



Minor Works Building Contract with contractor's design for use in Scotland

Amendment 1 to MWD/SCOT 2005 Edition and May 2006 Revision
Issued April 2007

CIS and CDM Regulations

Clause number and heading	Action										
Recitals	Insert new Recital as Fifth Recital: 'for the purposes of the Construction Industry Scheme (CIS) under the Finance Act 2004, the status of the Employer is, as at the Base Date, that stated in the Contract Particulars;'; Renumber existing Fifth Recital as Sixth Recital										
Fifth Recital	Delete 'the extent of the application' and insert 'for the purposes'; Delete '1994' and insert '2007'; After '(the 'CDM Regulations')' delete 'to' and insert 'the status of the project that comprises or includes'										
Article 5 heading	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator'										
Article 5	Delete 'Planning Supervisor' and insert 'CDM Co-ordinator' (twice); Delete '6(5)' and insert '14(1)'										
Article 6	Delete '6(5)' and insert '14(2)'										
Footnote [8]	Delete existing text and insert : 'Insert the name of the CDM Co-ordinator only where the Architect/Contract Administrator is not to fulfil that role, and that of the Principal Contractor only if that is to be a person other than the Contractor. If the project that comprises or includes the Works is not notifiable under the CDM Regulations 2007 – see the Contract Particulars (Sixth Recital), delete Articles 5 and 6 in their entirety.'										
Contract Particulars	Insert new entry for 'Fifth Recital and clause 5.2': <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">'Construction Industry Scheme (CIS)</td> <td style="width: 40%;">Employer at the Base Date</td> </tr> <tr> <td></td> <td>* is a 'contractor'/is not a 'contractor' for the purposes of the CIS'</td> </tr> </table>	'Construction Industry Scheme (CIS)	Employer at the Base Date		* is a 'contractor'/is not a 'contractor' for the purposes of the CIS'						
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	* is a 'contractor'/is not a 'contractor' for the purposes of the CIS'										
Contract Particulars, Fifth Recital	Delete 'Fifth Recital' and existing entry and insert new entry for 'Sixth Recital': <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">'CDM Regulations'^[1]</td> <td style="width: 40%;">the project</td> </tr> <tr> <td></td> <td>* is/is not notifiable'</td> </tr> </table> <p>Insert new footnote text for ^[1]: 'A project is not notifiable under the CDM Regulations where it is not likely to involve more than 30 days, or 500 person days, of construction work or it is being carried out for a residential occupier as a purely domestic project.'</p>	'CDM Regulations' ^[1]	the project		* is/is not notifiable'						
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Contract Particulars	Insert new entry for '1.1': <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">'CDM Planning Period'^[1]</td> <td style="width: 40%;">shall mean the period of</td> </tr> <tr> <td></td> <td>_____ * days/weeks</td> </tr> <tr> <td></td> <td>* ending on the Date of Commencement of the Works/</td> </tr> <tr> <td></td> <td>* beginning/ending on</td> </tr> <tr> <td></td> <td>_____ 20 _____'</td> </tr> </table>	'CDM Planning Period' ^[1]	shall mean the period of		_____ * days/weeks		* ending on the Date of Commencement of the Works/		* beginning/ending on		_____ 20 _____'
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	<p>Insert new footnote text for ^[1]: ‘Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time (the CDM Planning Period) prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation. There may be cases where that planning and preparation needs to be completed earlier than the Date for Commencement of the Works.’</p>
Clause 1-1	<p>Delete the definition of ‘Health and Safety Plan’; Insert the following new definitions:</p> <p>‘CDM Co-ordinator: the Architect/Contract Administrator or other person named in Article 5 or any successor appointed by the Employer.</p> <p>CDM Planning Period: the minimum amount of time referred to in regulation 10(2)(c) of the CDM Regulations, as specified in the Contract Particulars (against the reference to clause 1-1).</p> <p>CDM Regulations: the Construction (Design and Management) Regulations 2007.</p> <p>Construction Phase Plan: the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.’</p>
Clause 2-1	<p>Delete ‘Health and Safety’ and insert ‘Construction Phase’; After ‘(where applicable) and’ delete ‘the’ and insert ‘other’</p>
Clause 2-1-4	<p>Delete ‘regulation 13’ and insert ‘regulations 11, 12 and 18’; Delete ‘, including cooperation with the Planning Supervisor and others as required by regulation 13(2)(c)’</p>
Clause 4-3	<p>Delete existing sub-clauses 4-3-2 and 4-3-3 and insert new sub-clause as 4-3-2:</p> <p>‘A sub-contract for the Works or any part of them shall provide that:</p> <ul style="list-style-type: none"> ·1 the sub-contractor’s employment under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor’s employment under this Contract; ·2 each party undertakes to the other in relation to the Works and the site duly to comply with the CDM Regulations^[1]; ·3 if by the final date for payment stated in the sub-contract the Contractor fails properly to pay any amount, or any part of it, due to the sub-contractor, the Contractor shall in addition to the amount not properly paid pay simple interest thereon at the Interest Rate for the period until such payment is made; such payment of interest to be on and subject to terms equivalent to those of clause 5-4 of these Conditions.’ <p>Insert new footnote text for ^[1]: ‘As to the duties imposed by the CDM Regulations 2007, see the Guidance Notes.’</p>
Clause 4-9 heading	<p>After ‘CDM Regulations – Undertakings to comply’ insert new footnote ^[1]</p> <p>Insert new footnote text for ^[1]: ‘As to the duties imposed by the CDM Regulations 2007, see the Guidance Notes.’</p>
Clause 4-9	<p>Delete existing text and insert:</p> <p>‘Each Party acknowledges that he is aware of and undertakes to the other that in relation to the Works and site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the Works is notifiable:</p> <ul style="list-style-type: none"> ·1 the Employer shall ensure both that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, that the Principal Contractor carries out all his duties under those regulations;

