

## 4 Testing and Defects

### Tests and inspections 40

- 40.1 The subclauses in this clause only apply to tests and inspections required by the Service Information, a Task Order or the applicable law.
- 40.2 The *Contractor* and the *Employer* provide materials, facilities and samples for tests and inspections as stated in the Service Information or a Task Order (as appropriate).
- 40.3 The *Contractor* and the *Service Manager* each notifies the other of each of his tests and inspections before it starts and afterwards notifies the other of its results. The *Contractor* notifies the *Service Manager* in time for a test or inspection to be arranged and done before doing work which would obstruct the test or inspection. The *Service Manager* may watch any test done by the *Contractor*.
- 40.4 If a test or inspection shows that any work has a Defect, the *Contractor* repeats the work if possible or corrects the Defect and the test or inspection is repeated.
- 40.5 The *Service Manager* does his tests and inspections without causing unnecessary delay to the work.
- 40.6 The *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found. The *Contractor* pays the amount assessed.
- 40.7 When the *Service Manager* assesses the cost incurred by the *Employer* in repeating a test or inspection after a Defect is found, he does not include the *Contractor's* cost of carrying out the repeat test or inspection.

### Testing and inspection before delivery 41

- 41.1 The *Contractor* does not deliver those Plant and Materials which the Service Information states are to be tested or inspected before delivery until the *Service Manager* has notified the *Contractor* that they have passed the test or inspection.

### Searching for and notifying Defects in connection with a Task 41A

- 41A.1 Without prejudice to any other provision in this section 4, for each Task where there is a defects date stated in the Task Order, the *Service Manager* may, until the relevant defects date, instruct the *Contractor* to search for a Defect. He gives his reason for the search with his instruction. Searching may include
- uncovering, dismantling, re-covering and re-erecting work,
  - providing facilities, materials and samples for tests and inspections done by the *Service Manager* and
  - doing tests and inspections which the Service Information or Task Order does not require.
- 41A.2 For each Task where there is a defects date identified in the Task Order, until the relevant defects date, the *Service Manager* notifies the *Contractor* of each Defect as soon as he finds it and the *Contractor* notifies the *Service Manager* of each Defect as soon as he finds it.

### Correcting Defects 42

- 42.1 The *Contractor* corrects Defects in the Core Service within the *defect correction period*. If the *Contractor* does not correct a Defect within the time required by this contract, the *Service Manager* assesses the cost to the *Employer* of having the Defect corrected by other people and the *Contractor* pays this amount.
- 42.2 The *Contractor* arranges for access and permissions to and use of the Affected Property or a Task Site (as applicable) if it is needed for correcting a Defect.
- 42.3 The *Contractor* corrects a Defect whether or not the *Service Manager* notifies him of it.
- 42.4 In connection with a Task the *Contractor* corrects a notified Defect before the end of the defect correction period stated in the relevant Task Order (if applicable). The relevant defect correction period (if applicable) begins at Task Completion for Defects notified before Task Completion and when the Defect is

notified for other Defects.

- 42.5 For each Task where there is a defects date identified in the Task Order, the *Service Manager* issues a Task Defect Certificate at the later of the defects date stated in the Task Order and the end of the last defect correction period for the Task. The *Employer's* rights in respect of a Defect which the *Service Manager* has not found or notified are not affected by the issue of a Task Defect Certificate.

**Accepting Defects 43**

- 43.1 The *Contractor* and the *Service Manager* may each propose to the other that the Service Information or Task Order (as applicable) should be changed so that a Defect does not have to be corrected. If the *Contractor* and the *Service Manager* are prepared to consider the change, the *Contractor* submits a quotation for reduced Prices or, where applicable, an earlier Task Completion Date or both to the *Service Manager* for acceptance. If the *Service Manager* accepts the quotation, he gives an instruction to change the Service Information or Task Order (as applicable), the Task Completion Date (if applicable) and the Prices accordingly.
- 43.2 For the avoidance of doubt, the *Contractor* continues to be liable for Defects (including Defects listed in any Task Defect Certificate and latent or inherent Defects) after
- the issue of any Task Defect Certificate
  - the operation of this section 4 and
  - the termination of this contract for any reason (including breach by the *Employer*)

in accordance with the *law of the contract*, subject to any time limit on claims and limitation on liability expressly provided by this contract.