

Change Note for PW-CF5 & FTS-5

17 July 2023: The following amendments are made:

TABLE A: DOCUMENTS AMENDED	
Form of Conditions of Contract	Form of Tender and Schedule
PW-CF5 v2.6 07-01-2022	FTS-5 v2.5 07-01-2022

TABLE B: AMENDMENTS	
Ref	DESCRIPTION OF AMENDMENT
A.	<p>Sub-clause 2.6 (<i>Ethics in Public Office</i>)</p> <p>In sub-clause 2.6 (<i>Ethics in Public Office</i>) the reference to the “Prevention of Corruption Acts 1889 to 2010” is replaced by the “Criminal Justice (Corruption Offences) Act 2018”.</p>
B.	<p>Sub-clause 3.8 (<i>Existing Facilities and Use of Occupation by Employer</i>)</p> <p>In the Schedule Part 1D, Optional Insurance Provisions, the first sentence: “The Employer shall not/shall have the risk of loss of and damage to its existing facilities and parts of the Works it uses or occupies, in accordance with sub-clause 3.8.” is removed, and is replaced by: “Sub-clause 3.8 (<i>Existing Facilities and Use or Occupation by Employer</i>) shall/shall not apply”. (The Contracting Authority selects either “shall” or “shall not” from a drop-down option). (There is no change to Sub-clause 3.8 (<i>Existing Facilities and Use or Occupation by Employer</i>)).</p>
C.	<p>Sub-clause 3.9 (<i>General Requirements Concerning Insurance</i>)</p> <p>Sub-clause 3.9.6 is amended such that the Contractor is required to provide evidence that the Insurances are in effect, on or before the renewal date of any insurance policy.</p>
D.	<p>Schedule 1D <i>Insurance (Clause 3)</i></p> <ul style="list-style-type: none"> The option to select “each and every claim” for Professional Indemnity Insurance is removed and “annual aggregate” only applies. The maximum excess permitted for Professional Indemnity Insurance is amended to read “The maximum excess shall be the greater amount of 2% of the Contractor’s annual turnover or €5,000.”
E.	<p>Sub-clause 3.10 (<i>Limitation on Liability</i>)</p> <ul style="list-style-type: none"> A new sub-clause 3.10 (<i>Limit on Liability</i>) is incorporated, which, subject to specified exclusions, limits the liability of the Contractor to the Employer to an amount stated in the Schedule (“the Liability Cap”). Sub-clause 3.10.1 provides that the amount of the Liability Cap is as stated in the Schedule, Part 1M <i>Limit on Liability</i> and sub-clause 3.10.2 describes exclusions from the application of the Liability Cap. <p>The Contracting Authority is to state the amount of the Liability Cap to apply in Schedule, Part 1M <i>Limit on Liability</i>. The Schedule provides that where the Contracting Authority does not state an amount, the amount of the Liability Cap defaults to the amount of the Contract Sum.</p>
F.	<p>Clause 12 <i>Termination</i></p>

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TABLE B: AMENDMENTS	
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	Sub-clause 12.1.2 is amended by the removal of “(ii) terminate the obligation to complete the Works of the person concerned and the others shall remain liable to perform the Contractor’s obligations”.
G.	<p>Clause 14 (Covid-19 Mandatory Closure)</p> <p>Sub-clause 14.3.1 is amended by removing the requirement that Site Closure Costs are added to the Contract Sum where the duration of a Covid-19 Mandatory Closure(s) exceeds a period of 7 days.</p>
H.	<p>Clause 15 (Price Variation)</p> <ul style="list-style-type: none"> • Clause PV1 is removed and instead, a new Clause 15, which is based on a simplified version of PV2 (as previously in PW-CF1 to PW-CF4) is provided. • Clause 15 permits adjustments to the Contract Sum for fluctuations in Materials, Fuel and Labour and a change in law. • A fixed price period for Materials and Fuel no longer applies. • The Contracting Authority assigns, (in the Schedule Appendix 4, Part 1), the proportions of the Contract Sum that are eligible for adjustment for fluctuations in Materials, Fuel and Labour. • In order to calculate the adjustments to the Contract Sum, the Contracting Authority also assigns, (in the Schedule Appendix 5, Parts 1 - 3), weightings to specified Material Categories, Fuel Categories and Labour Categories. • Instead of applying separate Material Categories, a Contracting Authority may elect to apply a single category for Materials – the “All Materials” Category. This Category uses the “All Materials” index provided by the CSO. • The Contracting Authority must also assign, (in the Schedule Appendix 4, Part 2), a value to apply for the <i>Permitted Increase Threshold</i> (which must be between 3% and 10%) for Materials and Fuel. • For Materials and Fuel, in order for an adjustment to be permitted, fluctuations in relevant CSO indices for Material Categories and Fuel Categories must either: <ul style="list-style-type: none"> (i) increase by more than the applicable Permitted Increase Threshold; or (ii) decrease by more than ten percent. • The duration of the Base Date is reduced to that date falling 25 months after the Designated Date. • Adjustments to the Contract Sum for Labour are calculated using changes in sectoral employment orders coming into effect after the Base Date for stated labour categories. • In addition, the following amendments are made: <ul style="list-style-type: none"> (i) Sub-clause 1.1 <i>Definitions</i> – definitions of Applicable Factor, Applicable Factor (Specialist) and the Tender Inflation Indexation Date are removed. (ii) Sub-clause 11.1.1(3) is amended (re: adjustment of named Specialist payments) (iii) Sub-clause 11.1.3 is no longer used.
I.	<p>Inflation/Supply Chain Co-operation Framework Agreement</p> <p>NOTE: In tandem with the publication of the PW-CF5 (& PW-CF1 to PW-CF4, the Inflation/Supply Chain Co-operation Framework Agreement v1.1 is replaced by the Supply Chain Co-operation Framework Agreement v1.2. Parties to an un-amended form of public works contract PW-CF1 to PW-CF5 with a publication date of 17-7-2023 may elect to use the Supply Chain Co-operation Framework Agreement to address delay caused by supply chain delay in accordance with the provisions of the Framework Agreement.</p>

End.