

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

**GENERAL CONDITIONS OF EMPLOYMENT
OF
ENGINEERING AND ASSOCIATED CONSULTANTS**

FOR A

FEASIBILITY ASSIGNMENT

1997 EDITION

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**GENERAL CONDITIONS OF EMPLOYMENT OF
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Definitions

1. In the Agreement as hereinafter defined the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires :

"Agreement" means and includes the Memorandum of Agreement, General Conditions of Employment of Engineering & Associated Consultants for a Feasibility Assignment, any Special Conditions of Employment, the Brief, Schedule of Fees and such other documents as may be referred to in the Memorandum of Agreement.

"Assignment" means that part of the Project undertaken by the Consultants as detailed in the Brief.

"Brief" means the document attached to the Memorandum of Agreement which describes the Project and sets out the details of the Assignment.

"Consultants" means the person, firm or company named in the Memorandum of Agreement and includes the Consultants' permitted assignees.

"Deliverables" means all the reports, drawings, documents, software, certificates and other items described in the Brief which are to be produced by the Consultants under the Assignment.

"Director" means the person designated in the Memorandum of Agreement to act as the Director or such other person as may be appointed from time to time by the Employer and notified in writing to the Consultants to act as the Director for the purposes of this Agreement and the person so designated or appointed may be described either by name or as the holder for the time being of a public office.

"Director's Representative" means the person designated in the Brief to act as the Director's Representative or such other person as may be appointed from time to time by the Director and notified in writing to the Consultants to carry out the duties of the Director's Representative and the person so designated or appointed may be described either by name or as the holder for the time being of a public office.

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

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

"Project" means the scheme described in the Brief, of which the Assignment forms a part.

(C) The Consultants shall not without the prior written consent of the Director which approval shall not be unreasonably withheld publish, either alone or in conjunction with any other person, in any newspaper, magazine, or periodical, any article, photograph or illustration relating to this Agreement.

(D) If the Consultants have provided the Employer with documents and information which they have declared in writing to be confidential and stamped accordingly whether in relation to their practice or special circumstances or for other good causes, unless the Director within two months of receipt of such information by notice in writing disagrees, then that information will be treated as confidential. The Employer shall not permit the disclosure of such confidential information to third parties without the written consent of the Consultants.

10. (A) The Director's Representative shall keep the Consultants informed on such matters as may appear to him to affect the performance of the Services and shall give such assistance, approvals, and decisions in writing as and when they shall reasonably be required for the performance of the Services.

Information to be supplied by the Employer

(B) All information relevant to the Assignment which is readily available shall be supplied free of charge to the Consultants subject to the provisions in the Brief. Any documents supplied free of charge to the Consultants shall be returned to the Director's Representative if so required.

(C) The Consultants shall take all necessary steps to approach the Director's Representative for the supply of information and for making additional copies of any information supplied.

11. The Consultants shall, through the Director's Representative, keep the Employer informed on all matters related to the Assignment within the knowledge of the Consultants including details of all staff employed by them in the performance of the Services and shall answer all reasonable enquiries received from the Director's Representative and render reports at reasonable intervals when asked to do so and shall assist the Director's Representative to form an opinion as to the manner in which they are proceeding with the Assignment.

Information to be supplied by the Consultants

12. (A) For a period of 12 years commencing with the completion of any works contract, supervision of which is part of the Services, the Consultants shall retain and provide spaces for that purpose all their records, measurement books, accounts and other information in respect of each works contract.

Retention of documents and audit inspection

(B) The Consultants shall give assistance to authorised public officers for the purpose of audit inspection to inspect such records, measurement books, accounts and other information whatsoever and shall answer queries or supply information reasonably requested by such officers in pursuance of such audit inspection.

13. The Consultants shall, if reasonably possible, attend or be represented at all meetings convened by the Director's Representative to which they may be summoned and shall advise and assist the Director and the Director's Representative on all matters relating to the Services.

Attendance at meetings

Facilities for inspection

14. The Consultants shall at all times give to the Director, his representatives and any persons duly authorised by him reasonable facilities to inspect or view the contract works and the sites for the contract works and all plans, drawings, specifications, records and correspondence in their possession relevant to any works contracts covered by this Agreement.

