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**CM/TC 2016**  
**Construction Management**  
**Trade Contract 2016**

**DRAFT**

**2016**  
**CONSTRUCTION MANAGEMENT**

## Construction Management Trade Contract (CM/TC)

Appropriate:

- where the Employer is to enter into direct separate trade contracts; and
- where a Construction Manager engaged under the Construction Management Appointment is to administer the conditions on behalf of the Employer.

Can be used:

- where the works are to be carried out in sections.

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For details of 2016 Edition changes, see the Construction Management Guide (CM/G) and the Tracked Change Document.

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# Contents

	<b>Agreement</b>	<b>1</b>
	<b>Recitals</b>	<b>2</b>
	<b>Articles</b>	<b>5</b>
1	Trade Contractor's obligations	
2	Trade Contract Sum and Final Trade Contract Sum	
3	Trade Contract Tender Sum and Final Trade Contract Sum	
4	Construction Manager	
5	Principal Designer	
6	Principal Contractor	
7	Consultant Team Leader	
8	Adjudication	
9	Arbitration	
10	Legal proceedings	
	<b>Trade Contract Particulars</b>	<b>7</b>
	Part 1: General	
	Part 2: Programme	
	<b>Attestation</b>	<b>19</b>
	<b>Conditions</b>	<b>24</b>
<b>Section 1</b>	<b>Definitions and Interpretation</b>	<b>24</b>
	<b>Definitions</b>	
1.1	Definitions	
	<b>Interpretation</b>	
1.2	Reference to clauses etc.	
1.3	Agreement etc. to be read as a whole	
1.4	Headings, references to persons, legislation etc.	
1.5	Reckoning periods of days	
1.6	Contracts (Rights of Third Parties) Act 1999	
1.7	Notices and other communications	
1.8	Effect of Final Certificate	
1.9	Effect of certificates other than Final Certificate	
1.10	Consents and approvals	
1.11	Applicable law	
<b>Section 2</b>	<b>Carrying out the Works</b>	<b>32</b>
	<b>Trade Contractor's Obligations</b>	
2.1	General obligations	
2.2	Trade Contractor's Designed Portion	
2.3	Materials, goods and workmanship	
	<b>Commencement, Progress and Occupation</b>	
2.4	Date of commencement	
2.5	Progress of the Project and the Works	
2.6	Occupation of the site	
	<b>Supply of Documents, Setting Out etc.</b>	
2.7	Trade Contract Documents	
2.8	Construction information and Trade Contractor's master programme	
2.9	Levels and setting out of the Works	
2.10	Information Release Schedule	

- 2.11 Further drawings, details and instructions
- Errors, Discrepancies and Divergences**
- 2.12 Preparation of bills of quantities and Employer's Requirements
- 2.13 Bills of quantities and TCDP-related documents – errors and inadequacy
- 2.14 Notice of discrepancies etc.
- 2.15 Discrepancies in TCDP-related documents
- 2.16 Divergences from Statutory Requirements
- 2.17 Emergency compliance with Statutory Requirements
- TCDP Design Work**
- 2.18 Design liabilities and limitation
- 2.19 Errors and failures – other consequences
- Fees, Royalties and Patent Rights**
- 2.20 Fees or charges legally demandable
- 2.21 Patent rights and royalties – Trade Contractor's indemnity
- 2.22 Patent rights – Instructions
- Unfixed Materials and Goods – property, risk etc.**
- 2.23 Materials and goods – on site
- 2.24 Materials and goods – off site
- Adjustment of Completion Period**
- 2.25 Related definitions and interpretation
- 2.26 Notice by Trade Contractor of delay to progress
- 2.27 Fixing Completion Period
- 2.28 Relevant Events
- Acceleration**
- 2.29 Instruction to accelerate
- 2.30 Trade Contractor's right of reasonable objection
- Practical Completion, Lateness and Damages**
- 2.31 Practical completion and certificates
- 2.32 Failure of Trade Contractor to complete on time – Employer's direct loss and/or expense
- Partial Occupation by Employer**
- 2.33 Trade Contractor's consent
- 2.34 Practical completion date
- 2.35 Insurance – Relevant Part
- Defects**
- 2.36 Schedules of defects and instructions
- 2.37 Employer's protection of the Works
- 2.38 Certificate of Making Good
- Trade Contractor's Design Documents**
- 2.39 As-built Drawings
- 2.40 Copyright and use
- Section 3 Control of the Works**
- Construction Manager**
- 3.1 Authority of Construction Manager
- Access and Representatives**
- 3.2 Access for Employer and Construction Manager
- 3.3 Person-in-charge
- 3.4 Replacement of Construction Manager or Consultant Team Leader
- 3.5 Trade Contractor's responsibility
- Sub-Contracting**
- 3.6 Consent to sub-contracting
- 3.7 Conditions of sub-contracting
- Construction Manager's Instructions**
- 3.8 Compliance with instructions
- 3.9 Non-compliance with instructions

- 3.10 Instructions other than in writing
- 3.11 Provisions empowering instructions
- 3.12 Instructions requiring Variations
- 3.13 Postponement of work
- 3.14 Instructions on Provisional Sums
- 3.15 Inspection – tests
- 3.16 Work not in accordance with the Trade Contract
- 3.17 Workmanship not in accordance with the Trade Contract
- 3.18 Executed work
- 3.19 Exclusion of persons from the Project
- 3.20 Antiquities

**Attendance and Special Requirements**

- 3.21 Attendance and Special Requirements

**CDM Regulations**

- 3.22 CDM Regulations

**Other Provisions**

- 3.23 Strikes – loss or expense
- 3.24 Project Certificates

**Section 4 Payment**

50

**Trade Contract Sum and Trade Contract Tender Sum**

- 4.1 Adjustment Basis
- 4.2 Remeasurement Basis
- 4.3 Taking adjustments into account

**Taxes**

- 4.4 VAT
- 4.5 Construction Industry Scheme (CIS)

**Payments, Certificates and Notices – general provisions**

- 4.6 Advance payment
- 4.7 Interim payments – due dates
- 4.8 Interim Certificates
- 4.9 Trade Contractor's Payment Applications and Payment Notices
- 4.10 Interim and final payments – final date and amount
- 4.11 Pay Less Notices and other general provisions
- 4.12 Trade Contractor's right of suspension

**Interim Payments – calculation of sums due**

- 4.13 Gross Valuation
- 4.14 Sums due as interim payments

**Listed Items**

- 4.15 Listed Items

**Retention**

- 4.16 Rules on treatment of Retention
- 4.17 Retention Bond
- 4.18 Retention – amounts and periods

**Loss and Expense**

- 4.19 Matters materially affecting regular progress
- 4.20 Notification and ascertainment
- 4.21 Relevant Matters
- 4.22 Reservation of Trade Contractor's rights and remedies

**Final Adjustment and Final Payment**

- 4.23 Final Trade Contract Sum – Adjustment Basis
- 4.24 Final Trade Contract Sum – Remeasurement Basis
- 4.25 Calculation of Final Trade Contract Sum
- 4.26 Final Statement and final payment

**Section 5 Valuation of Work and Variations**

59

**General**

- 5.1 Definition of Variations
- 5.2 Valuation of Work
- 5.3 Variation Quotation
- 5.4 Trade Contractor's right to be present at measurement
- 5.5 Giving effect to Valuations, agreements etc.

**The Valuation Rules**

- 5.6 Measurable Work – Adjustment Basis
- 5.7 Measurable Work – Remeasurement Basis
- 5.8 General Rules
- 5.9 Daywork
- 5.10 Trade Contractor's Designed Portion – Valuation
- 5.11 Change of conditions for other work
- 5.12 Additional provisions

**Section 6 Injury, Damage and Insurance**

63

**Personal Injury and Property Damage**

- 6.1 Trade Contractor's liability – personal injury or death
- 6.2 Trade Contractor's liability – loss, injury or damage to property
- 6.3 Loss or damage to Existing Structures or their contents

**Insurance against Personal Injury and Property Damage**

- 6.4 Trade Contractor's insurance of his liability
- 6.5 Excepted Risks

**Insurance of the Project, the Works and Existing Structures**

- 6.6 Obligation to insure
- 6.7 Related definitions
- 6.8 Sub-contractors – Specified Perils cover under Project Insurance Policies
- 6.9 Terrorism Cover – policy extensions and premiums
- 6.10 Terrorism Cover – non-availability – Employer's options
- 6.11 Evidence of insurance
- 6.12 Loss or damage – insurance claims and reinstatement
- 6.13 Loss or damage to Existing Structures – right of termination

**TCDP Professional Indemnity Insurance**

- 6.14 Obligation to insure
- 6.15 Increased cost and non-availability

**Joint Fire Code – compliance**

- 6.16 Application of clauses
- 6.17 Compliance with Joint Fire Code
- 6.18 Breach of Joint Fire Code – Remedial Measures
- 6.19 Joint Fire Code – amendments/revisions

**Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties**

69

**Assignment**

- 7.1 Assignment

**Performance Bonds and Guarantees**

- 7.2 Performance Bonds and Guarantees

**Clauses 7.6 to 7.9 – Preliminary**

- 7.3 Trade Contract Rights Particulars
- 7.4 Notices
- 7.5 Execution of Collateral Warranties

**Third Party Rights from Trade Contractor**

- 7.6 Rights for Purchasers and Tenants
- 7.7 Rights for a Funder

**Collateral Warranties from Trade Contractor**

- 7.8 Trade Contractor's Warranties – Purchasers and Tenants
- 7.9 Trade Contractor's Warranty – Funder

**Section 8 Termination**

72

	<b>General</b>	
8.1	Meaning of insolvency	
8.2	Notices under section 8	
8.3	Other rights, reinstatement	
	<b>Termination by Employer</b>	
8.4	Default by Trade Contractor	
8.5	Insolvency of Trade Contractor	
8.6	Corruption and regulation 73(1)(b) of the PC Regulations	
8.7	Consequences of termination under clauses 8.4 to 8.6	
8.8	Employer's decision not to complete the Works	
	<b>Termination by Trade Contractor</b>	
8.9	Default by Employer	
8.10	Insolvency of Employer	
	<b>Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations</b>	
8.11	Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations	
	<b>Consequences of Termination under clauses 8.9 to 8.11, etc.</b>	
8.12	Consequences of Termination under clauses 8.9 to 8.11, etc.	
	<b>Termination by Employer – Discontinuation of Project</b>	
8.13	Termination by Employer – Discontinuation of Project	
<b>Section 9</b>	<b>Settlement of Disputes</b>	<b>78</b>
	<b>Mediation</b>	
9.1	Mediation	
	<b>Adjudication</b>	
9.2	Adjudication	
	<b>Arbitration</b>	
9.3	Conduct of arbitration	
9.4	Notice of reference to arbitration	
9.5	Powers of Arbitrator	
9.6	Effect of award	
9.7	Appeal – questions of law	
9.8	Arbitration Act 1996	
<hr/>		
	<b>Schedules</b>	<b>80</b>
<hr/>		
<b>Schedule 1</b>	<b>Design Submission Procedure</b>	<b>80</b>
<b>Schedule 2</b>	<b>Acceleration Quotation and Variation Quotation</b>	<b>82</b>
	Part 1: Acceleration Quotation	
	Part 2: Variation Quotation	
<b>Schedule 3</b>	<b>Insurance</b>	<b>85</b>
	Insurance by the Employer of Existing Structures and Project	
<b>Schedule 4</b>	<b>Code of Practice</b>	<b>86</b>
<b>Schedule 5</b>	<b>Third Party Rights</b>	<b>87</b>
	Part 1: Third Party Rights for Purchasers and Tenants	
	Part 2: Third Party Rights for a Funder	
<b>Schedule 6</b>	<b>Forms of Bonds</b>	<b>92</b>
	Part 1: Advance Payment Bond	
	Part 2: Bond in respect of payment for off-site materials and/or goods	
	Part 3: Retention Bond	
<b>Schedule 7</b>	<b>JCT Fluctuations Option A</b>	<b>101</b>
	(Contribution, levy and tax fluctuations)	
<b>Schedule 8</b>	<b>Supplemental Provisions</b>	<b>105</b>

# Agreement

## This Agreement

is made the \_\_\_\_\_ 20 \_\_\_\_\_

## Between

### The Employer

[\_\_\_\_\_]

(Company No. [\_\_\_\_\_])<sup>[1]</sup>

of/whose registered office is at

[\_\_\_\_\_]

## And

### The Trade Contractor

[\_\_\_\_\_]

(Company No. [\_\_\_\_\_])<sup>[1]</sup>

of/whose registered office is at

[\_\_\_\_\_]

[1] Where the Employer or Trade Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number. As to execution by foreign companies and matters of jurisdiction, see the Construction Management Guide.

## Recitals

### Whereas

#### First

the Employer wishes to have the following work carried out<sup>[2]</sup>:

[ ]

at

[ ] ('the Works'),  
and has had drawings and bills of quantities or a specification or work schedules prepared which show and describe the work to be done;

#### Second

the Employer has supplied to the Trade Contractor:

Trade Contract Drawings<sup>[3]</sup>

Specification<sup>[3]</sup>

Bills of Quantities<sup>[3]</sup>

Work Schedules<sup>[3]</sup>

which have for identification been signed or initialled by or on behalf of each Party;

#### Third

the Works are to be carried out as part of a Project comprising

[ ]  
being procured under the JCT Construction Management documentation by the Employer and the Construction Manager as his agent;

#### Fourth

for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Trade Contract Particulars;

#### Fifth

the Trade Contractor has supplied the Construction Manager with:

the priced document(s) identified in the Trade Contract Particulars ('the Priced Document')

the priced schedule of activities annexed to this Trade Contract ('the Activity Schedule')<sup>[4]</sup>

[2] State nature and location of intended works.

[3] Delete as appropriate.

[4] Delete this line if a priced Activity Schedule is not provided.

which have each for identification been signed or initialled by or on behalf of each Party;

**Sixth**

---

the Construction Manager has provided the Trade Contractor with a schedule ('the Information Release Schedule') which states the information the Construction Manager will release and the time of that release<sup>[5]</sup>;

**Seventh**

---

the division of the work comprising the Project into Sections is shown in the Trade Contract Documents or in such other documents as are identified in the Trade Contract Particulars<sup>[6]</sup>;

**Eighth**

---

where so stated in the Trade Contract Particulars, this Trade Contract is supplemented by the Framework Agreement identified in those particulars;

**Ninth**

---

whether any of Supplemental Provisions 1 to 6 apply is stated in the Trade Contract Particulars;  
*The Tenth to Thirteenth Recitals apply only where there is a Trade Contractor's Designed Portion*

**Tenth**

---

the Works include the design and construction of<sup>[7]</sup>  
[ ] ('the Trade Contractor's Designed Portion');

**Eleventh**

---

the Employer has supplied to the Trade Contractor documents showing and describing or otherwise stating his requirements for the design and construction of the Trade Contractor's Designed Portion ('the Employer's Requirements');

**Twelfth**

---

in response to the Employer's Requirements the Trade Contractor has supplied to the Employer:

- documents showing and describing the Trade Contractor's proposals for the design and construction of the Trade Contractor's Designed Portion ('the Trade Contractor's Proposals'); and
- an analysis of the portion of the Trade Contract Sum or Trade Contract Tender Sum (as the case may be) relating to the Trade Contractor's Designed Portion ('the TCDP Analysis');

**Thirteenth**

---

the Employer has examined the Trade Contractor's Proposals and, subject to the Conditions, is satisfied that they appear to meet the Employer's Requirements.<sup>[8]</sup> The Employer's Requirements, the Trade Contractor's Proposals and the TCDP Analysis have each for identification been signed or

[5] Delete the Sixth Recital if an Information Release Schedule is not provided.

[6] Delete the Seventh Recital if the Project is not divided into Sections.

[7] State nature of work in the Trade Contractor's Designed Portion, or delete these four Recitals if not applicable. If the space here is insufficient a separate list should be prepared, signed or initialled by or on behalf of each Party and identified here, either as a specified Annex to this Trade Contract or by its reference number, date or other identifier.

initialled by or on behalf of each Party and particulars of each are given in the Trade Contract Particulars;

DRAFT

---

**[8]** Where the Employer has accepted a divergence from his requirements in the proposals submitted by the Trade Contractor, the divergence should be removed by amending the Employer's Requirements before the Trade Contract is executed.

## Articles

### Now it is hereby agreed as follows

---

**Article 1 Trade Contractor's obligations**

---

The Trade Contractor shall carry out and complete the Works in accordance with this Trade Contract.

---

**Article 2 Trade Contract Sum and Final Trade Contract Sum**

---

The Employer shall pay the Trade Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of<sup>[9]</sup>

[ ] (£[ ]) ('the Trade Contract Sum')

or such other sum as becomes payable on the Adjustment Basis ('the Final Trade Contract Sum').

---

**Article 3 Trade Contract Tender Sum and Final Trade Contract Sum**

---

The Employer shall pay the Trade Contractor at the times and in the manner specified in the Conditions the VAT-exclusive sum of<sup>[9]</sup>

[ ] (£[ ]) ('the Trade Contract Tender Sum')

or such other sum as becomes payable on the Remeasurement Basis ('the Final Trade Contract Sum').

---

**Article 4 Construction Manager**

---

For the purposes of this Trade Contract the Construction Manager is

[ ]

of

[ ]

or, if he ceases to be the Construction Manager, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

---

**Article 5 Principal Designer**

---

The Principal Designer for the purposes of the CDM Regulations is<sup>[10]</sup>

[ ]

of

---

[9] Complete Article 2 or Article 3 as applicable, and delete the Article not required. Article 3 is for use where the Works are to be completely remeasured and valued.

[10] Insert the name of the Principal Contractor in Article 6 if that is to be a person other than the Construction Manager. Under the CDM Regulations 2015, regardless of whether or not a project is notifiable, there is a requirement to appoint a principal designer and a principal contractor in all cases where there is more than one contractor, or if it is reasonably foreseeable that more than one contractor will be working on a project at any time. For these purposes, the term 'contractor' is broadly defined by the regulations and treats the contractor's sub-contractors as separate contractors.

[ ]

or such replacement as the Employer at any time appoints to fulfil that role.

---

**Article 6**                      **Principal Contractor**

---

The Principal Contractor for the purposes of the CDM Regulations is the Construction Manager

(or)<sup>[10]</sup> [ ]

of

[ ]

or such replacement as the Employer at any time appoints to fulfil that role.

---

**Article 7**                      **Consultant Team Leader**

---

The Consultant Team Leader is

[ ]

of

[ ]

or, if he ceases to be the Consultant Team Leader, such other person as the Employer nominates in accordance with clause 3.4 of the Conditions.

---

**Article 8**                      **Adjudication**

---

If any dispute or difference arises under this Trade Contract, either Party may refer it to adjudication in accordance with clause 9.2.<sup>[11]</sup>

---

**Article 9**                      **Arbitration**

---

Where Article 9 applies<sup>[12]</sup>, then, subject to Article 8 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Trade Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#). The exceptions to this Article 9 are:

- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

---

**Article 10**                      **Legal proceedings<sup>[12]</sup>**

---

Subject to Article 8 and (where it applies) to Article 9, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Trade Contract.

---

[11] As to adjudication in cases where the Employer is a residential occupier within the meaning of section 106 of the Housing Grants, Construction and Regeneration Act 1996, see the Construction Management Guide.

[12] If it is intended, subject to the right of adjudication and exceptions stated in Article 9, that disputes or differences should be determined by arbitration and not by legal proceedings, the Trade Contract Particulars **must** state that Article 9 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 10 (see also clause 1.11).

## Trade Contract Particulars

**Note: An asterisk \* indicates where selection has been or should have been made.**

### Part 1: General

#### Fourth Recital and clause 4.5

Construction Industry Scheme (CIS)

- Employer at the Base Date  
\* is a 'contractor'/is not a 'contractor'  
for the purposes of the CIS

#### Fifth Recital

Priced Document  
(Identify the document(s) that comprise the Priced Document.)

- \* the priced Specification
- \* the priced Work Schedules
- \* the priced Bills of Quantities
- \* a Schedule of Rates
- \* a Schedule of Daywork Rates

#### Seventh Recital

Description of Sections (if any)  
(If not shown or described in the Trade Contract Documents, state the reference numbers and dates or other identifiers of documents in which they are shown.)<sup>[13]</sup>

[ ]

#### Eighth Recital

Framework Agreement (if applicable)  
(State date, title and parties.)

[ ]

#### Ninth Recital and Schedule 8

Supplemental Provisions<sup>[14]</sup>  
(Where neither entry against one of Supplemental Provisions 1 to 6 below is deleted, that Supplemental Provision applies.)

- Supplemental Provision 1: Collaborative working  
\* applies/does not apply

[13] If the relevant document or set of documents takes the form of an Annex to this Trade Contract, it is sufficient to refer to that Annex.

[14] Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Trade Contract is subject to the PC Regulations.

- Supplemental Provision 2: Health and safety  
\* applies/does not apply
- Supplemental Provision 3: Cost savings and value improvements  
\* applies/does not apply
- Supplemental Provision 4: Sustainable development and environmental considerations  
\* applies/does not apply
- Supplemental Provision 5: Performance Indicators and monitoring  
\* applies/does not apply
- Supplemental Provision 6: Notification and negotiation of disputes  
\* applies/does not apply

Where Supplemental Provision 6 applies, the respective nominees of the Parties are

Employer's nominee

[ ]

Trade Contractor's nominee

[ ]

or such replacement as each Party may notify to the other from time to time

#### Eleventh Recital

---

Employer's Requirements  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

[ ]

#### Twelfth Recital

---

Trade Contractor's Proposals  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

[ ]

TCDP Analysis  
(State reference numbers and dates or other identifiers of the relevant documents.)<sup>[13]</sup>

[ ]

#### Article 9

---

Arbitration  
(If neither entry is deleted, Article 9 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 9 and clauses 9.3 to 9.8 apply.)<sup>[15]</sup>

- Article 9 and clauses 9.3 to 9.8 (Arbitration)  
\* apply/do not apply

#### 1.1

---

Base Date

[ ]

---

[15] On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Construction Management Guide. See also footnote [12].

BIM Protocol (where applicable)  
(State title, edition, date or other identifiers of the relevant documents.)

[ ]

Employer's Representative  
(State name and address.)

[ ]

**1.7**

---

Addresses for service of notices by the Parties  
(If none is stated, the address in each case, subject to clause 1.7.3, shall be that shown at the commencement of the Agreement.)<sup>[16]</sup>

Employer

[ ]

Trade Contractor

[ ]

**2.8.1.2**

---

Master programme

Critical paths

\* are/are not required to be shown

**2.12.1**

---

Bills of quantities – the method of measurement<sup>[17]</sup> used is  
(Unless otherwise stated in the Trade Contract Documents, the form of the document shall be that published at the Base Date.)

\* the RICS Measurement Rules

\* the Standard Method of Measurement for Civil Engineering

\* [ ]

**2.18.3**

---

Trade Contractor's Designed Portion: limit of Trade Contractor's liability for loss of use etc. (if any)

£[ ]

**2.32.2**

---

Maximum liability of Trade Contractor for failure to complete on time  
(If no limit is stated, the Trade Contractor's liability is unlimited.)

£[ ]

---

[16] As to service of notices etc. outside the United Kingdom, see the Construction Management Guide.

[17] The appropriate method of measurement for building works is that in the RICS Measurement Rules and for civil engineering is the Civil Engineering Standard Method of Measurement (CESMM), but the Parties may agree to use another method of measurement.

**2.36**

---

**Final Release Date**

*(where completion by Sections does not apply)*

*(Where no date or period is stated, the date is 12 months after practical completion of the Works.)*

[ ]  
or (if later)

[ ] months  
after practical completion of the Works

*(where there are Sections)*

*(Where no period is stated, the date is 12 months after practical completion of the Works in the relevant Section.)*

[ ] months  
after practical completion of the Works in the relevant Section

**3.21.1**

---

**Attendance** – attendance items to be supplied free of charge to the Trade Contractor are

*(List here or on a separate sheet.)*

[ ]

**3.21.2**

---

**Attendance** – attendance items to be supplied at the Trade Contractor's cost are

*(List here or on a separate sheet.)*

[ ]

**4.6**

---

**Advance payment**

*(Not applicable where the Employer is a Local or Public Authority)*

Clause 4.6  
\* applies/does not apply

If applicable:  
the advance payment will be<sup>[18]</sup>

\* £[ ]

\* [ ] per cent of the Trade Contract Sum/Trade Contract Tender Sum

and will be paid to the Trade Contractor on

[ ]<sup>[18]</sup>

it will be reimbursed to the Employer in the following amount(s) and at the following time(s)

[ ]

**Advance Payment Bond**

*(Not applicable where the Employer is a Local or Public Authority)*

*(Where an advance payment is to be made, an advance payment bond is required unless stated that it is not required.)*

An advance payment bond

\* is/is not required

---

**[18]** Insert either a monetary amount or a percentage figure, delete the alternative and complete the other required details.

#### 4.7

---

Interim Payments: method of payment – alternatives  
(If no alternative is selected, periodic payments apply.)

- \* Periodic payments
- \* Stage payments

Stage payments

- The respective stages and payments are
- \* as follows
- \* set out in the following document(s)

[ ]

Interim Payments – Interim Valuation Dates  
(If no date is stated, the Interim Valuation Date is the last day of each month.)

The Interim Valuation Date in each month is the

[ ] day of the month

#### 4.13 and 4.23

---

Fluctuations Provision<sup>[19]</sup>  
(Unless another option or entry is selected, JCT Fluctuations Option A applies.)

- \* JCT Fluctuations Option A applies
- \* JCT Fluctuations Option B applies
- \* JCT Fluctuations Option C applies<sup>[20]</sup>
- \* no Fluctuations Provision applies
- \* the following Fluctuations Provision applies

[ ]

JCT Fluctuations Option A (paragraph A.12) – percentage addition

[ ] per cent

#### 4.15.4

---

Listed Items – uniquely identified  
(Delete the entry if no bond is required.)

- \* For uniquely identified Listed Items a bond in respect of payment for such items is required for

£[ ]

#### 4.15.5

---

Listed Items – not uniquely identified  
(Delete the entry if clause 4.15.5 does not apply.)

- \* For Listed Items that are not uniquely identified a bond in respect of payment for such items is required for

---

[19] Unless the Fluctuations Provision is to be JCT Fluctuations Option A (set out in Schedule 7), delete all but one of the asterisked choices. JCT Fluctuations Options B and C are no longer included in JCT contract documents but continue to be available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk). Where JCT Fluctuations Option B or C or another (non-JCT) Fluctuations Provision applies, it is recommended that the necessary particulars and the relevant document(s) are included in the Trade Contract Documents. A proforma set of particulars for each of JCT Fluctuations Options B and C is included with that Option on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).

[20] JCT Fluctuations Option C can only operate where either annotated bills of quantities or a schedule to which rules 11a and 11b of the Formula Rules refer is included in the Priced Documents.

£[ ]

**4.17**

---

**Trade Contractor's Retention Bond**

*(Not applicable where the Employer is a Local or Public Authority and, in other cases, not applicable unless stated to apply, with relevant particulars given below)*

Clause 4.17  
\* applies/does not apply

If clause 4.17 applies, the maximum aggregate sum for the purposes of clause 2 of the bond is

£[ ]

For the purposes of clause 6.3 of the bond, the expiry date shall be

[ ]

**4.18.1**

---

**Retention Percentage**

*(The percentage is 3 per cent unless a different rate is stated; if no retention is required, insert 'Nil' or '0'.)*

[ ] per cent

**5.9.1 and 5.9.2**

---

**Daywork**

The Percentage Additions to each section of the prime cost or, if they apply in respect of labour, the All-Inclusive Rates are set out in the following document<sup>[21]</sup>

[ ]

**6.4.1**

---

Trade Contractor's Public Liability insurance: injury to persons or property – the required level of cover is not less than

£[ ]  
for any one occurrence or series of occurrences arising out of one event

**6.6 and Schedule 3**

---

Insurance of Existing Structures – paragraph 2 of Schedule 3<sup>[21]</sup>

*(Unless otherwise stated, paragraph 2 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)*

\* applies  
\* is replaced by the provisions of the following document(s)

[ ]

---

[21] Under Schedule 3, the **Employer** is required to take out a Joint Names Policy for All Risks Insurance for the Project and also, if paragraph 2 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) may not be able readily to obtain the Joint Names cover required under paragraph 2. Where that is the case, alternative arrangements and amendments will be necessary. See the Construction Management Guide.

