



National Federation of Demolition Contractors
Voice of the Global Demolition Industry

FORM OF DIRECT CONTRACT 2015 EDITION

NATIONAL FEDERATION OF DEMOLITION CONTRACTORS (A COMPANY LIMITED BY GUARANTEE)

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SAMPLE

Drafting committee for Form of Contract
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ARTICLES OF AGREEMENT

An Agreement made on

of

20

BETWEEN

whose registered office is

And
whose registered office is

(“the Employer”)

(“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 the Contract and the Contract Documents as identified in Appendix 1.

2. The Contract Sum is £exclusive of VAT (such sum being net of all/any credits arising unless identified as to be retained by the Employer)

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 Completed up to a maximum value of £..... and the Contractor accepts that this is a genuine pre-estimate of loss by the Employer.

7. (2) In the event that the Contractor has Practically Completed 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

8. (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)

10. The rate of interest shall be% above the base rate for the time being of Barclays Bank Plc

SAMPLE

EXECUTION UNDER HAND

| | |
|--|-----------|
| Signed on behalf of the Employer by(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 Witness name | Signature |
| 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 Contractor acting by (insert names of Signatories) | |
| Director: | Signature |
| Director/Company Secretary: | Signature |

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:

| | |
|---|--|
| Article | An article in the Articles of Agreement. |
| Asbestos Containing Materials | Shall mean any material or substance which contains asbestos. |
| Business Day | A day (other than a Saturday, Sunday trade holiday or and statutory public holiday). |
| Condition Precedent | Means that if the clause referred to is not complied with fully the entitlement arising under that clause is foregone by the party seeking to enforce it. |
| Contingencies | Shall mean as detailed in Clause 16. |
| Contract Documents | Shall mean the Articles of Agreement, the Conditions of Contract, those documents identified as the Contract Documents in Appendix 1. |
| Contract Sum | Shall mean the sum stated in Article 2. |
| Date of Possession | Shall mean the date noted in Article 5. |
| Date of Completion | Shall mean the date noted in Article 6 or any extended date pursuant to Clause 4(b). |
| Hazardous Materials, Contaminated Materials or Contaminated Substances | Shall mean any material or substance which is required by legislation or in accordance with any regulations or standards contained in the Contract relating to any materials in force or as current at the date of the Contract to be removed by means of a special process and or disposed of in accordance with any legislation, regulation or standards contained in the Contract relating to hazardous materials in force or current at the date of the Contract and for the avoidance of doubt shall also include without limitation persistent organic pollutants. |
| Industry Good Practice | Shall mean an accepted practice of a competent demolition contractor carrying out works of a similar nature. |
| Normal Working Hours | Shall mean within such hours as may be specified in the Contract Documents or otherwise between 8am-6pm but not including weekends, Christmas day, accepted trade holidays applicable to the Contractor and statutory public holidays |
| Practical Completion | Shall mean the stage when the Works have been Practically Completed |
| Practically Completed | 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. |
| Provisional Sum | Shall mean an item designated in the Contract Documents to estimate approximately the cost of works yet to be particularised. |
| Provisional Sum Work | Shall mean work instructed to be carried out in respect of Provisional Sum items. |
| Public Service Installations | Shall mean but shall not be limited to any installation providing electricity, mains gas, telecommunications, water mains, signalling, roads, railway or the like. |
| 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. |
| Statutory Undertakers | Shall mean any authorised body who provides, maintains or is responsible for Public Service Installations. |
| The Contract | Shall mean these conditions and the Contract Documents |
| The Site | See Article 4. |

| | |
|--------------|--|
| Works | Shall mean the scope and detailed content of the work to be provided as specified in the Contract Documents. |
| VAT | Value Added Tax chargeable under English Law for the time being and any similar additional tax. |

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.

(b) The Employer retains responsibility for:

- (i) the Site being and remaining available and accessible to the Contractor for the duration of the Works.
- (ii) the obtaining and paying for all necessary consents or accesses required for the Works.

