# **Brief Contents**

Preface xv Acknowledgements xix

- **1** Clause **1** General Provisions *1*
- **2** Clause 2 The Employer 15
- **3** Clause **3** The Engineer 19
- 4 Clause 4 The Contractor 27
- **5 Clause 5 Subcontracting** 45
- 6 Clause 6 Staff and Labour 49
- 7 Clause 7 Plant, Materials, and Workmanship 53
- 8 Clause 8 Commencement, Delays, and Suspension 59

٧

- 9 Clause 9 Test on Completion 69
- 10 Clause 10 Employer's Taking Over 71
- **11 Clause 11 Defects after Taking Over** 75
- **12** Clause **12** Measurement and Valuation *81*
- 13 Clause 13 Variations and Adjustments 87
- **14 Clause 14 Price and Payment** *97*
- **15 Clause 15 Termination by the Employer** *109*

## vi Brief Contents

- **16** Clause **16** Suspension and Termination by the Contractor *115*
- **17** Clause **17** Care of the Works and Indemnities *119*
- **18 Clause 18 Exceptional Events** *123*
- **19 Clause 19 Insurance** 127
- 20 Clause 20 Employer's and Contractor's Claims 133
- 21 Clause 21 Disputes and Arbitration 139

Appendix A. Guidance for the Preparation of Particular Conditions 145

Appendix B. Employer's Claims 147

Appendix C. Contractor's Claims 149

Appendix D. Notices and Site Organisation 153

Appendix E. Daywork and Contemporary Record Sheets 165

Appendix F. Contractor's Costs 169

Appendix G. Joint Ventures 173

Model Form of a Pre-Bid Joint Venture Agreement 175

Index of Clauses and Sub-Clauses 179

Index of Sub-Clauses 183

# Contents

Preface *xv* Acknowledgements *xix* 

#### **1** Clause **1** General Provisions *1*

- 1.1 Definitions 1
- 1.1.10 The Contract 1
- 1.1.12 Contract Data 1
- 1.1.13 Contract Price 2
- 1.1.15 Contractor's Documents 2
- 1.1.20 Cost Plus Profit 2
- 1.1.22 DAAB 2
- 1.1.23 DAAB Agreement 2
- 1.1.24 Date of Completion 2
- 1.1.26 Daywork Schedule (If Included) 2
- 1.1.27 Defects Notification Period (DNP) 3
- 1.1.28 Delay Damages 3
- 1.1.29 Disputes 3
- 1.1.37 Exceptional Events 3
- 1.1.38 Extension of Time (EOT) 3
- 1.1.40 Final Payment Certificate (FPC) 3
- 1.1.43 General Conditions 3
- 1.1.45 Interim Payment Certificate (or IPC) 3
- 1.1.46 Joint Venture 4
- 1.1.48 Key Personnel 4
- 1.1.49 Laws 4
- 1.1.54 Month 4
- 1.1.55 No objection 4
- 1.1.56 Notice 4
- 1.1.57 Notice of Dissatisfaction (or NOD) 4
- 1.1.59 Particular Conditions 4
- 1.1.62 Performance Certificate 5

