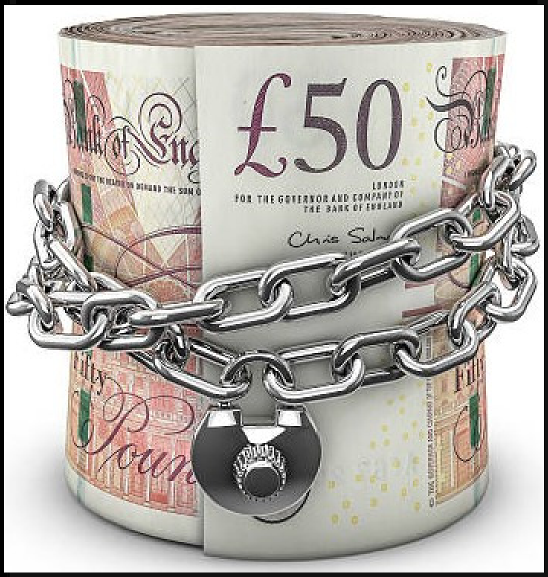
Improve your Cash Flow

FRESH JCT



Improve your Cash Flow

How negotiating payment for materials off-site could improve 50% of your payments by 1 month or more

We have all heard the saying “Cash is King” and it is true of all businesses and industries, so why do so many suppliers and sub-contractors in the Construction Industry enter into JCT, NEC and other Building Contracts with adverse terms of payment.

Much of the UK Construction Industry is built on “credit” from a combination of suppliers or sub-contractors in the first instance operating under adverse payment terms and then receiving delayed or late payment and an undervaluation of their work.

Is it any wonder that when faced with a substantial JCT or NEC Contract many small to medium sized companies wary of the very mention of JCT or NEC simply walk away from the potential opportunity.

Many others sign and enter into these “one-side” forms of contract with their adverse payment terms and enter into contracts which have negative cash flow implications that seriously impinge on their company cash flow, restricting growth and financial viability.

It does not have to be this way.

With professional, confident up front negotiation and an understanding of the provisions within construction contracts it is perfectly possible to negotiate more favourable and realistic terms of payment.

Just as important as negotiating more favourable terms is putting the Theory into Practice and understanding and complying with the unwieldy payment procedures many Main Contractors operate.

Here at FRESH JCT our team with over 30 year experience of providing capital mechanical and electrical equipment to the construction industry understand how to make the contract work for you and the opportunities that exist to improve your cash flow.

Combining up front confident contract negotiation with a professional understanding of how to manage a construction contract it is perfectly reasonably to target a one month improvement in receipt of payment of approximately 50% of monies due to you.

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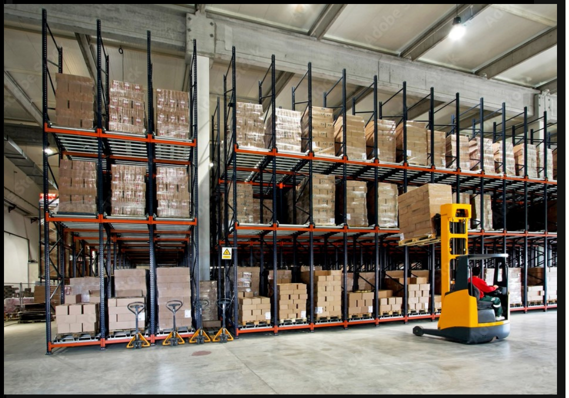

Unamended JCT and NEC Construction Contracts were originally designed to be balanced documents for Main Contractors and Sub-contractors alike to carry out construction contracts in a fair and equitable way. Unfortunately, today these contracts are accompanied by a raft of amendments usually one-side and favouring the Main Contractor and payment terms are unsurprisingly invariably subject to amendment.

As one of the Fundamental Five that are the foundation to any successful contract negotiation. It is essential that all parties have an unambiguous documented understanding of the agreed payment terms.

Payment terms need to be negotiated free from discounts to include agreed amounts against ‘milestone’ work done and most importantly include payment for materials off site.

Having submitted your quotation and been asked to attend a pre-contract negotiation many suppliers and sub-contractors become reticent of asking for what they want or “standing their ground” for fear of not securing the order.

Firstly, it is important to realise that if you are called to a pre-contract negotiation provided you are reasonable and professional you are in a position of strength.

By the very nature of being invited to a pre-contract meeting you are offering the Main Contractor an advantage over your competitors whether that be improved or higher quality, specification, personal service, price, delivery or a combination you are offering something the Main Contractor wants from you.

