

**PPC2000 (amended 2008): March 2013 changes to The Late Payment of Commercial Debts (Interest) Act 1998**

**Current as at 15 May 2013**

On 16 March 2013 changes were made to The Late Payment of Commercial Debts (Interest) Act 1998 (as amended) (the **Late Payment Act**) by The Late Payment of Commercial Debts Regulations 2013. The changes effectively impose restrictions on what purchasers (in PPC terminology the 'Client') can agree in terms of payment dates and interest rates in the event of late payment. There are different restrictions depending on whether the Client is a 'contracting authority' or not. For these purposes 'contracting authority' has the same meaning as in The Public Contracts Regulations 2006 (as amended).

Trowers & Hamblins LLP and the Association of Consultant Architects do not consider that any changes are needed to PPC2000 where the Client is not a 'contracting authority'. However, some changes are considered necessary where the Client is a 'contracting authority'.

'Contracting authorities' are required to pay within 30 days of certain 'trigger dates' in the revised Late Payment Act. Trowers & Hamblins LLP and the Association of Consultant Architects recommend that the amendments contained in this loose leaf updater are incorporated into PPC2000 for contracts entered into after 16 March 2013 where the client is a 'contracting authority' to cover this. The amendments:

- Shorten the payment period for consultants to 'fit' within the new statutory timescale (no changes are considered necessary for the payment timescales for the Constructor).
- Impose a new obligation on Consultants and the Constructor to provide (where the Client requires a VAT invoice) a VAT invoice within a certain number of days from the issue a payment notice. This is to try and ensure that the final date for payment for a particular payment occurs before statutory interest starts to run pursuant to the revised Late Payment Act. To the extent that a Consultant or Constructor does not comply with this obligation it waives any right to statutory interest for the period of delay.

As well as incorporating the amendments in this loose leaf updater into the Partnering Terms if revised payment periods are stated in the Price Framework and/or the Consultant Payment Terms these should be shorter than the revised time periods mentioned in this loose leaf updater.

These amendments will be incorporated into the published form when it is next updated and republished.

A marked up version of the payment clause (which is itself contained in a loose leaf updater) is included in this loose leaf so that users can easily see how that clause should 'look' when the amendments set out in this updater are included within it.

In addition to the amendments contained in this loose leaf updater the Client should consider what level of interest (in the event of late payment) it wishes to include in clause 20.9 in the Project Partnering Agreement.

**Amendments to clause 20 in PPC2000 (amended 2008) as amended in October 2011 loose leaf**

**1 Clause 20.4**

In the final sentence delete "thirty (30) Working Days" and "twenty five (25) Working Days" and insert "twenty (20) Working Days" and "fifteen (15) Working Days" respectively.

**2 Clause 20.19**

Insert new clause 20.19 as follows:

VAT invoices and  
late payment

20.19 If VAT invoices are required by the Client:

- (i) the Constructor or the Consultant (as applicable) shall within 4 days from the date of issue of the relevant payment notice pursuant to clause 20.3, clause 20.4 or clause 20.16(iii) deliver the required VAT invoice to the Client;
- (ii) to the extent that the Constructor or the Consultant does not comply with clause 20.19(i) the Consultant or the Constructor hereby waives its right to interest pursuant to the Late Payment Act for the period up to and including the final date for payment.

**Mark up of clause 20 including Construction Act changes showing suggested changes contained in this loose leaf updater**

	<b>20</b>	<b>Payment</b>	
Payment obligations	20.1		The Client shall be responsible for payment to the Consultants of all agreed amounts stated in the Consultant Payment Terms and for payment to the Constructor of all agreed amounts in respect of Constructor's Services, in respect of Pre-Construction Activities and comprising the Agreed Maximum Price, plus in each case VAT (if applicable), and in each case subject to and adjusted in accordance with these Partnering Terms.
Payment applications and due dates for payment	20.2		Subject to any agreed payment milestones, activity schedules or cashflows and any other payment arrangements set out in the Price Framework and the Consultant Payment Terms and any Pre-Construction Agreement, applications for payment of amounts due to the Consultants and the Constructor shall be submitted respectively by each Consultant and the Constructor to the Client and the Client Representative at the intervals stated in the Price Framework, the Consultant Payment Terms and any Pre-Construction Agreement or (if no intervals are stated) at the end of each calendar month. Each application for payment shall state the sum the relevant Consultant or the Constructor considers to be due to it on the due date for payment and the basis on which that sum is calculated and shall be accompanied by such details as are stated in the Project Brief and such further information as the Client Representative may reasonably require. The due date for payment in respect of each application for payment shall be the date of receipt by the Client of the relevant application, submitted in accordance with this clause 20.2.
Interim payments to Constructor – payment notices and final date for payment	20.3		Within five (5) days from receipt of each application for payment made by the Constructor in accordance with clause 20.2, clause 20.15 or when otherwise required by these Partnering Terms, the Client Representative shall issue to the Constructor and the Client a payment notice, calculated in accordance with clause 20.5, specifying the sum the Client Representative considers to have been due on the due date for payment and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the Constructor the sum stated as due in the payment notice by the final date for payment. Subject to any revised periods stated in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the Client of any required VAT invoice from the Constructor in the same sum as the payment notice.
Payment to Consultants – payment notices and final date for payment	20.4		Within five (5) days from receipt by the Client of each application for payment made by a Consultant in accordance with clause 20.2 the Client shall issue a payment notice to each Consultant, calculated according to the relevant Consultant Payment Terms on the basis of the Consultant Services provided and taking into account sums due pursuant to clauses 20.10 and 20.17, specifying the sum the Client considers to have been due on the due date for payment and the basis on which that sum is calculated.

