**1. GENERAL**

| **Actions** | **10**  10.1  10.2 | The Parties, the *Project Manager* and the *Supervisor* shall act as stated in this contract.  The Parties, the *Project Manager* and the *Supervisor* act in a spirit of mutual trust and co­operation. |
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| **Identified and** | **11** |  |
| **defined terms** | 11.1 | In these *conditions of contract,* terms identified in the Contract Data are in italics and defined terms have capital initials. |

11.2 (1) The Accepted Programme is the programme identified in the Contract Data or is the latest

programme accepted by the *Project Manager.* The latest programme accepted by the *Project Manager* supersedes previous Accepted Programmes.

1. Completion is when the Contractor has

done all the work which the Scope states is to be done by the Completion Date and

corrected notified Defects which would have prevented the *Client* from using the *works* or Others from doing their work.

If the work which the *Contractor* is to do by the Completion Date is not stated in the Scope, Completion is when the *Contractor* has done all the work necessary for the *Client* to use the *works* and for Others to do their work.

1. The Completion Date is the *completion date* unless later changed in accordance with the contract.
2. The Contract Date is the date when the contract came into existence.
3. A Corrupt Act is

the offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust or

abusing any entrusted power for private gain

in connection with this contract or any other contract with the *Client.* This includes any commission paid as an inducement which was not declared to the *Client* before the Contract Date.

1. A Defect is

a part of the *works* which is not in accordance with the Scope or

a part of the *works* designed by the Contractor which is not in accordance with the applicable law or the *Contractor's design* which the *Project Manager* has accepted.

1. The Defects Certificate is either a list of Defects that the *Supervisor* has notified before the *defects date* which the *Contractor* has not corrected or, if there are no such Defects, a statement that there are none.
2. The Early Warning Register is a register of matters which are

* listed in the Contract Data for inclusion and
* notified by the *Project Manager* or the *Contractor* as early warning matters.

It includes a description of the matter and the way in which the effects of the matter are to be avoided or reduced.

1. Equipment is items provided and used by the *Contractor* to Provide the Works and which the Scope does not require the *Contractor* to include in the *works.*
2. The Fee is the amount calculated by applying the *fee percentage* to the amount of Defined Cost.
3. A Key Date is the date by which work is to meet the Condition stated. The Key Date is the *key date* stated in the Contract Data and the Condition is the *condition* stated in the Contract Data unless later changed in accordance with the contract.
4. Others are people or organisations who are not the *Client,* the *Project Manager,* the *Supervisor,* the *Adjudicator* or a member of the Dispute Avoidance Board, the *Contractor* or any employee, Subcontractor or supplier of the *Contractor.*
5. The Parties are the *Client* and the- *Contractor.*
6. Plant and Materials are items intended to be included in the *works.*
7. To Provide the Works means to do the work necessary to complete the *works* in accordance with the contract and all incidental work, services and actions which the contract requires.
8. Scope is information which

specifies and describes the *works* or

states any constraints on how the *Contractor* Provides the Works

and is either

in the documents which the Contract Data states it is in or

in an instruction given in accordance with the contract.

1. The Site is the area within the *boundaries of the site* and the volumes above and below it which are affected by work included in the contract.
2. Site Information is information which

describes the Site and its surroundings and

is in the documents which the Contract Data states it is in.

1. A Subcontractor is a person or organisation who has a contract with the *Contractor* to

* construct or install part of the *works,*
* design all or part of the *works,* except the design of Plant and Materials carried out by the supplier or
* provide a service in the Working Areas which is necessary to Provide the Works, except for the

hire of Equipment or

supply of people paid for by the *Contractor* according to the time they work.

1. The Working Areas are the Site and those parts of the *working areas* which are

* necessary for Providing the Works and
* used only for work in the contract

unless later changed in accordance with the contract.

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| **Interpretation and the law** | **12**  12.1 | In the contract, except where the context shows otherwise, words in the singular also mean in the plural and the other way round. |
|  | 12.2 | The contract is governed by the *law of the contract.* |
|  | 12.3 | No change to the contract, unless provided for by these *conditions of contract,* has effect unless it has been agreed, confirmed in writing and signed by the Parties. |
|  | 12.4 | The contract is the entire agreement between the Parties. |
| **Communications** | **13**  13.1 | Each communication which the contract requires is communicated in a form which can be read, copied and recorded. Writing is in the *language of the contract.* |
|  | 13.2 | If the Scope specifies the use of a communication system, a communication has effect when it is communicated through the communication system specified in the Scope. |
|  |  | If the Scope does not specify a communication system, a communication has effect when it is received at the last address notified by the recipient for receiving communications or, if none is notified, at the address of the recipient stated in the Contract Data. |
|  | 13.3 | If the contract requires the *Project Manager,* the *Supervisor* or the *Contractor* to reply to a communication, unless otherwise stated in these *conditions of contract,* they reply within the *period for reply.* |
|  | 13.4 | The *Project Manager* replies to a communication submitted or resubmitted by the *Contractor* for acceptance. If the reply is not acceptance, the *Project Manager* states the reasons in sufficient detail to enable the *Contractor* to correct the matter. The *Contractor* resubmits the communication within the *period for reply* taking account of these reasons. A reason for withholding acceptance is that more information is needed in order to assess the *Contractor's* submission fully. |
|  | 13.5 | The *Project Manager* may extend the period for reply to a communication if the *Project Manager* and the *Contractor* agree to the extension before the reply is due. The *Project Manager* informs the *Contractor* of the extension which has been agreed. |
|  | 13.6 | The *Project Manager* issues certificates to the *Client* and the *Contractor.* The *Supervisor* issues certificates to the *Project Manager,* the *Client* and the *Contractor.* |
|  | 13.7 | A notification or certificate which the contract requires is communicated separately from other communications. |
|  | 13.8 | The *Project Manager* may withhold acceptance of a submission by the *Contractor.* Withholding acceptance for a reason stated in these *conditions of contract* is not a compensation event. |
| **The *Project Manager and* the *Supervisor*** | **14**  14.1 | The *Project Manager's* or the *Supervisor's* acceptance of a communication from the *Contractor* or acceptance of the work does not change the *Contractor's* responsibility to Provide the Works or liability for its design. |
|  | 14.2 | The *Project Manager* and the *Supervisor,* after notifying the *Contractor,* may delegate any of their actions and may cancel any delegation. The notification contains the name of the delegate and details of the actions being delegated or any cancellation of delegation. A reference to an action of the *Project Manager* or the *Supervisor* in the contract includes an action by their delegate. The *Project Manager* and the *Supervisor* may take an action which they have delegated. |
|  | 14.3 | The *Project Manager* may give an instruction to the *Contractor* which changes the Scope or a Key Date. |
|  | 14.4 | The *Client* may replace the *Project Manager* or the *Supervisor* after notifying the *Contractor* of the name of the replacement. |

**Early warning**

**15**

15.1 The *Contractor* and the *Project Manager* give an early warning by notifying the other as soon as either becomes aware of any matter which could

* increase the total of the Prices,
* delay Completion,
* delay meeting a Key Date or
* impair the performance of the *works* in use.

