

Contractual Legalities

Exactly how covered are you?

It's not just about having a contract in place but having the correct contract in place....

A lot goes into the design, preparation, and subsequent execution of a project whether it be the construction, upgrading or expansion of a facility or the introduction of a new line or piece of equipment. What may often be overlooked is the contractual aspect. The importance of having the right contracts in place before any work commences cannot be stressed enough. Without the correct contract in place neither party will be able to fully ascertain their role in the project and the obligations which go along with it, in turn exposing themselves to a large amount of unnecessary risk.

This can be avoided by ensuring the correct contract is put in place for the envisaged scope of work. The contract should not only set out who the parties to the agreement are but also the roles, duties and obligations of each party along with a detailed description of the works, the standard to which it must be performed, a timeline for said work, the contract value as well as how payment shall be made. All of which would form material

terms of the agreement. The contract, once signed, then serves as legally binding proof that both parties have come to an agreement and understand their roles within the relationship. In turn this enables either party to avoid any back and forth further down the line should a dispute arise.

Having the correct contract in place further protect the parties from any deviation or change which is not agreed to in

writing by both parties prior to the change being implemented. Thus, the innocent party would be able to claim breach of contract by the offending party.



However, not just any contract will suffice....

Different disciplines or scopes of work require different contractual terms to ensure the best protection is provided and that compliance with the contract is adhered to. You would not implement a contract dealing primarily with the purchase of equipment in a scenario which entails the construction of a building. Therefore, it is of vital importance to have the right contracts in place for all aspects of the project, from appointment of the agents, the health and safety officials, the contractors who will be performing the work to the equipment suppliers.

Contracts further serve as a tool to managing a project in the sense that it enables the appointing party to ensure milestones are met in accordance with the contract in terms of both standards as well as cost.

When contracts go wrong

It's not inevitable but relationships do go wrong from time to time and having the correct contract in place will drastically reduce the amount of risk you may be exposed to.

The implication of a contract going wrong or having the wrong contract in place can range from missing a deadline or incurring additional costs to finding oneself liable for an incident which occurred on site. All of these pose a threat to the successful execution of a project and in more drastic cases it may result in large scale lawsuits which could put an end to the business.

The contract would set about limiting these risks by enforcing compliance and setting out the steps to be taken in the event of a dispute or deviation from the original agreement.

Having said that, a contract in place serves very little purpose if the parties do not adhere to the obligations created therein. For example, the JBCC suite of contracts include in them the obligation on the appointing party to issue monthly progress certificates, as well as setting out the proper process to be followed at practical and final completion stages.

Failure to adhere to these clauses could result in the works being considered complete from a legal perspective, at a stage where it is in fact not completed and snags may remain. Failure may also result in liability for the works changing hands earlier than it should, leaving the party with very little recourse should something go wrong.

Ensuring you implement the correct contract

As previously alluded to, no one contract will be sufficient for all the possible transactions which may be encountered and thus it is important to be able to identify which contracts are best suited to the scope of work which is being dealt with. There are many forms of contracts available, be it the JBCC, FIDIC, NEC or GCC etc. These offer a wide range of contracts covering small and simple works to more complex large-scale projects. Although reference is often made to the

complexity and value of the works, these are not the only determining facts which need to be considered when implementing a contract. The scale, duration, funding, and appointment of parties, many other factors all of which need to be considered when selecting the correct contract.

Furthermore, you may often find that the available contracts do not deal directly with the intended scope of works, in which case a new contract specific to the works will need to be drawn up to ensure the unique aspects are covered.

Complying with this step and ensuring the correct contract is used will aid in reducing the amount of risk which you may be exposed to, as well as assist in the successful execution of the project.

To contact Astratek Manufacturing Engineers for assistance and advice call us on +27 (0) 21 001 4570 or e-mail us at info@astratek.co

