Pavement Framework

Z clauses
(Engineering and Construction
Short Subcontract)

CONTENTS AMENDMENT SHEET

Amend. No.	Issue Date	Amendments	Initials	Date
1	13/11/2017	Addition of Z clause Z65F.1	AB	13/11/2017

Z CLAUSES (Engineering and Construction Short Subcontract)

MANDATORY Z CLAUSES

Clause Z1F Changes to Conditions of Subcontract

51   Payment

In clause 51.1 of the *conditions of subcontract*, delete "three weeks" and insert "14 days".

63   Assessing compensation events

After clause 63.10 of the *conditions of subcontract*, insert the following sub-clause

> 63.11   If the *Employer* and the *Contractor* agree, rates and lump sums in the Price List may be used to assess a compensation event.

82   Insurance cover

Delete clause 82 of the *conditions of subcontract* and insert

82.1   The *Subcontractor* provides the insurances stated in, and to comply with the requirements set out in, Annex 10 to the Framework Information.

Additional condition 1 (Page CS 13 of 13)

In condition 1.1(2) delete "three weeks" and insert "14 days".

Clause Z8F   Conflict of interest

> Z8F.1 Clause 60.1(4) is amended by adding the following words at the end (before the full stop):
>
> ", unless the instruction relates to a notification from the *Subcontractor* that a conflict of interest may exist or arise".

Clause Z10F   Subcontracting

> Z10F.1   The *Subcontractor* submits the name of each proposed subcontractor to the *Contractor* for acceptance. A reason for not accepting the subcontractor is that his appointment will not allow the *Subcontractor* to Provide the Works. The *Subcontractor* does not appoint a proposed subsubcontractor until the *Contractor* has accepted him.
>
> Z10F.2 The *Subcontractor* submits the proposed conditions of subcontract for each subcontract to the *Contractor* for acceptance unless the *Contractor* has agreed that no submission is required.
>
> Z10F.3 The *Subcontractor* does not appoint a subcontractor on the proposed subcontract conditions submitted until the *Contractor* has accepted them. A reason for not accepting them is that
>
> - they will not allow the *Subcontractor* to Provide the Works or
>
> - they do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and co-operation.

Z10F.4 The *Subcontractor* assesses the amount due to a Subcontractor without taking into account the amount assessed under this subcontract.

Z10F.5 If the *Subcontractor* subcontracts work to an Associated Company, the Defined Cost of the work subcontracted is assessed as if the work had not been subcontracted unless otherwise agreed by the *Contractor*.

Z10F.6 The *Contractor* may, having stated his reasons, instruct the *Subcontractor* to remove a subcontractor. The *Subcontractor* then arranges the removal of the subcontractor and the appointment of a replacement in accordance with this subcontract.

Z10F.7 Before

- appointing a proposed subcontractor or

- allowing a subcontractor to appoint a proposed subsubcontractor

the *Subcontractor* submits to the *Contractor* for acceptance

- either

    - a European Single Procurement Document (as described in regulation 59 of the Public Contracts Regulations 2015) in respect of the proposed subcontractor or subsubcontractor or

    - other means of proof (as specified in regulations 60(4) and 60(5) of the Public Contracts Regulations 2015) that none of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applies to the proposed subcontractor or subsubcontractor and

- details of any RIDDOR Incident under any contract for which the proposed Subcontractor or subsubcontractor is responsible and of any Enforcement Action brought against the proposed subcontractor or subsubcontractor.

Z10F.8 The *Subcontractor* does not appoint the proposed subcontractor (or allow the subcontractor to appoint the proposed subsubcontractor) until the *Contractor* has accepted the submission. A reason for not accepting the submission is that

- it shows that there are grounds for excluding the proposed subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 or

- the *Contractor* is not satisfied that the proposed subcontractor or subsubcontractor has put in place adequate measures to

ensure that the RIDDOR Incident or Enforcement Action will not recur.

Z10F.9 If requested by the *Contractor*, the *Subcontractor* provides further information to support, update or clarify a submission under clause Z10F.7.

Z10F.10 If, following the acceptance of a submission under clause Z10F.8, it is found that

- one of the grounds for excluding the subcontractor or subsubcontractor under regulation 57 of the Public Contracts Regulations 2015 applies or

- the Subcontractor or subsubcontractor has not put in place adequate measures to ensure that the RIDDOR Incident or Enforcement Action will not recur

the *Contractor* may instruct the *Subcontractor* to

- replace the subcontractor or

- require the subcontractor to replace the subsubcontractor.

Clause Z18F   Quality Management Points

Z18F.1 A failure by the *Subcontractor* to take the agreed actions to reduce the number of Quality Management Points in effect under this subcontract to 25 or less following the issue of a quality warning notice is treated as a substantial failure by the *Subcontractor* to comply with this subcontract.

