



**Hong Kong Housing Authority**

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**GENERAL  
CONDITIONS OF CONTRACT  
FOR  
BUILDING AND MISCELLANEOUS TERM CONTRACTS**

**2024 EDITION**



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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:-

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

“Change in Law” means any addition or amendment to any enactment, regulation, bye-law or rule provided in the appendix to the Conditions of Contract, 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 any Works but does not include materials or other things intended to form or forming part of the permanent works or vehicles engaged in transporting any personnel, constructional plant, materials or other things to or from any Site.

“Contract” means the Articles of Agreement, the Tender (including the Form of Tender), the Letter of Acceptance, the Drawings, the General Conditions of Contract, the Special Conditions of Contract, the appendices to the Conditions of Contract, the Specification and the Schedule of Rates.

“Contract Area” means the areas referred to in the Contract within which the Sites are located.

“Contract Period” means the period stated in the appendix to the Form of Tender.

“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 purpose 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 Rates” means the rates of the Schedule of Rates subject to adjustments for the Tendered Percentage Adjustment (save otherwise stated in the Contract) and further adjustments for any applicable Percentage Additions.

“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 any Site and depreciation in value of Constructional Plant owned by the Contractor but excluding profit.

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- “Designated Sub-contractor” means any sub-contractor employed by the Contractor on a written instruction of the Contract Manager.
- “Designated Sub-contract Works” means any works to be executed, any materials to be supplied or any services to be provided by a Designated Sub-contractor.
- “Director of Housing” means the Director of Housing of the Hong Kong Housing Authority.
- “Drawings” means the drawings described in the Specification 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.
- “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.
- “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.
- “Labour Relations Officer” means any person authorised from time to time by the Employer and notified in writing to the Contractor to monitor the payment of wages to workers and staff employed by the Contractor or his sub-contractors of any tier (including Specialist Sub-contractors and Designated Sub-contractors) and carry out such other duties in relation to wage payment monitoring all as specified in the Specification.
- “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 (as stated in the appendix to the Form of Tender) for any Works or Section or any part thereof.
- “Mediation Request Notice” means a mediation request notice served in writing under Clause 17.1.
- “Normal Working Hours” shall be deemed to be the period from 9.00 a.m. to 6.00 p.m.
- “Notice of Dispute” means a notice of dispute served in writing under Clause 17.1.
- “Notice to Refer to Arbitration” means a notice to refer to arbitration served in writing under Clause 17.1.
- “Pass” means a pass, in a form as required under the Contract, for admission of the bearer to any Site.



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- “Percentage Addition(s)” means the Percentage Addition(s) (in positive percentage) quoted in the Form of Tender applicable to adjustments of the rates of the Schedule of Rates as stated in the Form of Tender or, as the case may be, applicable to payment for the Contractor’s profit and attendance on Designated Sub-contract Works in accordance with the Contract.
- “Portion” means a part of any Site separately identified in any Works Order.
- “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.
- “Schedule of Rates” means the schedule of rates referred to in the Contract.
- “Section” means a part of any Works for which a separate date for commencement and/or completion is identified in any Works Order.
- “Self-employed Worker” means any worker who is not an employee of the Contractor or his sub-contractor of any tier (including Specialist Sub-contractors and Designated Sub-contractors) but is engaged for the execution of any Works on any Site.
- “Site” means the lands and other places including the sea under, over, on, in or through which the Works specified in a Works Order are to be executed and any other lands or places which the Contractor is allowed to access or of which the Contractor is given limited occupation 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 any tier (including Specialist Sub-contractors and Designated Sub-contractors) for the execution of Works on Sites 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 Sub-contract Works” means any works 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 any sub-contractor executing parts of any Works and/or carrying out parts of the design of any Works or supplying materials or providing services for any Works specifically specified in the Contract or in any Works Order and who shall have been or shall be selected in accordance with the provisions of the Contract and employed by the Contractor.
- “Specialist Works” means any works or services separately identified in the Contract or in any Works Order and connected with or ancillary to the Works which may from time to time be carried out on site by a Specialist Contractor.
- “Specification” means the specifications referred to in the Contract and any modification thereof or addition thereto or as may otherwise 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.
- “Temporary Works” means all temporary works of every kind required for the construction, completion and/or maintenance of any Works.
- “Tender” means the Contractor’s tender for the Contract.
- “Tender Closing Date” means the date for the return of tenders for the Contract.

“Tendered Percentage Adjustment” means the Tendered Percentage Adjustment (in positive, negative or zero percentage) quoted in the Form of Tender and (unless otherwise provided under the Contract) applicable to adjustments of the rates of the Schedule of Rates in accordance with the Contract and subject to such increase or decrease under Clause 20.2.

“Utility Undertaking” means any person, undertaking, company, organisation 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 any Works under the Contract, including the contractors and sub-contractors of any tier of such person, undertaking, company, organisation or government department.

“Variation” is defined in Clause 11.2(1).

“Whole of the Works” means all the Works ordered in all Works Orders issued within the Contract Period and all related obligations and services to be performed under the Contract.

“Works” means works, services and/or materials ordered from time to time (including but not limited to Specialist Sub-contract Works and Designated Sub-contract Works) to be constructed, completed, maintained and/or supplied in accordance with the Contract as detailed in a Works Order and includes Temporary Works.

“Works Order” means a written order issued by the Contract Manager instructing the Contractor to carry out the Works stated therein.

## **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 Conditions of Contract, the appendices to the Conditions of Contract, the Specification and the like 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 any Works shall be made in Hong Kong dollars.
- (2) No adjustment shall be made to any payments under the Contract, including the final value of any Works, 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**

**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 any Works, to test and examine any material to be used and workmanship employed by the Contractor in connection with any 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, service or material shall not prejudice the power of the Contract Manager thereafter to disapprove such work, service or material.

Provided further that if the Contractor or the Employer shall be dissatisfied by reason of any decision of the Contract Manager’s Representative, either of them may refer the matter to the Contract Manager who shall confirm, reverse or vary such decision.

- (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.

- (6) The Contract Manager shall have the power to order the Contractor to provide any information which in the opinion of the Contract Manager is relevant to the Contract Manager'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 Contract Manager within such time or times as may be required by the Contract Manager.

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

#### **3.1 Assignment**

- (1) The Contractor shall not assign the Contract or any interest therein without the prior written consent of the Employer and any assignment shall be in such 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 Whole of 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 any 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 any 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 any 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 any Site and/or any Works, which power shall not be exercised unreasonably.
- (4) The sub-contracting of any part of any 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 5.9 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 and neglects of the Contractor.
- (5) The Contractor shall ensure that each and every sub-contract irrespective of the tier of relevant sub-contractor (including Specialist Sub-contractors and Designated Sub-contractors) employed or to be employed for any Works shall contain provisions consistent with the Contract in particular for those provisions in relation to information not to be divulged, prompt payments of fair wages to workers, payments to site personnel, 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 any Works.

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- (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.
- (9) (a) Unless otherwise specified in the Contract, where the Contractor is to sub-contract a part of any Works execution of which involves trades available in the trade contractors registration scheme administered by the Construction Industry Council as specified in the Contract, the Contractor shall ensure that, for the purpose of execution of such part of the Works and to the extent that execution of the same involves such trades, all sub-contractors, irrespective of their tiers to the Contractor, who are to be engaged to carry out that part of the Works:-
- (i) have completed or shall comply with the registration requirements stipulated in Clause 3.2(9)(b) for their registration under the relevant trades available in such trade contractors registration scheme unless otherwise provided in this Clause 3.2; and
- (ii) shall comply with the rules and requirements under such trade contractors registration scheme unless otherwise provided in the Contract.
- The Contractor shall submit the latest updated particulars of the sub-contractors in the format as specified in the Contract.
- (b) The sub-contractors proposed by the Contractor under Clause 3.2(9)(a) irrespective of their tiers to the Contractor shall complete their registration under the relevant trades available in such trade contractors registration scheme before the date for commencement of the sub-contract works.
- Provided that the Contractor shall not engage a sub-contractor who is suspended or in the process of an appeal against his suspension from registration under such trade in the trade contractors registration scheme unless the suspension is lifted before the commencement of the sub-contract works under the relevant sub-contracts.
- (c) In pursuance of Clause 3.2(5), the Contractor shall submit to the Contract Manager particulars, as specified in the Contract, of the sub-contractors irrespective of their tiers to the Contractor within 14 days from the date for commencement of the Contract Period and shall notify the Contract Manager in writing of any changes of or to such particulars or sub-contractors or any new sub-contracting permitted under Clause 3.2(1) or 3.2(2) during the currency of the Contract as soon as practicable and not later than 14 days after such change.

## **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 following order of precedence:-
  - (a) the Special Conditions of Contract.
  - (b) the General Conditions of Contract.
  - (c) other documents forming part of the Contract.
- (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 written 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) works or services shown on the Drawings or described in the Specification but not referred to in the Schedule of Rates shall be valued in accordance with Clause 11.3;
- (b) if compliance with such instructions shall, in the opinion of the Contract Manager, involve the Contractor in any expense which by reason of any ambiguity or discrepancy the Contractor did not and had no reason to anticipate, such expense shall be valued in accordance with Clause 11.3 and certified for payment accordingly; and
- (c) if compliance with such instructions shall, in the opinion of the Contract Manager, involve the Contractor in any saving, such saving shall be valued in accordance with Clause 11.3 and adjusted in any payment due to the Contractor.

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

- (1) The Contractor shall be furnished free of charge with two copies of the Drawings together with two copies of 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 any Works such other Drawings and Specification as in the opinion of the Contract Manager 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 Works.
- (5) One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor at places designated by the Contract Manager and the same shall at all reasonable times be available for inspection and use by the Contract Manager, the Contract Manager's Representative and any other persons authorised by the Contract Manager in writing.
- (6) The Contractor shall, if required by the Contract Manager upon completion of the Whole 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 Works**

- (1) When the Contractor is required to provide drawings or other documents in connection with any 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 allow 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 purpose of the Contract, any information provided by the Employer, the Contract Manager or the Contract Manager'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 any 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 and the Contract Manager may use any information provided by the Contractor in accordance with the Contract but shall not divulge such information except for the purpose of the Contract or for the purpose of carrying out any repair, amendment, extension or other works or services in connection with the relevant 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 cost 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 cost 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, the Drawings and other documents provided by the Contractor in accordance with Clause 4.3 shall be in English unless otherwise allowed by the Contract Manager.

