



BRIEF SUMMARY OF THE MAJOR DIFFERENCES BETWEEN JBCC EDITION 4.1 & 6.2 SUITE OF DOCUMENTS

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MAJOR DIFFERENCES BETWEEN JBCC ED 4.1 (2005) AND ED 6.2 (2018)

1. Development history of standard building agreements in South Africa

Available records are by no means decisive on when standard building conditions in South Africa became available, but it is a reasonable assumption that no concerted effort towards the achievement of national standard conditions was made prior to the 1909 Royal Institute of British Architects (RIBA) form becoming available. The 1931 RIBA form was found acceptable to the Institute of South African Architects, the Chapter of South African Quantity Surveyors and BIFSA, and according to BIFSA's annual report published in 1932 it was adopted by all the interests concerned, subject to the introduction of such amendments as were necessary to satisfy the requirements of differing local conditions. Thus, this form became the basis of the first standard form of contract in South Africa – the 1932 edition and was entitled 'Agreement and Schedule of Conditions of Building Contract'. This cumbersome name required a nickname. As the 'with quantities' version was printed on white paper and the 'without quantities' on blue, the two versions became known as the 'white form' and the 'blue form' respectively.

After efforts during the 1970s failed by the then Joint Study Committee to draft a local building contract a new committee was established in 1984, named the Joint Building Contracts Committee or JBCC for short. The JBCC put its first standard building contract documentation into the marketplace in 1991 (the First Edition). This contract quickly gained acceptance in most quarters and JBCC is today the foremost contract document suite in use in South Africa for building works.

It was recognised from the outset that an advantage could be gained by employers, contractors and professionals should the document meet the needs of both the Private and Public sectors. A joint committee was set up with the Public Works Department and over several months the apparent differences of requirements were reduced to manageable proportions that could be accommodated without impairing readability. This led to an intensive re-examination and re-drafting of the documents by the Review and Main committees and in 1998 the new documents, designated JBCC Series 2000, were published (the Second Edition). These replaced all the documents published in 1991.

JBCC published the Third Edition in January 2003 primarily to update the Series 2000 documents. There were, however, some significant changes; e.g. in cases where the employer in the agreement is an Organ of State specific requirements that differ from those required by the Private sector were set out in a single clause for ease of reference (clause 13). This clause provided for the substitution by these clauses in the document when so required.

JBCC published the Fourth Edition in March 2004. The primary purpose of this revised edition (that followed so soon after the publication of the Third Edition) was to satisfy the requirements of the office of the State Attorney with regards to clause 13, which were regarded to be inadequate in the Third Edition. The content of this clause was substantially expanded to further accommodate aspects where the State differs in its approach from the Private sector. To distinguish this edition from its predecessors it featured on the front cover the wording '*including State provisions*' to make it clear that it had been accepted by the National DPW. Another significant change in the Fourth Edition was the introduction of 'adjudication' as an alternative dispute resolution (ADR) process to bring it in line with other modern agreements. This had the result that clause 40 Dispute Settlement had to be completely redrafted.

A further edition (edition 4.1) was published in March 2005 that was specifically structured for usage by both the Private and State sectors, which included the following major amendments:

- Clause 13 (State Provisions) was once again expanded and was shifted to the back of the document (Clause 41)
- Clause 40 (Dispute Settlement) was once again redrafted to allow for adjudication to be the default dispute resolution process in private contracts

JBCC published the Fifth Edition in August 2007 featuring some major modifications to previous editions; with the removal of the substitution provisions applicable to State in the various documents certainly representing the most significant of these modifications.

Other modifications included:

- The discontinuation of the *Preliminaries* as a separate JBCC document
- Change in style of cross referencing
- The complete redrafting of the insurance clauses
- The introduction of the contractor's right to suspension of the works
- The shifting of the Schedule of Variables to separate Contract Data documents, i.e. Employer to Contractor (EC) and Contractor to Employer (CE) respectively
- A reduction in the percentages applicable to the security provisions to bring it in line with those of the State
- Adjudication would no longer be the default dispute resolution procedure - the parties were to decide at the time of the dispute arising on the appropriate dispute resolution process.

