

THE NATIONAL FEDERATION OF DEMOLITION CONTRACTORS
FORM OF DIRECT CONTRACT 2007 EDITION

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SAMPLE

ARTICLES OF AGREEMENT

An Agreement made on _____ of _____ 20____

BETWEEN

whose registered address is _____ (“the Employer”)

And

whose registered address is _____ (“the Contractor”)

Whereby it is agreed as follows:

1. In consideration of payment of the Contract Sum the Contractor shall carry out and complete the Works in accordance with the Conditions of Contract and Contract Documents identified in Appendix 1

2. The Contract Sum shall be a net sum exclusive of VAT and shall include all taxes and duties payable by the Contractor in connection with the Works.

3. The Employer nominates to act as its duly authorised representative

_____ (“the Employers Representative”)

The Employers Representative shall be authorised to receive and issue all applications, notices, consents, orders, instructions requests, statements and for otherwise acting on behalf of the Employer under the contract unless contrary written notice is received from the Employer

4. The Site including the other areas available for the Contractor to carry out the Works are as defined in Appendix 2

5. The Date of Possession of the Site shall be _____

6. The Date of Completion of the works shall be _____ or such other date as determined under the provisions of the Contract

7. (1) In the event that the Contractor does not reach Practical Completion of the Works on or by the Date of Completion the Employer shall be entitled to deduct liquidated and ascertained damages at the rate of £.....per..... or part thereof for the period when the Works are not Practically Complete up to a maximum value of £.....

(2) In the event that the Contractor Completes the Works before the Date of Completion an early completion bonus of £.....per..... shall be paid to the Contractor by the Employer in addition to the Contract Sum.



8. (1) The Contractor shall take out and maintain the following insurances in the minimum sums stated below:

Clause 11(a)(i) insurance (Employers Liability) - £ (min)
 Applies/Does not apply
 Clause 11(a)(ii) insurance (Public Liability) - £ (min)
 Applies/Does not apply
 Clause 12 Insurance (Damage to Property) - £ (min)
 Applies/Does not apply

(2) The Employer shall take out and maintain the following insurances in the minimum sums stated below:

Clause 13 insurance - £ (min)
 Applies/Does not apply

9. The Contract Sum shall/shall not be subject to retention pursuant to Clause 25(b) of the Conditions of Contract (where no deletion shown the Contract Sum will not be subject to retentions)

SAMPLE

.....(Print Name)	Signature
In the Presence of	
Witness name	Signature
Witness Address	

Signed on behalf of the Contractor by(Print Name)	Signature
In the Presence of	Signature
Witness name	
Witness Address	

EXECUTION AS A DEED

Executed as a deed by the Employer acting by (insert names of Signatories)	
Director:	Signature
Director/Company Secretary:	Signature
Executed as a deed by the Employer acting by (insert names of Signatories)	
Director:	Signature
Director/Company Secretary:	Signature

SAMPLE

Note: The above attestation clauses must be completed to meet particular case

CONDITIONS OF CONTRACT

1. Definitions:

- (a) In the Conditions of Contract and in the Articles of Agreement, unless stated to the contrary the following expressions shall have the meanings assigned to them below:

- | | | |
|-------|-------------------------------|---|
| i. | Article | An article in the Articles of Agreement |
| ii. | Asbestos Containing Materials | Shall mean any material or substance which contains asbestos |
| | Condition Precedent | Mean that if the clause referred to is not complied with the entitlement arising under this clause is foregone the party is not bound to enforce it. |
| iii. | Contract Documents | Shall mean as detailed in Clause 16 of the Articles of Agreement, the Conditions of Contract, those documents identified as the Contract Documents in Appendix 1 |
| v. | Contract Sum | Shall mean the sum stated in Article 2 |
| vi. | Date of Possession | Shall mean the date noted in Article 5 |
| vii. | Date of Completion | Shall mean the date noted in Article 6 |
| viii. | Hazardous Substances. | Shall mean any material or substance which is required to be removed by means of a special process and or disposed of in accordance with the legislation relating to hazardous materials as current at the time of the Works |
| ix. | Industry Good Practice | Shall mean the accepted practice of a competent demolition contractor carrying out works of a similar nature |
| x. | Normal Working Hours | Shall mean the hours specified in the Contract Documents during which Contractor is allowed to work but not including weekends, Christmas day, accepted trade holidays applicable to the Contractor and statutory public holidays |
| xi. | Practical Completion | Shall mean the stage when the Works have been Practically Complete |
| xii. | Practically Complete | Shall mean Completion of the Works subject only to the existence of minor defects and/or omissions which are capable of being made good without materially interfering with the beneficial use and enjoyment of the Works and which it would be unreasonable to include in a schedule of minor snagging items |

