



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

**GENERAL
CONDITIONS OF CONTRACT
FOR
CIVIL ENGINEERING WORKS**



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GENERAL CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

1. (1) In the Contract the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires: Definitions
- “Constructional Plant” means all appliances or things of whatsoever nature required for the execution of the Works but does not include materials or other things intended to form or forming part of the permanent work or vehicles engaged in transporting any personnel, Constructional Plant, materials or other things to or from the Site.
- “Contingency Sum” means the sum provided for work or expenditure which cannot be foreseen at the time the tender documents are issued which sum may include provision for work to be executed or for materials or services to be supplied by a Nominated Sub-contractor.
- “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 priced Bills of Quantities.
- “Contractor” means the person, firm or company whose Tender has been accepted by the Employer and includes the Contractor’s personal representatives, successors and permitted assigns.
- “Contract Sum” means the total of the priced Bills of Quantities at the date of acceptance of the Tender for the Works.
- “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.
- “Drawings” means the drawings referred to in the Specification or Bills of Quantities and any modification of such drawings approved in writing by the Engineer and such other drawings as may from time to time be furnished in writing or approved in writing by the Engineer.
- “Employer” means the Government of the Hong Kong Special Administrative Region.
- “Engineer” means the person, company or firm appointed from time to time by the Employer and notified in writing to the Contractor to act as the Engineer for the purposes of the Contract. The person appointed may be described by name or as the holder for the time being of a public office.
- “Engineer’s Representative” means any person or persons appointed from time to time by the Engineer and notified in writing to the Contractor to perform the duties set forth in Clause 2(2). The person appointed may be described by name or as the holder for the time being of a public office.
- “Final Contract Sum” means the sum to be ascertained and paid in accordance with the provisions hereinafter contained for the execution of the Works in accordance with the Contract.
- “General Holiday” means every Sunday and other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149).
- “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 the Works or any Section or part thereof certified by the Engineer in accordance with Clause 53.
- “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.
- “Portion” means a part of the Site separately identified in the Contract.
- “Prime Cost Sum” means the sum provided for work to be executed or for materials or services to be supplied by a Nominated Sub-contractor; such sum shall be the estimated net price to be paid for such work executed or for materials or services supplied by a Nominated Sub-contractor, after deducting any trade or other discount.
- “Provisional Sum” means a sum provided for work or expenditure which has not been quantified or detailed at the time the tender documents are issued which sum may include provision for work to be executed or for materials or services to be supplied by a Nominated Sub-contractor.
- “Retention Money” means the sum retained by the Employer as retention money in accordance with the Contract.

“Section” means a part of the Works for which a separate time for completion is identified in the Contract.

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

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

“Specialist Works” means any work separately identified in the Contract and connected with or ancillary to the Works which may from time to time be carried out on the Site by a Specialist Contractor.

“Specification” means the specifications referred to in the Contract and any modification thereof or addition thereto as may from time to time be furnished in writing or approved in writing by the Engineer.

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

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

“Works” means the work or services including work or services to be carried out by Nominated Sub-contractors to be constructed, completed, maintained and/or supplied in accordance with the Contract and includes Temporary Works.

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 Contract Sum 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.

ENGINEER AND ENGINEER’S REPRESENTATIVE

Duties and powers of the Engineer and the Engineer’s Representative

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

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

(c) The Contractor’s rights under the Contract shall not be prejudiced in any way by any failure on the part of the Engineer to comply with the requirements particularised in the Appendix to the Form of Tender or any other requirements of his appointment by the Employer.

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

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

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

by the Engineer's Representative to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer.

Provided that:

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

(4) No act or omission by the Engineer or the Engineer's Representative in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon him by any of the provisions of the Contract.

ASSIGNMENT AND SUB-CONTRACTING

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.

Assignment

4. (1) The Contractor shall not sub-contract 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.

Sub-contracting

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

(3) Notwithstanding that the Contract has not prohibited sub-contracting under sub-clause (1) of this Clause and the Engineer has not prohibited sub-contracting under sub-clause (2) of this Clause the Engineer, if in his opinion he considers it necessary, shall have full power to order the removal of any sub-contractor from 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 17 and he shall be responsible for the acts, defaults and neglects of any sub-contractor or the agents, employees or workers of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor, his agents, employees or workers.

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

CONTRACT DOCUMENTS

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.

Documents mutually explanatory

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

Provided that:

- (a) work shown on the Drawings or described in the Specification but not measured in the Bills of Quantities shall be dealt with in accordance with Clause 59;
- (b) if in the opinion of the Engineer compliance with such instructions shall involve the Contractor in any expense which by reason of any ambiguity or discrepancy the Contractor did not and had no reason to anticipate, the Engineer shall value such expense in accordance with Clause 61, and shall certify in accordance with Clause 79;
- (c) if in the opinion of the Engineer compliance with such instructions shall involve the Contractor in any saving then the Engineer shall value such saving and deduct the same from the Contract Sum accordingly.

Provision of Drawings and Specification

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

(2) The Engineer shall within 14 days of receiving a request in writing from the Contractor provide the Contractor with any further copies of the Drawings requested by the Contractor upon payment at the standard rate laid down from time to time by the Employer.

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

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

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

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

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

(2) If the Engineer has reasonable cause for being dissatisfied with the proposals set out in the Contractor's Drawings or documents the Engineer shall require the Contractor to make such amendments thereto as the Engineer may consider reasonably necessary. The Contractor shall make and be bound by such amendments at no additional expense to the Employer.

(3) The Contractor shall provide the Engineer with the type and number of copies of such Drawings and documents as may be specified in the Contract within 14 days of the Engineer's approval.

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

(5) No examination by the Engineer of the Drawings or documents submitted by the Contractor under the provisions of this Clause nor any approval given by the Engineer of the same, with or without amendment, shall absolve the Contractor from any liability for the same.

Information not to be divulged

8. (1) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer or the Engineer in the Contract or in any subsequent correspondence or documentation.