It is further important to note that because of the discontinuation of the JBCC Preliminaries the Association of South African Quantity Surveyors (ASAQS) prepared and published the ASAQS Preliminaries in November 2007 to cater for those clauses that were not accommodated into the JBCC documents and which needed a new home.

JBCC published the Sixth Edition in September 2013 but it was held back and only released in March 2014 as the 6.1 Edition. The changes were extensive and included major redrafting to shorten and tidy up the suite. Main modifications included:

- Removal, adding or rewording of a substantial number of the definitions
- Rewording, incorporation and repositioning of clauses (30 vs 41)
- Order of precedence between contract documents included in sub-clause 5.6
- Revised percentage adjustments in the case of security as a fixed construction guarantee
- Reduction of default periods in a few instances
- Removal of Works Completion as a completion stage
- Complete redrafting of the EC and CE data documents into one CD document
- Amendments in the Agreement must only be listed in the CD document or in a single referenced Annexure
- Publication of the *General Preliminaries* once again the responsibility of the JBCC and no longer that of the ASAQS.

The 6.1 Edition however contained several errors and the JBCC embarked on a process to rectify those and after considerable effort that took more than two years the 6.2 Edition finally saw the light in May 2018. The ASAQS published a document that indicates the major differences between the 6.1 and 6.2 Editions (see Addendum "A").

2. A summary of the major differences between Editions 4.1 and 6.2

A summary of the major differences in tabulated format is provided hereunder as mentioned hereinbefore

Item	Clauses in Ed 6.2	Edition 4.1 (2005) v Edition 6.2 (2018)
	INTERPRETATION	
1.	Clause 1.1	<p>The following definitions were either omitted, added or substantially reworded (the order has changed of some definitions as result of grouping together guarantees, lists, etc:</p> <ul style="list-style-type: none"> • AGREEMENT (inclusive of other Contract documents) • ADJUDICATOR (definition not necessary - used in one clause only) • ARBITRATOR (ditto) • CERTIFICATE OF WORKS COMPLETION (stage no longer applicable) • COMPENSATORY INTEREST (new) • CONSTRUCTION EQUIPMENT (new) • CONSTRUCTION INFORMATION (new) • CONTRACT DATA (new - was Schedule) • [CD] (new) • DEFAULT INTEREST (new) • CPAP (omitted – not used in other countries) • FINAL PAYMENT CERTIFICATE (new) • FORCE MAJEURE (new) • FREE ISSUE (new) • LIST FOR COMPLETION (new) • LIST FOR FINAL COMPLETION (new) • LIST FOR PRACTICAL COMPLETION (new) • LUMP SUM DOCUMENT (omitted) • MEDIATOR (see Adjudicator and Arbitrator above) • MATERIALS AND GOODS (new) • NOTICE (new) • N/S SUBCONTRACT AGREEMENT (new) • NOMINATED SUBCONTRACTOR (omitted – now SUBCONTRACTOR) • PARTY (new) • PRELIMINARIES (new) • PROGRAMME (new) • PROVISIONAL SUM (new) • SCHEDULE (omitted – now Contract Data) • SELECTED SUBCONTRACTOR (omitted – now SUBCONTRACTOR) • STATUS REPORT (new) • SUBCONTRACTOR (new – includes both Nominated and Selected) • STATE (omitted) • SUSPENSION (new)

		<ul style="list-style-type: none"> • WORKS COMPLETION (stage no longer applicable)
2.	Clause 1.2	New sub-clause that contains some of the items 1.2 – 1.9 of Edition 4.1
3.	Clause 2.0	Clause 7.0 in Edition 4.1, with sub-clauses 1.6.1 – 4 incorporated (Note: electronic mail 'excludes social media' added)
4.	Clause 3.0	Clause 2.0 in Edition 4.1, redrafted
5.	Clause 4.0	Clause 19.0 in Edition 4.1 <ul style="list-style-type: none"> • Sub-clause 4.3 added
6.	Clause 5.0	Clause 3.0 in Edition 4.1 <ul style="list-style-type: none"> • Payment and construction guarantees moved to Securities (clause 11.0 in Edition 6.2) • Reference to the lien in sub-clause 3.3 now in sub-clause 11.10 of Edition 6.2
7.	Clause 6.0	Clause 5.0 in Edition 4.1 <ul style="list-style-type: none"> • Sub-clause 6.4 added that gives the contractor a right to suspend the works where the principal agent and/or an agent fails to act • Sub-clause 6.6 added - the employer may not interfere or prevent the principal agent and/or agents from exercising independent judgement when performing their obligations
8.	Clause 7.0	Clause 4.0 in Edition 4.1 (no change)

