

**Standard Form of Contract For  
Maintenance and Renovation Works**

For use in the Hong Kong Special Administrative Region

**The Hong Kong Institute of Surveyors**

**First Edition 2013**

## STANDARD FORM OF CONTRACT FOR MAINTENANCE AND RENOVATION WORKS

### This Agreement

read in conjunction with the Particulars of Agreement hereto is made on the Contract Signing Date between the Employer of the one part and the Contractor of the other part.

### Whereas:

- Recital 1: The Employer wishes to have the Works carried out at the Site.
- Recital 2: The Employer has provided the Contractor with the Tender Documents showing and describing the whole of the Works to be done.
- Recital 3: The Contractor has submitted a tender ("the Tender") based on the Tender Documents (as may be modified by any tender addenda issued by the Employer to the Contractor prior to the submission of the Tender).
- Recital 4: To the extent that the Employer and the Contractor ("the Contract Parties") have further clarified or adjusted the requirements of the Tender Documents and the proposals in the Tender, such clarifications or adjustments have been exchanged in writing after the submission of and before the acceptance of the Tender and accepted by the Contract Parties to form part of this Contract ("Tender Correspondence").

### Now

the Contract Parties hereby agree as follows:

Article 1: Object of this Contract

The Contractor will carry out and complete the Works shown or described in the Contract Documents defined in Article 4.1 hereof for the consideration hereinafter provided.

Article 2: Contract Price

The Employer will pay to the Contractor the Contract Price stated at Item 17 of the Particulars of Agreement, or such other sum as shall become payable at the times and in the manner stated in this Contract.

Article 3: Contract Periods

The Contractor will complete the Works Sections within the respective Contract Period or Periods or such extended period or periods as may be authorized under this Contract.

Article 4: Contract Documents

4.1 The documents constituting this Contract ("the Contract Documents") consist of the following:

- (a) this Contract Agreement (including the Particulars of Agreement);
- (b) the Tender Correspondence;
- (c) the Contract Conditions and Appendix A both annexed hereto as may be modified by the Special Contract Conditions included in the Tender Documents; and
- (d) the Tender Documents as completed by the Contractor when submitting the Tender.

4.2 Three sets of the Contract Documents are signed. One set contains the original and the two other sets are duplicates. The original is to be kept by the Contract Administrator and the duplicates are to be kept each by the Employer and the Contractor.

4.3 This Contract shall be deemed to have taken effect from the Contract Award Date.

**\*SIGNED SEALED AND DELIVERED** as a deed/**SIGNED** by the Employer

The Employer \_\_\_\_\_

Company seal/chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

**\*SIGNED SEALED AND DELIVERED** as a deed/**SIGNED** by the Contractor

The Contractor \_\_\_\_\_

Company seal/chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

\*delete as appropriate

Particulars of Agreement				
Item	Entities or Defined Terms	Particulars or Definitions		
	<b>Contract</b>			
1	Contract Signing Date			
2	Contract Award Date (being the date of the letter issued by or on behalf of the Employer awarding this Contract to the Contractor)			
3	Project Title			
4	Project Address			
5	Contract Title			
6	Works (brief description)			
7	Locations of Site (same as the Project Address if not stated)			
	<b>Contract Parties</b>	The Employer and the Contractor		
8	Name of the Employer			
9	Registered Address of the Employer			
10	Name of the Contractor			
11	Registered Address of the Contractor			
	<b>Consultants</b>			
12	Name of the Contract Administrator (role taken up by the Employer if not stated)			
13	Registered Address of the Contract Administrator			
14	Name of the Quantity Surveyor (role taken up by the Contract Administrator if not stated)			
15	Registered Address of the Quantity Surveyor			
	<b>Contract Type and Price</b>			
16	Contract Type (delete 'Yes' where inapplicable)	Lump Sum Contract	Yes	Clause 6.6.2 apply to this Contract
		Remeasurement Contract	Yes	
		Rates Only Contract	Yes	
17	Contract Price (for Lump Sum Contract or Remeasurement Contract only, leave it blank for Rates Only Contract, Contract Price for Rates Only Contract to be determined from time to time according to the Contract Conditions)	(HK\$ )		
	<b>Time</b>			
18	Date for Access to the Site	Portions of the Site	Date	

19	Names of Works Sections	Phase / Section / Stage		Description	
20	Contract Periods	Works Sections	Commencement Date (or a mechanism to determine the Commencement Date)	Completion Date (or a mechanism to determine the Completion Date)	Durations in calendar days
21	Rate of Liquidated Damages for Delayed Completion (If none or "N/A" stated, general damages apply)	Works Sections		Rate HK\$/calendar day	
22	Defects Liability Period	Works Sections		Durations in calendar months from Completion Date of each Works Section	
<b>Documents</b>					
23	Tender Documents comprising	(delete "Yes" if not applicable)			
	(a) Conditions of Tendering	Attached hereto	Yes		
		Bound separately and signed	Yes		
		Not provided	Yes		
	(b) Form of Tender	Attached hereto	Yes		
		Bound separately and signed	Yes		
		Not provided	Yes		

	(c) Special Contract Conditions	Attached hereto	Yes	
		Bound separately and signed	Yes	
		Not provided	Yes	
	(d) Specification	Attached hereto	Yes	
		Bound separately and signed	Yes	
		Not provided	Yes	
	(e) Schedule of Works	Attached hereto	Yes	
		Bound separately and signed	Yes	
		Not provided	Yes	
	(f) Schedule of Drawings	Attached hereto	Yes	
		Bound separately and signed	Yes	
		Not provided	Yes	

24	Tender Correspondence (being documents submitted by the Contractor with the Tender in addition to the Tender Documents and further written exchanges referred to in Recital 4, and accepted by the Contract Parties to form part of this Contract)	Date	Ref.	Media Type	From	To	With Attachments			
							Yes	No		
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
								Yes	No	
		Abbreviations:								

	<b>Payment terms</b>	
25	Amount of advance payment	
26	Method of recovery of advance payment	
27	Retention Percentage	
28	Maximum Retention	
29	Period for Honouring Payment	

	<b>Insurances and bond</b>	
30	Contractors' All Risks and Third Party Liability Insurance	
	(a) Party responsible for taking out the insurance (delete as appropriate)	The Employer / the Contractor
	(b) Percentage of professional fees in case of reinstatement	_____ %
	(c) Amount for the removal of debris	\$ _____
	(d) Percentage for escalation clause	_____ %
	(e) Material Damage insurance excess in respect of each and every occurrence of loss or damage	
	(i) Generally	\$ _____
	(ii) Loss of or damage to scaffolding, shuttering, formwork, timbering, screens, fencing and hoardings	_____ % of loss or damage
	(iii) Loss of or damage to the Insured Property caused by water	_____ % of loss or damage
	(f) Limit of indemnity for third party liability	
	(i) Generally	\$ _____ maximum for any one occurrence but unlimited in the aggregate amount for the period of insurance
	(ii) Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	\$ _____ maximum for any one occurrence and any one period of insurance
	(iii) Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	\$ _____ maximum for any one occurrence and any one period of insurance
	(g) Third party liability insurance excess in respect of each and every occurrence of loss or damage	
	(i) Generally	\$ _____
	(ii) Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	_____ % of loss or damage
	(iii) Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	_____ % of loss or damage
	(iv) Loss of or damage caused by water	_____ % of loss or damage
	(v) Loss of or damage to existing underground services	_____ % of loss or damage

	(vi) Loss of or damage to oil filled cable, fibre-optic cable or telephone cable of 4,000 pairs or more	_____ % of loss or damage
31	Amount of surety bond (consideration should be given to the amount of advance payment when fixing the amount of surety bond)	
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## **CONTRACT CONDITIONS**

### **1. INTERPRETATIONS**

#### 1.1 Building Manager

“the Building Manager” means the person providing estate, property or facility management services to the premises where the Site is.

#### 1.2 Clerk of Works

“the Clerk of Works” means the person or persons appointed by the Employer or the Contract Administrator on site and acting under the direction of the Contract Administrator to watch, inspect, check, and record the Works, any resources, facilities and activities on the Site.

#### 1.3 Contractor

“the Contractor” means the person named in the Contract Agreement who has been appointed by the Employer to carry out and complete the Works required under this Contract.

#### 1.4 Contract Administrator

1.4.1 “the Contract Administrator” means the person named in the Contract Agreement who has been appointed by the Employer to supervise, on behalf of the Employer, the Contractor in carrying out the Works. When required by these Contract Conditions to issue any certificate, the Contract Administrator shall act independently and fairly as between the Contract Parties.

1.4.2 If the person named in the Contract Agreement as the Contract Administrator ceases to have authority or capability to act, the Employer shall appoint another person to whose appointment the Contractor has no reasonable objection as a replacement. The replacement Contract Administrator shall not overrule the validity of any certification as to quality or extension of time issued by the previous Contract Administrator to the disadvantage of the Contractor.

#### 1.5 Contract Drawings

“the Contract Drawings” means the Tender Drawings included in the Tender Documents, and any other drawings as may be prepared by the Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Employer to form part of this Contract.

#### 1.6 Contract Rates

1.6.1 “Contract Rates” means the rates inserted in the Schedule of Works as may be modified by the Tender Correspondence.

1.6.2 A Contract Rate shall be deemed to include for all labour costs, material costs, plant costs, indirect costs, management costs, overheads, profits, taxes, and costs of all ancillary work and liability indispensably necessary for the item of work to which the Contract Rate applies, and shall not be adjusted for error made by the Contractor in building up the Contract Rate.

#### 1.7 Contract Specification

“the Contract Specification” means the Specification included in the Tender Documents, and any other specification as may be prepared by the Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Employer to form part of this Contract.

1.8 Day and counting of periods

A day means a calendar day unless otherwise stated. When counting days, 1 day means 24 hours. Within 1 day means within 24 hours, not within the same day. "Commencing or starting from a certain day" means that certain day is day 1 for counting. "Commencing or starting after a certain day" means the day following that certain day is day 1 for counting.

1.9 Defects Rectification Certificate

"Defects Rectification Certificate" means a certificate issued by the Contract Administrator after completion by the Contractor of rectification of all defects notified to him in respect of a Works Section.

1.10 Employer

"the Employer" means the person named in the Contract Agreement who has appointed the Contractor to carry out and complete the Works required under this Contract and who has undertaken to pay the Contractor for executing the Works.

1.11 Excepted Risks

"Excepted Risks" means:

- (a) any consequence of war (whether war be declared or not) in which Hong Kong is actively engaged, the invasion of Hong Kong, acts of terrorists in Hong Kong, civil war, rebellion, revolution or military or usurped power in Hong Kong, riot, commotion or disorder in Hong Kong other than amongst the employees of the Contractor or any person for whom the Contractor is responsible;
- (b) any direct consequence of the faulty design provided by the Contract Administrator or other designers engaged by the Employer or the Contract Administrator;
- (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
- (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.

