



**Hong Kong Housing Authority**

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**GENERAL  
CONDITIONS OF CONTRACT  
FOR  
BUILDING WORKS**

**2013 EDITION**

(version 1.1)



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## **GENERAL CONDITIONS OF CONTRACT**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In the Contract the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires:-

“Agreed Requested Variation” means the changes referred to in the Requested Variation Proposal (including any amendments thereto) agreed between the Contract Manager and the Contractor in accordance with Clause 11.8.

“Articles of Agreement” means the articles of agreement to be executed by the Employer and the Contractor.

“Bills of Quantities” means the bills of quantities of the Contract.

“Change in Law” means any Law or any amendment or addition to any Law which is

- (a) made on or after the date 10 days prior to the Tender Closing Date, or
- (b) made before the date 10 days prior to the Tender Closing Date and the commencement date of which is only ascertainable on or after the date 10 days prior to the Tender Closing Date and the Contract does not expressly provide for the Employer’s and the Contractor’s respective rights and obligations in relation to compliance with such Law or such amendment or addition upon its commencement

and which of itself directly affects the Contractor’s execution of the Contract.

“Conditions of Contract” means the General Conditions of Contract and the Special Conditions of Contract.

“Constructional Plant” means all appliances or things of whatsoever nature required for the execution of the Works but does not include materials or other things intended to form or forming part of the permanent work or vehicles engaged in transporting any personnel, constructional plant, materials or other things to or from the Site.

“Contingency Sum” means the sum provided for work or expenditure which cannot be foreseen at the time the tender documents are issued which sum may include provision for Nominated Sub-contract Works.

“Contract” means the Articles of Agreement, the Tender, the Letter of Acceptance, the Drawings, the General Conditions of Contract, the Special Conditions of Contract, the Specification and the Bills of Quantities and/or schedule of rates.

“Contract Manager” means the person, company or firm named in the Contract as the Contract Manager or such other person, company or firm as may be appointed from time to time by the Employer and notified in writing to the Contractor to act as the Contract Manager for the purposes of the Contract. The person named or appointed may be described by name or as the holder for the time being of a public office.

“Contract Manager’s Representative” means any person, company or firm appointed from time to time by the Contract Manager and notified in writing to the Contractor to perform the duties set out in Clause 2.1(2). The person or persons appointed may be described by name or as the holder for the time being of a public office.

“Contract Sum” means the sum accepted by the Employer for the execution of the Works as stated in the Letter of Acceptance.

“Contractor” means the person, firm or company whose Tender has been accepted by the Employer and includes the Contractor’s personal representatives, successors and permitted assigns.

“Cost” means expenditure reasonably incurred including overheads whether on or off the Site and depreciation in value of Constructional Plant owned by the Contractor but excluding profit.

“DARA” means the dispute avoidance and resolution advisor appointed under Clause 17.1.

“Director of Housing” means the Director of Housing of the Hong Kong Housing Authority.

- “Drawings” means the drawings referred to in the Specification, Bills of Quantities and/or schedule of rates and any modification of such drawings approved in writing by the Contract Manager and such other drawings as may from time to time be furnished or approved in writing by the Contract Manager.
- “Employer” means the Hong Kong Housing Authority.
- “Enhancement Works” means any work ordered by the Contract Manager under Clause 11.9.
- “Environmental Management Plan” means a plan setting out the Contractor’s policies, detailed procedures and requirements for the implementation and fulfilment of the Contractor’s obligations as to environmental management, waste management and site hygiene under the Contract.
- “Final Contract Sum” means the final sum determined or ascertained to be payable to the Contractor in accordance with the Contract and for the avoidance of doubt, the sum shall exclude any amount that may be deducted by the Employer under Clause 15.3.
- “Form of Tender” means the form of tender as completed and submitted by the Contractor with the Tender.
- “General Conditions of Contract” means the general conditions of contract set forth as such in the Contract.
- “General Holiday” means every Sunday and other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
- “Government” means the Government of Hong Kong.
- “Hong Kong” means the Hong Kong Special Administrative Region.
- “Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs, processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights.
- “Law” means any enactment of the laws of Hong Kong as defined in Chapter 1 of the laws of Hong Kong.
- “Letter of Acceptance” means the letter issued by or on behalf of the Employer for the acceptance of the Tender including such documents as may be attached to or expressly stated in the letter to form part of the Contract.
- “Maintenance Period” means the maintenance period for the Works or Section or part thereof as stated in the appendix to the Form of Tender which shall commence on the date as specified in Clause 8.7.
- “Maintenance Works” means any works which are required to be carried out by the Contractor within such time and in such manner as specified in the Contract for the fulfilment of the Contractor’s obligations as set out in Clause 10.1(2) which may include but without limitation any work of repair or rectification (whether such work is necessitated by any default or neglect of the Contractor under the Contract or otherwise) or any work of making good of any defect, imperfection, shrinkage, settlement or other fault as identified within the Maintenance Period.
- “Memorandum of Agreement” means the memorandum issued by the Contract Manager under Clause 11.8(4)(c) setting out the terms of agreement in respect of an Agreed Requested Variation.
- “Nominated Sub-contract” means the sub-contract between the Contractor and a Nominated Sub-contractor.
- “Nominated Sub-contract Works” means any work to be executed, any materials to be supplied or any services to be provided by a Nominated Sub-contractor.
- “Nominated Sub-contractor” means a sub-contractor nominated by the Employer and employed by the Contractor to carry out any part of the Nominated Sub-contract Works.
- “Notice of Dispute” means a notice of dispute served in writing under Clause 17.1.
- “Pass” means the pass, in a form as required under the Contract, for the admission of the bearer to the Site.

- “Period of Final Measurement” means the period of final measurement as stated in the appendix to Form of Tender which shall commence on the date as referred to in Clause 11.1(7)(a).
- “Portion” means a part of the Site separately identified in the Contract.
- “Preliminaries” means the bill or schedule for preliminaries included in the Bills of Quantities and/or schedule of rates as referred to in Clause 11.1.
- “Prime Cost Sum” means the sum provided for Nominated Sub-contract Works which sum shall be the estimated net price to be paid for such Nominated Sub-contract Works, after deducting any trade or other discount.
- “Provisional Sum” means a sum provided for work or expenditure which has not been quantified or detailed at the time the tender documents are issued and which sum may include provision for Nominated Sub-contract Works.
- “Requested Variation Proposal” shall be as defined in Clause 11.8(1).
- “Retention Money Held in respect of the Contractor” shall be as defined in Clause 14.2(1)(i).
- “Retention Money Held in respect of the Nominated Sub-contractor” shall be as defined in Clause 14.2(1)(ii).
- “Safety Plan” means a plan setting out the Contractor’s policies, detailed procedures and requirements for the implementation and fulfilment of the Contractor’s obligations as to safety and health under the Contract.
- “Section” means a part of the Works for which a separate date for commencement and/or a separate time for completion is/are specified in the Contract.
- “Self-employed Worker” means a worker who is not an employee of the Contractor or his sub-contractor of any tier including Specialist Sub-contractors and Nominated Sub-contractors but is engaged for the execution of the Works on the Site.
- “Site” means the lands and other places provided by the Employer for the purpose of the execution of the Works together with such other places as may be subsequently agreed in writing by the Contract Manager as forming part of the Site.
- “Site Personnel” means such workers or staff employed by the Contractor or any of his sub-contractors of all tiers including Specialist Sub-contractors and Nominated Sub-contractors engaged for the execution of the Works on the Site but excluding Self-employed Workers.
- “Special Conditions of Contract” means the conditions of contract which amend or revise any General Conditions of Contract by way of addition, deletion or substitution.
- “Specialist Contractor” means any contractor employed by the Employer to execute Specialist Works.
- “Specialist Works” means any work separately identified in the Contract and connected with or ancillary to the Works which may from time to time be carried out on and/or outside the Site by a Specialist Contractor or the supply of any materials specified in the Contract for incorporation into the Works which may from time to time be provided and delivered to the Site by a Specialist Contractor.
- “Specialist Sub-contract” means a sub-contract made between the Contractor and a Specialist Sub-Contractor.
- “Specialist Sub-contract Works” means any work to be executed, any design to be carried out, any materials to be supplied or any services to be provided by a Specialist Sub-contractor.
- “Specialist Sub-contractor” means such domestic sub-contractor of the Contractor executing that part of the Works and/or carrying out that part of the design of the Works or supplying those materials or providing those services for the Works specifically specified in the Contract and who shall have been or shall be selected in accordance with the provisions of the Contract and employed by the Contractor.
- “Specification” means the specifications referred to in the Contract and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Contract Manager.

“Sub-contractors Management Plan” means a plan setting out the Contractor’s policies, detailed procedures and requirements for the implementation and fulfilment of the Contractor’s obligations as to sub-contracting arrangement and management of sub-contractors of all tiers under the Contract.

“Surveyor” means the person, company or firm named in the Contract as the Surveyor or such other person, company or firm as may be appointed from time to time by the Employer and notified in writing to the Contractor to act as the Surveyor for the purposes of the Contract. The person appointed may be described by name or as the holder for the time being of a public office.

“Surveyor’s Representative” means any person or persons appointed from time to time by the Surveyor and notified in writing to the Contractor to perform the duties set out in Clause 2.2(3). The person or persons appointed may be described by name or as the holder for the time being of a public office.

“Temporary Works” means all temporary work of every kind required for the construction, completion and/or maintenance of the Works.

“Tender” means the Contractor’s tender for the Contract.

“Tender Closing Date” means the date for the return of tenders for the Contract.

“Utility Undertaking” means any person, undertaking, company, organization or government department and includes any office, division, sub-division, section, sub-section, unit or group within a government department which engages in or is so engaged in supplying or providing utilities (including but not limited to electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the Works under the Contract, including the contractors and sub-contractors of any tier of such person, undertaking, company, organization or government department.

“Variation” means any change to the Works as defined in Clause 11.2(1).

“Works” means the work or services (including but not limited to Nominated Sub-contract Works, Specialist Sub-contract Works and Enhancement Works) to be constructed, completed, maintained and/or supplied in accordance with the Contract and includes Temporary Works.

“Works Subject to Excision” means any part of the Works specified in the Contract as works subject to excision.

## **1.2 Singular and plural**

Words importing the singular only also include the plural and vice versa where the context requires.

## **1.3 Marginal notes**

The index, marginal notes and headings in the General Conditions of Contract, Special Conditions of Contract and the Specification shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof.

## **1.4 Payment**

- (1) Unless otherwise provided, all payments under the Contract or in respect of the Works shall be made in Hong Kong dollars.
- (2) No adjustment shall be made to any payments under the Contract, including the Final Contract Sum, on account of any variation in the exchange rate between the Hong Kong dollar and any other currency.

## **1.5 Contract governed by Laws of Hong Kong**

- (1) The Contract shall be governed by and construed according to the laws for the time being in force in Hong Kong.
- (2) Except where the context otherwise requires, any reference to any statute or statutory provision includes reference to:-
  - (a) that statute or statutory provision as amended, extended, re-enacted or consolidated from time to time, and
  - (b) any orders, regulations, instruments or other subordinate legislation made pursuant to it.



**1.6 Gender**

Except where the context otherwise requires, words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender and words importing persons shall include firms, companies and corporations and vice versa.

**1.7 Day**

Whenever the word “day” is referred to in the Contract, it means a calendar day and includes General Holidays.

**2 CONTRACT MANAGER AND CONTRACT MANAGER’S REPRESENTATIVE AND SURVEYOR AND SURVEYOR’S REPRESENTATIVE**

**2.1 Duties and powers of the Contract Manager and the Contract Manager’s Representative**

- (1) The Contract Manager shall carry out the duties as are specified in or necessarily to be implied from the Contract with due expedition. The Contract Manager may exercise such powers as are specified in or necessarily to be implied from the Contract, but when such powers are exercised they shall be exercised with due expedition. Subject to the provisions of Clause 2.1(3) the Contractor shall take instructions, orders or directions only from the Contract Manager.
- (2) The Contract Manager’s Representative shall have the duties and powers to watch and inspect the Works, to test and examine any material to be used and workmanship employed by the Contractor in connection with the Works, and shall carry out such duties and may exercise such powers vested in the Contract Manager as may be delegated to him by the Contract Manager in accordance with the provisions of Clause 2.1(3).
- (3) The Contract Manager may from time to time delegate to the Contract Manager’s Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Contract Manager and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Any written instruction or written approval given by the Contract Manager’s Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Contract Manager.

Provided that failure of the Contract Manager’s Representative to disapprove any work or material shall not prejudice the power of the Contract Manager thereafter to disapprove such work or material.

- (4) No act or omission by the Contract Manager or the Contract Manager’s Representative in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of his duties, responsibilities, obligations or liabilities under the Contract.
- (5) Where a person is appointed to be the Contract Manager or the Contract Manager’s Representative, as the case may be, and is described as the holder for the time being of a public office, any person for the time being lawfully discharging the functions of that public office or any part of such functions and any person appointed to act in or perform the duties of such public office or any part of such duties for the time being may carry out the duties and may exercise the powers of the Contract Manager or the Contract Manager’s Representative, as the case may be.

**2.2 Duties and powers of the Surveyor and the Surveyor’s Representative**

- (1) The Surveyor shall carry out the duties as are specified in the Contract with due expedition. The Surveyor may exercise such powers as are specified in or necessarily to be implied from the Contract, but when such powers are exercised they shall be exercised with due expedition.
- (2) The Surveyor’s Representative shall carry out such duties and may exercise such powers vested in the Surveyor as may be delegated to him by the Surveyor in accordance with the provisions of Clause 2.2(3).
- (3) The Surveyor may from time to time delegate to the Surveyor’s Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Surveyor and

shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor.

- (4) No act or omission by the Surveyor or the Surveyor's Representative in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of his duties, responsibilities, obligations or liabilities under the Contract.
- (5) Where a person is appointed to be the Surveyor or the Surveyor's Representative, as the case may be, and is described as the holder for the time being of a public office, any person for the time being lawfully discharging the functions of that public office or any part of such functions and any person appointed to act in or perform the duties of such public office or any part of such duties for the time being may carry out the duties and may exercise the powers of the Surveyor or the Surveyor's Representative, as the case may be.
- (6) The Surveyor shall have the power to order the Contractor to provide any information which in the opinion of the Surveyor is relevant to the Surveyor's execution of his duties under the Contract. Such information may include costing and pricing documents and shall be presented and submitted by the Contractor in a form acceptable to the Surveyor within such time or times as may be required by the Surveyor.

### **3 ASSIGNMENT AND SUB-CONTRACTING**

#### **3.1 Assignment**

- (1) The Contractor shall not assign the Contract or any interest therein without the written consent of the Employer and any assignment shall be in a form approved by the Employer.
- (2) The application of the Contractor for consent of assignment shall be supported by such submissions and details as the Employer may require. The Employer shall have the right not to consent to any such application and no consent of the Employer shall be implied from an acknowledgement or acceptance of delivery of such submissions or details.

#### **3.2 Sub-contracting**

- (1) The Contractor shall not sub-contract the Works. The Contractor shall, unless expressly prohibited by and subject to the limitation on the number of tiers of sub-contracting as specified in the Contract, be permitted to sub-contract a part of the Works either on the basis of the provision by the sub-contractor of labour and materials or by the provision of labour. The Contractor shall be under a continuous duty to ensure and be responsible for the compliance with the limitation on the number of tiers of sub-contracting and shall cause his sub-contractors to observe and comply with such limitation.
- (2) The Contractor shall also be permitted to sub-contract a part of the Works on the basis of provision of Constructional Plant by the sub-contractor, provided that such sub-contracting is not expressly prohibited by the Contract Manager in writing within a period of 14 days from receipt by the Contract Manager of a request in writing from the Contractor.
- (3) Notwithstanding that the Contractor may be permitted to sub-contract a part of the Works under Clause 3.2(1) and the Contract Manager has not prohibited sub-contracting under Clause 3.2(2), the Contract Manager shall, if in his opinion he considers it necessary, have power to order the removal of any sub-contractor from the Site and/or the Works, which power shall not be exercised unreasonably.
- (4) The sub-contracting of any part of the Works shall not relieve the Contractor from any of his liabilities or obligations under the Contract particularly in respect of the provision of the Contractor's management team in accordance with Clause 5.8 and he shall be responsible for the acts, defaults and neglects of any sub-contractor or the agents, employees or workers of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor.
- (5) The Contractor shall ensure that each and every sub-contract (including Specialist Sub-contracts and Nominated Sub-contracts) irrespective of the tier of the relevant sub-contractor employed or to be employed for the Works shall contain provisions consistent with the Contract in particular for those provisions in relation to prompt payments of fair wages to workers, site safety and site security. It shall be the duty of the Contractor if so required by the Contract Manager to furnish

the Contract Manager with full particulars of any sub-contractor employed or to be employed for the Works.

- (6) Parts of the Works shall, where specified in the Contract, be executed by a sub-contractor selected by the Contractor from the relevant list given or referred to in the Specification or by a Specialist Sub-contractor.
- (7) The Contractor shall submit the Sub-contractors Management Plan and any subsequent revision or update to the Contract Manager in accordance with the requirements as specified in the Contract.
- (8)
  - (a) Unless the Contract provides to the contrary, the Contractor shall ensure that each of his sub-contractors shall not sub-contract the whole of the works sub-contracted to him.
  - (b) The Contractor shall employ his own staff to manage and supervise his sub-contractors.

## **4 CONTRACT DOCUMENTS**

### **4.1 Documents mutually explanatory**

- (1) The several documents forming the Contract shall be taken as mutually explanatory of one another and shall be construed according to the order of precedence as may be provided in the Contract, provided always that the Special Conditions of Contract shall prevail over the General Conditions of Contract for the purpose of interpretation.
- (2) In case of ambiguities or discrepancies found in the documents forming the Contract, the same shall be explained by the Contract Manager who shall issue to the Contractor instructions clarifying such ambiguities or discrepancies. Where the Contractor makes a request in writing to the Contract Manager for instructions under this Clause 4.1(2), the Contract Manager shall respond within 14 days of receipt of such request.

Provided that:-

- (a) errors in quantities provided in the Bills of Quantities (other than provisional quantities) or work shown on the Drawings or described in the Specification but not measured in the Bills of Quantities shall be dealt with in accordance with Clause 11.1, and
- (b) if compliance with such instructions shall, in the opinion of the Surveyor, involve the Contractor in any expense which by reason of any ambiguity or discrepancy the Contractor did not and had no reason to anticipate, the Surveyor shall determine such expense in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take this into account in the calculation of the Final Contract Sum, and
- (c) if compliance with such instructions shall, in the opinion of the Surveyor, involve the Contractor in any saving then the Surveyor shall determine such saving in the same manner as a sum to be deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take this into account in the calculation of the Final Contract Sum.

### **4.2 Provision of Drawings and Specification**

- (1) The Contractor shall be furnished free of charge with four copies of the Drawings together with two copies of the Bills of Quantities and/or the schedule of rates and the Specification other than the standard specification library.
- (2) The Contract Manager shall within 14 days of receiving a request in writing from the Contractor provide the Contractor with any further copies of the Drawings requested by the Contractor upon payment at the standard rates laid down from time to time by the Employer.
- (3) The Contract Manager shall issue to the Contractor from time to time during the progress of the Works such other Drawings and Specification as in the opinion of the Contract Manager shall be necessary for the purpose of the execution of the Works and the Contractor shall be bound by the same.
- (4) The Contractor shall give adequate notice in writing to the Contract Manager of other Drawings or Specification that may be required for the execution of the Works.

- (5) One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Contract Manager, the Contract Manager's Representative, the Surveyor, the Surveyor's Representative and any other persons authorized by the Contract Manager in writing.
- (6) The Contractor shall, if required by the Contract Manager or the Surveyor upon completion of the Works, return to the Contract Manager all Drawings and other documents provided under the Contract except the Contractor's signed copies of such Drawings and documents.

#### **4.3 Drawings provided by the Contractor for the Works**

- (1) When the Contractor is required to provide Drawings or other documents in connection with the Works, unless the Contract provides to the contrary, all such Drawings and documents shall be submitted in duplicate to the Contract Manager at a reasonable time before the work shown or described thereon is to be carried out so as to permit the Contract Manager sufficient time to examine the Contractor's proposals properly. Subject to Clause 4.3(2), the Contract Manager shall give or refuse his approval in writing to such proposals within a reasonable time.
- (2) If the Contract Manager has reasonable cause for being dissatisfied with the proposals set out in the Contractor's Drawings or documents the Contract Manager shall require the Contractor to make such amendments thereto as the Contract Manager may consider reasonably necessary. The Contractor shall make and be bound by such amendments at no additional expense to the Employer.
- (3) The Contractor shall provide the Contract Manager with the type and number of copies of such Drawings and documents as may be specified in the Contract within 14 days of the Contract Manager's approval.
- (4) Should it be found at any time after approval has been given by the Contract Manager that the details of such Drawings or documents do not comply with the terms and conditions of the Contract or that the details do not agree or comply with the Drawings or documents previously submitted and approved by the Contract Manager, the Contractor shall make such alterations or additions as in the opinion of the Contract Manager are necessary to remedy such non-compliance or non-agreement at the Contractor's own expense.
- (5) No examination by the Contract Manager of the Drawings or documents submitted by the Contractor under the provisions of this Clause 4.3 nor any approval given by the Contract Manager of the same, with or without amendment, shall absolve the Contractor from any of his liabilities or obligations under the Contract.