Clause number and heading	Action
	<p>-2 where the Contractor is and while he remains the Principal Contractor, he shall ensure that:</p> <p>-1 the Construction Phase Plan is prepared and received by the Employer before construction work under this Contract is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Architect/Contract Administrator; and</p> <p>-2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase^[1];</p> <p>-3 where the Contractor is not the Principal Contractor, he shall promptly inform the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him;</p> <p>-4 promptly upon the written request of the CDM Co-ordinator, the Contractor shall provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.'</p> <p>Insert new footnote text for ^[1]: 'There is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.'</p>

Clause 4-10 **Delete** 'Planning Supervisor' and **insert** 'CDM Co-ordinator';
After 'immediately upon' **insert** 'the'

Clause 5-2 **Delete** existing text and **insert**:

'If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS^[1], the obligation of the Employer to make any payment under this Contract is subject to the provisions of the CIS.'

Insert new footnote text for ^[1]:
'See the Contract Particulars (Fifth Recital and clause 5-2).'

Insurance

Clause number and heading	Action
Contract Particulars, 6-4A and 6-4B	<p>Delete '6-4A and 6-4B' and insert '6-4A, 6-4B and 6-4C'; Delete existing entry and footnote [16] and insert:</p> <p>'Insurance of the Works etc – alternative provisions^[1]</p> <ul style="list-style-type: none"> * Clause 6-4A (<i>Works insurance by Contractor in Joint Names</i>) applies/ * Clause 6-4B (<i>Works and existing structures insurance by Employer in Joint Names</i>) applies/ * Clause 6-4C (<i>Existing structures insurance by Employer in own name</i>) applies' <p>Insert new footnote text for ^[1]: 'Delete as appropriate. Depending on the nature of the project and insurance available, the Parties may use: i) clause 6-4A on its own (where the Works are not an extension to or an alteration of an existing structure); ii) clause 6-4B on its own (where the Works are an extension to or an alteration of an existing structure and the Employer can obtain the insurance in Joint Names in compliance with clause 6-4B); or iii) clause 6-4C together with clause 6-4A (where the Works are an extension to or an alteration of an existing structure and where the Employer is a residential occupier and cannot obtain the insurance in Joint Names in compliance with clause 6-4B). See the Guidance Notes.'</p>

