

Design and Build Contract 2016
Design and Build Contract for use in Scotland 2016

SBCC Fluctuations Options B and C

SBCC Fluctuations Option B

Labour and materials cost and tax fluctuations

Deemed calculation of Contract Sum – labour rates etc.

B-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 The Contract Sum (including the cost of employer's liability insurance and of third party insurance) is based upon the rates of wages and the other emoluments and expenses (including holiday credits) which will be payable by the Contractor to or in respect of:

- .1 workpeople engaged upon or in connection with the Works either on or adjacent to the site; and
- .2 workpeople 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 engaged

in accordance with:

- .3 the rules or decisions of the Construction Industry Joint Council or other wage-fixing body which will be applicable to the Works and which have been promulgated at the Base Date;
- .4 any incentive scheme and/or productivity agreement under the Working Rule Agreement of the Construction Industry Joint Council or provisions on incentive schemes and/or productivity agreements contained in the rules or decisions of some other wage-fixing body; and
- .5 the terms of the Building and Civil Engineering Annual and Public Holidays Agreements (or the terms of agreements to similar effect in respect of workpeople whose rates of wages and other emoluments and expenses (including holiday credits) are in accordance with the rules or decisions of a wage-fixing body other than the Construction Industry Joint Council) which will be applicable to the Works and which have been promulgated at the Base Date;

and upon the rates or amounts of any contribution, levy or tax which will be payable by the Contractor in his capacity as an employer in respect of, or calculated by reference to, the rates of wages and other emoluments and expenses (including holiday credits) referred to herein.

.2 If any of the said rates of wages or other emoluments and expenses (including holiday credits) are increased or decreased by reason of any alteration in the said rules, decisions or agreements promulgated after the Base Date, then the net amount of the increase or decrease in wages or other emoluments and expenses (including holiday credits) together with the net amount of any consequential increase or decrease in the cost of employer's liability insurance, of third party insurance and of any contribution, levy or tax payable by a person in his capacity as an employer shall, as the case may be, be paid to or allowed by the Contractor.

.3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph B-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 workpeople in paragraph B-12-3, the same amount as is payable or allowable in respect of a craftsman under paragraph B-1-2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed.

- 4 For the purposes of paragraphs B.1.3 and B.2.3:
 - 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;
 - 2 “the same amount as is payable or allowable in respect of a craftsman” shall refer to the amount in respect of a craftsman employed by the Contractor (or by any sub-contractor under a sub-contract to which paragraph B.4 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 craftsman, shall refer to the amount in respect of a craftsman employed as aforesaid to whom the highest rate is applicable; and
 - 3 “employed by the Contractor” shall mean an employment to which the Income Tax (Pay As You Earn) Regulations 2003 apply.
- 5 The Contract Sum is based upon:
 - 1 the transport charges referred to in a basic transport charges list submitted by the Contractor and attached to the Contractor’s Proposals and incurred by the Contractor in respect of workpeople engaged in either of the capacities referred to in paragraphs B.1.1.1 and B.1.1.2; or
 - 2 the reimbursement of fares which will be reimbursable by the Contractor to workpeople engaged in either of the capacities referred to in paragraphs B.1.1.1 and B.1.1.2 in accordance with the rules or decisions of the Construction Industry Joint Council which will be applicable to the Works and which have been promulgated at the Base Date or, in the case of workpeople so engaged whose rates of wages and other emoluments and expenses are governed by the rules or decisions of some wage-fixing body other than the Construction Industry Joint Council, in accordance with the rules or decisions of such other body which will be applicable and which have been promulgated as aforesaid.
- 6 If:
 - 1 the amount of transport charges referred to in the basic transport charges list is increased or decreased after the Base Date; or
 - 2 the reimbursement of fares is increased or decreased by reason of any alteration in the said rules or decisions promulgated after the Base Date or by any actual increase or decrease in fares which takes effect after the Base Date,

then the net amount of that increase or decrease shall, as the case may be, be paid to or allowed by the Contractor.