(2) The Employer and the Engineer may use any information provided by the Contractor in accordance with the Contract but shall not divulge such information except for the purpose of the Contract or for the purpose of carrying out any repair, amendment, extension or other work connected with 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. The Contractor shall, subject to the provisions of the Contract, execute the Works and provide all labour, materials, Constructional Plant, Temporary Works, transport to and from the Site or in and about the Works and everything whether of a temporary or permanent nature required in and for such execution so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

- 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. Contractor to execute Articles of Agreement
- 12.** If the Contract so requires, the Contractor shall either: Sureties or security
- (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 Form of Tender.
- Provided that when the certificate of completion with respect to the Works is issued, the said guarantee or deposit sum shall be released or repaid to the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression "certificate of completion" shall, for the purpose of this Clause, mean the last of such certificates.
- 13.** (1) The Contractor shall be deemed to have examined and inspected the Site and its surroundings and to have satisfied himself, before submitting his Tender, as regards existing roads or other means of communication with and access to the Site, the nature of the ground and sub-soil, the form and nature of the Site, the risk of 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 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 Works. Inspection of the Site
- (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.
- 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 Works and of the rates stated in the priced Bills of Quantities which 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 Works. Sufficiency of Tender
- 15.** Save in so far as it is legally or physically impossible the Contractor shall execute the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with and adhere strictly to the Engineer's instructions on any matter related to the Contract whether mentioned in the Contract or not. Works to be to the satisfaction of the Engineer
- 16.** (1) Within 14 days of the acceptance of the Tender or within such other period of time as may be specified in the Contract the Contractor shall submit to the Engineer a programme showing the sequence, method and timing, including (in so far as such work is described in the Contract) due allowance for the carrying out of Specialist Works and work by utility undertakings, in which the Contractor proposes to carry out the Works and shall, whenever required by the Engineer, furnish for the Engineer's information, particulars in writing of the Contractor's arrangements for carrying out the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be. Programme to be furnished
- (2) The submission to the Engineer of such programme, or revised programme in accordance with Clauses 50 or 51, or the furnishing of such particulars shall not relieve the Contractor of any duty or responsibility under the Contract.
- 17.** (1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract. Contractor's superintendence
- (2) The Contractor shall ensure that he is at all times represented on the Site by a competent and authorized English-speaking agent who shall be deemed to be approved by the Engineer provided such agent is not expressly disapproved by the Engineer in writing within 14 days from the serving of a notice in writing upon the Engineer by the Contractor of the appointment of such agent. Such agent shall be constantly on the Site and shall give his whole time to the superintendence of the Works.

(3) The Engineer 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 from the Site forthwith and shall not thereafter employ him again on the Site in any capacity and shall replace him by another competent English-speaking agent approved by the Engineer.

(4) Such authorized agent shall receive on behalf of the Contractor directions and instructions from the Engineer and the Engineer's Representative.

Contractor's employees

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

- (a) only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work 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 Works.

(2) The Engineer 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 the Works who in the opinion of the Engineer misconducts himself or is incompetent or negligent in the proper performance of his duties or fails to comply with any particular provision with regard to safety or whose employment is otherwise considered by the Engineer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Engineer.

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

Setting-out

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

(2) If at any time during the progress of the Works any error shall appear or arise in the position, level, dimensions or alignment of any part of the Works, the Contractor on being instructed so to do by the Engineer or the Engineer's Representative shall, at his own expense, rectify such error unless such error is based on incorrect data shown on the Drawings or any document supplied to the Contractor by the Engineer or the Engineer's Representative in which case the rectification shall be treated as a variation ordered in accordance with Clause 60.

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

Safety and security of the Works

20. (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 Engineer 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 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 Engineer proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works. No such road opening or traffic diversion shall be brought into operation or use unless the proposals submitted have been previously approved by the Engineer and properly provided and implemented on the Site.

Care of the Works

21. (1) From and including the date for commencement of the Works notified by the Engineer in accordance with Clause 47 until 28 days after the date of completion of the Works certified by the Engineer in accordance with Clause 53 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 20(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 Engineer 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 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 Engineer in respect of that Section or part 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 Engineer, the Engineer's Representative and their staff.

(2) In case any damage, loss or injury from any cause whatsoever, except the "excepted risks" as defined in sub-clause (4) of this Clause, shall happen to 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 Engineer 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 Engineer's instructions.

(3) To the extent that any damage, loss or injury arises from any of the "excepted risks" defined in sub-clause (4) of this Clause, the Contractor shall, if instructed by the Engineer, repair and make good the same at the expense or proportionate expense of the Employer. Any sum payable under this Clause by the Employer shall be valued by the Engineer in the same manner as a sum payable in respect of a variation ordered in accordance with Clause 60.

(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, employees or other contractors 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 Engineer's design of the Works;
- (h) a cause due to any neglect or default by the Engineer or the Employer or their employees or agents in the course of their employment;
- (i) ionising radiations or contamination by radio-activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radio active 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.

22. (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 and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Damage to persons and property

(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 Engineer or the Employer, their respective agents or employees shall have contributed to the damage, loss or injury;
- (b) nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:
 - (i) the use or occupation of land provided by the Employer for 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,
 - (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 in respect 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 Engineer or the Engineer'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

23. 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 Engineer.

Interference with traffic and adjoining properties

24. (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 to or of properties whether in the possession of the Employer or any other person.

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

Remedy on failure to insure

25. 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

26. 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

27. 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 Engineer in the form prescribed in the Contract.

28. 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.

Patent rights and royalties

Provided that where in compliance with the Contract or the Engineer's written instructions the Contractor shall incorporate into the permanent work any patented article, process or invention, the Contractor shall be reimbursed by the Employer for any expenses, costs or damages which the Contractor may have had to pay to the persons entitled to such patented article, process or invention in respect of any infringement of any patent rights, design, trademark, name or other protected rights in relation to such article, process or invention.

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

29. 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.

Giving of notices and payment of fees

30. 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 29,

Compliance with enactments and regulations

and any additions or amendments thereto during the continuance 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.

31. Any notice required to comply with any enactment or the rules and regulations of the Government of the Hong Kong Special Administrative Region 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.

Notices to be written in English and Chinese

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

Site diary and labour returns

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

(3) The Contractor shall, as and when called upon to do so by the Engineer, make available to the Engineer or such other person as the Engineer may direct, such information as the Engineer considers necessary to enable him properly to keep and maintain his site record, but in any event and without prejudice to the generality of the foregoing, the Contractor shall deliver to the office of the Engineer's Representative by not later than 1.00 p.m. on each working day a return in such form as the Engineer may prescribe showing in detail the numbers of the several classes of labour on 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 Engineer's Representative may require.

