



RICS draft guidance note - Appropriate contract selection (1st edition)

Appendix - Contract comparison

- ▶ This Appendix compares the following contracts:
- ▶ JCT Standard Building Contract 2011
- ▶ NEC3 Engineering & Construction Contract (April 2013)
- ▶ PPC2000 (2013 edition); and
- ▶ Infrastructure Conditions of Contract (Measurement Version, 2011).

Topic	JCT Standard Building Contract 2011	NEC3 Engineering & Construction Contract (April 2013)	PPC2000 (2013 edition)	Infrastructure Conditions of Contract (Measurement Version, 2011)	
1.	Types of work/project used on	The mainstream construction sector procuring works such as new-build office blocks, office remodelling and refurbishments, hotels, new apartment blocks, fit-out of shops and office premises, accommodation projects, education projects, sports stadia and leisure facilities.	The engineering and infrastructure sectors procuring works such as new roads and upgrades to the existing road network, new rail lines and assets, nuclear facilities, the London 2012 Olympics, and water utilities	Can be used in the mainstream construction sector, but has found particular use by local authorities (e.g. term maintenance arrangements for housing stocks), housing associations and some central government departments (e.g. the Ministry of Justice and the Department for Work & Pensions).	The engineering and infrastructure sectors procuring works such as new rail lines and assets, tunnelling, ports and docks, energy and water utilities.
2.	Documents comprising the contract	The contract documents for the JCT Standard Building Contract 2011 'with Quantities'	The contract documents for the NEC3 ECC are as follows: - the Contract	The contract documents for the PPC2000 are as follows: - the	The contract documents for the ICC Measurement Version are as follows:

<p>and 'with Approximate Quantities' versions, are as follows:</p> <ul style="list-style-type: none"> - the Articles of Agreement (comprising the Recitals, Articles and Contract Particulars) - the Conditions of Contract - the Contract Drawings - the Contract Bills; and - (where applicable) the Employer's Requirements, Contractor's Proposals and CDP analysis. <p>The contract documents for the JCT Standard Building Contract 2011 'without Quantities' version, are as follows:</p> <ul style="list-style-type: none"> - the Articles of Agreement (comprising the Recitals, Articles and Contract Particulars) - the Conditions of Contract - the Contract Drawings; and - where applicable, the Employer's Requirements, Contractor's Proposals and CDP analysis - (where Pricing Option A applies) the 	<p>Agreement</p> <ul style="list-style-type: none"> - the Contract Data - the Conditions of Contract - the Schedule of Cost Components and Shorter Schedule of Cost Components - the Works Information - the Site Information; and - the Activity Schedule or bill of quantities. 	<p>Commencement Agreement</p> <ul style="list-style-type: none"> - the Project Partnering Agreement - the Partnering Terms - the Project Timetable - the Partnering Timetable - the Consultant Services Schedules and Consultant Payment Terms - the Project Brief incorporating any Constructor's Services Schedules - the Project Proposals - the Price Framework - the Joining Agreement - the Pre-Construction Agreement - the Risk Register - the KPIs and Targets; and - any other Partnering Document. 	<ul style="list-style-type: none"> - the Form of Agreement (if required) - the Form of Tender and the written acceptance thereof - the Conditions of Contract - the drawings - the specification; and - the bill of quantities.
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		<p>Priced Document or (where Pricing Option B applies) the Specification; and</p> <p>- (where Fluctuations Option C applies) the schedule referred to in 11b of the JCT Formula Rules.</p> <p>An Information Release Schedule may also be used, although this is not listed within the definition of 'contract documents'.</p>			
3.	Key parties involved in the contract	<ul style="list-style-type: none"> - the employer - the contractor - the architect/contract administrator - the quantity surveyor 	<ul style="list-style-type: none"> - employer - contractor - project manager - supervisor 	<ul style="list-style-type: none"> - client - constructor - client representative - partnering adviser - lead designer - consultants/design team - specialists 	<ul style="list-style-type: none"> - employer - contractor - engineer - engineer's representative
4.	Project management	<p>The architect/contract administrator and the quantity surveyor both have roles in administering the contract. They are not a party to the contract, but are expected to maintain impartiality while administering the contract.</p> <p>The contractor must comply with the architect/contract administrator's instructions.</p>	<p>Good project management is a key theme of the NEC3 ECC. Examples include:</p> <ul style="list-style-type: none"> - key role for the project manager in the administration of the contract - early warning provisions (see Cl. 16.1) 	<p>Good project management is a key theme of the PPC2000. Examples include:</p> <ul style="list-style-type: none"> - the establishment of a core group (see Cl. 3.3) - the operation of an early warning system (see Cl. 3.5) - liaison with interested parties (see Cl. 3.9) 	<p>The engineer is appointed by the employer to supervise the contract. The contract confers certain duties and obligations on the engineer (e.g. valuing variations and formally deciding on issues where either the employer or contractor is dissatisfied).</p> <p>Matters which might</p>

