

RIAS ABERDEEN CHAPTER

2016 SBCC CONTRACTS

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Bunton Consulting

Past Chair SBCC 2016

Your Presenter

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**Bunton
Consulting**

Len is founder and Principal of Bunton Consulting. He has over forty years of unparalleled experience in the industry, predominantly as a dispute resolver (Adjudicator, Arbitrator, Mediator, Expert Determiner). Len acts as an adviser and representative of numerous contracting organisations, various trade bodies, the SBCC, and several professional institutions. He is a Past Chairman of the CIArb Scottish Branch and immediate past chair of SBCC. Len was recently elected an Honorary Fellow of the RIAS for his decades of work in resolving and preventing disputes in the construction industry.

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Seminar 1 – SBCC 2016 Minor Works

Len Bunton

- **16.30 – 17.15**
- **SBCC – Design and Build Contracts**

Mike Barlow MacRoberts LLP Solicitors

- **17.30 – 18.30 – Insurance Provisions**

Seminar 1 – SBCC Design and Build 2016

- **JCT 2016 Tracked Changes Version is very useful to have as it shows the changes from 2011**
- **Also the SBCC Design and Build Contract Guide**
- **Consideration of the various D&B models**
- **Employers Requirements – full blown Contractors D&B and Contractors Proposals**
- **Initial design by employer, Contractors Proposal, designed novated**

- **Employers Requirements, initial design by Employer, Contractor develops the design, Contractors Proposals, initial designed continues to act for the Employer**
- **Are D&B projects more successful – time, cost and quality – than traditionally procured projects ?**
- **What are the benefits to everyone**
- **Architects diminishing role – need to get back to the architect being the “lead designer”**

- **SBCC 2016, Design and Build, Related Publications**
- **Design and Build Sub-Contract Agreement (DBsub/A/Scot), comprises Agreement and Conditions, 9 DBSub/C/Scot**
- **Design and Build Sub-Contract Guide (DBSub/G/Scot)**
- **Short Form of Sub-Contract (ShortSub/Scot)**
- **Sub-subcontract (SubSubScot)**
- **Partnering Charter**

- **Framework Agreement (F/A Guide)**
- **Framework Agreement Guide (FA/G/Scot)**
- **Pre-construction Services Agreement (General Contractor) (PCSA/Scot) and**
- **Pre-construction Services Agreement (Specialist) (PCSA/SP/Scot)**
- **Collateral Warranties (2, 3 for sub-contractors)**
- **Adjudication Agreement**

SBCC 2016 – Main Changes

- **Change of the dispute resolution position from court proceedings to arbitration**
- **A new pro forma testing clause**
- **Minor changes to the SBCC Public Sector Supplement relating to Fair Payment, Transparency and Building Information Modelling**
- **Adjustments to reflect the 2015 CDM Regulations**
- **Inclusion of provisions to reflect the Procurement Reform (Scotland) Act 2014**
- **Extension of (Works) Insurance Option C**

- SBCC 2016 D&B main changes

- **Revision and simplification of the Payment provisions, prompt assessment of loss and expense etc**
- **Inclusion of provisions for the grant of Performance Bonds and Patent Company Guarantees**
- **Extension of the optional provisions for Collateral Warranties**
- **Updating of the SBCC IPR provisions**
- **Minor editorial changes**

- **Key Issues**
- **Agreement - Importance of getting the names of the parties right**
- **Recitals – identify the documents that comprise the Employers Requirements and the Contractors Proposals. See Third Footnote**
- **Contract Particulars – 1.1, identify BIM Protocols, 6.7 relates to Insurance Option Cc**
- **Importance of completing the Contract Particulars properly – certain issues might need to go back to the Employer or their legal advisers – LAD’s etc**

- **Conditions**
- **Section 1 – Definitions and Interpretation, most changes are straightforward**
- **Clause 1.3 – an agreed BIM Protocol is a Contract Document**
- **Clause 1.4.6 – new provision – read it !!!**
- **Clause 1.8 – changes aimed at brevity and clarity**
- **Clause 1.10 – new provision**

