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Postgraduate Certificate in Construction Law and Arbitration

# Contract Law and Administration in Construction

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Contract law is a crucial aspect of the construction industry, governing the relationships and agreements between various parties involved in construction projects. Understanding the key terms and vocabulary associated with contract law and administration is essential for professionals in the construction sector, particularly those pursuing a Postgraduate Certificate in Construction Law and Arbitration. This detailed explanation will cover a wide range of terms to provide a comprehensive understanding of contract law and administration in construction.

## Contract

A contract is a legally binding agreement between two or more parties that creates obligations to perform certain actions. In the context of construction, contracts are essential to outline the rights and responsibilities of parties involved in a project.

## Offer

An offer is a promise to do or refrain from doing something, provided that the other party agrees to certain terms. In construction contracts, the offer is usually made by the party seeking to engage another party's services.

## Acceptance

Acceptance is the unconditional agreement to the terms of an offer. In construction contracts, acceptance occurs when the party receiving the offer agrees to the terms without any modifications.

## Consideration

Consideration refers to something of value exchanged between parties to a contract. In construction contracts, consideration often takes the form of payment for services rendered.

## Intention to Create Legal Relations

This principle states that parties entering into a contract must have a clear intention to create legal relations. In construction contracts, this is crucial to ensure that the agreement is legally enforceable.

## Capacity

Capacity refers to the legal ability of parties to enter into a contract. In construction contracts, parties must have the capacity to understand the terms and implications of the agreement.

## Express Terms

Express terms are the specific terms and conditions explicitly agreed upon by the parties and included in the contract. These terms are crucial in construction contracts to avoid misunderstandings or disputes.

## Implied Terms

Implied terms are terms that are not expressly stated in the contract but are deemed to be included based on the nature of the agreement or the intentions of the parties. In construction contracts, implied terms may relate to industry standards or common practices.

## Conditions

Conditions are fundamental terms of a contract that, if breached, can lead to the termination of the agreement. In construction contracts, conditions may relate to payment schedules, completion deadlines, or quality standards.

## Warranties

Warranties are secondary terms of a contract that are not fundamental to the agreement. Breach of warranties may entitle the innocent party to claim damages but does not typically result in contract termination. In construction contracts, warranties may relate to minor aspects of the project.

## Breach of Contract

A breach of contract occurs when one party fails to fulfill its obligations as outlined in the contract. In construction contracts, breaches may occur due to delays, substandard work, or non-payment.

## Liquidated Damages

Liquidated damages are pre-determined amounts specified in the contract to be paid in the event of a breach. In construction contracts, liquidated damages may be imposed for delays in project completion.

## Termination

Termination refers to the ending of a contract before all obligations are fulfilled. In construction contracts, termination may occur due to breaches, disputes, or unforeseen circumstances.

## Assignment

Assignment is the transfer of rights or obligations under a contract from one party to another. In construction contracts, assignments may occur when subcontractors take over specific aspects of the project.

## Novation

Novation is the substitution of one party in a contract with another party, with the consent of all parties involved. In construction contracts, novation may occur when a new contractor takes over the

responsibilities of the original contractor.

#### Variation

Variation refers to changes made to the terms of a contract after it has been agreed upon. In construction contracts, variations may occur due to unforeseen circumstances, design changes, or client requests.

#### Dispute Resolution

Dispute resolution mechanisms are processes outlined in the contract to resolve conflicts between parties. In construction contracts, dispute resolution may involve mediation, arbitration, or litigation.

#### Adjudication

Adjudication is a rapid dispute resolution process commonly used in construction contracts to resolve payment disputes or other issues quickly. Adjudication decisions are usually binding on the parties involved.

#### Retention

Retention is a portion of the contract sum retained by the client until the satisfactory completion of the project. In construction contracts, retentions are often used as security against defects or delays.

#### Force Majeure

Force majeure refers to unforeseeable circumstances that prevent one or both parties from fulfilling their contractual obligations. In construction contracts, force majeure clauses may cover events such as natural disasters, strikes, or government actions.