1.1.65	Plant 5
1.1.66	Programme 5
1.1.68	QM System 5
1.1.70	Review 5
1.1.71	Schedules 5
1.1.75	Special Provisions 5
1.1.77	Statement 6
1.1.78	Subcontractor 6
1.1.81	Tender 6
1.1.82	Tests After Completion 6
1.1.85	Unforeseeable 6
1.2	Interpretation 6
1.3	Notices and Other Communications 6
1.4	Law and Language 7
1.5	Priority of Documents 8
1.6	Contract Agreement 8
1.7	Assignment 9
1.8	Care and Supply of Documents 9
1.9	Delayed Drawings or Instructions 9
1.10	Employer's Use of Contractor's Documents 11
1.11	Contractor's Use of Employer's Documents 11
1.12	Confidentiality 11
1.13	Compliance with Laws 12
1.14	Joint and Several Liability 12
1.15	Limitation of Liability 13
1.16	Contract Termination 13
2	Clause 2 The Employer 15
2.1	Right of Access to the Site 15
2.2	Assistance 16
2.3	Employer's Personnel and Other Contractors 17
2.4	Employer's Financial Arrangements 17
2.5	Site Data and Items of Reference 17
2.6	Employer-Supplied Materials and Employer's Equipment 18
3	Clause 3 The Engineer 19
3.1	The Engineer 19
3.2	Engineer's Duties and Authority 19
3.3	The Engineer's Representative 20
3.4	Delegation by the Engineer 20
3.5	Engineer's Instructions 21
3.6	Replacement of the Engineer 21
3.7	Agreement or Determination 21
271	Consultation to Posch Agrooment 22

3.7.1 Consultation to Reach Agreement 22

# viii Contents

- 3.7.2 Engineer's Determination 22
- 3.7.3 Time Limits 22
- 3.7.4 Effect of the Agreement or Determination 24
- 3.7.5 Dissatisfaction with Engineer's Decision 24
- 3.8 Meetings 24

### 4 Clause 4 The Contractor 27

- 4.1 Contractor's General Obligations 27
- 4.2 Performance Security 27
- 4.2.1 Contractor's Obligations 27
- 4.2.2 Claims under the Performance Security 28
- 4.2.3 Return of the Performance Security 28
- 4.3 Contractor's Representative 29
- 4.4 Contractor's Documents 29
- 4.4.1 Preparation and Review 30
- 4.4.2 As Built Records 30
- 4.4.3 Operation and Maintenance Manuals 30
- 4.5 Training *31*
- 4.6 Co-operation 31
- 4.7 Setting Out 32
- 4.8 Health and Safety Obligations 32
- 4.9 Quality Management and Compliance Verification 33
- 4.9.1 Quality Management System General Comments 33
- 4.9.2 Compliance Verification System 34
- 4.9.3 General Provisions 34
- 4.10 Use of Site Data 34
- 4.11 Sufficiency of the Accepted Contract Amount 35
- 4.12 Unforeseeable Physical Conditions 35
- 4.13 Rights of Way and Facilities 38
- 4.14 Avoidance of Interference 38
- 4.15 Access Route 38
- 4.16 Transport of Goods 39
- 4.17 Contractor's Equipment 40
- 4.18 Protection of the Environment 40
- 4.19 Temporary Utilities 40
- 4.20 Progress Reports 41
- 4.21 Security of the Site 42
- 4.22 Contractor's Operations on Site 42
- 4.23 Archaeological and Geological Findings 43

### 5 Clause 5 Subcontracting 45

- 5.1 Subcontractors 45
- 5.2 Nominated Subcontractors 46
- 5.2.1 Definition of a 'Nominated Subcontractor' 46

- **x** Contents
  - 5.2.2 Objection to Nomination 46
  - 5.2.3 Payments to Nominated Subcontractors 46
  - 5.2.4 Evidence of Payment 47

### 6 Clause 6 Staff and Labour 49

- 6.1 Engagement of Staff and Labour 49
- 6.2 Rates of Wages and Conditions of Labour 49
- 6.3 Recruitment of Persons 49
- 6.4 Labour Laws 50
- 6.5 Working Hours 50
- 6.6 Facilities for Staff and Labour 50
- 6.7 Health and Safety for Personnel 50
- 6.8 Contractor's Superintendence 51
- 6.9 Contractor's Personnel 51
- 6.10 Contractor's Records 52
- 6.11 Disorderly Conduct 52
- 6.12 Key Personnel 52

