

Amendment No. 2 to the IChemE Form of Contract for Target Cost Contracts (The Burgundy Book) Second Edition 2013, including all reprints

The IChemE main contract forms each provide that, in the event of the termination of the Contractor's employment, the benefit of the subcontracts should be assigned to the Purchaser, if the Purchaser so requires. The recent decision in the case of Energy Works (Hull) Limited v MW High Tech Projects UK Limited (2020) EWHC 2537 (TCC) established that following any such assignment, the Contractor would lose many of his rights to claim against the Subcontractor for any previous breaches of the subcontract. This could cause significant injustice, particularly if the Subcontractor was responsible for the circumstances leading to the termination.

Accordingly, the IChemE has amended the IChemE Burgundy Book (2nd Edition) General Conditions of Contract from the date of this amendment as set out below:

43. Termination by the Purchaser for convenience

Replace the whole of Sub-clause 43.3 with the following:

- 43.3** As soon as practicable after receipt of the **Notice of Termination**, the **Contractor** shall if so required by the **Purchaser** ensure that his **Subcontractors** cease work in accordance with and subject to Sub-clause 43.2 so far as possible by the exercise by the **Contractor** of such powers of termination, omission or cancellation as are available to him in the relevant subcontracts.

44. Termination for Contractor's default

- 44.3** *In Sub-clause (c), replace “; and” with “.”*
Delete Sub-clause (d)

Those who are planning to enter into a contract on or after the date of this amendment based on the IChemE Burgundy Book (2nd Edition) should ensure that these amendments are expressly incorporated in the contract.

Dated: 12 January 2021