SAMPLE

xiii.	Provisional Sum	Shall mean an item designated in the Contract Documents to estimate approximately the cost of works yet to be particularised
xiv.	Provisional Sum Work	Shall mean work instructed to be carried out in respect of Provisional Sum
xv.	Public Service Installations	Shall mean any public service installation, including but not limited to any premises, telecommunication, signalling, radio or like
xvi.	Specialist sub-contractor	Means a sub-contractor who provides services of a specialist nature that in the opinion of the Contractor is required to carry out elements of the Works
xvii.	Statutory Undertakers	Shall mean any authorised body who provides, maintains or is responsible for Public Service Installations
xviii.	The Contract	Shall mean these conditions and the Contract Documents
xix.	The Site	See Article 4
xx.	Works	Shall mean the scope of the work to be provided as specified in the Contract Documents

SAMPLE

2. General Provisions

- (a)** Save where it is expressly agreed or stated in the Contract Documents the Contract Sum is calculated on the basis that:
 - (i)** there are no requirements as to working outside Normal Working Hours
 - (ii)** Contingencies are not encountered that result in delay or delays to the natural progress of the Works and/or give rise to the requirement to work outside Normal Working Hours
- (b)** The Clause headings in the Conditions of Contract shall not be deemed to be part thereof and are not to be taken into consideration in the interpretation or construction of the Contract. If any discrepancy arises between the Conditions of Contract and that which is contained elsewhere in the Contract the Conditions of Contract shall prevail.

3. Execution of the Works

- (a)** The Contractor shall carry out and complete the Works and provide everything necessary for the proper execution of the Works in accordance with the Contract, Industry Good Practice and the relevant statutes and regulations, save as excepted by the unforeseen presence of Hazardous Materials, Asbestos Containing Materials and prohibition on access to the Site.

- (e) As soon as he is able to, the Contractor shall ascertain the amount of any such loss and expense and provide the Employer with copies of any calculations and supporting evidence as the Employer may reasonably require and the amount so ascertained and evidenced shall be added to the Contract Sum.

5 Variations and Provisional Sums

- (a) The Employer shall have power by notice in writing to order the Contractor to alter, amend, omit, add to or otherwise vary the Works. Provided that no such variation shall, except with the consent of the Contractor or except as relates to Provisional Sums, be such as will together with any variations already ordered involve a net decrease in the Contract Sum payable to the Contractor.
- (b) The Employer shall unless expressly otherwise provided in these Conditions issue instructions in regard to the expenditure of all Provisional Sums set out in the Contract. Such instructions shall be issued in due time and shall be valued in accordance with Clause 5 hereof.

SAMPLE

- (d) The provisions of these Conditions shall, mutatis mutandis, apply to all alterations, additions, omissions, or other variations ordered hereunder as they apply to the Works but, without prejudice to the generality of the foregoing, a reasonable additional time shall be allowed for extra work ordered or required unless expressly otherwise agreed. Any additional time allowed shall be used to calculate a revised Date of Completion under Clause 4 above.

6. Sub-Letting

- (a) The Contractor shall be entitled at his discretion to sub-let any part or parts of the Works, which in the opinion of the Contractor ought to be delegated to a Specialist Sub-contractor, provided always that the Contractor shall not be entitled to sub-let the whole Works without the written consent of the Employer.
- (b) Sub-letting all or part of the Works shall not relieve the Contractor from any liability or obligation under the Contract. The Contractor shall be responsible for the acts defaults and neglects of any Sub-contractor his agents or servants or operatives as fully as if they were the acts defaults or neglects of the Contractor, his agent, servants or operatives.

7. Fair Wages and Construction Industry Scheme [CIS]

- (a) The Contractor shall in the execution of the Contract observe and perform the conditions of the Working Rule Agreement for the time being in force and issued by authority of the Demolition Industry Conciliation Board.

- (b) Where the Employer is a Local Authority the Contractor agrees to comply with the Fair Wages Regulations as generally applicable to Local Authorities at the time of contracting
- (c) If the Contractor is or becomes entitled to be paid without the statutory tax deduction, he shall provide the Employer with evidence to that effect.
- (d) At all times the Parties will comply with current fiscal regulations applicable to the construction industry, including the CIS.

