



# Legal guidance to off-site manufacturing

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# Forms of Contract - Introduction

- The guide
- The scenario
  - The client wishes to procure a building
  - The preferred solution is off-site
  - The method to be adopted is modular
  - The modular building is pre-designed and assembly starts upon commitment and payment
  - The principal contractor is appointed after the modular building is ordered

# Questions to be considered

- Is Design and Build contract with a letter of intent the way the industry should respond?
- How should the industry respond to the need for the design to be completed before the works start on site?
- Should the principal contractor be liable for defects in the modular building?
- Should the construction industry be looking at a different contractual arrangement?
- Should the construction industry seek to avoid the use of bespoke terms and conditions?

# Forms of Contract (1)

Just some suggestions

- Pre-construction Agreement
  - Early contractor involvement
  - Ability to instruct works and services
- Construction Management
  - Appointment of a construction manager
  - Appointment of Trade Contractors by the client

# Forms of Contract (2)

- JCT Intermediate Contract – Named Subcontractor
  - Client invites tenders for off-site works
  - Tender states the terms of the main contract and the list of attendances
  - Sub-contractor and client enter into a Named Subcontractor/Employer Agreement
  - Agreement allows – design and fabrication and payment
  - Design responsibility remains with the Named Subcontractor
  - Named Subcontractor becomes under the control of the main contractor

# Forms of Contract (3)

- NEC3 or 4
  - If the Contractor appoints the manufacturer
  - To avoid the manufacturer's own terms and conditions
  - NEC Supply Contract and NEC Supply Short Contract
  - Look at the option X25 – warranties
  - Add a test regime





# Option 1

- Establishing ownership under the sale/supply contract
  - Contract should deal clearly with:
    - When ownership of the goods will be transferred – i.e. upon payment
    - How will the goods be stored?
    - Where will the goods be stored?
    - How will the goods be marked?
    - Any insurance arrangements to be put in place and by who
  - Detail is key

# Option 2

- Vesting Certificates
  - Valid option for off-site manufacturing
  - Will include
    - When ownership of the goods will be transferred – usually upon payment
    - How/where will the goods be stored
    - How will the goods be marked
    - Any insurance arrangements
  - Check for any conflict with the sale/supply contract



# Option 3: Advance payment/offsite materials guarantees/bonds

- Most parties comfortable with the concept
- OSM guarantees/bonds – specific type
  - Connected to the off-site materials
  - Reducing form of bond
  - Protects monies paid out rather than goods
- Cost considerations
- Not as widely available as standard variety

# Off-site, on-site – Pop-ups (1)

- What is a 'pop-up'?
  - Temporary facility
  - Can be substantial in size
  - Intended solely to facilitate the OSM process

# Off-site, on-site – Pop-ups (2)

- Why use a 'pop-up'?
  - Process/product manufactured under a controlled environment
  - Reduced transportation costs
  - Closer relationship between manufacturing and works on site
  - Better, cleaner working environment; not subject to British weather!
  - Controlled health and safety

# Off-site, on-site – Pop-ups (3)

- Considerations when using a 'pop-up'
  - Planning permission – do you need it?
  - Lease/licence – should there be one solely for the facility?







# Lease or Licence (1)

- Do you need a lease or licence for the facility?
  - In all likelihood, yes!
  - The 'pop-up' is a facility in its own right
  - Licence or lease should cover specific key points

# Lease or Licence (2)

- Key points to cover
  - Erection, maintenance and removal of facility
  - Working hours
  - Details relating to delivery of materials or product
  - Permitted noise levels
  - Arrangements if contractor or manufacturer cease work
  - Can facility be used for other projects
  - If/how the licence or lease can be extended
  - Arrangements if project doesn't proceed
  - Transfer of ownership of goods/materials

# Off-site, on-site – Pop-ups (4)

- Viability of 'pop-ups' is project specific
- Should be considered at the outset
- Planning permission likely to be required
- Suitable lease or licence should be drafted

<http://constructingexcellencesw.org.uk/downloads/>



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