

## Section 9 Settlement of Disputes

### Mediation

- 9-1 Subject to Article 7, if a dispute or difference arises under this Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.<sup>1571</sup>

### Adjudication

- 9-2 If a dispute or difference arises under this Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:
- 1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Contract Particulars;
  - 2 where the dispute or difference is or includes a dispute or difference relating to clause 3-13-3 and as to whether an instruction issued thereunder is reasonable in all the circumstances:
    - 1 the Adjudicator to decide such dispute or difference shall (where practicable) be an individual with appropriate expertise and experience in the specialist area or discipline relevant to the instruction or issue in dispute;
    - 2 if the Adjudicator does not have the appropriate expertise and experience, the Adjudicator shall appoint an independent expert with such expertise and experience to advise and report in writing on whether or not the instruction under clause 3-13-3 is reasonable in all the circumstances.

### Arbitration

Clauses 9-3 to 9-8 not applicable.

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<sup>1571</sup> See the Design and Build Contract Guide.

# Schedules

## Schedule 1 Design Submission Procedure

(Clause 2.8)

- 1 The Contractor shall prepare and submit each of the Contractor's Design Documents to the Employer by the means and in the format stated in the Employer's Requirements or the Contractor's Proposals and in sufficient time to allow any comments of the Employer to be incorporated prior to the relevant Contractor's Design Document being used for procurement and/or in the carrying out of the Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Employer, the Contractor shall submit 2 copies of each of the Contractor's Design Documents to him.
- 2 Within 14 days from the date of receipt of any Contractor's Design Document, or (if later) 14 days from either the date or expiry of the period for submission of the same stated in the Contract Documents, the Employer shall return one copy of that Contractor's Design Document to the Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Employer considers that it is not in accordance with this Contract.
- 3 If the Employer does not respond to a Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4 Where the Employer marks a Contractor's Design Document 'B' or 'C', he shall identify by means of a written comment why he considers that it is not in accordance with this Contract.
- 5 When a Contractor's Design Document is returned by the Employer:
  - 1 if it is marked 'A', the Contractor shall carry out the Works in strict accordance with that document;
  - 2 if it is marked 'B', the Contractor may carry out the Works in accordance with that document, provided that the Employer's comments are incorporated into it and an amended copy of it is promptly submitted to the Employer; or
  - 3 if it is marked 'C', the Contractor shall take due account of the Employer's comments on it and shall either forthwith resubmit it to the Employer in amended form for comment in accordance with paragraph 1 or notify the Employer under paragraph 7.
- 6 The Contractor shall not carry out any work in accordance with a Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the Works executed otherwise than in accordance with Contractor's Design Documents marked 'A' or 'B'.
- 7 If the Contractor disagrees with a comment of the Employer and considers that the Contractor's Design Document in question is in accordance with this Contract, he shall within 7 days of receipt of the comment notify the Employer that he considers that compliance with the comment would give rise to a Change. Such notification shall be accompanied by a statement setting out the Contractor's reasons. Upon receipt of such a notification the Employer shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Contractor shall amend and resubmit the document accordingly.
- 8 Provided always that:
  - 1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by the Employer that the relevant Contractor's Design Document or amended document is in accordance with this Contract or that compliance with the Employer's comment would give rise to a Change;
  - 2 where in relation to a comment by the Employer the Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Change; and
  - 3 neither compliance with the design submission procedure in this Schedule nor with the Employer's comments shall diminish the Contractor's obligations to ensure that the Contractor's Design Documents and Works are in accordance with this Contract.

## Schedule 2 Supplemental Provisions

(Seventh Recital)

### Part 1

Supplemental Provisions 1 to 3 apply only if so stated in the Contract Particulars.

