

IS YOUR LETTER OF INTENT ANY GOOD?

Use this STAR Checklist to review if your letter of intent is 'good to go' or a 'disaster waiting to happen'.

STAR Checklist: Quick Version

| SUCCINCT & SOPHISTICATED SCOPE | | ☹ | ☺ | 😊 |
|--|---|-----|--------|-------|
| Partners Is your letter of intent/ project partner... | A company with a reputation for bringing claims or refusing to pay? | Red | | |
| | A new company or of unknown financial standing and experience? | | Orange | |
| | A reputable company, of good financial standing and known experience? | | | Green |
| Works Is the description of the initial works... | Incomplete, lacking in detail, and generic? | Red | | |
| | Mostly complete, with sufficient detail, but buildability is not clear? | | Orange | |
| | Complete, sufficient in detail, buildable and produced by reputable designers? | | | Green |
| Documents Are the works documents... | Referred to (not attached) and relate to the whole project? | Red | | |
| | Attached but without clarifying which apply to the initial works? | | Orange | |
| | Attached and clearly distinguish the initial works from the rest of the project? | | | Green |
| TAILORED & TIGHT TERMS | | ☹ | ☺ | 😊 |
| Exclusions and limits Is the letter of intent... | For open-ended works with open-ended timescale and no limit on costs? | Red | | |
| | Limited but without linking those limits to the time or cost of the initial works? | | Orange | |
| | Limited by clear definition of initial works, target date for completion and initial price beyond which contractor cannot work? | | | Green |
| Remedies Is the right to terminate... | For the employer only, at any time, without reasons and no compensation? | Red | | |
| | By reference to proposed standard form only? | | Orange | |
| | On notice from either partner, if the project contract is signed or for breach? | | | Green |
| ALIGNED & AGREED AIMS | | ☹ | ☺ | 😊 |
| Time Are the dates for starting and completing the initial works... | Unclear, incomplete and unrealistic? | Red | | |
| | By reference to whole project programme? | | Orange | |
| | Clear, complete, realistic and relating to the initial works only? | | | Green |
| Cost Is the price for the initial works... | Not stated or limited without reference to the scope of the initial works? | Red | | |
| | Reasonable/proven costs only with no element of profit? | | Orange | |
| | Clearly stated, a fixed price and sufficient for the initial works? | | | Green |
| Quality Are the standards for works, goods and services... | Based on fitness for purpose? | Red | | |
| | By reference to the proposed standard form only? | | Orange | |
| | Based on reasonable skill and care/ relevant works documents? | | | Green |
| REAL & REVIEWED RISKS | | ☹ | ☺ | 😊 |
| Ground Risks Are the site risks associated with the initial works... | Unknown, unclear and not accounted for within the price? | Red | | |
| | By reference to whole project? | | Orange | |
| | Identified, analysed, well-defined and priced in the letter of intent? | | | Green |
| Contract Risk What will happen if any limits in the letter of intent are reached and the project contract has not been signed... | Unclear whether letter ends or can be extended and terms to apply to/price to be paid for extended works? | Red | | |
| | Price payable is reasonable sum but unclear whether extended works are under letter of intent or oral contract? | | Orange | |
| | The letter ends automatically as does the partners' commercial relationship? | | | Green |

Introduction to Letters of Intent

A letter of intent is just a specialised short form of contract, in the style of a letter. It is widely used in the UK construction industry to get a project started with the minimum of paperwork. At its core is a letter that says:

- the Client (or sender) states that he intends to enter into a full contract with the Contractor for a project - the intention element of the 'letter of intent'; and
- the Contractor (or recipient) is asked or instructed to start some preparatory works, provide order specific long-lead materials and goods, or provide some pre-contract services.

A letter of intent is used to enable a project to start when some formalities cannot or have not been completed.

