

Conditions of Contract
for
Private Sector Building and Engineering Works
Designed by the Employer



Schedule

Version 1.1 – 4 May 2021

SCHEDULE - PART 1

PART 1A Employer's Representative and Communications (Sub-clauses 4.3 and 4.14)

Details for sending notices under clauses 12 and 13 to the Employer are:

For the attention of:

Address:

Details for sending other notices and communications to the Employer are:

For the attention of:

Address:

eMail:

The Employer's Representative is:

Details for sending notices and other communications to the Employer's Representative are:

For the attention of:

Address:

eMail:

Names of individuals (no more than 3) who will represent the Employer in any matter arising under clause 13.1 of the Contract :

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PART 1B Documents

The **Works Requirements** are:

The **Bill of Quantities, and the rules of measurement in accordance with which it has been prepared,** is:

The **Works Proposals** are:

Parts of the Works to be designed by the Contractor or its subcontractors (sub-clause 8.1.1):

PART 1C Project Supervisor (Sub-clause 2.4)

The Contractor, or an individual or body corporate named in the Work Proposals, is to be appointed project supervisor for the construction stage for the Works and any other work on the Site between the Starting Date and the date of Substantial Completion of the Works contemplated in the Works Requirements.

Part 1D Insurance (Clause 3)

Insurance of the Works: minimum amount insured for professional fees¹ of the Contract Sum.

- Minimum indemnity limit for Public liability insurance:². for any one event, but this limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution.
- Minimum indemnity limit for Employers' liability insurance:³. for any one event.
- Maximum excess for Insurance of Works and other Risk items:⁴.
- Maximum excess for Public liability and Employer's liability:⁵.

Permitted exclusions from all Insurances

- War, invasion, act of foreign enemies, hostilities [whether war is declared or not], civil war, rebellion, revolution, insurrection or military or usurped power
- Pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds
- Contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor or the Contractor's Personnel
- Terrorism
- Asbestos

Permitted exclusions from insurance of the Works and other Risk Items

- Use or occupation of the Works by the Employer except in connection with the Works
- Unless otherwise specified in the Works Requirements, cost of making good defects in the Works but not damage caused by such defects to other sound parts of the Works
- Wear, tear, normal upkeep or normal repair or gradual deterioration
- Inventory losses
- Loss of use or any consequential loss of any nature including penalties for delay, non-completion or non-compliance
- Failure of information technology
- Mechanical or electrical breakdown but not resulting damage
- Cessation of the Works for more than 3 months

1 If no percentage stated, 12½% applies.

2 If no minimum specified, €6,500,000 applies.

3 If no minimum stated, €13,000,000 applies.

4 If no amount stated, €10,000 applies.

5 If no amount stated, €6,500 applies.

Permitted exclusions from public liability insurance:

- Persons under a contract or service or apprenticeship with the insured
- Property of the insurance or in the insured’s custody or control other than existing premises and their contents temporarily occupied for the purposes of the Works
- Defective workmanship or materials but not resulting damage
- Mechanically propelled vehicles within the meaning of the Road Traffic Acts
- Loss or damage due to design for a fee or for which a fee would normally be charged / design / defective workmanship, materials or design, but including its consequences (Delete two. If none deleted, permitted exclusion is “loss or damage due to design for a fee or for which a fee would normally be charged”).
- Gradual pollution or contamination
- Territorial limits
- Unless otherwise specified in the Works Requirements, aircraft and waterborne craft
- Fines, penalties, liquidated damages

Permitted exclusions from employer's liability insurance:

- Offshore work
- Liability compulsorily insurance under the Road Traffic Acts

Permitted exclusions from professional indemnity insurance

- Persons under a contract of service or apprenticeship with the insured.
- Ownership, use, occupation or leasing of mobile or immobile property
- Effecting or maintenance of insurance of or in connection with the provision of finance or advice on financial matters
- Dishonest, malicious, criminal or deliberate illegal acts
- Libel and slander
- Insolvency
- Fines, penalties, liquidated damages or any penal, punitive, exemplary, non-compensatory or aggravated damages
- Failure of information technology
- Contractual liability that would not apply in the absence of the contract

Optional insurance provisions

Clause 3.8 shall/shall not apply. (Delete as appropriate. Default position is 3.8 does not apply)

Insurance of the Works and other Risk Items, under sub-clause 3.3.4, shall include the following property of the Employer, other than the Works and Works Items:

and the minimum sum for which this property is to be insured shall be €.....