#### Named Sub-Contractors

- 1
  - 1 Where the Employer's Requirements state that work ('Named Sub-Contract Work') is to be executed by a named person as the Contractor's sub-contractor (a 'Named Sub-Contractor'):
    - 1 as soon as reasonably practicable after entering into this Contract the Contractor shall enter into a sub-contract with the Named Sub-Contractor that includes the undertaking referred to in paragraph 1.5 and notify the Employer of the date of such sub-contract;
    - 2 if for any reason the Contractor is unable to enter into that sub-contract he shall immediately notify the Employer of the grounds and provided the Contractor has acted reasonably the Employer shall by a Change instruction:
      - 1 remove the grounds;
      - 2 direct the Contractor to carry out that work using either his own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Employer; or
      - 3 omit the Named Sub-Contract Work from this Contract,

but shall not require that the work be executed by another Named Sub-Contractor.
  - 2 Subject to the provisions contained in paragraph 1.1.2, the provisions of clause 5.2 (*Valuation of Changes*), clauses 2.23 to 2.26 (*Adjustment of Completion Date*) and clauses 4.19 to 4.23 (*Loss and Expense*) shall as relevant apply to the Change instruction issued under that paragraph.
  - 3 If the Contractor becomes entitled to terminate a Named Sub-Contractor's employment under his sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:
    - 1 shall promptly, and prior to giving any notice to that effect to the Named Sub-Contractor, notify the Employer and consult with him, if requested;
    - 2 save where the Named Sub-Contractor is or becomes Insolvent, shall not give notice of termination, or notice that he is treating the sub-contract as repudiated, without the Employer's consent; and
    - 3 shall at the time of issue send the Employer a copy of each notice that he gives to the Named Sub-Contractor.
  - 4 If the Named Sub-Contractor's employment is terminated or if he repudiates the sub-contract:
    - 1 the Contractor shall himself or by his selected sub-contractor complete any balance of the Named Sub-Contract Work;
    - 2 such completion shall be treated as a Change except where the termination has resulted from the Contractor's default, whether by act or omission, or where there has been a material breach of paragraph 1.3; and
    - 3 the Contractor shall account to the Employer for such proportion of any amount that he recovers, or with reasonable diligence could have recovered, from the Named Sub-Contractor in respect of the termination, as may properly and fairly be regarded as due to the Employer to offset the cost to him of the Change.
  - 5 The Contractor shall include in any Named Sub-Contract a condition stating that the Named

Sub-Contractor, having had notice of the terms in this Supplemental Provision 1, undertakes not to contend, whether in proceedings or otherwise, that the Contractor has suffered or incurred no loss and/or expense or that his liability to the Contractor should be in any way reduced or extinguished by reason of this Supplemental Provision 1 and in particular paragraph 1.4.

- 6 The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clause 2.1 shall not be affected in any manner by the naming of any person for any work in accordance with this Supplemental Provision 1 or by any of the events that it refers to.

#### Valuation of Changes – Contractor's estimates

- 2
  - 1 Section 5 (*Changes*) clauses 2.23 to 2.26 (*Adjustment of Completion Date*) and clauses 4.19 to 4.23 (*Loss and Expense*) shall have effect as modified by the provisions of paragraphs 2.2 to 2.6.
  - 2 Where compliance with instructions of the Employer under clause 3.9 will in the opinion of the Contractor or of the Employer entail a Valuation under clause 5.2 and/or the making of an adjustment of time in respect of the Relevant Event and/or the ascertainment of direct loss and/or expense under clause 4.20 the Contractor, before such compliance, shall submit to the Employer within 14 days of the date of the relevant instruction (or within such other period as may be agreed or, failing agreement, within such other period as may be reasonable in all the circumstances) estimates, or such of those as are relevant, as referred to in paragraphs 2.3.1 to 2.3.5 unless:
    - 1 the Employer with the instructions or within 14 days thereafter states in writing that such estimates are not required; or
    - 2 the Contractor within 10 days of receipt of the instructions raises for himself or on behalf of any sub-contractor reasonable objection to the provision of all or any of such estimates.
  - 3 The estimates required under paragraph 2.2 shall be in substitution for any Valuation under clause 5.2 and/or any ascertainment under clause 4.20 and shall comprise:
    - 1 the value of the adjustment to the Contract Sum, supported by all necessary calculations by reference to the values in the Contract Sum Analysis;
    - 2 the additional resources (if any) required to comply with the instructions;
    - 3 a method statement for compliance with the instructions;
    - 4 the length of any extension of time required and the resultant change in the Completion Date; and
    - 5 the amount of any direct loss and/or expense, not included in any other estimate, which results from the regular progress of the Works or any part of them being materially affected by compliance with the instructions under clause 3.9.
  - 4 Upon submission of the estimates required under paragraph 2.2 the Employer and Contractor shall take all reasonable steps to agree those estimates and upon such agreement those estimates shall be binding on the Employer and Contractor.
  - 5 If within 10 days of receipt of the Contractor's estimates the Contractor and Employer cannot agree on all or any of the matters therein the Employer:
    - 1 may instruct compliance with the instruction and this Supplemental Provision 2 shall not apply in respect of that instruction; or
    - 2 may withdraw the instruction.