		Other project management tools that are present in other contracts are not generally found within this contract.	- risk reduction meetings (see Cl. 16.3); and - the use of a risk register.	- the use of objectives and targets (see Cl. 4) - the use of detailed partnering and project timetables; and - the use of a risk register.	become disputes are notified and discussed under Cl. 66.
5.	Who has responsibility for design of the works?	The employer retains primary responsibility for the design of the works. The contractor can be asked to design discrete parts of the works by using the Contractor's Designed Portion.	Responsibility for the design of the works should be detailed in the Works Information. The NEC3 ECC is flexible. The contractor may have little or no responsibility for design, or full responsibility for design.	The design of the project is developed by the lead designer and the other design team members (see Cl. 8.1). Optional wording in the Project Partnering Agreement can be used to place full responsibility on the constructor for the design, supply, construction and completion of the project.	The employer retains primary responsibility for design. Apart from any discrete part of the permanent works which the contract requires the contractor to design; the contractor is not responsible for the design or specification of the permanent works, or any part thereof, or of any temporary works design supplied by the engineer (see Cl. 8(2)).
6.	The standard of design responsibility (e.g. fitness for purpose or reasonable skill and care)	Where there is a Contractor's Designed Portion, the required standard of design responsibility is intended to be the same as that of any independent architect or other professional design directly employed by the employer and claiming to be competent to undertake work of this	A fitness for purpose obligation will be implied unless secondary Option X15 (limitation of the contractor's liability for his design to reasonable skill and care) is selected for use.	Each of the partnering team members is required to use the reasonable skill and care appropriate to their respective roles, expertise and responsibilities as stated in the partnering documents, as may be amended by the Project	If the contractor is to be responsible for designing any part of the permanent works, the contractor shall exercise all reasonable skill, care and diligence in carrying out such design (see Cl. 8(2)).

		<p>type (see Cl. 2.19.1). This is akin to an obligation to reasonable skill and care.</p>		<p>Partnering Agreement (see Cl. 22.1).</p> <p>If the constructor is acting in a design and build capacity, this wording could import a fitness for purpose requirement.</p> <p>Optional wording in the Project Partnering Agreement can also be used to import an express fitness for purpose requirement.</p>	
7.	Programming requirements	<p>Programming requirements are lighter than in other contracts (see Cl. 2.9).</p> <p>The contractor is obliged to provide the architect/contract administrator with two copies of the master programme. The contractor shall provide a revised programme if an extension of time is granted.</p>	<p>The programme is a key document in the NEC3 ECC.</p> <p>Extensive programming obligations are contained in Cl. 31, 32 and 50.3.</p>	<p>The partnering timetable governs the activities of the partnering team prior to the date of the Commencement Agreement</p> <p>The project timetable is agreed in accordance with Cl. 6 and governs the implementation of the project after the date of the Commencement Agreement.</p>	<p>Programme requirements are detailed in Cl. 14.</p> <p>The contractor is required to submit a programme and general methods of construction to the engineer. These are intended to be management tools.</p>
8.	Sectional completion	<p>Sectional completion will apply if the relevant parts of the contract documents (including the Contract Particulars) state that sectional completion is to apply and detail the relevant sections (see the</p>	<p>Sectional completion will apply if secondary Option X5 is selected for use.</p>	<p>Sectional completion will apply if the Commencement Agreement and the partnering timetable or the project timetable states that the project is to be</p>	<p>Sectional completion will apply if the relevant parts of the Appendix to the Form of Tender are completed identifying the relevant sections and the time for</p>