If Insurance of the Works and other Risk Items is to include terrorism cover, the minimum sum insured shall be €.....

The Contractor is/is not required to extend the insurance of the Works and other Risk Items for a Section that has reached Substantial Completion until the Employer’s Representative issues the certificate of Substantial

Completion for the whole Works.(Delete as appropriate. Default position is Contractor not required to extend the insurance)

Required extensions to Insurance

Professional indemnity insurance is/is not required. (Delete as appropriate. Default position is professional indemnity insurance not required) If required, the professional indemnity insurance is to be kept in place for _____ years after Substantial Completion of the Works is certified by the Employer's Representative. If required, the minimum indemnity limit for professional indemnity insurance shall be €..... for each and every claim or series of claims arising from the same originating cause / annual aggregate limit (Delete one. If none deleted, read as "annual aggregate limit"). The maximum excess shall be⁶.

Part 1E Performance Bond (Sub-clause 1.5)

A performance bond is/is not required. (Delete as appropriate. Default position bond is required)

The amount of the performance bond shall be⁷ of the initial Contract Sum up to certification of Substantial Completion of the Works, and⁸ of the initial Contract Sum for the subsequent period stated in the form of bond in the Works Requirements / 450 days after that. (Delete one. If none deleted, read as "450 days after that").

Part 1F(1) Collateral Warranties (Sub-clauses 5.6, 9.1.2(6) and 11.4.1)

Collateral Warranties are required from the following categories of Specialists and Subcontractors:-

Category of Specialist/ Subcontractor	Date for Warranty	Amount Withheld (11.4.1)	Minimum indemnity limit for professional indemnity insurance	Maximum excess for professional indemnity insurance

6 If no amount specified, €50,000 applies.

7 If no percentage stated, 10% applies.

8 If no percentage stated, 5% applies.

Part 1F(3) Novated & Named Specialists (Sub-clause 5.4)

Name of Specialist	Design Responsibility	Specialist Form of Contract	Specialist Contract Value	Specialist Contract Works Requirements Reference	Contact Details of Specialist
			€		
			€		
			€		
			€		
			€		
			€		
			€		
			€		

Part 1F(4) Nominated Specialists (Sub-clause 5.5)

Category of Specialist	Specialist Form of Contract	Prime Cost Sum
		€
		€
		€
		€
		€
		€
		€
		€

Part 1G Dates for Substantial Completion, Sections, Liquidated Damages, Retention

	Date or period for Substantial Completion	Rate of liquidated damages	Reduction in retention on Substantial Completion of Section (%)
The Works		€ per	
Section: (Employer to complete names of sections)		€ per	
Section: (Employer to complete names of sections)		€ per	
Section: (Employer to complete names of sections)		€ per	
Section: (Employer to complete names of sections)		€ per	

Part 1H Provision of Site

(Sub-clause 7.1)

Date on which the Site (or a part of the site as set out in the Works Requirements) is to be provided.