The *Project Manager* or the *Contractor* may give an early warning by notifying the other of any other matter which could increase the *Contractor's* total cost. The *Project Manager* enters early warning matters in the Early Warning Register. Early warning of a matter for which a compensation event has previously been notified is not required.

15.2 The *Project Manager* prepares a first Early Warning Register and issues it to the *Contractor* within one week of the *starting date.* The *Project Manager* instructs the *Contractor* to attend a first early warning meeting within two weeks of the *starting date.*

Later early warning meetings are held

* if either the *Project Manager* or *Contractor* instructs the other to attend an early warning meeting, and, in any case,
* at no longer interval than the interval stated in the Contract Data until Completion of the whole of the *works.*

The *Project Manager* or *Contractor* may instruct other people to attend an early warning meeting if the other agrees.

A Subcontractor attends an early warning meeting if its attendance would assist in deciding the actions to be taken.

15.3 At an early warning meeting, those who attend co-operate in

* making and considering proposals for how the effects of each matter in the Early Warning Register can be avoided or reduced,
* seeking solutions that will bring advantage to all those who will be affected,
* deciding on the actions which will be taken and who, in accordance with the contract, will take them,
* deciding which matters can be removed from the Early Warning Register and
* reviewing actions recorded in the Early Warning Register and deciding if different actions need to be taken and who, in accordance with the contract, will take them.

15.4 The Project Manager revises the Early Warning Register to record the decisions made at each early warning meeting and issues the revised Early Warning Register to the Contractor within one week of the early warning meeting. If a decision needs a change to the Scope, the Project Manager instructs the change at the same time as the revised Early Warning Register is issued.

**16**

16.1 The Contractor may propose to the Project Manager that the Scope provided by the Client is changed in order to reduce the amount the Client pays to the Contractor for Providing the Works. The Project Manager consults with the Client and the Contractor about the change.

16.2 Within four weeks of the *Contractor* making the proposal the *Project Manager*

* accepts the *Contractor's* proposal and issues an instruction changing the Scope
* informs the *Contractor* that the *Client* is considering the proposal and instructs the *Contractor* to submit a quotation for a proposed instruction to change the Scope or
* informs the *Contractor* that the proposal is not accepted.

The *Project Manager* may give any reason for not accepting the proposal.

1. The *Contractor* may submit a proposal for adding an area to the Working Areas to the *Project Manager* for acceptance. A reason for not accepting is that the proposed area is

|  |  | * not necessary for Providing the Works or |
| --- | --- | --- |
|  |  | * used for work not in the contract. |
| **Requirements for instructions** | **17**  17.1 | The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware of an ambiguity or inconsistency in or between the documents which are part of the contract. The *Project Manager* states how the ambiguity or inconsistency should be resolved. |
|  | 17.2 | The *Project Manager* or the *Contractor* notifies the other as soon as either becomes aware that the Scope includes an illegal or impossible requirement. If the Scope does include an illegal or impossible requirement, the *Project Manager* gives an instruction to change the Scope appropriately. |
| **Corrupt Acts** | **18**  18.1 | The *Contractor* does not do a Corrupt Act. |
|  | 18.2 | The *Contractor* takes action to stop a Corrupt Act of a Subcontractor or supplier of which it is, or should be, aware. |
|  | 18.3 | The *Contractor* includes equivalent provisions to these in subcontracts and contracts for the supply of Plant and Materials and Equipment. |
| **Prevention** | **19**  19.1 | If an event occurs which |

* stops the *Contractor* completing the whole of the *works* or
* stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

and which

* neither Party could prevent and
* an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it,

the *Project Manager* gives an instruction to the *Contractor* stating how the event is to be dealt with.

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**2. THE *CONTRACTOR'S* MAIN RESPONSIBILITIES**

|  |  |  |
| --- | --- | --- |
| **Providing the Works** | **20**  20.1 | The *Contractor* Provides the Works in accordance with the Scope. |
| **The *Contractor's*** | **21** |  |
| **design** | 21.1 | The *Contractor* designs the parts of the *works* which the Scope states the *Contractor* is to design. |
|  | 21.2 | The *Contractor* submits the particulars of its design as the Scope requires to the *Project Manager* for acceptance. A reason for not accepting the *Contractor's* design is that it does not comply with either the Scope or the applicable law.  The *Contractor* does not proceed with the relevant work until the *Project Manager* has accepted its design. |
|  | 21.3 | The *Contractor* may submit its design for acceptance in parts if the design of each part can be assessed fully. |
| **Using the** | **22** |  |
| ***Contractor's* design** | 22.1 | The *Client* may use and copy the *Contractor's* design for any purpose connected with construction, use, alteration or demolition of the *works* unless otherwise stated in the Scope and for other purposes as stated in the contract. The *Contractor* obtains from a Subcontractor equivalent rights for the *Client* to use material prepared by the Subcontractor. |
| **Design of** | ***23*** |  |
| **Equipment** | 23.1 | The *Contractor* submits particulars of the design of an item of Equipment to the *Project Manager* for acceptance if the *Project Manager* instructs the *Contractor* to. A reason for not accepting is that the design of the item will not allow the *Contractor* to Provide the Works in accordance with   * the Scope, * the *Contractor's* design which the *Project Manager* has accepted or * the applicable law. |
| **People** | **24** |  |
|  | 24.1 | The *Contractor* either provides each *key person* named to do the job stated in the Contract Data or provides a replacement person who has been accepted by the *Project Manager.*  The *Contractor* submits the name, relevant qualifications and experience of a proposed replacement person to the *Project Manager* for acceptance. A reason for not accepting the person is that their relevant qualifications and experience are not as good as those of the person who is to be replaced. |
|  | 24.2 | The *Project Manager* may, having stated the reasons, instruct the *Contractor* to remove a person. The *Contractor* then arranges that, after one day, the person has no further connection with the work included in the contract. |
| **Working with the** | **25** |  |
| ***Client* and Others** | 25.1 | The *Contractor* co-operates with Others, including in obtaining and providing information which they need in connection with the *works.* The *Contractor* shares the Working Areas with Others as stated in the Scope. |
|  | 25.2 | The *Client* and the *Contractor* provide services and other things as stated in the Scope. Any cost incurred by the *Client* as a result of the *Contractor* not providing the services and other things which it is to provide is assessed by the *Project Manager* and paid by the *Contractor.* |
|  | 25.3 | If the *Project Manager* decides that the work does not meet the Condition stated for a Key Date by the date stated and, as a result, the *Client* incurs additional cost either |

* in carrying out work or

| **Other** | **27** | |
| --- | --- | --- |
| **responsibilities** | 27.1 | The *Contractor* obtains approval of its design from Others where necessary. |
|  | 27.2 | The *Contractor* provides access to work being done and to Plant and Materials being stored for the contract for   * the *Project Manager,* * the *Supervisor* and * Others as named by the *Project Manager*. |
|  | 27.3 | The *Contractor* obeys an instruction which is in accordance with the contract and is given by the *Project Manager* or the *Supervisor.* |
|  | 27.4 | The *Contractor* acts in accordance with the health and safety requirements stated in the Scope. |
| **Assignment** | **28** |  |
|  | 28.1 | Either Party notifies the other Party if they intend to transfer the benefit of the contract or any rights under it. The *Client* does not transfer a benefit or any rights if the party receiving the benefit or right does not intend to act in a spirit of mutual trust and co-operation. |
| **Disclosure** | **29** |  |
|  | 29.1 | The Parties do not disclose information obtained in connection with the *works* except when necessary to carry out their duties under the contract. |
|  | 29.2 | The *Contractor* may publicise the *works* only with the *Client's* agreement. |

* by paying an additional amount to Others in carrying out work

on the same project, the additional cost which the *Client* has paid or will incur is paid by the *Contractor.* The *Project Manager* assesses the additional cost within four weeks of the date when the Condition for the Key Date is met. The *Client's* right to recover the additional cost is its only right in these circumstances.

