

Intermediate Building Contract

Intermediate Building Contract

Amendment 1 Issued April 2007

CDM Regulations

| Clause number and heading | Action |
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| Seventh Recital | Delete 'the extent of the application' and insert 'for the purposes'; Delete '1994' and insert '2007'; After '(the 'CDM Regulations')' delete 'to' and insert 'the status of the project that comprises or includes'; Delete '[9]' |
| Footnote [9] | Delete footnote number and text |
| Article 5 heading | Delete 'Planning Supervisor' and insert 'CDM Co-ordinator' |
| Article 5 | Delete 'Planning Supervisor' and insert 'CDM Co-ordinator' (twice); Delete '6(5)' and insert '14(1)' |
| Article 6 | Delete '6(5)' and insert '14(2)' |
| Footnote [12] | Delete existing text and insert : 'Insert the name of the CDM Co-ordinator only where the Architect/Contract Administrator is not to fulfil that role, and that of the Principal Contractor only if that is to be a person other than the Contractor. If the project that comprises or includes the Works is not notifiable under the CDM Regulations 2007 – see the Contract Particulars (Seventh Recital), delete Articles 5 and 6 in their entirety.' |
| Contract Particulars, Seventh Recital | Delete existing entry and insert : 'CDM Regulations ^[1] the project * is/is not notifiable' Insert new footnote text for ^[1] : 'A project is not notifiable under the CDM Regulations where it is not likely to involve more than 30 days, or 500 person days, of construction work or it is being carried out for a homeowner as a purely domestic project.' |
| Contract Particulars, 1-1 | Insert new entry: 'CDM Planning Period ^[1] shall mean the period of _____ * days/weeks * ending on the Date of Possession/ * beginning/ending on _____ 20 _____' Insert new footnote text for ^[1] : 'Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time (the CDM Planning Period) prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation. There may be cases where that planning and preparation needs to be completed earlier than the Date of Possession and adaptation of the entries may be needed where there are Sections.' |

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| Clause 1-1 | <p>'CDM Regulations': Delete '1994' and insert '2007'; Delete the definitions of 'Health and Safety Plan' and 'Planning Supervisor'; Insert the following new definitions:</p> <p>'CDM Co-ordinator: the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer.</p> <p>CDM Planning Period: the minimum amount of time referred to in regulation 10(2)(c) of the CDM Regulations, as specified in the Contract Particulars (against the reference to clause 1-1).</p> <p>Construction Phase Plan: the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.'</p> |
| Clause 2-1 | <p>Delete 'Health and Safety Plan and the' and insert 'Construction Phase Plan (where applicable) and other'</p> |
| Clause 3-6-2 | <p>Insert new sub-clause as 3-6-2-3: 'that each party undertakes to the other in relation to the Works and the site duly to comply with the CDM Regulations;'; Renumber existing sub-clauses -3, -4 and -5 as -4, -5 and -6 respectively</p> |
| Clause 3-18 | <p>Delete existing text and insert:</p> <p>'Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the Works is notifiable:</p> <ul style="list-style-type: none"> -1 the Employer shall ensure both that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, that the Principal Contractor carries out all his duties under those regulations; -2 where the Contractor is and while he remains the Principal Contractor, he shall ensure that: <ul style="list-style-type: none"> -1 the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Architect/Contract Administrator; and -2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase¹; -3 where the Contractor is not the Principal Contractor, he shall promptly inform the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him; -4 promptly upon the written request of the CDM Co-ordinator, the Contractor shall provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.' <p>Insert new footnote text for ¹ 1: 'There is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.'</p> |
| Clause 3-19 | <p>Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'</p> |

