



This contract has been amended from the original template.

MTC 2016  
Measured Term Contract 2016

**2016**

**MEASURED TERM CONTRACT**

**Measured Term Contract (MTC)**

Appropriate for use:

- by Employers who have a regular flow of maintenance and minor works, including improvements, to be carried out by a single contractor over a specified period of time and under a single contract;
- where the work is to be instructed from time to time and measured and valued on the basis of an agreed schedule of rates; and
- where a Contract Administrator is to administer the conditions.

This document has been produced electronically by Rapidocs software and is derived from the published printed version (March 2017). Its use is subject to the software licence agreement. Thomson Reuters and the Thomson Reuters Logo are trademarks of Thomson Reuters. Sweet & Maxwell ® is a registered trademark of Thomson Reuters (Professional) UK Limited.

For details of 2016 Edition changes, see the Measured Term Contract Guide (MTC/G) and the Tracked Change Document.

[www.jcttd.co.uk](http://www.jcttd.co.uk)

# Contents

## Agreement

## Recitals

## Articles

- Article 1: Contractor's obligations
- Article 2: Payment
- Article 3: Contract Administrator
- Article 4: Principal Designer
- Article 5: Principal Contractor
- Article 6: Adjudication
- Article 7: Arbitration
- Article 8: Legal proceedings

## Contract Particulars

## Attestation

## Conditions

### Section 1 Definitions and Interpretation

- 1.1 Definitions
- 1.2 Agreement etc. to be read as a whole
- 1.3 Headings, references to persons, legislation etc.
- 1.4 Reckoning periods of days
- 1.5 Contracts (Rights of Third Parties) Act 1999
- 1.6 Notices and other communications
- 1.7 Applicable law

### Section 2 Carrying out Work

- 2.1 Contractor's obligations
- 2.2 Materials, goods and workmanship
- 2.3 Rights of Employer
- 2.4 Size and duration of Orders
- 2.5 Value of work to be carried out under this Contract
- 2.6 Orders – completion
- 2.7 Programme
- 2.8 Divergences from Statutory Requirements
- 2.9 Fees or charges
- 2.10 Extension of time
- 2.11 Order Completion Date
- 2.12 Defects

### Section 3 Control of Work

- 3.1 Assignment
- 3.2 Sub-contracting
- 3.3 Contractor's representative
- 3.4 Access to the Site
- 3.5 Variations
- 3.6 Cancellation of an Order
- 3.7 Exclusion from the Site
- 3.8 Non-compliance with instructions
- 3.9 CDM Regulations
- 3.10 Replacement of Contract Administrator

### Section 4 Payment

- 4.1 VAT
- 4.2 Construction Industry Scheme (CIS)

- 4.3 Progress payments
- 4.4 Final payment where Contract Administrator measures and values Orders
- 4.5 Final payment where Contractor measures and values Orders
- 4.6 Payments – final date and amount
- 4.7 Contractor's right of suspension

## **Section 5 Measurement and Valuation**

- 5.1 Definition of Variations
- 5.2 Measurement and Valuation – responsibility
- 5.3 Valuation – measurement
- 5.4 Valuation – daywork
- 5.5 Derived rates
- 5.6 Rates – Fluctuations
- 5.7 Overtime work
- 5.8 Interruption of work – unproductive costs

## **Section 6 Injury, Damage and Insurance**

- 6.1 Contractor's liability – personal injury or death
- 6.2 Contractor's liability – loss, injury or damage to property
- 6.3 Loss or damage to existing structures or their contents
- 6.4 Contractor's insurance of his liability
- 6.5 Excepted Risks
- 6.6 Related definitions
- 6.7A Joint Names Insurance of work or supply comprised in Orders and existing structures by the Employer
- 6.7B Joint Names Insurance of work or supply comprised in Orders by the Contractor
- 6.8 Clause 6.7B – use of Contractor's annual policy – as alternative
- 6.9 Notification by Contractor of occupation and use
- 6.10 Evidence of insurance
- 6.11 Terrorism Cover – policy extensions and premiums
- 6.12 Terrorism Cover – non-availability – Employer's options
- 6.13 Loss or damage – insurance claims and reinstatement
- 6.14 Loss or damage to existing structures – right of termination in respect of Orders

