

Minor Works Building Contract for use in Scotland 2024

(MW/Scot and MWD/Scot versions)

SBCC Fluctuations Option

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(Contribution, levy and tax fluctuations)

Deemed calculation of Contract Sum – labour

- 1 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
 - 1.1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in its capacity as an employer and which at the Base Date are payable by the Contractor. A type and a rate so payable are in paragraph 1.2 referred to as a 'tender type' and a 'tender rate'.
 - 1.2 If any of the tender rates other than a rate of levy payable by virtue of the Industrial Training Act 1982 is increased or decreased, or if a tender type ceases to be payable, or if a new type of contribution, levy or tax which is payable by a person in its capacity as an employer becomes payable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays or will pay in respect of:
 - 1.2.1 operatives engaged upon or in connection with the Works either on or adjacent to the site; and
 - 1.2.2 operatives directly employed by the Contractor who are engaged upon the production of materials or goods for use in or in connection with the Works and who operate neither on nor adjacent to the site and to the extent that they are so engagedor because of its employment of such operatives and what it would have paid had the alteration, cessation or new type of contribution, levy or tax not become effective shall, as the case may be, be paid to or allowed by the Contractor.
 - 1.3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph 1.2, in respect of each person employed by the Contractor who is engaged upon or in connection with the Works either on or adjacent to the site and who is not within the definition of operatives in paragraph 12.3, the same amount as is payable or allowable in respect of a skilled operative under paragraph 1.2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.
 - 1.4 For the purposes of paragraph 1.3:
 - 1.4.1 no period of less than 2 whole working days in any week shall be taken into account and periods of less than a whole working day shall not be aggregated to amount to a whole working day;
 - 1.4.2 "the same amount as is payable or allowable in respect of a skilled operative" shall refer to the amount in respect of a skilled operative employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph 3 refers) under the rules or decisions or agreements of the Construction Industry Joint Council or other wage-fixing body and, where those rules or decisions or agreements provide for more than one rate of wage, emolument or other expense for a skilled operative, shall refer to the amount in respect of a skilled operative employed as aforesaid to whom the highest rate is applicable; and

- 1.4.3 “employed by the Contractor” shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply and “skilled operative” shall mean a person entitled to be paid a “skill rate” under the Construction Industry Joint Council Working Rule Agreement or similar agreements of any other wage-fixing body, current at the Base Date.
- 1.5 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in its capacity as an employer and upon the types and rates of premium receivable by a person in its capacity as an employer being in each case types and rates which at the Base Date are receivable by the Contractor. Such a type and such a rate are in paragraph 1.6 referred to as a ‘tender type’ and a ‘tender rate’.
- 1.6 If any of the tender rates is increased or decreased or if a tender type ceases to be payable or if a new type of refund of any contribution, levy or tax payable by a person in its capacity as an employer becomes receivable or if a new type of premium receivable by a person in its capacity as an employer becomes receivable after the Base Date, then in any such case the net amount of the difference between what the Contractor actually receives or will receive in respect of operatives as referred to in paragraphs 1.2.1 and 1.2.2 or because of its employment of such operatives and what it would have received had the alteration, cessation or new type of refund or premium not become effective shall, as the case may be, be paid to or allowed by the Contractor.
- 1.7 The references in paragraphs 1.5 and 1.6 to premiums shall be construed as meaning all payments howsoever they are described which are made under or by virtue of an Act of Parliament (including any act passed by the Scottish Parliament) to a person in its capacity as an employer and which affect the cost to an employer of having persons in its employment.
- 1.8 The references in paragraph 1 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in its capacity as an employer howsoever the said person is described and regardless of the identity of the recipient which are imposed under or by virtue of an Act of Parliament (including any act passed by the Scottish Parliament) and which affect the cost to an employer of having persons in its employment.

Deemed calculation of Contract Sum – materials

- 2 The Contract Sum shall be deemed to have been calculated in the manner set out below and shall be subject to adjustment in the events specified hereunder.
- 2.1 The Contract Sum is based upon the types and rates of duty, if any, and tax, if any (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor), payable by any person, and which at the Base Date are payable on the import, purchase, sale, appropriation, processing, use or disposal of the materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works by virtue of any Act of Parliament (including any act passed by the Scottish Parliament). A type and a rate so payable are in paragraph 2.2 referred to as a ‘tender type’ and a ‘tender rate’.
- 2.2 If, in relation to any materials or goods or any electricity or fuels or materials taken from the site as waste or any other solid, liquid or gas necessary for the execution of the Works including temporary site installations for those Works, a tender rate is increased or decreased or a tender type ceases to be payable or a new type of duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) becomes payable on the import, purchase, sale, appropriation, processing, use or disposal of any of the above things after the Base Date, then in any such case the net amount of the difference between what the Contractor actually pays in respect of those materials, goods, electricity, fuels, materials taken from the site as waste or any other solid, liquid or gas and what it would have paid in respect of them had the alteration, cessation or imposition not occurred shall, as the case may be, be paid to or allowed by the Contractor. In this paragraph 2.2 “a new type of duty or tax” includes an additional duty or tax and a duty or tax imposed in regard to any of the above in respect of which no duty or tax whatever was previously payable (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor).

