



**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**

**GENERAL CONDITIONS OF CONTRACT
FOR
TERM CONTRACTS
FOR
ELECTRICAL AND MECHANICAL
ENGINEERING WORKS**

2007 EDITION

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GENERAL CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

Definitions

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

"Change in Law" means any addition or amendment to any enactment, regulations, bye-laws or rules listed in Appendix A attached to these General Conditions Contract

(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 parties' respective rights and obligations in relation to compliance with such addition or amendment upon its commencement.

"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 work or vehicles engaged in transporting any personnel, Constructional Plant, Plant, materials or other things to or from any Site.

"Contract" means the Articles of Agreement, the Tender and the acceptance thereof by the Employer (including such further agreed documents as may be expressly referred to in or by the same), Drawings, General Conditions of Contract, Special Conditions of Contract (if any), Specification and Schedule of Rates.

"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.

"Contract Area" means the area referred to in the Contract within which the Sites are located.

"Contract Period" means the period referred to in the Form of Tender within which the Engineer may issue Works Orders to the Contractor, the commencement of which shall be within 30 days after the date of acceptance of the Tender and notified by the Engineer.

"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.

"Defects Liability Period" means the defects liability period stated in the Appendix to the Form of Tender calculated from the date of completion of any Works Order or part thereof certified by the Engineer in accordance with Clause 55.

"Designated Contract Area" means the part of the Contract Area within which Works will normally be ordered.

"Designated Sub-contractor" means and includes all specialists, merchants, tradesmen and the like executing any part of any Works or supplying any materials or services for any Works who shall be employed by the Contractor on the instructions of the Engineer.

"Drawings" means the drawings referred to in the Specification or Schedule of Rates and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished in writing or approved in writing by the Engineer.

"Employer" means the Government of the Hong Kong Special Administrative Region.

"Engineer" means the person, company or firm appointed from time to time by the Employer and notified in writing to the Contractor to act as the Engineer for the purposes of the Contract. The person appointed may be described by name or as the holder for the time being of a Public Office.

"Engineer's Representative" means any person, company or firm appointed from time to time by the Engineer and notified in writing to the Contractor to perform the duties set forth in Clause 2(2). The person appointed may be described by name or as the holder for the time being of a Public Office.

"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 the Hong Kong Special Administrative Region.

"Hong Kong" means the Hong Kong Special Administrative Region.

"Plant" means the machinery, equipment and apparatus of all kinds other than the Constructional Plant to be supplied and installed by the Contractor for the Works.

"Portion" means a part of any Site separately identified in any Works Order.

"Public Office" means an office of emolument under the Government of the Hong Kong Special Administrative Region, whether such office be permanent or temporary.

"Schedule of Rates" means the schedule of rates referred to in the Contract.

"Site" means the lands and other places including the sea under, over, on, in or through which Works in a Works Order are to be constructed and any other lands or places provided by the Employer for the purpose of carrying out the requirements of such Works Order together with such other places as may be subsequently agreed in writing by the Engineer as forming part of the Site of such Works Order.

"Specialist Contractor" means any contractor employed by the Employer to execute Specialist Works.

"Specialist Works" means any work 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 the Site of such Works by a Specialist Contractor.

"Specification" means the specifications referred to in the Contract and any modification thereof or addition thereto as may be included in any Works Order or as may otherwise from time to time be furnished in writing or approved in writing by the Engineer.

"Temporary Works" means all temporary work of every kind required for the construction, completion and maintenance of any works.

"Tender" means the Contractor's tender for the Contract.

"Test" means any test prescribed by the Contract or instructed by the Engineer or Engineer's Representative and includes commissioning of the Works and any commissioning test.

"Whole of the Works" means all Works in all Works Orders and all obligations and services to be performed under the Contract.

"Works" means the work, services and/or goods ordered from time to time, which include work or services to be carried out or goods to be supplied by Designated Sub-contractors, in accordance with the Contract as detailed in a Works Order and includes Temporary Works.

"Works Order" means a written order signed by the Engineer and served on the Contractor or posted to the Contractor's usual place of business for any work to be executed, services to be performed and/or goods to be supplied by the Contractor under the Contract.

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

Singular and Plural (2) Words importing the singular only also include the plural and vice versa where the context requires.

Marginal notes (3) The index and marginal notes or headings in the General Conditions of Contract, Special Conditions of Contract if any, and the Specification shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof.

Payment (4) (a) Unless otherwise provided, all payments shall be made in Hong Kong dollars.
(b) No adjustment shall be made to the final value of the Works on account of any variation in the exchange rate between the Hong Kong dollar and any other currency.

Contract governed by Laws of Hong Kong (5) The Contract shall be governed by and construed in all respects according to the laws for the time being in force in Hong Kong.

Gender (6) Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.

ENGINEER AND ENGINEER'S REPRESENTATIVE

Duties and powers of the Engineer and the Engineer's Representative 2. (1) (a) The Engineer shall carry out the duties and may exercise the powers specified in or necessarily to be implied from the Contract.

(b) Before carrying out any such duty or exercising any such power, the Engineer may be required under the terms of his appointment by the Employer to obtain confirmation that the Employer has no objection to the Engineer's proposed course of action and, in the event of an objection, to act in accordance with the Employer's direction. If the Engineer is subject to any such requirements, particulars thereof shall be set out in the Appendix to the Form of Tender.

(c) The Contractor's rights under the Contract shall not be prejudiced in any way by any failure

on the part of the Engineer to comply with the requirements particularised in the Appendix to the Form of Tender or any other requirements of his appointment by the Employer.

- (d) Except as expressly stated in the Contract, the Engineer shall have no power to amend the terms and conditions of the Contract nor to relieve the Contractor of any of his obligations under the Contract.

(2) The duties of the Engineer's Representative are to watch and inspect the Whole of the Works, to test and examine any Plant or material to be used and workmanship employed by the Contractor in connection with the Whole of the Works and to carry out such duties and exercise such powers vested in the Engineer as may be delegated to him by the Engineer in accordance with the provisions of sub-clause (3) of this Clause.

(3) The Engineer may from time to time delegate to the Engineer's Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Engineer 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 Engineer'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 Engineer.

Provided that:

- (a) failure of the Engineer's Representative to disapprove any work, Plant or material shall not prejudice the power of the Engineer thereafter to disapprove such work, Plant or material;
- (b) if the Contractor or the Employer shall be dissatisfied by reason of any decision of the Engineer's Representative they may refer the matter to the Engineer who shall confirm, reverse or vary such decision.

(4) No act or omission by the Engineer or the Engineer'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 the duties, responsibilities, obligations or liabilities imposed upon him by any of the provisions of the Contract.

(5) Where a person is appointed to be the Engineer or the Engineer's Representative as the case may be and is described as the holder for the time being of a Public Office it is declared that 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 Engineer or the Engineer's Representative as the case may be.

ASSIGNMENT AND SUB-CONTRACTING

Assignment **3.** The Contractor shall not assign the Contract or any interest therein without the written consent of the Employer and any assignment shall be in a form approved by the Employer.

Sub-contracting **4.** (1) The Contractor shall not sub-contract the Whole of the Works. The Contractor shall be permitted, unless expressly prohibited by the Contract to sub-contract a part of the Works, either on the basis of the provision by the sub-contractor of labour and materials and Plant or by the provision of labour.

(2) The Contractor shall be permitted to sub-contract a part of the Works on the basis of provision of Constructional Plant by the sub-contractor, provided that such sub-contracting is not expressly prohibited by the Engineer in writing within a period of 14 days from receipt by the Engineer of a request in writing from the Contractor.

(3) Notwithstanding that the Contract has not prohibited sub-contracting under sub-clause (1) of this Clause and the Engineer has not prohibited sub-contracting under sub-clause (2) of this Clause the Engineer, if in his opinion he considers it necessary, shall have full 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 the Works shall not relieve the Contractor from any liability or obligation under the Contract particularly in respect of the provision of superintendence in accordance with Clause 18 and he shall be responsible for the acts, defaults and neglects of any sub-contractor or the agents, employees or workers of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor, his agents, employees or workers.

(5) It shall be the duty of the Contractor if so required by the Engineer to furnish the Engineer with full particulars of any sub-contractor employed or to be employed on any Works.

CONTRACT DOCUMENTS

Documents mutually explanatory

5. (1) Save to the extent that any Special Condition of Contract provides to the contrary the provisions of these General Conditions of Contract shall prevail over those of any other documents forming part of the Contract.

(2) Subject to the foregoing the several documents forming the Contract are to be taken as mutually explanatory of one another but in case of ambiguities or discrepancies the same shall be explained by the Engineer who shall issue to the Contractor instructions clarifying such ambiguities or discrepancies. Where the Contractor makes a request in writing to the Engineer for instructions under this sub-clause the Engineer shall respond within 14 days of receipt of such request.

Provided that:-

- (a) work shown on the Drawings or described in the Specification but not referred to in the Schedule of Rates shall be dealt with in accordance with Clause 63;
- (b) if in the opinion of the Engineer compliance with such instructions shall involve the Contractor in any expense which by reason of any ambiguity or discrepancy the Contractor did not and had no reason to anticipate, the Engineer shall value such expense in accordance with Clause 63, and certify for payment accordingly;
- (c) if in the opinion of the Engineer compliance with such instructions shall involve the Contractor in any saving then the Engineer shall value such saving and deduct the same from any payment due to the Contractor.

Provision of Drawings and Specification

6. (1) Two copies of the Contract and two additional copies of the Drawings shall be furnished to the Contractor free of charge.

(2) The Engineer 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 rate laid down from time to time by the Employer.

(3) The Engineer 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 Engineer shall be necessary for the purpose of the execution of such Works and the Contractor shall be bound by the same.

(4) The Contractor shall give adequate notice in writing to the Engineer of other Drawings or Specification that may be required for the execution of any Works.

(5) One copy of the Drawing furnished to the Contractor as aforesaid shall be kept by the Contractor at those Sites nominated by the Engineer and the same shall at all reasonable times be available for inspection and use by the Engineer and the Engineer's Representative and by any other person authorized by the Engineer in writing.

