

1 Agree contractual terms

Prior to commencing work, it is essential to **agree the key contractual terms for the project in writing** (as a minimum: payment, scope of works and programme), as this will help clarify your rights, limit your liabilities and provide you with certainty as to your position as the project progresses. It is recommended that you agree at least the following before starting work:

Payment

- Application dates
- Due dates
- Final dates for payment

Scope of works

- What you are providing (e.g. labour, plant and materials)
- What attendances/services are being provided for you (e.g. hoists, storage areas, materials)
- Whether you are doing design, and, if you are, to what extent
- Where your activities end and someone else's start
- Tolerances for your work, specification/standards of workmanship and materials

Programme

- When you start and finish
- Any "lead-in" period from order to start on site to allow for off-site works (e.g. design, long delivery equipment/materials)
- Any sections, partial completions or handovers for your works
- Whether there are liquidated damages for late completion, and, if there are, a limit on your liability and any "grace" period before they apply.

Always be careful what you sign: anything that you sign (even an informal document such as a set of pre-contract meeting minutes) could become a binding agreement that overrides your tender conditions.

2 Include clear payment terms

As far as your payment terms are concerned, there should be **clear agreement as to the dates which determine when you get paid**. As a minimum, you should agree all of the items relating to payment above and insist on a schedule of calendar dates for these wherever possible. This will allow you to determine when and how much you are going to get paid.

If you don't agree terms that meet the requirements of the Housing Grants Construction and Regeneration Act (the 'Construction Act'), the **Scheme for Construction Contracts** applies. This is a formal payment framework, which provides for instalments at 28 day intervals for contracts lasting more than 45 days. **However, it only applies where there is no agreement or the agreed terms do not satisfy the Construction Act – you cannot revert to it because you decide you don't like the terms you have signed up to!**

3 Know your client (and your client's client!)

When you allow clients time to pay, it should be a conscious decision based on knowledge – if you knew a client was about to become insolvent, it is unlikely that you would allow 30 days credit. **By conducting basic credit checks on clients, you can greatly increase your chances of getting paid.** The following are simple ways of checking a client's credit-worthiness:

- A **credit-rating from a credit-reference agency** – can provide you with a status report on a company for a fee – NSCC offers via its member organisations a free credit checking service; contact your trade association for details.
- Own records** – allow you to check, if you are in the habit of recording your experiences with clients, whether you have had any problems with a client in the past
- Bank references** – are quite reliable because they reflect the current cash position of a company; however, they are notoriously vague and will not simply state 'do not extend credit to this company'.
- Trade references** from your client's regular suppliers – can offer an insight into a client's payment practices e.g. whether they pay on time.
- Company accounts** (at Companies House – www.companieshouse.gov.uk)
- Register of County Court Judgements** – contains details of all money judgements from the County Courts of England, Scotland, Wales and Northern Ireland.

In addition to checking out your client, it is also advisable to **research your client's client**, as it is currently legal for a contractor to include terms that allow him to avoid paying his sub-contractor if he does not get paid as a result of his client becoming insolvent. However, to be effective, contract terms to this effect must be agreed. Do not sign up to them.

4 Protect against clients considered high risk

If a client is considered a high risk (because, for example, they always pay late or are deemed near insolvency), there are a number of steps you can take to improve the likelihood of getting paid:

- Insist on **full or part-payment** in advance for goods and services
- Ask for a **Director's personal guarantee**
- Take out **credit insurance**
- Include a **retention of title clause** in the contract which will allow you to retain ownership of goods supplied until they are paid for
- Deposit the contract sum with a third party, such as a bank, by means of a **stakeholder fund**, ensuring there are clear conditions for its release, which ideally involve a third party.

5 Establish a contact for payment queries

To encourage prompt payment and ensure you are in a position to resolve any queries that arise, it is advisable to **establish a contact for payment queries, as having a 'friend' in your client's company can prove invaluable when chasing an unpaid invoice**. The most effective way of persuading a client to pay up is a telephone call. Call your contact a week or so before the account is due to be paid to make sure that your payment is in your client's system – this gives you time to resolve any problems before the payment becomes late.

6 Submit invoices on time

You can't expect to get paid until your invoice has made its way into your client's payment process, which means it is essential to **submit invoices on time and get proof that your client has received them**. To ensure that an invoice is paid promptly, it is advisable to show your payment terms clearly on the front e.g. **Payment Terms: 30 days from date of invoice**. Including as much information as possible in respect of the amount claimed (e.g. by means of an attached schedule showing how the amounts claimed have been calculated) makes it harder for your client to dispute or reduce your payment.

7 Avoid giving your client an excuse not to pay

Your client is likely to operate a computerised system that will not allow a payment to be made without certain information being in place. Typically this will include your CIS, VAT registration, insurance and bank details; however, you should check your contract for any additional requirements. **Avoid giving your client an excuse not to pay you by making sure that they are given all the information required** and get proof that they have received it.

8 Charge interest on late payments

If a client pays you later than agreed, you have a legal right under the Late Payment of Commercial Debts (Interest) Act 1998 to **claim interest on the overdue amount**. It is advisable to make reference to this right in your contracts as follows even if you don't intend to actually charge interest, as it may act as a deterrent against late payment:

We will exercise our statutory right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 (at 8% over the Bank of England base rate) if we are not paid according to our agreed credit terms.

Where you have agreed a credit period with your client, the payment is late if it is made after the last day of the credit period – if no credit period has been agreed, the Act sets a default period of 30 days.

9 Make use of remedies offered by Construction Act

If you are firm and show that you **know your rights**, you are less likely to be taken advantage of when it comes to getting paid on time. The Construction Act offers the following remedies in the event that you do not receive payment from your client:

Suspension of work - If you have not been paid in full by the final date for payment and no notice of intention to withhold payment has been given, you can issue 7 days notice of your intention to suspend work until payment is received – for advice on suspending work, contact the NSCC contractual and legal helpline provided by Wedlake Bell on **020 7395 3000**.

Adjudication - Adjudication is a 28-day dispute resolution process. If your client has rejected your claim for monies owed to you, you can refer the dispute to the adjudicator or Adjudicator Nominating Body (ANB) named in your contract. If your contract does not name an adjudicator or ANB, you can approach AICA, which acts for NSCC, a named ANB in the JCT contracts – contact AICA on 0870 429 6353 for further information.

10 Consider using a third party

If all usual efforts fail, a client may not pay until threatened. **Send a final demand threatening the use of a third party** such as a debt collection agency or legal action, or use a solicitor to issue a strong letter before action to try to avoid proceedings. You can use the Small Claims Court for debts under £5,000 and the County Court to recover debts up to £150,000 – for further information, go to www.hmcourts-service.gov.uk.