		Sixth Recital and the Contract Particulars)		divided into sections (see Cl. 6.3).	completion of each section.
9.	Remedies for delayed completion	<p>Cl. 2.30 - 2.32 provide for liquidated damages in the event of delay in achieving practical completion of the whole of the works or, if applicable, sections of the works.</p> <p>The rate of liquidated damages is to be specified in the Contract Particulars.</p>	<p>If secondary Option X7 (delay damages) is not selected for use, in the event of delayed completion, the employer would have to bring an action for breach of contract and seek recovery of the actual losses it has suffered.</p> <p>If secondary Option X7 is selected for use, the parties can pre-agree the amount of damages the contractor will be liable for in the event of delayed completion.</p>	<p>The PPC2000 does not contain any express provision for a pre-fixed amount to be levied in the event of late completion. The client would be required to bring a claim for breach of contract and claim its actual losses instead.</p> <p>However, other provisions, e.g. those dealing with risk sharing, KPIs and incentives, may apply in the event of late completion, depending on whether selected for use and how drafted.</p>	<p>Cl. 47 provides for liquidated damages in the event of delay in achieving substantial completion of the whole of the works or, if applicable, sections of the works.</p> <p>The rate of liquidated damages is to be specified in the Appendix to the Form of Tender. A cap on liability for liquidated damages can also be expressed in the Appendix to the Form of Tender.</p>
10.	Events entitling extensions of time	<p>These are known as 'relevant events'. They are detailed in Cl. 2.29.</p>	<p>These are known as 'Compensation Events'. They are detailed in Cl. 60.1.</p>	<p>These are contained in Cl. 18.3, plus any additional events stated in the Commencement Agreement.</p>	<p>These are contained in Cl. 44(1).</p> <p>Apart from the five specific grounds referred to in sub-clauses 44(1)(a), (b), (d), (e) and (f), the following causes of delay are also referred to in the contract (which link to sub-clause 44(1)(c)):</p>

					Cl. 7(4), 12(2), 13(3), 14(8), 26(4), 31(2), 40(1), 42(3); and 59(4)(f).
11.	Events entitling payment of additional cost	These are known as 'Relevant Matters'. They are detailed in Cl. 4.24.	These are known as 'Compensation Events'. They are detailed in Cl. 60.1.	These are contained in Cl. 18.3 plus any additional events stated in the Commencement Agreement (although certain events will not lead to payment of additional site overheads and an increase in the agreed maximum price, see Cl. 18.5 and 18.6).	Numerous events in the contract entitle the contractor to claim payment of additional cost. These events are spread around the contract and are not all gathered under one clause. For example, see Cl. 7(4), 12(3), 12(6), 13(3), 14(8), 17(2), 26(4), 31(2), 36(2), 36(4), 38(2), 40(1), 42(3), 50, and 52(3).
12.	Use of time-bars preventing claims for extensions of time and/or payment of additional cost	There are no express time-bars in the contract, although contractors should be aware of the timescales for submitting claims under Cl. 2.27 and 4.23.	Time-bars are used in the NEC3 ECC. For example, see Cl. 61.3 and 61.4.	Time-bars are not used in the PPC2000 to prevent claims for extensions of time and/or payment of additional cost.	Time-bars are not used in the ICC Measurement Version to prevent claims for extensions of time and/or payment of additional cost.
13.	Adverse weather conditions	Exceptionally adverse weather conditions are a relevant event, entitling the contractor to claim an extension of time (see Cl. 2.29.9).	Adverse weather is a compensation event under Cl. 60.1(13). The weather measurements to compare against should be detailed in the Contract Data.	The constructor will be able to claim an extension of time in respect of weather conditions, which the meteorological office records for the area nearest to the site, indicate are exceptionally adverse for the time of year.	Exceptional adverse weather conditions entitle the contractor to claim an extension of time (see Cl. 44(1)(d)).
14.	Site/ground condition risk	The risk of adverse site/ground conditions is not mentioned in the contract. In the	A risk for the employer. Adverse physical	Subject to any exceptions stated in the Commencement	This is dealt with in Cl. 12. The contractor is

		<p>absence of any express provisions to the contrary, the risk would ordinarily be with the contractor.</p>	<p>conditions are a Compensation Event (see Cl. 60.1(12)).</p>	<p>Agreement and the discovery of any antiquities (see Cl. 18.3(ii)), the constructor bears the risk of the state and condition of the site (see Cl. 18.9).</p>	<p>expected to take responsibility for physical conditions or artificial obstructions that could reasonably have been foreseen by an experienced contractor.</p> <p>The contractor will be able to claim for an extension of time and/or payment of additional cost if he encounters physical conditions (other than weather conditions or conditions due to weather conditions) or artificial obstructions which could not have been foreseen by an experienced contractor.</p>
15.	Partnering/ collaborative provisions	<p>Paragraph 1 (Collaborative Working) of Schedule 8 (Supplemental Provisions) requires the parties to work with each other and other project team members in a cooperative and collaborative manner, in good faith and in a spirit of trust and respect.</p> <p>Whether or not Paragraph 1 of Schedule 8 applies to a particular contract will be determined by the Contract Particulars.</p> <p>The parties can also</p>	<p>There is a general obligation for the parties to act as stated in the contract and 'in a spirit of mutual trust and co-operation'.</p> <p>Secondary Option X12 (Partnering) can be selected for use.</p>	<p>The PPC2000 is drafted as a partnering contract. Partnering is at the heart of this contract.</p> <p>Cl. 4 details the partnering objectives and targets for each partnering team member. These include achieving 'trust, fairness, mutual co-operation, dedication to agreed common goals and an understanding of each other's expectations and</p>	<p>The ICC Measurement Version is drafted in a 'traditional' style and does not contain any partnering provisions or other expressly collaborative requirements.</p>