#### **4.4 Information not to be divulged**

- (1) The Contractor shall not use or divulge, except for the purposes of the Contract, any information provided by the Employer, the Contract Manager, the Contract Manager's Representative, the Surveyor or the Surveyor's Representative in the Contract or in any subsequent correspondence or documentation. Any disclosure to any sub-contractor or person for the purposes of the Contract shall be in strict confidence and shall only be on the basis that it is necessary for the purposes of the Contract for such sub-contractor or person to have such disclosure. The Contractor shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that the purposes of the Contract by such sub-contractor or person. The Contractor shall indemnify and keep indemnified the Employer against all losses, liabilities, damages, costs, legal costs, professional fees and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provisions by the Contractor or his employees, agents or sub-contractors.
- (2) The Employer, the Contract Manager and the Surveyor may use any information provided by the Contractor in accordance with the Contract but shall not divulge such information except for the purposes of the Contract or for the purposes of carrying out any repair, amendment, extension or other work in connection with the Works.

Provided that the Employer may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Contractor or the outcome of an arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the

Employer shall inform the Contractor. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Contractor but such consent shall not be unreasonably withheld. The Contractor shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Contractor may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Contractor's request, the Employer shall convey the request to the said Committee for its consideration.

- (3) (a) Notwithstanding Clause 4.4(2) and subject to Clause 4.4(3)(b):-
- (i) any contract rates or related information provided by the Contractor in connection with the Contract may be used by the Employer for the sole purpose of cost estimation or cost analysis for the Employer's other works which may or may not be connected with the Contract, and
  - (ii) the Employer may also disclose such information to any third party engaged by the Employer for the sole purpose of cost estimation or cost analysis, provided that the Employer shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.
- (b) In connection with the use and/or disclosure of the contract rates and related information under Clause 4.4(3)(a), the Employer shall ensure that the Contract number, Contract title and the names of the Contractor and his sub-contractors of any tier shall not be disclosed.

#### **4.5 Use of English language**

The Contract, all correspondence in connection with the Contract and the Drawings or other documents provided by the Contractor in accordance with Clause 4.3 shall be in English.

### **5 GENERAL OBLIGATIONS**

#### **5.1 Extent of Contract**

- (1) The Contractor shall, subject to the provisions of the Contract, execute the Works and provide all labour, materials, Constructional Plant, Temporary Works, transport to and from the Site or in and about the Works and everything whether of a temporary or permanent nature required in and for such execution so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.
- (2) The Contractor shall liaise and co-ordinate with his sub-contractors including Specialist Sub-contractors and Nominated Sub-contractors in compliance with the Contract.

#### **5.2 Contractor to execute Articles of Agreement**

The Contractor shall, when called upon to do so, enter into and execute the Articles of Agreement which shall be prepared at the expense of the Employer in the form prescribed in the Contract with such modifications as may be necessary.

#### **5.3 Sureties or security**

- (1) The Contractor shall procure a bond in the form as provided in the appendix to the Conditions of Contract from an insurance company or bank, in either case to be approved in writing in advance by the Employer, in favour of the Employer in the sum stated in the Contract.
- (2) The Contractor shall submit the bond duly executed by the insurance company or bank to the Employer within 21 days of the date of the Letter of Acceptance.

#### **5.4 Inspection of the Site**

- (1) The Contractor shall be deemed to have examined and inspected the Site and its surroundings and to have satisfied himself, before submitting the Tender, as regards existing roads or other means of communication with and access to the Site, the nature of the ground and sub-soil, the

form and nature of the Site, the risk of death of or injury to any person or loss of or damage to any property, the nature of materials (whether natural or otherwise) to be excavated, the nature of the work and materials necessary for the execution of the Works, the accommodation he may require and generally to have obtained his own information on all matters affecting the Tender and the execution of the Works.

- (2) Save as expressly provided otherwise in the Contract, no demand or claim by the Contractor for additional payment shall be accepted or allowed on the ground of any misunderstanding in respect of the matters referred to in Clause 5.4(1) or otherwise or on the ground of any allegation or fact that incorrect or insufficient information was given to him by any person whether in the employ of the Employer or not or of the failure of the Contractor to obtain correct or sufficient information, nor shall the Contractor be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may in fact affect or have affected the execution of the Works.

#### **5.5 Sufficiency of Tender**

The Contractor shall be deemed to have satisfied himself before submitting the Tender as to the correctness and sufficiency of the Tender for the Works and of all the rates stated in the Bills of Quantities or the schedule of rates, if any, and all such rates shall, except in so far as it is otherwise provided in the Contract, cover all his risks, liabilities and obligations set out in or implied from the Contract and all matters and things necessary for the proper execution of the Works.

#### **5.6 Works to be to the satisfaction of the Contract Manager**

Save in so far as it is legally or physically impossible, the Contractor shall execute the Works in strict accordance with the Contract to the satisfaction of the Contract Manager and shall comply with and adhere strictly to the Contract Manager's instructions on any matter related to the Contract whether mentioned in the Contract or not.

#### **5.7 Programme to be furnished**

- (1) Save as otherwise specified in the Contract, the Contractor shall, within 14 days of the date of the Letter of Acceptance, submit to the Contract Manager a programme, in a form acceptable to the Contract Manager, showing the sequence, method and timing, including (in so far as such work is described in the Contract) due allowance for the carrying out of Specialist Works and work by Utility Undertakings, in which the Contractor proposes to carry out the Works and shall, whenever required by the Contract Manager, furnish the Contract Manager with particulars in writing of the Contractor's arrangements for carrying out the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be.
- (2) The Contractor shall regularly update the programme during the currency of the Works and shall submit the updated programme to the Contract Manager at the intervals stated in the Contract but in any event within 28 days of:-
  - (a) the date of granting of an extension of time for completion by the Contract Manager under Clause 8.4, or
  - (b) the receipt of the Contract Manager's notification in writing under Clause 8.5 informing the Contractor that the rate of progress of the Works or any Section is too slow to ensure completion by the time or extended time for completion as referred to in Clause 8.3(1), or
  - (c) the receipt of the Contract Manager's notification in writing requesting the Contractor to update the programme.
- (3) The submission to the Contract Manager of such programme or updated programme in accordance with the Contract, or the furnishing of such particulars shall not relieve the Contractor of any duty or responsibility under the Contract.

#### **5.8 Contractor's superintendence**

- (1) The Contractor shall give or provide all necessary superintendence during the currency of the Works and as long thereafter as the Contract Manager may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract.

- (2) Without prejudice to the Contractor's obligations under Clause 5.8(1), the Contractor shall provide and maintain a management team of sufficient number of members to manage and supervise the Contract during the currency of the Works. All members of the management team shall have the qualifications and experience as specified in the Contract and shall be under the direct employment of the Contractor.
- (3) No member of the management team shall take up or be awarded a sub-contract for any part of the Works or shall have a vested interest in any sub-contract or sub-contractor of any tier (including Specialist Sub-contractors and Nominated Sub-contractors) in connection with the Contract.
- (4) The Contractor shall name from the members of the management team a competent and authorized agent who shall be proficient in both Chinese and English and shall at all times represent the Contractor on the Site and receive on behalf of the Contractor instructions, orders or directions from the Contract Manager and the Contract Manager's Representative. Such agent shall be constantly on the Site on a full time basis dedicated to the superintendence of the Works.
- (5) The Contractor shall submit for approval of the Contract Manager the names, qualifications, experience and documentary proof of the employment status of any members of his management team as required under the Contract.
- (6) The Contract Manager shall have the power to revoke his approval of any member of the Contractor's management team at any time. Upon receipt of a notice in writing by the Contract Manager revoking his approval of a member of the management team, the Contractor shall remove such member from the Works forthwith and shall not thereafter employ him again on the Works. Such member shall be replaced as soon as possible by a competent substitute with the qualifications and experience as specified in the Contract subject to the approval of the Contract Manager in accordance with Clause 5.8(5).
- (7) The Contractor shall inform the Contract Manager forthwith of any changes made to the management team.

#### **5.9 Contractor's employees**

- (1) The Contractor shall provide and employ and shall ensure that any of his sub-contractors shall provide and employ on the Site in connection with the execution of the Works:-
  - (a) only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work which they are required to supervise, and
  - (b) such skilled, semi-skilled and general workers as is necessary for the proper and timely execution of the Works, and
  - (c) such number of qualified workers to fulfil the requirements provided in the Contract.
- (2) The Contract Manager shall have the power to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor or by a sub-contractor on the Works who in the opinion of the Contract Manager misconducts himself or is incompetent or negligent in the proper performance of his duties or whose employment is otherwise considered by the Contract Manager to be undesirable and such person shall not be again employed upon the Works without the written permission of the Contract Manager.
- (3) Any person so removed from the Works shall be replaced as soon as possible by a competent substitute.

#### **5.10 Setting-out**

- (1) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference shown on the Drawings or any document supplied by the Contract Manager and for the correctness of the position, level, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.
- (2) If at any time during the progress of the Works any error shall appear or arise in the position, level, dimensions or alignment of any part of the Works, the Contractor on being instructed so to do by the Contract Manager or the Contract Manager's Representative shall, at his own expense,

rectify such error unless such error is based on any incorrect data shown on the Drawings or any document supplied to the Contractor by the Contract Manager or the Contract Manager's Representative, in which case the rectification shall be treated as a Variation.

- (3) The checking of any setting-out, position, dimension or of any line or level by the Contract Manager or the Contract Manager's Representative shall not in any way relieve the Contractor of his responsibility for the correctness thereof and the Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

#### **5.11 Safety, security and environmental management of the Works**

- (1) Without prejudice to the generality of the Contractor's responsibilities under the Contract or any statutory regulation with respect to safety, security and environmental management and without imposing any obligation or responsibility on the Employer or the Contract Manager beyond that set out in the Contract, the Contractor shall comply with the requirements of Clauses 5.11(2) to 5.11(6) in relation to safety, security and environmental management.
- (2) The Contractor shall throughout the progress of the Works take full responsibility for the adequate stability and safety of all operations on the Site other than those of Specialist Contractors and Utility Undertakings and have full regard for the safety of all persons on the Site. The Contractor shall keep the Site and the Works in an orderly state appropriate to avoid danger to all persons.
- (3) The Contractor shall in connection with the Works provide and maintain all lights, guards, fences and warning signs and shall provide watchmen when and where necessary or required by the Contract Manager or any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others.
- (4) The Contractor shall provide adequate lighting with all necessary lighting facilities to or in all parts of the Site where any works are being carried out so as to ensure the safety of all persons on or in the vicinity of the Site or such works.
- (5) The Contractor shall submit the Safety Plan and the Environmental Management Plan and their subsequent revisions or updates to the Contract Manager in accordance with the requirements as specified in the Contract.
- (6) The Contractor shall, after obtaining any necessary approval from any relevant authority, submit to the Contract Manager proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works. No such road opening or traffic diversion shall be brought into operation or use unless the proposals submitted have been previously approved by the Contract Manager and properly implemented to the satisfaction of the Contract Manager.

#### **5.12 Care of the Works**

- (1) The Contractor shall (from and including the date for commencement of the Works as notified by the Contract Manager under Clause 8.1 up to and including the day 28 days after the date of completion of the Works certified by the Contract Manager under Clause 8.7 but in the event of the Employer taking possession of the Works earlier, then up to and including the day 28 days after such date of possession) take full responsibility for the care of the Works and subject to Clause 5.11(2) any Specialist Works, and for the care of any Constructional Plant, temporary buildings and materials and things whatsoever on the Site or delivered to or placed on the Site in connection with or for the purpose of the Works or any Specialist Works.

Provided that when a Section or part of the Works is completed before completion of the Works, the Contractor shall be responsible for the care of such Section or part of the Works up to and including the day 28 days after the date of completion therefor as certified under Clause 8.7.

Provided further that the Contractor shall take full responsibility for the care of any outstanding work (which he shall have undertaken to finish during the Maintenance Period) and any Enhancement Works (which may be ordered under Clause 11.9) until such outstanding work and Enhancement Works are completed in accordance with the Contract, and shall continue to be responsible for all things or items which are required to be retained on the Site during the Maintenance Period including Constructional Plant, temporary buildings and materials and other facilities provided for the use of the Contract Manager, the Contract Manager's



Representative and any persons authorized by the Contract Manager, the Contract Manager's Representative or the Employer.

- (2) In the event that any damage, loss or injury from any cause whatsoever, except the "excepted risks" as defined in Clause 5.12(4), happens to the Works or Specialist Works or any part thereof, or to any Constructional Plant, temporary buildings, materials and things whatsoever on the Site, the Contractor shall at his own expense and with all possible speed make good or at the option of the Employer shall pay to the Employer the cost of making good any such damage, loss or injury to the satisfaction of the Contract Manager and shall, notwithstanding such damage, loss or injury, proceed with the Works in all respects in accordance with the Contract and the Contract Manager's instructions.
- (3) To the extent that any damage, loss or injury arises from any of the "excepted risks" defined in Clause 5.12(4), the Contractor shall, if instructed by the Contract Manager, repair and make good the same at the expense or proportionate expense of the Employer. Any sum payable under this Clause 5.12(3) by the Employer shall be determined by the Surveyor in the same manner as a sum payable in respect of a Variation in accordance with Clause 11.3.
- (4) The "excepted risks" are:-
  - (a) outbreak of war (whether war be declared or not) in which Hong Kong shall be actively engaged,
  - (b) invasion of Hong Kong,
  - (c) act of terrorists in Hong Kong,
  - (d) civil war, rebellion, revolution or military or usurped power in Hong Kong,
  - (e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on the Works or Specialist Works,
  - (f) a cause due to the occupation by the Employer or his agents, employees or contractors of any part of the Works for a purpose other than the carrying out of Specialist Works and such purpose is authorized and required by the Employer,
  - (g) damage, loss or injury which is the direct consequence of the Contract Manager's design of the Works,
  - (h) a cause due to any neglect or default by the Contract Manager or the Employer or the Employer's employees or agents in the course of their employment, and
  - (i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive, nuclear assembly or nuclear component thereof provided always that the same are not caused in whole or in part by the Contractor or any sub-contractor.

### **5.13 Death of or injury to any person or loss of or damage to any property**

- (1) The Contractor shall, except if and so far as the Contract otherwise provides, indemnify and keep indemnified the Employer against all losses and claims for death of or injury to any person or loss of or damage to any property whatsoever, other than surface or other damage to land or crops on the Site, which may arise out of or in consequence of the execution of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (2) The Contractor shall make good or at the option of the Employer, shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury which may occur to any employee of the Employer by or arising out of or in consequence of the execution of the Works or in the carrying out of the Contract.
- (3) The Contractor's liability to indemnify or recompense the Employer under Clauses 5.13(1) and 5.13(2) shall, subject to Clause 5.13(4), be reduced proportionately to the extent that the act or neglect of the Contract Manager, the Employer or the Employer's employees or agents has contributed to such damage, loss or injury, and nothing herein contained shall be deemed to

render the Contractor liable to the Employer for or in respect of any interference with or of the use or occupation of land provided by the Employer for the purpose of the execution of the Works or any right of way, light, air or water or other easement or quasi easement or the right of the Employer to construct the Works on, over, under, in or through any land which is an unavoidable result of the Contractor's proper and necessary execution of the Works in accordance with the Contract.

- (4) The indemnities given herein by the Contractor shall not be rendered ineffective or reduced by reason of any negligence or omission of the Employer or the Contract Manager or the Contract Manager's Representative in watching and inspecting the Works, or in testing and examining any material to be used and workmanship employed by the Contractor in connection with the Works, or in supervising or controlling the Contractor's site operations or methods of working or Temporary Works, or in detecting or preventing or remedying defective work or services, or in ensuring proper performance of any other obligation of the Contractor.

#### **5.14 Third party insurance**

- (1) Without limiting the Contractor's obligations and responsibilities under Clause 5.13, the Contractor shall procure before the date for commencement of the Works as notified by the Contract Manager under Clause 8.1, in the joint names of the Contractor, the Employer, the power supply company (if the design, supply and installation of grid-connected photovoltaic system has been specified as part of the Works) and the Contractor's sub-contractors of any tier an insurance policy covering the period from and including such notified date for commencement of the Works up to and including the certified date of completion of the maintenance obligations but if there is more than one certified date of completion of the maintenance obligations then the last date of such dates of completion of the maintenance obligations certified by the Contract Manager under Clause 14.3, against any damage, loss or injury which may occur to any property including that of the Employer (other than the Works), and/or to any person, by or arising out of or in consequence of the execution of the Works or in the carrying out of the Contract otherwise than due to the matters referred to in Clause 5.13(3).
- (2)
  - (a) Such insurance shall be effected with an insurer as specified in the Contract for at least the amount stated in the appendix to the Form of Tender and the insurance policy shall be consistent with the terms of the specimen policy as provided in the appendix to the Conditions of Contract and shall at least cover the risks stipulated therein.
  - (b) The Contractor shall lodge with the Employer through the Surveyor or the Surveyor's Representative the originals of the policy or policies of insurance, the originals of the receipts for payment of the current premiums and a confirmation letter consistent with the sample as provided in the appendix to the Conditions of Contract. Such insurance shall be in terms approved by the Employer which approval shall not be unreasonably withheld.

Provided that if through no fault of the Contractor, it becomes impracticable for the Contractor to procure an insurance policy consistent with the terms of the specimen policy, the Employer may accept an insurance policy with modified terms as may be proposed by the Contractor subject to adjustment to the Contract Sum under Clause 5.14(2)(c).

- (c) Any proposal submitted by the Contractor for modifications to the terms in the specimen policy shall be accompanied with a proposed adjustment to the Contract Sum. If the Employer agrees to such modifications and such proposed adjustment, the adjustment shall be taken into account in the calculation of the Final Contract Sum. Failing agreement on the adjustment to the Contract Sum, the Surveyor shall determine the amount of the adjustment in the same manner as a sum to be added to or deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take such amount into account in the calculation of the Final Contract Sum.
- (d) The Contractor shall, if so required in writing by the Employer at any time during the currency of the Works, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with Clause 5.14(1) or the proviso of Clause 5.14(2)(b), a replacement insurance policy, with modified terms. In such event, the Surveyor and the Contractor shall agree on an adjustment to the Contract Sum and failing agreement, the Surveyor shall determine the amount of the adjustment in the

same manner as a sum to be added to or deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3. The adjustment agreed between the Surveyor and the Contractor or, as the case may be, determined by the Surveyor shall be taken into account in the calculation of the Final Contract Sum.

#### **5.15 Design responsibility**

- (1) Unless otherwise provided for in the Contract, the Contractor shall not be responsible for the design of the permanent work or for the design of any Temporary Works designed by the Contract Manager.
- (2) The Contractor shall, in respect of any defect or insufficiency in any design:-
  - (a) as is required to be carried out by the Contractor under the Contract, or
  - (b) as is required to be carried out by a Nominated Sub-contractor under a Nominated Sub-contract or by a Specialist Sub-contractor under a Specialist Sub-contract, or
  - (c) which the Contractor has to carry out as a result of a Variation or an Agreed Requested Variation

(referred to in this Clause 5.15 as the “Contractor’s Design”), have the like liability to the Employer, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on the Contractor’s Design.

- (3) Notwithstanding the provisions of Clause 5.15(2) and except as otherwise provided for in the Contract, the Contractor shall ensure that the equipment, plant, materials and goods are reasonably fit for the purpose intended by the Contract where the Employer has relied upon the Contractor to select such equipment, plant, materials and goods required to be incorporated into the Works.
- (4) In preparing the Contractor’s Design and complying with his obligations under Clause 5.15(2), the Contractor shall, where prescribed in the Contract, comply in all respects with the design checking procedures provided in the Contract.
- (5) No examination or lack of examination of whatsoever nature by the Employer, his agents or employees of the Contractor’s drawings, documents, calculations or details relating to the Contractor’s Design or otherwise nor any certification, comment, rejection or approval expressed by any of such persons in regard thereto, whether with or without modification, shall in any respect relieve or absolve the Contractor from any obligation or liability under or in connection with the Contract.

#### **5.16 Use of Intellectual Property Rights**

- (1) In so far as work which forms part of the Works shall be designed by the Contractor under the Contract or in accordance with an Agreed Requested Variation, all Intellectual Property Rights incorporated or utilized in such work which are owned or procured by the Contractor shall, save as otherwise expressed in the Contract, remain vested in him.
- (2) After the date of completion of the Works as certified under Clause 8.7 or upon termination of the Contractor’s employment under Clause 15.1 or in the event of frustration of this Contract or where the Employer has appointed other contractors to perform work pursuant to Clause 15.2, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a non-exclusive irrevocable licence to utilize such Intellectual Property Rights which have been provided or procured by the Contractor, provided that the Employer shall make use of such Intellectual Property Rights solely in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever. No prior written agreement or consent from the Contractor shall be required for such use by the Employer. Where sectional or partial completion is provided for in the Contract, the expression “certificate of completion” shall, for the purpose of Clause 5.16(2), mean such certificate of the relevant Section or part of the Works.

**5.17 Indemnity for Intellectual Property Rights**

- (1)
  - (a) The Contractor shall, subject to Clause 5.17(3), indemnify the Employer from and against and keep the Employer fully and effectively indemnified from and against all actions, claims, demands, proceedings, costs, losses, charges, damages and expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and all awards and cost which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature which the Employer may pay or incur for or on account of any allegation and/or claim of infringement of any Intellectual Property Rights in respect of any Constructional Plant, machine, work, method or material or anything whatsoever required or used for or in connection with the Works.
  - (b) Except when otherwise specified in the Contract, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works.
  - (c) The indemnity granted pursuant to Clause 5.17(1)(a) shall continue to apply where the actions, claims, demands and/or proceedings concerned are subsequently withdrawn or settled or in the event that the allegations or claims of infringement are subsequently found to be unsubstantiated and shall not terminate if the Contractor shall for any reason cease to be employed in connection with the Works.
- (2) The Contractor shall, at his own expense and in consultation with the Employer, conduct any proceedings arising from any allegation and/or claim for infringement referred to in Clause 5.17(1)(a) and all negotiations in connection therewith.
- (3)
  - (a) Where the Contractor shall, in compliance with the Contract or the Contract Manager's written instruction, incorporate into the permanent work any patented article, process or invention, the Contractor shall be reimbursed by the Employer for any expenses, costs or damages which the Contractor may have had to pay to the persons entitled to such patented article, process or invention in respect of any infringement of any Intellectual Property Rights in relation to such article, process or invention.
  - (b) The Contractor shall, as a condition precedent to any such reimbursement under Clause 5.17(3)(a), notify the Contract Manager in writing as soon as the Contractor is aware of or ought reasonably to be aware of any incorporation of any such patented article, process or invention into the permanent work.
- (4) The provisions of this Clause 5.17 shall survive and continue in full force and effect notwithstanding the completion of the Works as certified under Clause 8.7 or the completion of the maintenance obligations as certified under Clause 14.3 or the termination of the Contractor's employment under Clause 15.1.

