



Border-Kei Institute of Architects

ADMINISTRATION BY AN ARCHITECT/PRINCIPAL AGENT OF THE JBCC 2000 EDITION JULY 2007 PRINCIPAL BUILDING AGREEMENT AND ITS SUPPORT DOCUMENTS

Presenter: Bryan Prisgrove

Bryan will present a course on the changes in the 5th Edition of the JBCC documents. This course is suitable for architects/quantity surveyors/ technologists/ project managers, and anyone who uses the JBCC contract.

WEDNESDAY, 23 APRIL 2008

Venue: Border Bears Pavilion, Buffalo Park Drive, East London

Time: 09h00 (Registration) - 09h30 - 12h30

Cost: R 342.00 (BKIA Members)
R 456.00 (Non-members)
(VAT inclusive)

RSVP: Glynis Heger, P O Box 15314, Beacon Bay 5205
Fax No. 043 - 748 2839 Tel. 043 - 7481156 E-mail: irsasapo@iafrica.com
BY NOT LATER THAN TUESDAY 15TH APRIL 2008-03-05
BOOKINGS CONFIRMED ON RECEIPT OF PAYMENT.

Payment details: Nedbank, East London - Branch Code 121021 - Account No. 1210272229

With acknowledgement to our sponsors



**THE ADMINISTRATION BY AN
ARCHITECT/PRINCIPAL AGENT
OF THE JBCC 2000 EDITION JULY 2007
PRINCIPAL BUILDING AGREEMENT
AND IT'S SUPPORT DOCUMENTS**

A SEMINAR BY BRYAN PRISGROVE

INTRODUCTION

The practice of architecture involves risk. The risk of mistakes that can be seen as negligence. The test of the duty of care of an architect to his client – also to third parties is that of an ordinary architect acting competently and reasonably at that time in that place.

It is ill advised to claim special skills unless:

- You have experience/training in such skills
- You declare it to your PI underwriter in the insurance proposal form

We spend our client's money, acting as the client's agent with authority in terms of 5.1 of the contract agreement.

Whilst the new client/architect agreement provides under conditions of service at 4.4:

Certificate of Final Completion

Where the building contract provides that the issue of the final certificate be conclusive evidence as to the sufficiency of the works and materials, the word "sufficiency" shall not in any way imply that the Architect is satisfied that every component or element of the building has been installed or adjusted to perfection nor that the materials and workmanship comply with the specification in every detail.

However an architect is liable for negligently certifying final payment. (*Hoffman v Meyer 1956*) (2) SA 752 (c)

An issued certificate of final completion JBCC Clauses [26.2.1 and 26.3.1] shall be conclusive evidence as to the sufficiency of the works and that the contractor's obligations [2. 2, 15.3] have been fulfilled other than for latent defects

Those attending the seminar require a copy of each of the JBCC Series 2000 Edition 5.0 Code 2101 July 2007:

- Principal Building Agreement
- Contract Data EC
- Contract Data CE
- Payment Guarantee
- Waiver of Lien
- Construction Guarantee – Variable and Fixed