**Subcontracting 26**

1. If the *Contractor* subcontracts work, it is responsible for Providing the Works as if it had not subcontracted. The contract applies as if a Subcontractor's employees and equipment were the *Contractor's.*
2. The *Contractor* submits the name of each proposed Subcontractor to the *Project Manager* for acceptance. A reason for not accepting the Subcontractor is that the appointment will not allow the *Contractor* to Provide the Works. The *Contractor* does not appoint a proposed Subcontractor until the *Project Manager* has

* accepted the Subcontractor and, to the extent these *conditions of contract* require,
* accepted the subcontract documents.

1. The Contractor submits the proposed subcontract documents, except any pricing information, for each subcontract to the *Project Manager* for acceptance unless

the proposed subcontract is an NEC contract which has not been amended other than in accordance with the *additional conditions of contract* or

the *Project Manager* has agreed that no submission is required.

A reason for not accepting the subcontract documents is that

* their use will not allow the *Contractor* to Provide the Works or
* they do not include a statement that the parties to the subcontract act in a spirit of mutual trust and co-operation.

**3. TIME**

| **Starting,** | **30** | |
| --- | --- | --- |
| **Completion and** | 30.1 | The *Contractor* does not start work on the Site until the first *access date* and does the work |
| **Key Dates** |  | so that Completion is on or before the Completion Date. |
|  | 30.2 | The *Project Manager* decides the date of Completion and certifies it within one week of the date. |
|  | 30.3 | The *Contractor* does the work so that the Condition stated for each Key Date is met by the Key Date. |

**The programme 31**

1. If a programme is not identified in the Contract Data, the *Contractor* submits a first programme to the *Project Manager* for acceptance within the period stated in the Contract Data.
2. The *Contractor* shows on each programme submitted for acceptance

the *starting date, access dates,* Key Dates and Completion Date,

planned Completion,

the order and timing of the operations which the *Contractor* plans to do in order to Provide the Works,

the order and timing of the work of the *Client* and Others as last agreed with them by the *Contractor* or, if not so agreed, as stated in the Scope,

the dates when the *Contractor* plans to meet each Condition stated for the Key Dates and to complete other work needed to allow the *Client* and Others to do their work,

provisions for

* float,
* time risk allowances,
* health and safety requirements and
* the procedures set out in the contract,
* the dates when, in order to Provide the Works in accordance with the programme, the *Contractor* will need
* access to a part of the Site if later than its access *date,*
* acceptances,
* Plant and Materials and other things to be provided by the *Client* and
* information from Others,
* for each operation, a statement of how the *Contractor* plans to do the work identifying the principal Equipment and other resources which will be used and
* other information which the Scope requires the *Contractor* to show on a programme submitted for acceptance.

A programme issued for acceptance is in the form stated in the Scope.

1. Within two weeks of the *Contractor* submitting a programme for acceptance, the *Project Manager* notifies the *Contractor* of the acceptance of the programme or the reasons for not accepting it. A reason for not accepting a programme is that

* the *Contractor's* plans which it shows are not practicable,
* it does not show the information which the contract requires,
* it does not represent the *Contractor's* plans realistically or
* it does not comply with the Scope.

If the *Project Manager* does not notify acceptance or non-acceptance within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the failure continues for a further one week after the *Contractor's* notification, it is treated as acceptance by the *Project Manager* of the programme.

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| **Revising the** | 32 | |
| **programme** | 32.1 | The *Contractor* shows on each revised programme   * the actual progress achieved on each operation and its effect upon the timing of the remaining work, * how the *Contractor* plans to deal with any delays and to correct notified Defects and * any other changes which the *Contractor* proposes to make to the Accepted Programme. |
|  | 32.2 | The Contractor submits a revised programme to the *Project Manager* for acceptance   * within the *period for reply* after the *Project Manager* has instructed the *Contractor* to, * when the *Contractor* chooses to and, in any case, * at no longer interval than the interval stated in the Contract Data from the *starting date* until Completion of the whole of the *works.* |
| **Access to and use** | 33 |  |
| **of the Site** | 33.1 | The *Client* allows access to and use of each part of the Site to the Contractor which is necessary for the work included in the contract. Access and use is allowed on or before the later of its access *date* and the date for access shown on the Accepted Programme. |
| **Instructions to stop** | 34 |  |
| **or not to start work** | 34.1 | The *Project Manager* may instruct the *Contractor* to stop or not start any work. The *Project Manager* subsequently gives an instruction to the *Contractor* to   * re-start or start the work or * remove the work from the Scope. |
| **Take over** | 35 |  |
|  | 35.1 | The *Client* need not take over the *works* before the Completion Date if the Contract Data states it is not willing to do so. Otherwise the *Client* takes over the *works* not later than two weeks after Completion. |
|  | 35.2 | The *Client* may use any part of the *works* before Completion has been certified. The *Client* takes over the part of the *works* when it begins to use it except if the use is   * for a reason stated in the Scope or * to suit the *Contractor's* method of working. |
|  | 35.3 | The *Project Manager* certifies the date upon which the *Client* takes over any part of the *works* and its extent within one week of the date. |
| **Acceleration** | 36 |  |
|  | 36.1 | The *Contractor* and the *Project Manager* may propose to the other an acceleration to achieve Completion before the Completion Date. If the *Project Manager* and *Contractor* are prepared to consider the proposed change, the *Project Manager* instructs the *Contractor* to provide a quotation. The instruction states changes to the Key Dates to be included in the quotation. The *Contractor* provides a quotation within three weeks of the instruction to do so. The *Project Manager* replies to the quotation within three weeks. The reply is   * a notification that the quotation is accepted or * a notification that the quotation is not accepted and that the Completion Dates and Key Dates are not changed. |

1. A quotation for an acceleration comprises proposed changes to the Prices and a revised programme showing the earlier Completion Date and the changed Key Dates. The *Contractor* submits details of the assessment with each quotation.
2. When a quotation for an acceleration is accepted, the *Project Manager* changes the Prices, the Completion Date and the Key Dates accordingly and accepts the revised programme

