



THE GOVERNMENT OF THE HONG KONG

GENERAL CONDITIONS OF CONTRACT

2004 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:

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

“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.

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

“Contract Percentages” means the percentages entered by the Contractor against the trade sections in the Appendix to the Form of Tender. The percentages entered against the respective trade sections of the Schedule of Rates for which the Contractor undertakes to carry out the Works can be addition or deduction for adjusting the rates quoted in the Schedule of Rates.

“Contract Period” means the period referred to in the Form of Tender within which the Maintenance Surveyor 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 Maintenance Surveyor.

“Contract Rates” means the rates quoted in the Schedule of Rates that have been adjusted by the relevant Contract Percentages rounded off to the nearest cent.

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

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

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

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

“Employer” means the Government of the Hong Kong Special Administrative Region.

“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. Except when the context otherwise requires, reference in the Contract to “the Hong Kong Government”, “the Government” or “the Government of Hong Kong” shall be deemed to be a reference to “the Government of the Hong Kong Special Administrative Region”.

“Hong Kong” means the Hong Kong Special Administrative Region.

“Maintenance Period” means the maintenance period named in the Appendix to the Form of Tender commencing on the day following the date of completion of any Works Order or part thereof certified by the Maintenance Surveyor in accordance with Clause 56.

“Maintenance Surveyor” 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 Maintenance Surveyor for the purposes of the Contract. The person appointed may be described by name or as the holder for the time being of a Public Office.

“Maintenance Surveyor’s Representative” means any person, company or firm appointed from time to time by the Maintenance Surveyor 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.

“Minor Works Order” means a Works Order with an estimated value not exceeding the amount stated in the Appendix to the Form of Tender and is in all respects, other than for payment, referred to as a Works Order. Minor Works Order shall further be classified into the following categories according to different completion time as stated in the Appendix to the Form of Tender:

- (i) Emergency
- (ii) Urgent
- (iii) General

“Nominated Sub-contractor” means and includes all specialists, merchants, tradesmen and the like executing any part of the Works or supplying any materials or services for the Works who shall have been or shall be nominated by the Employer and employed by the Contractor.

“Normal Working Hours” shall be deemed to be the period from 8.00 a.m. until 5.00 p.m.

“Portion” means a part of the 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.

“Section” means a part of the Works for which a separate time for commencement and/or completion is identified in any Works Order.

“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 to which the Contractor is allowed access and limited occupation by the Employer for the purpose of the execution of the Works together with such other places as may be subsequently agreed in writing by the Maintenance Surveyor 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 by a Specialist Contractor.

“Specification” means the specifications referred to in the Contract and any modification or addition 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 Maintenance Surveyor.

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

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

“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 Nominated 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 Maintenance Surveyor or the Maintenance Surveyor’s Representative and served on the Contractor or posted to the Contractor’s usual place of business for any works to be executed, services to be performed and/or goods to be supplied by the Contractor under the Contract.

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.

MAINTENANCE SURVEYOR AND MAINTENANCE SURVEYOR’S REPRESENTATIVE

Duties and powers of the Maintenance

- 2. (1) (a) The Maintenance Surveyor shall carry out the duties and may exercise the powers specified in or necessarily to be implied from the Contract.

Surveyor and the
Maintenance
Surveyor's
Representative

- (b) Before carrying out any such duty or exercising any such power, the Maintenance Surveyor may be required under the terms of his appointment by the Employer to obtain confirmation that the Employer has no objection to the Maintenance Surveyor's proposed course of action and, in the event of an objection, to act in accordance with the Employer's direction. If the Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor's Representative are to watch and inspect the Whole of the Works, to test and examine any 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 Maintenance Surveyor as may be delegated to him by the Maintenance Surveyor in accordance with the provisions of sub-clause (3) of this Clause.

(3) The Maintenance Surveyor may from time to time delegate to the Maintenance Surveyor's Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Maintenance Surveyor and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Any written instruction or written approval given by the Maintenance Surveyor'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 Maintenance Surveyor.

Provided that:

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

(4) No act or omission by the Maintenance Surveyor or the Maintenance Surveyor's Representative in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of 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 Maintenance Surveyor or the Maintenance Surveyor'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 Maintenance Surveyor or the Maintenance Surveyor'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 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 Maintenance Surveyor in writing within a period of 14 days from receipt by the Maintenance Surveyor 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 Maintenance Surveyor has not prohibited sub-contracting under sub-clause (2) of this Clause the Maintenance Surveyor, if in his opinion he considers it necessary, shall have full

power to order the removal of any sub-contractor from the Site and/or the Works, which power shall not be exercised unreasonably.

(4) The sub-contracting of any part of the Works shall not relieve the Contractor from any 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 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 Maintenance Surveyor to furnish the Maintenance Surveyor with full particulars of any sub-contractor employed or to be employed on the 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 document 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 Maintenance Surveyor who shall issue to the Contractor instructions clarifying such ambiguities or discrepancies. Where the Contractor makes a request in writing to the Maintenance Surveyor for instructions under this sub-clause the Maintenance Surveyor 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 64;
- (b) if in the opinion of the Maintenance Surveyor 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 Maintenance Surveyor shall value such expense in accordance with Clause 64, and shall certify for payment accordingly;
- (c) if in the opinion of the Maintenance Surveyor compliance with such instructions shall involve the Contractor in any saving then the Maintenance Surveyor shall value such saving and deduct the same from any payment due to the Contractor.

Provision of Drawings, Specification and Schedule of Rates

6. (1) Two copies of the Drawings shall be furnished to the Contractor free of charge together with two copies of the Schedule of Rates and Specification if requested by the Contractor.

(2) The Maintenance Surveyor 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 Maintenance Surveyor shall issue to the Contractor from time to time during the progress of the Works such other Drawings and Specification as in the opinion of the Maintenance Surveyor may be necessary for the purpose of the execution of the Works and the Contractor shall be bound by the same.

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

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

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

(7) Subject to any provision to the contrary contained in the Contract, all work executed under the Contract shall be measured in accordance with the instructions detailed in the Schedule of Rates and paid for at the Contract Rates.

Drawings provided by the Contractor for the Works

7. (1) When the Contractor is required to provide Drawings or other documents in connection with the Works, unless the Contract provides to the contrary, all such Drawings and documents shall be submitted in duplicate to the Maintenance Surveyor at a reasonable time before the work shown or described thereon is to be carried out so as to permit the Maintenance Surveyor sufficient time to examine the Contractor's proposals properly. The Maintenance Surveyor shall give or refuse his approval in writing to such proposals within a reasonable time.

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

(4) Should it be found at any time after approval has been given by the Maintenance Surveyor 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 Maintenance Surveyor, the Contractor shall make such alterations or additions as in the opinion of the Maintenance Surveyor are necessary to remedy such non-compliance or non-agreement at the Contractor's own expense.

(5) No examination by the Maintenance Surveyor of the Drawings or documents submitted by the Contractor under the provisions of this Clause nor any approval given by the Maintenance Surveyor 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 or the Maintenance Surveyor in the Contract or in any subsequent correspondence or documentation.

(2) The Employer and the Maintenance Surveyor 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 the Works.

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, Constructional Plant, Temporary Works, transport and everything whether of a temporary or permanent nature required in and for such execution so far as the necessity for providing the same is specified in or reasonably inferred from the Contract.

(2) The right is reserved by the Employer, at the discretion of the Employer, to have any Works 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 guarantee 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 Appendix to the Form of Tender.

Provided that when the maintenance certificate in respect of the Whole of the Works is issued as provided in Clause 86, 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 the 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 Contract Rates stated therein. The Contract Rates 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
Maintenance
Surveyor

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 Maintenance Surveyor and shall comply with and adhere strictly to the Maintenance Surveyor's instruction on any matter related to the Contract whether mentioned in the Contract or not.