33. 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

Fossils

or thing and shall immediately upon discovery thereof and before removal acquaint the Engineer or the Engineer's Representative of such discovery and carry out at the expense of the Employer the instructions of the Engineer as to the disposal of the same.

Facilities for other persons

34. (1) The Contractor shall in accordance with the requirements of the Engineer afford all reasonable facilities for any person who may be carrying out, on or adjacent to 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 written request of the Engineer either:

- (a) make available any road or way for the maintenance of which the Contractor is responsible to, or
- (b) permit the use of any Constructional Plant on 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 Engineer considers reasonable.

Clearance of the Site on completion

35. As soon as practicable after the issue of the certificate of completion as provided for in Clause 53 the Contractor shall clear away and remove from the Site or, where the certificate of completion relates to a Section or part of the Works, the relevant part of the Site, all surplus materials and rubbish of any kind whatsoever and leave the Site or the relevant part thereof and the Works or the relevant Section or part thereof in a clean and tidy condition.

Publication of photographs of the Site or the Works

36. (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

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

Site cleanliness

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

LABOUR

Engagement of labour

39. (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 the Government of the Hong Kong Special Administrative Region 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.

Fair wages

40. (1) The Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

(2) The Contractor shall in respect of all persons employed by him, whether in carrying out this Contract or otherwise, in every workshop or other place occupied or used by him for carrying out the Works comply with the general conditions required by this Clause.

(3) The Contractor shall be responsible for the observance of this Clause by sub-contractors employed in the carrying out of the Works.

(4) 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.

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

Passes

(2) If required by the Engineer 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 Engineer of their bona fides and identity.

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

MATERIALS AND WORKMANSHIP

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

Quality of materials, workmanship and tests

(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 Engineer or the Engineer'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 Engineer 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 Engineer or the Engineer's Representative, then such expense and costs of such examination, measurement or test including those of the Engineer'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 Engineer's instructions but otherwise such expense and costs shall be borne by the Employer and shall be valued in accordance with Clause 61.

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

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

43. The Engineer 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 Engineer and any person so authorized by him to obtain access when required to such other workshops and places from where materials or manufactured articles are being obtained for incorporation into the Works.

Access to the Site and places of manufacture

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

Examination of work before covering up

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

Uncovering and making openings

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

(2) If any such part has been covered up or put out of view after compliance with the requirements of Clause 44 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 61 but in any other case the expense shall be borne by the Contractor.

Removal of unsatisfactory material and work

46. (1) The Engineer 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 Engineer 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 Engineer may but shall not be obliged to 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 Engineer such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Engineer shall value such excess in accordance with Clause 61, and shall certify in accordance with Clause 79.

(4) In the event that the Engineer 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 Engineer the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Engineer shall ascertain the Cost incurred, and shall certify in accordance with Clause 79.

COMMENCEMENT, COMPLETION AND DELAYS

Commencement of the Works

47. The Contractor shall commence the Works on the date for commencement of the Works as notified in writing by the Engineer and shall proceed with the same with due diligence. The date so notified by the Engineer shall be within the period of time after the date of acceptance of the Tender as stated in the Appendix to the Form of Tender. The Contractor shall not commence the Works before the notified date for commencement.

Possession of the Site

48. (1) Save in so far as the Contract may prescribe the extent of Portions of the Site of which the Contractor is to be given possession from time to time and the order in which such Portions shall be made available to him and, subject to any requirement in the Contract as to the order in which the Works shall be executed, the Employer shall give to the Contractor on the date for commencement notified by the Engineer in accordance with Clause 47 possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the programme referred to in Clause 16 and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Engineer. The Employer will from time to time, as the Works proceed, give to the Contractor possession of such further parts of the Site as may be required to enable the Contractor to proceed with construction of the Works with due despatch in accordance with the said programme or proposals, as the case may be.

(2) If upon written application having been made by the Contractor to the Engineer, the Engineer is of the opinion that the Contractor has been involved in additional expenditure by reason of the progress of the Works or any part thereof having been materially affected by the failure of the Employer to give possession in accordance with this Clause then the Engineer shall ascertain the Cost incurred, and shall certify in accordance with Clause 79.

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

49. (1) The Works and any Section thereof shall be completed within the time or times stated in the Appendix to the Form of Tender calculated from and including the date for commencement notified by the Engineer in accordance with Clause 47 or such extended time as may be determined in accordance with Clause 50.

Time for completion

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

50. (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 or any Section thereof has arisen, the Contractor shall give notice in writing to the Engineer of the cause and probable extent of the delay.

Extension of time for completion

Provided that as soon as the Contractor can reasonably foresee that any order or instruction issued by the Engineer is likely to cause a delay to the progress of the Works or any Section thereof the Contractor shall forthwith give notice in writing to the Engineer 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 Engineer has issued the relevant order or instruction.

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

- (i) inclement weather and/or its consequences adversely affecting the progress of the Works, or
- (ii) the hoisting of tropical cyclone warning signal No. 8 or above, or
- (iii) a Black Rainstorm Warning, or
- (iv) an instruction issued by the Engineer under Clause 5, or
- (v) a variation ordered under Clause 60, or
- (vi) a substantial increase in the quantity of any item of work included in the Contract not resulting from a variation ordered under Clause 60, or
- (vii) the Contractor not being given possession of the Site or any Portion or part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or
- (viii) a disturbance to the progress of the Works for which the Employer or the Engineer or a Specialist Contractor is responsible including but not restricted to any matter referred to in Clause 63, or
- (ix) the Engineer suspending the Works in accordance with Clause 54 in so far as the suspension is not occasioned by the circumstances described in Clause 54(2)(a) to (d), or
- (x) 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
- (xi) delay on the part of any Nominated Sub-contractor for any reason specified in sub-clauses (b)(i) to (ix) of this Clause and which the Contractor has taken all reasonable steps to avoid or reduce, or
- (xii) any special circumstance of any kind whatsoever,

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

(c) Notwithstanding the powers of the Engineer under the provisions of this Clause to decide whether the Contractor is fairly entitled to an extension of time the Contractor shall not be entitled to an extension of time for the completion of the Works or any Section thereof if the cause of the delay is:

- (i) a suspension occasioned by the circumstances described in Clause 54(2)(a) to (d), or
- (ii) a shortage of Constructional Plant or labour.