**5.18 Interference with traffic and adjoining properties**

- (1) All operations necessary for the execution of the Works shall be carried on so as not to interfere unnecessarily or improperly with:-
  - (a) the convenience of the public, or
  - (b) the access to, use or occupation of any public or private roads or footpaths or any properties whether in the possession of the Employer or any other person.
- (2) The Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

**5.19 Remedy on failure to insure**

If the Contractor fails to effect and keep in force any insurance which he may be required to effect under the Contract, then the Employer may, in any such case, effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and such premiums, together with any other expenses incurred by the Employer, shall be recoverable by the Employer from the Contractor.

**5.20 Accident or injury to workers**

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the Contractor or any of his sub-contractors save and except an accident or injury resulting from any act or default of the Employer or his agents or employees and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

**5.21 Contractor to give notice of injury**

In the event of any worker or other person employed on the Works or in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there is or will be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required under the Employees' Compensation Ordinance (Cap. 282) and report the matter to the Contract Manager in the form prescribed in the Contract.

**5.22 Giving of notices and payment of fees**

The Contractor shall give all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulation or bye-law of any local or other duly constituted authority in relation to the execution of the Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the Works.

**5.23 Compliance with enactments and regulations**

The Contractor shall conform in all respects with:-

- (a) the provisions of any enactment, and
- (b) the regulations or bye-laws of any local or duly constituted authority, and
- (c) the rules and regulations of such public bodies and statutory authorities as are referred to in Clause 5.22

and any additions or amendments thereto or any new enactments, regulations, bye-laws or rules made during the currency of the Works, which are applicable to the Works, and shall be responsible for the payment of all penalties and fines and the discharge of all obligations under such enactments, regulations, bye-laws or rules and shall keep the Employer indemnified against all penalties and fines and liabilities of every kind for breach of any such enactments, regulations, bye-laws or rules.

Provided that the Contractor shall, under no circumstances, be paid by the Employer for any penalties, fines and liabilities for breach of such enactments, regulations, bye-laws or rules nor shall the Final Contract Sum be adjusted for that purpose.

**5.24 Notices to be written in English and Chinese**

Any notice required to comply with any enactment or the rules and regulations of Government or other duly constituted authority and which the Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees and any sub-contractors shall be written in English and Chinese.

**5.25 Site diary and labour returns**

- (1) The Contract Manager's Representative shall record daily in the Contract Manager's site diary information with regard to labour, plant, materials, utilities, work carried out and instructions issued to the Contractor and all other facts that may affect the progress or quality of the Works.
- (2) The authorized agent or representative of the Contractor shall sign the site diary daily indicating his agreement to the information and details recorded therein. Should the authorized agent or representative of the Contractor disagree with any of the recorded items or details, he shall indicate clearly in writing in the site diary such items or details with which he disagrees.
- (3) The Contractor shall, as and when called upon to do so by the Contract Manager, make available to the Contract Manager or such other person as the Contract Manager may direct, such information as the Contract Manager considers necessary to enable him to keep and

maintain his site records properly, but in any event and without prejudice to the generality of the foregoing, the Contractor shall deliver to the office of the Contract Manager's Representative by not later than 1.00 p.m. on each working day a return in such form as the Contract Manager may prescribe showing in detail the numbers of the several classes of labour on the Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day together with such information concerning materials, Constructional Plant and other such matters as the Contract Manager's Representative may require.

**5.26 Fossils**

All fossils, coins, articles of value or antiquities and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be the absolute property of the Employer. The Contractor shall take reasonable precautions to prevent his workers, sub-contractors or any other persons from removing or damaging any such items, remains or things and shall upon discovery but before removal thereof notify the Contract Manager or the Contract Manager's Representative in writing of such discovery and carry out at the expense of the Employer the instructions of the Contract Manager as to the disposal of the same. The Surveyor shall determine such expense in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3.

**5.27 Facilities for other persons**

(1) The Contractor shall in accordance with the requirements of the Contract Manager afford all reasonable facilities to any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer or any Specialist Contractor, Utility Undertaking or other duly constituted authority.

(2) In the event that the Contractor shall on written request of the Contract Manager:-

- (a) make available any road or way the maintenance of which the Contractor is responsible, or
- (b) afford the use of any Constructional Plant, or
- (c) provide any other service of whatsoever nature

to any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer or any Specialist Contractor, Utility Undertaking or other duly constituted authority, the Employer shall pay to the Contractor in respect of such use or service such sum as determined to be reasonable by the Surveyor. Provided that if the Contractor is responsible for affording such use or service in accordance with the Contract, the cost of such use or service shall be deemed to have been included in the Contract Sum.

**5.28 Clearance of the Site on completion**

As soon as practicable after the date of completion of the Works as certified under Clause 8.7, the Contractor shall clear away and remove all surplus materials and rubbish of any kind whatsoever from the Site but in the event of the completion relating to a Section or part of the Works, then from such Section or part of the Works (as the case may be) and leave the same in a clean and tidy condition.

**5.29 Publication of photographs of the Site or the Works**

- (1) The Contractor shall not disclose, publish or circulate photographs of the Site or of the Works or any part thereof or anything therein except with the permission in writing of the Employer.
- (2) No such permission shall exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs.

**5.30 Prohibition of offering gratuities**

- (1) If the Contractor or any of his employees, representatives or agents shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any kind to any employee, representative or agent of the Employer, to the Contract Manager or to any member of the Contract Manager's staff or to the Surveyor or any member of the Surveyor's staff, the Employer may terminate the employment of the Contractor under Clause 15.1 and hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

- (2) The Contractor shall prohibit his employees, representatives, agents, and sub-contractors who are involved in the Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with the Contract.
- (3) The Contractor shall require his employees, representatives, agents and sub-contractors who are involved in the Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with the Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (4) The Contractor shall prohibit his employees who are involved in the Contract from engaging in any work or employment other than in the performance of the Contract, with or without remuneration, which may create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with the Contract. The Contractor shall also require his sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.
- (5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, representatives, agents and sub-contractors are aware of the prohibitions and requirements in this Clause 5.30.
- (6) The Contractor acknowledges his full awareness that dishonesty, theft or corruption on his part or on any part of his employees, representatives, agents or sub-contractors who are involved in the Contract may lead to prosecution under, without limitation, the Prevention of Bribery Ordinance (Cap. 201), the Theft Ordinance (Cap. 210) and the Crimes Ordinance (Cap. 200). These offences commonly carry terms of imprisonment upon conviction.

#### **5.31 Site cleanliness**

The Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on the Site and shall keep the Site in a clean and hygienic condition.

#### **5.32 Disposal ground**

- (1) The Contractor shall not dispose of construction and demolition materials generated from the Works or in connection with the Site at any place other than the disposal ground designated in the Contract or directed by the Contract Manager or such alternative disposal grounds as proposed by the Contractor and approved by the Contract Manager in accordance with the Specification.
- (2) Notwithstanding any other provisions in the Contract, the Contract Manager's approval or disapproval of any alternative disposal ground proposed by the Contractor shall not in any way relieve the Contractor of any duty or responsibility under the Contract nor entitle the Contractor to any additional payment or extension of time.

#### **5.33 Care of the Works insurance**

- (1) Without limiting the Contractor's obligations and responsibilities under Clause 5.12, the Contractor shall procure before the date for commencement of the Works as notified by the Contract Manager under Clause 8.1, in the joint names of the Contractor, the Employer and the Contractor's sub-contractors of any tier an insurance policy for care of the Works and any Specialist Works covering the period from and including such notified date for commencement of the Works up to and including the day 28 days from the date of completion of the Works as certified by the Contract Manager under Clause 8.7, provided that should the Works be completed in Sections, the period of insurance for a Section shall cover the period from and including the date for commencement of such Section up to and including the day 28 days from the date of completion of such Section as certified by the Contract Manager under Clause 8.7.
- (2) (a) Such insurance shall be effected with an insurer as specified in the Contract and the insurance policy shall be consistent with the terms of the specimen policy as provided in the appendix to the Conditions of Contract. Such insurance policy shall at least cover the risks stipulated therein and in respect of Specialist Works within the coverage of the insurance policy, the Contractor shall also assess the value of the Specialist Works.

- (b) The Contractor shall lodge with the Employer through the Surveyor or the Surveyor's Representative the originals of the policy or policies of insurance, the originals of the receipts for payment of the current premiums and a confirmation letter consistent with the sample as provided in the appendix to the Conditions of Contract. Such insurance shall be in terms approved by the Employer which approval shall not be unreasonably withheld.
  - (c) In the event that through no fault of the Contractor, it becomes impracticable for the Contractor to procure an insurance policy consistent with the terms of the specimen policy, the Employer may accept an insurance policy with modified terms as may be proposed by the Contractor subject to the adjustment as may be agreed between the Employer and the Contractor or determined by the Surveyor in accordance with Clause 5.33(2)(d).
  - (d) Any proposal submitted by the Contractor for modifications to the terms in the specimen policy shall be accompanied with a proposed adjustment to the Contract Sum. If the Employer agrees to such modifications and such proposed adjustment, the adjustment shall be taken into account in the calculation of the Final Contract Sum. Failing agreement on the adjustment to the Contract Sum, the Surveyor shall determine the amount of the adjustment in the same manner as a sum to be added to or deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take such amount in the calculation of the Final Contract Sum.
  - (e) The Contractor shall, if so required in writing by the Employer at any time during the currency of the Works, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with Clause 5.33(1) or 5.33(2)(c), a replacement insurance policy, with modified terms. In such an event, the Surveyor and the Contractor shall agree on an adjustment to the Contract Sum and failing such agreement the Surveyor shall determine the amount of the adjustment in the same manner as a sum to be added to or deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3. The adjustment agreed between the Surveyor and the Contractor or, as the case may be, determined by the Surveyor shall be taken into account in the calculation of the Final Contract Sum.
- (3) The extent of the insurance cover to be provided shall be:-
- (a) the Works and Specialist Works to the full reinstatement value, and
  - (b) the materials, Constructional Plant and all other things brought onto the Site by anyone so authorized to do so to the full replacement value of such materials, Constructional Plant and other things.

## **6 LABOUR**

### **6.1 Engagement of labour**

- (1) The Contractor shall make his own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required for the execution of the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such enactments and regulations as Government may from time to time require to be observed.
- (2) As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong.

### **6.2 Fair wages**

- (1) The Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.
- (2) The Contractor shall in respect of all persons employed by him, whether in carrying out the Contract or otherwise, in every workshop or other place occupied or used by him for carrying out the Works comply with the general conditions required in this Clause 6.2.



- (3) The Contractor shall be responsible for the observance of this Clause 6.2 by sub-contractors employed in the carrying out of the Works.
- (4) The Employer may make payment, in whole or in part, on behalf of the Contractor of claims of any employee of wages in arrears by the Contractor or as the case may be, the Contractor's superior sub-contractors under and as defined in the Employment Ordinance (Cap. 57), out of any money due or becoming due to the Contractor (whether under the Contract or any other contract between the Employer and the Contractor), which money shall exclude the Retention Money held in respect of the Contractor before it is due, in the event:-
- (a) that default is being made by the Contractor in the payment of any money in respect of wages of any person employed by the Contractor in and for carrying out the Contract, or
  - (b) that the Contractor is liable to an employee of his sub-contractor of any tier including Specialist Sub-contractors but excluding Nominated Sub-contractors for the first two months of the wages in arrears under section 43C of the Employment Ordinance (Cap. 57)

and if the claim therefor is filed by the employee in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or as the case may be, the sub-contractor (as the employer of the employee) or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the appellant court) is furnished to the satisfaction of the Commissioner for Labour. Without prejudice to Clause 15.3, any money due or becoming due to the Contractor under the Contract or any other contract between the Employer and the Contractor shall be reduced correspondingly by the amount so paid by the Employer to the employee as aforesaid provided that the aggregate reductions shall not exceed the amount paid by the Employer under this Clause 6.2(4).

- (5) The Employer may make payment, in whole or in part, on behalf of the Nominated Sub-contractor for or of claims of the employee of wages in arrears by the Nominated Sub-contractor or as the case may be, the superior nominated sub-contractors under the Employment Ordinance (Cap. 57), out of any money due or becoming due to the Nominated Sub-contractor under the nominated sub-contract, which money shall exclude the Retention Money held in respect of the Nominated Sub-contractor before it is due, in the event:-
- (a) that default is being made in the payment of any money in respect of wages of any person employed by the Nominated Sub-contractor in and for carrying out the Nominated Sub-contract Works, or
  - (b) that the Nominated Sub-contractor is liable to an employee of his nominated sub-contractor of any tier for the first two months of the wages in arrears under section 43G of the Employment Ordinance (Cap. 57)

and if the claim therefor is filed by the employee in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Nominated Sub-contractor or as the case may be, the nominated sub-contractor (as the employer of the employee) or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the appellant court) is furnished to the satisfaction of the Commissioner for Labour. Without prejudice to Clause 15.3, any money due or becoming due to the Contractor under the Contract shall be reduced correspondingly by the amount so paid by the Employer to the employee as aforesaid provided that the aggregate reductions shall not exceed the amount paid by the Employer under this Clause 6.2(5). For the purpose of this Clause 6.2(5), the respective meaning of the "superior nominated sub-contractor" and "nominated sub-contractor" shall be as defined in the Employment Ordinance (Cap. 57).

- (6) Where any person claiming or alleged to be a Self-employed Worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the appellant court to be an employee instead of a Self-employed Worker, Clauses 6.2(4) and 6.2(5) shall apply to such person.

### **6.3 Passes**

- (1) The Contractor shall set up and maintain a system for controlling and regulating the admission of workers, Site Personnel and visitors to the Site as required under the Contract.
- (2) The Contractor shall, at his own expense, issue a Pass to each of such persons who are authorized to enter the Site for the carrying out of the Works or any other purposes in connection with the Works and thereafter keep full and proper records thereof and conduct regular checking of such Passes being carried at all times on the Site and ensure such Passes are returned to the Contractor after use by the bearers. The Contractor shall be responsible for any delay or disruption to the progress or execution of the Works due to any matter in connection with such Passes including but not limited to the issue or late issue of any Passes.
- (3) The Contractor shall keep and maintain at all times and update on a weekly basis a list of such Passes that were reported lost or not returned to the Contractor. Such list shall be kept at or in the guard post or house at the entrance of the Site for the checking of the Employer or his representatives and a copy thereof shall be provided by the Contractor to the Contract Manager.

## **7 MATERIALS AND WORKMANSHIP**

### **7.1 Quality of materials, workmanship and tests**

- (1) All materials and workmanship shall be of the respective character, quality or kind required under the Contract and in accordance with the Contract Manager's instructions and shall be subjected to such examinations, measurements or tests as required under the Contract or as ordered by the Contract Manager or the Contract Manager's Representative at the place of manufacture, or on the Site, or at such other place or places as the Contract Manager may think appropriate.
- (2) The Contractor shall provide such assistance, instruments, machines, labour and other facilities as may be necessary for examining, measuring or testing any work or the quality, weight or quantity of any material used and shall, before incorporation into the Works, supply for examining, measuring or testing samples of such materials as may be selected or required by the Contract Manager or the Contract Manager's Representative.
- (3) The Contractor shall bear the expense and costs of any examination, measurement or test and of complying with the requirements of Clause 7.1(2), including without limitation any transportation costs and shall reimburse the Employer in respect of the costs of the Contract Manager and the Contract Manager's Representative in attending such examination, measurement or test, if such examination, measurement or test and all repetitions thereof are clearly intended or provided for in the Contract.
- (4) If any examination, measurement or test not so intended or provided for in the Contract is ordered by the Contract Manager or the Contract Manager's Representative, then the expense and costs of such examination, measurement or test including those of the attendance by the Contract Manager and/or the Contract Manager's Representative shall be borne by the Contractor if the examination, measurement or test shows the materials or workmanship to be not in accordance with the Contract or the Contract Manager's instructions but otherwise such expense and costs shall be determined by the Surveyor in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and be borne by the Employer.
- (5) In the event that any test shows that the Contractor has failed to comply with the requirements of the Contract or with the Contract Manager's instructions in respect of materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other test as the Contract Manager may approve.

- (6) Clauses 7.1(4) and 7.1(5) shall apply to any series of tests carried out on any part of the Works the results of which indicate that in the opinion of the Contract Manager the Contractor has failed to comply with the requirements of the Contract or with the Contract Manager's instructions in respect of materials or workmanship notwithstanding there being satisfactory individual tests included in any such series of tests.
- (7) Notwithstanding the other provisions of this Clause 7.1, any test carried out in the Employer's laboratories in connection with the Works shall be free of charge.

## **7.2 Access to the Site and places of manufacture**

The Contract Manager and any person authorized by him shall at all times have access to the Works and to the Site and to all workshops and places where materials or manufactured articles are being stored or prepared or from where materials or manufactured articles are being supplied by the Contractor or any sub-contractor, and the Contractor shall render every assistance to the Contract Manager and any person so authorized by him to obtain access when required to such workshops and places from where materials or manufactured articles are being obtained for incorporation into the Works.

## **7.3 Examination of work before covering up**

- (1) No work shall be covered up or put out of view without the approval of the Contract Manager or the Contract Manager's Representative and the Contractor shall afford full opportunity for the Contract Manager or the Contract Manager's Representative to examine and measure any work which is about to be covered up or put out of view and to examine any foundation before permanent work is placed thereon.
- (2) The Contractor shall give reasonable notice to the Contract Manager's Representative whenever any such work or foundation is ready for examination and the Contract Manager or the Contract Manager's Representative shall, without unreasonable delay and unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or examining any such foundation.

## **7.4 Uncovering and making openings**

- (1) The Contractor shall uncover or make such openings in or through any part of the Works as the Contract Manager may from time to time direct and shall reinstate and make good any such part in accordance with the Contract.
- (2) If any such part has been covered up or put out of view after compliance with the requirements of Clause 7.3 and is found to be executed in accordance with the Contract, the expense of uncovering, making openings in or through, reinstating and making good the same shall be determined by the Surveyor in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall be taken into account in the calculation of the Final Contract Sum. In any other case the expense shall be borne by the Contractor.

## **7.5 Removal of unsatisfactory material and work**

- (1) The Contract Manager shall during the progress of the Works have the power to order in writing:-
  - (a) the removal from the Site within such time as may be specified in the order of any material which in the opinion of the Contract Manager is not in accordance with the Contract, and
  - (b) the substitution with proper and suitable material, and
  - (c) the removal and proper re-execution, notwithstanding any previous examination, measurement or test thereof or any interim payment therefor, of any work which, in respect of materials or workmanship, is not in accordance with the Contract.
- (2) The Contractor shall bear the expense of uncovering, breaking up and removal from the Site of any material or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works resulting from such uncovering, breaking up or removal.

- (3) Where the rectification of any work or replacement of any material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Contract Manager may but shall not be obliged to give directions for a Variation in lieu of such removal and re-execution at no additional expense to the Employer.

Provided that if in the opinion of the Surveyor such Variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Surveyor shall determine such excess in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take this into account in the calculation of the Final Contract Sum.

- (4) In the event that the Contract Manager exercises any of his powers under Clause 7.5(1) concerning materials supplied by the Employer, and if the Contractor could not, in the opinion of the Contract Manager, have reasonably ascertained that the material was not in accordance with the Contract then the Surveyor shall ascertain such Cost incurred and shall take this into account in the calculation of the Final Contract Sum.

## **7.6 Warranty**

- (1) Without prejudice to any right of the Employer under the Contract or at law, the Contractor shall, in respect of such material, equipment or installation work specifically required in the Contract, unconditionally warrant to the Employer the satisfactory performance of such specified material, equipment or installation work for such period of time as specified in the Contract and that such specified material, equipment and installation work are in conformity to the specified requirements.
- (2) Where a deed of warranty from a manufacturer, supplier, agent, sub-contractor or such other person is required in the Contract, the Contractor shall, at no cost to the Employer and without prejudice to Clause 7.6(1) procure from such person and submit to the Employer within the time as stipulated in the Contract such deed of warranty on such terms and conditions as specified in the Contract.

Provided that the provision of such deed of warranty shall not relieve the Contractor of any of his other obligations or liabilities under the Contract.

## **8 COMMENCEMENT, COMPLETION AND DELAYS**

### **8.1 Commencement of the Works**

The Contractor shall commence the Works on the date for commencement of the Works as notified in writing by the Contract Manager. If the Works are phased for completion in Sections and where it is specified in the Contract that the date for commencement of any of the Sections is not the same as the notified date for commencement of the Works, the Contractor shall commence the Section on the date for commencement as notified in writing by the Contract Manager for such Section. The Contractor shall not commence the Works or Section before the notified date for commencement thereof. The Contractor shall proceed with the Works and/or Sections with due diligence after commencement thereof. The date for commencement of the Works so notified by the Contract Manager shall fall within the period of time after the date of the Letter of Acceptance as stated in the appendix to the Form of Tender.

### **8.2 Possession of the Site**

- (1) Save in so far as the Contract may prescribe the extent of Portions of which the Contractor is to be given possession from time to time and the order in which such Portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer shall give to the Contractor on the date for commencement as notified by the Contract Manager under Clause 8.1 possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the Works in accordance with the programme referred to in Clause 5.7 and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Contract Manager. The Employer will from time to time, as the Works proceed, give to the Contractor possession of such further parts of the Site as may be required to enable the Contractor to proceed with the Works with due despatch in accordance with the said programme or proposals, as the case may be.