Order of
executing the
Works

16. The Contractor shall, if directed by the Maintenance Surveyor, execute any part of the Works in such order and at such times and commencing from such points as may be required by the Maintenance Surveyor. In the absence of such directions the Contractor may execute the Works in such order and commencing at such point as is convenient to himself. The Maintenance Surveyor may at any time after the issuing of a Works Order change the previously required order of the Works, specify the order of the Works, or order changes to points of ingress and egress to any Works.

Particulars to be
furnished

17. (1) The Contractor shall, whenever required by the Maintenance Surveyor, furnish for the Maintenance Surveyor'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 Maintenance Surveyor 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 Maintenance Surveyor 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 a competent and authorized English-speaking agent who shall be deemed to be approved by the Maintenance Surveyor provided such agent is not expressly disapproved by the Maintenance Surveyor in writing within 14 days from the serving of a notice in writing upon the Maintenance Surveyor by the Contractor of the appointment of such agent. Such agent shall give his whole time to the superintendence of the Whole of the Works.

(3) The Maintenance Surveyor shall have the power to withdraw his approval of the 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 the Works in any capacity and shall replace him by another competent English-speaking agent

approved by the Maintenance Surveyor.

(4) Such authorized agent shall receive on behalf of the Contractor directions and instructions from the Maintenance Surveyor or the Maintenance Surveyor'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 Maintenance Surveyor shall be at liberty to object to and require the Contractor to remove forthwith from the 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 Maintenance Surveyor 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 Maintenance Surveyor to be undesirable and such person shall not be again employed upon the Works without the written permission of the Maintenance Surveyor.

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

Emergency
works

20. (1) The Contractor shall have available at all times workers and plant for the execution of emergency work, and such workers and plant shall be available without extra charge to the Employer except for any additional payment as detailed in the Contract.

(2) If by reason of any accident or failure or other event occurring which, in the opinion of the Maintenance Surveyor, requires emergency works to be executed or services to be performed, the Maintenance Surveyor may give to the Contractor an order verbally in the first instance to be followed by a Works Order within 10 working days of the issue by the Maintenance Surveyor 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 the Works in relation to original points, lines and levels of reference shown on any Drawing or any schedule supplied by the Maintenance Surveyor and for the correctness of the position, level, dimensions and alignment of any part of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

(2) If at any time during the progress of the Works any error shall appear or arise in the position, level, dimensions or alignment of any part of the Works, the Contractor on being instructed so to do by the Maintenance Surveyor or the Maintenance Surveyor'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 Maintenance Surveyor or the Maintenance Surveyor's Representative in which case the rectification shall be treated as a variation ordered in accordance with Clause 63.

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

Safety and
security of the
Works

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

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

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

(4) The Contractor, after obtaining any necessary approval from any relevant authority, shall submit to the Maintenance Surveyor proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works. No such road opening or traffic diversion shall be brought into operation or used unless the proposals submitted have been previously approved by the Maintenance Surveyor and properly provided and implemented on the Site of such Works.

Care of the
Works

23. (1) From and including the date for commencement of the Works notified by the Maintenance Surveyor in accordance with Clause 49 or from the date of occupation whichever is the earlier until 28 days after the date of completion of the Works certified by the Maintenance Surveyor in accordance with Clause 56 or until the date the Employer takes over the Works, if earlier, the Contractor shall take full responsibility for the care of the Works and any Specialist Works (except the stability and safety of the operations of Specialist Contractors and utility undertakings referred to in Clause 22(1) or any part thereof, and for the care of any Constructional Plant, temporary buildings and materials and things whatsoever on the Site or delivered to or placed on the Site in connection with or for the purpose of the Works or any Specialist Works.

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

Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Maintenance Period until such outstanding work is complete, and shall continue to be responsible for all things which are required to be retained on the Site during the Maintenance Period including Constructional Plant, temporary buildings and materials and other facilities provided for the use of the Maintenance Surveyor, the Maintenance Surveyor'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 the Works or any Specialist Works or any part thereof, or to any Constructional Plant, temporary buildings, materials and things whatsoever on the Site, the Contractor shall at his own expense and with all possible speed make good or at the option of the Employer shall pay to the Employer the cost of making good any such damage, loss or injury to the satisfaction of the Maintenance Surveyor and shall, notwithstanding such damage, loss or injury, proceed with the execution of the Works in all respects in accordance with the Contract and the Maintenance Surveyor'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 Maintenance Surveyor, 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 valued by the Maintenance Surveyor in the same manner as a sum payable in respect of a variation ordered in accordance with Clause 63.

(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 the Works or Specialist Works;
- (f) a cause due to the occupation by the Employer, his agents or employees or tenants, or other contractors employed by the Employer, of any part of the Works for a purpose other than carrying out of Specialist Works, such purpose being authorized and required by the Employer;
- (g) damage, loss or injury which is the direct consequence of the Maintenance Surveyor's design of the Works;
- (h) a cause due to any neglect or default by the Maintenance Surveyor or the Employer or their employees and agents in the course of their employment;
- (i) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or

nuclear component thereof provided always that the same are not caused in whole or in part by the Contractor or any sub-contractor.

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 the Site, which may arise out of or in consequence of the execution of the 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 the 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 Maintenance Surveyor 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 limited occupation of land provided by the Employer for the Works, or for the purpose of executing the 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 the Works in accordance with the Contract, or
 - (ii) the right of the Employer to construct the Works on, over, under, in or through any land,
 or for, or in respect of all claims, demands, proceedings, damages, costs, charges and expenses thereof or in relation thereto.

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

Design
responsibility

25. Except as may be provided for in the Contract, the Contractor shall not be responsible for the design of the permanent work or for the design of any Temporary Works designed by the Maintenance Surveyor.

Interference with
traffic and
adjoining
properties

26. (1) All operations necessary for the execution of the Works shall be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private roads or footpaths or access to 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 workers

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 worker 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 the Works or in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there 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 Maintenance Surveyor 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, work, method or material or anything whatsoever required for the 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 the Works.

Provided that where in compliance with the Contract or the Maintenance Surveyor'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, trademarks, name or other protected rights in relation to such article, process or invention.

Provided further that the Contractor shall notify the Maintenance Surveyor 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 regulation or bye-law of any local or other duly constituted authority in relation to the execution of the Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the Works and if any new fee is imposed or if any existing fee is increased after the date of submission by the Contractor of the Tender, all such new fees or increases shall also be at the expense of the Contractor.

Compliance with enactments and regulations

32. The Contractor shall conform in all respects with:

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

and any additions or amendments thereto during the continuance of the Whole of the Works, which are applicable to the Works, and shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules.

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 Maintenance Surveyor's Representative shall maintain a site diary for those Works nominated by the Maintenance Surveyor and he shall record daily in the site diary information with regard to labour, plant, materials, utilities, work carried out, and instructions issued to the Contractor and all other facts that may affect the progress or quality of the Works.

- (2) Where a site diary is maintained in accordance with sub-clause (1) of this Clause, an

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 Maintenance Surveyor, make available to the Maintenance Surveyor or such other person as the Maintenance Surveyor may direct, such information as the Maintenance Surveyor 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 Maintenance Surveyor's Representative by not later than 1.00 p.m. on each working day a return in such form as the Maintenance Surveyor may prescribe showing in detail the numbers of the several classes of labour on the Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day together with such information concerning materials, Constructional Plant and other such matters as the Maintenance Surveyor 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 the 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 Maintenance Surveyor or the Maintenance Surveyor's Representative of such discovery and carry out at the expense of the Employer the instructions of the Maintenance Surveyor as to the disposal of the same.

Facilities for other persons

36. (1) The Contractor shall in accordance with the requirements of the Maintenance Surveyor afford all reasonable facilities for 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.

- (2) If however the Contractor shall on the written request of the Maintenance Surveyor 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 the 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 Maintenance Surveyor considers reasonable.