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| --- | --- | --- |
| **4. QUALITY MANAGEMENT** | | |
| **Quality**  **management**  **system** | 40  40.1 | The *Contractor* operates a quality management system which complies with the requirements stated in the Scope. |
|  | 40.2 | Within the period stated in the Contract Data, the *Contractor* provides the *Project Manager* with a quality policy statement and a quality plan for acceptance. A reason for not accepting a quality policy statement or quality plan is that it does not allow the *Contractor* to Provide the Works. |
|  |  | If any changes are made to the quality plan, the *Contractor* provides the *Project Manager* with the changed quality plan for acceptance. |
|  | 40.3 | The *Project Manager* may instruct the *Contractor* to correct a failure to comply with the quality plan. This instruction is not a compensation event. |
| **Tests and**  **inspections** | 41  41.1 | This clause only applies to tests and inspections required by the Scope or the applicable law. |
|  | 41.2 | The *Contractor* and the *Client* provide materials, facilities and samples for tests and inspections as stated in the Scope. |
|  | 413 | The *Contractor* and the *Supervisor* informs the other of each of their tests and inspections before the test or inspection starts and afterwards informs the other of the results. The *Contractor* informs the *Supervisor* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Supervisor* may watch any test done by the *Contractor.* |
|  | 41.4 | If a test or inspection shows that any work has a Defect, the *Contractor* corrects the Defect and the test or inspection is repeated. |
|  | 41.5 | The *Supervisor* does tests and inspections without causing unnecessary delay to the work or to a payment which is conditional upon a test or inspection being successful. A payment which is conditional upon a *Supervisor's* test or inspection being successful becomes due at the later of the *defects date* and the end of the last *defect correction period* if |
|  |  | • the *Supervisor* has not done the test or inspection and |
|  |  | • the delay to the test or inspection is not the *Contractor's* fault. |
|  | 41.6 | The *Project Manager* assesses the cost incurred by the *Client* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed. |
| **Testing and inspection before delivery** | 42  42.1 | The *Contractor* does not bring to the Working Areas those Plant and Materials which the Scope states are to be tested or inspected before delivery until the *Supervisor* has notified the *Contractor* that they have passed the test or inspection. |
| **Searching for and notifying Defects** | 43  43.1 | Until the *defects date,* the *Supervisor* may instruct the *Contractor* to search for a Defect. The *Supervisor* gives reasons for the search with the instruction. Searching may include |
|  |  | * uncovering, dismantling, re-covering and re-erecting work, |
|  |  | * providing facilities, materials and samples for tests and inspections done by the *Supervisor* and |
|  |  | * doing tests and inspections which the Scope does not require. |
|  | 43.2 | Until the *defects date* the *Supervisor* and the *Contractor* notifies the other as soon as they become aware of a Defect. |
| **Correcting Defects** | 44  44.1 | The *Contractor* corrects a Defect whether or not the *Supervisor* has notified it. |
|  | 44.2 | The *Contractor* corrects a notified Defect before the end of the *defect correction period.* The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects. |

44.3 The *Supervisor* issues the Defects Certificate at the *defects date* if there are no notified Defects, or otherwise at the earlier of

* the end of the last *defect correction period* and

|  |  |  |
| --- | --- | --- |
| * the date when all notified Defects have been corrected. | | |
|  | 44.4 | The *Client's* rights in respect of a Defect which the *Supervisor* has not found or notified are not affected by the issue of the Defects Certificate.  The *Project Manager* arranges for the *Client* to allow the *Contractor* access to and use of a part of the *works* which has been taken over if it is needed for correcting a Defect. In this case the *defect correction period* begins when the necessary access and use have been provided. |
| **Accepting Defects** | 45 |  |
|  | 45.1 | The *Contractor* and the *Project Manager* may propose to the other that the Scope should be changed so that a Defect does not have to be corrected. |
|  | 45.2 | If the *Contractor* and the *Project Manager* are prepared to consider the change, the *Contractor submits* a quotation for reduced Prices or an earlier Completion Date or both to the *Project Manager* for acceptance. If the quotation is accepted, the *Project Manager* changes the Scope, the Prices and the Completion Date accordingly and accepts the revised programme. |
| **Uncorrected** | 46 |  |
| **Defects** | 46.1 | If the *Contractor* is given access in order to correct a notified Defect but the Defect is not corrected within its *defect correction period,* the *Project Manager* assesses the cost to the *Client* of having the Defect corrected by other people and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect. |
|  | 46.2 | If the *Contractor* is not given access in order to correct a notified Defect before the *defects date,* the *Project Manager* assesses the cost to the *Contractor* of correcting the Defect and the *Contractor* pays this amount. The Scope is treated as having been changed to accept the Defect. |

| **5. PAYMENT** | | |
| --- | --- | --- |
| **Assessing the** | 50 |  |
| **amount due** | 50.1 | The *Project Manager* assesses the amount due at each assessment date. The first assessment date is decided by the *Project Manager* to suit the procedures of the Parties and is not later than the *assessment interval* after the *starting date.* Later assessment dates occur at the end of each *assessment interval* until   * the *Supervisor* issues the Defects Certificate or * the *Project Manager* issues a termination certificate. |
|  | 50.2 | The *Contractor* submits an application for payment to the *Project Manager* before each assessment date setting out the amount the *Contractor* considers is due at the assessment date. The *Contractor's* application for payment includes details of how the amount has been assessed and is in the form stated in the Scope.  In assessing the amount due, the *Project Manager* considers an application for payment submitted by the *Contractor* before the assessment date. |
|  | 50.3 | If the Contractor submits an application for payment before the assessment date, the amount due at the assessment date is   * the Price for Work Done to Date, * plus other amounts to be paid to the *Contractor,* * less amounts to be paid by or retained from the *Contractor.* |
|  | 50.4 | If the *Contractor* does not submit an application for payment before the assessment date, the amount due at the assessment date is the lesser of   * the amount the *Project Manager* assesses as due at the assessment date, assessed as though the *Contractor* had submitted an application before the assessment date, and |

* the amount due at the previous assessment date.

1. If no programme is identified in the Contract Data, one quarter of the Price for Work Done to Date is retained in assessments of the amount due until the *Contractor* has submitted a first programme to the *Project Manager* for acceptance showing the information which the contract requires.
2. The *Project Manager* corrects any incorrectly assessed amount due in a later payment certificate.

**Payment 51**

1. The *Project Manager* certifies a payment within one week of each assessment date. The *Project Manager's* certificate includes details of how the amount due has been assessed. The first payment is the amount due. Other payments are the change in the amount due since the previous assessment. A payment is made by the *Contractor* to the *Client* if the change reduces the amount due. Other payments are made by the *Client* to the *Contractor.* Payments are in the *currency of the contract* unless otherwise stated in the contract.
2. Each certified payment is made within three weeks of the assessment date or, if a different period is stated in the Contract Data, within the period stated. If a certified payment is late, or if a payment is late because the *Project Manager* has not issued a certificate which should be issued, interest is paid on the late payment. Interest is assessed from the date by which the late payment should have been made until the date when the late payment is made, and is included in the first assessment after the late payment is made.
3. If an amount due is corrected in a later certificate

* in relation to a mistake or a compensation event,
* because a payment was delayed by an unnecessary delay to a test or inspection done by the *Supervisor* or
* following a decision of the *Adjudicator* or the *tribunal,* or a recommendation of the Dispute Avoidance Board,

interest on the correcting amount is paid. Interest is assessed from the date when the incorrect amount was certified until the date when the changed amount is certified and is included in the assessment which includes the changed amount.

