Your route through Pre-Signing Contract Review

A sample report, built from invented answers, to show what yours will look like.

> This report is based only on your answers, before we have seen any of your papers. It is not legal advice, and you should not rely on any date or time limit in it: check every date against your subcontract. Legal questions go to your solicitor.

Where you stand

Your answers show two of the heaviest risks in a subcontract at once: delay damages with no cap, and payment that waits on someone else. Together they may be more than the job can carry. If neither can be changed, walking away is worth weighing now, before time goes into negotiating.

You have not seen the main contract, yet your subcontract may pass its terms down to you. Delay damages and time bars often sit there, so the risk you are asked to sign for may be larger than the subcontract shows.

Put together, your answers mean the scope you are signing for is not yet clear. Your exclusions may not count, and part of what you are agreeing to sits in documents you have not seen. That is how scope grows without any one clause looking unusual.

Even with no changes accepted, the pay-when-paid link is worth asking about. The payment rules set by law may replace it anyway, so your main contractor has little to lose by giving it up.

Whatever you cannot get changed has to go into your price. Slower payment and the damages you could face both have a cost on this job.

Your terms are a published form with amendments. The terms that cost subcontractors most are usually in the amendments, not the standard form.

Your quote is not part of the subcontract, so its exclusions and assumptions may not protect you. Work you left out of your price could become yours to do.

Your payment waits on your main contractor's client, known as pay-when-paid or pay-when-certified. The Housing Grants, Construction and Regeneration Act 1996 may make a term like that ineffective; whether it does is a question for your solicitor. Either way, relying on the Act means arguing the point while your money is late.

Your delay damages have no cap, or pass down whatever the client takes. A risk like that cannot be priced with confidence: a few weeks' delay on the main job can cost more than your whole subcontract.

Your subcontract has time bars. Each one is only as safe as the team that keeps it: a notice a day late can cost the whole claim.

Your main contractor says it will not accept changes. That is common, and not always final. A short list of the changes that move the most money, each with its cost, is the one most likely to be read.

What to do now

In order of priority.

1. **Decide what must change for the job to be worth taking**

   Why: Knowing your line before you negotiate stops a bad deal being signed under programme pressure.

   How: Write down the two or three changes without which you would not sign, such as a cap on delay damages or fixed payment dates. Put them at the top of what you ask for. If they are refused, you have your answer before more time is spent, and whether to sign stays your decision.

2. **Put a figure on each clause that stays**

   Why: Every clause that stays has a cost, paid in cash flow, in risk or in margin. Priced before you sign, it is in your price; found later, it comes out of your margin.

   How: For each one, work out what it could cost on this job. That means the money you carry while you wait to be paid, any retention held for longer, and the damages you could face. Add them to your price or your allowances, and keep the working.

3. **Read each amendment beside the clause it changes**

   Why: A schedule of amendments on its own only shows which clauses changed. Beside the published clause, it shows which ones cost you money.

   How: Get the published form and check its edition matches the one the subcontract names. Go through the amendments in order and write one line for each: what it does to your money, your time or your risk. Mark the ones that could cost most on this job.

4. **Ask for the main contract before you sign**

   Why: Seeing it is the only way to price the terms a back-to-back subcontract passes down to you.

   How: Ask your main contractor in writing for a copy, with the prices blacked out if need be. Then read the parts that reach your work: the notice periods, the delay damages, the payment terms and anything your trade must design.

5. **Ask for your quote, or its exclusions, to be named in the subcontract**

   Why: Your exclusions protect you only if the subcontract includes them. This goes to the top of the list of changes to ask for.

   How: Ask in writing for your quote, or a schedule of its exclusions and assumptions, to be added to the list of subcontract documents. If that is refused, list what you excluded, and price each item the subcontract now makes yours.

6. **Ask for fixed payment dates in place of the link**

   Why: Fixed dates cost your main contractor nothing to agree before you sign. Afterwards, they cost you time and money to argue for.

   How: Ask for payment to fall due a set number of days after each application. Ask for the final date for payment to follow a set number of days after that. Neither should depend on your main contractor being paid or certified. If this is refused, price the longer wait into your quote.

7. **Ask for a cap on delay damages**

   Why: Uncapped damages are a risk you cannot price. A cap, and a rate that fits your package, turn it into one you can.

   How: Ask for a daily or weekly rate set for your package, not the whole project, and an overall cap. If deleting the clause is refused, a cap is the fall-back to offer.