Removal of surplus materials and rubbish

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

Publication of photographs of the Sites or the Works

38. (1) The Contractor shall not publish or otherwise circulate photographs of the Site or of the Works or any part thereof or anything therein except with the permission in writing of the Employer.

(2) No such permission shall exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs.

Offering gratuities

39. 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 Maintenance Surveyor or to any member of the Maintenance Surveyor's staff, the Employer may terminate forthwith the employment of the Contractor under the Contract, and hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

Site cleanliness

40. The Contractor shall keep the whole of the Site in a clean and hygienic condition and when so required by the Maintenance Surveyor the Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on the Site.

LABOUR

Engagement of labour

41. (1) The Contractor shall make his own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required for the execution of the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such 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 is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the 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 Maintenance Surveyor may arrange the issue of passes to the Contractor for the admission of workers to the Site or to any Portion or 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 Maintenance Surveyor the Contractor shall submit a list of the names of all his workers requiring passes together with two photographs of each person and shall satisfy the Maintenance Surveyor of their bona fides and identity.

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

MATERIALS AND WORKMANSHIP

Quality of materials, workmanship and tests

44. (1) All materials and workmanship shall be of the respective character, quality or kind required by the Contract and in accordance with the Maintenance Surveyor's instructions and shall be subjected to such examinations, measurements or tests as the Contract shall require or as ordered by the Maintenance Surveyor or the Maintenance Surveyor's Representative at the place of manufacture, or on the Site, or at such other place or places as may be specified in the Contract, or at all or any such places.

(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 material used and, before incorporation into the Works, shall supply for examining, measuring or testing such samples of materials as may be selected or required by the Maintenance Surveyor or the Maintenance Surveyor's Representative.

(3) The Contractor shall bear the expense and costs of any examination, measurement or test and 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 Maintenance Surveyor in attending such examination, measurement or test, 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 Maintenance Surveyor or the Maintenance Surveyor's Representative, then such expense and costs of such examination, measurement or test including those of the Maintenance Surveyor's attendance shall be borne by the Contractor if the examination, measurement or test shows the materials or workmanship not to be in accordance with the Contract or with the Maintenance Surveyor's instructions but otherwise such expense and costs shall be borne by the Employer and shall be valued in accordance with Clause 64.

(5) In the event that any test shows that the Contractor has failed to comply with the requirements of the Contract or with the Maintenance Surveyor's instructions in respect of materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other

tests as the Maintenance Surveyor may approve.

(6) Sub-clauses (4) and (5) of this Clause shall apply to any series of tests carried out on any part of the Works the results of which indicate that in the opinion of the Maintenance Surveyor the Contractor has failed to comply with the requirements of the Contract or with the Maintenance Surveyor's instructions in respect of 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 the Works shall be free of charge.

Access to the Site and places of manufacture

45. The Maintenance Surveyor and any person authorized by him shall at all times have access to the Works and to the Site and to all workshops and places where materials or manufactured articles are being stored or prepared or from where materials or manufactured articles are being supplied by the Contractor or any sub-contractor, and the Contractor shall render every assistance to the Maintenance Surveyor 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 the 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 Maintenance Surveyor or the Maintenance Surveyor's Representative and the Contractor shall afford full opportunity for the Maintenance Surveyor or the Maintenance Surveyor's Representative to examine and/or measure any work which is about to be covered up or put out of view and to examine any foundation before permanent work is placed thereon.

(2) The Contractor shall give reasonable notice to the Maintenance Surveyor or the Maintenance Surveyor's Representative whenever any such work or foundation is ready for examination and the Maintenance Surveyor or the Maintenance Surveyor'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 or of examining any such foundation.

Uncovering and making openings

47. (1) The Contractor shall uncover any part of the Works or make such openings in or through the same as the Maintenance Surveyor may from time to time direct and shall reinstate and make good any such part in accordance with the Contract.

(2) If any such part has been covered up or put out of view after compliance with the requirements of Clause 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 64 and certified for payment by the Maintenance Surveyor but in any other case the expense shall be borne by the Contractor.

Removal of unsatisfactory material and work

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

- (a) the removal from the Site within such time as may be specified in the order of any material which in the opinion of the Maintenance Surveyor is not in accordance with the Contract,
- (b) the substitution of proper and suitable material and
- (c) the removal and proper re-execution, notwithstanding any previous examination, measurement or test thereof or any interim payment therefor, of any work which, in respect of materials or workmanship, is not in accordance with the Contract.

(2) The Contractor shall bear the expense of uncovering, breaking up and removal from the Site of any material or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works resulting from such uncovering, breaking up or removal.

(3) Where the rectification of any work or replacement of any material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Maintenance Surveyor may but shall not be obliged to either:

- (a) give directions for a variation of the Works in lieu of such removal and re-execution at no additional expense to the Employer provided that if in the opinion of the Maintenance Surveyor such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Maintenance Surveyor shall value such excess in accordance with Clause 64, and shall certify in accordance with Clause 79A/79B or

Clause 80A/80B, as the case may be; or

- (b) with the prior agreement in writing of the Employer, accept any work which, in respect of materials 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 Maintenance Surveyor 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 Maintenance Surveyor and the Contractor. In the event of the Maintenance Surveyor and the Contractor failing to reach agreement then the Maintenance Surveyor 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 Maintenance Surveyor exercises any of his powers under sub-clause (1) of this Clause concerning materials supplied by the Employer, and if in the opinion of the Maintenance Surveyor the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Maintenance Surveyor shall ascertain and certify for payment the Cost incurred.

COMMENCEMENT, COMPLETION AND DELAYS

Commencement
of the Works

49. (1) The Contractor shall commence the Works on the date for commencement stated on the Works Order or if the date is not stated then within a reasonable time and shall proceed with the Works with due diligence and without delay except as may be expressly sanctioned or ordered by the Maintenance Surveyor or be wholly beyond the control of the Contractor.

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

(3) In the event that the Contractor is ordered to carry out emergency work, such work shall be commenced immediately unless otherwise instructed by the Maintenance Surveyor. All emergency work shall be carried out continuously by the Contractor working 24 hours a day unless otherwise instructed by the Maintenance Surveyor.

Occupation of
the Site

50. (1) Save in so far as the Contract, any Works Order, or the Maintenance Surveyor may require, the extent of Portions of the Site of which the Contractor is to be given access and limited occupation, shall be sufficient to enable the Contractor to commence and proceed with the execution of the Works as provided in Clause 16 or where applicable on the date provided in the Works Order and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Maintenance Surveyor. The Employer will from time to time, as such work proceeds, give to the Contractor limited occupation of such further parts of the Site as may be required to enable the Contractor to proceed with due despatch.

(2) Every possible opportunity will be given to the Contractor by the Employer to take such limited occupation of the Site or such Portion thereof as is necessary for the execution of any Works Order but the Employer reserves the right to use for any purpose the Site or Portion upon which works are in progress at any time. The Contractor shall not be entitled to any costs arising from any disruption as a result of the limited occupation granted or use of the Site or Portion.

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

(4) The access and limited occupation of the Site referred to in this Clause shall not be exclusive to the Contractor but only such as shall enable him to execute the Works.

Time for
completion

51. (1) Subject to any requirement stated on a Works Order as to completion of any Section before completion of the whole Works Order, the whole Works Order shall be completed:

- (a) on or before the date for completion as stated on a Works Order, or
(b) within any extended time as may be determined in accordance with Clause 53.

(2) The "time for completion" wherever referred to in the Contract shall be the inclusive days from:

- (a) the date for commencement of the Works as provided in Clause 49(1), to

(b) the date for completion as provided in sub-clause (1)(a) of this Clause.

