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LEGAL TOOLBOX #3
THE ACCEPTANCE OF WORKS IN FRANCE

QUESTION	ANSWER
How is the acceptance of works legally defined?	Pursuant to article 1792-6 of the Civil Code, it is the **act by which the client accepts (with or without reservations) the works** carried out. The acceptance of works is different from: - The taking over which is only an aspect of the acceptance - The delivery - The settlement of accounts - The achievement of works
What are the client's rights and obligations by the acceptance?	The acceptance allows the client to **verify the apparent quality of the works provided and to require repairs** if the works: - do not conform to the contract's provisions; - are not carried out in a safe and skilful manner. The acceptance can be pronounced **with or without reservations**. The client is obliged to proceed to the acceptance, should the works be terminated. They cannot, without a valid reason, refuse to carry out this formality.
Which party can request the acceptance of works?	Both the **client** and the **main contractor** may have an interest to request the taking place of the acceptance. A **subcontractor** can also request the acceptance of works under conditions. However, only the client can pronounce the acceptance of works.
What are the main consequences of the acceptance of works?	It transfers the **custody** of the works to the client who is then required to carry out the maintenance and conservation of the building. Pronounced with or without reservations, it **terminates the contract** with the main contractor. It is the starting point of: - the ten-year period during which the liability of builders can be brought into play on the basis of article 1792 of the Civil Code for damage which affects the solidity of the works or which renders it unfit for its purpose (C. civ., art. 1792-4-1); - the minimum period of 2 years corresponding to the guarantee of proper functioning of the building's equipment (C. civ., art. 1792-3) - the one-year period during which the contractor is bound by the guarantee of perfect completion (C. civ., art. 1792-6)

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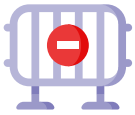
	Whereas no particular form is required under Article 1792-6 of the Civil Code, the acceptance needs to be pronounced in a sufficiently clear manner to avoid any subsequent dispute as to its very existence, its date or any possible reservations.
Under which form does the acceptance take place?	In the practice, the acceptance is **express** in the form of a report signed by the client and approved by the contractor and possibly by the architect. The courts have been led to recognise the possibility of a **tacit** acceptance under strict conditions In the absence of an agreement, **judicial** acceptance may be pronounced at the request of the client or the contractor.
Is a provisory acceptance authorised by law?	**No**, because of the principle of the single acceptance of the works. However**, preparatory steps are authorised** by the French jurisdictions.
Is it possible to have partial-acceptance of works on the same building site?	**Yes**. In the case of major works, it frequently happens that successive acceptance are carried out as the various phases of construction are completed. The French Cour de cassation has recently decided that the parties may expressly or tacitly derogate from the principle of single acceptance and that separately acceptance of sections is not excluded when several batches are the subject of a single contract
Is the client obliged to pay the total amount of the contract after the acceptance?	Should the acceptance be pronounced with or without reservations, the client is legally entitled to **retain 5 % of the amount of the works** for the fulfilment of the reservation made at the acceptance and not at the good end of the building site.
What are the consequences of the acceptance of the works without reservation? 	<u>Consequences in case of apparent damages</u> The acceptance releases the constructor from any liability or guarantee, of whatever nature, for apparent construction defects and defects of conformity which were not the subject of reservations at the time of acceptance <u>Consequences in case of hidden damages or defects</u> Damages and defects of conformity not apparent at acceptance which become apparent within one year of acceptance may be repaired, either on the basis of the guarantee of perfect completion, or, at the discretion of the client and depending on the nature of the defects, on the basis of the ten-year guarantee. Other guarantees may also apply such as the two-year guarantee "*garantie de bon fonctionnement*" which applies to repair of separable equipment. Disorders which appear after the year following the acceptance of the works may be covered, depending on their nature, under the ten-year guarantee or the two-year guarantee while so-called "intermediate" damages, i.e. damages for which either the ten-year guarantee nor the two-year guarantee apply, are subject to contractual liability under ordinary law.
What are the consequences of the acceptance of the works with reservation?	The pronouncement of reservations by the client **do not prevent the taking place of the acceptance** and do not make acceptance provisional pending the lifting of reservations. The constructor has to prove that the works required to lift the reservations have been carried out. The lifting of reservations is subject to an unequivocal expression of willingness on the part of the client to lift the reservations formulated at the time of the acceptance.
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