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

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

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

(2A) For the avoidance of doubt if the Engineer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of 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 the 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 Engineer 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 Engineer, they shall be submitted in writing by the Contractor to the Engineer as soon as practicable in order that the Contractor's claim may be investigated at that time by the Engineer. If the Contractor fails to comply with the provisions of this sub-clause, the Engineer shall consider such extension only to the extent that the Engineer is able on the information available.

(4) Whenever the Engineer grants an extension of time for completion in accordance with this Clause, the Contractor shall revise the programme referred to in Clause 16 accordingly.

(5) Except as provided elsewhere in the Contract, any extension of time granted by the Engineer to the Contractor shall be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.

(6) 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

51. (1) If the rate of progress of the Works or any Section thereof is at any time in the opinion of the Engineer too slow to ensure completion by the prescribed time or extended time for completion, the Engineer may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the completion of the Works or any Section thereof. The Contractor shall inform the Engineer of such proposed steps and revise the programme referred to in Clause 16 accordingly.

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

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

Liquidated
damages for
delay

52. (1) If the Contractor fails to complete the Works or where the Works are divided into Sections any Section within the time for completion prescribed by Clause 49 or such extended time as may be granted in accordance with Clause 50, 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 83. 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 shall be calculated using the rate per day prescribed in the Appendix to the Form of Tender, either for the Works or for the relevant Section, whichever is applicable.

Provided that, if the Engineer certifies completion under Clause 53 of any part of the Works before completion of the Works or any part of any Section before the completion of the whole thereof, then the rate per day of liquidated damages for the Works or the relevant Section 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 or the relevant Section, as applicable, both values as of the date of such certification shall be determined by the Engineer.

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

Provided that, if the Engineer subsequently grants an extension of time which affects the period described above, then the Employer shall reimburse to the Contractor the liquidated damages for the number of days so affected at the rate described in sub-clause (2) of this Clause together with interest at the rate provided for in Clause 79(4) 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.

53. (1) When the Works have been substantially completed and have satisfactorily passed any final test that may be prescribed by the Contract, the Contractor may serve notice in writing to that effect to the Engineer, accompanied by an undertaking to carry out any outstanding work during the Maintenance Period, requesting the Engineer to issue a certificate of completion in respect of the Works. The Engineer shall, within 21 days of the date of receipt of such notice either:

Completion of
the Works

- (a) issue a certificate of completion stating the date on which, in the Engineer's opinion, the Works were substantially completed in accordance with the Contract and the Maintenance Period shall commence on the day following the date of completion stated in such certificate, or
- (b) give instructions in writing to the Contractor specifying all the work which, in the Engineer'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 Engineer the Works have been substantially completed and satisfactorily passed any final test which may be prescribed by the Contract, the Engineer 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 carry out any outstanding work as soon as practicable after the issue of the certificate of completion or as reasonably directed by the Engineer 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 required by the Engineer.

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

- (5) (a) The Engineer shall give a certificate of completion in respect of any part of the Works which has been completed to the satisfaction of the Engineer and is required by the Employer for permanent occupation or use before the completion of the Works or any Section.
- (b) The Engineer, 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 Engineer before the completion of the Works or any Section and is capable of permanent occupation and/or permanent use by the Employer.
- (c) When a certificate of completion is 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 surface requiring reinstatement unless the certificate shall expressly so state.

(7) For the purposes of this Clause the term "Works" shall exclude any maintenance work executed in accordance with Clause 56.

SUSPENSION OF THE WORKS

Suspension of
the Works

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

(2) If upon written application by the Contractor to the Engineer, the Engineer is of the opinion that the Contractor has been involved in additional expenditure by reason of a suspension order given by the Engineer under this Clause then the Engineer shall ascertain the Cost incurred and shall certify in accordance with Clause 79, 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 Engineer or the Employer or from any of the excepted risks defined in Clause 21.

Suspension
lasting more
than 90 days

55. If the progress of the Works or any part thereof is suspended on the written order of the Engineer and if written permission to resume work is not given by the Engineer within a period of 90 days after the date of suspension then the Contractor may, unless such suspension is occasioned by the circumstances described in Clause 54(2)(a) to (d), serve a notice in writing on the Engineer requiring permission within 28 days after the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Engineer does not grant such permission the Contractor by a further notice in writing served on the Engineer may, but is not bound to, elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 60 or where it affects the Works as an abandonment of the Contract by the Employer.

MAINTENANCE AND DEFECTS

Execution of
work of repair

56. (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 Engineer shall be carried out by the Contractor during the Maintenance Period or within 14 days after its expiry, and the Engineer 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 Engineer 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 Engineer as the Engineer may consider necessary and reasonable in the circumstances.

(3) All such work shall be carried out by the Contractor at his own expense if the necessity for such work shall, in the Engineer's opinion, be due to the use of materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Engineer such necessity shall be due to any other cause, the Engineer shall value the work as if it were a variation ordered in accordance with Clause 60, and shall certify in accordance with Clause 79.

(4) If the Contractor fails to carry out any outstanding work as required by Clause 53(3) or fails to carry out any maintenance work and in such terms (if any) as required by the Engineer under sub-clause (2) of this Clause the Employer shall be entitled after giving reasonable notice in writing to the Contractor, to have such work carried out by his own workers or by other contractors and if such work is work which the Contractor would have been required to carry out at his own expense the Employer shall be entitled to recover from the Contractor the expenditure incurred in connection therewith.

57. 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:

Temporary
reinstatement

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

58. (1) At any time prior to the issue of the maintenance certificate in accordance with Clause 80 the Contractor shall, if instructed by the Engineer in writing, investigate the cause of any defect, imperfection or fault under the directions of the Engineer.

Investigating
defects

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

(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 in investigating as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault together with any consequential damage at his own expense.

