

2016 Edition

DB/G/Scot

**Design and Build Contract
Guide for use in Scotland**

978-1-909432-22-2

SBC564



SAMPLE

Contents

Introduction	<i>Page 1</i>
General	
2016 edition changes	
Format and Risk Allocation	
Content of the Guide	
Agreement	3
Recitals	3
Articles	3
Contract Particulars	3
Signing	3
Conditions	6
Section 1 – Definitions and Interpretation	6
Definitions (clause 1.1)	
Interpretation (clauses 1.2 to 1.11)	
Section 2 – Carrying out the Works	6
Contractor's Obligations (clauses 2.1 and 2.2 and Supplemental Provisions 5, 8 and 9)	
Possession (clauses 2.3 to 2.6)	
Supply of Documents, Setting Out etc. (clauses 2.7 to 2.9, Schedule Part 1 (Design Submission Procedure) and Supplemental Provision 11)	
Discrepancies and Divergences (clauses 2.10 to 2.16)	
Design Work and Liability (clause 2.17 and Supplemental Provision 7)	
Fees, Royalties and Patent Rights (clauses 2.18 to 2.20)	
Unfixed Materials and Goods (clause 2.21)	
Adjustment of Completion Date (clauses 2.23 to 2.26 and Supplemental Provisions 2 and 4)	
Practical Completion, Lateness and Liquidated Damages (clauses 2.27 to 2.29)	
Partial Possession by Employer (clauses 2.30 to 2.34)	
Defects (clauses 2.35 and 2.36)	
Contractor's Design Documents (clauses 2.37 and 2.38)	
Section 3 – Control of the Works	10
Access and Representatives (clauses 3.1 and 3.2)	
Sub-Contracting (clauses 3.3 and 3.4 and Supplemental Provisions 1 and 12)	
Employer's Instructions (clauses 3.5 to 3.15 and Schedule Part 4)	
CDM Regulations (clause 3.16 and Supplemental Provision 6)	
Section 4 – Payment (and Schedule Part 6 – Forms of Bonds and Contracts of Purchase)	12
Contract Sum and Adjustments (clauses 4.1 to 4.3)	
Taxes (clauses 4.4 and 4.5)	
Payments and Notices – general provisions (clauses 4.6 to 4.11)	
Interim Payments – calculation of sums due (clauses 4.12 to 4.14)	
Off- site materials and goods (clause 4.15)	
Retention (clauses 4.16 to 4.18)	
Loss and Expense (clauses 4.19 to 4.23 and Supplemental Provision 3)	
Final Statement and Final Payment (clause 4.24)	

Section 5 – Changes	14
General (clauses 5.1 to 5.3 and Supplemental Provision 2) The Valuation Rules (clauses 5.4 to 5.7)	
Section 6 – Injury, Damage and Insurance (and Schedule Part 3 – Insurance Options)	14
Personal Injury and Property Damage – indemnity and insurance (clauses 6.1 to 6.5) Insurance of the Works and Existing Structures (clauses 6.7 to 6.14 and Schedule Part 3) Professional Indemnity Insurance (clauses 6.15 and 6.16) Joint Fire Code (clauses 6.17 to 6.20)	
Section 7 – Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties (and Schedule Part 5 – Third Party Rights)	18
Section 8 – Termination	20
General (clauses 8.1 to 8.3) Termination by Employer (clauses 8.4 to 8.8) Termination by Contractor (clauses 8.9 and 8.10) Termination by either Party and regulations 73(1)(a) and 73(1)(c) of the PC(Scotland) Regulations (clause 8.11) Consequences of Termination under clauses 8.9 to 8.11, etc. (clause 8.12)	
Section 9 – Settlement of Disputes	22
General (and Supplemental Provision 10) Mediation (clause 9.1) and ADR Adjudication (clause 9.2) Arbitration (clauses 9.3 to 9.5) and litigation (Article 9)	
Appendix A – Model Form for the Rights Particulars	23
Appendix B – Related Publications	25
Appendix C – DB/Scot 2016 changes	26

Introduction

General

- 1 This edition of the Guide to the Design and Build Contract for use in Scotland has been issued in conjunction with the 2016 edition of the contract (DB/Scot 2016).
- 2 DB/Scot 2016 is primarily appropriate for larger works where the Employer has defined his requirements and where the Contractor is not only to carry out the works, but also to complete the design for them in accordance with those requirements. It retains the provisions designed to meet the needs of both private and public sectors and allows for the works to be carried out in sections.
- 3 For the purpose of contract administration, DB/Scot 2016 requires the appointment of an Employer's Agent; that agent may be either an external consultant or an appropriate member of the Employer's staff.

2016 edition changes

- 4 The principal changes in the 2016 edition of DB/Scot are:
 - The change of the dispute resolution default position from court proceedings to arbitration;
 - The introduction of a pro forma testing clause;
 - the incorporation, with minor changes, of the provisions of the SBCC Public Sector Supplement 2011 relating to Fair Payment, Transparency and Building Information Modelling;
 - adjustments to reflect the Construction (Design and Management) Regulations 2015 ('the 2015 CDM Regulations');
 - the inclusion of provisions to reflect relevant aspects of the Procurement Reform (Scotland) Act 2014 (the "Procurement Act") and the Public Contracts (Scotland) Regulations 2015 ('PC (Scotland) Regulations');
 - an extension of (Works) Insurance Option C to allow alternative solutions to the problems for tenants and domestic homeowners of obtaining Existing Structures cover for Contractors, accompanied by consolidation within the main text of the previous general provisions of Insurance Options A, B and C relating to evidence of insurance, insurance claims and reinstatement work;
 - revisions and simplification of the section 4 payment provisions, including introduction of a procedure for prompt assessment of Loss and Expense claims, the establishment for Fair Payment purposes of Interim Valuation Dates that are also to apply at sub-contract and sub-subcontract levels, further flexibility in relation to Fluctuations Provisions and consolidation in a single sub-section of the notice requirements of the Housing Grants, Construction and Regeneration Act 1996, as amended ('the Construction Act');
 - inclusion of provisions for the grant of Performance Bonds and Parent Company Guarantees;
 - extension of the optional provisions for Collateral Warranties from sub-contractors to include Third Party Rights from them;
 - minor updating and clarification of the SBCC IPR provisions.
- 5 Together with minor consequential amendments and in common with other SBCC contracts DB/Scot 2016 also:
 - introduces minor updates in terminology: the Articles remain in their existing format but reference to them has been dropped from the Agreement heading; and 'Site Manager' supersedes 'Person in charge';
 - includes an updating of the wording of clause 1.8 (Effect of Final Statement), as part of a review that, in the case of certain other contracts and sub-contracts, was already reflected in their 2011 editions;
 - includes a new clause 1.10 (Consents and approvals); this eliminates the need for multiple iterations of the requirement that particular consents or approvals are not to be unreasonably delayed or withheld. (The giving of consent by either party to an assignation of rights by the other remains entirely discretionary.)

SAMPLE

SAMPLE