Clause number and heading	Action
Contract Particulars, 6-4A-1 and 6-4B-1	Delete '6-4B-1' and insert '6-4B-1.2'
Clause 1-1	<p data-bbox="411 376 791 398">Insert the following new definitions:</p> <p data-bbox="411 427 1498 595">'All Risks Insurance'^I 1: insurance which provides cover against any physical loss or damage to work executed and Site Materials and against the reasonable cost of the removal and disposal of debris and of any shoring and propping of the Works which results from such physical loss or damage but excluding the cost necessary to repair, replace or rectify:</p> <ul style="list-style-type: none"> <li data-bbox="775 629 1498 819">(a) property which is defective due to: <ul style="list-style-type: none"> <li data-bbox="839 685 1050 707">(i) wear and tear, <li data-bbox="839 741 1082 763">(ii) obsolescence, or <li data-bbox="839 797 1203 819">(iii) deterioration, rust or mildew; <li data-bbox="775 853 1498 1021">(b) any work executed or any Site Materials lost or damaged as a result of its own defect in design, plan, specification, material or workmanship or any other work executed which is lost or damaged in consequence thereof where such work relied for its support or stability on such work which was defective^{II} 11; <li data-bbox="775 1043 1498 1491">(c) loss or damage caused by or arising from: <ul style="list-style-type: none"> <li data-bbox="839 1099 1498 1323">(i) any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation, commandeering, nationalisation or requisition or loss or destruction of or damage to any property by or under the order of any government <i>de jure</i> or <i>de facto</i> or public, municipal or local authority, <li data-bbox="839 1357 1498 1435">(ii) disappearance or shortage if such disappearance or shortage is only revealed when an inventory is made or is not traceable to an identifiable event, or <li data-bbox="839 1469 1091 1491">(iii) an Excepted Risk. <p data-bbox="411 1514 1498 1626">Joint Names Policy: a policy of insurance which includes the Employer and the Contractor as composite insured and under which the insurers have no right of recourse against any person named as an insured, or recognised as an insured thereunder.'</p> <p data-bbox="411 1648 1498 1738">Insert new footnote text for ^I 1: 'The definition of All Risks Insurance defines the risks for which insurance is required. Policies issued by insurers are not standardised and the way in which insurance for those risks is expressed varies.'</p> <p data-bbox="411 1760 1498 1933">Insert new footnote text for ^{II} 11: 'In any policy for All Risks Insurance taken out under clause 6-4A or 6-4B-1.2, cover should not be reduced by the terms of any exclusion written in the policy beyond the terms of paragraph (b) in this definition of All Risks Insurance; thus an exclusion in terms 'This Policy excludes all loss of or damage to the property insured due to defective design, plan, specification, materials or workmanship' would not be in accordance with the terms of those insurance clauses or of that definition. Wider All Risks cover than that specified may be available to Contractors, though it is not standard.'</p>
Clause 6-4A heading	After 'by Contractor' insert 'in Joint Names'