		use the JCT's Partnering Charter (non-binding) where they do not wish to enter into a legally binding agreement but do wish to create a collaborative working environment.		values'. Cl. 3 also details how the partnering team members should communicate and organise themselves.	
16.	Key Performance Indicators (KPIs)	Paragraph 5 (Performance Indicators and Monitoring) of Schedule 8 (Supplemental Provisions) allows the employer to monitor the contractor's performance by reference to performance indicators stated or identified in the contract documents. Whether or not Paragraph 5 of Schedule 8 applies to a particular contract will be determined by the Contract Particulars.	Secondary Option X20 (Key Performance Indicators) can be selected for use, but not if secondary Option X12 has also been selected for use.	Cl. 23 deals with KPIs and targets. These are detailed in Appendix 8 of the contract. Shared savings, shared added value and pain/gain incentives can also be agreed (see Cl. 13).	The ICC Measurement Version does not contain any provision for KPIs.
17.	Control over the contractor's key personnel	There are no express provisions regarding control of key personnel employed by the contractor.	Dealt with in Cl. 24. The identity of any key personnel, their role and qualifications can be detailed in the Contract Data. The employer's consent is required to replace any key personnel.	There are no express provisions regarding control of key personnel employed by the constructor.	There are no express provisions regarding control of key personnel employed by the contractor.
18.	Controls on	This is addressed in	The contractor	The PPC2000	The contractor shall

	sub-contracting (including nominated sub-contractors)	<p>Cl. 3.7 - 3.9.</p> <p>The architect/contract administrator's consent is required to sub-contract the whole or any part of the works. The employer's consent is required to subcontract the design of any Contractor's Designed Portion.</p> <p>The contract does not contain any provisions relating to nominated sub-contractors, but Cl. 3.8 retains provision for a list of three or more approved sub-contractors that the contractor can choose from.</p> <p>Cl. 3.9 sets out the minimum conditions required for any sub-contract.</p> <p>The JCT's Named Specialist Update (issued February 2012) can also be used to name individual specialists as domestic sub-contractors for identified parts of the works.</p>	<p>is required to submit the name of each proposed sub-contractor to the project manager for acceptance (see Cl. 26.2).</p> <p>The contractor may also be required to submit the proposed conditions of contract for each sub-contract to the project manager (see Cl. 26.3).</p> <p>The NEC3 ECC does not contain any provisions relating to nominated sub-contractors.</p>	<p>does not contain any provisions relating to nominated sub-contractors, but Cl. 10 of the contract gives the client a high degree of involvement in the selection and approval of sub-contractors (known as 'specialists').</p>	<p>not sub-contract the whole of the works without the prior written consent of the employer (see Cl. 4(1)).</p> <p>The sub-contracting part of the works may require the engineer's approval (see Cl. 4(2)). Although the employment of labour-only sub-contractors does not require notification to the engineer (see Cl. 4(3)).</p> <p>Cl. 59 of the ICC Measurement Version deals with nominated sub-contractors. The contractor is given a right of objection (see Cl. 59(1)). The employer is expected to bear some of the risk for defaults by nominated sub-contractors.</p>
19.	Coordination with other contractors	<p>This is addressed in Cl. 2.7, although this provision is frequently amended to provide more extensive obligations on the contractor to coordinate with other contractors.</p>	<p>This is addressed in Cl. 25 (working with the employer and others). The level of cooperation should be detailed in the</p>	<p>Coordination with other contractors is not expressly mentioned, but could come under the obligation to liaise with interested parties (see Cl. 3.9).</p>	<p>This is addressed in Cl. 31(1).</p> <p>The contractor will be entitled to claim an extension of time and/or payment of additional cost if he incurs delay or cost beyond that</p>

