

RM

Repair and Maintenance Contract
Commercial

Revision 2 2009

2009

Repair and Maintenance Contract (Commercial) (RM)

Appropriate:

- where the work involves the repair and maintenance of a building; and
- where no independent contract administrator is to be appointed.

Can be used:

- by both private and local authority employers.

Not suitable:

- for periodic repair or maintenance over a fixed term or the regular maintenance of plant etc. – consider the Measured Term Contract (MTC);
- for work on a dwelling by a residential occupier – consider the Building contract for a home owner/occupier who has not appointed a consultant to oversee the work (HO/B) or the Building contract and consultancy agreement for a home owner/occupier (HO/C), or if the work is of a very minor nature the Home Repair and Maintenance Contract (HO/RM).

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SPECIMEN

Invitation to Tender

Note: An asterisk * indicates text that is to be deleted as appropriate.

Issued by^[1]:

For repair/maintenance work at^[2]:

(Reference No _____)

To:

You are invited to tender for the repair/maintenance work details of which are set out in the documents referred to at item 1 of the attached Contract Particulars ('the Works'). If you wish to tender, please complete the Tender form included in this document.

When completed, you should sign the Tender and, for the purposes of identification, sign or initial each of the following:

- * the enclosed Drawings^[3]
- * the enclosed Specification^[3]
- * your Schedule of Rates^[4]
- * your Schedule of Hourly Charges^[4]
- * _____

[5]

[1] If issued by an agent, the name and address of the Employer for whom it is issued should also be stated.

[2] Insert location and brief reference to the general nature of the Work.

[3] Two copies of the Drawings and/or Specification should be sent to each tenderer, together with a further copy of this document.

[4] Item 2 of the Contract Particulars is intended to state whether tenders are to be made on the basis of a fixed Contract Price for the Works as a whole (subject to adjustment for Variations) or whether the price of the whole or part of the Works is to be calculated by reference to the Contractor's Schedule of Rates or, in the case of daywork, an all-in Schedule of Hourly Charges. (Where a fixed price is required for the Works as a whole, Schedules of Rates and/or Hourly Charges may nevertheless provide an appropriate basis for valuing variations.)

The Employer/issuer, when completing item 2, should also make appropriate deletions in the Tender form prior to issue.

[5] Specify any other descriptive document referred to in item 1 of the Contract Particulars or which tenderers are required to supply.

This complete document (RM), together with one signed or initialled copy of each of those other documents, should then be returned to

_____ at _____

so as to be received not later than _____ hours on the _____ day of _____, 20_____

(The additional copies of each of the documents supplied by us are for you to retain.)

Tenders should remain open for acceptance for no less than _____ days from the closing date stated above.

Signed by or on behalf of _____

Signature: _____

Position: _____

Date: _____ 20_____

SPCCN

Contract Particulars

Note: An asterisk * indicates text that is to be deleted as appropriate.

(References in these Particulars to clauses are to the clauses in the attached Conditions.)

1 Description of the Works

The Works are those shown and/or described in the enclosed^[6]:

* Drawings, numbered _____

; and/or

; and/or

2 Basis of pricing

(Fixed price/daywork or other rates^[7])

CS

[6] If documents other than Drawings or a Specification are used, the references here and in the Invitation to Tender should be adjusted accordingly.

[7] State the required basis of pricing, which should then be reflected in the Contract Price section of the Tender. If the Works or part(s) of them are to be tendered for on the basis of daywork or other rates, the basis on which each item of Work is to be performed should be stated clearly either here or in a document identified here.

The Contract provides that daywork labour rates shall be given by way of all-in hourly rates (inclusive of incidental costs, overheads and profit) in a Schedule of Hourly Charges and provides for a percentage to be added to the cost of materials.

3 Time of payment(s)^[8]

The Contract Price is to be paid:

* by a single payment on completion of the Works

(or)

* by the instalments stated below on completion of the following stages:

The diagram illustrates the relationship between Stage and Payment. On the left, the word "Stage" is positioned above five horizontal lines. On the right, the word "Payment" is positioned above five horizontal lines. A series of diagonal lines connect the first four horizontal lines of the Stage row to the first four horizontal lines of the Payment row, representing a mapping or relationship between the two stages.

4 Conditions of Contract

The terms and conditions that are to apply to the Contract are those set out in the Conditions, and these include the Supplemental Provisions set out in the Schedule and identified below:

(Where neither entry against an item below is deleted, the relevant paragraph of the Schedule applies.)

Collaborative working	* Paragraph 1 * applies/does not apply
Health and safety	* Paragraph 2 * applies/does not apply
Cost savings and value improvements	* Paragraph 3 * applies/does not apply
Sustainable development and environmental considerations	* Paragraph 4 * applies/does not apply
Performance Indicators and monitoring	* Paragraph 5 * applies/does not apply
Notification and negotiation of disputes	* Paragraph 6 * applies/does not apply

[8] Where the duration of the Works is stated or estimated to be 45 days or more, there will generally be a legal right to instalment payments (see section 109, Housing Grants, Construction and Regeneration Act 1996).