Approval of documents

15. (A) All drawings, designs, plans specifications, bills of quantities or other documents, matters or things prepared by the Consultants for or in connection with any invitation for tenders shall not be used for such purpose unless they shall first have been approved by the Director's Representative.

(B) The Consultants shall, when so requested by the Director's Representative, submit to him for his approval such drawings, designs, plans, specifications, bills of quantities or other documents, matters or things prepared by them as a direct requirement of the Assignment as he may specify or require.

(C) No such approval shall affect the responsibility of the Consultants in connection with the Services.

Director's Representative

16. The Consultants shall take instructions and directions and, where appropriate, receive the Employer's decisions and views only through the Director's Representative and, subject to any limitations imposed by the Director's Representative in any letter of authority granted by him, such other person to whom the Director's Representative may delegate his powers.

Amendments to the Brief

17. (A) The Director's Representative shall make any changes to the Brief which he considers necessary or desirable for the successful completion of the Assignment or the Project.

(B) Any queries on, or suggestions for amendments to the Brief shall be referred to the Director's Representative for his clarification or instructions regarding further action.

Written approval

18. The Consultants shall obtain the written approval of the Director's Representative prior to entering into any commitment to expenditure for which there is provision for reimbursement under the Schedule of Fees.

Consultation

19. (A) The Consultants shall, as may be necessary for the successful completion of the Assignment, consult all authorities, including public utility companies, having rights or powers in connection with the Assignment and bodies or persons affected by the Assignment.

(B) The Consultants shall consult all persons and bodies listed in the Brief or who may be appointed by the Employer or nominated by the Director in regard to any particular aspect of the Project and in consequence thereof make such changes in the production of the Deliverables as may be approved by the Director's Representative.

20. (A) The Consultants shall respond to queries on the findings and conclusions of this Assignment raised during the period defined in the Brief for such queries by the Director's Representative or by any consultant who may be appointed by the Employer for the subsequent stage of the Project.

Response to queries

(B) The Consultants shall use their best endeavours to respond to queries on the findings and conclusions of this Assignment raised after the period defined in the Brief for such queries by the Director's Representative or any person who may be appointed by the Employer or nominated by the Director's Representative.

21. The Employer shall become the exclusive owner of all Deliverables, save those Deliverables under licence or those Deliverables in respect of which there is a pre-existing copyright or patent, supplied or produced by, for or on behalf of the Consultants under this Agreement. The liability of the Consultants in respect of the Employer's use of such Deliverables shall be limited to liabilities arising from uses contemplated under this Agreement or expressly agreed to in writing by the Consultants. The Employer hereby :

Exclusive ownership

- (i) indemnifies the Consultants against all claims, damages, losses or expenses suffered by the Employer; and
- (ii) agrees to indemnify the Consultants against all claims, made by third parties against the Consultants;

arising out of or in connection with a use by the Employer of any Deliverable which use was not contemplated under this Agreement or not expressly agreed to in writing by the Consultants.

22. (A) The Consultants shall exercise all reasonable professional skill, care and diligence in the performance of all and singular the Services and, in so far as their duties are discretionary, shall act fairly between the Employer and any third party.

Care and diligence

(B) The Consultants shall, in respect of any work done or information supplied by or on behalf of the Employer, report to the Director's Representative any errors, omissions and shortcomings of whatsoever nature of which the Consultants become aware in the performance of the Services.

(C) The Consultants shall indemnify and keep indemnified the Employer against all claims, damages, losses or expenses arising out of or resulting from any negligence in or about the conduct of and performance by the Consultants, their servants or agents, of all and singular the Services.

(D) In the event of any errors or omissions for which the Consultants are responsible and as a result of which the re-execution of the Services is required, the Consultants shall, without relieving any liability and obligation under the Agreement, at their own cost re-execute such Services to the satisfaction of the Director's Representative.

Instructions and procedure

23. The Consultants shall comply with all reasonable instructions of the Director or the Director's Representative. The Director's Representative shall issue to the Consultants general instructions on procedure and shall supply such additional information and standard Government printed forms as may be required. The Consultants shall follow the Employer's procedure so far as possible and shall obtain the prior approval in writing of the Director's Representative to major departures from such procedure. Nothing in this clause shall be deemed to affect the responsibility of the Consultants in connection with the Services.

