

Material Shortages and How to Confront Them



Confronting the Challenges

Exposure to increased material costs and delays will be a major concern to clients throughout the country and has the potential to significantly de-stabilise projects under construction, as well as impacting the viability of projects in the pre-construction and early development stages. This clearly is very unwelcome news for an industry hoping for a strong post-pandemic recovery.

Steel prices are almost £500 per tonne higher than this time last year, with standard section rates predicted to reach over £1,000 per tonne in the coming months. Timber prices have also increased by almost 80% in the past six months, and paint and cement prices have increased by over 20% and 30% respectively over the past year, so the scale of the challenge currently facing the wider construction industry is clear.

Clients will now be seeking advice on how these material shortages, cost increases and delays may affect their current development plans or live projects. To assist with this, the table below lists ten key matters that clients should be considering in detail whilst the construction supply chain remains in this period of uncertainty and volatility.

Projects in Development

Price Fluctuation	Tenderers may now insist that fluctuation clauses are included within construction contracts, which means that the contract sum may be subject to change due to inflation, the cost of which is borne by the client.
Sustainability Targets	Net zero carbon targets may be impacted by a limited supply of sustainably sourced materials and some clients may be forced to opt for less sustainably sourced products in order to complete their project on time or with minimal delay.
Advance Orders	Clients may face the prospect of having to place advanced orders for materials, which are acutely in short supply, prior to the award of the main construction contract. This could increase client risk and obligate the client to ensure materials are delivered to site on time.
Performance Bonds	Market volatility, in an industry where high-value fixed prices are offered for construction works, may put many contractors at risk of business failure. We expect to see many more clients opting to pay for performance bonds in their contracts to protect against this.
Risk Allocation	Excessive levels of risk transfer, during times of uncertainty and volatility, may limit the number of tenderers willing to bid. Clients will need to carefully consider risk allocation within their tender documents and may need to own more project risks than they are typically used to.

Where projects are in development, clients should:

- Seek advice from their commercial advisors on their potential exposure to inflation and fluctuations and consider options to secure fully fixed price offers.
- Engage much earlier with their Sustainability and BREEAM advisors to ensure continued compliance with their sustainability targets.
- Discuss the need for advanced orders with their programme managers or ensure that materials already specified are unaffected by current market conditions.
- Investigate the financial position of tenderers prior to issuing enquiry documentation and explore the level of protection that performance bonds may offer.
- Ensure that risk management forms a key part of the development process, to ensure there is a balanced approach to risk allocation and to encourage market interest.

Projects under Construction

Delay and Disruption	Delay and disruption is likely to impact most projects currently under construction. Regardless of contract provisions, or where liability lies for any delays, clients should still prepare themselves for the likelihood that projects may be delivered late, which in turn will delay occupation.
Contract Provisions	A high proportion of live contracts are expected to already have Brexit and Covid-19 provisions within them, although clients should be aware that contractors may cite other reasons for material shortages, delays or price increases when preparing claims for loss and expense.
Collaboration	During the Covid-19 pandemic, the UK Government and the Construction Leadership Council published guidance on responsible contractual behaviour in the performance and enforcement of contracts. Clients are likely to be encouraged to continue to adhere to these guidelines.
Product Flexibility	Clients may be forced to accept product or design changes during the progress of the works due to unavailability of materials or delays. Clients may have to make the difficult decision of changing a key project element or material, simply to ensure timely completion of the works.
Cost Increases	Due to the extent of increased prices across the industry, it is likely that most projects will experience at least some degree of cost increase. Regardless of how well protected clients believe they may be, by their existing construction contracts, they should be aware of this risk.

Where projects are under construction, clients should:

- Request clarity from their programme managers on the likelihood of project delays and engage with any end-users on possible alternative occupation arrangements, if necessary.

- Engage with their legal advisors to ensure that Brexit or Covid-19 contractual provisions continue to be robust and offer protection against claims for increased material prices or delays.
- Talk to their appointed contractors about project challenges caused by the shortages and be prepared to work collaboratively to find mutually beneficial solutions, otherwise contractual conflict may follow.
- Be alert to the prospect that some materials and products they have chosen may not be available however alternative products will undoubtedly be found. A small sacrifice in a volatile market.
- Prudently set aside a contingency sum to cover for any potential additional costs associated with the shortages and price increases, albeit this may never be needed, depending on the form of contract and extent of protection this offers.

It is clear that the industry is facing several challenges in relation to material shortages, however early and well thought out strategies should help mitigate any risks. The best advice is to seek early advice and to confront the challenges head on.



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