Where the Employer withdraws the instructions under paragraph 2.5.2 such withdrawal shall be at no cost to the Employer except that where the preparation of the estimates involved the Contractor in any additional design work solely and necessarily carried out for the purpose of preparing his estimates such design work shall be treated as a Change.
  - 6 If the Contractor is in breach of paragraph 2.2 compliance with the instruction shall be dealt with in accordance with clauses 2.23 to 2.26, 3.9 and 4.20 but any resultant addition to the Contract Sum in respect of such compliance shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4.2. Provided that such addition shall not include any amount in respect of loss of interest or any financing charges in respect of the cost to the Contractor of compliance with the instruction which have been suffered or incurred by him prior to the date of issue of the Final Statement or Employer's Final Statement.

**Loss and expense – Contractor's estimates**

- 3
- 1 Clauses 4·19 to 4·23 (*Loss and Expense*) shall have effect as modified by the provisions of paragraphs 3·2 to 3·6.
  - 2 Where the Contractor pursuant to clause 4·19 is entitled to an amount in respect of direct loss and/or expense to be added to the Contract Sum, he shall (except in respect of direct loss and/or expense dealt with or being dealt with under Supplemental Provision 2) on presentation of the next Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which he has incurred in the period immediately preceding that for which the Interim Payment Application has been made.
  - 3 Following the submission of an estimate under paragraph 3·2 the Contractor shall for so long as he has incurred direct loss and/or expense to which clause 4·19 refers, on presentation of each Interim Payment Application submit to the Employer an estimate of the addition to the Contract Sum which the Contractor requires in respect of such loss and/or expense which has been incurred by him in the period immediately preceding that for which each Interim Payment Application is made.
  - 4 Within 21 days of receipt of any estimate submitted under paragraph 3·2 or 3·3 the Employer may request such information and details as he may reasonably require in support of the Contractor's estimate but within the aforesaid 21 days the Employer shall give to the Contractor notice that:
    - 1 he accepts the estimate;
    - 2 he wishes to negotiate on the amount of the addition to the Contract Sum and in default of agreement to refer the issue as a dispute or difference to the Adjudicator in accordance with the provisions of clause 9·2; or
    - 3 the provisions of clauses 4·19 and 4·20 shall apply in respect of the loss and/or expense to which the estimate relates.

If the Employer elects to negotiate pursuant to paragraph 3·4·2 and agreement is not reached, the provisions of clauses 4·19 and 4·20 shall apply in respect of the loss and/or expense to which the estimate relates.
  - 5 Upon acceptance or agreement under paragraph 3·4·1 or 3·4·2 as to the amount of the addition to the Contract Sum such amount shall be added to the Contract Sum and no further additions to the Contract Sum shall be made in respect of the direct loss and/or expense incurred by the Contractor during the period and in respect of the matter set out in clauses 4·19 to 4·21 to which that amount related.
  - 6 If the Contractor is in breach of paragraphs 3·2 and 3·3 direct loss and/or expense incurred by the Contractor shall be dealt with in accordance with clauses 4·19 and 4·20 save that any resultant addition to the Contract Sum shall not be included in Interim Payments but shall be included in the adjustment of the Contract Sum under clause 4·2. Provided that such addition shall not include any amount in respect of loss of interest or financing charges in respect of such direct loss and/or expense which have been suffered or incurred by the Contractor prior to the date of issue of the Final Statement or Employer's Final Statement.