8. Legislation and Codes of Practice

- (a) The Contractor shall comply with the legislation currently in force as applicable to the Demolition Industry and shall execute the Works in accordance with British Standard Code of Practice for Demolition BS. 6187:2000 and any amendments thereto or successors thereof.
- (b) The Employer warrants that the Contract shall be prepared and carried out in accordance with the Construction (Design & Management Regulations) 1994 ("the CDM Regs"), and (without prejudice to the generality of the foregoing) the Employer shall ensure that it is required to appoint a competent person to act as the CDM Co-ordinator in carrying out the Works and to issue and maintain a Health and Safety File in respect of the Works. Where the Works are carried out in compliance with the Contract Documents and the relevant legislation current at the time of contracting.

SAMPLE

9. Local and Other Authorities Notices and Fees

- (a) The Employer warrants and undertakes at his own expense that:
 - (i) He has or will in due time, give all notices necessary to comply with the requirements of any applicable EU Regulations, or Directives; Acts of Parliament; Regulations and/or Bye-Laws of any Local Authority; National or Public Service Utility Company or Authority; affected by the Works, or from whose system any installations on the site will be disconnected and in particular, that he has obtained every licence permission or authority required for the execution of the Works, and that he will pay the fees or charges payable by law under such Acts, Regulations, Directives and/or Bye-Laws in respect of the Works, or any disconnections as aforesaid or will reimburse the Contractor any amounts of loss and expense incurred by the Contractor unless provision for such loss and expense was expressly included in the Contract Sum.
 - (ii) Without Prejudice to the generality of the foregoing the Employer will obtain the consents, and accesses referred to in Clause 3(b) or will reimburse the Contractor any amounts of loss and expense incurred in obtaining the consents and accesses unless provision for such loss and expense was expressly included in the Contract Sum

10. Protection, Completion of Works and Handing Back the Site

- (a) The Contractor shall as from the date upon which the Site is handed over to the Contractor and until the Site shall be taken back by the Employer, be responsible for and take reasonable and proper steps for protecting the Site, and for providing and maintaining any necessary temporary fencing, barriers, boarding or fans for the safety of the public.
- (b) The Contractor shall notify the Employer in writing of the date, when in his opinion the Works are Practically Complete. If not dissented from in writing by the Employer within 7 days of receipt of the Contractor's written notice, Practical Completion for all purposes of the Contract shall be deemed to have taken place on the date so notified.
- (c) The Employers' right to levy Liquidated Damages as set out at Article 7 of the Articles of Agreement is subject to the following Condition Precedents:

SAMPLE

(i) the failure by the Contractor to Practically Complete the works by the Date of Completion or by the later Date of Completion fixed by the Employer in writing within 7 days of receipt of the Contractor's written notice of Practical Completion; and

(ii) that the Contractor has not notified the Employer of a written notice stating the Date of Completion and of his intention to deduct Liquidated Damages, such notice to be given no later than seven days from the issue by the Contractor of a notice of Practical Completion required by Clause 10(b) of these Conditions.

- (d) It is expressly declared and agreed that no liability for safety or security measures on or adjacent to the Site shall attach to the Contractor before the Site is handed over to him or after the Site is taken back into the possession of the Employer. The Employer hereby indemnifies the Contractor in respect of any claims arising directly or indirectly from any such liability.

11. Contractors Third Party Liability Insurance

- (a) The Contractor shall be liable for, and shall indemnify the Employer against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury as follows:

(i) Contractor's Employers Liability Indemnity

Personal injury to or the death of any employee arising out of or in the course of such person's employment this insurance shall comply with the Employers Liability (Compulsory Insurance) Act 1969 and any amendment or statutory successor thereof;

(ii) Contractor's Public Liability Indemnity

Personal injury to or the death of any other person whomsoever arising out of or in the course of, or caused by the carrying out of the Works, not due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

(b) Contractors Public Liability Indemnity - Property Damage

Except for such loss or damage which is at the risk of the Employer under Clause 13, the Contractor shall be liable for and shall indemnify the Employer against any expense, liability, loss, claim, or proceedings in respect of any injury, or damage whatsoever, to any property real or personal, in so far as such damage arises out of or in the course of, or by any reason of the carrying out of the Works, and provided always that the same is due to any negligence, breach of statutory duty, omissions or default, of the Contractor, his servants or agents or of any person employed or engaged by the Contractor upon or in connection with the Works or any part thereof.

(c) (i) The Employer agrees that the Contractor's liability under-sub-clauses (a) and (b) of Clause 11 shall be limited to:

1. the cover of those risks: and

SAMPLE

(ii) The Contractor shall take out and maintain insurances in accordance with and to the extent defined in Clause 11(c) (i) in respect of claims arising out of his liability referred to in Clauses 11(a) and 11(b) hereof:

(iii) Subject to Clauses 11(a)(i) and 11(c) (i) in respect of claims to which this clause applies, the insurance cover shall be in the minimum sum stated in Article 8 of the Articles of Agreement for any one occurrence or a series of occurrences arising out of any one event.