(c) The Employer shall use all reasonable endeavours to notify the Contractor of all Public Service Installations and other installations upon, under, adjacent or subjacent to the Site and the location thereof. The safety of all such installations if accurately and completely notified shall be the responsibility of the Contractor. Damage to any Public Service Installation and other installations not so notified by the Employer occurring in the execution of the Works and not attributable to negligence of the Contractor shall be at the risk of the Employer who shall indemnify the Contractor against all claims in respect thereof.

(d) The Contractor shall be entitled to add to the Contract Sum and recover from the Employer the cost of meeting the reasonable requirements of Statutory Undertakers as to the execution or recovery of the cost of Works affected thereby. Including the protection and storage pending removal of equipment of theirs on the Site, the proper sealing off, diversions or severance upon or outside the Site of installations, services passing over under or through the Site. PROVIDED that no such additional cost shall be made hereunder for work expressly included in the Works, or for expenses provided for under Clause 9 which have been paid by the Employer.

(e) The Employer shall co-operate fully with the Contractor in all matters relating to the Works.

4. PROGRESS OF THE WORKS, EXTENSION OF TIME, AND LOSS AND EXPENSE

- (a) Save as affected by any Contingency the Works shall be commenced upon the date specified in Article 5 of the Contract or within seven days thereafter.
- (b) The Works shall be completed by the Date of Completion.
- (c) Upon it becoming reasonably apparent that the completion of the Works is likely to be delayed by reasons beyond the control of, or which could not reasonably have been foreseen by the Contractor, or by variations as instructed under Clause 5, the Contractor shall, within a reasonable time, give written notice to the Employer of the cause(s) and the effect(s) of such delay on the Date of Completion. Provided always that the Contractor shall use his reasonable endeavours to prevent delay in the progress of the Works, the Date of Completion shall be deemed to be extended by the length of the delay notified by the Contractor and a new Date of Completion shall thereby be fixed, such date being reviewable on provision of new information by the Contractor.
- (d) If the Contractor has or is likely to suffer any loss and expense as a result of the delay referred to as Clause 4 (c) above or otherwise, for which he would not be reimbursed by a payment under any other provision of this Contract he shall give written notification to the Employer when this becomes apparent or within a reasonable time thereof.
- (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.
- (f) If the Contractor's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Employer or failure by the Employer to perform any relevant obligation then without limiting its other rights or remedies, the Contractor has the right to suspend performance of the Works until the Employer remedies such default and is relieved from the performance of and shall not be liable for the failure or delay in performance of its obligations to the extent that such default prevents, or delays the Contractor's performance of any of its obligations. The Contractor shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred as a result of the exercise of its rights under this clause. In addition, a new Date for Completion shall be fixed pursuant to Clause 4(c).

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 promptly once known and shall be valued in accordance with Clause 5 hereof.
- (c) Except where the value of variations or Provisional Sum Work so ordered is expressly agreed in writing between the parties the said value shall be determined in the first instance using rates and prices contained in the Contract for similar work carried out under similar circumstances. If the Contract does not contain similar work or similar work carried out under similar circumstances, the prices shall be determined using reasonable rates derived from industry norms such as the National Federation of Demolition Contractors suggested 'daywork charges'.

(d) These Conditions and any agreed alterations thereto shall apply to all alterations, additions, omissions, or other variations ordered pursuant to these terms.

(e) Unless expressly otherwise agreed reasonable additional time shall be assessed by the Employer and awarded in writing to the Contractor as a consequence of any alteration, amendment, omission, addition or variation to the Works. Any additional time allowed shall be used by the Employer to calculate a revised Date of Completion under Clause 4 above.

6. SUB-LETTING

(a) The Contractor shall be entitled at his sole discretion to sub-let any part or parts of the Works, which in the sole opinion of the Contractor ought to be delegated to a Specialist Sub-contractor.

(b) The Contractor shall not be entitled to sub-let or assign the whole of the Works without the written consent of the Employer.

(c) 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: 2011 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) (“the CDM Regs”) in force at the date of the Contract, and (without prejudice to the generality of the foregoing) and shall appoint those parties it is required to appoint and discharge any obligations it is required to in accordance with the CDM Regs including any updates revisions or amendments thereto or successors thereof.