Section 2 – Employers Requirements becomes Contract Documents

- **Clause 2.1.1 – refer to provisions**
- **Possession Clauses 2.3-2.6 – deals with deferment of possession, early use by Employer**
- **Clause 2.8 – provide copies of Contractors Design Documents, in accordance with Design Submission Procedures, refer to Schedule Page 1, page 75, Contractor must comply with the procedures**
- **Clauses 2.10 – 2.16 – Discrepancies and Divergences – no changes from 2011**
- **Inadequacies in the ER's, Employer responsible, Contractor responsible for errors, discrepancies and divergences in Contractors Proposals, Contractor is responsible**

Design Work and Liability

- **Clause 2.17 – very minor changes, and deals with the Contractors liability in respect of his design work. Same as that of any independent architect or other professional designer employed by the Employer.**
- **2.17.3 provides for a cap on liability – legal advice needed here**
- **Refer to Supplemental Provision 7**

Fees, Royalties and Patent Rights

- **Clauses 2.18 -2.20, statutory fees to be paid by the Contractor, are his liability unless covered by a Provisional Sum in the ER's**
- **Unfixed Materials and Goods**
- **Clause 2.21 – no changes. Concerns transfer to the Employer of property in materials and goods on payment to the Contractor**

Adjustment to Completion Date

- **Clauses 2.23 to 2.36, and Supplemental Provisions 2 and 4**
- **Virtually identical to SBC 2016, minor adjustment to the Relevant Events**
- **Obligation to notify all material circumstances**
- **Clause 2.25.2 – often overlooked, following PC, Employer carries out a complete review of time issues**

Practical Completion, Lateness and LAD's

- **Clauses 2.27-2.29 – no changes**
- **Issue a PC Statement or Section Completion Statement as soon as the Works or Sections achieve practical completion**
- **Issue Non-Completion Certificate, LAD's become payable thereafter but Employer has to notify Contractor of intentions, deduction by way of a Pay Less Notice**

Partial Possession by Employer

- **Clauses 2.30-2.34, minor change**
- **Refer to Clauses 2.5 and 2.6**
- **PC of the Relevant Part occurs and Rectification Period commences**
- **LAD's figure is reduced in proportion to the value of the Relevant Part to the Contract Sum or the Section Sum**

Defects

- **Clauses 2.23 – 2.36 and refer also to Clauses 3.12-3.14**
- **Rectify as you go and don't leave it till the end**
- **Focus on defects at Progress Meetings**
- **Issue schedule within 14 days of the Rectification Period expiring, but you can issue before**
- **Issue Notice of Completion of Making Good Defects, and don't be unreasonable**
- **Refer to Clause 2.35 – can deduct the cost of remedial works from the Contract Sum**

Contractors Design Documents

- **Clauses 2.37-2.38**
- **Contractor to supply the Employer with the Contractors Design Documents, in addition to his obligation to supply the health and safety files**

Section 3 Control of the Works

- **Access and Representatives Clauses 3.1 and 3.2**
- **Employers Agent can have access to the works and off site premises**
- **Contractor appoints a full time Site Manager**
- **Sub-Contracting – Employer has to consent to sub-contracting and design**
- **Where appropriate Contractor uses the SBCC Design and Build Sub-Contract**

Clause 3.5 Employers Instructions

- **Contractor shall forthwith comply, Contractor can make a reasonable objection to an instruction concerning a Change, refer to the exception in Clause 2.20.2**
- **Subject to Clauses 3.5 and 3.9 if Contractor does not comply with an instruction, Employer may employ and pay others to do the work and Contractor bears the additional costs**

- **Contractor may request Employer to state which provision of the Contract empowers the Employer to issue an instruction. May need to refer to dispute resolution procedure**
- **Employer may issue instructions relating to a Change; but not to alteration, modification, in the design of the works without the Contractors consent**
- **With Provisional Sums, Contractor can object in his capacity of Principal Designer and/or Principal Contractor**

