

TENDER RISK REVIEW

Run this before the pre-contract meeting, and again before signing anything. Some risks cannot be quoted away, they have to be priced or pushed back. The big three: LADs, retention, and one-sided payment terms flowing down from the main contract.

PROJECT _____ MAIN CONTRACTOR _____ CONTRACT FORM _____
ORDER VALUE _____ DATE _____

1 LADS, LIQUIDATED DAMAGES

IN THE CONTRACT? Y / N _____ RATE _____ AS % OF ORDER VALUE _____ CAPPED AT _____

- ☐ **LADs are unusual in scaffolding subcontracts.** Resist sums above 10% of order value (NASC CG19:18).
- ☐ **The Scaffolding Contract 2018 standard form has no LAD clause.** Any LAD provision is an MC amendment: it was added deliberately, and it is negotiable. Cap it or resist it.
- ☐ **The Cavendish test:** the sum must be proportionate to a legitimate commercial interest, not a penalty.

2 RETENTION

RATE % _____ FIRST RELEASE TRIGGER _____ FINAL RELEASE TRIGGER _____

- ☐ **Standard is 3%. Challenge anything above 5%.** The 2018 standard form has no retention clause: if it appears, it was added, and it is negotiable.
- ☐ **Half released at YOUR practical completion,** not the main works PC. Your scaffold finishes earlier, and your retention should follow it.

3 PAYMENT TERMS

DAYS FROM APPLICATION TO FINAL DATE _____ APPLICATION DATE EACH MONTH _____
PAY LESS NOTICE DEADLINE _____

- ☐ **B2B terms cannot exceed 60 days** unless expressly agreed and not grossly unfair. Public sector cap is 30 days (CG7:22).
- ☐ **Statutory interest runs at base rate + 8%** plus a fixed recovery sum, reserve it in your terms rather than bargaining it away.
- ☐ **Watch for disguised pay-when-paid:** "payment subject to receipt", "conditional on funds received". Void under HGCRA s.113 except upstream insolvency. Have it struck out.

4 BATTLE OF THE FORMS, PROTECT YOUR TERMS

- ☐ **Acknowledge every order in writing the same day,** stating that your quotation terms govern. Silence is treated as acceptance of theirs.
- ☐ **Counter any purchase order** that carries your rates with none of your wording. The last shot usually wins (Butler Machine Tool v Ex-Cell-O).
- ☐ **Send a tracked-changes copy back with any rejection** so there is a record of what changed and when.

5 PRE-CONTRACT MEETING DISCIPLINE

The PCM is your last negotiation before work starts. Rates rarely separate the bids; the terms inside them do.

- ☐ **Prepared in advance:** you know which terms genuinely matter to your costs and delivery, and which you can concede. A payment-terms concession may be liveable; a cost that hits site every week is not.
- ☐ **A second pair of eyes attends with you.** Attending alone is one of the seven highest-risk pitfalls.
- ☐ **No on-the-spot decisions** on scope, programme or rates. Anything changed at the meeting gets re-priced before it is agreed.
- ☐ **No document signed unread,** H&S and quality schedules included.
- ☐ **The Golden Rule (NASC CG14:18): never sign the minutes before you leave.** Take them away, read them carefully, sign in your own time.
- ☐ **Respond in writing within 5 working days** to any errors or omissions in the minutes. Silence equals acceptance, and the minutes form part of the contract.

6 SEVEN HIGHEST-RISK PITFALLS, FINAL SCAN

PITFALL		CLEAR?
1	Scope, programme or conditions changed at the PCM without re-pricing	
2	Attending the PCM alone, no second pair of eyes on the deal	
3	Signing the minutes at the meeting rather than reviewing in your own time	
4	Being intimidated, bullied or rushed into on-the-spot decisions	
5	LAD flow-down above 10% of order value accepted without challenge	
6	Retention above 5%, or release tied to the main works PC, accepted without challenge	
7	Payment terms beyond 60 days B2B (30 public sector) without explicit, justified agreement	

DECISION
☐ Proceed

☐ Proceed with amendments listed

☐ Re-price or escalate

SIGNED _____

DATE _____

WHY THIS SHEET EXISTS

The competitor rates in the pack are usually similar. It is the terms and conditions inside each bid that separate the winning tender from the losing one, and the ones you accept under pressure that decide whether the job makes money.