1.12 Excusable and Compensable Events

1.12.1 "Excusable Events" are events the occurrence of which are at the risk of the Employer in so far as the time to complete the Works is concerned. "Compensable Events" are events the occurrence of which are at the risks of the Employer in so far as the price of the Works is concerned. "Excusable Events" and "Compensable Events" are respectively defined as follows:

<b>Event Code</b>	<b>Delays or disruptions by reason of</b>	<b>Excusa-ble Events</b>	<b>Compen-sable Events</b>
A	Force majeure	Yes	No
B	Inclement weather conditions, being rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded by the Hong Kong Observatory station nearest to the Site, and/or their consequences adversely affecting the progress of the Works	Yes	No
C	The hoisting of tropical cyclone warning signal No. 8 or above or the announcement of a Black Rainstorm Warning, and/or its consequences adversely affecting the progress of the Works	Yes	No

D	An Excepted Risk	Yes	Yes
E	Fire, lightning, explosion, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, not caused by the Contractor or people for whom the Contractor is responsible	Yes	No
F	Late provision of Contract Administrator's instructions expressly required by this Contract to be provided by a specific time or before implementation of the matter being instructed	Yes	Yes
G	Late provision by the Contract Administrator of instructions or information (including clarification of any ambiguity, discrepancy in or divergence between documents provided by the Employer or the Contract Administrator, and including outstanding or new information) required for the progressing of the Works, after taking into account any mitigating effect which could have been afforded if the Contractor had requested for such instructions or information reasonably in advance of the occurrence of the delays or disruptions	Yes	Yes
H	The opening up for inspection of work covered up or the testing of materials or work and the consequential making good which are additional to the Contract requirements and instructed by the Contract Administrator, provided that such materials and work are in accordance with this Contract	Yes	Yes
I	The carrying out of a Variation or the happening of an event deemed to be a Variation	Yes	Yes
J	Increase in the work to be carried out pursuant to provisional items in this Contract of sufficient magnitude that the increase was not apparent from the Contract Documents	Yes	Yes
K	A postponement of the Date for Access to any portion of the Site unless this Contract has provided for such occurrence	Yes	Yes
L	A postponement of the Commencement Date of a Works Section unless this Contract has provided for such occurrence	Yes	Yes
M	A suspension of the provision of the whole or a portion of the Site as instructed by the Contract Administrator beyond any provided for in this Contract and not being due to a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible	Yes	Yes
N	A suspension of the progress of the whole or a part of a Works Section as instructed by the Contract Administrator beyond any provided for in this Contract and not being due to a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible	Yes	Yes
O	A delay or disruption caused by a Separate Contractor	Yes	Yes

P	A delay caused by a statutory undertaker or utility company carrying out work in pursuance of its statutory obligations, not having a contractual relationship with the Employer, the Contractor or any person for whom the Employer or the Contractor is responsible, and failing to commence or to carry out its work in due time provided that the Contractor has taken all practicable measures to cause it to commence, carry out and complete its work on time	Yes	No
Q	A failure of the Employer to supply or supply on time materials that he agreed to provide for the Works	Yes	Yes
R	A delay by a Government department in giving an approval or a consent which is not the Contractor's responsibility to obtain	Yes	Yes
S	An unreasonable delay by a Government department in giving an approval or a consent which is the Contractor's responsibility to obtain, provided that any disallowance of approval or consent attributable to the Contractor's lack of adequate submission shall not be considered as unreasonable	Yes	No
T	A special circumstance considered by the Contract Administrator as sufficient grounds to fairly entitle the Contractor to an extension of time	Yes	No
U	An act of prevention, a breach of contract or other default by the Employer or any person for whom the Employer is responsible	Yes	Yes

1.12.2 The scope of each of the above event definitions is mutually exclusive. Any deletion or scope reduction of an event definition above shall not expand the scope of the remaining unchanged event definitions.

1.13 Headings

Headings to articles in the Contract Agreement or headings to clauses in the Contract Conditions shall be for identification purposes only and shall not be read to restrict or enlarge the scope of application of the articles or clauses under the headings.

1.14 Materials

"Materials" means materials and goods, and includes equipment or machinery for incorporation into the Works.

1.15 Money recoverable from Contractor

When money is stated to be recoverable from the Contractor by the Employer, the amount shall be deducted from the Contract Price and deducted from the next or further Payment Certificates issued after the amount is ascertained until the amount is fully deducted. If the balance of the Final Contract Price less retention fund is inadequate to cover the amount not yet deducted, the residue amount may be recovered from the Contractor by the Employer as a debt which may be set-off against any payment which the Employer is liable to pay to the Contractor under other contracts.

1.6 Money recoverable from Employer

When money is stated to be recoverable from the Employer by the Contractor, the amount shall be added to the Contract Price and added to the next or further Payment Certificates issued

after the amount is ascertained, unless the Employer requests to settle and settles the payment separately without adjustment to the Contract Price.

1.17 Plant

“Plant” means construction plant, equipment or machinery used for carrying out the Works.

1.18 Quantity Surveyor

1.18.1 “the Quantity Surveyor” means the person named in the Contract Agreement who has been appointed by the Employer to value the Works.

1.18.2 If the person named in the Contract Agreement as the Quantity Surveyor ceases to have authority or capability to act, the Employer shall appoint another person to whose appointment the Contractor has no reasonable objection as a replacement.

1.19 Schedule of Works

“the Schedule of Works” means a document called as such and included in the Tender Documents for the Contractor to show his price build-up of the Tender.

1.20 Separate Contractor

“Separate Contractor” means a person appointed by the Employer to carry out work, supply goods or provide services in connection with but not forming part of the Works, but excludes any statutory undertaker or utility company carrying out work in pursuance of its statutory obligations and not having a contractual relationship with the Employer, the Contractor or any person for whom the Employer or the Contractor is responsible.

1.21 Site

“the Site” means one or more areas or spaces, whether contiguous or not, on plan or on elevation as described in the Contract Agreement as to be made available by the Employer to the Contractor for the Contractor to carry out and complete the permanent portion of the Works or for the Contractor to place his materials and temporary site facilities.

1.22 Substantial Completion Certificate

“Substantial Completion Certificate” means a certificate issued by the Contract Administrator signifying the completion of a Works Section by the Contractor to the satisfaction of the Contract Administrator.

1.23 Temporary site facilities

“Temporary site facilities” includes construction plant, tools, implements, safety belts, safety helmets, safety appliances, roads and footpaths, gangways, ladders, working platforms, scaffolding, catch fans, gondola, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, tarpaulins, safety nets, safety screens, site offices, workshops and storage sheds, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, planking and strutting, shoring, props, falsework, formwork, refuse bins, etc. all provided on site temporarily for the purpose of execution of the Works.

1.24 Variation

A “Variation” means a change (addition, omission, substitution, alteration, modification, etc.) as instructed by the Contract Administrator to the design, quality or quantity of the Works or to the time or manner for carrying out the Works from that provided for in this Contract, and includes other events deemed by the Contract Conditions to be a Variation.



## **2. SITE**

### **2.1 Provision of Site**

- 2.1.1 The Employer shall provide such portions of the Site to the Contractor on such access dates as may be stipulated in the Contract Agreement. Provision of the Site shall entail the sustained use, but not exclusive possession of the portions of the Site by the Contractor for the carrying out and completion of the Works. The Contractor shall allow and protect legitimate occupiers and users for the time being on the Site to have continued use of such portions of the Site not immediately required by the Contractor for carrying out the Works.
- 2.1.2 The Contractor shall not obstruct the lawful and continued use by anyone of the land and premises outside but in the vicinity of the Site.
- 2.1.3 Where exclusive possession of any portion of the Site is stated in this Contract, the Contractor shall take over the relevant portion of the Site upon the respective access date and take responsibility for the care thereof.

### **2.2 Site access**

- 2.2.1 Where access to the Site is through land or premises which are not under the control of the Employer, the Contractor shall procure any necessary right of access.
- 2.2.2 Where access to the Site is through land or premises which are under the control of the Employer, the Employer shall provide the Contractor with right of access free of charge at such time mutually agreed between the Contract Administrator and the Contractor. For the purposes of this clause, where the Employer is the landlord or the incorporated owners or the Building Manager of the premises in which the Site is situated, any individual units of the premises which are separately owned or rented (such as residential flats, car parking spaces, offices, shops, workshops, stores, and the like) shall be deemed to be under the control of the Employer. In all other cases, the Employer shall not be deemed to be in control of units within the same premises not owned or leased by him.
- 2.2.3 Physical means of access to the Site and to work locations within the Site by way of roads, footpaths, bridges, tunnels, ladders, catwalks, scaffolding, gondolas, etc. shall be arranged for by the Contractor unless otherwise stated in this Contract.
- 2.2.4 Entry and exit points to the Site shall be at locations shown or described in this Contract or, when no specific locations are shown or described, at such locations determined by the Contract Administrator. Subsequent re-location and re-sizing of the entry and exit points to suit the sequence and progress of the Works shall be approved by the Contract Administrator and made by the Contractor at his own expense.
- 2.2.5 The Contractor shall comply with all relevant regulations or restrictions of the Police, other Government Authorities, and the Building Manager regarding access, usage of roads, parking of lorries and similar, and shall submit all necessary applications and pay any necessary fees and charges.

### **2.3 House rules of Building Manager**

- 2.3.1 The Contractor shall comply with the house rules of the Building Manager in regard to the day to day operation and use of the premises in which the Site is situated and in regard to any special restrictions on maintenance or renovation works within the premises.
- 2.3.2 Any restrictions on access or working hours more stringent than those announced by the Building Manager prior to the award of this Contract and affecting the Works shall be deemed to be a Variation.

2.3.3 If the Building Manager requires the payment of a deposit upon commencement of the Works, the Contractor shall pay any such deposit to the Building Manager and arrange by himself for the eventual release of the deposit.

2.4 Protection of access routes

The Contractor shall protect all access routes throughout the period of the Contract, and shall remove any protection when no longer required and make good any disturbance.

2.5 Off-site areas

The Contractor shall arrange by himself any areas or spaces outside the Site that he requires to prepare for the carrying out of the Works.

2.6 Site visit

2.6.1 The Contractor is deemed to have visited the Site and thoroughly acquainted himself with the location, general site conditions, type of soil where underground work is required, accessibility, storage space, restrictions for loading and off-loading materials, and any other conditions which may affect his carrying out of the Works prior to entering into this Contract and is deemed to have made due allowance for all such restrictions and factors in the Contract Price.

2.6.2 Any claim for extra payment or extension of the Contract Periods shall not be allowed on the grounds of ignorance or misinterpretation of the site conditions.

2.7 Site investigation and condition survey reports

Any site investigation or condition survey reports or other information which may be made available to the Contractor prior to the award of this Contract shall be the whole record of such investigation or survey as has been carried out. Other than this, any such reports are given without any warranty on the part of the Employer as to their accuracy or completeness, and they shall be deemed to be supplied for the Contractor's information only.

2.8 Access during Defects Liability Period

2.8.1 The Employer shall provide the Contractor with a right of access to specific locations on the Site for the specific purpose of rectifying defects arising during the Defects Liability Period at those locations. The Contractor shall restrict himself to the specific locations and shall leave the Site as soon as the defects have been rectified.