- (2) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the Site.

### **8.3 Time for completion**

- (1) The Works and any Section shall be completed within the time or times stated in the Contract calculated from and including the date for commencement as notified by the Contract Manager in accordance with Clause 8.1 but in the event that an extension of time is granted for the Works or Section, as the case may be, under Clause 8.4, then the Works or Section shall be completed within such extended time.
- (2) None of the Works shall be carried out on General Holidays save and except:-
  - (a) such part of the Works carried out in pursuance of the Contractor's obligations under Clause 5.11, or
  - (b) any work that is unavoidable or absolutely necessary for:-
    - (i) preventing injury to any person or saving the life of any person;
    - (ii) preventing damage to property;
    - (iii) curing of concrete which has been poured on the previous day, loosening of wallform bolts and the like and any similar works which the Contract Manager accepts as being necessary for the working cycle;
    - (iv) essential maintenance of Constructional Plant;
    - (v) providing any attendance required for turfing and planting or any other Specialist Works carried out on General Holidays; or
    - (vi) administrative office work on the Site related to the Works or as required under the Contract, or
  - (c) any part of the Works which may be carried out on General Holidays as expressly specified in the Contract.

Provided that as soon as is practicable the Contractor shall advise the Contract Manager of the need for such work referred to in Clauses 8.3(2)(a) and 8.3(2)(b) to be carried out on General Holidays and provided further that the Contract Manager has not expressly prohibited such work to be carried out on General Holidays.

- (3) The Contractor may also give notice in writing to the Contract Manager, accompanied with detailed reasons and justifications, requesting the Contract Manager to permit any work, other than those works covered by Clause 8.3(2), to be executed on General Holidays, and the Contract Manager shall respond within 14 days of the receipt of such notice. The Contract Manager may at his sole discretion grant or refuse to grant such permission so requested by the Contractor, and the Contract Manager shall not be obliged to give any reason to the Contractor in the case of the request being refused.
- (4) The Contractor shall not be entitled to any payment nor extension of time as a result of compliance with the provisions of this Clause 8.3 or as a result of any permission or refusal of the Contract Manager given under Clause 8.3(3).
- (5) Neither any of the provisions of Clause 8.3(2) nor the permission of the Contract Manager given under Clause 8.3(3) shall in any way relieve the Contractor of his obligations under Clause 5.23 or any of the Contractor's responsibilities or liabilities under the Contract. In particular, the Contractor shall not be relieved of his obligations to obtain any relevant and necessary permit required by law including but not limited to a Construction Noise Permit under the Noise Control Ordinance (Cap. 400).
- (6) Notwithstanding Clause 8.3(2), General Holidays shall be included in the time for completion unless otherwise stated in the Contract.

**8.4 Extension of time for completion**

*Extension of time for inclement weather conditions*

- (1) Within 42 days after the receipt by the Contract Manager of the Contractor's written request, the Contract Manager shall grant and notify in writing to the Contractor an extension of time for the completion of the Works or the relevant Section by one day for any single occurrence of the following prescribed events on any day falling within the time or extended time for completion (as the case may be) referred to in Clause 8.3(1):-
- (a) rainfall recorded at the Hong Kong Observatory, Nathan Road, Tsim Sha Tsui, Kowloon as exceeding twenty millimetres between midnight and midnight, or
  - (b) a Tropical Cyclone Warning Signal No. 8 or above issued by the Hong Kong Observatory, or
  - (c) a Black Rainstorm Warning issued by the Hong Kong Observatory.

Provided that consecutive occurrence and/or concurrent occurrence of any two or more of the circumstances described in this Clause 8.4(1) in any single day shall be deemed to be a single occurrence for the purposes of this Clause 8.4(1).

For the avoidance of doubt, the term "one day", "any day" and "single day" as stated in this Clause 8.4(1) shall include any day which is a General Holiday.

*Contractor's notice for delay*

- (2) (a) The Contractor shall, as soon as practicable but in any event within 28 days of the cause of any delay to the progress of the Works or any Section becoming apparent, serve a notice of claim for extension of time in writing on the Contract Manager, accompanied with particulars of the cause of the delay and the probable effect and extent of such delay.

*Grounds for extension of time for delay*

- (b) If in the opinion of the Contract Manager the cause of the delay is:-
- (i) the effects of an event caused by inclement weather conditions in respect of which a Tropical Cyclone Warning Signal No. 8 or above being issued and in force on any day falling within the time or extended time for completion (as the case may be) referred to in Clause 8.3(1) in so far as such effects have adversely affected the progress of the Works or Section (as the case may be) subsequent to the day of the lowering of the Tropical Cyclone Warning Signal No. 8, or
  - (ii) the effects of an event caused by inclement weather conditions in respect of which a Black Rainstorm Warning Signal being issued and in force on any day falling within the time or extended time for completion (as the case may be) referred to in Clause 8.3(1) in so far as such effects have adversely affected the progress of the Works or Section (as the case may be) subsequent to the day of the cancellation of the Black Rainstorm Warning Signal, or
  - (iii) an instruction issued by the Contract Manager under Clause 4.1, or
  - (iv) a Variation, or
  - (v) a substantial increase in the quantity of any item of work included in the Contract not resulting from any error in firm quantities or from a Variation, or
  - (vi) the Contractor not being given possession of the Site or any Portion or part thereof in accordance with the Contract, or
  - (vii) a disturbance to the progress of the Works for which the Employer, the Contract Manager or a Specialist Contractor is responsible including but not restricted to any matter referred to in Clause 11.5(1)(a), or
  - (viii) the Contract Manager suspending the Works in accordance with Clause 9.2 in so far as the suspension is not occasioned by the circumstances described in Clauses 9.2(3)(a)(i) to 9.2(3)(a)(iv), or
  - (ix) any Utility Undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of the Works, provided that the Contractor has taken all practical steps to cause the Utility Undertakings or duly constituted authority to commence or to proceed with such work, or

- (x) any utility work not forming part of the Works which in the opinion of the Contract Manager could not have been foreseen by a competent contractor based on the information available as at the Tender Closing Date, or
- (xi) a Change in Law, or
- (xii) delay on the part of any Nominated Sub-contractor for any reason specified in Clauses 8.4(2)(b)(i) to 8.4(2)(b)(xi) and which the Contractor has taken all reasonable steps to avoid or mitigate, or
- (xiii) any special circumstances of any kind whatsoever,

then the Contract Manager shall, taking into account of any extension of time granted pursuant to Clause 8.4(1), decide whether the Contractor is fairly entitled to an extension of time for the completion of the Works or the relevant Section.

- (c) Notwithstanding the powers of the Contract Manager under the provisions of this Clause 8.4 to decide whether the Contractor is fairly entitled to an extension of time, the Contractor shall not be entitled to an extension of time for the completion of the Works or any Section if the cause of the delay is:-
  - (i) a suspension occasioned by any of the circumstances described in Clauses 9.2(3)(a)(i) to 9.2(3)(a)(iv), or
  - (ii) a shortage of Constructional Plant or labour not occasioned by a Change in Law, or
  - (iii) a delay on the part of any Specialist Sub-contractor, or
  - (iv) inclement weather conditions and/or their consequential effects except as expressly provided in Clause 8.4(1), 8.4(2)(b)(i) or 8.4(2)(b)(ii).

- (d) If in accordance with Clause 8.4(2)(b) the Contract Manager decides that the Contractor is fairly entitled to an extension of time for the completion of the Works or a Section, the Contract Manager shall within 60 days after the receipt of the Contractor's notice of claim served pursuant to Clause 8.4(2)(a) notify in writing to the Contractor such extension. If the Contract Manager decides that the Contractor is not entitled to an extension, the Contract Manager shall notify the Contractor in writing accordingly.

***Decision on extension of time***

Provided that the Contract Manager and the Contractor may by mutual written agreement extend the said 60 day period by not more than 60 days. Any extension of the said 60 day period by more than 60 days shall be made by mutual written agreement between the Employer and the Contractor.

- (e) If in the opinion of the Contract Manager the cause of the delay envisaged by the Contractor's notice of claim served pursuant to Clause 8.4(2)(a) has a continuing effect, the Contract Manager may, but is not obliged to, grant an interim extension of time as he thinks fit for the completion of the Works or Section (as the case may be) at any time before his decision on the extension of time for the Works or such Section pursuant to Clause 8.4(2)(d).
- (f) The Contract Manager shall take into account all the circumstances known to him when making his decision on an extension of time for completion, including the effect of any omission of work or substantial decrease in the quantity of any item of work.
- (g) For the purposes of deciding whether or to what extent the Contractor may be entitled to an extension of time under Clause 8.4(2)(b) the Contract Manager may, within 14 days after the receipt of the Contractor's notice of claim served pursuant to Clause 8.4(2)(a), require the Contractor to submit further particulars of the cause and extent of the delay to the progress of the Works. Where such further particulars are required by the Contract Manager, they shall be submitted in writing by the Contractor to the Contract Manager within 14 days after the receipt of the Contract Manager's request.
- (h) (i) If the Contractor fails to comply with the notice requirements of Clause 8.4(2)(a) in respect of a claim for extension of time, such claim shall not be considered and shall be deemed to have been waived by the Contractor under the Contract and at common law.

- (ii) If the Contractor fails to comply with the provisions of Clause 8.4(2)(g) but nevertheless has served a notice of claim pursuant to Clause 8.4(2)(a), the Contract Manager shall consider granting such extension only to the extent that the Contract Manager is able to on the information available.

*Programme to be revised*

- (3) Whenever the Contract Manager grants an extension of time for completion in accordance with Clause 8.4, the Contractor shall revise the programme referred to in Clause 5.7 accordingly.
- (4) Provided that if the Contract Manager grants an extension of time in respect of a prescribed event under Clause 8.4(1) or a cause of delay under Clause 8.4(2)(b) occurring after the Employer is entitled to recover liquidated damages in respect of the Works or a Section (as the case may be) the period of extension of time granted shall be added to the time or extended time for the completion of the Works or the relevant Section in accordance with Clause 8.3(1).
- (5) Any extension of time granted by the Contract Manager to the Contractor shall, except as provided elsewhere in the Contract, be deemed to be in full compensation and satisfaction for any loss, damage or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.

#### **8.5 Rate of progress**

- (1) If the rate of progress of the Works or any Section is at any time in the opinion of the Contract Manager too slow to ensure completion by the time or extended time for completion referred to in Clause 8.3(1), the Contract Manager may so inform the Contractor in writing and the Contractor shall take such steps as are necessary to expedite the completion of the Works or such Section. The Contractor shall inform the Contract Manager of such proposed steps and revise the programme referred to in Clause 5.7 accordingly.
- (2) Notwithstanding the provisions of Clause 8.5(1) and subject to compliance with any enactment, regulation or bye-law, the Contract Manager shall be empowered to instruct the Contractor in writing to carry out the Works or any part thereof during any hours of the day where the Contract Manager considers it necessary owing to the default, negligence, omission or slow progress of the Contractor.
- (3) The Contractor shall not be entitled to any additional payment for complying with any instruction given in accordance with this Clause 8.5.

#### **8.6 Liquidated damages for delay**

- (1) If the Contractor fails to complete the Works or where the Works are divided into Sections any Section within the time or extended time for completion referred to in Clause 8.3(1), then the Employer shall be entitled to recover from the Contractor liquidated damages, and may but shall not be bound to deduct such damages either in whole or in part, in accordance with Clause 15.3. Payment of such liquidated damages shall not relieve the Contractor from his obligation to complete the Works or from any of his other obligations under the Contract.
- (2) The liquidated damages shall be calculated using the rate of liquidated damages prescribed in the Contract, either for the Works or for the relevant Section, whichever is applicable.

Provided that, if the Contract Manager certifies completion under Clause 8.7 of any part of the Works before completion of the Works or any part of any Section before the completion of the whole thereof, then the rate of liquidated damages for the Works or such Section shall from and including the day following such date of completion certified under Clause 8.7 be reduced in the proportion which the value of the part so certified bears to the value of the Works or such Section, as applicable, both values as of the date of such certification shall be determined by the Surveyor.

- (3) The period for which liquidated damages shall be calculated shall be the number of days from and including the day following the date for completion or any extension thereof of the Works or the relevant Section until and including the day of the date of completion certified under Clause 8.7.

Provided that, if the Contract Manager subsequently grants an extension of time which affects the period described above, then the Employer shall reimburse the Contractor the liquidated damages for the number of days so affected at the rate described in Clause 8.6(2) together with



interest for the period commencing from the date on which the said liquidated damages were deducted from or paid by the Contractor until the day of actual payment of the reimbursement to the Contractor at the rate provided for in Clause 14.2(6) within 28 days of the granting of such extension of time.

- (4) (a) Where the Contract Manager has issued an instruction pursuant to Clause 9.1 omitting a part of any Section, the rate of liquidated damages in respect of such Section shall be reduced by the same proportion as the omission as a result of the instruction valued in accordance with the Contract bears to the amount contained in the Contract Sum for such Section.
- (b) Where the Contract Manager has issued an instruction pursuant to Clause 9.1 omitting a part of the Works, the rate of liquidated damages in respect of the Works shall be reduced by the same proportion as the omission as a result of the instruction valued in accordance with the Contract bears to the amount contained in the Contract Sum for the Works.
- (5) All monies payable by the Contractor to the Employer pursuant to this Clause 8.6 shall be paid as liquidated damages for delay and not as a penalty.

## **8.7 Completion of the Works**

- (1) When the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may serve notice in writing to that effect to the Contract Manager, accompanied by an undertaking to carry out any outstanding work during the Maintenance Period, requesting the Contract Manager to issue a certificate of completion in respect of the Works. The Contract Manager shall, within 21 days of the receipt of such notice either:-
  - (a) issue a certificate of completion stating the date on which, in the Contract Manager's opinion, the Works were substantially completed in accordance with the Contract and the Maintenance Period shall commence on the day following the date of completion stated in such certificate, or
  - (b) give instructions in writing to the Contractor specifying all the work which, in the Contract Manager's opinion, is required to be done by the Contractor before such certificate can be issued, in which case the Contractor shall not be permitted to make any further request for a certificate of completion.
- (2) Notwithstanding other provisions in the Contract, as soon as in the opinion of the Contract Manager the Works have been substantially completed and satisfactorily passed any final test which may be prescribed by the Contract, the Contract Manager may issue a certificate of completion in respect of the Works and the Maintenance Period shall commence on the day following the date of completion stated in such certificate.
- (3) The Contractor shall carry out any outstanding work as soon as practicable after the issue of the certificate of completion or as reasonably directed by the Contract Manager and in any event before the expiry of the Maintenance Period. The Contractor's obligation to provide, service and maintain site offices, toilet facilities and the like, shall continue for as long as may reasonably be required by the Contract Manager.
- (4) The provisions of Clauses 8.7(1), 8.7(2) and 8.7(3) shall apply equally to any Section.
- (5) (a) The Contract Manager shall issue a certificate of completion in respect of any part of the Works which has been completed to the satisfaction of the Contract Manager and is required by the Employer for permanent occupation or use before the completion of the Works or any Section.
- (b) The Contract Manager may, following a written request from the Contractor, issue a certificate of completion in respect of any substantial part of the Works which has been completed to the satisfaction of the Contract Manager before the completion of the Works or any Section and is capable of permanent occupation and/or permanent use by the Employer.
- (c) When a certificate of completion is issued in respect of a part of the Works, such part shall be considered as completed and the Maintenance Period for such part shall commence on the day following the date of completion stated in such certificate.

- (6) Any certificate of completion issued under this Clause 8.7 in respect of any Section or part of the Works shall not be deemed to certify completion of any ground or surface requiring reinstatement unless the certificate shall expressly so state.
- (7) For the purposes of this Clause 8.7 the term “Works” shall exclude any Maintenance Works and any Enhancement Works.

## **9 EXCISION AND SUSPENSION OF THE WORKS**

### **9.1 Works Subject to Excision**

Where any part of the Works is specified in the Contract to be Works Subject to Excision, the Contractor shall have no right to carry out any such part of the Works unless and until a written instruction to proceed is issued by the Contract Manager. The Contract Manager’s instruction to proceed shall be issued pursuant to this Clause 9.1 within the time period specified in the Contract. In the event that the Contract Manager has not issued any instruction pertaining to the Works Subject to Excision within the time period specified in the Contract, the Contractor shall, within 7 days from the expiry of such time period, write to the Contract Manager seeking the Contract Manager’s direction. If the Contractor has not written to the Contract Manager within the said 7 day period or unless the Contract Manager issues an instruction within 14 days from the Contractor’s written request for a direction directing the Contractor to proceed, such Works Subject to Excision shall be deemed to be excised from the Works and the amount of which shall be determined by the Surveyor in the same manner as a sum to be deducted from the Contract Sum in respect of a Variation in accordance with Clause 11.3.

### **9.2 Suspension of the Works**

- (1) The Contract Manager shall have power to suspend the progress of the Works or any part thereof. The Contractor shall upon the written order of the Contract Manager suspend the progress of the Works or any part thereof for such time or times and in such manner as the Contract Manager may consider necessary and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Contract Manager.
- (2) If the Contractor intends to claim any expenditure that he has incurred or is likely to incur by reason of the suspension of the Works or any part thereof ordered by the Contract Manager pursuant to Clause 9.2(1), he shall, within 28 days from the date of the suspension order, serve a notice of intention to claim on the Contract Manager with a copy thereof to the Surveyor.
- (3) (a) The Contract Manager shall ascertain the circumstances and effects of the suspension order issued under Clause 9.2(1) and if he decides that the Contractor has incurred or is likely to incur expenditure by reason of the suspension order issued by him under Clause 9.2(1), then he shall, within 21 days from the date of serving of such notice of intention to claim, instruct the Surveyor to ascertain the Cost unless he is of the opinion that the suspension order is:-
  - (i) otherwise provided for in the Contract, or
  - (ii) necessary or occasioned by reason of weather conditions affecting the safety or quality of the Works or any part thereof, or
  - (iii) necessary or occasioned by reason of some default on the part of the Contractor or any person carrying out the Works, or
  - (iv) necessary or occasioned for the proper execution of the Works or for the safety of the Works or any part thereof or for the safety and health of any person or the safety of any property on or adjacent to the Site in as much as such necessity does not arise from any act or default of the Contract Manager or the Employer or from any of the excepted risks defined in Clause 5.12(4).
- (b) If the Contract Manager decides that the issue of the suspension order under Clause 9.2(1) falls within the circumstances of Clauses 9.2(3)(a)(i) to 9.2(3)(a)(iv) or the Contractor has not incurred or is unlikely to incur expenditure for which the Contractor has submitted the notice of intention to claim under Clause 9.2(2), the Contract Manager shall notify the Contractor of his decision in writing with a copy thereof to the Surveyor within 21 days from the date of serving of such notice of intention to claim.

- (c) Notwithstanding the notice requirements in Clauses 9.2(2) and 11.6(2)(d), if the Contractor has served a notice of claim for extension of time to the Contract Manager under Clause 8.4(2)(a) for which an extension of time has subsequently been granted by the Contract Manager for cause of delay under Clause 8.4(2)(b)(viii), then:-
- (i) such notice of claim for extension of time shall be taken to have the effect that a notice of intention to claim expenditure has also been served by the Contractor under Clause 9.2(2), and
  - (ii) such notice of claim for extension of time shall also be taken to have the effect that the Contractor has notified the Surveyor pursuant to Clause 11.6(2)(d) of the submission of such notice of claim for extension of time, and
  - (iii) the Contract Manager shall be deemed to have instructed the Surveyor under Clause 9.2(3)(a) to ascertain the expenditure incurred or likely to be incurred by the Contractor,
- unless the Contractor has otherwise complied with Clauses 9.2(2) and 11.6(2)(d) by serving the required notices.
- (4) It shall be a condition precedent to the Contractor's entitlement to the Cost that the Contractor shall comply with the notice requirements of Clause 9.2(2). If the Contractor fails to comply with the said notice requirements in respect of any claim, such claim shall not be considered and shall be deemed to have been waived by the Contractor under the Contract and at common law.

### **9.3 Suspension lasting more than 90 days**

If the progress of the Works or any part thereof is suspended on the written order of the Contract Manager and if written permission to resume work is not given by the Contract Manager within a period of 90 days after the date of suspension then the Contractor may, unless such suspension is occasioned by the circumstances described in Clauses 9.2(3)(a)(i) to 9.2(3)(a)(iv), serve a notice in writing on the Contract Manager requiring permission within 28 days after the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If the Contract Manager does not, within the said 28 days, grant such permission, the Contractor may but is not bound to, by a further notice in writing served on the Contract Manager, elect to treat the suspension where it affects only part of the Works as an omission of such part under Clause 11.2 or where it affects the whole of the Works as an abandonment of the Contract by the Employer.

## **10 MAINTENANCE AND DEFECTS**

### **10.1 Execution of Maintenance Works**

- (1) The Works or Section or part thereof (as the case may be) shall upon or as soon as practicable after the expiry of the respective Maintenance Period be delivered to the Employer in the condition required under the Contract, with fair wear and tear excepted.
- (2) During the Maintenance Period or within 14 days after its expiry, the Contract Manager may from time to time instruct the Contractor in writing to carry out any Maintenance Works. The Maintenance Works shall be carried out within the following times and in the following manner:-
  - (a) If the necessity for the Maintenance Works is, in the opinion of the Contract Manager, due to the use of material or workmanship not in accordance with the Contract, or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract, the Contract Manager shall state so in his instruction, in which case the Contractor shall carry out and complete such Maintenance Works within their respective times for completion as specified in the Contract.