(d) (i) As and when he is reasonably required to do so by the Employer the Contractor shall produce for inspection documentary evidence that the insurances referred to in Clause 11(c) are properly maintained, but on any occasion the Employer may (but not unreasonably or vexatiously) require to have produced for his inspection the policy or policies and receipts in question;

(ii) If the Contractor defaults in taking out, maintaining or providing evidence of insurance referred to in Clause 11(c), the Employer may insure against any liability or expense which may incur arising from such default and the amounts paid or payable by him in respect of premiums for such insurance may be deducted from any monies due

13. Loss and Damage to Works (including Original Structure) and Materials

- (a) (i) The Works (including materials and goods of the Contractor intended to be incorporated in the Works) and all structures, property and things belonging to the Employer which are on the Site or adjacent thereto, including materials and items required to be recovered for the Employer shall be at the sole risk of the Employer as regards any loss or damage caused by fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices, or articles dropped there from, riot and civil commotion, acts of terrorism and including any loss or damage caused by ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly of nuclear component thereof, pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (ii) It is specifically agreed that the risk of the Employer as noted above extends to and includes theft, accidental and malicious damage;
- (iii) It is specifically agreed that the risk of the Employer extends to and includes materials forming part of the Original Structure which have or are to become the property of the Contractor;

SAMPLE

- (b) Without prejudice to his liability to indemnify the Contractor under Clause 13 (a) above, the Employer shall take out and maintain insurance in the joint names of the Employer and the Contractor for the amount of the indemnity provided in Clause 13 (a) above in respect of any loss or damage to any of the Works as referred to in Clause 13 (a) above;

- (c) The Employer shall indemnify the Contractor in respect of any loss or damage which is at the Employer's risk under Clause 13 (a) above. If such loss occurs:

- (i) the Contractor shall notify the Employer and after any Inspection required by the insurers the Contractor shall carry on and complete the Works; and
 - (ii) the completion of the Works including the removal and replacement of damaged materials shall be regarded as a variation and/or contingency under Clause 4 and 5 hereof, with a consequent increase in the Contract Sum and extension to the Date of Completion.
- (d) In the event of any claim against which an indemnity is hereby given being made against either party under Clause 13, then the party giving the indemnity shall have the right to have the conduct of any proceedings arising there from. Nevertheless the party giving the indemnity shall be released of his obligations if the party indemnified shall by himself, his servants or his agents admit liability or make any payment in connection with such claim without the express authority of the party giving the indemnity.

14. Trespass and Nuisance

- (a) The Contractor shall take all reasonable precautions to prevent trespass on the Site, and, subject to the limitations set forth in Clauses 11(c) and 12(a) hereof, indemnify the Employer against all third party claims for damage caused by the trespasser, save for loss or damage to the Works, plant and materials.
- (b) The Contractor shall take reasonable precautions to prevent nuisance or inconvenience to the owners tenants or occupiers of adjacent premises and to the public generally. This provision shall not preclude the Contractor from carrying out the Works in accordance with Demolition Industry Good Practice and in accordance with current legislation and By-laws. If for any reason he shall be precluded from or delayed in completing the Works in accordance with such practices any loss and expense to the Contractor shall be borne by the Employer and added to the Contract Sum.

15. Hazardous Materials, Contaminated Materials or Substances

For the sole purpose of this Clause 15 Hazardous Materials, Contaminated Materials or Substances shall be termed Hazardous Substances (As defined by the European Waste code)

SAMPLE

(a) The Employer shall be bound to notify the Contractor in writing of the presence of Hazardous Substances on the Site prior to the commencement of the Works. If Hazardous Substances are discovered during the execution of the Works, the Contractor shall forthwith give written notice to the Employer stating the nature, extent and location of such Hazardous Substances. The removal thereof by the Contractor shall be deemed a variation under Clauses 4 and 5(a).

- (b) Where Hazardous Substances not previously notified by the Employer as aforesaid are uncovered during the execution of the Works, then the Contractor shall forthwith, upon such discovery give written notice to the Employer stating the nature, extent and location of such Hazardous Substances. The removal thereof by the Contractor shall be deemed a variation under Clauses 4 and 5(a)
- (c) The removal and disposal of all Hazardous Substances shall be carried out in a safe manner and in accordance with the regulations in force at the time of removal and disposal of the substance.