## **Section 7 Break Provision – Rights of each Party**

- 7.1 Break notice
- 7.2 Existing and subsequent Orders

## **Section 8 Termination for Default, etc.**

- 8.1 Meaning of insolvency
- 8.2 Notices under section 8
- 8.3 Other rights, reinstatement
- 8.4 Default by Contractor
- 8.5 Insolvency of Contractor
- 8.6 Corruption and regulation 73(1)(b) of the PC Regulations
- 8.7 Default by Employer
- 8.8 Insolvency of Employer
- 8.9 Termination by Employer – regulations 73(1)(a) and 73(1)(c) of the PC Regulations
- 8.10 Consequences of termination under clauses 8.4 to 8.6
- 8.11 Consequences of termination under clauses 8.7 to 8.9

## **Section 9 Settlement of Disputes**

- 9.1 Mediation
- 9.2 Adjudication
- 9.3 Arbitration – Conduct of arbitration
- 9.4 Notice of reference to arbitration
- 9.5 Powers of Arbitrator
- 9.6 Effect of award
- 9.7 Appeal – questions of law
- 9.8 Arbitration Act 1996

## **Schedule Supplemental Provisions**

# Agreement

This Agreement is made the 5th April 20 23

Between

**The Employer** Rooftop Housing Association Limited

(Company No. IP27786R)<sup>(1)</sup>

whose registered office is at Rooftop Housing Association Limited

70 High Street

Evesham

Worcestershire

WR11 4YD

And

**The Contractor** Anglian Windows Limited T/A Anglian Building Products

(Company No. 02540020)<sup>(1)</sup>

whose registered office is at Anglian Windows Limited T/A Anglian Building Products

Liberator Road

~~45 Hurricane Way~~

Norwich

England

NR6 6EU



<sup>(1)</sup> Where the Employer or Contractor is neither a company incorporated under the Companies Acts nor a company registered under the laws of another country, delete the references to Company number and registered office. In the case of a company incorporated outside England and Wales, particulars of its place of incorporation should be inserted immediately before its Company number.

As to execution by foreign companies and matters of jurisdiction, see the Measured Term Contract Guidé.

## Recitals

### Whereas

- First** the Employer requires maintenance and minor works to be carried out in:
- Various properties across the Employer's operational area, ('the Contract Area') in accordance with the details set out or referred to in the Contract Particulars;
- Second** the Contractor has offered to carry out the required works at specified rates or as otherwise determined in accordance with the Conditions and the Employer has accepted that offer;

- Third** the Employer has appointed a Contract Administrator to issue Orders for the required works and carry out the functions ascribed to the Contract Administrator by the Conditions;
- Fourth** the Contractor has supplied to the Employer the Contractor's safety policy complying with Statutory Requirements, a copy of which is annexed;
- Fifth** whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars;

## Articles

### Now it is hereby agreed as follows

#### Article 1: Contractor's obligations

The Contractor shall carry out all Orders that are placed with him during the Contract Period in accordance with the Contract Documents.

#### Article 2: Payment

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12), adjusted and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 and 14).

#### Article 3: Contract Administrator

For the purposes of this Contract the Contract Administrator is

Thornton- Firkin LLP

of 137 Newhall Street, Birmingham, B3 1SF

or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10.1 of the Conditions.

#### Article 4: Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the Contract Administrator or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

#### Article 5: Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

#### Article 6: Adjudication

If any dispute or difference arises under this Contract, either Party may refer it to adjudication in accordance with clause 9.2.