**Part 2**

Supplemental Provisions 4 to 10 apply unless otherwise stated in the Contract Particulars. Supplemental Provision 11 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 12 applies where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

**Acceleration Quotation**

- 4
- 1 ·1 If the Employer wishes to investigate the possibility of achieving practical completion before the Completion Date for the Works or a Section he shall invite proposals from the Contractor in that regard (an 'Acceleration Quotation'). The Contractor on receiving such an invitation shall either:
    - 1 provide an Acceleration Quotation accordingly, identifying the time that can be saved, the amount of the adjustment to the Contract Sum (inclusive of such amounts as are referred to in paragraph 4·1·2) and any other conditions attached; or
    - 2 explain why it would be impracticable to achieve practical completion earlier

than the Completion Date.

- 2 The adjustment to the Contract Sum to be specified under paragraph 4.1.1.1 shall include the amount to be paid in respect of any direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.20 together with a fair and reasonable amount in respect of the cost of preparing the quotation.
- 3 The Employer may on or before receipt of the quotation seek revised proposals.
- 4 Without affecting his obligations under clauses 2.1 and 2.3, the Contractor shall be under no obligation to accelerate, or take any steps for that purpose, until he receives a Confirmed Acceptance of his Acceleration Quotation under paragraph 4.3.
- 2 ·1 Unless otherwise agreed, the Acceleration Quotation shall be submitted in compliance with the invitation not later than 21 days from the later of:
  - 1 the date of receipt of the invitation; or
  - 2 the date of receipt by the Contractor of information sufficient to enable him to prepare the quotation.
- 2 The quotation shall remain open for acceptance by the Employer for not less than 7 days from its receipt.
- 3 The Parties may agree to increase or reduce any of the periods referred to in this Supplemental Provision 4; confirmation of such agreement shall be notified to the Contractor by or on behalf of the Employer.
- 3 If the Employer wishes to accept an Acceleration Quotation, he shall within the period for acceptance confirm such acceptance by an instruction to the Contractor (a 'Confirmed Acceptance') stating:
  - 1 the adjustment of the Contract Sum (including any amounts referred to in paragraph 4.1.2) to be made for complying with the instruction;
  - 2 the adjustment to the time required by the Contractor for completion of the Works and/or Section and the resultant revised Completion Date(s) (which, where relevant, may be a date earlier than the Date for Completion); and
  - 3 any such conditions as are referred to in paragraph 4.1.1.1.
- 4 ·1 If an Acceleration Quotation is not accepted, a fair and reasonable amount shall be added to the Contract Sum in respect of the cost of its preparation provided that it has been prepared on a fair and reasonable basis. Non-acceptance by the Employer of a quotation shall not of itself be evidence that the quotation was not prepared on such a basis.
- 2 Unless the Employer issues a Confirmed Acceptance, neither the Employer nor the Contractor may use the quotation for any purpose whatsoever.

#### **Collaborative working**

- 5 The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

#### **Health and safety**

- 6 ·1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
- 2 In addition to the specific health and safety requirements of this Contract, the Contractor undertakes to:
  - 1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
  - 2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
  - 3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and

Safety at Work Regulations 1999; and

- 4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

#### **Cost savings and value improvements**

- 7
  - 1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the Completion Date or otherwise.
  - 2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 7, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
  - 3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Date. Upon agreement, the change and the amount of any adjustment of the Contract Sum shall be confirmed in an Employer's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the Completion Date.
  - 4 Original proposals by the Contractor under this Supplemental Provision 7 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

#### **Sustainable development and environmental considerations**

- 8
  - 1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Change, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.
  - 2 The Contractor shall provide to the Employer all information that he reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

#### **Performance Indicators and monitoring**

- 9
  - 1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the Contract Documents.
  - 2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.
  - 3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

#### **Notification and negotiation of disputes**

- 10 With a view to avoidance or early resolution of disputes or differences (subject to Article 7), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.