(6) At the completion of the Whole of the Works the Contractor, if required by the Engineer, shall return to the Engineer all Drawings and other Contract documents provided under the Contract, other than the Contractor's signed copy of such Drawings or documents.

Drawings provided by the Contractor for Works

7. (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 Engineer at a reasonable time before the work shown or described thereon is to be carried out so as to permit the Engineer sufficient time to examine the Contractor's proposals properly. The Engineer shall give or refuse his approval in writing to such proposals within a reasonable time.

(2) If the Engineer has reasonable cause for being dissatisfied with the proposals set out in the Contractor's Drawings or documents the Engineer shall require the Contractor to make such amendments thereto as the Engineer 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 Engineer with the type and number of copies of such Drawings and documents as may be specified in the Contract within 14 days of the Engineer's approval.

(4) Should it be found at any time after approval has been given by the Engineer that the details do not comply with the terms and conditions of the Contract or that the details do not agree with the Drawings or documents previously submitted and approved by the Engineer, the Contractor shall make such alterations or additions as in the opinion of the Engineer are necessary to remedy such non-compliance or non-agreement at the Contractor's own expense.

(5) No examination by the Engineer of the Drawings or documents submitted by the Contractor under

the provisions of this Clause nor any approval given by the Engineer of the same, with or without amendment, shall absolve the Contractor from any liability for the same.

Information not to be divulged

8. (1) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer, the Engineer or the Engineer's Representative in the Contract or in any subsequent correspondence or documentation. Any disclosure to any person or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-contractor. The Contractor shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional 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 provision by the Contractor or his employees, agents or sub-contracts.

(2) The Employer and the Engineer 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 work connected with any Works.

(3) Notwithstanding sub-clause (2) of this Clause, but subject to the following provisions, 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 the 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.

Use of English language

9. The Contract, all correspondence in connection with the Contract and Drawings or other documents provided by the Contractor in accordance with Clause 7 shall be in English.

GENERAL OBLIGATIONS

Extent of Contract

10. (1) The Contractor shall, subject to the provisions of the Contract, execute the Whole of the Works and provide all labour, materials, Plant, 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 to be inferred from the Contract.

(2) The right is reserved by the Employer, at the discretion of the Employer, to have any work or services of this Contract to be carried out or goods of this Contract to be supplied by means of a contract with others or by the use of the Employer's work force and resources.

Contractor to execute Articles of Agreement

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

Sureties or security

12. If the Contract so requires, the Contractor shall either :

- (a) at his own expense obtain the grantee in the form provided by the Employer of 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 Form of Tender for the due performance of the Contract, or
- (b) deposit with the Director of Accounting Services, the Government of the Hong Kong Special Administrative Region, as security for the due performance of the Contract the sum stated in the Form of Tender.

Provided that when the defects liability certificate in respect of the Whole of the Works is issued as

provided in Clause 83, the said guarantee or deposit sum shall be released or repaid to the Contractor.

Inspection of
the Contract
Area

13. (1) The Contractor shall be deemed to have examined and inspected the Contract Area and to have satisfied himself, before submitting his 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 injury or damage to property, the nature of materials (whether natural or otherwise) to be excavated, the nature of the work and materials necessary for the execution of the Whole of the Works, the accommodation he may require and generally to have obtained his own information on all matters affecting his Tender and the execution of the Whole of the Works.

(2) No claim by the Contractor for additional payment shall be allowed on the ground of any misunderstanding in respect of the matters referred to in sub-clause (1) of this Clause 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 and 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.

Sufficiency of
Tender

14. The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender for the Whole of the Works and of the Schedule of Rates together with the percentage adjustments applying thereto, which Schedule of Rates together with the percentage adjustments shall, except in so far as it is otherwise provided in the Contract, cover all his risks liabilities and obligations set out or implied in the Contract and all matters and things necessary for the proper execution of the Whole of the Works.

Works to be to
the satisfaction
of the Engineer

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

Order of
executing the
Works

16. The Contractor shall execute any part of any Works in the manner and to the programme or other requirements of the Engineer. In the absence of any requirements of the Engineer but subject to any requirements of the Contract the Contractor may select the manner, and programme of executing any Works.

Particulars to be
furnished

17. (1) The Contractor shall, whenever required by the Engineer, furnish for the Engineer's information particulars in writing of the Contractor's arrangements for carrying out any Works, which may include the Contractor's programme of Works, and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be.

(2) The submission to and approval by the Engineer of such particulars shall not relieve the Contractor of any of his liabilities and obligations under the Contract.

Contractor's
superintendence

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

(2) The Contractor shall ensure that he is at all times represented by competent and authorized English-speaking agents as provided in the Contract who shall be deemed to be approved by the Engineer provided any agent is not expressly disapproved by the Engineer in writing within 14 days from the serving of a notice in writing upon the Engineer by the Contractor of the appointment of such agent. Such agents shall give their whole time to the superintendence of the Whole of the Works.

(3) The Engineer shall have the power to withdraw his approval of any authorized agent at any time. If such approval shall be withdrawn the Contractor shall, after receiving notice in writing of such withdrawal, remove the agent forthwith and shall not thereafter employ him again on any Works in any capacity and shall replace him by other competent English-speaking agent approved by the Engineer.

(4) The authorised agents shall receive on behalf of the Contractor directions and instructions from the Engineer or the Engineer's Representative.

Contractor's
employees

19. (1) The Contractor shall provide and employ and shall ensure that any of his sub-contractors on every Site in connection with the execution of the Whole of the Works:

- (a) only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and
- (b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Whole of the Works.

(2) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from any Works any person employed by the Contractor or by a sub-contractor in or about the execution of such Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or fails to comply with any particular provision with regard to safety or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon any Works without the written permission of the Engineer.

(3) Any person so removed from any Works shall be replaced as soon as possible by a competent substitute.

Emergency
Works

20. (1) The Contractor shall have available at all times such workers, Constructional Plant and Plant as provided in the Contract for the execution of emergency works.

(2) If by reason of any accident or failure or other event occurring which, in the opinion of the Engineer, requires emergency works to be executed or services to be performed, the Engineer may give to the Contractor an order verbally in the first instance to be followed by a Works Order within 7 days of the issue by the Engineer 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.

Setting-out

21. (1) The Contractor shall be responsible for the true and proper setting-out of any Works in relation to original points, lines and levels of reference shown on any Drawing or any schedule supplied by the Engineer and for the correctness of the position, level, dimensions and alignment of any part of any Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

(2) If at any time during the progress of any Works any error shall appear or arise in the position, level, dimensions or alignment of any part of such Works, the Contractor on being instructed so to do by the Engineer or the Engineer's Representative shall, at his own expense, rectify such error unless such error is based on incorrect data shown on any Drawing or document supplied to the Contractor by the Engineer or the Engineer's Representative in which case the rectification shall be treated as a variation ordered in accordance with Clause 62.

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

Safety and
security of
Works

22. (1) The Contractor shall throughout the progress of any Works take full responsibility for the adequate stability and safety of all operations on the Site of such Works other than those of Specialist Contractors and utility undertakers and have full regard for the safety of all persons on such Sites. The Contractor shall keep all Sites and all Works in an orderly state appropriate to the avoidance of danger to all persons.

(2) The Contractor shall in connection with any Works provide and maintain all lights, guards, fences and warning signs and provide watchmen when and where necessary or required by the Engineer or by any competent statutory or other authority for the protection of such Works or for the safety and convenience of the public or others.

(3) The Contractor shall ensure that all parts of any Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of such Site and of such work.

(4) The Contractor, after obtaining any necessary approval from any relevant authority, shall submit to the Engineer 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 any 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 Engineer and properly provided and implemented on the Site of such Works.

Care of Works

23. (1) From and including the date for commencement of any Works as provided in Clause 49 until 28 days after the date of completion of such Works certified by the Engineer in accordance with Clause 55 or until the date the Employer takes over such Works, if earlier, the Contractor shall take full responsibility for the care of such Works and any Specialist Works (except the stability and safety of the operations of

Specialist Contractors and utility undertakings referred to Clause 22(1)) or any part thereof, and for the care of any Constructional Plant, temporary buildings, materials, Plant and things whatsoever on the Site of such Works or delivered to or placed on such Site in connection with or for the purpose of such Works or any Specialist Works.

Provided that if the Engineer shall issue a certificate of completion in respect of any part of such Works before he shall issue a certificate of completion in respect of the whole of such Works the Contractor shall cease to be responsible for the care of such part of such Works 28 days after the date of completion certified by the Engineer in respect of that part and the responsibility for the care thereof shall thereupon pass to the Employer.

Provided further that the Contractor shall continue to be responsible for the things which are required to be retained on such Site during the Defects Liability Period including Constructional Plant, temporary buildings, materials, Plant and other facilities provided for the use of the Engineer, the Engineer's Representative and their staff.

(2) In case any damage, loss or injury from any cause whatsoever, except the excepted risks as defined in sub-clause (4) of this Clause, shall happen to any Works or any Specialist Works or any part thereof, or to any Constructional Plant, temporary buildings, Plant, materials and things whatsoever on the Site of such Works, 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 Engineer and shall, notwithstanding such damage, loss or injury, proceed with the execution of such Works in all respects in accordance with the Contract and the Engineer's instructions.

(3) To the extent that any damage, loss or injury arises from any of the excepted risks defined in sub-clause (4) of this Clause, the Contractor shall, if instructed by the Engineer, repair and make good the same at the expense or proportionate expense of the Employer. Any sum payable under this Clause by the Employer shall be determined by the Engineer in the same manner as a sum payable in respect of a variation ordered in accordance with Clause 62.