#### Article 7: Arbitration

Where Article 7 applies<sup>[3]</sup>, then, subject to Article 6 and the exceptions set out below, any dispute or difference between the Parties of any kind whatsoever arising out of or in connection with this Contract shall be referred to arbitration in accordance with clauses 9.3 to 9.8 and the JCT 2016 edition of the Construction Industry Model Arbitration Rules (CIMAR). The exceptions to this Article 7 are:

<sup>[3]</sup> If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).



- any disputes or differences arising under or in respect of the Construction Industry Scheme or VAT, to the extent that legislation provides another method of resolving such disputes or differences; and
- any disputes or differences in connection with the enforcement of any decision of an Adjudicator.

**Article 8: Legal proceedings<sup>[3]</sup>**

Subject to Article 6 and (where it applies) to Article 7, the English courts shall have jurisdiction over any dispute or difference between the Parties which arises out of or in connection with this Contract.

**Article 9: Incorporation of amendments**

The recitals, articles, contract particulars, conditions and schedules included shall be subject to the schedule of amendments.

---

<sup>[3]</sup> If it is intended, subject to the right of adjudication and exceptions stated in Article 7, that disputes or differences should be determined by arbitration and not by legal proceedings, the Contract Particulars **must** state that Article 7 and clauses 9.3 to 9.8 apply and the words "do not apply" **must** be deleted. If the Parties wish any dispute or difference to be determined by the courts of another jurisdiction the appropriate amendment should be made to Article 8 (see also clause 1.7).

## Contract Particulars

*Note: An asterisk \* indicates where selection has been or should have been made.*

### 1 Properties and description of the types of work (First Recital)

- 1 List of properties in the Contract Area in respect of which Orders may be issued:

Various properties across the Employer's operational area.

- 2 Description of the types of work for which Orders may be issued<sup>[4]</sup>:

See Window and External Door Replacement Programme.

### 2 Supplemental Provisions<sup>[5]</sup> (Fifth Recital and Schedule)

*(Where neither entry against one of  
Supplemental Provisions 1 to 6 below is deleted,  
that Supplemental Provision applies.)*

Collaborative working	* Supplemental Provision 1 applies
Health and safety	* Supplemental Provision 2 applies
Cost savings and value improvements	* Supplemental Provision 3 applies
Sustainable development and environmental considerations	* Supplemental Provision 4 applies
Performance Indicators and monitoring	* Supplemental Provision 5 applies
Notification and negotiation of disputes	* Supplemental Provision 6 applies
Where Supplemental Provision 6 applies, the respective nominees of the Parties are	Employer's nominee <u>Rebecca Pitt</u> Contractor's nominee

<sup>[4]</sup> Where the National Schedule of Rates is to apply (see items 12.1 and 12.2 of the Contract Particulars) but some (or all) of the work is of a type for which it is appropriate to use as a basis for pricing a version of the National Schedule other than 'Building Works', the Parties, in addition to stating that in item 12.2, should make appropriate entries here (or in any separate document incorporated by reference here) indicating the types of work to which it is agreed that such alternative version of the National Schedule shall apply.

<sup>[5]</sup> Supplemental Provision 7 (Transparency) applies only where the Employer is a Local or Public Authority or other body to whom the Freedom of Information Act 2000 applies; Supplemental Provision 8 (The Public Contracts Regulations 2015) applies only where the Employer is a Local or Public Authority and this Contract is subject to the PC Regulations.

Mark Lynchy

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

### 3 **Contract Period**<sup>[6]</sup>

(Article 1 and clause 7.1)

Subject to clause 7.1, the Contract Period will be Three Years years

commencing on 28th November 2022

### 4 **Arbitration**

(Article 7)

*(If neither entry is deleted, Article 7 and clauses 9.3 to 9.8 do not apply. If disputes and differences are to be determined by arbitration and not by legal proceedings, it must be stated that Article 7 and clauses 9.3 to 9.8 apply.)<sup>[7]</sup>*

\* Article 7 and clauses 9.3 to 9.8 (Arbitration) apply

### 5 **BIM Protocol**

(Clause 1.1)

BIM Protocol (where applicable)  
(State title, edition, date or other identifiers of  
the relevant documents.)