16. Contingencies

- (a) Contingencies shall include but not be limited to force majeure, exceptional adverse weather conditions; civil commotion or demonstrations, a local combination of workmen strikes, lock-outs, or statutory powers affecting the availability of labour, machinery, materials or fuel; acts of terrorism; and factors in respect of the Works which were concealed or about which the Contractor was not informed prior to the execution of the Articles of Agreement.
- (b) For the avoidance of doubt Contingencies shall include acts occurring both on the Site and elsewhere

17. Ownership of Materials Recovered

- (a) All materials recovered from the Site by demolition or clearance shall become the property of the Contractor and shall be removed from the Site during the Works, there being excepted from this provision:
- (i) all items required to be recovered for the Employer as specified in the Contract which shall be left on the Site unless otherwise instructed.
 - (ii) any ancient relics or antiquities discovered on the Site, which shall in all cases be deemed to be the property of the Employer and shall be handed over by the Contractor to the Employer, against the receipt of the Employer. Upon discovering any ancient relics or antiquities the Contractor shall take all reasonable steps to preserve them in the exact position and condition in which they were found and shall inform the Employer of the discovery and precise location thereof.
 - (iii) Following the reported discovery of any ancient relic or antiquity the Employer shall issue instructions in respect thereof and the Date of Completion shall be extended by the period of any delay arising from the discovery. There shall be added to the Contract Sum any loss and expense incurred by the Contractor as a direct result of the discovery of ancient relic or antiquity.

SAMPLE

18.

The Contractor shall have sole possession of the Site during the Works but will, without liability for the safety of such persons, by prior arrangement with the Employer allow reasonable facilities for the execution upon the Site by other persons of work not included in the Contract. Provided that the same shall not impede the progress of the Works, add to the cost thereof, be contrary to any regulations, or be in the opinion of the Contractor prejudicial to the safety, health or welfare of such said persons or others.

19. Protection of Footpaths

Where the Contractor is responsible for the protection of any public footpaths and for making good any damage to such footpaths and for any expense incurred in reinstating the same, the cost of such protection making good and reinstating shall be deemed included in the Contract Sum.

20. Precautions Against Fire Risks

- (a) The Contractor shall take all reasonable precautions to prevent loss or damage by fire on Site and to minimise the amount of any such loss or damage.

- (b) The Contractor shall comply with any statute, regulation or bye-law governing the storage or use of explosives, gas, petrol or other volatile or aggressive materials brought on to the Site for the execution of the Works.

21. Damage to Plant and Material

The Contractor shall be responsible for all loss or damage to his own plant and tools brought onto Site for the execution of the Works unless caused by:

- (i) The Employer;
- (ii) Third parties on the Site at the request of the Employer or their respective servants or agents;
- (iii) Trespassers.

22. Damage to Adjoining Property

The Contractor shall take reasonable and proper precautions to avoid damage to any adjoining property during the execution of the Works and where shoring and/or to adjoining property or the goods of the same shall be necessary in the opinion of the Contractor the Contractor shall, not unnecessarily overburden the ground, and shall be liable for any damage with the exception of the Contractor's and shall be liable for the same to the satisfaction of the Local Authority and the Employer.

23. Provision of Storage Facilities

The Employer shall free of charge to the Contractor provide safe and proper accommodation on the Site to the reasonable requirements of the Contractor, for the storage of all materials and other items required to be recovered for the Employer, and from the time such materials and items are deposited at the accommodation so to be provided, they shall be at the sole risk in all respects of the Employer.

24. Vesting of Materials

All plant, materials and equipment of any kind whatsoever which are brought onto the Site by the Contractor but are not intended by the Contractor for incorporation into the Works shall remain the property of the Contractor in any event.