***Execution of  
Maintenance  
Works***

Provided that, as soon as it becomes apparent that the progress of the execution of the Maintenance Works instructed by the Contract Manager is likely to be delayed, then:-

- (i) the Contractor shall forthwith give notice in writing to the Contract Manager of the cause and probable effect and extent of such delay, and
- (ii) if the delay is, in the opinion of the Contract Manager, due to the occurrence of a

special circumstance beyond the control of the Contractor, he shall within a reasonable time consider whether the Contractor is fairly entitled to an extension of the time for the completion of any such Maintenance Works and shall notify the Contractor of such extended time accordingly.

Provided further that where there is no specific time for completion of the Maintenance Works specified in the Contract, such Maintenance Works shall be carried out by the Contractor within the Maintenance Period or as soon as practicable thereafter.

- (b) If such necessity is, in the opinion of the Contract Manager, due to any cause other than those stated in Clause 10.1(2)(a), the Contract Manager shall state so in his instructions, in which case the Contractor shall carry out the Maintenance Works within the Maintenance Period or as soon as practicable thereafter.
- (c) Notwithstanding the requirements of Clauses 10.1(2)(a) and 10.1(2)(b), if the Maintenance Works shall, in the opinion of the Contract Manager, be required to be carried out urgently, the Contract Manager may give the Contractor such instructions as he considers necessary to carry out such Maintenance Works and the Contractor shall comply with such instructions forthwith.

***Notice for completion of Maintenance Works***

- (3) When the Maintenance Works required in each of such Contract Manager's written instructions under Clause 10.1(2) have been completed, the Contractor shall serve notice in writing to that effect to the Contract Manager requesting the Contract Manager to issue a written confirmation of completion in respect of such Maintenance Works. The Contract Manager shall within a reasonable time of receipt of such notice issue a confirmation to the Contractor in writing:-

- (a) stating the date on which the Maintenance Works were completed and in respect of those Maintenance Works with specific time for completion under Clause 10.1(2)(a), stating the date before which such Maintenance Works shall be completed in accordance with the Contract, or
- (b) stating that such Maintenance Works were not so completed.

- (4) All Maintenance Works shall be carried out by the Contractor at his own expense if the necessity for such Maintenance Works is, in the Contract Manager's opinion, due to the use of materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Contract Manager such necessity is due to any other cause, the Surveyor shall determine the value of the Maintenance Works in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take this into account in the calculation of the Final Contract Sum.

***Contractor's failure to perform***

- (5) If the Contractor fails to:-
  - (a) carry out any Maintenance Works in such terms as required by the Contract Manager in accordance with Clauses 10.1(2)(a) and 10.1(2)(b), or
  - (b) comply with any instruction requiring Maintenance Works to be carried out urgently in accordance with Clause 10.1(2)(c),

the Employer shall be entitled, after giving reasonable notice in writing to the Contractor, except that no notice is required for Maintenance Works ordered under Clause 10.1(2)(c), to have such Maintenance Works carried out by his own workers or other contractors. If such Maintenance Works are works which the Contractor should have carried out at his own expense, the Employer shall be entitled to recover from the Contractor any expenditure incurred in connection therewith.

***Maintenance Works Stages***

- (6) The Maintenance Works in each of such Contract Manager's instructions under Clause 10.1(2) shall be phased into one of the following Maintenance Works stages based upon the date of such instruction. Where there is more than one certificate of completion issued under the Contract, the expression "certificate of completion" shall for the purposes of this Clause 10.1(6) mean the last of the certificates of completion issued under Clause 8.7:-
  - (a) the first stage of the Maintenance Works shall include all Maintenance Works in each of such Contract Manager's instructions under Clause 10.1(2) where the date of the instruction falls within the period ending on the date six months from the day following the date of completion stated in the certificate of completion, and

- (b) the second stage of the Maintenance Works shall include all Maintenance Works in each of such Contract Manager's instructions under Clause 10.1(2) where the date of the instruction falls within the six month period commencing from the day following the end of the first stage of the Maintenance Works, and
  - (c) the third stage of the Maintenance Works shall include all Maintenance Works in each of such Contract Manager's instructions under Clause 10.1(2) where the date of the instruction falls within the period commencing from the day following the end of the second stage of the Maintenance Works up to the expiry of the 14 days period after the end of the Maintenance Period.
- (7) Further to Clause 10.1(3)(a), the Contract Manager shall issue a confirmation in writing to the Contractor with a copy thereof to the Surveyor when any of the following occurs:-
- (a) all Maintenance Works pertaining to the Nominated Sub-contract Works of a Nominated Sub-contractor with respect to any one of the Maintenance Works stages described in Clause 10.1(6) have been completed in accordance with the manner required under the Contract, and
  - (b) all Maintenance Works pertaining to the Works, other than Nominated Sub-contract Works, with respect to any one of the Maintenance Works stages described in Clause 10.1(6) have been completed in accordance with the manner required under the Contract.

## **10.2 Temporary reinstatement**

If in the course or for the purpose of the execution of the Works or any part thereof any highway or other road or way has been broken into then notwithstanding any other provision of the Contract:-

- (a) if the permanent reinstatement of such highway, road or way is to be carried out by the appropriate authority or any person other than the Contractor, the Contractor shall at his own expense and independently of any requirement of or notice from the Contract Manager be responsible for the making good of any subsidence or shrinkage or other defect, imperfection, settlement or fault in the temporary reinstatement of such highway, road or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the expiry of the Maintenance Period in respect of the relevant part of the Works beneath such highway, road or way or until the authority or person as aforesaid shall have taken possession of the relevant part of the Site for the purpose of carrying out permanent reinstatement, whichever is the earlier. The Contractor shall indemnify the Employer against and from any damage or injury to the Employer or to third parties arising out of or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (b) as from the expiry of such Maintenance Period or the taking of possession as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out of or in consequence of or in connection with the said permanent reinstatement or any defect, imperfection or failure of or in such work of permanent reinstatement and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (c) where the authority or person as aforesaid shall take possession of the Site as aforesaid in Portions or parts the responsibility of the Contractor under Clause 10.2(a) shall cease in regard to any such Portion or part at the time possession thereof is so taken but shall during the currency of the said Maintenance Period continue in regard to any Portion or part of which possession has not been so taken and the indemnities given by the Contractor and the Employer respectively under Clauses 10.2(a) and 10.2(b) shall be construed and have effect accordingly.

## **10.3 Investigating defects**

- (1) At any time prior to the issue of the various maintenance certificates under Clause 14.3, the Contractor shall, if instructed by the Contract Manager in writing, investigate the cause of any defect, imperfection or fault under the directions of the Contract Manager.

Provided that if the Contract Manager at his discretion so decides, the Employer shall be entitled, after giving reasonable notice in writing to the Contractor, to have such investigation carried out by his own workers or by other contractors.

- (2) If such defect, imperfection or fault shall be one for which the Contractor is liable under the Contract, the expense incurred in investigating as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault together with any consequential damage at his own expense.
- (3) If such defect, imperfection or fault shall be one for which the Contractor is not so liable, then the Surveyor shall determine the value of any investigation and remedial work carried out by the Contractor as aforesaid in the same manner as a sum to be added to the Contract Sum in respect of a Variation in accordance with Clause 11.3 and shall take this into account in the calculation of the Final Contract Sum.

## **11 MEASUREMENT, VARIATIONS, VALUATIONS AND CLAIMS**

### **11.1 Bills of Quantities and measurement or schedule of rates**

#### ***Bills of Quantities***

- (1) When Bills of Quantities are included in the Contract, the quality and quantity of the work the value of which is included in the Contract Sum shall be deemed to be those which are set out in the Bills of Quantities, and the Bills of Quantities including measurements thereto shall, except where any statement in the Bills of Quantities expressly specifies to the contrary, be deemed to have been prepared according to the procedures set forth in the method of measurement stated in the Preliminaries.
- (2) Any error in description in or omission from the Bills of Quantities shall not vitiate the Contract nor release the Contractor from the execution of the whole or any part of the Works according to the Drawings and Specification or from any of his obligations or liabilities under the Contract.
- (3) The quantities in the Bills of Quantities are firm except where described or stated as provisional. Only provisional quantities, Variations, work required by the Contract Manager to be carried out which is shown on the Drawings or described in the Specification but not measured in the Bills of Quantities and errors discovered in firm quantities shall be measured.

Provided that there shall be no rectification of any error, omission or wrong estimate in any description, quantity or rate inserted by the Contractor in the Bills of Quantities.

- (4) (a) Work shown on the Drawings or described in the Specification but not measured in the Bills of Quantities, Variations and the rectification of any error in firm quantities shall be determined in accordance with Clause 11.3. Provisional quantities shall, subject to Clause 11.1(4)(b), be valued at the rates stated in the Bills of Quantities.
- (b) If the execution of work in respect of any item for which a provisional quantity is stated in the Bills of Quantities results in the actual quantity of work executed being substantially greater or less than that stated in the Bills of Quantities and if in the opinion of the Surveyor such increase or decrease of itself shall render the rate for the item unreasonable or inapplicable and subject to any provisions in the Contract which provide otherwise, the Surveyor shall determine an appropriate increase or decrease of the rate for the item using the Bills of Quantities rate as the basis for such determination and shall notify the Contractor accordingly.

#### ***Schedule of rates***

- (5) When Bills of Quantities are not included in the Contract, the quality and quantity of the work the value of which is included in the Contract Sum shall be deemed to be those which are shown on the Drawings and/or described in the Specification. The Contractor shall submit a fully priced and detailed schedule of rates with approximate quantities showing the build-up of the Tender. When any provisional quantity is included in the Contract by the Employer the item shall be valued at the rate in the schedule of rates. Variations shall be valued based on the rates included in the schedule of rates in accordance with Clause 11.3.

#### ***Measurement and valuation***

- (6) When any part of the Works is required to be measured, the Surveyor shall inform the Contractor who shall forthwith attend or send a representative to assist the Surveyor in making such measurement on the Site and shall furnish all particulars required. Should the Contractor not attend or neglect or omit to send such representative then the measurement made or approved by the Surveyor shall be taken to be the correct measurement of such part of the

Works.

- (7) (a) When the Surveyor is required to furnish the Contractor with his measurement and valuation under the Contract, such measurement and valuation shall be provided progressively to the Contractor. Effect shall be given to such measurement and valuation in the calculation of the Final Contract Sum. The Surveyor shall provide the Contractor with a copy of the statement of final account which is a summary of all adjustments to be made to the Contract Sum within the Period of Final Measurement stated in the appendix to the Form of Tender which period, unless otherwise stated in the Contract, shall commence on the day following the date of completion stated in the certificate of completion issued under Clause 8.7. Where there is more than one certificate of completion issued under the Contract, the expression “certificate of completion” shall, for the purpose of this Clause 11.1(7)(a), mean the last of the certificates of completion issued under Clause 8.7.
- (b) With respect to any measurement and valuation under Clause 11.1(7)(a) for provisional quantities, the Surveyor shall provide the Contractor with his determination for provisional quantities within the period as specified in the Contract after the commencement of the Period of Final Measurement.

## **11.2 Variation**

- (1) The Contract Manager shall order any change to the Works or any Section or any part thereof that is necessary for the completion of the Works and shall have the power to order any change that for any other reason shall in his opinion be desirable for or to achieve the satisfactory completion and functioning of the Works. Any such change (referred to in the Contract as “Variation”) may include:-
- (a) addition, omission, substitution, alteration, change in quality, form, character, kind, position, dimension, level or line, and
- (b) change to any sequence, method or timing of construction specified in the Contract, and
- (c) change to the Site or entrance to and/or exit from the Site.

Provided that the Contract Manager shall not be under any obligation to order a Variation that is necessary for the completion of the Works or any Section or any part thereof the design of which is the Contractor’s responsibility.

- (2) The Contract Manager may order any Variation to any part of the outstanding work referred to in Clause 8.7 during the Maintenance Period if such Variation shall in the opinion of the Contract Manager be desirable for or to achieve the satisfactory completion and functioning of the Works.
- (3) No change to the Works shall be made by the Contractor without an order in writing by the Contract Manager. No Variation shall in any way vitiate or invalidate the Contract but the value of such Variation shall be taken into account in calculating the Final Contract Sum.

## **11.3 Valuing Variation**

The Surveyor shall determine the sum which in his opinion shall be added to or deducted from the Contract Sum as a result of a Variation in accordance with the following principles:-

- (a) Any item of work omitted from the Works shall be valued at the rate set out in the Contract for such work.
- (b) Any work carried out which is the same as or similar in character to and executed under the same or similar conditions and circumstances to any item of work priced in the Contract shall be valued at the rate set out in the Contract for such item of work.
- (c) Any work carried out which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work priced in the Contract shall be valued at a rate based on the rates in the Contract so far as may be reasonable, failing which, at a rate determined by the Surveyor.

Provided that if the nature or extent of any Variation relative to the nature or extent of the Works or any part thereof shall be such that in the opinion of the Surveyor any rate contained in the Contract for any item of work is by reason of such Variation rendered unreasonable or inapplicable, then a new rate shall

be determined by the Surveyor for that item, using the Contract rates as the basis for determination. This proviso shall not apply to the valuation of any omission resulting from instructions issued under Clause 9.1.

Provided always that any Cost which has been or is likely to be incurred by reason of the progress of the Works or any Section or any part thereof having been materially affected by any Variation shall be notified by the Contractor and ascertained by the Surveyor within such time and in such manner as provided in Clauses 11.5 and 11.6. Such Cost shall be ascertained exclusively pursuant to Clause 11.6 and not as part of the Surveyor's determination made pursuant to this Clause 11.3.

#### **11.4 Daywork**

- (1) The Contract Manager may, if in his opinion it is necessary or desirable, order in writing that any work to be carried out as a result of a Variation shall be executed on a daywork basis.
- (2) The Contractor shall then be paid for such work under the conditions and at the rates set out in the Contract or if no such conditions and rates have been included, at such rates as the Surveyor shall determine as being reasonable.
- (3) The Contractor shall furnish to the Surveyor such receipts or other vouchers as may be necessary to prove the sums paid and before ordering materials shall, if so required by the Surveyor, submit to the Surveyor quotations for the same for his approval.
- (4) In respect of all work executed on a daywork basis the Contractor shall during the currency of such work deliver on each working day to the Contract Manager's Representative a list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all materials and Constructional Plant used thereon or therefor. One copy of such lists and statements shall be agreed as correct or be rejected with stated reasons, and which shall be signed by the Contract Manager's Representative and returned to the Contractor within 2 days exclusive of General Holidays.
- (5) At the end of each month the Contractor shall deliver to the Contract Manager's Representative a priced statement of the labour, materials and Constructional Plant used on a daywork basis.

Provided that if the Surveyor shall consider that for any reason the delivery of such statement by the Contractor in accordance with the foregoing provision was impracticable, the Surveyor shall nevertheless be entitled to authorize payment for such work either as daywork, on being satisfied as to the time employed and the Constructional Plant and materials used thereon, or at such value as shall in the Surveyor's opinion be reasonable.

- (6) The Contractor shall inform the Contract Manager's Representative in advance whenever the Contractor proposes to carry out daywork ordered by the Contract Manager and shall afford every facility for the Contract Manager's Representative to check all time and materials for which the Contractor proposes to charge therefor.

#### **11.5 Notice of claims**

- (1) (a) If the Contractor has incurred or is likely to incur expenditure for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract by reason of the progress of the Works or any part thereof having been materially affected by:-
  - (i) the Contractor not having received in due time necessary instructions, orders, directions, decisions, Drawings, Specifications, details or levels from the Contract Manager for which the Contractor specifically applied in writing on a date which, having regard to the time or extended time for completion of the Works referred to in Clause 8.3(1), was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor to receive the same, or
  - (ii) any Variation, or
  - (iii) the opening up for inspection in accordance with Clause 7.4 of any work covered up or put out of view after compliance with the requirements of Clause 7.3 or the testing of materials or workmanship not required under the Contract but directed by the Contract Manager or the Contract Manager's Representative in accordance



with Clause 7.1(1) unless the inspection or test showed that the work, materials or workmanship were not in accordance with the Contract, or

- (iv) delay caused by any person or any company, not being a Utility Undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works, or
- (v) late delivery of material, plant or equipment by the Employer, or
- (vi) failure of the Employer to give possession of the Site or any Portion or part thereof in accordance with the Contract,

and if the Contractor intends to claim such expenditure, he shall, within 28 days of the event set out in Clauses 11.5(1)(a)(i) to 11.5(1)(a)(vi) upon which the claim is based becoming apparent, serve a notice of intention to claim in writing on the Contract Manager with a copy thereof to the Surveyor.

- (b) Upon receipt of the notice of intention to claim under Clause 11.5(1)(a), the Contract Manager shall decide:-
  - (i) that the Contractor has incurred or is likely to incur expenditure by reason of the progress of the Works or any part thereof having been materially affected and the Contract Manager shall, within 21 days from the date of serving of such notice of intention to claim, instruct the Surveyor to ascertain the expenditure incurred or likely to be incurred by the Contractor for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract, or
  - (ii) that the Contractor has not incurred or is unlikely to incur expenditure for which the Contractor has submitted a notice of intention to claim under Clause 11.5(1)(a) and the Contract Manager shall notify the Contractor of his decision in writing with a copy thereof to the Surveyor within 21 days from the date of serving of such notice of intention to claim.
- (c) Notwithstanding the notice requirements in Clauses 11.5(1)(a) and 11.6(2)(d), if the Contractor has served a notice of claim for extension of time to the Contract Manager under Clause 8.4(2)(a) for which an extension of time has subsequently been granted by the Contract Manager for cause of delay under Clauses 8.4(2)(b)(iv), 8.4(2)(b)(vi) or 8.4(2)(b)(vii), then:-
  - (i) such notice of claim for extension of time shall be taken to have the effect that a notice of intention to claim expenditure has also been served by the Contractor under Clause 11.5(1)(a), and
  - (ii) such notice of claim for extension of time shall also be taken to have the effect that the Contractor has notified the Surveyor pursuant to Clause 11.6(2)(d) of the submission of such notice of claim for extension of time, and
  - (iii) the Contract Manager shall be deemed to have instructed the Surveyor under Clause 11.5(1)(b)(i) to ascertain the expenditure incurred or likely to be incurred by the Contractor,

unless the Contractor has otherwise complied with Clauses 11.5(1)(a) and 11.6(2)(d) by serving the required notices.

- (2) If the Contractor intends to claim additional payment under any provision of the Conditions of Contract other than Clauses 7.5(4), 9.2(2), 11.5(1) and 12.3(1)(b), the Contractor shall within 28 days of an event which may give rise to a claim becoming apparent serve a notice of intention to claim in writing on the Surveyor with a copy thereof to the Contract Manager and state the contractual provision upon which the claim is based.
- (3) It shall be a condition precedent to the Contractor's entitlement to any expenditure or additional payment referred to in this Clause 11.5 that the Contractor shall comply with the notice requirements of Clause 11.5(1)(a) or 11.5(2). If the Contractor fails to comply with the said notice requirements in respect of any claim, such claim shall not be considered and shall be deemed to have been waived by the Contractor under the Contract and at common law.

**11.6 Ascertainment of claims**

- (1) Upon serving of a notice of intention to claim under Clause 9.2(2), 11.5(1)(a) or 11.5(2), the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim and shall submit to the Surveyor details of the records being kept in respect thereof. Without necessarily admitting the Employer's liability, the Surveyor may require the Contractor to keep and agree with the Contract Manager's Representative any additional contemporary records as are reasonable and may in the opinion of the Surveyor be material to the claim. The Contractor shall permit the Surveyor and the Contract Manager's Representative to inspect all records kept pursuant to this Clause 11.6 and shall supply copies thereof as and when the Surveyor or Contract Manager's Representative may so require.
- (2) The Contractor shall, after the submission of a notice of intention to claim expenditure or additional payment under Clause 9.2(2), 11.5(1)(a) or 11.5(2), submit to the Surveyor the claim including an account giving particulars of the circumstances giving rise to the claim, the sum claimed and the methodology and calculation of such sum within the following time:-
  - (a) within 60 days from the date of serving of the notice of intention to claim under Clause 9.2(2), 11.5(1)(a) or 11.5(2) unless Clause 11.6(2)(b), 11.6(2)(c) or 11.6(2)(d) shall apply;
  - (b) (where the effect of the event giving rise to the claim commences later than 60 days after the Contractor has served the notice of intention to claim and the Contractor has notified the Surveyor of the said late commencement of the effect in writing within 60 days from the date of serving such notice of intention to claim) within 60 days from a date which shall be agreed between the Surveyor and the Contractor in writing, but failing agreement, then within 60 days from such date fixed and notified to the Contractor by the Surveyor which in his opinion reasonably represents the date on which the effect of the event giving rise to the claim commences, or
  - (c) (where the event giving rise to the claim has a continuing effect and the Contractor has notified the Surveyor of the said continuing effect in writing within 60 days from the date of serving the notice of intention to claim) within 28 days from a date which shall be agreed between the Surveyor and the Contractor in writing, but failing agreement, then within 28 days from such date fixed and notified to the Contractor by the Surveyor which in his opinion reasonably represents the date after which the ascertainment of the entirety of the claim becomes possible, or
  - (d) (where the event giving rise to the claim is the same as the event for which the Contractor has submitted a notice of claim for extension of time pursuant to Clause 8.4(2) and the Contractor has notified the Surveyor of the said submission in writing within 60 days from the date of serving the notice of intention to claim) within 28 days after the receipt of the Contract Manager's grant of such extension of time.
- (3) The Surveyor may within 14 days after the receipt of the submission from the Contractor under Clause 11.6(2), require the Contractor to submit any further information which the Surveyor may reasonably require for the purpose of his ascertainment of the Cost or additional payment. The Contractor shall submit the requisite information to the Surveyor within 28 days from the receipt of the Surveyor's requirement.
- (4) Upon the Contract Manager's instruction under Clause 9.2(3)(a) or 11.5(1)(b)(i) or if the Surveyor is of the opinion that the Contractor is entitled to additional payment for the notice of intention to claim submitted under Clause 11.5(2), the Surveyor shall ascertain the Cost or additional payment (if any) according to the respective provisions of the Contract within 60 days after the receipt of the information submitted by the Contractor pursuant to Clause 11.6(2) or 11.6(3) as the case may be.
- (5) It shall be a condition precedent to the Contractor's entitlement to any Cost or additional payment to be ascertained under Clause 11.6(4) that the Contractor shall comply with the claim submission requirements of Clause 11.6(2). If the Contractor fails to comply with the said claim submission requirements in respect of any claim, such claim shall not be considered and shall be deemed to have been waived by the Contractor under the Contract and at common law. If the Contractor fails to comply with the provisions of Clause 11.6(3) in respect of any claim, the Surveyor shall consider such claim only to the extent that the Surveyor is able to on the information available.