2.8.2 When existing facilities such as gondolas or lifting platforms are available for day to day use by the Employer or the Building Manager subject to his control, and such existing facilities are useful for rectifying defects, the Employer shall permit the use of such gondolas or lifting platforms by the Contractor subject to payment of reasonable amounts for consumables. In other cases, the Contractor shall provide his own temporary facilities required for rectifying defects.

2.9 Objects of antiquity

Any object of antiquity found on the Site shall be deemed to be the property of the Employer. Upon discovery, the Contractor shall immediately report to the Contract Administrator who shall issue instructions to deal with the issue. The Contractor shall permit others appointed by the Employer to carry out examination, excavation or removal of the object of antiquity. Compliance with the Contract Administrator's instructions in this regard shall be deemed to be a Variation.

### **3. WORKS**

#### 3.1 Definitions

##### 3.1.1 The Works include:

- (a) permanent work required to be carried out and completed by the Contractor under this Contract;
- (b) temporary work required for the carrying out and completion of the permanent work;
- (c) services required to be carried out and completed by the Contractor under this Contract;
- (d) materials supplied by the Employer for incorporation by the Contractor into the Works after they are handed over to the Contractor;
- (e) design of any part of the permanent work if this is specified to be part of the Works;
- (f) service and maintenance required to be carried out after substantial completion of the Works; and
- (g) provision of warranties and guarantees.

##### 3.1.2 The Works exclude:

- (a) materials supplied by the Employer for incorporation by the Contractor into the Works but only until such time when they are handed over to the Contractor;
- (b) materials or workmanship or method or work which is not in accordance with this Contract; and
- (c) work or services carried out by the Contractor without authority under this Contract.

#### 3.2 Design of permanent work

Unless otherwise stated in this Contract or unless the Contractor has provided the design, and subject to Clause 3.3 below, the design of the permanent work required for the Works shall be the responsibility of the Employer who shall engage the Contract Administrator or other designers to carry out the design work. The Contract Administrator shall be responsible for issuing and explaining the design to the Contractor.

#### 3.3 Development of design

3.3.1 Where any Contract Drawings or further drawings issued by the Contract Administrator after the award of this Contract are described as "design intent drawings", such drawings shall be understood as indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions, and size limitations required for the finished work. The Contractor shall be responsible for the detailed design of the components making up the complete system, installation or fitting, and the selection of materials in compliance with the Contract Drawings and the further drawings.

3.3.2 The Contract Drawings or further drawings issued by the Contract Administrator after the award of this Contract for the building services installations (deemed to include plumbing and drainage) shall be understood as schematic and layout design drawings indicating only the performance requirements, materials of the major components, layout, positions, configurations, controlling dimensions and sizes required for the finished work. The Contractor shall be responsible for the selection and fixing details of the system components, and the exact and co-ordinated routing of pipework, ducting, cable and wiring in compliance with the Contract Drawings and the further drawings.

3.4 Design of temporary work

Unless otherwise stated in this Contract, the design of temporary work required for the Works (no matter whether it has been shown on the Contract Drawings or not) shall be the responsibility of the Contractor.

3.5 Contractor's design to be approved

3.5.1 Any design for which the Contractor is responsible under this Contract shall be submitted to the Contract Administrator for comment and approval before implementation.

3.5.2 The Contractor's design shall be fit for the purpose for which it is intended. Approval by the Contract Administrator shall not be taken as acceptance that the work is so fit for the purpose.

3.6 Testing and commissioning

Before they may be certified as substantially completed, all mechanically, hydraulically, electrically or electronically operated parts of the Works and any parts of the Works connected by and including pipes, ducts, conduits, trunking, wiring or cables shall be tested and commissioned in accordance with the requirements of this Contract.

3.7 Contractor's alternative proposals

3.7.1 The Contract Administrator may consider alternative design, materials, workmanship and methods that the Contractor may propose but the Contract Administrator's approval of such alternatives shall be at the Contract Administrator's sole discretion and the Contract Administrator shall not be obliged to consider or approve any alternatives nor shall the Contract Administrator be obliged to provide any reasons for disapproval of such alternatives. No such alternatives shall be adopted without the prior written approval by the Contract Administrator. The approval shall have no effect on the Contract Price or the Completion Date unless the effect is specifically stated in the written approval, in which case, the approval shall be deemed to be a Variation instruction. Under no circumstances shall the approval relieve the Contractor of his responsibilities under this Contract.

3.7.2 For a material permitted under this Contract to be the subject of a proposal in regard to "equal and approved" or "approved equal" brands or models or a number of choices of brands or models, the Contractor may propose a brand or model of the same kind of material equal in performance and quality to those originally specified or proposed in this Contract for the approval by the Contract Administrator. No cost reduction shall be required if the alternative brand or model is not cheaper than the cheapest of those originally specified or proposed in this Contract by more than 10%, otherwise a share of the cost saving shall be proposed.

**4. TIME**

4.1 Contract commencement

This Contract shall be deemed to take effect and commence on the date of a letter issued by or on behalf of the Employer awarding this Contract to the Contractor, irrespective of when the Contract Agreement is signed.

4.2 Consent to commencement

The Contractor shall submit all applications required by law to be submitted by contractors and shall pay all associated charges prior to the commencement of work on site or as and when the same fall due, whichever is the later.

#### 4.3 Commencement of Works

The Contractor shall commence each Works Section on its Commencement Date stated in the Contract Agreement, and shall complete each Works Section on or before its Completion Date stated in the Contract Agreement.

#### 4.4 Working hours

The Contractor shall observe any working days and working hours restrictions which may be imposed under this Contract and at law, and shall apply to the Contract Administrator and the relevant Government authority for working outside the legally restricted time at his own expense.

#### 4.5 Notices and claims

4.5.1 As soon as practicable after the commencement of an event causing or likely to cause delay or disruption to the regular progress of the Works or delay to the completion of any Works Section beyond its Completion Date becoming apparent, the Contractor shall give notice to the Contract Administrator of such a delay or disruption.

4.5.2 The notice shall state in full detail (illustrated with diagrammatic programmes as necessary) the event and material circumstances causing or likely to cause the delay or disruption, the estimated extent of the delay or disruption to the progress, the estimated length of the delay to the completion, and whether the Contractor considers that he is or may become entitled to an extension of time due to the event being an Excusable Event listed in Clause 1.12 and to reimbursement for direct loss and/or expense due to the event being a Compensable Event listed in Clause 1.12. If direct loss and/or expense is expected to be incurred, the notice shall give an estimate of the likely amount. If the delay or disruption is of continuing or repetitive nature, the Contractor shall submit updated notices at monthly intervals.

4.5.3 The Contractor shall submit his monetary claim for reimbursement for direct loss and/or expense with evidence of the direct loss and/or expense as soon as the direct loss and/or expense are fully known and reasonably calculable.

4.5.4 In any case, the notice under Clause 4.5.1 and the updated notices under Clause 4.5.2 shall not be submitted later than the Completion Date of the relevant Works Section or its extended completion date previously claimed by the Contractor, and the Contractor's monetary claim under Clause 4.5.3 shall not be submitted later than three months after the direct loss and/or expense having been incurred, progressive submission permitted.

It shall be a condition precedent to the Contractor's entitlement to any extension of time or loss and/or expense claim that the Contractor shall have fully complied with the provisions of Clauses 4.5.1 to 4.5.4. If he fails to fully comply with these provisions in respect of any claim, that claim will be deemed to have been waived by the Contractor.

When considering the amount of any extension of time or loss and/or expense that the Contractor is entitled, the Contract Administrator and the Quantity Surveyor are entitled to take into account only of the information already submitted by the Contractor without an obligation to demand for further information from the Contractor. For the avoidance of doubt, the Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information.

#### 4.6 Mitigation of delay or disruption

The Contractor shall continuously use his best endeavours to prevent or mitigate delay or disruption to the progress of the Works however caused, and to prevent the completion of the Works from being delayed or further delayed. The use of best endeavours by the Contractor shall not require the Contractor to accelerate the carrying out of the Works to recover delay caused by an Excusable Event. The Contractor shall however do all that may reasonably be required to proceed with the Works expeditiously.

4.7 Determining time effect

- 4.7.1 Within **14 days** after receipt of the Contractor's notice of delay or disruption under Clause 4.5 and subject to Clause 4.5.4, the Contract Administrator shall notify the Contractor his opinion on the extent of delay or disruption to progress or delay to completion that the Excusable Event or Compensable Event specified by the Contractor in his notice has caused or is likely to cause to the relevant Works Section. If there is a delay to completion due to an Excusable Event, the Contract Administrator shall give an extension of time to the Contractor by fixing a later Completion Date for the relevant Works Section to compensate the working time lost.
- 4.7.2 If the Contract Administrator gives an extension of time to the Contractor because of an Excusable Event that occurs in the period of delay after the Completion Date but before the substantial completion of a Works Section, he shall add this extension of time to the total of any extensions of time previously granted when fixing a new Completion Date, even though the Excusable Event may have occurred later than the date that the Contract Administrator fixes as the new Completion Date.
- 4.7.3 The Contract Administrator may review his opinion on the time effect under Clause 4.7.1 and adjust any extension of time previously granted in light of further evidence at any time before issuing the Final Certificate, but shall not reduce the extension of time previously granted unless any previous extension has been based upon incorrect information provided by the Contractor.

4.8 Valuing cost effect

- 4.8.1 Within **14 days** after the receipt of both the Contractor's monetary claim and the opinion of the Contract Administrator on the time effect, the Quantity Surveyor shall assess the value of any direct loss and/or expense compensable to the Contractor for certification by the Contract Administrator. Any such value which may be assessed from time to time shall be added to the Contract Price and included in the next Payment Certificate.
- 4.8.2 The Quantity Surveyor may review his valuation of the time effect under Clause 4.8.1 in light of further evidence at any time before issuing the Final Certificate. Any adjustment so resulted shall be accounted for in the next Payment Certificate.

4.9 Damages for delayed completion

If a Works Section is not completed by the Completion Date or the currently extended Completion Date, the Employer may recover from the Contractor liquidated damages calculated at the respective Rate of Liquidated Damages for Delayed Completion stated in the Contract Agreement for the period during which the Works Section remains incomplete. Where no rate is specifically stated, the Employer may claim for general damages for delayed completion.

4.10 Substantial completion

- 4.10.1 A Works Section shall be considered as substantially completed when the whole of the Works within the Works Section has been completed and the place is clean and tidy with the Contractor's temporary site facilities demobilized to the satisfaction of the Contract Administrator and is ready for handover to the Employer, excluding only work or services specifically required by this Contract to be carried out after substantial completion, and minor work which is not essential for the occupation, use or functioning of the Works.
- 4.10.2 If the Contractor considers that substantial completion of a Works Section is imminent, he shall invite by giving reasonable advance notice to the Contract Administrator to carry out a completion inspection. The Contract Administrator shall carry out the inspection and notify the Contractor whether there is any outstanding work essential to substantial completion. The Contractor shall complete the outstanding work, invite the Contract Administrator to re-inspect as appropriate, demobilize from the Site of the Works Section (subject to Clause 4.10.3), and make the place clean, tidy and ready for handover to the Employer. If the Contract Administrator

is satisfied that the state of substantial completion has been achieved, he shall issue a Substantial Completion Certificate to the Contractor to confirm the fact and the date.

