

13-16a

Breach of contract

Letter from Ogawa to TKO Construction

OGAWA KK
SHIN NICHIBO BUILDING
1-2-1 SARUGAKU-CHO
CHIYODA-KU, TOKYO 101
TEL: (03) 3294 0385 FAX: (03) 3294 0348



Gaspard Racette
Sales Manager
TKO Construction SA
301 Boulevard Voltaire
PARIS 75011

Ref: E/00987
January 9

Dear M Racette,

Following our meeting last week, I am writing to confirm that I would like TKO Construction to fit out Okawa's new showroom in Paris. I would like to take this opportunity to say how pleased I am that we will be working together on this project and to thank you for all the time you put into putting together such a very detailed and helpful proposal.

To summarise the main points from our meeting:

- 1 The design used will be the one produced by the architects Fiona Barnes Associates
- 2 TKO will be responsible for all building works, including purchasing and transportation of materials
- 3 The price for the job will be FF880,000
- 4 Payment will be in two parts: FF440,000 on signature of the contract followed by FF440,000 on satisfactory completion of the work
- 5 Building works will commence on February 15
- 6 All works will be completed by March 15 at the latest
- 7 If the work is completed late TKO Construction will pay Ogawa a penalty of FF15,000 for every day's overrun.

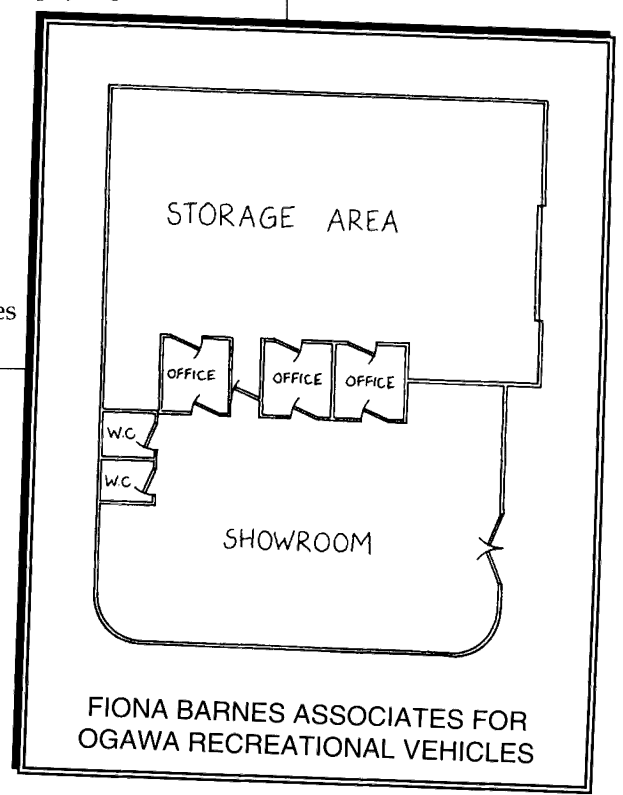
If this meets your approval, I will have our lawyers draw up a contract this week.

Best wishes,

Yours,

Okamoto Yutaka

Okamoto Yutaka
Special Projects Manager, Ogawa Recreational Vehicles



FIONA BARNES ASSOCIATES FOR
OGAWA RECREATIONAL VEHICLES

13-16b

Breach of contract

Letter from Ogawa to Fiona Barnes Associates

OGAWA KK
SHIN NICHIBO BUILDING
1-2-1 SARUGAKU-CHO
CHIYODA-KU, TOKYO 101
TEL: (03) 3294 0385 FAX: (03) 3294 0348



Fiona Barnes Associates
Architects
213 rue du Roi de Sicile
75004 PARIS

Ref: E/00911

January 12

Dear Ms Marigny,

I hope this finds you well. Once again, thank you for all the hard work you put into the design of the new Ogawa showroom in Paris. The company selected for the building works is TKO Construction. I contacted the two companies you recommended, but TKO's bid was more competitive. They have a good reputation, and I am sure there will be no problems. I am enclosing the business card of Gaspard Racette, TKO's Sales Manager, in case you need to contact him.