**Where there are Existing Structures, it is vital that any prospective Employer who is not familiar with Schedule 3 – in particular any Employer who is a tenant – 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.**

(the 'Paragraph 2 Replacement Schedule')

### 6.9 and Schedule 3

---

Terrorism Cover – details of the required cover  
(Unless otherwise stated, Pool Re Cover is required.)<sup>[22]</sup>

are set out in the following document(s)

[ ]

### 6.14

---

Trade Contractor's Designed Portion (TCDP) Professional Indemnity insurance

Level of cover

(If an alternative is not selected the amount shall be the aggregate amount for any one period of insurance. A period of insurance for these purposes shall be one year unless otherwise stated.)

Amount of indemnity required

- \* relates to claims or series of claims arising out of one event
- \* is the aggregate amount for any one period of insurance

(If no amount is stated, insurance under clause 6.14 shall not be required.)

and is

£[ ]

Cover for pollution and contamination claims

(If no amount is stated, such cover shall not be required; unless otherwise stated, the required limit of indemnity is an annual aggregate amount.)

- \* is required, with a sub-limit of indemnity of

£[ ]

- \* is not required

Expiry of required period of TCDP Professional Indemnity insurance is

(If no period is selected, the expiry date shall be 6 years from the date of practical completion of the Project.)

- \* 6 years
- \* 12 years
- \* [ ] years  
(not exceeding 12 years)

### 6.16

---

The Joint Fire Code

- \* applies/does not apply

If the Joint Fire Code applies, state whether the insurer has specified that the Works are a 'Large Project':

- \* Yes/No

---

[22] Obtaining Terrorism Cover, which unless otherwise agreed is necessary in order to comply with the requirements of Schedule 3, will involve an additional premium and in certain situations has been difficult to effect. If any difficulty might arise, there should be immediate pre-contract discussion between the Parties and their insurance advisers. See the Construction Management Guide.

## 6.19

---

Joint Fire Code – amendments/revisions

*(The cost shall be borne by the Employer unless otherwise stated.)*

- The cost, if any, of compliance with amendment(s) or revision(s) to the Joint Fire Code shall be borne by
- \* the Employer/the Trade Contractor

## 7.2.1

---

Performance bond or guarantee from bank or other approved surety<sup>[23]</sup>

*(If this entry is not completed or the required form is not specified, a performance bond or guarantee is not required.)*

- \* is required/is not required

The required form of the bond or guarantee is set out in

[ ]

Initial value

[ ] per cent of the Trade Contract Sum or Tender Sum

Period of validity – if not specified in the required form, the expiry date of the performance bond or guarantee is to be  
*(If no entry is selected, the date shall be the date of practical completion of the Works.)*

- \* the date of practical completion of the Works
- \* the later of the Final Release Date or the date for issue of the Certificate of Making Good for the Works or last relevant Section

Reduction in value – if not specified in the required form and if expiring later than the date of practical completion of the Works, the percentage reduction in the initial value on that date is  
*(If no other percentage is stated, it shall be 50 per cent.)*

[ ] per cent

## 7.2.2

---

Guarantee from the Trade Contractor's parent company

- \* is required/is not required

Parent company's name and registration number

[ ]

The required form of the guarantee is set out in

[ ]

---

**[23]** If a performance bond is required, the identity of the issuer as well as the operative terms of the bond should be agreed prior to execution of the contract.

### 7.3

---

Third Party Rights and Collateral Warranties – details of the requirements for the grant by the Trade Contractor of P&T Rights and/or Funder Rights in respect of the Works, either as third party rights or by collateral warranties ('Trade Contract Rights Particulars') are set out in the following document<sup>[24]</sup>  
(State reference number and date or other identifier of the relevant document.)

[ ]

### 8.9.2

---

Period of suspension  
(If none is stated, the period is 2 months.)

[ ]

### 8.11.1.1 to 8.11.1.5

---

Period of suspension  
(If none is stated, the period is 2 months.)

[ ]

### 9.2.1

---

Adjudication<sup>[25]</sup>

The Adjudicator is [ ]

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[26]</sup>  
(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed below selected by the Party requiring the reference to adjudication.)

- \* Royal Institute of British Architects
- \* The Royal Institution of Chartered Surveyors
- \* constructionadjudicators.com<sup>[27]</sup>
- \* Chartered Institute of Arbitrators

### 9.4.1

---

Arbitration<sup>[28]</sup> – appointor of Arbitrator (and of any replacement)<sup>[29]</sup>  
(If no appointor is selected, the appointor shall be the President or a Vice-President of the Royal Institute of British

- 
- [24] The Trade Contract Rights Particulars should identify the beneficiaries (by name, class or description), specify whether rights are to be granted as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Trade Contract Rights Particulars is included in the Construction Management Guide and is also available on the JCT website [www.jcttd.co.uk](http://www.jcttd.co.uk).  
In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Trade Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (TCWa/P&T or TCWa/F). See also the Construction Management Guide.
- [25] The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.
- [26] Delete all but one of the nominating bodies asterisked.
- [27] constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.
- [28] This only applies where the Trade Contract Particulars state (against the reference to Article 9) that Article 9 and clauses 9.3 to 9.8 (Arbitration) apply.
- [29] Delete all but one of the bodies asterisked.

*Architects.)*

- President or a Vice-President:
- \* Royal Institute of British Architects
  - \* The Royal Institution of Chartered Surveyors
  - \* Chartered Institute of Arbitrators

**Schedule 3, paragraph 1**

---

Percentage to cover professional fees  
*(If no other percentage is stated, it shall be 15 per cent.)*

[ ] per cent

DRYAFFE

## Part 2: Programme

- 1 The period required for the preparation of all necessary Trade Contractor's drawings etc. (co-ordination, installation, shop or builders' work or other as appropriate) from receipt of the instruction to proceed with such preparation and from receipt of all other relevant drawings and specifications etc., prior to submission to the Construction Manager for comment is

[ ] weeks

- 2 The period required for the Construction Manager's initial comments upon the drawings etc. from receipt by the Construction Manager to their return to the Trade Contractor is

[ ] weeks

- 3 The period required for the procurement of materials, fabrication (where appropriate) and delivery to site prior to commencing \*work on site/work in each Section is

[ ] weeks

(The periods under items 1 to 3 are consecutive so that the period required from the date of receipt under item 1 to delivery to site under item 3 is the sum of the weeks stated under those items i.e. [ ] weeks)

- 4 The period of notice to commence work on site required to enable a start to be made to \*the Works/each Section is

[ ] weeks

- 5 The period required for the carrying out of the Works on site after delivery (see item 3) and after the expiry of the period of notice to commence work (see item 4) is:

where completion by Sections does not apply

[ ] weeks

(or)

Section<sup>[30]</sup>

Weeks

[ ]

[ ]

- 6 The earliest starting date and the latest starting date for the Works to be carried out on site are:

where completion by Sections does not apply

Earliest

Latest

[ ]

[ ]

(or)

Section<sup>[30]</sup>

Earliest

Latest

[ ]

[ ]

[ ]

- 7 Further details or arrangements that may qualify or clarify the above or are otherwise relevant to the carrying out of the Works<sup>[30]</sup> including the anticipated start and completion dates for the Project or Sections:

[ ]

[30] Continue on further sheets if necessary, which should be signed or initialled by or on behalf of each Party and then be annexed to this Trade Contract.

- 8** The site will be closed on the following dates due to holidays<sup>[31]</sup>:  
[ ]
- 9** The site will be open for the Trade Contractor to carry out the Works from [ ] a.m. to  
[ ] p.m. except on [ ] and except on any dates stated in item 8.

DRAFT

---

**[31]** Insert any days when the site will not be open (e.g. Saturdays, Sundays and Bank Holidays).

## Attestation

### Note on Execution

This Agreement should be executed by both the Employer and the Trade Contractor either under hand or as a deed. As to factors relevant to that choice, see the Construction Management Guide.

#### Execution under hand

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

#### Execution as a Deed

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

#### Other forms of Attestation

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.

DRY  
ATTESTATION

*Execution under hand*

## As witness

the hands of the Parties  
or their duly authorised representatives

---

Signed by or on behalf of  
the Employer

\_\_\_\_\_

in the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

\_\_\_\_\_

---

Signed by or on behalf of  
the Trade Contractor

\_\_\_\_\_

in the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

\_\_\_\_\_

## Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Trade Contractor. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Employer or Trade Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:
  - (A)** through signature by a Director and the Company Secretary or by two Directors;
  - (B)** by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or
  - (C)** signature by a single Director in the presence of a witness who attests the signature.

Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.) Methods **(A)** and **(C)** are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method **(B)**.
- 3 Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method **(B)** (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "*Company*" under the second signature should be deleted where appropriate.)
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Employer or Trade Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

*Execution as a Deed*

**Executed as a Deed by the Employer**

namely <sup>1</sup> [ ]

**(A)** acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

\_\_\_\_\_  
*(Print name of signatory)*

Signature \_\_\_\_\_ Director

and

\_\_\_\_\_  
*(Print name of signatory)*

Signature \_\_\_\_\_ Company Secretary/Director

**(B)** by affixing hereto the common seal **of the company/other body corporate** <sup>2,4</sup>

in the presence of

Signature \_\_\_\_\_ Director

Signature \_\_\_\_\_ Company Secretary/Director

*[Common seal of company]*

**(C)** by attested signature of a single Director **of the company** <sup>2,5</sup>

Signature \_\_\_\_\_ Director

in the presence of

Witness' signature \_\_\_\_\_ *(Print name)* \_\_\_\_\_

Witness' address \_\_\_\_\_

**(D)** by attested signature **of the individual** <sup>6</sup>

Signature \_\_\_\_\_

in the presence of

Witness' signature \_\_\_\_\_ *(Print name)* \_\_\_\_\_

Witness' address \_\_\_\_\_

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

*Execution as a Deed*

**Executed as a Deed by the Trade Contractor**

namely <sup>1</sup> [ ]

**(A)** acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* Director

and

\_\_\_\_\_  
*(Print name of signatory)*

\_\_\_\_\_  
*Signature* Company Secretary/Director

**(B)** by affixing hereto the common seal **of the company/other body corporate** <sup>2,4</sup>

in the presence of

\_\_\_\_\_  
*Signature* Director

\_\_\_\_\_  
*Signature* Company Secretary/Director

*[Common seal of company]*

**(C)** by attested signature of a single Director **of the company** <sup>2,5</sup>

\_\_\_\_\_  
*Signature* Director

in the presence of

*Witness' signature* \_\_\_\_\_ *(Print name)* \_\_\_\_\_

*Witness' address* \_\_\_\_\_

**(D)** by attested signature **of the individual** <sup>6</sup>

\_\_\_\_\_  
*Signature*

in the presence of

*Witness' signature* \_\_\_\_\_ *(Print name)* \_\_\_\_\_

*Witness' address* \_\_\_\_\_

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

# Conditions

## Section 1 Definitions and Interpretation

### Definitions

#### 1.1 Definitions

Unless the context otherwise requires or the Agreement or these Conditions specifically provide otherwise, the following words and phrases, where they appear in capitalised form in the Agreement or these Conditions, shall have the meanings stated or referred to below:

**Acceleration Quotation:** see **clause 2.29** and **Part 1 of Schedule 2**.

**Activity Schedule:** see the **Fifth Recital**.

**Adjudicator:** an individual appointed under **clause 9.2** as the Adjudicator.

**Adjustment Basis:** see **clauses 4.1** and **4.23**.

**Agreement:** the Agreement to which these Conditions are annexed, including its Recitals, Articles and Trade Contract Particulars.

**All Risks Insurance:** see **clause 6.7**.

**Approximate Quantity:** a quantity in any bills of quantities included in the Trade Contract Documents identified therein as an approximate quantity.

**Arbitrator:** an individual appointed under **clause 9.4** as the Arbitrator.

**Article:** an article in the **Agreement**.

**Base Date:** the date stated as such date in the **Trade Contract Particulars** (against the reference to **clause 1.1**)<sup>[32]</sup>.

**BIM Protocol:** (where applicable) the document identified as such in the **Trade Contract Particulars** (against the reference to **clause 1.1**).

**Business Day:** any day which is not a Saturday, a Sunday or a Public Holiday.

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**Certificate of Making Good:** see **clause 2.38**.

**Completion Period:** the period for completion of the Works or such works in a Section as stated in **Part 2 of the Trade Contract Particulars (item 5)** or as revised in accordance with these Conditions.

**Conditions:** the clauses set out in sections 1 to 9 of these Conditions, together with and including the Schedules hereto.

**Confirmed Acceptance:** the Construction Manager's instruction confirming acceptance of an Acceleration Quotation or Variation Quotation in accordance with **Schedule 2**.

**Construction Industry Scheme (or 'CIS'):** see the **Fourth Recital**.

[32] The Base Date is relevant (inter alia) to clause 2.16.2.1 (changes in Statutory Requirements) and the JCT Fluctuations Options and it helps to determine the edition/issue and/or version of documents relevant to this Trade Contract, e.g. the RICS Measurement Rules and definitions of the prime cost of daywork (clause 5.9).

**Construction Management Appointment:** the contract between the Employer and the Construction Manager under which the Construction Manager is to manage the procurement of the Project.

**Construction Manager:** the person named in **Article 4** or any successor nominated under **clause 3.4**.

**Construction Phase Plan:** those parts of the construction phase plan for the Project that are applicable to the Works and annexed to the Agreement, together with any updates and revisions of it by the Principal Contractor notified to the Trade Contractor before or during the progress of the Works.

**Consultant Team:** the consultants named in Part 2 of the Contract Particulars in the Construction Management Appointment, or subsequently notified to the Construction Manager by the Employer as having been appointed to the Consultant Team.

**Consultant Team Leader:** the person named in **Article 7** or any successor nominated or otherwise agreed under **clause 3.4**.

**Consultants:** see **clause 7.3.3**.

**Defined Provisional Sum:** (to the extent that there are bills of quantities and regardless of the method of measurement used), the definition of the term in paragraph 2.9.1.2 of the RICS Measurement Rules.

**Design Submission Procedure:** such procedure as is specified by the BIM Protocol or, where that is not applicable, the procedure set out in **Schedule 1**, subject to any modifications of that procedure specified in the Trade Contract Documents.

**Employer:** the person named as Employer in the **Agreement**.

**Employer's Persons:** all persons employed, engaged or authorised by the Employer, including the Construction Manager, the Consultant Team, other trade contractors and their sub-contractors and any such third party as is referred to in **clause 3.20.2** but excluding the Trade Contractor, Trade Contractor's Persons and any Statutory Undertaker.

**Employer's Representative:** the person named in the **Trade Contract Particulars** to act in that capacity, or any successor appointed by the Employer.

**Employer's Requirements:** see the **Eleventh Recital** and the **Trade Contract Particulars**.

**Excepted Risks:** see **clause 6.7**.

**Existing Structures:** any and all existing structures within which the Project or part of it is to be executed or to which it is to form an extension, together with such works in a Section for which a certificate of practical completion under **clause 2.31** has been issued, such works under any other trade contract in respect of the Project for which a certificate of practical completion has been issued under **clause 2.3.1** of the Construction Management Appointment, any Section for which a Section Completion Certificate has been issued and, as from the Relevant Date, any Relevant Part taken over under **clause 2.33**.

**Final Certificate:** the certificate issued by the Construction Manager under **clause 2.5.2** of the Construction Management Appointment.

**Final Release Date:** the date specified in the Trade Contract Particulars (against the reference to **clause 2.36**).

**Final Statement:** see **clause 4.26**.

**Final Trade Contract Sum:** see **clause 4.23**, if **Article 2** applies, or **clause 4.24**, if **Article 3** applies.

**Finance Agreement:** the agreement between the Funder and the Employer for the provision of finance for the Project.

**Fluctuations Provision:** the provision (if any) specified by the **Trade Contract Particulars** (against the reference to **clauses 4.13** and **4.23**).

**Funder:** the person named or otherwise sufficiently identified as such (whether by class or description) in or by the Trade Contract Rights Particulars and in respect of whom the Employer gives notice under **clause 7.7.1**.

**Funder Rights:** the rights in favour of the Funder to be granted by the Trade Contractor as third party rights under **Part 2 of Schedule 5** or by JCT collateral warranty TCWa/F in accordance with the Trade Contract Rights Particulars.

**Gross Valuation:** see **clause 4.13**.

**Information Release Schedule:** the schedule referred to in the **Sixth Recital**.

**Insolvent:** see **clause 8.1**.

**Interest Rate:** a rate 5% per annum above the official bank rate of the Bank of England current at the date that a payment due under this Trade Contract becomes overdue.

**Interim Certificate:** any of the certificates to which **clause 4.8** refers.

**Interim Valuation Date:** each date as specified by the **Trade Contract Particulars** (against the reference to **clause 4.7**).

**Joint Fire Code:** the Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation, published by Construction Industry Publications Ltd and the Fire Protection Association, current at the Base Date.

**Joint Names Policy:** see **clause 6.7**.

**Listed Items:** materials, goods and/or items prefabricated for inclusion in the Works which are listed as such items by the Employer in a list supplied to the Trade Contractor and annexed to the Trade Contract Documents.

**Local or Public Authority:** a body that is a 'contracting authority' as defined by the PC Regulations.

**P&T Rights:** the rights in favour of a Purchaser or Tenant to be granted by the Trade Contractor as third party rights under **Part 1 of Schedule 5** or by JCT collateral warranty TCWa/P&T in accordance with the Trade Contract Rights Particulars.

**Paragraph 2 Replacement Schedule:** (where applicable) the insurance schedule and/or other documents identified as such in the **Trade Contract Particulars** (against the reference to **clause 6.6** and **Schedule 3**).

**Parties:** the Employer and the Trade Contractor together.

**Party:** either the Employer or the Trade Contractor.

**Pay Less Notice:** see **clauses 4.10.5** and **4.11.1**.

**Payment Application:** see **clause 4.9.1**.

**Payment Notice:** see **clause 4.9.2**.

**PC Regulations:** the Public Contracts Regulations 2015.

**Pre-agreed Adjustment:** see **clause 2.25**.

**Priced Document:** see the **Fifth Recital**.

**Principal Contractor:** the Construction Manager or other contractor named in **Article 6** or any successor appointed by the Employer.

**Principal Designer:** the person named in **Article 5** or any successor appointed by the Employer.

**Project:** the works being procured under the Construction Management Appointment briefly described in the **Third Recital**.

**Project Completion Certificate:** the certificate issued under clause 2.3.2 of the Construction Management Appointment following practical completion of work under the last trade contract to be completed for the Project.

**Project Insurance Policy:** the Joint Names Policy or policies covering the Project to be effected and maintained by the Employer under clause 6.6 and in accordance with Schedule 3.

**Provisional Sum:** where the Trade Contract Documents include bills of quantities, the term includes

a sum provided in the bills for work, whether or not it is identified as being for defined or undefined work within the meaning of paragraph 2.9.1 of the RICS Measurement Rules; and

where the Trade Contract Documents do not include bills of quantities, the term includes a sum provided for work that the Employer may or may not decide to have carried out, or which cannot be accurately specified in the Trade Contract Documents.

**Public Holiday:** Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.<sup>[33]</sup>

**Purchaser:** any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Trade Contract Rights Particulars to whom the Employer transfers or agrees to transfer his interest in all or part of the Works.

**Recitals:** the recitals in the **Agreement**.

**Relevant Date:** see **clause 2.33**.

**Relevant Event:** see **clause 2.28**.

**Relevant Matter:** see **clause 4.21**.

**Relevant Omission:** see **clause 2.25**.

**Relevant Part:** see **clause 2.33**.

**Remeasurement Basis:** see **clauses 4.2** and **4.24**.

**Retention:** see **clauses 4.14** and **4.16** to **4.18**.

**Retention Bond:** see **clause 4.17**.

**Retention Percentage:** the percentage stated in the **Trade Contract Particulars** (against the reference to **clause 4.18.1**).

**RICS Measurement Rules:** the RICS New Rules of Measurement – Detailed Measurement for Building Works (NRM2).

**Scheme:** Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998.

**Sections:** (where applicable) the sections into which the Project is divided, as referred to in the **Seventh Recital** and the **Trade Contract Particulars**.

**Section Completion Certificate:** the certificate issued under clause 2.3.2 of the Construction Management Appointment following practical completion of work under the last trade contract to be completed for a Section.

**Site Facilities:** see **clause 6.7**.

**Site Materials:** all unfixed materials and goods delivered to and placed on or adjacent to the Project which are intended for incorporation therein.

**Specified Perils:** see **clause 6.7**.

**Statutory Requirements:** any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law which affects the Works or performance of any obligations under this Trade Contract and any regulation or bye-law of any local authority or statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the Works are, or are to be, connected.

**Statutory Undertaker:** any local authority or statutory undertaker where executing work solely in pursuance of its statutory obligations, including any persons employed, engaged or authorised by it upon or in connection with that work.

**TCDP Analysis:** see the **Twelfth Recital** and the **Trade Contract Particulars**.

**TCDP Works:** that part of the Works comprised in the Trade Contractor's Designed Portion.

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[33] Amend as necessary if different Public Holidays are applicable.

**Tenant:** any person named or otherwise sufficiently identified as such (whether by class or description) in or by the Trade Contract Rights Particulars to whom the Employer grants or agrees to grant a leasehold interest in all or part of the Works.

**Terrorism Cover:** see **clause 6.7**.

**Trade Contract:** the completed Agreement, these Conditions and the Trade Contract Documents.

**Trade Contract Documents:** the documents identified in the Second Recital and the Priced Document, together with (where applicable) the Employer's Requirements, the Trade Contractor's Proposals and the TCDP Analysis and (where applicable) the BIM Protocol.

**Trade Contract Particulars:** the particulars in the **Agreement** and there described as such, including the entries made by the Parties.

**Trade Contract Rights Particulars:** see **clause 7.3** and the **Trade Contract Particulars** for that clause.

**Trade Contract Sum:** the sum stated in **Article 2**.

**Trade Contract Tender Sum:** the sum stated in **Article 3**.

**Trade Contractor:** the person named as Trade Contractor in the **Agreement**.

**Trade Contractor's Design Documents:** the drawings, details and specifications of materials, goods and workmanship and other related documents and information prepared by or for the Trade Contractor in relation to the Trade Contractor's Designed Portion (including such as are contained in the Trade Contractor's Proposals or referred to in clause 2.8.4), together, where applicable, with any other design documents or information to be provided by him under the BIM Protocol.

**Trade Contractor's Designed Portion:** see the **Tenth Recital**.

**Trade Contractor's Persons:** the Trade Contractor's employees and agents, all other persons employed or engaged on or in connection with the Works or any part of them and any other person properly on the site in connection therewith, excluding the Employer, Employer's Persons and any Statutory Undertaker.

**Trade Contractor's Proposals:** see the **Twelfth Recital** and the **Trade Contract Particulars**.

**Valuation:** a valuation in accordance with the Valuation Rules, pursuant to **clause 5.2**, or in accordance with **clause 5.3.3**, as applicable.

**Valuation Rules:** see **clauses 5.6 to 5.12**.

**Variation:** see **clause 5.1**.

**Variation Quotation:** see **clause 5.3** and **Part 2 of Schedule 2**.

**VAT:** Value Added Tax.

**Works:** the work referred to in the **Agreement**, as more particularly shown, described or referred to in the Trade Contract Documents, which is to be carried out by the Trade Contractor as part of the Project, including any changes made to that work in accordance with this Trade Contract.

## Interpretation

### 1.2 Reference to clauses etc.

Unless otherwise stated, a reference in the Agreement or in these Conditions to a clause or Schedule is to that clause in or Schedule to these Conditions and, unless the context otherwise requires, a reference in a Schedule to a paragraph is to that paragraph of that Schedule.

### 1.3 Agreement etc. to be read as a whole

The Agreement and these Conditions are to be read as a whole. Nothing contained in the Trade Contract Documents or any Framework Agreement, irrespective of their terms, shall override or modify the Agreement or these Conditions.

#### **1.4 Headings, references to persons, legislation etc.**

In the Agreement and these Conditions, unless the context otherwise requires:

- 1.4.1 the headings, notes and footnotes are included for convenience only and shall not affect the interpretation of this Trade Contract;
- 1.4.2 the singular includes the plural and vice versa;
- 1.4.3 a gender includes any other gender;
- 1.4.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;
- 1.4.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom; and
- 1.4.6 references to documents shall, where there is a BIM Protocol or other protocol relating to the supply of documents or information, be deemed to include information in a form or medium conforming to that protocol.

#### **1.5 Reckoning periods of days**

Where under this Trade Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where the period would include a day which is a Public Holiday that day shall be excluded.

#### **1.6 Contracts (Rights of Third Parties) Act 1999**

Other than such rights of any Purchasers, Tenants and/or Funder as take effect pursuant to clauses 7.6 and/or 7.7, nothing in this Trade Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

#### **1.7 Notices and other communications**

- 1.7.1 Any notice or other communication between the Parties, or by or to the Construction Manager, that is expressly referred to in the Agreement or these Conditions (including, without limitation, each application, approval, consent, confirmation, counter-notice, decision, instruction or other notification) shall be in writing.
- 1.7.2 Subject to clause 1.7.4, each such notice or other communication and any documents to be supplied may or (where so required) shall be sent or transmitted by the means (electronic or otherwise) and in such format as the Parties have agreed or may from time to time agree in writing for the purposes of this Trade Contract.<sup>[34]</sup>
- 1.7.3 Subject to clauses 1.7.2 and 1.7.4, any notice, communication or document may be given or served by any effective means and shall be duly given or served if delivered by hand or sent by pre-paid post to:
  - 1.7.3.1 the recipient's address stated in the Trade Contract Particulars, or to such other address as the recipient may from time to time notify to the sender; or
  - 1.7.3.2 if no such address is then current, the recipient's last known principal business address or (where a body corporate) its registered or principal office.
- 1.7.4 Any notice expressly required by this Trade Contract to be given in accordance with this clause 1.7.4 shall be delivered by hand or sent by Recorded Signed for or Special Delivery post. 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.
- 1.7.5 If in an emergency any communication is made orally with respect to health and safety, risk of damage to property or insurance matters, written confirmation of it shall be sent as soon thereafter as is reasonably practicable.

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[34] In cases where there is no BIM Protocol, the Parties should agree a communications protocol on or before entering into the Trade Contract, or as soon thereafter as is practicable, covering e.g. the medium or format to be used for the Design Submission Procedure (Schedule 1) if not stated in the Employer's Requirements or Trade Contractor's Proposals. See the Construction Management Guide.

## **1.8 Effect of Final Certificate**

- 1.8.1 Subject to clause 1.8.2 (and save in respect of fraud), the Final Certificate shall have effect in any proceedings arising out of or in connection with this Trade Contract (whether by adjudication, arbitration or legal proceedings) as conclusive evidence that:
- 1.8.1.1 where and to the extent that any particular quality of any materials or goods or any particular standard of an item of workmanship was expressly described in the Trade Contract Documents, in any instruction issued by the Construction Manager under these Conditions or in any drawings or documents issued by him under any of clauses 2.8 to 2.11, to be for his approval, the particular quality or standard was to his reasonable satisfaction, but the Final Certificate shall not be conclusive evidence that they or any other materials, goods or workmanship comply with any other requirement or term of this Trade Contract;
  - 1.8.1.2 necessary effect has been given to all the terms of this Trade Contract which require that an amount is to be taken into account in the calculation of the Final Trade Contract Sum save where there has been an erroneous inclusion or exclusion of any work, materials, goods or figure or an arithmetical error in any computation, in which event the Final Certificate shall have effect as conclusive evidence as to all other computations;
  - 1.8.1.3 all and only such extensions of time, if any, as are due under clause 2.27 have been given; and
  - 1.8.1.4 the reimbursement of direct loss and/or expense, if any, due to the Trade Contractor as agreed, ascertained or valued in accordance with these Conditions is in final settlement of all and any claims which the Trade Contractor has or may have arising out of the occurrence of any Relevant Matters, whether such claim be for breach of contract, duty of care, statutory duty or otherwise.
- 1.8.2 The effects of the Final Certificate specified in clause 1.8.1 shall in relation to the subject matter of any adjudication, arbitration or other proceedings be suspended pending the conclusion of such proceedings, and shall thereafter be subject to the terms of any decision, award or judgment in and any settlement of those proceedings:
- 1.8.2.1 where those proceedings are commenced before or within 28 days after the date of issue of the Final Certificate; or
  - 1.8.2.2 in the case of an adjudication commenced within the period referred to in clause 1.8.2.1 in which the Adjudicator gives his decision after the date of issue of the Final Certificate, where arbitration or legal proceedings to determine the dispute or difference in question are commenced within 28 days of the date of that decision
- but not otherwise.
- 1.8.3 For the purposes of clause 1.8.2 any proceedings shall be treated as concluded if during any period of 12 months commencing on or after the issue of the Final Certificate neither Party takes a further step in them.