Part 1I Defects PeriodThe initial Defects Period is⁹ from the date of Substantial Completion of the Works.**Part 1J Not Used.****Part 1K Delay Events, Compensation Events, Programme Contingency, Delay Costs, Adjustments**

(Sub-clauses 9.3, 9.4, 10.1, 10.6, 10.7)

Delay Events and Compensation Events are as follows:

Event	Delay Event	Compensation Event
1. The Employer's Representative gives the Contractor a Change Order	Yes	Yes
2. The Employer's Representative directs the Contractor to search for Defects or their cause and no Defect is found, and the search was not required because of a failure of the Contractor to comply with the Contract.	Yes	Yes
3. The Employer's Representative directs the Contractor to suspend work under sub-clause 9.2.	Yes	Yes
4. The Contractor suspends work in accordance with sub-clause 12.3.	Yes	Yes

⁹ If no period stated, one year applies.

Event	Delay Event	Compensation Event
5. There is a factual error in information about the Site or setting out information in the Works Requirements. [This does not include an error of interpretation].	Yes	Yes
6. The Employer takes over part of the Works before Substantial Completion of the Works and any relevant Section.	Yes	Yes
7. The Employer's Representative does not give the Contractor an instruction required under sub-clause 4.5.4 within the time required under sub-clause 4.11.2 when the Contractor has asked for the instruction in accordance with sub-clause 4.11.1.	Yes	Yes
8. The Contractor is unable to occupy and use a part of the Site because of a failure of the Employer under sub-clause 7.1.	Yes	Yes
9. The Employer does not give the Contractor a Works Item or other thing as required by the Contract when the Contractor has asked for it in accordance with sub-clause 4.11.1.	Yes	Yes
10. Employer's Personnel working on the Site under clause 7.6 interfere with the execution of the Works on the Site, and the interference is unforeseeable and not in accordance with the Contract.	Yes	Yes
11. The Employer instructs the Contractor under sub-clause 3.2.3 to rectify loss of or damage to Risk Items for which the Contractor is not responsible.	Yes	Yes
12. Loss of or damage to the Works that is at the Contractor's risk in accordance with sub-clause 3.2.	Yes	No
13. A weather event as described below.	Yes	No
14. A strike or lockout affecting the construction industry generally or a significant part of it, and not confined to employees of the Contractor or any Contractor's Personnel.	Yes	No
15. Delay to the Works caused by the order or other act of a court or other public authority exercising authority under Law, that did not arise as a result of or in connection with an act, omission or breach of Legal Requirements of the Contractor or the Contractor's Personnel or a breach of the Contract by the Contractor.	Yes	Yes
16. A breach by the Employer of the Contract that is not listed elsewhere in this table.	Yes	Yes
17. Refer to Sub-clause 10.2	No	Yes
18. An item of archaeological interest or human remains is found on the Site, and it was unforeseeable.	Yes	Yes/No The default position is Yes

Event	Delay Event	Compensation Event
19. The Contractor encounters on the Site unforeseeable ground conditions (not resulting from weather) or unforeseeable human-made obstructions in the ground, other than Utilities.	Yes	Yes/No The default position is Yes
20. The Contractor encounters unforeseeable Utilities in the ground on the Site.	Yes	Yes/No The default position is Yes
21. Owners of Utilities on the Site do not relocate or disconnect Utilities as stated in the Works Requirements, when the Contractor has complied with their procedures and the procedures in the Contract, and the failure is unforeseeable.	Yes	Yes/No The default position is Yes
22. The Works are adversely affected by reason of Consents for which the Employer is responsible provided the requirement for the Consent is not as a result of any breach of the Contract or any default on the part of the Contractor.	Yes	Yes
23. Actions by members of the public by way of protest against the Employer or the Employer's use of the Site or any part of it unless such actions are attributable to work by the Contractor outside the scope of the Works Requirements or Works Proposals.	Yes	No
24. A change of Legal Requirement occurring after the Designated Date.	Yes	Yes

In the above table

Utilities means conducting media and apparatus for water, sewage, electricity, gas, oil, telecommunications, data, steam, air, or other services, and associated apparatus and structures.

A condition, circumstance or occurrence is **unforeseeable** if an experienced contractor tendering for the Works could not have reasonably foreseen it on the Designated Date, having inspected the Site and its surroundings and having satisfied itself, insofar as practicable and taking into account any information in connection with the Site provided by the Employer, as to all matters concerning the Site, including its form and nature and its geotechnical, hydrological and climatic conditions.

