

# Building Safety – Basic Level

## Article ~~65~~ CDM Regulations – Principal Designer and Principal Contractor

For the purposes of the CDM Regulations:

~~The~~ Principal Designer ~~for the purposes of the CDM Regulations~~ is the Contractor (or) [...] or such replacement as the Employer at any time appoints to fulfil that role-;

the Principal Contractor is the Contractor (or) [...] or such replacement as the Employer at any time appoints to fulfil that role.

## Article 76 Building Regulations – Principal Designer and Principal Contractor

For the purposes of the Building Regulations:

the Principal Designer is the Contractor (or) [...] or such replacement as the Employer at any time appoints to fulfil that role;

~~The~~ Principal Contractor ~~for the purposes of the CDM Regulations~~ is the Contractor (or) [...] or such replacement as the Employer at any time appoints to fulfil that role.

# Building Safety – Basic Level

## CDM Regulations and Part 2A of the Building Regulations

### 3.16 CDM Regulations and Part 2A of the Building Regulations

Without limiting either Party's statutory and regulatory duties and responsibilities, Each Party undertakes to the other that in relation to the Works and site ~~it his~~ will duly comply with applicable CDM Regulations and as applicable Part 2A of the Building Regulations , and ~~in~~ particular but without limitation:

- 3.16.1 where the Contractor is not the Principal Designer, the Employer shall ensure that the Principal Designer carries out ~~its his~~ duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out ~~its his~~ duties under those regulations;
- 3.16.2 where the Contractor is and while ~~it he~~ remains the Principal Designer, ~~it he~~ shall comply with the duties of a Principal Designer and (~~where it is the Principal Designer for the purposes of the CDM Regulations~~) it shall without charge prepare, and deliver to the Employer, the health and safety file;
- 3.16.3 the Contractor shall comply with: ~~regulations 8 to 10 and 15 and, where he is the Principal Contractor, with regulations 12 to 14;~~
- 3.16.3.1 regulations 8 to 10 and 15 of the CDM Regulations and, where it is the Principal Contractor for the purposes of the CDM Regulations, with regulations 12 to 14 of those regulations; and
- 3.16.3.2 regulations 11F, 11J, 11K and 11L of the Building Regulations and, where it is the Principal Contractor for the purposes of the Building Regulations, with regulation 11N of those regulations;
- 3.16.45 if the Employer appoints a replacement for ~~any the~~ Principal Designer or Principal Contractor, the Employer shall immediately upon that appointment notify the Contractor with details of the new appointee.

# Building Safety – Higher Risk Buildings

- There is nothing specific in the new JCT 2024s relating to higher risk buildings.
- You will need to draft in bespoke amendments to your contract to deal with the new requirements of the Building Safety Act.

# Design Liability

## 2.17 Design Work – liabilities and limitation

- 2.17.1 ~~Insofar as his design of the Works is comprised in the Contractor’s Proposals and in what he is to complete in accordance with the Employer’s Requirements and these Conditions (including any further design that he is required to carry out as a result of a Change), the Contractor shall in respect of any inadequacy in such design have the same liability to the Employer, whether under statute or otherwise, **as would an architect or other appropriate professional designer who holds himself out as competent to take on work for such design** and who, acting independently under a separate contract with the Employer, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.~~
- 2.17.1.1 Insofar as its design of the Works is comprised in the Contractor’s Proposals and in what it is to complete in accordance with the Employer’s Requirements and these Conditions (including any further design that it is required to carry out as a result of a Change), the Contractor warrants, subject to clause 2.17.1.2, that it shall **use the reasonable skill and care** in such design to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to such design of the Works.
- 2.17.1.2 To the extent permitted by the Statutory Requirements, the Contractor shall have no greater duty, obligation or liability than to exercise reasonable skill and care as provided in clause 2.17.1.1 in respect of such design and under **no circumstances shall the Contractor be subject to any duty, obligation or liability which requires than any such design shall be fit for its purpose.**

# New Relevant Events (and Relevant Matters?)

## 2.26.7 an epidemic:

2.26.7.1 first occurring after the Base Date which affects the execution of the Works; or

2.26.7.2 first occurring before the Base Date whose effects change after the Base Date and any such change affects the execution of the Works

by limiting the availability or use of labour or the availability of persons engaged in providing services for the Works where such labour and/or persons are necessary for the proper carrying out of the Works, or preventing the Contractor from, or delaying the Contractor in, securing such goods or materials or such services as are necessary for the proper carrying out of the Works;