Assignment and Collateral Warranties

| Clause number and heading | Action |
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| Part 2 (E), right column heading | Delete 'State whether clause 7.7 and/or clause 7.8 applies' and insert 'Type(s) of warranty required' and after ^{33} insert '(SCWa/P&T, SCWa/F, SCWa/E) limited to' |
| Part 2 (E) Notes, item (i) | Delete 'where clause 7.7 is stated to apply ^{33} '; After '(A) above' delete 'and' and insert comma; After '(C) above' insert 'and the Employer'; After 'clause 7.7' delete ^{34} ; After 'identified sub-contractor' insert ^{33} ; |
| Part 2 (E) Notes, item (ii) | Delete item number and text; Renumber existing items (iii), (iv) and (v) as (ii), (iii) and (iv) respectively |
| Part 2 (E) Notes, item (iv) | Insert 'sub-contractors' before 'Collateral Warranties'; Delete – SCWa/P&T and SCWa/F' |
| Part 2 (E) Notes, item (v) | After 'Collateral Warranty' delete '-' and insert 'SCWa/E and' |
| Footnote [33] | Delete existing text and insert : 'Where a sub-contractor is required to grant only a particular type or types of the Collateral Warranties referred to in clause 7.7 (i.e. the Sub-Contractor Collateral Warranty for a Purchaser or Tenant (SCWa/P&T), for a Funder (SCWa/F) and for the Employer (SCWa/E)), state the particular type(s). All three Collateral Warranties are documents prepared by JCT.' |
| Footnote [34] | Delete footnote number and text |
| Clause 7.7 heading | Delete '– Purchasers and Tenants/Funder' |
| Clause 7.7 | After 'to a Purchaser, Tenant or Funder' insert 'or to the Employer'; After 'comply with' delete 'the requirements as set out in'; After 'SCWa/P&T' delete 'or' and insert comma; After 'SCWa/F' insert 'or SCWa/E' |
| Clause 7.8 | Delete clause heading, number and text |

Termination

| Clause number and heading | Action |
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| Clause 8.5.3.1 | Delete '8.7.3, 8.7.4' and insert '8.7.4, 8.7.5' |
| Clause 8.7.1 | After 'complete the Works' insert 'and to make good any defects of the kind referred to in clause 2.30' |
| Clause 8.7 | Insert new sub-clause as 8.7.2: 'the Contractor shall: -1 when required in writing by the Architect/Contract Administrator 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 Contractor or Contractor's Persons; -2 if so required by the Employer (or by the Architect/Contract Administrator on his behalf) 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 Contract ¹ .' |

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| | <p>Insert new footnote text for ¹ 1: 'Clause 8-7-2-3 may not be effectual in cases of Contractor's insolvency.'</p> <p>Renumber existing sub-clauses -2, -3 and -4 as -3, -4 and -5 respectively</p> |
| Clause 8-7-2 | Delete '8-7-3, 8-7-4' and insert '8-7-4, 8-7-5' |
| Clause 8-7-4 | Delete '8-7-3-1 and 8-7-3-2' and insert '8-7-4-1 and 8-7-4-2'; Delete '8-7-3-3' and insert '8-7-4-3' |
| Clause 8-12-2 | Delete existing text (including sub-clauses 8-12-2-1 to 8-12-2-3) and insert : 'the Contractor shall with all reasonable dispatch remove or procure the removal from the site of any temporary buildings, plant, tools and equipment belonging to the Contractor and Contractor's Persons and, subject to the provisions of clause 8-12-5, all goods and materials (including Site Materials);' |
| Clause 8-12 | <p>Insert new sub-clause as 8-12-3:</p> <p>'where the Contractor's employment is terminated under clause 8-9 or 8-10, the Contractor shall as soon as reasonably practical prepare an account or, where terminated under clause 8-11 or 6-10-2-2 or under paragraph C-4-4 of Schedule 1, the Contractor shall at the Employer's option either so prepare that account or, not later than 2 months after the date of termination, provide the Employer with all documents necessary for the Employer to prepare it, 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:</p> <ul style="list-style-type: none"> ·1 the total value of work properly executed at the date of termination of the 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 Contractor under these Conditions; ·2 any sums ascertained in respect of direct loss and/or expense under clause 4-17 (whether ascertained before or after the date of termination); ·3 the reasonable cost of removal under clause 8-12-2; ·4 the cost of materials or goods (including Site Materials) properly ordered for the Works for which the Contractor then has paid or is legally bound to pay; ·5 any direct loss and/or damage caused to the Contractor by the termination;' <p>Renumber existing sub-clauses -3 and -4 as -4 and -5 respectively</p> |
| Clause 8-12-3 | Delete '8-12-2-3' and insert '8-12-3-5' |
| Clause 8-12-4 | Delete 'the Contractor to the Employer' and insert 'the Employer to the Contractor (or vice versa)'; Delete '8-12-2-2' and insert '8-12-3-4' |
| Schedule 1, paragraph C-4-4-2 | Delete '8-12-4' and insert '8-12-5'; Delete '8-12-2-3' and insert '8-12-3-5' |
| Schedule 4, paragraph 6-2 | Delete '8-12-2-1' and insert '8-12-3-1' |

Guidance Notes to Amendment 1

CDM Regulations

General

The Construction (Design and Management) Regulations 2007 replace the 1994 Regulations with effect from 6 April 2007. They also incorporate the provisions of the Construction (Health, Safety and Welfare) Regulations 1996 not incorporated in the Work at Height Regulations 2005, i.e. health and safety duties on site, welfare facilities and inspection report particulars. The latter provisions are contained in Part 4 and Schedules 2 and 3 respectively.

