

MODULE 1 OF 5 · SCAFFOLDING CONTRACT MANAGERS

# Understanding Your Subcontract

Module summary — key concepts, diagrams, and references

## KEY TAKEAWAYS

- ✓ Your subcontract is made up of several documents — the order of priority matters when they conflict.
- ✓ "Incorporated by reference" can silently expand your obligations beyond what you quoted for.
- ✓ Certain clauses (pay-when-paid, back-to-back, fitness for purpose) transfer significant risk — you must spot them before signing.
- ✓ As a subcontractor you have statutory rights under UK construction law that protect you even when the contract tries to override them.

## SECTION 1 — WHY THIS MATTERS

The subcontract is the single most important document on any job. It defines what you must deliver, when, and at what cost — and what happens when things go wrong. Most problems in scaffolding subcontracting arise not from poor workmanship, but from misunderstood or unread obligations.

### KEY PRINCIPLE

A subcontract is legally binding once signed. This includes any documents incorporated by reference — even if you have never seen them. Understanding what you are signing is a fundamental management responsibility.

## SECTION 2 — WHAT MAKES UP YOUR SUBCONTRACT

Your subcontract is usually a collection of documents. The following priority order applies when documents conflict — the document highest in the list takes precedence.

### SUBCONTRACT AGREEMENT

01 Core legal terms — obligations, payment, liability, dispute resolution

**HIGHEST PRIORITY**

### SPECIFICATION / WORKS INFORMATION

02 Defines exactly what you must build — scope, materials, standards

### DRAWINGS

03 Technical drawings showing the structure to be scaffolded

### PROGRAMME

04 When activities must be completed — sequencing and progress obligations

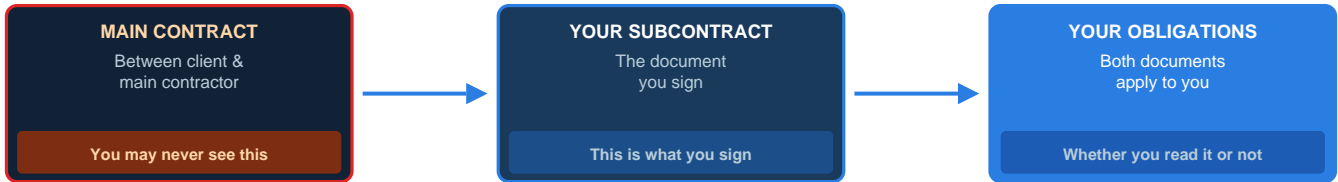
### SCHEDULE OF RATES / BILL OF QUANTITIES

05 Pricing basis — rates per item or priced bill

**MAIN CONTRACT (if incorporated by reference)**

May be binding on you even if you have never seen it — always request a copy

**HOW "INCORPORATED BY REFERENCE" WORKS**



Always ask for a copy of any incorporated document before you sign.

KEY TERM

**Incorporated by Reference**

When your subcontract says another document is "incorporated by reference", that document's terms become part of your obligations — regardless of whether you have read it. Always request a copy of any incorporated document before signing.

**SECTION 3 — HIGH-RISK CLAUSES TO IDENTIFY BEFORE YOU SIGN**

Main contractors often amend standard forms to transfer additional risk to subcontractors. These three clauses carry the highest exposure for scaffolding businesses.

<p><b>! HIGH RISK</b></p> <p><b>PAY WHEN PAID</b></p> <p>Makes your payment conditional on the main contractor being paid.</p> <p><b>Generally unenforceable in UK</b> HGCRA 1996, s.113</p>	<p><b>! HIGH RISK</b></p> <p><b>BACK-TO-BACK</b></p> <p>Your obligations mirror the main contract — incl. delays &amp; costs.</p> <p><b>Widens your exposure</b> Read main contract first</p>	<p><b>! HIGH RISK</b></p> <p><b>FITNESS FOR PURPOSE</b></p> <p>Higher standard than "reasonable skill and care" — greater liability.</p> <p><b>Check your PI insurance</b> Before agreeing this clause</p>
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These clauses do not mean you should not take the job. They mean you need to understand them, price for the risk they carry, and manage the job accordingly.

**PRACTICAL EXAMPLE**

**THE SCENARIO**

XYZ Scaffolding Ltd is awarded a subcontract by ABC Construction to erect, hire, and dismantle scaffolding on a 20-house new-build scheme for 123 Housing Association in the East Midlands. Contract value: £68,000. The procurement manager is on annual leave when the documents arrive. The operations director signs and returns the subcontract the same day — three days before the first gang is needed on site.

## What they signed

The subcontract package contained: the Sub-Contract Agreement, a 47-page Works Information, a set of drawings, the master programme, and a Schedule of Rates. The agreement also stated: "*The Main Contract between ABC Construction and 123 Housing Association is incorporated into this subcontract by reference.*"

Nobody at XYZ Scaffolding requested a copy of the Main Contract or read the Works Information before signing.

## What the documents actually said

The Works Information specified a **16-week phased hire period** across all 20 plots, released in groups of four. XYZ Scaffolding had priced for a 6-week in-and-out programme. The programme made the phasing clear; the quote did not reflect it. Difference: approximately **£14,000 in hire charges** XYZ Scaffolding were now contractually obliged to absorb.

