

ACE 2020

ARCHITECT - CLIENT CHECKLIST



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■ Preamble

It is always advisable that the relationship between client and architect should be agreed and formalised within an appropriate written contract. This is even more important when working internationally as familiar domestic contracts may not be suitable. The architects might favour one type of contract whereas the client and/or local imperative rules or customs might require another.

This checklist has been drawn up by the ACE IBM taskforce to highlight the issues for architects working internationally, and to guide both parties towards a fair and workable basis for their relationship from the outset. The checklist deals with a commonplace situation in which an architect has to work in the legal context of the client's country.

Please note that this checklist is not a contract, but a guide. For ease of reference, a brief checklist is provided. When drawing up a contract with your client, it is essential to check local law first, for example, what binding imperative rules apply and where does contract freedom apply? This checklist highlights the issues to be covered in a contract but not how to address these issues.

This checklist includes three elements:

- **General guidance on how to set up a legally binding contract**
- **A brief contract checklist**
- **A list of links to various national and international contract templates available online**



■ General guidance on how to set up a legally binding contract

At its most basic, a legally binding contract is a contract between two parties that can be legally enforced. What makes a contract binding is the existence of three elements:

- 1 | **Agreement:** an offer by one party and acceptance of this offer by the other party
- 2 | **Consideration:** the economic value of the exchange between the parties (services to be delivered; fee to be paid) needs to be sufficiently defined
- 3 | **Intention:** parties must have the intention to enter into a legally binding agreement. In commercial transactions this intention is presumed to exist.

A written agreement is not always required to make a legally binding contract. A verbal contract can be binding as well when it includes the three aforementioned elements. Therefore a written agreement is always recommended to avoid misunderstandings and to be able to evidence what has been agreed, should disagreements rise.

When setting up a contract, you are advised to pay attention to the following:

- 1 | **Imperative local rules:** the contract must conform to (overriding) imperative local laws
- 2 | **Customised contract:** ideally the contract should be customised for architectural design services or consultancy services. Generic or unsuitable contracts should be avoided
- 3 | **Standard contract:** when available, make use of standard contract templates or other proven templates to avoid legal errors and omissions, see section 3
- 4 | **Ethics:** make sure the contract meets the obligations set by your professional code of conduct
- 5 | **Consumers:** be aware of the European consumer protection rules, not all professional contract templates are suitable for consumer assignments
- 6 | **Accessibility:** choose a contract language that is easily read and understood by both parties
- 7 | **Professional help:** do not amend legal contracts you may not fully understand, but hire a professional and specialised lawyer for advice and/or support, see section 4
- 8 | **Insurance check:** always consult your insurance company to make sure you have sufficient coverage, before you finalise a contract

When choosing a template for your contract, you have the following options (in order of preference):

- 1 | **Standard local customised contract** for architectural design services or consultancy services (from the relevant professional or industry association), see section 3
- 2 | **Reuse of a customised individual contract** that you have used before in the same country
- 3 | **FIDIC Whitebook**, an international customised standard contract for consultancy services (FIDIC licence required in order to download)
- 4 | **Customised individual contract** prepared by a professional and specialised lawyer
- 5 | **Standard local contract**, when provided by the client (needs to be customised for architectural design services)
- 6 | **Standard foreign customised contract** for architectural design services or consultancy services from the country of the architect (needs to be customised to conform to imperative local rules)
- 7 | **Individual contract**, prepared by architect and/or client (not really an option, unless parties are very experienced)



■ Brief contract checklist

An appropriate architect contract should include the following elements:

- 1 | **Identity of the parties**
Including the chamber where you are a member and member number, when dealing with larger parties identify representatives.
- 2 | **Definitions**
Meanings of the key designations in the contract to make sure the contract clauses are fully understood by both parties.
- 3 | **Description of the assignment**
Accurate description of the project and the services to be provided, and how and when they should be delivered.
 - a | *Address, size of building site and number in land registry*
 - b | *Programme of requirements and type of project*
Also mention other relevant project information to be provided to the architect, such as surveys, briefing documents.
 - c | *Scope of the services to be provided*
Including coordination and supervision of services provided by other consultants; also provide a list of necessary excluded services such as construction calculations to be provided by other consultants – to be engaged separately by the client.
 - d | *Project schedule (optional)*
When will the various work stages start and finish.
 - e | *Project budget*
What is the building and project budget. Note in some countries clients have to declare that they have the means to realise the project.
- 4 | **Obligations of the architect**
Description of the duties and responsibilities of the architect.
 - a | *Mandatory warning*
Architect has to warn client about errors and omissions in informations provided by and decisions made by the client.
 - b | *Protocol for providing working documents to the client for approval*
When and how must the architect send the result(s) of a working stage to the client.
 - c | *Duties with regard to project schedule and project budget*
What are the time and budget management responsibilities of the architect and how must he respond to potential delays and budget overruns. Avoid giving guarantees for planning and budget, as they are influenced by external factors.
- 5 | **Project administration and archiving duties**
Requirements with regard to project administration; how long is the architect required to archive the drawings for the project. Note, archiving is also important for liability reasons.
- 6 | **Professional standards and ethics**
Architects work to professional standards and in relation to their national codes of conduct, with social and ethical awareness, and standards of care.

**7 | Obligations of the client**

Description of the duties and responsibilities of the client; does the client have the financial and organisational means to execute the project and who is the day to day point of contact for the architect? Do they have to sign all drawings to confirm that they have approved them? In what cases does the client have to pay the architect even if the work is not executed? Are there extra national duties for the client? In some countries the client has to have an insurance covering issues not covered by contractor or architect.

8 | Liability and insurance

Conformation to imperative liability law, in case of contract freedom reasonable limitations of liability – amount, period, only direct damages- minimal insurance requirements and information about insurance coverage available. Always make sure that insurance coverage corresponds to liability.

9 | Fees and expenses

Composition of the fee proposal - hours, percentages, lump sum, squareage or otherwise; currency; VAT included or not; arrangement for reimbursement of expenses; period of validity of the proposal or provisions for review of the proposal; indexing of fees and/or reimbursements; payment terms / schedule; compensation for overdue payment.

- *Extra fee for additional services*

(fee proposal for extra work activities, due to changes in the brief or scope, revision of approved work, delays, unforeseen circumstances et cetera)

10 | Copyright license

Provisions to attribute a copyright license to the client in relation to the design - including license conditions, for example with regard to reproductions, alterations and uses in a different location by third parties.

11 | Suspension or termination

Provisions to determine the conditions for and consequences of suspension or termination of the contract. Note: a consumer must always be able to terminate his contract with an architect!

12 | Dispute resolution and applicable law

Identification of applicable law and competent court, provisions for alternative dispute resolution (ADR). Note: ADR provisions can be voidable in a contract with a consumer unless the consumer has explicitly agreed to these provisions.

13 | Signatures (optional)

Signatures to evidence the acceptance of the offer by the architect and the intention of parties to enter into a legally binding contract.

■ Links to national and international contracts available online

Where possible and available online, these links refer to suitable contract templates in the national and English language, too. Many of these contracts can be used as a basis for setting up an agreement free of charge.

In the future, ACE will collect examples of different kinds of contract.