8. **Check each notice period against what your team can meet**

   Why: A period your team cannot keep on site is a claim you are likely to lose. It is cheaper to change it now than to argue about it later.

   How: List every notice the subcontract asks for, with its trigger, its period and where it must go. Where a period is too short for your team to meet, ask for it to be longer. Or ask for a late notice not to cost you the claim.

9. **Pick the few changes that move the most money**

   Why: A short, costed list gets read and answered. A list of forty objections tends to get a single reply: no.

   How: Rate each clause that worries you by what it could cost on this job. Take the few that cost most, and write each one with the wording you want, the reason and its cost to you. Price the rest.

10. **Keep every version of the terms exactly as it arrived**

    Why: The terms can change between drafts. The original emails show what was offered, when, and what was agreed along the way.

    How: Make one folder for this subcontract. Save each version as the email that carried it, with its attachments, and do the same for your quote and every email about the terms. Do not edit or rename the attachments.

What to gather

Everything the work is built from. Copies are fine: send what you have and we will tell you what is missing.

- **The documents the subcontract pulls in. You said you do not have this yet.** Everything the subcontract lists as part of it, in the revisions it names. That means the main contract terms passed down to you, the schedules, the specification, the drawings list and the programme.

  Where to find it: The subcontract's list of contract documents names them. Your main contractor's document register or tender portal usually holds them.

- **The subcontract as offered.** The subcontract exactly as it was sent to you, with its particulars and every schedule and appendix, as PDFs, with nothing removed.

  Where to find it: Usually attached to an email from your main contractor's commercial or procurement team, or in its procurement portal under the project.

- **The schedule of amendments.** The changes to the standard form as issued, whether a separate schedule, tracked changes or extra pages of terms. If the subcontract names a standard form and edition, tell us which.

  Where to find it: Often a separate attachment to the same email, or a schedule at the back of the subcontract.

- **Your tender or quote.** The quote as sent, with its date, reference, exclusions and assumptions, and

any tender clarifications that followed it.
Where to find it: Your estimator's sent items, or the tender folder for the project.

- **The correspondence about the terms.** Any emails or letters since your quote about the terms, the programme or the price. Forward the original messages, with their dates and attachments.
  Where to find it: A search of your inbox for your main contractor's contact and the project name usually finds the whole thread.

Why Quantsurv

You can do a good deal of this yourself, and the steps above show how. If you would rather have it done for you, or want the notices checked before you act, this is the work we do.

- **Specialists in exactly this.** We work only for subcontractors, on the claims and disputes that cost them money. Behind it: 10 years on the commercial side of construction, and £100m+ of construction projects worked on.
- **A fixed fee, agreed first.** We never bill by the hour. Fixed fee agreed in writing after we see the contract, before work starts. If the work runs over, the cost is ours, not yours.
- **Fast where it matters.** Five working days. A fixed fee also gives us every reason to finish quickly.

How Pre-Signing Contract Review would run for you

The whole service, step by step. Where your answers decide a route, it is shown under the step it belongs to.

Step 01 You tell us about the subcontract and your signing date

The first conversation is free. You tell us about the job, your price, the date you are asked to sign by and what worries you in the terms.

What you get: A straight answer on whether this review fits, and whether your signing date can be met

Step 02 You send us the subcontract and everything it pulls in

You send everything in the list below, exactly as it was sent to you. If the subcontract names a document you were never sent, tell us which one.

Step 03 We confirm the scope, fixed fee and review date in writing

We list every document that makes up the subcontract and check you have each one, in the revision it names. Then we confirm in writing the scope, the fixed fee and the date the review lands.

What you get: A written scope, fixed fee and the date the review lands

Step 04 You decide whether to go ahead

You read the written scope, fee and date, then decide.

Step 05 We read the whole subcontract against your quote

We read every clause, and read each amendment into the clause it changes. We read every document it pulls in, from the main contract terms passed down to the programme, against your quote and the job you priced.

- **If your quote's exclusions and assumptions are not part of the subcontract:** we flag each one as a scope risk. Writing them into the subcontract goes to the top of the amendments to ask for.

Step 06 We rate each clause by what it could cost you

We rate every clause that moves money or risk onto you: payment and any pay-when-paid wording, set-off, retention, delay damages, notices and time bars. We also rate variations, design responsibility, termination, indemnities, insurance and the terms passed down.