Provided that the Surveyor shall not be obliged to take into account any particulars of the claim received by him after the expiry of a period of 180 days calculated from the date of completion stated in the certificate of completion with respect to the Works. In the event of different certificates of completion having been issued for different Sections or parts of the Works under Clause 8.7, the expression “certificate of completion” shall, for the purpose of this Clause 11.6(5), mean the last of such certificates.

#### **11.7 Surveyor’s determination and ascertainment**

- (1) Where the Surveyor is required to issue a determination or an ascertainment under the Contract, the Surveyor shall make such determination or ascertainment within such time and in such manner as provided in the Contract.

Provided that:-

- (a) the Surveyor shall be allowed to make corrections of arithmetical errors in his determination or ascertainment issued in accordance with any of the provisions of the Contract, and
  - (b) no deviation from the time provided in the Contract for issuing Surveyor’s determinations and ascertainment shall be allowed without the written agreement between the Surveyor and the Contractor.
- (2) (a) Prior to issuing a Surveyor’s determination under the Contract, the Surveyor shall, within such time stipulated in the Contract or within such time as may be agreed in writing between the Surveyor and the Contractor, issue an assessment in connection with the Surveyor’s determination to the Contractor.
  - (b) Within 42 days from the receipt of the Surveyor’s assessment in connection with the Surveyor’s determination under Clause 11.7(2)(a), the Contractor shall either notify the Surveyor in writing of his agreement to the assessment or make a request in writing with reasons to the Surveyor for a review of the assessment.
  - (c) If the Contractor does not respond to the Surveyor’s assessment in connection with the determination within the time stipulated in Clause 11.7(2)(b), such assessment shall be deemed to have been agreed by the Contractor.
  - (d) The Surveyor shall:-
    - (i) issue his determination based on the agreement or deemed agreement of the Contractor to the Surveyor’s assessment in connection with the Surveyor’s determination within 14 days upon being notified by the Contractor of his agreement in writing pursuant to Clause 11.7(2)(b) or within 14 days after the Contractor’s failure to respond as stated in Clause 11.7(2)(c) as the case may be, or
    - (ii) make a review of his assessment in connection with the Surveyor’s determination if the Contractor shall so request in writing in accordance with Clause 11.7(2)(b) taking into account any supplementary information made available to him by the Contractor and issue his reviewed assessment within 28 days from the receipt of the Contractor’s written request.
  - (e) If the Surveyor has issued a reviewed assessment in accordance with Clause 11.7(2)(d)(ii), the Contractor shall, within 14 days from the receipt of the Surveyor’s reviewed assessment, either notify the Surveyor in writing of his agreement to the reviewed assessment or make a request in writing with reasons to the Surveyor for a final review of the assessment.
  - (f) If the Contractor does not respond to the Surveyor’s reviewed assessment within the time stipulated in Clause 11.7(2)(e), such Surveyor’s reviewed assessment shall be deemed to have been agreed by the Contractor.
  - (g) The Surveyor shall:-
    - (i) issue his determination based on the agreement or deemed agreement of the Contractor to the Surveyor’s reviewed assessment within 14 days of being notified by the Contractor of his agreement in writing pursuant to Clause 11.7(2)(e) or within 14 days after the Contractor’s failure to respond as stated in Clause 11.7(2)(f) as the case may be, or

- (ii) make a final review of his reviewed assessment if the Contractor shall so request in writing in accordance with Clause 11.7(2)(e) taking into account any supplementary information where appropriate and issue his determination within 14 days from the receipt of the Contractor's written request.

#### **11.8 Requested Variation**

- (1) The Contractor may, before the date of completion of the Works or any Section as certified under Clause 8.7, submit in writing a proposal (referred to in the Contract as "Requested Variation Proposal") which shall relate to any of the following changes to the Contract Manager for his consideration and agreement:-
  - (a) addition, omission, substitution, alteration, change in quality, form, character, kind, position, dimension, level or line,
  - (b) change to any sequence, method or timing of construction specified in the Contract.Provided always that the Contract Manager shall not agree to any Requested Variation Proposal which:-
  - (i) proposes change to any part of the Works or Section the design of which shall be the responsibility of the Contractor under the Contract, or
  - (ii) may result in an increase in the Contract Sum, or
  - (iii) may cause delay or require an extension of time for completion of the Works or any Section, or
  - (iv) may render the quality or standard of any work or material inferior in any aspect to that specified in the Contract.
- (2) The Contractor shall include the following information and documents in a Requested Variation Proposal:-
  - (a) a detailed written description or narrative of and drawings and sketches for the proposed change(s) to the Works or any Section,
  - (b) the estimated amount of saving in the Contract Sum with a detailed breakdown thereof in connection with or arising from the Requested Variation Proposal,
  - (c) the principles of design adopted in the Requested Variation Proposal,
  - (d) a programme showing the time and sequence of the requisite submissions, approvals and consents for the carrying out of the change(s) set out in the Requested Variation Proposal,
  - (e) an outline of the benefit (if any) arising from the change(s) set out in the Requested Variation Proposal in terms of the environmental, health, safety and/or technical aspects in relation to the Works or any Section as the case may be,
  - (f) the date before which the Contract Manager's agreement (if any) shall be given for the timely completion of the Works or any Section to which the Requested Variation Proposal relates, and
  - (g) any other information or documents that may be useful to the Contract Manager for his consideration or to the Surveyor for his assessment of the value of the change(s) set out in the Requested Variation Proposal.
- (3) The Contractor shall not be reimbursed for any cost or expense incurred by him and any Nominated Sub-contractor (if applicable) for the preparation and submission of any Requested Variation Proposal unless and until a Memorandum of Agreement in respect of such Requested Variation Proposal is issued under Clause 11.8(4)(c). In any event, the Contractor shall pay to the Employer reasonable charges for technical checking of any Requested Variation Proposal and subsequent amendments thereof, whether or not such Requested Variation Proposal and subsequent amendments are agreed by the Contract Manager.
- (4) (a) The Contract Manager may request the Contractor in writing to amend the Requested Variation Proposal submitted to him under this Clause 11.8, and the Contractor may then make such amendments.

- (b) The Contract Manager may instruct the Surveyor to value the change(s) set out in any Requested Variation Proposal (including any amendments thereto) and the Surveyor shall, upon such instruction, assess and agree with the Contractor the value of saving to the Contract Sum arising from the change(s) set out in the Requested Variation Proposal in accordance with the principles set out in Clause 11.3 and shall take into account any expenditure already incurred or to be incurred or likely to be incurred by the Contractor in connection with the Requested Variation Proposal if the Surveyor is satisfied that:-
    - (i) the expenditure is reasonably incidental to the change(s) set out in the Requested Variation Proposal, and
    - (ii) the Contractor has not been and will not be reimbursed by a payment under any other provisions in the Contract.
  - (c) If the Contract Manager is satisfied with the change(s) set out in the Requested Variation Proposal (including any amendments thereto) in terms of both the technical aspect and value of saving (agreed between the Surveyor and the Contractor), the Contract Manager may, as soon as practicable but before such specified date, where applicable, in the Requested Variation Proposal as referred to in Clause 11.8(2)(f) or such date or extended date as may be agreed between the Contract Manager and the Contractor, issue a Memorandum of Agreement to the Contractor and such change(s) set out in the Requested Variation Proposal (including such amendments thereto (if any)) shall become an Agreed Requested Variation. Upon receipt of the Memorandum of Agreement, the Contractor shall carry out the Agreed Requested Variation in accordance with the terms of the Memorandum of Agreement and the provisions of the Contract.
  - (d) If the Contractor fails to make any amendment to the Requested Variation Proposal upon the written request of the Contract Manager referred to in Clause 11.8(4)(a) or the Contract Manager fails to issue a Memorandum of Agreement before such specified date, where applicable, in the Requested Variation Proposal as referred to in Clause 11.8(2)(f) or such date or extended date as may be agreed between the Contract Manager and the Contractor, the Requested Variation Proposal shall be deemed to have been disagreed.
  - (e) The Contract Manager shall have the absolute discretion to agree or not to agree to a Requested Variation Proposal and shall not be bound to disclose to the Contractor the reasons therefor.
- (5) A Memorandum of Agreement shall contain the following information:-
- (a) details of the Agreed Requested Variation,
  - (b) references of such documents that are relevant or applicable to the Agreed Requested Variation,
  - (c) the value of saving to the Contract Sum of the Agreed Requested Variation agreed between the Surveyor and the Contractor in accordance with Clause 11.8(4)(b),
  - (d) adjustment to the Contract Sum after taking into account the value of the Agreed Requested Variation, and
  - (e) any other documents or information as may be required which include but are not limited to the following undertakings from the Contractor:-
    - (i) types of warranties to be submitted by the Contractor, his sub-contractors and/or suppliers,
    - (ii) types and limits of indemnity of professional indemnity insurance, and
    - (iii) technical checking/audit by an independent qualified checker/auditor.
- (6) An Agreed Requested Variation shall form part of the Works. Unless otherwise expressly stated in the Memorandum of Agreement, no agreement given by the Contract Manager shall relieve or absolve the Contractor from any of his obligations or liabilities under the Contract and all terms, conditions and requirements of the Contract shall apply to the Agreed Requested Variation. The Contractor shall indemnify and keep indemnified the Employer against all costs, expenses, claims, liabilities and losses in respect of or arising from any Agreed Requested Variation.

- (7) (a) Unless otherwise specified in the Memorandum of Agreement, the value of saving to the Contract Sum of the Agreed Requested Variation as stated in the Memorandum of Agreement shall be considered as a fixed sum and shall not be adjusted in any event.
- (b) The adjustment to the Contract Sum in respect of an Agreed Requested Variation in the calculation of the Final Contract Sum shall be made in accordance with the following principles:-
  - (i) For a Requested Variation Proposal submitted by the Contractor at the request of a Nominated Sub-contractor pursuant to the conditions of the Nominated Sub-contract, 57.5% of the value of saving of the Agreed Requested Variation shall be deducted from the concerned nominated sub-contract sum and 7.5% of the value of saving of the Agreed Requested Variation shall be added to the Contract Sum for the Contractor's share of the saving in connection with the Agreed Requested Variation.
  - (ii) For a Requested Variation Proposal other than one as referred to in Clause 11.8(7)(b)(i), half of the value of saving of the Agreed Requested Variation shall be deducted from the Contract Sum.

### **11.9 Enhancement Works**

- (1) The Contract Manager may order any Enhancement Works to any part of the Works or Section that has been certified complete by the Contract Manager under Clause 8.7 that are desirable for or to achieve the better functioning of the Works, during the period of 180 days following the date of completion of the Works or the relevant Section or the relevant part thereof, as the case may be, stated in the certificate of completion issued under Clause 8.7. The Contract Manager shall state the time for completion of the Enhancement Works in his written instruction.

Provided that no Enhancement Works with a date for completion beyond the Maintenance Period shall be ordered by the Contract Manager. The Enhancement Works may include addition, substitution and alteration of the Works or any Section or any part thereof.
- (2) The Contractor shall comply with the Contract Manager's instruction issued under Clause 11.9(1) and shall carry out and complete the Enhancement Works with due diligence and to the satisfaction of the Contract Manager.
- (3) The Surveyor shall determine by way of fair valuation the sum which in his opinion shall be added to the Contract Sum as a result of an order for Enhancement Works issued by the Contract Manager under Clause 11.9(1).
- (4) No Enhancement Works shall in any way vitiate or invalidate the Contract but the value of all Enhancement Works shall be taken into account in calculating the Final Contract Sum.

## **12 PRIME COST, PROVISIONAL AND CONTINGENCY SUMS**

### **12.1 Use of Prime Cost, Provisional and Contingency Sums**

- (1) All sums set out in the Contract which are stated to be Prime Cost Sums, Provisional Sums or the Contingency Sum shall only be used upon the written instruction of the Contract Manager.
- (2) Where any Prime Cost Sum is included in the Contract, the Contractor shall, when instructed by the Contract Manager, enter into a sub-contract with the Nominated Sub-contractor in the form of sub-contract provided by the Employer. Subject to Clause 12.3(1), the Contractor shall not enter into any other form of sub-contract with a Nominated Sub-contractor.
- (3) If in connection with any Prime Cost Sum or Provisional Sum, the services to be provided include any matter of design or specification of any part of the Works (other than Temporary Works) or of any equipment or plant to be incorporated therein, such design or specification requirement shall be stated in the Contract and shall be included in any such Nominated Sub-contract and the obligations of the Contractor in respect thereof shall only be such obligations which have been stated in accordance with this Clause 12.1(3).
- (4) The Contractor shall not terminate the employment of a Nominated Sub-contractor on the ground of the Nominated Sub-contractor's failure to submit a bond as required under the Nominated Sub-contract without the prior written consent of the Employer which consent shall

not be unreasonably withheld.

## **12.2 Accounting of Provisional and Contingency Sums**

For the purpose of calculating the Final Contract Sum, the Provisional Sums and the Contingency Sum shall be deducted from the Contract Sum and in lieu thereof shall be added the value of the work ordered by the Contract Manager as determined in accordance with Clause 11.3 or, where the Provisional Sum or Contingency Sum relates to Nominated Sub-contract Works, determined in accordance with the Nominated Sub-contract. Any part of any Provisional Sum or the Contingency Sum which is to be used for Nominated Sub-contract Works shall be deemed to be a Prime Cost Sum.

## **12.3 Varied form of sub-contract and objections to nomination**

- (1) The Contract Manager may instruct the Contractor to enter into a sub-contract with a Nominated Sub-contractor containing different terms to those specified in the form of sub-contract referred to in Clause 12.1(2). If the Contract Manager so instructs, then:-
  - (a) the Contractor shall not be bound to discharge his obligations under the Contract to the extent that the terms of such sub-contract are inconsistent with the discharge of the same, and
  - (b) in the event of the Contractor incurring additional expenditure due to the terms of such sub-contract being different from the terms in the form of sub-contract referred to in Clause 12.1(2), so much of such expenditure as the Contractor could not reasonably avoid shall be ascertained by the Surveyor and shall be taken into account in the calculation of the Final Contract Sum.
- (2)
  - (a) The Contract Manager shall, prior to calling for tenders for Nominated Sub-contracts, notify the Contractor in writing of the names of the proposed tenderers and the Contractor may, within 14 days of such notification, raise objection with reason in writing to entering into a sub-contract with any proposed tenderer so named. If the Contract Manager considers any such objection to be reasonable the proposed tenderer so objected to shall not be invited to tender.
  - (b) Unless such objection shall be notified in writing within 14 days of the Contract Manager's notification of the names of the proposed tenderers and such objection is accepted by the Contract Manager, the Contractor shall be obliged to enter into a sub-contract with any one of the proposed tenderers in accordance with the Contract Manager's subsequent instruction to do so.
  - (c) In the event that the Contractor raises objections under Clause 12.3(2)(a) to all of the tenderers referred to therein and in the opinion of the Contract Manager, all such objections are reasonable, then the Contract Manager may, by an order of Variation, vary any part of the Works or the work, materials or services provided for in the Prime Cost Sum, Provisional Sum or Contingency Sum as the case may be, including if necessary the omission of any such work, materials or services so that the same may be taken up and provided by workers or contractors employed by the Employer either concurrently with the Works, in which case the provisions of Clause 5.27 shall apply, or at some other dates or time.

## **12.4 Accounting of Prime Cost Sums**

- (1) For the purpose of calculating the Final Contract Sum, Prime Cost Sums shall be deducted from the Contract Sum and in lieu thereof shall be added the total sums to be paid by the Contractor to Nominated Sub-contractors on the final payment certificate to be issued by the Surveyor.
- (2) The sum included by the Contractor in the Contract for attendance on the Nominated Sub-contract Works in respect of a Nominated Sub-contractor shall be fixed regardless of whether the actual sum expended is greater or less than the Prime Cost Sum. In respect of profit on the Nominated Sub-contract Works, the final sum to be paid shall be the product of the percentage quoted by the Contractor in the Contract and the actual sum expended in relation to the Prime Cost Sum.

## **12.5 Payments to Nominated Sub-contractors**

- (1) The Contractor shall, when required by the Surveyor, produce all quotations, invoices, vouchers and receipts in connection with any Prime Cost Sum, Provisional Sum or the Contingency Sum.
- (2) The Contractor shall, within 28 days of the Surveyor's certification in accordance with Clause 14.2, notify and pay to every Nominated Sub-contractor the sum certified in such certificate as due to such Nominated Sub-contractor.
- (3)
  - (a) Before issuing any certificate under Clause 14.2, the Surveyor shall be entitled to demand from the Contractor reasonable proof that all sums included in previous certificates in respect of the Nominated Sub-contract Works have been paid to all relevant Nominated Sub-contractors accordingly. If the Contractor has not made such payments or any part thereof, the Contractor shall:-
    - (i) give details to the Surveyor in writing of the reason why the Contractor is withholding or refusing to make such payments, and
    - (ii) produce to the Surveyor reasonable proof that the Contractor has so informed the relevant Nominated Sub-contractors in writing.
  - (b) If the Contractor fails to satisfy the Surveyor that he has reasonable cause for withholding or refusing to make any payment to any Nominated Sub-contractor as aforesaid, the Employer shall, after serving notice in writing on the Contractor, be entitled:-
    - (i) to pay any Nominated Sub-contractor direct, upon the certificate of the Surveyor, all payments, less retention provided for in the Nominated Sub-contract, which the Contractor has failed to make to any Nominated Sub-contractor and all such sums paid direct shall be recoverable by the Employer from the Contractor, and/or
    - (ii) if satisfied that it is expedient to do so, to pay any Nominated Sub-contractor direct all payments that become due, less retention provided for in the Nominated Sub-contract, for any work carried out, or materials supplied or services provided in connection with the Works in so far as the price or cost thereof has not already been paid by the Contractor.
  - (c) Where on the certification to the Contractor of a portion of the Retention Money Held in respect of the Nominated Sub-contractor in accordance with Clause 14.2(5)(a), the Contractor fails to make payment to any Nominated Sub-contractor of the sum so due to such Nominated Sub-contractor and the Surveyor considers that the Contractor does not have reasonable cause for such failure, the Employer shall, after serving notice in writing on the Contractor, be entitled to pay such Nominated Sub-contractor direct and any sum so paid shall be recoverable by the Employer from the Contractor.
  - (d) Neither the existence nor the exercise of any of the aforesaid powers by the Employer or the Surveyor shall render the Employer liable to pay any Nominated Sub-contractor directly.

## **12.6 Assignment of Nominated Sub-contractor's obligations**

In the event of a Nominated Sub-contractor having undertaken towards the Contractor in respect of his Nominated Sub-contract Works any continuing obligations extending for a period exceeding that of the Maintenance Period under the Contract, the Contractor shall immediately after the expiry of the Maintenance Period assign to the Employer the benefit of such obligations for the unexpired duration thereof.



## **13 CONSTRUCTIONAL PLANT, TEMPORARY BUILDINGS AND MATERIALS**

### **13.1 Vesting of Constructional Plant and temporary buildings**

All Constructional Plant and temporary buildings owned by the Contractor shall when brought onto the Site be and become the property of the Employer but may be removed from the Site by the Contractor at any time unless removal is expressly prohibited by the Contract Manager in writing. Upon removal as aforesaid or under the provisions of Clause 19.1(2), such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works the remainder of such Constructional Plant and temporary buildings shall, subject to Clause 15.1, re-vest in the Contractor.

### **13.2 Vesting of materials**

All materials owned by the Contractor for incorporation into the Works shall be and become the property of the Employer upon delivery to the Site, and shall not be removed without an instruction or the prior written consent of the Contract Manager. Materials shall, subject to Clause 15.1, only re-vest in the Contractor to the extent that they may be found to be surplus to requirements upon or prior to completion of the Works. The operation of this Clause 13.2 shall not be deemed to imply any approval by the Contract Manager of such materials or prevent the rejection by the Contract Manager of any material at any time.

### **13.3 Removal of Constructional Plant, temporary buildings and materials**

- (1) Upon issue of the certificate of completion of the Works, or the last of such certificates where there is more than one certificate of completion issued under the Contract for the completion of the Works, the Contractor shall remove all Constructional Plant, temporary buildings and surplus materials from the Site, except those required to complete any outstanding work and/or Enhancement Works (if any) under Clauses 8.7 and 11.9 or to discharge the Contractor's other obligations under the Contract.
- (2) If the Contractor fails to remove from the Site any Constructional Plant, temporary buildings or surplus materials as aforesaid within such reasonable time after completion of the Works as may be allowed by the Contract Manager, then the Employer may:-
  - (a) sell any such Constructional Plant, temporary buildings or surplus materials owned by the Contractor and after deducting from any proceeds of sale the charges and expenses of and in connection with such sale shall pay the balance, if any, to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such charges and expenses the excess shall be recoverable by the Employer from the Contractor, or
  - (b) return such Constructional Plant hired or being the subject of a hire-purchase agreement to the firm or company from whom it was so hired by the Contractor, and recover the charges and expenses of and in connection with such return from the Contractor.