Deemed calculation of Contract Sum – labour levies and taxes

- B.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.
- 1 The Contract Sum is based upon the types and rates of contribution, levy and tax payable by a person in his 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 B.2.2 referred to as a ‘tender type’ and a ‘tender rate’.
 - 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 his 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 workpeople as referred to in paragraphs B.1.1.1 and B.1.1.2 or because of his employment of such workpeople and what he 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.

- .3 There shall be added to the net amount paid to or allowed by the Contractor under paragraph B-2-2, 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 workpeople in paragraph B-12-3, the same amount as is payable or allowable in respect of a craftsman under paragraph B-2-2 or such proportion of that amount as reflects the time (measured in whole working days) that each such person is so employed. The provisions of paragraph B-1-4 shall apply to this paragraph B-2-3.
- .4 The Contract Sum is based upon the types and rates of refund of the contributions, levies and taxes payable by a person in his capacity as an employer and upon the types and rates of premium receivable by a person in his 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 B-2-5 referred to as a 'tender type' and a 'tender rate'.
- .5 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 his capacity as an employer becomes receivable or if a new type of premium receivable by a person in his 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 workpeople as referred to in paragraphs B-1-1-1 and B-1-1-2 or because of his employment of such workpeople and what he 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.
- .6 The references in paragraphs B-2-4 and B-2-5 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 to a person in his capacity as an employer and which affect the cost to an employer of having persons in his employment.
- .7 Where employer's contributions are payable by the Contractor in respect of workpeople as referred to in paragraphs B-1-1-1 and B-1-1-2 whose employment is contracted-out employment within the meaning of the Pension Schemes Act 1993, the Contractor shall, subject to the proviso hereto, for the purpose of recovery or allowance under paragraph B-2 be deemed to pay employer's contributions as if that employment were not contracted-out employment; provided that this paragraph B-2-7 shall not apply where the occupational pension scheme, by reference to membership of which the employment of workpeople is contracted-out employment, is established by the rules of the Construction Industry Joint Council or of some other wage-fixing body so that contributions to such occupational pension scheme are within the payment and allowance provisions of paragraph B-1.
- .8 The references in paragraphs B-2-1 to B-2-5 and B-2-7 to contributions, levies and taxes shall be construed as meaning all impositions payable by a person in his capacity as an employer howsoever they are described and whoever the recipient which are imposed under or by virtue of an Act of Parliament and which affect the cost to an employer of having persons in his employment.

Deemed calculation of Contract Sum – materials, goods, electricity and fuels

- B-3** 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 The Contract Sum is based upon the market prices which were current at the Base Date of the materials, goods, electricity, fuels or any other solid, liquid or gas necessary for the execution of the Works, and upon the duty or tax payable at that date on the disposal of waste from the site.
 - .2 If after the Base Date the market price of any of the above things increases or decreases, or the duty or tax on the disposal of waste from the site increases or decreases, then the net amount of the difference shall, as the case may be, be paid to or allowed by the Contractor.
 - .3 The references in paragraphs B-3-1 and B-3-2 to market price(s) shall be construed as including any duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation, processing, use or disposal of any of the things described in paragraph B-3-1.

Sub-contract work – incorporation of provisions to like effect

- B-4**
- .1 If the Contractor sub-contract any portion of the Works to a sub-contractor he shall incorporate in the sub-contract provisions to the like effect as the provisions of Fluctuations Option B (excluding this paragraph B-4) including the percentage stated in the Contract Particulars pursuant to paragraph B-13 which are applicable for the purposes of this Contract.
 - .2 If the price payable under such a sub-contract as referred to in paragraph B-4.1 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

- B-5**
- .1 The Contractor shall notify the Employer 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:
 - .1 paragraph B-1.2;
 - .2 paragraph B-1.6;
 - .3 paragraph B-2.2;
 - .4 paragraph B-2.5;
 - .5 paragraph B-3.2;
 - .6 paragraph B-4.2.
 - .2 Any notification required to be given under paragraph B-5.1 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 – Employer and Contractor

- B-6** The Employer 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 B-5.1.