			Works Information.		reasonably to have been foreseen by an experienced contractor (see Cl. 31(2)).
20.	Payment basis (e.g. lump sum, re-measurement, target cost)	<p>The 'with Quantities' and 'without Quantities' versions are both fixed price lump-sum contracts. The only difference between the two being whether bills of quantities are used to define the quantity and quality of work.</p> <p>The 'with Approximate Quantities' version is a re-measurement contract. An approximate bill of quantities is used to define the quantity and quality of work which is then re-measured.</p>	<p>The basis of paying the contractor will depend on which payment option is selected for use:</p> <p>(i) Option A - priced contract with activity schedule (a lump sum contract)</p> <p>(ii) Option B - priced contract with bills of quantities (a re-measurement contract)</p> <p>(iii) Option C - target contract with activity schedule (a target cost contract)</p> <p>(iv) Option D - target contract with bills of quantities (a target cost contract)</p> <p>(v) Option E - cost reimbursable contract (a cost reimbursable contract)</p> <p>(vi) Option F - management</p>	<p>For any of the constructor's services performed prior to the date of the Commencement Agreement, the constructor is paid in accordance with the price framework (see Cl. 12.1).</p> <p>Any pre-construction activities are paid for in accordance with the Pre-Construction Agreement (see Cl. 12.2).</p> <p>Otherwise, prices for all aspects of the project are developed by reference to the price framework to establish an agreed maximum price (see Cl. 12.3). This is akin to a target cost arrangement. Any pain/gain incentives can be detailed in the Project Partnering Agreement (see Cl. 13.2).</p>	<p>Payment to the contractor is on the basis of re-measurement.</p> <p>The contract refers to a 'tender total' (the total of the bill of quantities or the agreed estimated total value of the works) and a 'contract price' (the sums to be ascertained and paid in accordance with the contract).</p> <p>The quantities in the bill of quantities are estimated only. Re-measurement will determine the actual quantities.</p>

			contract (a cost reimbursable contract)		
21.	Retention	The employer may withhold retention monies (see Cl. 4.9.2.1 and 4.18 - 4.20). The rate of retention is specified in the Contract Particulars.	The employer may withhold retention monies if secondary Option X16 (Retention) is selected for use.	The employer may withhold retention monies from the agreed maximum price at the rate specified in the price framework (see Cl. 20.15).	The employer may withhold retention monies (see Cl. 60(5) and 60(6)). The rate and limit of retention are specified in the Appendix to the Form of Tender.
22.	Compliance with Third Party Agreements	Not addressed in the contract. A bespoke amendment would be needed to deal with this.	Not addressed in the contract. A bespoke amendment in the 'Z' clauses would be needed to deal with this.	Not addressed in the contract. A bespoke special term would be needed to deal with this.	Not addressed in the contract. A bespoke amendment would be needed to deal with this.
23.	Insurance requirements	<p>Insurance requirements are detailed in Section 6 of the Conditions of Contract, the Contract Particulars and Schedule 3 (Insurance Options).</p> <p>The contractor will be required to provide employer's liability insurance and third party liability insurance (see Cl. 6.4.1.). Professional indemnity insurance and insurance under Cl. 6.5.1 may also be required if so stated in the Contract Particulars.</p> <p>Responsibility for insurance of the works will be detailed in the Contract Particulars.</p>	<p>The contractor provides those insurances stated in the insurance table in Cl. 84.2 and any other insurances detailed in the Contract Data.</p> <p>The employer provides any insurances that may be stated in the Contract Data.</p>	<p>The Project Partnering Agreement and Commencement Agreement are used to detail which party/parties are required to procure the following insurances:</p> <ul style="list-style-type: none"> - insurance of the project and site - insurance (if any) of third party property damage - third party liability insurance - professional indemnity or product liability insurance - environmental risk insurance - latent defects 	<p>The contractor procures joint names insurance for the works together with materials, plant and equipment for incorporation therein to the full replacement cost plus 10% to cover additional costs (including professional fees) (see Cl. 21(1)). The contractor also procures third party liability insurance in joint names (see Cl. 23(1)).</p> <p>If the contractor is required to design any part of the works, the employer may also require the contractor to procure and maintain</p>

