

Plain English Commercial and Industrial Building Contract



Date:

This contract is between

1 Limited (**we, us, our**)(the builder)

of and

2 (**you, your**)(the client)

of and

..... (**your** authorised representative)

[If you do not have an authorised representative, please cross this out. You and we must put our initials next to it. Please see items 1 and 2 in the checklist.]

of

(**Your** authorised representative is **your** agent, who **you** have authorised to give instructions to **us**.)

(**You** may change **your** authorised representative, but **you** must tell **us** in writing about this.)

This contract may also be used for subcontracting by:

changing (the builder) in line 1 above to (the subcontractor) and by changing (the client) in line 2 above to (the main contractor).

Fill in this contract twice. **We** and **you** must both sign the two contracts.

We will keep one part and **you** will keep the other.

By using this contract, it does not necessarily mean that **we** are a member of the Federation of Master Builders.

This contract has guidance notes to help **you** and **us** understand it.

You can get more copies of this contract from:
Federation of Master Builders Limited (FMB)
a company limited by guarantee. Company no: 368163 (England)
Gordon Fisher House, 14/15 Great James Street, London WC1N 3DP
Phone: 020 7242 7583 Fax: 020 7404 0296
or Email: central@fmb.org.uk Websites: www.fmb.org.uk & www.findabuilder.co.uk

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Checklist of items to be put in or crossed out.

| Item number | Page number | Relevant term or condition (or other) | Items to be put in or crossed out |
|-------------|-------------|--|---|
| 1 | 1 | (Cover page) | Cross out your authorised representative, if you do not have one. |
| 2 | 1 | (Cover page) | Or put in the name and address of your authorised representative (if you have one). |
| 3 | 3 | Contract period | Put in the relevant period. |
| 4 | 3 | Interim bill | Put in the frequency of the necessary payment [for example, seven or 14 days]. |
| 5 | 3 | Liquidated and ascertained damages | Put in the amount agreed between you and us . |
| 6 | 3 | Price | Put in the relevant amount (in words and figures). |
| 7 | 3 | Rates | Put in all the relevant amounts and our normal working hours. |
| 8 | 3 | Site | Put in the relevant address. |
| 9 | 3 | Start date | Put in the relevant date. |
| 10 | 3 | Work | If there is no design element, cross out 'does/'. If there is a design element, cross out 'does not'. You and we must put initials next to whatever is crossed out. |
| 11 | 4 | Condition 1.1 Insurance-backed guarantee | If there is no insurance-backed guarantee on the work , cross out will/. If there is an insurance-backed guarantee on the work , cross out /will not and put the name of the person or company providing the guarantee. You and we must put our initials next to the crossing out. |
| 12 | 4 | Condition 2.1.4 and 2.2.4 | Put in the amount you and we have agreed you will keep. You and we must put initials next to that amount. |
| 13 | 5 | Condition 12 Supplying services | Cross out any of the specified services which are not available. |
| 14 | 5 | Condition 13 Limits on how or when the site can be used | Cross out the version you do not want. Put in details of all relevant limits if condition 12.2 applies. |
| 15 | 6 | Condition 17 Labour-only service | Cross out condition 17 if we are providing full building services. You and we must put initials next to condition 17 if it is crossed out. |
| 16 | 7 | Condition 27.3.3 Arbitration or court proceedings | Cross out the version you do not want. |
| 17 | 8 | The benefit of the contract | If the contract is only intended to benefit you and us , cross out 'or This contract will also benefit anyone who later buys or leases the site from you .' If the contract is intended to benefit other people, as well as you and us , cross out 'This contract is only for the benefit of you and us , and no one else. or' You and we must put initials next to whatever is crossed out. |
| 18 | 9 | Schedule A The documents | Put in details of all relevant documents. |
| 19 | 10 | Schedule B The client's named suppliers | Put in all details as shown; or put in 'none'. |
| 20 | 10 | Schedule C The client's named subcontractors | Put in all details as shown; or put in 'none'. |

Both you and we must put initials alongside anything crossed out or put in.

Special meaning of words

Certain words used in this contract have particular meanings, shown below. Every time we use this word, with this particular meaning, it is printed in **bold**. If the word is not in **bold**, we are using it in its ordinary English sense - for example the **work** and the work both appear in this contract.

CDM

The Construction (Design and Management) Regulations 2007.

Changes (or changing)

refers to **changes** to the **work**. This includes anything added or left out.

Contract period

[See item 3 in the checklist.]

Months / weeks / days

Completion date

The date on which the **work** will be substantially completed, so that the **site** is ready to be handed back to **you** ready for use, even if there are some minor defects (faults).

Defects liability period

Six months from the **completion date**.

Documents

The **documents** referred to in Schedule A.

Due date or date on which payment becomes due

The date **you** receive any interim bill or the final bill.

Final bill

The final price, including any changes to the **price** under conditions 14 and 19. **We** will add VAT to this new figure.