- **Employer may postpone any work executed under the Contract; shall issue instructions relating to the expenditure of Provisional Sums; may issue instructions concerning testing; may issue instructions concerning non-compliant workmanship, refer to Schedule 4 Code of Practice**
- **Antiquities become the Employers property**
- **CDM – additional clause from SBC**

Section 4 Payment

- **Same principles as SBC and Minor Works**
- **Critical to comply with the provisions**
- **Important to remember the right of suspension and termination if payment not made by the final date for payment**

Gross Valuations – Alternatives A and B

- **Alternative A relates to stage payments and Alternative B to value of works properly executed**

- **Comply with payment provisions**
- **Agreed Payment Schedule with Contractor to include application date, due date, final date for payment**
- **Who can issue pay less notices?**
- **Loss and expense – now payable with 28 days of receipt of initial assessment, and 14 days after each update**

- **Section 5 Changes**
- **Change = “ a change on the Employers Requirements”**
- **Virtually identical to the Variation provisions in SBC**
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Section 6 - Injury Damage and Insurance

Section 7 - Assignment, Performance Bonds and Guarantees, Third Party Rights and Collateral Warranties

Section 8 – Termination

- **Virtually identical to SBC**
- **Critical to get notice provisions correct**

Section 9 – Settlement of Disputes

- **Mediation, Adjudication and Arbitration**

Schedules 1-9

- **Re-ordered from SBC**
- **Design Submission Procedures provisions - essential to follow these**
- **Schedule Part 2 – now named sub-contractors and in SBC is Named Specialists**
- **Valuation of Changes – Part 1 agreed pricing mechanism and Part 2 deals with Acceleration Quotations**
- **Clauses 5 – 12 are the same as SBC**
- **Schedule Part 3 – Insurance Options**
- **Schedule Part 4 – Code of Practice**

- **Schedule Part 5 - Third Party Rights**
- **Schedule Part 6 - Form of Bonds and Contract of Purchase from a Contractor and Sub-Contractor – see Notes on page 99 and 105**
- **Schedule Part 7 – Fluctuations**
- **Schedule Part 8 – Contract Documents**

Factors to consider when selecting an appropriate form of contract

- The nature of the project
- The scope of the works
- Measure of control by the client
- Accountability
- Appointment of a contractor
- Certainty of final cost
- Start and completion times
- Restrictions
- Changes during construction
- Assessment of risks
- Building relationships with the supply chain

Minor Works Building Contract for use in Scotland (2016) - (“MW/Scot 2016”)

Some of the factors that may make it appropriate to use a MW/Scot 2016:

- where the work involved is simple in character;
- where the work is designed by or on behalf of the Employer;
- where the Employer is to provide drawings and/or a specification and/or work schedules to adequately define the quantity and quality of the work; and
- where an Architect/Contract Administrator is to administer the conditions.

Can be used:

- by both private and local authority employers.

Not suitable:

- where bills of quantities are required;
- where provisions are required to govern work carried out by named specialists;
- where detailed control procedures are needed;
- where the Contractor is to design discrete part(s) of the works, even though all the other criteria are met –
- consider using the Minor Works Building Contract with contractor’s design (MWD).

Standard Building Contract With Quantities for use in Scotland (2016) – (“SBC/Q/Scot 2016”)

It may be appropriate to use a SQC/Q/Scot 2016 where:

- for larger works designed and/or detailed by or on behalf of the Employer, where detailed contract provisions are necessary and the Employer is to provide the Contractor with drawings; and with bills of quantities to define the quantity and quality of the work; and
- where an Architect/Contract Administrator and Quantity Surveyor are to administer the conditions.

Can be used:

- where the Contractor is to design discrete part(s) of the works (Contractor’s Designed Portion);
- where the works are to be carried out in sections;
- by both private and local authority employers; and
- where provisions are required to cover named specialists.