WE 1.0 is the document entitled Weather Events WE 1.0 published on www.constructionprocurement.gov.ie on the Designated Date.

A weather measurement for a month means each of the following:

- the number of days with rainfall exceeding 10 millimetres
- the number of days with minimum air temperature less than 0 degrees Celsius and
- the number of days with maximum mean 10 minute wind speed exceeding 15 metres per second as recorded at weather station.

If no weather station is named, the Met Eireann station nearer the Site is used. If the station named, or the nearest one, does not record the weather measurements, the station nearest the Site that records that weather measurement is used.

A **weather event** is when in a month between the Starting Date and the Date for Substantial Completion of the Works a weather measurement exceeds the number of days for the same item, the same weather station, and the corresponding month in WE 1.0.

The extension to the Date for Substantial Completion of the Works in each month shall be the difference between the weather measurement and the number of days for the corresponding item in WE 1.0

In **sub-clause 10.7**, the amount to be added for delay cost is the daily rate stated in the Schedule, part 2D (sub-clause 10.7.1(1)) / the expenses unavoidably incurred as a result of the delay (sub-clause 10.7.1(2)) (Delete as applicable. If neither deleted, "expenses unavoidably incurred as a result of the delay" to be read as deleted).

For the purposes of sub-clause 10.7, a single daily rate for delay costs / separate daily rates for delay costs for each of the following periods or parts of the Works is / are to apply:

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-
-

(If the above are blank, and sub-clause 10.7.1(1) applies, Contractor is to tender a single daily rate).

Part 1L Payment Particulars (Clause 11)

The first payment claim date will be the last working day in the month in which the Starting Date occurs and each subsequent payment claim date will be the last day of every following month.

Period for interim payment is 30 days after each payment claim date

Minimum amount for interim payments, except release of retention,¹⁰

Up to the percentage stated below of the Contract value of the following unfixed Works Items may be included in an interim payment in accordance with sub-clause 11.2.

On-Site Materials	% of Contract Value
	90

Off-Site Materials with Bond	% of Contract Value
	90

The retention percentage is¹¹

¹⁰ If none stated, no minimum applies.

¹¹ If no percentage stated, 5% applies.

Part 1M Not Used.

Part 1N Not Used.

Part 10 Rights in Contractor's Documents (Sub-clause 6.4)

Copyright and all other rights in the following Contractor's Documents and Works Proposals described in sub-clause 6.4.2 transfer to the Employer in accordance with sub-clause 6.4.

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SCHEDULE - PART 2**Part 2A Communications** (Sub-clause 4.14)

Details for sending notices under clauses 12 and 13 to the Contractor are:

For the attention of:

Address:

Details for sending other notices to the Contractor are:

For the attention of:

Address:

eMail:

The Employer's Representative is:

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The Contractor's agent¹² in the Republic of Ireland for service of legal process is:

Name:

Address:

Names of individuals (no more than 3) who will represent the Contractor in any matter arising under clause 13.1 of the Contract :

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Part 2B Not Used.

Part 2C Not Used.

¹² An agent in the State must be named if the Contractor's registered office or other principal place of business is outside the State.

Part 2D Adjustments to the Contract Sum as a Result of Delay Costs (sub-clause 10.7).

The Contractor's rate of delay costs is € _____ excluding VAT per Site Working Day
(If left blank, or stated as a negative value, read as zero).

If part 1K states that separate rates are to be stated for separate periods or parts of the Works, the Contractor's rates are as follows:

Period or part of the Works (part 1K)	Rate
	€..... per Site Working Day
	€..... per Site Working Day
	€..... per Site Working Day
	€..... per Site Working Day

SCHEDULE - PART 3

FORM OF COLLATERAL WARRANTY (Sub-Clause 5.6)