Interest rate:

8% a year above the Bank of England base rate.

This is calculated:

- from the date the amount was due, until the date of payment;
- daily; and
- at the **interest rate** in force on each day.

Interim bill

[See item 4 in the checklist.]

A written interim bill every _____ days [for example, seven or 14 days].

Liquidated and ascertained damages

[See item 5 in the checklist.]

At the rate of £ _____ for each week (or part of a week).

Your named suppliers

The suppliers, chosen by **you**, referred to in Schedule B.

Your named subcontractors

The subcontractors, chosen by **you**, referred to in Schedule C.

Price

[See item 6 in the checklist.]

_____ pounds (£ _____) plus VAT.

This figure may change under conditions 14 and 19.

Provisional sum

Part of the **price**. This is an amount **we** have estimated to help **you** work out **your** costs. At the date of this contract, **we** cannot tell **you** what the final cost will be because **you** have not decided which particular items **you** want. When **you** do decide, this will be a **change** to this contract. [See condition 14 and guidance note 10.] In **our final bill**, **we** will adjust this to the actual cost plus **our** profit.

Prime cost (or prime cost sum)

I Part of the price. **We** will only use this for **your named subcontractors** or **your named suppliers**. This is an amount we have estimated because, at the date of this contract, **we** do not know the final cost.

2 **We** will adjust this in the **final bill** to:

- the actual cost of the work or item; plus
- an amount **you** must pay, which is equal to **our** discount from **your named suppliers** or **named subcontractors** for prompt payment. This is 5.27% for goods or materials and 2.57% for **your named subcontractors** (or any other discount shown in the **documents**).

| Rates (see item 7 in the checklist) | | |
|--|---|------------------------------|
| | During our normal working hours _____ am to _____ pm | Outside normal working hours |
| Hourly labour rate for: | | |
| 1 building craftsmen we employ | | |
| 2 other craftsmen we employ [please give details]: | | |
| 2.1 | | |
| 2.2 | | |
| 2.3 | | |
| 3 general operatives we employ | | |
| 4 specialist subcontractors: market rate plus %. | | |
| Materials at cost plus | | % |
| Plant hire and haulage at cost plus | | % |

Scheme for Construction Contracts

Means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 or the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (Wales) Regulations 2011 as appropriate.

Site

[See item 8 in the checklist.]

Set off and abatement

Any contra charge (where a builder can charge another builder for putting right a fault) and reduction in the value of work because of a reduced quality of work or the materials used.

Start date

[See item 9 in the checklist.]

Value added tax or VAT

VAT applies at the rate of []% / VAT does not apply (**delete as appropriate**).

We, us, our

the builder (see the contract cover page).

Work

[See item 10 in the checklist.]

The **work we** will carry out, set out in the **documents**. The **work** does/does not include a design obligation by **us**.

(If there is no design element, cross out 'does/'. If there is a design element, cross out 'does not'. You and we must put initials next to that crossing out. Please see item 10 in the checklist.)

You, your

the client (see the contract cover page).

Interpretation

This contract is written in plain English.

- In this contract references to a statute or statutory provision include any changes which are made to it.
- If any term, condition, paragraph or sub-paragraph is invalid, it does not make any other term, condition, paragraph and sub-paragraph invalid.
- If there is more than one of **us** or **you**, this contract applies to all of those people together, and to each of them on their own.
- This contract is governed by the law of England and Wales.

I Our main obligation – to do the work

We will carry out the **work**:

- with reasonable care and skill and to a reasonable standard;
- by the end of the **contract period** (as extended under condition 22, if it applies), but this term does not make time an essential condition [See guidance note 3.]
- and keep to all building regulations;
- and keep to all legal requirements, which **we** would need to keep to in the course of carrying out the **work**, but only if **you** have told us in writing about these requirements in line with condition 7;
- and at the end of the contract, as long as you pay all amounts due, **we** will give **you** any guarantees, test certificates and so on which apply to the **work**. **You** should keep these in a safe place in case you need them in the future.

I.1 Insurance-backed guarantees

The **work** will/will not be covered by an insurance-backed guarantee provided by _____ (put in name of provider if it applies).

[If there is no insurance-backed guarantee on the **work**, cross out will/. If there is an insurance-backed guarantee on the **work**, cross out /will not. **You** and **we** must put our initials next to the crossing out.]

[See item 11 in the checklist.]

2 Your main obligation – to pay us

You will pay **us** the **price**.

2.1 Interim payments

- 2.1.1 When the **contract period** is more than 28 days, **we** will be entitled to send **you** **interim bills**.
- 2.1.2 **We** will send **you** **interim bills** for the value of any work **we** have carried out up to that date, together with the cost of all goods and materials delivered to the **site**.
- 2.1.3 **You** must pay **us** within [] (insert period, for example, 'seven' or '14' days) of receiving an **interim bill**.
- 2.1.4 **You** will take and keep % from all **interim bills** (the retention) [see condition 2.2.4].

