

ACA Form of Building Agreement 1982 Third Edition 1998 (2003 Revision)

The ACA contract, fully updated to cover the requirements of the Housing Grants, Construction and Regeneration Act 1996 and the Rights of Third Parties Act 1999 was produced in negotiation with clients and with client's interests in mind. Because of this, it is sometimes said to be a client's contract, but it would be more accurate to describe it as a contract, which ensures that responsibilities are placed fairly upon those parties best able to shoulder them.

The ACA contract is a document, which the client and his architect must discuss in detail, and to which they must commit themselves before seeking a contractor to tender. The obligation is put upon the client to consider at the outset who should provide information, and when it should be made available.

An important feature of the ACA contract is that it defines the various responsibilities of the parties in a readable and easily understood form, eliminating areas of uncertainty. Recognising that one part or another must shoulder risk, the contract seeks to place it where it may most easily be quantified and dealt with by experience. It is the architect's responsibility to design, whilst that of the contractor to build the building to an agreed price, within an agreed time. The contractor's responsibility for workmanship and craftsmanship are explicitly spelt out, as is the importance of qualified and continuous supervision.

The flexibility of the ACA contract is achieved via the use of key optional clauses, providing for a number of choices which allow it to be tailored to the needs of each individual building project. There is, for example, a clause which places the risks on the contractor (in recognition of which he will adjust his price) and allows claims only as a result of a change in the employer's requirements, lateness of the architect's instruction, or substantial variations. This helps forestall the long list of reasons by virtue of which the contractor can claim time or money. Another option provided by the ACA Form of Contract allows the contractor to contribute to the design, accordingly taking responsibility for his contribution. The ACA contract can be used with or without bills of Quantities, for design, develop and construct as well as for conventional contracts, and has a straightforward index to deal with fluctuations.

The 'contents' page and first three pages of the Agreement in its latest edition can be viewed in the next pages:-

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THIS AGREEMENT is made the _____ day of _____ 20_____

BETWEEN:

(1) _____

of/or whose registered office is situate at

(referred to in this Agreement as “the Employer”); and

(2) _____

of/or whose registered office is situate at

(referred to in this Agreement as “the Contractor”).

WHEREAS:

A The Employer has requested the Contractor to execute and complete

_____ (referred to in this Agreement as “the Works”) at

_____ (referred to in this Agreement as “the Site”).

Insert brief description of works and address

B The Contractor has offered to execute and complete the Works for the sum of _____ pounds (£ _____) (referred to in this Agreement as “the Contract Sum”) together with such additions or deductions as may be made under the provisions of this Agreement (referred to in this Agreement as “the Final Contract Sum”). The Contract Sum and the Final Contract Sum are exclusive of value added tax.

C Certain drawings, a time schedule, [and a schedule of rates and prices] [and a specification] [and bills of quantities] have been prepared for this Agreement which are annexed and signed by the parties (referred to in this Agreement as “the Contract Drawings”, “the Time Schedule” [and “the Schedule of Rates”,] [and “the Specification”,] [and “the Contract Bills”,]

Delete any items which do not apply to this Agreement

Delete the items as above

respectively and collectively referred to as “the Contract Documents”). Where Contract Bills are included in the Contract Documents, all references in this Agreement to the Schedule of Rates shall be deemed to be references to the rates contained in the Contract Bills.

D The Contract Documents shall form part of this Agreement and the term “this Agreement” shall be construed accordingly.

E ALTERNATIVE 1

The term “the Architect” in this Agreement shall mean

of

or such other person notified in writing by the Employer to the Contractor from time to time to act as Architect in place of the Architect so designated provided that the Employer shall not appoint any person or firm to whom the Contractor shall make reasonable objection within working days of the Employer’s notice.

*Delete where
Alternative 2
is appropriate*

Insert name

and address

*

E ALTERNATIVE 2

The Employer has appointed

of

to act as Supervising Officer for the Works and all references in this Agreement to the Architect shall be deemed to be references to the Supervising Officer or such other person notified in writing by the Employer to the Contractor from time to time to act as Supervising Officer in place of the Supervising Officer so designated, provided that the Employer shall not appoint any person or firm to whom the Contractor shall make reasonable objection within working days of the Employer’s notice.

