

2016 Edition

DBSub/**G**/Scot

Design and Build Sub-Contract
Guide for use in Scotland

978-1-909432-25-3

SBC567

SAMPLE ONLY

Contents

Introduction	<i>Page 1</i>
General	
2016 edition changes	
Content of the Guide	2
Sub-Contracting under DB/Scot 2016	3
Consent to sub-contracting	
Conditions of sub-contracting	
Sub-contract tendering – information requirements	
Agreement	5
General	5
Recitals	5
Articles	6
Sub-Contract Particulars	6
Signing	10
Appendix Part 1: Main Contract Information Schedule	
Appendix Part 2: Numbered Documents	
Conditions	13
Section 1 – Definitions and Interpretation	13
Definitions (clause 1.1)	
Interpretation (clauses 1.2 to 1.10)	
Section 2 – Carrying out the Sub-Contract Works	14
Sub-Contractor's general obligations (clauses 2.1 to 2.4 and Supplemental Provisions 1, 4 and 5)	
Compliance with the Main Contract and indemnity (clause 2.5)	
Supply of Documents, Setting Out etc. (clause 2.6 and Schedule Part 7 and clause 2.7)	
Errors, Discrepancies and Divergences (clauses 2.8 to 2.12)	
Sub-Contractor's Designed Works (clauses 2.13 and 2.14 and Supplemental Provision 3)	
Unfixed Materials and Goods (clause 2.15)	
Adjustment of Period for Completion (clauses 2.16 to 2.19)	
Practical Completion and Lateness (clauses 2.20 and 2.21)	
Defects (clauses 2.22 and 2.23)	
Sub-Contractor's Design Documents (clauses 2.24 and 2.25)	
Third Party Rights ('TPRs') and Collateral Warranties (clauses 2.26 and 2.27)	
Sub-Contract Rights Particulars	
Section 3 – Control of the Sub-Contract Works	18
Assignment and Sub-Contracting (clauses 3.1 to 3.3 and Supplemental Provision 7)	
Contractor's Directions (clauses 3.4 to 3.7)	
Person-in-charge (clause 3.8)	
Opening Up and Remedial Measures (clauses 3.10 to 3.15)	
Attendance (clause 3.16)	
Health and Safety and CDM Requirements (clauses 3.19 and 3.20 and Supplemental Provision 2)	
Suspension of Main Contract by Contractor (clauses 3.21 and 3.22)	

Benefits under the Main Contract (clause 3.24)
Statements and notices under the Main Contract (clause 3.25)

Section 4 – Payment 20

General

Sub-Contract Sum and Sub-Contract Tender Sum (clauses 4.1 to 4.3)

Taxes (clauses 4.4 and 4.5)

Payments and Notices – general provisions (clauses 4.6 to 4.8)

Interim Payments – calculation of sums due (clauses 4.9 and 4.10)

Off-Site Materials and Goods (clause 4.11)

Retention (clauses 4.12 and 4.13)

Loss and Expense (clauses 4.14 to 4.18)

Final Adjustment and Final Payment (clauses 4.19 to 4.22)

Section 5 – Valuation of Work and Variations 22

General (clauses 5.1 to 5.5 and Schedule Part 2)

The Valuation Rules (clauses 5.6 to 5.12)

Section 6 – Injury, Damage and Insurance 23

Injury to Persons and Property (clauses 6.2 to 6.5)

Insurance – Loss or Damage to Work and Site Materials (clauses 6.6 to 6.9)

Sub-Contractor's Designed Works Professional Indemnity or Product Liability Insurance (clauses 6.10 and 6.11)

Joint Fire Code (clauses 6.12 to 6.15)

Section 7 – Termination 24

Rights of termination (clauses 7.4 to 7.6 and 7.8 to 7.10)

General provisions (clauses 7.1 to 7.3)

Consequences of termination (clauses 7.7 and 7.11 and Supplemental Provision 7)

Section 8 – Settlement of Disputes 26

General (and Supplemental Provision 6)

Mediation (clause 8.1) and ADR

Adjudication (clause 8.2)

Arbitration (clauses 8.3 to 8.5) and litigation (Article 6)

Appendix A – Specimen Activity Schedule 28

Appendix B – Model Form for the Sub-Contract Rights Particulars 29

Appendix C – Related Publications 31

Appendix D – 2016 changes 32

Introduction

General

- 1 This edition of the Design and Build Sub-Contract Guide for use in Scotland has been issued in conjunction with the 2016 editions of the Design and Build Contract (DB/Scot 2016), the Design and Build Sub-Contract (DBSub/Scot 2016) and the SBCC range as a whole.
- 2 DBSub/Scot is for use whether or not the Sub-Contractor is required to design all or any of the Sub-Contract Works. It can be used when the Main Contract Works are to be carried out in Sections and:
 - where the Sub-Contractor is to be paid a Lump Sum, adjustable for variations etc.; or
 - where there is an agreed Tender Sum but the sub-contract works are to be subject to complete remeasurement.
- 3 The Sub-Contract comprises two documents: the Sub-Contract Agreement (DBSub/A/Scot) and the Conditions (DBSub/C/Scot). (In this Guide, unless the context requires otherwise, references to the Agreement and Articles are to the Sub-Contract Agreement and its Articles; references to Conditions are to the Sub-Contract Conditions and references to sections, clauses and Schedules are to those parts of the Conditions.)

2016 edition changes

- 4 The principal changes in the 2016 edition of DBSub/Scot are:
 - to the format of the Agreement to insert the Sub-Contract Particulars after the Articles and to introduce an Appendix of two Parts;
 - the change of the dispute resolution default position from court proceedings to arbitration;
 - the introduction of a pro forma testing clause after the Sub-Contract Particulars;
 - 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 Public Contracts (Scotland) Regulations 2015 ('PC (Scotland) Regulations');
 - revisions and simplification of the section 4 payment provisions, including introduction of a procedure for prompt assessment of Sub-Contractor's Loss and Expense claims, the establishment for Fair Payment purposes of Interim Valuation Dates that are also to apply at main 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');
 - extension of the optional provisions for collateral warranties from the Sub-Contractor to include the alternative for the Sub-Contractor to grant Third Party Rights ('TPRs');
 - minor revisions to the insurance provisions, including in relation to the Sub-Contractor's Designed Works providing for Product Liability as an alternative to Professional Indemnity insurance; and
 - minor updating and clarification of the IPR provisions.
- 5 Together with minor consequential amendments DBSub/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; 'Measurement Rules' (the RICS New Measurement Rules, unless otherwise stated) now supersede the Standard Method of Measurement;
 - includes revisions to the wording of clause 1.8 (Effect of Final Payment Notice);