(c) Whereas the Works are to include any construction works, and/or earthworks, and/or asbestos removal works these works shall be carried out in compliance with the Contract Documents and the relevant legislation in force at the date of the Contract.

9. LOCAL AND OTHER AUTHORITIES NOTICES AND FEES

(a) The Employer warrants and undertakes at his own expense that:

(i) He has or will when due, 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 Completed. If not contested 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:

(i) the failure by the Contractor to have Practically Completed the works by the Date of Completion or by any later Date of Completion fixed by the application of Clause 4 of the Conditions; and

(ii) the issue by the Employer to the Contractor of a written notice stating that the Contractor has not Practically Completed the Works by 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 INDEMNITY AND 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 as follows:

(i) CONTRACTOR'S EMPLOYERS LIABILITY

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

(ii) CONTRACTOR'S PUBLIC LIABILITY

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 and excepting such loss or damage which is at the risk of the Employer under Clause 13.

(b) CONTRACTORS PUBLIC LIABILITY - 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
2. the extent of cover for such risks; for which the UK Insurance Market normally provides liability insurance in respect of such works.

(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 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 in bad faith) 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 or to become due to the Contractor under this Contract or may be recoverable by the Employer as a debt.

(e) In the event of any claim against which an indemnity is hereby given being made against either party under Clause 11, then the party giving the indemnity shall have the right to have the conduct of any proceedings arising therefrom. Nevertheless the party giving the indemnity shall be relieved of his obligation 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.

12. DAMAGE TO SURROUNDING PROPERTY – JOINT NAMES INSURANCE

(a) Where it is stated in Article 8 of the Articles of Agreement that insurance under this clause is required by the Employer, then subject to the like information set forth in Clause 11(c)(i) hereof, the Contractor shall take out and maintain insurance in joint names of the Employer and the Contractor for the amount of indemnity stated in Article 8 of the Articles of Agreement for any one occurrence arising out of any one event in respect of any expense, liability, loss, claim or proceedings, which the Employer may incur or sustain by reason of damage to any property, other than the Works and Site Materials, caused by collapse, subsidence, heave, vibration weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works excepting damage:

- (i) for which the Contractor is liable under Clause 11 (b);
- (ii) attributable to errors or omission in the design of the Works;
- (iii) which can reasonably be foreseen to be inevitable having regard to the nature of the work to be executed or the manner of its execution;
- (iv) which is at the sole risk of the Employer under Clause 13;
- (v) arising from any nuclear risks or war risks;

(b) Any such insurance as is referred to in this clause shall be placed with insurers approved by the Employer, such approval not being unreasonably withheld, and the Contractor shall deposit with the Employer the policy or policies and premium receipts. The cost of the insurance required by this clause and incurred by the Contractor shall be added to the Contract Sum.

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 and or any third parties whether known to the Employer or not 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;

(b) Without prejudice to his liability to indemnify the Contractor under Clause 13 (c) below, the Employer shall take out and maintain insurance in the joint names of the Employer and the Contractor for the amount of indemnity stated in Article 8 of the Articles of Agreement, in respect of loss or damage from any of the risks 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 therefrom. Nevertheless the party giving the indemnity shall be released of his obligations if the party indemnified shall by itself; its 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 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 Industry Good Practice and in accordance with current legislation and Bye-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 CONTAMINATED SUBSTANCES

For the sole purpose of this Clause 15 Hazardous Materials, Contaminated Materials or Contaminated Substances shall be termed Hazardous Substances.

(a) The Employer shall notify the Contractor in writing prior to the submission of the tender, of the presence of any Hazardous Substances and the location thereof on Site. Notification of said Hazardous Substances shall as a minimum arise from such invasive or destructive inspection or survey as necessary (carried out at the Employer's cost) to identify the nature and full extent of such Hazardous Substances and the Contractor shall be deemed to have allowed in his tender for the removal of any Hazardous Substances so notified.

(b) The Employer and the Contractor shall agree in writing prior to the Contractor commencing work the residual level of contamination to be achieved by the Contractor on completion of the Works.