#### **Transparency**

- 11 Where the Employer is a Local or Public Authority or other body to whom the provisions of the Freedom of Information Act 2000 ('FOIA') apply, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of FOIA, the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Contract:
  - 1 the Contractor hereby consents to the Employer publishing any amendments to the

standard form JCT contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOIA redacted;

- 2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.

#### **The Public Contracts Regulations 2015**

**12** Where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations<sup>[59]</sup>:

- 1 where regulation 113 of the PC Regulations applies to this Contract, the Contractor shall include in any sub-contract entered into by him suitable provisions to impose the requirements of regulation 113(2)(c)(i) and (ii);
- 2 the Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
  - 1 to supply and notify to the Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
  - 2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 12.2.1 of Supplemental Provision 12;
- 3
  - 1 the Contractor shall include in any sub-contract entered into by him provisions that shall entitle him to terminate the sub-contractor's employment where there are grounds for excluding the sub-contractor under regulation 57;
  - 2 in the event the Employer requires the Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Contractor shall take the appropriate steps to terminate that employment and where required by the Employer under regulation 71(9) shall, or in circumstances where there is no such requirement may, appoint a replacement sub-contractor.

<sup>[59]</sup> An explanatory summary of those provisions in the PC Regulations that are reflected in this Contract is contained in the Design and Build Contract Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Contract. The JCT Design and Build Sub-Contract (DBSub) meets the requirements of Supplemental Provision 12.



## Schedule 3 Insurance Options

(Clause 6.7)

### Insurance Option A

(New Buildings – All Risks Insurance of the Works by the Contractor)<sup>[60]</sup>

#### Contractor to effect and maintain a Joint Names Policy

- A.1** The Contractor shall effect and for the period specified in clause 6.7.2 maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.8 for the full reinstatement value of the Works or (where applicable) Sections (plus the percentage, if any, stated in the Contract Particulars to cover professional fees).

#### Use of Contractor's annual policy – as alternative

- A.2** If and so long as the Contractor independently of this Contract maintains an annual insurance policy which in respect of the Works or Sections:
- .1 provides (inter alia) All Risks Insurance with cover and in amounts no less than those specified in paragraph A.1; and
  - .2 is a Joint Names Policy,
- that policy shall satisfy the Contractor's obligations under paragraph A.1. The annual renewal date of the policy, as supplied by the Contractor, is stated in the Contract Particulars.

#### Loss or damage

- A.3** Where there is loss or damage affecting any executed work and/or Site Materials, the provisions of clause 6.13 shall as relevant apply.

<sup>[60]</sup> **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy.

**Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Design and Build Contract Guide will be necessary.

**Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.**

## Insurance Option B

(New Buildings – All Risks Insurance of the Works by the Employer)<sup>[60]</sup>

Not applicable.

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<sup>[60]</sup> **Insurance Options A and B** are for use in the case of new buildings. **Insurance Option A** is applicable where the **Contractor** is required to take out a Joint Names Policy for All Risks Insurance of the Works or to include them on that basis within his Annual Construction policy; **Insurance Option B** is applicable where the **Employer** has elected to take out that Joint Names Policy.

**Insurance Option C** is for use in the case of alterations of or extensions to Existing Structures. Under that option, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Works and also, if paragraph C.1 applies, a Joint Names Policy to insure the Existing Structures and their contents owned by him or for which he is responsible against loss or damage by the Specified Perils. Some Employers (e.g. tenants and some homeowners) may not be able readily to obtain the Joint Names cover required under paragraph C.1. Where that is the case, alternative arrangements through use of a C.1 Replacement Schedule or as otherwise described in the Design and Build Contract Guide will be necessary.

**Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Insurance Option C – in particular any Employer who is a tenant or domestic homeowner – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.**

## Insurance Option C

(Joint Names Insurance by the Employer of Existing Structures and Works in or Extensions to them)<sup>[61]</sup>

Not applicable.

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<sup>[61]</sup> **Insurance Option C** is for use where there are Existing Structures. It can be used in its existing printed form by those Employers who are able to effect the Joint Names, Specified Perils cover for the Contractor in respect of the Existing Structures and those contents that are owned by the Employer or for which he is responsible.

