In a hardening contractual market, a set of standard terms and conditions is a really useful risk management tool for a consultant in order to (i) set a benchmark at the outset as to what terms and conditions are acceptable and (ii) ensure a contract is in place at an early stage including, amongst other things, appropriate limits of liability.

Following recent key legal and market developments, we are advising our clients to update their standard terms and conditions (and their clause precedent banks). Standard form contracts do not deal with the majority of these legal developments. Provisions need to be included in bespoke appointments to mitigate the risks arising.

What key changes do you need to consider implementing into your standard terms and conditions?

1. The *MT Hojgaard v E.ON Supreme Court decision*, in relation to duty of care and “parallel” strict or fitness for purpose obligations, and the importance of an “overarching” duty of care and an exclusion of fitness for purpose liabilities;

2. Recent case law in respect of limits on liability in appointments and collateral warranties, including amongst others, the *TCC decision of Swansea Stadium Management Company Ltd v City & County of Swansea*, the Court of Appeal decision of *Persimmon Homes Ltd and Others v Ove Arup & Partners Ltd*, and the Scottish Court decision of *British Overseas Bank Nominees Limited v Stewart Milne Group Limited*;

3. The increased risk of projects being delayed and/or put on hold in a difficult market, which makes a robust variation mechanism very important;

4. *CDM Regulations 2015* including a “way out” if the client causes the consultant to breach CDM Regulations 2015;

5. *GDPR* and the provisions needed to facilitate compliance with the regulations;

6. The Dame Judith Hackitt review on Building Regulations and Fire Safety, and changes in the law (i.e. the Building Regulations);

7. The potential risks arising out of *Brexit*, including market uncertainty, impossibility and price escalation;

8. The increasingly common uncertainty in relation to the contractual approach to *BIM* and


We recommend that our clients revisit their standard terms of business to ensure that the above risks are appropriately mitigated in the drafting.

**How can we help?**

Should you require further support or wish to obtain a quotation for a review of your standard terms of business (or precedent banks) please do not hesitate to contact us, or your usual contact at the firm.

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