### **13.4 Hired and hire-purchase Constructional Plant**

- (1) In respect of any item of Constructional Plant brought onto the Site, the Contractor shall upon written request by the Contract Manager (which may be issued by the Contract Manager from time to time or at any time during the currency of the Works) produce to the Contract Manager proof of ownership of such item or items of Constructional Plant to the satisfaction of the Contract Manager or, where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form approved by the Employer, from the owner of the relevant item of Constructional Plant to the Employer that:-
  - (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the termination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works, and
  - (b) subject to any assignment under Clause 13.4(1)(a), the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works.

The Contract Manager may make as many separate written requests as he thinks fit during the currency of the Works.

- (2) In the event that the Contract Manager shall certify in writing to the Employer that the Contractor has failed to comply with any written request referred to in Clause 13.4(1) within 28 days of the date of the written request and without prejudice to any other rights or remedies available to the Employer, the Employer may withhold a sum equal to 5 percent of the total certified sum referred to in the second proviso to Clause 14.2(1) from each interim payment otherwise due to the Contractor in accordance with the Contract until such time as such failure to comply with the relevant written request is rectified to the satisfaction of the Contract Manager or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the Contractor in accordance with the provisions of the Contract, whichever is the earlier and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment.

Provided that the total sum withheld by the Employer on the ground of failure to comply with any written request referred to in Clause 13.4(1) shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item of Constructional Plant as decided and notified in writing by the Contract Manager to the Employer and the Contractor.

- (3) The application of Clauses 13.4(1) and 13.4(2) is limited to items of Constructional Plant which, in the Contract Manager's opinion, are essential to the completion of the Works and are difficult to replace in the event of termination of the Contractor's employment under Clause 15.1.

### **13.5 Employer's expense in entering into hire or hire-purchase agreement**

In the event of the Employer entering into any agreement for hiring or hire-purchase under Clause 13.4 all sums paid by the Employer under the provisions of any such agreement and all expenses incurred by the Employer in entering into such agreement shall be deemed to be part of the cost of completing the Works, and shall be recoverable by the Employer from the Contractor.

### **13.6 Liability for loss or damage to Constructional Plant**

Save as stated in Clause 5.12, the Employer shall not at any time be liable for any loss of or damage to the Constructional Plant, temporary buildings or materials which has become the property of the Employer under Clause 13.1 or 13.2 or for any loss of or damage to any hired or hire-purchase Constructional Plant brought onto the Site in accordance with Clause 13.4.

### **13.7 Incorporation of certain Clauses in sub-contracts**

The Contractor shall when entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract the provisions of Clauses 13.1 to 13.6 and shall use his best endeavours to ensure that they are observed.

## **14 CERTIFICATES AND PAYMENTS**

### **14.1 Contractor's interim statements**

- (1) The Contractor shall deliver to the Surveyor at the end of each period of interim certificates stated in the appendix to the Form of Tender a statement showing:-
- (a) the estimated contract value of the work done in accordance with the Contract up to the end of such period with sums payable in respect of daywork, Nominated Sub-contractors and adjustments for Variations listed separately, and
  - (b) a list of the materials specified for interim payment purpose in the Contract that have been delivered to the Site for use in the permanent work and their estimated contract value, and
  - (c) all other estimated sums which the Contractor considers to be due to him under the Contract.
- (2) The Contractor shall deliver to the Contract Manager no later than 3 days after the end of each period of interim certificates stated in the appendix to the Form of Tender a statement showing:-
- (a) the estimated contract value of work done in accordance with the Contract up to the end of such period for each item in the Bills of Quantities or schedule of rates for site safety, environmental management and other sundry requirements, and

- (b) the information to be submitted by the Contractor for each item in the Bills of Quantities or schedule of rates for site safety, environmental management and other sundry requirements.
- (3) The statement to be submitted in accordance with Clauses 14.1(1) and 14.1(2) shall be prepared in a form supplied by and at the expense of the Contractor and in the format and by the number of copies as required by the Surveyor and the Contract Manager respectively.
- (4) The Contractor shall also submit a signed declaration in a form as provided in the appendix to the Conditions of Contract to confirm compliance with the provisions on confidentiality and ethical commitment as stated in Clauses 4.4 and 5.30 as part of the Contractor's interim statement. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under Clause 14.2(6)(a) in that period.

#### **14.2 Interim payments, retention money and interest**

- (1) The Surveyor shall value and certify within 21 days (unless otherwise stated in the Contract) of the date of delivery to the Surveyor of the Contractor's statement in accordance with Clause 14.1(1) based on the rates in the Contract where appropriate, in respect of the following:-
  - (a) the estimated value of the permanent work executed, and
  - (b) the estimated value of any Temporary Works or item in the Preliminaries for which a separate sum is provided in the Bills of Quantities or schedule of rates, and
  - (c) the estimated value of the materials as referred under Clause 14.1(1)(b) for inclusion in the permanent work and not being prematurely delivered to and being properly stored on the Site, and
  - (d) the estimated sums payable in respect of Nominated Sub-contractors, and
  - (e) any other estimated sums to which, in the opinion of the Surveyor, the Contractor is entitled in accordance with the Contract.

Provided that any item in the Bills of Quantities or schedule of rates for site safety, environmental management and other sundry requirements shall only be valued and certified by the Surveyor if the Contract Manager has instructed the valuation and certification of the item.

Provided further that the total estimated sum in respect of Clauses 14.2(1)(a) to 14.2(1)(e) shall be adjusted by the Surveyor to take into account:-

- (i) the retention of the percentage as specified in the Contract of all estimated sums payable (before any adjustment made in accordance with Clause 14.2(1)(iii)) excepting any estimated sums payable in respect of Nominated Sub-contractors (the sum so retained shall be referred to in the Contract as "Retention Money Held in respect of the Contractor") until the sum retained hereunder reaches the limit as specified in the Contract, and
  - (ii) the retention of the percentage of five percent of any estimated sum payable in respect of any Nominated Sub-contractor (before any adjustment made in accordance with Clause 14.2(1)(iv)) (the sum so retained shall be referred to in the Contract as "Retention Money Held in respect of the Nominated Sub-contractor") until the total of any such retention reaches the limit as stated in the respective Nominated Sub-contract, and
  - (iii) any adjustment to be made for contract price fluctuations in accordance with Clause 20.2, if applicable, and
  - (iv) any adjustment to be made to the sum payable to any Nominated Sub-contractor for price fluctuations as may be provided for in the Contract, if applicable.
- (2) Within 21 days of the day following the Surveyor's certification of interim payment, the Employer shall pay to the Contractor the total sum certified which in the opinion of the Surveyor is due under the Contract, subject to deduction of previous payments on account, if any, and any other sum deductible by the Employer under the Contract.

- (3) For the purpose of Clause 14.2(1)(c), the estimated value of materials for use in connection with any item of permanent work priced in the Contract shall be valued on the basis of the rate set out in the Contract for such work.
- Provided that the value of materials required for work being valued under the Contract on the basis of rates other than rates in the Contract or rates based thereon, shall be based on actual cost or current prices.
- (4) The Surveyor may refuse to issue a certificate for an interim payment for a sum less than the minimum payment stated in the Contract, but nothing in this Clause 14.2 shall prevent the Surveyor from issuing a certificate at any time for any sum if in the opinion of the Surveyor it is desirable to do so.
- (5) The Retention Money Held in respect of the Contractor and the Retention Money Held in respect of the Nominated Sub-contractor shall be released in the proportions specified in the Contract and in accordance with the following:-
- (a) Within 14 days of the date of written confirmation by the Contract Manager for all of the Maintenance Works included in the Maintenance Works stage in respect of the part of the Nominated Sub-contract Works of the respective Nominated Sub-contractor in accordance with Clause 10.1(7)(a), the Surveyor shall certify for payment of the specified portion of the respective Retention Money Held in respect of the Nominated Sub-contractor and the certificate shall state the money so due to the respective Nominated Sub-contractor and, subject to Clause 15.3, the Employer shall pay such money to the Contractor within 21 days of the day following the Surveyor's certification of interim payment.
- (b) Within 14 days of the date of written confirmation by the Contract Manager for all Maintenance Works included in the Maintenance Works stage in respect of the part of the Works executed, materials or services supplied for the Works excepting Nominated Sub-contract Works in accordance with Clause 10.1(7)(b), the Surveyor shall certify for payment of the specified portion of the Retention Money Held in respect of the Contractor and the certificate shall state the money so due and, subject to Clause 15.3, the Employer shall pay such money to the Contractor within 21 days of the day following the Surveyor's certification of interim payment.
- (6) (a) In the event of failure by the Employer to pay the Contractor in compliance with the provisions of this Clause 14.2, the Employer shall pay to the Contractor interest in simple interest on a daily basis and at a rate equivalent to 1% per annum above the average of the best lending rates of the three Hong Kong note-issuing banks prescribed from time to time upon any overdue payment from the day following the date on which the same should have been made.
- (b) The Employer shall not under any circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether upon the certificate of the Surveyor or otherwise, at a rate in excess of 1% above the said average of the best lending rates.
- (7) (a) The Surveyor shall have the power to omit from any certificate the value of any work done, materials supplied or services rendered with which the Contract Manager may for the time being be dissatisfied and for that purpose, or for any other reason which to the Surveyor may consider proper, may by any certificate delete, correct or modify any sum previously certified by him.
- (b) The Contract Manager shall have the power to refuse to instruct the Surveyor to value and certify any of the items in the Bills of Quantities or schedule of rates for site safety, environmental management and other sundry requirements for which the Contractor has failed to submit the requisite information in accordance with Clause 14.1(2).

### **14.3 Maintenance certificate**

- (1) Upon the expiry of the Maintenance Period, or where there is more than one such Maintenance Period, upon the expiry of the last Maintenance Period, the Contract Manager shall issue:-
  - (a) a separate partial maintenance certificate in respect of the Nominated Sub-contract Works of each of the Nominated Sub-contractors, and
  - (b) a separate maintenance certificate in respect of the Works excepting any part of the Nominated Sub-contract Works,

when, in relation to that part of the Works in respect of which partial maintenance certificate(s) and/or the maintenance certificate is to be issued, all outstanding work referred to in Clause 8.7, all Enhancement Works referred to in Clause 11.9 and all Maintenance Works referred to in Clause 10.1 shall have been completed in accordance with the Contract, and the Contract Manager shall, in such partial maintenance certificate(s) and/or maintenance certificate as may be issued, state the date on which the Contractor has completed his obligation to execute that part of the Works in respect of which it is issued.

Provided that where the Contract Manager considers that the Contractor has fulfilled the conditions for the issue of the maintenance certificate under Clause 14.3(1)(b) at a time when the conditions for the issue of any of the partial maintenance certificates under Clause 14.3(1)(a) remain unfulfilled, the Contract Manager shall issue the maintenance certificate on condition that the Contractor shall remain to be bound by, and shall not be relieved from, his obligation to execute that part or parts of the Works which remain outstanding, until such time when the partial maintenance certificates in respect thereof have been issued.

- (2) No certificate, other than the partial maintenance certificates or the maintenance certificate, shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof.

Provided that the partial maintenance certificates or the maintenance certificate shall not be deemed to constitute approval of any work or other matter in respect of which it is issued which has not been carried out in accordance with the Contract and which the Contract Manager could not with reasonable diligence have discovered before the issue of the partial maintenance certificates or the maintenance certificate.

- (3) The issue of any certificate including a partial maintenance certificate or the maintenance certificate shall not be taken as relieving either the Contractor or the Employer from any liability the one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract. Provided that the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works unless the Contractor shall have made a claim in relation thereto in accordance with the time limits specified in Clause 8.4(2), 11.5 or 11.6(2).

## **15 REMEDIES AND POWERS**

### **15.1 Termination of the Contractor's employment**

- (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Contractor or any of his employees, representatives or agents is found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any kind to any employee, representative or agent of the Employer or to the Contract Manager or any member of the Contract Manager's staff or to the Surveyor or any member of the Surveyor's staff or if the Contract Manager shall certify in writing to the Employer that in his opinion the Contractor:-
  - (a) has abandoned the Contract, or

- (b) without reasonable excuse has failed to commence the Works in accordance with Clause 8.1, or
- (c) has suspended the progress of the Works for 14 days after receiving from the Contract Manager a notice in writing to proceed, or
- (d) has failed to comply with an order from the Contract Manager given in accordance with Clause 7.5, or
- (e) despite previous warning by the Contract Manager in writing is failing to proceed with the Works with due diligence or is persistently in breach of any of his obligations under the Contract, or
- (f) has sub-contracted the Works, or
- (g) has to the detriment of good workmanship or in defiance of the Contract Manager's instruction to the contrary sub-contracted any part of the Works, or
- (h) has failed to submit a bond as required under Clause 5.3,

then the Employer may after giving at least 7 days' notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Contract Manager by the Contract and the Employer may complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Constructional Plant, temporary buildings and materials which become the property of the Employer under Clauses 13.1 and 13.2 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract.

- (2) As soon as may be practicable after such entry and expulsion by the Employer, the Surveyor shall ascertain and record:-
  - (a) the quantity of work completed up to the time of such entry and expulsion, and
  - (b) the quantity of unused or partially used materials and list any Constructional Plant and temporary buildings which have become the property of the Employer under the Contract as at the time of such entry and expulsion.

The provisions of Clause 11.1(6) shall apply for the purposes of attendance by the Contractor for measurement and agreement of records and drawings.

- (3) By the notice referred to in Clause 15.1(1) or by further notice in writing within 28 days of the date thereof the Employer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement for the supply of any materials and/or for the execution of any work for the purposes of the Contract which the Contractor may have entered into.
- (4)
  - (a) If the Employer enters upon the Site and the Works and expels the Contractor in accordance with this Clause 15.1, the Employer shall not be liable to pay to the Contractor any money under the Contract (whether in respect of amounts certified by the Surveyor or otherwise) unless and until the Surveyor certifies that an amount is due to the Contractor under Clause 15.1(4)(b).
  - (b) The Surveyor shall certify the difference between:-
    - (i) such sum as would have been due to the Contractor if he had duly completed the Works together with any proceeds of sale under Clause 15.1(1), and
    - (ii) the sum of the costs of completing the Works (whether or not the Works are completed under a separate contract), damages for delay (if any) to the completion of the Works and all other expenses reasonably incurred by the Employer in connection with or arising out of the termination under Clause 15.1(1).
  - (c) Such difference as certified by the Surveyor under Clause 15.1(4)(b), subject to adjustment by the Surveyor to take into account of the amount (if any) certified by the

Surveyor under Clause 15.1(5), shall be a debt due to the Employer or the Contractor as the case may be and shall be paid by or to the Contractor as the case may be within 21 days of the day following the Surveyor's certification of interim payment.

- (5) If the Surveyor is satisfied at any time prior to the completion of the Works that the whole or part of the costs, damages and other expenses referred to in Clause 15.1(4)(b)(ii) exceeds such sum as calculated under Clause 15.1(4)(b)(i), he may issue a certificate for interim payment to that effect and the amount of such excess as certified by the Surveyor in such certificate shall be considered as a debt due from the Contractor to the Employer and shall be paid by the Contractor within 21 days of the day following the Surveyor's certification of interim payment.

## **15.2 Work by person other than the Contractor**

- (1) If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Contract Manager in accordance with the Contract within a reasonable time, the Contract Manager may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workers or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.
- (2) If by reason of any accident or failure or other event occurring to, in, or in connection with the Works any remedial or other work shall in the opinion of the Contract Manager be urgently necessary and the Contractor is unable or unwilling at once to carry out such remedial or other work, the Contract Manager may authorize the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorized by the Contract Manager is work which in the Contract Manager's opinion the Contractor was liable to carry out under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Contract Manager shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

## **15.3 Recovery of money due to the Employer**

- (1) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract and any sum retained as retention money in accordance with the Contract and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.
- (2) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under the Contract and any sum retained as retention money in accordance with the Contract.

## **16 SPECIAL RISKS AND FRUSTRATION**

### **16.1 Special risks**

- (1) If during the currency of the Works, there shall be:-
  - (a) an outbreak of war (whether war be declared or not) in any part of the world which, whether financially or otherwise, materially affects the execution of the Works, or
  - (b) an invasion of Hong Kong, or
  - (c) civil war, rebellion, revolution or military or usurped power in Hong Kong, or
  - (d) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor of any tier including Specialist Sub-contractors and Nominated Sub-contractors or any Specialist Contractor currently or formerly engaged on the Works or Specialist Works, or

- (e) act of terrorists in Hong Kong,

hereinafter referred to as the “special risks”, the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause 16.1, use his best endeavours to complete the execution of the Works.

Provided that the Employer shall be entitled at any time after the occurrence of any of the special risks to terminate the Contract (with the exception of the provisions of this Clause 16.1 and Clause 17.1) by giving written notice to the Contractor, and upon such notice being given the Contract shall terminate but without prejudice to the claims of either the Employer or the Contractor in respect of any antecedent breach thereof.

- (2) In the event of termination in accordance with the proviso to Clause 16.1(1), the Contractor shall with all reasonable despatch remove from the Site all Constructional Plant and temporary buildings and surplus materials and shall similarly allow his sub-contractors to do so.
- (3) In the event of termination in accordance with the proviso to Clause 16.1(1), the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination at the rates provided in the Contract and in addition:-
- (a) the sums payable in respect of items in the Preliminaries in so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Surveyor of all such items the work or service comprised in which has been partially carried out or performed;
- (b) the Cost of materials reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials becoming the property of the Employer upon such payment being made by the Employer;
- (c) a sum to be certified by the Surveyor being any Cost reasonably incurred by the Contractor in the expectation of completing the Works in so far as such Cost shall not have been paid in accordance with any provisions of this Clause 16.1.
- (4) Whether the Contract shall be terminated in accordance with the proviso to Clause 16.1(1) or not, the following provisions shall apply or be deemed to have applied as from the occurrence of any of the special risks notwithstanding anything expressed in or implied by the other terms of the Contract:-
- (a) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of damage to the Works (other than work condemned under Clause 7.5) or to property (other than property of the Contractor including property vested in the Employer under Clauses 13.1 and 13.2 or property hired by the Contractor for the purposes of executing the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life which is wholly the consequence of the occurrence of any of the special risks and the Employer shall indemnify the Contractor against all such liabilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- (b) If the Works or any material on the Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless be entitled to payment for the Works and for any materials so destroyed or damaged and the Contractor shall be entitled to recover from the Employer the expense incurred in making good any such destruction or damage to the Works and of replacing or making good such materials so far as may be required by the Contract Manager or as may be necessary for the completion of the Works, the Surveyor shall determine the expense incurred by the Contractor as in his opinion reasonable and notify the Contractor accordingly.
- (c) Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, missile, munition or explosive of war shall be deemed to be a consequence of the special risks.



**16.2 Frustration**

In the event of the Contract being frustrated whether by war or otherwise howsoever, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Clause 16.1 as if the Contract had been terminated in accordance with Clause 16.1.

**17 AVOIDANCE AND RESOLUTION OF DISPUTES**

**17.1 Avoidance and resolution of disputes**

- (1) In order to foster co-operation among the Employer, the Contractor and the Nominated Sub-contractors and Specialist Sub-contractors who may be engaged for the execution of any part of the Works, to minimize the volume of claims, disputes and disruptions to the Works, and to ensure the cost-effective and expeditious resolution of disputes that do arise, the dispute avoidance and resolution procedures as set forth in this Clause 17.1 shall be implemented.
- (2) All Nominated Sub-contracts and Specialist Sub-contracts for the execution of any part of the Works shall have a clause requiring the Nominated Sub-contractor or Specialist Sub-contractor to participate fully in the dispute avoidance and resolution procedures set forth herein and to resolve any claims which arise out of a difference or dispute between the Contractor and the Employer over the Nominated Sub-contract Works or Specialist Sub-contract Works by the process required in this Clause 17.1 and to be bound by the results of such process.
- (3)
  - (a) As soon as practicable after the issue of the Letter of Acceptance, the Employer and the Contractor shall jointly select and appoint a DARA in accordance with the procedures specified in the Contract.
  - (b) The tenure of the DARA shall, unless the Employer and the Contractor otherwise agree in writing, end upon the expiry of the Period of Final Measurement or upon termination or abandonment of the Contract, whichever is the earlier, but in the event that any dispute stated in any Notice of Dispute issued in accordance with Clause 17.1(7) or 17.1(8) having been referred to the DARA remains unresolved after the expiry of the tenure of the DARA, such tenure shall, unless the Contract has been terminated or abandoned, automatically be extended until the dispute is resolved through the dispute avoidance and resolution procedures or is referred to short form arbitration in accordance with Clause 17.1(14) or as the case may be to arbitration in accordance with Clause 17.1(15).
- (4)
  - (a) The DARA's fees and expenses for his services shall be shared equally between the Employer and the Contractor. In the event that the DARA's services are required in respect of a difference or dispute raised by the Contractor to the Employer at the request of a Nominated Sub-contractor or Specialist Sub-contractor or as a result of the resolution of dispute raised by a Nominated Sub-contractor or Specialist Sub-contractor pursuant to the Nominated Sub-contract or Specialist Sub-contract, then the DARA's fees and expenses in respect of such difference or dispute shall be shared equally by the Employer, the Contractor and such Nominated Sub-contractor or Specialist Sub-contractor.
  - (b) If the Contractor or such Nominated Sub-contractor or Specialist Sub-contractor fails to pay his share of the DARA's fees and expenses as required under Clause 17.1(4)(a) within 7 days after the due date for payment as reasonably demanded by the DARA, the Employer may pay such amount and recover the same as a debt from the Contractor.
- (5)
  - (a) The Employer, the Contractor, the Contract Manager and the Surveyor shall perform their obligations or duties under the Contract with due expedition. The Employer, the Contractor, the DARA and the Nominated Sub-contractors and Specialist Sub-contractors shall adopt a proactive and cooperative working attitude with an aim to reduce conflicts and disputes and to resolve any difference or dispute that may arise from or in relation to the Contract.