However, the Joint Names Policy required by paragraph C.1 or the extension of a subsisting structure and contents policy to being a Joint Names Policy may not be readily available – and that provision is often not now appropriate for – refurbishment projects or alterations by tenant Employers where Existing Structures insurance is the landlord's responsibility.

Joint Names cover may also not be readily available to some domestic owner-occupiers looking to undertake refurbishments or extensions to their property.

The Contract Particulars for clause 6.7 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph C.1 and, by means of a C.1 Replacement Schedule, to include in place of that paragraph provisions that are tailored to their particular requirements.

**In JCT's view the preparation of such replacement provisions must be assigned to insurance professionals.**

An explanatory summary of the alternative arrangements generally adopted to overcome those difficulties is, however, contained in the Design and Build Contract Guide.

## Schedule 4 Code of Practice

(Clause 3-13-3)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3-13-3.

The Employer and the Contractor should endeavour to agree the amount and method of opening up or testing, but in any case, in issuing his instructions pursuant to that clause, the Employer is required to consider the following criteria:

- 1 the need in the event of non-compliance to demonstrate at no cost to the Employer either that it is unique and not likely to occur in similar elements of the Works or alternatively, the extent of any similar non-compliance in the Works already constructed or still to be constructed;
- 2 the need to discover whether any non-compliance in a primary structural element is a failure of workmanship and/or materials such that rigorous testing of similar elements must take place; or, where the non-compliance is in a less significant element, whether it is such as is to be statistically expected and can simply be repaired; or whether the non-compliance indicates an inherent weakness such as can only be found by selective testing, the extent of which must depend upon the importance of any detail concerned;
- 3 the significance of the non-compliance, having regard to the nature of the work in which it has occurred;
- 4 the consequence of any similar non-compliance on the safety of the building, its effect on users, adjoining property, the public, and compliance with any Statutory Requirements;
- 5 the level and standard of supervision and control of the Works by the Contractor;
- 6 the relevant records of the Contractor and, where relevant, those of any sub-contractor, whether resulting from the supervision and control referred to in paragraph 5 or otherwise;
- 7 any Codes of Practice or similar advice issued by a responsible body which are applicable to the non-compliant work, materials or goods;
- 8 any failure by the Contractor to carry out, or to secure the carrying out of, any tests specified in the Employer's Requirements or Contractor's Proposals or in an instruction of the Employer;
- 9 the reason for the non-compliance, when this has been established;
- 10 any technical advice that the Contractor has obtained in respect of the non-compliant work, materials or goods;
- 11 current recognised testing procedures;
- 12 the practicability of progressive testing in establishing whether any similar non-compliance is reasonably likely;
- 13 if alternative testing methods are available, the time required for and the consequential costs of such alternative testing methods;
- 14 any proposals of the Contractor; and
- 15 any other relevant matters.

## Schedule 5 Third Party Rights

(Clauses 7A and 7B)

### Part 1: Third Party Rights for Purchasers and Tenants

#### ('P&T Rights')

- 1
  - 1 The Contractor warrants as at and with effect from practical completion of the Works (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or, as the case may be, that Section, in accordance with this Contract. In the event of any breach of this warranty and subject to paragraphs 1.2 and 1.3:
    - 1 the Contractor shall be liable for the reasonable costs of repair, renewal and/or reinstatement of any part or parts of the Works to the extent that the Purchaser or Tenant incurs such costs and/or the Purchaser or Tenant is or becomes liable either directly or by way of financial contribution for such costs; and
    - 2 where the Rights Particulars state that paragraph 1.1.2 applies, the Contractor shall in addition to the costs referred to in paragraph 1.1.1 be liable for any other losses incurred by the Purchaser or Tenant up to the maximum liability stated in or by the Rights Particulars.
  - 2 Where paragraph 1.1.2 does not apply, the Contractor shall not be liable for any losses incurred by the Purchaser or Tenant other than the costs referred to in paragraph 1.1.1.
  - 3 The Contractor's liability to a Purchaser or Tenant in respect of its P&T Rights shall be limited to the proportion of the Purchaser's or Tenant's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s)<sup>[62]</sup>:
    - 1 has or have provided contractual undertakings to or conferred third party rights on the Purchaser or Tenant as regards the performance of his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
    - 2 has or have paid to the Purchaser or Tenant such proportion of the Purchaser's or Tenant's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Purchaser's or Tenant's losses.
  - 4 The Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract.
  - 5 The obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Purchaser or Tenant to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Purchaser or Tenant has no authority to issue any direction or instruction to the Contractor in relation to this Contract.
- 4 The Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site, and subject to the Contractor having been paid all sums due and payable under this Contract, shall in respect of such parts have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.