[Put in the amount you and we have agreed you will keep. Both you and we must put initials next to that. See item 12 in the checklist.]

2.2 Final payment

- 2.2.1 When **we** have finished the **work** (at the **completion date**), **we** will send **you** the **final bill**.
- 2.2.2 **You** must pay **us** the **price** within 21 days of receiving the **final bill**.
- 2.2.3 **We** will give **you** credit, in the **final bill**, for all **interim bills you** have paid.
- 2.2.4 **You** will take and keep % from the **final bill**. **You** must pay **us** this amount at the end of the **defects liability period**, unless there are defects which still need action.

[Put in the amount you and we have agreed you will keep. Both you and we must put initials next to that amount. See item 12 in the checklist.]

2.3 Valuations

Unless **you** have employed a third-party certifier and they have issued a payment certificate, the value under condition 2.1.2 or condition 2.2.1 will be the value (valuation) **we** have given to the **work** carried out up to that date.

2.4 Payment

Within five days of receiving any **interim bill** or the **final bill** you must give us written notice showing how much you plan to pay as long as:

- **we** have met **our** obligations under the contract; and
- no set-off or abatement was allowed to be claimed.

you must also tell **us** how you worked out the amount **you** are planning to pay.

[See also clause 6.]

If **you** do not give **us** written notice under this condition 2.4, **we** will give **you** written notice showing the amount **we** think is due and the basis on which that amount was worked out, depending on any notice you have given under clause 6 to pay this amount. **We** will delay the final date for payment of this amount by the number of days between the date when **you** should have given **us** written notice and the date of **our** written notice to **you**.

3 Access to site

You must allow **us** enough access to the site and keep the site clear of all obstructions so **we** can carry out the **work**.

4 Interest

You must pay **us** interest, at the **interest rate**, on any amounts overdue.

This applies as well as our entitlement (if any) to compensation under late-payment legislation.

5 Starting the work, length of the work and the site

- 5.1 **We** will start the **work** on the **start date**.
- 5.2 **You** must make the **site** available to **us** on the **start date** and for the time it takes **us** to carry out the **work**.

6 Withholding payment

If **you** plan to pay less than the amount shown in **our** interim or final bill or in our notice given under clause 2.4, then no later than five days before the final date for payment **you** must give **us** notice to say you plan to pay less than the amount of our bill and tell **us** the amount **you** consider to be due at the date **you** give the notice and the basis on which **you** have worked out that amount.

7 Permission

Unless **we** agree otherwise in writing, **you** must get all permission **you** need before **we** start the **work** and keep to any conditions relating to the **work** (including paying all the relevant fees). If **you** break this condition 7, **you** must pay us any losses and damages **we** suffer. When the **work** is completed, whoever is responsible for getting building regulations approval or planning permission is also responsible for getting formal written confirmation that the **work** meets those regulations or permission. [See guidance note 5.]

8 Materials or goods

- 8.1 Any materials or goods **we** supply will be:
 - new, unless **you** agree otherwise in writing;
 - of satisfactory quality;
 - of the description **you** give for their type, as far as possible;
 - of the appropriate British standard and codes of practice in force at the date of placing the order; and
 - fit for their normal purposes.

Contract conditions (continued)

- 8.2 **We** will get any materials or goods **you** ask **us** to, as long as they are available, within a reasonable period. If shown in Schedule B, **we** will get these from **your named supplier**.
- 8.3 **We** will not be liable for:
- the satisfactory quality of any materials or goods **you** provide; or
 - the satisfactory quality or whether they are fit for purpose (or both) of any materials or goods if condition 24.2 applies.
- 8.4 If, instead of any normal purposes, **you** have told **us** about a special purpose for any materials or goods (whether under condition 8.1 or 8.2 or 8.3) **you** should preferably confirm this in writing within 14 days. [See guidance note 6.]
- 8.5 **We** will send **you**, at least 24 hours before the **start date**, a written list of any goods, materials and fixtures at the **site** which **we** need to remove, for the **contract period**, to carry out the **work**. **We** will return these at the **completion date**, unless **you** tell **us**, preferably in writing, to get rid of any items.

9 Who owns materials or goods

You will not own any materials or goods delivered to the **site** until **you** have paid **us**.

10 Responsibility for the documents

- 10.1 **You** are responsible for making sure the details shown in the **documents**:
- 10.1.1 meet all legal requirements (including planning and building regulations); and
 - 10.1.2 are fit for the intended purposes.
- Unless condition 10.4 applies:
- 10.2 **you** must pay for all relevant fees under condition 10; and
- 10.3 **we** are not responsible for the details shown in the **documents** being fit for the intended purposes, if **we** did not prepare those **documents**. **Our** obligation is simply to build to the details shown in those **documents** [see guidance note 7].
- 10.4 **We** will be responsible for the details of any **documents we** produce being fit for the intended purposes.