## **5 GENERAL OBLIGATIONS**

### **5.1 Extent of Contract**

- (1) The Contractor shall, subject to the provisions of the Contract, execute all Works and provide all labour, materials, Constructional Plant, Temporary Works, transport 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 inferred from the Contract.
- (2) Notwithstanding Clause 5.1(1), the Employer shall be at liberty to have any works, services or materials which form part of the Contract to be carried out or supplied by means of contracts with other contractors or suppliers or by the use of the Employer's work force or resources, in which event, the Contractor shall not be entitled to any damages or losses.
- (3) The Contractor shall liaise and co-ordinate with his sub-contractors (including Specialist Sub-contractors and Designated Sub-contractors) for 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**

If the Contract so requires, the Contractor shall either:-

- (a) at his own expense obtain a guarantee or bond in the form provided by the Employer from an insurance company or bank, in either case to be approved in writing by the Employer, to be jointly and severally bound together with him to the Employer in the sum stated in the appendix to the Form of Tender, or
- (b) deposit with the Employer, as security for the due performance of the Contract the sum stated in the appendix to the Form of Tender.

**5.4 Inspection of the Contract Area**

- (1) The Contractor shall be deemed to have examined and inspected the Contract Area 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 and within the Contract Area, the nature of the ground and sub-soil, the form and nature of the Contract Area, 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 works, services and materials necessary for the execution of the Whole 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 Whole 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 any 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 Whole of the Works and of the Contract Rates. All such Contract 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 Whole 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 all 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 Sequence of executing Works**

- (1) The Contractor shall execute any part of any Works in such sequence, method and timing as may be specified in the Contract and/or in the Works Orders for such Works. In the absence of such requirements, the Contractor may select the sequence, method and timing of executing the Works. The Contract Manager may at any time after issuing a Works Order change the previously instructed sequence, method and/or timing of the Works, specify the sequence, method and/or timing of the Works, or order changes to points of ingress and/or egress to the Works.
- (2) Save as otherwise specified in the Contract, the Contractor shall not be entitled to any additional payment for complying with the sequence, method, timing requirements and changes to points of ingress and/or egress as ordered in accordance with this Clause 5.7.

**5.8 Particulars to be furnished**

- (1) The Contractor shall whenever required by the Contract Manager, furnish for the Contract Manager's information particulars in writing of the Contractor's arrangements for carrying out any Works which may include the Contractor's programme for the Works and the Constructional Plant and Temporary Works, which the Contractor intends to supply, use or construct as the case may be.
- (2) The submission to the Contract Manager of such particulars shall not relieve the Contractor of any of his liabilities and obligations under the Contract.

**5.9 Contractor's superintendence**

- (1) The Contractor shall give or provide all necessary superintendence during the currency of the Whole 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 5.9(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 Whole 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 any Works or shall have a vested interest in any sub-contract or sub-contractor of any tier (including Specialist Sub-contractors and Designated Sub-contractors) in connection with the Contract.
- (4) The Contractor shall name from the members of the management team a competent and authorised agent who shall be proficient in both Chinese and English and shall at all times represent the Contractor and receive on behalf of the Contractor instructions, orders or directions from the Contract Manager and the Contract Manager's Representative. Such agent shall wholly dedicate to the superintendence for the Whole 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 Contract forthwith and shall not thereafter employ him again for the Contract. 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 5.9(5).
- (7) The Contractor shall inform the Contract Manager forthwith in writing of any changes made to the management team.

#### **5.10 Contractor's employees**

- (1) The Contractor shall provide and employ and shall ensure that any of his sub-contractors of any tier shall provide and employ on every Site in connection with the execution of the Works on such Site:-
  - (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 works or services which they are required to supervise,
  - (b) such skilled, semi-skilled and general workers as are 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 any Works any person employed by the Contractor or by any sub-contractor of any tier 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 for the Contract 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.

#### **5.11 Emergency works**

- (1) The Contractor shall have available at all times workers and plant for the execution of emergency works. The Contractor shall not be entitled to any additional payment for providing such workers and plant save as expressly provided otherwise in the Contract.
- (2) If by reason of any accident or failure or other event occurring which, in the opinion of the Contract Manager, requires emergency works to be executed or services to be performed, the Contract Manager may give the Contractor an order verbally in the first instance to be followed by a Works Order within 10 days (exclusive of General Holidays) of the issue by the Contract Manager of the verbal order. The Contractor shall upon receipt of the verbal order immediately execute the works or perform the services with due diligence as instructed in the verbal order.

#### **5.12 Setting-out**

- (1) The Contractor shall be responsible for the true and proper setting-out of 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 Works and for the provision of all necessary instruments, appliances and labour in connection therewith.
- (2) If at any time during the progress of 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 under the Contract 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 Works.

**5.13 Safety, security and environmental management of 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 5.13(2) to 5.13(6) in relation to safety, security and environmental management.
- (2) The Contractor shall throughout the progress of the Whole of the Works take full responsibility for the adequate stability and safety of all operations on all Sites other than those of Specialist Contractors and Utility Undertakings and have full regard for the safety of all persons on all Sites. The Contractor shall keep all Sites and all Works in an orderly state appropriate to avoid danger to all persons.
- (3) The Contractor shall in connection with all 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 duly constituted or other authority for the protection of 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 all Sites where any works or services are being carried out so as to ensure the safety of all persons on or in the vicinity of all Sites or such works or services.
- (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 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 in writing and properly implemented to the satisfaction of the Contract Manager.

**5.14 Care of Works**

- (1) The Contractor shall (from and including the date for commencement of the Works as stated in a Works Order under Clause 8.1 up to (and including) the day 45 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 over the Works earlier, then up to (and including) the day 45 days after such date of takeover) take full responsibility for the care of the Works and (subject to Clause 5.13(2)) any Specialist Works, and for the care of all Constructional Plant, temporary buildings, 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 45 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) until such outstanding work is completed in accordance with the Contract, and shall continue to be responsible for all things and items which are required to be retained on the Site during the Maintenance Period including Constructional Plant, temporary buildings, materials and other facilities provided for the use of the Contract Manager, the Contract Manager's Representative and any persons authorised by the Contract Manager, the Contract Manager's Representative or the Employer.

- (2) In the event that any damage, loss or injury arising from any cause whatsoever, except the “excepted risks” as defined in Clause 5.14(4), happens to any Works or Specialist Works or any part thereof, or to any Constructional Plant, temporary buildings, materials or things whatsoever on any Sites, 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 5.14(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 5.14(3) by the Employer shall be valued in accordance with Clause 11.3 and certified for payment accordingly.
- (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 of any tier (including Specialist Sub-contractors and Designated Sub-contractors) or any Specialist Contractor currently or formerly engaged on any Works or Specialist Works,
  - (f) a cause due to the occupation by the Employer or his agents, employees, tenants or contractors, of any part of any Works for a purpose other than the carrying out of Specialist Works and such purpose is authorised and required by the Employer,
  - (g) damage, loss or injury which is the direct consequence of the Contract Manager’s design of any Works,
  - (h) a cause due to any neglect or default by the Contract Manager or the Employer or their employees or agents in the course of their employment, and
  - (i) ionising 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.

**5.15 Death of or injury to person or loss of or damage to 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 any Site, which may arise out of or in consequence of the execution of any 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 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 any Works or in the carrying out of the Contract.

- (3) The Contractor's liability to indemnify or recompense the Employer under Clause 5.15(1) or 5.15(2) shall, subject to Clause 5.15(4), be reduced proportionately to the extent that the act or neglect of the Contract Manager, the Employer or their 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 Works or any right of way, light, air or water or other easement or quasi easement or the right of the Employer to construct Works on, over, under, in or through any land which is an unavoidable result of the Contractor's proper and necessary execution of 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 any Works, or in testing and examining any material to be used and workmanship employed by the Contractor in connection with any 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 works or services, or in ensuring proper performance of any other obligation of the Contractor.

#### **5.16 Third party insurance**

- (1) Without limiting the Contractor's obligations and responsibilities under Clause 5.15, the Contractor shall procure before the date of commencement of the Contract Period, in joint names of the Contractor, the Employer, the power supply company (if the maintenance of grid-connected photovoltaic system has been specified as part of the Contract) and the Contractor's sub-contractors of any tier an insurance policy covering the period from (and including) the date of commencement of the Contract Period up to (and including) the certified date of completion of the maintenance obligations as stated in the final certificate issued under Clause 14.4, 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 any Works or in the carrying out of the Contract.
- (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 Contract Manager or the Contract Manager'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 the adjustment to payments in accordance with Clause 5.16(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 payments otherwise due to the Contractor in accordance with the Contract. If the Employer agrees to such modifications and such proposed adjustment, the adjustment shall be effected by the Contract Manager in the next interim payment or interim payments. In the event of the Employer and the Contractor failing to agree on the adjustment, the Contract Manager shall determine the amount of the adjustment and effect the adjustment in the next interim payment or interim payments.

- (d) The Contractor shall, if so required in writing by the Employer at any time during the currency of the Contract, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with Clauses 5.16(1), 5.16(2)(a) and 5.16(2)(b), a replacement insurance policy with modified terms. Any adjustment arising from such procurement or replacement of insurance policy with modified terms shall be valued in accordance with Clause 11.3 and effected in the next interim payment or interim payments.

#### **5.17 Design responsibility**

- (1) Unless otherwise provided for in the Contract or in any Works Order, the Contractor shall not be responsible for the design of the permanent works 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 any Works Order,
  - (b) as is required to be carried out by a Specialist Sub-contractor or Designated Sub-contractor, or
  - (c) which the Contractor has to carry out as a result of a Variation,(referred to in this Clause 5.17 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 5.17(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 relevant Works.
- (4) In preparing the Contractor’s Design and complying with his obligations under Clause 5.17(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 of his obligations or liabilities under or in connection with the Contract.

#### **5.18 Use of Intellectual Property Rights**

- (1) In so far as work which forms part of any Works shall be designed by the Contractor under the Contract, all Intellectual Property Rights incorporated or utilised 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 relevant 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 the 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 fees a non-exclusive irrevocable licence to utilise 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 or in any Works Orders, the expression "certify completion" shall, for the purpose of this Clause 5.18(2), mean such certification of the relevant Section or part of the relevant Works.

### **5.19 Indemnity for Intellectual Property Rights**

- (1) (a) The Contractor shall, subject to Clause 5.19(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 costs which may be agreed to be paid in settlement of any proceedings and/or 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 any 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 all Works.
- (c) The indemnity granted pursuant to Clause 5.19(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 under the Contract.
- (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 5.19(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 5.19(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 5.19 shall survive and continue in full force and effect notwithstanding completion of Works as certified under Clause 8.7, completion of the maintenance obligations as certified under Clause 14.4, termination of the Contractor's employment under Clause 15.1 or frustration of the Contract, as the case may be.



**5.20 Interference with traffic and adjoining properties**

- (1) All operations necessary for the execution of any 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 persons.
- (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.

**5.21 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.

**5.22 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 of any tier 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.