24. *Not used.*

25. *Not used.*

Programme to be submitted and agreed

26. (A) The Consultants may propose changes to some or all of the key dates specified in the Brief for incorporation into the draft programme prepared under sub-clause (B) of this Clause. If any of such proposed changes are agreed by the Director's Representative, who may impose conditions on his agreement, the corresponding key dates shall be changed and the changed dates incorporated into the draft programme.

(B) The Consultants shall submit a draft programme which shall be in accordance with the requirements of the Brief and shall incorporate the key dates specified in the Brief, including any changes agreed under sub-clause (A) of this Clause. The Director's Representative shall either agree the draft programme or instruct the Consultants to submit a revised draft programme which they shall do.

(C) If the Director's Representative does not agree the revised draft programme submitted under sub-clause (B) of this Clause, he shall issue an instruction under Clause 23.

(D) When the Director's Representative has agreed the draft programme or the revised draft programme submitted under sub-clause (B) of this Clause or such other draft programme as may result from sub-clause (C) of this Clause, the agreed draft programme or re-draft programme shall become the Programme for carrying out the Assignment and shall be amended only with the approval of the Director's Representative.

Payment

27. Payments under this Agreement shall be made in accordance with the Schedule of Fees.

Fees to be inclusive

28. Unless provided otherwise, the fees quoted in the Schedule of Fees shall be inclusive of all labour, materials and expenses incurred in the performance of the Services.

Payment in Hong Kong dollars

29. Unless provided otherwise, payments shall be made in Hong Kong in Hong Kong dollars.

30. (A) The Consultants shall specify in their claims for fees on a time basis and any reimbursement expenses associated with these fees incurred by the Consultants or one of their associated firms in a currency other than Hong Kong dollars the calendar month during which the Services to which they relate are performed. Payment shall be arranged by conversion to Hong Kong dollars at the Selling (T.T.) rate in use by the Hong Kong and Shanghai Banking Corporation at the commencement of business on the last working day of that month.

Expenses incurred in currencies other than Hong Kong dollars

(B) The Consultants shall specify in their claims for other reimbursement expenses incurred in currencies other than Hong Kong dollars the date on which the expenses were paid. Payment shall be arranged by conversion to Hong Kong dollars at the Selling (T.T.) rate in use by the Hong Kong and Shanghai Banking Corporation at the commencement of business on the date the expense was paid.

(C) Payment of claims under sub-clauses (A) and (B) of this Clause may alternatively be arranged by conversion to Hong Kong Dollars at the actual rate of exchange used, on production of a copy of the relevant exchange receipt issued by the bank.

31. (A) Except as provided for in sub-clause (B) of this Clause accounts of all money due from the Employer to the Consultants in accordance with this Agreement shall be paid within 28 days after receipt of the Consultants' invoice by the Director's Representative. In the event of failure by the Employer to make payment to the Consultants in compliance with the provisions of this Clause the Employer shall pay to the Consultants interest at the judgement debt rate prescribed from time to time by the Rules of the Supreme Court (Chapter 4 of the Laws of Hong Kong) (interpreted in accordance with the Hong Kong Reunification Ordinance) upon any overdue payment from the date on which the same should have been made.

Payment of accounts

(B) If any item or part of an item of an account rendered by the Consultants is reasonably disputed or reasonably subject to question by the Employer, the Employer shall within 14 days after receipt of the invoice by the Director's Representative inform the Consultants in writing of all items under dispute or subject to question. Payment by the Employer of the remainder of that account shall not be withheld on such grounds and the provisions of sub-clause (A) of this Clause shall apply to such remainder.

32. The Consultants shall render their accounts for interim payments in accordance with the Schedule of Fees.

Rendering of accounts

33. The Consultants shall be entitled to payment for the performance of any Services which they could not reasonably have anticipated at the time of entering into this Agreement resulting from:

Payment for additional Services

- (i) explanations or adjustments made under Clause 7;
- (ii) changes to the Brief made under sub-clause (A) of Clause 17;
- (iii) clarifications or instructions given under sub-clause (B) of Clause 17;

- (iv) appointments or nominations made under sub-clause (B) of Clause 19;
- (v) responding to queries under sub-clause (B) of Clause 20; and
- (vi) instructions given under Clause 23.