## **1.9 Effect of certificates other than Final Certificate**

Save as stated in clause 1.8 no certificate of the Construction Manager shall of itself be conclusive evidence that any works, any materials or goods or any design completed by the Trade Contractor for the Trade Contractor's Designed Portion to which the certificate relates are in accordance with this Trade Contract.

## **1.10 Consents and approvals**

Where consent or approval of either Party or the Construction Manager is expressly required under these Conditions and is requested by the other Party, such consent or approval shall not be unreasonably delayed or withheld, except in the case of either Party's consent under clause 7.1 the giving of which shall be at the sole discretion of the Party from whom it is sought.

**1.11 Applicable law**

This Trade Contract shall be governed by and construed in accordance with the law of England.<sup>[35]</sup>

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**[35]** Where the Parties do not wish the law applicable to this Trade Contract to be the law of England appropriate amendments should be made.

## Section 2 Carrying out the Works

### Trade Contractor's Obligations

#### 2.1 General obligations

The Trade Contractor shall carry out and complete the Works in a proper and workmanlike manner and in compliance with this Trade Contract, the Construction Phase Plan and Statutory Requirements, and shall give all notices required by the Statutory Requirements.

#### 2.2 Trade Contractor's Designed Portion

Where the Works include a Trade Contractor's Designed Portion, the Trade Contractor shall:

2.2.1 in accordance with the Trade Contract Documents, complete the design for the Trade Contractor's Designed Portion, including the selection of any specifications for the kinds and standards of the materials, goods and workmanship to be used in the TCDP Works, so far as not described or stated in the Employer's Requirements or the Trade Contractor's Proposals;

2.2.2 comply with the Construction Manager's directions for the integration of the design of the Trade Contractor's Designed Portion with both the design of the Works as a whole and that of the Project as a whole, subject to the provisions of clause 3.8.3; and

2.2.3 in complying with this clause 2.2, comply with regulations 8 to 10 of the CDM Regulations.

#### 2.3 Materials, goods and workmanship

2.3.1 All materials and goods for the Works, excluding any TCDP Works, shall, so far as procurable, be of the kinds and standards described in the Trade Contract Documents. Materials and goods for any TCDP Works shall, so far as procurable, be of the kinds and standards described in the Employer's Requirements or, if not there specifically described, as described in the Trade Contractor's Proposals or other Trade Contractor's Design Documents. The Trade Contractor shall not substitute any materials or goods so described without the Construction Manager's consent which, if given, shall not relieve the Trade Contractor of his other obligations.

2.3.2 Workmanship for the Works, excluding any TCDP Works, shall be of the standards described in the Trade Contract Documents. Workmanship for any TCDP Works shall be of the standards described in the Employer's Requirements or, if not there specifically described, as described in the Trade Contractor's Proposals.

2.3.3 Insofar as the quality of materials or goods or standards of workmanship are stated to be a matter for the Construction Manager's approval, such quality and standards shall be to his reasonable satisfaction. To the extent that the quality of materials and goods or standards of workmanship are neither described in the documents referred to in clause 2.3.1 or 2.3.2 nor stated to be a matter for such approval or satisfaction, they shall in the case of the Trade Contractor's Designed Portion be of a standard appropriate to it and shall in any other case be of a standard appropriate to the Works.

2.3.4 The Trade Contractor shall at the Construction Manager's request provide him with reasonable proof that the materials and goods used comply with this clause 2.3.

2.3.5 The Trade Contractor shall take all reasonable steps to encourage Trade Contractor's Persons to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

## Commencement, Progress and Occupation

### 2.4 Date of commencement

The Trade Contractor shall, upon the expiry of the period stated in item 4 of Part 2 of the Trade Contract Particulars from the Construction Manager's notice to commence work on site, enter upon the site of the Project and commence the execution of the Works.

### 2.5 Progress of the Project and the Works

The Works shall be carried out and completed in accordance with the programme details stated in Part 2 of the Trade Contract Particulars and reasonably in accordance with the progress of the Project or each relevant Section of it, subject, as respects construction but not design work, to receipt by the Trade Contractor of notice to commence work in accordance with those particulars and subject to clauses 2.25 to 2.28.

### 2.6 Occupation of the site

The Construction Manager shall permit the Trade Contractor to occupy so much of the site of the Project as is reasonably required for the execution of the Works, but such occupation shall not be exclusive and the Trade Contractor shall not object to the use or occupation of that part of the site by any other person engaged by the Employer on or in connection with the Project unless such use or occupation will or is likely to cause or contribute to any delay to or obstruction of the Trade Contractor in the execution of the Works.

## Supply of Documents, Setting Out etc.

### 2.7 Trade Contract Documents

2.7.1 The Trade Contract Documents shall remain in the custody of the Construction Manager and shall be available at all reasonable times for inspection by the Trade Contractor.

2.7.2 Immediately after the execution of this Trade Contract the Construction Manager, without charge to the Trade Contractor, shall (unless previously provided or unless the BIM Protocol or other communications protocol requires otherwise) provide him with:

2.7.2.1 one copy, certified on behalf of the Employer, of this Trade Contract;

2.7.2.2 two further unpriced copies of the Trade Contract Documents.

2.7.3 The Trade Contractor shall keep on the site or accessible there to the Construction Manager at all reasonable times copies of the Trade Contract Documents, the Trade Contractor's Design Documents and the further documents and information referred to in clauses 2.8 to 2.11.

2.7.4 None of the documents referred to in this clause 2.7 that are provided to the Trade Contractor shall be used by him for any purpose other than this Trade Contract, and (subject only to clause 2.7.5) neither the Employer nor any of his agents or representatives shall divulge or use except for the purposes of this Trade Contract any of the rates or prices in the Trade Contract Documents.

2.7.5 Where the Employer is a Local or Public Authority or other body of the type mentioned in Supplemental Provision 7, his obligations of confidentiality shall be subject to that Supplemental Provision.

### 2.8 Construction information and Trade Contractor's master programme

2.8.1 As soon as possible after the execution of this Trade Contract, if not previously provided:

2.8.1.1 the Construction Manager, without charge to the Trade Contractor, shall provide him with any descriptive schedules or similar documents necessary for use in carrying out the Works (excluding any TCDP Works), together with any pre-construction information required to be provided to the Trade Contractor under regulation 4 of the CDM Regulations; and

2.8.1.2 the Trade Contractor shall without charge provide the Construction Manager with his master programme for the execution of the Works identifying the critical paths, where so required by the Trade Contract Particulars, and providing any

other details specified by the Trade Contract Documents.

- 2.8.2 Within 14 days of any decision by the Construction Manager under clause 2.27.1 or of agreement of any Pre-agreed Adjustment, the Trade Contractor shall provide him with an amendment or revision of the master programme that takes account of that decision or agreement, with the details referred to in clause 2.8.1.2.
- 2.8.3 Nothing in the descriptive schedules or similar documents, or in the master programme or any amendment or revision of it, shall however impose any obligation beyond those imposed by the Trade Contract Documents.
- 2.8.4 In relation to any TCDP Works, the Trade Contractor, in addition to complying with clause 2.2, shall as and when necessary from time to time and without charge provide the Construction Manager with such Trade Contractor's Design Documents as are reasonably necessary to explain or amplify the Trade Contractor's Proposals, including:
- 2.8.4.1 such related calculations and information as may be requested; and
- 2.8.4.2 all levels and setting out dimensions which the Trade Contractor prepares or uses for the purposes of carrying out and completing the Trade Contractor's Designed Portion.
- 2.8.5 The Trade Contractor's Design Documents to be provided pursuant to clause 2.8.4 shall be submitted to the Construction Manager in accordance with the Design Submission Procedure and the Trade Contractor shall not commence any work to which such a document relates before that procedure has been complied with.

## **2.9 Levels and setting out of the Works**

The Construction Manager shall determine any levels required for the execution of the Works and, subject to clause 2.8.4.2, shall provide the Trade Contractor by way of accurately dimensioned drawings with such information as shall enable the Trade Contractor to set out the Works. The Trade Contractor shall be responsible for, and shall at no cost to the Employer amend, any errors arising from his own inaccurate setting out. The Construction Manager may instruct that such errors shall not be amended and an appropriate deduction may be taken into account in the calculation of the Final Trade Contract Sum for those that are not required to be amended.

## **2.10 Information Release Schedule**

Unless prevented by an act or default of the Trade Contractor or any Trade Contractor's Person, the Construction Manager shall ensure that the information referred to in the Information Release Schedule is released at the time stated in that schedule. The Construction Manager and the Trade Contractor may agree to vary any such time, such agreement not to be unreasonably withheld.

## **2.11 Further drawings, details and instructions**

- 2.11.1 Where not included in the Information Release Schedule, the Construction Manager shall from time to time, without charge to the Trade Contractor, provide him with such further drawings or details as are reasonably necessary to explain and amplify the Trade Contract Documents and shall issue such instructions (including those for or in regard to the expenditure of Provisional Sums) as are necessary to enable the Trade Contractor to carry out and complete the Works in accordance with this Trade Contract.
- 2.11.2 The further drawings, details and instructions shall be provided or given at the time the Trade Contractor reasonably requires them, having regard to the progress of the Works, or, if in the Construction Manager's opinion practical completion of the Works or of such works in a Section is likely to be achieved before the expiry of the relevant Completion Period, having regard to that Completion Period.
- 2.11.3 Where the Trade Contractor has reason to believe that the Construction Manager is not aware of the time by which the Trade Contractor needs to receive such further drawings, details or instructions, he shall, so far as reasonably practicable, give such advance notice to the Construction Manager as should enable the Construction Manager to comply with that requirement.

## **Errors, Discrepancies and Divergences**

### **2.12 Preparation of bills of quantities and Employer's Requirements**

- 2.12.1 Where bills of quantities are included in the Trade Contract Documents, unless otherwise specifically stated in respect of any specified item or items in those bills, the bills are to have been prepared in accordance with the method of measurement stated in the Trade Contract Particulars.
- 2.12.2 Subject to clause 2.16, the Trade Contractor shall not be responsible for the contents of the Employer's Requirements or for verifying the adequacy of any design contained within them.

### **2.13 Bills of quantities and TCDP-related documents – errors and inadequacy**

- 2.13.1 If in any bills of quantities there is any unstated departure from the method of preparation referred to in clause 2.12.1 or any error in description or in quantity or any omission of items, the departure, error or omission shall not vitiate this Trade Contract but shall be corrected.
- 2.13.2 If an inadequacy is found in any design in the Employer's Requirements and the Trade Contractor under clause 2.12.2 is not responsible for verifying its adequacy, then, if or to the extent that the inadequacy is not dealt with in the Trade Contractor's Proposals, the Employer's Requirements shall be altered or modified accordingly.
- 2.13.3 Subject to clause 2.16, any correction, alteration or modification under clause 2.13.1 or 2.13.2 shall be treated as a Variation.
- 2.13.4 Any error in description or in quantity in the Trade Contractor's Proposals or the TCDP Analysis and any erroneous omission of items from them shall be corrected, but no amount shall be taken into account in the calculation of the Final Trade Contract Sum in respect of that correction or in respect of any instruction requiring a Variation of work not comprised in the Trade Contractor's Designed Portion that is necessitated by the error or its correction.

### **2.14 Notice of discrepancies etc.**

If the Trade Contractor becomes aware of any such departure, error, omission or inadequacy as is referred to in clause 2.13 or any other discrepancy or divergence in or between any of the following, namely:

- 2.14.1 the Trade Contract Documents;
- 2.14.2 any instruction issued by the Construction Manager under these Conditions;
- 2.14.3 any drawings or documents issued by the Construction Manager under any of clauses 2.8 to 2.11; and
- 2.14.4 (where applicable) the Trade Contractor's Proposals and other Trade Contractor's Design Documents,

he shall immediately give notice with appropriate details to the Construction Manager, who shall issue instructions in that regard.

### **2.15 Discrepancies in TCDP-related documents**

- 2.15.1 Where the discrepancy or divergence to be notified under clause 2.14 is within or between the Trade Contractor's Proposals and/or other Trade Contractor's Design Documents, the Trade Contractor shall send with his notice, or as soon thereafter as is reasonably practicable, a statement setting out his proposed amendments to remove it. On receiving that statement, the Construction Manager shall issue instructions and the Trade Contractor shall comply with them but, to the extent that they relate to the removal of that discrepancy or divergence, they shall not be taken into account in the calculation of the Final Trade Contract Sum.
- 2.15.2 Where the discrepancy is within the Employer's Requirements (including any Variation of them) the Trade Contractor's Proposals shall prevail (subject to compliance with Statutory Requirements), with no adjustment being made in the calculation of the Final Trade Contract Sum. Where the Trade Contractor's Proposals do not deal with the discrepancy, the Trade Contractor shall notify the Construction Manager of his proposed amendment to

deal with it and the Construction Manager shall either agree the proposed amendment or decide how the discrepancy is to be dealt with; that agreement or decision shall be notified to the Trade Contractor and treated as a Variation.

## **2.16 Divergences from Statutory Requirements**

- 2.16.1 If the Trade Contractor or Construction Manager becomes aware of a divergence between the Statutory Requirements and a document referred to in clause 2.14, he shall immediately give the other notice specifying the divergence and, where it is between the Statutory Requirements and the Employer's Requirements, the Trade Contractor's Proposals or other Trade Contractor's Design Documents, the Trade Contractor shall notify the Construction Manager of his proposed amendment for removing it.
- 2.16.2 Within 7 days of becoming aware of such divergence (or, where applicable, within 14 days of receipt of the Trade Contractor's proposed amendment), the Construction Manager shall issue instructions in that regard, in relation to which:
- 2.16.2.1 if the divergence is between the Statutory Requirements and the Employer's Requirements or any document referred to in clause 2.14.4, the Trade Contractor shall comply at no cost to the Employer unless after the Base Date there is a change in the Statutory Requirements which necessitates an alteration or modification to the Trade Contractor's Designed Portion, in which event the instruction shall to that extent be treated as a Variation of the Employer's Requirements; and
- 2.16.2.2 in any other case, if and insofar as those instructions require the Works to be varied, they shall be treated as a Variation.
- 2.16.3 Provided the Trade Contractor is not in breach of clause 2.16.1, the Trade Contractor shall not be liable under this Trade Contract if the Works (other than the TCDP Works) do not comply with the Statutory Requirements to the extent that the non-compliance results from the Trade Contractor having carried out work in accordance with the documents referred to in clauses 2.14.1 to 2.14.3.

## **2.17 Emergency compliance with Statutory Requirements**

- 2.17.1 If in an emergency compliance with the Statutory Requirements necessitates the Trade Contractor supplying materials and/or executing work before receiving instructions under clause 2.16.2, the Trade Contractor shall supply such limited materials and execute such limited work as are reasonably necessary to secure immediate compliance.
- 2.17.2 The Trade Contractor shall forthwith notify the Construction Manager of the emergency and the steps that he is taking under clause 2.17.1.
- 2.17.3 Where the emergency arises from a divergence between Statutory Requirements and any of the documents referred to in clauses 2.14.1 to 2.14.3, then, provided that the Trade Contractor has complied with clause 2.17.2, the execution and supply of work and materials under clause 2.17.1 shall be treated as a Variation.

## **TCDP Design Work**

### **2.18 Design liabilities and limitation**

Where there is a Trade Contractor's Designed Portion:

- 2.18.1 insofar as its design is comprised in the Trade Contractor's Proposals and in what he is to complete in accordance with the Employer's Requirements and these Conditions (including any further design that he is required to carry out as a result of a Variation), the Trade Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design;
- 2.18.2 where and to the extent that this Trade Contract involves the Trade Contractor in taking on work for or in connection with the provision of a dwelling or dwellings, the clause 2.18.1 reference to the Trade Contractor's liability includes liability under the Defective Premises

Act 1972;

- 2.18.3 where or to the extent that this Trade Contract does not involve the Trade Contractor in taking on work for or in connection with the provision of a dwelling or dwellings to which that Act applies, the Trade Contractor's liability for loss of use, loss of profit or other consequential loss arising in respect of the liability of the Trade Contractor referred to in clause 2.18.1 shall be limited to the amount, if any, stated in the Trade Contract Particulars; but such a limitation shall not apply to or be affected by any liability for damages under clause 2.32.

## **2.19 Errors and failures – other consequences**

No extension of time shall be given, and clauses 4.19 and 8.9.2 shall not have effect, insofar as the cause of the progress of the Works being delayed, affected or suspended is:

- 2.19.1 an error, divergence, omission or discrepancy in the Trade Contractor's Proposals or other Trade Contractor's Design Documents, or a failure of the Trade Contractor, in completing those documents, to comply with clause 2.2.3; or
- 2.19.2 a failure by the Trade Contractor to provide in due time any necessary Trade Contractor's Design Documents or information either:
- 2.19.2.1 as required by clause 2.8.5; or
- 2.19.2.2 in response to a request from the Construction Manager that specifies the documents or information and date by which it is reasonably necessary for him to receive them, having regard to the progress of the Project and the Works (or, where practical completion of the Works or of such works in a Section is likely to be achieved before the expiry of the relevant Completion Period, having regard to that expiry date).

## **Fees, Royalties and Patent Rights**

### **2.20 Fees or charges legally demandable**

The Trade Contractor shall pay all fees or charges (including any rates or taxes) legally demandable under any Statutory Requirement and indemnify the Employer against any liability resulting from any failure to do so. The amount of any such fees or charges (including any rates or taxes other than VAT) shall be included in the calculation of the Final Trade Contract Sum unless they:

- 2.20.1 are priced in the Trade Contract Documents; or
- 2.20.2 are stated by way of a Provisional Sum in the Trade Contract Documents.

### **2.21 Patent rights and royalties – Trade Contractor's indemnity**

Where the carrying out of the Works as described by or referred to in the Trade Contract Documents or any Variation Quotation of which there is Confirmed Acceptance involves the supply or use of any patented article, process or other invention, all royalties or other sums payable in respect of such supply and use shall be deemed to have been included in the Trade Contract Sum or Trade Contract Tender Sum (as the case may be) or, where appropriate, the quoted adjustment to that sum, and the Trade Contractor shall indemnify the Employer from and against all claims and proceedings which may be brought or made against the Employer, and all damages, costs and expense to which he may be put, by reason of the Trade Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes or inventions.

### **2.22 Patent rights – Instructions**

- 2.22.1 Where in order to comply with the Construction Manager's instructions, other than in relation to a Variation Quotation of which there is Confirmed Acceptance, it is necessary for the Trade Contractor in carrying out the Works to supply and/or use any patented article, process or other invention, the Trade Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights relating to it and all royalties, damages or other sums which the Trade Contractor may be liable to pay to the persons entitled to such rights shall be included in the calculation of the Final Trade Contract Sum.
- 2.22.2 If prior to the instructions being carried out the Construction Manager or the Trade Contractor is or becomes aware that such supply or use may infringe any patent rights, he

shall promptly notify and consult the other and the instructions shall not take effect unless confirmed by the Construction Manager.

## **Unfixed Materials and Goods – property, risk etc.**

### **2.23 Materials and goods – on site**

Site Materials shall not be removed from storage on or adjacent to the Works except for use on the Works without the Construction Manager's consent. Where their value has in accordance with clauses 4.8 and 4.13 been included in any Interim Certificate under which the amount properly due to the Trade Contractor has been paid by the Employer, they shall upon such payment become the Employer's property, but, subject to the Joint Names Policy for All Risks Insurance referred to by paragraph 1 of Schedule 3, the Trade Contractor shall remain responsible for loss or damage to them.

### **2.24 Materials and goods – off site**

Where the value of any Listed Items has in accordance with clause 4.15 been included in any Interim Certificate under which the amount properly due to the Trade Contractor has been paid by the Employer, those items shall become the Employer's property and thereafter the Trade Contractor shall not, except for use upon the Works, remove or cause or permit them to be moved or removed from the premises where they are. The Trade Contractor shall be responsible for any loss of or damage to them and for the cost of their storage, handling and insurance until they are delivered to and placed on or adjacent to the Works. As from such delivery the provisions of clause 2.23 (except the words "Where their value" to "Employer's property, but,") shall apply to such items.

## **Adjustment of Completion Period**

### **2.25 Related definitions and interpretation**

In clauses 2.26 to 2.28 and, so far as relevant, in the other clauses of these Conditions:

- 2.25.1 any reference to delay or extension of time includes any further delay or further extension of time;
- 2.25.2 'Pre-agreed Adjustment' means the fixing of a revised Completion Period for the Works or for such works in a Section by the Confirmed Acceptance of an Acceleration Quotation or a Variation Quotation;
- 2.25.3 'Relevant Omission' means the omission of any work or obligation through an instruction for a Variation under clause 3.12 or through an instruction under clause 3.14 in regard to a Defined Provisional Sum.

### **2.26 Notice by Trade Contractor of delay to progress**

- 2.26.1 If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Works or of such works in any Section is being or is likely to be delayed the Trade Contractor shall forthwith give notice to the Construction Manager of the material circumstances, including, insofar as the Trade Contractor is able, the cause or causes of the delay, and shall identify in the notice any event which in his opinion is a Relevant Event.
- 2.26.2 In respect of each event identified in the notice the Trade Contractor shall, if practicable in such notice or otherwise in writing as soon as possible thereafter, give particulars of its expected effects, including an estimate of any expected delay in the completion of the Works or of such works in any Section beyond the relevant Completion Period.
- 2.26.3 The Trade Contractor shall forthwith notify the Construction Manager of any material change in the estimated delay or in any other particulars and supply such further information as the Construction Manager may at any time reasonably require.

### **2.27 Fixing Completion Period**

- 2.27.1 If, in the Construction Manager's opinion, on receiving a notice and particulars under clause 2.26:
  - 2.27.1.1 any of the events which are stated to be a cause of delay is a Relevant Event;  
and

- 2.27.1.2 completion of the Works or of such works in any Section is likely to be delayed thereby beyond the relevant Completion Period,
- then, save where these Conditions expressly provide otherwise, the Construction Manager shall give an extension of time by fixing such extended period as the Completion Period for the Works or such works in a Section as he then estimates to be fair and reasonable.
- 2.27.2 Whether or not an extension is given, the Construction Manager shall notify the Trade Contractor of his decision in respect of any notice under clause 2.26 as soon as is reasonably practicable and in any event within 12 weeks of receipt of the required particulars. Where the period from receipt to the expiry of the Completion Period is less than 12 weeks, he shall endeavour to do so prior to the expiry of the Completion Period.
- 2.27.3 The Construction Manager shall in his decision state:
- 2.27.3.1 the extension of time that he has attributed to each Relevant Event; and
- 2.27.3.2 (in the case of a decision under clause 2.27.4 or 2.27.5) the reduction in time that he has attributed to each Relevant Omission.
- 2.27.4 After the first fixing of an extended Completion Period in respect of the Works or such works in a Section, either under clause 2.27.1 or by a Pre-agreed Adjustment, but subject to clauses 2.27.6.3 and 2.27.6.4, the Construction Manager may by notice to the Trade Contractor, giving the details referred to in clause 2.27.3, fix a Completion Period for the Works or such works in that Section shorter than that previously fixed if in his opinion the fixing of such shorter Completion Period is fair and reasonable, having regard to any Relevant Omissions for which instructions have been issued after the last occasion on which a new Completion Period was fixed for the Works or for such works in that Section.
- 2.27.5 After the expiry of the Completion Period for the Works or for such works in a Section, if this occurs before the date of practical completion, the Construction Manager may, and not later than the expiry of 12 weeks after the date of practical completion shall, by notice to the Trade Contractor, giving the details referred to in clause 2.27.3:
- 2.27.5.1 fix a Completion Period for the Works or for such works in the Section later than that previously fixed if in his opinion that is fair and reasonable having regard to any Relevant Events, whether on reviewing a previous decision or otherwise and whether or not the Relevant Event has been specifically notified by the Trade Contractor under clause 2.26.1; or
- 2.27.5.2 subject to clauses 2.27.6.3 and 2.27.6.4, fix a Completion Period shorter than that previously fixed if in his opinion that is fair and reasonable having regard to any instructions for Relevant Omissions issued after the last occasion on which a new Completion Period was fixed for the Works or such works in the relevant Section; or
- 2.27.5.3 confirm the Completion Period previously fixed.
- 2.27.6 Provided always that:
- 2.27.6.1 the Trade Contractor shall constantly use his best endeavours to prevent delay in the progress of the Works or of such works in any Section, however caused, and to prevent their completion being delayed or further delayed beyond the relevant Completion Period;
- 2.27.6.2 in the event of any delay the Trade Contractor shall do all that may reasonably be required to the satisfaction of the Construction Manager to proceed with the Works or such works in a Section;
- 2.27.6.3 no decision of the Construction Manager under clause 2.27.4 or 2.27.5.2 shall fix a Completion Period for the Works or for such works in any Section shorter than that stated in the Trade Contract Particulars; and
- 2.27.6.4 no decision under clause 2.27.4 or 2.27.5.2 shall alter the length of any Pre-agreed Adjustment unless the relevant Variation or other work to which it relates is itself the subject of a Relevant Omission.

## 2.28 Relevant Events

The following are the Relevant Events referred to in clauses 2.26 and 2.27:

- 2.28.1 Variations and any other matters or instructions which under these Conditions are to be treated as, or as requiring, a Variation;
- 2.28.2 Construction Manager's instructions:
  - 2.28.2.1 under any of clauses 2.14, 3.13, 3.14 (excluding an instruction for expenditure of a Defined Provisional Sum) or 5.3.2; or
  - 2.28.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.15 or 3.16.4 (including making good), unless the inspection or test shows that the work, materials or goods are not in accordance with this Trade Contract;
- 2.28.3 compliance with clause 3.20.1 or with Construction Manager's instructions under clause 3.20.2;
- 2.28.4 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 2.28.5 suspension by the Trade Contractor under clause 4.12 of the performance of any or all of his obligations under this Trade Contract;
- 2.28.6 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Trade Contractor or any Trade Contractor's Person;
- 2.28.7 the carrying out by a Statutory Undertaker of work in pursuance of its statutory obligations in relation to the Project, or the failure to carry out such work;
- 2.28.8 exceptionally adverse weather conditions;
- 2.28.9 loss or damage occasioned by any Specified Peril;
- 2.28.10 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat;
- 2.28.11 strike, lock-out or local combination of workmen affecting any trade employed upon the Works or engaged in the preparation, manufacture or transportation of any of the goods or materials required for them or any persons engaged in design work for the Trade Contractor's Designed Portion;
- 2.28.12 the exercise after the Base Date by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Trade Contractor or any Trade Contractor's Person but which directly affects the execution of the Project;
- 2.28.13 force majeure.

## Acceleration

### 2.29 Instruction to accelerate

- 2.29.1 The Construction Manager may at any time during the carrying out of the Works issue an instruction to the Trade Contractor to submit, within 14 days of its receipt, a written quotation in accordance with Part 1 of Schedule 2 (an 'Acceleration Quotation') for achieving, by acceleration, a reduction of the Completion Period for the Works or such works in any Section, as then estimated.
- 2.29.2 The Construction Manager's instruction shall state:
  - 2.29.2.1 the required period of the reduction;
  - 2.29.2.2 such extensions of the Completion Period for the Works or for such works in the relevant Sections as have already been given at the date of the instruction, together with an estimate of any extensions of time which have been applied for by the Trade Contractor and are likely to be given.

### **2.30 Trade Contractor's right of reasonable objection**

If the Trade Contractor makes reasonable objection to the Construction Manager's instruction under clause 2.29.1 the instruction shall be either withdrawn at no cost to the Employer or varied and re-issued in a form such that the Trade Contractor is able to comply with the instruction.

## **Practical Completion, Lateness and Damages**

### **2.31 Practical completion and certificates**

2.31.1 When in the Construction Manager's opinion practical completion of the Works or of such works in a Section is achieved and the Trade Contractor has complied sufficiently with clauses 2.39 and 3.22 in respect of the supply of documents and information, the Construction Manager shall issue a certificate to that effect and practical completion of such works shall be deemed for all the purposes of this Trade Contract to have taken place on the date stated in that certificate.