Design and Build Contract for use in Scotland 2016 - (“DB/Scot 2016”)

It may be appropriate to use a DB/Scot 2016 where:

- where detailed contract provisions are necessary and Employer’s Requirements have been prepared and provided to the Contractor;
- where the Contractor is not only to carry out and complete the works, but also to complete the design; and
- where the Employer employs an agent (who may be an external consultant or employee) to administer the conditions.

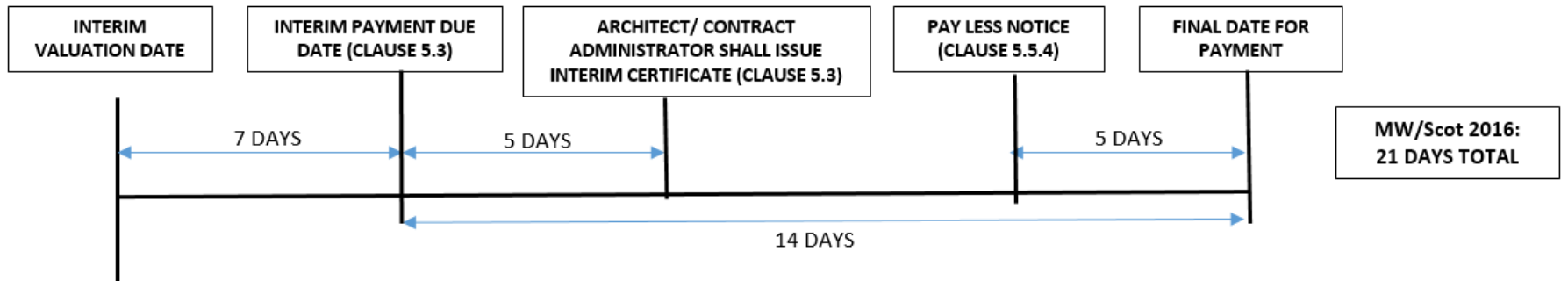
Can be used:

- where the works are to be carried out in sections; and
- by both private and local authority employers.

Attestation and Signing Procedures

- Requirements of Writings (Scotland) Act 1995.
- Subscription alone is sufficient for the valid execution.
- Pro Forma Testing Clause – contents and method of subscription dependent on nature of the party signing.
- Attestation:
 - subscribed by the granter(s)/parties;
 - signed by at least one witness to the subscription of each granter/party, whose name and address are also stated; and
 - nothing in the document indicates that it was not properly subscribed or witnessed.

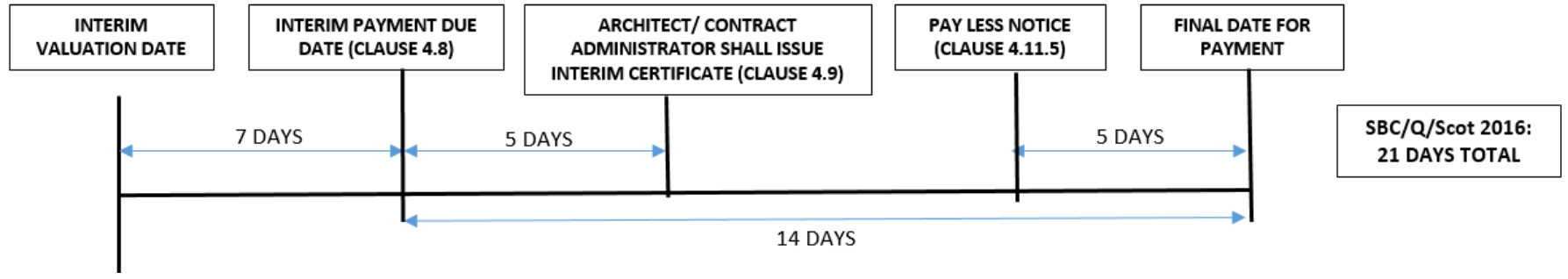
MW/Scot 2016 - Payment Timeline



Seminar 1 – SBCC 2016 Minor Works

- **Agreement**
- **Contract Particulars**
- **Recitals**
- **Articles**

SBC/Q/Scot 2016 - Payment Timeline



DB/Scot 2016 - Payment Timeline