11 Responsibility for loss and damage and insurance

11.1 **Your** obligations

11.1.1 Existing structures and contents

You are responsible for any loss of and damage to any existing structures and contents, unless it falls within **our** obligations in condition 11.2.1.

11.1.2 The **work**

You are not responsible for insuring the **work**.

11.1.3 Evidence of insurance

You must take out and keep an adequate insurance policy for **your** liability under condition 11.1.1. **We** will be entitled to see this policy.

11.2 **Our** obligations

11.2.1 Existing structures and contents

We will only be responsible for any loss of and damage to any existing structures and contents, if the loss and damage is caused by **our** negligence or by the negligence of any person **we** are responsible for. If part of the loss and damage is caused by someone else, **we** will only pay **our** share.

11.2.2 The **work**

We will be responsible for insuring against any loss of and damage to the **work** until practical completion or

you end **our** employment, whichever happens first.

11.2.3 Insurance for design or specification

If the **work** involves a material design element or specification by **us**, **we** will:

- take out suitable insurance cover for at least the final estimated value of the work; and
- continue to keep that insurance until the end of the period during which legal action for any claim can be started.

11.2.4 Evidence of insurance

We will take out and keep adequate insurance policies for **our** liability under conditions 11.2.1 and 11.2.2 and 11.2.3 and 11.3. and 11.4.

If **you** ask, **we** will provide details of the policies.

11.3 Liability for personal injury

11.3.1 **We** will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for personal injury to, or the death of, any person arising out of or in the course of, or caused by carrying out, the **work**. This does not apply if condition 11.3.2 applies.

11.3.2 **You** will be responsible for personal injury or death caused by **your** negligence or the negligence of any person **you** are responsible for.

11.4 Liability for damage to any property of another person

We will pay **you** any losses and damages **you** have to pay as a result of **your** legal liability for loss of or damage to any property of another person. This only applies if:

- it arises out of, or in the course of, or is caused by carrying out, the **work**; and
- is caused by **our** negligence or the negligence of any person **we** are responsible for.

11.5 **We** will include **you** as an insured person under **our** insurance policies.

All insurance policies which **we** must have under **our** obligations under this condition 11 will include **you** as an insured person. In the insurance industry this is called an indemnity to principals clause.

You or **we** must immediately let the insurers know about any claims. **You** and **we** must keep to the terms and exclusions of the insurance policy. If **you** or **we** fail to do this, the insurance may no longer be valid.

12 Supplying services

You agree to provide for **us**:

- toilet and washing facilities;
- water;
- electricity; and
- storage space.

[Please cross out any services which are not available. Both you and we must write initials next to that. Please see item 13 in the checklist.]

13 Limits on how or when the site can be used

13.1 **You** are not putting any limits on how or when the **site** can be used.

13.2 **You** are putting the following limits on how or when the **site** can be used

13.2.1 Working hours [Please give details.]

Contract conditions (continued)

13.2.2 Other [Please give details.]

[Please cross out the version of condition 13 which you do not want to apply. Put in details of relevant limits if condition 13.2 applies. In particular, you should say in condition 13.2 if you will still be living on all or any part of the site. Both you and we must write initials next to anything crossed out or put in. Please see item 14 in the checklist.]

14 Changing the work

14.1 If **you** want to change the **work**, **you** must:

- confirm this in writing; and
 - do so within 14 days, if **you** first tell **us**.
- We** will then adjust the **price**.

14.2 14.2.1 **We** will carry out any **change** instructed by an appropriate local authority or public utility officer, but only after giving **you** written notice.

14.2.2 However, if **you** can change those requirements, while still meeting **your** obligations under condition 10, **you** may do so. But **you** must tell **us** in writing before **we** start carrying out that **change**.

Whichever applies, **we** will adjust the **price** accordingly.

14.3 The **price** will be adjusted by:

- written agreement beforehand, if possible; or if not then
- later written agreement; or if not then
- referring to any priced **documents**, if this applies; or if not then
- referring to the **rates**, if this applies; or if not then
- a reasonable amount for the work done or goods supplied.

14.4 Every **change** which requires extra or revised work (as opposed to a change leaving something out) may mean extra costs.

15 Unexpected work

If unexpected **work** arises, **we** will tell **you** and ask how **you** want **us** to go ahead. If so, condition 14 will apply.

[See guidance note 10.]

16 Our employees subcontractors or tradesmen

You may not use or instruct **our** employees, subcontractors or tradesmen. If **you** do, **you** will have to pay **us** as if **we** had carried the **work** out.

17 Labour-only services

We are providing labour-only services, **You** are to provide all products, materials, fittings and similar which are needed for the **work**. If **you** do not provide these or ask us to transport or collect these items, this may result in extra charges under condition 14. **Cross out** this condition 17 if **we** are providing full building services. [Please see item 15 in the check list.]