- 4.10.3 The Contractor may stay after substantial completion at such portion of the Site which has been designated for the Contractor's placement of temporary site facilities and which are not immediately required for the occupation or use by the Employer until 7 days after the Contract Administrator's instruction to demobilize from such portion of the Site.

## **5. CONTRACT BASIS**

### 5.1 Interpretation of Contract Documents

- 5.1.1 The various parts of the Contract Documents are complementary to each other and shall be interpreted as a whole as far as possible.

- 5.1.2 In case of any contradiction between the various parts of the Contract Documents, the order of precedence for interpretation shall be in the following descending order:

- (a) Contract Agreement;
- (b) Tender Correspondence;
- (c) Form of Tender or the Tender;
- (d) Special Contract Conditions;
- (e) Schedule of Works;
- (f) the Preliminaries section of the Contract Specification;
- (g) Contract Conditions;
- (h) Contract Drawings; and
- (i) Sections of the Contract Specification other than the Preliminaries section.

- 5.1.3 Subject to Clause 5.1.2, documents issued later in time shall take precedence, particular specification shall take precedence over general specification, detailed drawings shall take precedence over general drawings, specification and drawings specially prepared for the Works shall take precedence over standard specification and drawings.

- 5.1.4 No other documents exchanged prior to the award of this Contract shall form part of the Contract, or affect the meaning and interpretation of the Contract Documents, unless otherwise agreed in writing by both the Contract Parties.

### 5.2 Clarification of discrepancy or divergence

If the Contractor shall find any discrepancy in or divergence between the various parts of the Contract Documents, he shall immediately give a written notice specifying the discrepancy or divergence to the Contract Administrator who shall issue instructions to clarify.

### 5.3 Supplementary information

The Contract Administrator shall, if so requested by the Contractor, or may on his own initiative, issue supplementary drawings or specifications to amplify the Contract Documents.



5.4 Number of copies of Contract Documents and supplementary information

5.4.1 The Contractor shall be entitled free of charge to one signed copy and one unsigned copy of the Contract Documents.

5.4.2 The Contractor shall be entitled free of charge to two sets of supplementary drawings or specifications.

5.5 Instructions

5.5.1 The Contract Administrator may issue instructions in regard to any matter in connection with the Works to the Contractor. The Contractor shall forthwith comply with all instructions issued to him by the Contract Administrator. If the Contractor fails to comply with an instruction of the Contract Administrator, then the Contract Administrator may issue a notice in writing requiring the Contractor to comply with the instruction. If the Contractor does not comply with the instruction within **7 days** of receipt of a written notice from the Contract Administrator requiring compliance with an instruction, then the Employer may without further notice employ and pay other persons to carry out any work whatsoever to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer.

5.5.2 All instructions issued by the Contract Administrator shall be issued in writing. Any instruction issued orally shall be confirmed in writing by the Contract Administrator within **2 days**, otherwise the oral instruction shall have no effect.

5.5.3 The Contractor shall maintain an efficient organization so that all instructions issued by the Contract Administrator are communicated immediately to the Site. The Contractor shall take instructions only from the Contract Administrator or persons authorised by the Contract Administrator in writing to give them.

5.5.4 The Contractor shall enter all instructions given to him or his Site Agent by the Contract Administrator or such other persons as are authorised in a diary recording a description of such work ordered, and shall obtain against each entry the initials of the Contract Administrator or such other authorised person on the day that such instructions are given.

5.5.5 If required by the Employer, his Consultants and the Clerk of Works, the Contractor shall allow such diary to be inspected by them at any reasonable time.

5.6 Documents on site

5.6.1 The Contractor shall keep a complete set of the Contract Drawings and Contract Specification together with copies of all instructions and supplementary or additional drawings or specifications issued after the award of this Contract on the Site. These documents shall be available for reference by the Employer, his Consultants and the Clerk of Works at all times.

5.6.2 The drawings shall be stored in a neat and orderly manner by fixing them to sheets of hardboard, or using any other suitable system.

5.7 Use of drawings

5.7.1 Figured dimensions on drawings shall be taken in preference to scaled in all cases.

5.7.2 The Contractor shall counter-check the scale of any drawing transmitted electronically for the accuracy of the stated scale and make appropriate adjustments when scaling.



## **6. PRICES**

### 6.1 Lump Sum Contract

Where the Contract Type stated in the Contract Agreement is “Lump Sum Contract”. The Contract Price stated in the Contract Agreement shall be deemed to be inclusive of all costs necessary for the completion of the Works originally described in this Contract. The Contract Price shall not be adjusted except for Variations or adjustments of provisional quantities or provisional sums and other adjustments permitted under or required by this Contract.

### 6.2 Remeasurement Contract

Where the Contract Type stated in the Contract Agreement is “Remeasurement Contract”. The Contract Price stated in the Contract Agreement shall be deemed to be provisional and shall finally be recalculated by remeasuring the work properly carried out and valuing the same at the Contract Rates, subject only to other adjustments permitted under or required by this Contract.

### 6.3 Rates Only Contract

Where the Contract Type stated in the Contract Agreement is “Rates Only Contract”. The Contract Price shall finally be recalculated by measuring the work properly carried out based on the as-built records (excluding work done without authority) and valuing the same at the Contract Rates, subject only to other adjustments permitted under or required by this Contract.

### 6.4 No adjustment for rises or falls in costs of labour and materials

The Contract Price shall not be adjusted for rises or falls in the costs of labour and materials or exchange rates of currencies.

### 6.5 Arithmetical errors

Any arithmetical errors in multiplying the quantities and rates for the extensions, casting the extensions to page or section totals or carrying or bringing forward figures when calculating the original Contract Price stated in the Contract Agreement shall be deemed to have been accepted by the Contract Parties with no adjustment to the Contract Price.

### 6.6 Quantities for Lump Sum Contract

6.6.1 Where the Contract Type stated in the Contract Agreement is “Lump Sum Contract”, the following provisions shall apply:

- (a) no matter whether the quantities of the Works stated in the Schedule of Works or other parts of the Contract Documents are estimated by the Employer or the Contractor, the quantities are deemed to be estimated by the Contractor according to the Contract Drawings and the Contract Specification;
- (b) the Contractor has allowed in the Contract Price for all quantities required for the carrying out of the Works as shown on the Contract Drawings or as described in the Contract Specification; and
- (c) except for clause 6.6.2 and quantities of items described as provisional, both the quantities and the Contract Price are not subject to adjustment for the situation where the quantities including their descriptions have any discrepancy from the Contract Drawings and/or the Contract Specification in accordance with the method of measurement specified in the Contract Agreement.

6.6.2 If

- (a) the Contract Agreement states that this clause 6.6.2 applies to this Contract; and
- (b) the Contract Administrator confirms that the quantities including their descriptions have any discrepancy from the Contract Drawings and the Contract Specification in accordance with the method of measurement specified in the Contract Agreement and correction of the quantities and their descriptions have to be made to match with the actual carrying out of the Works, the correction shall be deemed to be a Variation.

6.7 Provisional quantities

6.7.1 Quantities of items described as "provisional" in the Schedule of Works or other build-up of the Contract Price as included in the Tender Correspondence shall be remeasured on completion of the relevant work based on the as-built records (excluding work done without authority) and shall be valued in accordance with the Contract Rates. Provisional quantities shall be considered as estimates only, and the Employer shall not bear any responsibility for their accuracy. The Contract Rates are fixed, and shall not be adjusted whether or not the final quantities differ from the provisional quantities.<sup>1</sup>

6.7.2 Where the unit for measuring the quantities of an item described in Clause 6.7.1 is "Item" or "Sum", the Contract Rate for the item shall be the sum priced against the item in the Schedule of Works or other build-up of the Contract Price.

6.8 Method of measurement

6.8.1 The quantities in the Schedule of Works or other build-up of the Contract Price as included in the Tender Correspondence shall be deemed to have been measured in accordance with the method of measurement stated in the Preliminaries section of the Contract Specification or in the Preambles to the respective documents, except that when a different method of measurement is described in an item description of the documents, then the method of measurement described in the item description shall take precedence. The same method of measurement shall be used in the settlement of the Final Account.

6.8.2 Where more items than those specifically required by the method of measurement are measured for the same work, the same method of measurement as was adopted in the preparation of the tender documents shall be used in the settlement of the Final Account.

6.8.3 For Lump Sum Contract and where clause 6.6.2 does not apply to this Contract, if fewer items than those specifically required by the method of measurement are measured for the work, the cost of the items not measured shall be deemed to have been allowed for in the other Contract Rates, the omission of measurement shall be deemed to be a modification of the method of measurement and such modified method of measurement shall be used in the settlement of the Final Account.

6.8.4 If the various documents referred to in Clause 6.8.1 are silent as to the method of measurement used, the method of measurement which is stated or reasonably apparent from the Tender Documents shall be used, subject to the conditions that:

- (a) all quantities shall be measured the net quantities as fixed in position with no allowance for wastage or, for work measured superficially, for laps; and
- (b) ancillary items shown on the Contract Drawings or described in the Contract Specification but not measured separately in the documents shall not be measured separately when valuing variations, unless the proportion of the ancillary items to the principal items have been varied by Variations.

6.9 Provisional sums

The Contract Administrator may issue instructions with regard to the expenditure of any sum described as "provisional sum" in the Schedule of Works or other build-up of the Contract Price as included in the Tender Correspondence. The relevant work shall be valued based on the valuation rules stated below. In the settlement of the Final Account, the provisional sum shall be deducted from the Contract Price and the said value shall be added to the Contract Price.

6.10 Prime cost rates

6.10.1 Where a prime cost rate ("PC Rate") is included in the description of an item in the Schedule of Works or other build-up of the Contract Price as included in the Tender Correspondence for materials delivered to site, the prime cost rate is a provisional allowance for the supply cost of the principal material of that item delivered to site only and the Contract Rate for the item shall be deemed to have allowed in addition for all waste, fixing, all ancillary materials required for fixing such as mortar for bedding and jointing and all other similar items of a like nature, and for profits and overheads.

6.10.2 Where the prime cost rate is described as for supply and fix / install / apply, the provisional allowance is for the supply and fixing cost charged by a domestic specialist sub-contractor, and the Contract Rate for the item shall be deemed to have allowed in addition for the Contractor's profits and overheads.

6.10.3 In the settlement of the Final Account, the Contract Rate shall be adjusted by the net difference between the prime cost rate and the actual unit cost and will be applied to the net quantity of the item measured as fixed, installed or applied in position, exclusive of wastage.

6.11 Variations

The Contract Administrator may issue instructions from time to time requiring a Variation. All Variations shall be valued based on the valuation rules stated below, and the Contract Price shall be adjusted accordingly. Valuation of work is not a condition precedent to its execution by the Contractor.