Where paragraph 6 applies, the respective nominees of the Parties are

Employer's nominee

Contractor's nominee

or such replacement as each Party may notify to the other from time to time

The Contract is supplemented by the Framework Agreement identified below^[9]:

5 Commencement and completion^[8]
(Clause 2.2)

The Works shall be commenced on _____ 20_____

and, subject to the Conditions, shall be completed by _____ 20_____

6 Access, facilities and site regulations
(Clauses 2.3.2 and 3.1.1)

Access to areas where the work is to be carried out^[10] will be given on _____

between _____ and _____ hours.

The premises *will be occupied/will not be occupied while the works are being carried out.

[9] State date, title and parties of any Framework Agreement that apply to the Contract.

[10] State whether access is to be given for the whole of the period mentioned in item 5 above or specify the days/dates on which access is to be given, and in either case specify the hours of access.

The Employer will provide free of charge (unless otherwise stated) the use of^[11]:

Regulations applicable to the Works are those set out in

7 Rectification Period
(Clause 2.5)

The Rectification Period is _____ weeks^[12]
(The period is 6 weeks unless a different period is stated.)

8 Employer's representative
(Clause 3.2)

The Employer's representative is _____ [14]

9 Contractor's insurance – injury to persons or property
(Clause 5.4.2)

Insurance cover (for any one occurrence or series of occurrences arising out of one event) £_____

[11] Specify facilities (including any electricity, water, telephone, toilet and washing facilities, materials and/or equipment) to be supplied by the Employer.

[12] Employer to identify (and to make available copies of) any applicable site regulations.

[13] If a 6 week period is not sufficient, having regard to the nature of the Works, an appropriate longer period should be inserted.

[14] Leave blank if no appointment has been made or decided upon.

Tender by Contractor

Note: An asterisk * indicates text that is to be deleted as appropriate.

To: _____

From: _____

Repair/maintenance work at: _____

(Reference No _____)

We note the information set out in the Contract Particulars and have examined the documents referred to in them. We return with this Tender one signed or initialled copy of each of the documents as requested in the Invitation to Tender.

Contract Price^[15]

On the basis of that information and those documents we offer to carry out the Works in accordance with the Conditions for:

* a fixed price of £ _____

for the Works as a whole

(or)

* a fixed price of £ _____

for the fixed-price element of the Works as identified in the Contract Particulars (item 2)

plus the price of the other works to be calculated in accordance with:

* the attached Schedule of Rates

* the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the attached Schedule of Hourly Charges; the invoices for materials supplied (plus _____ % for profit and overheads)

[15] The issuer should prior to issue to tenderers insert the name of the Employer as the addressee and make appropriate deletions or adaptations to accord with the Invitation to Tender and item 2 of the Contract Particulars.

(or)

* a price for the works as a whole to be calculated in accordance with:

* the attached Schedule of Rates

* the all-in labour rates (inclusive of incidental costs, overheads and profit) set out in the attached Schedule of Hourly Charges; the invoices for materials supplied (plus _____ % for profit and overheads)

The price and/or any rates given are **exclusive of VAT** and the price is subject to adjustment in accordance with the Conditions.

We are:

* Registered for VAT/
* Not registered for VAT

VAT registration number _____

This tender remains open for acceptance for the period stated in the Invitation to Tender, or for such longer period as we may agree.

Signed by or on behalf of _____

Signature: _____

Position: _____

Date: _____ 20____

Accepted by or on behalf of the Employer^[16]

Signature: _____

Position: _____

Date: _____ 20____

CS

[16] On acceptance, the Employer must sign and return a copy of the accepted Tender to the Contractor.

Conditions

Section 1 Definitions and Interpretation

Definitions

1.1 Unless the context otherwise requires, the following words or phrases where they appear in capitalised form in these Conditions shall have the following meanings:

Word or phrase	Meaning
Conditions:	the clauses set out in sections 1 to 7, together with and including the Schedule hereto.
Construction Industry Scheme (or CIS):	the Construction Industry Scheme under the Finance Act 2004.
Contract Price:	the sum specified and/or the amount calculated in accordance with the rates and prices stated in the Contract, exclusive of VAT and adjusted in accordance with these Conditions.
Insolvent:	insolvent, within the meaning of section 113 of the Housing Grants, Construction and Regeneration Act 1996.
Parties:	the Employer and the Contractor together.
Party:	the Employer or the Contractor.
Rectification Period:	the period of 6 weeks (or such other period as is stated in the Contract Particulars (item 7)) from the completion of the Works.
Site Materials:	all unfixed materials and goods delivered to and placed on or adjacent to the Works which are intended for incorporation therein.
Variation:	any variation or change in the Works.
VAT:	Value Added Tax.
Works:	the works as described in the documents listed in the Contract Particulars (item 1) , subject to any Variations.