Clause Z27F   Termination – PCRs, Regulation 73

Z27F.1 The *Contractor* may terminate the *Subcontractor*'s obligation to Provide the Works if one of the mandatory or discretionary grounds for exclusion referred to in regulation 57 of the Public Contracts Regulations 2015 applied to the *Subcontractor* at the *starting date*. The procedure and amount due on termination are the same as for Reason 2.

Clause Z28F   Termination and removal of work

Z28F.1 The following are treated as a substantial failure by the *Subcontractor* to comply with this subcontract

- the *Subcontractor* substantially or repeatedly breaks a requirement of environmental legislation,

- the *Subcontractor* persistently or materially fails to comply with the Quality Statement or to meet any of the Performance Requirements or

- a key resource needed by the *Subcontractor* to Provide the Works is no longer available and the *Subcontractor* does not propose an alternative resource acceptable to the *Contractor.*

Z28F.2 The *Contractor* may instruct the *Subcontractor* that

- part of the *subcontract works* is to be permanently removed from this subcontract or

- for urgent reasons of health and safety, part of the *subcontract works* is to be temporarily removed from this subcontract.

In either case the *Subcontractor* acknowledges that the *Employer* or the *Contractor* may himself, or appoint another supplier in place of the *Subcontractor* to undertake works similar to the removed *subcontract works* (or part of them).

Z28F.3 An instruction given under clause Z28F.2 is assessed as a compensation event, except that if the instruction is given for one of Reasons 1 to 4, the assessment includes a deduction of the forecast of the additional cost to the *Contractor* of completing the removed *subcontract works.*

Clause Z30F   Compensation events

Z30F.1 Clause 60.1(1) of the *conditions of subcontract* is amended as follows

The *Contractor* gives an instruction changing the Works Information unless the change is

- to the method of or requirements for performance measurement,

- stated elsewhere in the *conditions of subcontract* not to be a compensation event or

- in order to make a Defect acceptable.

Clause Z33F   Joint ventures

Z33F.1 Where two or more Consortium Members comprise the *Subcontractor*, clause 90.2 of the *conditions of subcontract* is amended by inserting after "the other Party" the words "(or, in the case of the *Subcontractor*, any Consortium Member)".

Clause Z36F   Construction Industry Scheme

Z36F.1 In this clause Z36F (but not otherwise)

- the Act is the Finance Act 2004 and

- the Regulations are the Income Tax (Construction Industry Scheme) Regulations 2005 (SI 2005/2045).

Z36F.2 This subcontract falls within the scope of the Construction Industry

Scheme provided for by Chapter 3, Part 3 of the Act.

Z36F.3 The *Subcontractor* provides the information required by the Regulations to enable the *Contractor* to verify (in accordance with paragraph 6 of the Regulations) whether the *Subcontractor* under the Act

- is registered for gross payment,

- is registered for payment under deduction,

- is exempt from registration as a local authority or other public body or

- is neither registered nor exempt from registration.

Z36F.4 If the *Subcontractor* is registered for payment under deduction or is neither registered nor exempt from registration

- the *Subcontractor* submits an application for payment which separately identifies the cost of labour and

- the *Contractor* deducts the relevant percentage from the payment in accordance with the Act and the Regulations.

OPTIONAL Z CLAUSES

Clause Z62F   Building Information Modelling (BIM)

Z62F.1   *Definitions*

In this subcontract

(1)   **BIM Execution Plan** is the document of that name identified in the Contract Data that describes how the *Subcontractor* will produce the Specified Models and meet the requirements in the Employer's Information Requirements.

(2)   **Employer Owned Materials** are

- the Specified Models,

- any information in any electronic medium comprised in a Specified Model, whether prepared by or on behalf of the *Subcontractor* or provided to the *Subcontractor* by or on behalf of the *Contractor* or the *Employer*,

- any Model (or any part of a Model) produced and delivered by another Project Team Member as specified in the Model Production and Delivery Table,

- any Federated Model (and any part of it) and

- any proprietary work contained in, and any rights subsisting in, any of the above.

(3)   **Employer's Information Requirements** is the document of that name identified in the Contract Data that describes how Models and associated information are produced, delivered and used, including any processes, protocols and procedures referred to in it.

(4)   **Federated Model** is a Model consisting of connected but distinct individual Models.

(5)   **Level of Definition** is the graphical and non-graphical content required for a Model at each Stage as specified in the Employer's Information Requirements.

(6)   **Model** is a digital representation of part of the physical or functional characteristics of the works in the main .

(7)   **Model Production and Delivery Table** is the table of that name included in the Employer's Information Requirements that sets out

- the subject matter of each Model,

- the person who is to produce and deliver each Model at each Stage and

- the proposed Level of Definition for each Model at each Stage.

(8)   **Permitted Purpose** is a purpose related to the Project (including the construction, operation and maintenance of the Project) which is consistent with the applicable Level of Definition of the relevant Model and the purpose for which it was prepared.