Clause number and heading	Action
Clause 6-4A-1	After 'the Contractor shall' delete existing text and insert : 'take out and maintain with insurers approved by the Employer a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees) and shall maintain such Joint Names Policy up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment (whether or not the validity of that termination is contested).'
Footnote [23]	Delete 'against loss or damage by inter alia the perils referred to in clause 6-4A'
Clause 6-4B heading	Delete existing text and insert 'Insurance of existing structures and the Works by Employer in Joint Names'
Clause 6-4B-1	Delete existing text and insert : 'If the Contract Particulars state that clause 6-4B applies, the Employer shall take out and maintain: ·1 a Joint Names Policy in respect of the existing structures together with the contents of them owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils; ·2 a Joint Names Policy for All Risks Insurance for the full reinstatement value of the Works (plus the percentage, if any, stated in the Contract Particulars to cover professional fees) and shall maintain such Joint Names Policies up to and including the date of issue of the practical completion certificate or, if earlier, the date of termination of the Contractor's employment (whether or not the validity of that termination is contested). The Contractor shall authorise the insurers to pay all monies from such insurance to the Employer.'
Clause 6-4B-2	Delete '6-4B-1' and insert '6-4B-1-2'; Delete 'The Contractor shall authorise the insurers to pay all monies from such insurance to the Employer.'
Clause 6-4C heading	Insert 'Insurance of existing structures by Employer in own name'
Clause 6-4C	Insert new clause as 6-4C: 'If the Contract Particulars state that clause 6-4C applies, the Employer shall, if he has not already done so, take out and maintain in his own name a policy in respect of the existing structures together with the contents thereof owned by him or for which he is responsible, for the full cost of reinstatement, repair or replacement of loss or damage due to any of the Specified Perils up to and including the date of issue of the practical completion certificate or (if earlier) the date of termination of the Contractor's employment (whether or not the validity of that termination is contested).'
Clause 6-5	After 'Where clause 6-4B' insert 'or 6-4C'

Guidance Notes to Amendment 1

CDM Regulations

CDM Regulations

Regulations made under Act of Parliament to improve health and safety standards on construction sites. The extent to which the CDM Regulations apply depends on whether or not the project that comprises or includes the Works is notifiable under the CDM Regulations. Part 2 of the CDM Regulations 2007 imposes duties (e.g. as to competence, co-operation, co-ordination and preventive steps) on clients, designers, contractors and sub-contractors at each level, whether or not the project is notifiable, as does Part 4 in relation to contractors, sub-contractors and others controlling work during the construction period. The additional duties contained in Part 3 (including those relating to the CDM Co-ordinator and Principal Contractor) apply only where the project is notifiable. Domestic clients (i.e. clients not acting in the course or furtherance of business) are not subject to duties under the CDM Regulations in relation to purely domestic projects, which in turn are treated as non-notifiable.

CDM Co-ordinator

The person named as the CDM Co-ordinator in the Articles of Agreement or subsequently appointed as such as required by the CDM Regulations. A CDM Co-ordinator is required only where the project is notifiable under the CDM Regulations.

Health and safety file

A manual which the CDM Co-ordinator has to ensure is delivered to the Employer on completion of the work, giving information for the future on the management of health and safety in the maintenance, repair, renovation, occupancy or demolition of the work and its contents. It is only required where the project is notifiable under the CDM Regulations and is not required where the client is a residential occupier undertaking a purely domestic project.

Insurance

The insurance provisions have been modified to reflect the type of cover available in the current market. Clause 6-4A has been revised so as to require All Risks Insurance, which is defined, and not Specified Perils cover, to be taken out in Joint Names (which is also a defined term).

Clause 6-4B has been split so that All Risks Insurance is required for the Works, whereas Specified Perils cover remains in respect of the existing structures.

An additional clause (6-4C) provides for the Employer to insure the existing structures in his own name where a Joint Names policy cannot be effected. The intention is that only residential occupiers should use this option. Where this clause is to apply, clause 6-4A should also be operative. Where an existing insurance policy provides cover in respect of the existing structures the Employer must notify his household insurer that building works are to be carried out. The insurer may require the Employer to pay an additional premium.

Clauses 6-4A, 6-4B and 6-4C expressly state that the insurance shall be maintained until the date of issue of the practical completion certificate.

A revised Contract Particular provides for the selection of the appropriate clause(s).