(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 foreign terrorists in Hong Kong;
- (d) civil war, rebellion, revolution or military or usurped power in Hong Kong;
- (e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on and Works or any Specialist Works;
- (f) a cause due to the occupation by the Employer, his agents or employees or other contractors employed by the Employer, on any part of any Works for a purpose other than carrying out the Specialist Works, such purpose being authorized and required by the Employer;
- (g) damage, loss or injury which is the direct consequence of the Engineer's design of any Works;
- (h) a cause due to any neglect or default by the Engineer or the Employer or their employees or agents in the course of their employment;
- (i) ionizing radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion or 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) Notwithstanding the provisions of sub-clause (1) of this Clause, if the Contract provides a mobilization period within which the Contractor shall commence any Works then the Contractor shall take full responsibility for the care of such Works from and including the date of commencement as provided in Clause 49.

Damage to
persons and
property

24. (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 injury or damage to any person or 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 Works on such Site and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

(2) The Contractor shall make good or at the option of the Employer shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury which may occur to any agent or 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.

Provided that:

- (a) the Contractor's liability to indemnify or recompense the Employer under sub-clauses (1) and (2) of this Clause shall, subject to sub-clause (3) of this Clause, be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer, their respective agents or employees shall have contributed to the damage, loss or injury;
- (b) nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:
 - (i) the use or occupation of land provided by the Employer for any Works, or for the purpose of executing any Works, or interference, whether temporary or permanent, with any right of way, light, air or water or other easement or quasi easement which is the unavoidable result of the execution of such Works in accordance with the Contract,
 - (ii) the right of the Employer to construct any Works on, over, under, in or through any land, or for or in respect of all claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

(3) The indemnities given herein by the Contractor shall not be rendered ineffective reduced by reason of any negligence or omission of the Employer or the Engineer or the Engineer'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 work or services, or in ensuring proper performance of any other obligation of the Contractor.

Design
responsibility

25. Except as may be provided for in the Contract, the Contractor shall be responsible for the design of the whole of the Works and shall in completing the designs use all necessary skill and care. The Contractor shall ensure that Plant and materials required by the design to be incorporated into any Works are fit for the purpose intended by the Contract.

Interference
with traffic and
adjoining
properties

26. (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 and occupation of public or private roads or footpaths or to or of properties whether in the possession of the Employer or of any other person.

(2) The Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

Remedy on
failure to insure

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

Accident or
injury to
workmen

28. 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 workman or other person in the employ of the Contractor or any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, 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.

Contractor to
give notice of
injury

29. 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 be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required by the Employees' Compensation Ordinance (Chapter 282) and report the matter to the Engineer in the form prescribed in the Contract.

Patent rights
and
royalties

30. The Contractor shall indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights in respect of any Constructional Plant, machine, Plant, work, method or material or anything whatsoever required for

any Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. 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 any Works.

Provided that where in compliance with the Contract or the Engineer's written instructions the Contractor shall 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 patent rights, design, trademark, name or other protected rights in relation to such article, process or invention.

Provided further that the Contractor shall notify the Engineer as soon as the Contractor is aware of any incorporation of patented articles, processes or inventions as a condition precedent to any such reimbursement.

Giving of notices and payment of fees

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

- (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.”

Compliance with enactments and regulations

32. The Contractor shall conform in all respects with:-

- (a) the provisions of any enactment,
- (b) the regulations or by-laws of any local or duly constituted authority, and
- (c) the rules and regulations of such public bodies and companies as are referred to in Clause 31,

and any additions or amendments thereto or any new enactment, regulations, bye-laws or rules made during the continuance of the Works, which are applicable to the Works, and shall be responsible for the payment of all penalties and fines and discharge of all liabilities under such enactment, 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 enactment, regulations, bye-laws or rules. For the avoidance of doubt, the Contractor shall, under no circumstances, be paid by the Employer for any penalties, fines and liabilities under such enactment, regulations, bye-laws or rules.

32A. (1) The final account for such Works, shall subject to sub-clause (2) of this clause, be adjusted to take account of any increase or decrease in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract resulting from any Change in Law.

(2) If the Engineer is of the opinion the Contractor has been or is likely to be involved in decrease in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract resulting from any Change in Law or upon written application by the Contractor to the Engineer, the Engineer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change in Law, the Engineer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with Clause 78.

Notices to be written in English and Chinese

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

Site diary and labour returns

34. (1) The Engineer's Representative, unless the Engineer direct otherwise, will record daily in the Engineer's site diary information with regard to labour, plant, materials, utilities, work carried out, and instructions issued to the Contractor and all other facts that may affect the progress or quality of those Works.

(2) The authorized agent or representative of the Contractor shall sign the site diary daily indicating his agreement to the information recorded. If the authorized agent or representative of the Contractor does not agree with any of the items recorded in the site diary he shall draw reference to the points of disagreement in writing in the site diary.

(3) The Contractor shall, as and when called upon to do so by the Engineer, make available to the Engineer or such other person as the Engineer may direct, such information as the Engineer considers necessary to enable him properly to keep and maintain his site record, but in any event and without prejudice to the generality of the foregoing, the Contractor shall deliver to the office of the Engineer's Representative by not later than 1:00 p.m. on each working day a return in such form as the Engineer may prescribe showing in detail the numbers of the several classes of labour on every Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day together with such information concerning materials, Constructional Plant and other such matters as the Engineer's Representative may require.

Fossils

35. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on any Site shall, as between the Employer and the Contractor, be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workers or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer or the Engineer's Representative of such discovery and carry out at the expense of the Employer the instructions of the Engineer as to the disposal of the same.

Facilities for other persons

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

(2) If however the Contractor shall on written request of the Engineer either :-

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

any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer, any utility undertaking or other duly constituted authority, the Employer shall pay to the Contractor in respect of such use or service such sum as the Engineer considers reasonable.

Removal of surplus materials and rubbish

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

Publication of photographs of Sites or Works

38. (1) The Contractor shall not publish or otherwise circulate photographs of any Site 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.

Ethical Commitment

39. (1) If the Contractor or any of his agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Engineer or to any member of the Engineer's staff, the Employer shall be at liberty forthwith to terminate the employment of the Contractor under the Contract, and to hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

(2) The Contractor shall prohibit his employees, agents, and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.

(3) The Contractor shall require his employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this 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 this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.

(5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

Site cleanliness

40. The Contractor shall keep every Site in a clean and hygienic condition and where the Contract so requires the Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on such Site.

LABOUR

Engagement of labour

41. (1) The Contractor shall, subject to the requirement of the Contract, make his own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required for the execution of any 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 regulations as Government may from time to time require to be observed.

(2) As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong.

Default in payment of wages

42. In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor in and for carrying out this Contract and if a claim therefor is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or it 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 Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to that person and any sums so paid shall be recoverable by the Employer from the Contractor.

Passes

43. (1) The Engineer may arrange the issue of passes to the Contractor for the admission of workmen to any Site or to any part thereof and in such event any person who fails to show his pass on demand to any duly authorized person may be refused admission.

(2) If required by the Engineer the Contractor shall submit a list of the names of all his workmen requiring passes together with two photographs of each person and shall satisfy the Engineer of their bona fides and identity.

(3) Any pass so issued shall be returned at any time on the demand of the Engineer and in any case on completion of the Works on such Site or on the cessation of the bearer's employment on such Works.

MATERIALS, PLANT AND WORKMANSHIP

Quality of Plant, materials, workmanship and Tests

44. (1) All Plant, materials and workmanship shall be of the respective character, quality or kind required by the Contract and in accordance with the Engineer's instructions and shall be subjected to such examinations, measurements or Tests as the Contract shall require or as ordered by the Engineer or the Engineer's Representative at the place of manufacture, or on any Site, or at such other place or places as may be specified in the Contract, or at all or any such places. All Plant and materials shall be of recent manufacture and not previously used.

(2) The Contractor shall provide such assistance, instruments, machines, labour and other facilities as may be necessary for examining, measuring or testing any work and the quality, weight or quantity of any Plant and material used and, before incorporation into any Works, shall supply for examining, measuring or testing such samples of Plant and materials as may be selected or required by the Engineer or the Engineer's Representative.

(3) The Contractor shall bear the expense and costs of any examination, measurement or Test of complying with the requirements of sub-clause (2) of this Clause, including without limitation any transportation costs and shall reimburse the Employer in respect of the costs of the Engineer in attending such examinations, measurements or Tests, if such examinations, measurements or Tests 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 Engineer or the Engineer's Representative, then such expense and costs of such examinations, measurements or Tests including those of the Engineer's attendance shall be borne by the Contractor if the

examination, measurement or Test shows the Plant, materials or workmanship not be in accordance with the Contract or with the Engineer's instructions but otherwise such expense and costs shall be borne by the Employer and shall be valued in accordance with Clause 63.

(5) In the event that any Test shows that the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other Tests as the Engineer may approve.

(6) Sub-clauses (4) and (5) of this Clause 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 Engineer the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship notwithstanding there being satisfactory individual Tests included in any such series of Tests.

(7) Notwithstanding the above, testing carried out in the Employer's laboratories in connection with any Works shall be free of charge.

(8) If the Contractor is required by the Contract or ordered by the Engineer to carry out any examination, measurement or Test, then the Contractor shall give notice to the Engineer specifying the procedures that the Contractor intends to adopt and the time and location of the examination, measurement or Test. If no period of notice is specified in the Contract then reasonable notice shall be given by the Contractor having regard to the type and location of the Plant, materials and workmanship to be examined, measured or tested.

Access to any Site and places of manufacture

45. The Engineer and any person authorized by him shall at all times have access to all Works and to all Sites 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 Engineer and any person so authorized by him to obtain access when required to such other workshops and places from where materials or manufactured articles are being obtained for incorporation into any Works.

Examination of work before covering up

46. (1) No work shall be covered up or put out of view without the approval of the Engineer or the Engineer's Representative and the Contractor shall afford full opportunity for the Engineer or the Engineer's Representative to examine and measure any work which is about to be covered up or put out of view.

(2) The Contractor shall give reasonable notice to the Engineer's Representative whenever any such work is ready for examination and the Engineer's Representative shall, without unreasonable delay and unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and/or measuring such work.

Uncovering and making openings

47. (1) The Contractor shall uncover any part of any Works or make such openings in or through the same as the Engineer 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 Clauses 46 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 63 and certified for payment by the Engineer but in any other case the expense shall be borne by the Contractor.

