LATE PAYMENT OF COMMERCIAL DEBTS REGULATIONS 2013: HOW DOES IT AFFECT YOU?

One of the biggest concerns for subcontractors chasing outstanding debts is the possibility of incurring large bills for legal, administrative and specialist service support.

Thankfully, as a direct result of changes within the Late Payment of Commercial Debts Regulations 2013, **all fees incurred for chasing monies owed, including any Adjudication costs, will now be paid by the other side**.

Simply put, there is absolutely no reason why you should accept anything less than full and proper payment for all work conducted. Just take the time to understand your rights and use them to secure your business profitability.

What is changing and when?

The changes that have been introduced include payment provisions, interest start dates, acceptance and validation, gross unfairness and the recovery of costs for chasing debts.

The changes were made on 21 February 2013, were laid before Parliament on 22 February 2013 and came into force on 16 March 2013. The Regulations will apply to contracts entered into on or after 16 March 2013 and will not apply to any contracts retrospectively.

Payment Periods

The new Regulations impose payment periods for commercial contracts for goods or services by providing that interest on outstanding payments starts to run after certain time periods, so that both parties are clear as to when interest starts to accrue.

If a Public Authority purchases goods or services, interest will start to run on outstanding payments from 30 days after the latest of:-

- Receiving the Supplier's Invoice
- Receiving the goods or services
- Verification or acceptance of the goods or services

(where provided for by statute or contract).

If a Business purchases goods or services, if the contract is silent on the time for payment, interest will start to run on outstanding payments from 30 days after the latest of :-

- Receiving the Supplier's Invoice
- Receiving the goods or services
- Verification or acceptance of the goods or services

The parties can agree a due date for payment of up to 60 days after the latest of the events, and if the extension if not 'grossly unfair' to the supplier, then the parties can agree to extend the due date even further.

Any payment terms that breach these time limits will result in interest accruing from the expiration of the 30 day statutory limit, irrespective of any agreed terms.

Acceptance and validation processes

The Regulations introduce an extension to the usual 30 day and 60 day time periods, where the statute or the contract provide for a procedure of acceptance or validation.

Purchasers should verify the conformity of goods or services within 30 days, unless the parties expressly agree a longer period and that period is not '*grossly unfair*' to the supplier.

What is '*grossly unfair*'?

To determine what is *'grossly unfair'* a business purchaser all of the circumstances need to be taken into account, in particular:-

- Whether anything is a gross deviation from good commercial practice and contrary to good faith dealing.
- The nature of the goods or services supplied.
- Whether the purchaser has an objective reason for requiring a change from the statutory provisions.

Calculating Interest start dates

For Public Authorities, the limit is set at the default 30 day limit. If no time is stated in the contract, interest will start to run on outstanding payments from 30 days after the later of:-

- Receiving the Supplier's Invoice
- Receiving the goods or services
- Verification or acceptance of the goods or services

By Agreement, the parties may agree a due date for payment of up to 30 days from the latest of the above events.

For businesses, If no time limit is stated in the contract, interest will start to run on outstanding payments from 30 days after the latest of:-

- Receiving the Supplier's Invoice
- Receiving the goods or services
- Verification or acceptance of the goods or services

These Regulations apply to commercial contracts for the supply of goods and services (which is not a consumer credit agreement, or a contract intended to operate by way of mortgage, pledge charge or other security).

By agreement the parties may agree a due date for payment of up to 60 days from the latest of the above events (interest will start to run from the earlier of the agreed due date for payment and the expiry of the 60 day limit). The parties may agree to extend the due date for payment beyond 60 days, but this will only be valid is not '*grossly unfair*' to the supplier.

Recovery Costs

In addition to interest and fixed compensation (of £40, £70 or £100 as applicable, dependant upon the size of the debt) the supplier can also claim any other reasonable costs of recovery. This includes management time spent chasing debts and reasonable costs that you incur in referring the matter to Adjudication to recover the outstanding payments.

If a party tries to exclude or limit this right it must be reasonable in accordance with the unfair contract terms legislation (whether or not the contract is in a standard from or a bespoke contract).

In Summary

There is no longer any need to accept anything less than full and timely payment for all work conducted. And, with the other side paying the fees and expenses incurred in chasing the debt, you can concentrate on core business activities and let our expert team recover 100% of the monies owed.

For more information about the Late Payment of Commercial Debt Regulations and our Fixed Fee Adjudication Service, just get in touch.

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