**5.23 Contractor to give notice of injury**

In the event of any worker or other person employed on any 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.

**5.24 Giving of notices and payment of fees**

The Contractor shall give all notices and pay all licences, levies, premiums and 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 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 any Works and if any new fee is imposed or any existing fee is increased after the Tender Closing Date, all such new fees or increases shall also be at the expense of the Contractor, except any expenditure ascertained by the Contract Manager due to a Change in Law under Clause 20.1.

**5.25 Compliance with enactments and regulations**

The Contractor shall conform in all respects with:-

- (a) the provisions of any enactment,
- (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 referred to in Clause 5.24

and any additions or amendments thereto or any new enactments, regulations, bye-laws or rules made during the currency of the Contract, which are applicable to any 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.

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

Any notice required to comply with any enactment or the rules and regulations of the 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.

**5.27 Site diary and labour returns**

- (1) The Contract Manager's Representative shall maintain a site diary for those works and/or services designated by the Contract Manager and record in the Contract Manager's site diary information with regard to labour, plant, materials, utilities, works or services carried out, and instructions issued to the Contractor and all other facts that may affect the progress or quality of any Works.
- (2) Where a site diary is maintained in accordance with Clause 5.27(1), the authorised agent or representative of the Contractor shall sign the site diary indicating his agreement to the information and details recorded therein. Should the authorised 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 not later than 1.00 p.m. on each day (except on a General Holiday) a return in such form as the Contract Manager may prescribe showing in detail the numbers of the several classes of labour on all Sites that day together with the numbers of the several classes of labour so employed during the preceding 24 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 or Contract Manager's Representative may require.

**5.28 Fossils**

All fossils, coins, articles of value or antiquities and structures and other remains or things of geological or archaeological interest discovered on any Sites 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. Such expense shall be valued in accordance with Clause 11.3 and certified for payment accordingly.

**5.29 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 any Sites, any work or service 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 instructions of the Contract Manager:-
  - (a) make available any road or way the maintenance for which the Contractor is responsible,
  - (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 any Sites, any work or service 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 valued in accordance with Clause 11.3, provided that provision of such use or service is not specified in the Contract.

**5.30 Clearance of the Site**

The Contractor shall clear away and remove from all Sites all surplus materials and rubbish of any kind whatsoever as they arise and leave all Sites in a clean and tidy condition.

**5.31 Publication of photographs of Sites or Works**

- (1) The Contractor shall not disclose, publish or circulate photographs of any Sites or any 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.

**5.32 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 as defined in the Prevention of Bribery Ordinance (Cap. 201) when conducting business in connection with the Contract to any employee, representative or agent of the Employer, to the Contract Manager or to any member of the Contract Manager's staff, the Employer may terminate the employment of the Contractor under Clause 15.1 and hold the Contractor liable for any loss or damages 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 and/or 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 and/or financial interests and their duties in connection with the Contract. The Contractor shall also require his sub-contractors and agents to impose similar restrictions on their employees by way of contractual provisions.
- (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 5.32.
- (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.

**5.33 Site cleanliness**

The Contractor shall keep all Sites in a clean and hygienic condition and if the Contract so requires, the Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on the Sites.

**5.34 Disposal ground**

- (1) The Contractor shall not dispose of construction and demolition materials generated from any Works or in connection with any 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 of his duties or responsibilities under the Contract nor entitle the Contractor to any additional payment or extension of time.

**5.35 Contracts (Rights of Third Parties) Ordinance**

Nothing in the Contract confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of the Contract.

**5.36 Sale of Goods (United Nations Convention) Ordinance**

The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.

**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 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 the 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 any Works, comply with the requirements in this Clause 6.2.
- (3) The Contractor shall be responsible for the observance of this Clause 6.2 by his sub-contractors of any tier employed in the carrying out of any 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), in the event that:-
  - (a) 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) the Contractor is liable to an employee of his sub-contractor of any tier (including Specialist Sub-contractors and Designated 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) 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, Clause 6.2(4) 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 any Site as required under the Contract.
- (2) The Contractor shall, at his own expense, issue a Pass to each of such persons who are authorised to enter a Site for the carrying out of the Works or any other purpose 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 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 a place designated by the Contract Manager for the checking by the Employer or his representatives.

### **6.4 Payment of Wages of Site Personnel**

- (1) Site Personnel shall be engaged in accordance with this Clause 6.4 and/or as specified in the Specification. Such Site Personnel shall be engaged with a written employment contract with their respective employers who shall either be the Contractor or any of his sub-contractors, irrespective of tiers, as submitted in the Sub-contractors Management Plan required under the Contract. The terms of the employment contract shall not be less favourable to the terms provided in the "Specimen Employment Contract" as specified in the Specification and the wage period in respect of which the wages are payable under the employment contract shall not be longer than one month, as far as the Site Personnel are concerned.
- (2) (a) No Self-employed Worker shall be engaged in the execution of any part of any Works which involves any trade available in the trade contractors registration scheme administered by the Construction Industry Council as specified in the Contract.

- (b) The Contractor shall ensure that the Self-employed Workers engaged by him or his sub-contractors, irrespective of tiers, to work on any Site shall each be covered by a personal accident insurance plan with a minimum coverage of the amount stated in the appendix to the Form of Tender by either extending the Contractor's employee compensation insurance policy as required by the law or his third party liability and all risks insurance policy. Alternatively, the Contractor shall arrange a separate personal accident insurance plan with a minimum coverage of the amount stated in the appendix to the Form of Tender for each of the Self-employed Workers in the form as provided in the appendix to the Conditions of Contract and shall maintain such policy for the duration of the Self-employed Workers being engaged in the Contract. The Contractor shall produce evidence of procurement of such insurance before the Self-employed Workers are allowed to work on the Site. The Contractor shall inform the Contract Manager immediately when the insurance policy of a Self-employed Worker has expired together with evidence showing its renewal as appropriate.
- (3) The Contractor shall provide and maintain a site access control and recording system with smart-cards or such system approved by the Contract Manager to record and verify the information of all Site Personnel entering and leaving a Site in accordance with the Specification.
- (4) The Contractor shall implement the arrangement on payment of wages and on payment of Mandatory Provident Fund (hereinafter referred to as "MPF") contributions to Site Personnel as specified in the Contract. The Contractor shall keep records of transactions for payment of wages and MPF contributions in accordance with the Specification and submit a written declaration at monthly intervals to the Contract Manager declaring that all wages of the Site Personnel payable have been paid and all MPF contributions have been made in accordance with the Specification.
- (5) The Contractor shall provide assistance, facilities and information including access to the source of the provided information for verification purpose to the Labour Relations Officers for them to execute their duties as specified in the Specification.
- (6) The Contractor shall be responsible for the observance of this Clause 6.4 by his sub-contractors of any tier employed in the carrying out of any Works. Pursuant to Clause 3.2(3), failure to comply with this Clause 6.4 or the Specification in relation thereto by any of the sub-contractors, irrespective of tiers, may lead to the removal of the sub-contractor from the Sites.

## **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 any Sites, or at such other place or places as the Contract Manager may consider 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 of any materials into any 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 such 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 valued 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 any 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.

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

The Contract Manager and any person authorised by him shall at all times have access to any Works and to any 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 authorised by him to obtain access when required to such workshops and places from where materials or manufactured articles are being obtained for incorporation into any 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 or 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 any 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 valued in accordance with Clause 11.3 and certified for payment accordingly. 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 any Works have the power to instruct in writing:-
  - (a) the removal from the Site within such time as may be specified in the instruction of any material which in the opinion of the Contract Manager is not in accordance with the Contract,
  - (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 any 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 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:-
  - (a) 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 Contract Manager 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 such excess shall be valued in accordance with Clause 11.3 and certified for payment accordingly, or
  - (b) with a prior agreement in writing of the Employer, accept any work which (in respect of materials and/or workmanship) does not comply with the requirements of the Contract, in which event the value of such work as if the work had been executed in accordance with the relevant Works Order shall be adjusted for any damages suffered or likely to be suffered by the Employer or any saving in cost to the Contractor as a result of such non-complaint work, whichever is the greater, provided that such adjustment shall be valued in accordance with Clause 11.3 and in no event shall such amount of adjustment exceed the cost of removal and re-execution of the original permanent work.
- (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 Cost shall be valued in accordance with Clause 11.3 and certified for payment accordingly.

**7.6 Warranty and Deed of 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 and workmanship specifically required in the Contract, unconditionally warrant to the Employer the satisfactory performance of such specified material, equipment and workmanship for such periods of time as specified in the Contract and that such specified material, equipment and workmanship are in conformity to the specified requirements.
- (2)
  - (a) In the event of any defect, failure, imperfection or fault in respect of works with the warranty requirements as specified in the Contract (hereinafter referred to as “**works with warranty**”) occurring or appearing or discovered at any time during the periods of warranty as described in the Specification, the Contractor shall as soon as reasonably practicable but in no event later than the time specified by the Contract Manager or the Employer, carry out at his own cost all repair or replacement works, including emergency and temporary works, which are, in the opinion of the Contract Manager or the Employer, necessary to ensure that the works with warranty serve their intended purposes and functions and shall be restored to conform to the warranty under the Contract. In the event that the Contractor fails to carry out the repair or replacement works in accordance with this Clause 7.6(2)(a), the Employer may, without prejudice to any other remedy, proceed to carry out such repair or replacement works by his own workers or other contractors and any cost incurred by the Employer therefrom shall be a debt due to the Employer by the Contractor and shall be paid to the Employer by the Contractor immediately on demand.
  - (b) The Contractor shall make good or, at the option of the Employer, pay to the Employer the cost of making good any damage or loss to any property of the Employer or third parties which is caused by such or any defect, failure, imperfection or fault in respect of the works with warranty. For the avoidance of doubt, in the carrying out of any repair or replacement work including any emergency and temporary work in accordance with this Clause 7.6, the Contractor shall at his own cost make good, restore or reinstate any part of roads, pavements, buildings, structures, areas or finishes that were damaged, disturbed or affected to their prior conditions.
  - (c) The Contractor shall indemnify and keep indemnified the Employer against all liabilities, claims, demands, proceedings, damages, costs and charges for injury to any person or damage to any property whatsoever which is caused by such or any defect, failure, imperfection or fault in respect of the works with warranty and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
  - (d) Provided that nothing in this Clause 7.6(2) shall be deemed to render the Contractor liable to the Employer for any compensation or damages including all claims, demands, proceedings, damages, costs, charges and expenses in respect of or in relation to:-
    - (i) any defect, failure, imperfection or fault in respect of works with warranty caused by work which was not carried out by the Contractor or his employees, agents, representatives or sub-contractors and for which the Contractor or his employees, agents, representatives or sub-contractors shall not be held responsible, or

- (ii) any defect, failure, imperfection or fault in respect of the works with warranty caused by repair, maintenance or alteration to the works with warranty (other than the repair or replacement work carried out by the Employer's own workers or contractors in accordance with Clause 7.6(2)(a)) done by persons other than the Contractor or his employees, agents, representatives or sub-contractors after the date of completion of the relevant Works as certified by the Contract Manager, but in the event of there being more than one certified date of completion, then from the date of completion of the Section in which the works with warranty is included as certified by the Contract Manager under Clause 8.7.
- (3) Where a deed of warranty from a manufacturer, supplier, agent, sub-contractor or such other person is required in the Contract (hereinafter referred to as "the relevant warrantor"), 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 such deed of warranty in the form consistent with the sample warranty as provided in the appendix to the Conditions of Contract within the time as stipulated in the Contract on such terms and conditions as specified in the Contract.