(3) If such defect, imperfection or fault shall be one for which the Contractor is not so liable, then the Engineer shall value any investigation and remedial work carried out by the Contractor as aforesaid in accordance with Clause 61, and shall certify in accordance with Clause 79.

MEASUREMENT, VARIATIONS, VALUATIONS AND CLAIMS

59. (1) Except where any statement in the Bills of Quantities expressly shows to the contrary the Bills of Quantities shall be deemed to have been prepared and measurements shall be made according to the procedures set forth in the Method of Measurement stated in the Preamble to the Bills of Quantities.

Bills of
Quantities and
measurement

(2) The quantities set out in the Bills of Quantities are estimated quantities and they are not to be taken as the actual and correct quantities of the work to be executed.

(3) Any error in description in the Bills of Quantities or item omitted therefrom shall not vitiate the Contract nor release the Contractor from the execution of the whole or any part of the Works according to the Drawings and Specification or from any of his obligations or liabilities under the Contract. The Engineer shall correct any such error or omission, shall ascertain the value of the work actually carried out in accordance with Clause 61, and shall certify in accordance with Clause 79.

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

- (4) (a) For the purpose of calculating the Final Contract Sum the Engineer shall ascertain and determine by measurement the quantity of work executed in accordance with the Contract. Subject to (b) of this sub-clause such work shall be valued at the rates set out in the Bills of Quantities or if there are no appropriate rates in the Bills of Quantities then at other rates determined in accordance with the Contract.
- (b) Should the actual quantity of work executed in respect of any item be substantially greater or less than that stated in the Bills of Quantities (other than an item included in the daywork schedule if any) and if in the opinion of the Engineer such increase or decrease of itself shall render the rate for such item unreasonable or inapplicable, the Engineer shall determine an appropriate increase or decrease of the rate for the item using the Bills of Quantities rate as the basis for such determination and shall notify the Contractor accordingly.
- (5) (a) When any part of the Works is required to be measured the Engineer shall inform the Contractor who shall forthwith attend or send a representative to assist the Engineer in making such measurement and shall furnish all particulars required by him. Should the Contractor not attend or neglect or omit to send such representative then the measurement made by the Engineer shall be taken to be the correct measurement of the work.
- (b) For the purpose of measuring such permanent work as is to be measured by records and drawings the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor, as and when called upon to do so in writing, shall within 14 days attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed and if the Contractor does not so attend to examine and agree any such records and drawings they shall be taken to be correct.
- (c) If after examination of such records and drawings the Contractor does not agree the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the Contractor shall, within 14 days of such examination, lodge with the Engineer for a decision by the Engineer a statement in writing of the respects in which such records and drawings are claimed by the Contractor to be incorrect.

Variations

60. (1) The Engineer shall order any variation to any part of the Works that is necessary for the completion of the Works and shall have the power to order any variation that for any other reason shall in his opinion be desirable for or to achieve the satisfactory completion and functioning of the Works. Such variations may include:

- (a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;
- (b) changes to any sequence, method or timing of construction specified in the Contract; and
- (c) changes to the Site or entrance to and exit from the Site.

(2) No variation shall be made by the Contractor without an order in writing by the Engineer. 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 Contract Sum.

Valuing variations

61. (1) The Engineer shall determine the sum which in his opinion shall be added to or deducted from the Contract Sum as a result of an order given by the Engineer under Clause 60 in accordance with the following principles:

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

Provided that if the nature or extent of any variation ordered in accordance with Clause 60 relative to the nature or extent of the Works or any part thereof shall be such that in the opinion of the Engineer any rate contained in the Contract for any item of work is by reason of such variation rendered unreasonable or inapplicable then a new rate shall be agreed between the Engineer and the Contractor for that item, using the Contract rates as the basis for determination.

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

62. (1) The Engineer 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 60 shall be executed on a daywork basis.

Daywork

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

(3) The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the sums paid and before ordering materials shall, if so required by the Engineer, submit to the Engineer 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 Engineer's Representative a list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all materials and Constructional Plant used thereon or therefor. One copy of such lists and statements shall be agreed as correct or be rejected with stated reasons, be signed by the Engineer's Representative and returned to the Contractor within 2 days exclusive of General Holidays.

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

Provided that if the Engineer shall consider that for any reason the sending of such statement by the Contractor in accordance with the foregoing provision was impracticable the Engineer 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 Engineer's opinion be reasonable.

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

63. If upon written application by the Contractor to the Engineer the Engineer is of the opinion that the Contractor has been or is likely to be involved in 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:

Disturbance to the progress of the Works

- (a) the Contractor not having received in due time necessary instructions, orders, directions, decisions, Drawings, specifications, details or levels from the Engineer 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 49 or to any extension of time then granted by the Engineer, 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 60, or
- (c) the opening up for inspection in accordance with Clause 45 of any work covered up or the testing of materials or workmanship not required by the Contract but directed by the Engineer or the Engineer's Representative in accordance with Clause 42(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 Engineer shall ascertain the Cost incurred and shall certify in accordance with Clause 79.

Notice of claims

64. (1) If the Contractor intends to claim a higher rate than one notified to him by the Engineer pursuant to Clause 59(4)(b) or Clause 61(2) or Clause 84(4)(b) the Contractor shall within 28 days of such notification give notice in writing of his intention to claim to the Engineer.

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

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

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

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

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

Provided that the Engineer shall not be obliged to take into account when considering a claim any particulars of the claim received by him after the expiry of a period of 180 days calculated from the date of completion stated in the certificate of completion with respect to the Works. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.

PRIME COST, PROVISIONAL AND CONTINGENCY SUMS

65. (1) All sums set out in the Contract which are stated to be Prime Cost Sums, Provisional Sums or the Contingency Sum shall only be used upon the written instruction of the Engineer.

(2) Where any Prime Cost Sum is included in the Contract the Contractor shall, when instructed by the Engineer, enter into a sub-contract with the Nominated Sub-contractor using the appropriate sub-contract booklet provided by the Employer. Subject to Clause 66(1), the Contractor shall not enter into any other form of sub-contract with a Nominated Sub-contractor.

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

66. (1) The Engineer may instruct the Contractor to enter into a sub-contract with a Nominated Sub-contractor containing different terms to those specified in the standard form of sub-contract referred to in Clause 65(2). If the Engineer 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 Engineer.