Fluctuations added to or deducted from Contract Sum

- B-7** Any amount which from time to time becomes payable to or allowable by the Contractor by virtue of paragraphs B-1 to B-3 or paragraph B-4 shall, as the case may be, be added to or deducted from:
- .1 the Contract Sum; and
 - .2 any amounts payable to the Contractor and which are calculated in accordance with clause 8.12.3.1.

The addition or deduction to which paragraph B-7 refers shall be subject to the provisions of paragraphs B-8 to B-10.1.

Evidence and computations by Contractor

- B-8** As soon as is reasonably practicable the Contractor shall provide such evidence and computations as the Employer may reasonably require to enable the amount payable to or allowable by the Contractor by virtue of paragraphs B-1 to B-3 or paragraph B-4 to be ascertained; and in the case of amounts payable to or allowable by the Contractor under paragraph B-1.3 (or paragraph B-4 for amounts payable to or allowable under the provisions in the sub-contract to the like effect as paragraphs B-1.3 and B-1.4) – employees other than workpeople – 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.

No alteration to Contractor's profit

- B-9** No addition to or deduction from the Contract Sum made by virtue of paragraph B-7 shall alter in any way the amount of profit of the Contractor included in that Sum.

Position where Contractor in default over completion

- B-10**
- .1 Subject to the provisions of paragraph B-10-2 no amount shall be added or deducted in the computation of the amount stated as due in an Interim Application or in the Final Statement or in the Employer's Final Statement in respect of amounts otherwise payable to or allowable by the Contractor by virtue of paragraphs B-1 to B-3 or paragraph B-4 if the event (as referred to in the provisions listed in paragraph B-5-1) in respect of which the payment or allowance would be made occurs after the Completion Date.
 - .2 Paragraph B-10-1 shall not be applied unless:
 - .1 the printed text of clauses 2-23 to 2-26 is unamended and forms part of the Conditions; and
 - .2 the Employer has, in respect of every notification by the Contractor under clause 2-25, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.

Work etc. to which paragraphs B-1 to B-4 not applicable

- B-11** Paragraphs B-1 to B-4 shall not apply in respect of:
- .1 work for which the Contractor is allowed daywork rates under clause 5-5;
 - .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 for use with Fluctuations Option B

- B-12** In Fluctuations Option B:
- .1 the Base Date means the date stated as such in the Contract Particulars;
 - .2 "materials" and "goods" include timber used in formwork but do not include other consumable stores, plant and machinery;
 - .3 "workpeople" 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;
 - .4 "wage-fixing body" means a body which lays down recognised terms and conditions of workers;
 - .5 "recognised terms and conditions" means terms and conditions of workers 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 workers in the trade, industry or section being workers of the description to which the agreement or award relates.

Percentage addition to fluctuation payments or allowances

- B-13** There shall be added to the amount paid to or allowed by the Contractor under:
- .1 paragraph B-1-2,
 - .2 paragraph B-1-3,
 - .3 paragraph B-1-6,
 - .4 paragraph B-2-2,

.5 paragraph B.2.5,

.6 paragraph B.3.2

the percentage stated in the Contract Particulars.

SBCB Fluctuations Option C

(Formula adjustment)

Adjustment of Contract Sum – Formula Rules

- C-1**
- .1 .1 The Contract Sum shall be adjusted in accordance with the provisions of Fluctuations Option C and the Formula Rules current at the Base Date issued for use with Fluctuations Option C by the JCT ('the Formula Rules').
 - .2 Any adjustment under Fluctuations Option C shall be to sums exclusive of VAT and nothing in Fluctuations Option C shall affect in any way the operation of clause 4.4.
 - .2 The Definitions in rule 3 of the Formula Rules shall apply to Fluctuations Option C.
 - .3 The adjustment referred to in Fluctuations Option C shall be effected (after taking into account any Non-Adjustable Element^[1]) in all applications for payment issued under the provisions of the Conditions.
 - .4 If any correction of amounts of adjustment under Fluctuations Option C included in previous payments is required following any operation of rule 5 of the Formula Rules, such correction shall be given effect in the next payment to be made.