18 Health and safety

- 18.1 **We** will be responsible for all health-and-safety issues relating to the **work**.
- 18.2 If **CDM** applies, **we** must keep to **our** obligations and **you** must keep to **your** obligations.

18.3 **Your** obligations

18.3.1 **You** are the **client** under the **CDM** regulations.

18.3.2 **You** are appointing **us** as the principal contractor.

18.3.3 **You** must appoint a co-ordinator who, if **we** agree, may be **us**.

18.4 **Our** obligations

18.4.1 **We** are the principal contractor and, if **we** agree, may be the co-ordinator.

18.4.2 **We** will co-ordinate and manage health-and-safety issues from the design and early stages of preparation through to finally completing the **work**.

18.4.3 **We** will prepare the health-and-safety file.

18.4.4 **We** will make sure that all contractors and employees keep to health-and-safety requirements.

19 Delay or disruption

If the **work** is delayed or lasts longer than expected for any reason (other than **our** fault), **we** will adjust the price accordingly, as shown in condition 14.3. If it is **your** fault, **we** will be entitled to claim for any losses and expenses caused.

20 Your right to end this contract

Without affecting **your** other legal rights and remedies, **you** can end this contract in one (or more) of the following circumstances.

20.1 If, without reasonable cause, **we**:

- stop work for 14 days in a row; or
- fail to work steadily; and

you send **us** a written notice, by recorded delivery, telling **us** to restart work or work steadily and **we** do not do this within seven days of receiving **your** notice.

20.2 If **we** become bankrupt.

20.3 If **we** go into liquidation.

20.4 If **we** make a composition or arrangement with **our** creditors.

20.5 If **we** are wound up.

20.6 If a receiver or manager is appointed over **our** business, unless this is to amalgamate or reorganise the business.

However, **we** can still use all **our** legal rights and remedies.

21 Our right to suspend or end this contract

Without affecting **our** other legal rights and remedies, **we** can end all or suspend all or part of our obligations under the contract in one (or more) of the following circumstances.

- 21.1 If **you** fail to pay any amount due and still fail to pay for seven days after receiving a written notice **we** send by recorded delivery demanding payment and warning you of **our** intention to end all or suspend all or part of **our** obligations under the contract.
- 21.2 If **you**, or anyone **you** employ or **your** agent, interfere with or obstruct the **work** or fail to make the **site** available for **us** (without good reason) for the **contract period** (or any one or more of these).
- 21.3 If **you** become bankrupt or go into liquidation, or make a composition or arrangement with **your** creditors (or any one or more of these).

After **we** use **our** right to suspend part or all of this contract, if **you** are still at fault, **we** can end our obligations under it, (as shown in conditions 21.1 to 21.3).

We will be entitled to:

- all relevant payments under condition 2.1; and
- any reasonable costs and any reasonable losses **we** suffer (including loss of profit) involved in or resulting from ending all or suspending all or part of our obligations under the contract within 14 days of asking for payment.

Our right to suspend performance ends when **you** pay the amount due in full unless in the meantime **we** have ended **our** obligations under the contract.

[See guidance note 13 about the duty to ‘mitigate’ the loss.] However, you can still use all your legal rights and remedies (including term 6).

22 Extending the contract period

You will extend the **contract period** by a reasonable period to take into account any one (or more) of the following.

- 22.1 **Your** delayed instructions or lack of instructions on any one (or more) of the following:
- the **work**;
 - changes to the **work** (see condition 14); or
 - **your** choice of materials (see condition 8.2).
- 22.2 If **we** suspend all or part of **our** obligations under this contract (see condition 21).
- 22.3 If the **work** is obstructed by any matter **we** do not control.
- 22.4 Weather conditions which delay or prevent **us** from continuing the work.
- 22.5 Civil commotion, wars, riots and lock-outs.

23 Liquidated and ascertained damages

If **we** fail to complete the **work** by the end of the **contract period** (as extended under condition 22), **we** must pay **liquidated and ascertained damages** to **you**, from that date until the **completion date** [See guidance note 4.]

24 Defects liability period

- 24.1 During the **defects liability period**, **we** will put right any defects in the **work** due to faulty workmanship or materials (unless condition 24.2 applies). **We** will not charge **you** for this.
- 24.2 However, **we** will not be responsible for any one (or more) of the following defects.
- 24.2.1 Defects due to the condition of the **site** or relevant property, that existed before **we** began work.
- 24.2.2 Defects caused by **you** or any other person or caused by any event, which happen after the **completion date**.

- 24.2.3 Defects which would have the effect of making **us** liable for matters which are excluded under condition 8.3. [See guidance note 11.]

25 Subcontracting

- 25.1 **We** can subcontract any part of the **work**, but **we** will still be responsible for the work, unless condition 25.2 applies.
- 25.2 **We** will not be liable for any one (or more) of the following.
- The satisfactory quality or fitness for purpose of any materials or goods, chosen by **you** from, or selected by, **your named subcontractor** or **your named suppliers** (or any one or more of these).
 - Any defective design by **your named subcontractor**.