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
1	<p>These notes are provided to enable those attending the seminar to have a reference document for use in their work. Space is provided in the right hand column for notes</p>	
2	<p>These seminars are prepared with reference to the JBCC principal building agreement and documents</p> <p>They arise from my experience of disputes</p>	
3	<p>The key issue for effective administration is the implementation of system by architects to those aspects of the work that involve routine matters such as initiating a contract, insurances, guarantees, liens, certificates and the minuting of meetings. This is necessary to be dealt with consistently across the board of the administration of a contract in a practice</p>	
4	<p>The principal issues in the formation of a contract are:</p> <p>The names and addresses of the parties, the obligations of the parties to each other. Clarity on the process to resolve any disputes.</p> <p>Do not use vernacular expressions such as snag list, site meetings, variation order or beneficial occupation. They have no contractual definition and indicate a level of poor understanding of the contract</p>	
5	<p>The problems come from the need to makes rules for specific issues to address the rights of the parties in the course of the work. The JBCC suite of documents, when understood, provides a balanced framework to administer a building contract</p> <p>Reference in these notes to JBCC principal building agreement clauses and contract data are shown in blue type. You are advised also to note the cross references of provisions in the text of the JBCC documents</p>	
6	<p>The provisions as to time for construction, to insurances, penalties, guarantees and payment need to have been clarified with the client before tenders or a negotiation can be put into effect</p>	
7	<p>The tender documents issued by the principal agent should comprise:</p> <p>Contract data EC completed (employer to contractor), drawings suitable for tendering purposes, bill of quantities and/or specification and geotechnical report 16.4</p> <p>Always allow a reasonable period for preparation of tenders – at least 3 weeks. To push it leads to poor tendering, cover prices and other mistakes</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
8	The contractor submits contract Data CE (contractor to employer) duly completed to the principal agent and remains in force for 30 calendar days	
9	<p>Clause 5 of CE sets out the rules as to tender opening and provides for tender acceptance</p> <p>The reputation of a professional becomes clouded unless tenders are opened there and then in the presence of the tenderers and the tender amounts declared</p>	
10	<p>No tender should be accepted until critical issues are settled and approved by the principal agent as follows: See 3.5 and 32.12</p> <ul style="list-style-type: none"> • <i>3.5 The principal agent shall complete the contract data and arrange the formal signing of the agreement once the contract documents have been provided and effected. Formal signatures are not required to render agreement binding</i> • <i>32.12. The preliminary and general amounts in the priced document shall be adjusted and paid in terms of the alternative chosen by the contractor as stated in the contract data</i> • Bill of quantities or schedule of rates • Proof of insurance • Provisions of an acceptance construction programme (Clause 15.6.1) • Identity of contractors representative to control the site/be responsible for OHS • (For a house) NHBRC enrolment certificate <p>This to be sent in writing to the contractor intended to be appointed as his/her conditions of appointment</p>	

ITEM NO.	REFENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
	<p>Now to the JBCC principal building agreement.</p> <p>Clause number are shown in blue</p>	
11	<p>1.1 Definitions – I will refer to these as they arise in the texts of clauses</p>	
12	<p>1.2 Always be sure of the physical address as well as for postal, e-mails and fax of all involved</p>	
	<p><i>The parties each choose their physical address as stated in the contract data where notices or processes arising out of or concerning this agreement may validly be delivered to and served on them. Either party may, at any time, by notice to the other change its physical address provided that it is in the same country as that initially stated in the contract data</i></p>	
13	<p>1.5.7 Deemed – e.g. at 32.6.3</p>	
14	<p>1.5.2 'An action writing'. I see these as documents sent by one party to another and <u>not</u> as, (for example), minutes of a meetings distributed to a group</p>	
15	<p>1.6 Some <u>proof</u> of delivery is necessary for documents related to delay and disputes. Hand delivery is best, with a second copy acknowledged by the recipient</p>	
16	<p>1.8 NOTE THE FINAL SENTENCE</p>	
	<p>This is one of the most important provisions – especially in the context of results of negotiations on delays to practical completion</p>	
	<p>It must be done in writing and signed by the parties not by the principal agent</p>	
	<p>DOCUMENTS</p>	
17	<p>3.1 See the definition of payment guarantee. The guarantee is a 'standalone' demand guarantee from a bank (not an insurance company) for recovery by the contractor of monies certified but not paid by the employer</p>	
	<p>The amount of the guarantee required is at the opinion of the contractor, who would be guided by perceived risk of payment default of the employer. i.e. It could be a nominal sum for a contract with a major institution, up to the whole contract sum for an employer seen as 'somewhat dodgy'</p>	