For the avoidance of doubt,

  - (a) it is the Contractor's responsibility to ensure that he is able to contractually require the relevant warrantor to provide the required deed of warranty to the Employer;
  - (b) the Contractor shall liaise and co-ordinate with and use his best endeavour to compel the relevant warrantor to submit the deed of warranty in a timely manner; and
  - (c) a deed of warranty of the relevant warrantor provided by the Contractor in accordance with this Clause 7.6(3) shall not relieve the Contractor of any of his obligations or liabilities under the Contract or otherwise.
- (4) The Contractor shall further unconditionally warrant that the relevant warrantor shall design, supply and/or install the works with warranty in accordance with all the drawings, specifications, terms and requirements of the sub-contract between the Contractor and such relevant warrantor in so far as the same relate to the design, supply and/or installation of the works with warranty. The Contractor shall, within 14 days from the request in writing by the Contract Manager or the Employer, provide the Contract Manager or the Employer (as the case may be) at no charge to the Employer with a copy of the sub-contract between the Contractor and any relevant warrantor (including any other documents relating thereto or stated therein) in so far as such sub-contract and other documents relate to the design, supply and/or installation of the works with warranty.
- (5) The warranties referred to in this Clause 7.6 and the deed of warranty of the relevant warrantor provided by the Contractor in accordance with Clause 7.6(3) shall be without prejudice to and shall not be deemed or construed so as to limit or exclude the rights or remedies which the Employer may have against the Contractor or any other third party or person whether under the Contract or in tort or otherwise.
- (6) The Employer shall be entitled to assign the benefits of the warranties referred to in this Clause 7.6 and the deed of warranty of the relevant warrantor provided by the Contractor in accordance with Clause 7.6(3) at any time without the consent of the Contractor and/or the relevant warrantor being required.

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

### **8.1 Commencement of Contract Period and Works**

- (1) The Contract Period shall commence on such date as stated in the Letter of Acceptance or such date as notified in writing by the Contract Manager. The Contract Manager may issue Works Orders within the Contract Period.
- (2) The Contractor shall commence such Works on such date as ordered in a Works Order and shall proceed with the same with due diligence and without delay.
- (3) The Contractor shall not commence or carry out any work or service unless such work or service is ordered in a Works Order, provided that if the Contract Manager considers it necessary to give an order verbally, the Contractor shall immediately comply with such verbal order which shall be subsequently confirmed by the Contract Manager in a Works Order.

### **8.2 Occupation of Sites**

- (1) Save in so far as the Contract, any Works Order or the Contract Manager may otherwise require, the extent of any Site or Portion or any part thereof (to or of which the Contractor is to be given access or limited occupation) shall be sufficient to enable the Contractor to commence and proceed with the execution of the Works in accordance with the programme provided in Clause 5.8 or where applicable to commence the Works on the date provided in the Works Order in accordance with Clause 8.1 or 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 the Contractor limited occupation of such further parts of the Site as may be required to enable the Contractor to proceed with due despatch.
- (2) Every possible opportunity will be given to the Contractor by the Employer to access or take limited occupation of such Site or Portion or part thereof as is necessary for the execution of the relevant Works but the Employer reserves the right to use for any purpose such Site or Portion or part thereof upon which such Works are being carried out at any time. The Contractor shall not be entitled to any costs arising from any disruption as a result of the limited occupation or use of such Site or Portion or part thereof.
- (3) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to any Site.
- (4) The access to or limited occupation of any Site referred to in this Clause 8.2 shall not be exclusive to the Contractor but shall only be to such extent that it shall enable him to execute the relevant Works on such parts of the Site.

### **8.3 Time for completion**

- (1) Works or any Section specified in a Works Order shall be completed within the time or times calculated from (and including) the date for commencement to (and including) the date for completion as stated in such Works Order, 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) Subject to any provision or instruction to the contrary contained in the Contract or a Works Order, none of the work or service shall, save as hereinafter provided, be carried out outside Normal Working Hours without the permission of the Contract Manager in writing unless the work or service is unavoidable or absolutely necessary for:-
  - (a) preventing injury to any person or saving the life of any person;
  - (b) preventing damage to property; or
  - (c) completion of emergency work,in which case the Contractor shall immediately inform the Contract Manager.
- (3) Subject to compliance with Clause 5.25, the Contractor may carry out any work or service on any General Holiday.

Provided always that the Contract Manager may, in his absolute discretion order the Contractor not to carry out any work or service on any General Holiday and/or after 1.00 p.m. on any Saturday.
- (4) Unless otherwise stated in the Contract, the time for completion of any Works shall include General Holidays.
- (5) Subject to compliance with any enactment, regulation, bye-law or rule, the Contract Manager may, by a written instruction, require the Contractor to execute any Works or Section at any time of the day or night or continuously for 24 hours in a day.
- (6) The Contractor shall not be entitled to any additional payment for complying with the time requirements stated in a Works Order but in the event of payment for overtime being specified in such Works Order, such payment shall be valued in accordance with Clause 11.3.

### **8.4 Extension of time for completion**

- (1)
  - (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 specified in a Works Order becoming apparent, serve a notice of claim for extension of time in writing to the Contract Manager, accompanied with particulars of the cause of the delay and the probable effect and extent of such delay.
  - (b) If in the opinion of the Contract Manager, the cause of the delay is:-
    - (i) rainfall recorded by the Hong Kong Observatory in excess of 20 millimetres between midnight and midnight on any day falling within the time or extended time for completion,

- (ii) a Tropical Cyclone Warning Signal No. 8 or above or a Black Rainstorm Warning Signal issued by the Hong Kong Observatory and in force on any day falling within the time or extended time for completion or the effects of an event so caused by inclement weather conditions in respect of such Tropical Cyclone Warning Signal No. 8 or Black Rainstorm Warning Signal in so far as such effects have adversely affected the progress of the Works or Section (as the case may be),
  - (iii) an instruction issued by the Contract Manager under Clause 4.1,
  - (iv) a Variation,
  - (v) the Contractor not being given access to or limited occupation of the Site or any Portion or part thereof in accordance with the Contract or is subsequently deprived by the Employer of the Site or any Portion or part thereof after occupation of the same by the Contractor,
  - (vi) a disturbance to the progress of the Works or the relevant Section for which the Employer, the Contract Manager or a Specialist Contractor is responsible,
  - (vii) the Contract Manager suspending the Works or the relevant Section in accordance with Clause 9.1 in so far as the suspension is not occasioned by any of the circumstances described in Clauses 9.1(3)(a)(i) to 9.1(3)(a)(iv),
  - (viii) 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 or the relevant Section, provided that the Contractor has taken all practical steps to cause the Utility Undertaking or duly constituted authority to commence or proceed with such work or service,
  - (ix) any utility work not forming part of the Works or the relevant Section 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 date when the Works Order was issued,
  - (x) a Change in Law, or
  - (xi) any special circumstances of any kind whatsoever,
- then the Contract Manager shall 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 any Works or any Section if the cause of the delay is:-
    - (i) the failure of a Designated Sub-contractor to commence or carry out works or services in due time which the Contractor has not, in the opinion of the Contract Manager, taken all practical steps to prevent,
    - (ii) a suspension occasioned by any of the circumstances described in Clauses 9.1(3)(a)(i) to 9.1(3)(a)(iv),
    - (iii) a shortage of Constructional Plant or labour not occasioned by a Change in Law,
    - (iv) inclement weather conditions and/or their consequential effects except as expressly provided in Clause 8.4(1)(b)(i) or 8.4(1)(b)(ii),
    - (v) a delay on the part of any Specialist Sub-contractor, or
    - (vi) an objection of the Contractor to entering into a sub-contract with a Designated Sub-contractor which in the opinion of the Contract Manager is unreasonable.

- (d) If in accordance with Clause 8.4(1)(b), the Contract Manager decides that the Contractor is fairly entitled to an extension of time for the completion of the Works or the relevant Section, the Contract Manager shall within a reasonable time notify in writing to the Contractor of 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.
- (e) 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.

Provided that the Contract Manager shall, if the Contractor shall so request in writing, make a subsequent review of the circumstances causing delay and decide whether any further extension of time for completion should be granted.

- (f) For the purpose of deciding whether or to what extent the Contractor may be entitled to an extension of time under Clause 8.4(1)(b), the Contract Manager may require the Contractor to submit further particulars of the cause and extent of the delay to the progress of the Works or the relevant Section. Where such further particulars are required by the Contract Manager, they shall be submitted in writing by the Contractor to the Contract Manager as soon as practicable in order that the Contractor's claim may be investigated at that time by the Contract Manager. If the Contractor fails to comply with the provisions of this Clause 8.4(1)(f), the Contract Manager shall consider granting such extension only to the extent that the Contract Manager is able to assess only based on the information available to him at that time.
- (2) Whenever the Contract Manager grants an extension of time for completion in accordance with this Clause 8.4, the Contractor shall revise the programme referred to in Clause 5.8 accordingly.
  - (3) Provided that if the Contract Manager grants an extension of time in respect of a cause of delay under Clause 8.4(1)(b) occurring after the Employer is entitled to recover liquidated damages in respect of the Works or the relevant 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).
  - (4) 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 continuing beyond such period.

## **8.5 Rate of progress**

- (1) If the rate of progress of any Works or 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 instruct the Contractor in writing to improve the rate of progress of such Works or Section to the satisfaction of the Contract Manager within the time stipulated in the instruction and the Contractor shall take such steps as are necessary to expedite the completion of such Works or Section. The Contractor shall inform the Contract Manager of such proposed steps and revise the programme referred to in Clause 5.8 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 or time 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 any Works or any Section (where the Works are divided into Sections) 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, as the case may be, the Section, or from any of his other obligations under the Contract.
- (2) Unless otherwise stated in the appendix to the Form of Tender, the liquidated damages per day shall be a sum equal to the percentage (stated in the appendix to the Form of Tender) of the estimated value of the Works or Section as determined by the Contract Manager at the time of issue of the Works Order for such Works or Section in accordance with the Contract before the deduction of any liquidated damages for such Works or Section divided by the time for completion in days prescribed in such Works Order including General Holidays (rounded to the nearest dollar), and in no circumstances shall such liquidated damages per day for such Works be less than the minimum amount of liquidated damages stated in the appendix to the Form of Tender.