(9)   **Project** is the project of which the *subcontract works* form part.

(10)   **Project Agreement** is an agreement entered into between the *Employer* or the *Contractor* and a Project Team Member in relation to the Project.

(11)   **Project Team Member** is any person appointed by the *Employer* or the *Contractor* in relation to the *works* with responsibility for the production, delivery or use of Models.

(12)   **Specified Model** is a Model to be produced and delivered by the *Subcontractor* as specified in the Model Production and Delivery Table.

(13)   **Stage** is a stage of the Project specified in the Employer's Information Requirements.

Z62F.2 *Priority of Documents*

Z62F.2.1 This clause prevails over any conflicting provisions of this subcontract.

Z62F.2.2 Unless the Employer's Information Requirements state otherwise, any Model prepared and delivered in accordance with this clause prevails over any conflicting document or information extracted from the Model.

Z62F.3 *The Information Manager*

Z62F.3.1 The *Information Manager* establishes and manages the processes, protocols and procedures set out in the Employer's Information Requirements.

Z62F.3.2 If the *Employer* replaces the *Information Manager*, the *Contractor* notifies the *Subcontractor* of the name of the replacement.

Z62F.3.3 The *Information Manager* may delegate any of his functions to an employee of

- the *Contractor* or

- another supplier of works or services to the *Employer*.

The *Contractor* notifies the *Subcontractor* of any delegation to an employee of another supplier. A reference to an action of the *Information Manager* in this contract includes an action by his delegate.

Z62F.4 *Electronic Data Exchange*

Z62F.4.1 The *Subcontractor* does not warrant the integrity of any electronic data delivered in accordance with this clause.

Z62F.4.2 The *Subcontractor* is not liable to the *Contractor* for any corruption or unintended modification of the electronic data in a Specified Model which occurs after it has been transmitted by the *Subcontractor*, unless the corruption or modification is due to the *Subcontractor*'s failure to comply with this clause.

Z62F.5 *Use of Models*

Z62F.5.1 The *Contractor* grants to the *Subcontractor* a non-exclusive licence (including the right to grant sub-licences to subsubcontractors) to transmit, copy and use the Employer Owned Materials for the Permitted Purpose.

Z62F.5.2 The licence in Z62F.5.1 does not include the right to

- modify a Model without the agreement of the *Employer* or the Project Team Member who produced the Model (or the relevant part of it), unless such modification is provided for in the Employer's Information Requirements or is made for the Permitted Purpose following termination of the Project Team Member's engagement or

- reproduce, for an extension of the Project, any proprietary

work contained in a Model.

Z62F.5.3 The *Contractor* is not liable to the *Subcontractor* for the consequences of any modification, transmission, copying or use by the *Subcontractor* of any of the Employer Owned Materials that is not permitted by this clause.

Z62F.6 *Termination*

The provisions of this clause continue to apply after termination of the *Subcontractor*'s obligation to Provide the Works.

Z62F.7 *Subsubcontracting*

If the *Subcontractor* subsubcontracts any work involved in producing information for inclusion in a Specified Model, the *Subcontractor* includes in the subsubcontract provisions equivalent to those set out in

- this clause and

- the section headed "Building Information Modelling" in the Works Information.

Z62F.8 *Compensation event*

The following is a compensation event.

- An event outside the *Subcontractor*'s control prevents him from delivering the Specified Models at the Level of Definition specified in the Model Production and Delivery Table for a Stage in accordance with the Employer's Information Requirements.

Clause Z65F   *Limitation of Liability*

Z65F.1   Delete clause 80.1

Z65F.2   The *Subcontractor's* liability to the *Contractor* for the *Contractor s* indirect or consequential loss is limited to the amount stated in the Contract Data

Z65F.3   For any one event, the liability of the *Subcontractor* to the *Contractor* or the *Contractor* for loss of or damage to the *Employer's* or *Contractor's* property is limited to the amount stated in the Contract Data

Z65F.4   The *Subcontractor's* liability to the *Contractor* for Defects due to his design which are not listed on the Defects Certificate is limited to the amount stated in the Contract Data.

Z65F.5   The *Subcontractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to the amount stated in the Contract Data and applies in contract, tort or delict and otherwise to the extent allowed under the law of the country where the *site* is.

Z65F.6   The excluded matters are amounts payable by the *Subcontractor* as stated in this contract for:

- loss of or damage to the *Employer's* or *Contractor's* property,
- *delay damages*,
- fraud or fraudulent misrepresentation,
- events for which this contract requires the *Contractor* to insure,
- infringement of an intellectual property right,
- loss or damage
    - to third party property or
    - due to pollution,
- loss arising from breach of
    - confidentiality or data protection obligations or
    - anti-bribery or anti-corruption obligations,
- interest on debt and
- losses caused by the *Contractor's* wilful misconduct illegal acts, deliberate default, deliberate abandonment or reckless misconduct