6.12 Valuation of Variations and provisional sum items

The valuation of Variations and of work carried out by the Contractor covered by a provisional sum shall be made by the Quantity Surveyor in accordance with the following "valuation rules":

- (a) The Contract Rates shall be used for valuing work of the same or similar character to, and carried out under the same or similar conditions to the work to which the Contract Rates apply.
- (b) If the work is not of the same or similar character to or not carried out under the same or similar conditions to the work to which the Contract Rates apply, "pro-rata rates" shall be used. A pro-rata rate shall use the Contract Rates for comparable items as the base with adjustment for the net difference in costs due to the difference in character or conditions plus the same percentage for profits and overheads as used in the relevant Contract Rates.
- (c) The Contract Rates shall be used for valuing work omitted from the Contract.
- (d) If the omission of work substantially varies the character of, or the conditions under which any remaining items of work are carried out, then such remaining items of work shall be valued in accordance with sub-clause (b) above.

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<sup>1</sup> If it is considered that the Contract Rates for the stated provisional quantities may become inapplicable due to substantial difference between the final quantities and the provisional quantities, additional rates only items should be included by the Contract Administrator or the Contractor in the Contract to deal with the possible situations.

- (e) If there are no Contract Rates which can reasonably form a basis for valuing work, "star rates" shall be used. Star rates shall be derived from market rates including rates used on other comparable projects fairly adjusted to take into consideration the nature and conditions under which the work is carried out under this Contract or from first principle based on actual costs plus the percentage for profits and overheads generally used in the Contract Rates.
- (f) If there is any disagreement as to the percentage for profits and overheads generally used in the Contract Rates, 15% shall be used for mark-up on the costs of direct labour, materials and plant. If the work is sub-contracted, then 10% shall be used for mark-up on the sub-contract prices.
- (g) If it is foreseen that work to be carried out may not be properly measured or valued at Contract Rates then the Contract Administrator may and the Contractor shall propose that the work shall be valued on a daywork basis whereby the time of labour and plant engaged or properly left idling and the quantities of materials used or properly wasted shall be recorded by the Contractor and endorsed by the Clerk of Works or other authorized representative of the Employer or the Contract Administrator on site. Notwithstanding any such proposal, the work shall be valued on a daywork basis only if there is an agreement between the Contract Administrator and the Contractor to that effect.
- (h) The labour and plant to be valued on a daywork basis shall be valued at daywork rates contained or stipulated in the Contract or, in the absence of such rates, at fair rates determined by the Quantity Surveyor. Materials to be valued on daywork basis shall be valued at the nett cost incurred by the Contractor until being fixed plus 15% for profits and overheads.

6.13 Contractor's claims for extras

- 6.13.1 Subject to Clause 6.13.2, the following shall not be Variations and shall not have any cost effect:
  - (a) changes made to the Contractor's submissions such as drawings, samples or catalogues in consequence of any comments made by the Contract Administrator; or
  - (b) any written instruction of the Contract Administrator specifically stating that there should be no cost addition.
- 6.13.2 If the Contractor considers that compliance with Clause 6.13.1 constitutes a Variation, then the Contractor shall immediately upon the receipt of the relevant comment or instruction write to the Contract Administrator to seek clarification.
- 6.13.3 Any failure by the Contractor to seek clarification of any such comment or instruction within a reasonable time is to be taken as an acknowledgement by the Contractor that the compliance is not a Variation.

6.14 Invoices, receipts, etc.

The Contractor shall produce all original invoices, vouchers or receipted accounts with a photocopy of such documents for any materials or sub-contract labour charges when called upon to do so by the Contract Administrator. Upon verifying the photocopies of the invoices, receipts, etc., the originals shall be returned to the Contractor.

6.15 Payment

- 6.15.1 The Contractor shall submit applications for payment to the Contract Administrator and the Quantity Surveyor with a copy to the Employer at **monthly** intervals after the commencement of the Works until **1 month** after substantial completion, and at **bimonthly** intervals thereafter.

- 6.15.2 The Quantity Surveyor shall check, amend or verify the payment application and recommend to the Contract Administrator the net amount payable and the Contract Administrator may make appropriate deductions for work or materials not in accordance with the Contract but included in the payment recommendation and shall issue a Payment Certificate to certify the net amount payable, if any, to the Employer with a copy to the Contractor within **14 days** of receipt of the Contractor's application.
- 6.15.3 The Contractor shall submit an invoice for the amount stated in the Payment Certificate to the Employer and the Employer shall pay the amount stated in the Payment Certificate as invoiced by the Contractor within the Period for Honouring Payment stated in the Contract Agreement.
- 6.15.4 The net amount payable to the Contractor under each Payment Certificate shall be computed by calculating the gross valuation at sub-clause (a) below and then making the deductions or additions at sub-clauses (b) to (g) below:
- (a) the gross valuation of the Works, being the total value of materials delivered to site and work partly or fully completed up to the date of the Contractor's payment application, excluding those materials supplied by the Employer and those materials or work which are not in accordance with this Contract, but taking into account the effect of the items stated in Clause 6.16.1 (a) to (i);
  - (b) deduction for retention fund as Clause 6.15.5;
  - (c) addition for the amount of any advance payment stated in the Contract Agreement, but only after the provision by the Contractor of a surety bond in a form acceptable to the Contract Administrator of a value not less than the amount of the advance payment;
  - (d) deduction for the amount of any advance payment which the Employer is entitled to recover in the manner stated in the Contract Agreement;
  - (e) deduction for cash security or addition for release of cash security as Clauses 10.10.2 and 10.10.3;
  - (f) deduction for any other sums including liquidated damages due from the Contractor to the Employer under this Contract or otherwise; and
  - (g) deduction for the total amount previously paid to the Contractor.
- 6.15.5 The retention fund stated in Clause 6.15.4(b) above shall be dealt with in the following manner:
- (a) The retention fund shall be calculated by applying the Retention Percentage stated in the Contract Agreement on the gross valuation stated in Clause 6.15.4(a), subject to a maximum equal to the Maximum Retention stated in the Contract Agreement.
  - (b) Upon the issue of the Substantial Completion Certificate of a Works Section and the submission of any warranties and guarantees required under this Contract for that Works Section, one half of the retention fund held in respect of the Works Section shall be released to the Contractor in the next Payment Certificate.
  - (c) Upon the issue of the Defects Rectification Certificate of a Works Section, the balance of the retention fund held in respect of the Works Section shall be released to the Contractor without interest by way of a special Payment Certificate.
  - (d) Provided always that the Employer may have recourse to the retention fund otherwise due to the Contractor to recover sums due to the Employer from the Contractor.
- 6.15.6 The inclusion of materials or work in any Payment Certificate prior to the Final Certificate shall not be regarded as evidence that the materials are and the work has been performed in accordance with the requirements of this Contract.

- 6.15.7 The computation of Payment Certificates shall be by way of an estimate only based on the latest contemporary information available at the time of valuation and the valuation shall not be limited or affected by the information available in computing the amounts used in previous Payment Certificates.
- 6.16 Final Account
- 6.16.1 A Final Account is a statement of the computation of the final Contract Price payable to the Contractor taking into account the following:
- (a) measurement and valuation of final quantities in the case of a Rate Only Contract as Clause 6.3;
  - (b) adjustment of provisional quantities in the case of a Lump Sum Contract or Remeasurement Contract as Clause 6.8;
  - (c) adjustment of provisional sums as Clause 6.10;
  - (d) adjustment of prime cost rates as Clause 6.11;
  - (e) adjustment for Variations as Clause 6.12;
  - (f) addition for the value of any direct loss and expense as Clause 4.10;
  - (g) deduction for failure to rectify defects as Clauses 7.6.3 and 7.6.4;
  - (h) adjustment due to failure to pay statutory fees, charges or taxes as Clause 9.1.2;
  - (i) deduction for the Contractor's failure to insure or addition for the Employer's failure to insure as Clause 10.6;
  - (j) deduction for liquidated damages as Clause 4.9 if the Employer so instructs; and
  - (k) other additions to or deductions from the Contract Price required by this Contract.
- 6.16.2 The Contractor shall submit his proposed Final Account calculated in accordance with this Contract with all factual evidence and relevant calculation details to the Contract Administrator and the Quantity Surveyor for checking within 3 months from the completion of the whole of the Works. The Quantity Surveyor shall be entitled to consult the Contract Administrator and the Employer for any factual evidence which may affect the computation of the Final Account, and shall send his draft Final Account to the Contractor for agreement as soon as practicable. In the absence of a submission by the Contractor, the Quantity Surveyor may compute the Final Account based on the information that is available to him and send it to the Contractor for agreement. The Contractor and the Quantity Surveyor shall discuss and agree the details of the Final Account from time to time and shall agree the whole Final Account as soon as possible not later than 1 month after the issue of the Defects Rectification Certificate.
- 6.16.3 The agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the Final Account and known at the time of agreement but shall not prejudice the Contractor's liability for making good defects not considered in Clause 6.16.1(g) and the Contractor's responsibility to complete work valued in the Final Account but not yet done at the time of agreement.
- 6.16.4 If the Quantity Surveyor considers that he has taken into account all the representation of the Contractor but still fails to obtain the Contractor's agreement, he may issue an unilateral Final Account to the Contractor and declare it as such.
- 6.16.5 The cost incurred by the Contractor in preparing the Final Account shall be deemed to have been included in the Contract Price.

6.17 Final Certificate

- 6.17.1 The Contract Administrator shall issue the Final Certificate within **14 days** after the issue of the Defects Rectification Certificate of the last Works Section or within **14 days** after the agreement of the Final Account or after **1 month** has lapsed after the issue of the unilateral Final Account, whichever is the later.
- 6.17.2 The Final Certificate shall state:
- (a) the Final Contract Price;
  - (b) the amount previously paid to the Contractor; and
  - (c) the amount of the difference between the sums expressed in Clause 6.17.2(a) and Clause 6.17.2(b) as the amount due to the Contractor or due to the Employer, as the case may be.
- 6.17.3 The amount referred to in clause 6.17.2(c) shall be a debt payable by the Employer to the Contractor or by the Contractor to the Employer, as the case may be, within the Period for Honouring Payment stated in the Contract Agreement calculated from the date of the Final Certificate, subject to:
- (a) all deductions authorized by the Contract Agreement; and
  - (b) the situation where either of the Contract Parties has expressed his disagreement to the Final Certificate and notified the other party not later than the due date for payment to resolve the disagreement in accordance with Clause 12.
- 6.17.4 Except for the matters related to the disagreement notified by either of the Contract Parties in accordance with Clause 6.17.3(b), the issue of the Final Certificate shall mean that the Employer has accepted the Works carried out by the Contractor as being to his satisfaction and the contractual liabilities of both Contract Parties shall cease upon issuance of such Final Certificate except for the payment of the amount certified as finally due, liabilities for any latent defects not discovered at the time of the Final Account, or matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.

**7. QUALITY**

7.1 Quality liability

The Contractor shall be fully liable for the site operations, construction methods and the stability, safety and quality of all work, whether completed or not, except for loss or damage arising from the Excepted Risks.