Interpretation

1.2

- Unless otherwise expressly agreed in writing, nothing in the documents referred to in the Contract Particulars (item 1), nor anything in any Framework Agreement, shall override or modify the provisions of the accepted Tender or of these Conditions.
- A reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification. A reference to legislation includes any regulation or bye-law of any local authority or statutory undertaker applicable to the Works.
- Notwithstanding any other provision of the Contract, nothing in the Contract confers or is intended to confer any right to enforce any of its terms on any person who is not a party to it.

continued 1·2

- 4 Any notice under the Contract may be given by any effective means. In the absence of any agreed address, a notice shall be treated as effectively given if addressed and sent by pre-paid post to the addressee's last known principal business address or, where the addressee is a body corporate, its registered or principal office.

Applicable law

- 1·3 The Contract shall be governed by and construed in accordance with the law of England and the English Courts shall have jurisdiction over any dispute or difference that may arise.^[17]

Section 2 Carrying out the Works

Contractor's obligations

- 2·1 ·1 The Contractor shall carry out and complete the Works in a regular, diligent and competent manner, in accordance with the Contract and all applicable legislation.
- 2 The Contractor shall take all reasonable steps to encourage employees and agents of the Contractor and sub-contractors employed in the execution of the Works to be registered cardholders under the Construction Skills Certification Scheme (CSCS) or qualified under an equivalent recognised qualification scheme.

Commencement and completion

- 2·2 The Works may commence on and shall be completed by the respective dates stated in the Contract Particulars (item 5).

Employer's duties

- 2·3 The Employer shall provide to the Contractor:
 - 1 in writing and in due time, any further information and instructions that the Contractor reasonably requires in order to carry out the Works by the date fixed for their completion; and
 - 2 the access to areas and facilities stated in the Contract Particulars (item 6).

Extension of time

- 2·4 If the Contractor is delayed by the Employer or for any reason beyond the Contractor's control, the Employer shall fix a fair and reasonable revised date for completion of the Works. The Contractor shall constantly use all reasonable endeavours to prevent or minimise any delay in the progress of the whole or any part of the Works.

Defects

- 2·5 ·1 The Contractor at no cost to the Employer shall promptly on being notified make good any defects in the Works which appear within the Rectification Period and which result from materials and/or workmanship not being in accordance with the Contract. The Employer will give prompt notice of any defects and give reasonable access for making good.
- 2 If the Contractor fails promptly to make good any defects of which notice is given under clause 2·5·1, the Employer may employ other contractors to do so and shall be entitled to deduct or recover as a debt the costs of doing so.

[17] Where the Parties do not wish the law applicable to the Contract to be the law of England appropriate amendments should be made.

Section 3 Control of the Works

Contractor's undertakings

3.1 The Contractor:

- 1 shall keep the working areas tidy and comply with any regulations identified in the Contract Particulars (item 6);
- 2 shall provide to the Employer any information that the Employer may reasonably require as to the methods and materials used or to be used in carrying out the Works and/or as to their conformity with the Contract;
- 3 shall promptly comply with all reasonable written instructions given by the Employer;
- 4 shall not assign the benefit of the Contract; and
- 5 shall not sub-contract the Works or any part(s) of them except with the prior written consent of the Employer. Such consent shall not be unreasonably delayed or withheld but shall not affect the Contractor's responsibility for carrying out and completing the Works.

Employer's representative

3.2

The Employer may at any time on giving notice in writing to the Contractor appoint a person to act as his representative for the purposes of the Contract and may at any time on giving such notice remove or replace the representative. Without affecting the rights of the Employer under clause 3.4, neither the Employer nor any replacement representative may disregard any instruction duly given by a predecessor representative.

Giving instructions

3.3

If the Employer gives any instructions orally, those instructions shall promptly be confirmed to the Contractor in writing.

Variations

3.4

The Employer may at any time give instructions for Variations provided that they are of a nature and scale that is reasonable relative to the scope of the Works as originally described in the Contract.

Valuation of Variations

3.5

If instructions are given for a Variation, the Contract Price shall be adjusted accordingly. The Employer and the Contractor shall in each case use all reasonable endeavours to pre-agree the amount of that adjustment, failing which it shall be valued by the Employer on a fair and reasonable basis. Where and insofar as there are under the Contract agreed daywork or other rates that apply to work of the type in question, such valuation shall where appropriate be made by reference to the agreed rates, but due account shall be taken of the cost to the Contractor of any additional work for which instructions are given (or the saving from any omission) and also of any loss and/or expense arising directly from the effects of the instruction on the regular progress of the Works.

Daywork returns

3.6

Where the Works or any part of them (including any Variations) are to be carried out on the basis of daywork rates, the Contractor shall not later than the end of the week following that in which the work has been carried out deliver to the Employer in such form as the Employer may reasonably require a return giving full details of the labour, materials and plant for the relevant week.

Section 4 Payment

VAT

4·1 The Contract Price is exclusive of VAT and in relation to any payment to the Contractor under the Contract, the Employer shall in addition pay the amount of any VAT properly chargeable in respect of it.