The Main Contract — incorporated by reference — contained a **fitness-for-purpose obligation** covering all temporary works. XYZ Scaffolding's professional indemnity insurance covered reasonable skill and care only. Uninsured liability exposure: up to **£40,000**.

## What went wrong on site

### PAY WHEN PAID

A dispute between ABC Construction and 123 Housing Association over bricklaying defects caused the housing association to withhold a £120,000 interim payment. ABC Construction cited a pay-when-paid clause to hold XYZ Scaffolding's invoice for six weeks. Under HGCRA 1996, s.113, the clause was unenforceable. XYZ Scaffolding issued a payment notice and recovered the sum in full — but only because they knew the law.

### BACK-TO-BACK

The late contract award meant XYZ Scaffolding's first gang mobilised two days after the agreed start date. Because the subcontract was back-to-back with the main contract programme, ABC Construction attributed **£6,400 in preliminary costs** to the scaffold delay and deducted it from the final account. A carve-out limiting back-to-back liability to scaffold-specific delays would have prevented this deduction entirely.

### FITNESS FOR PURPOSE

A scaffold on Plot 14 was struck by a delivery vehicle, partially collapsing a bay. The client alleged the scaffold was not fit for purpose. Because the Main Contract's fitness-for-purpose clause had been incorporated, XYZ Scaffolding faced a claim that exceeded the scope of their PI policy. The clause should have been challenged or removed before signing.

### WHAT A 30-MINUTE CONTRACT REVIEW WOULD HAVE REVEALED

The hire period was 16 weeks, not 6 — price accordingly or renegotiate the scope. The Main Contract needed to be requested and read before signing. The fitness-for-purpose clause needed to be challenged or PI cover extended. The back-to-back clause needed a carve-out limiting it to scaffold-specific delays. The pay-when-paid clause was unenforceable — but only if XYZ Scaffolding knew to challenge it.

*None of these problems required a solicitor to identify. They required the subcontract to be read.*

## SECTION 4 — YOUR QUOTE, THE CONTRACT SCOPE, AND DELIVERY

Your quote defines your price. The subcontract defines your scope. If there is a gap between the two, you are generally required to deliver the contract scope at the quoted price — unless you identify and formally agree a variation before starting work.

### Before You Sign — Compare Quote to Contract

The most important pre-signing check is a direct comparison between what you priced and what the contract requires. Key things to check:

- **Works Information vs quoted scope** — if the spec has grown, that is a change to be agreed before signing, not absorbed after.
- **Programme duration** — if the phasing has changed or the programme compressed, your hire period and labour allowance may no longer be adequate.
- **Drawing revision** — always confirm which revision is attached to the contract. Revisions can materially change the scope.
- **Quote assumptions** — if you priced a straight erect-and-dismantle but the contract requires phased handover by section, your method and resources may need to change at a cost.

If you find a discrepancy, do not sign until it is resolved. Raise it in writing and either agree a revised price or get written confirmation that the scope is consistent with what you priced.

### During Delivery — Work to the Contract, Not the Quote

Once signed, the job must be managed against the contract terms. This means:

- **Variations must be managed formally** — issue a variation notice, get it agreed in writing, and do not carry out additional work at your own risk.
- **Progress must be reported against the contract programme** — do not wait until the end to flag a delay; by then it may be too late to recover your entitlement to an extension of time.
- **Payment applications must follow the contract mechanism** — know your application dates, payment notice obligations, and your statutory right to suspend under HGCRA 1996.
- **Completion must be evidenced** — obtain written confirmation of handover (signed certificate or written instruction to demobilise). This is your evidence if a dispute arises later.

## REFERENCES & FURTHER READING

1. **Housing Grants, Construction and Regeneration Act 1996**. UK Parliament. Chapter 53. [legislation.gov.uk/ukpga/1996/53](http://legislation.gov.uk/ukpga/1996/53) — covers payment rights, adjudication, and unenforceability of pay-when-paid clauses.
2. **Joint Contracts Tribunal (JCT)**. Standard Building Sub-Contract (SBCSub). London: Thomson Reuters / Sweet & Maxwell. [jctltd.co.uk](http://jctltd.co.uk) — standard form subcontract widely used in UK building works.
3. **NEC (New Engineering Contract)**. NEC4 Engineering and Construction Subcontract (ECS). London: ICE Publishing. [necontract.com](http://necontract.com) — standard form increasingly used on infrastructure and public sector projects.
4. **RICS**. (2019). *Contracts in Use: A Survey of Building Contracts Used During 2018*. London: Royal Institution of Chartered Surveyors.
5. **Keane, R. & Caletka, A.** (2015). *Delay Analysis in Construction Contracts*. 2nd ed. Oxford: Wiley-Blackwell.
6. **Murdoch, J. & Hughes, W.** (2008). *Construction Contracts: Law and Management*. 4th ed. Abingdon: Taylor & Francis.
7. **Hughes, W., Champion, R. & Murdoch, J.** (2015). *Construction Contracts: Law and Management*. 5th ed. Abingdon: Routledge. pp. 121–140 — scope, variations, and contract administration.
8. **Eggleston, B.** (2006). *The NEC3 Engineering and Construction Contract: A Commentary*. 2nd ed. Oxford: Blackwell. pp. 44–58 — works information and scope definition.