Although all pre-contract negotiations are different try to leave negotiating payment terms towards the end of the discussion and agree some of the easier less contentious items first

Ultimately however successful payment terms negotiations are dependent upon 2 factors.

How much and when

Security of payment

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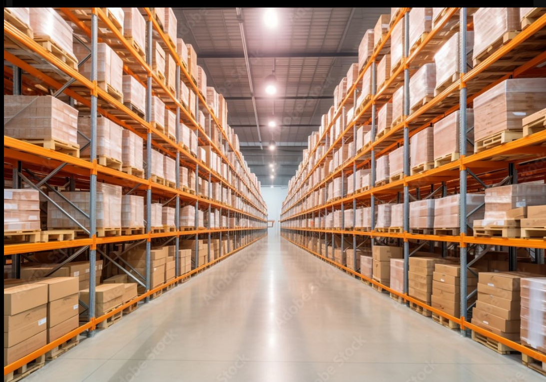

How much and When

When it comes to how much and when you are at an advantage over the Main Contractors negotiator usually a Q.S. Just as you know the technical aspects of your product and services inside out you fully understand how much your product costs you and the cash flow profile of your product or services. Consequently, you can present a reasoned argument as to why you want certain payments by specific dates usually to cover your costs in paying your suppliers.

Regardless of any terms included in the Main Contractors initial invitation to tender it is important that your quotation included the payment terms you want to secure up front it’s too late to get your terms inserted after submission of your quote. Quite simply if you don’t ask you won’t get.

Your payment terms need to realistic and reasonable – put yourself in the Main Contractors position and ask yourself if the roles were reversed would you accept what you are asking for.

To avoid ambiguity and the likelihood of under or late payments it is important that you negotiate your payment terms on agreed values or percentages of the contract sum against easily identifiable milestones as the contract progresses such as key tasks or calendar / programme dates. Typical examples of this can be X% on submission of drawings, Y% a set number of weeks before delivery of material to site.

It is also important to couch the terms in a certain way. For example, you are unlikely to receive a simple deposit payment without the evidence that you have carried out work and incurred costs, but it is highly likely you can secure an initial payment for design work, or drawings submitted.

The key however to improving your cash flow particularly for those with a high material content is for the payment terms to include provision for payment of material off-site. With the material element representing the majority of cost outlay for capital equipment and alike it is reasonable to assume that by changing from the Main Contractors preferred terms of payment for materials on site or on delivery to site to a payment profile including the provision for off-site materials on completion of manufacture this will result in approximately 50% of your payments being received at least one month earlier.

Provided your argument is both reasoned and realistic the Main Contractors representatives only objection can be that either they are concerned about the security of their payment to you for materials off-site or alternatively they or their client do not have the funds or the cash flow to pay you when you require.

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Security of Payment

The objection regarding security of payment for material off-site is relatively easily overcome by offering the vesting of materials off site with the use of vesting certificates legally transferring ownership to the person or company paying you.

The process and administration of vesting of material off-site and the issue of the appropriate vesting certification can be a relatively complex process requires the use of specific legal documents / certificates.

Although the Main Contractor may try to claim they or their client are reluctant to engage in discussions about payment for material off-site your reasoned argument coupled with the use of vesting certification removes any legitimate argument or concern and ultimately, they can have no logical objection.

If after offering vesting certification for material off-site they still refuse to accept payment for material off site, it is reasonable to assume that they or their client do not have the funds or the cash flow to pay you when you require. But it is better to come to that conclusion BEFORE you expend considerable sums and end up fighting through the courts to obtain your monies or worse still not receiving any.

Once you have agreed your contract payments terms you will need to ensure these specific payment terms and vesting obligations are bound into the construction contracts whether JCT, NEC or a bespoke contract to take precedence over any other payment terms.

There are several ways in which the FRESH JCT team can help you improve your cash flow by negotiating improved and off-site material payment terms.

The FRESH JCT Theory into Practice will provide you with templates of the relevant certificates and documents together with a detailed explanation of which document to use were.

Alternatively, if you are not feeling confident to do it yourself allow the FRESH JCT team to guide you through the process or even negotiate with the Main Contractor on your behalf.

Whether specific advice limited to advice and guidance on the correct use and negotiation of vesting certificates or a full review or “Health Check” of all your Project Management Procedures the FRESH JCT team are happy to provide help and guidance.

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