2.31.2 The Trade Contractor may notify the Construction Manager of the date on which he considers that the Works or such works in a Section have reached or will reach practical completion and request the issue of a certificate giving the notified date as the date of practical completion. When forming his opinion, the Construction Manager may, but shall not be obliged to, take account of the notification.

2.31.3 Upon practical completion of the Works or such works in a Section, the Trade Contractor shall clear up and leave those works clean and tidy to the reasonable satisfaction of the Construction Manager together with (so far as used by him) all areas made available to him for the purpose of carrying them out.

### **2.32 Failure of Trade Contractor to complete on time – Employer's direct loss and/or expense**

2.32.1 If the Trade Contractor fails to complete the Works or such works in a Section within the Completion Period and provided that decisions have been given on all outstanding applications for extension of time, the Trade Contractor shall pay or allow to the Employer the amount of any direct loss and/or expense suffered or incurred by the Employer and caused by that failure. Subject to clause 2.32.2 that amount shall include, but shall not be limited to, any damages, costs or expenses which the Employer is obliged or may be liable to pay or allow to any other person engaged by the Employer on or in connection with the Project as a direct consequence of the Trade Contractor's failure.

2.32.2 The Trade Contractor's maximum financial liability in respect of the matters referred to in clause 2.32.1 shall not exceed the sum (if any) specified in the Trade Contract Particulars.

## **Partial Occupation by Employer**

### **2.33 Trade Contractor's consent**

If at any time or times before the date of issue by the Construction Manager of the certificate of practical completion for the Works or such works in a Section the Employer wishes to take over any part or parts of the Works or such works in a Section and the Trade Contractor's consent has been obtained, then, notwithstanding anything expressed or implied elsewhere in this Trade Contract, the Employer may take over such part or parts. The Construction Manager shall thereupon give the Trade Contractor notice identifying the part or parts taken over and giving the date when the Employer took over those part or parts ('the Relevant Part' and 'the Relevant Date' respectively).

### **2.34 Practical completion date**

For the purposes of clauses 2.36 and 4.18.1, practical completion of the Relevant Part shall be deemed to have occurred on the Relevant Date.

### **2.35 Insurance – Relevant Part**

As from the Relevant Date the Project insurance obligations of the Employer other than the defects liability protection referred to in paragraph 1.2 of Schedule 3 shall cease in respect of the Relevant Part (but not otherwise) and the Existing Structures (if any) shall from that date be deemed to include the Relevant Part.

## Defects

### 2.36 Schedules of defects and instructions

- 2.36.1 If any defects, shrinkages or other faults in the Works or such works in a Section appear prior to the Final Release Date due to materials, goods or workmanship not in accordance with this Trade Contract or any failure of the Trade Contractor to comply with his obligations in respect of the Trade Contractor's Designed Portion:
- 2.36.1.1 such defects, shrinkages and other faults shall be specified by the Construction Manager in a schedule of defects which he shall deliver to the Trade Contractor as an instruction not later than 14 days after the Final Release Date; and
- 2.36.1.2 prior to issue of that schedule, the Construction Manager may whenever he considers it necessary issue instructions requiring any such defect, shrinkage or other fault to be made good, provided no instructions under this clause 2.36.1.2 shall be issued after delivery of that schedule or more than 14 days after the Final Release Date.
- 2.36.2 Within a reasonable time after receipt of such schedule or instructions, the defects, shrinkages and other faults shall at no cost to the Employer be made good by the Trade Contractor unless the Construction Manager instructs otherwise. If he so instructs otherwise, an appropriate deduction may be made in the calculation of the Final Trade Contract Sum in respect of the defects, shrinkages or other faults not made good.

### 2.37 Employer's protection of the Works

The Employer shall take responsibility for protecting the Works or such works in a Section at all times after their date of practical completion and may (but without any derogation from that responsibility) seek or take the advice of the Trade Contractor as to protection measures which the Trade Contractor may consider necessary or appropriate. The liability of the Trade Contractor under clause 2.36 shall be reduced to the extent that any defect, shrinkage or fault appearing in the Works after that date is the result of:

- 2.37.1 fair wear and tear; or
- 2.37.2 failure by the Employer adequately to protect the Works; or
- 2.37.3 any other act, default or omission by the Employer or by any Employer's Person.

### 2.38 Certificate of Making Good

When in the Construction Manager's opinion the defects, shrinkages or other faults in the Works or in such works in a Section which under clause 2.36 he has required to be made good have been made good, he shall issue a certificate to that effect (a 'Certificate of Making Good'), and completion of that making good shall for the purposes of this Trade Contract be deemed to have taken place on the date stated in that certificate.

## Trade Contractor's Design Documents

### 2.39 As-built Drawings

Where there is a Trade Contractor's Designed Portion, the Trade Contractor, in addition to his obligations under the CDM Regulations in relation to information for the health and safety file, shall, before practical completion of the Works or such works in the relevant Section and without further charge to the Employer supply for retention and use by the Employer such Trade Contractor's Design Documents and related information as is specified in the Trade Contract Documents or as the Employer may reasonably require that show or describe the Trade Contractor's Designed Portion as built or relate to the maintenance and operation of it or its installations.

### 2.40 Copyright and use

- 2.40.1 Subject to any rights in any designs, drawings and other documents supplied to the Trade Contractor for the purposes of this Trade Contract by or on behalf of the Employer or the Construction Manager, all rights including (without limitation) copyright in all Trade Contractor's Design Documents shall remain vested in the Trade Contractor.
- 2.40.2 Subject to all sums due and payable under this Trade Contract to the Trade Contractor

having been paid, the Employer shall have an irrevocable, royalty-free, non-exclusive licence to copy and use the Trade Contractor's Design Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. That licence shall enable the Employer to copy and use the Trade Contractor's Design Documents for an extension of the Project but shall not include any right or licence to reproduce the designs contained in them for any such extension.

- 2.40.3 The licence shall be assignable to any owner from time to time of the Project or any part of it and may be sub-licensed to any owner or tenant of the Project or part of it and to any person engaged for the purposes permitted by clause 2.40.2.
- 2.40.4 The Trade Contractor shall not be liable for any use by the Employer of any of the Trade Contractor's Design Documents for any purpose other than that for which they were prepared.

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## Section 3 Control of the Works

### Construction Manager

#### 3.1 Authority of Construction Manager

- 3.1.1 Subject to clause 3.1.2, all acts, decisions and instructions of the Construction Manager under this Trade Contract are done, made or issued on behalf of the Employer.
- 3.1.2 Subject to clause 4.11.1.1, acts, decisions and instructions specifically stated to be those of the Employer are to be acts, decisions and instructions of the Employer and not those of the Construction Manager.
- 3.1.3 References in this Trade Contract to 'the Employer' shall be deemed to include the Employer's Representative.
- 3.1.4 Subject to clause 3.1.2, the Trade Contractor shall be entitled to assume and to rely on as a fact that any function exercised by the Construction Manager under this Trade Contract has been authorised by the Employer and the Trade Contractor shall not be liable for any costs, claims, loss, damage or other expenses incurred or suffered by the Employer in consequence of the compliance by the Trade Contractor with any function exercised by the Construction Manager which was not so authorised.

### Access and Representatives

#### 3.2 Access for Employer and Construction Manager

The Employer, the Construction Manager and any person authorised by either of them shall at all reasonable times have access to the Works and to the workshops or other premises of the Trade Contractor where work is being prepared for this Trade Contract. When work is to be prepared in workshops or other premises of a sub-contractor, the Trade Contractor shall by a term in the sub-contract secure so far as possible a similar right of access to those workshops or premises for the Employer, the Construction Manager and any person authorised by either of them and take any steps reasonably necessary to make that right effective. Access under this clause 3.2 may be subject to such reasonable restrictions as are necessary to protect proprietary rights.

#### 3.3 Person-in-charge

The Trade Contractor shall ensure that at all times he has on the site a competent person-in-charge and any instructions given to that person by the Construction Manager shall be deemed to have been issued to the Trade Contractor.

#### 3.4 Replacement of Construction Manager or Consultant Team Leader

- 3.4.1 If the Construction Manager or Consultant Team Leader at any time ceases to hold that post, the Employer shall as soon as reasonably practicable, and in any event within 21 days of the cessation, nominate a replacement and notify the Trade Contractor.
- 3.4.2 No replacement Construction Manager appointed for this Trade Contract shall be entitled to disregard or overrule any certificate, opinion, decision, consent, approval or instruction given or expressed by any predecessor in that post, save to the extent that that predecessor if still in the post would then have had power under this Trade Contract to do so.

#### 3.5 Trade Contractor's responsibility

Irrespective of the Construction Manager's obligations to the Employer, the Trade Contractor shall remain wholly responsible for carrying out and completing the Works in all respects in accordance with these Conditions. That responsibility shall not be affected by the Construction Manager at any time inspecting the Works, any workshop or other premises or any work in preparation there, by the inclusion of the value of any work, materials or goods in a certificate for payment or by his issuing any

certificate of practical completion or Certificate of Making Good.

## Sub-Contracting

### 3.6 Consent to sub-contracting

#### 3.6.1

3.6.1.1 The Trade Contractor shall not without the Construction Manager's consent sub-contract the whole or any part of the Works.

3.6.1.2 Where there is a Trade Contractor's Designed Portion, the Trade Contractor shall not without the Employer's consent sub-contract the design for it.

In no case shall any such consent or any sub-contracting in any way affect the Trade Contractor's obligations under any other provision of this Trade Contract.

3.6.2 The provisions of this clause 3.6 and of clause 3.7 shall not apply to the execution of part of the Works by a Statutory Undertaker, who shall not in that capacity be a sub-contractor within the terms of this Trade Contract.

### 3.7 Conditions of sub-contracting

It shall be a condition of any sub-contract that:

3.7.1 the sub-contractor's employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Trade Contractor's employment under this Trade Contract;

3.7.2 the sub-contract shall provide:

3.7.2.1 that, except for use on the Works, no Site Materials delivered to the Works by or for the sub-contractor shall be removed without the Trade Contractor's written consent (such consent not to be unreasonably delayed or withheld) and (in addition to any provision for earlier vesting in the Trade Contractor of title to any Listed Items for the purposes of clause 4.15.2.1 of these Conditions) that:

3.7.2.1.1 where, in accordance with clauses 4.8 and 4.13 of these Conditions, the value of any Site Materials has been included in any Interim Certificate under which the amount properly due to the Trade Contractor has been paid to him, they shall upon such payment become, and the sub-contractor shall not deny that they have become, the Employer's property;

3.7.2.1.2 if the Trade Contractor pays the sub-contractor for any Site Materials before their value is included in an Interim Certificate, they shall upon such payment become the Trade Contractor's property;

3.7.2.2 that the sub-contractor shall give access to workshops or other premises in accordance with clause 3.2 of these Conditions;

3.7.2.3 that each party to the sub-contract shall in relation to the Project and the site comply with applicable CDM Regulations;

3.7.2.4 in terms equivalent to those of clause 4.10.6 of these Conditions, that if by a final date for payment under the sub-contract the Trade Contractor fails to pay the sub-contractor any amount that should properly have been paid, the Trade Contractor shall, in addition to that amount, pay simple interest on it at the Interest Rate for the period from the final date for payment until such payment is made;

3.7.3 where documents or information and/or the grant of licences are or may be required from the sub-contractor for the BIM Protocol, where applicable, and/or for the purposes of clauses 2.39 and 3.22 of these Conditions, the sub-contract shall also provide for the supply and grant to and by the sub-contractor of all information and licences reasonably necessary for that purpose.

The Trade Contractor shall not give such consent as is referred to in clause 3.7.2.1 without the

Construction Manager's prior consent under clause 2.23 of these Conditions.

## **Construction Manager's Instructions**

### **3.8 Compliance with instructions**

The Trade Contractor shall forthwith comply with all instructions issued to him by the Construction Manager on any matter on which these Conditions expressly empower the Construction Manager to issue instructions, save that:

- 3.8.1 where an instruction requires a Variation of the type referred to in clause 5.1.2, the Trade Contractor need not comply to the extent that he notifies a reasonable objection to it to the Construction Manager;
- 3.8.2 where an instruction for a Variation is given which under clause 5.3.1 requires the Trade Contractor to provide a Variation Quotation, the Variation shall not be carried out until the Construction Manager has in relation to it issued either a Confirmed Acceptance or a further instruction under clause 5.3.2;
- 3.8.3 if the Trade Contractor considers that compliance with any instruction would adversely affect the efficacy of the design of the Trade Contractor's Designed Portion or his compliance with applicable CDM Regulations and if within 7 days of receipt of the instruction he gives notice to the Construction Manager specifying that adverse effect, the instruction shall not take effect unless and until confirmed by the Construction Manager;
- 3.8.4 in the case of a notification by the Trade Contractor under clause 2.22.2, the Trade Contractor need not comply pending confirmation of the instruction.

### **3.9 Non-compliance with instructions**

Subject to clause 3.8, if within 7 days after receipt of a notice from the Construction Manager requiring compliance with an instruction the Trade Contractor does not comply, the Employer may employ and pay other persons to execute work of any kind that may be necessary to give effect to that instruction. The Trade Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction may be made in the calculation of the Final Trade Contract Sum.

### **3.10 Instructions other than in writing**

- 3.10.1 Where the Construction Manager gives an instruction otherwise than in writing, it shall be of no immediate effect but the Trade Contractor shall confirm its terms in writing to the Construction Manager within 7 days, and, if he does not dissent by notice to the Trade Contractor within 7 days from receipt of the Trade Contractor's confirmation, it shall take effect as from the expiry of the latter 7 day period.
- 3.10.2 If prior to or within 7 days from receipt of the Trade Contractor's confirmation the Construction Manager confirms the terms of the instruction in writing, it shall take effect from the date and in the terms of the Construction Manager's confirmation.
- 3.10.3 If neither the Trade Contractor nor the Construction Manager confirms such an instruction in the manner and time stated but the Trade Contractor nevertheless complies with it, the Construction Manager may at any time prior to the issue of the Final Statement confirm it with retrospective effect.

### **3.11 Provisions empowering instructions**

On receipt of an instruction the Trade Contractor may request the Construction Manager to notify him which provision of these Conditions empowers its issue and the Construction Manager shall forthwith comply with the request. If the Trade Contractor thereafter complies with that instruction with neither Party then having invoked any dispute resolution procedure under this Trade Contract to establish the Construction Manager's powers in that regard, the instruction shall be deemed to have been duly given under the specified provision.

### **3.12 Instructions requiring Variations**

- 3.12.1 The Construction Manager may issue instructions requiring a Variation.
- 3.12.2 Any instruction of the type referred to in clause 5.1.2 shall be subject to the Trade

Contractor's right of reasonable objection set out in clause 3.8.1.

- 3.12.3 In respect of the Trade Contractor's Designed Portion, any instruction requiring a Variation shall be an alteration to or modification of the Employer's Requirements.
- 3.12.4 The Construction Manager may sanction in writing any Variation made by the Trade Contractor otherwise than pursuant to an instruction.
- 3.12.5 No Variation required or sanctioned by the Construction Manager shall vitiate this Trade Contract.

### **3.13 Postponement of work**

The Construction Manager may issue instructions in regard to the postponement of any work to be executed under this Trade Contract.

### **3.14 Instructions on Provisional Sums**

The Construction Manager shall issue instructions in regard to the expenditure of Provisional Sums included in the Trade Contract Documents.

### **3.15 Inspection – tests**

The Construction Manager may issue instructions requiring the Trade Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work. The cost of that opening up or testing (including the cost of making good) shall be included in the calculation of the Final Trade Contract Sum unless provided for in the Trade Contract Documents or unless the inspection or test shows that the materials, goods or work are not in accordance with this Trade Contract.

### **3.16 Work not in accordance with the Trade Contract**

If any work, materials or goods are not in accordance with this Trade Contract the Construction Manager, in addition to his other powers, may:

- 3.16.1 issue instructions in regard to the removal from the site of all or any of such work, materials or goods;
- 3.16.2 after consultation with the Trade Contractor, allow all or any such work, materials or goods to remain, in which event he shall notify the Trade Contractor to that effect but that shall not be construed as a Variation and an appropriate deduction may be made in the calculation of the Final Trade Contract Sum;
- 3.16.3 after consultation with the Trade Contractor, issue such Variation instructions as are a reasonably necessary consequence of any instruction under clause 3.16.1 and/or notification under clause 3.16.2 (but to the extent that such instructions are reasonably necessary, they shall be disregarded in the calculation of the Final Trade Contract Sum and no extension of time shall be given); and/or
- 3.16.4 having due regard to the Code of Practice set out in Schedule 4, issue such instructions under clause 3.15 to open up for inspection or to test as are reasonable in all the circumstances to establish to his reasonable satisfaction the likelihood or extent, as appropriate to the circumstances, of any further similar non-compliance. To the extent that those instructions are reasonable, whatever the results of the opening up, they shall be disregarded in the calculation of the Final Trade Contract Sum but clauses 2.27 and 2.28.2.2 shall apply unless the inspection or test shows that the work, materials or goods are not in accordance with this Trade Contract.

### **3.17 Workmanship not in accordance with the Trade Contract**

Where there is any failure to comply with clause 2.1 in regard to the carrying out of work in a proper and workmanlike manner or in accordance with the Construction Phase Plan, the Construction Manager, in addition to his other powers, may, after consultation with the Trade Contractor, issue such instructions (whether requiring a Variation or otherwise) as are in consequence reasonably necessary. To the extent that such instructions are reasonably necessary, no amount shall be taken into account in the calculation of the Final Trade Contract Sum and no extension of time shall be given.

### **3.18 Executed work**

In respect of any materials, goods or workmanship, as comprised in executed work, which under clause 2.3 are to be to his reasonable satisfaction, the Construction Manager, if he is dissatisfied, shall give the reasons for such dissatisfaction to the Trade Contractor within a reasonable time from the execution of the unsatisfactory work.

### **3.19 Exclusion of persons from the Project**

The Construction Manager may (but shall not unreasonably or vexatiously) issue instructions requiring the exclusion from the site of the Project of any person employed thereon.

### **3.20 Antiquities**

3.20.1 All fossils, antiquities and other objects of interest or value which may be found on the site or in excavating it during the progress of the Works shall become the Employer's property. Upon discovery of any such object the Trade Contractor shall forthwith:

3.20.1.1 use his best endeavours not to disturb the object and cease work if and insofar as its continuance would endanger the object or prevent or impede its excavation or removal;

3.20.1.2 take all steps necessary to preserve the object in the exact position and condition in which it was found; and

3.20.1.3 inform the Construction Manager of its discovery and precise location.

3.20.2 The Construction Manager shall issue instructions as to action to be taken concerning any object reported under clause 3.20.1, which (without limiting his powers) may require the Trade Contractor to permit the examination, excavation or removal of the object by a third party.

## **Attendance and Special Requirements**

### **3.21 Attendance and Special Requirements**

3.21.1 The Construction Manager shall provide, free of charge to the Trade Contractor, the items of attendance stated in the Trade Contract Particulars.

3.21.2 Any other items of attendance or special requirements may be provided by the Construction Manager and, if so agreed and stated in the Trade Contract Particulars, the Trade Contractor shall pay to the Employer either the agreed price or, in the absence of such agreement, a fair and reasonable price for such other items or special requirements.

3.21.3 The Employer and the Trade Contractor shall not, and shall respectively ensure that the Employer's Persons and the Trade Contractor's Persons do not, wrongfully use or interfere with plant, ways, scaffolding, temporary works, appliances or other property belonging to or provided by others or infringe any Statutory Requirements, but nothing in this clause 3.21.3 shall affect the rights of the Employer or of the Trade Contractor to carry out their respective statutory duties and contractual obligations under this Trade Contract.

## **CDM Regulations**

### **3.22 CDM Regulations**

Each Party undertakes to the other that in relation to the Project and site he will duly comply with applicable CDM Regulations. In particular but without limitation:

3.22.1 the Employer shall ensure that the Principal Designer carries out his duties and, where the Trade Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out his duties under those regulations;

3.22.2 whether or not clause 2.2.3 applies, the Trade Contractor shall comply with regulations 8 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;<sup>[36]</sup>

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[36] Where the Employer is a domestic client, as defined in regulation 2, the Principal Contractor may also be responsible for carrying out certain of the client's duties under regulations 4, 6 and 8. (As to the CDM Regulations generally, see the Construction Management Guide.)

- 3.22.3 whether or not the Trade Contractor is the Principal Contractor, compliance by the Trade Contractor with his duties under the regulations, including any such directions as are referred to in regulation 15(3), shall be at no cost to the Employer and shall not entitle the Trade Contractor to an extension of time;
- 3.22.4 if the Employer appoints a replacement for the Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Trade Contractor with details of the new appointee.

## Other Provisions

### 3.23 Strikes – loss or expense

- 3.23.1 If the Project or the Works are affected by a strike, lock-out or local combination of workmen affecting any trade employed upon them or engaged in preparation, manufacture or transportation of any goods or materials required for them:
- 3.23.1.1 neither Party shall have any claim on the other for any loss and/or expense resulting from such action;
- 3.23.1.2 the Construction Manager shall take all reasonably practicable steps to keep the site open and available for the use of the Trade Contractor;
- 3.23.1.3 the Trade Contractor shall take all reasonably practicable steps to continue with the Works.
- 3.23.2 Nothing in this clause 3.23 shall affect any other right of either Party under this Trade Contract if such action occurs.

### 3.24 Project Certificates

The Construction Manager shall, as soon as reasonably practicable after its issue, send to the Trade Contractor a copy of:

- 3.24.1 the Project Completion Certificate and, where applicable, each Section Completion Certificate, and practical completion of the Project or the Section shall for the purposes of this Trade Contract be deemed to have taken place on the date stated in that certificate; and
- 3.24.2 the Final Certificate.

## Section 4 Payment

### Trade Contract Sum and Trade Contract Tender Sum

#### 4.1 Adjustment Basis

Where the Adjustment Basis (Article 2) applies:

- 4.1.1 where bills of quantities are included in the Trade Contract Documents, the quality and quantity of the work included in the Trade Contract Sum is that set out in those bills and, where there is a Trade Contractor's Designed Portion, that set out in the Employer's Requirements, the Trade Contractor's Proposals, the TCDP Analysis and other Trade Contractor's Design Documents or, where there are no such bills, that included in the Trade Contract Documents taken together, but, where quantities are contained in the Trade Contract Documents provided by the Employer, the quantity of work shall to that extent be that set out in those quantities;
- 4.1.2 the Trade Contract Sum shall not be adjusted or altered in any way other than in accordance with the express provisions of these Conditions and, subject to clause 2.13, any error in the computation of the Trade Contract Sum is accepted by the Parties; and
- 4.1.3 the Final Trade Contract Sum shall be calculated in accordance with clause 4.23.

#### 4.2 Remeasurement Basis

Where the Remeasurement Basis (Article 3) applies:

- 4.2.1 where bills of quantities are included in the Trade Contract Documents, the quality and quantity of the work included in the Trade Contract Tender Sum is that set out in those bills and, where there is a Trade Contractor's Designed Portion, that set out in the Employer's Requirements, the Trade Contractor's Proposals, the TCDP Analysis and other Trade Contractor's Design Documents or, where there are no such bills, that included in the Trade Contract Documents taken together, but, where quantities are contained in the Trade Contract Documents provided by the Employer, the quantity of work shall to that extent be that set out in those quantities; and
- 4.2.2 the Works shall be subject to complete remeasurement and the Final Trade Contract Sum shall be calculated in accordance with clause 4.24.

#### 4.3 Taking adjustments into account

Where these Conditions provide that an amount is to be taken into account in the calculation of the Final Trade Contract Sum, then, as soon as the amount is ascertained in whole or in part, the ascertained amount shall be taken into account in the next Interim Certificate.

### Taxes

#### 4.4 VAT

- 4.4.1 The Trade Contract Sum or Trade Contract Tender Sum and the Final Trade Contract Sum are exclusive of VAT and in relation to each payment to the Trade Contractor under this Trade Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.
- 4.4.2 If after the Base Date the supply of any goods or services to the Employer becomes exempt from VAT there shall be paid to the Trade Contractor an amount equal to the input tax on the supply to the Trade Contractor of goods and services that contribute to the Works which as a consequence of that exemption the Trade Contractor cannot recover.

#### **4.5 Construction Industry Scheme (CIS)**

If the Employer is or at any time up to the final payment becomes a 'contractor' for the purposes of the CIS<sup>[37]</sup>, his obligation to make any payment under this Trade Contract is subject to the provisions of the CIS.

### **Payments, Certificates and Notices – general provisions**

#### **4.6 Advance payment**

Where the Trade Contract Particulars state that clause 4.6 applies, and an advance payment is to be made, it shall be paid to the Trade Contractor on the date and reimbursed to the Employer on the terms stated in the Trade Contract Particulars, save that, if the Trade Contract Particulars state that an advance payment bond is required, payment shall only be made if the Trade Contractor has provided to the Employer a bond in the terms set out in Part 1 of Schedule 6 from a surety approved by the Employer.<sup>[38]</sup>

#### **4.7 Interim payments – due dates**

During the period up to the due date for the final payment fixed under clause 4.26.3 and whether periodic payments or stage payments are stated in the Trade Contract Particulars to apply, the monthly due dates for interim payments shall in each case be the date 7 days after the relevant Interim Valuation Date, commencing with the Interim Valuation Date next following the commencement of the Works on site.

#### **4.8 Interim Certificates**

The Construction Manager shall not later than 5 days after each due date issue an Interim Certificate, stating:

- 4.8.1 the sum he considers to be or have been due to the Trade Contractor at the due date, calculated in accordance with clauses 4.13 and 4.14; and
- 4.8.2 the basis on which that sum has been calculated.

#### **4.9 Trade Contractor's Payment Applications and Payment Notices**

4.9.1 In relation to any interim payment, the Trade Contractor may not later than its Interim Valuation Date or, in the case of the final payment, may at any time prior to issue of the Final Statement make an application to the Construction Manager (a 'Payment Application'), stating the sum that the Trade Contractor considers to be due to him at the relevant due date, as fixed in accordance with clause 4.7 or 4.26.3, and the basis on which that sum has been calculated.

4.9.2 If an Interim Certificate or the Final Statement is not issued in accordance with clause 4.8 or 4.26.1, then:

- 4.9.2.1 where the Trade Contractor has made a Payment Application in accordance with clause 4.9.1, that application is for the purposes of these Conditions a Payment Notice; or
- 4.9.2.2 where the Trade Contractor has not made a Payment Application, he may at any time after the last date for issue of the Interim Certificate or the Final Statement (as the case may be) give a Payment Notice to the Construction Manager, stating the sum that the Trade Contractor considers to have become due to him under clauses 4.13 and 4.14 or clause 4.26.2 at the relevant due date and the basis on which that sum has been calculated.

#### **4.10 Interim and final payments – final date and amount**

4.10.1 Subject to clause 4.10.4, the final date for payment of each interim payment and the final payment shall be 14 days from its due date.

4.10.2 Subject to any Pay Less Notice given by the paying Party under clause 4.10.5, the paying

[37] See the Trade Contract Particulars (Fourth Recital and clause 4.5).

[38] As to approval of sureties, see the Construction Management Guide.

Party shall pay the sum stated as due in the Interim Certificate or the Final Statement on or before the final date for payment.

4.10.3 If the Interim Certificate or the Final Statement is not issued in accordance with clause 4.8 or 4.26.1, but a Payment Notice has been or is then given, the Employer shall, subject to any Pay Less Notice under clause 4.10.5, pay the Trade Contractor the sum stated as due in the Payment Notice.

4.10.4 Where a Payment Notice is given under clause 4.9.2.2, the final date for payment of the sum specified in it shall for all purposes be regarded as postponed by the same number of days as the number of days after the last date for issue of the Interim Certificate or the Final Statement that the Payment Notice is given.

4.10.5 Where:

4.10.5.1 the Employer intends to pay less than the sum stated as due from him in an Interim Certificate, the Final Statement or a Payment Notice; or

4.10.5.2 if the Final Statement shows a balance due to the Employer, the Trade Contractor intends to pay less than the sum stated as due,

the Party by whom the payment is stated to be payable shall not later than 5 days before the final date for payment give the other Party notice of that intention in accordance with clause 4.11.1 (a 'Pay Less Notice'). Where a Pay Less Notice is given, the payment to be made on or before the final date for payment shall not be less than the amount stated in it as due.

4.10.6 If either Party fails to pay a sum, or any part of it, due to the other Party under these Conditions by its final date for payment, he shall, in addition to any unpaid amount that should properly have been paid, pay the other Party simple interest on that amount at the Interest Rate for the period from the final date for payment until payment is made.