(3) Subject to any provision to the contrary contained in the Contract or Works Order none of the work shall, save as hereinafter provided, be carried on outside Normal Working Hours without the permission in writing of the Maintenance Surveyor save when work is unavoidable or absolutely necessary for:

- (a) preventing injury to any person or saving the life of any person; or
- (b) preventing damage to property where the immediate carrying out of such work is necessary in order to prevent damage to that property; or
- (c) completion of emergency work

in which case the Contractor shall immediately advise the Maintenance Surveyor.

(4) Subject to compliance with Clause 32 the Contractor may carry on any work on any General Holiday.

Provided always that the Maintenance Surveyor may in his absolute discretion by notice, order the Contractor not to carry on any work on any General Holiday and/or after 1.00 p.m. on any Saturday and where such a notice is given any such period shall not be included in the time for completion.

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

(6) The Contractor shall not be entitled to any additional payment for complying with the time requirements stated in the Works Order except payment for overtime specified in the Works Order and which shall be calculated at the Contract Rates or if no such Contract Rates have been included, at such rates as the Maintenance Surveyor shall determine as being reasonable.

Continuous or
Overtime
Working

52. The Maintenance Surveyor may, by written order, require the Contractor to execute the Works of any Works Order or Section thereof, at any time of the day or night, or on a continuous basis, 24 hours per day.

Extension of
time for
completion

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

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

- (b) If in the opinion of the Maintenance Surveyor the cause of the delay is:
- (i) inclement weather and/or its consequences adversely affecting the progress of the 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 Maintenance Surveyor under Clause 5, or
 - (iv) a variation ordered under Clause 63, or
 - (v) a substantial increase in the quantity of any item of work included in the Works Order not resulting from a variation ordered under Clause 63, or
 - (vi) the Contractor not being given occupation of the Site 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 the Works which the Contractor could not reasonably have foreseen and for which the Employer or the Maintenance Surveyor or a Specialist Contractor is responsible, or
 - (viii) the Maintenance Surveyor suspending the Works in accordance with Clause 57 in so far as the suspension is not occasioned by the circumstances described in Clause 57(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 the 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

- (x) delay on the part of any Nominated Sub-contractor for any reason specified in sub-clause (b)(i) to (ix) of this Clause and which the Contractor has taken all reasonable steps to avoid or reduce, or
- (xi) any other special circumstance of any kind whatsoever,

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

- (c) Notwithstanding the powers of the Maintenance Surveyor 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 the Works if the cause of the delay is:
 - (i) the failure of a Nominated Sub-contractor to commence or to carry out work in due time which the Contractor has not, in the opinion of the Maintenance Surveyor, taken all practical steps to prevent, or
 - (ii) a suspension occasioned by the circumstances described in Clause 57(2)(a) to (d), or
 - (iii) a shortage of Constructional Plant or labour.

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

Provided that the Maintenance Surveyor 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 quantity of work described in the Works Order.

Provided further that the Maintenance Surveyor 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 Maintenance Surveyor 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 the Works or any Section, the period of extension of time granted shall be added to the prescribed time or previously extended time for the completion of such Works or as the case may be, the relevant Section.

(3) 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 Maintenance Surveyor may require the Contractor to submit full and detailed particulars of the cause and extent of the delay to the progress of the Works. Where such full and detailed particulars are required by the Maintenance Surveyor, they shall be submitted in writing by the Contractor to the Maintenance Surveyor as soon as practicable in order that the Contractor's claim may be investigated at the time by the Maintenance Surveyor. If the Contractor fails to comply with the provisions of this sub-clause, the Maintenance Surveyor shall consider such extension only to the extent that the Maintenance Surveyor is able on the information available.

(4) Except as provided elsewhere in the Contract, any extension of time granted by the Maintenance Surveyor 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 the delay during the period of such extension but not for any delay continued beyond such period.

(5) For the purpose of this 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 the heavy rainstorm signal commonly referred to as Black.

Rate of progress

54. (1) If the rate of progress of the Works or any Section thereof is at any time in the opinion of the Maintenance Surveyor too slow to ensure completion by the time for completion or extended time for completion, the Maintenance Surveyor may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the completion of the Works or any Section thereof. The Contractor shall inform the Maintenance Surveyor 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 Maintenance Surveyor shall be empowered to instruct the Contractor in writing to carry out the Works or any part thereof during any hours of the day where

the Maintenance Surveyor 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

55. (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 53, 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 89. 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 Maintenance Surveyor certifies completion under Clause 56 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 Maintenance Surveyor 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-clause (1)(a) of Clause 51 or any extension thereof of the Works until and including the certified date of completion.

Provided that, if the Maintenance Surveyor 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 82 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.

Completion of
the Works

56. (1) When the Works have been substantially completed and have passed any final test that may be prescribed by the Contract, the Contractor may notify the Maintenance Surveyor to that effect and give an undertaking to carry out any outstanding work during the Maintenance Period and request the Maintenance Surveyor to issue a certificate of completion. The Maintenance Surveyor shall, within 21 days of the date of receipt of such notice either:

- (a) issue a certificate of completion stating the date on which, in the Maintenance Surveyor's opinion, the Works were substantially completed in accordance with the Contract and the Maintenance Period shall commence on the day following the date of completion stated in such certificate, or
- (b) give instruction in writing to the Contractor specifying all the work which, in the Maintenance Surveyor's opinion, is required to be done by the Contractor before such certificate can be issued, in which case the Contractor shall not be permitted to make any further request for a certificate of completion and the provisions of sub-clause (2) of this Clause shall apply.

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

(3) The Contractor shall complete any outstanding work as soon as reasonably practicable after the issue of the certificate of completion or as directed by the Maintenance Surveyor and in any event before the expiry of the Maintenance Period. The Contractor's obligation to provide, service and maintain site offices, latrines and the like, shall continue for as long as may be necessary for the completion of any outstanding work.

(4) The provisions of sub-clauses (1), (2) and (3) of this Clause shall apply equally to any Section.

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

- (b) The Maintenance Surveyor, following a written request from the Contractor, may give

a certificate of completion in respect of any substantial part of the Works which has been completed to the satisfaction of the Maintenance Surveyor before the whole of the Works or any Section and is capable of permanent occupation and/or permanent use by the Employer.

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

(6) Any certificate of completion given in accordance with this Clause in respect of any Section or part of the 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 59(2).

SUSPENSION OF THE WORKS

Suspension of
the Works

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

(2) If upon written application by the Contractor to the Maintenance Surveyor, he is of the opinion that the Contractor has been involved in additional expenditure by reason of a suspension order given by the Maintenance Surveyor under this Clause then the Maintenance Surveyor 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 the Works or any part thereof, or
- (c) necessary by reason of some default on the part of the Contractor or any person carrying out the Works, or
- (d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof or for the safety and health of any person or the safety of any property on or adjacent to the Site in as much as such necessity does not arise from any act or default of the Maintenance Surveyor or the Employer or from any of the excepted risks defined in Clause 23.

Suspension
lasting more
than 90 days

58. If the progress of the Works or any part thereof is suspended on the written order of the Maintenance Surveyor and if permission to resume work is not given by the Maintenance Surveyor 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 57(2)(a) to (d), serve a notice in writing on the Maintenance Surveyor requiring permission within 28 days after the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Maintenance Surveyor does not grant such permission the Contractor by a further notice in writing served on the Maintenance Surveyor may, but is not bound to, elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 63 or where it affects the Whole of the Works as an abandonment of the Contract by the Employer.

MAINTENANCE AND DEFECTS

Execution of
work of repair

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

(2) All maintenance work whether or not required urgently by the Maintenance Surveyor shall be carried out by the Contractor during the Maintenance Period or within 14 days after its expiry, and the Maintenance Surveyor may by notice in writing require the Contractor to carry out maintenance work including any work of repair or rectification, or make good any defect, imperfection, shrinkage, settlement or other fault identified within the Maintenance Period, and the Contractor shall carry out such work within the Maintenance Period or as soon as practicable thereafter and where the Maintenance Surveyor requires such maintenance 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 Maintenance Surveyor as the Maintenance Surveyor 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 Maintenance Surveyor's opinion, be due to the use of materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Maintenance Surveyor such necessity shall be due to any other cause, the Maintenance Surveyor shall value the work as if it were a variation ordered in accordance with Clause 63, and shall certify in accordance with Clauses 79A/79B and 80A/80B.