Provided that such Services are not attributable to default on the part of the Consultants.

Reduction of lump sum fees

- 34.** If there shall be a reduction in the Services resulting from :
- (i) explanations or adjustment made under Clause 7;
 - (ii) changes to the Brief made under sub-clause (A) of Clause 17;
 - (iii) clarifications or instructions given under sub-clause (B) of Clause 17;
 - (iv) appointments or nominations made under sub-clause (B) of Clause 19; and
 - (v) instructions given under Clause 23;

then the Employer shall be entitled to a reduction in the lump sum fees in respect of such a reduction in the Services.

Payment for delays

35. (A) The Consultants shall be entitled to payment in respect of any additional costs they incur as a result of delays arising during the performance of the Services provided that the delays are not attributable to default on the part of the Consultants.

(B) The Consultants shall notify the Director's Representative when a delay arises and shall detail what in their opinion are the reasons for the delay, the consequences or likely consequences of the delay and any additional costs they have incurred or may incur.

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

(D) After the giving of a notice of delay to the Director's Representative under sub-clause (B) of this Clause, the Consultants shall, as soon as is reasonable, send to the Director's Representative a first interim account giving full and detailed particulars of the circumstances giving rise to the delay and any additional costs they incurred. Thereafter at such intervals as the Director's Representative may reasonably require, the Consultants shall send to the Director's Representative further up-to-date accounts giving the accumulated total of the additional costs and any further full and detailed particulars in relation thereto.

(E) If the Consultants fail to comply with the provisions of sub-clause (B) of this Clause in respect of any claim, such claim shall not be considered.

(F) If the Consultants fail to comply with the provisions of sub-clauses (C) or (D) of this Clause in respect of any claim, the Director's Representative may consider such claim only to the extent that the Director's Representative is able on the information made available.

(G) The Consultants shall take all reasonable steps to mitigate the costs which may be incurred as a result of the delays.

36. *Not used.*

37. The Consultants shall not have the right to assign or transfer the benefit and obligations of this Agreement or any part thereof.

Non-assignment

38. The Consultants shall obtain the prior written approval of the Director's Representative to :

Employment and replacement of sub-consultants

- (i) the appointment of sub-consultants to undertake any part of the Services; and
- (ii) the replacement of any sub-consultant appointed under sub-clause (i) of this Clause.

39. The appointment of sub-consultants to undertake any part of the Services shall not relieve the Consultants from any liability or obligation under this Agreement and they shall be responsible for the acts, default and neglects of any sub-consultant, his agents, servants or workmen as fully as if they were the acts, default and neglects of the Consultants, their agents, servants or workmen.

Liability of Consultants for acts, default and neglects of sub-consultants

40. *Not used.*

41. (A) This Agreement may be suspended or terminated by the Employer at any time, by the Director's Representative giving the Consultants 3 months' notice in writing.

Suspension, resumption or termination

(B) On suspension or termination the Consultants shall be paid all fees and expenses commensurate with the Services performed by them up to the date of suspension or termination which may then be due.

(C) In the event of suspension or termination the Consultants shall be entitled to reimbursement of the actual cost of or an amount in fair compensation for any financial commitment or obligation outstanding after the giving of the notice of suspension or termination which they have properly incurred in accordance with this Agreement prior to the giving of the notice of suspension or termination.

(D) The payments referred to in sub-clauses (B) and (C) of this Clause shall be deemed in full and final payment for the Services up to the date of suspension or termination.

(E) In the event of suspension and subsequent resumption of this Agreement the Consultants shall be reimbursed any expenses necessarily incurred as a result of such resumption.

(F) If this Agreement is resumed any payment of fees under this Clause except in respect of abortive work that has to be re-done shall rank as payment on account towards the fees payable under this Agreement.

(G) Should this Agreement continue to be suspended for a period of more than two years then either :

- (i) it shall be terminated upon the written notice of either party; or
- (ii) it may be renegotiated with the agreement of both parties.

Special risks

42. (A) The Consultants shall not be liable for any failure to perform the Services caused by the special risks.

(B) Should the performance by the Consultants of the Services be prevented or adversely affected by the special risks, they shall forthwith give notice in writing thereof to the Director and, subject to such notice having been given, shall be reimbursed any extra costs and expenses as may have been necessarily incurred by reason of the special risks.