<sup>[62]</sup> See the Design and Build Contract Guide.

- 5 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars<sup>[63]</sup>. The Contractor shall immediately give written notice to the Purchaser or Tenant if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Purchaser or Tenant can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Purchaser or Tenant the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Contractor's consent by a Purchaser or Tenant, by way of absolute legal assignment, to another person (P1) taking an assignment of the Purchaser's or Tenant's interest in the Works and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of a Purchaser's or Tenant's rights under this Schedule will be permitted and in particular P2 shall not be entitled to assign these rights.
- 7 Any notice to be given by the Purchaser or Tenant to the Contractor or by the Contractor to the Purchaser or Tenant shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 8 No action or proceedings for any breach of P&T Rights shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
- 1 where this Contract is executed under hand, 6 years; and
  - 2 where this Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Contractor shall have no liability to the Purchaser or Tenant under this Schedule for delay in completion of the Works.
- 10 This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and any Purchaser or Tenant which arises out of or in connection with the P&T Rights of that Purchaser or Tenant.

## Part 2: Third Party Rights for a Funder

### ('Funder Rights')

- 1 The Contractor warrants that he has complied and will continue to comply with this Contract. In the event of any breach of this warranty:
- 1 the Contractor's liability to the Funder for costs under this Schedule shall be limited to the proportion of the Funder's losses which it would be just and equitable to require the Contractor to pay having regard to the extent of the Contractor's responsibility for the same, on the assumptions that the Consultant(s)<sup>[62]</sup>:
    - 1 has or have provided contractual undertakings to or conferred third party rights on the Funder that he or they has or have and will perform his or their services in connection with the Works in accordance with the terms of his or their respective consultancy agreements and that there are no limitations on liability as between the Consultant and the Employer in the consultancy agreement(s); and
    - 2 has or have paid to the Funder such proportion of the Funder's losses as it would be just and equitable for them to pay having regard to the extent of their responsibility for the Funder's losses;

<sup>[63]</sup> For Contractors who do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.

<sup>[62]</sup> See the Design and Build Contract Guide.

- 2 the Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Contract;
- 3 the obligations of the Contractor under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Funder to carry out any independent enquiry into any relevant matter.
- 2 The Contractor further warrants that unless required by this Contract or unless otherwise authorised in writing by the Employer (or, where such authorisation is given orally, confirmed in writing by the Contractor to the Employer), he has not used and will not use materials in the Works other than in accordance with the guidelines contained in the edition of 'Good Practice in Selection of Construction Materials' (British Council for Offices) current at the date of this Contract. In the event of any breach of this warranty the provisions of paragraph 1 shall apply.
- 3 The Funder has no authority to issue any direction or instruction to the Contractor in relation to this Contract unless and until the Funder has given notice under paragraph 5 or 6·4.
- 4 The Funder has no liability to the Contractor in respect of amounts due under this Contract unless and until the Funder has given notice under paragraph 5 or 6·4.
- 5 The Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Contractor shall, if so required by written notice given by the Funder and subject to paragraph 7, accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Contract of the termination of the Finance Agreement by the Funder; and further acknowledges that such acceptance of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract.
- 6 ·1 The Contractor shall not exercise any right of termination of his employment under this Contract without having first:
- 1 copied to the Funder any notices required by this Contract to be sent to the Employer prior to the Contractor being entitled to give notice under this Contract that his employment under this Contract is terminated; and
- 2 given to the Funder written notice that he has the right under this Contract forthwith to notify the Employer that his employment under this Contract is terminated.
- 2 The Contractor shall not treat this Contract as having been repudiated by the Employer without having first given to the Funder written notice that he intends so to notify the Employer.
- 3 The Contractor shall not:
- 1 issue a notice to the Employer to which paragraph 6·1·2 refers; or
- 2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 6·2
- before the lapse of 14 days from receipt by the Funder of the notice by the Contractor which the Contractor is required to give under paragraph 6·1·2 or 6·2.
- 4 The Funder may, not later than the expiry of the period referred to in paragraph 6·3, require the Contractor by written notice and subject to paragraph 7 to accept the instructions of the Funder or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of this Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Funder under this paragraph 6·4 and that acceptance by the Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that nothing in this paragraph 6·4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of this Contract.
- 7 It shall be a condition of any notice given by the Funder under paragraph 5 or 6·4 that the Funder or its appointee accepts liability for payment of the sums due and payable to the Contractor under this Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Funder under paragraph 5 or 6·4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under this Contract, nor any right of the Contractor to treat this Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Funder and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6·4 requires the Contractor to accept the