Provided that, if the Contract Manager certifies completion under Clause 8.7 of any Section or part of the Works before completion of the Works, then the rate of liquidated damages for the Works 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 Section or the part so certified bears to the value of the Works, as applicable, both values as of the date of such certification shall be determined by the Contract Manager.

- (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 up to (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 (and not including) the day of actual payment of the reimbursement to the Contractor at the rate provided for in Clause 14.3(2) within 28 days of the granting of such extension of time.

- (4) 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 Works**

- (1) When any Works have been substantially completed and have satisfactorily passed any final test that may be prescribed in the Contract, the Contractor may report to the Contract Manager to that effect, accompanied by an undertaking to carry out any outstanding work during the Maintenance Period of such Works and requesting the Contract Manager to certify completion of such Works. The Contract Manager shall, within 21 days of the date of receipt of such report:-
  - (a) certify 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 certified date of completion, or
  - (b) give instructions in writing to the Contractor specifying all the works which, in the Contract Manager's opinion, are required to be done by the Contractor before such certification, in which case the Contractor shall not be permitted to make any further request for such certification.
- (2) Notwithstanding other provisions in the Contract, as soon as in the opinion of the Contract Manager any Works have been substantially completed and satisfactorily passed any final test (which may be prescribed in the Contract), the Contract Manager shall certify completion of the Works and the Maintenance Period for such Works shall commence on the day following the certified date of completion.
- (3) The Contractor shall carry out any outstanding work as soon as practicable after the certification of completion of such Works or as reasonably directed by the Contract Manager and in any event before the expiry of the Maintenance Period for such Works. 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) Clauses 8.7(1), 8.7(2) and 8.7(3) shall apply equally to any Section.
- (5)
  - (a) The Contract Manager shall certify completion in respect of any part of any Works or Section 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 Section.
  - (b) The Contract Manager may, following a written request from the Contractor, certify completion of any substantial part of the Works or Section which has been completed to the satisfaction of the Contract Manager before the completion of the Works or Section and is capable of permanent occupation and/or permanent use by the Employer.
  - (c) When completion is certified in respect of a part of any Works or Section, such part shall be considered as completed and the Maintenance Period for such part shall commence on the day following the certified date of completion of such part.
- (6) Any certification of completion in accordance with this Clause 8.7 in respect of any Section or part of any Works or Section shall not be deemed to be certification of completion of any ground or surface requiring reinstatement unless the Contract Manager has expressly so stated.
- (7) For the purpose of this Clause 8.7, the terms "Works" and "Section" shall exclude any work executed in accordance with Clause 10.1(2).

**8.8 Contract Period with provisional period**

- (1) The Contract Period may include a provisional period, as stated in the appendix to the Form of Tender unless otherwise amended pursuant to the provisions of this Clause 8.8.
- (2) The Employer may omit the provisional period from the Contract Period by serving the Contractor a prior written notice before the time as stated in the appendix to the Form of Tender, if in the opinion of the Contract Manager, the Contractor has failed to meet the performance requirements as specified in the Contract.
- (3) If the Employer exercises its right to shorten the Contract Period under this Clause 8.8, the Contractor shall not be entitled to any losses or damages arising therefrom.

**9 SUSPENSION OF WORKS**

**9.1 Suspension of Works**

- (1) The Contract Manager shall have power to suspend the progress of any Works or Section or any part thereof. The Contractor shall, upon receipt of a written order of the Contract Manager, forthwith suspend the progress of the Works or Section or 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 or Section or part thereof 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 Section or part thereof ordered by the Contract Manager pursuant to Clause 9.1(1), he shall, within 28 days from the date of the suspension order, serve a notice of intention to claim on the Contract Manager.
- (3) (a) The Contract Manager shall ascertain the circumstances and effects of the suspension order issued under Clause 9.1(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 9.1(1), then he shall ascertain the Cost in accordance with Clause 11.6 unless he is of the opinion that the suspension order is:-
  - (i) otherwise provided for in the Contract,
  - (ii) necessary or occasioned by reason of weather conditions affecting the safety or quality of the Works or Section or part thereof,
  - (iii) necessary or occasioned by reason of some default on the part of the Contractor or any person carrying out the Works or Section or part thereof, or
  - (iv) necessary or occasioned for the proper execution of the Works or Section or part thereof or for the safety of the Works or Section or 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 5.14(4).
- (b) If the Contract Manager decides that the issue of the suspension order under Clause 9.1(1) falls within any of the circumstances of Clauses 9.1(3)(a)(i) to 9.1(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 9.1(2), the Contract Manager shall notify the Contractor of his decision in writing within 21 days from the date of serving of such notice of intention to claim.
- (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 9.1(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.

## **10 MAINTENANCE AND DEFECTS**

### **10.1 Execution of work of repair**

- (1) Any 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 including any work of repair or rectification and making good any defect, imperfection, shrinkage, settlement or other fault identified within the Maintenance Period, the Contractor shall carry out such works within the Maintenance Period or as soon as practicable thereafter.
- (3) Notwithstanding the requirements of Clause 10.1(2), 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 works and the Contractor shall comply with such instructions forthwith.
- (4) All maintenance works shall be carried out by the Contractor at his own expense if the necessity for such 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 works shall be valued in accordance with Clause 11.3 and be borne by the Employer.
- (5) If the Contractor fails to carry out any maintenance works in such terms as required by the Contract Manager in accordance with Clause 10.1(2) or 10.1(3), 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(3), to have such works carried out by his own workers or other contractors. If such 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.

### **10.2 Temporary reinstatement**

If in the course or for the purpose of the execution of any 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) (where the permanent reinstatement of such highway, road or way is to be carried out by an 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 modification thereof from whatever cause the necessity thereof arises until the expiry of the Maintenance Period in respect of the Works or, as the case may be, the relevant part of the Works beneath such highway, road or way or until the authority or person as aforesaid shall have taken full occupation 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 full occupation as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out 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 full occupation 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 full occupation thereof is so taken but shall during the currency of the said Maintenance Period continue in regard to any Portion or part of which full occupation 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 expiry of the Maintenance Period, 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 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 such investigation and remedial work carried out by the Contractor as aforesaid shall be valued in accordance with Clause 11.3 and certified for payment accordingly.

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

### **11.1 Measurement of Works**

- (1) All Works shall be measured in accordance with the rules contained in the Schedule of Rates. No guarantee is given by the Employer as to the scope or extent of any work or service that may be ordered.
- (2) Except as otherwise stated in the Contract, the Works executed shall be measured by the Contractor during the progress of or as soon as possible after the completion of each Works Order. The Contractor shall give full facilities to the Contract Manager to take independent measurements of all or part of such Works. The Contractor shall inform the Contract Manager in advance so as to enable the Contract Manager or the Contract Manager's Representative to be present when the Contractor is measuring such Works.

## **11.2 Variation**

- (1) The Contract Manager shall order any change which in his opinion is necessary and shall have the power to order any change that for any reason shall in his opinion be desirable for or to achieve the satisfactory functioning of any Works. Any such change (referred to in the Contract as “Variation”) may include:-
  - (a) changes in quality, form, character of any work or material detailed in the Specification and/or the Drawings, or work or material of any kind which is not detailed in the Specification and/or the Drawings, and
  - (b) additions, omissions, substitutions, alterations, or changes in quality, form, character, kind, position, dimension, level or line of any work, service or material, specified in a Works Order.

Provided that the Contract Manager shall not be under any obligation to order a Variation that is necessary for the completion of any Works or Section or 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 functioning of the relevant Works.
- (3) No Variation shall be carried out by the Contractor unless a written instruction has been issued by the Contract Manager except otherwise provided in the Contract. No Variation shall in any way vitiate or invalidate the Contract but such Variation shall be valued in accordance with Clause 11.3.

## **11.3 Valuation of Works**

- (1) All Works (except Designated Sub-contract Works), including any Variation under Clause 11.2, shall be valued at the Contract Rates. The Contract Rates shall apply to whatever amount of works or services ordered. The rate for any work, service or material which is not same as or similar in character to or is not executed under same or similar conditions or circumstances as those of item of work, service or material shown in the Schedule of Rates shall, so far as may be reasonable, be agreed upon between the Contract Manager and the Contractor in accordance with the provisions contained in the Schedule of Rates.
- (2) In the event of the Contract Manager and the Contractor failing to reach agreement on any rate under the provisions of Clause 11.3(1), the Contract Manager shall determine such rate as shall in his opinion be reasonable and inform the Contractor accordingly.

## **11.4 Daywork**

- (1) The Contract Manager may, if in his opinion it is necessary or desirable, instruct in writing that any work or service which cannot be measured in accordance with the Schedule of Rates and paid for at Contract Rates (excluding the daywork items) shall be executed on a daywork basis.
- (2) The Contractor shall then be paid for such works or service under the conditions set out in the Contract and at the Contract Rates or if there are no such conditions and Contract Rates, at such rates as the Contract Manager shall determine as being reasonable.
- (3) The Contractor shall furnish the Contract Manager with such receipts or other vouchers as may be necessary to prove the sums paid, and before ordering any materials, the Contractor shall (if so required by the Contract Manager) submit quotations for the same for the approval of the Contract Manager.

- (4) In respect of all works or services executed on a daywork basis, the Contractor shall during the currency of such works or services deliver on each day (except on a General Holiday) 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 works or services on the previous day (except on a General Holiday) 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 7 days exclusive of General Holidays.
- (5) 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 the times and materials for which the Contractor proposes to charge therefor.