#### Indemnity

Indemnity is a promise by one party to compensate the other party for losses or damages incurred. In construction contracts, indemnity clauses may allocate risks for specific events or liabilities.

#### Performance Bonds

Performance bonds are financial guarantees provided by contractors to ensure that they will fulfill their contractual obligations. In construction contracts, performance bonds may be required to protect clients against contractor default.

#### Professional Indemnity Insurance

Professional indemnity insurance provides coverage for professionals against claims of negligence or errors in their services. In construction contracts, professional indemnity insurance may be required for architects, engineers, or other consultants.

#### Counterclaim

A counterclaim is a claim made by the defendant in response to a claim made by the claimant. In

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construction contracts, counterclaims may arise in disputes over payment, defects, or delays.

### Severability

Severability is a clause in a contract that allows the rest of the contract to remain valid even if one or more provisions are found to be unenforceable. In construction contracts, severability clauses help to ensure that the agreement remains intact despite legal challenges.

### Dispute Adjudication Board (DAB)

A Dispute Adjudication Board is a panel of independent experts appointed to resolve disputes that may arise during the construction project. DABs are commonly used in construction contracts to provide quick and efficient resolution of conflicts.

### Design and Build Contracts

Design and build contracts are contracts where a single entity is responsible for both the design and construction of a project. In design and build contracts, the contractor is typically responsible for delivering a fully designed and completed project.

### Joint Contracts Tribunal (JCT)

The Joint Contracts Tribunal is a prominent provider of standard forms of contract for construction projects in the UK. JCT contracts are widely used in the construction industry and cover a range of project types and procurement methods.

### FIDIC Contracts

The International Federation of Consulting Engineers (FIDIC) produces a suite of standard forms of contract for construction projects worldwide. FIDIC contracts are commonly used in international construction projects and provide a framework for addressing various contractual issues.

### NEC Contracts

The New Engineering Contract (NEC) is a suite of contracts that focuses on collaboration, flexibility, and risk management in construction projects. NEC contracts are widely used in the UK and other countries for various types of construction projects.

### Public Procurement

Public procurement refers to the process by which public sector organizations acquire goods, services, or works from external suppliers. In construction, public procurement involves the tendering and awarding of contracts for public infrastructure projects.

### Private Finance Initiative (PFI)

The Private Finance Initiative is a method of financing public infrastructure projects through private sector investment. In PFI projects, private sector companies are responsible for designing, building, financing, and

operating public facilities.

### Design Liability

Design liability refers to the responsibility of designers, architects, or engineers for the quality and accuracy of their design work. In construction contracts, design liability issues may arise if design errors lead to defects or delays in the project.

### Retention of Title

Retention of title is a clause in a contract that allows the seller to retain ownership of goods until payment has been made in full. In construction contracts, retention of title clauses may be used to protect suppliers against non-payment.

### Collateral Warranties

Collateral warranties are additional warranties provided by third parties to a construction project, typically to protect the interests of funders, tenants, or future owners. In construction contracts, collateral warranties may be required to cover specific aspects of the project.

### Defects Liability Period

The defects liability period is a specified period after the completion of the project during which the contractor is responsible for rectifying any defects that arise. In construction contracts, defects liability periods ensure that the project meets the required quality standards.

### Subcontracting

Subcontracting is the practice of engaging third parties to perform specific aspects of a construction project. In construction contracts, subcontracting allows main contractors to delegate certain tasks to specialist subcontractors.

### Retention Money

Retention money is a portion of the contract sum retained by the client to ensure that the contractor fulfills their obligations. In construction contracts, retention money is typically released to the contractor after the defects liability period has expired.

### Payment Terms

Payment terms specify the schedule and conditions for payments to be made under the contract. In construction contracts, payment terms may include milestone payments, interim payments, and final payments upon project completion.

### Adjudicator's Decision

An adjudicator's decision is a binding determination made by an adjudicator in a construction dispute. Adjudicator's decisions are typically enforceable pending further dispute resolution or arbitration.

