return to HMRC
- send a set of accounts to Companies House every year
- send Companies House an annual return - form LL AR01 - in order to keep your LLP's records up to date
- inform Companies House of any changes to your LLP's membership, the personal details of its members or the address of its registered office

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If the LLP has a website, it will need to show the LLP's name, registered office and geographic addresses, registered number, VAT number and the place of registration. It must also include an email address.

PROCUREMENT

ARCHITECT APPOINTMENTS and BUILDING CONTRACTS

PROCUREMENT is the method by which a building project is to be achieved, determining:

relations between client, design and construction teams;
methods of financing and management; and
form of construction contract.

OPTIMISM BIAS

Optimism Bias is the amount by which a project's costs and duration are underestimated and/or benefits are overestimated. The concept was introduced by Tim Evans of Osprey Mott MacDonald at the National Benchmarking Forum. All projects suffer from optimism bias: Major public projects procured by traditional means average 17% overrun on time and 47% on cost and construction projects suffer by between 4% and 66%. Cost overrun egs: Channel Tunnel by 80%, Boston Tunnel by 200%, and Scottish Parliament by 900%. Time overrun egs: British Library by 10 years, and Channel Tunnel by 1 year.

Common causes: Complexity of contract structure; Contractors not involved early enough; Failure to recognize that change is inevitable; and Strategic misrepresentation ie the deliberate down-playing of likely cost and time overruns to ensure a project gets started.

BENCHMARKING

Benchmarking is a method of improving performance in a systematic and logical way by measuring and comparing your performance against others, and then using lessons learned from the best to make targeted improvements.

Five key steps in benchmarking process:

Plan: Clearly establish what needs to be improved - make sure it is important to you and your customers - and determine the data collection methodology to be used (including any KPIs).

Analysis: Gather the data and determine the current performance gap - against a competitor, the industry or internally - and identify the reasons for the difference.

Action: Develop and implement improvement plans & performance targets.

Review: Monitor performance against the performance targets.

Repeat: Repeat the whole process - benchmarking needs to become a habit if you are serious about improving your performance.

www.constructingexcellence.org.uk

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KEY PERFORMANCE INDICATORS (KPIs)

A **Key Performance Indicator** is the measure of performance of an activity that is critical to the success of an organisation.

KPI Wallcharts published annually for:

- All Construction (Economic)
- Respect for People
- Environment
- Construction Consultants
- M&E Contractors
- Construction Products Industry

KPIs can be used by organisations to benchmark their performance against the rest of the industry or sector. They can form the basis of a more comprehensive set of performance measures. Regular measurement using appropriate KPIs enables an organisation to set and communicate its performance targets, and to measure whether it is achieving them.

KPIs are used within the Construction Industry to:

- Measure the benefits from partnering projects and frameworks;
- Support 'best value';
- Meet Housing Corporation requirements;
- Provide evidence of past performance to support bids for new work;
- Meet the requirements of ISO 9001 quality management standard.

KPIs measure:

- Client Satisfaction (Product): How satisfied the client was with the finished product/facility using a 1 to 10 scale.
- Client Satisfaction (Service): How satisfied the client was with the service of the consultants and main contractor.
- Defects: The Condition of the facility with respect to defects at the time of handover.
- Predictability (Cost): Design Cost and Construction Cost
- Predictability (Time): Design Time and Construction Time
- Profitability
- Productivity
- Safety
- Construction Cost
- Construction Time

www.constructingexcellence.org.uk www.kpizone.co.uk

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RIBA AGREEMENTS 2010

The printed versions of the new suite of RIBA Agreements 2010 have now been published. They supersede the RIBA Agreements 2007, which will be withdrawn from sale on 1 December 2010 along with the Standard Form of Appointment of an Architect (SFA 99), the Conditions of Engagement for the Appointment of an Architect (CE 99) and the Form of Appointment as Sub-Consultant (SC 99).