4.10.7 Any such unpaid amount and any interest under clause 4.10.6 shall be recoverable as a debt. Acceptance of a payment of interest shall not in any circumstances be construed as a waiver either of the recipient's right to proper payment of the principal amount due or of the Trade Contractor's rights to suspend performance under clause 4.12 or to terminate his employment under section 8.

#### **4.11 Pay Less Notices and other general provisions**

4.11.1 A Pay Less Notice given by either Party shall specify the sum he considers to be due to the other Party at the date the notice is given and the basis on which that sum has been calculated. Such notice:

4.11.1.1 (where it is to be given by the Employer) may be given on his behalf by the Construction Manager or Employer's Representative or by any other person who the Employer notifies the Trade Contractor as being authorised to do so but, in the case of a payment for which an Interim Certificate or the Final Statement is not issued in due time, may not be given until the Trade Contractor has in respect of the payment given a Payment Notice;

4.11.1.2 (where it is to be given by the Trade Contractor) shall be sent to the Employer, with a copy to the Construction Manager.

4.11.2 In relation to the requirements for the issue of Interim Certificates and the Final Statement and the giving of Pay Less Notices, it is immaterial that the amount then considered to be due may be zero.

4.11.3 The Employer's fiduciary interest in the Retention referred to in clause 4.16 shall not prevent him exercising any right under this Trade Contract to withhold or deduct from a sum due to the Trade Contractor, subject to clause 4.10.5, even if that sum includes any Retention due for release under clause 4.18.

#### **4.12 Trade Contractor's right of suspension**

4.12.1 If the Employer fails to pay a sum payable to the Trade Contractor in accordance with clause 4.10 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure continues for 7 days after the Trade Contractor has given notice to the Employer, with a copy to the Construction Manager, of his intention to

suspend the performance of his obligations under this Trade Contract and the grounds for such suspension, the Trade Contractor, without affecting his other rights and remedies, may suspend performance of any or all of those obligations until payment is made in full.

- 4.12.2 Where the Trade Contractor exercises his right of suspension under clause 4.12.1, he shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by him as a result of exercising the right.
- 4.12.3 Applications in respect of any such costs and expenses shall be made to the Construction Manager and the Trade Contractor shall with his application or on request submit such details of them as are reasonably necessary for ascertaining the amount in question.

## Interim Payments – calculation of sums due

### 4.13 Gross Valuation

The Gross Valuation for each interim payment shall be the total of the amounts referred to in clauses 4.13.1 and 4.13.2 less the deductions referred to in clause 4.13.3, each calculated as at the Interim Valuation Date:

- 4.13.1 the total values of the following which are subject to Retention:
  - 4.13.1.1 the work properly executed by the Trade Contractor (including work so executed for which a value has been agreed pursuant to clause 5.2.1 or which has been valued under the Valuation Rules and work for which there is a Confirmed Acceptance of a Variation Quotation), but excluding any amounts referred to in clause 4.13.2.4. Where there are stage payments the value to be included in respect of work to which the stage payments relate is the cumulative amount in respect of the stages that have been achieved as referred to in the Trade Contract Particulars;
  - 4.13.1.2 Site Materials, provided they are adequately protected against weather and other casualties and are not on the Works prematurely; and
  - 4.13.1.3 Listed Items (if any) for which the conditions set out in clause 4.15 are satisfied;  
those values shall be adjusted, where appropriate, in accordance with any applicable Fluctuations Provision or any Acceleration Quotation for which there has been Confirmed Acceptance and, where there is an Activity Schedule, the value of the work in each activity to which it relates shall be a proportion of the price stated for the work in that activity equal to the proportion of the work in that activity that has then been properly executed;
- 4.13.2 the total of the following which are not subject to Retention:
  - 4.13.2.1 any amounts to be included in accordance with clause 4.3 as a result of payments made or costs incurred by the Trade Contractor under clause 2.20, 2.22, 3.15, 6.11.2 or 6.19;
  - 4.13.2.2 any amounts payable under clause 4.12.2;
  - 4.13.2.3 the amount of any loss and/or expense to which the Trade Contractor is entitled under clause 4.19.1 or 5.3.3 or by a Confirmed Acceptance;
  - 4.13.2.4 any amounts in respect of reinstatement work under clause 6.12.4;
  - 4.13.2.5 any amount payable to the Trade Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1; and
  - 4.13.2.6 any other amount which is required by this Trade Contract to be added in the calculation of the Final Trade Contract Sum;
- 4.13.3 the following deductions:
  - 4.13.3.1 any amounts deductible under clause 2.9, 2.36, 3.9, 3.16.2, 6.11.2 or 6.18.2; and
  - 4.13.3.2 any amount allowable by the Trade Contractor under any applicable Fluctuations Provision, other than by means of an adjustment made under clause 4.13.1.

#### **4.14 Sums due as interim payments**

The sum due as an interim payment shall in each case be the Gross Valuation less the following deductions:

- 4.14.1 any amount which may be deducted and retained by the Employer under clauses 4.16 to 4.18 ('the Retention');
- 4.14.2 the cumulative total of the amounts of any advance payment that have then become due for reimbursement to the Employer in accordance with the terms stated in the Trade Contract Particulars for clause 4.6;
- 4.14.3 the sums stated as due in previous Interim Certificates; and
- 4.14.4 any sum paid in respect of any Payment Notice given after the issue of the latest Interim Certificate.

### **Listed Items**

#### **4.15 Listed Items**

The conditions for inclusion of the value of a Listed Item in the Gross Valuation before its delivery to or adjacent to the Works as referred to in clause 4.13.1.3 are:

- 4.15.1 the Listed Item is in accordance with this Trade Contract;
- 4.15.2 the Trade Contractor has provided the Construction Manager with reasonable proof that:
  - 4.15.2.1 property in the Listed Item is vested in the Trade Contractor; and
  - 4.15.2.2 the Listed Item is and will remain insured against loss or damage for its full value under a policy of insurance protecting the interests of the Employer and the Trade Contractor in respect of the Specified Perils until delivered to, or adjacent to, the Works;
- 4.15.3 at the premises where the Listed Item is situated pending delivery, there is in relation to that item clear identification of:
  - 4.15.3.1 the Employer as the person to whose order it is held; and
  - 4.15.3.2 the Works as its destination,each item being either set apart or clearly and visibly marked, individually or as a set, by letters, figures or a pre-determined code; and
- 4.15.4 for uniquely identified Listed Items, the Trade Contractor, if it is stated in the Trade Contract Particulars as required, has provided a bond in favour of the Employer from a surety approved by the Employer in the terms set out in Part 2 of Schedule 6<sup>(B)</sup> ('the required bond') in the amount specified in the Trade Contract Particulars for this clause 4.15.4; or
- 4.15.5 for Listed Items that are not uniquely identified, the Trade Contractor has provided the required bond in the amount specified in the Trade Contract Particulars for this clause 4.15.5.

### **Retention**

#### **4.16 Rules on treatment of Retention**

The Retention which the Employer may deduct and retain as referred to in clause 4.14 shall be subject to the following rules:

- 4.16.1 the Employer's interest in the Retention is fiduciary as trustee for the Trade Contractor (but without obligation to invest);
- 4.16.2 prior to the date for issue of each Interim Certificate the Construction Manager shall prepare and with that certificate shall issue to the Employer and the Trade Contractor a statement specifying the amount of the Retention deducted (and, where relevant, the

amount to be released in accordance with clause 4.18) in arriving at the sum stated as due;

- 4.16.3 except where the Employer is a Local or Public Authority, the Employer, to the extent that he exercises his right under clause 4.18 and if the Trade Contractor so requests, shall at the date of payment place the Retention in a separate bank account (so designated as to identify the amount as the Retention held by the Employer on trust as provided in clause 4.16.1) and certify to the Construction Manager and the Trade Contractor that the amount has been so placed. The Employer shall be entitled to the full beneficial interest in any interest accruing on the separate bank account and under no duty to account for any such interest to the Trade Contractor or any sub-contractor.

#### 4.17 Retention Bond

Where the Trade Contract Particulars state that clause 4.17 applies, then:

- 4.17.1 subject to clauses 4.17.3 and 4.17.4, the provisions of clauses 4.14 and 4.18 permitting the deduction of the Retention shall not apply, save that the Construction Manager shall prior to the date for issue of each Interim Certificate prepare a statement specifying the deduction in respect of the Retention that would have been made had those clauses applied<sup>[39]</sup>;
- 4.17.2 on or before the date of commencement of the Works the Trade Contractor shall provide to the Employer and thereafter maintain a bond ('the Retention Bond') in favour of the Employer from a surety approved by the Employer ('the Surety')<sup>[38]</sup> in the terms set out in Part 3 of Schedule 6, incorporating in clauses 2 (*maximum aggregate sum*) and 6.3 (*expiry date*) of the bond, the sum and date stated in the Trade Contract Particulars;
- 4.17.3 if the Trade Contractor fails to provide or maintain the Retention Bond in accordance with clause 4.17.2, the provisions of clauses 4.14 and 4.18 permitting the deduction of the Retention shall apply in respect of Interim Certificates issued after the date of the failure save that if the Trade Contractor subsequently provides the required bond, any Retention deducted during the period of the failure shall become due for release to the Trade Contractor on the next due date thereafter;
- 4.17.4 if at any time the amount of the Retention that would have been deducted had the provisions of clauses 4.14 and 4.18 applied exceeds the aggregate sum stated in the Retention Bond, then either the Trade Contractor shall arrange with the Surety for the aggregate sum to equate to such amount or the amount not covered by the bond may be deducted as Retention; and
- 4.17.5 where the Trade Contractor has provided a performance bond or guarantee of the type referred to in clause 7.2, then, in respect of any default for which the Employer is entitled to make a demand under both that performance bond or guarantee and the Retention Bond, the Employer shall first have recourse to the Retention Bond.

#### 4.18 Retention – amounts and periods

The Retention which may be deducted under Interim Certificates and retained by the Employer shall be the following percentages of the total amount (or proportion of that amount) included in the Gross Valuation under clause 4.13.1 for work and (where applicable) Site Materials and Listed Items calculated in accordance with the following rules<sup>[40]</sup>:

- 4.18.1 the Retention Percentage may be deducted from so much of the total amount as relates to work which has not reached practical completion (excluding from the total amount any proportion of it attributable to a Relevant Part);
- 4.18.2 half the Retention Percentage may be deducted from so much of the total amount as relates to work which has reached practical completion for the period up to the Final Release Date or, if later, the date of issue of the Certificate of Making Good (or, where applicable, the later of those dates in respect of the relevant Section).

[39] This saving provision is included in view of the provisions of clauses 4.2 and 4.3 of the form of Retention Bond in Schedule 6.

[40] For the effect of clause 4.16.2, see the Construction Management Guide.

## Loss and Expense

### 4.19 Matters materially affecting regular progress

- 4.19.1 If in the execution of this Trade Contract the Trade Contractor incurs or is likely to incur any direct loss and/or expense because regular progress of the Works or any part of them has been or is likely to be materially affected by any Relevant Matter, he shall, subject to clause 4.19.2 and compliance with the provisions of clause 4.20 be entitled to reimbursement of that loss and/or expense.
- 4.19.2 No such entitlement arises where these Conditions provide that no amount shall be taken into account in the calculation of the Final Trade Contract Sum or otherwise exclude the operation of this clause 4.19 or to the extent that the Trade Contractor is reimbursed for such loss and/or expense under another provision of these Conditions.

### 4.20 Notification and ascertainment

- 4.20.1 The Trade Contractor shall notify the Construction Manager as soon as the likely effect of a Relevant Matter on regular progress becomes (or should have become) reasonably apparent to him.
- 4.20.2 That notification shall be accompanied by or, as soon as reasonably practicable, followed by the Trade Contractor's initial assessment of the loss and/or expense incurred and any further amounts likely to be incurred, together with such information as is reasonably necessary to enable the Construction Manager to ascertain the loss and/or expense incurred.
- 4.20.3 The Trade Contractor shall thereafter, in such form and manner as the Construction Manager may reasonably require, update that assessment and information at monthly intervals until all information reasonably necessary to allow ascertainment of the total amount of such loss and expense has been supplied.
- 4.20.4 Within 28 days of receipt of the initial assessment and information and 14 days of each subsequent update of them the Construction Manager shall notify the Trade Contractor of the ascertained amount of the loss and/or expense incurred, each ascertainment being made by reference to the information supplied by the Trade Contractor and in sufficient detail to enable the Trade Contractor to identify differences between it and the Trade Contractor's assessment.

### 4.21 Relevant Matters

The following are the Relevant Matters:

- 4.21.1 Variations (excluding those where the amount of loss and/or expense has been agreed by Confirmed Acceptance of a Variation Quotation or Acceleration Quotation but including any other matters or instructions which under these Conditions are to be treated as a Variation);
- 4.21.2 Construction Manager's instructions:
- 4.21.2.1 under clause 3.13 or 3.14 (excluding an instruction for expenditure of a Defined Provisional Sum);
  - 4.21.2.2 for the opening up for inspection or testing of any work, materials or goods under clause 3.15 (including making good), unless the cost is provided for in the Trade Contract Documents or unless the inspection or test shows that the work, materials or goods are not in accordance with this Trade Contract;
  - 4.21.2.3 in relation to any discrepancy or divergence referred to in clause 2.14;
- 4.21.3 the execution of work for which an Approximate Quantity is not a reasonably accurate forecast of the quantity of work required;
- 4.21.4 compliance with clause 3.20.1 or with Construction Manager's instructions under clause 3.20.2;
- 4.21.5 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person, except to the extent caused or contributed to by any default, whether by act or omission, of the Trade Contractor or any Trade Contractor's Person.

#### **4.22 Reservation of Trade Contractor's rights and remedies**

The provisions of clauses 4.19 to 4.21 shall not limit or affect any other rights or remedies of the Trade Contractor.

### **Final Adjustment and Final Payment**

#### **4.23 Final Trade Contract Sum – Adjustment Basis**

On the Adjustment Basis the Final Trade Contract Sum shall be the Trade Contract Sum adjusted by:

- 4.23.1 the amount of each Valuation and any amounts agreed by the Construction Manager and the Trade Contractor in respect of Variations and other work of the types referred to in clause 5.2.1, whether by Confirmed Acceptance of a Variation Quotation or otherwise;
- 4.23.2 any amount agreed by Confirmed Acceptance of an Acceleration Quotation;
- 4.23.3 where the Trade Contract Particulars state that a Fluctuations Provision applies, any amounts payable or allowable under that provision;
- 4.23.4 any other amounts referred to in clause 4.13.2 (excluding any loss and/or expense to the extent included under clause 4.23.1 or 4.23.2) and any amounts deductible or allowable under clause 4.13.3;
- 4.23.5 the deduction of all Provisional Sums and the value of any work described as provisional in the Trade Contract Documents and, where there are bills of quantities, the value of all work for which an Approximate Quantity is included in those bills or in the Employer's Requirements; and
- 4.23.6 any other amount which under this Trade Contract may or is required to be taken into account in the calculation of the Final Trade Contract Sum.

#### **4.24 Final Trade Contract Sum – Remeasurement Basis**

On the Remeasurement Basis the Final Trade Contract Sum shall be the amount of the Valuation under clause 5.2.2 adjusted by:

- 4.24.1 the amounts stated in the Confirmed Acceptance of any Acceleration Quotation or Variation Quotation, and of any Variations to that quotation, as valued under clause 5.3.3;
- 4.24.2 any amounts referred to in clause 4.13.2 (excluding any loss and/or expense to the extent included under clause 4.24.1) and any amounts deductible or allowable under clause 4.13.3; and
- 4.24.3 any other amount which under this Trade Contract may or is required to be taken into account in the calculation of the Final Trade Contract Sum.

#### **4.25 Calculation of Final Trade Contract Sum**

- 4.25.1 Not later than 3 months after the issue by the Construction Manager of the certificate of practical completion of the Works, the Trade Contractor shall provide the Construction Manager with all documents necessary for calculating the Final Trade Contract Sum.
- 4.25.2 Not later than 3 months after receipt by the Construction Manager of the documents referred to in clause 4.25.1 the Construction Manager shall prepare and send to the Trade Contractor a provisional calculation in accordance with clause 4.23 or 4.24, as applicable.

#### **4.26 Final Statement and final payment**

- 4.26.1 The Construction Manager shall issue the Final Statement to the Trade Contractor not later than 2 months after whichever of the following occurs last:
  - 4.26.1.1 the Final Release Date or (where there are Sections) the last such date;
  - 4.26.1.2 the date of issue of the Certificate of Making Good under clause 2.38 or (where there are Sections) the last such certificate to be issued; or
  - 4.26.1.3 the date on which the Construction Manager sends to the Trade Contractor a copy of the statement to be prepared under clause 4.25.2.

- 4.26.2 The Final Statement shall set out:
- 4.26.2.1 the Final Trade Contract Sum; and
  - 4.26.2.2 the sum of amounts already stated as due in Interim Certificates plus the amount of any advance payment made under clause 4.6 and (where relevant) any such sum as is referred to in clause 4.14.4,

and (without affecting the rights of the Trade Contractor in respect of any interim payment not paid in full by the Employer by its final date for payment) the final payment shall be the difference (if any) between the two sums, which shall be shown in the Final Statement as a balance due to the Trade Contractor from the Employer or vice versa. The Final Statement shall state the basis on which that amount has been calculated.

- 4.26.3 The due date for the final payment shall be the date of issue of the Final Statement or, if that statement is not issued within the 2 month period referred to in clause 4.26.1, the last day of that period.

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## Section 5 Valuation of Work and Variations

### General

#### 5.1 Definition of Variations

The term 'Variation' means:

- 5.1.1 the alteration or modification of the design, the quality or (except where the Remeasurement Basis applies) the quantity of the Works including:
  - 5.1.1.1 the addition, omission or substitution of any work;
  - 5.1.1.2 the alteration of the kind or standard of any of the materials or goods to be used in the Works;
  - 5.1.1.3 the removal from the site of any work executed or Site Materials other than work, materials or goods which are not in accordance with this Trade Contract;
- 5.1.2 the imposition by the Employer of any obligations or restrictions in regard to the following matters or any addition to or alteration or omission of any such obligations or restrictions that are so imposed or are imposed by the Trade Contract Documents in regard to:
  - 5.1.2.1 access to the site or use of any specific parts of the site;
  - 5.1.2.2 limitations of working space;
  - 5.1.2.3 limitations of working hours; or
  - 5.1.2.4 the execution or completion of the work in any specific order.<sup>[41]</sup>

#### 5.2 Valuation of Work

Unless otherwise agreed by the Construction Manager and the Trade Contractor (whether by Confirmed Acceptance of a Variation Quotation or otherwise), a valuation ('Valuation') shall be made by the Construction Manager of the items referred to in either clause 5.2.1 or 5.2.2 in accordance with clauses 5.6 to 5.12 ('the Valuation Rules'), namely:

- 5.2.1 where the Adjustment Basis applies:
  - 5.2.1.1 all Variations required by Construction Manager's instructions or subsequently sanctioned by him in writing but excluding any to which clause 5.3.3 applies;
  - 5.2.1.2 all work which under these Conditions is to be treated as a Variation;
  - 5.2.1.3 all work executed by the Trade Contractor in accordance with Construction Manager's instructions as to the expenditure of Provisional Sums included in the Trade Contract Documents or work included in them that is described as provisional; and
  - 5.2.1.4 all work executed by the Trade Contractor for which an Approximate Quantity has been included in any bills of quantities which are included in the Trade Contract Documents; or
- 5.2.2 where the Remeasurement Basis applies, all work executed by the Trade Contractor in accordance with the Trade Contract Documents and the Construction Manager's instructions, including any instruction requiring a Variation or in regard to the expenditure of a Provisional Sum included in the Trade Contract Documents or work included in them that is described as provisional.

Such Valuation insofar as it relates to the Trade Contractor's Designed Portion shall be in accordance

[41] See clauses 3.8.1 and (where applicable) 3.8.3 for the Trade Contractor's right of reasonable objection to Variations.

with clause 5.10 and references in clauses 5.6 to 5.8 to the Trade Contract Documents shall exclude the TCDP Analysis.

### **5.3 Variation Quotation**

- 5.3.1 If the Construction Manager in his instruction for a Variation states that the Trade Contractor is to provide a quotation in accordance with the provisions of Part 2 of Schedule 2 (a 'Variation Quotation'), the Trade Contractor shall subject to receipt of sufficient information provide a quotation in accordance with those provisions, unless within 7 days of his receipt of that instruction (or such longer period as is either stated in the instruction or agreed between them) he notifies the Construction Manager that he disagrees with the application of the procedure to that instruction.
- 5.3.2 If the Trade Contractor notifies his disagreement within that period, he shall not be obliged to provide that quotation and the Variation shall not be carried out unless and until the Construction Manager gives a further instruction that the Variation is to be carried out and is to be valued by a Valuation.
- 5.3.3 Where a Variation Quotation has been made for work and a Confirmed Acceptance issued, then, if the Construction Manager subsequently issues an instruction requiring a Variation of that work, the Valuation of that Variation shall be made on a fair and reasonable basis having regard to the content of that quotation and that Valuation shall include the direct loss and/or expense, if any, incurred by the Trade Contractor because the regular progress of the Works or of any part of them is materially affected by compliance with the instruction. The Valuation Rules shall apply only to the extent that they are consistent with those requirements.

### **5.4 Trade Contractor's right to be present at measurement**

Where it is necessary to measure work for the purpose of a Valuation the Construction Manager shall give the Trade Contractor an opportunity to be present at the time of such measurement and to take such notes and measurements as the Trade Contractor may require.

### **5.5 Giving effect to Valuations, agreements etc.**

The Final Trade Contract Sum shall be adjusted for each Confirmed Acceptance or other agreement by the Construction Manager and the Trade Contractor under clause 5.2 and for each Valuation.

## **The Valuation Rules**

### **5.6 Measurable Work – Adjustment Basis**

- 5.6.1 To the extent that the Valuation relates to the execution of additional or substituted work which can properly be valued by measurement or to the execution of work for which an Approximate Quantity is included in any bills of quantities in the Trade Contract Documents and subject to clause 5.10 in the case of TCDP Works, such work shall be measured and shall be valued in accordance with the rules in this clause 5.6.1 and those in clauses 5.8, 5.11 and 5.12:
- 5.6.1.1 where the additional or substituted work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in the Trade Contract Documents, the rates and prices for the work set out in the Priced Document shall determine the valuation;
- 5.6.1.2 where the additional or substituted work is of similar character to work set out in the Trade Contract Documents but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Priced Document shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity;
- 5.6.1.3 where the additional or substituted work is not of similar character to work set out in the Trade Contract Documents, the work shall be valued at fair rates and prices;
- 5.6.1.4 where the Approximate Quantity is a reasonably accurate forecast of the quantity of work required the rate or price for the Approximate Quantity shall determine the valuation; and

5.6.1.5 where any Approximate Quantity is not a reasonably accurate forecast of the quantity of work required, the rate or price for that Approximate Quantity shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in quantity.

Provided that clauses 5.6.1.4 and 5.6.1.5 shall apply only to the extent that the work has not been altered or modified other than in quantity.

5.6.2 To the extent that a Valuation relates to the omission of work set out in the Trade Contract Documents and subject to clause 5.10 in the case of TCDP Works, the rates and prices for the work set out in the Priced Document shall determine the valuation of the work omitted.

## **5.7 Measurable Work – Remeasurement Basis**

To the extent that the Valuation relates to the execution of work which can properly be valued by measurement and subject to clause 5.10 in the case of TCDP Works, such work shall be measured and shall be valued in accordance with the rules in this clause 5.7 and those in clauses 5.8, 5.11 and 5.12:

5.7.1 where the work is of similar character to, is executed under similar conditions as, and does not significantly change the quantity of, work set out in the Trade Contract Documents, the rates and prices for the work set out in the Priced Document shall determine the valuation;

5.7.2 where the work is of similar character to work set out in the Trade Contract Documents but is not executed under similar conditions thereto and/or significantly changes its quantity, the rates and prices for the work set out in the Priced Document shall be the basis for determining the valuation and the Valuation shall include a fair allowance for such difference in conditions and/or quantity; and

5.7.3 where the work is not of similar character to work set out in the Trade Contract Documents, the work shall be valued at fair rates and prices.

## **5.8 General Rules**

In any valuation of work under clauses 5.6 and 5.7:

5.8.1 measurement shall be in accordance with the same principles as those governing the preparation of the Trade Contract Documents;

5.8.2 allowance shall be made for any percentage or lump sum adjustments in the Trade Contract Documents;

5.8.3 where the Adjustment Basis applies, an allowance, where appropriate, shall be made for any addition to or reduction of preliminary items of the type referred to in the method of measurement identified in the Trade Contract Particulars for clause 2.12.1, provided that no such allowance shall be made in respect of compliance with a Construction Manager's instruction for the expenditure of a Defined Provisional Sum; and

5.8.4 where the Remeasurement Basis applies, any amounts priced in the preliminaries section of the Trade Contract Documents shall be adjusted, where appropriate, to take into account any Variations or any Construction Manager's instructions for the expenditure of a Provisional Sum (other than a Defined Provisional Sum) included in the Trade Contract Documents.

## **5.9 Daywork**

Where the execution of work cannot be valued in accordance with clause 5.6, 5.7 or 5.10, as applicable, the Valuation shall be based on the Schedule of Daywork Rates, if any, included in or as a Priced Document but if not included it shall comprise:

5.9.1 the prime cost of such work (calculated in accordance with the 'Definition of Prime Cost of Daywork carried out under a Building Contract' issued by The Royal Institution of Chartered Surveyors (RICS) and Construction Industry Publications Ltd as current at the Base Date or the 'Schedule of Dayworks carried out incidental to Contract Work' issued by the Federation of Civil Engineering Contractors as current at the Base Date) together with Percentage Additions to each section of the prime cost at the rates stated in the document identified in the Trade Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document; or

- 5.9.2 where the work is within the province of any specialist trade and the RICS and the appropriate body representing the employers in that trade have agreed and issued a definition of prime cost of daywork<sup>[42]</sup>, the prime cost of such work calculated in accordance with that definition current at the Base Date, together with Percentage Additions on the prime cost at the rates stated in the document identified in the Trade Contract Particulars or, if they apply in respect of labour, at the All-Inclusive Rates stated in such document.

Provided that in any case vouchers specifying the time daily spent upon the work, the workmen's names, the plant and the materials employed shall be delivered for verification to the Construction Manager not later than 7 Business Days after the work has been executed.

#### **5.10 Trade Contractor's Designed Portion – Valuation**

Valuations relating to the Trade Contractor's Designed Portion shall be made under this clause 5.10.

- 5.10.1 Allowance shall be made in such Valuations for the addition or omission of the relevant design work.
- 5.10.2 The valuation of additional or substituted work (Adjustment Basis) or executed work (Remeasurement Basis) shall be consistent with the values of work of a similar character set out in the TCDP Analysis, making due allowance for any change in the conditions under which work is carried out and/or any significant change in the quantity of the work so set out. Where there is no work of a similar character set out in the TCDP Analysis a fair valuation shall be made.
- 5.10.3 The valuation of the omission of work set out in the TCDP Analysis shall be in accordance with the values therein for such work.
- 5.10.4 Clauses 5.8.2, 5.8.3, 5.8.4, 5.9 and 5.11 shall apply so far as is relevant.

#### **5.11 Change of conditions for other work**

If as a result of:

- 5.11.1 compliance with any instruction requiring a Variation;
- 5.11.2 where the Trade Contract Documents include bills of quantities, compliance with any instruction as to the expenditure of a Provisional Sum other than instructions in relation to Defined Provisional Sums;
- 5.11.3 where the Trade Contract Documents include bills of quantities, compliance with any instruction as to the expenditure of a Defined Provisional Sum, to the extent that the instruction for that work differs from the description given for such work in any bills of quantities; or
- 5.11.4 where the Adjustment Basis applies, the execution of work for which an Approximate Quantity is included in the Trade Contract Documents, to the extent that the quantity is more or less than the quantity ascribed to that work in the Trade Contract Documents,

there is a substantial change in the conditions under which any other work is executed (including TCDP Works), that other work shall be treated as a Variation and shall be valued in accordance with the provisions of this section 5.