Construction Industry Scheme (CIS)

4·2 If the Employer is or at any time up to the payment of the final certificate becomes a 'contractor' for the purposes of the CIS, the obligation of the Employer to make any payments under the Contract is subject to the provisions of the CIS.

Interim invoices

4·3 Where the Contract provides for payment by instalments, the Contractor on completion of the Works comprised in the relevant stage shall send the Employer an itemised invoice for such instalment, adjusted for the agreed value or any valuation of Variations of the part(s) of the Works comprised in that stage and showing any VAT chargeable.

Final invoice

4·4 On completion of the Works the Contractor shall send the Employer an itemised invoice for the Contract Price, adjusted for the agreed value or valuation of all Variations and after deducting the aggregate amount of any instalment payments previously invoiced. The invoice shall also show any VAT chargeable.

Final date for payment

4·5 The final date for payment of each duly invoiced amount, including VAT, shall be 14 days after the date of receipt by the Employer of that invoice.

Notices of amounts to be paid and deductions

4·6 ·1 Not later than 5 days after receipt of an invoice issued under clause 4·3 or 4·4 the Employer shall give a written notice to the Contractor, stating the amount of the payment proposed to be made in respect of it, to what the amount relates and the basis on which the amount has been calculated.

·2 Not later than 5 days before the final date for payment of the amount due in respect of that invoice, the Employer may give a written notice to the Contractor which shall specify any amount proposed to be withheld or deducted from the invoiced amount, the ground or grounds for such withholding or deduction and the amount of the withholding or deduction attributable to each item and ground.

·3 Subject to any notice given under clause 4·6·2, the Employer shall pay the amount specified in the notice under clause 4·6·1 or, in the absence of a notice under clause 4·6·1, the amount due to the Contractor determined in accordance with the Contract.

Failure to pay amount due

4·7 If the Employer fails properly to pay the amount, or any part of it, due to the Contractor under these Conditions by the final date for its payment, the Employer shall, in addition to the amount not properly paid, pay the Contractor simple interest on the overdue amount at the rate of 5% per annum above the official dealing rate of the Bank of England at the final date for payment for the period until payment is made. Interest under this clause 4·7 shall be a debt due to the Contractor by the Employer. Acceptance of a payment of interest under this clause 4·7 shall not in any circumstances be construed as a waiver of the Contractor's right to proper payment of the principal amount due, to suspend performance under clause 4·8 or to terminate his employment under section 6.

Contractor's right of suspension

4.8 Without affecting the Contractor's other rights and remedies, if the Employer, subject to any notice issued pursuant to clause 4.6.2, fails to pay the Contractor in full (including any VAT properly chargeable in respect of such payment) by the final date for payment as required by these Conditions and the failure continues for 7 days after the Contractor gives written notice to the Employer of his intention to suspend performance of his obligations under the Contract and the ground or grounds on which it is intended to suspend performance, the Contractor may suspend such performance until payment is made in full.

Section 5 Indemnities and Insurance

Liability of Contractor – personal injury or death

5.1 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever in respect of personal injury to or death of any person arising out of or in the course of or caused by the carrying out of the Works, except to the extent that the same is due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

Liability of Contractor – injury or damage to property

5.2 The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage whatsoever to any property real or personal (other than loss, injury or damage to the Works and/or Site Materials) in so far as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the Works and to the extent that the same is due to any negligence, breach of statutory duty, omission or default of the Contractor or any person employed or engaged by the Contractor on or in connection with the Works or any part of them.

Employer's insurance

5.3 The Employer shall, prior to the Contractor coming onto the premises, duly notify his existing structures and contents insurers of the arrangements for carrying out the Works but (unless otherwise agreed in writing) shall not be obliged to effect any cover for the Contractor or any sub-contractor under such insurances.

Contractor's insurance^[18]

5.4 Prior to coming onto the premises the Contractor shall (unless otherwise agreed pursuant to clause 5.3):

- 1 take out and maintain until completion of the Works, a 'contractor's all risks' policy in the names of the Contractor and the Employer for the full reinstatement cost of the Works; and
- 2 take out and maintain until the expiry of the Rectification Period or (if later) completion of making good in accordance with clause 2.5.1, a public liability insurance policy for death or injury to people and damage to property, under which the limit of indemnity for any one occurrence or series of occurrences arising out of one event is not less than the amount specified in the Contract Particulars (item 9),

and shall on request promptly produce to the Employer such evidence as the Employer may reasonably require to establish that such policies have been taken out and are being maintained.

Damage to the Works etc.^[18]

5.5 If prior to completion of the Works there is loss of or damage to any work executed or Site Materials from a risk covered by the contractor's all risks policy, notice shall immediately be given to the other Party and, by the Party responsible for insuring the Works, to the insurers. Unless otherwise agreed:

[18] See the Guidance Notes.

continued 5.5

- 1 following any inspection required by insurers, the Contractor shall promptly remove and dispose of any debris and continue to carry out and complete the Works;
- 2 insurance monies shall be paid to the Employer who at the time of payment for the Works or for any related stage of them shall reimburse the Contractor for the costs of restoration, repair and replacement work but only up to the total amount of those monies;
- 3 the occurrence shall otherwise be disregarded in computing amounts payable under the Contract.