ITEM NO.	REFENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
18	<p>The selection of the form of guarantee to be provided is at the option of the contractor. 3.2. See the definitions of the guarantees, in the wording</p> <p>It is a commonplace situation that contracts are not usually completed on the contracted date (EC 4.1). Guarantees are often issued with a date shown on which they will lapse. It is advisable to insist that the lapse date is set appropriately later than the date of practical completion. This is a judgment in which the employer should be consulted and his views recorded (1.5.2)</p> <p>For the contractor to reasonably require an advance payment guarantee it would be for ordering costly equipment of long delivery elements; alternatively, it could be related to a contractor's misgivings as to the employers financial status – 14.1</p> <p>Liens</p>	
19	<p>3.3 A lien in construction is a right of retention of property by the entity improving the property of another.</p> <p>I quote from a source case in our law:</p> <p><i>The rule then seems to be that salvage and improvement liens prevail against all the world, but, on the other hand, are limited to expenses which have maintained or advanced the market price: while debtor and creditor liens (so far, at all events, as they include expenses not limited by considerations of market price) are restricted within the limits of contractual privity</i></p> <p><i>(United Building Society v Smookler's Trustees and Golombrick's Trustee 70 (3) SA271.276 (A))</i></p> <p>To maintain a lien, it is vital to retain control of the property by physical presence. It will fail if that is not done. To merely lock the doors and of off site</p> <p>A lien can be overcome by the owner paying into court the amount claimed by the contractor. That money is held at low interest until the publication of an arbitrator's award or a judgement by the court</p> <p>Should the employer use force to gain entry, the court would order a summary reinstatement of the lien</p> <p>A lien cannot be enforced when no money is owing to the contractor further. If there is a current negative payment certificate in place with money owed by the contractor to the employer. See also 31.16.2 in the case of payment disputes</p>	

ITEM NO.	REFENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
20	3.5 See 12.3. The final sentence is a critical issue. A letter of appointment, or the employer making payment sets the contract in place. (See 10 above)	
21	3.6 Assemble the contract set with a copy for each party. Should the employer hold the original set, get a receipt for it for your file	
22	3.7 The contractor <u>shall</u> keep a set of all current drawings and other documents on site. To not do so is a breach of the contract Issue all drawings with a contract instruction. Use a consecutive numbering system for instructions (1.5.2)	
23	3.9 Be cautious before authorizing the bills of quantity or contract specification/priced schedule to be used as a working specification. See definitions of bills of quantity and/or priced document	
24	3.10 For a schedule of rates contract it is preferable to settle the basis of interim payments before signing the contract (3.1.2)	
25	3.11 See EC6 DESIGN RESPONSIBILITY	
26	4.1 Spatial coordination of all elements of the works is your responsibility	
27	4.2 Use the SAIA form of indemnity for all subcontract tenders (SAIA document 3.432) When things go wrong you will need it	
28	4.3 Timeous design by a selected subcontractor. See also 15.6 EMPLOYER'S AGENTS	
29	5.1 See definition of principal agent	
30	5.2 Remember 1.5.2. Do it all in writing	
31	5.3 Remember 1.5.2. Do it all in writing	
32	5.5 See EC 1.9. This is critical for your credibility to be seen to be fair to both parties	
33	5.6 The employer would be in breach of the contract (38.1.3) in this context	

ITEM NO.	REFENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
34	<p>CONTRACTOR'S SITE REPRESENTATIVE</p> <p>6.1 Insist on the name of the competent representative be provided to you in writing – 1.5.2. For that person not to be in place at all work times is a breach or the contract</p> <p>Should that competent person not be there continuously, give a written notice (1.5.2)(17.1.9). Should the contractor not deal with this acceptably, consider termination of the contract – 17.1.9 and 36.1.2</p>	
35	<p>6.2 All site instructions must be in writing 1.5.2. Have a 3 carbon book on site for this</p> <p>WORKS RISK, INDEMNITIES, GENERAL INSURANCES, SPECIAL INSURANCES EFFECTING INSURANCES</p>	
36	<p>8.1 Note the 'deemed' achievement of practical completion. This is usually a result of sloppy work or, worse, sloppy admin by the principal agent!</p>	
37	<p>It is no part of an architect's duty to <u>decide</u> on the limits of indemnity for the works insurances. The sound process is to arrange a meeting with the employer and his insurance broker to decide such matters and to confirm the employers decisions to him and to the quantity surveyor (EC 3)</p>	
38	<p>9.2.7 The employer must insure the works and existing occupied premises and where the contract includes alterations to an existing building. See also 12.6 where a direct contractor is involved 9.2.2 and 22.2</p>	
39	<p>9.2.11 My advice is to not specify any product until you know it is reliable and has at least 5 years of proven satisfactory performance in use by others</p>	
40	<p>12.1 All contract works insurances are annually renewable. 12.5 Diarise to check the facts of each due renewal and document that to the party at risk if not renewed</p>	
41	<p>12.4 Support insurance design by the employer's engineer does not close the insurance risk. The insurer will appoint an engineer to assess the risk and rate the policy accordingly. This takes time – often three or four weeks</p>	
42	<p>ASSIGNMENT</p> <p>13.1 and 13.2 Be cautious – check the credentials of assignees – a risk to your PI cover!</p>	