## 7 Clause 7 Plant, Materials, and Workmanship 53

- 7.1 Manner of Execution 53
- 7.2 Samples 53
- 7.3 Inspections (by the Employer's Personnel) 54
- 7.4 Testing by the Contractor (on Site) 55
- 7.5 Defects and Rejection 55
- 7.6 Remedial Work 56
- 7.7 Ownership of Plant and Materials 56
- 7.8 Royalties 57

### 8 Clause 8 Commencement, Delays, and Suspension 59

- 8.1 Commencement of Works 59
- 8.2 Time for Completion 59
- 8.3 Programme 60
- 8.4 Advance Warning 60
- 8.5 Extension of Time 61
- 8.6 Delays Caused by Authorities 62
- 8.7 Rate of Progress 62
- 8.8 Delay Damages 63
- 8.9 Employer's Suspension 64
- 8.10 Consequences of Employer's Suspension 64
- 8.11 Payment for Plant and Materials after Employer's Suspension 65
- 8.12 Prolonged Suspension 66
- 8.13 Resumption of Work 66

## 9 Clause 9 Test on Completion 69

- 9.1 Contractor's Obligations 69
- 9.2 Delayed Tests 70

- 9.3 Re-testing 70
- 9.4 Failure to Pass Tests on Completion 70

#### 10 Clause 10 Employer's Taking Over 71

- 10.1 Taking Over of the Works and Sections 71
- 10.2 Taking Over of Parts of the Works 72
- 10.3 Interference with Tests on Completion 73
- 10.4 Surfaces Requiring Reinstatement 74

### 11 Clause 11 Defects after Taking Over 75

- 11.1 Completion of Outstanding Work and Remedying Defects 75
- 11.2 Cost of Remedying Defects 76
- 11.3 Extension of Defects Notification Period 77
- 11.4 Failure to Remedy Defects 77
- 11.5 Remedying of Defective Work off Site 77
- 11.6 Further Tests after Remedying Defects 78
- 11.7 Right of Access after Taking-Over 78
- 11.8 Contractor to Search 78
- 11.9 Performance Certificate 79
- 11.10 Unfulfilled Obligations 79
- 11.11 Clearance of Site 79

### 12 Clause 12 Measurement and Valuation 81

- 12.1 Works To Be Measured 81
- 12.2 Method of Measurement 83
- 12.3 Valuation of the Works 84
- 12.4 Omissions 85
- 12.4.1 Contractor to give Notice of unreimbursed Costs 85

### 13 Clause 13 Variations and Adjustments 87

- 13.1 Right to Vary 87
- 13.2 Value Engineering 89
- 13.3 Variation Procedure 90
- 13.3.1 Variation by Instruction 90
- 13.3.2 Variation by Request for Proposal 91
- 13.4 Provisional Sums *91*
- 13.5 Daywork 92
- 13.6 Adjustments for Changes in Laws 93
- 13.7 Adjustment for Changes in Cost 94

### 14 Clause 14 Price and Payment 97

- 14.1 The Contract Price 97
- 14.2 Advance Payment 97
- 14.2.1 Advance Payment Guarantee 98
- 14.2.2 Advance Payment Certificate 98
- 14.2.3 Repayment of the Advance Payment 98

- xii Contents
  - 14.3 Application for Interim Payment Certificates 99
  - 14.4 Schedule of Payments 100
  - 14.5 Plant and Materials intended for the Works 101
  - 14.6 Issue of IPC 102
  - 14.6.1 The IPC 102
  - 14.6.2 Withholding (Amounts in) an IPC 102
  - 14.6.3 Correction or Modification 103
  - 14.7 Payment 103
  - 14.8 Delayed Payment 103
  - 14.9 Release of Retention Money 104
  - 14.10 Statement on Completion 105
  - 14.11 Final Statement 105
  - 14.11.1 Draft Final Statement 105
  - 14.11.2 Agreed Final Statement 106
  - 14.12 Discharge 106
  - 14.13 Issue of Final Payment Certificate (FPC) 107
  - 14.14 Cessation of Employer's Liability 107
  - 14.15 Currencies of Payment 107