Section 6 Termination

Termination – breach or insolvency

6.1 Each Party ('the terminating Party') shall be entitled by written notice to the other Party to terminate the Contractor's employment under the Contract forthwith if the other Party at any time:

- 1 is in material breach of his obligations under the Contract which he fails to rectify within 7 days of a written warning from the terminating Party specifying the breach and requiring that it be remedied within that period; or
- 2 is Insolvent.

In the event of such termination the terminating Party shall be entitled to recover from the other Party the amount of any resultant loss, damage and/or expense incurred by the terminating Party which he would not have incurred had the Contract been duly performed in full.

Termination – corruption

6.2 The Employer shall be entitled by notice to the Contractor to terminate the Contractor's employment, under this or any other contract with the Employer if, in relation to this or any other such contract, the Contractor or any person employed by him or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 to 1916, or, where the Employer is a Local Authority, shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972.

Other rights

6.3 The provisions of section 6 are without prejudice to any other rights or remedies available to either Party.

Section 7 Settlement of Disputes

Mediation

7.1 Subject to clause 7.2, if a dispute or difference arises under the Contract which cannot be resolved by direct negotiations, each Party shall give serious consideration to any request by the other to refer the matter to mediation.

Adjudication

7.2 Either Party may at any time refer any dispute or difference arising under the Contract to adjudication in accordance with the provisions of Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998 except that the adjudicator nominating body shall be:

Royal Institute of British Architects;

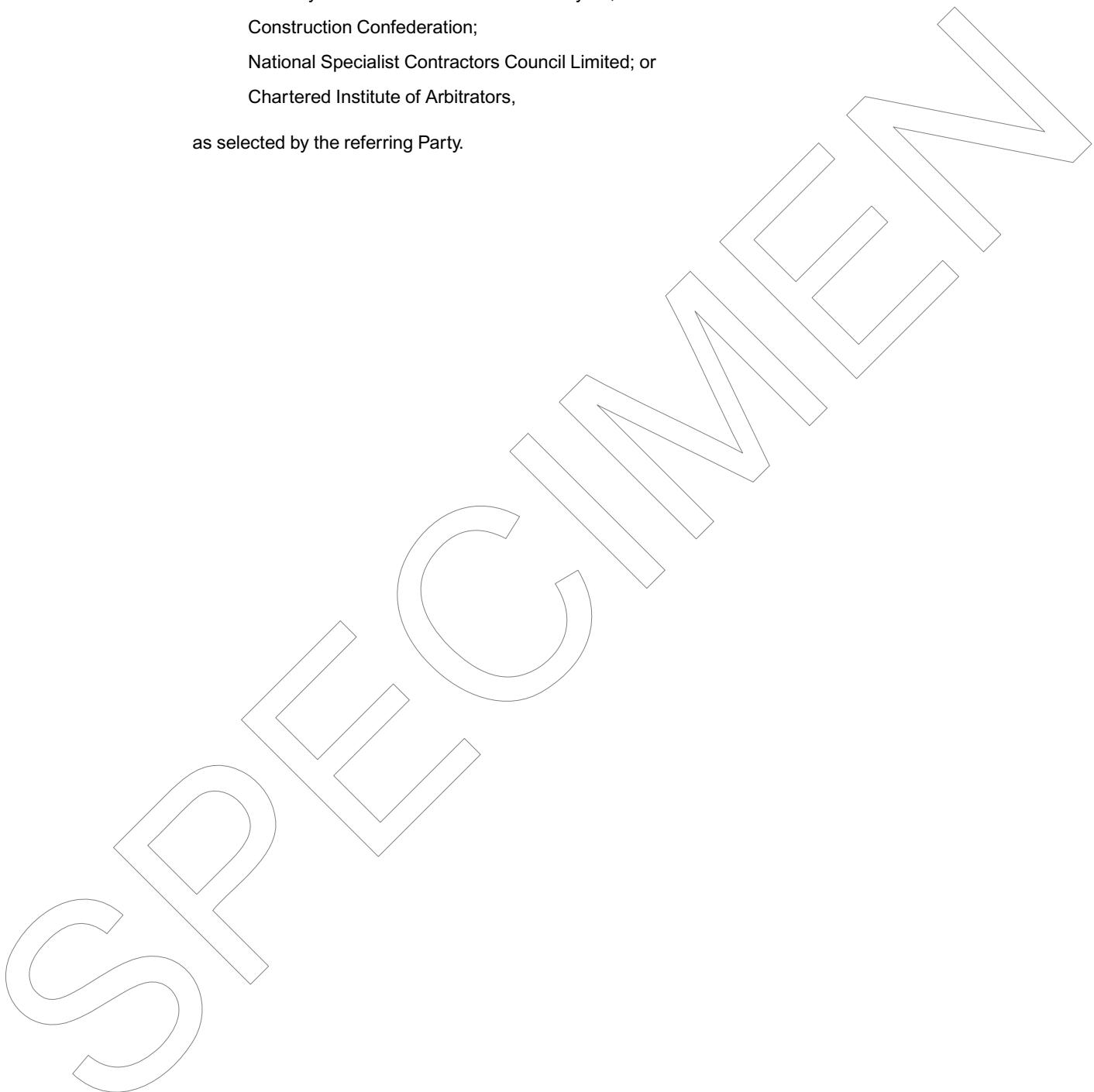
The Royal Institution of Chartered Surveyors;