Sub-contract work – incorporation of provisions to like effect

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- 3.1 If the Contractor sub-contracts any portion of the Works it shall incorporate in the sub-contract provisions to the like effect as the provisions of this Fluctuations Option (excluding this paragraph 3) including the percentage stated in the Contract Particulars pursuant to paragraph 13 which are applicable for the purposes of this Contract.
- 3.2 If the price payable under such a sub-contract as referred to in paragraph 3.1 is increased above or decreased below the price in such sub-contract by reason of the operation of the said incorporated provisions, then the net amount of such increase or decrease shall, as the case may be, be paid to or allowed by the Contractor under this Contract.

Notification by Contractor

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- 4.1 The Contractor shall notify the Architect/Contract Administrator of the occurrence of any of the events referred to in such of the following provisions as are applicable for the purposes of this Contract:
- 4.1.1 paragraph 1.2;
 - 4.1.2 paragraph 1.6;
 - 4.1.3 paragraph 2.2;
 - 4.1.4 paragraph 3.2.
- 4.2 Any notification required to be given under paragraph 4.1 shall be given within a reasonable time after the occurrence of the event to which it relates, and notification in that time shall be a condition precedent to any payment being made to the Contractor in respect of the event in question.

Agreement – Architect/Contract Administrator and Contractor

- 5 The Architect/Contract Administrator and the Contractor may agree what shall be deemed for all the purposes of this Contract to be the net amount payable to or allowable by the Contractor in respect of the occurrence of any event such as is referred to in any of the provisions listed in paragraph 4.1.

Fluctuations added to or deducted from Contract Sum

- 6 Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 shall, as the case may be, be added to or deducted from the Contract Sum. The addition or deduction to which this paragraph 6 refers shall be subject to the provisions of paragraphs 7 to 10.1.

Evidence and computations by Contractor

- 7 As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Architect/Contract Administrator may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph 1.3 (or paragraph 3 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs 1.3 and 1.4) – employees other than operatives – such evidence shall include a certificate signed by or on behalf of the Contractor each week certifying the validity of the evidence reasonably required to ascertain such amounts.

Actual payment by Contractor

- 8 No amount shall be added or deducted in the computation of the amount stated as due in interim payments by virtue of this paragraph 8 unless on or before the date as at which the total value of work, materials and goods is ascertained for the purposes of any interim payment the Contractor shall have actually paid or received the sum which is payable by or to it in consequence of the event in respect of which the payment or allowance arises.

No alteration to Contractor's profit

- 9 No addition to or deduction from the Contract Sum made by virtue of paragraph 6 shall alter in any way the amount of profit of the Contractor included in that Sum.

Position where Contractor in default over completion

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10.1 Subject to the provisions of paragraph 10.2 no amount shall be added or deducted in the computation of the amount stated as due in interim payments or in the final certificate in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs 1 and 2 or paragraph 3 if the event (as referred to in the provisions listed in paragraph 4.1) in respect of which the payment or allowance would be made occurs after the Date for Completion stated in the Contract Particulars or after any later Date for Completion fixed under clause 2.7 (MW/Scot 2024) or 2.8 (MWD/Scot 2024).

10.2 Paragraph 10.1 shall not be applied unless:

10.2.1 the printed text of clause 2.7 (MW/Scot 2024) or 2.8 (MWD/Scot 2024) is unamended and forms part of the Conditions; and

10.2.2 the Architect/Contract Administrator has, in respect of every notification by the Contractor under clause 2.7 (MW/Scot 2024) or 2.8 (MWD/Scot 2024), fixed or confirmed such Date for Completion as it considers to be in accordance with the relevant clause.

Work etc. to which paragraphs 1 to 3 not applicable

- 11 Paragraphs 1 to 3 shall not apply in respect of:

11.1 work for which the Contractor is allowed daywork rates under clause 4.6;

11.2 changes in the rate of VAT charged on the supply of goods or services by the Contractor to the Employer under this Contract.

Definitions

- 12 In this Fluctuations Option:

12.1 the Base Date means the date stated as such in the Contract Particulars;

12.2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;

12.3 "operatives" means persons whose rates of wages and other emoluments (including holiday credits) are governed by the rules or decisions or agreements of the Construction Industry Joint Council or some other wage-fixing body for trades associated with the building industry;

12.4 "wage-fixing body" means a body which lays down recognised terms and conditions of operatives;

12.5 "recognised terms and conditions" means terms and conditions of operatives in comparable employment in the trade or industry, or section of trade or industry, in which the employer in question is engaged which have been settled by an agreement or award to which the parties are employers' associations and independent trade unions which represent (generally, or in the district in question, as the case may be) a substantial proportion of the employers and of the operatives in the trade, industry or section being operatives of the description to which the agreement or award relates.

Percentage addition to fluctuation payments or allowances

- 13 There shall be added to the amount paid to or allowed by the Contractor under:

13.1 paragraph 1.2,

13.2 paragraph 1.3,

13.3 paragraph 1.6,

13.4 paragraph 2.2

the percentage stated in the Contract Particulars.