ITEM NO.	REFENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
43	<p>SECURITY</p> <p>See clause 19 below</p> <p>14.7.1 Read the option as to retention. Any decision must be by the employer 1.5.2 again 33.1</p>	
44	<p>14.8 The security to the employer applies only to this contract. Set off would not apply to liabilities of any other nature, soon as another contract between the parties</p>	
45	<p>The guarantees are stand alone payment guarantees. Read the language of each. The procedure to call up a guarantee is carefully set out in the guarantee document. <u>It is not, itself, part of the principal building agreement</u></p>	
46	<p>PREPARATION FOR AND EXECUTION OF THE WORKS</p> <p>Clause 15 is the major change to the JBCC principal building agreement. It is the introduction of most of the previous preliminaries document which is no longer to be used. Aspects are in the EC contract data at EC 1.9 and 2.8</p>	
47	<p>15.1.1 See 10 below</p>	
48	<p>15.1.1 and 15.2 The employer's obligations – note 15.2.3 – cash advances to subcontractors. It is critical that such cash advances are made on receipt of a correctly worded bank guarantee to the employer</p>	
49	<p>15.3 Here is the issue we all have to contend with, that of the contractor working “continuously, industriously and with due skill and appropriate physical resources.” (15.9) For the contractor not to do so is grounds for termination - (36.1.1)</p>	
50	<p>In my experience, it is better to face up to a bad quality and control problem early. I have never regretted terminating a contract. I have always had worse problems by not doing so</p>	
	<p>15.5 This points to the critical issue of the standard of work, often a major source of dispute at practical completion.</p>	
	<p>Should you want (?need) a quality higher than the ordinary commercial quality of SA builders, this is the provision you can use. It could only be of use by calling tenders with an explicitly worded specification, trade by trade. It is then implemented through 24.1 in the approach to practical completion and in 24.3.2</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
51	<p>15.6.1, 15.6.2 and 15.6.3 This is so crucial an issue that I quote it below</p> <p>15.6 The contractor shall:</p> <p>15.6.1 Prepare a programme of the works together with a schedule of outstanding construction information in sufficient detail to enable the principal agent to assess the progress of the works and timeously provide the necessary contract instructions, and</p> <p>15.6.2 Coordinate the n/s subcontractors' and direct contractors' programmes with his own, and</p> <p>15.6.3 Continuously revise and modify the programme and the schedule of outstanding construction information and issue copies timeously to the principal agent</p> <p>Note the expression "sufficient detail to assess the progress or the works"</p> <p>Any claim for delay to practical completion (29.4 to 29.6) can only be assessed and an award made (29.7) where the principal agent can know, <u>from the detail of the works programme</u>. That should be done at least week by week. It should preferably be day by day. Without such a programme, it is manifestly not logically possible to consider and award any but the most simplistic claims, such as for issues in 29.21 and 29.2.2</p>	
52	15.8 Note the difference between progress meetings and technical meetings	
53	<p>15.9 – Starts with 'The contractor shall' i.e. a contractual obligation. This enables you to look at issues of delay due to low site resources – 15.3. Make sure you record it in the minutes of progress meetings</p> <p>SITE AND ACCESS</p>	
54	16.4 Geotechnic investigation – 7 above and EC 2.9	
55	16.7 – Beware unknown services	
56	<p>CONTRACT INSTRUCTIONS</p> <p>17.1 Note that 17.1 to 17.2 are the <u>only</u> issues concerning which contract instructions may be issued. Always to be in writing – 1.5.2 or not valid – 17.3</p> <p>Site instructions are not referred to. See 35 above. A system to validate them to contractor and quantity surveyor is necessary.</p> <p>17.1.5 and 17.1.6 – Note the right to payment for opening up and testing (32.4.2)</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