Interim Application– statement of allocation of values

- C-2** The Contractor shall provide any amplification of the Contract Sum Analysis necessary to ensure the allocation of items and values in accordance with the Formula Rules. When making an Interim Application under clause 4.8 the Contractor shall include a statement of the allocation of the values and the amount of their adjustment in accordance with Fluctuations Option C and the Formula Rules.

Fluctuations – articles manufactured outside the United Kingdom

- C-3** For any article to which rule 4(ii) of the Formula Rules applies the Contractor shall insert in a list attached to the Contractor's Proposals the market price of the article in sterling (that is the price delivered to the site) current at the Base Date. If after that date the market price of the article inserted in that list increases or decreases then the net amount of the difference between the cost of purchasing at the market price inserted in such list and the market price payable by the Contractor and current when the article is bought shall, as the case may be, be paid to or allowed by the Contractor. The reference to market price in this paragraph C-3 shall be construed as including any duty or tax (other than any VAT which is treated, or is capable of being treated, as input tax by the Contractor) by whomsoever payable under or by virtue of any Act of Parliament on the import, purchase, sale, appropriation or use of the article specified as aforesaid.

Power to agree – Employer and Contractor

- C-4** The Employer and the Contractor may agree any alteration to the methods and procedures for ascertaining the amount of formula adjustment to be made under Fluctuations Option C, and the amounts ascertained after the operation of such agreement shall be deemed for all the purposes of this Contract to be the amount of formula adjustment payable to or allowable by the Contractor in respect of the provisions of Fluctuations Option C. Provided always that no alteration to the methods and procedures shall be agreed unless it is reasonably expected that the amount of formula adjustment so ascertained will be the same or approximately the same as that ascertained in accordance with Part I or Part II of Section 2 of the Formula Rules whichever Part is stated to be applicable in the Employer's Requirements or the Contractor's Proposals.

Position where Monthly Bulletins are delayed, etc.

- C-5**
- .1 .1 If at any time prior to the due date for the final payment under clause 4.12.5 formula adjustment is not possible because of delay in, or cessation of, the publication of the Monthly Bulletins, adjustment of the Contract Sum shall be made in each Interim Application during such period of delay on a fair and reasonable basis.

[1] Applies to Local Authorities only.

- .2 If publication of the Monthly Bulletins is recommenced at any time prior to the due date for the final payment, the provisions of Fluctuations Option C and the Formula Rules shall apply for each Valuation Period as if no delay or cessation had occurred and the adjustment under Fluctuations Option C and the Formula Rules shall be substituted for any adjustment under paragraph C-5-1.
- .3 During any such period of delay or cessation the Contractor and the Employer shall operate such parts of Fluctuations Option C and the Formula Rules as will enable the amount of formula adjustment due to be readily calculated upon recommencement of publication of the Monthly Bulletins.

Formula adjustment – failure to complete

- C-6**
- .1 .1 If the Contractor fails to complete the Works by the Completion Date, formula adjustment of the Contract Sum under Fluctuations Option C shall be effected in all statements given under paragraph C-2 with Interim Applications issued after the Completion Date by reference to the Index Numbers applicable to the Valuation Period in which the Completion Date falls.
 - .2 If for any reason the adjustment included in the amount of any Interim Application which is or has been made after the Completion Date is not in accordance with paragraph C-6.1.1, such adjustment shall be corrected to comply with that paragraph.
 - .2 Paragraph C-6.1 shall not be applied unless:
 - .1 the printed text of clauses 2-23 to 2-26 is unamended and forms part of the Conditions; and
 - .2 the Employer has, in respect of every notification by the Contractor under clause 2-25, fixed or confirmed such Completion Date as he considers to be in accordance with that clause.