Rejection and removal of unsatisfactory Plant, material and work

48. (1) The Engineer shall during the progress of any Works have the power to order in writing:

- (a) the rejection and the removal from the Site of such Works within such time as may be specified in the order of any Plant or material which in the opinion of the Engineer is not in accordance with the Contract;
- (b) the substitution of proper and suitable Plant or 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 Plant, material or workmanship, is not in accordance with the Contract.

(2) The Contractor shall bear the expense of uncovering, dismantling, breaking up and removal from any Site of any Plant, 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, dismantling, breaking up or removal.

(3) Where the rectification of any work or replacement of any Plant or material by the Contractor which

does not comply with the Contract would involve the removal and re-execution of the original permanent work the Engineer may but shall not be obliged to either:

- (a) give directions for a variation of such Works in lieu of such removal and re-execution at no additional expense to the Employer provided that if in the opinion of the Engineer such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Engineer shall value such excess in accordance with Clause 63 and shall certify in accordance with Clause 78 or Clause 79, as the case may be; or
- (b) with the prior agreement in writing of the Employer, accept any work which, in respect of Plant, material or workmanship, is not in accordance with the Contract and without requiring rectification and replacement or removal and re-execution, in which event the value of the work done as if the work has been executed in accordance with the relevant Works Order shall be reduced by such amount as may be determined by the Engineer in respect of any loss or damage suffered or likely to be suffered by the Employer or any saving in cost to the Contractor in carrying out the work which is not in accordance with the Contract, whichever is the greater.

Provided that the amount of reduction referred to in (b) above shall be agreed between the Engineer and the Contractor. In the event of the Engineer and the Contractor failing to reach agreement then the Engineer shall determine the amount of such reduction but in no event shall the amount of such reduction exceed the cost of removal and re-execution of the original permanent work.

(4) In the event that the Engineer exercises any of his powers under sub-clause (1) of this Clause concerning any material supplied by the Employer, and if in the opinion of the Engineer of the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Engineer shall ascertain and certify for payment the Cost incurred.

(5) Unless authorized otherwise by the Engineer, all replacement parts, which during the progress of the Works and the Defects Liability Period, are required to be fitted to any Plant, shall be genuine proprietary standard parts produced or recommended by the manufacturer of the Plant.

COMMENCEMENT, COMPLETION AND DELAYS

Commencement
of Works

49. (1) The Contractor shall commence the Works on the date for commencement stated on any Works Order or within the mobilisation period commencing on such date if specified in the Form of Tender or as otherwise provided in the Contract and shall proceed with the Works with due diligence and without delay except as may be expressly sanctioned or ordered by the Engineer or be wholly beyond the control of the Contractor.

(2) The Contractor shall not carry out any work without a Works Order except as provided for in Clause 20(2).

Possession of
Sites

50. (1) Save in so far as the Contract or any Works Order may prescribe or the Engineer may require pursuant to Clause 16 the extent of Portions of any Site of which the Contractor is to be given possession from time to time and the order in which such Portions shall be made available to him the Employer shall give to the Contractor possession of so much of such Site as may be required to enable the Contractor to commence and proceed with the execution of the Works as provided in Clause 16 and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Engineer. The Employer will from time to time, as such Works proceed, give to the Contractor possession of such further parts of such Site as may be required to enable the Contractor to proceed with due despatch.

Provided that the Employer may use for any purpose any part of any Site.

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

Time for
completion

51. (1) Works shall be completed, as the case may be,

- (a) on or before the date for completion as stated on a Works Order, or
- (b) on or before any revised date as a consequence of any revision pursuant to sub-clause (2) of this Clause, or
- (c) within any extended time as may be determined in accordance with Clause 52.

(2) If the Contractor or any authorized representative shall have reason to object to the time for completion given on any Works Order, he shall inform the Engineer in writing giving reasons for the objection within 3 days from the date of issue of such Works Order. The Engineer shall take into account

any reasons submitted, which in the opinion of the Engineer are reasonable, in determining whether or not a revised time for completion is justified. The Engineer shall provide written notification of his decision to the Contractor.

(3) The “time for completion” whenever referred to in the Contract shall be the inclusive days from:

- (a) the date for commencement of any Works as provide in Clause 49 (1), to
- (b) the date for completion as provided in sub-clauses (1)(a) or (b) of this Clause.

(4) General Holidays shall be included in the time for completion of the Works unless otherwise stated in the Contract.

Extension of
time for
completion

52. (1) (a) As soon as practicable but in any event within 28 days after the cause of any delay to the progress of any Works, the Contractor shall give notice in writing to the Engineer of the cause and probable extent of delay.

Provided that as soon as the Contractor can reasonably foresee that any order or instruction issued by the Engineer is likely to cause a delay to the progress of any Works the Contractor shall forthwith give notice in writing to the Engineer of the cause and specify the probable effect and extend of such delay. Such notice shall not in any event be given later than 28 days after the Engineer has issued the relevant order or instruction.

(b) If in the opinion of the Engineer the cause of the delay is:-

- (i) inclement weather and/or its consequences adversely affecting the progress of such Works, or
- (ii) the hoisting of tropical cyclone warning signal No. 8 or above, or
- (iia) a Black Rainstorm Warning, or
- (iii) an instruction issued by the Engineer under Clause 5, or
- (iv) a variation ordered under Clause 62, or
- (v) a substantial increase in the amount of work described in any Works Order not resulting from a variation ordered under Clause 62, or
- (vi) the Contractor not being given possession of the Site of such Works or any Portion or part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or
- (vii) a disturbance to the progress of such Works for which the Employer or the Engineer or a Specialist Contractor is responsible, or
- (viii) the Engineer suspending such Works in accordance with Clause 56 in so far as the suspension is not occasioned by the circumstances described in Clause 56(2)(a) to (d), or
- (ix) any utility undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of such Works, provided that the Contractor has taken all practical steps to cause the utility undertaking or duly constituted authority to commence or to proceed with such work, or
- (ixa) any Change in Law, or any utility work directly connected with but not forming part of the Works and which in the opinion of the Engineer could not have been foreseen by an experienced contractor based on the information available as at the tender closing date, or
- (x) any other special circumstance of any kind whatsoever,

then the Engineer shall within a reasonable time consider whether the Contractor is fairly entitled to an extension of time for the completion of such Works.

(c) Notwithstanding the powers of the Engineer under the provisions of this Clause 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 if the cause of the delay is:-

- (i) a suspension occasioned by the circumstances described in Clause 56(2)(a) to (d), or
- (ii) a shortage of Constructional Plant or labour, or
- (iii) the submission and consideration of any objection to the time for completion pursuant to Clause 51(2), or

(2) If in accordance with sub-clause (1) of this Clause the Engineer considers that the Contractor is fairly entitled to an extension of time for the completion of any Works, the Engineer shall within a reasonable time determine, grant and notify in writing to the Contractor such extension. If the Engineer decides that the Contractor is not entitled to an extension, the Engineer shall notify the Contractor in writing accordingly.

Provided that the Engineer in determining any such extension shall take into account all the circumstances known to him at that time, including the effect of any omission of work or substantial

decrease in the amount of work described in the Works Order.

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

(2A) For the avoidance of doubt if the Engineer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of any Works, the period of extension of time granted shall be added to the prescribed time or previously extended time for the completion of such Works.

(2B) For the purposes of determining whether or to what extent the Contractor may be entitled to an extension of time under sub-clause (1)(b) of this Clause the Engineer may require the Contractor to submit full and detailed particulars of the cause and extent of delay to the progress of such Works. Where such full and detailed particulars are required by the Engineer, they shall be submitted in writing by the Contractor to the Engineer as soon as practicable in order that the Contractor's claim may be investigated at that time by the Engineer. If the Contractor fails to comply with the provisions of this sub-clause, the Engineer shall consider such extension only to the extent that the Engineer is able on the information available.

(3) Except as provided elsewhere in the Contract, any extension of time granted by the Engineer to the Contractor shall be deemed to be in full compensation and satisfaction for any loss 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 any delay during the period of such extension but not for any delay continued beyond such period.

(4) For the purpose of the Clause, "Black Rainstorm Warning" means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of heavy rainstorm signal commonly referred to as Black.

Rate of progress

53. (1) If the rate of progress of any Works is at any time in the opinion of the Engineer too slow to ensure completion by the time for completion or extended time for completion, the Engineer may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the completion of such Works. The Contractor shall inform the Engineer of such proposed steps.

(2) Notwithstanding the provisions of sub-clause (1) of this Clause and subject to compliance with any enactment, regulation or bye-law, the Engineer shall be empowered to instruct the Contractor in writing to carry out any Works or any part thereof during any hours of the day where the Engineer considers it necessary owing to the default, negligence, omission or slow progress of the Contractor.

(3) The Contractor shall not be entitled to any additional payment for complying with any instruction given in accordance with this Clause.

Liquidated damages for delay

54. (1) If the Contractor fails to complete the Works within the time for completion or such extended time as may be granted in accordance with Clause 52, 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 the provisions of Clause 86. The payment of such damages shall not relieve the Contractor from his obligations to complete the Works or from any other of his obligations under the Contract.

(2) The liquidated damages per day shall be calculated using the formula prescribed in the Appendix to the Form of Tender.

Provided that, if the Engineer certifies completion under Clause 55 of any part of the Works before completion of the Works then the liquidated damages for the Works shall from the date of such certification be reduced in the proportion which the value of the part so certified bears to the value of the Works. For the avoidance of doubt, the Engineer shall determine the value of the part of the Works completed and the value of the Works both as of the date of certification.

(3) The period for which liquidated damages shall be calculated shall be the number of days from the date for completion as provided in sub-clauses (1)(a) or (b) of Clause 51 or any extension thereof of the Works until and including the certified date of completion.

Provided that, if the Engineer subsequently grants an extension of time which affects the period described above, then the Employer shall reimburse to the Contractor the liquidated damages for the number of days so affected together with interest at the rate provided for in Clause 81 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 shall be paid as liquidated damages for delay and not as a penalty.