57	<p>17.4 This is the 'catchall' to enable one to get the job finished. It only works at or near practical completion (24) or works completion (25)</p> <p>Note the procedure:</p> <ul style="list-style-type: none"> • Contract instruction to do the work • Do not make empty threats • After 5 working days, put others on to site to do the work, all at the cost of the contractor – beware of mitigation arguments 	
58	<p>SETTING OUT OF THE WORKS</p> <p>18.1 Architects are not qualified nor insured to undertake land survey, nor to establish site boundary beacons nor site datum. This is the skill for which registered land surveyors are in place. The employer has the responsibility to appoint a registered land surveyor as agent for that. It is the surveyor who should point out the beacons on site handover.</p> <p>18.2 A fully dimensioned drawing that incorporates the setting out data should be part of the contract set</p> <p>TEMPORARY WORKS AND PLANT</p>	
59	<p>19.2 Any approval or site notice boards must be in writing – 1.5.2. The client should be consulted</p> <p>NOMINATED AND SELECTED SUBCONTRACTORS</p>	
60	<p>20 and 21 The critical difference between subcontractors nominated or selected is that of risks to employer and contractor.</p> <p>A nominated subcontractor's performance as to time and quality of works is at the risk of the employer 20.7, 20.8. A selected subcontractor is at the risk of the contractor 21.7, 21.10</p>	
61	<p>It is appropriate to mention that, despite all efforts by the JBCC technical committee, risks of late payment to nominated and selected subcontractors still exist. The provision of a payment guarantee by the contractor to the subcontractor (20.4 and 21.4) is seldom done.</p> <p>The payment provisions in the nominated and selected subcontract require administration and notifications that are poorly dealt with by architect principal agent's</p>	
62	<p>To get rid of a subcontractor not performing is</p> <ul style="list-style-type: none"> - nominated at 20.7, 20.8 and 20.9 - selected at 21.7, 21.8 and 21.9 	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
63	<p>The provisions for direct payment by the employer to a subcontractor, in the event of the contractor not making payment included in the contractor's payment are always involved in a dispute 20.6 and 21.6.</p> <p>It can be difficult to ascertain facts so as to be able to decide what to do, try not to get involved</p> <p>In the event that late or non payment by the contractor is caused by the insolvency of the contractor, <u>on no account</u> should direct payment be made to the contractor.</p> <p><i>See "Administrator, Natal v Magill, Grant and Nel (Pty) Ltd (in liquidation) 1969 (1) SA 660 (A)"</i></p> <p>EMPLOYER'S DIRECT CONTRACTORS</p>	
64	<p>22.3 Subject to reasonable controls by the contractor</p> <p>22.4 At the cost and risk of the employer</p> <p>CONTRACTOR'S DOMESTIC SUBCONTRACTORS</p>	
65	<p>Nothing to do with the principal agent</p> <p>PRACTICAL COMPLETION</p>	
66	<p>See definition of practical completion</p> <p>24.1 This is the architect/principal agent's right duty and opportunity to stand up and deal with the <u>contracted</u> quality of work and materials – see 67</p> <p>24.1.2 A contract instruction please, on what is required</p> <p>24.2 and 24.3 The contractor's duty to get it right. You do not act as the contractor's finishing foreman</p>	
67	<p>24.3.1, 24.3.2, 24.4 and 24.4.1 The practical completion list – do not issue the practical completion certificate until the state of the works warrants it</p>	
68	<p>It is advisable to have the client attend the inspection for practical completion. This lessens the likelihood of conflict with a client when the works completion list (25.1) is issued</p>	
69	<p>24.3.1 and 24.8 Should the employer move into the works prior to the contracted date of practical completion this needs the agreement of the contractor – 1.8 and 1.5.2</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
70	It is my view that architects should not issue a certificate of practical completion until the potential works completion list is an acceptably a short one – preferably not more than 2 pages	
71	Remember clause 17.4 if faced with a contractor cannot or will not get it right. See 57	