What you get: The clause risk schedule: each clause rated by what it could cost you, with the legal questions marked for your solicitor

- **If a payment term is one the Housing Grants, Construction and Regeneration Act 1996 may replace:** we still rate it and ask for fixed dates. Relying on the Act means arguing the point later, while your money is late.
- **If a risk cannot be priced with confidence, such as uncapped delay damages:** we say so and show it as an exposure, not a figure. A clause like that is one to change, or a reason to think again about signing.

Step 07 You choose what to push back on

We take one call with you through the ratings. For each clause, you decide whether to ask for a change, price it or accept it knowingly.

- **If you price a clause instead:** it goes on the list of what to price in, with what it could cost on this job.
- **If the tender says no amendments will be accepted:** we narrow the list to the few changes that move the most money, and you price the rest. A short list with its cost beside each change is the one most likely to be read.
- **If the risk overall is more than the job can carry:** we tell you plainly. Walking away is weighed now, before any time is spent negotiating, and the decision is yours.

Step 08 We write the amendments and the negotiation note

For each clause you chose, we write the wording to ask for and the reason, with its cost to you. A short note in your name puts them to your main contractor, most valuable first.

What you get: The amendments to ask for, each with its reason and cost, and a short negotiation note in your name

- **Where a change is likely to be refused:** we give you a fall-back to offer, such as a cap in place of a deletion, so the point can still be traded.

Step 09 We list what to price in for every clause that stays

For every clause that stays, we set out what it could cost on this job and how to allow for it. That covers slower payment, retention held longer and the damages you could face.

What you get: The price-in list: what each clause that stays could cost on this job, and how to allow for it

Step 10 You send the amendments, and your main contractor replies

The note and the amendments go from you, in your name. We read the reply with you as soon as it arrives.

Step 11 We check the version you are asked to sign

Before you sign, we compare the final version with the amendments agreed and the documents we reviewed. Any change you did not agree is marked.

What you get: A check of the final version against what was agreed, with every difference marked

Step 12 You decide whether to sign

We set out the terms as they now stand and what they could cost you. Whether you sign is always your decision.

Step 13 We write the one-page summary for your team

If you sign, we put the dates and duties from the signed terms on one page for whoever runs the job. That runs from the payment and notice dates to the time bars and the retention release.

What you get: A one-page summary of the dates and duties in the signed terms, for whoever runs the job

Step 14 We hand over the review file and the summary

You receive a risk review with proposed amendments and pricing allowances, followed by a negotiation note to send in your name. We check the final version and provide a one-page summary of your dates and duties.

Your path through the questions

The questions you answered, in order, as the page drew them. Your answers are in yellow, with the line running through them.

Which is closest to where you are with this subcontract?

We have been sent the terms, and have not signed yet

We are working on a letter of intent, and have not signed yet

We have already signed the subcontract

We only need to know whether a clause is enforceable in law

Does the date you are asked to sign by, or your start on site, fall this week?

Yes

No

Not sure

What are the terms based on?

A JCT or NEC form, with amendments or extra pages of terms

A JCT or NEC form with no changes

Our main contractor's own form

Not sure

Have you been sent every document the subcontract lists as part of it?

Yes, all of them

Some are named but were never sent to us

Not sure

Have you seen the main contract terms the subcontract passes down to you?

Yes, we have a copy | We asked, and our main contractor will not provide it | **No, we have not asked for it** | Not sure

Does the subcontract name your quote, with its exclusions, as part of the deal?

Yes, our quote is listed | **No, our quote is not listed** | Not sure

When does the subcontract say you get paid?

A set number of days after we apply | A set time, but a long one, such as 60 days or more | **When our main contractor is paid, or when its client certifies** | Not sure

Does the subcontract set delay damages, and is there a cap on them?

Yes, at a set rate, with a cap | **Yes, with no cap, or whatever the client takes off our main contractor** | No, none are set | Not sure

When does the subcontract say your retention comes back?

When our own work is complete, and after our own defects period | When the whole project, or the main contract, is complete | No retention is held | Not sure

Does the subcontract say you lose a claim for time or money if your notice is late?

Yes, we have found at least one | No, not that we have found | Not sure

Does the subcontract make you responsible for any design?

Yes | **No** | Not sure

Has your main contractor said it will not accept changes to its terms?

Yes, it says no amendments will be accepted | No, changes can be discussed | Not sure

Roughly how much is at stake?

Under £5,000 | £5,000 to £25,000 | £25,000 to £100,000 | **Over £100,000** | Not sure

Your report

Next step

> **The first conversation is free and commits you to nothing.** Reply to the email this report came with, or email contact@quantsurv.com, and we will already have your answers.