	INSURANCES & SECURITIES	
9.	Clause 8.0	No change
10.	Clause 9.0	Basically unchanged
11.	Clause 10.0	Clauses 10.0 – 12.0 in Edition 4.1 <ul style="list-style-type: none"> • Redrafted into a single clause with minor changes only such as who takes responsibility after practical completion for aspects not insured – see sub-clause 10.10
12.	Clause 11.0	Clause 14.0 in Edition 4.1 <ul style="list-style-type: none"> • Employer payment guarantee moved from clause 3.0 in Edition 4.1 • Variable construction guarantee percentages reduced from 12,5% and 7,5% to 10% and 6% respectively • Fixed construction guarantee percentage reduced from 7,5% to 5%
13.	Clause 12.0	Clauses 6.0, 15.0 and 16.0 in Edition 4.1 One of the major changes between the two editions. In Edition 6.2 the clause deals comprehensively with the obligations of the parties by: <ul style="list-style-type: none"> • Listing in sub-clause 12.1 the employer's obligations (13 of) • Listing in sub-clause 12.2 the contractor's obligations (21 of); and • Sub-clause 12.3 states that the principal agent must hold regular meetings to monitor progress and to distribute the minutes of such meetings to all parties
14.	Clause 13.0	Clause 18.0 in Edition 4.1, redrafted
15.	Clause 14.0	Clause 20.0 in Edition 4.1, redrafted but with similar conditions <ul style="list-style-type: none"> • New sub-clause 14.8 – no privity of contract between employer and subcontractor
16.	Clause 15.0	Clause 21 in Edition 4.1, redrafted but with similar conditions <ul style="list-style-type: none"> • New sub-clause 15.8 – no privity of contract between employer and subcontractor
17.	Clause 16.0	Clause 22.0 in Edition 4.1, redrafted but with similar conditions <ul style="list-style-type: none"> • New sub-clause 16.3 – no privity of contract between contractor and direct contractor
18.	Clause 17.0	Redrafted but with similar conditions

	COMPLETION	
19.0	Clause 18.0	No clause in Edition 6.2 (clause number kept lining the PBA clause numbers up with that of the N/SSA)
20.0	Clause 19.0	Clause 24.0 in Edition 4.1, basically unchanged except for: <ul style="list-style-type: none"> • Wording changed in first sub-clause from ... <i>From time to time</i> ... to ...<i>at appropriate intervals</i> ... Reason being that supervision would differ from one project to another, in some the principal agent will have to visit the site more regularly than on others • A <i>comprehensive and conclusive list</i> ... wording added in sub-clause 19.3.1 ensuring no additional items will be added to the list that may prevent the contractor from achieving practical completion by the intended date • NB: New sub-clause 19.6 that deals with the situation where the employer takes possession of the whole or portion of the works by agreement before the date of practical completion • NB: New sub-clause 19.7 allowing access for installation work by others to be executed after practical completion
21.	Clause 20.0	Clause 28.0 in Edition 4.1. Much less wording in the redraft
22.	Clause 21.0	Clause 26.0 in Edition 4.1, redrafted but with similar conditions
23.	Clause 22.0	Clause 27.0 in Edition 4.1, redrafted but with similar conditions
24.	Clause 23.0	Clause 29.0 in Edition 4.1, basically unchanged except for: <ul style="list-style-type: none"> • Default by a nominated subcontractor moved to time and compensation sub-clause 23.2.9 • Suspension of the works added to time and compensation sub-clause 23.2.13
25.	Clause 24.0	Clause 30.0 in Edition 4.1, basically unchanged except for: <ul style="list-style-type: none"> • New sub-clause 24.3 stating that the principal agent shall include the penalty in interim payment certificates from the date on which the employer's entitlement to penalties commences