72	<p>24.9 Hold back some payment until the maintenance manuals and guarantees are provided. Have you listed them in advance? Be tough about this or you will wait a long time, should you get them at all. Do you have a system in place in minutes of progress meetings?</p> <p>WORKS COMPLETION</p>	
73	<p>25.1 and 25.3 The architect/principal agent must get the works completion list issued within seven days</p> <p>25.2 Relentlessly and frequently reinspect the work to be done on the works completion list and reissue it with a contract instruction as it is reduced</p> <p>FINAL COMPLETION</p>	
74	26.1 Diarise the end of the 90 days defects liability period	
75	26.3 Do not let the defects list become mixed with the works completion list. The are entirely separate contractual issues	
76	26.4 The seven day period to issue the defects list again. Police the list to closure. Clause 17.4 is again available to get the job finished	
77	<p>26.6 The certificate of final completion (see 3 below) is conclusive as to all except latent defects. Thus the principal agent is liable to the employer for damages for negligence in its being issued</p> <p><i>(see Hoffman v Meyer 1956 (2) SA 752 (c) @758)</i></p> <p>LATENT DEFECTS LIABILITY PERIOD</p>	
78	<p>5 Years</p> <p>27.1 and 27.2</p> <p>SECTIONAL COMPLETION</p>	
79	28.1 Note that this applies to subcontractors – a lot of admin	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
	<p>REVISION OF DATE FOR PRACTICAL COMPLETION</p> <p>See 15.6</p>	
80	<p>29.1 and 29.2 Note the issues that attract payment of preliminaries in 29.2. See CE 3 for specific dates of payment and adjustment of preliminaries. This clause 29 is probably the most frequent cause of disputes</p>	
81	<p>29.3 This provides the catchall for the wild card issues, including changes to the work required by the employer</p> <p>29.4 The provision for 20 working days to give notice of intention to submit a claim is often not complied with by contractor and so a claim then fails at this point</p>	
82	<p>29.5 Again a time limit for the contractor to submit a claim or it is forfeited. A critical issue. The purpose is to prevent late claims. Always likely when things go awry</p> <p>29.6 The critical detail of the claim and the <u>explicit requirements</u> to comply are frequently not complied with and so, in such case, no valid claim for delay is in place</p>	
83	<p>29.7 The principal agent <u>must</u> follow the detail of the rules in 29.7.1, 29.7.2 and 29.7.3 to award a validly claimed delay to the date of practical completion</p>	
84	<p>PENALTY FOR LATE OR NON COMPLETION</p> <p>There is sometimes dispute late in the day as to the amount (rate) of the penalty. Disputes as to this will not get far. The Conventional Penalties Act is unlikely to be used to any effect in this issue</p>	
85	<p>30.2 Note that the employer decides whether to levy the penalty. This must be done in writing, instructing the principal agent to do so – 1.5.2</p>	
86	<p>INTERIM PAYMENT</p> <p>31.1 <u>Certificates every month until the issue of the final payment certificate</u></p> <p>31.5.4 and 33.1 Principal agent to issue a recovery statement monthly to the parties simultaneously with the payment certificate</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
87	<p>Thus the principal agent must issue both certificate and recovery statement from the start of the contract until the final settlement. Therefore, the duty is to do so after practical completion, each month, usually showing a nil amount. To me it is a matter of poor professional duty of care to not do so. With word processing, all that is needed is to update the number and date of the certificate – a clerk's <u>job</u> and send by e-mail</p> <p>With a quantity surveyor involved, his input by a valuation statement is readily converted electronically to what is needed</p> <p>It is poor service for an architect to merely stamp and sign such valuation and issue it as a certificate</p> <p>In the case of a schedule of rates, then be cautious to value accurately from well based documents</p>	
88	<p>31.3 Payment certificates issued late can and should attract penalty interest – a risk to your professional liability policy</p>	