(c) Where Hazardous Substances not previously notified in writing 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. Upon receipt of such notice from the Contractor the Employer shall forthwith issue a notice in writing pursuant to Clause 5(a) directing the removal of such Hazardous Substances or amending the residual level of contamination which the Contractor is required to achieve. The Contractor shall not be obliged to take any steps to implement any works required by the Employer's notice until agreement is reached in respect of the matters set out in Clause 5(c).

(d) If as a result of the identification of Hazardous Substances not previously notified by the Employer the Contractor is required to carry out additional works to achieve the agreed residual level of contamination such additional work shall be deemed to be a variation under Clauses 4 and 5(a).

(e) Save for the contract specifying a specific method and save for the Employer issuing a notice in writing pursuant to Clause 5(a), the method of removal and disposal of all Hazardous Substances shall be at the sole discretion of the Contractor subject to such removal and disposal being carried out in a safe manner and in accordance with the applicable 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, save for the following:

(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.

(b) The Contractor shall be entitled to use materials recovered from the Site (other than those identified in sub-clauses 17(a)(i) - (iii) above) for temporary works.

(c) Where required by the Employer, the Contractor shall within a reasonable period of time provide written estimated data (if reasonably practicable to do so) relating to the materials anticipated to be recovered from the Site during the Works. Such data shall identify: material type; estimated quantity; proposed future use, or treatment or disposal facility as applicable, to allow the Employer to complete the relevant sections of a compliant site waste management plan in respect of materials potentially recoverable from the site.

18. FACILITIES FOR OTHER WORKS

The Contractor shall have sole possession of the Site during the Works but shall, without liability for the safety of such persons; by prior arrangement with the Employer allow reasonable facilities for the execution of work upon the Site by other persons 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; his servants or agents;
- (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 works to adjoining property, or the making good of the same is necessary in the opinion of the Contractor or the Local Authority such work shall, if not expressly provided for in the Contract Sum, be deemed to be a variation in accordance with Clauses 4 and 5 of the Conditions, and shall be carried out to the reasonable satisfaction of the Local Authority and/or 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 each interim payment in respect of works done to the date of the Application for Payment and the due date for payment shall be 5 days after the submission of the Application for Payment and the final date for payment shall be 10 Business Days thereafter. 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 or as agreed in writing.
- (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 34 of these Conditions.
- (iii) No later than five days before the final date for payment of an amount due pursuant to Clause 25(a)(ii) the Employer shall issue a notice to the Contractor which specifies the amount the Employer considers to be due at the payment due date and the basis upon which this amount was calculated.
- (iv) If the Employer fails to properly issue a notice pursuant to Clause 25(a)(iii) the Application for Payment will constitute a default payment notice and the amount of payment to be made to the Contractor shall be the sum stated in the Application for Payment which, subject to Clause 25(v), the Employer shall pay by the final date 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 per cent 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 25 (a) above by the final date for payment there shall be payable by the Employer to the Contractor interest at the rate shown in the Articles of Agreement such interest to be calculated on a daily basis from the due date to the date of payment and such interest added to the Contract Sum.

(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 25 (e) applies the Contract Sum shall be subject to recalculation to account for any additional sums due to the Contractor under the provisions of the Contract including but not limited to variations and loss and expense.

(f) All amounts payable by the Employer under the Contract are exclusive of amounts in respect of VAT. Where any taxable supply for VAT purposes is made under the Contract by the Employer to the Contractor, the Employer shall, on receipt of a valid VAT invoice from the Contractor, pay to the Contractor such additional amounts in respect of VAT as are chargeable on the supply of the services and/or materials for the Works at the same time as payment is due hereunder.

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).

(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 34 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 due date for payment of the Final Account shall be 14 days from the date of submission of the Final Account and the final date for payment of the Final Account shall be 4 days thereafter. 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) A default entitling the Employer to terminate the Contract shall be deemed to exist if:

- (i) Without reasonable cause the Contractor wholly suspends the Works before completion; or
- (ii) Without reasonable cause the Contractor fails to proceed with the Works with reasonable diligence; or
- (iii) The Contractor wholly and fully assigns this Contract without written consent by the Employer.