1. Interest is calculated on a daily basis at the *interest rate* and is compounded annually.
2. Any tax which the law requires a Party to pay to the other Party is added to any payment made under the contract.

**Defined Cost 52**

1. All the *Contractor's* costs which are not included in the Defined Cost are treated as included in the Fee. Defined Cost includes only amounts calculated using rates and percentages stated in the Contract Data and other amounts at open market or competitively tendered prices with deductions for all discounts, rebates and taxes which can be recovered.

**Final assessment 53**

1. The *Project Manager* makes an assessment of the final amount due and certifies a final payment, if any is due, no later than

* four weeks after the *Supervisor* issues the Defects Certificate or
* thirteen weeks after the *Project Manager* issues a termination certificate.

The *Project Manager* gives the *Contractor* details of how the amount due has been assessed. The final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.

1. If the *Project Manager* does not make this assessment within the time allowed, the *Contractor* may issue to the *Client* an assessment of the final amount due, giving details of how the final amount due has been assessed. If the *Client* agrees with this assessment, a final payment is made within three weeks of the assessment or, if a different period is stated in the Contract Data, within the period stated.
2. An assessment of the final amount due issued within the time stated in the contract is conclusive evidence of the final amount due under or in connection with the contract unless a Party takes the following actions.

If the contract includes Option W1, a Party

* refers a dispute about the assessment of the final amount due to the *Senior Representatives* within four weeks of the assessment being issued,
* refers any issues not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of the issues not agreed being produced or when it should have been produced and
* refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

If the contract includes Option W2, a Party

* refers a dispute about the assessment of the final amount due to the *Senior Representatives* or to the *Adjudicator* within four weeks of the assessment being issued,
* refers any issues referred to but not agreed by the *Senior Representatives* to the *Adjudicator* within three weeks of the list of issues not agreed being produced or when it should have been produced and
* refers to the *tribunal* its dissatisfaction with a decision of the *Adjudicator* as to the final assessment of the amount due within four weeks of the decision being made.

If the contract includes Option W3, a Party

* refers a dispute about the assessment of the final amount due to the Dispute Avoidance Board and
* refers to the *tribunal* its dissatisfaction with the recommendation of the Dispute Avoidance Board within four weeks of the recommendation being made.

1. The assessment of the final amount due is changed to include

* any agreement the Parties reach and
* a decision of the *Adjudicator* or recommendation of the Dispute Avoidance Board which has not been referred to the *tribunal* within four weeks of that decision or recommendation.

A changed assessment becomes conclusive evidence of the final amount due under or in connection with the contract.

**6. COMPENSATION EVENTS**

**Compensation 60**

**events** 60.1 The following events are compensation events.

1. The *Project Manager* gives an instruction changing the Scope except

* a change made in order to accept a Defect or
* a change to the Scope provided by the *Contractor* for its design which is made
* at the *Contractor's* request or
* in order to comply with the Scope provided by the *Client.*

1. The *Client* does not allow access to and use of each part of the Site by the later of its access *date* and the date for access shown on the Accepted Programme.
2. The *Client* does not provide something which it is to provide by the date shown on the Accepted Programme.
3. The *Project Manager* gives an instruction to stop or not to start any work or to change a Key Date.
4. The *Client* or Others

* do not work within the times shown on the Accepted Programme,
* do not work within the conditions stated in the Scope or carry out work on the Site that is not stated in the Scope.

1. The *Project Manager* or the *Supervisor* does not reply to a communication from the Contractor within the period required by the contract.
2. The *Project Manager* gives an instruction for dealing with an object of value or of historical or other interest found within the Site.
3. The *Project Manager* or the *Supervisor* changes a decision which either has previously communicated to the *Contractor.*
4. The *Project Manager* withholds an acceptance (other than acceptance of a quotation for acceleration or for not correcting a Defect) for a reason not stated in the contract.
5. The *Supervisor* instructs the *Contractor* to search for a Defect and no Defect is found unless the search is needed only because the *Contractor* gave insufficient notice of doing work obstructing a required test or inspection.
6. A test or inspection done by the *Supervisor* causes unnecessary delay.
7. The *Contractor* encounters physical conditions which

are within the Site,

are not weather conditions and

an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for them.

Only the difference between the physical conditions encountered and those for which it would have been reasonable to have allowed is taken into account in assessing a compensation event.

1. A *weather measurement* is recorded

* within a calendar month,
* before the Completion Date for the whole of the *works* and

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* at the place stated in the Contract Data

the value of which, by comparison with the *weather data,* is shown to occur on average less frequently than once in ten years.

Only the difference between the *weather measurement* and the weather which the *weather data* show to occur on average less frequently than once in ten years is taken into account in assessing a compensation event.

1. An event which is a *Client's* liability stated in these *conditions of contract.*
2. The *Project Manager* certifies take over of a part of the *works* before both Completion and the Completion Date.
3. The *Client* does not provide materials, facilities and samples for tests and inspections as stated in the Scope.
4. The *Project Manager* notifies the *Contractor* of a correction to an assumption which the *Project Manager* stated about a compensation event.
5. A breach of contract by the *Client* which is not one of the other compensation events in the contract.
6. An event which

* stops the *Contractor* completing the whole of the *works* or
* stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme,

and which

neither Party could prevent,

an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it and

is not one of the other compensation events stated in the contract.

1. The *Project Manager* notifies the *Contractor* that a quotation for a proposed instruction is not accepted.
2. Additional compensation events stated in Contract Data part one.
3. In judging the physical conditions for the purpose of assessing a compensation event, the *Contractor* is assumed to have taken into account

* the Site Information,
* publicly available information referred to in the Site Information,
* information obtainable from a visual inspection of the Site and
* other information which an experienced contractor could reasonably be expected to have or to obtain.

1. If there is an ambiguity or inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions more favourable to doing the work.

**61**

**Notifying compensation events**

1. For a compensation event which arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision, the *Project Manager* notifies the *Contractor* of the compensation event at the time of that communication.

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1. The *Project Manager* includes in the notification of a compensation event an instruction to the *Contractor* to submit quotations unless

* the event arises from a fault of the *Contractor* or
* the event has no effect upon Defined Cost, Completion or meeting a Key Date.

1. The *Contractor* notifies the *Project Manager* of an event which has happened or which is expected to happen as a compensation event if

* the *Contractor* believes that the event is a compensation event and
* the *Project Manager* has not notified the event to the *Contractor.*

If the *Contractor* does not notify a compensation event within eight weeks of becoming aware that the event has happened, the Prices, the Completion Date or a Key Date are not changed unless the event arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision.