Not applicable

### 6 **Orders – minimum and maximum value**

(Clause 2.4)

Minimum value of any one Order to be issued

£The employer gives no guarantee as to the size, value or frequency of any order (words )

Maximum value of any one Order to be issued

£The employer gives no guarantee as to the size, value or frequency of any order (words )

### 7 **Orders – value of work to be carried out**

(Clause 2.5)

Approximate anticipated value of work to be carried out under this Contract

\* £ (words ) for the Contract Period

\* The employer gives no guarantee as to the value of any Orders to be placed, if at all.

\*

t

<sup>[6]</sup> The period is envisaged as normally being at least one year.

<sup>[7]</sup> On factors to be taken into account by the Parties in considering whether disputes are to be determined by arbitration or by legal proceedings, see the Measured Term Contract Guide. See also footnote [3].

**8 Orders – priority coding<sup>[8]</sup>**

(Clause 2.6)

Not required.

**9 Construction Industry Scheme (CIS)**

(Clause 4.2)

The Employer at the commencement of the Contract Period

\* is a 'contractor'

for the purposes of the CIS

**10 Payments**

(Clauses 4.3, 4.4 and 4.5)

Estimated value of an Order above which  
progress payments can be applied for  
(If none is stated, it is £2,500.)

£5,000.00

Valuation Dates

(If no date is stated, the Valuation Date is the  
last day of each month.)

The Valuation Date in each month is the

last day of the month**11 Responsibility for measurement and valuation**

(Clause 5.2)

(Unless one of the three options opposite is  
selected and, if relevant, an estimated value  
specified, the Contract Administrator shall  
measure and value all Orders.)

\* ~~The Contract Administrator shall measure  
and value all Orders/~~\* ~~The Contract Administrator shall measure  
and value each Order with an estimated  
value of £ \_\_\_\_\_~~or more; the Contractor shall measure and  
value all other Orders/\* The Contractor shall measure and value all  
Orders**12 Schedule of Rates**

(Clauses 5.3, 5.6.1 and 5.6.2)

**1 The Schedule of Rates is**

\* The schedule of rates are as submitted during the SWPA procurement process.  
(identify the Schedule of Rates to be used)

subject to adjustment of the rates listed in that Schedule by

\* the addition

of the **Adjustment Percentage**, which is \*as set out in the following document Section 4 of  
the specific project order Contract Particulars

*Not Applicable***2 Not applicable.**

<sup>[8]</sup> To be completed if the Employer requires; as an example the code might be:

- 'A': response time to be 4 hours;
- 'B': to be commenced within 2 days;
- 'C': to be commenced within 14 days;
- 'D': to be commenced as agreed.

### 3 Rates – Fluctuations

Clause 5.6.1  
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

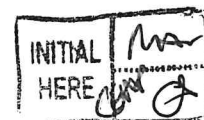
\* ~~does not apply~~ Applies

### 4 Basis and dates of revision

~~Not applicable.~~ As detailed in the GUPA Framework Agreement

## 13 Daywork

(Clauses 5.4, 5.6.3 and 5.6.4)



### 1 Valuation – percentage additions

~~The percentage additions to the invoice price of non-labour items are included in or annexed to the Schedule of Hourly Charges.~~

Where not included in or annexed to the Schedule of Hourly Charges, the percentage additions to the invoice price of non-labour items are as follows:

- Overheads and profits on materials: 25%
- Overheads and profit on plant, services and consumable stores: 25%
- Overheads and profit on Sub-Contractors: 25%
- Revision of Schedule of Hourly Charges: where clause 5.6.3 applies
- The annual revision date is Twelve monthly intervals after the commencement date.
- The basis of revision of hourly charges is to be built up from base principles for trade

### 2 Revision of Schedule of Hourly Charges

Clause 5.6.3  
(Unless 'applies' is deleted, the clause shall be deemed to apply.)