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Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the relevant Consultant the amount stated as due in the relevant payment notice by the final date for payment. Subject to any revised periods stated in the Consultant Payment Terms, the final date for payment shall be the later of ~~twenty thirty (2030)~~ Working Days from the due date for payment and ~~fifteen twenty five (1525)~~ Working Days from the date of receipt by the Client from the relevant Consultant of any required VAT invoice in the same sum as the relevant payment notice.

Content of Constructor valuations	20.5	The amount payable under each application for payment by the Constructor shall be calculated in accordance with the Price Framework to establish the value of the Constructor's Services properly performed, or the value of any Pre-Construction Activities properly performed or the value of that part of the Project properly progressed, including the value of any unfixed materials, goods and equipment on and off Site intended for the Project (subject to clause 15.4 and if and to the extent provided in the Price Framework), less the total of all amounts previously paid, and adjusted to reflect shared savings, shared added value and pain/gain Incentives pursuant to clause 13.2, any Incentives that link payment to achievement of the Date for Completion or any KPI Targets pursuant to clause 13.3 and any sums due pursuant to clauses 17.3, 17.4, 18.5 or 18.6 and taking into account sums due pursuant to clauses 20.10 and 20.17.
Default notice	20.6	<p>If the Client Representative or the Client does not issue a payment notice in accordance with clause 20.3 or clause 20.4 respectively:</p> <ul style="list-style-type: none"><li>(i) the relevant Consultant's application for payment under clause 20.2 or the Constructor's application under clause 20.2 or clause 20.15 shall be treated as the payment notice;</li><li>(ii) subject to any notice issued in accordance with clause 20.7, the Client shall pay the amount stated as due in the application for payment by the final date for payment.</li></ul>
Pay less notice	20.7	<p>Not later than two (2) Working Days before the final date for payment of any sum due, the payer or (in respect of payments due to the Constructor) the Client Representative may give notice to the payee pursuant to Section 111(3) of the HGCRA, specifying the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 20.7:</p> <ul style="list-style-type: none"><li>(i) the payer shall pay the amount stated in such notice by the final date for payment;</li><li>(ii) the payee shall reissue any required VAT invoice to reflect the sum stated in such notice.</li></ul>
Adjustment of notices	20.8	<p>The issue of any notice or VAT invoice or the payment of any amount by the payer shall not in any way affect the right of the payer or any payee to contend that:</p> <ul style="list-style-type: none"><li>(i) any Consultant Services or Constructor's Services or Pre-</li></ul>

Construction Activities or the Project have or have not been properly valued; and/or

- (ii) that any amount has been improperly paid or withheld.

In calculating any notice, the payer or (in the case of payments to the Constructor) the Client Representative shall be entitled to reconsider and, if necessary, adjust any assessment made in arriving at any previous notice.

Notices not approved	20.9	<p>The issue of any notice or VAT invoice or the payment of any amount shall not:</p> <ul style="list-style-type: none"><li>(i) constitute or imply or be evidence of the Client's approval or acceptance of any part of any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project; or</li><li>(ii) in any way affect the responsibilities of any Partnering Team member under the Partnering Contract.</li></ul>
Interest on late payment	20.10	<p>Any delay in a due payment beyond the final date stated in clause 20.3, clause 20.4, clause 20.16(iii) or clause 20.18 shall entitle the payee to be paid interest at the percentage specified in the Project Partnering Agreement, and the Partnering Team members confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.</p>
Fluctuation	20.11	<p>Amounts in the Price Framework and Consultant Payment Terms shall be subject only to such fluctuation provisions, if any, as are set out in the Price Framework and Consultant Payment Terms.</p>
Payment of Specialists	20.12	<p>The Constructor shall pay all Specialists (other than Specialists appointed pursuant to clause 10.11) the amounts to which they are entitled in accordance with the Specialist Payment Terms (with provision for interest on late payment equivalent to clause 20.10), shall maintain full records of all amounts payable and paid to each Specialist and shall make these records available to the Client Representative on request.</p>
Inspection of financial records	20.13	<p>Each Partnering Team member shall allow the Client Representative to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice.</p>
Statutory deduction	20.14	<p>Where the Client is a "contractor" for the purposes of the Finance Act, then not later than fifteen (15) Working Days prior to the Constructor's first application for payment in relation to the Project, and at any other time upon request, the Constructor shall either provide the Client with evidence that the Constructor is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Client in writing that it is not entitled to be paid without such statutory deduction (and in the latter case the Constructor shall immediately inform the Client if it subsequently becomes entitled to be paid without such statutory deduction) and the</p>