1. The *Project Manager* replies to the *Contractor's* notification of a compensation event within

* one week after the *Contractor's* notification or
* a longer period to which the *Contractor* has agreed.

If the event

arises from a fault of the *Contractor,*

* has not happened and is not expected to happen,
* has not been notified within the timescales set out in these *conditions of contract,*
* has no effect upon Defined Cost, Completion or meeting a Key Date or
* is not one of the compensation events stated in the contract

the *Project Manager* notifies the *Contractor* that the Prices, the Completion Date and the Key Dates are not to be changed and states the reasons in the notification. Otherwise, the *Project Manager* notifies the *Contractor* that the event is a compensation event and includes in the notification an instruction to the *Contractor* to submit quotations.

If the *Project* Manager fails to reply to the *Contractor's* notification of a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Project Manager* that the event is a compensation event and an instruction to submit quotations.

1. If the *Project Manager* decides that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the *Project Manager* states this in the instruction to the *Contractor* to submit quotations.
2. If the effects of a compensation event are too uncertain to be forecast reasonably, the *Project Manager* states assumptions about the compensation event in the instruction to the *Contractor* to submit quotations. Assessment of the event is based on these assumptions. If any of them is later found to have been wrong, the *Project Manager* notifies a correction.
3. A compensation event is not notified by the *Project Manager* or the *Contractor* after the issue of the Defects Certificate.

**Quotations for**

**compensation events**

62

62.1 After discussing with the *Contractor* different ways of dealing with the compensation eventwhich are practicable, the *Project Manager* may instruct the *Contractor* to submit alternative quotations. The *Contractor* submits the required quotations to the *Project Manager* and may submit quotations for other methods of dealing with the compensation event which it considers practicable.

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1. Quotations for a compensation event comprise proposed changes to the Prices and any delay to the Completion Date and Key Dates assessed by the *Contractor.* The Contractor submits details of the assessment with each quotation. If the programme for remaining work is altered by the compensation event, the *Contractor* includes the alterations to the Accepted Programme in the quotation.
2. The *Contractor* submits quotations within three weeks of being instructed to do so by the *Project Manager.* The *Project Manager* replies within two weeks of the submission. The reply is

* a notification of acceptance of the quotation,
* an instruction to submit a revised quotation or
* that the *Project Manager* will be making the assessment.

1. The *Project Manager* instructs the *Contractor* to submit a revised quotation only after explaining the reasons for doing so to the *Contractor.* The *Contractor* submits the revised quotation within three weeks of being instructed to do so.
2. The *Project Manager* extends the time allowed for

* the *Contractor* to submit quotations for a compensation event or
* the *Project Manager* to reply to a quotation

if the *Project Manager* and the *Contractor* agree to the extension before the submission or reply is due. The *Project Manager* informs the *Contractor* of the extension which has been agreed.

1. If the *Project Manager* does not reply to a quotation within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Project Manager* of the quotation.

**63**

**Assessing compensation events**

1. The change to the Prices is assessed as the effect of the compensation event upon

the actual Defined Cost of the work done by the dividing date,

the forecast Defined Cost of the work not done by the dividing date and

the resulting Fee.

For a compensation event that arises from the *Project Manager* or the *Supervisor* giving an instruction or notification, issuing a certificate or changing an earlier decision, the dividing date is the date of that communication.

For other compensation events, the dividing date is the date of the notification of the compensation event.

1. The *Project Manager* and the *Contractor* may agree rates or lump sums to assess the change to the Prices.
2. If the effect of a compensation event is to reduce the total Defined Cost, the Prices are not reduced unless otherwise stated in these *conditions of contract*
3. If the effect of a compensation event is to reduce the total Defined Cost and the event is

* a change to the Scope other than a change to the Scope provided by the *Client,* which the *Contractor* proposed and the *Project Manager* accepted or
* a correction to an assumption stated by the *Project Manager* for assessing an earlier compensation event

the Prices are reduced.

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63.5 A delay to the Completion Date is assessed as the length of time that, due to the compensation event, planned Completion is later than planned Completion as shown on the Accepted Programme current at the dividing date.

A delay to a Key Date is assessed as the length of time that, due to the compensation event, the planned date when the Condition stated for a Key Date will be met is later than the date shown on the Accepted Programme current at the dividing date.

The assessment takes into account

* any delay caused by the compensation event already in the Accepted Programme and
* events which have happened between the date of the Accepted Programme and the dividing date.

63.6

**The *Project***

***Manager's* assessments**

64

64.1

The *Project Manager* assesses a compensation event

* if, when the *Contractor* submits quotations for the compensation event, it has not submitted a programme or alterations to a programme which the contract requires it to submit or

64.2

* if, when the *Contractor* submits quotations for the compensation event, the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract.

The *Project Manager* assesses the programme for the remaining work and uses it in the assessment of a compensation event if

* there is no Accepted Programme,
* the *Contractor* has not submitted a programme or alterations to a programme for acceptance as required by the contract or
* the *Project Manager* has not accepted the *Contractor's* latest programme for one of the reasons stated in the contract.

The rights of the *Client* and the *Contractor* to changes to the Prices, the Completion Date and the Key Dates are their only rights in respect of a compensation event.

If the *Project Manager* has stated in the instruction to submit quotations that the *Contractor* did not give an early warning of the event which an experienced contractor could have given, the compensation event is assessed as if the *Contractor* had given the early warning.

The assessment of the effect of a compensation event includes risk allowances for cost and time for matters which have a significant chance of occurring and are not compensation events.

The assessment of the effect of a compensation event is based upon the assumptions that the *Contractor* reacts competently and promptly to the event and that any Defined Cost and time due to the event are reasonably incurred.

A compensation event which is an instruction to change the Scope in order to resolve an ambiguity or inconsistency is assessed as if the Prices, the Completion Date and the Key Dates were for the interpretation most favourable to the Party which did not provide the Scope.

If a change to the Scope makes the description of the Condition for a Key Date incorrect, the *Project Manager* corrects the description. This correction is taken into account in assessing the compensation event for the change to the Scope.

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* if the *Contractor* has not submitted the quotation and details of its assessment within the time allowed,
* if the *Project Manager* decides that the *Contractor* has not assessed the compensation event correctly in the quotation and has not instructed the *Contractor* to submit a revised quotation,

1. The *Project Manager* notifies the *Contractor* of the assessment of a compensation event and gives details of the assessment within the period allowed for the *Contractor's* submission

of its quotation for the same compensation event. This period starts when the need for the *Project Manager's* assessment becomes apparent.

1. If the *Project Manager* does not assess a compensation event within the time allowed, the *Contractor* may notify the *Project Manager* of that failure. If the *Contractor* submitted more than one quotation for the compensation event, the notification states which quotation the *Contractor* proposes is to be used. If the failure continues for a further two weeks after the *Contractor's* notification it is treated as acceptance by the *Project Manager* of the quotation.