55. (1) When the Contractor considers that the Works have been satisfactorily completed and have satisfactorily passed the Test that may be prescribed by the Contract, he may notify the Engineer in writing to that effect and request the Engineer to issue a certificate of completion. The Engineer shall within a reasonable time and in any case no later than 21 days of the date of receipt of such notice either :

- (a) issue a certificate of completion by endorsement on the Works Order or otherwise, stating the date on which, in the Engineer's opinion, the Works were satisfactorily completed in accordance with the Contract and the Defects Liability Period shall commence on the day following the date of completion stated in such certificate, or
- (b) give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, is required to be done by the Contractor before such certificate can be issued.

(2) Notwithstanding the provisions of sub-clause (1) of this Clause, as soon as in the opinion of the Engineer any Works have been satisfactorily completed and have satisfactorily passed any Test which may be prescribed by the Contract, the Engineer shall issue a certificate of completion in respect of such Works and the Defects Liability Period shall commence on the day following the date of completion stated in such certificate.

(2A) Notwithstanding sub-clause (1) of this Clause if, due to any reason other than the default of the Contractor, any Test prescribed by the Contract cannot be carried out and the Works are otherwise satisfactorily completed, then the Engineer may issue a certificate of completion and the prescribed Test shall become outstanding work to be carried out during the Defects Liability Period. When issuing a certificate of completion in circumstances described in this sub-clause the Engineer may instruct the Contractor to continue to be fully responsible for the care of such Works under Clause 23 until the prescribed Test has been satisfactorily completed. If the prescribed Test is carried out during the Defects Liability Period the Engineer may extend the Defects Liability Period for any period up to the length of time which has elapsed between the day following the date of completion stated in the certificate of completion and the date of satisfactory completion of the prescribed Test. Any additional work carried out by the Contractor as the result of the exercise by the Engineer of powers contained in this sub-clause shall be valued pursuant to Clause 63.

(3) The Engineer shall give a certificate of completion in respect of any part of any Works which has been completed to the satisfaction of the Engineer and is required by the Employer for permanent occupation or use before the completion of the whole of such Works.

(4) The Engineer, following a written request from the Contractor, may give a certificate of completion in respect of any substantial part of any Works which has been completed to the satisfaction of the Engineer before the whole of such Works and is capable of permanent occupation, and/or permanent use by the Employer.

(5) When a certificate of completion is given in respect of a part of any Works such part shall be considered as completed and the Defects Liability Period for such part shall commence on the day following the date of completion stated in such certificate.

(6) Any certificate of completion given in accordance with this Clause in respect of any part of any Works shall not be deemed to certify completion of any ground or surfaces requiring reinstatement unless the certificate shall expressly so state.

(7) For the purposes of this Clause the term "Works" shall exclude any work executed in accordance with Clause 58(2).

SUSPENSION OF WORKS

56. (1) The Contractor shall upon the written order of the Engineer suspend the progress of any Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall during such suspension properly protect and secure such Works so far as is necessary in the opinion of the Engineer.

(2) If upon written application by the Contractor to the Engineer, the Engineer is of the opinion that the Contractor has been involved in additional expenditure by reason of a suspension order given by the Engineer under this Clause then the Engineer shall ascertain the Cost incurred and shall certify for payment accordingly unless such suspension order is:

- (a) otherwise provided for in the Contract, or
- (b) necessary by reason of weather conditions affecting the safety or quality of such Works or any part thereof, or
- (c) necessary by reason of some default on the part of the Contractor or any person carrying out such Works, or
- (d) necessary for the proper execution of such Works or for the safety of such Works or any

part thereof or for the safety and health of any person or the safety of any property on or adjacent to the Site in as much as such necessity does not arise from any act or default of the Engineer or the Employer or from any of the excepted risks defined in Clause 23.

Suspension
lasting more
than 90 days

57. If the progress of any Works or any part thereof is suspended on the written order of the Engineer and if permission to resume work is not given by the Engineer within a period of 90 days after the date of suspension then the Contractor may, unless such suspension is occasioned by the circumstances described in Clause 56(2)(a) to (d), serve a notice in writing on the Engineer requiring permission within 28 days after the receipt of such notice to proceed with such Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Engineer does not grant such permission the Contractor by a further notice in writing served on the Engineer may, but is not bound to, elect to treat the suspension where it affects part only of the Whole of the Works as an omission of such part under Clause 62 or where it affects the Whole of the Works as an abandonment of the Contract by the Employer.

DEFECTS

Execution of
work of repair

58.(1) Any Works shall at or as soon as practicable after the expiry of the Defects Liability Period be delivered up to the Employer in the condition required by the Contract, fair wear and tear excepted.

(2) During the Defects Liability Period or within 14 days after its expiry, the Engineer may by notice in writing require the Contractor to carry out any work of repair or rectification, or make good any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection, shrinkage, settlement or other fault identified within the Defects Liability Period, and the Contractor shall carry out such work within the Defects Liability Period or as soon as practicable thereafter and where the Engineer requires such work to be carried out urgently, the Contractor shall carry out such work in compliance with such terms contained in the notice imposed by the Engineer as the Engineer may consider necessary and reasonable in the circumstances.

(3) All such work shall be carried out by the Contractor at his own expense if the necessity for such work shall, in the Engineer's opinion, be due to the use of Plant, 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 Engineer such necessity shall be due to any other cause, the work shall be valued and certified as if it were a variation ordered in accordance with Clause 62.

(4) If the Contractor fails to carry out any outstanding work as required by Clause 55(3) or fails to carry out any or all work of repair or rectification, or make good any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection, shrinkage, settlement or other fault and in such terms (if any) as required by the Engineer under sub-clause (2) of this Clause the Employer shall be entitled after giving reasonable notice in writing to the Contractor, to have such work carried out by his own workers or by other contractors and if such work is work which the Contractor would have been required to carry out at his own expense the Employer shall be entitled to recover from the Contractor the expenditure incurred in connection therewith.

(5) If during the Defects Liability Period any Works or any part thereof cannot be used by reason of any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection, shrinkage, settlement or other fault identified within the Defects Liability Period, then the Engineer may extend the Defects Liability Period in respect of such Works or any part thereof by periods equal to the time during which such Works or any part thereof cannot be used but the Defects Liability Period for such Works or any part thereof shall not, unless otherwise provided in the Contract, be extended beyond two years from the date of completion certified pursuant to Clause 55.

(6) If any work is carried out under this Clause which for any reason, in the opinion of the Engineer, necessitates the extension of the Defects Liability Period then the Engineer may extend the Defects Liability Period in respect of any relevant part of the Works.

Provided that:-

- (a) any extension under this sub-clause shall not be for a period longer than the original Defects Liability Period specified in the Contract and
- (b) the Defects Liability Period for any Works or any part thereof shall not, unless otherwise provided in the Contract, be extended beyond two years from the date of completion certified pursuant to Clause 55.

(7) The provision of sub-clauses (5) and (6) of this Clause shall apply equally to any part or substantial part of the Works referred to in sub-clauses (4), (5) and (6) of Clause 55.

(8) If the nature of any work carried out under this Clause is such that, in the opinion of the Engineer, it is necessary to repeat any Test carried out pursuant to Clause 44 then the Engineer may require the Contractor to repeat such Test and the work shall not be considered complete until satisfactory results are obtained. The provisions of sub-clause (3) of this Clause shall apply to a Test required by the Engineer pursuant to this sub-clause.

Temporary
reinstatement

59. 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 shall have been broken into then notwithstanding any other provision of the Contract:-

- (a) if the permanent reinstatement of such highway or other road or way is to be carried out by the appropriate authority or by some person other than the Contractor, the Contractor shall at his own expense and independently of any requirement of or notice from the Engineer be responsible for the making good of any subsidence or shrinkage or other defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection, settlement or fault in the temporary reinstatement of such highway or other road or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the Defects Liability Period in respect of such Works beneath such highway or other road or way or until the authority or other person as aforesaid shall have taken possession 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 end of such Defects Liability Period or the taking of possession as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out of or in consequence of or in connection with the said permanent reinstatement or any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, 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 other person as aforesaid shall take possession of such Site as aforesaid in Portions or parts the responsibility of the Contractor under paragraph (a) of this Clause shall cease in regard to any such Portion or part at the time possession thereof is so taken but shall during the continuance of the said Defects Liability Period continue in regard to any Portion or part of which possession has not been so taken and the indemnities given by the Contractor and the Employer respectively under paragraphs (a) and (b) of this Clause shall be construed and have effect accordingly.

Investigating
defects

60.(1) At any time prior to the issue of the defects liability certificate in accordance with Clause 83 the Contractor shall, if instructed by the Engineer in writing, investigate the cause of any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection or fault under the directions of the Engineer.

Provided that if the Engineer at his absolute 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 workmen or by other contractors and the provisions of sub-clause (2) and (3) of this Clause shall apply to any investigation so carried out.

(2) If such defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection or fault shall be one for which the Contractor is liable in accordance with the provisions of 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, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection or fault together with any consequential damage at his own expense.

(3) If such defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection or fault shall be one for which the Contractor is not so liable, then any investigation and remedial work carried out by the Contractor as aforesaid shall be valued in accordance with Clause 63 and certified for payment by the Engineer.

MEASUREMENT, VARIATIONS, VALUATIONS AND CLAIMS

Measurement
of Works

61. (1) Unless otherwise stated, valuation of the work done in accordance with the Contract shall be ascertained and determined by measurement.

(2) Without affecting the generality of the other provisions of this Contract, all work, for the purpose of valuation, shall be measured by the Contractor. The measurement shall be agreed with the Engineer during the progress of each Works Order or within 14 days after its completion. The Contractor shall afford full opportunity and give reasonable notice to the Engineer to attend, examine and agree the measurements with the Contractor. The agreed measurements shall be so taken and recorded by the Contractor in such form and/or drawings as may be specified by the Engineer. The Contractor shall provide the Engineer with a copy of the form and/or drawings containing all the agreed measurements within 21 days of the date on which the measurements are agreed.