				insurance; and - whole project insurance.	professional indemnity insurance. A bespoke amendment would be needed to achieve this.
24.	Assignment	Neither the employer nor the contractor shall be entitled to assign the contractor or their rights thereunder without the consent of the other party (see Cl. 7.1). This provision is frequently amended in practice.	The NEC3 ECC does not contain any restrictions on a party's right to assign the benefit of the contract.	Except as stated in the Project Partnering Agreement or otherwise in accordance with the partnering terms, none of the partnering team members may assign their rights without the prior consent of all other partnering team members (see Cl. 25.2).	Neither the employer nor the contractor shall assign without the prior written consent of the other party, which consent shall not be unreasonably withheld (see Cl. 3(1)).
25.	Performance security	The contract contains provisions for and template forms of advance payment bond, a bond in respect of offsite materials and/or goods, and a retention bond. The contract does not include provision for a parent company guarantee or performance bond. Bespoke amendments to the contract would be needed to incorporate requirements to provide these documents.	Secondary Options X4 (Parent Company Guarantee) and X13 (Performance Bond) are available for selection. If the employer requires the contractor or sub-contractors to provide other forms of performance security, bespoke amendments in the 'Z' clauses are required.	Under Cl. 19.9, the project brief is used to state whether the constructor is to provide: - an advance payment bond - a performance bond - a parent company guarantee; and/or - a retention bond. Details of the required performance security are to be included in the Commencement Agreement.	Cl. 10(1) governs provision of a performance bond. The maximum value of the bond is 10% of the tender total. The form of bond is annexed to the conditions of contract. If the employer requires the contractor to provide other forms of performance security (e.g. a parent company guarantee), bespoke amendments to the contract will be required.

26.	Collateral warranties	<p>Part 2 of the Contract Particulars is used to specify whether the contractor and any specified sub-contractors are required to provide collateral warranties.</p> <p>The required forms of collateral warranty are those drafted by the JCT.</p>	<p>The contract does not contain any obligations for the contractor and sub-contractors to provide collateral warranties.</p> <p>If the employer requires the contractor or sub-contractors to provide collateral warranties, bespoke amendments in the 'Z' clauses are required.</p>	<p>Partnering team members can be required to provide collateral warranties under Cl. 22.2.</p> <p>The constructor can be required to procure collateral warranties from specialists under Cl. 22.3.</p>	<p>The contract does not contain any obligations for the contractor and sub-contractors to provide collateral warranties.</p> <p>If the employer requires the contractor or sub-contractors to provide collateral warranties, bespoke amendments will be required.</p>
27.	Copyright	<p>A licence to use the contractor's design documents is contained in Cl. 2.41. It will not take effect unless all sums due and payable to the contractor have been paid.</p>	<p>A copyright licence from the contractor to the employer is contained in Cl. 22.1. This is often amended as it is not as wide as other copyright provisions typically seen in the market.</p>	<p>A copyright licence from each partnering team member to the client is contained in Cl. 9.2.</p>	<p>Copyright licences from each of the employer and contractor are contained in Cl. 6(3).</p>
28.	Ability to instruct/request variations	<p>The architect/contract administrator may issue instructions requiring a 'variation' (see Cl. 3.14). The term variation is defined in Cl. 5.1.</p> <p>The contractor does not have to comply with variations of the</p>	<p>The project manager may instruct a change to the Works Information. If so, this will constitute a Compensation Event.</p>	<p>Any partnering team member may propose a change to the client at any time if it is demonstrably in the best interests of the project (see Cl. 17.1).</p> <p>The client may</p>	<p>Under Cl. 51(1), the engineer shall order any variation to any part of the works that is in his opinion necessary for the completion of the works, and may order any variation that for any other reason</p>

		<p>type under Cl. 5.1.2 provided he notifies a reasonable objection to the architect/contract administrator (see Cl. 3.10.1).</p>		<p>propose a change at any time (see Cl. 17.2).</p>	<p>shall in his opinion be desirable for the completion and/or improved functioning of the works.</p> <p>Under Cl. 51(3), the contractor may submit proposals to the engineer to vary the drawings and specification.</p>
29.	Valuing variations	<p>The valuation of variations is addressed in Cl. 5.2.</p> <p>If the value of a variation is not agreed between the contractor and employer, the quantity surveyor shall value the variation in accordance with the Valuation Rules (see Cl. 5.6 - 5.10).</p>	<p>An instruction by the project manager that changes the Works Information will, apart from in certain circumstances, constitute a Compensation Event (see Cl. 60.1(1)).</p> <p>The valuation of Compensation Events will depend on which payment option (A - F) is selected for use. The valuation of Compensation Events is different for each payment option.</p>	<p>The client and members of the partnering team have the ability to propose a change (see Cl. 17.1 and 17.2).</p> <p>Changes are valued by reference to the Price Framework (see Cl. 17.2 and 17.3).</p> <p>In the event of a dispute, the client representative may value a change on a fair and reasonable basis utilising prices for similar work in the Price Framework (see Cl. 17.4).</p>	<p>If requested by the engineer, the contractor submits a quotation for any proposed variation and the parties seek to agree the valuation of any variation (see Cl. 52(1)).</p> <p>If the contractor is not asked to submit a quotation or agreement is not reached, the contractor may submit a quotation to the engineer having due regard to any rates or prices included in the contract (see Cl. 52(3)).</p> <p>Failing agreement between the engineer and contractor, the valuation of the variation will depend on whether or not the work is of similar character and carried out under similar conditions to work</p>