* the issue of the instruction together with a notification of the instruction as a compensation event and acceptance of the quotation or
* an instruction to submit a revised quotation including the reasons for doing so,

**Proposed instructions**

**65**

65.1

65.2

The *Project Manager* may instruct the *Contractor* to submit a quotation for a proposed instruction. The *Project Manager* states in the instruction the date by which the proposed instruction may be given. The *Contractor* does not put a proposed instruction into effect.

The *Contractor* submits quotations for a proposed instruction within three weeks of being instructed to do so by the *Project Manager.* The quotation is assessed as a compensation event. The *Project Manager* replies to the *Contractor's* quotation by the date when the proposed instruction may be given. The reply is

**Implementing compensation events**

* a notification that the quotation is not accepted.

65.3

If the *Project Manager* does not reply to the quotation within the time allowed, the quotation is not accepted.

If the quotation is not accepted, the *Project Manager* may issue the instruction, notify the instruction as a compensation event and instruct the *Contractor* to submit a quotation.

**66**

66.1

A compensation event is implemented when

* the *Project Manager* notifies acceptance of the *Contractor's* quotation,
* the *Project Manager* notifies the *Contractor* of an assessment made by the *Project Manager* or

66.2

66.3

* a *Contractor's* quotation is treated as having been accepted by the *Project Manager.、*When a compensation event is implemented the Prices, the Completion Date and the Key Dates are changed accordingly.

The assessment of an implemented compensation event is not revised except as stated in these *conditions of contract.*

**7. TITLE**

|  |  |  |
| --- | --- | --- |
| **The *Client's* title to Plant and Materials** | **70**  70.1  70.2 | Whatever title the *Contractor* has to Plant and Materials which are outside the Working Areas passes to the *Client* if the *Supervisor* has marked them as for the contract.  Whatever title the *Contractor* has to Plant and Materials passes to the *Client* if they have been brought within the Working Areas. The title to Plant and Materials passes back to the *Contractor* if they are removed from the Working Areas with the *Project Manager's* permission. |
| **Marking** | **71** |  |
| **Equipment, Plant and Materials** | 71.1 | The *Supervisor* marks Equipment, Plant and Materials which are outside the Working Areas if |
| **outside the** |  | * the contract identifies them for payment and |
| **Working Areas** |  | * the *Contractor* has prepared them for marking as the Scope requires. |
| **Removing** | **72** |  |
| **Equipment** | 72.1 | The *Contractor* removes Equipment from the Site when it is no longer needed unless the *Project Manager* allows it to be left in the *works.* |
| **Objects and** | **73** |  |
| **materials within** | 73.1 | The *Contractor* has no title to an object of value or of historical or other interest within the |
| **the Site** |  | Site. The *Contractor* informs the *Project Manager* when such an object is found and the *Project Manager* instructs the *Contractor* how to deal with it. The *Contractor* does not move the object without instructions. |
|  | 73.2 | The *Contractor* has title to materials from excavation and demolition unless the Scope states otherwise. |
| **The *Contractor's*** | **74** |  |
| **use of material** | 74.1 | The *Contractor* has the right to use material provided by the *Client* only to Provide the |

Works. The *Contractor* may make this right available to a Subcontractor.

**8. LIABILITIES AND INSURANCE**

***Client's* liabilities 80**

80.1 The following are *Client's* liabilities.

* Claims and proceedings from Others and compensation and costs payable to Others which are due to
* use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works* or
* negligence, breach of statutory duty or interference with any legal right by the *Client* or by any person employed by or contracted to it except the *Contractor.*
* A fault of the *Client* or any person employed by or contracted to it, except the *Contractor.*
* A fault in the design contained in
* the Scope provided by the *Client* or
* an instruction from the *Project Manager* changing the Scope.
* Loss of or damage to Plant and Materials supplied to the *Contractor* by the *Client,* or by Others on the *Client's* behalf, until the *Contractor* has received and accepted them.
* Loss of or damage to the *works,* Plant and Materials due to
* war, civil war, rebellion, revolution, insurrection, military or usurped power,
* strikes, riots and civil commotion not confined to the *Contractor's* employees or radioactive contamination.
* Loss of or damage to the parts of the *works* taken over by the *Client,* except loss or damage occurring before the issue of the Defects Certificate which is due to
* a Defect which existed at take over,
* an event occurring before take over which was not itself a *Client's* liability or
* the activities of the *Contractor* on the Site after take over.
* Loss of or damage to the *works* and any Equipment, Plant and Materials retained on the Site by the *Client* after a termination, except loss or damage due to the activities of the *Contractor* on the Site after the termination.
* Loss of or damage to property owned or occupied by the *Client* other than the *works,* unless the loss or damage arises from or in connection with the *Contractor* Providing the Works.
* Additional *Client's* liabilities stated in the Contract Data.

***Contractor's* 81**

**liabilities** 81.1 The following are *Contractor's* liabilities unless they are stated as being *Client's* liabilities.

* Claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the *Contractor* Providing the Works.
* Loss of or damage to the *works,* Plant and Materials and Equipment.
* Loss of or damage to property owned or occupied by the *Client* other than the *works,*

which arises from or in connection with the *Contractor* Providing the Works.

* Death or bodily injury to the employees of the *Contractor.*

**Recovery of costs 82**

1. Any cost which the *Client* has paid or will pay as a result of an event for which the *Contractor* is liable is paid by the *Contractor.*
2. Any cost which the *Contractor* has paid or will pay to Others as a result of an event for which the *Client* is liable is paid by the *Client.*
3. The right of a Party to recover these costs is reduced if an event for which it was liable contributed to the costs. The reduction is in proportion to the extent that the event for which that Party is liable contributed, taking into account each Party's responsibilities under the contract.

**Insurance cover 83**

1. The *Client* provides the insurances which the *Client* is to provide as stated in the Contract Data.
2. The *Contractor* provides the insurances stated in the Insurance Table except any insurance which the *Client* is to provide as stated in the Contract Data. The *Contractor* provides additional insurances as stated in the Contract Data.
3. The insurances in the Insurance Table are in the joint names of the Parties except the fourth insurance stated. The insurances provide cover for events which are the *Contractor's* liability from the *starting date* until the Defects Certificate or a termination certificate has been issued.

|  |  |
| --- | --- |
| INSURANCE TABLE | |
| INSURANCE AGAINST | MINIMUM AMOUNT OF COVER |
| Loss of or damage to the *works,* Plant and Materials | The replacement cost, including the amount stated in the Contract Data for the replacement of any Plant and Materials provided by the Client |
| Loss of or damage to Equipment | The replacement cost |
| Loss of or damage to property (except the *works,* Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor)* arising from or in connection with the *Contractor* Providing the Works | The amount stated in the Contract Data for any one event with cross liability so that the insurance applies to the Parties separately |
| Death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with the contract | The greater of the amount required by the applicable law and the amount stated in the Contract Data for any one event |

**Insurance policies 84**

84.1

Before the *starting date* and on each renewal of the insurance policy until the *defects date,* the *Con actor* submits to the *Project Manager* for acceptance certificates which state that the insurance required by the contract is in force. The certificates are signed by the *Contractor's* insurer or insurance broker. The *Project Manager* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.

