

FRESH JCT



IS RETENTION A COST OR REVENUE ?

RETENTION – one of the most emotive subject's sub-contractors face when working under JCT & Construction Contracts.

At the outset when pricing and tendering for a contract many sub-contractors assume Retention is a revenue and make no allowance in their cost make up – after all it just a deferred payment!

However, many sub-contractors – too many – don't get paid retention on time or worse still ever.

We all have our views on why Main Contractors delay or don't pay sub-contractors their monies for work satisfactorily completed many months earlier.

We can give some Main Contractors the benefit of the doubt because their systems are badly organised or incompetent, but for many others this is not the case although I leave you to decide if some Main Contractors even plan to absorb sub-contractor retentions into their own financial performance.

With profit margins for sub-contractors already at minimum levels and continuing to be eroded the non-payment of a 5% retention can easily put a company into "the red" and has a serious impact on cash flow.

Although it may make your offer slightly less competitive you should consider retention as a cost to your business and not guaranteed revenue.

Its is unlikely that the unfair and onerous practice of retention deductions will be removed from construction contacts in the foreseeable future.

If you are having retention issues and require immediate advice or assistance contact Fresh JCT on info@freshjct.co.uk

or call us on **07563 246 975** we are happy to offer no obligation advice.

AFFORDABLE BESPOKE TERMS AND CONDITIONS FOR CONSTRUCTION SUBCONTRACTORS

**Your business is unique and so should
be your terms and conditions**

**There is no common set of Terms and
Conditions and generic template Terms
and Conditions downloaded from the
internet are not going to
fully protect you**

**FRESH JCT only work with construction
subcontractors and with over 50 years
experience of providing specialist
Mechanical and Electrical Equipment to**



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What can you do to minimise the effect of retention on your business?

The most obvious is not to accept retention deductions.

Exclude retention deductions from your quotation. The Main Contractors Q.S. will usually assume that you will accept retention and therefore not disregard your quotation at tender stage. When pushed at a pre-negotiation meeting offer to accept retention at an extra cost equivalent to the value of the second retention moiety (50% of the retention). State the second payment is a cost to your business. You might be pleasantly surprised!

If you are forced into accepting retention here are some useful tips:-

- Make sure the retention % and release dates (or periods) for each moiety are clearly and unambiguously stated in the contract BEFORE you sign it.
- Ask for the monies to be held in an escrow account.
- Do not accept extended or excessive retention release periods (no more than 12 months from your P.C. Date).
- Confirm in writing at the earliest opportunity the date of practical completion of your works thereby establishing an undisputed date from which to calculate the defects liability period and your retention release dates.
- It sounds obvious but record the completion / retention dates in your diary / reminder systems and chase 2-3 weeks before due so there are no excuses that Main Contractors has overlooked in their systems.
- Always request retention release in writing and submit the necessary "application for payment".
- Do not submit requests at month end giving the Main Contractor the excuse to delay to the following month.
- If the retention is not paid on the expected date immediately investigate why in writing (confirm in writing all phone conversations)
- Keep records of all correspondence sent or received.
- In the event the retention is not paid on the date agreed in the contract:-
Remind them politely that payment has not been received
Bypass the administrative personnel and speak directly (confirm in writing) with the appropriate Director – Finance or even MD.
- If retention is still not released consider what further action you wish to take e.g., suspended any works such as maintenance etc (but give the appropriate notices etc), pass to a debt collection agency, or a mediation, adjudication, or the courts.

We would strongly suggest that early in the process and at the contract negotiation stage before you sign the contract you seek professional help.

For a few hundred pounds professionals such as Fresh JCT will help reduce your contractual risks and increase your chance of receiving the retention payment you are legally entitled to.

**FRESH JCT WILL PROTECT YOUR BUSINESS WITH YOUR
OWN BESPOKE TERMS & CONDITIONS**