7.2 Materials, workmanship and method to comply with Contract

- 7.2.1 The Works shall be carried out, tested and inspected using the materials, workmanship and methods shown on the Drawings or described in the Specification or the Schedule of Works, in conformity with the whole of this Contract.
- 7.2.2 If any of the specified materials are not procurable, then the Contractor shall submit proposed alternatives for the approval by the Contract Administrator.

7.3 Approval

All items stated by this Contract to require the checking or approval by the Contract Administrator shall be submitted by the Contractor in good time before they are required for use to the Contract Administrator for such checking or approval, and shall not be used in the Works until after the checking or approval by the Contract Administrator, which is to be confirmed in



writing. No approval, disapproval or amendment proposal made by the Contract Administrator shall in any way reduce the Contractor's liability under this Contract.

#### 7.4 Samples

7.4.1 If at the time of the award of this Contract, the Contractor has already submitted samples which have been approved by the Contract Administrator, those samples shall be used as the standard for subsequent acceptance of the materials or workmanship.

7.4.2 If samples have not been approved at the time of the award of this Contract, the Contractor shall submit free of charge samples and catalogues for approval purposes before ordering materials or commencing work. Approved samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.

#### 7.5 Testing and inspection

7.5.1 The Contractor shall carry out all tests and inspections required by this Contract to be carried out or arrange for them to be carried out by independent parties if so required, all at the Contractor's expense unless the testing and inspection is covered by a provisional quantity or a provisional sum item. A copy of the testing and inspection report shall be submitted to the Contract Administrator as soon as possible after the testing and inspection.

7.5.2 The Contract Administrator may issue instructions requiring the Contractor to carry out tests and inspections additional to those required by this Contract on work already carried out, and the relevant costs (including the cost of subsequent making good) shall be borne by the Employer. Provided that if the additional testing or inspection shows that the work is not in accordance with the requirements of this Contract, then the relevant costs (including the cost of subsequent making good and cost of rectification of other work) shall be borne by the Contractor.

7.5.3 The Contractor shall inform the Contract Administrator not less than **24 hours** before work is to be covered up to allow the Contract Administrator to inspect such work. If the Contract Administrator fails to inspect, the Contractor may carry out his own inspection. If the Contract Administrator requires work to be uncovered for inspection after it has been covered up, the Contractor shall so uncover the work. All costs of such an inspection shall be borne by the Employer, unless the inspection reveals that the work is not in accordance with this Contract, in which case the costs shall be borne by the Contractor.

7.5.4 If the Contractor fails to give the notice required by Clause 7.5.3, then the Contract Administrator may nevertheless require the inspection of any relevant work, and the cost of any such inspection shall be borne by the Contractor.

#### 7.6 Defects liability

7.6.1 The Contractor shall replace or rectify at his own cost any materials or work which are found at any time before the expiry of the Defects Liability Period not provided in accordance with this Contract on his own initiative or as and when instructed by the Contract Administrator to do so.

7.6.2 At any time not later than **14 days** after the expiry of the Defects Liability Period, the Contract Administrator may issue one or more lists of defects to the Contractor for the Contractor to rectify. The Contractor shall rectify all defects on the lists of defects within a reasonable time as directed by the Contract Administrator or, if not so directed, within a reasonable time of receipt of a list.

7.6.3 If the Contractor fails to rectify defects within the aforesaid reasonable time, then the Contract Administrator may issue a notice to the Contractor informing him of the Employer's intention to employ others to rectify the defects specified in the notice at the expense of the Contractor. If the Contractor continues to fail to proceed to rectify the defects for a further period of **7 days** or if the Contractor fails to carry on diligently thereafter, then the Employer shall be entitled to employ others to rectify the defects, and to recover the extra cost of so doing from the Contractor.



- 7.6.4 The Contract Administrator may instruct the Contractor not to rectify some or all of the defects specified on the lists which have been issued by the Contract Administrator, in which case a reasonable deduction from the Contract Price shall be made in respect of such defects.
- 7.6.5 After the expiry of the Defects Liability Period and the completion of rectification of defects on the lists of defects to his satisfaction, the Contract Administrator shall issue to the Contractor a Defects Rectification Certificate to that effect. Each Works Section shall have its own separate Defects Rectification Certificate.
- 7.6.6 The issue of a Defects Rectification Certificate for a Works Section shall discharge the Contractor from any further obligation to carry out the work of rectifying defects in the Works Section which were patent before the issue of the Defects Rectification Certificate, but it shall not prejudice the Contractor's obligations under a warranty or guarantee or the Employer's other rights and remedies either under this Contract or at law regarding defective work or other breaches of contract.
- 7.7 Warranties and guarantees
- 7.7.1 The Contractor shall procure such warranties or guarantees to be in favour of the Employer as may be required by this Contract.
- 7.7.2 If the Contractor has any suppliers' and sub-contractors' warranties or guarantees for materials or work required by this Contract, he shall assign such warranties or guarantees to the Employer (so far as he is lawfully able to do so) the benefits of all such warranties or guarantees.
- 7.7.3 The submission of the aforesaid warranties and guarantees satisfactorily in full compliance with this Contract shall be a pre-requisite to the release of one half of the retention fund upon substantial completion of the relevant Works Section under Clause 6.16.5(b).

## **8. CONTRACTOR'S DOCUMENTS**

### 8.1 Shop drawings

The Contractor shall submit all such shop drawings and other drawings as he is required to prepare under this Contract to the Contract Administrator for approval in sufficient time as to ensure that no delay to the Works are caused.

### 8.2 Construction method statement and programme

- 8.2.1 Within **7 days** after the Contract Award Date, the Contractor shall submit his proposed method statement and programme showing his intended time, method, sequence, stages and order of proceeding with the Works for checking and approval by the Contract Administrator. The Contractor shall carry out the Works in accordance with the approved method statement and programme.
- 8.2.2 If during the course of this Contract special circumstances should arise which in the opinion of the Contract Administrator warrant or necessitate a revision of the approved method statement and programme, then the Contractor shall accordingly so revise his method statement and programme as the Contract Administrator may require and submit the revised method statement and programme within **7 days** of being notified by the Contract Administrator that such a revision is required.
- 8.2.3 The submission to and approval by the Contract Administrator of the method statement and programme (including revisions) shall not relieve the Contractor of any of his duties or responsibilities under this Contract.

### 8.3 Progress reports

8.3.1 The Contractor shall submit the following progress reports in reasonable number of copies in the pre-approved format to the Contract Administrator regularly until **14 days** after substantial completion of the whole of the Works and as and when work is carried out during the Defects Liability Period:

- (a) daily reports to be submitted on the working day following the day recorded and showing a record of labour employed on site under each trade, plant on site, materials delivered to site, and the weather throughout the day, and other information as may be instructed by the Contract Administrator;
- (b) weekly reports to be submitted on the first working day following the week recorded and describing in detail the progress of the Works, any deviations from programme, reasons for actual or expected delays or disruptions, proposed actions to overcome the delays or disruptions, any claim for extension of time, testing and inspection carried out, list of Contract Administrator's instructions received, list of confirmations of oral instructions issued, outstanding information required, and other information as may be instructed by the Contract Administrator; and
- (c) progress photographs attached to the weekly reports.

8.3.2 If a Clerk of Works or other representative of the Employer is employed upon the Works, the progress reports shall be submitted for checking and signing by the Clerk of Works or other representative of the Employer before submission to the Contract Administrator.

### 8.4 As-built records

Within **14 days** after the completion of a Works Section, the Contractor shall submit two sets of prints and one electronic file in suitable media of as-built records for use by the Employer, and shall additionally submit as-built records in accordance with any relevant statutory or other requirements. If there is any Variation during the Defects Liability Period, revisions to the as-built records shall be made and submitted as soon as the Variation is carried out.

## 9. **GENERAL OBLIGATIONS**

### 9.1 Statutory obligations

9.1.1 The Contractor shall comply with, give all notices and make all applications required by, any ordinance, regulation, rule or order of the Government or statutory undertakers or utility companies applicable to the Works and shall pay any fees, charges or taxes legally demandable except for those fees, charges or taxes for which the Employer is legally responsible.

9.1.2 If either of the Contract Parties discharges the liability of the other party in regard to payment of fees, charges or taxes, then the amount paid plus 10% for administrative charges shall become money recoverable from the party liable for such fees, charges or taxes by the other party, without further adjustment to the prices allowed in this Contract for the like liability.

9.1.3 If the Contractor considers that a change to the Works is necessary to comply with any statutory requirement, he shall give a written notice specifying the change to the Contract Administrator. If the Contractor does not receive any instructions from the Contract Administrator within **7 days** of having given such a written notice, he shall proceed with the change, which shall be deemed to be a Variation.

### 9.2 Intellectual property

The prices for all work shall be deemed to include for all royalties, license fees or other sums legally demandable for the use of intellectual property in respect of the design or design

development for which the Contractor is responsible, materials, plant, methods or anything whatsoever used in carrying out the Works. The Contractor shall indemnify the Employer against any claim involving an infringement or alleged infringement of intellectual property rights.

9.3 Assignment

The Contractor shall not assign this Contract without the written consent of the Employer.

9.4 Care of Works

The Contractor shall take responsibility for the care of the work within a Works Section, materials supplied by him or persons for whom he is responsible for incorporation into the work, and materials supplied by the Employer and handed over to the Contractor or persons for whom his is responsible for incorporation into the work, except for loss or damage arising from the Excepted Risks from commencement of the Works Section until **14 days** after substantial completion of the Works Section or **14 days** after the determination of the employment of the Contractor, whether valid or not, whichever is the earlier.

9.5 Injury to persons and property and indemnity to Employer

Without prejudice to Clause 9.4, the Contractor shall be liable for and shall indemnify the Employer against any damage, expense, liability or loss in respect of any claims or proceedings for:

- (a) bodily injury to, disease contracted by or the death of any person arising out of, or in the course of, or by reason of the carrying out of the Works and whether arising on or off the Site, except to the extent that the injury, disease or death of that person is due to any act or neglect of the Employer or any person for whom the Employer is responsible; and
- (b) injury or damage to real or personal property arising out of, or in the course of, or by reason of the carrying out of the Works and whether arising on or off the Site, to the extent that the injury or damage is due to a breach of contract or other default of the Contractor or any person for whom the Contractor is responsible.

9.6 Provision of all things necessary

The Contractor shall provide all labour, materials, temporary site facilities, site and head office management necessary for the completion of the Works.

9.7 Labour and site management team

9.7.1 The labour provided by the Contractor shall be adequate in number, of the appropriate trades, skillful and competent in their respective callings, and managed by a site management team consisting of foremen, supervisors, co-ordinators, safety officers, etc. and headed by a construction manager full-time on site authorized and able to communicate with and take instructions from the Contract Administrator and capable of managing the Works.

9.7.2 The persons employed upon the Works shall be legally employable in Hong Kong. They shall not live on the Site, except for watchmen approved by the Contract Administrator. They shall be properly equipped with tools, safety belts, safety helmets, safety appliances, and shall wear proper uniforms and bear identification cards. Illegal immigrants shall not be allowed to enter the Site.