(4) If the Contractor fails to carry out any outstanding work as required by Clause 56(3) or fails to carry out any maintenance work including any work of repair or rectification, or make good any defect, imperfection, shrinkage, settlement or other fault and in such terms (if any) as required by the Maintenance Surveyor 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.

Temporary
reinstatement

60. If in the course or for the purpose of the execution of the Works or any part thereof any highway or other road or way 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 Maintenance Surveyor be responsible for the making good of any subsidence or shrinkage or other defect, imperfection, settlement or fault in the temporary reinstatement of such highway 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 Maintenance Period in respect of the Works beneath such highway or other road or way or until the authority or other person as aforesaid shall have taken full occupation 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 Maintenance Period or the taking of full occupation as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out of or in consequence of or in connection with the said permanent reinstatement or any defect imperfection or failure of or in such work of permanent reinstatement and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (c) where the authority or other person as aforesaid shall take full occupation of the Site as aforesaid in Portions the responsibility of the Contractor under paragraph (a) of this Clause shall cease in regard to any such Portions at the time full occupation thereof is so taken but shall during the continuance of the said Maintenance Period continue in regard to any Portion of which full occupation 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

61. (1) At any time prior to the issue of the Maintenance Certificate in accordance with Clause 86 the Contractor shall, if instructed by the Maintenance Surveyor in writing, investigate the cause of any defect, imperfection or fault under the directions of the Maintenance Surveyor.

Provided that if the Maintenance Surveyor 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 workers or by other contractors and the provisions of sub-clauses (2) and (3) of this Clause shall apply to any investigation so carried out.

(2) If such defect, imperfection or fault shall be one for which the Contractor is liable in accordance with the provisions of the Contract, the expense incurred investigating as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault together with any consequential damage at his own expense.

(3) If such defect, imperfection or fault shall be one for which the Contractor is not so liable, then any investigation and remedial work carried out by the Contractor as aforesaid shall be valued in accordance with Clause 64 and certified for payment by the Maintenance Surveyor.

MEASUREMENT, VARIATIONS, VALUATIONS AND CLAIMS

Measurement of Works

62. Except as otherwise stated all Works executed under each Works Order shall be measured by the Contractor in accordance with the Schedule of Rates during the progress of or as soon as possible after the completion of each Works Order. The Contractor shall give full facilities to the Maintenance Surveyor to take independent measurements of all or part of such Works. The Contractor shall give due notice to enable the Maintenance Surveyor to be present when the Contractor is measuring such Works.

Orders for variations

63. (1) The Maintenance Surveyor shall have the power to make any variation 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 Maintenance Surveyor shall also have the power to make any variation to any Works Order. Such variations may include:

- (a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;
- (b) changes to the sequence, method or timing of construction and order of work as specified in the Works Order, and
- (c) changes to the ingress or egress to any work as specified in the Works Order.

No variation shall in any way vitiate or invalidate the Contract but the value of all such variations shall be taken into account in ascertaining the final value of the Works Order.

(3) No variation shall be made without an order in writing from the Maintenance Surveyor.

Provided that:-

- (a) if for any reason the Maintenance Surveyor shall consider it desirable to give any such order verbally the Contractor shall comply with such an order and confirmation in writing of such verbal order given by the Maintenance Surveyor shall be issued within 10 working days after such verbal order.
- (b) if the Contractor shall confirm in writing to the Maintenance Surveyor any verbal order of the Maintenance Surveyor and such confirmation shall not be contradicted in writing by the Maintenance Surveyor before the commencement of the work concerned.

Valuing variations

64. (1) The rate for any work ordered by the Maintenance Surveyor under Clause 63 which is varied in form, character or quality from that detailed in the Specification or Schedule of Rates or for any different work or material of any kind ordered which is not detailed in the Specification or Schedule of Rates shall, so far as may be reasonable, be agreed upon between the Maintenance Surveyor and the Contractor in accordance with the provisions of the Schedule of Rates.

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

Daywork

65. (1) The Maintenance Surveyor may, if in his opinion it is necessary or desirable, order in writing that any work to be carried out as a result of a variation ordered under Clause 63 shall be executed on a daywork basis.

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

(3) The Contractor shall furnish to the Maintenance Surveyor such receipts or other vouchers as may be necessary to prove the sums paid and before ordering materials shall if so required by the Maintenance Surveyor submit quotations for the same for his approval.

(4) In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each working day to the Maintenance Surveyor's Representative a

list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all materials and Constructional Plant used thereon or therefor. One copy of such lists and statements shall be agreed as correct or be rejected with stated reasons, and be signed by the Maintenance Surveyor's Representative and returned to the Contractor within 2 days exclusive of General Holiday.

(5) At the end of each month the Contractor shall deliver to the Maintenance Surveyor's Representative a priced statement of the labour, materials and Constructional Plant used on a daywork basis.

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

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

Disturbance to
the progress of
the Works

66. If upon written application by the Contractor to the Maintenance Surveyor the Maintenance Surveyor is of the opinion that the Contractor has been or is likely to be involved in expenditure for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract by reason of the progress of the Works or any part thereof having been materially affected by:

- (a) the Contractor not having received in due time necessary instructions, decisions, Drawings, Specification, details or levels from the Maintenance Surveyor for which the Contractor specifically applied in writing on a date which, having regard to the time for completion of the Works prescribed by Clause 51 or to any extension of time then granted by the Maintenance Surveyor, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor to receive the same, or
- (b) any variation ordered in accordance with Clause 63, or
- (c) the opening up for inspection in accordance with Clause 47 of any work covered up or put out of view after compliance with the requirements of Clause 46, or the testing of materials or workmanship not required by the Contract but directed by the Maintenance Surveyor or the Maintenance Surveyor's Representative in accordance with Clause 44(1) unless the inspection or test showed that the work, materials or workmanship were not in accordance with the Contract, or
- (d) delay caused by any person or any company, not being a utility undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works, or
- (e) late delivery of material, plant or equipment by the Employer,

then the Maintenance Surveyor shall ascertain the Cost incurred and certify for payment accordingly.

Notice of claims

67. (1) If the Contractor intends to claim a higher rate than one notified to him by the Maintenance Surveyor pursuant to Clause 64(2) or Clause 65(2) or Clause 90(4)(b), the Contractor shall within 28 days of such notification give notice in writing of his intention to claim to the Maintenance Surveyor.

(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 Maintenance Surveyor 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 Maintenance Surveyor details of the records being kept in respect thereof. Without necessarily admitting the Employer's liability, the Maintenance Surveyor may require the Contractor to keep and agree with the Maintenance Surveyor's Representative any additional contemporary records as are reasonable and may in the opinion of the Maintenance Surveyor be material to the claim. The Contractor shall permit the Maintenance Surveyor and the Maintenance Surveyor's Representative to inspect all records kept pursuant to this Clause and shall

supply copies thereof as and when the Maintenance Surveyor or Maintenance Surveyor's Representative shall so require.

(4) After the giving of a notice to the Maintenance Surveyor under this Clause, the Contractor shall, as soon as is reasonable, send to the Maintenance Surveyor 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 Maintenance Surveyor may reasonably require, the Contractor shall send to the Maintenance Surveyor 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) The Maintenance Surveyor shall not consider and the Employer shall not be liable to pay any claim unless as soon as reasonably possible after the notification by the Contractor of his intention to claim under sub-clauses (1) or (2) of this Clause, but in any event within a period of 180 days from the certified date of completion of the Works Order the Contractor shall have given to the Maintenance Surveyor full and detailed particulars in writing of the circumstances giving rise to the claim, of the rate or sum claimed and of the manner in which such rate or sum is calculated.