RIBA Standard Agreement 2010 – Architect

RIBA Standard Agreement 2010 – Consultant

RIBA Concise Agreement 2010 – Architect

RIBA Domestic Project Agreement 2010 – Architect

RIBA Sub-consultant Agreement 2010

The RIBA Agreements are now more user-friendly with a new simplified design. Recent legislative changes have been taken into account, including The Cancellation of Contracts made in a Consumer's Home or Place of Work Regulations 2008 and the Provision of Services Regulations 2009. Revisions have been made to the provisions for termination, which give rights to the architect equal to those offered to the client. The option of an aggregate cap on liability has been introduced. The establishment of the right for the architect to have reasonable access to photograph a project and to publish images. Increased interest charges on the late payment of fees. Better clarification in relation to the architect's right to suspend the copyright licence in the event of non-payment of any amounts properly due.

(from www.ribabookshop.org)

RIBA S-Con-07-A Standard Agreement for the appointment of an Architect.

- Articles
- Attestation
- Schedules
- Terms

Do

- Ensure agreement signed BEFORE starting work on a project,
- Sign as simple contract (6 year liability)
- Keep original document. Give copy to client
- Financial liability as low as reasonable

Do not

- Sign as deed (12 year liability)
- Sign warranties to third parties
- Reduce 6 year liability period UNLESS you are absolutely sure, and have evidence in writing from the client, that the reduction and its consequences are wholly understood and accepted by the client

Appointment as:

Architectural Designer;
Lead Designer;
Lead Consultant; or
Contract Administrator.

Lead Consultant advises on methods of procuring construction.

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NEC3 ENGINEERING AND CONSTRUCTION CONTRACT

- The NEC Contract is a legal framework of project management procedures designed to handle all aspects of the management of construction projects.
- Benefits (stimulus to good management, flexibility and simplicity) can be applied to any construction project, large or small.
- Comprises a suite of contract documents and guidance books and a range of training, consultancy and a Users' Group services.
- The NEC is a modern day family of standard contracts that embraces the concept of partnership and encourages employers, designers, contractors and project managers to work together through both a powerful management tool and a legal framework to facilitate all aspects of the creation of construction projects.

FLEXIBLE Can be used:

- for engineering and construction work including civil, electrical, mechanical and building work;
- when Contractor has full, partial or no design responsibility;
- for fixed price, target, cost reimbursable and management types of contract;
- in UK and other countries.

CLEAR and SIMPLE

- Written in ordinary language;
- Clauses and text less than in many standard forms;
- Sentences as short as possible;
- Sentences sub-divided using bullet points;
- Option clauses add to core clauses not alter or delete them;
- No cross-references required between clauses.

STIMULATES GOOD MANAGEMENT

- Foresight applied collaboratively mitigates problems and shrinks risk;
- Clear division of function and responsibility helps accountability and motivates people to play their part.

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STRUCTURE

- Core Clauses
 - General
 - The Contractor's main responsibilities
 - Time
 - Testing and Defects
 - Payment
 - Compensation Events
 - Title
 - Risks and Insurance
 - Termination
- Main Option Clauses
 - A. Priced contract with activity schedule
 - B. Priced contract with bill of quantities
 - C. Target contract with activity schedule
 - D. Target contract with bill of quantities
 - E. Cost reimbursable contract
 - F. Management contract
- Dispute Resolution
- Secondary Option Clauses
- Schedule of Cost Components
- Shorter Schedule of Cost Components
- Contract Data
- Index

ROLES and DUTIES

The NEC3 sets out the responsibilities and roles of the following parties:

- the **EMPLOYER**
- the **PROJECT MANAGER**
- the **SUPERVISOR**
- the **CONTRACTOR**
- **SUBCONTRACTORS**
- the **ADJUDICATOR**

Note: The roles played by the Engineer, Architect, Contract Administrator or Supervising Officer in other standard forms are divided between the **Project Manager**, the **Supervisor**, the **Employer's** designer and the **Adjudicator**.
(newengineeringcontract.com)