instructions of the Funder's appointee, the Funder shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Funder's appointee.

- 8 Subject to the Contractor having been paid all sums due and payable under this Contract, the Funder shall have rights and licences in relation to the Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.38, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where this Contract requires the Contractor to take out and maintain Professional Indemnity insurance, the Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.15 and its related Contract Particulars<sup>[63]</sup>. The Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Funder can discuss the means of best protecting their respective positions in the absence of such insurance. As and when reasonably requested to do so by the Funder or its appointee under paragraph 5 or 6.4 the Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 10 The rights contained in this Schedule may be assigned without the Contractor's consent by the Funder, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Works and by P1, by way of absolute legal assignment, to another person (P2) providing finance or re-finance in connection with the carrying out of the Works. In such cases the assignment shall only be effective upon written notice of it being given to the Contractor. No further or other assignment of Funder Rights will be permitted and in particular P2 shall not be entitled to assign these rights.
- 11 Any notice to be given by the Contractor to the Funder or by the Funder to the Contractor shall be duly given if delivered by hand or sent by Recorded Signed for or Special Delivery post to the recipient at such address as he may from time to time notify to the sender or (if no such address is then current) his last known principal business address or (where a body corporate) its registered or principal office. Where sent by post in that manner, it shall, subject to proof to the contrary, be deemed to have been received on the second Business Day after the date of posting.
- 12 No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of the relevant period from the date of practical completion of the Works. Where there are Sections no action or proceedings shall be commenced against the Contractor in respect of any Section after the expiry of the relevant period from the date of practical completion of such Section. For the purposes of this paragraph, the relevant period shall be:
  - 1 where this Contract is executed under hand, 6 years; and
  - 2 where this Contract is executed as a deed, 12 years.
- 13 Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Funder for delay under this Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4. For the avoidance of doubt the Contractor shall not be required to pay damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
- 14
  - 1 This Schedule shall be governed by and construed in accordance with the law of England and subject to paragraph 14.2 the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Funder which arises out of or in connection with this Schedule.
  - 2 Following the giving of any notice by the Funder pursuant to paragraph 5 or 6.4, any dispute or difference which shall arise between the Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 7 and (where they apply) Article 8 and clauses 9.3 to 9.8.

<sup>[63]</sup> For Contractors who do not carry Professional Indemnity insurance, see the Design and Build Contract Guide.



## Schedule 6 Forms of Bonds

(Clauses 4.6, 4.15 and 4.17)

(Agreed between the JCT and the British Bankers' Association)

### Part 1: Advance Payment Bond<sup>[64]</sup>

Not applicable.

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<sup>[64]</sup> Not applicable where the Employer is a Local Authority or other public sector body.

**Part 2: Bond in respect of payment for off-site materials and/or goods**

Not applicable.

### Part 3: Retention Bond<sup>[65]</sup>

Not applicable.

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<sup>[65]</sup> Not applicable where the Employer is a Local Authority or other public sector body.

## **Schedule 7 JCT Fluctuations Option A**

(Clause 4.2, 4.12 and 4.13)

(Contribution, levy and tax fluctuations)

Not applicable.



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