9.7.3 The Contract Administrator may require the replacement of any person employed upon the Works who in the opinion of the Contract Administrator misconducts himself or is incompetent or negligent in the proper performance of his duties with suitable a substitute at no extra cost and time to this Contract.

9.8 Temporary site facilities

The temporary site facilities provided by the Contractor shall be adequate and appropriate for the intended purposes, safe and secured, causing minimum nuisance, placed at positions approved by the Contract Administrator, up-kept and maintained regularly in good conditions with minimum downtime, relocated as necessary to suit the progress and need of the Works, and removed from the Site when no longer required.

9.9 Setting out

The Contractor shall ensure that the Works are constructed at the correct positions as shown on the Contract Drawings or further drawings issued by the Contract Administrator after the award of this Contract. He shall properly set out lines and levels for the Works, and provide instruments for the Contract Administrator to verify the setting out lines and levels or as-constructed positions if so required by the Contract Administrator. Such verification shall not relieve the Contractor of his obligation to construct at the correct positions.

9.10 Cleanliness and tidiness

The Contractor shall keep the Site and the Works clean and tidy with minimum accumulated rubbish at all times.

9.11 Protection

Without prejudice to Clauses 9.4 and 9.5, the Contractor shall take every care and safety precaution necessary to protect all persons and properties, including but not limited to the following, from injury, disease, death, loss, damage, nuisance, fire hazard, etc. caused by reason of the carrying out of the Works:

- (a) all workers or other persons on the Site;
- (b) all occupiers or users in the vicinity of the Site;
- (c) the public;
- (d) the Works, materials for incorporation into the Works, construction plant or temporary buildings used for the Works;
- (e) existing building construction, finishes, fittings, services within the Site which are not to be modified under this Contract;
- (f) roads, loading and unloading points, temporary parking spaces, footpaths, corridors, staircases and lifts for travel within the Site or within the premises in which the Site is situated;
- (g) the premises where the Site is situated;
- (h) adjoining properties;
- (i) public properties, public roads and footpaths;
- (j) properties of the Public Utility Service Companies; and
- (k) existing trees and shrubs.

9.12 Visitors

The Contractor shall not allow any unauthorised visitors on the Site. He shall keep a visitors book for persons authorised to visit the Site and provide safety helmets for such visitors.

9.13 Prevention of bribery offences

The Contractor shall not offer, give or agree to give to any person any bribe, commission, gift, loan or advantage of any kind as defined in the Prevention of Bribery Ordinance, Cap 201 as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the execution of this Contract or any other contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or other contract with the Employer. Any commitment of the aforesaid offences by any person with the Contractor's prior authorization or subsequent acquiescence shall be deemed to be the Contractor's fault. The Contractor shall take all necessary measures to ensure that his employees, agents, sub-contractors, suppliers, or other persons for whom the Contractor is responsible comply with the foregoing provisions.

**10. INSURANCES AND BOND**

10.1 Employees' Compensation Insurance

10.1.1 The Contractor shall effect and maintain employees' compensation insurance in compliance with the provisions of the Employees' Compensation Ordinance in the joint names of the Contractor and his sub-contractors of all tiers as "the insured contractors" and the Employer and the Building Manager as "the principals" to cover the legal liabilities, costs and claims against any or all of the insured in respect of death or bodily injury by accident or disease sustained by any employees employed by any of the insured contractors arising out of and in the course of their employment on the Works or in connection with this Contract whether on site or off-site, for the full period of construction, Defects Liability Period and maintenance.

10.1.2 The insurance policy shall be especially endorsed to cover the death or bodily injury by accident or disease sustained by any self-employed persons or sole proprietors engaged by any of the insured contractors upon the Works or in connection with this Contract as if they were employees employed by the insured contractors. Alternatively, the Contractor shall extend at his own expense the Contractors' All Risks and Third Party Liability Insurance stated in Clause 10.2 or ensure that separate personal accident insurance plans are taken out to provide cover commensurate with that enjoyed by an employee under the Employees' Compensation Ordinance to all self-employed persons or sole proprietors.

10.1.3 As soon as the Contractor becomes aware of any employees, self-employed persons or sole proprietors employed or engaged upon the Works or in connection with this Contract sustaining death or bodily injury by accident or disease, he shall notify the Commissioner for Labour in the manner prescribed by the Ordinance, with a copy of the notice to the Contract Administrator and the insurers, irrespective of whether the death or bodily injury gives rise to any liability to pay compensation.

10.2 Contractors' All Risks and Third Party Liability Insurance

10.2.1 The party as stated in the Contract Agreement to be responsible for taking out the Contractors' All Risks and Third Party Liability Insurance shall effect and maintain the said insurance in the joint names of the Contractor, those Separate Contractors as may be specified in the Specification and their respective sub-contractors of all tiers as "the insured contractors" and the Employer and the Building Manager as "the principals".

10.2.2 The Material Damage section of the insurance shall comply with the following requirements:

- (a) The Insured Property shall consist of the Works under this Contract, the works of the Separate Contractors and the materials supplied by the Employer for incorporation into the Works and shall include temporary work and all unfixed materials and goods delivered to, placed on or adjacent to the Insured Property and intended therefor (excluding construction plant and temporary buildings which are owned or hired by the insured contractors).
- (b) It shall cover physical loss of or damage to any part of the Insured Property during the period of construction until **14 days** after substantial completion of that part notwithstanding any use or occupation by the principals or others prior to substantial completion, and also cover loss of or damage to such property arising during the period of defects liability and/or maintenance from a cause occurring during construction prior to completion or occasioned by any of the insured in the course of their carrying out of remedial work or outstanding work.
- (c) The sum insured shall be equal to the full reinstatement value of the Insured Property plus:
  - (i) the percentage of professional fees in case of reinstatement as stated in the Contract Agreement to cover the costs and expenses in respect of architects', surveyors' and engineers' fees necessarily incurred in the reinstatement of the Insured Property consequent upon its loss or damage but not for preparing any claim; and
  - (ii) an amount not less than the amount for the removal of debris as stated in the Contract Agreement to cover the costs and expenses necessarily incurred by the Insured with the consent of the Insurers in dismantling and removing debris of the portion or portions of the Insured Property destroyed or damaged by any peril thereby insured against.
- (d) It shall contain an escalation clause to cover the possible increase in the reinstatement value of the Insured Property by the percentage as stated in the Contract Agreement.

10.2.3 The Third Party Liability section of the insurance shall comply with the following requirements:

- (a) It shall cover the legal liability, costs and claims against any or all of the insured in respect of:
  - (i) accidental death, bodily injury, illness or disease suffered by any person, other than employees of the insured contractors;
  - (ii) accidental loss or damage to physical property, other than those insured under the Material Damage section until **14 days** after substantial completion;
  - (iii) loss of or damage to property real or personal including damage to property, land or buildings due to collapse, subsidence, vibration, weakening or removal of support or lowering of ground water;
  - (iv) loss of or damage to any building, structure or property belonging to the principals in the care, custody or control of the insured contractors (alternatively, this paragraph (iv) may be covered by the Material Damage section of the insurance); and
  - (v) accidental death, bodily injury, illness or disease suffered by any employee of the principals visiting the Site on occasional basis, arising out of the performance of the Works and the works of Separate Contractors.
- (b) It shall remain in force for the full period of construction, defects liability and/or maintenance.
- (c) There shall be a "cross-liability" clause to cover any and all of the insured as separate and distinct parties with stipulation that the insurers agree to waive any right of subrogation rights which the insurers may have against any of the insured.

(d) The limit of indemnity shall not be less than the amounts stated in the Contract Agreement.

10.2.4 The amount of excess in respect of each and every occurrence of loss or damage shall not be more than the respective amount or the percentage of loss or damage stated in the Contract Agreement, whichever is greater.

10.2.5 If the Contractor considers that the above-mentioned insurance coverage is inadequate to cover his contractual or legal liabilities and requires that the coverage be increased or the amounts of excesses be reduced then the additional premium so payable shall be solely for the account of the Contractor.

10.2.6 In the event of loss or damage covered by the Material Damage section of the insurance, the Contractor shall remove and dispose of any debris, repair or replace any materials damaged, destroyed, lost or stolen, restore work destroyed, damaged or lost, and proceed with the carrying out and completion of the Works with due diligence immediately after any inspection required by the insurers has been carried out. The Contractor shall not be entitled to any payment in respect of the replacement, repair or restoration of the loss or damage and the removal and disposal of debris other than the amount received under the insurance (less the amount to cover professional fees) unless and to the extent that the loss or damage was caused or contributed to by a breach of contract or other default by the Employer or any person for whom the Employer is responsible.

### 10.3 Taking out insurances

10.3.1 The policies of the aforesaid insurances shall contain the usual terms and conditions, subject only to non-negotiable exclusions imposed by the insurance market.

10.3.2 For insurances to be taken out by the Contractor, the terms and conditions of the policies and the insurers shall be approved by the Contract Administrator, and evidence of insurance cover shall be submitted to the Contract Administrator before and a condition precedent to the commencement of any physical work. The policies and premium receipts shall be deposited with the Contract Administrator as soon as practicable afterwards.

10.3.3 For insurances to be taken out by the Employer, evidence of insurance cover shall be provided to the Contractor before commencement of any physical work. Copies of the policies and premium receipts shall be provided to the Contractor as soon as practicable afterwards.

### 10.4 Company master policy or annual policy

If the party responsible for taking out the aforesaid insurances maintains a company master policy or an annual policy, and endorses the policy to specifically include this Contract and the required parties as the insured and provide cover no less than that required under this Contract, then this shall be a discharge of the party's obligations to take out the insurance separately for this Contract. The party shall produce a copy of the policy, the specific endorsement and premium receipt for the inspection by the other party prior to commencement of any physical work.

### 10.5 Maintaining insurances

10.5.1 The party responsible for taking out the aforesaid insurances shall maintain and extend as necessary the insurances to be in full force for the required periods of insurance. Extension endorsement, renewal policy (in the case of annual policy) and premium receipt shall be produced to the other party for inspection within **14 days** after each extension or renewal date.

10.5.2 If the period of insurance shall be extended through default of the Contractor or parties for whom he is responsible, the Contractor shall be responsible for any additional premiums for the extension, otherwise, the Employer shall be responsible.



10.6 Remedy for failure to insure

If the party responsible for taking out the aforesaid insurances shall at any time fail upon request to produce any receipt showing that any of the insurances is in full force then the other party may without prejudice to other rights and remedies in the joint name and on behalf of both parties insure against any risk, loss or damage with respect to which the default shall have occurred, and shall be entitled to recover the premium paid plus 15% administrative charges from the party responsible upon production of the premium receipt, without further adjustment to prices allowed in this Contract for insurance.

10.7 Compliance with insurance conditions

The Contractor shall with all due diligence and at his own cost conform to the terms and conditions of the aforesaid insurances and all reasonable requirements of the insurers in connection with the prevention of accidents, the submission and settlement of claims, the recovery of losses and shall bear at his own cost the consequences of any failure to do so.

