

The JCT logo is a white, stylized font inside a black rounded square, which is itself centered within a larger yellow diamond shape composed of several overlapping smaller diamonds.

JCT

The background of the cover is a photograph of a cityscape at dusk or dawn. The most prominent feature is the Shard, a tall, glass-clad skyscraper that tapers to a point. To its left is a large, curved, glass-domed structure. In the foreground, there are several modern buildings with glass facades that reflect the sky. The River Thames is visible on the right side of the image. The overall color palette is dominated by blues, greys, and the yellow of the bottom banner.

# JCT 2016 Edition of Contracts

# Welcome to the JCT 2016 Edition of Contracts

## *What are the main new features of the 2016 Edition?...*

- » We've incorporated the provisions of the JCT Public Sector Supplement 2011 that relate to Fair Payment, Transparency & BIM.
  - » We've made adjustments to reflect the Construction (Design & Management) Regulations 2015.
  - » We've incorporated the provisions of the JCT 2012 Named Specialist Update.
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- » There's now an extension of (Works) Insurance Option C to allow alternative solutions Contractors. In addition, we've consolidated within the main text some of the general provisions relating to evidence of insurance, insurance claims and reinstatement work that were previously in each of Insurance Options A, B & C.
  - » We've revised and simplified the Section 4 Payment provisions, including:
    - Introducing a procedure for prompt assessment of Loss and Expense claims
    - Establishing (for Fair Payment purposes) Interim Valuation Dates that apply to main contract, sub-contract and sub-subcontract levels
    - Increased flexibility in relation to fluctuation provisions
    - Introducing a sub-section to consolidate the notice requirements of the Housing Grants, Construction & Regeneration Act 1996.
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- » We've included provisions for the grant of Performance Bonds and Parent Company Guarantees.
  - » We've extended the optional provisions for Collateral Warranties from sub-contractors to include Third Party Rights. We've also changed the way the requirements for Collateral Warranties and/or Third Party Rights are set out - removing part 2 of the contract particulars and replacing it with a separate document, the Rights Particulars.

# Building Information Modelling (BIM)

## ***Why does the JCT 2016 Edition have a greater focus on Building Information Modelling (BIM)?***

We believe that BIM is an important route to improving construction performance.

We published our Practice Note, "Building Information Modelling (BIM), Collaborative and Integrated Team Working" earlier this year to provide information and assist practitioners with achieving BIM level 2, and we welcome the government's commitment to advance the UK to BIM level 3 over the coming years.

Wider adoption of BIM and further development of its techniques is yielding substantial benefits for the industry.

The UK's leading position on BIM will likely increase the export prospects for our consultants, constructors and product makers, as well as benefit clients.

It's important for JCT, as an industry-wide collaborative body, that our contracts provide the facility for, and support the adoption of, BIM on projects.

With that in mind, to recognise the importance of BIM, BIM protocols and their status within construction contracts, we have introduced a number of amendments for the 2016 Edition.

## ***What are some of the specific amendments included, in relation to BIM, in the 2016 Edition?***

Some of the key points are that firstly, an agreed BIM protocol is now a new defined term in clause 1.1, and where the protocol is to apply, relevant details will need to be inserted in the new entry provided in the contract particulars.

Where there is an agreed BIM protocol it is also a Contract Document. This means that the Contractor's general obligations (in clause 2.1) to carry out and complete the works "in compliance with the Contract Documents" will include compliance with the agreed BIM protocol.

Secondly, the definition of the Design Submission Procedure (which operates in many JCT contracts where the Contractor carries out a design function), has been adapted to take account of BIM's role.

Where there is an agreed BIM Protocol included in the Contract Documents, the procedure specified in the BIM protocol will apply.

If there is none, or it is not applicable, the existing procedures set out in the relevant schedule to the JCT contract will apply in default.

We have also acknowledged that by including an agreed BIM Protocol as a Contract Document, there

may be additional obligations for the supply of information. We have included a new clause within the conditions of sub-contracting provisions requiring these obligations to be stepped down to the sub-contractor.

## ***Some BIM protocols state that in the case of conflict they will override the Agreement and other Contract Documents. What is JCT's position on this?***

We acknowledge that some model protocols state that in the case of conflict they will override the Agreement and other Contract Documents.

However JCT does not endorse the suitability of an overriding provision such as this. We consider that our contracts give sufficient latitude to BIM protocols so that a conflict should not arise.

In the 2016 Edition, whilst an agreed BIM Protocol is a Contract Document, it will not - in accordance with JCT's precedence of documents provision, be capable of overriding or modifying the Contract Agreement or Conditions in the event of any conflict.