Client shall be entitled to receive from the Constructor evidence supporting the Constructor's stated entitlement to be paid without such statutory deduction.

Payment on Project  
Completion 20.15

Within twenty (20) Working Days following Project Completion (or any other period stated in the Price Framework), the Client Representative shall prepare and issue to the Client and the Constructor an account confirming the balance of the Agreed Maximum Price due as between the Client and the Constructor, calculated in accordance with clause 20.5. The Client and the Constructor shall seek to agree the amount of that balance, taking into account any adjustment provided for in these Partnering Terms and subject to deduction of any amount stated as a Retention in the Price Framework. On or after forty (40) Working Days following Project Completion (or any revised period stated in the Price Framework) the Constructor shall issue a payment application in accordance with clause 20.2 and the due date for payment shall be the date of receipt by the Client of such application.

Final Account 20.16

The following procedures shall apply in relation to the Final Account:

- (i) Within twenty (20) Working Days following notice to the Client and the Constructor by the Client Representative confirming satisfaction of the Constructor's obligations under clause 21.4 as to rectification of defects (or on such earlier date as the Client and the Constructor may agree), the Client Representative shall prepare and issue to the Client and the Constructor a Final Account (calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) for agreement between the Client and the Constructor.
- (ii) On or after forty (40) Working Days of the notice confirming satisfaction of the Constructor's obligations under clause 21.4 (or any revised period stated in the Price Framework) the Constructor or the Client (as the case may be) shall make an application for payment which shall state the sum the Constructor or the Client considers to be due to it and the basis on which that sum is calculated and which shall be accompanied by such details as are stated in the Project Brief and such further information as the Constructor or the Client Representative may reasonably require. Such application shall either be in the agreed amount or if agreement is not reached then in such amount as the payee considers to be due on the due date for payment, calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms. The due date for payment in respect of the application shall be the date of receipt by the payer of such application.
- (iii) Within five (5) days of the due date for payment the payer or (in respect of payments due to the Constructor) the Client Representative shall issue to the payee a payment notice setting out the sum the payer or the Client Representative considers to

have been due on the due date for payment (either in the agreed sum or as calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) and the basis on which that sum is calculated. Subject to any revised periods in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the payer of any required VAT invoice in the same sum as the payment notice.

- (iv) If a payment notice is not issued in accordance with clause 20.16(iii) the application for payment pursuant to clause 20.16(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 20.7, the payer shall pay the sum stated as due in the payment notice or the application for payment by the final date for payment.
- (v) The Final Account, when agreed, shall be conclusive evidence as to the balance of the Agreed Maximum Price due between the Client and the Constructor.

Suspension of performance	20.17	If the Client fails to make any payment due in accordance with this clause 20 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Constructor or a Consultant has given the Client written notice of its intention to suspend performance of any or all of its obligations and the grounds for such intended suspension, then the Constructor or such Consultant may suspend performance of any or all of its obligations under the Partnering Contract until payment is received in full. Where the Constructor or a Consultant exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.
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Sums due to the Client	20.18	Any sum due to the Client from a Partnering Team member (other than pursuant to clause 20.16) which the Client does not deduct and/or withhold from sums due or to become due to the relevant Partnering Team member shall be due for payment on receipt of an application from the Client by the relevant Partnering Team member. In such application the Client shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the relevant Partnering Team member shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the relevant Partnering Team member fails to serve such notice the Client's application shall be treated as the payment notice. The final date for payment for any such sum applied for shall be the later of twenty (20) Working Days from the payment due date and fifteen (15) Working Days from the date of receipt by the relevant Partnering Team member of any required VAT invoice from the Client in the same amount as the payment notice.
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20.19 If VAT invoices are required by the Client:

- (i) the Constructor or the Consultant (as applicable) shall within 4 days from the date of issue of the relevant payment notice pursuant to clause 20.3, clause 20.4 or clause 20.16(iii) deliver the required VAT invoice to the Client;
- (ii) to the extent that the Constructor or the Consultant does not comply with clause 20.19(i) the Consultant or the Constructor hereby waives its right to interest pursuant to the Late Payment Act for the period up to and including the final date for payment.