## 2.26.8 the occurrence after the Base Date of any of the following which affects the execution of the Works:

2.26.8.1 the passing into law of any statute, statutory instrument or other subordinate legislation, regulation or bye-law, whether to make a new law or change or repeal an existing law;

2.26.8.2 the exercise of any statutory power, except to the extent caused or contributed to by any default, whether by act or omission, of the Contractor or any Contractor's Person; or

2.26.8.3 the **publication of any guidance,**

by the United Kingdom Government or any of the devolved administrations, or any Local or Public Authority or any equivalent authority governed by public law in any of the devolved administrations, or in the case of guidance by the Construction Leadership Council or its successor;

# Delay Assessments

2.24.4 If, on receiving the particulars under clause 2.24.2, or any notification under clause 2.24.3, the Employer requires such further information as is reasonably necessary to enable it to reach a decision under clause 2.25.1, then, **not later than 14 days** from receipt of the particulars or notification, it shall notify the Contractor stating the further information required, and the Contractor shall supply such further information.

2.25.2 ~~Whether or not an extension is given, t~~The Employer shall notify the Contractor of its ~~his~~ decision in respect of ~~any~~ each notice and particulars under clauses 2.24.1 and 2.24.2 and each notification (if any) under clause 2.24.3, whether or not an extension is given, as soon as is reasonably practicable and in any event **not later than 8 weeks** from the later of: ~~within 12 weeks of receipt of the required particulars. Where the period from receipt to the Completion Date is less than 12 weeks, he shall endeavour to do so prior to the Completion Date.~~

2.25.2.1 the date of receipt of the particulars or notification; or

2.25.2.2 the date of receipt of the further information required under clause 2.24.4.

Where the period from receipt to the Completion Date is less than 8 weeks, it shall endeavour to do so prior to the Completion Date.

# Liquidated Damages

2.29.5 If the Contractor's employment is terminated under this Contract:

2.29.5.1 where the date of termination occurs prior to the date of practical completion of the Works, the provisions of clauses 2.28 and 2.29 shall apply in respect of the period between the Completion Date and the date of termination, and the reference to practical completion of the Works or Section in clause 2.29.2 shall be deemed to be a reference to the date of termination;

2.29.5.2 in respect of the period **after the date of termination**, subject to clause 2.29.5.1, **the Employer shall not be empowered to require the payment of or to withhold or deduct liquidated damages** under clause 2.29 but the provisions of this clause 2.29.5.2 shall be without prejudice to and not in substitution of any other rights and remedies of the Employer.

(Principle from Triple Point Technology Inc v PTT Public Company Limited)

# Collaborative Working

## Article 3

### Collaborative working

The Parties shall work with each other and with other project team members in a co-operative and collaborative manner, in good faith and in a spirit of trust and respect. To that end, each shall support collaborative behaviour and address behaviour which is not collaborative.

[Moved from the Supplemental Provisions to the Articles]



# Environmental Performance / Sustainability

2.1.5 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Change, may result in an improvement in environmental performance and sustainability in the carrying out of the Works or of the completed Works and a reduction in environmental impact, provided that no such instruction shall extend the Contractor's obligations in relation to design under this Contract.

2.2.2 The Contractor shall provide to the Employer all information that the Employer reasonably requests regarding the environmental impact of the supply and use of materials and goods which the Contractor selects.

[Moved from the Supplemental Provisions to the main conditions]

# Site Conditions

3.15 Antiquities, asbestos, contaminated material and unexploded ordnance

3.15.3 Upon discovery of any asbestos, contaminated material or unexploded ordnance on the site or in excavating it during the progress of the Works the Contractor shall forthwith:

3.15.3.1 use its best endeavours not to disturb the material or item and cease work if and insofar as continuing work would endanger health and safety and/or life and property or prevent or impede the disposal or removal of the material or item; and

3.15.3.2 report the discovery of such material or item and the steps it is taking under clause 3.15.3.1 to the Employer.

3.15.4 The Employer shall issue instructions with respect to any material or item reported under clause 3.15.3, which (without limiting its powers) may require the Contractor to permit the investigation, disposal or removal of such material or item by a third party.

# Miscellaneous

- General updating of legislation references.
- Gender neutral language.
- Notices to be served by email (optional).
- New procedure for termination payments.
- Resolving disputes through negotiation.
- Executing via electronic signature.