Contractual Letters of Intent

From a legal perspective, the purpose of a letter of intent is to record all the main elements of your agreement for works which are in preparation for a specific project. A contract needs five legal requirements: offer, acceptance, consideration, intention and certainty. Of these, the two which are most likely to cause trouble for your letter of intent are:

1 Did you and your partner intend to enter into a contract *now*?

2 Are all the essential contents of a construction contract *present and clear*?

Most modern letters of intent are mini-contracts – they record that the contractor is providing works, goods, or services for which the client is paying. Although a letter of intent is a temporary stop-gap contract, it still needs to be clear and workable. It needs to set out just enough to create a contract; and be limited so that it does not extend beyond a few crucial early weeks.

Using the STAR Checklist

This STAR Checklist has been developed to provide you with a fast and fool-proof list of questions to help you decide if your letter of intent is 'good to go', or is a 'disaster waiting to happen.'

A letter which complies with all 10 questions is one which will be a clear and workable contract for limited and specified works, and which cannot be extended beyond those initial works. This avoids two risks of using letters of intent: (1) that the partners do not understand the content of the letter of intent i.e. what they are meant to do once it is sent, and (2) that the letter rumbles on, without the project contract being signed.

Just tick the comment which best describes your letter of intent. To interpret the results, see page 7.

Note: For the purposes of this STAR checklist, the works, goods, or services being provided under the letter of intent are referred to as the 'initial works'.

STAR Checklist: Scope

It is now well established where a ‘letter of intent’ authorises work, materials or services to be provided pending the conclusion of some further agreement it will, if accepted, constitute a contract... (*Durabella v Jarvis*)

One of the critical aspects of any contract for construction works, including a letter of intent, is to clearly and unambiguously specify what the contractor is being asked or instructed to do. The scope of the works, goods, or services needs to be accurate, brief and clear.

Many of the existing letters of intent contain loose terms and vague phrases such as ‘mobilisation works’ or ‘preparatory services’ without further explanation or attaching the documents that describe the initial works. Without certainty over the partners (who) and the initial works (what), the letter of intent may not even be a contract.

| SCOPE | | ☹️ | 😐 | 😊 |
|---|--|-----|--------|-------|
| Partners Is your letter of intent/ project partner... | A company with a reputation for bringing claims or refusing to pay? | Red | | |
| | A new company, or of unknown financial standing and experience? | | Orange | |
| | A reputable company, of good financial standing and known experience? | | | Green |
| Works Is the description of the initial works... | Incomplete, lacking in detail, and generic? | Red | | |
| | Mostly complete, with sufficient detail, but buildability is not clear? | | Orange | |
| | Complete, sufficient in detail, buildable and produced by reputable designers? | | | Green |
| Documents Are the works documents... | Referred to (not attached) and relate to the whole project? | Red | | |
| | Attached but without clarifying which apply to the initial works? | | Orange | |
| | Attached and clearly distinguish the initial works from the rest of the project? | | | Green |

The parties should be clearly set out, covering the identity of both the company/form providing the initial works, and the company/firm paying for them. Do not rely on email addresses or other correspondence!

A good letter of intent will provide a complete description in sufficient detail for the partners (and even an innocent bystander reading it over your shoulder) to know precisely what is involved. The initial works should not be open-ended – a good letter clearly describes limited works to be carried out, specific goods or materials to be ordered, or a list of services to be performed. The initial works should be clear, unambiguous and limited.

The best way to be clear about the initial works is to make proper use of the works documents and the relevant sections that apply. This also records the quality standards required (see **Aims**).