### **11.5 Notice of Claims**

- (1) If the Contractor intends to claim a higher rate than one determined by the Contract Manager pursuant to Clause 11.3(2) or 11.4(2), the Contractor shall within 28 days of such notification give a notice of intention to claim in writing to the Contract Manager.
- (2) If the Contractor intends to claim additional payment under any provision of the Conditions of Contract other than those mentioned in Clause 11.5(1), the Contractor shall within 28 days after the occurrence of the event giving rise to a claim becoming apparent serve a notice of intention to claim in writing on 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 this Clause 11.5 that the Contractor shall comply with the notice requirements of Clause 11.5(1) or, as the case may be, Clause 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 9.1(2), 11.5(1) or 11.5(2), the Contractor shall keep such contemporary records as may reasonably be necessary to support the claim and shall submit to the Contract Manager details of the records being kept in respect thereof. Without necessarily admitting the Employer's liability, the Contract Manager may instruct the Contractor to keep all additional contemporary records which may in the opinion of the Contract Manager be reasonable and material to the claim. The Contractor shall permit the Contract Manager and the Contract Manager's Representative to inspect all records kept pursuant to this Clause 11.6 and shall supply copies thereof to the Contract Manager or the Contract Manager's Representative at no charge as and when the Contract Manager or the Contract Manager's Representative may so require.
- (2)
  - (a) After the submission of a notice of intention to claim expenditure under Clause 9.1(2) or additional payment under Clause 11.5(1) or 11.5(2), the Contractor shall, as soon as is reasonable, submit to the Contract Manager particulars of the circumstances giving rise to the claim, the rate or sum claimed and the methodology and calculation of such rate or sum.
  - (b) In addition, the Contractor shall, at such intervals as the Contract Manager may reasonably require, submit to the Contract Manager further up-to-date accounts giving the accumulated total of the claim and any further particulars in relation thereto.

- (3) If the Contractor fails to comply with any of the provisions of Clause 11.6(1) or 11.6(2) in respect of any claim, the Contract Manager shall consider such claim only to the extent that the Contract Manager is able to assess only based on the information available to him at that time.

Provided that the Contract Manager shall not be obliged to take into account when considering a claim any particulars of the claim received by him after the expiry of a period of 180 days calculated from the certified date of completion of the Works Order to which the claim relates. When the Contractor's claim relates to several Works Orders under the Contract, such period of 180 days shall commence on the last of such certified dates of completion.

## **12 DESIGNATED SUB-CONTRACTORS**

### **12.1 Work by Designated Sub-contractors**

- (1) The Employer reserves the right to instruct any works or services to be executed and/or any materials to be supplied by a Designated Sub-contractor. The Contractor shall not be entitled to any damages or losses (if any) in relation to or in connection with such works, services or materials being provided by a Designated Sub-contractor.
- (2) The Contractor shall enter into a sub-contract with a Designated Sub-contractor for the execution of such works or services or for the supply of such materials as and when instructed by the Contract Manager. The entering into such sub-contract shall not relieve the Contractor of any of his duties or liabilities under the Contract.
- (3) The Contractor shall not be obliged to enter into a sub-contract with a Designated Sub-contractor against whom the Contractor may raise any objection, provided that the Contract Manager is notified in writing of such objection within 14 days of receipt of the instruction to enter into such sub-contract and provided further that the Contract Manager considers the objection to be reasonable.
- (4) Subject to Clause 12.1(3), if the Contractor fails or refuses to enter into such sub-contract in accordance with the Contract Manager's instruction, the Employer may make separate arrangements for the works or services to be executed or for the materials to be supplied and the cost of making these separate arrangements shall be deducted from any payment due to the Contractor or recovered from the Contractor in accordance with Clause 15.3.

### **12.2 Payment to Contractor for work of Designated Sub-contractors**

- (1) The Contractor shall, when required by the Contract Manager, produce all quotations, invoices, vouchers and receipts in connection with expenditure in respect of a Designated Sub-contractor.
- (2) The amount which the Employer shall pay to the Contractor for works or services executed or materials supplied by a Designated Sub-contractor shall be the net cost of such works, services or materials, as the case may be, ascertained in accordance with the sub-contract after deducting any trade or other discount.
- (3) In addition, the Employer shall pay to the Contractor the Percentage Addition (for the Contractor's profit and attendance on Designated Sub-contract Works) on the net cost paid or to be paid to such Designated Sub-contractor by the Contractor and such Percentage Addition shall be deemed to be full payment for the Contractor's profit, overheads and all other expenses arising out of or in connection with works or services executed or materials supplied by such Designated Sub-contractor.

**12.3 Payment to Designated Sub-contractors**

- (1) The Contractor shall pay the Designated Sub-contractor according to the terms of the sub-contract.
- (2) The Contractor shall provide the Contract Manager with all receipts or other proof of payments made to the Designated Sub-contractor. If the Contractor has not paid the Designated Sub-contractor in full, then the Contractor shall inform the Contract Manager in writing of the reasons for withholding such payment. If the Contract Manager considers that the Contractor does not have any reasonable ground for withholding such payment from the Designated Sub-contractor, then the Employer shall be entitled to pay the Designated Sub-contractor direct and recover from the Contractor the monies so paid in accordance with Clause 15.3.
- (3) Neither the existence nor the exercise of such power of the Contract Manager or such right of the Employer shall render the Employer liable to pay any Designated Sub-contractor direct.

**12.4 Assignment of Designated Sub-contractor's obligations**

In the event of a Designated Sub-contractor having undertaken towards the Contractor in respect of the works or services executed or the materials supplied by the Designated Sub-contractor, any continuing obligation extending beyond the date of the expiry of the relevant Maintenance Period, the Contractor shall immediately after the date of such expiry assign to the Employer the benefit of such obligation 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 any 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 relevant 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 any 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 the certification of completion of the relevant Works, the Contractor shall remove all Constructional Plant, temporary buildings and surplus materials from the Site except those required to complete any outstanding work under Clause 8.7 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 shall, after deducting from any proceeds of sale the charges and expenses of and in connection with such sale and subject to Clause 15.3, pay the balance (if any) to the Contractor and if 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 any 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 relevant 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 termination of the Contractor's employment by the Employer in accordance with the provisions of the Contract or abandonment of the Contract by the Contractor before completion of the relevant 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 relevant Works.

The Contract Manager may make as many separate written requests as he thinks fit during the currency of the relevant 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 five percent of the total certified sum referred to in Clause 14.1 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 relevant Sites 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 relevant 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 5.14, the Employer shall not at any time be liable for any loss of or damage to any Constructional Plant, temporary buildings or materials which have become the property of the Employer under Clause 13.1 or, as the case may be, Clause 13.2 or for any loss of or damage to any hired or hire-purchase Constructional Plant brought onto any Sites under 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 any 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 Interim payments**

- (1) During the progress of any Works, the Contractor may serve on the Employer, at the end of each period of interim payment stated in the appendix to the Form of Tender, a statement with supporting documents requesting an interim payment for such Works. The statement in respect of the following shall be prepared by and at the expense of the Contractor in the form and with such copies as stated in the Contract or as may be required by the Contract Manager:-
  - (a) the estimated value of the work done in accordance with the Contract up to the end of such period with sums payable in respect of daywork and adjustments for Variations,
  - (b) a list of materials delivered to Sites for use in the permanent work and their estimated values, and
  - (c) all other estimated sums which the Contractor considers to be due to him under the Contract.
- (2) It shall be a condition precedent to the Contractor's entitlement to any payment that the Contractor shall 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 5.32 at a frequency of once every three months. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold any payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under Clause 14.3(2) for such period within which such payment was being withheld.

- (3) Unless otherwise stated in the Contract, the Contract Manager shall value and certify within 21 days from (and including) the date of service of the Contractor's statement in accordance with Clause 14.1(1) in respect of the following:-
- (a) the estimated values of the works executed based on the Contract Rates (where appropriate),
  - (b) the estimated values of the materials as referred to in Clause 14.1(1)(b) for incorporation into the permanent work and not being prematurely delivered to and being properly stored on Sites, and
  - (c) any other estimated sums to which, in the opinion of the Contract Manager, the Contractor is entitled in accordance with the Contract.

The interim payment for the estimated values in respect of Clauses 14.1(3)(a), 14.1(3)(b) and 14.1(3)(c) shall not exceed the percentage stated in the appendix to the Form of Tender for the same and there shall be no amount due if such payment is less than the minimum amount for interim payment stated in the appendix to the Form of Tender.

Nothing in this Clause 14.1 shall prevent the Contract Manager from certifying payments at any time for any sums if in his opinion it is desirable to do so.

- (4) Notwithstanding Clauses 14.1(1), 14.1(2) and 14.1(3), the Contract Manager may value and certify any Works for payment automatically at such interval stated in the appendix to the Form of Tender, in which event, the Contractor shall not be required to submit to the Contract Manager a statement requesting an interim payment as aforesaid.
- (5) The Contract Manager shall have the power to deduct from any certified value of any work executed, service performed or material supplied, with which he is for the time being dissatisfied, and the Contract Manager may (for that purpose or for any other reason which he considers proper) omit, correct or modify any sum previously certified by him.
- (6) No certification of an interim payment shall be deemed to constitute approval of any work or other matter in respect of which it is certified or shall be taken as an admission of the due performance of any Works or Works Order or any part thereof under the Contract or shall protect or be deemed to protect the Contractor in the case of any over measurement or over payment or shall constitute a waiver of any powers of the Contract Manager or any rights of the Employer arising under the Contract against the Contractor or his sureties.

#### **14.2 Submission of final bills for Works**

- (1) As soon as possible after completion of measurement of a Works Order and in any event not later than 90 days after the date of completion of the Works as certified by the Contract Manager in accordance with Clause 8.7, the Contractor shall submit a final bill (including a dimension book) in respect of the Works to the Contract Manager for his checking and correction of errors (if any).
- (2) Final bills, dimension books and all supporting vouchers, invoices, receipts and other documents and information shall be prepared by and at the cost of the Contractor and in such manner as may be required by the Contract Manager.
- (3) The Contractor may claim the value of any Works based on the standard base value (as stated in the appendix to the Form of Tender) without stating any details or measurements of such Works, provided that completion of such Works shall have been certified in accordance with Clause 8.7. The claimed value of the Works Order for such works shall be deemed to be the correct value of such Works Order and shall be binding upon the Contractor.
- (4) Upon receipt of final bills and supporting documents, Works Orders subject to batch payments ("Batched Works Orders") as specified in the Specification shall be sorted into batches according to the mechanism specified in the Specification and their claimed values as stated in the appendix to the Form of Tender if applicable.