As a result, the 2007 Regulations impose on clients, designers, contractors (including sub-contractors at all levels), and on others controlling the way in which any construction work is carried out (e.g. construction or project managers and contract administrators), a wider and more coherent set of health, safety and welfare duties.

As part of the greater emphasis placed on the need to plan and on communication and co-ordination, the functions of the Planning Supervisor are replaced by those of a CDM co-ordinator, and a 'construction phase plan' replaces the Health and Safety Plan; the Health and Safety file provisions remain. Amendment 1 incorporates the changed terms. The 2007 Regulations also eliminate the distinction in the 1994 Regulations between the notification requirements and applicability provisions for particular regulations. While the Regulations maintain the basic 1994 criteria as to notifiability, i.e. 30 days or 500 person days of construction work, there are now only two types of project – notifiable and non-notifiable. The 'five or more workers' requirements of the 1994 Regulations have been omitted.

Domestic clients, i.e. those not acting in the course or furtherance of a business, are exempt from duties under the 2007 Regulations in relation to purely domestic projects, which in turn are treated as non-notifiable.

Part 2 – General duties

Part 2 of the 2007 Regulations (regulations 4 to 13) sets out the duties that apply to all projects, whether or not notifiable, commencing with duties that apply to clients, designers and contractors alike. These include the requirement of competence and the duty to check appointees, a general duty to co-operate and seek co-operation with others concerned (now expressly extended to adjoining construction sites) and duties for all, so far as reasonably practicable, both to co-ordinate their activities with others and to ensure the application of general principles of prevention (specified in the Management of Health and Safety at Work Regulations 1998).

Part 2 then sets out specific duties for clients, designers and contractors respectively. In the case of clients, these include a duty to ensure that suitable arrangements are in place for the management of health, safety and welfare aspects of the project, including the allocation of sufficient time for construction phase planning and preparation for health and safety purposes. This is coupled with obligations to supply information on the site and its proposed use and to specify the minimum period to be allowed to contractors for planning and preparation before construction starts (referred to in the Amendment as the 'CDM Planning Period').

Main contractors are under similar obligations with respect to their sub-contractors and so on down the chain; provisions are being inserted in the JCT sub-contracts and sub-subcontract. Part 2 also sets out in detail contractors' information and training obligations with respect to their workers and an obligation, so far as is practicable, to make Schedule 2 welfare provision. The commencement of work by any contractor is conditional (inter alia) upon reasonable steps having been taken to prevent unauthorised site access.

Part 3 – Notifiable Project duties

Part 3 (regulations 14 to 24) relates to notifiable projects. The client is required to appoint the CDM co-ordinator as soon as is practicable after initial design work or other preparation has begun – further design work is conditional on that appointment, as is construction, which (in addition to access restrictions) is also conditional on the appointment of the principal contractor, production of the construction phase plan and notification to the Health and Safety Executive.

The duties of the CDM co-ordinator and principal contractor are slightly more widely drawn than in the 1994 Regulations and the principal contractor's responsibilities now include ensuring the provision of Schedule 2 welfare facilities. Part 3 imposes certain additional duties on each participant both with respect to these appointees and generally. These in general follow naturally from the Part 2 obligations and the functions and duties of the two appointees but there is now a duty on all contractors promptly to supply to the principal contractor any information relevant to health and safety, as well as that identified for inclusion in the Health and Safety file.

Assignment and Collateral Warranties

Clause 7.7 now additionally provides for a warranty for Employer (previously clause 7.8) and incorporates specific reference to the recently published Sub-Contractor Collateral Warranty for Employer (SCWa/E). Consequential changes have been made to Part 2(E) of the Contract Particulars and clause 7.8 deleted.

Termination

The termination provisions are now generally in line with the Standard Building Contract 2005.

Clause 8.7 which covers the consequences of a termination by the Employer includes a new sub-clause (8.7.2) dealing with removal of items from the Works and the assignment of certain agreements.

Clause 8.12 which covers the consequences of a termination by the Contractor and by either Party for certain neutral events includes revised sub-clauses dealing with removal of items from the Works and revised procedures for dealing with the preparation of an account.