Best regards,

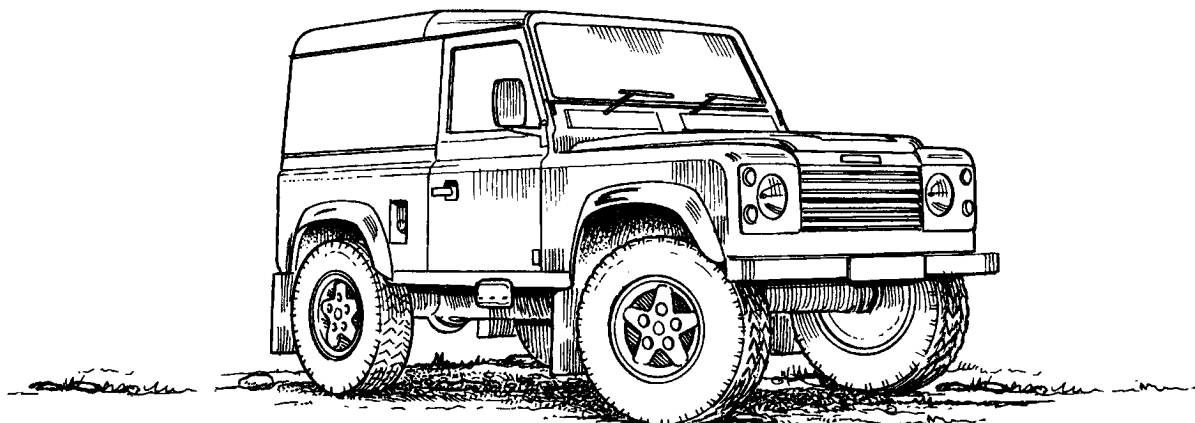
Okamoto Yutaka

Okamoto Yutaka
Special Projects Manager, Ogawa Recreational Vehicles

TKO
Construction

Gaspard Racette
Sales Manager

TKO Construction SA
301 Boulevard Voltaire
PARIS 75011



13-16c

Breach of contract

Memos

MEMO OGAWA KK



From: Okamoto Yutaka, Special Projects Manager
To: All managers, Ogawa Paris
Re: Paris showroom

Date: 26 March

I am writing about the overrun by TKO on completing the building works on the Paris showroom. The work was finished on Saturday: seven days late. TKO do not wish to pay the penalty – a total of FF105,000 (7 × FF15,000). They say it is not their fault. According to their site engineer it was due to errors in the architect's drawings. However, they accepted the architect's drawings when they signed the contract. I am not willing to fly to Paris to sort this out; I will leave it to you. Do not make any decisions without my authorisation, unless the decision is that TKO, Fiona Barnes Associates or both of them together pay us the money we are owed.

Best regards,

Okamoto Yutaka

Meeting at TKO
30 March at 2 pm

MEMO

From: Gaspard Racette, Sales Manager
To: Perry Mahon, Managing Director
Re: Ogawa showrooms, Paris

TKO
Construction

Date: 27 March

Dear Perry,

We've run into problems on the Ogawa showrooms job. We finished 7 days late and Ogawa wants to apply the penalty clause: FF15,000 per day late, a total of FF105,000. The job was costed very tightly, and this would mean that we came out without a profit. I wouldn't normally have agreed to a penalty clause on a job like this, but the time allowed – a month – seemed very generous. It was my decision to do the work at weekends – we need all our resources for the job we are doing at Charles de Gaulle airport. The problem arose when we found an error in the architect's plans on Saturday 10: the dimensions for the showroom offices didn't add up. The architect was closed for the weekend and we had to hang about until Tuesday for the correction. In other words, we lost a full weekend's work – which we had to pay wages etc for. We were fully stretched and couldn't put extra workers on the job, so we didn't finish until Saturday 24. We're meeting Ogawa and Fiona Barnes Associates at our offices here this Friday – 30 March. What do you think our position should be?