Provided that when the Contractor's claim relates to the whole of the Works under the Contract the period of 180 days shall commence on the certified date of completion of the final Works Order.

CONTINGENCY SUM

Contingency
Sum

67A.(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 Maintenance Surveyor.

(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 Maintenance Surveyor in accordance with Clause 63 and valued in accordance with Clause 64. 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.

NOMINATED SUB-CONTRACTORS

The Employer's
right to order
work or
materials from
specialist

68. (1) The Employer reserves the right to order work to be executed or goods or materials to be supplied by any specialist, merchant, tradesman or other person notwithstanding the fact that relevant items for such work to be executed or goods or materials to be supplied are contained in the Schedule of Rates.

(2) When instructed by the Maintenance Surveyor the Contractor shall enter into a sub-contract with the Nominated Sub-contractor using the appropriate standard form of sub-contract provided by the Employer. Subject to Clause 69(1), the Contractor shall not enter into any other form of sub-contract with a Nominated Sub-contractor.

(3) If the services to be provided in the Nominated Sub-contract include any matter of design or specification of any part of the Works (other than Temporary Works) or of any equipment or plant to be incorporated therein, such design or specification requirement shall be stated in the Contract and shall be included in any such nominated sub-contract and the obligation of the Contractor in respect thereof shall be only that which has been stated in accordance with this Clause.

Varied form of
sub-contract and
objections to
nomination

69. (1) The Maintenance Surveyor may instruct the Contractor to enter into a sub-contract with a Nominated Sub-contractor containing different terms from those specified in the standard form of sub-contract referred to in Clause 69(2). If the Maintenance Surveyor so instructs the Contractor, then

- (a) the Contractor shall not be bound to discharge his obligations under the Contract to the extent that the terms of such sub-contract are inconsistent with the discharge of the same, and
- (b) in the event of the Contractor incurring additional expenditure due to the terms of such sub-contract being different from the terms of the standard form of sub-

contract, so much of such expenditure as the Contractor could not reasonably avoid shall be ascertained by the Maintenance Surveyor and certified accordingly.

(2) The Contractor shall not be obliged to enter into a sub-contract with a Nominated Sub-contractor against whom the Contractor may raise any objection which the Maintenance Surveyor considers reasonable. Unless such objection shall be notified in writing to the Maintenance Surveyor within 14 days of the date of the Maintenance Surveyor's instruction given under Clause 68(2) to enter into a sub-contract, the Contractor shall be obliged to enter into such sub-contract. If, pursuant to this sub-clause, the Contractor does not enter into a sub-contract, the Maintenance Surveyor shall either:

- (a) nominate an alternative sub-contractor in which case provisions of Clauses 68 and 69 shall apply; or
- (b) by an order in writing given in accordance with Clause 63(2) vary the Works or the work, materials or services provided for in the Nominated Sub-contract including if necessary the omission of any such work, materials or services so that they may be provided by workers or contractors employed by the Employer either concurrently with the Works, in which case the provisions of Clause 36 shall apply, or at some other date.

Payment to
Nominated Sub-
contractors

70. (1) The Contractor shall, when required by the Maintenance Surveyor, produce all quotations, invoices, vouchers and receipts in connection with expenditure in respect of Nominated Sub-contractors.

(2) The amount which the Employer shall pay to the Contractor for work executed or goods and materials supplied by Nominated Sub-contractors shall be the net cost actually paid or to be paid by the Contractor to such Nominated Sub-contractor as certified by the Maintenance Surveyor.

(3) In addition the Employer shall pay to the Contractor a percentage as detailed in the Contract on the net cost paid or to be paid to such Nominated Sub-contractors by the Contractor, which percentage shall be deemed to be full payment for the Contractor's profit, overhead expenses, provision of facilities and any other costs, charges and expense whatsoever arising out of or in connection with work executed or goods or materials supplied by such Nominated Sub-contractors.

(4) The Contractor shall within 28 days of the delivery to the Employer of the Maintenance Surveyors certificate issued in accordance with Clauses 79, 80 or 81 hereafter, notify and pay in full to Nominated Sub-contractors the amounts certified in such certificate to be due for work executed by Nominated Sub-contractors.

- (5) (a) Before issuing any certificate under Clauses 79, 80 or 81 the Maintenance Surveyor shall be entitled to demand from the Contractor reasonable proof that all sums, included in previous certificates in respect of work executed, or materials or services supplied by Nominated Sub-contractors have been paid to each Nominated Sub-contractor. If the Contractor has not made such payments the Contractor shall:
 - (i) give details to the Maintenance Surveyor in writing of the reason why the Contractor is withholding or refusing to make such payments, and
 - (ii) produce to the Maintenance Surveyor reasonable proof that the Contractor has so informed every such Nominated Sub-contractor in writing.
- (b) If the Contractor fails to satisfy the Maintenance Surveyor that he has reasonable cause for withholding or refusing to make any payment to any Nominated Sub-contractor as aforesaid, the Employer, following notice in writing to the Contractor, shall be entitled:
 - (i) to pay any Nominated Sub-contractor direct, upon the certificate of the Maintenance Surveyor, all payments, which the Contractor has failed to make to any Nominated Sub-contractor and all such sums paid direct shall be recoverable by the Employer from the Contractor and/or
 - (ii) if satisfied that it is expedient to do so, to pay any Nominated Sub-contractor direct all payments that become due, for any work executed, or materials or services supplied in connection with the Works in so far as the price or cost thereof has not already been paid by the Contractor.
- (c) Neither the existence nor the exercise of any of the aforesaid powers by the Employer or the Maintenance Surveyor shall render the Employer liable to pay any Nominated Sub-contractor directly.

Assignment of
Nominated Sub-
contractor's

71. In the event of a Nominated Sub-contractor having undertaken towards the Contractor in respect of the work executed or the materials or services supplied by such Nominated Sub-contractor any continuing obligation extending for a period exceeding that of the Maintenance Period under the

obligations

Contract, 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 AND MATERIALS

Vesting of
Constructional
Plant and
temporary
buildings

72. All Constructional Plant and temporary buildings owned by the Contractor shall when brought onto the Site be and become the property of the Employer but may be removed from the Site by the Contractor at any time unless removal is expressly prohibited by the Maintenance Surveyor in writing. Upon removal as aforesaid or under the terms of Clause 94(2) such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works on the Site the remainder of such Constructional Plant and temporary buildings shall, subject to Clause 87, re-vest in the Contractor.

Vesting of
materials

73. All materials owned by the Contractor for incorporation in the Works shall be and become the property of the Employer upon delivery to the Site, and shall not be removed without an instruction or the prior written consent of the Maintenance Surveyor. Materials shall, subject to Clause 87, only re-vest in the Contractor to the extent that they may be found to be surplus to requirements upon or prior to completion of the Works. The operation of this Clause shall not be deemed to imply any approval by the Maintenance Surveyor of such materials or prevent the rejection by the Maintenance Surveyor of any material at any time.

Removal of
Constructional
Plant,
temporary
buildings and
materials

74. (1) Upon the issue of the last certificate of completion under the Contract or where appropriate, the issue of a certificate of completion for the Works comprised in an individual Works Order, the Contractor shall remove all Constructional Plant, temporary buildings and surplus materials from the Site, except those required to complete any outstanding work in accordance with Clause 56 or to discharge the Contractor's other obligations under the Contract.

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

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

75. Constructional Plant which is not solely owned by the Contractor shall not be brought onto the Site without the consent of the Maintenance Surveyor, and the Maintenance Surveyor shall have the power to withhold consent unless the owner of the Constructional Plant gives a written undertaking 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 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 Whole of the Works.
- (b) subject to any assignment under paragraph (a) of this 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.