89	<p>31.4 The contractor is entitled to a reasonable i.e. <u>an accurate valuation</u>. It is seldom and appropriate to withhold a 'buffer' of money 'for final account settlement'. The contractor should be properly paid for the work done satisfactory</p>	
90	<p>31.13.1, 31.13.2 and 31.13.3 The principal agent shall issue the documents referred to each month. Do you do so? If not, why not? Many architects see them as 'just paper work'.</p> <p>All you need is a competent secretary or clerk and a word processor</p>	
91	<p>31.15 and 31.16.3 The contractor has a powerful right to suspend the works and claim delay to the date of practical completion (29.2.6)</p>	
92	<p>31.16.2 – The contractor's lien again. See 20 below</p> <p>ADJUSTMENT TO THE CONTRACT VALUE</p>	
93	<p>The rules are those now established in previous editions of the JBCC principal building agreement as to settling the final account</p>	
94	<p>32.5 – Be aware of the rules for the recovery of loss or expense by the contractor</p>	
95	<p>32.6.2 This is a potential cause of loss to an unwary contractor. The 40 working day limit is intended to prevent a contractor hiding claims until the final account – no timeous claim - no payment!</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
96	32.6.2 The principal agent to be reasonable and deal with these within 20 working days. Not to do it in time will probably tend to an otherwise avoidable dispute	
97	32.14 Hopefully there is a quantity surveyor involved if not, it is desirable to call one in – cost will probably be involved	
	RECOVERY OF EXPENSE OR LOSS	
98	This is an aspect of contract administration that often involved disputes – even arbitration. Whilst many disagreements are settled by discussion, some are ignored and just left unresolved, often with no formal close out of a matter between the parties, no final certificate resulting in an open end left unresolved	
99	Remember that the resulting Prescription Act, provides for closure on a debt 'due and payable within 3 years of it arising. Whilst clause 27 provides for liability to end when it is within the defined contractual relationship, should there be no formal end to a contract, it all is left hanging in limbo	
100	It could be argued that, by occupying the works by the employer, that is a tacit practical completion. Good for the lawyers however!	
101	33.1 The monthly recovery statement attached to the payment certificate is the contractual mechanism whereby the parties can recover, each from the other, money attributed to their actions or default. The role of the principal agent is central to this. Subject to 33.1.1 below, it is the duty of the principal agent to deal with this	
102	<p>33.1.1 Penalties for delay to the date of practical completion. Be clear that the <u>employer</u> decides whether to withhold penalties (30.2) an instruction by the employer to the principal agent is necessary – 1.5.2</p> <p>33.1.4 Compensatory interest – see definition of 'interest'</p> <p>33.1.5 Default interest – 160% of the ordinary bank lending rate e.g. 14% x 160% = 22.4%</p>	
103	33.1.3 Expense and loss is often related to problems approaching practical completion involving clause 17.4	
104	33.2.5 Where the contractor is shown in the recovery statement as owing money to the employer and should the contractor not pay within the seven calendar days, the contractor cannot terminate the contract – see 38.6 as an attempted way out	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
105	33.5 The employer must issue written demand to the guarantor where the construction guarantee is to be called up. Read the language of the guarantee!!	
106	33.6 An attorney appointed by the employer is needed where the contractor becomes insolvent, so do not take any action other than to alert the employer. Do not issue any payment certificates without involvement of the attorney. See 63 above	
107	<p>FINAL ACCOUNT AND FINAL PAYMENT</p> <p>3.4.1, 3.4.3 and 3.4 The principal agent issues the (draft) final account. It may be necessary to involve a quantity surveyor to deal with adjustment and negotiation – diarise for the 90 and 45 day limits, subject to the possible extension of the 45 days</p>	