# The Public Contracts Regulations 2015

## ***Why is JCT including amendments specific to the Public Contracts Regulations 2015 in the 2016 Edition?***

Many publicly procured projects are built on JCT contracts and it is important that public sector clients feel confident in using our contracts and that they are fully compliant with any relevant regulations.

For the 2016 Edition we have taken this into account not only with the incorporation of provisions from the JCT Public Sector Supplement 2011, but also in amending the contracts to take care of some of the specific aspects of the PCR 2015 that are relevant.

The PCR 2015 applies where the employer is a 'contracting authority' and awards a 'public contract' in accordance with the definitions set out in the regulations.

Generally, the regulations apply when the contract is within the scope of PCR 2015 and exceeds a value threshold. We recommend that professional advice should be taken in there is any doubt as to the applicability of the Regulations generally or a specific provision.

Whilst many of the PCR 2015's provisions relate solely to procurement, it is important that, where applicable, JCT contracts correctly comply.

For the 2016 Edition, the provisions included in respect of PCR 2015 only apply where the Employer is a Local or Public Authority and the Contract is subject to the PCR 2015.

## ***What are the specific provisions included?***

Regulation 113 of the PCR 2015 requires that Employers pay valid and undisputed invoices within a 30-day period.

There is also a requirement to ensure that invoices are considered and verified in a timely fashion. In addition, there is an obligation on contracting authorities to ensure that sub-contractors abide by the conditions, and that the terms are passed down the supply chain.

Where a public contract doesn't provide for these requirements, they are deemed to be included, so that the obligations cannot be contracted out of.

JCT's payment provisions, if they are unamended, already allow for a 30-day period to apply to the payment process, so there are no specific provisions referring to the PCR 2015 in that respect.

There are however provisions at each tier that refer to Regulation 113 and require that the payment terms are passed down the supply chain.

Under Regulation 71 of the PCR 2015, there are provisions that require the Contractor to provide the Employer basic information on the contractor's immediate sub-contractors, which may be extended to lower tiers of sub-contractors. These requirements are included in all tiers of JCT contracts.

Regulation 57 gives the Employer the right to insist on the removal of a sub-contractor where there are grounds for exclusion in accordance with the regulation. The 2016 Edition includes a specific provision to reflect these rights.

Regulation 73 requires public contracts to contain the right for the Employer to terminate the contract where:

- » There has been a substantial modification to the contract within the meaning of Regulation 72.
- » The Contractor should have been excluded under Regulation 57.
- » The contract should not have been awarded due to a serious infringement under European Law, as declared by the Court of Justice in infraction proceedings.

The 2016 Edition includes provisions to give the Employer the right to terminate the contract under each of these circumstances, and includes appropriate provisions to deal with the consequences of termination in each of these individual cases.

# Payment

## ***A significant change in the JCT 2016 Edition concerns the Section 4 Payment provisions. What sort of changes have been made?***

In addressing the payment provisions for the 2016 Edition, we wanted to achieve two main objectives: to simplify, whilst making sure that the provisions remained comprehensive, and to provide greater flexibility.

As part of simplifying the payment provisions, we have in many cases re-organised and re-arranged them into smaller sub-sections. The makeup of these sections varies from form to form, but to use the Standard Building Contract With Quantities as an example, this is now organised into eight sub sections:

- » Contract Sum and Adjustments
- » Taxes
- » Payments, Certificates and Notices - general provisions
- » Interim Payments - calculation of sum due
- » Listed items
- » Retention
- » Loss and Expense
- » Final Adjustment and Final Payment

## ***How have Fair Payment Principles been incorporated?***

To reflect Fair Payment principles we have made modifications to the interim payment due date provisions. These include establishing Interim Valuation Dates that are also to apply at JCT sub-contract and sub-subcontract level.

Under the revised provisions, using the Standard Building Contract again as an example, for the period up to the due date for the final payment, the due dates for interim payments are in each case the date 7 days after the relevant Interim Valuation Date.

The parties must now specify the first Interim Valuation Date in the Contract Particulars, which we recommend should not be more than one month after the Date of Possession. Subsequent Interim Valuation Dates are to be the same date in each month.

Again, these amendments are also reflected at sub-contract and sub-subcontract level. If the relevant entries are inserted in the Contract Particulars, as we recommend, this will enable to Interim Valuation Dates to be linked across the tiers.

## ***What other provisions have been included or changed?***

The monthly cycle of due dates to payments now applies up to the due date for the Final Payment. This replaces the two-month cycle that under previous editions from 2009 applied post-practical completion.

For the 2016 Edition we have also consolidated the Payment Notice and Pay Less Notice requirements of the Construction Act. In previous editions these requirements were set out in each of the interim and final payment provisions.