Use of Prime Cost, Provisional and Contingency Sums

Varied form of sub-contract and objections to nomination

(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 Engineer considers reasonable. Unless such objection shall be notified in writing to the Engineer within 14 days of the date of the Engineer's instruction given under Clause 65(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 Engineer shall either:

- (a) nominate an alternative sub-contractor in which case the provision of Clauses 65 and 66 shall apply; or
- (b) by order under Clause 60, vary the Works or the work, materials or services provided for in the Prime Cost, Provisional or Contingency Sum item 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 34 shall apply, or at some other date.

67. (1) Prime Cost Sums shall be deducted from the Contract Sum and in lieu thereof shall be added the total sum to be paid by the Contractor to any Nominated Sub-contractor on the certificate of the Engineer.

Accounting of
Prime Cost Sums

(2) The sum included by the Contractor in the Contract for attendance on a Nominated Sub-contractor shall be fixed regardless of whether the actual sum expended is greater or less than the Prime Cost Sum. In respect of profit the sum paid shall be the product of the percentage quoted by the Contractor in the Contract and the actual sum expended in relation to the Prime Cost Sum.

68. Provisional Sums and the Contingency Sum shall be deducted from the Contract Sum and in lieu thereof shall be added the value of the work ordered by the Engineer, valued in accordance with Clause 61 or, where the Provisional Sum or Contingency Sum relates to work executed by, or goods, materials or services supplied by a Nominated Sub-contractor, valued in accordance with the sub-contract, deducting any trade or other discount. Any part of any Provisional Sum or the Contingency Sum which is to be used for work to be executed by, or goods, materials or services to be supplied by a Nominated Sub-contractor, shall be deemed to be a Prime Cost Sum.

Accounting of
Provisional and
Contingency
Sums

69. (1) The Contractor shall, when required by the Engineer, produce all quotations, invoices, vouchers and receipts in connection with any Prime Cost Sum, Provisional Sum or the Contingency Sum.

Payments to
Nominated Sub-
contractors

(2) Within 7 days after the date when payment is made by the Employer to the Contractor pursuant to the Engineer's interim certificate issued in accordance with Clause 79, the Contractor shall notify and pay to every Nominated Sub-contractor the sum certified in such certificate as due in respect of work carried out or materials or services supplied by such Nominated Sub-contractor.

(3) (a) Before issuing any certificate under Clause 79 the Engineer shall be entitled to demand from the Contractor reasonable proof that all sums included in previous certificates in respect of work carried out or materials or services supplied by every Nominated Sub-contractor have been paid to each Nominated Sub-contractor. If the Contractor has not made such payments the Contractor shall:

- (i) give details to the Engineer in writing of the reason why the Contractor is withholding or refusing to make such payments, and
- (ii) produce to the Engineer reasonable proof that the Contractor has so informed every such Nominated Sub-contractor in writing.

(b) If the Contractor fails to satisfy the Engineer 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 Engineer, all payments, less retention provided for in the sub-contract, which the Contractor has failed to make to any Nominated Sub-contractor and all such sums paid direct shall be recoverable by the Employer from the Contractor and/or
- (ii) if satisfied that it is expedient to do so, to pay any Nominated Sub-contractor direct all payments that become due, less retention provided for in the sub-contract, for any work carried out, 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) Where on the certification and payment to the Contractor of Retention Money in accordance with Clause 79(3) the Contractor fails to make payment to any Nominated Sub-contractor of any Retention Money due to such Nominated Sub-contractor and the Engineer considers that the Contractor does not have reasonable cause for such failure, the Employer, following notice in writing to the Contractor, shall be entitled to pay such Nominated Sub-contractor direct and any Retention Money so paid shall be recoverable by the Employer from the Contractor.
- (d) Neither the existence nor the exercise of any of the aforesaid powers by the Employer or the Engineer shall render the Employer liable to pay any Nominated Sub-contractor directly.

Assignment of Nominated Sub-contractor's obligations

70. 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 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

71. 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 Engineer in writing. Upon removal as aforesaid or under the terms of Clause 88(2) such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works the remainder of such Constructional Plant and temporary buildings shall, subject to Clause 81, re-vest in the Contractor.

Vesting of materials

72. 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 Engineer. Materials shall, subject to Clause 81, 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 Engineer of such materials or prevent the rejection by the Engineer of any material at any time.

Removal of Constructional Plant, temporary buildings and materials

73. (1) Upon the certificate of completion of the Works being issued, or the last of such certificates where a certificate is issued for a part or parts of the Works before completion of the whole, 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 53 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 Engineer, 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

74. Constructional Plant which is not solely owned by the Contractor shall not be brought onto the Site without the consent of the Engineer, and the Engineer 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 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.

- 75.** In the event of the Employer entering into any agreement for hiring or hire-purchase under Clause 74 all sums paid by the Employer under the provisions of any such agreement and all expenses incurred by the Employer in entering into such agreement shall be deemed to be part of the cost of completing the Works, and shall be recoverable by the Employer from the Contractor. Employer's expense in entering into hire or hire-purchase agreement
- 76.** Save as stated in Clause 21, 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 71 and 72 or loss of or damage to any hired or hire-purchase Constructional Plant brought onto the Site in accordance with Clause 74. Liability for loss or damage to Constructional Plant
- 77.** 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 71 to 76 and shall use his best endeavours to ensure that they are observed. Incorporation of certain Clauses in sub-contracts