(3) If agreement on measurements cannot be reached, the Contractor shall, within 21 days from the date the Engineer notifies the Contractor of his disagreement, submit all the particulars to justify the measurement he considers correct for a decision by the Engineer. The Engineer shall within a reasonable time notify the Contractor of his decision accordingly.

(4) In the event of the Contractor failing to comply with sub-clause (2) or sub-clause (3) of this Clause, the Engineer shall have the power to ascertain and determine the measurements and value of the work done based on his own records and the Contractor shall pay the Employer all costs and expenses incurred under this sub-clause.

(5) The Engineer may order additional measurements of works to be carried out if he deems necessary and the Contractor shall facilitate such measurements accordingly.

Orders for
variations

62. (1) The Engineer shall make any variation as he may consider necessary in the form, character or quality of any work or materials detailed in the Specification or the Schedule of Rates, or to order different work or material of any kind which is not detailed in the Specification or Schedule of Rates and no such variation or order for different work or material shall in any way vitiate or invalidate the Contract.

(2) The Engineer shall also make any variation as he may consider necessary under any Works Order. Such variations may include additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line.

(3) No variation shall be without an order in writing from the Engineer.

Provided that:-

- (a) if for any reason the Engineer shall consider it desirable to give any such order verbally in the first instance to be followed by written confirmation the Contractor shall comply with such verbal order. The Engineer's confirmation in writing of such verbal order, whether before or after the carrying out of such verbal order shall deem the verbal order to be an order in writing from the Engineer within the meaning of this Clause, or
- (b) if the Contractor shall confirm in writing to the Engineer any verbal order of the Engineer and such confirmation is not contradicted in writing by the Engineer within 10 working days of the date of receipt by the Engineer of the Contractor's confirmation, then such verbal order shall be deemed to be an order in writing within the meaning of this Clause.

Valuing
variations

63. (1) The rate for any work ordered by the Engineer under Clause 62 which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work in the Schedule of Rates shall be ascertained by the Engineer, based on the rates in the Contract so far as may be reasonable, and be agreed upon between the Engineer and the Contractor.

(2) In the event of the Engineer and the Contractor failing to reach agreement on any rate under the provisions of sub-clause (1) of this Clause, the Engineer shall fix such rate as shall in his opinion be reasonable and notify the Contractor accordingly.

Daywork

64. (1) The Engineer may, if in his opinion it is necessary or desirable, order in writing that any work which cannot be measured and paid for under items in the Schedule of Rates (excluding the daywork items) shall be executed on a daywork basis.

(2) The Contractor shall then be paid for such work under the conditions and at the rates set out in the Contract or if no such conditions and rates have been included, at such rates as the Engineer shall determine as being reasonable.

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

Submission of records for daywork

65. (1) In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver on each working day to the Engineer's Representative a list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all Plant, 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, be signed by the Engineer's Representative and returned to the Contractor within 5 working days.

(2) When any work has been ordered to be carried out as daywork the Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to substantiate the sums paid and before ordering Plant and/or materials shall if so required by the Engineer submit to the Engineer quotations for the same for his approval.

Notice of claims

66. (1) If the Contractor intends to claim a higher rate than one notified to him by the Engineer pursuant to Clause 63(2) or Clause 64(2) or Clause 87(4)(b) the Contractor shall within 28 days of such notification give notice in writing of his intention to claim to the Engineer.

(2) If the Contractor intends to claim any additional payment under the provisions of any Clause of the General Conditions of Contract or Special Conditions of Contract other than as mentioned in sub-clause (1) of this Clause, the Contractor shall within 28 days after the happening of the events giving rise to a claim serve notice in writing on the Engineer of his intention to claim and the contractual provisions upon which the claim is based.

(3) The Contractor shall keep such contemporary records as may reasonably be necessary to support any claim and shall give to the Engineer details of the records being kept in respect thereof. Without necessarily admitting the Employer's liability, the Engineer may require the Contractor to keep and agree with the Engineer's Representative any additional contemporary records as are reasonable and may in the opinion of the Engineer be material to the claim. The Contractor shall permit the Engineer and the Engineer's Representative to inspect all records kept pursuant to this Clause and shall supply copies thereof as and when the Engineer or Engineer's Representative shall so require.

(4) After the giving of a notice to the Engineer under this Clause, the Contractor shall, as soon as is reasonable, send to the Engineer a first interim account giving full and detailed particulars of the circumstances giving rise to the claim, the rate or sum claimed and the manner in which such rate or sum is calculated. Thereafter, at such intervals as the Engineer may reasonably require, the Contractor shall send to the Engineer further up-to-date accounts giving the accumulated total of the claim and any further full and detailed particulars in relation thereto.

(5) If the Contractor fails to comply with the notice provisions contained in sub-clauses (1) or (2) of this Clause in respect of any claim, such claim shall not be considered.

(6) If the Contractor fails to comply with the provisions of sub-clauses (3) or (4) of this Clause in respect of any claim the Engineer may consider such claim only to the extent that the Engineer is able on the information made available.

Provided that the Engineer 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 90 days calculated from the certified date of completion of the Works to which the claim relates.

CONTINGENCY SUM

Contingency Sum

66A. (1) Any sum set out in a Works Order which is stated to be Contingency Sum shall only be used upon the written instruction of the Engineer.

(2) Each Works Order shall specify the estimated value of the Works and the Contingency Sum for the Works. The Contractor is entitled to the Contingency Sum or any part thereof only when the work or services or expenditure for which such sum is provided have been ordered by the Engineer in accordance with Clause 62 and valued in accordance with Clause 63. In no other cases will the Contractor be entitled to any or all of the Contingency Sum.

(3) "Contingency Sum" wherever referred to in any Works Order means the sum provided in such Works Order for work or services or expenditure which cannot be foreseen at the time such Works Order is issued.

Work by Designated Sub-contractors

67. (1) The Employer reserves the right to order any specialist work and/or the supply of any specialist materials to be executed by a Designated Sub-contractor notwithstanding that relevant items for such work are contained in the Schedule of Rates.

(2) The Contractor shall enter into a sub-contract with a Designated Sub-contractor for the execution of such work as and when instructed by the Engineer. The entering into such sub-contract shall not

relieve the Contractor of any 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 Engineer is notified of the objection within 14 days of receipt of the order to enter into such sub-contract and further provided that the Engineer considers the objection to be reasonable.

(4) Subject to sub-clause (3) of this Clause if the Contractor fails or refuses to enter into such subcontract in accordance with the Engineer's instruction then the Employer will make separate arrangements for the work to be carried out and the cost of making these separate arrangements shall be deducted or recovered from the Contractor in accordance with Clause 86.

Payment to
Contractor for
work of
Designated
Sub-contractor

68. (1) The Contractor shall, when required by the Engineer, 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 work executed by a Designated Sub-contractor and subject to the requirements of Clause 69(2) shall be the net cost actually paid or to be paid by the Contractor to such Designated Sub-contractor as agreed by the Engineer after deducting any trade or other discount.

(3) In addition the Employer shall pay to the Contractor the percentage or sum referred to in the Contract on the net cost paid or to be paid to such Designated Sub-contractor by the Contractor which percentage or sum shall be deemed to be full payment for the Contractor's profit, overheads and all other expenses. Provided that Temporary Works executed or labour, materials or plant supplied for the sole reason of having the work of the Designated Sub-contractor carried out shall be paid separately in accordance with the Contract.

(4) With the exception of amounts payable for Temporary Works executed and labour, materials and plant supplied the amounts payable under sub-clauses (2) and (3) of this Clause shall not be subject to any adjustment by the percentage quoted in the Form of Tender.

Payment to
Designated
Sub-contractors

69. (1) The Contractor shall pay the Designated Sub-contractor according to the terms of the subcontract or, should no term be stated, within 28 days of the completion of the work of the sub-contract.

(2) The Contractor shall forward all receipts or other proof of payments made to the Designated Sub-contractor to the Engineer. If the Contractor has not paid the Designated Sub-contractor in full then the Contractor shall inform the Engineer of the reasons for withholding such payments. If the Contractor fails to satisfy the Engineer that there are reasonable grounds for withholding payment to the Designated Sub-contractor then the Employer shall be entitled to pay the Designated Sub-contractor direct and recover the monies so paid in accordance with Clause 86.

(3) Neither the existence nor the exercise of the aforesaid powers by the Employer or the Engineer shall render the Employer liable to pay any Designated Sub-contractor.

Assignment of
Designated
Sub-
contractor's
obligations

70. In the event of a Designated Sub-contractor having undertaken towards the Contractor in respect of the work executed or the materials or services supplied by such Designated Sub-contractor any continuing obligation extending for a period exceeding that of the Maintenance Period, the Contractor shall immediately after the expiry of the Maintenance Period assign to the Employer the benefit of such obligation for the unexpired duration thereof.

CONSTRUCTIONAL PLANT, TEMPORARY BUILDINGS, PLANT AND MATERIALS

Vesting of
Constructional
Plant and
temporary
buildings

71. 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 such Site by the Contractor at any time unless removal is expressly prohibited by the Engineer in writing. Upon removal as aforesaid or under the terms of Clause 91(2) such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works on such Site the remainder of such Construction Plant and temporary buildings shall, subject to Clause 84, re-vest in the Contractor.

Vesting of Plant
and materials

72. All Plant and materials owned by the Contractor for incorporation in any Works shall be and become the property of the Employer upon delivery to the Site of such Works, and shall not be removed without an instruction or the prior written consent of the Engineer. Plant and materials shall, subject to Clause 84, 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 such Works. The operation of this Clause shall not be deemed to imply any approval by the Engineer of such Plant or materials or prevent the rejection by the Engineer of any Plant or material at any time.

Removal of
Constructional
Plant,
temporary
buildings,
Plant and
materials

73. (1) Upon the issue of the last certificate of completion under the Contract or where appropriate, the issue of a certificate of completion for any Works Order, the Contractor shall remove all Constructional Plant, temporary buildings, surplus materials and Plant from every Site or the Site for such Works Order as the case may be except those required to discharge the Contractor's other obligations under the Contract.