108	34.5 Note the interlock between the final payment certificates and certificate of final completion	
109	<p>It is often at this stage of the contract where the principal agent becomes aware of problems should he/she not have regularly issued monthly certificates <u>and recovery statements</u> since practical completion. In a dispute, the principal agent would be criticized for lack of compliance with this duty to the parties</p> <p>PAYMENT TO OTHER PARTIES</p>	
110	<p>35.1.2 Notwithstanding the provisions of 20.6 and 21.6, try to get a written agreement from the contractor for direct payment to subcontractors</p> <p>TERMINATION BY EMPLOYER – CONTRACTOR DEFAULT</p> <p>Note that the word ‘cancellation’ has gone!</p>	
111	Where poor performance and/or no performance by a contractor is a problem, termination is probably necessary. The employer must appoint an attorney to control the process	
112	36.1 and 36.3 Note the procedure and 10 days for the contractor to come to heel	
113	36.5 A long, miserable, process for the architect/principal agent, full of conflict and problems. Does your client/architect agreement enable you to claim time charges?	
114	36.6 A material breach would include not having made full payment of any amount certified for payment to the contractor; also refusal of site access to complete work on the works completion list or defects list	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
115	<p>TERMINATION BY THE EMPLOYER – LOSS AND DAMAGE</p> <p>37.1 and 37.2 The loss becomes an insurance issue for the party that insures – clause 12</p>	
116	<p>TERMINATION BY CONTRACTOR – EMPLOYERS DEFAULT</p> <p>38.0 This is the corollary of clause 37</p>	
117	<p>TERMINATION – CESSATION OF THE WORKS</p> <p>39.1 This enables the parties to walk away after cessation of work on site 90 days or intermittent stoppages of 120 days. Suspension of the works – 31.16.3 can be involved in this</p>	
118	<p>SETTLEMENT OF DISPUTES</p> <p>40.1 The key activity is notice of dispute by either party to each and other and to the principal agent = 1.5.2 it must be in writing, setting out the nature of the dispute. Without that being done, nothing can go forward</p>	
119	<p>40.2.1 to 40.3 Adjudication is appropriate where both of the parties seek a ready resolution of the disagreement. It can be relatively quickly be brought to a conclusion – perhaps 6 to 8 weeks</p>	
120	<p>40.4 Arbitration is stressful, expensive and time consuming. The SAIA client/architect agreement brings into effect the architect’s right to claim time charges after the dispute is formally in place</p> <p>Arbitration, using the summary procedure rules – <u>no lawyers</u> can take 8 to 12 weeks</p> <p>With the full procedure rules, with attorneys, and often counsel, can take from 6 months to 2 years</p>	
121	<p>40.9 The dispute resolution clause does not end should either party terminate the contract</p>	
122	<p>POST TENDER PROVISIONS</p> <p>41.1 A critical aspect. Neither architect, principal agent, nor a quantity surveyor may prescribe issues that are at the selection of the contractor in his tender - CE</p>	

ITEM NO.	REFERENCE TEXTS	SPACE FOR NOTES BY THOSE ATTENDING
123	<p data-bbox="313 247 690 275">CONTRACTUAL AGREEMENT</p> <p data-bbox="313 310 987 428">The principal agent to carefully complete the contract set of drawings and other documents. It is advisable that the contractor be provided with the opportunity to examine them before the parties sign</p> <p data-bbox="313 464 987 520">The principal agent has a duty of care to the employer to get it correctly completed – 3.5</p>	

The what to watch out for list

You are the employer's agent – spending his money

Have a system for your work

Do it in writing – get that habit

The contractor must have a competent person on site at all times

If you want quality – specify it trade by trade

Enforce quality in the long run up to practical completion

Use the subcontract indemnity form if the subcontractor does any selection of materials or designs work

Use the certificate and recovery statement from the start

Be exacting in dealing with claims for delay

Don't put up with bullshit from anyone. Be fair to all and still seen as stern and tough