CERTIFICATES AND PAYMENTS

- 78.** (1) The Contractor shall submit to the Engineer at the end of each monthly period (the first of such monthly periods to commence on the date for commencement of the Works) a statement showing: Contractor's interim statements
- (a) the estimated contract value of the work done in accordance with the Contract up to the end of such monthly period with sums payable in respect of Nominated Sub-contractors listed separately;
 - (b) a list of materials delivered to the Site for use in the permanent work and their estimated contract value;
 - (c) all further estimated sums which the Contractor considers to be due to him under the Contract.
- (2) The statement shall be prepared on a form supplied by and at the expense of the Contractor and the style and number of copies shall be as the Engineer shall determine. The Contractor shall complete the required number of copies of the statement and deliver them to the Engineer for checking and, if necessary, correction in accordance with Clause 79. One corrected copy shall be returned to the Contractor.
- 79.** (1) Within 21 days (unless otherwise stated in the Contract) of the date of delivery to the Engineer of the Contractor's statement in accordance with Clause 78, the Engineer shall value and certify and within a further 21 days the Employer shall pay to the Contractor after deducting previous payments on account (if any) and any other sum deductible by the Employer under the Contract the sum which in the opinion of the Engineer is due, based on the rates in the Contract where appropriate, in respect of the following: Interim and final payments, Retention Money and interest
- (a) the estimated value of the permanent work executed, and
 - (b) the estimated value of any Temporary Works or preliminary item for which a separate sum is provided in the Bills of Quantities, and
 - (c) the estimated value of materials for inclusion in the permanent work and not being prematurely delivered to and being properly stored on the Site, and
 - (d) the estimated sums payable in respect of Nominated Sub-contractors, and
 - (e) any other estimated sum to which, in the opinion of the Engineer, the Contractor is entitled in accordance with the Contract.
- Provided that the total certified sum shall be adjusted by the Engineer to take into account:
- (i) the retention of the percentage stated in the Contract until the sum retained reaches the limit of Retention Money stated in the Contract; and
 - (ii) any adjustment to be made for fluctuations in the cost of labour and materials in accordance with Clause 89.

Provided further that, for the purpose of interim payments, the value of the materials as referred to in (c) above for use in connection with any item of permanent work priced in the Contract shall be determined on the basis of the rate set out in the Contract for such work.

(2) The Engineer may refuse to issue a certificate for an interim payment for a sum less than the minimum payment stated in the Contract, but nothing in this Clause shall prevent the Engineer from issuing a certificate at any time for any sum if in the opinion of the Engineer it is desirable to do so.

(3) Within 14 days of the date of issue by the Engineer of the maintenance certificate in accordance with Clause 80, the Engineer shall issue a certificate for the payment of Retention Money, which certificate shall state any Retention Money due to any Nominated Sub-contractor and, subject to Clause 83, the Employer shall pay such Retention Money to the Contractor within 21 days of the date of such certificate.

(4) (a) 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.

(b) The Employer shall not under any circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether upon the certificate of the Engineer or otherwise, at a rate in excess of one percent below the said judgment debt rate.

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

(6) Within 90 days after the date of issue of the maintenance certificate the Contractor shall submit to the Engineer a statement of final account and supporting documentation showing in detail the value in accordance with the Contract of the work done in accordance with the Contract together with all further sums which the Contractor considers to be due to him under the Contract up to the date of the maintenance certificate. Within 90 days after receipt of the final account and of all information reasonably required for its verification, the Engineer shall issue a final payment certificate stating the sum which in his opinion is finally due under the Contract up to the date of the maintenance certificate, and after giving credit to the Employer for all sums previously paid by the Employer and for all sums to which the Employer is entitled under the Contract the Engineer shall state the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require within 28 days of the date of the certificate.

(7) If the Contractor fails to submit a statement of final account within 90 days of the date of the maintenance certificate in accordance with sub-clause (6) of this Clause the Engineer shall be entitled to issue a final payment certificate without reference to the Contractor.

Maintenance
certificate

80. (1) Upon the expiry of the Maintenance Period, or where there is more than one such Period, upon the expiry of the latest Period and when all outstanding work referred to under Clause 53 and all work of repair, reconstruction, rectification and making good any defect, imperfection, shrinkage and other fault referred to in Clause 56 shall have been completed the Engineer shall issue a maintenance certificate stating the date on which the Contractor shall have completed his obligation to execute 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 Engineer 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 50 or Clause 64.

REMEDIES AND POWERS

Determination of
the Contractor's
employment

81. (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of

amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Engineer shall certify in writing to the Employer that in his opinion the Contractor:

- (a) has abandoned the Contract, or
- (b) without reasonable excuse has failed to commence the Works in accordance with Clause 47, or
- (c) has suspended the progress of the Works for 14 days after receiving from the Engineer notice in writing to proceed, or
- (d) has failed to comply with an order from the Engineer given in accordance with Clause 46, or
- (e) despite previous warning by the Engineer in writing is failing to proceed with the Works with due diligence or is persistently in breach of any of his obligations under the Contract, or
- (f) has sub-contracted the Works, or
- (g) has to the detriment of good workmanship or in defiance of the Engineer'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 Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Engineer by the Contract and the Employer may 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 71 and 72 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract.

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

- (a) the quantity of work completed up to the time of such entry and expulsion, and
- (b) the 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 59 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) If the Employer shall enter and expel the Contractor in accordance with this Clause, the Employer shall not be liable to pay to the Contractor any money on account of the Contract until the expiry of the Maintenance Period or, where there is more than one such Period, until the expiry of the latest Period and thereafter until the cost of completion and maintenance, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Engineer.

(5) The Contractor shall then be entitled to receive only such sum (if any) as the Engineer may certify would have been payable to the Contractor upon due completion by him less the amount certified for the purposes of sub-clause (4) of this Clause. If the amount certified in accordance with sub-clause (4) of this Clause shall exceed the sum which would have been payable to the Contractor upon due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess.

82. (1) If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workers or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by

Work by person
other than the
Contractor

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

Recovery of money due to the Employer

83. (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 including Retention Money 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, including Retention Money.

SPECIAL RISKS AND FRUSTRATION

Special risks

84. (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 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 86) 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 payment on account made to the Contractor, for all work executed prior to the date of termination at the rates provided in the Contract and in addition:

- (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Engineer of all such items the work or service comprised in which has been partially carried out or performed;
- (b) the Cost of materials reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, such materials becoming the property of the Employer upon such payment being made by the Employer;

- (c) a sum to be certified by the Engineer being any Cost reasonably incurred by the Contractor in the expectation of completing the Works in so far as such Cost shall not have been paid in accordance with any other sub-clause of this Clause.