Construction Confederation;

National Specialist Contractors Council Limited; or

Chartered Institute of Arbitrators,

as selected by the referring Party.



Schedule Supplemental Provisions

Each provision applies unless otherwise stated in the Contract Particulars (item 4).

Collaborative working

- 1 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.

Health and safety

- 2 ·1 Without limiting either Party's statutory and/or regulatory duties and responsibilities and/or the specific health and safety requirements of the Contract, the Parties will endeavour to establish and maintain a culture and working environment in which health and safety is of paramount concern to everybody involved with the project.
- 2 In addition to the specific health and safety requirements of the Contract, the Contractor undertakes to:
 - 1 comply with any and all approved codes of practice produced or promulgated by the Health and Safety Executive and/or the Health and Safety Commission;
 - 2 ensure that all personnel engaged by the Contractor and members of the Contractor's supply chain on site receive appropriate site-specific health and safety induction training and regular refresher training;
 - 3 ensure that all such personnel have access at all times to competent health and safety advice in accordance with regulation 7 of the Management of Health and Safety at Work Regulations 1999; and
 - 4 ensure that there is full and proper health and safety consultation with all such personnel in accordance with the Health and Safety (Consultation with Employees) Regulations 1996.

Cost savings and value improvements

- 3 ·1 The Contractor is encouraged to propose changes to designs and specifications for the Works and/or to the programme for their execution that may benefit the Employer, whether in the form of a reduction in the cost of the Works or their associated life cycle costs, through practical completion at a date earlier than the date for completion or otherwise.
- 2 The Contractor shall provide details of his proposed changes, identifying them as suggested under this paragraph 3, together with his assessment of the benefit he believes the Employer may obtain, expressed in financial terms, and a quotation.
- 3 Where the Employer wishes to implement a change proposed by the Contractor, the Parties shall negotiate with a view to agreeing its value, the financial benefit and any adjustment to the date for completion. Upon agreement, the change and the amount of any adjustment of the Contract Price shall be confirmed in an Employer's instruction, together with the share of the financial benefit to be paid to the Contractor and any adjustment to the date for completion.
- 4 Original proposals by the Contractor under this paragraph 3 may only be instructed in accordance with it, provided always that nothing shall prevent the Employer from utilising other contractors to implement such changes after practical completion of the Works.

Sustainable development and environmental considerations

- 4 ·1 The Contractor is encouraged to suggest economically viable amendments to the Works which, if instructed as a Variation, may result in an improvement in environmental performance in the carrying out of the Works or of the completed Works.