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PP2000 ACA STANDARD FORM OF CONTRACT FOR PROJECT PARTNERING

Key Features

- Team-Based Multi-Party Approach
- Integrated Design/Supply/Construction Process
- Egan Objectives
- Supply Chain Partnering
- Core Group
- Controls
- Incentives
- Risk Management
- Non-Adversarial Problem Resolution
- Partnering Adviser

Agreements by Partnering Team at signing of Project Partnering Agreement

- Client's Project Brief
- Contractor's Project Proposals
- Initial Price Framework
- Provisional KPIs
- Consultant Services Schedules
- Consultant Payment Terms

Structure

- Agreement
- Terms
- Appendices

Terms

- Project and Partnering Team Members
- Partnering Documents
- Communication and Organisation
- Partnering Objectives
- Client Representative and Partnering Adviser
- Partnering and Project Timetables
- Health and Safety, Site Welfare and Employees
- Design and Process Development
- Intellectual Property
- Supply Chain
- Volume Supply Agreements
- Prices
- Incentives
- Pre-Conditions to Start on Site
- Project on Site
- Quality and Environment
- Change
- Risk Management
- Insurance and Security
- Payment
- Project Completion and Support

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- Duty of Care and Warranties
- Key Performance Indicators and Continuous Improvement
- Joint Initiatives and Strategic Alliancing
- General
- Termination
- Problem Solving and Dispute Avoidance or Resolution
- Special Terms

JCT05 SBC/Q STANDARD BUILDING CONTRACT WITH QUANTITIES

STRUCTURE

Contents

Articles of Agreement

- Recitals
- Articles
- Contract Particulars
- Attestation

Conditions

- Definitions and Interpretation
- Carrying out the Works
- Control of the Works
- Payment
- Variations
- Injury, Damage and Insurance
- Assignment, Third Party Rights and Collateral Warranties
- Termination
- Settlement of Disputes

Schedules

- Contractor's Design Submission Procedure
- Schedule 2 Quotation
- Insurance Options
- Code of Practice
- Third Party Rights
- Forms of Bonds
- Fluctuations Options

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JCT05 SBC/Q PRACTICAL COMPLETION

JCT05 SBC/Q provides in cl 2.30 'When in the opinion of the Architect/Contract Administrator Practical Completion of the Works is achieved the Architect/CA shall forthwith issue a certificate to that effect and practical completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the date stated in that certificate'.

Several attempts have been made by the courts to define the meaning of practical completion most notably in Westminster Corporation v J Jarvis and Sons (1970), HW Neville (Sunblest Ltd) v William Press and Sons (1982) and Emson Eastern v EME Developments (1991).

Keating writes that:

1. The Works can be Practically Complete notwithstanding that there are latent defects;
2. A Certificate of Practical Completion may not be issued if there are patent defects. The (JCT05 Rectification Period) is provided in order to enable defects not apparent at the date of Practical Completion to be remedied;
3. Practical Completion means the completion of all the construction work that has to be done;
4. However, the Architect is given discretion to certify Practical Completion where there are very minor items of work left incomplete, on 'de minimus' principles.

Rod Males wrote in the Architects Job Book Volume 2 Contract Administration 5th Edition 1988 that:

Practical completion means that the whole of the work to be done under the contract is complete in all respects, except for any latent defects.

The consequences of practical completion are:

1. Contractor's liability to pay liquidated damages ceases;
2. Rectification Period starts;
3. Contractor ceases to be responsible for frost damage occurring subsequently;
4. Period of final measurement starts;
5. Employer releases half of the retention;
6. Responsibility for insurance of the Works moves from Contractor to Employer;
7. Completion Date is reviewed and confirmed.

DEFECTS

A defect is that material or workmanship not in accordance with the contract documents. A patent defect is that which can be discovered by normal means of discovery. A latent defect is that which cannot be discovered by normal means of discovery.

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PROVISIONAL SUMS

General Rules of the Standard Method of Measurement 7th Edition for Buildings (SMM7) defines and JCT05 SBC/Q refers:

10.1 Where work can be described and given in items in accordance with these rules but the quantity of work required cannot be accurately determined, an estimate of the quantity shall be given and identified as an approximate quantity.