\* does not apply

## 14 Overtime work

(Clause 5.7)

The percentage addition in respect of overheads and profit on non-productive overtime rates is  
(Not applicable where an inclusive rate for such overtime is included in the Schedule of Hourly Charges)

Does not apply per cent

## 15 Insurance

(Clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11)

- |   |   |   |
|---|---|---|
| 1 | Contractor's Public Liability insurance: injury to persons or property - the required level of cover is not less than | £10,000,000<br>for any one occurrence or series of occurrences arising out of one event |
| 2 | Percentage to cover professional fees<br>(If no other percentage is stated, it shall be 15 per cent.)                 | 15 per cent   |

- 3 Insurance of existing structures - clause 6·7A·1<sup>[11]</sup> \* applies  
(Unless otherwise stated, clause 6·7A·1 applies. If it is not to apply, state the reference number and date or other identifier of the replacement document(s).)
- 4 Insurance of work or supply comprised in Orders - clause 6·7B \* does not apply  
(If neither entry is deleted, the clause does not apply.)
- 5 Not applicable
- 6 Terrorism Cover – details of the required cover are set out in the following document(s)  
(Unless otherwise stated, Pool Re Cover is required.) Does not apply

**16 Break Provisions – Employer or Contractor**  
(Clause 7·1) Replaced with 7·1 herein

The period of notice, if less than 13 weeks, is As detailed in the contract amendments - weeks

**17 Settlement of Disputes**  
(Clauses 9·2, 9·3 and 9·4·1)

**Adjudication<sup>[12]</sup>**

The Adjudicator is

Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)<sup>[13]</sup>  
(Where an Adjudicator is not named and a nominating body has not been selected, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication.)

- \* ~~Royal Institute of British Architects~~
- \* ~~The Royal Institution of Chartered Surveyors~~
- \* ~~constructionadjudicators.com<sup>[14]</sup>~~
- \* ~~Association of Independent Construction Adjudicators<sup>[15]</sup>~~
- \* ~~Chartered Institute of Arbitrators~~

**Arbitration<sup>[16]</sup>**

<sup>[11]</sup> As to choice of applicable insurance provisions, see the Measured Term Contract Guide. In respect of existing structures, it is vital that any prospective Employer who is not familiar with clause 6·7A and the alternative solutions under clause 6·7A·1 – in particular, any Employer who is a tenant – or an appropriate member of the Employer's professional team, should consult specialist insurance advisers prior to the tender stage. Any Employer who is a tenant should also consult his insuring landlord prior to that stage.

<sup>[12]</sup> The Parties should either name the Adjudicator and select the nominating body or, alternatively, select only the nominating body. The Adjudication Agreement (Adj) and the Adjudication Agreement (Named Adjudicator) (Adj/N) have been prepared by JCT for use when appointing an Adjudicator.

<sup>[14]</sup> constructionadjudicators.com is a trading name of Contractors Legal Grp Ltd.

<sup>[13]</sup> Delete all but one of the nominating bodies asterisked.

<sup>[15]</sup> Association of Independent Construction Adjudicators is controlled by and acts as an agent of the National Specialist Contractors' Council for the purpose of the nomination of adjudicators.

<sup>[16]</sup> This only applies where the Contract Particulars state (against the reference to Article 7) that Article 7 and clauses 9·3 to 9·8 (Arbitration) apply.

Appointor of Arbitrator (and of any replacement)<sup>[17]</sup>

*(If no appointor is selected, the appointor shall be the President or a Vice-President of The Royal Institution of Chartered Surveyors.)*

- President or a Vice-President:
- \* ~~Royal Institute of British Architects~~
  - \* The Royal Institution of Chartered Surveyors
  - \* ~~Chartered Institute of Arbitrators~~



<sup>[17]</sup> Delete all but one of the bodies asterisked.

## **Attestation**

### **Note on Execution**

This Agreement should be executed by both the Employer and the Contractor either under hand or as a deed. As to factors relevant to that choice, see the Measured Term Contract Guide.