Insurance policies include a waiver by the insurers of their subrogation rights against the Parties and the directors and other employees of every insured except where there is fraud.

The Parties comply with the terms and conditions of the insurance policies to which they are a party.

84.1

84.2

84.3

**85**

85.1

The *Client* may insure an event or liability which the contract requires the *Contractor* to insure if the *Contractor* does not submit a required certificate. The cost of this insurance to the *Client* is paid by the *Contractor.*

**If the *Contractor* does not insure**

**Insurance by**

**the**  ***Client***

1. The *Project Manager* submits certificates for insurance provided by the *Client* to the *Contractor* for acceptance before the *starting date* and afterwards as the *Contractor* instructs. The *Contractor* accepts the certificates if the insurance complies with the contract and if the insurer's commercial position is strong enough to carry the insured liabilities.
2. The *Contractor's* acceptance of an insurance certificate provided by the *Client* does not change the responsibility of the *Client* to provide the insurances stated in the Contract Data.
3. The *Contractor* may insure an event or liability which the contract requires the *Client* to insure if the *Client* does not submit a required certificate. The cost of this insurance to the *Contractor* is paid by the *Client.*

**9. TERMINATION**

**90**

**Termination**

1. If either Party wishes to terminate the *Contractor's* obligation to Provide the Works it notifies the *Project Manager* and the other Party giving details of the reason for terminating. The *Project Manager* issues a termination certificate promptly if the reason complies with the contract.
2. A Party may terminate for a reason identified in the Termination Table. The procedures followed and the amounts due on termination are in accordance with the Termination Table.

|  |  |  |  |
| --- | --- | --- | --- |
| **TERMINATION TABLE** | | | |
| **TERMINATING PARTY** | **REASON** | **PROCEDURE** | **AMOUNT DUE** |
| The *Client* | R1-R15, R18or R22  R17or R20  R21 | P1, P2 and P3  P1 and P4  P1 and P4 | A1 and A3  A1 and A2  A1 and A2 |
| The *Contractor* | R1-R10, R16or R19  R17or R20 | P1 and P4  P1 and P4 | A1, A2 and A4  A1 and A2 |

1. The procedures for termination are implemented immediately after *the Project Manager* has issued a termination certificate.

If the *Client* terminates for one of reasons R1 to R15, R18 or R22 and a certified payment has not been made at the date of the termination certificate, the *Client* need not make the certified payment unless these *conditions of contract* state otherwise.

1. After a termination certificate has been issued, the *Contractor* does no further work necessary to Provide the Works.

**Reasons for 91**

**termination** 91.1 Either Party may terminate if the other Party has done one of the following or its equivalent.

* If the other Party is an individual and has
* presented an application for bankruptcy (R1),
* had a bankruptcy order made against it (R2),
* had a receiver appointed over its assets (R3) or
* made an arrangement with its creditors (R4).
* If the other Party is a company or partnership and has
* had a winding-up order made against it (R5),
* had a provisional liquidator appointed to it (R6),
* passed a resolution for winding-up (other than in order to amalgamate or reconstruct) (R7),
* had an administration order made against it or had an administrator appointed over it (R8),
* had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets (R9) or
* made an arrangement with its creditors (R10).

1. The *Client* may terminate if the *Project Manager* has notified that the *Contractor* has not put one of the following defaults right within four weeks of the date when the *Project Manager* notified the *Contractor* of the default.

* Substantially failed to comply with its obligations (R11).
* Not provided a bond or guarantee which the contract requires (R12).
* Appointed a Subcontractor for substantial work before the *Project Manager* has accepted the Subcontractor (R13).

1. The *Client* may terminate if the *Project Manager* has notified that the *Contractor* has not stopped one of the following defaults within four weeks of the date when the *Project Manager* notified the *Contractor* of the default.

* Substantially hindered the *Client* or Others (R14).
* Substantially broken a health or safety regulation (R15).

1. The *Contractor* may terminate if the *Client* has not paid an amount due under the contract within thirteen weeks of the date that the *Contractor* should have been paid (R16).
2. Either Party may terminate if the Parties have been released under the law from further performance of the whole of the contract (R17).
3. If the *Project Manager* has instructed the *Contractor* to stop or not to start any substantial work or all work and an instruction allowing the work to re-start or start or removing work from the Scope has not been given within thirteen weeks,

* the *Client* may terminate if the instruction was due to a default by the *Contractor* (R18),
* the *Contractor* may terminate if the instruction was due to a default by the *Client (R19)* and
* either Party may terminate if the instruction was due to any other reason (R20).

1. The *Client* may terminate if an event occurs which

* stops the *Contractor* completing the whole of the *works* or
* stops the *Contractor* completing the whole of the *works* by the date for planned Completion shown on the Accepted Programme and is forecast to delay Completion of the whole of the *works* by more than thirteen weeks,

and which

* neither Party could prevent and
* an experienced contractor would have judged at the Contract Date to have such a small chance of occurring that it would have been unreasonable to have allowed for it (R21).

1. The *Client* may terminate if the *Contractor* does a Corrupt Act, unless it was done by a Subcontractor or supplier and the *Contractor*

* was not and should not have been aware of the Corrupt Act or
* informed *the Project Manager* of the Corrupt Act and took action to stop it as soon as the Contractor became aware of it (R22).

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**Procedures on termination**

1. On termination, the *Client* may complete the *works* and may use any Plant and Materials to which it has title (P1).
2. The procedure on termination also includes one or more of the following as set out in the Termination Table.

P2 The *Client* may instruct the *Contractor* to leave the Site, remove any Equipment, Plant and Materials from the Site and assign the benefit of any subcontract or other contract related to performance of the contract to the *Client*

**Payment on termination**

**93**

P3 The *Client* may use any Equipment to which the *Contractor* has title to complete the *works.* The *Contractor* promptly removes the Equipment from Site when the *Project Manager* informs the *Contractor* that the *Client* no longer requires it to complete the *works.*

P4 The *Contractor* leaves the Working Areas and removes the Equipment.

93.1 The amount due on termination includes (A1)

* + - an amount due assessed as for normal payments,
    - the Defined Cost for Plant and Materials
  + within the Working Areas or
  + to which the *Client* has title and of which the *Contractor* has to accept delivery,
    - other Defined Cost reasonably incurred in expectation of completing the whole of the *works*,
    - any amounts retained by the *Client* and
    - a deduction of any un-repaid balance of an advanced payment.

93.2 The amount due on termination also includes one or more of the following as set out in the Termination Table.

A2 The forecast Defined Cost of removing Equipment.

A3 A deduction of the forecast of the additional cost to the *Client* of completing the whole of the *works.*

A4 The *fee percentage* applied to

* + for Options A, B, C and D, any excess of the total of the Prices at the Contract Date over the Price for Work Done to Date or
  + for Options E and F, any excess of the first forecast of the Defined Cost for the *works* over the Price for Work Done to Date less the Fee.