*Objectives*

*Appointment of DARA*

*Cost of DARA service*

*General Obligations for dispute avoidance*

- (b) The DARA shall meet the Employer and the Contractor either jointly or separately on a monthly basis to facilitate the avoidance and resolution of disputes that may arise during the currency of the Works. The DARA shall as soon as practicable meet the Employer and the Contractor if either of the Employer or the Contractor requests such a meeting in writing.

***Difference  
and Dispute***

- (6) If a difference of any kind whatsoever arises between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works whether during the progress of the Works or after completion and whether before or after termination, abandonment or breach of the Contract, the Employer and the Contractor shall follow the dispute avoidance and resolution procedures stipulated herein. The Contractor shall proceed with the Works with due diligence unless the Contract has been abandoned or terminated.

Provided that the Employer and the Contractor shall not raise a difference over or in connection with any decision, certificate, determination or ascertainment of the Contract Manager or the Surveyor as the case may be unless and until the same has been issued or notified in writing to the Employer and/or the Contractor in accordance with the Contract.

- (7) (a) If a difference between the Employer and the Contractor arises over the following:-
  - (i) a decision of an extension of time for completion issued by the Contract Manager under Clause 8.4, or
  - (ii) a certificate of completion issued by the Contract Manager under Clause 8.7, or
  - (iii) a decision of the Contract Manager issued under Clause 9.2(3) or 11.5(1)(b), or
  - (iv) a determination or ascertainment issued by the Surveyor under the Contract,

the site level representatives of the Employer and the Contractor shall attempt in good faith to resolve the difference within 28 days from the date of such Contract Manager's decision referred to in Clauses 17.1(7)(a)(i) and 17.1(7)(a)(iii), such certificate of completion referred to in Clause 17.1(7)(a)(ii) or such Surveyor's determination or ascertainment referred to in Clause 17.1(7)(a)(iv) as the case may be.

- (b) In the event that the site level representatives of the Employer and the Contractor have failed to resolve the difference and if either the Employer or the Contractor wishes to pursue the resolution of the difference, he shall before the expiry of the said 28 day period stated in Clause 17.1(7)(a) serve on the other a Notice of Dispute and copy the same to the DARA.

Provided that if no Notice of Dispute is served by either the Employer or the Contractor within the said 28 day period, the difference shall be deemed to have been resolved and settled.

Provided further that any notice of dispute in respect of such difference (whether named or purported to be a Notice of Dispute) served by the Employer or the Contractor on the other after the said 28 day period shall be invalid and of no effect.

- (c) Notwithstanding any other provisions in the Contract, any:-
  - (i) decision of extension of time for completion issued by the Contract Manager under Clause 8.4, or
  - (ii) certificate of completion issued by the Contract Manager under Clause 8.7, or
  - (iii) decision of the Contract Manager issued under Clause 9.2(3) or 11.5(1)(b), or
  - (iv) determination or ascertainment issued by the Surveyor under the Contract,

for which neither the Employer nor the Contractor serves a Notice of Dispute within 28 days from the date of issue of the same shall become final and binding between and upon the Employer and the Contractor subject to any correction of arithmetical errors made pursuant to Clause 11.7(1)(a) in Surveyor's determination and ascertainment. The Employer and the Contractor shall not raise any matter, difference or dispute in relation to the finality or other issues concerning such Contract Manager's decision or certificate of completion, or Surveyor's determination or ascertainment (as the case may be) in any subsequent dispute avoidance and resolution procedures provided hereinbelow.

- (8) (a) If a difference between the Employer and the Contractor arises over any matter other than those matters referred to in Clauses 17.1(7)(a)(i) to 17.1(7)(a)(iv), either the Employer or the Contractor shall notify the other in writing stating the difference between them over the matter. Within 28 days from the date of such notice, either the Employer or the Contractor may write to the Contract Manager and copy the same to the other, requesting the Contract Manager to make a decision on the difference.

Provided that if no such written request is made to the Contract Manager within 28 days after the date of such notice, the difference shall be deemed to have been resolved and settled.

- (b) If the Employer or the Contractor has made a written request in accordance with Clause 17.1(8)(a), the Contract Manager shall, within 14 days after the receipt of such written request, issue to the Employer and the Contractor in writing either his decision or a statement of his inability to make a decision.
- (c) Within 28 days after the issue of the Contract Manager's decision or statement of his inability to make a decision, as the case may be, the site level representatives of the Employer and the Contractor shall attempt in good faith to resolve the difference. If the site level representatives have failed to resolve the difference, and if either the Employer or the Contractor wishes to pursue the resolution of the difference, he shall before the expiry of the said 28 day period serve on the other a Notice of Dispute and copy the same to the DARA.

Provided that if no Notice of Dispute is served by either the Employer or the Contractor within the said 28 day period, the difference shall be deemed to have been resolved and settled. Provided further that any notice of dispute in respect of such difference (whether named or purported to be a Notice of Dispute) served by the Employer or the Contractor on the other after the said 28 day period shall be invalid and of no effect.

- (9) For the purposes of this Clause 17.1, a Notice of Dispute shall be a notice in writing and served on the Employer by the Contractor or, as the case may be, served on the Contractor by the Employer stating the matter in dispute. A dispute shall be deemed to arise when such Notice of Dispute has been served.

- (10) Upon receipt of a copy of a Notice of Dispute, the DARA shall forthwith meet the site level representatives of the Employer and the Contractor to help resolve the dispute stated in the Notice of Dispute. If the dispute is not resolved within 14 days of the date of service of the Notice of Dispute, the DARA shall provide his views on the dispute by submitting a DARA report in writing to the senior management of the Employer and the Contractor within 7 days after the date that the efforts of resolution by the site level representatives have been terminated or within 21 days of the date of the service of the Notice of Dispute, whichever is the earlier. The DARA shall be allowed access to records or documents that are relevant to the dispute.

*Reference to  
DARA*

- (11) (a) The DARA shall set out the key issues of the dispute and identify the obstacles to settlement in the DARA report. Upon request in writing by both the Employer and the Contractor, the DARA shall provide in the DARA report a non-binding recommendation for settlement or as the case may be a non-binding evaluation of the merits of the subject matter of the dispute.

*DARA  
report*

- (b) The DARA report and any views given by the DARA (whether in the DARA report or otherwise) shall not be admissible in any subsequent dispute resolution process or legal proceedings in connection with the Contract.
- (c) Any statement or settlement offer made by either the Employer or the Contractor in any meeting convened for the purposes of dispute resolution facilitated by the DARA or otherwise made in confidence to the DARA shall not be admissible in any subsequent dispute resolution process or legal proceedings in connection with the Contract.
- (d) The DARA shall not be called upon as a witness in any subsequent dispute resolution process or legal proceedings in connection with the Contract.

- (12) Upon receipt of the DARA report, the senior management of the Employer and the Contractor shall meet and attempt to settle the dispute. The DARA shall only attend such meetings if requested by both the Employer and the Contractor. If the dispute is not settled within 14 days of the date of issue of the DARA report, the DARA may, within 7 days after the date that senior

*Alternative  
form of  
dispute  
resolution*

management settlement efforts have been terminated or within 21 days of the date of issue of the DARA report, whichever is the earlier, propose to the Employer and the Contractor a form of dispute resolution alternative to any form of arbitration, but the Employer and the Contractor shall not be obliged to accept such proposal.

- (13) (a) If either the Employer or the Contractor refuses to accept the DARA's proposal as referred to in Clause 17.1(12), then the dispute resolution procedures set out in Clause 17.1(14) shall be followed, but in the event that the Employer and the Contractor agree to accept the DARA's proposal, the Employer and the Contractor shall, with the assistance of the DARA (if required by the Employer and the Contractor), agree on the conduct of such alternative dispute resolution process (which may include but not limited to the time for appointment of the expert or other person, for exchange of submissions or documents and for commencement of the dispute resolution process) within 21 days after the date of the senior management settlement efforts have been terminated or within 35 days of the date of issue of the DARA report, whichever is the earlier.
- (b) If the Employer and the Contractor fail to agree on the time for appointment of the expert or other person, for exchange of submissions or documents or for commencement of the alternative dispute resolution process within the time as provided in Clause 17.1(13)(a), then either the Employer or the Contractor may notify the DARA in writing of the disagreement and copy the same to the other, and the DARA shall decide such time for the alternative dispute resolution process.
- (c) If the Employer and the Contractor fail to agree on the appointment of the expert or other person for conducting the alternative dispute resolution process under this Clause 17.1(13), the alternative dispute resolution process under this Clause 17.1(13) shall be deemed to have been abandoned by both of them.

***Reference to  
short form  
arbitration***

- (14) When any of the following events occurs:-
- (a) in the absence of a DARA's proposal referred to in Clause 17.1(12) and the Employer and the Contractor fail to reach agreement to adopt any alternative dispute resolution process, or
- (b) either the Employer or the Contractor refuses to accept the DARA's proposal referred to in Clause 17.1(12), or
- (c) the Employer and the Contractor fail to reach an agreement on the conduct of such alternative dispute resolution process within the time stated in Clause 17.1(13), or
- (d) such alternative dispute resolution process adopted in accordance with Clause 17.1(13) is abandoned or terminated by either the Employer or the Contractor, or
- (e) no settlement of the dispute is reached in such alternative dispute resolution process adopted in accordance with Clause 17.1(13),

then the Employer and the Contractor shall resolve the dispute by way of short form arbitration in accordance with the "Short Form Arbitration Rules" as provided in the appendix to the Conditions of Contract unless either the Employer or the Contractor refuses to do so in writing within 14 days after the date that any of the events referred to in Clauses 17.1(14)(a) to 17.1(14)(e) occurs, in which case, the dispute resolution procedures stated in Clause 17.1(15) shall be followed.

***Reference to  
arbitration***

- (15) If either the Employer or the Contractor refuses in writing to resolve the dispute by short form arbitration, the Employer or the Contractor may refer the dispute to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to such arbitration shall be made within 28 days of the written refusal to resolve the dispute by way of short form arbitration by either the Employer or the Contractor.
- (16) If a dispute of any kind whatsoever arises between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works of which a Notice of Dispute is given pursuant to the provisions of the Contract after the expiry of the Period of Final Measurement or after the termination or abandonment of the Contract, the dispute shall be resolved by way of mediation or arbitration as hereinafter provided. Either the

Employer or the Contractor may within 28 days of the service of the Notice of Dispute refer the dispute to mediation in accordance with and subject to the “Government of Hong Kong Special Administrative Region Construction Mediation Rules” or any modification thereof being in force at the date of such request. If the Employer and the Contractor fail to resolve the dispute by mediation or if either the Employer or the Contractor has no intention to refer the dispute to mediation, then either the Employer or the Contractor may refer the dispute to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force and any reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any such reference to arbitration shall be made within 90 days of:-

- (a) the refusal to mediate, or
  - (b) the abandonment or termination of the mediation, or
  - (c) the failure of the Employer and the Contractor to reach a settlement in the mediation.
- (17) The reference to arbitration under Clause 17.1(15) or 17.1(16) shall be in accordance with and subject to the following:-
- (a) All the provisions in Schedule 2 to the Arbitration Ordinance (Cap. 609) shall apply to any arbitration instituted in accordance with Clause 17.1(15) or 17.1(16).
  - (b) Subject to Clauses 17.1(17)(c) and 17.1(17)(d), the Domestic Arbitration Rules (2012) of the Hong Kong International Arbitration Centre (the “Arbitration Rules”) or any modification thereof for the time being in force shall apply to any arbitration instituted in accordance with Clause 17.1(15) or 17.1(16).
  - (c) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
  - (d) Article 26 of the Arbitration Rules shall be deleted and replaced by the following:-
    - “26.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures:-
      - (a) are necessary for implementation or enforcement, or
      - (b) are required by the parties’ auditors or for some other legitimate business reasons, or
      - (c) are required by any order of the courts of Hong Kong or other judicial tribunal, or
      - (d) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.
    - 26.2 Notwithstanding Article 26.1 and subject to the following provisions, the Hong Kong Housing Authority of the Hong Kong Special Administrative Region (the “Housing Authority”) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Housing Authority shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers it necessary to protect the sensitive nature of certain information relating to him, request the Housing Authority to disclose such specified information to the said Committee strictly on a confidential basis. If the Housing Authority considers that there are legitimate grounds to accede to the other party’s request, the Housing Authority shall convey the request to the said Committee for its consideration.”

***Arbitrator's  
powers***

- (18) The arbitrator appointed in a short form arbitration instituted under Clause 17.1(14) or an arbitration instituted under Clause 17.1(15) or 17.1(16) shall have full power to open up, review and revise any decision (other than a decision under Clause 7.5(3) not to vary the Works), opinion, instruction, order, direction or certificate of the Contract Manager or any measurement, valuation, determination, ascertainment or certificate of the Surveyor.

Provided that:-

- (a) any Contract Manager's decision or certificate of completion, or Surveyor's determination or ascertainment which has become final and binding between and upon the Employer and the Contractor by virtue of Clause 17.1(7)(c), and
- (b) any settlement, deemed settlement or resolution of difference or dispute pursuant to the provisions of this Clause 17.1

shall not be opened up, reviewed or revised by the arbitrator in the arbitration.

**18 NOTICES**

**18.1 Service of notices**

- (1) Any notice to be given to the Contractor under the provisions of the Contract shall be in writing and may be served:-
- (a) personally, or
- (b) by post addressed to the Contractor's last known place of business or, in the event of the Contractor being
- (i) a firm, to the last known place of residence of the owner or any of the partners thereof, or
- (ii) a company, to the registered office in Hong Kong of such company, or
- (c) by leaving a copy at the Contractor's last known place of business or, in the event of the Contractor being
- (i) a firm, at the last known place of residence of the owner or any of the partners thereof, or
- (ii) a company, at the registered office in Hong Kong of such company, or
- (d) by posting a copy in a conspicuous position upon the Site.
- (2) Subject to Clause 18.1(4), any notice to be given to the Contract Manager or to the Surveyor under the provisions of the Contract shall be served by post or leaving such notice at the office of the Contract Manager.
- (3) Any notice to be given to the Employer, as distinct from the Contract Manager, under the provisions of the Contract shall be served by post or leaving such notice at the office of the Director of Housing. At the same time such notice shall be copied to the Contract Manager and the Surveyor and served on them in like manner to any other notice to be given to the Contract Manager or to the Surveyor.
- (4) Notices may be served by facsimile only if the recipient has previously notified the other party and the Contract Manager in writing that it is prepared to accept service of notices in that manner. It shall in any event be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient in accordance with Clause 18.1(1), 18.1(2) or 18.1(3).

## **19 DEFAULT OF THE EMPLOYER**

### **19.1 Default of the Employer**

- (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clause 14.2 within 28 days after the same shall have become due under the provisions of the Contract the Contractor may give a 14 days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause 19.1. In the event of failure by the Employer to make such payment within such 14 day notice period, the Contractor shall be entitled to terminate the Contract.
- (2) So long as no notice pursuant to Clause 15.1(1) is given to the Contractor either before or during the 14 day notice period provided in Clause 19.1(1), on expiration of the said 14 day notice period, the property in all Constructional Plant and temporary buildings brought upon the Site by the Contractor shall thereupon re-vest in him and he shall with all reasonable despatch remove the same from the Site.
- (3) Nothing in this Clause 19.1 shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies available to him under this Clause 19.1, any other rights or remedies to which the Contractor may be entitled.

## **20 CHANGE IN LAW AND FLUCTUATIONS**

### **20.1 Adjustment of Contract Sum due to Change in Law**

- (1) Subject to the Contractor's compliance with the provisions under Clauses 11.5(2) and 11.6, if the Surveyor is of the opinion that the Contractor has incurred additional expenditure due to a Change in Law for which the Contractor would not be reimbursed by a payment made under any other provisions in the Contract, the Surveyor shall in compliance with Clauses 11.6(3), 11.6(4) and 11.6(5) ascertain the increase in Cost and shall take this into account in the calculation of the Final Contract Sum.
- (2) If the Surveyor is of the opinion that the Contractor has been or is likely to be involved in decrease in expenditure to the Contractor in execution of the Contract due to a Change in Law, the Surveyor shall determine such decrease which shall be deducted from the Contract Sum and be taken into account in the calculation of the Final Contract Sum.
- (3) For the avoidance of doubt, if the Change in Law results in additional expenditure incurred by the Contractor in execution of the Contract, any such additional expenditure incurred by reason other than additional deployment and procurement of labour, Constructional Plant and materials resources shall be deemed to have been fully reimbursed by the operation of Clause 20.2 and no further reimbursement of such expenditure shall be made under this Clause 20.1.

### **20.2 Contract price fluctuations**

- (1) The sum certified by the Surveyor in any interim or final payment certificate as being due (other than sums due under this Clause 20.2) shall be increased or decreased in accordance with the provisions of this Clause 20.2 if there shall be any changes in the Index Figures listed in the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003 = 100)" compiled by the Census and Statistics Department of the Government and applicable to those items included in the "Schedule of Proportions".
- (2) The net total of such increases or decreases shall be given effect to in determining the Final Contract Sum.
- (3) For the purpose of this Clause 20.2:-
  - (a) "Index Figure" shall mean any Index Figure appropriate to Clause 20.2(1).
  - (b) "Base Index Figure" shall mean the appropriate Index Figure applicable to the date 42 days prior to the Tender Closing Date.
  - (c) "Current Index Figure" shall mean the appropriate Index Figure to be applied in respect of the Works or any Section in any interim or final payment certificate by the Surveyor and shall be the appropriate Index Figure applicable to the date 42 days prior to:-
    - (i) in the event that the Works are not phased for completion in Sections in the

Contract

- (a) the due date, but in the event of the time for completion having been extended, then the extended date, for completion of the Works, or
  - (b) the date of completion of the Works certified pursuant to Clause 8.7, or
  - (c) the last day of the period to which the Surveyor's certificate relates,
- whichever is the earliest.

Provided that in the event that any work forming part of the Works is certified complete pursuant to Clause 8.7 before the remainder of the Works is certified complete pursuant to Clause 8.7 and the value of such work is included in such payment certificate, the Current Index Figure to be applied in respect of such work shall be the Index Figure applicable to the date 42 days prior to:-

- (A) the due date, but in the event of the time for completion having been extended, then the extended date, for completion of the Works, or
- (B) the date of completion of such work certified pursuant to Clause 8.7, or
- (C) the last day of the period to which the Surveyor's certificate relates,

whichever is the earliest, and the Current Index Figure to be applied in respect of the remainder of the Works shall be determined in the same way as that applicable to the Works specified in Clause 20.2(3)(c)(i) save and except that the words "the Works" in Clause 20.2(3)(c)(i)(b) shall be "the remainder of the Works" and the proviso to Clause 20.2(3)(c)(i) shall not apply.

- (ii) in the event that the Works are phased for completion in Sections in the Contract
  - (a) the due date, but in the event of the time for completion having been extended, then the extended date, for completion of the Section, or
  - (b) the date of completion of the Section certified pursuant to Clause 8.7, or
  - (c) the last day of the period to which the Surveyor's certificate relates,whichever is the earliest.

Provided that in the event that any work forming part of the Section is certified complete pursuant to Clause 8.7 before the remainder of the Section is certified complete pursuant to Clause 8.7 and the value of such work is included in such payment certificate, the Current Index Figure to be applied in respect of such work shall be the Index Figure applicable to the date 42 days prior to:-

- (A) the due date, but in the event of the time for completion having been extended, then the extended date, for completion of the Section, or
- (B) the date of completion of such work certified pursuant to Clause 8.7, or
- (C) the last day of the period to which the Surveyor's certificate relates,

whichever is the earliest, and the Current Index Figure to be applied in respect of the remainder of the Section shall be determined in the same way as that applicable to the Section specified in Clause 20.2(3)(c)(ii) save and except that the words "the Section" in Clause 20.2(3)(c)(ii)(b) shall be "the remainder of the Section" and the proviso to Clause 20.2(3)(c)(ii) shall not apply.

- (d) The "Effective Value" in respect of the Works or any Section or any part thereof shall be the difference between:-
  - (i) the sum, exclusive of any increases or decreases made in accordance with this Clause 20.2, which in the opinion of the Surveyor is due to the Contractor under Clause 14.2, before deducting retention and before deducting previous payments on account, less all sums in respect of Nominated Sub-contractors including profit thereon and items and portions of items based on actual cost or current prices; and
  - (ii) the sum calculated in accordance with Clause 20.2(3)(d)(i) and included in the last preceding interim payment certificate issued by the Surveyor.



Provided that in the case of the first Surveyor's certificate the Effective Value shall be the sum calculated in accordance with Clause 20.2(3)(d)(i).

- (4) The increase or decrease in the sums otherwise payable in an interim or final payment certificate pursuant to Clause 20.2(1) shall be calculated by multiplying the Effective Value by a Price Fluctuation Factor which shall be the net sum of the products obtained by multiplying each of the calculated proportions given in column 4 of the "Schedule of Proportions" by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.

Provided that if any appropriate Current Index Figure has not been published at the time of issue of any Surveyor's certificate, the increase or decrease in the sum payable in respect of that certificate will be provisionally calculated and added to or deducted from the sum payable in the certificate by the Surveyor using the latest published Current Index Figure and shall be corrected in the next Surveyor's certificate following the publishing of the relevant Current Index Figure.

- (5) The "Schedule of Proportions" shall (irrespective of the actual constituents of the work) be "the Schedule of Proportions to be used in calculating the Price Fluctuation Factor" submitted with the Tender and with the calculations duly completed.

## **21 HEIGHT RESTRICTIONS**

### **21.1 Airport height restrictions**

The Contractor shall comply with all height restrictions contained in the Hong Kong Airport (Control of Obstructions) Ordinance (Cap. 301) as if the same applied to all plant, machinery and other structures used or erected by the Contractor.

Hong Kong Housing Authority  
General Conditions of Contract for Building Works 2013 Edition  
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