#### **5.12 Additional provisions**

- 5.12.1 To the extent that a Valuation does not relate to the execution of work or the omission of work or to the extent that the valuation of any work or liabilities directly associated with a Variation cannot reasonably be effected in the Valuation by the application of clauses 5.6 to 5.11, a fair valuation shall be made.
- 5.12.2 No allowance shall be made under the Valuation Rules for any effect upon the regular progress of the Works or of any part of them or for any other direct loss and/or expense for which the Trade Contractor would be reimbursed by payment under any other provision in these Conditions.

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[42] There are currently three definitions to which clause 5.9.2 refers, namely those agreed between the RICS and the Electrical Contractors Association, the RICS and the Electrical Contractors Association of Scotland and the RICS and the Building and Engineering Services Association.

## Section 6 Injury, Damage and Insurance

### Personal Injury and Property Damage

#### 6.1 Trade Contractor's liability – personal injury or death

The Trade Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or the death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer, any Employer's Person or any Statutory Undertaker.

#### 6.2 Trade Contractor's liability – loss, injury or damage to property

Subject to clause 6.3, the Trade Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Trade Contractor or any Trade Contractor's Person.

#### 6.3 Loss or damage to Existing Structures or their contents

6.3.1 Where paragraph 2 of Schedule 3 applies, the Trade Contractor's liability and indemnity under clause 6.2 excludes any loss or damage to Existing Structures or to any of their contents required to be insured under that schedule that is caused by any of the risks or perils required or agreed to be insured against under that schedule.

6.3.2 The exclusion in clause 6.3.1 shall apply notwithstanding that the loss or damage is or may be due in whole or in part to the negligence, breach of statutory duty, omission or default of the Trade Contractor or any Trade Contractor's Person.

6.3.3 Where a Paragraph 2 Replacement Schedule applies in lieu of paragraph 2 of Schedule 3, the Trade Contractor's liability and indemnity under clause 6.2 shall, in respect of loss, injury or damage to the Existing Structures and their contents due to the causes specified in that clause, be subject only to such limitations or exclusions as are specified in that replacement schedule.

6.3.4 The reference in clause 6.2 to 'property real or personal' does not include the Project, work executed or Site Materials up to and including the date of issue of the certificate of practical completion of the Works or, if earlier, the date of termination of the Trade Contractor's employment, except that:

6.3.4.1 after the date of issue of a certificate of practical completion in respect of works in a Section, such works shall no longer be regarded as 'the Works' or 'work executed' for these purposes; and

6.3.4.2 if clause 2.33 has been operated, the Relevant Part shall no longer be so regarded after the Relevant Date.

### Insurance against Personal Injury and Property Damage

#### 6.4 Trade Contractor's insurance of his liability

6.4.1 Without limiting or affecting his indemnities to the Employer under clauses 6.1 and 6.2, the Trade Contractor shall effect and maintain insurance in respect of claims arising out of the liabilities referred to in those clauses which:

6.4.1.1 in respect of claims for personal injury to or the death of any employee of the Trade Contractor arising out of and in the course of such person's employment, shall comply with all relevant legislation; and

6.4.1.2 for all other claims to which clause 6.4.1 applies<sup>[43]</sup>, shall indemnify the Employer in like manner to the Trade Contractor (but only to the extent that the Trade Contractor may be liable to indemnify the Employer under the terms of this Trade Contract) and shall for any one occurrence or series of occurrences arising out of one event be in a sum not less than that stated in the Trade Contract Particulars for clause 6.4.1.<sup>[44]</sup>

6.4.2 As to evidence that such insurances have been effected and are being maintained and the consequences of failure to comply, clause 6.11 shall apply.

## 6.5 Excepted Risks

Notwithstanding clauses 6.1, 6.2 and 6.4.1, the Trade Contractor shall neither be liable to indemnify the Employer nor obliged to insure against any personal injury to or the death of any person or any damage, loss or injury to the Project, Site Materials, work executed, the site or any other property, caused by the effect of an Excepted Risk.

## Insurance of the Project, the Works and Existing Structures

### 6.6 Obligation to insure

The Employer shall insure the Project and any Existing Structures subject to and in accordance with Schedule 3.

### 6.7 Related definitions

In these Conditions the following phrases shall have the following meanings:

**All Risks Insurance<sup>[45]</sup>**: insurance which provides cover against any physical loss or damage to work executed, Site Materials and Site Facilities and against the reasonable cost of the removal and disposal of debris and of any shoring or propping of the Project which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:

- (a) property which is defective due to:
  - (i) wear and tear,
  - (ii) obsolescence, or
  - (iii) deterioration, rust or mildew;
- (b) damage to any item of Site Facilities caused by its own electrical or mechanical breakdown or derangement;
- (c) damage to tyres by the application of brakes or by cuts, bursts or punctures;
- (d) any work executed or any Site Materials and Site Facilities lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective<sup>[46]</sup>;

[43] It should be noted that the cover granted under Public Liability policies taken out pursuant to clause 6.4.1 may not be co-extensive with the indemnity given to the Employer in clauses 6.1 and 6.2: for example, each claim may be subject to an excess and cover may not be available in respect of loss or damage due to gradual pollution.

[44] The Trade Contractor may, if he wishes, insure for a sum greater than that stated in the Trade Contract Particulars.

[45] The risks and costs that All Risks Insurance is required to cover are defined by exclusions. Policies issued by insurers are not standardised; the way in which insurance for these risks is expressed varies and **in some cases it may not be possible for insurance to be taken out against certain of the risks required to be covered**. In the case of Terrorism Cover, where the extension of cover will involve an additional premium and may in certain situations be difficult to effect, the requirement is now expressly limited to Pool Re Cover or such other cover as is agreed and set out in the Trade Contract Particulars. That extension and any other relevant details of Project insurance also require discussion and agreement between the Parties and their insurance advisers at an early stage, **prior to entering into the contract**. See the Construction Management Guide.

[46] In an All Risks Insurance policy for the Works, cover should not be reduced by any exclusion that goes beyond the terms of paragraph (b) in this definition. For example, an exclusion in terms that 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of Schedule 3 or that definition. In relation to design defects, wider All Risks cover than that specified may be available, though it is not standard.

- (e) loss or damage caused by or arising from:
  - (i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government *de jure* or *de facto* or public, municipal or local authority,
  - (ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or
  - (iii) an Excepted Risk.

**Excepted Risks:** the risks comprise:

- (a) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof (other than such risk insofar, but only insofar, as it is included in the Terrorism Cover from time to time required to be taken out and maintained under this Trade Contract);
- (b) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and
- (c) any act of terrorism that is not within the Terrorism Cover from time to time required to be taken out and maintained under this Trade Contract.

**Joint Names Policy:** a policy of insurance which amongst others includes the Employer and the Trade Contractor as composite insured under which the insurers have no right of recourse against any person named as an insured, or, pursuant to clause 6.8, recognised as an insured thereunder.

**Pool Re Cover:** such insurance against loss or damage to work executed, Site Materials and Site Facilities caused by or resulting from terrorism as is from time to time generally available from insurers who are members of the Pool Reinsurance Company Limited scheme or of any similar successor scheme.<sup>[47]</sup>

**Site Facilities:** facilities provided by the Construction Manager further to the obligation contained in Schedule 6 to the Construction Management Appointment.

**Specified Perils:** fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipe, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, but excluding Excepted Risks.

**Terrorism Cover:** Pool Re Cover or other insurance against loss or damage to work executed, Site Materials and Site Facilities (and/or, for the purposes of clause 6.10.1, to an Existing Structure and/or its contents) caused by or resulting from terrorism.<sup>[47]</sup>

## 6.8 Sub-contractors – Specified Perils cover under Project Insurance Policies

- 6.8.1 The Employer shall ensure that the Project Insurance Policy either:
  - 6.8.1.1 provides for recognition of each sub-contractor of the Trade Contractor as an insured under the policy; or
  - 6.8.1.2 includes a waiver by the insurers of any right of subrogation which they may have against any such sub-contractorin respect of loss or damage by the Specified Perils to the Project, Site Materials and Site Facilities where and when paragraph 1 of Schedule 3 applies.
- 6.8.2 Clause 6.8.1 applies also in respect of any Project Insurance Policy taken out in default under clause 6.11.2.

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[47] As respects Terrorism Cover and the requirements of Schedule 3, see footnote [45] and the Construction Management Guide.

## **6.9 Terrorism Cover – policy extensions and premiums**

To the extent that the Project Insurance Policy excludes (or would otherwise exclude) loss or damage caused by terrorism, the Employer shall unless otherwise agreed effect and maintain, either as an extension to the Project Insurance Policy or as a separate Joint Names Policy, in the same amount and for the same period as the Project Insurance Policy, such Terrorism Cover as is specified in or by the Trade Contract Particulars, subject to clause 6.10.

## **6.10 Terrorism Cover – non-availability – Employer's options**

- 6.10.1 If the insurers named in any Joint Names Policy notify either Party that, with effect from a specified date (the 'cessation date'), Terrorism Cover will cease and will no longer be available or will only continue to be available with a reduction in the scope or level of such cover, the recipient shall immediately inform the other Party.
- 6.10.2 The Employer, after receipt of such notification but before the cessation date, shall give notice to the Trade Contractor in writing either:
- 6.10.2.1 that, notwithstanding the cessation or reduction in scope or level of Terrorism Cover, the Employer requires that the Works continue to be carried out; or
- 6.10.2.2 that on the date stated in the Employer's notice (which shall be a date after the date of the insurers' notification but no later than the cessation date) the Trade Contractor's employment under this Trade Contract shall terminate.
- 6.10.3 If the Employer gives notice of termination under clause 6.10.2.2, then upon and from such termination the provisions of clause 8.12 (excluding clause 8.12.3.5) shall apply.
- 6.10.4 If the Employer does not give notice of termination under clause 6.10.2.2, but Works executed and/or Site Materials thereafter suffer physical loss or damage caused by terrorism, clauses 6.12 and 6.13 shall as appropriate apply.

## **6.11 Evidence of insurance**

- 6.11.1 Where a Party is required by this Trade Contract to effect and maintain an insurance policy or cover under any of clauses 6.4, 6.6 or 6.9, or is responsible for ensuring that it is effected and maintained, that Party shall at the request of the other Party supply such documentary evidence as the other Party may reasonably require that the policy or cover has been effected and remains in force.
- 6.11.2 If a Party required to provide such documentary evidence fails to provide it within 7 days of a request being made, the other Party may assume that there has been a failure to insure, and may insure against any risk, liability or expense to which he may be exposed as a consequence, but shall not be obliged to do so. If the other Party insures, the defaulting Party shall be liable for the costs that the other Party incurs in taking out and maintaining that insurance. Any costs payable to the Trade Contractor shall be taken into account in the calculation of the Final Trade Contract Sum; any costs payable to the Employer may be deducted from any sums due or to become due to the Trade Contractor or shall be recoverable from the Trade Contractor as a debt.

## **6.12 Loss or damage – insurance claims and reinstatement**

- 6.12.1 If during the carrying out of the Works any loss or damage affecting any work executed or to be executed, Site Facilities or Site Materials is occasioned by any of the risks covered by the Project Insurance Policy or an Excepted Risk or there is any loss of or damage of any kind to any of the Existing Structures or their contents, the Trade Contractor shall forthwith upon it occurring or becoming apparent give notice to the Construction Manager of its nature, location and extent.
- 6.12.2 Subject to clause 6.12.5, the occurrence of such loss or damage to executed work or Site Materials shall be disregarded in calculating any amounts payable to the Trade Contractor under this Trade Contract.
- 6.12.3 The Trade Contractor, for himself and for all his sub-contractors recognised as an insured under the Project Insurance Policy, shall authorise the insurers to pay to the Employer all monies from such insurance, and from any policies covering Existing Structures or their contents that are effected by the Employer.
- 6.12.4 Where loss or damage affecting executed work or Site Materials is occasioned by any risk

covered by the Project Insurance Policy, and subject to clause 6.13 where relevant, the Trade Contractor shall after any inspection required by the insurers under the Project Insurance Policy and with due diligence restore the damaged work, replace or repair any lost or damaged Site Materials, remove and dispose of any debris (collectively 'reinstatement work') and proceed with the carrying out and completion of the Project. Reinstatement work under this clause 6.12.4 shall be treated as a Variation.

6.12.5 Where loss or damage is caused by an Excepted Risk, reinstatement work shall be treated as a Variation.

### **6.13 Loss or damage to Existing Structures – right of termination**

If there is material loss of or damage to any of the Existing Structures, the Employer shall be under no obligation to reinstate those structures, but either Party may, if it is just and equitable, terminate the Trade Contractor's employment under this Trade Contract by notice given to the other in accordance with clause 1.7.4 within 28 days of the occurrence of that loss or damage. If such notice is given, then:

6.13.1 unless within 7 days of receiving the notice (or such longer period as may be agreed) the Party to whom it is given invokes a dispute resolution procedure of this Trade Contract to determine whether the termination is just and equitable, it shall be deemed to be so;

6.13.2 upon the giving of that notice or, where a dispute resolution procedure is invoked within that period, upon any final upholding of the notice, the provisions of clause 8.12 (except clause 8.12.3.5) shall apply.

## **TCDP Professional Indemnity Insurance**

### **6.14 Obligation to insure**

Where there is a Trade Contractor's Designed Portion, the Trade Contractor shall:

6.14.1 forthwith after this Trade Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with a limit of indemnity of the type and in an amount not less than that stated in the Trade Contract Particulars<sup>[48]</sup>;

6.14.2 thereafter, provided it is available at commercially reasonable rates, maintain such insurance until the expiry of the period stated in the Trade Contract Particulars from the date of practical completion of the Project; and

6.14.3 as and when reasonably requested to do so by the Construction Manager, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

### **6.15 Increased cost and non-availability**

If the insurance referred to in clause 6.14 ceases to be available at commercially reasonable rates, the Trade Contractor shall immediately give notice to the Employer so that the Trade Contractor and the Employer can discuss the means of best protecting their respective positions in the absence of such insurance.

## **Joint Fire Code – compliance**

### **6.16 Application of clauses**

Clauses 6.17 to 6.19 apply where the Trade Contract Particulars state that the Joint Fire Code applies.

### **6.17 Compliance with Joint Fire Code**

The Parties shall comply with the Joint Fire Code; the Employer shall ensure such compliance by all Employer's Persons and the Trade Contractor shall ensure such compliance by all Trade Contractor's Persons.

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[48] See the Construction Management Guide.

## **6.18 Breach of Joint Fire Code – Remedial Measures**

- 6.18.1 If a breach of the Joint Fire Code occurs and the insurers under the Project Insurance Policy specify by notice to the Employer or the Trade Contractor the remedial measures they require (the 'Remedial Measures'), the Party receiving the notice shall send copies of it to the other and to the Construction Manager; and then:
- 6.18.1.1 subject to clause 6.18.1.2, where the Remedial Measures relate to the obligation of the Trade Contractor to carry out and complete the Works, the Trade Contractor shall ensure that the Remedial Measures are carried out by such date as the insurers specify; and
  - 6.18.1.2 to the extent that the Remedial Measures require a Variation to the Works as described in the Trade Contract Documents or in a Construction Manager's instruction, the Construction Manager shall issue such instructions as are necessary to enable compliance. If, in an emergency, compliance with the Remedial Measures in whole or in part requires the Trade Contractor to supply materials or execute work before receiving instructions under this clause 6.18.1.2, the Trade Contractor shall supply the materials and execute the work reasonably necessary to secure immediate compliance. The Trade Contractor shall forthwith notify the Construction Manager of the emergency and of the steps he is taking. Save to the extent they relate to the Trade Contractor's Designed Portion, the work and materials reasonably necessary shall be treated as if executed and supplied under a Variation instruction.
- 6.18.2 If the Trade Contractor, within 7 days of receipt of a notice specifying Remedial Measures not requiring a Construction Manager's instruction under clause 6.18.1.2, does not begin to carry out or thereafter fails without reasonable cause regularly and diligently to proceed with the Remedial Measures, then the Employer may employ and pay other persons to carry out those Remedial Measures. The Trade Contractor shall be liable for all additional costs incurred by the Employer in connection with such employment and an appropriate deduction shall be made in the calculation of the Final Trade Contract Sum.

## **6.19 Joint Fire Code – amendments/revisions**

If after the Base Date the Joint Fire Code is amended or revised and the Joint Fire Code as amended or revised is, under a Joint Names Policy, applicable to the Project, any cost of compliance by the Trade Contractor with any amendment or revision to the Joint Fire Code shall be borne as stated in the Trade Contract Particulars. If it is to be borne by the Employer, it shall be included in the calculation of the Final Trade Contract Sum.

## Section 7 Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

### Assignment

#### 7.1 Assignment

Neither the Employer nor the Trade Contractor shall without the consent of the other assign this Trade Contract or any rights thereunder.

### Performance Bonds and Guarantees

#### 7.2 Performance Bonds and Guarantees

The Trade Contractor shall on the execution of this Trade Contract provide to the Employer whichever of the following the Trade Contract Particulars state as being required:

7.2.1 a performance bond or guarantee of the Trade Contractor's due performance of the Trade Contract from a bank or other surety approved by the Employer in an amount equal to the percentage of the Trade Contract Sum or Tender Sum and for the period stated in the Trade Contract Particulars;

7.2.2 a guarantee by the Trade Contractor's parent company identified in the Trade Contract Particulars;

any such bond or guarantee, unless otherwise agreed by the Employer, being substantially in the form of the document identified by the Trade Contract Particulars.

### Clauses 7.6 to 7.9 – Preliminary

#### 7.3 Trade Contract Rights Particulars

The requirements for the grant of P&T Rights and Funder Rights by the Trade Contractor ('Trade Contract Rights Particulars') are set out in the document(s) identified in the Trade Contract Particulars against the reference to clause 7.3.<sup>[49]</sup> As respects those requirements:

7.3.1 such rights are conferred only on persons sufficiently identified (by name, class or description) in the Trade Contract Rights Particulars;

7.3.2 if in relation to an identified beneficiary the Trade Contract Rights Particulars fail to specify the method by which such rights are to be conferred, the Trade Contractor may elect to do so either as third party rights or by collateral warranty;

7.3.3 unless otherwise stated in the Rights Particulars, the term 'the Consultants' shall in all third party rights and/or collateral warranties to be granted mean the Construction Manager (including any replacements), together with the Consultant Team and any other consultants providing design services to the Employer in connection with the Project.

#### 7.4 Notices

Each notice to the Trade Contractor referred to in clauses 7.6 to 7.9 shall be given in accordance with

[49] The Trade Contract Rights Particulars should identify the beneficiaries (by name, class or description), specify whether rights are to be granted as Third Party Rights or by way of Collateral Warranties, state in those cases where the default provision is not to apply which alternative provision is to apply in its place and give any other details required to complete the terms of the rights or warranties that are to be given. A Model Form for the Trade Contract Rights Particulars is included in the Construction Management Guide and is also available on the JCT website [www.jctltd.co.uk](http://www.jctltd.co.uk).

In the case of third party rights the relevant limits and details required for the purposes of the respective parts of Schedule 5 of this Trade Contract are the same as those required for the purposes of the Warranty Particulars for the corresponding Collateral Warranty (TCWa/P&T or TCWa/F). See also the Construction Management Guide.

clause 1.7.4.

## **7.5 Execution of Collateral Warranties**

Where this Trade Contract is executed as a deed, any collateral warranty to be entered into by the Trade Contractor pursuant to clause 7.8 or 7.9 shall be executed as a deed. Where this Trade Contract is executed under hand, any such warranty may be executed under hand.<sup>[50]</sup>

## **Third Party Rights from Trade Contractor**

### **7.6 Rights for Purchasers and Tenants**

7.6.1 Where the Trade Contract Rights Particulars state that the Trade Contractor shall confer P&T Rights on a Purchaser or Tenant as third party rights, those rights shall vest in that Purchaser or Tenant on the date of receipt by the Trade Contractor of the Employer's notice to that effect, stating the name of the Purchaser or Tenant and the nature of his interest in the Works.

7.6.2 Where P&T Rights have vested in any Purchaser or Tenant, the Employer and the Trade Contractor shall not be entitled without the consent of that Purchaser or Tenant to amend or vary the express provisions of this clause 7.6 or of Part 1 of Schedule 5 (Third Party Rights for Purchasers and Tenants) but, subject thereto, the rights of the Employer and/or the Trade Contractor:

7.6.2.1 to terminate the Trade Contractor's employment under this Trade Contract (whether under section 8 or otherwise), or to agree to rescind this Trade Contract;

7.6.2.2 to agree to amend or otherwise vary or to waive any terms of this Trade Contract;

7.6.2.3 to agree to settle any dispute or other matter arising out of or in connection with this Trade Contract, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any Purchaser or Tenant.

### **7.7 Rights for a Funder**

7.7.1 Where the Trade Contract Rights Particulars state that the Trade Contractor shall confer Funder Rights on a Funder as third party rights, those rights shall vest in the Funder on the date of receipt by the Trade Contractor of the Employer's notice to that effect.

7.7.2 Where Funder Rights have been vested in the Funder pursuant to clause 7.7.1:

7.7.2.1 no amendment or variation shall be made to the express terms of this clause 7.7, to Part 2 of Schedule 5 (Third Party Rights for a Funder) or to the relevant Trade Contract Rights Particulars without the prior written consent of the Funder; and

7.7.2.2 neither the Employer nor the Trade Contractor shall agree to rescind this Trade Contract, and the rights of the Trade Contractor to terminate his employment under this Trade Contract or to treat it as repudiated shall in all respects be subject to the provisions of paragraph 6 of Part 2 of Schedule 5

but, subject thereto, unless and until the Funder gives notice under paragraph 5 or paragraph 6.4 of Part 2 of Schedule 5, the Trade Contractor shall remain free without the consent of the Funder to agree with the Employer to amend or otherwise vary or to waive any term of this Trade Contract and to settle any dispute or other matter arising out of or in connection with this Trade Contract, in each case in such terms as they think fit, without any requirement that the Trade Contractor obtain the consent of the Funder.

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[50] See the footnote to clause 7.3 above.

## **Collateral Warranties from Trade Contractor**

### **7.8 Trade Contractor's Warranties – Purchasers and Tenants**

Where the Trade Contract Rights Particulars state that the Trade Contractor shall confer P&T Rights on a Purchaser or Tenant by way of collateral warranty, the Employer may by notice to the Trade Contractor, identifying the Purchaser or Tenant and his interest in the Works, require that the Trade Contractor within 14 days from receipt of that notice enter into a Collateral Warranty with such Purchaser or Tenant in the form TCWa/P&T, completed in accordance with the relevant Rights Particulars.

### **7.9 Trade Contractor's Warranty – Funder**

Where the Rights Particulars state that the Trade Contractor shall confer Funder Rights on a Funder by way of collateral warranty, the Employer may by notice to the Trade Contractor require that the Trade Contractor within 14 days from receipt of the Employer's notice enter into a Collateral Warranty with the Funder in the form TCWa/F, completed in accordance with the relevant Rights Particulars.

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## Section 8 Termination

### General

#### 8.1 Meaning of insolvency

For the purposes of these Conditions:

8.1.1 a company becomes Insolvent:

8.1.1.1 when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;

8.1.1.2 on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;

8.1.1.3 on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or

8.1.1.4 on the making of a winding-up order under Part IV or V of that Act.

8.1.2 a partnership becomes Insolvent:

8.1.2.1 on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or

8.1.2.2 when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors.

8.1.3 an individual becomes Insolvent:

8.1.3.1 on the making of a bankruptcy order against him under Part IX of the Insolvency Act 1986; or

8.1.3.2 on the sequestration of his estate under the Bankruptcy (Scotland) Act 1985 or when he grants a trust deed for his creditors.

8.1.4 a person also becomes Insolvent if:

8.1.4.1 he enters into an arrangement, compromise or composition in satisfaction of his debts (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction); or

8.1.4.2 (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this clause 8.1.

Each of clauses 8.1.1 to 8.1.4 also includes any analogous arrangement, event or proceedings in any other jurisdiction.

#### 8.2 Notices under section 8

8.2.1 Notice of termination of the Trade Contractor's employment shall not be given unreasonably or vexatiously.

8.2.2 Such termination shall take effect on receipt of the relevant notice.

8.2.3 Each notice referred to in this section shall be given in accordance with clause 1.7.4.

#### 8.3 Other rights, reinstatement

8.3.1 The provisions of clauses 8.4 to 8.7 are without prejudice to any other rights and remedies

of the Employer. The provisions of clauses 8.9 and 8.10 and (in the case of termination under either of those clauses) the provisions of clause 8.12, are without prejudice to any other rights and remedies of the Trade Contractor.

- 8.3.2 Irrespective of the grounds of termination, the Trade Contractor's employment may at any time be reinstated if and on such terms as the Parties agree.

## Termination by Employer

### 8.4 Default by Trade Contractor

- 8.4.1 If, before practical completion of the Works, the Trade Contractor:
- 8.4.1.1 without reasonable cause wholly or substantially suspends the carrying out of the Works or the design of the Trade Contractor's Designed Portion; or
  - 8.4.1.2 fails to proceed regularly and diligently with the Works or the design of the Trade Contractor's Designed Portion; or
  - 8.4.1.3 refuses or neglects to comply with a notice or instruction from the Construction Manager requiring him to remove any work, materials or goods not in accordance with this Trade Contract and by such refusal or neglect the Works are materially affected; or
  - 8.4.1.4 fails to comply with clause 3.6 or 7.1; or
  - 8.4.1.5 fails to comply with clause 3.22,
- the Construction Manager may give to the Trade Contractor a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.4.2 If the Trade Contractor continues a specified default for 14 days from receipt of the notice under clause 8.4.1, the Employer may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Trade Contractor terminate the Trade Contractor's employment under this Trade Contract.
- 8.4.3 If the Employer does not give the further notice referred to in clause 8.4.2, (whether as a result of the ending of any specified default or otherwise) but the Trade Contractor repeats a specified default (whether previously repeated or not) then, upon or within a reasonable time after such repetition, the Employer may by notice to the Trade Contractor terminate that employment.

### 8.5 Insolvency of Trade Contractor

- 8.5.1 If the Trade Contractor is Insolvent, the Employer may at any time by notice to the Trade Contractor terminate the Trade Contractor's employment under this Trade Contract.
- 8.5.2 The Trade Contractor shall immediately notify the Employer if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1.
- 8.5.3 As from the date the Trade Contractor becomes Insolvent, whether or not the Employer has given such notice of termination:
- 8.5.3.1 clauses 8.7.3 to 8.7.5 and (if relevant) clause 8.8 shall apply as if such notice had been given;
  - 8.5.3.2 the Trade Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Trade Contractor's Designed Portion shall be suspended; and
  - 8.5.3.3 the Employer may take reasonable measures to ensure that the site, the Works and Site Materials are adequately protected and that such Site Materials are retained on site; the Trade Contractor shall allow and shall not hinder or delay the taking of those measures.

## 8.6 Corruption and regulation 73(1)(b) of the PC Regulations

The Employer shall be entitled by notice to the Trade Contractor to terminate the Trade Contractor's employment under this or any other contract with the Employer if, in relation to this or any other such contract, the Trade Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Bribery Act 2010, or, where the Employer is a Local or Public Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972, or, where this Trade Contract is one to which regulation 73(1) of the PC Regulations applies, the circumstances set out in regulation 73(1)(b) of the PC Regulations apply.