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

76. In the event of the Employer entering into any agreement for hiring or hire-purchase under Clause 75 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 to Constructional Plant

77. 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 or materials which have become the property of the Employer under Clauses 72 and 73 or loss of or damage to any hired or hire-purchase Constructional Plant brought onto the Site in accordance with Clause 75.

Incorporation of certain Clauses in sub-contracts

78. The Contractor shall when entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract the provisions of Clauses 72 to 77 and shall use his best endeavours to ensure that they are observed.

CERTIFICATES AND PAYMENTS

Submissions * for payment for the Works

79A.(1) As soon as possible after completion of measurement of each Works Order, and in any case within 90 days after the date of completion of the Works certified by the Maintenance Surveyor, the Contractor shall submit to the Maintenance Surveyor for checking and any necessary correction three signed copies of a bill for the work executed under that Works Order and all further sums which the Contractor considers to be due to him under that Works Order. Such bills shall be prepared on forms supplied by and at the expense of the Contractor, set out in a manner which shall be determined by the Maintenance Surveyor and shall be complete with the supporting dimension books and any vouchers, invoices, receipts, or other documents or information which the Maintenance Surveyor may require. After checking, any necessary correction and completion, the Maintenance Surveyor shall certify the correct value of the Works executed under the Works Order and such further sum as may be due to the Contractor under that Works Order and pass this certificate to the Employer for payment to the Contractor.

(2) If the Contractor fails to comply with sub-clause (1) of this Clause the Maintenance Surveyor 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 89 or recovered as a debt from the Contractor.

Submissions * for payment for the Works

79B. (1) As soon as possible after completion of measurement of each Works Order, and in any case within 90 days after the date of completion of the Works certified by the Maintenance Surveyor, the Contractor shall submit to the Maintenance Surveyor for checking and any necessary correction signed dimension books for the Works executed under that Works Order. Should the Contractor fail to submit such signed dimension books within the stipulated period of 90 days without due reason acceptable to the Maintenance Surveyor, the Maintenance Surveyor may value the Works. In this event the Maintenance Surveyor's valuation shall be final, and 7.5% of the value of the Works established by the Maintenance Surveyor shall be deducted before payment to the Contractor as payment of the Employer's costs for so valuing.

(2) Dimension books shall be supplied by and at the cost of the Contractor, set out in a manner which shall be determined by the Maintenance Surveyor and when submitted they shall be accompanied by any supporting vouchers, invoices, receipts or other documents or information which the Maintenance Surveyor may require.

(3) The Contractor shall be responsible for the accuracy of the dimension books submitted to the Maintenance Surveyor. The Maintenance Surveyor may reject any dimension books submitted for payment if the Maintenance Surveyor considers that the Contractor has unreasonably overclaimed the value of works over and above of that as detailed in the Works Order.

(4) For works ordered on a Minor Works Order up to a standard base value stated in the Appendix to the Form of Tender the Contractor may claim the standard base value without stating any details or measurements, subject to the claims of payment for Minor Work Order being received, duly and properly countersigned that the work has been acceptably carried out, by the Maintenance Surveyor's Representative within 12 working days of issue. For claims of payment for Minor Works Orders received after 12 working days from the date of issue of the Minor Works Order may, at the Maintenance Surveyor's discretion, be referred back to the Contractor for measurement details and upon receipt thereof will be batched and if required sampled, checked and valued in accordance with sub-clause (6) of this Clause. If dimension books are submitted for Minor Works Order these will be at the Maintenance Surveyor's discretion either individually checked and valued or batched and sample checked and valued and the Contractor will only be paid the value arrived at, whether below the standard base value or not.

(5) Completed Works Orders with dimension books submitted will be sorted by the

* (Note: there are two G. C. C. 79 and one must be deleted)

Maintenance Surveyor according to the claimed value of each separate Works Order into batches of those not exceeding and those exceeding the amount stated in the Appendix to the Form of Tender.

Provided that the Maintenance Surveyor shall have the power to select any Works Orders for individual checking.

(6) (a) When Works Orders with dimension books submitted are to be batched and sample checked, random samples of not less than ten per cent (10%) by number and by value of the claimed total value of a batch will be selected for checking. After checking the dimension books submitted for the sample Works Orders and agreeing any corrections with the Contractor the percentage error between the claimed total values of the samples and the corrected total values of the samples in a batch will be applied to the claimed values of all of the Works Orders in the batch.

(b) Where requested by the Maintenance Surveyor or the Maintenance Surveyor's Representative, the Contractor shall attend or send a representative to assist in checking the measurements in the dimension books submitted against the work as detailed in the Works Order, and shall furnish all particulars required by the Maintenance Surveyor or the Maintenance Surveyor's Representative. Should the Contractor not attend or neglect or omit to send such representative, or fail to furnish the required particulars then the corrections made to the dimension books by the Maintenance Surveyor shall be taken to be the correct value of the sample Works Order.

(7) A summary of the batch will be forwarded to the Contractor for his agreement showing the claimed and the checked value of each sample and corrected value of each Works Order supported by corrected dimension books where necessary.

(8) The Contractor's agreement with the corrected dimension books and the amounts shown on the summary of the batch shall be signified on the summary which shall then be returned to the Maintenance Surveyor who shall then certify as correct the final value of the Works Orders in the batch and pass such certificate for payment less any interim payments previously made.

(9) Within 45 days after the date of issue of the summary of batch to the Contractor, the Contractor shall submit to the Maintenance Surveyor any written representations he may wish to make in respect of the summary of the batch and the corrected values of the Works Orders in the batch, and all information reasonably required for verification by the Maintenance Surveyor of any such representations. If the Contractor fails to sign and return the summary of batch and fails to submit the written representations and the information required for verifications as aforesaid within the said period of 45 days, the Maintenance Surveyor shall certify as correct the amounts shown on the summary of batch which in his opinion are the final values of the Works Orders in the batch and pass such certificate for payment, where upon the Contractor shall have no further claims in respect of the Works Orders in the batch.

(10) If the Contractor submits any representations or any required information after the expiry of 45 days after the date of issue of the summary of batch to the Contractor, the Maintenance Surveyor shall not be obliged to take into account such representations or information for verification of the summary of batch.

Interim †
payments

80A. (1) Interim payments based on the Contract Rates where appropriate may be made during the progress of the Works on any Works Orders of an estimated value exceeding that specified in the Appendix to the Form of Tender. Such interim payments shall not exceed eighty per cent (80%) of the estimated value of permanent Works executed and materials and goods delivered upon the Site for use in the permanent works which, to the satisfaction of the Maintenance Surveyor are reasonably, properly and not prematurely brought upon the Site and are adequately stored or otherwise protected from damage by weather or other causes.

(2) No interim payments shall be made on any Works Order of an estimated value not exceeding that specified in sub-clause (1) of this Clause.

(3) An interim payment may be made on completion of the Works under any Works Order of an estimated value exceeding that specified in the Appendix to the Form of Tender. Such interim payment shall not exceed eighty per cent (80%) of the estimated value of the work executed or materials or goods supplied.

Provided always that nothing in this Clause shall prevent the Maintenance Surveyor if he so requires from making an interim payment of any amount at any time on a Works Order of any estimated value.

† (Note: There are two G. C. C. 80 and one must be deleted. Clause 80A is applicable if 79A is used and 80B is applicable if Clause 79B is used. Therefore strike out A or B as the case may require)

Interim†
payments

80B. (1) Interim payments based on the Contract Rates where appropriate shall be made in accordance with the schedule set out in the Appendix to the Form of Tender.

(2) Notwithstanding the provision of sub-clause (1) of this Clause, the Maintenance Surveyor shall be at liberty to certify an interim payment of any amount at any time on any Works Order.