Gaspard Racette

Any penalties should be paid by the architect. They made the mistake that caused the problem. Perry.

MEMO

fionabarnes
A.S.S.O.C.I.A.T.E.S

From: Dominique Marigny, Senior Architect, Paris
To: Fiona Barnes
Re: Ogawa showrooms
Date: 27 March

Dear Fiona,

Just to keep you up to date, the Ogawa job was finished on Saturday. Apparently there's some sort of problem between TKO and Ogawa. TKO finished late and Ogawa want them to pay a penalty. TKO say that it's our fault in some way. It's true that there was a mistake in the plans. The dimensions for the offices were wrong, but we got a new version of the plans out the day after we got their fax (Monday 12) and they finished a full week late. We've got a meeting with Ogawa and TKO on Friday 30 March, so we'll see what happens.

Yours,

Dominique Marigny

Breach of contract

Worksheets Progress check

13-16a

and

13-16b

and

13-16c

NOTE: This is a three-cornered negotiation. It isn't difficult, as long as you set the groups up clearly and make sure they get the right documentation.

ACTIVITY

Groupwork and pairwork: reading, speaking

AIM

To simulate a three-sided negotiation between a client, an architect and a firm of builders.

GRAMMAR AND FUNCTIONS

Third conditional

VOCABULARY

to confirm, proposal, purchasing, transportation, to summarise, signature of a contract, satisfactory completion, penalty clause, authorisation, approval, to recommend, to bid, competitive, to enclose, business card, reputation, to overrun, site engineer, to cost a job, resources, fully stretched (occupied)

Phrasal verbs: to fit out, to put into, to put together, to sort out, to run into, to add up, to hang about, to put on, to get out

PREPARATION

For each group of six students:

Make three copies of Worksheet 13-16a.

Make three copies of Worksheet 13-16b.

Make one copy of Worksheet 13-16c and cut it up as indicated.

Make sure you have some dictionaries available.

TIME

35-45 minutes

PROCEDURE

- 1 Write the following half sentence on the board:

If you'd finished the work on time...

- 2 Elicit a few completions for the sentence.

- 3 Tell the students they are going to practise negotiating. The negotiation is about a job that was not finished on time.

- 4 Dictate the following list of words: *deadline, penalty clause, overrun, completion, bid, contract.*

- 5 Ask how the words relate to the negotiating situation.

- 6 Write the following text on the board:

You stated in your (1) _____ that the (2) _____ for (3) _____ of the work was March 15th. You also agreed to the (4) _____ in the (5) _____ which said that you would pay us FF15,000 a day if there was an (6) _____.

- 7 Ask the students, in pairs, to complete the text with the words you dictated: (1) *bid*, (2) *deadline*, (3) *completion*, (4) *penalty clause*, (5) *contract*, (6) *overrun*.

- 8 Divide the class into three equal sized groups: *Clients, Builders* and *Architects*.

- 9 Within each of these three groups, put the students in pairs.

- 10 Give each pair of students the two worksheets 13-16a and 13-16b. Then give each pair of students the appropriate memo from Worksheet 13-16c as follows:
Clients: 1st memo (Ogawa)
Builders: 2nd memo (TKO Construction)
Architects: 3rd memo (Fiona Barnes)

- 11 Each pair of students reads their documents. They then discuss their negotiating position. Allow 5-10 minutes.

- 12 Set up the negotiating groups. There should be six students in each group: a pair each of clients, builders and architects. If you have only six students in the class, you may prefer to divide them into two groups of three with one representative of each party in each group.

- 13 Ask them to run the meeting and see if they can come to a conclusion. It is unlikely that they will find an easy agreement. Interests are very polarised in this negotiation. Allow 10-20 minutes.

- 14 When the negotiations finish, ask different groups to explain what the results of their meetings were. Ask what they think would happen in real life in a case like this. Should the three companies have set the job up differently? Could they have avoided this problem?

FOLLOW-UP 1

Students look through the documentation and find all the phrasal verbs.

FOLLOW-UP 2

Students write memos to their bosses summarising what happened in the negotiation.