

Amendments to the ACA Form of Building Agreement

PAYMENT

1. Delete and replace existing clause 16.1A as follows (but retain the side notes):

'16.1A On the [last working day of each calendar month, up to and including the calendar month in which Taking Over of the Works occurs and thereafter as and when further amounts become due to the Contractor under this Agreement][*Amend if different time applies for the submissions of applications*], the Contractor shall present to the Architect an interim application stating the sum which the Contractor considers to be due to it and the basis on which that sum is calculated in accordance with the provisions of Clause 16.2A supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Architect.'

2. Delete and replace existing clause 16.1B as follows (but retain the side notes):

'16.1B On completion of each stage set out in the Stage Payment Schedule the Contractor shall present to the Architect an application stating the sum which the Contractor considers to be due to it and the basis on which that sum is calculated in accordance with the provisions of Clause 16.2A supported by such documents, vouchers and receipts as shall be necessary for computing the same or as may be required by the Architect.'

3. Delete and replace existing clause 16.3 as follows:

'16.3

- (a) The due date for payment of a sum payable under this Agreement shall be the date of a certificate issued under clause 16.2A or under clause 16.B as applicable.
- (b) Within five (5) calendar days of the due date for any payment under this Agreement, the Architect shall on behalf of the Employer issue to the Contractor a payment notice setting out the sum the Employer or the Architect considers to have been due on the due date for payment and the basis on which that sum is calculated.
- (c) Subject to this 16.3 the final date for payment shall be the later of [*insert number of Working Days - 10 Working Days shall apply in default of an alternative period*] Working Days from the due date for payment and [*insert number of Working Day- 10 Working Days shall apply in default of an alternative period s*] Working Days from receipt by the Architect of any required VAT invoice in the same sum as the payment notice.
- (d) If a payment notice is not issued in accordance with 16.3 (b), the application for payment issued by the Contractor pursuant to clause 16.1A or 16.1B as appropriate shall be treated as the payment notice. Subject to any notice issued in accordance with clause 16.3 (e), the Employer shall pay the sum stated as due in the payment notice or the application for payment by the final date for payment.

- (e) Not later than 2 Working Days before the final date for payment of any sum due (the **prescribed period**), the Employer or the Architect on behalf of the Employer may give notice to the Contractor that the intention is to pay less than the sum that is specified as due in the payment notice, specifying the sum that is considered to be due on the date the pay less notice is served and the basis on which that sum is calculated. If a pay less notice is served under this clause then the Contractor shall be paid the amount stated in such pay less notice by the final date for payment of the relevant sum and the Contractor shall issue any required VAT invoice to reflect the sum stated in such notice. Notwithstanding the trustee status of retention monies as stated in clause 16.4 the Employer may exercise any right to pay less and/or deduct under this Agreement from such retention monies.
- (f) If the Employer fails to pay a sum, or any part of it, due to the Contractor under this Agreement by the final date for payment, the Employer shall in addition to any unpaid amount that should properly have been paid, pay the Contractor simple interest on that amount at the rate of [*5% shall apply in default of an alternative level being included here*]% above the official dealing rate of the Bank of England current at the date that a payment due under this Agreement becomes overdue, from the final date for payment until payment is made. Interest under this clause shall be a debt due to the Contractor from the Employer.
- (g) Notwithstanding any other provision, if the Contractor shall become insolvent (within the meaning set out in clause 20.3) after the prescribed period as referred to in clause 16.3 (e), the Employer shall not be required to pay the notified sum in accordance with clause 16.3 (d) on or before the final date for payment.'

4. Delete and replace clause 16.6 as follows:

'16.6 If the Employer fails to make any payment due in accordance with this Agreement by the stated final date for payment and if such failure shall continue for seven days after the Contractor has given the Employer or the Architect written notice of its intention to suspend performance of any or all of its obligations under this Agreement and the grounds for such intended suspension, then the Contractor may suspend performance of any or all of its obligations until payment is received in full. Where the Contractor exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred as a result of the exercise of the right.'

PAYMENT OF THE FINAL CONTRACT SUM

5. Add the following to clause 19.1:

'The final account shall state the sum which the Contractor considers to be due to it and the basis on which that sum is calculated.'

6. Add the following new clause 19.6:

'19.6 Payments under this clause 19 shall be payable subject to the same steps and procedure as set out in clause 16.3 which the parties shall comply with in regard to any application for payment of payment under this clause 19.'

NOTICES AND INTERPRETATION

7. Third party rights

Add new clause 23.3 as follows:

“23.3 The parties hereby confirm that notwithstanding any other provision of the Agreement, it shall not and shall not purport to confer on any third party any right to enforce any term of the Agreement for the purposes of the Contracts (Rights of Third Parties) Act 1999.

ADJUDICATION

8. Add the following to the end of the existing wording of clause 25.5

‘Notwithstanding any other provision, the said Construction Industry Council Model Adjudication Procedure shall take effect as if it was incorporated into this clause.’

9. Delete clauses 25.6 and 25.7.

CDM REGULATIONS

10. All references to the CDM Regulations shall be taken as referring to the Construction Design and Management Regulations 2007 or any variation or substitution of the same.

11. All references to “Planning Supervisor” in this Agreement shall be taken to read “CDM Co-Ordinator”.

BRIBERY ACT 2010

12. Add new clause 27 as follows:

“27 **BRIBERY ACT 2010**

27.1 The Contractor shall comply with the provisions of the Bribery Act 2010 and shall take all measures necessary to ensure that its employees, consultants and other advisers do not do anything on behalf of us which would constitute a breach of the Bribery Act by the Employer.

27.2 The Contractor shall promptly report to us any incidents or allegations of bribery in connection with this Agreement.

27.3 The Contractor shall ensure that its contracts with any sub-contractors impose an obligation on the subcontractor(s) to comply with the provisions of this clause 27.

27.4 The Contractor hereby agrees to save, protect, defend, indemnify and hold the Employer harmless from and against all claims, liabilities, demands, damages, judgments, awards, settlements, expenses or losses, including

costs of litigation, reasonable legal fees and criminal penalties (to the extent permitted by law) incurred by the Employer arising out of a breach by the Contractor of this clause 27.”