## Arbitration

Arbitration is a formal dispute resolution process where an independent arbitrator or panel of arbitrators is appointed to make a binding decision on the dispute. In construction contracts, arbitration is commonly used to resolve complex disputes.

## Mediation

Mediation is a voluntary dispute resolution process where an impartial mediator helps parties reach a mutually acceptable agreement. In construction contracts, mediation is often used to resolve disputes before resorting to more formal processes.

## Expert Determination

Expert determination is a dispute resolution process where an independent expert is appointed to provide a binding decision on technical or factual matters in the dispute. In construction contracts, expert determination may be used to resolve disputes over design, quality, or other technical issues.

## Contractual Claims

Contractual claims are formal requests made by parties under the contract for compensation, damages, or other remedies. In construction contracts, contractual claims may arise due to breaches, delays, defects, or other issues.

## Concurrent Delay

Concurrent delay occurs when multiple events cause delays to the project simultaneously. In construction contracts, concurrent delay may complicate the determination of liability for delays and associated costs.

## Force Account

Force account is a method of valuing and compensating for additional work or changes to the contract that cannot be priced in advance. In construction contracts, force account may be used for unforeseen works or variations.

## Limitation of Liability

Limitation of liability is a clause in a contract that limits the amount of damages that can be claimed in the event of a breach. In construction contracts, limitation of liability clauses may protect parties from excessive claims.

## Dispute Resolution Clause

A dispute resolution clause is a provision in a contract that outlines the process for resolving disputes between parties. In construction contracts, dispute resolution clauses may specify the use of mediation, arbitration, or other methods.

## Standard of Care

Standard of care refers to the level of professionalism, skill, and diligence expected of parties in performing their obligations under the contract. In construction contracts, the standard of care may vary depending on the role and expertise of the party.

#### Advance Payment Guarantee

An advance payment guarantee is a form of security provided by the contractor to guarantee the repayment of any advance payments received. In construction contracts, advance payment guarantees protect clients against contractor default.

#### Contract Sum

The contract sum is the total amount agreed upon by the parties for the completion of the project. In construction contracts, the contract sum includes all costs, fees, and allowances specified in the agreement.

#### Letter of Intent

A letter of intent is a document issued by the client to inform the contractor of their intention to enter into a formal contract. In construction contracts, letters of intent may be used to authorize the commencement of works before the formal contract is finalized.

#### Time Bar Clause

A time bar clause is a provision in a contract that sets a deadline for parties to bring claims or disputes. In construction contracts, time bar clauses help to ensure that claims are raised promptly to avoid delays or complications.

#### Retention Release

Retention release refers to the process of releasing the retained funds to the contractor upon the satisfactory completion of the project. In construction contracts, retention release may occur after the defects liability period has expired.

#### Dispute Resolution Board (DRB)

A Dispute Resolution Board is a panel of experts appointed to provide proactive dispute resolution services throughout the construction project. DRBs aim to prevent disputes from escalating and provide timely resolution to issues.

#### Contra Proferentem Rule

The contra proferentem rule is a legal principle that interprets ambiguous contract terms against the party that drafted the contract. In construction contracts, the contra proferentem rule may be used to resolve disputes over unclear or ambiguous terms.

#### Latent Defects

Latent defects are defects that are not immediately apparent but become evident after the completion of

the project. In construction contracts, latent defects may give rise to claims for rectification or compensation.

### Force Majeure Clause

A force majeure clause is a provision in a contract that excuses parties from fulfilling their obligations in the event of unforeseen circumstances beyond their control. In construction contracts, force majeure clauses may cover events such as natural disasters, epidemics, or government actions.

### Novation Agreement

A novation agreement is a formal document that transfers the rights and obligations of one party in a contract to another party with the consent of all parties involved. In construction contracts, novation agreements may be used to replace contractors or subcontractors.

