

2019 Edition

MTC/G/Scot

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

SBC585



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.

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Introduction

General

- 1 This edition of the Measured Term Contract Guide for use in Scotland has been issued in conjunction with the 2019 edition of the Measured Term Contract (MTC/Scot 2019). It is based on MTC/2016 prepared by JCT.
- 2 MTC/Scot 2019 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 2019 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 2019 is in a section-headed format similar to that of the SBCC Standard Building Contract 2016 (SBC/Scot 2016) and the SBCC range generally.
- 8 MTC/Scot 2019 is suitable for use by both private and public sectors. In the case of public and utility contracts, employers and their professional advisers need to have regard to public procurement law 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 2019 is solely concerned with work and related supplies and makes no provision in this regard.

2019 edition changes

- 10 The principal changes in the 2019 edition of MTC/Scot are:
 - 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 Regulations 2015 ('PC Regulations');

- revisions to the insurance provisions to allow alternative solutions to the problems for tenants of obtaining existing structures cover for Contractors, accompanied by consolidation of the provisions relating to evidence of insurance, insurance claims and reinstatement work;
- the change of the default position in the choice of dispute resolution from court proceedings to arbitration;
- the inclusion of the new signing format;
- the incorporation of Amendment 2: Contract (Third Party Rights) (Scotland) Act 2017, issued February 2018;
- the revision of the insolvency wording to reflect the position in Scotland; and
- the revision of the section 4 payment provisions, including the establishment for Fair Payment purposes of Valuation Dates that are also to apply at sub-contract and sub-subcontract levels.

Format and Risk Allocation

- 11 The MTC/Scot 2019 format remains substantially unchanged from that of MTC/Scot 2011 although it will be noted reference to the Articles has been dropped from the Agreement heading.
- 12 It is not believed that any of the 2019 edition amendments or changes will in practice materially affect risk allocation.

Content of the Guide

- 14 This Guide reviews the provisions of MTC/Scot 2019 sequentially, starting with the Agreement, followed by the Conditions. The Supplementary Provisions included in the Schedule are discussed in the context of the Conditions to which they most closely relate. That commentary is followed by Appendix (Related SBCC Publications), which lists the other SBCC documents that can be used in conjunction with MTC/Scot 2019.