

Confused about which of the 2005 JCT design contracts is right for your project?

Want to know how the key terms compare? Here's how to pick a winner ...

Studying the form

THIS YEAR THE JCT CAUSED QUITE A STIR WHEN it decided to revamp its entire suite of contracts (see *Building*, 24 June, page 58) but it's the changes to the design contracts - Design and Build Contract and the Intermediate Contract with Design - that have created most interest. The two other additions are often overlooked: Minor Works with Design for smaller schemes and its big brother the Major Projects Construction Contract badged for the experienced user and for larger projects only. So, how do the four family members compare?

The chart shown here sets out a useful comparison of key terms, which should help you assess which contract best suits your project's needs. Even if you are familiar with the earlier JCT forms, it's worth taking the time to review the new ones. You may find that the previous contract you chose as a matter of course can be replaced with another that is better suited or can be more easily adapted to your business needs.

Tip: Check the contract particulars

Possibly the greatest single change in the JCT contracts is the replacement of the old appendix with more extensive contract particulars at the front of each form. Care is needed in completion to ensure that any optional provisions apply in the way you want. There is no quick fix to completion. Read the small print and the various published guides. Take care to see that each entry is completed correctly or, if not required, clearly marked accordingly. Perhaps identify an individual with authority to "sign off" contract particulars within your organisation. Take care that there is no discrepancy between the contract particulars and any information concerning them in underlying contract documents as this may cause confusion.

Take your pick: JCT's four main design contracts

	Major Project Construction Contract (MP05) For major works, including design, undertaken by experienced employers and contractors. It gives more flexibility to the employer, with greater risk transferred to the contractor. <i>An alternative to DB05, and shorter</i>	Design and Build (DB05) A more detailed contract for significant works, which requires the employer to set out its brief for the contractor to then work up proposals for the completion of design and works. <i>Likely to be a favourite of funders and developers, with amendments</i>	Intermediate Contract with Design (ICD05) For simple works with specific elements designed by the contractor, where detailed contract provisions for pricing and specification will assist. <i>Not a full design-and-build contract.</i>	Minor Works with Design (MWD05) For simple works with little design, using a professional contract administrator but without more detailed contract provisions. <i>A useful contract for clients procuring direct works after letting the main contract</i>
Design risks	<ul style="list-style-type: none"> Choose between a high-level skill and care or fitness-for-purpose design obligation. <i>Greater risk for the contractor but closest to employers' and funders' expectations for bigger schemes</i> "Design adoption" of all design risk by contractor, except for early design. <i>Passes significant design risk to contractor - watch out for employers making amendments</i> 	<ul style="list-style-type: none"> Contractor has equivalent liability to an architect (that is, reasonable skill and care) to complete the design of the works. Not full "design adoption". <i>To place early design risk on the contractor, bespoke novation arrangements will be required</i> 	<ul style="list-style-type: none"> Contractor has equivalent liability to an architect (reasonable skill and care), limited to its designed portion of the works. Not a design-and-build contract, it incorporates a contractor's designed portion for which it takes the risk. <i>If the contractor is designing more than just simple elements, this contract may not be suitable - consider using DB05</i> 	<ul style="list-style-type: none"> Simple design obligation. Cut-down version of a contractor's designed portion of the works.
Copyright	<ul style="list-style-type: none"> Comprehensive transferable copyright licence for employer. 	<ul style="list-style-type: none"> Transferable copyright licence for employer is subject to payment. <i>Where employer and contractor are in dispute, the employer may have difficulty using the design information to finish the job</i> 	<ul style="list-style-type: none"> Transferable copyright licence for employer is subject to payment. 	<ul style="list-style-type: none"> No express copyright licence. <i>Consider whether your project requires a copyright licence - even on basic projects a licence is likely to be required to copy and use the design information in the statutory health and safety file</i>
Extended liabilities	<ul style="list-style-type: none"> Liability of the contractor may extend to funders, purchasers and tenants in schedules of third party rights only. This contract does not cater for collateral warranties. Permits "assignment" of the contract by the employer to others without the contractor's consent. <i>Contractors beware - this may increase your liability to others</i> 	<ul style="list-style-type: none"> Liability of contractor may extend to funders, purchasers and tenants in schedules of third-party rights or bespoke/JCT collateral warranties. May require the contractor to obtain collateral warranties for third parties from subcontractors. <i>Third-party rights or collateral warranties, which should you choose? Confusion may result if a mix of options is used across project documents (see Building, 23 September, page 78)</i> 	<ul style="list-style-type: none"> Liability of the contractor may extend to funders, purchasers and tenants through collateral warranties only. <i>Requires careful completion of contract particulars to activate relevant options</i> 	<ul style="list-style-type: none"> Rights of third parties under the Third Parties Act excluded, and collateral warranties not provided for. <i>Likely to be amended for even simple schemes to give rights to interested third parties</i>
Insurance	<ul style="list-style-type: none"> Contractor to maintain professional indemnity insurance where stated in the contract particulars (see "Tip", left). Works insurance arrangements are flexible and policy documents are attached to contract. <i>Allows for project insurance - common on complex and PFI schemes</i> 	<ul style="list-style-type: none"> Contractor to maintain professional indemnity insurance where stated in the contract particulars. New, but familiar, works insurance options based on earlier JCT forms. <i>The revised contract particulars mean it is now more important than ever to check that the insurance sections are correctly completed - liaising with your broker is a good idea</i> 	<ul style="list-style-type: none"> Contractor to maintain professional indemnity insurance where stated in the contract particulars. New, but familiar, works insurance options based on earlier JCT forms. 	<ul style="list-style-type: none"> Professional indemnity insurance not provided for. <i>With no express contract term to flag this up, employers would be wise to check that the contractor maintains professional indemnity insurance as part of the tender process</i> Simple statement identifying who is to insure the works.

Taylor Wessing's Construction & Engineering Group

For further information, please contact:
Helen Garthwaite
email h.garthwaite@taylorwessing.com or

Carmelite
50 Victoria Embankment
Blackfriars
London EC4Y 0DX

Neil White
email n.white@taylorwessing.com

Tel +44 (0)20 7300 7000
Fax +44 (0)20 7300 7100

or your usual contact.

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First published on 16 December 2005.

Disclaimer:

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