(4) Whether the Contract shall be terminated in accordance with the proviso to sub-clause (1) of this Clause or not, the following provisions shall apply or be deemed to have applied as from the occurrence of any of the special risks notwithstanding anything expressed in or implied by the other terms of the Contract:

- (a) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of damage to the Works (other than work condemned under Clause 46) or to property (other than property of the Contractor including property vested in the Employer under Clauses 71 and 72 or property hired by the Contractor for the purposes of executing the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life which is wholly the consequence of the occurrence of any of the special risks and the Employer shall indemnify the Contractor against all such liabilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- (b) If the Works or any material on the Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless be entitled to payment for the Works and for any materials so destroyed or damaged and the Contractor shall be entitled to recover from the Employer the expense incurred in making good any such destruction or damage to the Works and of replacing or making good such materials so far as may be required by the Engineer or as may be necessary for the completion of the Works, valued at rates agreed upon between the Engineer and the Contractor and based where possible on prime costs. In the event of the Engineer and the Contractor failing to reach agreement on any rate the Engineer shall fix such rate as shall in his opinion be reasonable and notify the Contractor accordingly.
- (c) Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, missile, munition or explosive of war shall be deemed to be a consequence of the special risks.

85. 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 84 if the Contract had been terminated in accordance with Clause 84.

Frustration

SETTLEMENT OF DISPUTES

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

Settlement of disputes

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

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
- (d) the abandonment of the mediation, or
- (e) the Engineer 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 Engineer 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 46(3) not to vary the Works), instruction, order, direction, certificate or valuation by the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. Save as provided for in sub-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 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 53 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.

(4) In the case of any dispute or difference as to the exercise of the Engineer's powers under Clause 81(1) the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(5) The Hong Kong International Arbitration Centre Domestic Arbitration Rules shall apply to any arbitration instituted in accordance with this Clause unless the parties agree to the contrary.

(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 **87.** (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 Engineer under the provisions of the Contract may be served by post to or leaving such notice at the office of the Engineer.

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

(4) Notices may be served by facsimile only if the recipient has previously notified the other party and the Engineer in writing that it is prepared to accept service of notices in that manner. It shall in any event be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient in accordance with sub-clauses (1), (2) or (3) of this Clause.

DEFAULT OF THE EMPLOYER

88. (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clause 79 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.

Default of the Employer

(2) So long as no notice pursuant to Clause 81(1) is given to the Contractor either before or during the 14 days' notice period provided in sub-clause (1) of this Clause, on expiration of that 14 days, the property in all Constructional Plant and temporary buildings brought upon 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.

FLUCTUATIONS

89. (1) The sum payable in any interim or final payment certificate certified by the Engineer as being due (other than sums due under this Clause) shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the Index Figures listed in the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects" compiled by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region and applicable to those items included in the "Schedule of Proportions".

Contract price fluctuations

(2) The net total of such increases and decreases shall be given effect to in determining the Final Contract Sum.

(3) For the purpose of this Clause:

- (a) "Index Figure" shall mean any Index Figure appropriate to sub-clause (1) of this Clause.
- (b) "Base Index Figure" shall mean the appropriate Index Figure applicable to the date 42 days prior to the date for the return of tenders.
- (c) "Current Index Figure" shall mean the appropriate Index Figure to be applied in respect of any interim or final payment certificate by the Engineer and shall be the appropriate Index Figure applicable to the date 42 days prior to:
 - (i) the due date (or extended date) for completion of the Works, or
 - (ii) the date of completion of the Works certified pursuant to Clause 53, or
 - (iii) the last day of the period to which the payment certificate relates,
 whichever is the earliest.

Provided that in respect of any work the value of which is included in any such certificate and which work forms part of a Section for which the due date (or extended date) for completion has passed without completion pursuant to Clause 53 being achieved, the Current Index Figure shall be the Index Figure applicable to the date 42 days prior to the due date (or extended date) for completion of that Section.

(d) The "Effective Value" in respect of the Works or any Section thereof shall be the difference between:

- (i) the sum, exclusive of any increases or decreases made in accordance with this Clause, which in the opinion of the Engineer is due to the Contractor under Clause 79, before deducting retention and before deducting previous payments on account, less all sums in respect of Nominated Sub-contractors including profit thereon and items based on actual cost or current prices; and

- (ii) the sum calculated in accordance with (i) above and included in the last preceding interim payment certificate issued by the Engineer.

Provided that in the case of the first certificate the Effective Value shall be the sum calculated in accordance with (i) above.

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

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

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

HEIGHT RESTRICTIONS

Airport height
restrictions

90. 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 (hereinafter referred to as "the Employer") and _____ of _____ (hereinafter referred to as "the Contractor"). In this agreement, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract and the Special Conditions of Contract hereinafter referred to.

WHEREAS the Employer is desirous of having the Works executed in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Bills of Quantities or Schedule of Rates, the Drawings and the Specification.

AND WHEREAS the Contractor has agreed to execute the Works subject to the terms and conditions hereinafter contained.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. For the consideration hereinafter contained, the Contractor shall execute the Works to the satisfaction of the Engineer in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance thereof by the Employer, the Bills of Quantities or Schedule of Rates, the Drawings and the Specification.
2. The Contractor shall execute the Works within the period stipulated in the Contract or within such further time as may be determined by the Engineer in accordance with the provisions of the Contract.
3. The Employer shall pay to the Contractor the Final Contract Sum at the times and in the manner specified in the Contract.

(a) SIGNED, SEALED AND DELIVERED by the)
 Contractor in the presence of)
)
 * _____)
)
 witness _____)

or

(b) THE COMMON SEAL of the Contractor was)
 hereunto affixed in the presence of)
)
 * _____)
)
 witness _____)

or

(c) SIGNED, SEALED AND DELIVERED for)
 and on behalf of and as lawful attorney of)
 the Contractor under power of attorney)
)
 dated _____)
)
 by * _____)
 in the presence of)
)
 * _____)
)
 witness _____)

SIGNED, SEALED AND DELIVERED for)
 and on behalf of the Employer by)
)
 * _____)
)
 _____)
 (Name and appointment of the officer) in the)
 presence of)
)
 * _____)
)
 witness _____)

Note: (a) For use where an individual contractor is a sole proprietor or where all partners of a firm execute.

(b) For use where a contractor which is a limited company executes under its common seal.

(c) For use where a contractor, whether a firm or a limited company, executes through an attorney.

* Name to be inserted in Block Capitals