					<p>priced in the bill of quantities (see Cl. 52(4)).</p> <p>The engineer has the right to fix the rate or price for any item of work that is affected by a variation (see Cl. 52(5)).</p> <p>The engineer may also order additional or substituted work to be carried out on a daywork basis (see Cl. 52(6)).</p>
30.	Change in law	<p>This is addressed in Cl. 2.17.2.</p> <p>A change in law may be dealt with by an instruction requiring a variation depending on when the change in law occurs and which contract documents are affected.</p>	<p>Secondary Option X2 (Changes in the Law) may be selected for use. If so, a change in law that occurs after the contract date will be treated as a Compensation Event.</p>	<p>This is a client risk. Under Cl. 18.3(iv), the constructor will be able to claim an extension of time and payment of addition cost for a change in any law or regulation of the country in which the site is located after the date of the Commencement Agreement and which was not reasonably foreseen by the constructor.</p>	<p>The contractor is obliged to ascertain and conform in all respects with any general or local Act of Parliament and the regulations and bye-laws of any local or statutory authority (see Cl. 26(3)).</p> <p>The contractor may be entitled to an extension of time and/or payment of additional cost if the contract or instructions of the engineer are not in conformity with Acts of Parliament, regulations and bye-laws (see Cl. 26(3)(b) and 26(4)).</p>
31.	Force majeure	<p>Force majeure is a Relevant Event entitling the contractor to claim an extension of time (see Cl. 2.29.14). Note that</p>	<p>Force majeure-type events are covered as a Compensation Event under</p>	<p>Force majeure is not expressly mentioned in the contract.</p> <p>Cl. 18.3(xvi) and the</p>	<p>Force majeure is not expressly mentioned in the contract.</p> <p>However, force majeure-type</p>

		<p>'force majeure' is not defined in the contract.</p> <p>The occurrence of force majeure also entitles either party to terminate the contractor's employment under the contract.</p>	<p>Cl. 60.1(19). They are also events that would entitle the employer to terminate (see Cl. 91.7).</p>	<p>Commencement Agreement could be used to include force majeure as a client risk event, but the client may not wish to be liable for the financial consequences of an event of force majeure.</p> <p>The occurrence of force majeure-type events could lead to termination under Cl. 26.6 and 26.7.</p>	<p>events could constitute a ground for an extension of time under Cl. 44(1) (f) or grounds for abandonment of the works under Cl. 63(1) or 63(2).</p>
32.	Defects rectification	<p>Defects rectification is addressed in Cl. 2.38 and 2.39. The length of the rectification period is specified in the Contract Particulars.</p> <p>The architect/contract administrator issues the Certificate of Making Good when in his opinion the defects, shrinkages and other faults which he has required to have been made good, have been made good.</p>	<p>Defects rectification is addressed in Cl. 40 - 45. The supervisor plays a key role in notifying the contractor of defects and issuing the Defects Certificate.</p>	<p>Defects rectification is addressed in Cl. 21.4. The Defects Liability Period and period for rectifying defects are specified in the Project Partnering Agreement.</p> <p>Defects are rectified at the constructor's cost.</p>	<p>Defects rectification is addressed in Cl. 49, 50 and 61. There is no clear definition of 'defect'.</p> <p>To become entitled to the Defects Correction Certificate, the contractor is required to have rectified all outstanding defects and completed all outstanding work to the engineer's satisfaction.</p>
33.	Employer termination 'at will' and consequences	<p>The employer does not have the right to terminate at will under this contract.</p>	<p>The employer may terminate for any reason (see Cl. 90.2). If so, the contractor is paid more on such termination than he would have been entitled to if the</p>	<p>The client cannot terminate at will, but can terminate for non-achievement of any of the pre-conditions set out in Cl. 14.1, or for any other reason not reasonably foreseeable by the client arising at</p>	<p>The employer does not have the right to terminate at will under this contract.</p>