### Adjudication Decision Enforcement

Enforcing an adjudication decision involves taking legal action to ensure that the decision is implemented by the parties involved. In construction contracts, enforcing adjudication decisions may require court intervention or other legal measures.

### Payment Disputes

Payment disputes arise when parties disagree on the amount or timing of payments under the contract. In construction contracts, payment disputes may lead to delays, disruptions, or even project suspensions.

### Retention Clauses

Retention clauses are provisions in a contract that allow the client to retain a percentage of the contract sum until the satisfactory completion of the project. In construction contracts, retention clauses are used to ensure that the contractor fulfills their obligations.

### Contractual Variations

Contractual variations are changes made to the terms of the contract after it has been agreed upon by the parties. In construction contracts, variations may be requested due to design changes, unforeseen circumstances, or client preferences.

### Dispute Resolution Process

The dispute resolution process is the series of steps outlined in the contract for resolving conflicts between parties. In construction contracts, the dispute resolution process may involve negotiation, mediation, adjudication, arbitration, or litigation.

### Professional Negligence

Professional negligence refers to the failure of a professional to perform their duties with the required standard of care, leading to harm or loss to the client. In construction contracts, professional negligence

claims may arise against architects, engineers, or other consultants.

### Retention Period

The retention period is the duration for which the client retains a percentage of the contract sum as security against defects or non-compliance. In construction contracts, retention periods typically extend beyond the completion of the project to cover the defects liability period.

### Defects Liability Clause

A defects liability clause is a provision in the contract that specifies the responsibilities of the contractor for rectifying defects that arise after project completion. In construction contracts, defects liability clauses ensure that the contractor addresses any defects within the agreed-upon period.

### Quantum Meruit

Quantum meruit is a legal principle that allows parties to claim payment for work done based on the value of the work performed. In construction contracts, quantum meruit may be invoked in cases where the contract is unenforceable or incomplete.

### Design and Construct Contracts

Design and construct contracts are contracts where the contractor is responsible for both the design and construction aspects of the project. In design and construct contracts, the contractor assumes greater responsibility for the project's outcomes.

### Performance Guarantee

A performance guarantee is a form of security provided by the contractor to assure the client that the project will be completed as per the contract terms. In construction contracts, performance guarantees may be required to protect clients against contractor default.

### Substantial Completion

Substantial completion refers to the stage of the project where the works are sufficiently complete for the client to occupy or use the building. In construction contracts, substantial completion triggers the start of the defects liability period.

### Contractual Disputes

Contractual disputes are disagreements or conflicts between parties arising from the interpretation or implementation of the contract terms. In construction contracts, contractual disputes may involve issues such as delays, defects, payments, or variations.

### Defects Rectification

Defects rectification is the process of identifying and correcting defects in the project to meet the required quality standards. In construction contracts, defects rectification is typically the responsibility of the

contractor during the defects liability period.

### Payment Certificates

Payment certificates are documents issued by the contract administrator to certify the amount due to the contractor for works completed. In construction contracts, payment certificates are used to facilitate timely and accurate payments.

### Arbitration Award

An arbitration award is the final decision made by the arbitrator or panel of arbitrators in an arbitration proceeding. In construction contracts, arbitration awards are binding on the parties and enforceable under applicable laws.

### Mediation Agreement

A mediation agreement is a formal document signed by parties agreeing to participate in a mediation process to resolve their dispute. In construction contracts, mediation agreements outline the terms and procedures for the mediation process.

### Expert Determination Clause

An expert determination clause is a provision in the contract that allows parties to refer technical or factual disputes to an independent expert for resolution. In construction contracts, expert determination clauses help to resolve complex technical issues efficiently.

### Contractual Remedies

Contractual remedies are legal options available to parties in the event of a breach of contract. In construction contracts, contractual remedies may include damages, specific performance, injunctions, or termination of the agreement.

### Retention Account

A retention account is a separate account where the retained funds are held by the client until the defects liability period has expired. In construction contracts, retention accounts help to ensure that the retained funds are safeguarded.