

LIQUIDATED AND ASCERTAINED DAMAGES ("LADs")

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What are LADs and why are they used?

- LADs are a specified sum payable per day or week by the Contractor to the Employer for failure to complete by a date stated in the contract, or any extended date, until the Works are completed
- They allow the Employer to recover damages for delay automatically, without proving actual loss
- They enable the Contractor to fix his liability for delay, and thus allow him to factor this into his price accordingly

What if the Employer's actual loss is higher than the LADs?

- It doesn't matter - LADs constitute an "exclusive remedy" for delay-related costs
- The Employer cannot recover any delay-related losses other than the LADs.

What if the Employer's loss is lower?

- It doesn't matter – if completion is delayed and no extension of time is granted, the Employer can recover LADs even if he has suffered no actual loss at all
- However, if the LADs are set so high that they are not a "genuine pre-estimate" of the Employer's loss, the Contractor may argue that they are an unenforceable penalty

Practical tips on LADs:

- Ensure that the LADs figure in the contract is completed (filling in "nil" or leaving the rate blank could mean you lose any right to delay damages at all)
- Use a rational basis to fix the LADs, and keep records of how they were calculated
- Note that sub-contracts do not generally provide for LADs - typically, the main contractor can recover LADs payable upstream from the sub-contractor as part of general damages in the event of delay

These top tips are correct to the best of our knowledge and belief at the time of going to press. It is however written as a general guide, so it is recommended that specific professional advice is sought before any action is taken. We are required by law to protect personal data.

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