			<p>employer had terminated for other reasons (see the Termination Table in Cl. 90.2).</p>	<p>any time prior to the date of the Commencement Agreement (see Cl. 26.1).</p> <p>The client pays a valuation in accordance with Cl. 20 but no other amounts (see Cl. 26.1)</p>	
34.	Dispute resolution procedures	<p>Various dispute resolution mechanisms are included in Section 9 of the contract:</p> <ul style="list-style-type: none"> - mediation - adjudication; and - litigation or arbitration. 	<p>Option W1 - Used unless the UK's <i>Housing Grants, Construction and Regeneration Act 1996</i> applies (in which case Option W2 is used) - adjudication followed by litigation or arbitration.</p> <p>Option W2 - Used in the UK when the <i>Housing Grants, Construction and Regeneration Act 1996</i> applies - adjudication followed by litigation or arbitration.</p>	<p>Various dispute resolution mechanisms are included in Cl. 26 of the contract:</p> <ul style="list-style-type: none"> - a problem-solving hierarchy - a meeting of the core group - conciliation, mediation or other form of alternative dispute resolution recommended by the partnering adviser - adjudication; and - litigation or arbitration. 	<p>Various dispute resolution mechanisms are included in Cl. 66A - 66D of the contract:</p> <ul style="list-style-type: none"> - amicable dispute resolution (whether by negotiation between the parties or by other means including conciliation or mediation) - adjudication; and - arbitration.
35.	Limitations on liability	Cl. 2.19.3 contains an optional provision for an overall cap on liability for loss of use, loss of profits and other consequential	Secondary Option X18 can be selected for use:	The Project Partnering Agreement provides optional wording for net contribution clause	The Appendix to the Form of Tender allows the parties to agree a limit on the contractor's potential exposure

		<p>loss arising from any inadequacy in the contractor's design work.</p> <p>Otherwise, the contract does not contain any limitations on liability. If required, these would need to be expressly introduced via a bespoke amendment to the contract.</p>	<p>X18.1 - Limitation of liability for indirect or consequential loss.</p> <p>X18.2 - Limitation of liability for loss of or damage to the employer's property.</p> <p>X18.3 - Limitation of liability for defects in the contractor's design, which are not listed in the Defects Certificate.</p> <p>X18.4 - Overall limitation on liability, apart from certain excluded matters.</p> <p>X18.5 - End of liability date.</p>	<p>or the ability to specify the exact proportions that the partnering team members would be liable for.</p> <p>Any other limitations on liability would need to be expressly introduced via the Special Terms.</p>	<p>to liquidated damages for delay.</p> <p>Otherwise, the ICC Measurement Version does not contain any limitations on liability.</p>
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<p>- adjudication; and - litigation or arbitration.</p>	<p>Option W1 - Used unless the UK's <i>Housing Grants, Construction and Regeneration Act 1996</i> applies (in which case Option W2 is used) - adjudication followed by litigation or arbitration.</p> <p>Option W2 - Used in the UK when the <i>Housing Grants, Construction and</i></p>	<p>Various dispute resolution mechanisms are included in Cl. 26 of the contract:</p> <ul style="list-style-type: none"> - a problem-solving hierarchy - a meeting of the core group - conciliation, mediation or other form of alternative dispute resolution recommended by the partnering 	<p>Various dispute resolution mechanisms are included in Cl. 66A - 66D of the contract:</p> <ul style="list-style-type: none"> - amicable dispute resolution (whether by negotiation between the parties or by other means including 	<p>35.</p>	
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	<i>Regeneration Act</i> 1996 applies - adjudication followed by litigation or arbitration.	adviser - adjudication; and - litigation or arbitration.	conciliation or mediation) - adjudication; and - arbitration.		
35.	Limitations on liability	Cl. 2.19.3 contains an optional provision for an overall cap on liability for loss of use, loss of profits and other consequential loss arising from any inadequacy in the contractor's design work. Otherwise, the contract does not contain any limitations on liability. If required, these would need to be expressly introduced via a bespoke amendment to the contract.	Secondary Option X18 can be selected for use: X18.1 - Limitation of liability for indirect or consequential loss. X18.2 - Limitation of liability for loss of or damage to the employer's property. X18.3 - Limitation of liability for defects in the contractor's design, which are not listed in the Defects Certificate. X18.4 - Overall limitation on liability, apart from certain excluded matters. X18.5 - End of liability date.	The Project Partnering Agreement provides optional wording for net contribution clause or the ability to specify the exact proportions that the partnering team members would be liable for. Any other limitations on liability would need to be expressly introduced via the Special Terms.	The Appendix to the Form of Tender allows the parties to agree a limit on the contractor's potential exposure to liquidated damages for delay. Otherwise, the ICC Measurement Version does not contain any limitations on liability.

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