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, then 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 in bad faith.

(b) If the Contractor 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 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.

(c) If the Contract 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.

(d) 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) A default entitling the Contractor to terminate the Contract shall be deemed to exist 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 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; Whereupon 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 in bad faith.

(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 in bad faith.

(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.

(d) The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or of which he is legally bound to accept delivery which materials and goods shall on payment by the Employer of the Final Account in full become the property of the Employer;

(e) The amount of any fluctuations calculated in accordance with Clause 34 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 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. OTHER RIGHTS AND REINSTATEMENT

(a) The provisions of Clause 27 are without prejudice to any other rights and remedies of the Employer. The provisions of Clause 28 are without prejudice to any other rights and remedies of the Contractor.

(b) Irrespective the grounds of termination, the Contractor's employment may at any time be reinstated if and on such terms as the Contractor and the Employer may agree.

30. 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.

31. 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 for final resolution by 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 (NFDC) with the requirement that the reasonable administration costs of the NFDC in doing so are borne equally by the parties.

(b) The decision of the single arbitrator shall be final and binding upon both parties and for the avoidance of doubt the procedures set out in this clause shall be the sole and exclusive method of resolving disputes and differences arising here from.

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

32. LEGAL PROCEEDINGS

If Clause 31(a) above is deleted or is otherwise agreed by the parties not to apply, the English Courts shall have jurisdiction over any dispute or difference between the Contractor and the Employer which arises out of or in connection with this Contract except when the Contract is made and executed in Scotland in which case unless expressly stated otherwise Scottish Courts shall have jurisdiction over any dispute or difference between the Contractor and the Employer which arises out of or in connection with this Contract.

33. SERVICE OF NOTICE

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business noted in this contract, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

34. 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 pension contribution).

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

(v) changes in legislation, Government Order, Regulation or Direction subsequent to the Costing Date and without prejudice to the generality of the foregoing any change in Land Fill Tax or its statutory successor.

(c) In calculating the value of goods arising from demolition which become the property of the Contractor, the value of such material shall be taken from market prices on secondary commodity markets published by Materials Recycling World for the day on which the material was removed from site.

(d) Where the Employer requires the Works to be executed in phases the provisions of this clause shall be applied as if the necessary changes have been made, differentially as regards the date of commencement of each phase of the Works;

(e) 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.

35. 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.

36. 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.

37. LAW OF CONTRACT

The Contract shall be governed by English Law except when the Contract is made and executed in Scotland where the Contract shall be subject to Scots Law.

For the avoidance of doubt:

(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.

38. 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.

39. SEVERANCE

If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

40. NO PARTNERSHIP

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

41. VARIATION

Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by the Contractor and the Employer.

42. ASSIGNMENT

(a) The Contractor may assign any of its rights under the Contract to any third party or agent save that the Contract cannot be assigned wholly without written consent of the Employer such consent not to be unreasonably withheld or delayed.

(b) The Employer shall not, assign, transfer, charge, subcontract or deal Contract.

43. CONFIDENTIALITY

The Employer shall keep in strict confidence all specifications including pricing structure, or initiatives which are of a confidential nature and have been disclosed to the Employer, its employees, agents, or consultants and any other confidential information concerning the Contractor's business

44. ENTIRE AGREEMENT

This agreement and any documents referred to in it constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this agreement.

APPENDIX 1

THE CONTRACT DOCUMENTS

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

SAMPLE

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.

SAMPLE

NOTE: This contract precedent and the related administration forms are not intended to constitute a definitive or complete statement of law, nor are they intended to constitute legal advice for any specific situation and if in any doubt as to their suitability for use you should take legal advice. No warranty, either express or implied is provided and NFDC shall not be liable for any loss of profits, loss of business, depletion of goodwill and/or similar losses or pure economic loss, or for any direct, indirect or consequential loss costs, damages, charges or expenses howsoever arising from their use.

SAMPLE

SAMPLE