

Contents

Introduction	v
List of tables	vii
List of figures	ix
Table of cases	xi
Table of statutes	xxv
Glossary	xxvii
1 UK construction sector context	1
1.1 The nature of the sector	1
1.2 The nature of professionalism in construction	6
1.3 The nature of projects	8
1.4 Procurement methods	11
2 Roles and relationships	13
2.1 Common problems.....	13
2.2 Client roles.....	18
2.3 Consultant roles	20
2.4 Professional services agreements.....	21
2.5 Architect	22
2.6 Quantity surveyor	24
2.7 Typical terms in professional services agreements.....	24
2.8 Integrated documentation	28
3 General contracting	31
3.1 Background.....	31
3.2 Use of general contracting	34
3.3 Basic characteristics.....	40
3.4 Risk in general contracting	45
3.5 Standardized approaches to general contracting	49
4 Design-build	51
4.1 Background.....	51
4.2 Features of DB contracts.....	53
4.3 Use of the JCT design build form (JCT DB 11)	56
4.4 Characteristics of JCT DB 11	61
4.5 Risk in DB	64
4.6 Approaches to DB.....	66
5 Construction management.....	69
5.1 Background.....	69
5.2 Use of construction management contracts	71
5.3 Principles of CM contracting	73

5.4	Overview of JCT CM Contract.....	75
5.5	Allocation of risk in construction management	77
5.6	Approaches to construction management	79
6	Collaborative contracting	81
6.1	Background.....	81
6.2	Use of collaborative contracting	82
6.3	Principles of collaborative contracting	84
6.4	Characteristics of collaborative contracting.....	84
6.5	Risk in collaborative contracting	90
6.6	Approaches to collaborative contracting	91
7	Risk allocation and procurement decisions	93
7.1	Types of risk in construction contracts	93
7.2	Dealing with risk.....	94
7.3	Procurement.....	99
7.4	Identifying and choosing procurement methods	103
7.5	Characteristics of procurement methods.....	107
8	Contract choice	117
8.1	Use of standard contracts	117
8.2	Contract drafting	120
8.3	JCT contracts	120
8.4	Other standard-form contracts	127
8.5	The burgeoning landscape of standard forms	132
9	Tendering and contract formation	133
9.1	The meaning of construction contracts	133
9.2	The formation of contracts by agreement	134
9.3	Contracts made by tender	144
10	Liability in contract and tort	157
10.1	Express terms.....	157
10.2	Exemption clauses	166
10.3	Incorporation by reference.....	168
10.4	Implied terms	169
10.5	Liability in tort for negligence	172
11	Contractor's obligations.....	175
11.1	Standard of work.....	175
11.2	Statutory obligations.....	179
11.3	Co-ordination and management.....	181
11.4	Transfer of materials.....	185
12	Employer's obligations.....	187
12.1	Implied obligations	187
12.2	Employer's express obligations	190
12.3	Responsibility for the contract administrator	192
12.4	Responsibility for site conditions	193
12.5	Health and safety	196

13	Responsibility for design	197
13.1	Design management.....	197
13.2	Design duties in law.....	198
13.3	Legal responsibility for design	204
14	Time	209
14.1	Commencement	209
14.2	Progress	211
14.3	Completion	212
14.4	Contractor's obligations after completion.....	216
14.5	Adjustments of time.....	217
15	Payment	229
15.1	Employer's obligation to pay.....	229
15.2	The contract sum.....	233
15.3	Variations.....	234
15.4	Fluctuations	243
15.5	Retention money	244
16	Contractors' delay and disruption costs.....	249
16.1	Contract claims and damages	249
16.2	Grounds for contractual claims.....	251
16.3	Claims procedures	254
16.4	Quantification of claims.....	256
17	Insurance and bonds	267
17.1	Insurance.....	267
17.2	Bonds and guarantees	277
18	Role of the contract administrator	283
18.1	Contract administrator as the employer's agent.....	283
18.2	Contract administrator as independent certifier	294
19	Sub-contracts	303
19.1	Reasons for the prevalence of sub-contracting	303
19.2	The legal basis of sub-contracting	305
19.3	The contractual chain.....	306
19.4	Domestic sub-contracts.....	307
19.5	Defaults of sub-contractors.....	309
19.6	Rights of sub-contractors	313
19.7	Collateral warranties.....	319
19.8	Employer selection of sub-contractors.....	324
20	Financial remedies for breach of contract.....	331
20.1	General damages.....	331
20.2	Liquidated damages	336
20.3	Quantum meruit claims.....	341
20.4	Non-payment as a contractual remedy.....	342
21	Defective buildings and subsequent owners	347
21.1	Claims in negligence.....	347
21.2	Statutory protection	350

21.3	Alternative forms of legal protection	353
21.4	Assessment of damages	358
22	Suspension and termination of contracts	361
22.1	Suspension of work.....	361
22.2	Termination for breach at common law	362
22.3	Termination under JCT contracts.....	369
22.4	Termination under NEC contracts	375
22.5	Termination under FIDIC contracts.....	376
22.6	Termination of contract by frustration	377
23	Non-adversarial dispute resolution	379
23.1	Background to disputes.....	379
23.2	The nature of construction disputes	382
23.3	The role of the contract administrator.....	384
23.4	Methods of dispute resolution.....	384
23.5	References to ADR procedures in standard forms.....	389
24	Adversarial dispute resolution.....	391
24.1	Adjudication	391
24.2	Arbitration	398
24.3	Litigation	407
24.4	Arbitration or litigation?	409
	References	415
	Author index	421
	Subject index.....	423