25. Payment

- (a) (i) The Contractor shall make a written Application for Payment to the Employer for an interim payment in respect of works done to the date of the Application for Payment. The first Application for Payment shall be no later than 4 weeks after the commencement of the works or any earlier date as agreed by the parties. Further Applications for Payment shall be made at a period of one calendar month after the first application.
- (ii) The Application for Payment shall state the total value of work executed including the value of variations and Provisional Sum Works determined in accordance with Clause 5 of these Conditions, the value of any materials properly delivered to the Site for incorporation in the Works, the amount of loss and expense claimed pursuant to these Conditions and the amount of any fluctuations calculated in accordance with Clause 32 of these Conditions.
- (iii) Within five days of the date of the Application for Payment the Employer shall give written notice to the Contractor specifying the amount of payment the Employer proposes to make in respect of that Application for Payment. The Employer shall in this notice clearly state the basis on which the amount proposed to be paid is calculated.
- (iv) The date of payment of an amount due under an Application for Payment shall be 14 days from the date of the Application for Payment.
- (v) No later than five days before the final date for payment of an amount due pursuant to Clause 25(a)(iii) the Employer shall issue a notice to the Contractor which specifies any amount proposed to be withheld and the ground for withholding payment, or if there is more than one ground, each ground and the amount attributable to it.
- (vi) If the Employer fails to properly issue a notice pursuant to Clause 25(a)(iii) and/or Clause 25(a)(v) the amount of payment to be made to the Contractor shall be the sum stated in the Application for Payment.
- (b) If so expressly stated in the Contract Documents the Employer shall be entitled to retain until such times as are specified in Clause 26 hereof three percent of the value so stated of the aforesaid work and materials. Any such sum retained by the Employer shall be deposited in a separate banking account and be held on trust by the Employer for the Contractor.
- (c) In the event of the Employer failing to pay the sum due in respect of an Application for Payment provided in (a) above by the final date for payment there shall be payable by the Employer to the Contractor interest at% above the Base Rate or rates for the time being, of Bank PLC, such interest to be calculated on a daily basis and such interest added to the Contract Sum.

SAMPLE

- (d) (i) Without prejudice to any other rights and remedies which the Contractor may possess, if the Employer shall fail to make any payment to the Contractor, as hereinbefore provided and such failure shall continue for seven days after the Contractor has given the Employer written notice of the same, then the Contractor may suspend the further execution of the Works remove plant and materials and labour, until such time payment shall have been made. The Contractor shall be allowed a reasonable period of remobilisation once the default of the Employer is rectified and shall be entitled to be paid a sum in respect of any loss and expense incurred due to the suspension including but not limited to standing time and remobilisation costs.
- (ii) Such suspension as aforesaid shall not be deemed to constitute a breach of the Contract or a failure by the Contractor to proceed diligently with the Works in accordance with Clause 4(b) of the Conditions of Contract and the Date of Completion shall be deemed to be extended for a period representing the period of suspension and the period of remobilisation.
- (e) (i) In the event where the Contract Sum represents a net credit to the Employer the final date for payment of the sum due to the Employer shall be six weeks after the date of Practical Completion.
- (ii) Where Clause 5 applies the Contract Sum shall be subject to adjustment in accordance with the provisions of the Contract including variations and loss and expense.

SAMPLE

26. Release of Retention Money and Final Account

- (a) The Employer shall within fourteen days of the date of Practical Completion under Clause 10 herein release to the Contractor all sums retained by the Employer under Clause 25 (b) herein.
- (b) Within a reasonable period of time after completion of the Works (not more than six weeks from the date of Practical Completion) the Contractor shall deliver to the Employer an itemised Final Account showing:-
- (i) the Contract Sum;
 - (ii) the value of variations and Provisional Sum Works (including the omission thereof) determined in accordance with Clause 5 of these Conditions;
 - (iii) Any adjustments required by Clause 32 hereof;
 - (iv) all other adjustments to the Contract Sum including loss and expense allowed and/or required by this Contract;
 - (v) the total amounts previously paid;

- (vi) the balance outstanding.
- (c) The final date for payment of the Final Account shall be 14 days from the date of submission of the Final Account. The Employer shall pay the balance outstanding to the Contractor less only the amount which the Employer may be entitled to deduct under Clause 10(c) herein.
- (d) The Employer shall issue like notices pursuant to Clause 25(a) (iii) and Clause 25(a) (v) in respect of the Final Account. In the event of a failure to properly issue such notices pursuant to Clause 25(a)(iii) and/or Clause 25(a)(v) the amount of payment to be made to the Contractor shall be the sum stated in the Final Account.

27. Determination by Employer

(a) Default shall be deemed to exist if:

SAMPLE

- (i) Without realising the contract, the Contractor who suspends work before completion of the contract.
- (ii) If the Contractor fails to proceed with the work in a reasonable diligence;
- (iii) The Contractor wholly assigns this Contract; and if such default shall continue for fourteen days after service of written notice by registered post or recorded delivery specifying the default has been given to the Contractor by the Employer, the Employer may without prejudice to any other of his rights or remedies thereupon by written notice by registered post determine the employment of the Contractor under this Contract provided that such notice shall not be given unreasonably or vexatiously.
- (b) Any notice given under Clause 27 (a) hereof shall be void and of no effect if at the time of the giving of such a notice the Employer is in breach of any term or condition of this Contract.
- (c) If the Contractor shall suffer a petition of bankruptcy or shall make or enter into any voluntary arrangement or composition with his creditors or being a Company enter into liquidation whether compulsory or voluntary (except for the purpose of reconstruction or amalgamation) or having an application made in respect of his company to the court for the appointment of an administrator or provisional liquidator, receiver, or manager of his business or undertaking appointed, or having an administrative receiver appointed or suffer or allow any execution whether legal or equitable to be levied on his property or obtained against him then the Employer may without prejudice to any other of his rights or remedies by written notice by registered post forthwith determine the employment of the Contractor under this Contract.