10.2 Where work cannot be described and given in items in accordance with these rules it shall be given as a Provisional Sum and identified as either defined or undefined work as appropriate.

10.3 A Provisional Sum for defined work is a sum provided for work which is not completely designed but for which the following information shall be provided:

- (a) The nature and construction of the work.
- (b) A statement of how and where the work is fixed to the building and what other work is to be fixed thereto.
- (c) A quantity or quantities which indicate the scope and extent of the work.
- (d) Any specific limitations and the like identified in Section A35 (of SMM7).

10.4 Where Provisional Sums are given for defined work the Contractor will be deemed to have made due allowance in programming, planning and pricing Preliminaries. Any such allowance will only be subject to adjustment in those circumstances where a variation in respect of other work measured in detail in accordance with the rules would give rise to adjustment.

10.5 A Provisional Sum for undefined work is a sum provided for work where the information required in accordance with rule 10.3 cannot be given.

10.6 Where Provisional Sums are given for undefined work the Contractor will be deemed not to have made any allowance in programming, planning and pricing Preliminaries.

Note: Where a provisional sum has been incorrectly listed as defined, JCT05 SBC/Q provides in cl 2.14.1 that 'Where the description of a Provisional Sum for defined work does not provide the information required by the Standard Method of Measurement, the description shall be corrected so that it does provide that information' and in cl 2.14.3 that '..... any correction, alteration or modification under clause 2.14.1 shall be treated as a Variation'. An instruction issued by the Architect under cl 3.14.1 may give rise to claims for extension of time under cl 2.29.1 and loss and expense under cl 4.24.1. It is therefore important that provisional sums for defined and undefined work are correctly identified and that for defined work all the information required by SMM7 rule 10.3 is provided at tender stage.

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EXTENSIONS OF TIME : WEATHER

JCT05 SBC/Q cl 2.29.8 lists 'exceptionally adverse weather conditions' as a Relevant Event.

Metereological Office Assistance

The NEC states that extension to contract claims can only be granted if the weather has been exceptionally severe. The weather must have been worse than could have been expected on average one year out of 10 (this is calculated using a 30-year time period from 1961-1990), in terms of:

- Monthly rainfall total
- Number of days with rainfall greater than 5mm
- Number of days with an air frost
- Number of days with snow lying at 09:00am

The NEC monthly summary helps you to settle claims quickly and efficiently and provides the following information.

- A comparison of weather during the month in question.
- Summaries for approximately 150 locations in the UK.
- The monthly weather information required by users of the NEC.

Downtime summaries

This report helps you to monitor the progress and evaluate the efficiency of a project by:

- Helping monitor progress and efficiency of site operations.
- Enabling faster settlement of contractual disputes.
- Detailing the number of hours of work lost during the day.
- Providing summaries of weather conditions that interfere with outdoor operations.

Long-term averages are also available as separate reports by weather item, covering the entire year. Examples:

- Temperature and Humidity
- Rain and Snow
- Wind
- Daily Items

Downtime summary reports are provided in two parts:

- Number of working hours with adverse weather.
- Number of days with adverse weather.

Reports are related to general disruption, including damage to partly completed work.

For more information email construction@metoffice.gov.uk

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EXTENSIONS OF TIME under JCT05 SBC/Q

Reflections on the Contractor's Notices of Delay

Relevant Clauses: c2.26, c2.27, c2.28, c2.29.

c2.27.1: If and whenever it becomes reasonably apparent that the progress of the Works or any Section is being or is likely to be delayed the Contractor shall forthwith give written notice to the Architect/CA of the material circumstances, including the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.

c2.28.1: If in the opinion of the Architect/CA, on receiving notice and particulars under clause 2.27

1 any of the events which are stated to be a cause of delay is a Relevant Event, and

2 completion of the Works or of any Section is likely to be delayed thereby beyond the relevant Completion Date,

then, save where these Conditions expressly provide otherwise, the Architect/CA shall give an extension of time by fixing such later date as the Completion Date for the Works or Section as he then estimates to be fair and reasonable.