However, this does not apply if it is something that **we**, for **our** own purposes, ask **your named supplier** to supply or **your named subcontractor** to do, and which is separate from **your** instructions.

26 Clearing the site

Before the **completion date**, **we** will remove all rubble, surplus materials, rubbish, tools and scaffolding on the **site** and leave it clean and tidy. **We** will not be responsible for removing any items **you**, or any person **we** don't control, place on the **site**.

27 Disputes

27.1 Conciliation

You and **we** must both agree to conciliation taking place. If so, the following apply.

- 27.1.1 If the **work** is covered by the MasterBond insurance or similar insurance cover, any conciliation will be under the terms of that insurance.
- 27.1.2 If the **work** is not covered by the MasterBond insurance or similar insurance cover:
- **you** and **we** can agree who the conciliator will be; or
 - **you** and **we** can ask the Federation of Master Builders to appoint the conciliator [see condition 27.5].

27.2 Adjudication – the Scheme for Construction Contracts

You or **we** can refer any dispute to adjudication at any time and the adjudication terms of the Scheme for Construction Contracts will apply to this contract, but with the following changes.

- (1) Adjudication will apply even if some of the contract has been arranged by discussion.
- (2) The adjudicator will be entitled to sort out any dispute about their own jurisdiction.
- (3) The adjudicator will be entitled to decide who will pay their costs and expenses and whether one side will pay the other side's costs as well.
- (4) The adjudicator may correct their decision to remove any clerical or typographical mistakes which may have happened within five days of giving their decision.
- (5) **You** and **we** can agree that the adjudicator's decision will be final and binding between **us** and that our right to have the dispute finally settled by legal proceedings or arbitration will not apply.

[See guidance note 14.]

27.3 Arbitration or court proceedings

Any dispute or difference arising from or in connection with the **work** or this contract (or any one or more of these) will be dealt with as follows.

- 27.3.1 If the **work** is covered by the MasterBond insurance or similar insurance cover, under the terms of that insurance.
- 27.3.2 If the MasterBond insurance or similar insurance cover does not apply and the amount in dispute is within the county court small claims limit, by county court proceedings.
- 27.3.3 If the MasterBond insurance or similar insurance cover does not apply and the amount in dispute is above the small claims county court limit, by:
 - arbitration; or
 - court proceedings.

[Please cross out the dispute resolution method which you do not want to apply. Both you and we must write initials next to that. Please see item 16 in the checklist.]

27.4 Arbitration

If **you** or **we** refer a dispute or difference to arbitration, the following will apply.

- 27.4.1 The arbitrator will be a person:
 - agreed between **us** and **you**; or
 - appointed by the Federation of Master Builders, at the request of either **you** or **us** [see condition 27.5].
- 27.4.2 The arbitration will be carried out under the Arbitration Act 1996 and the Construction Industry Model Arbitration Rules 1998.
- 27.4.3 If the arbitrator:
 - 27.4.3.1 is unable or unwilling to act; or
 - 27.4.3.2 becomes unable or unwilling to act; or
 - 27.4.3.3 resigns;**you** and **we** can agree a new arbitrator. Or, either **you** or **we** may reapply to the Federation of Master Builders to appoint a new arbitrator. This condition 27.4.3 applies as many times as is necessary.

27.5 Appointing of a conciliator or arbitrator by the Federation of Master Builders

Conciliators or arbitrators appointed by the Federation of Master Builders are chosen from the Federation's panel of members of:

- the Chartered Institute of Arbitrators; or
- the Royal Institution of Chartered Surveyors (RICS).

28 This contract

This contract is made up of the cover page, special meanings of words, interpretation, contract conditions, Schedule A (**the documents**), Schedule B (**your named suppliers**) and Schedule C (**your named subcontractors**).

You and **we** agree the terms of this contract. Signing this contract will mean that **you** and **we** have various legal obligations to each other. This contract is only for the benefit of **you** and **us**, and no one else.

or

This contract will also benefit anyone who later buys or leases the **site** from **you**.

[If the contract is only to benefit you and us, cross out 'or This contract will also benefit anyone who later buys or leases the site from you.' If the contract is intended to benefit other people, as well as you and us, cross out 'This contract is only for the benefit of you and us, and no one else. or.' **You and we must put initials next to whatever is crossed out. Please see item 17 in the checklist.]**

Our signature _____

Your signature (first client) _____

Your signature (second client) _____

[You should be (or include) the property owner. If the property is jointly owned, you should all sign this contract. See guidance note 2].

Schedule A - The documents (Please see item 18 in the checklist.)