*Delete where
Alternative 1
is appropriate*

Insert name

and address

*

F ALTERNATIVE 1

The Architect shall prepare or cause to be prepared all further drawings and details which are, in the Architect’s opinion, reasonably necessary for the execution of the works in accordance with the provisions of Clause 2.1

*Delete where
Clause 2
Alternative 2
is appropriate*

F ALTERNATIVE 2

The Architect shall prepare only further drawings and details as are specified in the Contract Documents in accordance with the provisions of Clause 2.1 and the Contractor shall provide all further drawings, details, documents and information for the execution of the Works in accordance with the provisions of Clause 2.2.

*Delete where
Clause 2
Alternative 1
is appropriate*

G The term “working day” in this Agreement shall mean Monday to Friday inclusive but shall exclude any day which is a recognised public holiday in the country in which the Works are to be executed and any day which is a holiday under the Building and Civil Engineering Annual Holiday with Pay Scheme from time to time in force.

H The Works are divided into sections, the work included in each such section is identified in the Contract Documents and the date for completion of each section is shown separately on the Time Schedule. Each such section is referred to in this Agreement as “the Section”.

*Delete if the
Works are not
divided into
sections*

I Pursuant to the Construction (Design and Management) Regulations 1994, or any amendment thereof, hereinafter called the CDM Regulations:

The Employer (the ‘Client’) has appointed

of

to act as Planning Supervisor or such other person as shall be notified in writing by the Employer, provided that the Employer shall not appoint any person or firm to whom the Contractor shall make reasonable objection within working days of the Employer's notice.

*

The term 'Principal Contractor' shall mean the Contractor, or in the event of his ceasing to be the Principal Contractor, such other contractor (as defined by the CDM Regulations) as the Employer shall appoint as Principal Contractor pursuant to Regulation 6(5) of the CDM Regulations.

- J** Nothing in this Contract confers or purports to confer on any third party any benefit or right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

Omit if clause 1.8 applies

NOW IT IS HEREBY AGREED as follows:

1. CONTRACTOR'S GENERAL OBLIGATIONS

Execution of the Works

- 1.1** In consideration of the payments to be made by the Employer to the Contractor under this Agreement, the Contractor shall execute and complete the Works in strict accordance with the Contract Documents and shall comply with and adhere strictly to the Architect's instructions issued under this Agreement.

Contractor's skill and care

- 1.2** Without prejudice to any express warranties or conditions imposing strict obligations upon the Contractor, the Contractor shall exercise in the performance of his obligations under this Agreement all the skill, care and diligence to be expected of a properly qualified and competent contractor experienced in carrying out work of a similar scope, nature and size to the Works.

Priority of documents

- 1.3** The provisions of this Form of Agreement shall prevail over the provisions contained in any other of the Contract Documents.

save only the following provisions which shall prevail over anything contained in this Agreement:

Delete, or if appropriate insert references to other Contract Documents

Adjustment to Contract Bills

- 1.4** Where the Contract Bills form part of this Agreement, any mistake in the quantities or omission or mis-description of items in the Contract Bills shall be corrected by the Architect who shall determine and certify a fair and reasonable adjustment to the Contract Sum based on the rates in the Contract Bills to take account of the correction of such mistake, omission or mis-description.

Ambiguities and discrepancies

- 1.5** The Architect may issue an instruction as to the manner in which any ambiguity or discrepancy between or contained in any of the drawings and documents comprising the Contract Documents which may become apparent shall be resolved. If the Contractor shall find any such ambiguity or discrepancy he shall immediately notify the Architect who shall upon receipt of such notice issue such an instruction. Subject to Clause 1.4, the provisions of Clause 8.2 shall apply in respect of compliance by the Contractor with such Architect's instruction unless such ambiguity or discrepancy