## 8.7 Consequences of termination under clauses 8.4 to 8.6

If the Trade Contractor's employment is terminated under clause 8.4, 8.5 or 8.6:

- 8.7.1 the Employer may employ and pay other persons to carry out and complete the Works and/or (where applicable) the design for the Trade Contractor's Designed Portion and to make good any defects of the kind referred to in clause 2.36, and he and they may enter upon the site and the Works and (subject to obtaining any necessary third party consents) may use all temporary buildings, plant, tools, equipment and Site Materials for those purposes;
- 8.7.2 the Trade Contractor shall:
- 8.7.2.1 when required in writing by the Construction Manager to do so (but not before), remove or procure the removal from the Works of any temporary buildings, plant, tools, equipment, goods and materials belonging to the Trade Contractor or Trade Contractor's Persons;
  - 8.7.2.2 (where there is a Trade Contractor's Designed Portion) without charge provide the Employer with copies of all Trade Contractor's Design Documents then prepared, whether or not previously provided;
  - 8.7.2.3 if so required by the Construction Manager within 14 days of the date of termination, assign (so far as assignable and so far as he may lawfully be required to do so) to the Employer, without charge, the benefit of any agreement for the supply of materials or goods and/or for the execution of any work for the purposes of this Trade Contract<sup>[51]</sup>;
- 8.7.3 no further sum shall become due to the Trade Contractor under this Trade Contract other than any amount that may become due to him under clause 8.7.5 or 8.8.2 and the Employer need not pay any sum that has already become due either:
- 8.7.3.1 insofar as the Employer has given or gives a Pay Less Notice under clause 4.10.5; or
  - 8.7.3.2 if the Trade Contractor, after the last date upon which such notice could have been given by the Employer in respect of that sum, has become insolvent within the meaning of clauses 8.1.1 to 8.1.3;
- 8.7.4 following the completion of the Works and the making good of defects (or of instructions otherwise, as referred to in clause 2.36), an account of the following shall within 3 months thereafter be set out in a certificate issued by the Construction Manager or a statement prepared by the Employer:
- 8.7.4.1 the amount of expenses properly incurred by the Employer, including those incurred pursuant to clause 8.7.1 and, where applicable, clause 8.5.3.3, and of any direct loss and/or damage caused to the Employer and for which the Trade Contractor is liable, whether arising as a result of the termination or otherwise;
  - 8.7.4.2 the amount of payments made to the Trade Contractor; and
  - 8.7.4.3 the total amount which would have been payable for the Works in accordance with this Trade Contract;
- 8.7.5 if the sum of the amounts stated under clauses 8.7.4.1 and 8.7.4.2 exceeds the amount stated under clause 8.7.4.3, the difference shall be a debt payable by the Trade Contractor to the Employer or, if that sum is less, by the Employer to the Trade Contractor.

[51] Clause 8.7.2.3 may not be effectual in cases of contractor's insolvency.

## 8.8 Employer's decision not to complete the Works

- 8.8.1 If within the period of 6 months from the date of termination of the Trade Contractor's employment the Employer decides not to have the Works carried out and completed, he shall forthwith notify the Trade Contractor. Within a reasonable time from the date of such notification, or if no notification is given but within that 6 month period the Employer does not commence to make arrangements for such carrying out and completion, then within 2 months of the expiry of that 6 month period, the Employer shall send to the Trade Contractor a statement setting out:
- 8.8.1.1 the total value of work properly executed at the date of termination or date on which the Trade Contractor became Insolvent, ascertained in accordance with these Conditions as if that employment had not been terminated, together with any amounts due to the Trade Contractor under these Conditions not included in such total value; and
  - 8.8.1.2 the aggregate amount of any expenses properly incurred by the Employer and of any direct loss and/or damage caused to the Employer and for which the Trade Contractor is liable, whether arising as a result of the termination or otherwise.
- 8.8.2 After taking into account amounts previously paid to the Trade Contractor under this Trade Contract, if the amount stated under clause 8.8.1.2 exceeds the amount stated under clause 8.8.1.1, the difference shall be a debt payable by the Trade Contractor to the Employer or, if the clause 8.8.1.2 amount is less, by the Employer to the Trade Contractor.

## Termination by Trade Contractor

### 8.9 Default by Employer

- 8.9.1 If the Employer:
- 8.9.1.1 does not pay by the final date for payment the amount due to the Trade Contractor in accordance with clause 4.10 and/or any VAT properly chargeable on that amount; or
  - 8.9.1.2 interferes with or obstructs the issue of any certificate due under this Trade Contract; or
  - 8.9.1.3 fails to comply with clause 7.1; or
  - 8.9.1.4 fails to comply with clause 3.22,
- the Trade Contractor may give to the Employer a notice specifying the default or defaults (a 'specified' default or defaults).
- 8.9.2 If before practical completion of the Works the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Trade Contract Particulars by reason of:
- 8.9.2.1 Construction Manager's instructions under clause 2.14, 3.12 or 3.13; and/or
  - 8.9.2.2 any impediment, prevention or default, whether by act or omission, by the Employer or any Employer's Person
- (but in either case excluding such instructions as are referred to in clause 8.11.1.2), then, unless in either case that is caused by the negligence or default of the Trade Contractor or any Trade Contractor's Person, the Trade Contractor may give to the Construction Manager a notice specifying the event or events (a 'specified' suspension event or events).
- 8.9.3 If a specified default or a specified suspension event continues for 14 days from the receipt of notice under clause 8.9.1 or 8.9.2, the Trade Contractor may on, or within 21 days from, the expiry of that 14 day period by a further notice to the Employer terminate the Trade Contractor's employment under this Trade Contract.
- 8.9.4 If the Trade Contractor for any reason does not give the further notice referred to in clause 8.9.3, but (whether previously repeated or not):
- 8.9.4.1 the Employer repeats a specified default; or

8.9.4.2 a specified suspension event is repeated for any period, such that the regular progress of the Works is or is likely to be materially affected thereby,

then, upon or within a reasonable time after such repetition, the Trade Contractor may by notice to the Employer terminate the Trade Contractor's employment under this Trade Contract.

#### **8.10 Insolvency of Employer**

- 8.10.1 If the Employer is Insolvent, the Trade Contractor may by notice to the Employer terminate the Trade Contractor's employment under this Trade Contract;
- 8.10.2 the Employer shall immediately notify the Trade Contractor if he makes any proposal, gives notice of any meeting or becomes the subject of any proceedings or appointment relating to any of the matters referred to in clause 8.1;
- 8.10.3 as from the date the Employer becomes Insolvent, the Trade Contractor's obligations under Article 1 and these Conditions to carry out and complete the Works and the design of the Trade Contractor's Designed Portion shall be suspended.

### **Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

#### **8.11 Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC Regulations**

- 8.11.1 If, before practical completion of the whole of the Works, the carrying out of the whole or substantially the whole of the uncompleted Works is suspended for a continuous period of the length stated in the Trade Contract Particulars by reason of one or more of the following events:
- 8.11.1.1 force majeure;
  - 8.11.1.2 Construction Manager's instructions under clause 2.14, 3.12 or 3.13 issued as a result of the negligence or default of any Statutory Undertaker;
  - 8.11.1.3 loss or damage to the Works occasioned by any risk covered by the Project Insurance Policy or by an Excepted Risk;
  - 8.11.1.4 civil commotion or the use or threat of terrorism and/or the activities of the relevant authorities in dealing with such event or threat; or
  - 8.11.1.5 the exercise by the United Kingdom Government or any Local or Public Authority of any statutory power that is not occasioned by a default of the Trade Contractor or any Trade Contractor's Person but which directly affects the execution of the Works,
- then either Party, subject to clause 8.11.2, may upon the expiry of that period give notice to the other that, unless the suspension ceases within 7 days after the date of receipt of that notice, he may terminate the Trade Contractor's employment under this Trade Contract. Failing such cessation within that 7 day period, he may then by further notice terminate that employment.
- 8.11.2 The Trade Contractor shall not be entitled to give notice under clause 8.11.1 in respect of the matter referred to in clause 8.11.1.3 where the loss or damage to the Works was caused by the negligence or default of the Trade Contractor or any Trade Contractor's Person.
- 8.11.3 Where this Trade Contract is one to which regulation 73(1) of the PC Regulations applies the Employer shall be entitled by notice to the Trade Contractor to terminate the Trade Contractor's employment under this Trade Contract where the grounds set out in regulation 73(1)(a) or 73(1)(c) of the PC Regulations apply.

### **Consequences of Termination under clauses 8.9 to 8.11, etc.**

#### **8.12 Consequences of Termination under clauses 8.9 to 8.11, etc.**

If the Trade Contractor's employment is terminated under any of clauses 8.9 to 8.11, under clause

6.10.2.2 or 6.13:

- 8.12.1 no further sums shall become due to the Trade Contractor otherwise than in accordance with this clause 8.12;
- 8.12.2 the Trade Contractor shall:
- 8.12.2.1 with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Trade Contractor and Trade Contractor's Persons and, subject to the provisions of clause 8.12.5, all goods and materials (including Site Materials); and
- 8.12.2.2 (where there is a Trade Contractor's Designed Portion) without charge provide to the Employer copies of the documents referred to in clause 2.39 then prepared;
- 8.12.3 where the Trade Contractor's employment is terminated under clause 8.9 or 8.10, the Trade Contractor shall as soon as reasonably practicable prepare and submit an account or, where terminated under clause 8.11, 6.10.2.2 or 6.13, the Trade Contractor shall at the Employer's option either prepare and submit that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to do so, which the Employer shall do with reasonable dispatch (and in any event within 3 months of receipt of such documents). The account shall set out the amounts referred to in clauses 8.12.3.1 to 8.12.3.4 and, if applicable, clause 8.12.3.5, namely:
- 8.12.3.1 the total value of work properly executed at the date of termination of the Trade Contractor's employment, ascertained in accordance with these Conditions as if the employment had not been terminated, together with any other amounts due to the Trade Contractor under these Conditions;
- 8.12.3.2 any sums ascertained in respect of direct loss and/or expense under clause 4.20 (whether ascertained before or after the date of termination);
- 8.12.3.3 the reasonable cost of removal under clause 8.12.2;
- 8.12.3.4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Trade Contractor then has paid or is legally bound to pay;
- 8.12.3.5 any direct loss and/or damage caused to the Trade Contractor by the termination;
- 8.12.4 the account shall include the amount, if any, referred to in clause 8.12.3.5 only where the Trade Contractor's employment is terminated either:
- 8.12.4.1 under clause 8.9, 8.10 or 8.13; or
- 8.12.4.2 under clause 8.11.1.3, if the loss or damage to the Works was caused by the negligence or default of the Employer or any Employer's Person;
- 8.12.5 after taking into account amounts previously paid to the Trade Contractor under this Trade Contract, the Employer shall pay to the Trade Contractor (or vice versa) the amount properly due in respect of the account within 28 days of its submission to the other Party, without deduction of any Retention. Payment by the Employer for any such materials and goods as are referred to in clause 8.12.3.4 shall be subject to those materials and goods thereupon becoming the Employer's property.

## **Termination by Employer – Discontinuation of Project**

### **8.13 Termination by Employer – Discontinuation of Project**

The Employer shall (except where clause 8.10 has become applicable) be entitled at any time during the carrying out of the Works to discontinue the Project and to require the Trade Contractor to cease work on it. If he wishes to exercise that right, the Employer shall give the Trade Contractor notice to that effect, specifying the date on which work is to cease. The Trade Contractor's employment under this Trade Contract shall terminate on the date stated and the provisions of clauses 8.12.2 to 8.12.5 shall apply.

## Section 9 Settlement of Disputes

### Mediation

#### 9.1 Mediation

Subject to Article 8, if a dispute or difference arises under this Trade 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>[52]</sup>

### Adjudication

#### 9.2 Adjudication

If a dispute or difference arises under this Trade Contract which either Party wishes to refer to adjudication, the Scheme shall apply, subject to the following:

9.2.1 for the purposes of the Scheme the Adjudicator shall be the person (if any) and the nominating body shall be that stated in the Trade Contract Particulars;

9.2.2 where the dispute or difference is or includes a dispute or difference relating to clause 3.16.4 and as to whether an instruction issued thereunder is reasonable in all the circumstances:

9.2.2.1 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;

9.2.2.2 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 3.16.4 is reasonable in all the circumstances.

### Arbitration

#### 9.3 Conduct of arbitration

Any arbitration pursuant to Article 9 shall be conducted in accordance with the JCT 2016 edition of the [Construction Industry Model Arbitration Rules \(CIMAR\)](#), provided that if any amendments to that edition of the Rules have been issued by the JCT the Parties may, by a joint notice in writing to the Arbitrator, state that they wish the arbitration to be conducted in accordance with the Rules as so amended. References in clause 9.4 to a Rule or Rules are references to such Rule(s) as set out in the JCT 2016 edition of [CIMAR](#).<sup>[53]</sup>

#### 9.4 Notice of reference to arbitration

9.4.1 Where pursuant to Article 9 either Party requires a dispute or difference to be referred to arbitration, that Party shall serve on the other Party a notice of arbitration to such effect in accordance with Rule 2.1 identifying the dispute and requiring the other Party to agree to the appointment of an arbitrator. The Arbitrator shall be an individual agreed by the Parties or, failing such agreement within 14 days (or any agreed extension of that period) after the notice of arbitration is served, appointed on the application of either Party in accordance with Rule 2.3 by the person named in the Trade Contract Particulars.

9.4.2 Where two or more related arbitral proceedings in respect of the Project or the Works fall

[52] See the Construction Management Guide.

[53] Arbitration or legal proceedings are **not** an appeal against the decision of the Adjudicator but are a consideration of the dispute or difference as if no decision had been made by an Adjudicator.

under separate arbitration agreements, Rules 2.6, 2.7 and 2.8 shall apply.

- 9.4.3 After the Arbitrator has been appointed either Party may give a further notice of arbitration to the other Party and to the Arbitrator referring any other dispute which falls under Article 9 to be decided in the arbitral proceedings and Rule 3.3 shall apply.

#### **9.5 Powers of Arbitrator**

Subject to the provisions of Article 9 and clause 1.8, the Arbitrator shall, without prejudice to the generality of his powers, have power to rectify this Trade Contract so that it accurately reflects the true agreement made by the Parties, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the Parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

#### **9.6 Effect of award**

Subject to clause 9.7 the award of the Arbitrator shall be final and binding on the Parties.

#### **9.7 Appeal – questions of law**

The Parties hereby agree pursuant to section 45(2)(a) and section 69(2)(a) of the Arbitration Act 1996 that either Party may (upon notice to the other Party and to the Arbitrator):

- 9.7.1 apply to the courts to determine any question of law arising in the course of the reference; and
- 9.7.2 appeal to the courts on any question of law arising out of an award made in an arbitration under this arbitration agreement.

#### **9.8 Arbitration Act 1996**

The provisions of the Arbitration Act 1996 shall apply to any arbitration under this Trade Contract wherever the same, or any part of it, shall be conducted.

# Schedules

## Schedule 1 Design Submission Procedure

(Clause 2.8.5)

- 1 The Trade Contractor shall prepare and submit each of the Trade Contractor's Design Documents to the Construction Manager by the means and in the format stated in the Employer's Requirements or the Trade Contractor's Proposals and in sufficient time to allow any comments of the Construction Manager to be incorporated prior to the relevant Trade Contractor's Design Document being used for procurement and/or in the carrying out of the TCDP Works. Where the means and format are not so stated, then, unless and until otherwise agreed with the Construction Manager, the Trade Contractor shall submit 2 copies of each of the Trade Contractor's Design Documents to him.
- 2 Within 14 days from the date of receipt of any Trade 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 Trade Contract Documents, the Construction Manager shall return one copy of that Trade Contractor's Design Document to the Trade Contractor marked 'A', 'B' or 'C' provided that a document shall be marked 'B' or 'C' only where the Construction Manager considers that it is not in accordance with this Trade Contract.
- 3 If the Construction Manager does not respond to a Trade Contractor's Design Document in the time stated in paragraph 2, it shall be regarded as marked 'A'.
- 4 Where the Construction Manager marks a Trade 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 Trade Contract.
- 5 When a Trade Contractor's Design Document is returned by the Construction Manager:
  - 5.1 if it is marked 'A', the Trade Contractor shall carry out the TCDP Works in strict accordance with that document;
  - 5.2 if it is marked 'B', the Trade Contractor may carry out the TCDP Works in accordance with that document, provided that the Construction Manager's comments are incorporated into it and an amended copy of it is promptly submitted to the Construction Manager; or
  - 5.3 if it is marked 'C', the Trade Contractor shall take due account of the Construction Manager's comments on it and shall either forthwith resubmit it to the Construction Manager in amended form for comment in accordance with paragraph 1 or notify the Construction Manager under paragraph 7.
- 6 The Trade Contractor shall not carry out any work in accordance with a Trade Contractor's Design Document marked 'C' and the Employer shall not be liable to pay for any work within the TCDP Works executed otherwise than in accordance with Trade Contractor's Design Documents marked 'A' or 'B'.
- 7 If the Trade Contractor disagrees with a comment of the Construction Manager and considers that the Trade Contractor's Design Document in question is in accordance with this Trade Contract, he shall within 7 days of receipt of the comment notify the Construction Manager that he considers that compliance with the comment would give rise to a Variation. Such notification shall be accompanied by a statement setting out the Trade Contractor's reasons. Upon receipt of such a notification the Construction Manager shall within 7 days either confirm or withdraw the comment and, where the comment is confirmed, the Trade Contractor shall amend and resubmit the document accordingly.
- 8 Provided always that:
  - 8.1 confirmation or withdrawal of a comment in accordance with paragraph 7 shall not signify acceptance by either the Employer or the Construction Manager that the relevant Trade Contractor's Design Document or amended document is in accordance with this Trade Contract or that compliance with the Construction Manager's comment would give rise to a

Variation;

- 8.2 where in relation to a comment by the Construction Manager the Trade Contractor does not notify him in accordance with paragraph 7, the comment in question shall not be treated as giving rise to a Variation; and
- 8.3 neither compliance with the design submission procedure in this Schedule nor with the Construction Manager's comments shall diminish the Trade Contractor's obligations to ensure that the Trade Contractor's Design Documents and TCDP Works are in accordance with this Trade Contract.

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## Schedule 2 Acceleration Quotation and Variation Quotation

(Clauses 2.29 and 5.3)

### Part 1: Acceleration Quotation

#### Content of Trade Contractor's Acceleration Quotation

1

- 1.1 The Trade Contractor's Acceleration Quotation for achieving the reduction in the Completion Period for the Works or such works in any Section shall comprise:
- 1.1.1 the amount to be included in the calculation of the Final Trade Contract Sum;
  - 1.1.2 details of any alterations in the sequence and timing of the Works;
  - 1.1.3 a fair and reasonable amount in respect of the cost of preparing the quotation; and
  - 1.1.4 where specifically required by the instruction, a statement of the additional resources (if any) required to achieve the required reduction in the Completion Period.
- 1.2 Each part of the Acceleration Quotation shall contain reasonably sufficient supporting information to enable that part to be evaluated by the Construction Manager.
- 1.3 The Acceleration Quotation shall remain open for acceptance by the Construction Manager for not less than 14 days from its receipt.

#### Acceptance of Acceleration Quotation

2

If the Construction Manager wishes to accept an Acceleration Quotation, the Construction Manager shall within the period for acceptance confirm such acceptance by an instruction to the Trade Contractor stating:

- 2.1 the additional sum to be taken into account in calculating the Final Trade Contract Sum, inclusive of the amount in respect of the cost of preparing the quotation; and
- 2.2 the revised period for completion which, from the date of the Confirmed Acceptance, shall for the purposes of this Trade Contract be the Completion Period for the Works or (where applicable) such works in the relevant Section.

#### Trade Contractor's Acceleration Quotation not accepted

3

If the Acceleration Quotation is not accepted, a fair and reasonable amount shall be added to the Final Trade 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 Construction Manager of the Acceleration Quotation shall not of itself be evidence that the quotation was not prepared on such a basis.

### Part 2: Variation Quotation

#### Submission of Variation Quotation

1

- 1.1 Any instruction of the Construction Manager requesting a Variation Quotation shall provide sufficient information<sup>[54]</sup> to enable the Trade Contractor to provide that quotation, which shall comprise the matters set out in paragraph 2 of this Part 2, in compliance with the instruction. If the Trade Contractor reasonably considers that the information provided is

[54] The information provided to the Trade Contractor should normally be in a similar format to that provided at the tender stage. If an addendum bill is provided, see clauses 2.12 and 2.13.

not sufficient, then, not later than 7 days from the receipt of the instruction, he shall notify the Construction Manager who shall supply that information.

- 1.2 The Trade Contractor shall submit his Variation Quotation to the Construction Manager in compliance with the instruction not later than 21 days from the later of:
  - 1.2.1 the date of receipt of the instruction; or
  - 1.2.2 the date of receipt by the Trade Contractor of sufficient information as referred to in paragraph 1.1.
- 1.3 The Variation Quotation shall remain open for acceptance by the Construction Manager for 7 days from its receipt by him.
- 1.4 The work for which the Trade Contractor has submitted his Variation Quotation shall not be carried out by the Trade Contractor until receipt by the Trade Contractor of the Confirmed Acceptance issued by the Construction Manager under paragraph 3.

#### **Content of the Variation Quotation**

- 2 The Variation Quotation shall separately comprise:
  - 2.1 the amount to be taken into account in the calculation of the Final Trade Contract Sum (other than any amount to which paragraph 2.3 refers) including the effect of the instruction on any other work, supported by all necessary calculations, which shall be made by reference, where relevant, to the rates and prices in the Priced Document and including also, where appropriate, allowances for any adjustment of preliminary items;
  - 2.2 any adjustment to the Completion Period for the Works and/or such works in any Section (including, where relevant, a shorter Completion Period than any Completion Period given in the Trade Contract Particulars) to the extent that such adjustment is not included in any revision of a Completion Period made by the Construction Manager under clause 2.27 or in any other Confirmed Acceptance;
  - 2.3 the amount to be paid in respect of direct loss and/or expense that is not included in any other Confirmed Acceptance or in any ascertainment under clause 4.20 or 5.3.3;
  - 2.4 a fair and reasonable amount in respect of the cost of preparing the quotation; and
  - 2.5 where specifically required by the instruction, indicative information in statements on:
    - 2.5.1 the additional resources (if any) required to carry out the Variation; and
    - 2.5.2 the method of carrying out the Variation.

Each part of the quotation shall contain supporting information that is reasonably sufficient to enable that part to be evaluated by the Construction Manager.

#### **Acceptance of the Variation Quotation**

- 3 If the Construction Manager wishes to accept a Variation Quotation, the Construction Manager shall within the period for acceptance confirm such acceptance by an instruction to the Trade Contractor stating:
  - 3.1 the adjustment to be made in calculating the Final Trade Contract Sum, including any amounts to which paragraphs 2.3 and 2.4 refer, for complying with the instruction; and
  - 3.2 any revised period or periods for completion of the Works or (where applicable) such works in the relevant Section.

#### **Variation Quotation not accepted**

- 4 If a Variation Quotation is not accepted by the expiry of the period for acceptance, the Construction Manager shall on the expiry of that period either:
  - 4.1 instruct that the Variation is to be carried out and is to be valued under the Valuation Rules (*clauses 5.6 to 5.12*); or
  - 4.2 instruct that the Variation is not to be carried out.

**Costs of Variation Quotation**

- 5 If a Variation Quotation is not accepted, the provisions of paragraph 3 in Part 1 of this Schedule shall correspondingly apply in respect of that quotation.

**Restriction on use of Variation Quotation**

- 6 Unless the Construction Manager issues a Confirmed Acceptance of a Variation Quotation, neither the Construction Manager nor the Trade Contractor may use the quotation for any purpose whatsoever.

**Time periods**

- 7 The Construction Manager and the Trade Contractor may agree to increase or reduce any period referred to in clause 5.3.1 or this Schedule; confirmation of such agreement shall be notified to the Trade Contractor by the Construction Manager.

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## Schedule 3 Insurance

(Clause 6.6)

### Insurance by the Employer of Existing Structures and Project<sup>[55]</sup>

#### The Project – Joint Names Policy for All Risks

- 1 The Employer shall effect and maintain a Joint Names Policy for All Risks Insurance with cover no less than that specified in clause 6.7 for the full reinstatement value of the Project or (where applicable) Sections (plus the percentage, if any, stated in the Trade Contract Particulars to cover professional fees) and covering the risks mentioned in paragraph 1.2 below<sup>[56]</sup>. The Employer shall maintain the interest of the Trade Contractor in the policy as an insured:
- 1.1 up to and including the date of issue of the certificate of practical completion of the Works or, where applicable, such works in the relevant Section; and
- 1.2 thereafter, in respect of physical loss or damage to the Works which occurs prior to the issue of the relevant Certificate of Making Good<sup>[56]</sup> and is either:
- 1.2.1 due to a cause occurring prior to practical completion of the Works or such Works in the relevant Section; or
- 1.2.2 occasioned by the Trade Contractor in the course of any operations carried out by him whilst making good any defects;

provided that the Employer shall not be required to maintain the Trade Contractor's interest in the policy beyond the date of termination of the Trade Contractor's employment.

#### Existing Structures and contents – Joint Names Policy for Specified Perils

- 2 The Employer shall unless otherwise stated by the Trade Contract Particulars for clause 6.6 and this Schedule effect and maintain a Joint Names Policy in respect of any Existing Structures, together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils and shall maintain the interest of the Trade Contractor in the policy as an insured up to and including the date of issue of the certificate of practical completion of the Works or (if earlier) the date of termination of the Trade Contractor's employment.

For the purposes of this Schedule and subject to paragraph 1.2 of it, the Existing Structures shall from the Relevant Date include any Relevant Part to which clause 2.33 refers and shall include such works in a Section after the date of issue of a certificate of practical completion in respect of those works under clause 2.31 and shall from the date of issue of a Section Completion Certificate include the relevant Section.

#### Loss or damage

- 3 If during the carrying out of the Works there is any loss of or damage of any kind to any executed work, Site Materials and/or to any Existing Structures or their contents the provisions of clauses 6.12 and 6.13 shall as relevant apply.

[55] The Joint Names Policy required by paragraph 2 of Schedule 3 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. The Trade Contract Particulars for clause 6.6 and Schedule 3 therefore expressly allow the Parties in those circumstances to disapply paragraph 2 and, by means of a Paragraph 2 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 Construction Management Guide. In considering those alternative arrangements thought should be given to how the Trade Contractor's interest is to be maintained in such alternative policies/arrangements.

[56] The defects liability protection set out in paragraph 1.2 represents an extension of cover under the Project Insurance Policy for the Project; see the exclusion in paragraph (d) of the All Risks Insurance definition in clause 6.7. This should be drawn to the attention of the Employer's insurance advisers before cover is effected.

## Schedule 4 Code of Practice

(Clause 3.16.4)

The purpose of the Code is to assist in the fair and reasonable operation of the requirements of clause 3.16.4.

The Construction Manager and the Trade 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 Construction Manager 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 be simply 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 Trade Contractor;
- 6 the relevant records of the Trade 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 Trade Contractor to carry out, or to secure the carrying out of, any tests specified in the Trade Contract Documents or in an instruction of the Construction Manager;
- 9 the reason for the non-compliance, when this has been established;
- 10 any technical advice that the Trade 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 Trade Contractor;
- 15 any other relevant matters.

## Schedule 5 Third Party Rights

(Clauses 7.6 and 7.7)

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

('P&T Rights')

1

1.1 The Trade Contractor warrants as at and with effect from practical completion of the Project (or, where there are Sections, practical completion of the relevant Section) that he has carried out the Works or such works in the relevant Section in accordance with this Trade Contract. In the event of any breach of this warranty and subject to paragraphs 1.2, 1.3 and 1.4:

1.1.1 the Trade 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

1.1.2 where the Trade Contract Rights Particulars state that paragraph 1.1.2 applies, the Trade 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 Trade Contract Rights Particulars.

1.2 Where paragraph 1.1.2 does not apply, the Trade 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.

1.3 The Trade 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 Trade Contractor to pay having regard to the extent of the Trade Contractor's responsibility for the same, on the assumptions that the Consultant(s):

1.3.1 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 Project 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

1.3.2 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.

1.4 The Trade Contractor shall be entitled in any action or proceedings by the Purchaser or Tenant to rely on any term in this Trade Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Trade Contract.