- (d) If the employment of the Contractor shall be determined under this Clause, then the Contractor shall forthwith give up possession of the Site, the Works and any unfixed materials and goods the Employer shall be liable for only:
 - (i) the value of any work, variations and loss and expense calculated in accordance with Clause 5 hereof, actually and properly executed and not paid for at the date of such determination, and
 - (ii) the value of any unfixed materials and goods delivered upon the Site for use in the Works and for no other sums whatsoever.
- (e) The Employer shall have the right to recover or deduct from or set off against any amount due to the Contractor the amount of any direct loss and/or damage caused to the Employer by the determination.

28. Determination by Contractor

- (a) If the Employer shall suffer a petition of bankruptcy, make or enter into any voluntary arrangement or composition with his creditors or being a Company enter into liquidation whether compulsory or voluntary (except for the purposes of reconstruction or amalgamation) or making an arrangement made in respect of his company to the satisfaction of the court or an arrangement of any kind for or in favour of a liquidator, receiver or administrator of his business, and making appointed, or being an administrator or receiver appointed, or suffering allow any process or net legal or equitable to be levied on his property or obtained against him the Contractor may without prejudice to any other of this rights or remedies thereupon by written notice served on the Employer determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.
- (b) If the whole or substantially the whole of the execution of the Works shall be delayed for more than four weeks by circumstances outside the Contractor's control, or the period of suspension under clause 25(d)(i) shall continue for four weeks the Contractor may without prejudice to any other of this rights or remedies thereupon by written notice served on the Employer determine the employment of the Contractor under this Contract, provided that such notice shall not be given unreasonably or vexatiously.
- (c) Upon such determination under either Clause 28(a) or Clause 28(b) above without prejudice to the accrued rights of either party the respective rights and liabilities of the parties shall be as follows:
 - (i) the Contractor shall with all reasonable despatch and subject to the provisions of sub clause (ii) below, remove all his property from the Site in such a manner and with such precautions as will prevent injury, death or damage from any of the causes for which the Contractor was liable under Clause 11 of the Conditions:

- (ii) the Contractor shall deliver the Final Account to the Employer and the Employer, only subject to deductions of instalments previously paid, pay the Contractor the amount stated in the said Final Account, that is to say;
 - (a) The value of the Works including the value of variations, loss and expense and Provisional Sum work completed at the date of determination, and calculated in accordance with Clause 5 herein;
 - (b) The value of all Works including the value of variations and Provisional Sum work begun and executed but not completed at the date of determination and calculated in accordance with Clause 5 herein;
 - (c) The value of any unfixed materials and goods delivered upon the Site for use in the Works ownership of which has passed to the Employer.

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- (e) The amount of any fluctuations calculated in accordance with Clause 32 of these Conditions;
- (f) The reasonable cost of the removal under Clause 28(c)(i), including the cost of removing equipment, plant, machinery, stores, goods and materials;
- (g) Any direct loss and/or damage caused to the Contractor by such determination. Provided that in addition to all other remedies the Contractor upon such determination may take possession of all materials which may have become the property of the Contractor under this Contract;
- (iii) In the case of such delay as is mentioned in Clause 28(b), the Contractor may at his option give written notice to the Employer by registered post or recorded delivery that in lieu of determining his employment under the Contract, he proposes to claim in addition to the Contract Sum, such sum as will compensate him for any extra expense caused to him by said delay. Within 14 days of receipt of such notice the Employer may by counter notice by registered post or recorded delivery to the Contractor require that the Contractor determine his employment under the Contract, in which case the Contractor's said employment shall be deemed to be determined on the day of the notice and the rights and liabilities of the parties shall be governed by sub-clause (c) of this Clause. And if no such counter notice by the Employer is given there shall be added to the Contract Sum such amount as will fairly and properly compensate

the Contractor for the additional expense as aforesaid.

29. Adjudication

Either party shall have the right to refer any dispute or difference arising under or in connection with this Contract to Adjudication. Any such dispute or difference referred shall be conducted in accordance with the provisions of the Scheme for Construction Contracts (England and Wales) Regulations 1998 or any amendment or statutory successor thereto. The decision of the adjudicator shall be binding and enforceable until the said dispute is determined by arbitration as hereinafter provided.