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- (5) In the case of Batched Works Orders subject to sampling and checking as specified in the Specification, random samples from the Batched Works Orders in the batch of not less than ten per cent (10%) of the total number of the Batched Works Orders (subject to the total claimed value of the sampled Works Orders (“Sampled Works Orders”) being not less than ten per cent (10%) of the total claimed value of the Batched Works Orders) will be selected for checking in accordance with the procedures set out in the Specification. After the final bills in respect of the Sampled Works Orders have been checked and all corrections of errors (if any) to such final bills have been made by the Contract Manager and agreed by the Contractor, the total claimed value of the Batched Works Orders shall be adjusted by the Contract Manager by applying thereto the percentage of error (“Adjusted Percentage”) derived from the difference between the corrected total claimed value and the original total claimed value of the Sampled Works Orders.
- (6) The Contract Manager shall have the power to select any Works Orders for individual checking. When requested by the Contract Manager or the Contract Manager’s Representative, the Contractor shall assist in checking measurements in dimension books against the Works as detailed in the Works Order, and shall furnish all particulars as and when required by the Contract Manager or the Contract Manager’s Representative. Should the Contractor fail to assist or furnish the required particulars, any correction of value made to the final bills by the Contract Manager shall be deemed to be the correct value of such Works Order and shall be binding upon the Contractor.
- (7) If the Contractor fails to submit any final bills (including dimension books) to the Contract Manager within the period stated in Clause 14.2(1), the Contract Manager may value the Works only based on the information available to him at that time and the amount so valued shall be deemed to be the correct value of such Works Order and shall be binding upon the Contractor.
- (8) Notwithstanding Clauses 14.2(3), 14.2(5) and 14.2(6), the Contract Manager may value any Works at his discretion, in which event, the Contractor shall not be required to submit a final bill to the Contract Manager in accordance with Clause 14.2(1).
- (9) The Contract Manager shall forward a summary of Batched Works Orders for each batch to the Contractor for his agreement. For Batched Works Orders subject to sampling and checking, such summary showing the corrected total claimed value of the Sampled Works Orders, the Adjusted Percentage and the adjusted total claimed value of the Batched Works Orders thereof shall be supported by corrected final bills. For Works Orders other than the Batched Works Orders, a corrected final bill will be forwarded to the Contractor for his agreement showing the claimed and corrected values of the Works Orders.
- (10) Should the Contractor notify the Contract Manager (in such manner as required by the Contract Manager) of his agreement to the amount shown on the summary of the Batched Works Orders or, as the case may be, the corrected final bill, the Contract Manager shall then certify as correct the final total value of the Batched Works Orders or the Works Order for payment. Otherwise, within 45 days after the date of issue of the summary of the Batched Works Orders or the corrected final bills to the Contractor, the Contractor shall submit to the Contract Manager any written representations he may wish to make in respect of the summary of the Batched Works Orders or the corrected final bills, and all information reasonably required. If the Contractor fails to agree and/or submit written representations and information required, the Contract Manager shall certify as correct the amounts shown on the summary of Batched Works Orders or the corrected final bills which in his opinion are the final values of the Works Orders or, as the case may be, the Works Order.
- (11) If the Contractor submits any representations or required information after the specified period in Clause 14.2(10), the Contract Manager is not obliged to take into account such representations or information and shall value the Works only on the information made available to him within the specified period.

### **14.3 Payment on certification**

- (1) Within 21 days of the Contract Manager's certification of a payment in accordance with Clause 14.1 or, as the case may be, Clause 14.2, the Employer shall pay to the Contractor the sum certified.
- (2)
  - (a) In the event of failure of the Employer to make payment to the Contractor in compliance with the provisions of this Clause 14.3, 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 (and including) the day following the day on which the same should have been made until (and not including) the date of payment.
  - (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 certification of the Contract Manager or otherwise, at a rate in excess of 1% above the said average of the best lending rates.

### **14.4 Final certificate**

- (1) Upon the expiry of all Maintenance Periods and when all outstanding works or services referred to under Clause 8.7 and all works of repair, reconstruction, rectification and making good of all defects, imperfection, shrinkage and other faults referred to in Clause 10.1 shall have been completed in accordance with the Contract, the Contract Manager shall issue a final certificate stating the date on which the Contractor shall have completed his obligation to execute the Whole of the Works.
- (2) No certificate, other than the final certificate, shall be deemed to constitute approval of any work or service 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 final certificate shall not be deemed to constitute approval of any work or service 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 final certificate.
- (3) The issue of any certificate including the final certificate shall not be taken as relieving the Contractor or the Employer from any liability towards each 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 any Works unless the Contractor shall have made a claim in relation thereto in accordance with the time limits specified in Clause 8.4, 11.5 or 11.6.

## **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 purpose of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer being 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 if the Contract Manager shall certify in writing to the Employer that in his opinion the Contractor:-

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

then the Employer may after giving at least 7 days' notice in writing to the Contractor enter upon all Sites and all 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 any rights or powers conferred on the Employer or the Contract Manager by the Contract and the Employer may complete or may employ any other contractor to complete all outstanding works or services in respect of Works Orders issued to the Contractor prior to such entry 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) Notwithstanding anything to the contrary in the Contract, if the Contractor has engaged or is engaging in any act or activity that may or is likely to constitute or cause the occurrence of an offence endangering national security or which would otherwise be contrary to the interest of national security, or the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security, the Employer may after giving notice in writing to the Contractor immediately enter upon all Sites and all 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 any rights or powers conferred on the Employer or the Contract Manager by the Contract and the Employer may complete or may employ any other contractor to complete all outstanding works or services in respect of Works Orders issued to the Contractor prior to such entry 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.
- (3) As soon as may be practicable after such entry and expulsion by the Employer, the Contract Manager shall ascertain and record:-
  - (a) the quantity of works or services 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 shall apply for the purpose of attendance by the Contractor for measurement and agreement of records and drawings.

- (4) By the notice referred to in Clause 15.1(1) or by further notice in writing within 28 days of the date thereof or by further notice in writing within 28 days of the notice referred to in Clause 15.1(2), the Employer may require the Contractor to assign to the Employer and the Contractor shall, if so required, forthwith assign to the Employer the benefit of any agreement for the supply of any material and/or for the execution of any work or service for the purpose of the Contract which the Contractor may have entered into.
- (5) (a) If the Employer enters upon all Sites and all 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 Contract Manager or otherwise) unless and until the Contract Manager certifies that an amount is due to the Contractor under Clause 15.1(5)(b).
- (b) The Contract Manager shall certify the difference between:-
- (i) such sum as would have been due to the Contractor had he duly completed all Works in such Works Orders issued prior to such entry together with any proceeds of sale under Clause 15.1(1) or 15.1(2), and
- (ii) the sum of the costs of completing all Works in such Works Orders issued prior to such entry (including the Works completed by the Contractor in accordance with the Contract prior to such entry and the remaining Works completed by other contractors employed by the Employer), damages for delay (if any) to the completion of such Works and all other expenses reasonably incurred by the Employer in connection with or arising out of the termination under Clause 15.1(1) or 15.1(2).
- (c) Such difference as certified by the Contract Manager under Clause 15.1(5)(b), subject to adjustment by the Contract Manager to take into account of the amount (if any) certified by the Contract Manager under Clause 15.1(6), 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 Contract Manager's certification of payment.
- (6) If the Contract Manager is satisfied at any time prior to the completion of the Works in such Works Orders issued prior to such entry that the whole or part of the costs, damages and other expenses referred to in Clause 15.1(5)(b)(ii) exceeds such sum as calculated under Clause 15.1(5)(b)(i), he may certify for interim payment to that effect and the amount of such excess as certified by the Contract Manager 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 Contract Manager's certification of interim payment.

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

- (1) In an event that:-
- (a) the Contractor fails to commence any Works within the time stipulated in the Specification,
- (b) the Contractor fails to comply with an instruction given by the Contract Manager (which was issued due to the Contractor's failure in carrying out work or service under the Contract or complying with any instruction given by the Contract Manager in accordance with the Contract within a reasonable time, and under which the Contractor was required to carry out such work or service or comply with such instruction) within 14 days of the date of such instruction, or
- (c) the Contractor fails to improve the rate of progress of any Works or Section to the satisfaction of the Contract Manager within the time under Clause 8.5(1),

the Employer shall be entitled to carry out such work or service, or, as the case may be, such instruction, by his own workers or any other contractor. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or service 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 any Works, any remedial or other works or services 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 works or services, the Contract Manager may authorise the carrying out of such remedial or other works or services by a person other than the Contractor. If the remedial or other works or services so authorised by the Contract Manager are works or services 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 always 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 the Employer shall have the right 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.

### **15.4 Termination of Contract**

- (1) Notwithstanding anything to the contrary contained in the Contract, the Employer shall, in addition to any other rights enabling the Employer to terminate the Contract, have the right to terminate the Contract at any time after the period stated in the appendix to the Form of Tender by serving prior notice in writing to the Contractor, provided that the Employer shall comply with the time requirement for service of the prior notice stated in the appendix to the Form of Tender. The termination shall be effective on the date of termination stated in such notice.
- (2) On or before the date of termination specified in such notice and subject to the provision of Clause 15.4(4), the Contractor shall, with all reasonable despatch remove from all Sites all Constructional Plant, temporary buildings and surplus materials and shall similarly allow his sub-contractors to do so.
- (3) In the event of such termination, the Employer shall not be responsible for any losses or damages to the Contractor arising out of or in connection with or by consequence of such termination save that the Employer shall be under the same obligations to the Contractor in regard to payments under Clauses 14.1, 14.2 and 14.3, and the Contract shall, save the rights of the parties under Clauses 14.1, 14.2 and 14.3 and the operation of Clause 17.1, terminate but without prejudice to the rights of either party in respect of any antecedent breach of the Contract.
- (4) Notwithstanding Clause 15.4(2), the Contractor shall, unless otherwise directed by the Contract Manager, complete to the satisfaction of the Contract Manager the Works in respect of Works Orders issued to the Contractor prior to the date of termination.



## **16 SPECIAL RISKS AND FRUSTRATION**

### **16.1 Special risks**

- (1) If during the currency of the Contract, 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 Works,
  - (b) an invasion of Hong Kong,
  - (c) civil war, rebellion, revolution or military or usurped power in Hong Kong,
  - (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 Designated 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 Whole 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) Upon termination under Clause 16.1(1), the Contractor shall with all reasonable despatch remove from all Sites all Constructional Plant, temporary buildings and surplus materials and shall similarly allow his sub-contractors to do so.
- (3) In the event of termination under Clause 16.1(1), the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payments on account made to the Contractor, for all works or services executed prior to the date of termination at the Contract Rates and in addition:-
- (a) the sums payable in respect of preliminary items in so far as the works or services comprised therein have been carried out or performed and a proper proportion as certified by the Contract Manager of such works or services comprised in such items have been partially carried out or performed;
  - (b) the Cost of materials (if any) reasonably ordered for all works in respect of Works Orders issued to the Contractor prior to such termination 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; and
  - (c) (where appropriate in the opinion of the Contract Manager) a sum to be certified by the Contract Manager being any Cost reasonably incurred by the Contractor in the expectation of completing all works in respect of Works Orders issued to the Contractor prior to such termination in so far as such Cost shall not have been paid in accordance with any provision of this Clause 16.1.
- (4) Whether the Contract shall be terminated in accordance with 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 any 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 purpose 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 thereof.
- (b) If the Works or any materials on any Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall be entitled to payment for such Works and for such materials so destroyed or damaged and the Contractor shall also be entitled to recover from the Employer the expenses of 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, and the Contract Manager shall determine the expenses incurred by the Contractor as in his opinion reasonable and notify the Contractor in writing accordingly.
- (c) Destruction, damage, injury or loss of life caused by 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 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) The Employer, the Contractor and the Contract Manager shall perform their obligations or duties under the Contract with due expedition. The Employer and the Contractor 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.
- (2) 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 unless and until the same has been issued or notified in writing to the Employer and/or the Contractor in accordance with the Contract.