- 1. Drawings prepared by [redacted] of [redacted] and dated [redacted] and numbered [redacted]
- 2. A detailed estimate **we** have prepared and dated [redacted]
- 3. A specification or schedule of work prepared by [redacted] of [redacted] and dated [redacted]
- 4. A schedule of prime costs and provisional sums (if any apply) prepared by [redacted] and dated [redacted]
- 5. A health-and-safety plan
- 6. The following extra documents. (Please give details, for example a MasterBond insurance document)

[Redacted area containing horizontal lines for providing details for item 6.]

[Please attach all these documents to this contract.]

Schedule B - Your named suppliers [Please see item 19 in the checklist.]

| Your named supplier | Address | Materials or goods to be supplied | Provisional sum |
|---------------------|---------|-----------------------------------|-----------------|
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[If none, say so.]
 (If necessary, continue on a separate sheet which **you** must attach to this contract.)

Schedule C - Your named subcontractors [Please see item 20 in the checklist.]

| Your named subcontractor | Address | Nature or extent of the work to be done | Provisional sum |
|--------------------------|---------|---|-----------------|
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[If none, say so.]
 (If necessary, continue on a separate sheet which **you** must attach to this contract.)

Guidance notes issued by the FMB for the FMB Commercial and Industrial Building Contract

1 Using this contract

1.1 When to use it

The FMB suggest that **you** and **we** use this contract:

- for work up to an original value of about £500,000;
- with or without an independent supervising officer.

1.2 Checklist of insertions and deletions

See the attached checklist.

2 The client (you) and the property owner

- 2.1 **You** can include people who are not the property owner.
- 2.2 However, **all** property owners must be named as the client.
- 2.3 If **you** are a tenant, **your** landlord does not need to be involved in the contract as the client. If **you** hold a tenancy agreement or a lease, that is probably enough. However, it is important to check if landlord's (or freeholder's) approval is needed for the **work** and, if it is, whether it has been given. Under condition 6 of the contract **you** must get this approval.

3 The contract period and completing the work – see the definitions and condition 1

- If **we** do not reach completion at the end of the contract period, **we** have broken the contract.
- But, **you** cannot immediately end the contract. To end the contract, **you** must serve a written notice on **us** saying that:
 - **we** have failed to complete at the end of the contract period; and
 - **we** must complete the **work** within a further reasonable period; and
 - if **we** fail to do so, **you** will end the contract.

This is similar to the procedure under condition 20.1. This is also the same procedure used for selling and buying houses.

In fixing the contract period and completing the **work**, remember to take into account any holiday date or periods such as Christmas, Easter and summer holiday breaks and any other likely holiday dates.

4 Liquidated and ascertained damages

This means that **you** and **we** have already agreed how much **we** should pay **you**, if **we** do not complete the **work** on time (at the end of the contract period) [see definitions and condition 23].

However:

- 1 **we** must be able to show that this is a genuine pre-estimate of the likely loss; and
- 2 if there is a sectional completion, for example, then liquidated and ascertained damages should relate to each sectional completion date, not the first sectional completion date only. If not, a penalty may not be able to be enforced.

5 Permission - condition 7

If **you** do not know what permission **you** need, **you** should get advice from an architect or solicitor.

6 Fitness for purpose – condition 8.4

You can ask for particular goods or materials to be used.

The FMB advise that if **we** do not consider those goods or materials are appropriate, **we** should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those particular goods or materials, **you** should confirm this in writing, and it will be at **your** risk.

7 Responsibility for the documents - condition 10.3

If **you** give **us** drawings made by someone else, **we** are not responsible for any errors or missing details in those drawings. **We** will follow the drawings as provided.

If **we** do not consider those drawings are correct, **we** should write and tell **you** this. **We** will have carried out **our** duty to **you** by giving **you** that warning. If **you** still insist on **us** using those drawings, **you** should confirm this in writing, and it will be at **your** risk.

8 Design and specification – condition 11.2.3

If the **work** does not involve any design element or specification by **us**, condition 11.2.3 will not apply.

If the **work** involves a material design element or specification by **us**:

- condition 11.2.3 applies; and
- the FMB say the following:
 - **You** and **we** should check **our** public liability insurance policy and agree – preferably in writing – that it provides the cover **you** and **we** need.
 - If it does not, **we** will need separate insurance to meet condition 11.2.3.
 - The matter should be referred to an insurance adviser if there is any doubt as to what design or specification means.

9 Limits on how and when the site can be used – condition 13

If **you** want to add extra limits on **us** after the contract has been signed, that will be a **change**, which will mean the **price** must be adjusted accordingly.

It is particularly important that **you** state in condition 13.2 if **you** are not leaving the site empty, but will still be living on:

- all of the site; or
- any part of the site.

10 Condition 14 – changing the work and condition 15 – unexpected work

You can get **change** instructions forms from the FMB. The FMB advise that the best procedure is:

- (preferably) to confirm any **change** instructions in writing, at the time;
- to write the details of the **change** twice, with both sets signed by **you** and **us**; and
- (if possible) for **you** and **us** to agree the cost of any **change** (whether a fixed price or an estimate), at the time. If **you** and **we** do not agree the amount at the time, a provisional sum can be given. But, if that cannot be done, **we** and **you** should confirm in writing (on the **change** instructions) that no fixed price or estimate has been given at that time.