(C) If at any time by reason of the special risks it shall be impossible or impracticable to give notice in writing to the Director in Hong Kong under the provisions of sub-clause (B) of this Clause, such notice may be given by or on behalf of the Consultants to any Economic and Trade Office of the Government wherever situated.

(D) Should the performance of the Services be wholly or substantially prevented by the special risks for a period of not less than 90 consecutive days, the Consultants shall be entitled at the expiration of such period of 90 days to give to the Director not less than 14 days' notice in writing terminating this Agreement. Upon the expiration of such notice, the Consultants shall be entitled to receive the same remuneration and reimbursement as if the Agreement had been terminated by the Director under Clause 41 plus any payments which may have become payable under sub-clause (B) of this Clause.

(E) For the purpose of this Clause "the special risks" means the outbreak of war affecting Hong Kong, hostilities (whether war be declared or not), invasion, acts of foreign enemies, rebellion, revolution, military or usurped power, the overthrow whether by external or internal means of the Government, civil war, riot, disturbances, civil commotion or any similar cause beyond the control of the Consultants which prevents or adversely affects the performance of the Services.

43. The Consultants shall have the right to appeal to the Director against any instruction or decision of the Director's Representative which they consider to be unreasonable.

Appeal to Director

44. (A) If any dispute or difference of any kind whatsoever shall arise between the Employer and the Consultants in connection with or arising out of this Agreement, either party shall be entitled to refer the dispute or difference to the Director and the partner or director of the Consultants, who shall meet within 21 days of such matter being referred to them.

Settlement of disputes

(B) If the dispute or difference cannot be resolved within 2 months of a meeting under sub-clause (A) of this Clause or upon written agreement that the dispute or difference cannot be resolved, either the Employer or the Consultants may at any time thereafter request that the matter be referred to mediation in accordance with and subject to the Hong Kong Government Mediation Rules or any modification thereof for the time being in force.

(C) If the matter cannot be resolved by mediation, or if either the Employer or the Consultants do not wish the matter to be referred to mediation then either the Employer or the Consultants 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 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 such reference to arbitration shall be made within 90 days of either the refusal to mediate, or the failure of the mediation.

(D) 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.

45. The Consultants shall inform their employees who are engaged either directly or indirectly on the formulation and implementation of a Government project that the soliciting or accepting of an advantage as defined in the Prevention of Bribery Ordinance is not permitted. The Consultants shall also caution their employees against soliciting or accepting any excessive hospitality, entertainment or inducements which would impair their impartiality in relation to the Government projects.

Prevention of bribery

Declaration of
interest

46. (A) On appointment and during the currency of this Agreement, the Consultants must declare any interest if it is considered to be in real or apparent conflict with the Services. The Consultants shall not undertake any services, which could give rise to conflict of interest, except with the prior approval of the Director's Representative which approval shall not be unreasonably withheld.

(B) In any case, the Consultants or any of their associated companies shall not undertake any services for a contractor in respect of a contract between that contractor and the Employer for which the Consultants are providing a service to the Employer.

Insurance

47. (A) Without limiting their obligations and responsibilities nor their liability to indemnify the Employer under Clause 22 the Consultants shall, as from the date of commencement of this Agreement, and thereafter, maintain a minimum insurance cover of an amount as defined in the Brief to meet any claims that may be made by the Employer in respect of any negligence in or about the conduct of and performance by the Consultants, their servants and agents of all and singular the Services. The Consultants shall use their best endeavours to maintain the said cover for a period of six years from completion of the works under the Assignment. Either in the same policy or additionally, the Consultants shall maintain sufficient insurance, for the like period, as would properly protect the Consultants against any claims by third parties in respect of the performance of the Services by the Consultants.

(B) In the event that through no fault of the Consultants it becomes impractical or unreasonable to maintain the said cover for the full period required by sub-clause (A) of this Clause, the Director's Representative may approve alternative arrangements.

(C) The foregoing insurance policy or policies shall be effected with an insurer (or insurers) and in terms acceptable to the Employer. Throughout the period of insurance the Consultants shall each year lodge with the Employer a certificate signed by and on behalf of the Consultants' insurers stating that the said policy or policies of insurance remain in force.