(2) If the Contractor shall fail to remove from any Site any Constructional Plant, temporary buildings, surplus materials or Plant as aforesaid within such reasonable time as may be allowed by the Engineer, then the Employer may:

- (a) sell any such Constructional Plant, temporary buildings, surplus materials or Plant owned by the Contractor and after deducting from any proceeds of sale the charges and expenses of and in connection with such sale shall pay the balance (if any) to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such charges and expenses the excess shall be recoverable by the Employer from the Contractor, or
- (b) return Constructional Plant hired or 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.

Hired and
hire-purchase
Constructional
Plant

74. (1) In respect of any item of Constructional Plant brought onto the Site, the Contractor shall upon written request by the Engineer (which may be issued by the Engineer from time to time or at any time during the continuance of the Works) produce to the Engineer proof of ownership of such item or items of Constructional Plant to the satisfaction of the Engineer or, where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form approved by the Employer, from the owner of the relevant item of Constructional Plant to the Employer that:

- (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the determination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works; and
- (b) subject to any assignment under paragraph (a) of this sub-clause, the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works.

The Engineer may make as many separate written requests as he thinks fit during the continuance of the Works.

(2) In the event that the Engineer shall certify in writing to the Employer that the Contractor has failed to comply with any written request referred to in sub-clause (1) of this Clause within 28 days of the date of issue of the written request and without prejudice to any other rights or remedies available to the Employer, the Employer may, subject to the proviso to this sub-clause, withhold a sum equal to the sum certified for payment by the Engineer in accordance with Clause 79 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 Engineer or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the Contractor in accordance with the provisions of the Contract, whichever is the earlier and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment. Provided that the total sum withheld by the Employer on the ground of failure to comply with any written request referred to in sub-clause (1) of this Clause shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item or items of Constructional Plant as determined by the Engineer and notified in writing by the Engineer to the Employer and the Contractor.

(3) The application of sub-clauses (1) and (2) of this Clause is limited to items of Constructional Plant which, in the Engineer's opinion, are essential to the completion of the Works and are difficult to replace in the event of determination of the Contractor's employment under Clause 81.

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

75. In the event of the Employer entering into any agreement for hiring or hire-purchase under Clause 74 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 Whole of the Works, and shall be recoverable by the Employer from the Contractor.

Liability for
loss or damage

76. Save as stated in Clause 23, the Employer shall not at any time be liable for the loss of or damage to any of the Constructional Plant, temporary buildings, materials or Plant which have become the property of the

to
Constructional
Plant

Employer under Clauses 71 and 72 or loss of or damage to any hired or hire-purchase Constructional Plant brought onto any Site in accordance with Clause 74.

Incorporation of
certain Clauses
in sub-contracts

77. 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 71 to 76 and shall use his endeavours to ensure that they are observed.

CERTIFICATES AND PAYMENTS

Submission of
bills for
payment for any
Works

78.(1) Within 60 days of the date of issue of the certificate of completion in accordance with Clause 55 for any Works the Contractor shall submit to the Engineer a statement of final account for such Works showing in detail the value in accordance with the Contract of the work done in accordance with the Works Order together with all other sums which the Contractor considers to be due to him under the Contract. The statement shall be accompanied by invoices, receipts, and other documents as may be required by the Engineer.

(2) The statement and the supporting documents shall be prepared by and at the expense of the Contractor in the form and with such copies as are stated in the Contract or required by the Engineer.

(3) On receipt of the statement and the supporting documents the Engineer shall value in accordance with the Contract and certify for payment the sum which in his opinion is due to the Contractor.

(4) If the Contractor fails to comply with sub-clauses (1) and (2) of this Clause the Engineer shall be entitled to issue a final payment certificate in respect of such Works without reference to the Contractor. All costs incurred necessarily by the Employer under this sub-clause shall be deducted by the Employer in accordance with Clause 86 or recovered as a debt from the Contractor.

Interim
payments

79.(1) During the progress of any Works the Contractor may submit a statement requesting an interim payment for such Works in respect of the following:-

- (a) the estimated value of the work carried out in accordance with the Contract; and
- (b) the estimated value of materials for inclusion in the permanent work, based on the rates in the Contract for such work, and not being prematurely delivered to and being properly stored on the Site of such Works; and
- (c) any other estimated sum to which the Contractor considers to be due to him under the Contract.

(2) On receipt of the statement and any supporting documents the Engineer shall within a reasonable time check and, if necessary correct the statement and shall certify the same for payment provided that :-

- (a) each interim payment for work and materials as specified in paragraphs (a) and (b) of sub-clause (1) of this Clause shall not exceed the percentage stated in the Appendix to the Form of Tender of the estimated value of the same; and
- (b) the statement shall be dated not less than 30 days from the date of issue of the Works Order or from the date of any previous successful request for an interim payment on such Works; and
- (c) the amount payable under any Works Order shall not be less than the minimum amount for interim payments given in the Appendix to the Form of Tender.

(3) Nothing in this Clause shall prevent the Engineer from issuing a certificate at any time for any sum if in the opinion of the Engineer it is desirable to do so.

(4) The Contractor shall also submit a signed declaration in a form prescribed or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in GCC Clauses 8 and 39 as part of the Contractor's interim statement. If the Contractor fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under General Conditions of Contract Clause 81 in that period.

Submission of
statement for
interim
payments

80. The statement referred to in Clause 79 shall be prepared on a form supplied by and at the expense of the Contractor and the style and number of copies shall be as the Engineer shall determine. The Contractor shall complete the required number of copies of the statement and deliver them to the Engineer for checking and, if necessary, correction in accordance with Clause 79. One corrected copy shall be returned to the Contractor.

Payment on
certification

81. Payment upon each of the Engineer's certificates shall be made by the Employer within twenty-one days

of the Engineer's certification. In the event of failure by the Employer to pay the Contractor in compliance with the provisions of this Clause the Employer shall pay to the Contractor interest at one percent below the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from but not including the date on which the same should have been made. The Employer shall not under any circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether upon the certificate of the Engineer or otherwise, at a rate in excess of one percent below the said judgment debt rate.

Correction and
with-holding of
certificates

82. The Engineer shall have the power to omit from any certificate the value of any work done, materials supplied or services rendered with which the Engineer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Engineer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.

Defects
liability
certificate

83. (1) Upon the expiry of the Defects Liability Periods in respect of all Works Orders and when all work of repair, reconstruction, rectification and making good any defect, misalignment, loosened connection, material failure, leakage, excessive vibration and noise, excessive wear, instability, overheating, imperfection, shrinkage and other fault referred to in Clause 58 shall have been completed the Engineer shall issue a defects liability 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 defects liability certificate, shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof.

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

(3) The issue of any certificate including the defects liability certificate shall not be taken as relieving either the Contractor or the Employer from any liability the one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract.

Provided that the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of any Works unless the Contractor shall have made a claim in relation thereto in accordance with the time specified in Clause 52 or Clause 66.

REMEDIES AND POWERS

Determination
of the
Contractor's
employment

84.(1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- (a) has abandoned the Contract, or
- (b) without reasonable excuse has failed to commence any Works in accordance with Clause 49, or
- (c) has suspended the progress of any Works for 14 days after receiving from the Engineer notice in writing to proceed, or
- (d) has failed to comply with an order from the Engineer given in accordance with Clause 48, or
- (e) despite previous warning by the Engineer 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, or
- (f) has sub-contracted the Whole of the Works, or
- (g) has to the detriment of good workmanship or in defiance of the Engineer's instruction to the contrary sub-contracted any part of any works,

then the Employer may after giving at least 7 days' notice in writing to the Contractor enter upon every Site and the Whole of the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract and the Employer may by his own workers or by employing any other contractor complete all outstanding Works Orders issued under the

Contract. The Employer or such other contractor may use for such completion so much of the Constructional Plant, temporary buildings, Plant and materials which become the property of the Employer under Clauses 71 and 72 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings, unfixed Plant and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract.

(2) As soon as may be practicable after such entry and expulsion by the Employer, the Engineer shall ascertain and record:

- (a) the quantity of work completed up to the time of such entry and expulsion; and
- (b) the unfixed Plant and 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 61 shall apply for the purposes of attendance by the Contractor for measurement and agreement of records and drawings.

(3) By the notice referred to in sub-clause (1) of this Clause or by further notice in writing within 28 days of the date thereof the Employer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement for the supply of any Plant and materials, and/or for the execution of any work for the purposes of this Contract which the Contractor may have entered into.

- (4) (a) If the Employer enters and expels the Contractor in accordance with this Clause, the Employer shall not be liable to pay the Contractor any money under the Contract (whether in respect of amounts certified by the Engineer or otherwise) unless and until the Engineer certifies that an amount is due to the Contractor under sub-clause (4)(b) of this Clause.
- (b) The Engineer shall certify the difference between :
 - (i) such sum as would have been due to the Contractor if he had duly completed all Works in those Works Orders which had been issued prior to re-entry together with any proceeds of sale under sub-clause (1) of this Clause; and
 - (ii) the costs of completing all Works in those Works Orders which had been issued prior to re-entry (whether or not such Works are completed under any separate contracts), damages for delay (if any) and all other expenses properly incurred by the Employer.
- (c) Such difference as is certified by the Engineer under sub-clause (4)(b) of this Clause, subject to adjustment by the Engineer to take account of the amount (if any) certified by the Engineer under sub-clause (5) of this Clause, 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 date of certification by the Engineer.

(5) If the Engineer is satisfied at any time prior to the completion of all Works in those Works Orders which had been issued prior to re-entry that the whole or part of the costs, damages and other expenses referred to in sub-clause (4)(b)(ii) of this Clause exceeds such sum as calculated under sub-clause (4)(b)(i) of this Clause, he may issue an interim certificate to that effect and the amount of such excess as is certified by the Engineer in the interim certificate shall be considered as a debt due from the Contractor to the Employer and shall be paid by the Contractor within 21 days of the date of interim certification by the Engineer.

Work by person
other than the
Contractor

85.(1) If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 7 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workers or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.