1.5 The obligations of the Trade 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 Trade Contractor further warrants that unless required by this Trade Contract or unless otherwise authorised in writing by the Employer or by the Construction Manager named in or appointed pursuant to this Trade Contract (or, where such authorisation is given orally, confirmed in writing by the Trade Contractor to the Employer and/or the Construction Manager), 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 Trade 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 Trade Contractor in relation to this Trade Contract.
- 4 Where the Works include a Trade Contractor's Designed Portion, the Purchaser or Tenant, insofar as it is the purchaser or tenant of any part(s) of the site falling within the Trade Contractor's Designed Portion, and subject to the Trade Contractor having been paid all sums due and payable under this Trade Contract, shall in respect of such parts have rights and licences in relation to the Trade Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.40, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 5 Where the Works include a Trade Contractor's Designed Portion and this Trade Contract requires the Trade Contractor to take out and maintain Professional Indemnity insurance, the Trade Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.14 and its related Trade Contract Particulars<sup>[57]</sup>. The Trade 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 Trade 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 Trade Contractor shall produce for inspection documentary evidence that his Professional Indemnity insurance is being maintained.
- 6 P&T Rights may be assigned without the Trade 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 Project and by P1, by way of absolute legal assignment, to another person (P2) taking an assignment of P1's interest in the Project. In such cases the assignment shall only be effective upon written notice of it being given to the Trade 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 Trade Contractor or by the Trade 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 Trade Contractor after the expiry of the relevant period from the date of practical completion of the Project. Where there are Sections, no action or proceedings shall be commenced against the Trade 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:
- 8.1 where this Trade Contract is executed under hand, 6 years; and
- 8.2 where this Trade Contract is executed as a deed, 12 years.
- 9 For the avoidance of doubt, the Trade 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 Trade 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 Trade Contractor warrants that he has complied and will continue to comply with this Trade Contract. In the event of any breach of this warranty:
- 1.1 the Trade 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 Trade Contractor to pay having regard to the extent of the Trade Contractor's responsibility

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[57] For Trade Contractors who do not carry Professional Indemnity insurance, see the Construction Management Guide.

for the same, on the assumptions that the Consultant(s):

- 1.1.1 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 Project 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
    - 1.1.2 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;
  - 1.2 the Trade Contractor shall be entitled in any action or proceedings by the Funder to rely on any term in this Trade Contract and to raise the equivalent rights in defence of liability as he would have against the Employer under this Trade Contract;
  - 1.3 the obligations of the Trade 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 Trade Contractor further warrants that unless required by this Trade Contract or unless otherwise authorised in writing by the Employer or by the Construction Manager named in or appointed pursuant to this Trade Contract (or, where such authorisation is given orally, confirmed in writing by the Trade Contractor to the Employer and/or the Construction Manager), 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 Trade 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 Trade Contractor in relation to this Trade Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 4 The Funder has no liability to the Trade Contractor in respect of amounts due under this Trade Contract unless and until the Funder has given notice under paragraph 5 or 6.4.
- 5 The Trade Contractor agrees that, in the event of the termination of the Finance Agreement by the Funder, the Trade 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 Project upon the terms and conditions of this Trade Contract. The Employer acknowledges that the Trade Contractor shall be entitled to rely on a notice given to the Trade Contractor by the Funder under this paragraph 5 as conclusive evidence for the purposes of this Trade 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 Trade Contractor's obligations to the Employer under this Trade Contract.
- 6
  - 6.1 The Trade Contractor shall not exercise any right of termination of his employment under this Trade Contract without having first:
    - 6.1.1 copied to the Funder any notices required by this Trade Contract to be sent to the Construction Manager or to the Employer prior to the Trade Contractor being entitled to give notice under this Trade Contract that his employment under this Trade Contract is terminated; and
    - 6.1.2 given to the Funder written notice that he has the right under this Trade Contract forthwith to notify the Employer that his employment under this Trade Contract is terminated.
  - 6.2 The Trade Contractor shall not treat this Trade 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.
  - 6.3 The Trade Contractor shall not:
    - 6.3.1 issue a notice to the Employer to which paragraph 6.1.2 refers; or
    - 6.3.2 notify the Employer that he is treating this Trade 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 Trade Contractor which the Trade Contractor is required to give under paragraph 6.1.2 or 6.2.

- 6.4 The Funder may, not later than the expiry of the period referred to in paragraph 6.3, require the Trade 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 Trade Contract. The Employer acknowledges that the Trade Contractor shall be entitled to rely on a notice given to the Trade Contractor by the Funder under this paragraph 6.4 and that acceptance by the Trade Contractor of the instructions of the Funder to the exclusion of the Employer shall not constitute any breach of the Trade Contractor's obligations to the Employer under this Trade Contract. Provided that nothing in this paragraph 6.4 shall relieve the Trade Contractor of any liability he may have to the Employer for any breach by the Trade Contractor of this Trade 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 Trade Contractor under this Trade 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 Trade Contract shall continue in full force and effect as if no right of termination of the Trade Contractor's employment under this Trade Contract, nor any right of the Trade Contractor to treat this Trade Contract as having been repudiated by the Employer, had arisen and the Trade Contractor shall be liable to the Funder and its appointee under this Trade Contract in lieu of his liability to the Employer. If any notice given by the Funder under paragraph 5 or 6.4 requires the Trade Contractor to accept the instructions of the Funder's appointee, the Funder shall be liable to the Trade Contractor as guarantor for the payment of all sums from time to time due to the Trade Contractor from the Funder's appointee.
- 8 Where the Works include a Trade Contractor's Designed Portion and subject to the Trade Contractor having been paid all sums due and payable under this Trade Contract, the Funder shall have rights and licences in relation to the Trade Contractor's Design Documents in the same terms as those conferred on the Employer by clause 2.40, but subject to similar conditions, limitations and exclusions as apply thereunder to the Employer.
- 9 Where the Works include a Trade Contractor's Designed Portion and this Trade Contract requires the Trade Contractor to take out and maintain Professional Indemnity insurance, the Trade Contractor warrants that he has and shall maintain that insurance in the amount, on the terms and for the period referred to in clause 6.14 and its related Trade Contract Particulars<sup>67</sup>. The Trade Contractor shall immediately give written notice to the Funder if such insurance ceases to be available at commercially reasonable rates in order that the Trade 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 Trade 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 Trade 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 Project 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 Project. In such cases the assignment shall only be effective upon written notice of it being given to the Trade 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 Trade Contractor to the Funder or by the Funder to the Trade 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 Trade Contractor after the expiry of the relevant period from the date of practical completion of the Project. Where there are Sections, no action or proceedings shall be commenced against the Trade 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:
- 12.1 where this Trade Contract is executed under hand, 6 years; and

12.2 where this Trade Contract is executed as a deed, 12 years.

**13** Notwithstanding the rights contained in this Schedule, the Trade Contractor shall have no liability to the Funder for delay under this Trade Contract unless and until the Funder serves notice pursuant to paragraph 5 or 6.4.

**14**

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 Trade Contractor and the Funder which arises out of or in connection with this Schedule.

14.2 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 Trade Contractor and the Funder (including any appointee or permitted assignee) shall be subject to the provisions of Article 8 and (where they apply) Article 9 and clauses 9.3 to 9.8.

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## 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>[58]</sup>

1 THE parties to this Bond are:

\_\_\_\_\_

whose registered office is at \_\_\_\_\_

\_\_\_\_\_ ('the Surety'), and

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Employer').

2 The Employer and \_\_\_\_\_ ('the Trade Contractor')

have agreed to enter into a contract ('the Trade Contract') for building works ('the Works') at \_\_\_\_\_

3 The Employer has agreed to pay the Trade Contractor the sum of [\_\_\_\_\_] as an advance payment of sums due to the Trade Contractor under the Trade Contract ('the Advance Payment') for reimbursement by the Surety on the following terms:

3.1 when the Surety receives a demand from the Employer in accordance with clause 3.2 below the Surety shall repay the Employer the sum demanded up to the amount of the Advance Payment;

3.2 the Employer shall in making any demand provide to the Surety a completed notice of demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers;

3.3 the Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

4 Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Trade Contractor and whether or not the Employer and the Trade Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

5 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any

[58] Not applicable where the Employer is a Local Authority or other public sector body.

way be affected hereby. The actions are:

- 5.1 waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Trade Contractor or any failure to make demand upon or take action against the Trade Contractor;
  - 5.2 any modification or changes to the Trade Contract; and/or
  - 5.3 the granting of any extensions of time to the Trade Contractor without affecting the terms of clause 7.3 below.
- 6** The Surety's maximum aggregate liability under this Bond which shall commence on payment of the Advance Payment by the Employer to the Trade Contractor shall be the amount of [ ] which sum shall be reduced by the amount of any reimbursement made by the Trade Contractor to the Employer as advised by the Employer in writing to the Surety.
- 7** The obligations of the Surety under this Bond shall cease upon whichever is the earliest of:
- 7.1 the date on which the Advance Payment is reduced to nil as certified in writing to the Surety by the Employer;
  - 7.2 the date on which the Advance Payment or any balance thereof is repaid to the Employer by the Trade Contractor (as certified in writing to the Surety by the Employer) or by the Surety; and
  - 7.3 [longstop date to be given],
- and any claims hereunder must be received by the Surety in writing on or before such earliest date.
- 8** This Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.
- 9** Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 10** This Bond shall be governed and construed in accordance with the laws of England and Wales.

---

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_ *witness' signature*

\_\_\_\_\_ *witness' name*

\_\_\_\_\_ *witness' address*

\_\_\_\_\_

Date: \_\_\_\_\_

## Schedule to Advance Payment Bond

(clause 3.2 of the Bond)

### Notice of Demand

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

Employer: \_\_\_\_\_

Surety: \_\_\_\_\_

The Bond has come into effect.

We hereby demand payment of the sum of

£ \_\_\_\_\_ (amount in words)  
which does not exceed the amount of reimbursement for which the Trade Contractor is in default at  
the date of this notice.

Address for payment: \_\_\_\_\_

This Notice is signed by the following persons who are authorised by the Employer to act for and on  
his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**The above signatures to be authenticated by the Employer's bankers**

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

1 THE parties to this Bond are:

\_\_\_\_\_

whose registered office is at \_\_\_\_\_

\_\_\_\_\_ ('the Surety'), and

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Employer').

2 The Employer and \_\_\_\_\_ ('the Trade Contractor')

have agreed to enter into a contract ('the Trade Contract') for building works ('the Works') at \_\_\_\_\_

3 Subject to the relevant provisions of the Trade Contract as summarised below but with which the Surety shall not at all be concerned:

3.1 the Employer has agreed to include the amount stated as due in Interim Certificates (as defined in the Trade Contract) for payment by the Employer the value of those materials or goods or items pre-fabricated for inclusion in the Works listed by the Employer in a list which has been included as part of the Trade Contract ('the Listed Items'), before their delivery to or adjacent to the Works; and

3.2 the Trade Contractor has agreed to insure the Listed Items against loss or damage for their full value under a policy of insurance protecting the interests of the Employer and the Trade Contractor during the period commencing with the transfer of the property in the items to the Trade Contractor until they are delivered to or adjacent to the Works; and

3.3 this Bond shall exclusively relate to the amount paid to the Trade Contractor in respect of the Listed Items which have not been delivered to or adjacent to the Works.

4 The Employer shall in making any demand provide to the Surety a Notice of Demand in the form of the **Schedule** attached hereto which shall be accepted as conclusive evidence for all purposes under this Bond. The signatures on any such demand must be authenticated by the Employer's bankers.

5 The Surety shall within 5 Business Days after receiving the demand pay to the Employer the sum so demanded. 'Business Day' means the day (other than a Saturday or a Sunday) on which commercial banks are open for business in London.

6 Payments due under this Bond shall be made notwithstanding any dispute between the Employer and the Trade Contractor and whether or not the Employer and the Trade Contractor are or might be under any liability one to the other. Payment by the Surety under this Bond shall be deemed a valid payment for all purposes of this Bond and shall discharge the Surety from liability to the extent of such payment.

7 The Surety consents and agrees that the following actions by the Employer may be made and done without notice to or consent of the Surety and without in any way affecting changing or releasing the Surety from its obligations under this Bond and the liability of the Surety hereunder shall not in any way be affected hereby. The actions are:

7.1 waiver by the Employer of any of the terms, provisions, conditions, obligations and agreements of the Trade Contractor or any failure to make demand upon or take action against the Trade Contractor;

- 7.2 any modification or changes to the Trade Contract; and/or
- 7.3 the granting of an extension of time to the Trade Contractor without affecting the terms of clause 9.2 below.
- 8** The Surety's maximum aggregate liability under this Bond shall be \*                    ].
- 9** The obligations of the Surety under this Bond shall cease upon whichever is the earlier of:
- 9.1 the date on which all the Listed Items have been delivered to or adjacent to the Works as certified in writing to the Surety by the Employer; or
- 9.2 *[longstop date to be given]*,
- and any claims hereunder must be received by the Surety in writing on or before such earlier date.
- 10** The Bond is not transferable or assignable without the prior written consent of the Surety. Such written consent will not be unreasonably withheld.
- 11** Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 12** This Bond shall be governed and construed in accordance with the laws of England and Wales.

\*The value stated in the Trade Contract which the Employer considers will be sufficient to cover him for maximum payments to the Trade Contractor for the Listed Items that will have been made and not delivered to the site at any one time.

---

**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_ *witness' signature*

\_\_\_\_\_ *witness' name*

\_\_\_\_\_ *witness' address*

\_\_\_\_\_

Date: \_\_\_\_\_

## Schedule to Bond

(clause 4 of the Bond)

## Notice of Demand

Date of Notice: \_\_\_\_\_

Date of Bond: \_\_\_\_\_

Employer: \_\_\_\_\_

Surety: \_\_\_\_\_

We hereby demand payment of the sum of £ \_\_\_\_\_  
being the amount stated as due in respect of Listed Items included in the amount stated as due in an  
Interim Certificate(s) for payment which has been duly made to the Trade Contractor by the Employer  
but such Listed Items have not been delivered to or adjacent to the Works.

Address for payment: \_\_\_\_\_

This Notice is signed by the following persons who are authorised by the Employer to act for and on  
his behalf:

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

Signed by \_\_\_\_\_

Name: \_\_\_\_\_

Official Position: \_\_\_\_\_

**The above signatures to be authenticated by the Employer's bankers**

### Part 3: Retention Bond<sup>[59]</sup>

BOND dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

issued by \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Surety')

in favour of \_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Employer')

**1** By a contract ('the Trade Contract') between the Employer and

\_\_\_\_\_

of \_\_\_\_\_

\_\_\_\_\_ ('the Trade Contractor')

the Employer has agreed that he will not exercise his right under the Trade Contract to deduct Retention from amounts included in Interim Certificates provided the Trade Contractor has taken out this Bond in favour of the Employer.

**2** The Surety is hereby bound to the Employer in the maximum aggregate sum of

\_\_\_\_\_ (figures and words)

until the Surety is notified by the Employer in writing of the date of issue of the next Interim Certificate after practical completion of the Works when the maximum aggregate sum shall be reduced by 50 per cent.

**3** The Employer shall, on a demand which complies with the requirements in clause 4 below, be entitled to receive from the Surety the sum therein demanded.

**4** Any demand by the Employer under clause 3 above shall:

4.1 be in writing addressed to the Surety at its office at

\_\_\_\_\_ refer to this Bond, and with the signature(s) therein authenticated by the Employer's bankers; and

4.2 state the amount of the Retention that would have been held by the Employer at the date of the demand had Retention been deductible; and

4.3 state the amount demanded, which shall not exceed the amount stated pursuant to clause 4.2 above, and identify for which one or more of the following such amount is demanded:

4.3.1 the costs actually incurred by the Employer by reason of the failure of the Trade Contractor to comply with the instructions of the Construction Manager under the Trade Contract; and be accompanied by a statement by the Construction

[59] Not applicable where the Employer is a Local Authority or other public sector body.

Manager which confirms that this failure by the Trade Contractor has occurred;

- 4.3.2 damages which under the Trade Contract the Trade Contractor is due to pay or allow to the Employer because the Trade Contractor has failed to complete the works within the relevant Completion Period for the Works;
- 4.3.3 any expenses or any direct loss and/or damage caused to the Employer as a result of the termination of the Trade Contractor's employment by the Employer;
- 4.3.4 any costs, other than the amounts referred to in clauses 4.3.1 to 4.3.3 above, which the Employer has actually incurred and which, under the Trade Contract, he is entitled to deduct from monies otherwise due or to become due to the Trade Contractor; and identify his entitlement;

and

- 4.4 incorporate a certification that the Trade Contractor has been given 14 days' written notice of his liability for the amount demanded hereunder by the Employer and that the Trade Contractor has not discharged that liability; and that a copy of this notice has at the same time been sent to the Surety at its office at

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Such demand as above shall, for the purposes of this Bond but not further or otherwise, be conclusive evidence (and admissible as such) that the amount demanded is properly due and payable to the Employer by the Trade Contractor.

- 5 If the Trade Contract is to be assigned or otherwise transferred with the benefit of this Bond, the Employer shall be entitled to assign or transfer this Bond only with the prior written consent of the Surety, such consent not to be unreasonably delayed or withheld.
- 6 The Surety, in the absence of a prior written demand made, shall be released from its liability under this Bond upon the earliest occurrence of either:
  - 6.1 the date of issue under the Trade Contract of the Certificate of Making Good as confirmed by the Employer to the Surety; or
  - 6.2 satisfaction of a demand(s) up to the maximum aggregate under the Bond; or
  - 6.3 \_\_\_\_\_ (insert calendar date).
- 7 Any demand made hereunder must be received by the Surety accompanied by the documents as required by clause 4 above on or before the earliest occurrence as stated above, when this Bond will terminate and become of no further effect whatsoever.
- 8 Notwithstanding any other provisions of this Bond nothing in this Bond confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.
- 9 This Bond shall be governed and construed in accordance with the laws of England and Wales.

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**IN WITNESS** whereof this Deed of Guarantee has been duly executed and delivered on the date below:

Signed as a Deed by: \_\_\_\_\_

as the Attorney and on behalf of the Surety: \_\_\_\_\_

In the presence of:

\_\_\_\_\_  
*witness' signature*

\_\_\_\_\_  
*witness' name*

\_\_\_\_\_  
*witness' address*

Date: \_\_\_\_\_

**Notes**<sup>[60]</sup>

- 1 The terms of this Retention Bond have been agreed with the British Bankers' Association and discussed with the Surety Panel of the Association of British Insurers. The JCT understands that a Bond which embodies the terms of this Part 3 of Schedule 6 is, at the proposed Surety's discretion, available to a Trade Contractor where the Employer has incorporated into a trade contract in the JCT Construction Management Trade Contract 2016 Edition, optional clause 4.17.
- 2 In clause 2 the figure to be inserted here is the amount stated in the Trade Contract Particulars pursuant to clause 4.17. It is understood that a Surety will, at additional cost to the Trade Contractor, and which may be subject to other terms and conditions of the Surety, provide for a greater sum than that stated in clause 2 of the Bond if, due to variations, and had Retention been applicable, that amount would have increased. The reduction by 50% of the maximum aggregate sum at the date of issue of the next Interim Certificate after practical completion of the Works matches a similar reduction had Retention been applicable.
- 3 The inclusion in the last paragraph of clause 4 of the words "but not further or otherwise" is to make clear that the Trade Contractor would not be prevented by the terms of clause 4 from alleging, under the Trade Contract, that the Trade Contractor was not in breach on any of the matters stated in clauses 4.3.1 to 4.3.4 of the Bond.  
  
Any demand by the Employer under clause 4 of the Bond must not exceed the costs actually incurred by the Employer and is not to be in excess of the amount stated pursuant to clause 4.2.
- 4 The Surety will require an actual expiry date to be stated in clause 6.3 of the Bond or (if earlier) a date that is capable of being ascertained on the face of the Bond. Where this is not possible, alternative terms should be discussed with the Surety.

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[60] These Notes will not appear on the Bond issued by the Surety.

## Schedule 7 JCT Fluctuations Option A

(Clauses 4.13 and 4.23)

### (Contribution, levy and tax fluctuations)

#### Deemed calculation of Trade Contract Sum or Tender Sum – labour

- A.1** The Trade Contract Sum or Tender Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
- A.1.1 The Trade Contract Sum or Tender Sum is based upon the types and rates of contribution, levy and tax payable by a person in his capacity as an employer and which at the Base Date are payable by the Trade Contractor. A type and rate so payable are in paragraph A.1.2 referred to as a 'tender type' and a 'tender rate'.
- A.1.2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in his capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Trade Contractor actually pays or will pay in respect of:
- A.1.2.1 workpeople engaged upon or in connection with the Works either on or adjacent to the site; and
- A.1.2.2 workpeople directly employed by the Trade Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engaged
- or because of his employment of such workpeople and what he would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Trade Contractor.
- A.1.3 There shall be added to the net amount paid to or allowed by the Trade Contractor under paragraph A.1.2, in respect of each person employed by the Trade Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of workpeople in paragraph A.11.3, the same amount as is payable or allowable in respect of a craftsman under paragraph A.1.2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.
- A.1.4 For the purposes of paragraph A.1.3:
- A.1.4.1 no period less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;
- A.1.4.2 "the same amount as is payable or allowable in respect of a craftsman" shall refer to the amount in respect of a craftsman employed by the Trade Contractor (or by any sub-contractor under a sub-contract to which paragraph A.3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and
- A.1.4.3 "employed by the Trade Contractor" shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.
- A.1.5 The Trade Contract Sum or Tender Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his capacity as an employer being in each case types and rates which at the Base Date are receivable by the Trade

Contractor. Such a type and such a rate are in paragraph A.1.6 referred to as a 'tender type' and a 'tender rate'.

- A.1.6 If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Trade Contractor actually receives or will receive in respect of workpeople as referred to in paragraphs A.1.2.1 and A.1.2.2 or because of his employment of such workpeople and what he would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Trade Contractor.
- A.1.7 The references in paragraphs A.1.5 and A.1.6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- A.1.8 Where employer's contributions are payable by the Trade Contractor in respect of workpeople as referred to in paragraphs A.1.2.1 and A.1.2.2 whose employment is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Trade Contractor shall for the purpose of recovery or allowance under this paragraph A.1 be deemed to pay employer's contributions as if that employment were not contracted-out employment.
- A.1.9 The references in paragraph A.1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

#### **Deemed calculation of Trade Contract Sum or Tender Sum – materials**

**A.2** The Trade Contract Sum or Tender Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.

- A.2.1 The Trade Contract Sum or Tender Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Trade Contractor), by whomsoever payable which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament. A type and a rate so payable are in paragraph A.2.2 referred to as a 'tender type' and a 'tender rate'.
- A.2.2 If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Trade Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Trade Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what he would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Trade Contractor. In this paragraph A.2.2 "a new type of duty or tax" includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Trade Contractor).

#### **Sub-contract work – incorporation of provisions to like effect**

**A.3**

- A.3.1 If the Trade Contractor sub-contracts any portion of the Works to a sub-contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of JCT Fluctuations Option A (excluding this paragraph A.3) including the percentage stated in the Trade Contract Particulars pursuant to paragraph A.12 which are applicable for the

purposes of this Trade Contract.

- A.3.2 If the price payable under such a sub-contract as referred to in paragraph A.3.1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Trade Contractor under this Trade Contract.

#### **Notification by Trade Contractor**

#### **A.4**

- A.4.1 The Trade Contractor shall notify the Construction Manager of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Trade Contract:

A.4.1.1 paragraph A.1.2;

A.4.1.2 paragraph A.1.6;

A.4.1.3 paragraph A.2.2;

A.4.1.4 paragraph A.3.2.

- A.4.2 Any notification required to be given under paragraph A.4.1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Trade Contractor in respect of the event in question.

#### **Agreement – Construction Manager and Trade Contractor**

- A.5 The Construction Manager and the Trade Contractor may agree what shall be deemed for all the purposes of this Trade Contract to be the net amount payable to or allowable by the Trade Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph A.4.1.

#### **Fluctuations taken into account in calculating the Final Trade Contract Sum**

- A.6 Any amount which from time to time becomes payable to or allowable by the Trade Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 shall be taken into account in calculating:

A.6.1 the Final Trade Contract Sum; and

A.6.2 any amounts payable to the Trade Contractor and which are calculated in accordance with clause 8.12.3.1.

The calculation to which this paragraph A.6 refers shall be subject to the provisions of paragraphs A.7 to A.9.1.

#### **Evidence and computations by Trade Contractor**

- A.7 As soon as is reasonably practicable the Trade Contractor shall provide such evidence and computations as the Construction Manager may reasonably require to enable the amount payable to or allowable by the Trade Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 to be ascertained; and in the case of amounts payable to or allowable by the Trade Contractor under paragraph A.1.3 (or paragraph A.3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs A.1.3 and A.1.4) – employees other than workpeople – such evidence shall include a certificate signed by or on behalf of the Trade Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

#### **No alteration to Trade Contractor's profit**

- A.8 No calculation made by virtue of paragraph A.6 shall alter in any way the amount of profit of the Trade Contractor due to be included in the calculation of the Final Trade Contract Sum.

#### **Position where Trade Contractor in default over completion**

#### **A.9**

- A.9.1 Subject to the provisions of paragraph A.9.2 no amount shall be added or deducted in the

computation of the amount stated as due in an Interim Certificate or in the Final Statement in respect of amounts otherwise payable to or allowable by the Trade Contractor by virtue of paragraphs A.1 and A.2 or paragraph A.3 if the event (as referred to in the provisions listed in paragraph A.4.1) in respect of which the payment or allowance would be made occurs after the expiry of the Completion Period.

A.9.2 Paragraph A.9.1 shall not be applied unless:

A.9.2.1 the printed text of clauses 2.25 to 2.28 is unamended and forms part of the Conditions; and

A.9.2.2 the Construction Manager has, in respect of every notification by the Trade Contractor under clause 2.26, fixed or confirmed such Completion Period as he considers to be in accordance with that clause.

#### **Work etc. to which paragraphs A.1 to A.3 not applicable**

**A.10** Paragraphs A.1 to A.3 shall not apply in respect of:

A.10.1 work for which the Trade Contractor is allowed daywork rates under clause 5.9;

A.10.2 changes in the rate of VAT charged on the supply of goods or services by the Trade Contractor to the Employer under this Trade Contract.

#### **Definitions for use with JCT Fluctuations Option A**

**A.11** In JCT Fluctuations Option A:

A.11.1 the Base Date means the date stated as such in the Trade Contract Particulars;

A.11.2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;

A.11.3 "workpeople" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;

A.11.4 "wage-fixing body" means a body which lays down recognised terms and conditions of workers;

A.11.5 "recognised terms and conditions" means terms and conditions of workers in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers' associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the workers in the trade, industry or section being workers of the description to which the agreement or award relates.

#### **Percentage addition to fluctuation payments or allowances**

**A.12** There shall be added to the amount paid to or allowed by the Trade Contractor under:

A.12.1 paragraph A.1.2,

A.12.2 paragraph A.1.3,

A.12.3 paragraph A.1.6,

A.12.4 paragraph A.2.2

the percentage stated in the Trade Contract Particulars.

## Schedule 8 Supplemental Provisions

(Ninth Recital)

Supplemental Provisions 1 to 6 apply unless otherwise stated in the Trade Contract Particulars. Supplemental Provision 7 applies where the Employer is a Local or Public Authority or other body of the type mentioned in that provision; Supplemental Provision 8 applies where the Employer is a Local or Public Authority and this Trade Contract is subject to the PC Regulations.

### Collaborative working

- 1 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

- 2
- 2.1 Without limiting any statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of this Trade 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.
- 2.2 In addition to the specific health and safety requirements of this Trade Contract, the Trade Contractor undertakes to:
- 2.2.1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive;
- 2.2.2 ensure that all personnel engaged by the Trade Contractor and members of the Trade Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
- 2.2.3 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
- 2.2.4 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

- 3
- 3.1 The Trade 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 expiry of the Completion Period or otherwise.
- 3.2 The Trade Contractor shall provide details of his proposed changes, identifying them as suggested under this Supplemental Provision 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
- 3.3 Where the Construction Manager wishes to implement a change proposed by the Trade Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the Completion Period. Upon agreement, the change and the amount to be included in the Final Trade Contract Sum shall be confirmed in an instruction, together with the share of the financial benefit to be paid to the Trade Contractor and any adjustment to the Completion Period.
- 3.4 Original proposals by the Trade Contractor under this Supplemental Provision 3 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**

4

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

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

5

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

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

6

With a view to avoidance or early resolution of disputes or differences (subject to Article 8), 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 Trade 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**

7

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 Trade Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Trade Contract is exempt from disclosure in accordance with the provisions of FOIA. Notwithstanding clause 2.7.4 or any other term of this Trade Contract:

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

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

8

Where the Employer is a Local or Public Authority and this Trade Contract is subject to the PC Regulations<sup>[61]</sup>:

- 8.1 where regulation 113 of the PC Regulations applies to this Trade Contract, the Trade 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);

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[61] An explanatory summary of those provisions in the PC Regulations that are reflected in this Trade Contract is contained in the Construction Management Guide. Provisions relating to the PC Regulations are also set out in section 8 (Termination) of this Trade Contract.

- 8.2 the Trade Contractor shall include in any sub-contract entered into by him provisions requiring the sub-contractor:
- 8.2.1 to supply and notify to the Trade Contractor the information required (as applicable) under regulations 71(3), 71(4) and 71(5) of the PC Regulations; and
  - 8.2.2 to include in any sub-subcontract he in turn enters into provisions to the same effect as required under paragraph 8.2.1 of Supplemental Provision 8;
- 8.3
- 8.3.1 the Trade 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;
  - 8.3.2 in the event the Employer requires the Trade Contractor to terminate a sub-contractor's employment pursuant to regulation 71(9) the Trade 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.

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