STAR Checklist: Terms

To keep your letter of intent temporary, it needs terms which prevent it being extended, deliberately or unwittingly. Your letter needs a right to terminate it, and a clear limited scope of works (with linked time and price terms).

| TERMS | | ☹ | ☺ | 😊 |
|--|---|-----|--------|-------|
| Exclusions and limits Is the letter of intent... | For open-ended works with open-ended timescale and no limit on costs? | Red | | |
| | Limited but without linking those limits to the time or cost of the initial works? | | Orange | |
| | Limited by clear definition of initial works, target date for completion and initial price beyond which contractor cannot work? | | | Green |
| Remedies Is the right to terminate... | For the employer only, at any time, without reasons and no compensation? | Red | | |
| | By reference to proposed standard form only? | | Orange | |
| | On notice from either partner, if the project contract is signed or for breach? | | | Green |

Many existing letters of intent specify a maximum amount payable to the contractor and include a date on which the letter of intent will expire. It is widely (and wrongly) assumed that these terms limit the amount of money that the client will have to pay and create an incentive to conclude the project contract.

From my research, there are very few cases where the limits in the letter of intent effectively prevented the contractor getting paid for all the works carried out - even beyond those instructed in the letter of intent. Although most letters of intent are quickly followed up by the project contract, it is not because of the terms in that letter but by the actions of the partners.

The only real 'incentive' under a letter of intent is the right to terminate the partners' involvement in the project. If you cannot agree the terms of the project contract, it is better to part ways amicably now.

In *RTS v Molkerei*, the contractor refused to sign the project contract because it contained no limit on their liability, and the only document they had to set out their agreement was the letter of intent. After 7 years of court proceedings, the Supreme Court said: "*The different decisions in the courts below and the arguments in this court demonstrate the perils of beginning work without agreeing the precise basis upon which it is to be done. The moral of the story is to agree first and to start work later.*"

Remember

No letter of intent guarantees that you will get the project contract signed!

STAR Checklist: Aims

The three core aims of any construction project are time, cost and quality. The relative importance of those aims for the initial works should be agreed, and should align with your aims for the project.

Many existing letters of intent fail to properly identify the aims of the initial works, as distinct from the aims for the project. Letters of intent routinely explain the proposed price *for the project*, the planned completion date *for the project* and the documents describing relevant quality standards *for the project*. But very few make similarly bold and clear statements about the initial works.

| AIMS | | ☹️ | 😐 | 😊 |
|---|--|-----|--------|-------|
| Time Are the dates for starting and completing the initial works... | Unclear, incomplete and unrealistic? | Red | | |
| | By reference to whole project programme? | | Orange | |
| | Clear, complete, realistic and relating to the initial works only? | | | Green |
| Cost Is the price for the initial works... | Not stated or limited without reference to the scope of the initial works? | Red | | |
| | Reasonable/proven costs only with no element of profit? | | Orange | |
| | Clearly stated, a fixed price and sufficient for the initial works? | | | Green |
| Quality Are the standards for works, goods and services... | Based on fitness for purpose? | Red | | |
| | By reference to the proposed standard form only? | | Orange | |
| | Based on reasonable skill and care/ relevant works documents? | | | Green |

Failing to provide terms which set out the aims of the parties in relation to these three generic aims is a mistake. It means that the letter of intent falls back on the minimum standards set by implied terms under legislation.

If you do not include provisions in your letter of intent, then this is what the partners will be required to achieve:

- **Time:** the time for completing the initial works will be a reasonable time, which will take into account any additional works instructed by or on behalf of the client
- **Cost:** the price will be determined by a reasonable sum – which may not reflect the cost analysis which resulted in the contractor becoming the preferred bidder
- **Quality:** the standard implied will be one of reasonable skill and care (services, works) and reasonable fitness for purpose (goods).

Are these vague and ambiguous aims really what you are striving for? In particular, how can a requirement to complete the initial works within a reasonable time really help you to keep the project on schedule – the very aim of the letter of intent!

If not, use the letter of intent to make your aims clear from the start of the project. After all, you should start as you mean to go on!

STAR Checklist: Risks

Before you start work on any project, you ought to properly understand the risks involved. Risk management involves identifying and analysing the project risks, and ensuring the contract responds to and manages those risks during the project.