Local authority officers have different views on matters. **We** may find that something which has been approved on a previous job by a local authority officer is not accepted by a different local authority officer on **your work**. If so, a **change** may be needed to meet the local authority's requirements. So, that may not be due to a failure by **us**. The FMB advise that it is often quicker and cheaper to accept the local authority's requirements, but each case must be considered on its own facts.

Unexpected work can arise during the course of the **work**, for example, unsuitable foundations which were not expected at the time of pricing the **work**, and which will normally result in extra costs.

11 Period within which to bring claims and the defects liability period in condition 24

Usually **you** or **we** have six years in which to make a claim. Sometimes a longer period can apply and **you** may need to take legal advice on this. The **defects liability period** - if **you** and **we** agree this - is an extra right, completely separate from, and which does not in any way restrict, **your** right to make a claim.

If the **defects liability period** applies, **you** should look at the special meaning of **defects liability period** and also at conditions 2.1.4 and 2.2.4.

When the **completion date** is reached, **you** must pay **us** all the rest of the **price**, except that **you** can keep back the retention (see condition 2.1.4). If any defects, which still need action, arise over the **defects liability period**, the fact that **you** are holding this retention is **our** incentive to encourage **us** to come back and deal with them. If **we** do, then at the end of the **defects liability period**, **you** must pay the retention to **us**.

12 Condition 27 – Disputes

We and **you** may sort out disputes by conciliation, adjudication, arbitration or court proceedings.

Both **you** and **we** must agree to a conciliation. Either party alone can ask for adjudication, arbitration or court proceedings.

Conciliation is a particular way of trying to sort out disputes which many believe to be quicker, cheaper and less formal than a court hearing or arbitration (if the conciliation is successful). An independent person, the conciliator, tries to help **you** and **us** reach agreement about how to settle the dispute.

Although the conciliator can make suggestions, she or he cannot force **you** or **us** to reach an agreement. If, **you** and **we** cannot reach agreement, **you** or **we** can continue with our other, more formal, rights of adjudication, arbitration or court proceedings.

Adjudication is a quick-fix (usually 35-day) process. Adjudication, if it is used, should take place before arbitration or court proceedings. The right to adjudication is a legal one and cannot be excluded, even by agreement. Adjudication only applies to 'construction contracts' (as defined in the Housing Grants Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009). Either **you** or **we** can still issue arbitration or court proceedings, after an adjudication

unless **you** and **we** agree to lose that right under clause 27.2 (5). Arbitration or court proceedings are a more lengthy and formal. **You** and **we** must follow the adjudicator's decision until the dispute is finally decided in arbitration or court proceedings. Remember that arbitration and court proceedings are alternatives. **You** and **we** must cross out the method not wanted (see item 14 in the checklist).

The Federation of Master Builders (FMB) can arrange adjudication under a scheme using selected members of the Royal Institution of Chartered Surveyors (RICS). **You** and **we** should check with the FMB first to find out if **our** dispute can be resolved under the terms of that scheme.

13 Disputes (additional)

If **you** or **we** suffer any losses or damages because of the other's negligence or breach of contract, **you** or **we** can claim for that. However, the FMB advise that the person who has suffered the loss or damages (the claimant) cannot sit back and let the loss get worse. The claimant has a duty to take reasonable steps to prevent the loss from getting worse. This is called the duty to 'mitigate' your loss.

In particular, the FMB advise that the claimant must do the following.

- Take all reasonable steps to mitigate the loss.
- Cannot claim for any loss or damage if she or he could reasonably have avoided it, but failed to do so.
- If **you** are the claimant, **you** must give **us** a reasonable opportunity to:
 - check the alleged defects; and
 - put right those defects. If **we** do that, at **our** own cost, the loss is avoided. However, this obligation (to allow **us** to put the defect right) may not apply if **you** can prove that **we** are so incompetent that **we** would not do the work properly, even if given the chance to do so.

14 Conditions 27.2 (5) final and binding adjudications

There must be a separate and specific agreement that the adjudicator's decision is final and binding. If not, although adjudication still applies, **you** or **we** can go on to challenge the adjudication by arbitration or court proceedings as in condition 27.3 and 27.4

Footnotes

- 1 This guidance note is a general guide only. **You** should always get specific advice.
- 2 This guidance note is issued by the FMB to help **you** and **us**. While it represents the FMB's view of matters, in any dispute the adjudicator, arbitrator or court will decide.
- 3 The FMB would be interested to hear of any decisions of any adjudicator, arbitrator or court interpreting any term of this contract. That will help the FMB to decide whether any of the current terms need changing.

We have deliberately left this page blank.



Federation of Master Builders

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