#### **Execution under hand**

If this Agreement is to be executed under hand, use the form set out on the following page. Each Party or his authorised representative should sign where indicated in the presence of a witness who should then sign and set out his name and address.

#### **Execution as a Deed**

If this Agreement is to be executed as a deed, each Party should use the relevant form marked 'Execution as a Deed' in accordance with the notes provided.

#### **Other forms of Attestation**

In cases where the forms of attestation set out are not appropriate, e.g. in the case of certain housing associations and partnerships or if a Party wishes an attorney to execute this Agreement on his behalf, the appropriate form(s) may be inserted in the vacant space opposite and/or below.



## Notes on Execution as a Deed

- 1 For the purposes of execution as a deed, two forms are provided for execution, one for the Employer and the other for the Contractor. Each form provides four methods of execution, **(A)** to **(D)**, for use as appropriate. The full name of the Employer or Contractor (whether an individual, a company or other body) should be inserted where indicated at the commencement of the relevant form. This applies irrespective of the method used.
- 2 For public and private companies incorporated and registered under the Companies Acts, the three principal methods of execution as a deed are:  
  
(A) through signature by a Director and the Company Secretary or by two Directors;  
  
(B) by affixing the company's common seal in the presence of a Director and the *Company* Secretary or of two Directors or other duly authorised officers; or  
  
(C) signature by a single Director in the presence of a witness who attests the signature.  
  
Methods **(A)** and **(C)** are available to public and private companies whether or not they have a common seal. (Method **(C)** was introduced by section 44(2)(b) of the Companies Act 2006.) Methods **(A)** and **(C)** are not available under companies legislation to local authorities or to certain other bodies corporate, e.g. bodies incorporated by letters patent or private Act of Parliament that are not registered under companies legislation and such bodies may only use method **(B)**.
- 3 Where method **(A)** is being used, delete the inappropriate words and insert in the spaces indicated the names of the two Directors, or of the Director and the Company Secretary, who are to sign.
- 4 If method **(B)** (affixing the common seal) is adopted in cases where either or both the authorised officers attesting its affixation are not themselves a Director or the *Company* Secretary, their respective office(s) should be substituted for the reference(s) to Director and/or to *Company* Secretary/Director. (In the case of execution by bodies that are not companies, the reference to "*Company*" under the second signature should be deleted where appropriate.)
- 5 Method **(C)** (execution by a single Director) has been introduced primarily, but not exclusively, for 'single officer' companies. The Director should sign where indicated in the presence of a witness who should then sign and set out his name and address.
- 6 Where the Employer or Contractor is an individual, he should use method **(D)** and sign where indicated in the presence of a witness who should then sign and set out his name and address.

*Execution as a Deed***Executed as a Deed by the Employer**namely <sup>1</sup> Rooftop Housing Association Limited(A) acting by a Director and the Company Secretary/~~two Directors~~ of the company <sup>2, 3</sup>CLAIRE-ELAINE ARTHURS PAYNE<sup>and</sup>  
(Print name of signatory)*CL Payne*  
Signature

Director

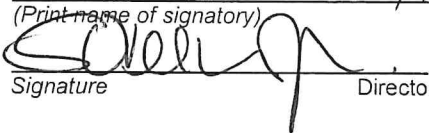
CAROWNE AWHEN  
(Print name of signatory)*CAWHEN*  
Signature

Company Secretary/Director

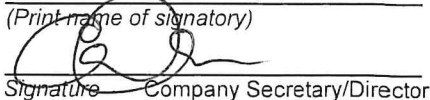
---

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*

*Execution as a Deed***Executed as a Deed by the Contractor**namely <sup>1</sup> Anglian Windows Limited T/A Anglian Building Products(A) acting by a Director and the Company Secretary/two Directors **of the company** <sup>2,3</sup>

S. OKES-104507  
(Print name of signatory)  
  
Signature Director

and

BENJAMIN DAWK  
(Print name of signatory)  
  
Signature Company Secretary/Director

---

*Note: The numbers on this page refer to the numbered paragraphs in the Notes on Execution as a Deed.*