

2011 Edition

MTC/G/Scot

**Measured Term Contract
Guide for use in Scotland**

Measured Term Contract Guide (MTC//G/Scot)

This Guide is intended to provide a general introduction to the contract and is not a substitute for professional advice.

SAMPLE ONLY

Contents

Introduction

Page 1

General
2011 edition changes
Format and Risk Allocation
Content of the Guide

Specific Provisions

Articles of Agreement

Recitals
Articles
Contract Particulars
Signing

Conditions

Section 1 – Definitions and Interpretation
Section 2 – Carrying out Work
Section 3 – Control of Work
Section 4 – Payment
Section 5 – Measurement and Valuation
Section 6 – Injury, Damage and Insurance
Section 7 – Break Provision – Rights of each Party
Section 8 – Termination for Default, etc.
Section 9 – Settlement of Disputes

Appendix A – MTC/Scot 2011 changes

Appendix B – MTC/Scot User Checklist

Appendix C – Related Publications

Introduction

General

- 1 This edition of the Measured Term Contract Guide for use in Scotland has been issued in conjunction with the 2011 edition of the Measured Term Contract (MTC/Scot 2011).
- 2 MTC/Scot 2011 is a flexible, medium-to-longer term procurement 'framework' or 'term' agreement. It is appropriate for use where an employer has a regular flow of maintenance and/or minor works (including improvements) to be carried out by a contractor over a specified contract period. Orders for such work are placed on an agreed basis with the Contractor who undertakes to fulfil them, with payments calculated in accordance with a schedule of rates or (where appropriate) a schedule of hourly charges.
- 3 The SBCC considers that a term contract of this type is generally appropriate where the intended programme and contract period are a year or more; the contract provides for the appointment of a Contract Administrator who is responsible for placing the orders and exercises the normal SBCC contract management role on behalf of the Employer.
- 4 MTC/Scot 2011 envisages orders being placed in relation to properties that are individually identified and/or situated within a specified geographical area. Provision is made for a minimum and a maximum value of individual orders that the Contractor is bound to accept and for those orders to specify a reasonable period for completion in each case, with and subject to an optional provision for the Employer to specify a priority coding system, setting out maximum response times for some or all types of order.
- 5 The Employer is invited to state, as no doubt he will have done in the invitation to tender, the approximate anticipated value of orders to be placed under the Contract, annually or overall, but, as the Contract makes clear, it is intended only as a bona fide estimate, not a legal commitment. The Contract contains no provision for exclusivity.
- 6 As a medium-to-longer term arrangement, the Contract contains optional provisions for the revision of rates but, as a safeguard for cases where it has been decided not to provide for revision and/or where orders do not reach the anticipated level, it also contains a break clause whereby either party, on not less than a 13 week or lesser agreed notice period, may shorten the contract period so that it expires on or at a specified time after a minimum 6 month term.
- 7 MTC/Scot 2011 is in a section-headed format similar to that of the SBCC Standard Building Contract 2011 (SBC 2011) and the SBCC range generally.
- 8 MTC/Scot 2011 is suitable for use by both private and local authority employers. Only one clause (clause 6-8-2), relating to insurance cover certificates, is specific to local authorities; there is otherwise no material differentiation between types of user, though in the case of public and utility contracts, employers and their professional advisers need to have regard to Public Procurement legislation as it applies to term contracts.
- 9 Similarly, if the requirement for use of this or a similar 'term contract' arises in the context of contracting out, a change of contractor or contracting back-in in circumstances where, immediately prior to the new arrangement for which the contract is being used, there is an "organised grouping of employees" that has hitherto provided the relevant service and/or where there is in effect a transfer of an economic entity which retains its identity, it is very likely that the Transfer of Undertakings (Protection of Employment) Regulations 2007 (TUPE 2007) will apply. Where the prospective Employer or Contractor is not fully familiar with the regulations and their implications, they should take appropriate professional advice, and implement that advice as necessary, before the term contract is entered into; MTC/Scot 2011 is solely concerned with work and related supplies and makes no provision in this regard.

2011 edition changes

- 10 The principal purpose of the 2011 edition is to reflect the coming into force of amendments to the Housing Grants, Construction and Regeneration Act 1996 ('the Construction Act') made by the Local Democracy, Economic Development and Construction Act 2009, insofar as they relate to payment terms and payment-related notices. (The amendments relating to adjudication do not require any changes in the Contract.)
- 11 The amendments relating to payment include a time limit for the issue of payment certificates and, where such certificates are not issued on time, give status to payment applications (or payment notices) by the Contractor unless subsequently countered by a withholding (or, as now, a 'pay less') notice given by the Employer. They