	PAYMENT	
26.	Clause 25.0	Clauses 31.0 and 35.0 in Edition 4.1. The following are some of the major changes between the two editions: <ul style="list-style-type: none"> • Payment by the employer within 14 calendar days (see sub-clause 25.10) • Payment by the contractor within 21 calendar days (see sub-clause 25.11) • Default interest now at repo rate plus 6% and not 160% of the repo rate • Security percentages adjusted for a fixed construction guarantee (see sub-clause 25.12.2) • The contractor shall pay his subcontractors within 7 calendar days (see subclause 25.13) • The contractor now has the right to suspend the works if not paid the amount due (see sub-clause 25.14.1) • The principal agent shall issue the final payment certificate within 7 calendar days of acceptance of the final account by the contractor (see sub-clause 25.15) • Where the contractor disputes the final account, he has the right to be paid the undisputed amount and not having to wait for the full outstanding amount until the disagreement has been resolved (see sub-clause 25.16) • Clause 35.0 in Edition 4.1 has been omitted and incorporated elsewhere in relevant clauses of Edition 6.2
27.	Clause 26.0	Clauses 32.0 and 34.0 in Edition 4.1. Restructured substantially and the later edition contains far less wording; The following are some of the major changes between the two editions: <ul style="list-style-type: none"> • New sub-clause 26.5 does not have the sub-sub-clauses following as previous in 32.5.1 – 7, but now has a condition for the contractor to give notice within 20 working days of becoming aware of an expense and/or loss, failing which the claim shall be forfeited • New sub-clause 26.6 that after the notice in 26.5 the contractor shall submit a detailed and substantiated claim within 40 working days

		<ul style="list-style-type: none"> • The period for the principal agent to prepare and issue the final account to the contractor is now 60 working days (see sub-clause 26.10) and no longer 90 working days • The period for the contractor to accept the final account is now 30 working days (see sub-clause 26.11) and no longer 45 working days • Details of the final payment previously in sub-clauses 34.5 – 14 are now given in a much shorter format and form part of the payment clause 25.0 in sub-clause 25.15
28.	Clause 27.0	Clause 33.0 I Edition 4.1, redrafted but with similar conditions

	SUSPENSION & TERMINATION	
29.	Clause 28.0	<p>Clause not in Edition 4.1 (contractor now has the right to suspend the works for the reasons listed - see sub-clauses 28.1.1 – 5)</p> <ul style="list-style-type: none"> • Contractor must give due notice of his intention to suspend • Contractor must instruct each subcontractor to likewise suspend their works • Contractor entitled to have his date for practical completion revised with an adjustment of the contract value
30.	Clause 29.0	<p>Clauses 36.0 – 39.0 in Edition 4.1. Another major restructure as four clauses have been combined into one. However, the principles are almost the same with just a few changes as indicated below:</p> <ul style="list-style-type: none"> • Employer may cancel where the contractor has failed to provide a construction guarantee • Employer may appoint others to safeguard the works and to complete the outstanding work and rectify defects • Employer has the right of recovery from the contractor from his guarantee for construction • Final account shall be prepared within 60 working days (not timeously) • Employer to arrange for appropriate insurances • Statement that the termination clause shall exist independently from the agreement
31.	Clause 30.0	<p>Clause 40.0 in Edition 4.1. Substantially redrafted with a neat separation between the various dispute processes of:</p> <ol style="list-style-type: none"> 1. Negotiation 2. Adjudication 3. Arbitration 4. Mediation <p>Other changes include:</p> <ul style="list-style-type: none"> • Applicable Rules for either Adjudication, Arbitration or Mediation to be stated in the contract data • Employer consents to the joining of any subcontractor with the contractor as a party to the proceedings • Reference to a 'recognised body' instead of the Association of Arbitrators (SA) to keep it suitable for international use

32.	STATE PROVISIONS	Clause 41.0 in Edition 4.1. This clause has no equivalent clause in Edition 6.2. The differences between an Organ of State and the private sector are to be dealt with in the contract data. The NDPW in conjunction with the JBCC and other stakeholders has prepared a model contract data document for use at all three levels of State, namely National, Provincial and Municipal
33.	AGREEMENT	The SCHEDULE in Edition 4.1 has been replaced by a single page AGREEMENT. However, in later Editions the SCHEDULE was removed from the main body of the Agreement and issued as a separate contract data document as required by the Standard for Uniformity published by the CIDB