This time, one sub-section applies to the final payment as well as to the interim payments, dealing with the final date for payment, the amount of interim payments and the final payment. The final date for payment of the final payment is now the same as for interim payments - 14 days from the relevant due date.

We have also amended the Fluctuations Provisions to make them more flexible. Previously, Fluctuations Options A, B & C were all set out in the relevant schedule to the contract, and the required option selected in the Contract Particulars.

In the 2016 Edition, the revised provisions simply refer to a Fluctuations Provision, as applicable, and the parties are required to specify whether fluctuations are to be applied, and if they are, whether the JCT option applies or whether an alternative provision is to apply.

JCT Fluctuations Option A remains as the default, Fluctuations Options B & C are no longer included in JCT contract documents but will continue to be available on the JCT website.

Finally, the provisions that entitle a Contractor to claim Loss and Expense by written application have been revised. With the aim of assisting with the timely and orderly settlement of such claims, the provisions provide for prompt initial notification of claims - or the likelihood of claims - in the same way as before.

They then provide for monthly updates from the Contractor for as long as necessary for final ascertainment.

The Architect/Contract Administrator or Quantity Surveyor is to notify the Contractor of their initial ascertainment within 28 days of receiving the required information, with further notifications being made within 14 days of each subsequent update, in each case identifying any points on which that ascertainment differs from the Contractor's assessment.

# Insurance

## ***How have Insurance provisions changed for the 2016 Edition?***

If we take the JCT Standard Building Contract as an example, section 6 takes the form of five sub-sections:

- » Personal Injury and Property Damage
- » Insurance against Personal Injury and Property Damage
- » Insurance of the Works and Existing Structures
- » CDP Professional Indemnity Insurance
- » Joint Fire Code compliance

The main changes in the 2016 Edition relate to Works insurance. The three Insurance Options (A, B & C) are set out in Schedule 3. Insurance Option C, which is generally intended to apply where there are existing structures has been modified in relation to Existing Structures cover, paragraph C.1.

This has been done to enable alternative solutions to be adopted through a C.1. Replacement Schedule without amendments to the Conditions in the cases where the Employer is unable to arrange satisfactory cover for the Contractor in respect of existing structures - notably where the Employer is a homeowner or tenant with an insuring landlord.

The three Insurance Options have themselves been simplified by consolidating in Section 6 their respective provisions relating to evidence of insurance - now clause 6.12, insurance claims and reinstatement - now clause 6.13 and the former Insurance Option C rights of termination in case of damages to Existing Structures - now clause 6.14.



# Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

***What new provisions are included in the 2016 Edition concerning Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties?***

We have included new enabling clauses that allow for the provision by the Contractor of a Performance Bond and/or Parent Company Guarantee with new entries in the Contract Particulars, under clause 7.3.

The 2016 Edition also includes new enabling provisions for Third Party Rights/Collateral Warranties, which have been extended to include Third Party Rights from Sub-Contractors.

***The 2016 Edition also includes a main format change - the removal of Part 2 of the Contract Particulars - which details the requirements relating to Third Party Rights and Collateral Warranties. How is this now being handled?***

We've replaced Part 2 of the Contract Particulars with a new separate document, the Rights Particulars.

The Rights Particulars are to be prepared by or on behalf of the Employer to set out the requirements for Third Party Rights and/or Collateral Warranties, for the Contractor and from sub-contractors.

The Rights Particulars may be in whatever format the Employer deems appropriate, however we also provide model forms for these particulars at both main contract and sub-contract level, which are available from the JCT website.

***Has there been any changes to the provisions of the Third Party Rights or Collateral Warranties to assist in the preparation of the Rights Particulars?***

Yes, we've carried out some revisions of the provisions contained in the Third Party Rights and Collateral Warranties, which should make preparing the Rights Particulars a relatively simple matter:

- » For the purposes of the net contribution clauses contained in the Third Party Rights and Collateral Warranties, we've included a standard definition of Consultants in the enabling provisions, although this can be altered by the Rights Particulars.
- » In relation to Professional Indemnity Insurance, the terms of the JCT collateral Warranties have been brought into line with the Third Party Rights.

This means that if there is a Contractor's Designed Portion and the Contract requires the Contractor to take out and maintain Professional Indemnity Insurance, the Purchases, Tenant or Funder will automatically receive an undertaking from the Contractor in relation to such insurance in the same terms as those given to the Employer under the Main Contract.

In relation to Sub-Contractors however, it remains necessary for the Employer, in their Rights Particulars, to specify the levels of PI cover or, where appropriate, Product Liability cover that the Contractor is to require from relevant categories of sub-contractor under their respective sub-contracts.





The Joint Contracts Tribunal  
Setting the standard for construction contracts