- (3) When a difference between the Employer and the Contractor arises, the site level representatives of the Employer and the Contractor shall attempt in good faith to resolve the difference. If the site level representatives cannot resolve the difference within a reasonable time, either the Employer or the Contractor may serve on the Contract Manager a Notice of Dispute defining the difference and requesting a decision by the Contract Manager.

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Provided that no Notice of Dispute may be served unless the Employer or the Contractor who wishes to do so has first taken steps or has invoked procedures, if there are such steps or procedures stipulated in the Contract, in connection with the subject matter of the difference and the other party or the Contract Manager, as the case may be, has taken such steps as may be required under the Contract or has been allowed a reasonable time to take such steps.

- (4) For the purpose of this Clause 17.1, a Notice of Dispute shall be a notice in writing from either the Employer or the Contractor to the Contract Manager stating the matter in dispute. A dispute shall be deemed to arise when a Notice of Dispute has been served.
- (5) Within 60 days of receiving a Notice of Dispute, the Contract Manager shall either issue his decision in writing on the dispute or state in writing his inability to make a decision on the dispute to the Employer and the Contractor. The Contract Manager's decision shall be final and binding upon the Employer and the Contractor and they shall both give effect forthwith to such decision unless and until as hereinafter provided either:-
  - (a) the Employer and the Contractor agree otherwise, or
  - (b) the Contract Manager's decision is superseded by that of an arbitrator and an award that has been made and published.
- (6) If either the Employer or the Contractor considers that the dispute remains unresolved after receipt of the Contract Manager's decision or his statement of inability to make a decision on the dispute issued pursuant to Clause 17.1(5) and provided that no Notice to Refer to Arbitration under Clause 17.1(7) has been served, the Employer or the Contractor may within 28 days after the issue of such Contract Manager's decision or such statement of inability to make a decision on the dispute, serve on the other party a Mediation Request Notice in writing, requesting the dispute to be referred to mediation in accordance with and subject to "The Government of the Hong Kong Special Administrative Region Construction Mediation Rules" (the "Mediation Rules") or any modification thereof being in force at the date of such request. The other party shall, within 28 days from the receipt of a Mediation Request Notice, reply in writing either agreeing to or rejecting mediation.
- (7) The Employer or the Contractor may require the dispute to be referred to arbitration for resolution by serving a Notice to Refer to Arbitration in writing within the time limits below:-
  - (a) within 28 days after the issue of the Contract Manager's decision or his statement of inability to make a decision in respect of a Notice of Dispute, or
  - (b) within 28 days of any of the following:-
    - (i) a rejection to mediate by either party in writing issued within 28 days from the receipt of the Mediation Request Notice,
    - (ii) a failure of the other party to reply to a Mediation Request Notice within 28 days from the receipt of the Mediation Request Notice, or
    - (iii) a failure of the Employer and the Contractor to reach a settlement in the mediation requested in accordance with the Clause 17.1(6). Failure of settlement by mediation shall be taken to be the abandonment or termination of the mediation under Rule 11(b) or 11(c) of the Mediation Rules.
- (8) The reference to arbitration under Clause 17.1 shall be 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. The reference to arbitration shall also 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.
  - (b) Subject to Clauses 17.1(8)(c) and 17.1(8)(d), the Domestic Arbitration Rules (2014) 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.

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- (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 20.1 of the Arbitration Rules shall be deleted and replaced by the following:-
- “20.1(a) 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:-
- (i) are necessary for implementation or enforcement,
  - (ii) are required by the parties’ auditors or for some other legitimate business reasons,
  - (iii) are required by any order of the courts of Hong Kong or other judicial tribunal, or
  - (iv) which are necessary for the making of claims against any third party or to defend a claim brought by any third party.
- 20.1(b) Notwithstanding Article 20.1(a) 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.”
- (9) The arbitrator appointed 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, measurement, valuation, determination, ascertainment or certificate of the Contract Manager.
- (10) Neither the Employer nor the Contractor shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Contract Manager for the purpose of obtaining his determination above referred to. Save as provided for in Clause 17.1(11), no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.
- Provided that:-
- (a) the certification of completion in accordance with Clause 8.7 shall not be a condition precedent to the taking of any step in such reference, and
  - (b) no decision given by the Contract Manager in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

- (11) In the case of any dispute or difference being related to the exercise of the Contract Manager's powers under Clause 15.1(1) or 15.1(2) or where the Contract has been terminated or abandoned the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be completed.

## **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,
  - (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,
  - (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 any Site.
- (2) Subject to Clause 18.1(4), any notice to be given to the Contract Manager 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 served on him in like manner to any other notice to be given to the Contract Manager.
- (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 14.3 within 28 days after the same shall have become due under the provisions of the Contract, the Contractor may give a notice in writing to the Employer to make payment of the sum due within 14 days from the date of notice. 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 period, the Contractor shall be entitled to terminate the Contract.
- (2) So long as no notice pursuant to Clause 15.1(1) or 15.1(2) is given to the Contractor either before or during the 14-day period provided in Clause 19.1(1), on expiration of the said 14-day period, the property in all Constructional Plant and temporary buildings brought upon any 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 Expenditure 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 Contract Manager is of the opinion that the Contractor has incurred an increase in 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 Contract Manager shall ascertain such increase in accordance with Clause 11.6.
- (2) If the Contract Manager 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 Contract Manager shall determine such decrease which shall be deducted from any payment due to the Contractor under the Contract or recovered from the Contractor under Clause 15.3.

### **20.2 Contract price fluctuations**

- (1) For any Works in respect of Works Orders issued at any time during the first 12 months of the Contract Period, no adjustment to the Tendered Percentage Adjustment shall be made by virtue of any fluctuations in wages rates or materials prices or any other costs whatsoever that may have occurred during such period.
- (2) For any Works in respect of Works Orders issued at any time during the second 12 months of the Contract Period, the Tendered Percentage Adjustment shall be increased or decreased in accordance with the provisions of Clauses 20.2(2) to 20.2(6) if there shall be any difference between the Fluctuation Index Figure and the Base Index Figure as referred to in Clause 20.2(3).
- (3) For the purpose of Clause 20.2(2):-
  - (a) "Index Figure" shall mean any index figure in the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2021 = 100)" compiled by the Census and Statistics Department of the Government (hereinafter referred to as the "C&SD") in respect of the items given in the labour and material list referred to in the Specification (hereinafter referred to as "the labour and material list").
  - (b) "Base Index Figure" shall mean the appropriate Index Figure applicable to the month which is two months prior to the Tender Closing Date.
  - (c) "Fluctuation Index Figure" shall mean the appropriate Index Figure applicable to the month which is 12 months following the month to which the Base Index Figure shall apply.
  - (d) "Price Fluctuation Factor" ("PFF") (rounded to the nearest four decimal places) shall mean the resultant obtained by multiplying the predetermined factor by a fraction the numerator of which is the difference between the corresponding Fluctuation Index Figure and the corresponding Base Index Figure and the denominator of which is the corresponding Base Index Figure.
- (4) The labour and material list and the corresponding predetermined factors referred to in the Specification shall, for the purpose of this Clause 20.2, remain the same for the duration of the Contract, irrespective of the actual constituents of the work, save to the extent under Clause 20.2(6).
- (5) Pursuant to Clause 20.2(2), for any Works in respect of Works Orders issued at any time during the second 12 months of the Contract Period, the Tendered Percentage Adjustment ("TPA") shall be adjusted and calculated using the following formula (rounded to the nearest two decimal places).

$$\text{TPA} + (100\% + \text{TPA}) \times \text{sum of all PFF}$$

- (6) In the event of any changes to the base period, composition, compilation method or availability of the Index Figure or any statistical figures used for compiling an Index Figure, as adopted by the C&SD in the published Index Figure on or after the Tender Closing Date, and
- (a) where a conversion factor and/or the associated conversion method for the change in the Index Figure is available from C&SD, the relevant Fluctuation Index Figure upon and after the discontinuation of the Index Figure with the original base period, composition and/or compilation method shall be calculated by using such conversion factor on the corresponding Index Figure;
- (b) where the Index Figure remains available but a conversion factor and/or the associated conversion method is not available from C&SD, the relevant Fluctuation Index Figure upon and after the discontinuation of the Index Figure with the original base period, composition and/or compilation method shall be calculated by multiplying the new Index Figure by a contract conversion factor which is a fraction, the numerator of which is the sum of the Index Figure with the original base period, composition and/or compilation method over the 12 months immediately before the first reference month whereby the Index Figure is discontinued (hereinafter referred to as the “month of the discontinuation”), and the denominator of which is the sum of the Index Figure with the new base period, composition and/or compilation method over the 12 months immediately before the month of the discontinuation

$$\text{(i.e. Contract Conversion Factor } C = \frac{\text{OIF}_{k-1} + \text{OIF}_{k-2} + \dots + \text{OIF}_{k-12}}{\text{NIF}_{k-1} + \text{NIF}_{k-2} + \dots + \text{NIF}_{k-12}}$$

where

- k is the month of the discontinuation of the old Index Figure
- $\text{NIF}_{k-x}$  is the new Index Figure applicable for x month(s) before month k
- $\text{OIF}_{k-x}$  is the old Index Figure applicable for x month(s) before month k); or

- (c) where the Index Figure becomes unavailable, such Index Figure (with its relevant item in the labour and material list) shall be abandoned. The corresponding predetermined factors shall be redistributed to other items in the labour and materials list which Index Figures remain available on a pro-rata basis. The predetermined factors in the labour and material list shall be updated accordingly.
- (7) For any Works in respect of Works Orders issued at any time after the second 12 months of the Contract Period, the Tendered Percentage Adjustment shall be increased or decreased in accordance with the provisions of Clauses 20.2(2) to 20.2(6), except that for the purpose of this Clause 20.2(7), Fluctuation Index Figure shall mean the appropriate Index Figure applicable to the month which is 24 months following the month to which the Base Index Figure shall apply.
- (8) This Clause 20.2 shall not apply to works not subject to Tendered Percentage Adjustment. For avoidance of doubt, any percentages (including any Percentage Additions) quoted in the Form of Tender other than the Tendered Percentage Adjustment shall not be adjusted under this Clause 20.2.

## **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.

General Conditions of Contract for Building and Miscellaneous Term Contracts  
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