30. Arbitration

(a) In the case of any dispute or difference that arises between the parties either, during the progress or after Completion or abandonment of the Works as to the construction of the Contract or as to any matter or thing arising there under, or in connection therewith, either party may forthwith give to the other notice in writing of such dispute or difference and the same shall be and is hereby referred to the arbitration and the final decision of a single Arbitrator to be agreed upon by the parties or failing agreement within 30 days of such notice to be appointed at the request of either party by the President or in his absence a Vice-president for the time being of the National Federation of Demolition Contractors Limited

(b) The decision of the Arbitrator shall be final and binding upon both parties.

(c) The procedure for the arbitration shall be that provided in the rules of the Chartered Institute of Arbitrators and the Arbitration Act 1996, or any amendment or statutory successor thereto.

31. Service of Notice

(a) Any notice required under this contract shall be in writing and shall be served to the registered address of the party noted in this contract (in respect of a company) or to the alternative address of the party as agreed between the parties and noted in Appendix 1.

32. Fluctuations

(a) In this clause the expression "the Costing Date" means:

- (i) Where this Contract results from acceptance of a Tender submitted by the Contractor, the date of such Tender;
- (ii) in any other case the date of this Contract.

(b) Where more than three months elapses between the Costing Date and commencement of the Works then there shall be added to the Contract Sum the aggregate increase (if any) and deducted from the Contract Sum the aggregate decrease (if any) arising from any changes between the Costing Date and dates when the relevant expense is incurred by the Contractor in performance of this Contract in:

(i) the market prices and rates for materials and goods, whether being materials and goods purchased by the Contractor for incorporation in the Works or materials and goods arising from demolition which become the property of the Contractor;

(ii) the cost of transport and plant:

(iii) the cost of labour due to any change in the working conditions and/or rates of wages allowances or other expenses recognised by the Demolition Industry Conciliation Board (including the cost of Employer's Liability Insurance, National Insurance, Third Party Insurance and B&CE Template Scheme)

(iv) the cost of any part or parts of the Works properly sub-contracted to the like or similar instances as explained above

(v) changes in the law or regulations or Direct Regulation or Direct Government intervention in the industry and without prejudice to the generality of the foregoing any change in Law or on the part of a statutory successor.

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(c) Where the Employer requires the Works to be executed in phases the provisions of this Clause shall be applied mutatis mutandis, differentially as regards the date of commencement of each phase of the Works;

(d) The value of any additions to or deductions from the Contract Sum which fall to be made under this Clause shall be allowed for in the computation of the value of work done for the purpose of all applications and payments under Clauses 25 and 26 hereof.

33. Signage and Accreditation

The Contractor shall be entitled to write or affix its name in or upon the Site in any way that is reasonably conspicuous, and the Employer authorises the Contractor to make known the fact that the Contractor is retained by the Employer.

34. Copyright

The copyright in any design prepared by the Contractor shall remain the property of the Contractor and any plans, drawings, specifications or samples submitted by the Contractor to the Employer shall remain the property of the Contractor. The Contractor grants to the Employer a royalty-free irrevocable licence which shall include the right to grant sub licences to use and reproduce all drawings and documents produced by it pursuant to the Contract and all amendments and additions thereto (whether in existence or to be made) and any works designs or inventions of it incorporated or referred to therein for all purposes relating to the Works and any part thereof provided that the Contractor shall not be liable for any use of such drawings and documents produced by it for projects other than the Works and it agrees that the Employer shall be entitled to receive copies of all such items at any time provided that the Employer shall pay the reasonable costs incurred by the Contractor providing such copies

35. Law of Contract

The Contract shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts except when the Contract is made and entered into in Scotland and when the Contract shall be subject to Scots Law and the parties hereby submit to the exclusive jurisdiction of the Scottish Courts unless expressly stated otherwise.

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- (i) When the Works are situated in England and Wales the Law of Contract is English Law;
- (ii) When the Works are situated in Scotland the Law of Contract is Scots Law;
- (iii) When the Works are situated in any other state or country the Law of Contract is English Law in any event.

36. Contracts (Rights of Third Parties) Act 1999

Nothing in this 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.

APPENDIX 1
The Contract Documents

Listed below are the documents that form the Agreement between the parties:

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Alternative service address for notices:
Employer

Contractor

**APPENDIX 2
The Site**

Described below is the Site including all areas to which the Contractor has access to carry out the Works for the duration of the Works or the duration of the Works as extended under Clause 4

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