(2) If by reason of any accident or failure or other event occurring to, in, or in connection with any Works any remedial or other work shall in the opinion of the Engineer be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Engineer may authorize the carrying out of such remedial or other work by a person other than the Contractors. If the remedial or other work so authorized by the Engineer is work which in the Engineer's opinion the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

Recovery of

86.(1) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the

money due to
the
Employer

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 power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.

(2) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under the Contract.

SPECIAL RISKS AND FRUSTRATION

Special risks

87. (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 any Works, or
- (b) an invasion of Hong Kong, or
- (c) civil war, rebellion, revolution or military or usurped power in Hong Kong, or
- (d) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on any Works or Specialist Works, or
- (e) act of foreign terrorists in Hong Kong;

hereinafter comprehensively referred to as "the special risks", the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, 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 and Clause 89) 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 party in respect of any antecedent breach thereof.

(2) In the event of termination in accordance with the proviso to sub-clause (1) of this Clause, the Contractor shall, upon instruction by the Engineer and with all reasonable despatch, remove from every Site all Constructional Plant, and temporary buildings and surplus materials and shall similarly allow his sub-contractors to do so.

(3) In the event of termination in accordance with the proviso to sub-clause (1) of this Clause, 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 work executed prior to the date of termination at the rates provided in the Contract and in addition:

- (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of all such items the work or service comprised in which has been partially carried out or performed;
- (b) the Cost of Plant and materials reasonably ordered for the Whole of the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such Plant and materials becoming the property of the Employer upon such payment being made by the Employer;
- (c) a sum to be certified by the Engineer being any Cost reasonably incurred by the Contractor in the expectation of completing the Whole of the Works in so far as such Cost shall not have been paid in accordance with any other sub-clause of this Clause;

(4) Whether the Contract shall be terminated in accordance with the proviso to sub-clause (1) of this Clause 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 48) or to property (other than property of the Contractor including property vested in the Employer under Clauses 71 and 72 or property hired by the Contractor for the purposes of executing the Whole of the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life which is wholly the consequence of the occurrence of any of the special risks and the Employer shall indemnify the Contractor against all such liabilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- (b) If any Works or any Plant and materials on any Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless be entitled to payment for such

Works and for such Plant and materials so destroyed or damaged and the Contractor shall be entitled to recover from the Employer the expense incurred in making good any such destruction or damage to such Works and of replacing or making good such Plant and materials so far as may be required by the Engineer or as may be necessary for the completion of the Whole of the Works, valued at rates agreed upon between the Engineer and the Contractor and based where possible on prime costs. In the event of the Engineer and the Contractor failing to reach agreement on any rate the Engineer shall fix such rate as shall in his opinion be reasonable and notify the Contractor accordingly.

- (c) Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, missile, munition or explosive of war shall be deemed to be a consequence of the special risks.

Frustration

88. In the event of the Contract being frustrated whether by war or otherwise howsoever, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Clause 87 if the Contract had been terminated in accordance with Clause 87.

SETTLEMENT OF DISPUTES

Settlement of disputes

89. (1) If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of any Works including any dispute as to any decision, instruction, order, direction, certificate or valuation by the Engineer whether during the progress of the Whole of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless the Contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the Whole of the Works with all due diligence and he shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised in mediation or arbitration as hereinafter provided. Such decision shall be final and binding upon the Contractor and the Employer unless either of them shall require that the matter be referred to mediation or arbitration as hereinafter provided. If the Engineer shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter shall 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.

(2) If the matter cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the matter to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap. 341) or any statutory modification thereof for the time being in force and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
- (d) the abandonment of the mediation, or
- (e) where the Engineer has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
- (f) where the Engineer has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the Engineer's decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

(3) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 48(3) not to vary any Works), instruction, order, direction, certificate or valuation

by the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. Save as provided for in sub-cause (4) and (4A) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Whole of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of the last certificate of completion in accordance with Clause 55 shall not be a condition precedent to the taking of any step in such reference;
 - (b) no decision given by the Engineer 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.
- (4) In the case of any disputes or difference as to the exercise of the Engineer's powers under Clause 84(1) the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be complete.

(4A) In the case 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 complete

- (5) (a) Subject to paragraph (b) of this sub-clause, the Hong Kong International Arbitration Centre Domestic Arbitration Rules (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.
- (b) Notwithstanding Article 8.2 and Article 13 of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.
- (c) Article 26 of the Arbitration Rules shall be deleted and replaced by :

26.1 The arbitration proceedings are private and confidential between the parties and the arbitrator. 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 reason;
- (iii) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (iv) which are necessary for the marking of claims against any third party or to defend a claim brought by any third party.

26.2 Notwithstanding Article 26.1 and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government Party) 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 Government party 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 necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration.

- (6) The reference to arbitration under sub-clause (2) of this Clause shall be a domestic arbitration for the purposes of Part II of the Arbitration Ordinance (Cap. 341).

NOTICES

Service of
notices

90.(1) Any notice to be given to the Contractor under the provisions of the Contract must be in writing and may be served:

- (a) personally, or
- (b) by post addressed to the Contractor's last known place of business or, in the event of the Contractor being
 - (i) a firm, to the last known place of residence of the owner or any of the partners thereof, or
 - (ii) a company, to the registered office in Hong Kong of such company, or

- (c) by leaving such notice 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) Any notice to be given to the Engineer under the provisions of the Contract may be served by post to or leaving such notice at the office of the Engineer.

(3) Any notice to be given to the Employer, as distinct from the Engineer, under the provisions of the Contract may be served by post to or leaving such notice at the appropriate management office of the Employer.

(4) Notices may be served by facsimile only if the recipient has previously notified the other party and the Engineer 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 sub-clauses (1), (2) or (3) of this Clause.

DEFAULT OF THE EMPLOYER

Default of the Employer

91. (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clauses 78 and 80 within 28 days after the same shall have become due under the provisions of the Contract the Contractor may give 14 days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause. In the event of failure by the Employer to make such payment within such 14 day notice period, the Contractor shall be entitled to terminate the Contract.

(2) So long as no notice pursuant to Clause 84(1) is given to the Contractor either before or during the 14 days' notice period provided in sub-clause (1) of this Clause, on expiration of that 14 days, 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 such Sites.

(3) Nothing in this Clause shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies in this Clause specified, any other rights or remedies to which the Contractor may be entitled.

92. (Not used)

HEIGHT RESTRICTIONS

Airport height Restrictions

93. 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.

List of Enactments

Cap.	Ordinance Title
28	Lands (Miscellaneous Provisions) Ordinance
47	Apprenticeship Ordinance
51	Gas Safety Ordinance
53	Antiquities and Monuments Ordinance
56	Boilers and Pressure Vessels Ordinance
59	Factories and Industrial Undertakings Ordinance
95	Fire Services Ordinance
102	Waterworks Ordinance
115	Immigration Ordinance
121	Buildings Ordinance (Application to the New Territories) Ordinance
123	Buildings Ordinance
127	Foreshore and Sea-bed (Reclamations) Ordinance
147	Sand Ordinance
295	Dangerous Goods Ordinance
311	Air Pollution Control Ordinance
313	Shipping and Port Control Ordinance
317	Industrial Training (Construction Industry) Ordinance
327	Lifts and Escalators (Safety) Ordinance
354	Waste Disposal Ordinance

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

CONTRACT NO. _____

TITLE _____

ARTICLES OF AGREEMENT made and entered into this _____ day of _____ between the Government of the Hong Kong Special Administrative Region (“the Employer”) and _____ of _____ (“the Contractor”).

RECITALS

- A. The Employer desires to have carried out such work and services and/or supply of such goods as may be required from time to time and other work and services in connection therewith in accordance with the provisions of Contract No. [_____].
- B. The Contractor is willing to carry out the Whole of the Works subject to the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS :

- 1. In these Articles of Agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract for Term Contracts For Electrical and Mechanical Engineering Works 2007 Edition issued by the Government of the Hong Kong Special Administrative Region and the Special Conditions of Contract (if any) contained in the Tender.
- 2. In consideration of the payments to be made at the times and in the manner set forth in the Contract the Contractor shall, upon and subject to the terms and conditions of the Contract, carry out and complete any work and services and/or supply of such goods as may be required from time to time by the Employer and perform all obligations and services under the Contract. Provided always that nothing contained in the Contract shall be construed as imposing on the Employer any obligation to order from the Contractor any work, services or goods which may be required during the Contract Period.

IN WITNESS WHEREOF these Articles of Agreement have been executed as a deed by the parties hereto the day and year first above written.

(a) SIGNED, SEALED and DELIVERED)
 by [insert name of sole proprietor])
 trading as [name of the firm])
 in the presence of -)
)
)
)
 [Name])
 [Occupation])
 [Address])

or

(b) SIGNED, SEALED and DELIVERED by)
 []¹ and)
 []¹)
 being the partners of the Contractor)
 in the presence of -)
)
)
)
 [Name])
 [Occupation])
 [Address])

or

(c) SEALED with the COMMON SEAL of)
 [name of Contractor] and SIGNED by)
 [] its [director(s) or)
 director and secretary or person(s) authorized)
 to sign the contract by its board of directors]²)
 in the presence of -)
)
)
)
 [Name])
 [Occupation])
 [Address])

or

(d) SIGNED, SEALED and DELIVERED by)
 [the Contractor] by [])
 his/her/its³ attorney under power of attorney)
 dated [])
 in the presence of -)
)
)
)
 [Name])
 [Occupation])
 [Address])

SIGNED, SEALED and DELIVERED by)
the Employer by)
[insert name and appointment of officer])
in the presence of -)
)
)
.....)
[Name])
[Occupation])
[Address])

- Note: (a) For use where an individual contractor is a sole proprietor.
(b) For use where an individual contractor is a partnership and all partners of a firm execute.
(c) For use where a contractor which is an incorporated company executes under its common seal.
(d) For use where a contractor, whether a firm or an incorporated company, executes through an attorney.

¹ Insert name(s) of partners. Add more names if there are more partners.

² Select the correct expression for use. If none is applicable, insert an appropriate expression.

³ Delete as appropriate.