continued 4

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

Performance Indicators and monitoring

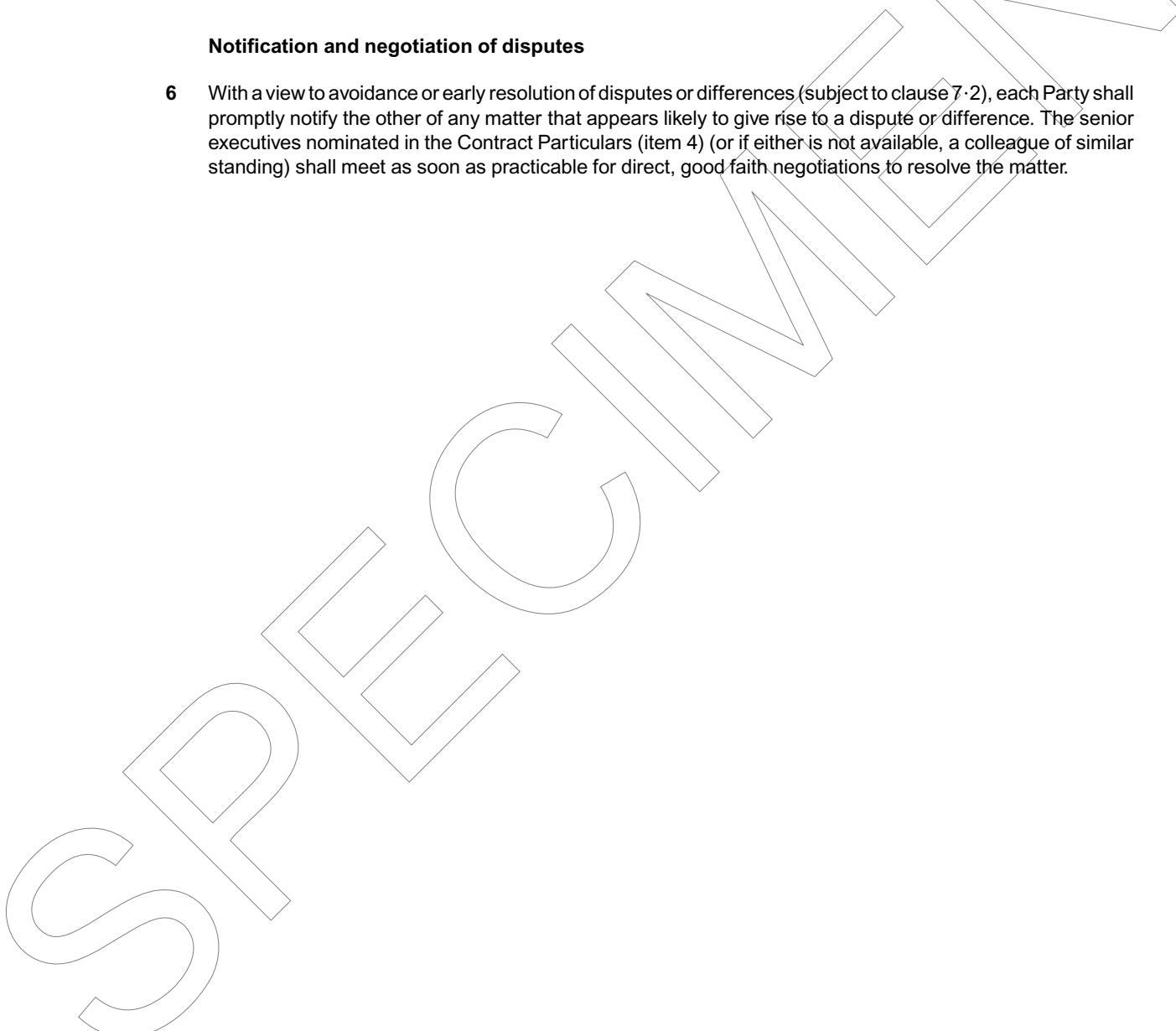
5 ·1 The Employer shall monitor and assess the Contractor's performance by reference to any performance indicators stated or identified in the contract documents.

·2 The Contractor shall provide to the Employer all information that he may reasonably require to monitor and assess the Contractor's performance against the targets for those performance indicators.

·3 Where the Employer considers that a target for any of those performance indicators may not be met, he may inform the Contractor who shall submit his proposals for improving his performance against that target to the Employer.

Notification and negotiation of disputes

6 With a view to avoidance or early resolution of disputes or differences (subject to clause 7·2), each Party shall promptly notify the other of any matter that appears likely to give rise to a dispute or difference. The senior executives nominated in the Contract Particulars (item 4) (or if either is not available, a colleague of similar standing) shall meet as soon as practicable for direct, good faith negotiations to resolve the matter.



Guidance Notes

Use and Format

- 1 The Repair and Maintenance Contract (Commercial) (RM) is intended for use on individual, substantially defined, programmes of repair and/or maintenance work on specified buildings or sites.
- 2 The primary users of RM are envisaged as being local authorities and other employers who regularly place small and medium-size contracts for jobbing work and are sufficiently experienced both in placing contracts and in dealing with Contractors' accounts that there is no requirement for administration of the Contract by an independent contract administrator.
- 3 Where there is a requirement for repair and maintenance programmes over the whole or a substantial part of a local authority area or other more substantial programmes with possible requirements for work of a type and/or at a time that cannot be predicted at the outset, but where the Employer wishes to select a contractor or contractors willing to take on such orders as need arises, users should consider the JCT Measured Term Contract and/or consult www.jctcontracts.com to assist in the selection of the appropriate form.
- 4 RM is published as a single document, comprising both the Tender (with its accompanying Invitation to Tender and form of acceptance) and the Conditions.
- 5 Where RM Conditions are to be incorporated by reference in an Employer's order, the Invitation to Tender and the Tender should be marked as 'not used' but the information set out in the Contract Particulars must be inserted in the order. Where the original programme is tendered and contracted for on the basis of the RM Tender, further or extended orders can be issued and accepted by reference to the Tender and the agreed rates and prices.

