



**LOVE YOUR LETTER OF INTENT**  
**What (Not) to Do Before and After You Agree**  
**A Letter of Intent**

**Sarah Fox, 2014**

## What (Not) To Do with Letters of Intent

**Use this guide to help you ask searching questions before you agree to a letter of intent and to make sure your actions after it is sent keep it temporary**

### Before Sending: is it the Right Strategy?

Before agreeing to use a letter of intent, the partners need to decide whether a letter of intent reflects a sensible contract strategy. Often, a round-table negotiation to agree the terms of the project contract is as quick and far more effective.

Before you agree to a letter of intent, you should speak to the project team to check:

- Are there *really good* reasons to start work NOW and not simply wait until the project contract is agreed?
- What is the commercial justification for starting now?
- Is an early start critical?
- If two-thirds of UK construction projects are completed late,<sup>1</sup> what is the real benefit of the letter of intent?
- Have the partners agreed that a letter of intent will benefit the project programme?
- Does any partner think they will be better off under a letter of intent?
- Why are the contract documents not finalised?
- Have the project partners agreed the key provisions for the project i.e. those on works, time, cost and quality agreed?
- If so, why not enter into the contract for the whole of the works?
- If not:
  - What makes the project team think that starting the project will make it easier to agree those issues when everyone is busy carrying out works or providing services?
  - Are there clear procedures in place for the key provisions to be agreed?
  - Is it likely that the key terms will be agreed before the works under the letter of intent are finished?
- What do the partners agree will be the position if any limits in the letter are exceeded?
- Are the initial works a distinct and logical works package, that can be stopped without disrupting the works programme?
- Does the letter need to comply with the Construction Act for payment and adjudication?
- Does the letter comply with any contractual requirements of regulatory authorities, funders and other stakeholders in your project?
- What bargaining power does the employer think it will have after the letter of intent is signed?
- Does everyone in the project team fully understand the risks of working under a letter of intent?
- Does everyone in the project team fully understand the risks of working without the project contract envisaged in the tender documents?
- Is the employer aware that if the letter of intent has no contractual effect, she will still have to pay for the works?<sup>2</sup>

### After Sending: Keep it Temporary

A letter of intent is meant to be a *temporary* contract. There are no guarantees that the project contract will ever be signed.

Once you've sent the letter of intent, you should focus on getting the project contract agreed and signed. Here are some things you SHOULD NOT do:

- You should not get distracted by the works and ignore progressing the contract.

- You should not treat the paperwork as done and dusted.
- You should not assume a project contract will be signed - it's up to you to make that happen.
- You should not extend the scope of the works either by an instruction or carrying out beyond those set out in the letter.
- You should not agree a new letter of intent covering more works.
- You should not pay or ask for payment over and above any money limit set out in the letter of intent.

The real crux of the matter is that you should get the project contract signed as soon as possible.

**Top tip:** As soon as the letter is sent, organise a completion meeting – which must be before the works under the letter of intent are finished. You should make it clear that you won't be letting anyone go home until the project contract is agreed and signed. You need to do whatever it takes to persuade the contractor to agree the project contract and not to allow the letter of intent to rumble on. If you can't agree, it's far better to part ways amicably now than spend 7 years in court!

Here are some things you SHOULD do:

- continue to communicate with your partner
- follow the terms of the letter of intent *strictly*
- diarise regular meetings with all stakeholders to progress the project contract, and
- do your best to get the project contract signed.

As the employer you should:

- refuse to pay for works which are outside the scope of the letter of intent
- ensure the project team understand the limited works to be undertaken
- instruct the contract administrator to ask the contractor to leave site once those works are completed if a project contract has not been signed
- instruct the contract administrator to ensure payment notices and certificates do not exceed any money limit set out in the letter of intent, and
- terminate the letter of intent (where the terms allow) once it becomes clear that a project contract cannot be agreed.

As the contractor you should:

- refuse to carry out works which are outside the scope of a letter of intent
- leave site when the initial works have been completed and the project contract has not been signed
- ensure your applications for payment do not exceed any money limit set out in the letter of intent, and
- assume any works carried out beyond the scope of the letter of intent will not be paid for unless and until a project contract is signed.

## User Suggestions

*Future* users of construction contracts (undergraduate construction students) were asked for their recommendations to improve letters of intent. Their recommendations make enlightening reading as these are the future contract administrators and construction clients who will use, draft and administer letters of intent. The future users said:

- Never use them, abolish them, or only use them as a last resort

- Ensure the partners understand the letter's purpose
- Follow up any letter of intent quickly
- Use the intended contract instead
- Maintain good communication between partners
- Do not change the letter of intent once sent.

This can be summarised as: **use them sparingly, and wisely.**

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 FREE 3-part video series on Making Letters of Intent Work for You, click [here](#).

### **Footnotes**

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<sup>1</sup> According to the Office for National Statistics.

<sup>2</sup> The contractor can claim payment under an oral contract, or bring a restitutionary claim for a reasonable sum (known as 'quantum meruit').