Question A.

Is a written notice of delay by the Contractor under c2.27.1 a condition precedent to the granting by the Architect/CA of an extension of time?

Answer A.

In 'Delay and Disruption in Construction Contracts' Keith Pickavance argues at page 86 that, irrespective of the notice requirements in the contract concerning acts of prevention by the Employer, the better view is:

1. absence of notice will not defeat a the Contractor's entitlement to an appropriate extension of time or compensation for events which are not at the his risk;
2. the Contract Administrator should grant a fair and reasonable extension of time as soon as he is able and not wait for notice;
3. an extension of time does not just protect the Employer's interest in liquidated and ascertained damages but demonstrates the date upon which the Works should have been completed for the purposes of demonstrating whether the Contractor has accelerated progress;
4. in the absence of a notice of a delaying event the Contractor cannot recover any acceleration costs he incurs in order to overcome the effect of an event the occurrence of which he has failed to notify the Employer;
5. in the event that the Contractor fails to give notice, he should not be entitled to benefit from his breach by receiving a greater extension of

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time or greater compensation than that which he would have received had he given notice in due time; and

6. in the event that the absence of notice prevented the Employer or the Contract Administrator from taking action which they could reasonably have taken to reduce the loss arising out of the delay, the Contractor's failure to give such notice will render him liable for the costs which could have been saved.

Question B.

What form should a Contractor's notice of delay take?

Answer B.

In London Borough of Merton v. Stanley Hugh Leach Ltd (1985) 32 BLR 51, Vinelott J accepted the arbitrator's criteria that, within the meaning of JCT63 c23, a written notice:

1. must be in writing;
2. must specify a cause of delay;
3. the progress of the Works must already have been affected; in other words, the notice must not relate solely to an anticipated future delay;
4. need not take any special form of words, provided that it is sufficiently precise to put the Contract Administrator on notice of the delay; and
5. need not relate the delay to one of the grounds for an extension of time set out in clause 23.

Pickavance argues (ibid) that the same criteria of enforceability should apply to the form of a written notice as to the period in which it is given: if the Contractor does not defeat his entitlement to an extension of time by not giving any notice at all, then it follows that he does not defeat his entitlement by not giving a notice which is otherwise than in writing. Thus a notice could be given by telephone or in a progress meeting.

Question C.

What should a Contractor's notice identify as a minimum?

Answer C.

1. the event;
2. the date the event took place;
3. the cause of the event;
4. the likely duration of the event;
5. the potential impact of the event upon the progress of the Works;
6. the cause of any anticipated or actual delay to progress;
7. whether the delay is likely to extend completion; and
8. whether the cause is an excusable event.

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Question D.

What constitutes a Contractor's entitlement to an extension of time?

Answer D.

The Architect/CA being of the opinion that:

1. the event constitutes a Relevant Event; and
2. it is likely that the event will delay the Works beyond the Completion Date.

Question E.

c2.28.1 requires not that the Architect's opinion be fair and reasonable but that the extension of time be fair and reasonable. How, then, should the Architect ensure an extension of time is fair and reasonable?

Answer E.

In John Barker Construction Ltd v. London Portman Hotel Ltd (1996) 12 Constr LJ 277, Roger Toulson QC stated that in order to calculate a fair and reasonable extension of time, the CA must:

1. Apply the rules of the contract;
2. recognise the effects of constructive change;
3. make a logical analysis in a methodical way of the effect of a Relevant Event upon the Contractor's programme; and
4. calculate rather than make an impressionistic assessment of the time taken up by an event.

Question F.

Must the Architect always discuss his findings with both Employer and Contractor before making an extension of time?

Answer F.

There is no requirement under JCT05 SBC/Q for such discussions to take place. However, Judge Coulson in John Barker Construction v. London Portman Hotel (ibid) implied that if an opportunity to discuss his award with one party is given by the Architect then the same opportunity should be given to the other party.