(3) In the event of failure to submit the dimension books for full and final measurement of the work in accordance with Clause 79B the Contractor shall repay immediately either by way of direct payment to the Employer or by way of deduction from any monies due to him from the Employer under this or any other contract the amount paid as interim payments on that Works Order as set out in the Appendix to the Form of Tender.

(4) Notwithstanding the provision of sub-clause (3) of this Clause, the Maintenance Surveyor shall be at liberty to extend the stated period within which the dimension books for full and final measurements must be submitted and may waive implementation of sub-clause (3) of this Clause during the first four months of this Contract.

Submission of
statement of
claims for
interim
payments

81. The Contractor shall submit to the Maintenance Surveyor a signed statement of any claim for interim payments under Clause 80A or 80B as applicable. Such statements shall be prepared on forms supplied by and at the cost of the Contractor and set out in a manner which shall be determined by the Maintenance Surveyor. After checking and any necessary correction of such statements the Maintenance Surveyor shall prepare certificates for interim payments for such amounts as may be justified by the statements, and pass these certificates to the Employer for payment to the Contractor.

Payment on
certification

82. Payment upon each of the Maintenance Surveyor's certificates shall be made by the Employer within 21 days after the date of the final signature thereon and 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 Maintenance Surveyor or otherwise, at a rate in excess of one percent below the said judgment debt rate. The Employer shall have the power to deduct from any payment due to the Contractor any sum due to the Employer from the Contractor in respect of overpayment on any previous certificate or certified bill or of any other cause whatsoever. Alternatively the Employer may issue a demand note to the Contractor for repayment by the Contractor of any previous over-payment by the Employer, or payment by the Contractor to the Employer in respect of any other matter whatsoever, and the Contractor shall make such repayment or payment to the Employer within 28 days of the issue of the demand note.

Correction and
withholding of
certificates

83. The Maintenance Surveyor may by any certificate make any correction or modification in any previous certificate which shall have been issued by him and shall have power to withhold any certificate of the Works or any part thereof which is not being carried out to his satisfaction.

Interim payment
certificate or
certified bill not
to constitute
approval of
work

84. No interim payment certificate or certified bill 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 any Works Order or part thereof under the Contract or shall protect or be deemed to protect the Contractor in the case of any over-measurement or over payment or shall constitute a waiver of any rights of the Maintenance Surveyor arising under the Contract against the Contractor or his sureties.

Approval of
works

85. Subject to paragraph 2 of Clause 86(2), the work executed and goods and materials supplied by the Contractor in pursuance of any Works Order under the Contract shall be deemed to be approved by the Maintenance Surveyor unless the Maintenance Surveyor shall disapprove of same in writing within 28 days after the expiry of the Maintenance Period on such Works Order.

Maintenance
certificate

86. (1) Upon the expiry of the Maintenance Periods in respect of all Works Orders and when all outstanding work referred to under Clause 56 and all work of repair, reconstruction, rectification and making good any defect, imperfection, shrinkage and other fault referred to in Clause 59 shall have been completed the Maintenance Surveyor shall issue a maintenance 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 maintenance certificate, shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof.

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

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

Provided that the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works unless the Contractor shall have made a claim in relation thereto in accordance with the time limits specified in Clause 53 or Clause 67.

REMEDIES AND POWERS

Determination
of the
Contractor's
employment

87. (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 being first obtained or shall have an execution levied on his goods or if the Maintenance Surveyor shall certify in writing to the Employer that in his opinion the Contractor:

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

then the Employer may after giving at least 7 days notice in writing to the Contractor enter upon the 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 Maintenance Surveyor by the Contract and the Employer may complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Constructional Plant, temporary buildings and materials which become the property of the Employer under Clauses 72 and 73 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract.

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

- (a) the quantity of work completed up to the time of such entry and expulsion, and
- (b) the quantity of unused or partially used materials and list any Constructional Plant and temporary buildings which have become the property of the Employer under the Contract as at the time of such entry and expulsion.

The provisions of Clause 62 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 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 Maintenance Surveyor or otherwise) unless and until the Maintenance Surveyor certifies that an amount is due to the Contractor under sub-clause (4)(b) of this Clause.

(b) The Maintenance Surveyor 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 Maintenance Surveyor under sub-clause (4)(b) of this Clause, subject to adjustment by the Maintenance Surveyor to take account of the amount (if any) certified by the Maintenance Surveyor 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 Maintenance Surveyor.

(5) If the Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor.

Work by person
other than the
Contractor

88. (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 Maintenance Surveyor in accordance with the Contract within a reasonable time, the Maintenance Surveyor 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 the Works any remedial or other work shall in the opinion of the Maintenance Surveyor be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Maintenance Surveyor may authorize the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorized by the Maintenance Surveyor is work which in the Maintenance Surveyor'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 Maintenance Surveyor shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

Recovery of
money due to
the Employer

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

90. (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 the Works, or
 - (b) an invasion of Hong Kong, or
 - (c) civil war, rebellion, revolution or military or usurped power in Hong Kong, or
 - (d) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on the 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 92) 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 with all reasonable despatch remove from the Site all Constructional Plant and temporary buildings and surplus materials and shall similarly allow his sub-contractors to do so.

(3) In the event of termination in accordance with the proviso to 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 Maintenance Surveyor of all such items the work or service comprised in which has been partially carried out or performed;
- (b) the Cost of materials reasonably ordered for the Whole of the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials becoming the property of the Employer upon such payment being made by the Employer;
- (c) a sum to be certified by the Maintenance Surveyor 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 determined 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 the 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 72 and 73 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 the Works or any material on the Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless be entitled to payment for such Works and for such 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 materials so far as may be required by the Maintenance Surveyor or as may be necessary for the completion of the Whole of the Works, valued at rates agreed upon between the Maintenance Surveyor and the Contractor and based where possible on prime costs. In the event of the Maintenance Surveyor and the Contractor failing to

reach agreement on any rate the Maintenance Surveyor 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

91. 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 90 if the Contract had been terminated in accordance with Clause 90.

SETTLEMENT OF DISPUTES

Settlement of
disputes

92. (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 the Works including any dispute as to any decision, instruction, order, direction, certificate or valuation by the Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor 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 Maintenance Surveyor 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 does 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) the Maintenance Surveyor failing to make a decision for a period of 90 days after being so requested to do so and subsequently neither the Employer nor the Contractor having requested mediation, or
- (f) the receipt of a notice of a decision by the Maintenance Surveyor and subsequently neither the Employer nor the Contractor having requested mediation.

(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 the Works), instruction, order, direction, certificate or valuation by the Maintenance Surveyor and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Maintenance Surveyor for the purpose of obtaining his decision above referred to. Save as provided for in sub-clause (4) 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 a certificate of completion in accordance with Clause 56 shall not be a condition precedent to the taking of any step in such reference;
 - (b) no decision given by the Maintenance Surveyor 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 dispute or difference as to the exercise of the Maintenance Surveyor's powers under Clause 87(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.
- (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.
- (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

- 93.** (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 the Site.
- (2) Any notice to be given to the Maintenance Surveyor under the provisions of the Contract may be served by post to or leaving such notice at the office of the Maintenance Surveyor.
- (3) Any notice to be given to the Employer, as distinct from the Maintenance Surveyor, 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 Maintenance Surveyor 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

- 94.** (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clauses 79 and 81 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 87(1) is given to the Contractor either before or during the 14 days' notice period provided in sub-clause (1) of this Clause, on expiry of that 14 days, the property in all Constructional Plant and temporary buildings brought upon the Site by the

Contractor shall thereupon re-vest in him and he shall with all reasonable despatch remove the same from the Site.

(3) Nothing in this Clause 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.

HEIGHT RESTRICTIONS

Airport height
restrictions

95. 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.

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 Building Works 2003 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.