



## CONTRACT REVIEW TRAINING SERIES

PART 1

### How to review a Construction Contract A Conceptual Overview



Presented by Greg Henry  
Principal, Turtons Lawyers

This is not legal advice.  
The usual disclaimer applies.



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#### 2 MINUTE SCAN

KEYWORD SEARCH

START READING

LOOK FOR WHAT'S  
NOT THERE

FOLLOW THE RULES

USE A REVIEW  
CHECKLIST

CATEGORISE THE  
RISKS

IMPLEMENT YOUR  
STRATEGY

### Quick flip from cover to cover

- Request for Tender
- Formal Instrument
- Definitions
- General Conditions
- Commercial Particulars (Part A)
- Annexures



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### What type of contract are you looking at?

ECI Agreement or Works Contract?

Cost plus or lump sum?

Construct only or Design & Construct?




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## What is the purpose of your review?

How much detail do you need?

Will you have the ability to go back later?


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## Control + F

latent cond	qualifying cau	consequential lo
indemnif	fit for	ambigui
site cond	novat	contractor warrants
design	approval	liquidated dam
delay	days	


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## Read the contract. There is (currently) still no substitute.


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## Most construction contracts are structured roughly the same way.


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<ul style="list-style-type: none"> <li>1 Interpretation and construction of Contract</li> <li>2 Nature of Contract</li> <li>3 Provisional sums</li> <li>4 Separable portions</li> <li>5 Security</li> <li>6 Evidence of Contract</li> <li>7 Service of notices</li> <li>8 Contract documents</li> <li>9 Assignment and subcontracting</li> <li>10 Intellectual property rights</li> <li>11 Legislative requirements</li> <li>12 Protection of people and property</li> <li>13 Urgent protection</li> <li>14 Care of the work and reinstatement of damage</li> <li>15 Damage to persons and property other than WUC</li> <li>16 Insurance of the Works</li> <li>17 Public liability insurance</li> <li>18 Insurance of employees</li> <li>19 Inspection and provisions of insurance policies</li> <li>20 Superintendent</li> <li>21 Superintendent's Representative</li> <li>22 Contractor's representative</li> <li>23 Contractor's employees and subcontractors</li> </ul>	<ul style="list-style-type: none"> <li>24 Site</li> <li>25 Latent conditions</li> <li>26 Setting out the Works</li> <li>27 Cleaning up</li> <li>28 Materials, labour and construction plant</li> <li>29 Quality</li> <li>30 Examination and testing</li> <li>31 Working hours</li> <li>32 Programming</li> <li>33 Suspension</li> <li>34 Time and progress</li> <li>35 Defects liability</li> <li>36 Variations</li> <li>37 Payment</li> <li>38 Payment of workers and subcontractors</li> <li>39 Default or insolvency</li> <li>40 Termination by frustration</li> <li>41 Notification of claims</li> <li>42 Dispute resolution</li> <li>43 Waiver of conditions</li> <li>Annexure Part A</li> <li>Annexure Part B</li> <li>Annexure Part C</li> </ul>
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Read everything.

Flag anything you don't understand.



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Assume every part of every clause could be improved.

Assume things are missing.



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Assume every part of every clause could be improved.

Latent conditions are limited to ground conditions at the site that could not have been anticipated by a competent and experienced contractor at the date of the contract, having reviewed the tender documents and carefully examined the site.




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**Assume every part of every clause could be improved.**


Latent conditions [are limited to]<sup>1</sup> [ground conditions]<sup>2</sup> [at the site]<sup>3</sup> [that could not have been anticipated]<sup>4</sup> [by a competent and experienced contractor]<sup>5</sup> [at the date of the contract]<sup>6</sup>, having [reviewed the tender documents]<sup>7</sup> and [carefully examined the site]<sup>8</sup>.


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**Assume every part of every clause could be improved.**

Latent conditions are limited to *include* ~~ground conditions~~ *physical and other conditions* ~~at the site~~ *at, under or above the site or otherwise in its near surrounds* ~~that could not have been anticipated~~ *that would not ordinarily have been anticipated* by a competent and experienced contractor *in the position of the Contractor* ~~at the date of the contract~~ *at the time of tender*, having reviewed the tender documents and carefully examined the site *inspected the site having regard to the extent of access provided by the Principal during the tender period.*



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**Assume every part of every clause could be improved.**

Latent conditions are limited to ground conditions at the site that could not have been anticipated by a competent and experienced contractor at the date of the contract, having reviewed the tender documents and carefully examined the site.

Latent conditions include physical and other conditions at, under or above the site or otherwise in its near surrounds that would not ordinarily have been anticipated by a competent and experienced contractor in the position of the Contractor at the time of tender, having reviewed the tender documents and inspected the site having regard to the extent of access provided by the Principal during the tender period.



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**Assume every part of every clause could be improved.**

Latent conditions are limited to *include* ground conditions *physical and other conditions* at the site *at, under or above the site or otherwise in its near surrounds* that could not have been anticipated *that would not ordinarily have been anticipated* by a competent and experienced contractor *in the position of the Contractor* at the date of the contract, *at the time of tender*, having reviewed the tender documents and carefully examined the site *inspected the site having regard to the extent of access provided by the Principal during the tender period.*


Considering the alternatives highlights the risks


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**Assume things are missing.**

No latent condition clause  
No liquidated damages  
No ability to claim delay damages  
No consequential loss exclusion  
No overall cap on liability


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**Start fresh.**

**Don't set out to do it all in one go.**


**If you don't understand something, assume it's bad and seek help.**

**Read every word.**

**Don't assume mark-ups are accurate.**

**Don't assume the same document will be suitable for different projects.**


**Be careful when using a contract review checklist.**


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**A contract review is a useful starting point, but nothing more.**

**(This includes the sample checklist from Turtons.)**


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### Absorb

You will be expected to absorb the risks if you are the best person to manage them

### Pass through

Will your subcontractors/suppliers accept it?  
What impact will have it have on price?  
Can you lawfully pass it on?

### Exclude or limit

Look for items that are outside your control and/or have the potential to destroy your company  
Consider what the Principal will be willing to accept


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### Absorb


Document the risks and educate the project team  
Put procedures in place to manage the risks

### Pass through

Make sure your subcontracts and supply contracts are 'back-to-back' and will be enforceable

### Exclude or limit


Make sure your tender qualifications are clear, and that these find their way into the contract


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### Key Takeaways

- Read the whole document
- Don't accept it if you don't understand it
- **Look for what's *not* there**
- Don't allow a review checklist to limit your thinking


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