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CONSTRUCTION PROGRAMMES

NEC3 New Engineering Contract

The Contractor must show on each programme which he submits for acceptance:

- the starting date, access dates, key dates and completion date;
- planned completion;
- the order and timing of the operations which the Contractor plans to do in order to provide the Works;
- the order and timing of the Work of the Employer and others as last agreed with them by the Contractor, or, if not so agreed, as stated in the Works information;
- the dates when the Contractor plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the Employer and others to do their work;
- provisions for float, time risk allowances, health and safety requirements, and the procedures set out in this contract;
- the dates when, in order to provide the Works in accordance with his programme, the Contractor will need access to a part of the Site if later than its access date, acceptances, plant and materials and other things to be provided by the Employer, and information from others;
- for each operation, a statement of how the Contractor plans to do the Work identifying the principal equipment and other resources which he plans to use;
- other information which the Works information requires the Contractor to show on a programme submitted for acceptance.

NBS National Building Specification

Immediately when requested and before starting work on site the Contractor must submit in an approved form a master programme for the Works, which must include details of:

- Design, production information and proposals provided by the Contractor, subcontractors and suppliers including inspection and checking;
- Planning and mobilisation by the Contractor;
- Earliest and latest start and finish dates for each activity and identification of all critical activities;
- Running in, adjustment, commissioning and testing of all engineering services and installations;

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- Work resulting from instructions issued in regard to the expenditure of provisional sums; and
- Work by or on behalf of the Employer and concurrent with the Contract the nature and scope of which, the relationship with preceding and following work and any relevant limitations, are suitably defined in the Contract Documents.

SCL Delay and Construction Protocol

As early as possible in the project, the Contractor should submit a programme (using commercially available critical path method project planning software) showing the manner and sequence in which the Contractor plans to carry out the Works.

DISPUTE RESOLUTION

Decide it for yourselves by:

- **Agreement** or
- **Conciliation** or
- **Mediation**

Get someone else to decide it for you by:

- **Expert Determination**
- **Adjudication** subject in all matters to
- **Arbitration** subject in restricted areas to
- **Litigation** County Court decision subject to High Court decision subject to Court of Appeal decision subject to Supreme Court decision subject to European Court of Justice.

ADJUDICATION

The Housing Grants, Construction and Regeneration Act 1996 provides (S.108) that:

- A party to a construction contract has the right to refer a dispute to adjudication;
- a dispute includes any difference; and
- an adjudicator's decision is to be binding until dispute is determined by legal proceedings, arbitration or agreement.

and that a construction contract shall:

- enable a party to give notice at any time of intention to refer dispute to adjudication;
- provide a timetable geared to securing the appointment of an adjudicator within seven days of notice;
- require an adjudicator to reach decision within 28 days of referral (unless extended by agreement of parties or by adjudicator with consent of referring party);
- require an adjudicator to act impartially;
- enable an adjudicator to take lead in establishing the facts and law; and
- protect an adjudicator from liability.

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ARBITRATION

Held under and in accordance with the Arbitration Act 1996 which provides for:

- Definition;
- Party autonomy;
- Flexibility;
- Confidentiality;
- Expertise;
- Authority;
- Appeal; and
- Costs.

Note that an arbitrator's decision (award) is binding in law subject to restricted appeal and can be enforced by the courts.

CORE BIBLIOGRAPHY

- Chappell & Willis The Architect in Practice
- CIOB CoP for Project Management for Construction and Development
- JCT Practice Note Deciding on the appropriate JCT contract
- JCT Standard Building Contract With Quantities 2005 (SBC/Q)
- NJCC Codes of Procedure for Tendering and Procedure Notes
- RIBA Architect's Job Book
- RIBA Architect's Handbook of Practice Management
- RIBA Plan of Work
- RIBA Standard Agreement 2010 – Architect
- Speaight & Stone Architect's Legal Handbook
Chapter 29 Brown Legal Organisation of Architects' Offices

END OF NOTES.