Many existing letters of intent take no account of two major risks for any works under a letter of intent:

- 1 Does the letter of intent make any reference to ground risks associated with the initial works?
You need to decide who bears the time and cost consequences if unknown and adverse ground conditions are encountered – like Richard III under your site.
- 2 Does the letter of intent clearly explain what will happen if the project contract is never signed.
You need to know whether you can end the authorisation under your letter and ask the contractor to leave the site.

You need to check these aspects *before* you send your letter.

| RISKS | | ☹️ | 😐 | 😊 |
|--|---|-----|--------|-------|
| Ground Risks Are the site risks associated with the initial works... | Unknown, unclear and not accounted for within the letter of intent price? | Red | | |
| | By reference to whole project? | | Orange | |
| | Known, discussed, well-defined and priced in the letter of intent? | | | Green |
| Contract Risk Is the letter of intent clear what will happen if its limits are reached and the project contract has not been signed... | Unclear whether letter ends or can be extended and terms to apply to/price to be paid for extended works? | Red | | |
| | Price payable is reasonable sum but unclear whether works are under letter of intent or oral contract? | | Orange | |
| | The letter ends automatically as does the partners' commercial relationship? | | | Green |

No construction project is risk-free. One role of a construction contract is to help identify risks, allocate the partners' responsibilities for the time and cost consequences of those risks, and contain processes for risk review and management during the project. This is often beyond the scope of a letter of intent, which makes the project contract critical for high-risk projects.

As your letter of intent probably makes no reference to risks associated with the initial works, the very least you should do, **before** you send a letter of intent, is to check whether you and your partner have relevant insurances in place.

The major risk of using a letter of intent is not a project risk. Instead, it depends on the actions of the partners and project team. That risk is that your letter of intent rumbles on, becomes extended by instructions, new letters or inertia, leaving you and your partner in a contractual 'no-man's land.'

Instead of this scenario, you must do everything in your power to get the project contract agreed. To find out more about how you can protect yourself and clients from risks, [subscribe](#) to my video series and watch video 3.

Interpreting Your Results

MOSTLY GREEN: A good letter of intent is reflected by ticking all the green boxes. Even if your letter of intent meets these requirements for its content, you still need to ask some searching questions about whether it is right to use a letter of intent. To find out more about what you should do before sending a letter of intent, [subscribe](#) to my video series and watch video 2 on what (not) to do.

MOSTLY AMBER: Where you thought amber was the nearest response, you should consider adapting the letter of intent to improve it, or decide whether the risks associated with poor drafting are ones you are prepared to take.

MOSTLY RED: Where you thought red was the nearest response, you should rewrite those sections of the letter of intent.

Only you can decide whether your letter of intent, whether or not you change the content, is appropriate for your partner, your project and at this time. Even though letters of intent exist - and in many countries are standard practice - you don't have to use them. The key is to use them sparingly and wisely.

The STAR Checklist is merely a tool to help you avoid some of the worst consequences of our love/hate relationship with letters of intent. This note provides only a brief flavour of the real difficulties, both practical and legal, with writing letters of intent and the risks of not properly documenting your agreement.

Author of the 500-Word Contract™

Sarah Fox is a construction contracts specialist, who has written, adapted and reviewed all manner of construction contracts from 5-page letters of intent to over 50,000-word multi-million pound construction contracts. What she thinks you need, particularly when time is tight, is a really simple contract... a 500-Word version.

Although her 500-Word construction contracts are quick to read, understand and agree, none cuts corners. The 500-Word Letter of Intent is a mini-contract which you cannot extend. It has everything your letter of intent needs, just in a more user-friendly package.

Sarah believes that project success in any industry is built on trust and that starts with a contract with no nasty surprises. Please [get in touch](#) if you too believe that you should be able to read, use and understand your contracts in an instant.

For access to Sarah's 3-part video series on Making Letters of Intent Work for You, [click here](#).