### **15** Clause **15** Termination by the Employer *109*

- 15.1 Notice to Correct 109
- 15.2 Termination for Contractor's Default 110
- 15.2.1 Notice 110
- 15.2.2 Termination 111
- 15.2.3 After Termination 111
- 15.2.4 Completion of the Works 112
- 15.3 Valuation after Termination for Contractor's Default 112
- 15.4 Payment after Termination for Contractor's Default 113
- 15.5 Termination for Employer's Convenience 113
- 15.6 Valuation after Termination for Employer's Convenience 114
- 15.7 Payment after Termination for Employer's Convenience 114

### 16 Clause 16 Suspension and Termination by the Contractor 115

- 16.1 Suspension by the Contractor 115
- 16.2 Termination by Contractor 116
- 16.2.1 Notice 116
- 16.2.2 Termination 116
- 16.3 Contractor's Obligations After Termination 117
- 16.4 Payment after Termination by the Contractor 117

## 17 Clause 17 Care of the Works and Indemnities 119

- 17.1 Responsibility for Care of Works 119
- 17.2 Liability for Care of the Works *119*
- 17.3 Intellectual and Industrial Property Rights 121
- 17.4 Indemnities by Contractor 121

- 17.5 Indemnities by Employer 122
- 17.6 Shared Indemnities 122
- 18 Clause 18 Exceptional Events 123
- 18.1 Exceptional Events 123
- 18.2 Notice of an Exceptional Event 124
- 18.3 Duty to Minimise Delay 124
- 18.4 Consequences of an Exceptional Event 124
- 18.5 Optional Termination 125
- 18.6 Release from Performance Under the Law 126

### **19 Clause 19 Insurance** *127*

- 19.1 General Requirements 127
- 19.2 Insurance to be provided by the Contractor 129
- 19.2.1 The Works 129
- 19.2.2 Goods (Contractor's Equipment, Materials, Plant, and Temporary Works) 130
- 19.2.3 Liability for Breach of Professional Duty 130
- 19.2.4 Injury to Persons and Damage to Property 130
- 19.2.5 Injury to employees 130
- 19.2.6 Other Insurances Required by Law and by Local Practice 131

#### 20 Clause 20 Employer's and Contractor's Claims 133

- 20.1 Claims 134
- 20.2 Claims for Payment and EOT 134
- 20.2.1 Notice to Claim 135
- 20.2.2 Engineer's Initial Response 135
- 20.2.3 Contemporary Records 135
- 20.2.4 Fully detailed claim 135
- 20.2.5 Agreement or determination of the Claim 136
- 20.2.6 Claims of Continuing Effect 136
- 20.2.7 General Requirements 137

#### 21 Clause 21 Disputes and Arbitration 139

- 21.1 Constitution of the DAAB 139
- 21.2 Failure to Appoint DAAB Members 140
- 21.3 Avoidance of Disputes 140
- 21.4 Obtaining DAAB's Decision 140
- 21.4.1 Reference of a Dispute to the DAAB 141
- 21.4.2 The Parties' Obligations after the Reference 141
- 21.4.3 The DAAB Decision 141
- 21.4.4 Dissatisfaction with DAAB's Decision (NOD) 142
- 21.5 Amicable Settlement 143
- 21.6 Arbitration 143
- 21.7 Failure to Comply with DAAB's Decision 144
- 21.8 No DAAB in Place 144

Appendix A. Guidance for the Preparation of Particular Conditions 145
Appendix B. Employer's Claims 147
Appendix C. Contractor's Claims 149
Appendix D. Notices and Site Organisation 153
Appendix E. Daywork and Contemporary Record Sheets 165
Appendix F. Contractor's Costs 169
Appendix G. Joint Ventures 173
Model Form of a Pre-Bid Joint Venture Agreement 175
Index of Clauses and Sub-Clauses 179

Index of Sub-Clauses 183