Invitation to Tender and Tender

- 6 The Invitation to Tender includes a Contract Particulars section and this, like the Invitation itself, should be completed by the Employer or his representative. These Particulars are intended to make available to the tenderer as much information on the variable contract terms as is practicable, thereby simplifying the terms of the Tender itself.
- 7 RM is flexible in terms of price in that it enables the Employer to seek quotes on the basis of a fixed price and/or of daywork or other rates, using either a Schedule of Rates or all-in labour rates in a Schedule of Hourly Charges (see item 2 of the Contract Particulars). RM also makes express provision for payment either by a single payment or by stage payments, at the same time noting the statutory right to instalment payments that may arise under the Housing Grants, Construction and Regeneration Act 1996 (see item 3 of the Contract Particulars).
- 8 The terms that are to apply are those set out in the Conditions and these include each of the Supplemental Provisions that are identified to apply in the Contract Particulars (item 4). Each of the Supplemental Provisions listed in item 4 applies unless "applies" against the provision is deleted. This item should also give the date, title and parties of any applicable Framework Agreement.
- 9 In completing the Invitation to Tender, it is important that items 5 and 6 of the Contract Particulars be duly completed, so that there is clear agreement on the commencement date for the work, its completion date, matters of access, site facilities to be provided by the Employer and conduct on site.
- 10 RM makes no provision for liquidated damages for delay: where these are appropriate, the Minor Works Building Contract (MW 2005) should generally be used.

- 11 Assuming the Employer's requirements are clearly set out in the Contract Particulars, completion by tenderers of the Tender form itself should be relatively straightforward.
- 12 It is important that copies of the Drawings, Specification and/or other description documents be signed or initialled by the Contractor and returned with the Tender, as requested by the Invitation. In the case of the successful Tender, it is important that the Employer on acceptance should sign the form of acceptance in the Tender and return a copy of it to the Contractor.

Conditions

- 13 Section 1 deals with Definitions and Interpretation, section 2 with the Carrying out the Works, section 3 with the Control of the Works (including provisions for Variations) and section 4 with the Payment provisions. Each is in straightforward and generally self-explanatory terms. As respects sections 5 to 7, the Schedule and applicable legislation (as referred to in clause 2.1), the following may be noted.

Insurance

- 14 Section 5, at clauses 5.1 and 5.2, provides for indemnities from the Contractor in relation to any personal injury, death or damage to property that may arise from his negligence or that of persons for whom he is responsible. Against those risks, in addition to his statutory obligation to maintain Employer's liability insurance, the Contractor is by clause 5.4.2 contractually bound to maintain a public liability policy for the amount specified in the Contract Particulars (item 9); that liability will ordinarily include any damage by the Contractor or his sub-contractors to existing structures or their contents.
- 15 In relation to the Works and Site Materials, clause 5.4.1 provides for the Contractor to take out and maintain a 'contractor's all risks' (CAR) policy, a policy which normally he will already have.
- 16 Clause 5.3 allows for possible extension of the Employer's insurance cover for existing structures and contents to give 'Specified Perils' cover to the Contractor. That insurance may where available be further extended to give cover for the Contractor, as well as to the Employer himself, for the Works and Site Materials.
- 17 Those extensions are not always available and may involve insurers' reservation of rights of recourse against the Contractor. However, if the existing structures/contents extension is available and if the Parties agree in writing, it may be of use where, because of the value involved, the level of cover would be too high for the Contractor to shoulder on his own account under his public liability cover.
- 18 Prior to a decision as to the course to be followed, the Parties should consult their insurance advisers.

Termination

- 19 RM contains (at clause 6.1) provisions for termination of the Contractor's employment by either Party in the case of the other's breach or insolvency and for the recovery of any loss, damage and/or expense arising. Such termination does not affect the rights of either Party (clause 6.3).

Settlement of Disputes

- 20 Section 7, at clause 7.1, includes reference to mediation as a means of dispute resolution that the Parties should consider and, at clause 7.2, includes provisions for adjudication.
- 21 With the right to adjudication, arbitration no longer appears appropriate to works of the scale envisaged by RM and there is no provision for it in the contract, but the Parties remain free to agree to arbitrate any dispute should they so wish.

Applicable legislation – CDM Regulations 2007

- 22 In addition to Building Regulations and those regulations relating to utilities, fire safety etc., applicable Health, Safety and Welfare legislation includes the Work at Height Regulations 2005 and the Construction (Design and Management) Regulations 2007 (CDM Regulations 2007).

23 Attention is drawn to the fact that, in addition to incorporating certain site welfare provisions, the CDM Regulations 2007 impose health and safety duties (e.g. as to information, competence, co-operation, co-ordination and preventive steps) on clients, designers, contractors and sub-contractors at all levels, whether or not the project in question is notifiable under the regulations.

Schedule (Supplemental Provisions)

24 The Schedule contains Supplemental Provisions that are intended to encourage collaborative working and to achieve value and environmental improvements.

Revision 2 changes

The following provisions in Revision 2 2009 contain textual changes. The provisions with substantive textual changes have been identified with *.

Revision 2 2009 numbering

Contract Particulars (entries)
Item 4*

Conditions (clauses)

1·1: Conditions*
1·2·1*
2·2
3·1·1
4·6·1, 4·6·2
4·7*
4·8*
5·4·2
7·1*

Schedule*

RM User Checklist

A checklist of the key information that will help you to complete the Invitation to Tender may be downloaded from the JCT website.

SP
CS

Repair and Maintenance Contract
Commercial
Revision 2 2009



Members

British Property Federation Limited
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