10.8 Reporting incidents

In the event of the occurrence of the perils covered by the aforesaid insurances, the Contractor shall notify the insurers and the Contract Administrator of the details of the incident immediately upon he becomes aware of it.

10.9 Insurances not affecting Contractor's liability

10.9.1 The presence of the aforesaid insurances shall not prejudice or reduce the Contractor's liability or responsibility under this Contract.

10.9.2 The Contractor shall bear the costs of all excesses, exclusions or limitations applying under the aforesaid insurances in so far as they concern risks or liabilities for which he is responsible under the terms of this Contract.

10.10 Surety bond or cash security

10.10.1 The Contractor shall obtain the guarantee of an insurance company or bank to be jointly and severally bound with the Contractor to the Employer in the sum stated in the Contract Agreement for the due performance of this Contract under the terms of a Bond in the form as Appendix A hereto. The surety shall be to the approval of the Contract Administrator and the cost of obtaining the Bond shall be borne by the Contractor. The Bond shall be submitted to the Employer for custody following approval by the Contract Administrator.

10.10.2 If the Contractor so elects or if the Contractor fails to submit an approved Bond before the first Payment Certificate is issued, a cash security equal to the amount of the Bond may be held by the Employer to serve the purpose of the Bond and the amount of the cash security is recoverable by the Employer from the Contractor. If the Contractor subsequently submits an approved Bond, the amount of the cash security is recoverable by the Contractor from the Employer.

10.10.3 Upon the issue of a Substantial Completion Certificate of a Works Section and the settlement of all claims (if any), the amount of the Bond or cash security shall be reduced pro-rata to ratio of the value of that Works Section to the final Contract Price currently estimated. Upon the issue of the Substantial Completion Certificate of the last Works Section and the settlement of all claims (if any), the Bond or the balance of the cash security shall be released to the Contractor without interests.



## 11. DETERMINATION

### 11.1 Determination by Employer

11.1.1 The Employer may but not unreasonably or vexatiously by notice by registered post or recorded delivery to the Contractor forthwith determine the employment of the Contractor under this Contract in any one or more of the following events:

- (a) the Contractor without reasonable cause fails to proceed regularly and diligently with the Works (including rectifying defects) or completely or substantially suspends the carrying out of the Works (including rectifying defects) before substantial completion of the whole of the Works;
- (b) the Contractor without reasonable cause fails persistently to rectify defects after substantial completion of the whole of the Works and the Employer pursuant to Clause 7.6.3 employs others to rectify the defects for 5 times or more and the total cost of rectifying defects exceeds \$100,000;
- (c) the Contractor without the written consent of the Employer assigns this Contract;
- (d) the Contractor without reasonable cause fails to submit evidence of the Employees' Compensation Insurance under Clause 10.1 and the Contractors' All Risks and Third Party Liability Insurance under Clause 10.2 in the manner stated in Clause 10.3.2 within **1 month** after the Contract Award Date;
- (e) the Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented or made against him or enters into compulsory or voluntary liquidation except for the purpose of reconstruction or has a provisional liquidator or receiver appointed, unless the Employer, the Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Contractor's employment; or
- (f) the Contractor (or any person for whom the Contractor is responsible with or without the knowledge of the Contractor) is convicted of a bribery offence described in Clause 9.13.

Provided that the employment of the Contractor shall not be determined due to Clauses 11.1.1(a) to (d) unless the event either has continued for **7 days** after receipt by registered post or recorded delivery of a warning notice of determination from the Contract Administrator specifying such event or, except for sub-clause (d), at any time thereafter has repeated, and the Contract Administrator has certified during the continuation or resumption of the event not more than **14 days** before the notice of determination.

11.1.2 In the event of the Employer determining the employment of the Contractor as aforesaid:

- (a) the Contractor shall reimburse the Employer all additional costs and direct loss and/or expense caused to the Employer by the determination. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Employer may possess;
- (b) the Contractor shall not without the consent of the Contract Administrator remove from the Site any materials, plant and facilities;
- (c) the balance of payment from one Contract Party to the other shall be computed by calculating the expenses at sub-clause (i) below and then making the deductions or additions at sub-clauses (ii) to (iv) below:

- (i) the expenses incurred by the Employer in completing the Works, excluding the costs of Variations instructed after determination, but including the additional costs of employment of consultants and site staff for a necessary period of time until the settlement of the final payment under this Contract and the completion of the Works respectively;
- (ii) addition for the total amount previously paid to the Contractor;
- (iii) addition for the additional costs and direct loss and/or expense caused to the Employer by the determination, including damages for delayed completion of any Works Section for the period until the original completion date of the contract for completion; and
- (iv) deduction for the total amount that would have been payable for completing the Works calculated in accordance with this Contract if the determination had not occurred.

11.1.3 If the Employer does not employ other persons to commence the Works left outstanding within **12 months** after determination, the expenses, costs, direct loss and/or expense, and period of delay for the purpose of Clause 11.1.2 shall be assessed on the assumption that the employment of such persons had commenced by the end of the said **12 months**.

## 11.2 Determination by Contractor

11.2.1 The Contractor may but not unreasonably or vexatiously by notice by registered post or recorded delivery to the Employer forthwith determine the employment of the Contractor under this Contract in any one of more of the following events:

- (a) the Employer fails to make any payment due under this Contract within **14 days** of such payment being due;
- (b) the Employer interferes with or obstructs the issue of any certificate due under this Contract;
- (c) the commencement or carrying out of the whole or substantially the whole of the Works has been postponed or suspended as instructed by the Employer or the Contract Administrator due to no beach or default of the Contractor or postponed or suspended due to any combination of the Compensable Events for a continuous period of more than **3 months** beyond any stipulated periods of postponement or suspension in this Contract; or
- (d) the Employer becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented or made against him or enters into compulsory or voluntary liquidation except for the purpose of reconstruction or has a provisional liquidator or receiver appointed, unless the Contractor, the Employer and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Contractor's employment.

Provided that the employment of the Contractor shall not be determined due to Clauses 11.2.1(a) to (c) unless the event has continued for 14 days after receipt by registered post or recorded delivery of a warning notice of determination from the Contractor specifying such event or, except for sub-clause (c), at any time thereafter has repeated, and the notice of determination is issued during the continuation or resumption of the event.

11.2.2 In the event of the Contractor determining his employment as aforesaid:

- (a) the Employer shall reimburse the Contractor all additional costs and direct loss and/or expense caused to the Contractor by the determination. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Contractor may possess;

- (b) the Contractor may after informing the Contract Administrator remove from the Site any materials, plant and facilities;
- (c) the balance of payment from one Contract Party to the other shall be computed by calculating the gross valuation at sub-clause (i) below and then making the deductions or additions at sub-clauses (ii) to (iii) below:
  - (i) the gross valuation of the Works in accordance with Clause 6.15.4(a), excluding materials removed by the Contractor after determination, but including materials that the Contractor has paid for, or is legally bound to pay for, and has or will transfer these materials with proper ownership to the Employer;
  - (ii) deduction for liquidated damages which may accrue up to the date of determination;
  - (iii) addition for the additional costs and direct loss and/or expense caused to the Contractor by the determination; and
  - (iv) deduction for the total amount previously paid to the Contractor.

### 11.3 Consequences of determination

- 11.3.1 In the event of determination of the employment of the Contractor under Clause 11.1 or 11.2, this Clause 11.3 shall apply in addition to Clause 11.1.2 or 11.2.2.
- 11.3.2 The Contractor shall immediately give up possession of the Site and demobilize his people from the Site except those necessary to attend to site security, site survey and handover but only for the time specified by the Contract Administrator as being reasonably required for that purpose.
- 11.3.3 Any removal by the Contractor of materials, plant and facilities shall be carried out with due care and with suitable safety provisions provided so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.
- 11.3.4 The Employer may provide site security to prevent improper removal and unauthorised access from happening and provide safety measures to protect the Works, people and adjoining properties.
- 11.3.5 The Contractor, the Contract Administrator and the Quantity Surveyor shall jointly take records of the status and quantities of the work done and materials, plant and facilities on site.
- 11.3.6 The Employer may employ and pay other persons to carry out and complete the Works and use or dispose of the materials, plant and facilities left on the Site pursuant to Clause 11.1.2(b) or 11.2.2(b).
- 11.3.7 If instructed to do so by the Contract Administrator, the Contractor shall, without payment from the Employer, terminate or assign to the Employer or other persons to be designated by the Employer as far as possible the contracts with his suppliers and sub-contractors to enable the Employer or other persons appointed by the Employer to employ and pay those suppliers and sub-contractors to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.
- 11.3.8 The additional costs incurred in implementing the above procedures and measures shall be part of the additional costs due to determination.
- 11.3.9 The Contractor and the Quantity Surveyor shall as soon as practicable exchange their computations of the balance of payment in Clause 11.1.2(c) or Clause 11.2.2(c) with supporting

documentation, discuss and agree the balance of payment. Upon agreement, the Quantity Surveyor shall issue a Final Account (in lieu of that under Clause 6.16) showing a summary computation of the balance of payment. If the Quantity Surveyor considers that he has taken into account all the representation of the Contractor but still fails to obtain the Contractor's agreement, he may issue a unilateral Final Account to the Contractor and declare it as such.

- 11.3.10 The Contract Administrator shall issue the Final Certificate (in lieu of that under Clause 6.17.1) certifying the balance of payment due to the Contractor or due to the Employer as the case may be within **14 days** after the agreement of the Final Account or after 1 month has lapsed after the issue of the unilateral Final Account, whichever is later. The amount stated as due in the Final Certificate shall be a debt payable as the case may be by the Employer to the Contractor or by the Contractor to the Employer within the Period for Honouring Payment stated in the Contract Agreement calculated from the date of the Final Certificate, and Clause 6.17.4 shall still apply, unless either of the Contract Parties has expressed his disagreement to the Final Certificate and notified the other party no later than the due date for payment to resolve the dispute in accordance with Clause 12.
- 11.3.11 Before the agreement of the Final Account, the liable Contract Party shall pay the undisputed portion of the up-to-date balance of payment once every **2 months**.

## **12. DISPUTE RESOLUTION**

### 12.1 Procedures

- 12.1.1 The Contract Parties agree to follow the dispute resolution procedures outlined in this Clause 12 to resolve any disputes or differences between the Contract Parties that may arise under or in connection with this Contract, including disagreement between them over any act or omission of the types stated in Clause 12.5.1(d) of the Contract Administrator or the Quantity Surveyor.
- 12.1.2 The dispute resolution procedures shall be deemed to commence when either of the Contract Parties notify the other to resolve disputes in accordance with Clause 12.

### 12.2 Reference to Designated Representatives

- 12.2.1 Each of the Contract Parties shall designate one of his own senior executives as its representative (referred to in this clause as the "Designated Representatives") within **14 days** after the Contract Award Date.
- 12.2.2 The dispute shall first be referred to the Designated Representatives who shall forthwith endeavour to settle the dispute.

### 12.3 Reference to mediation

- 12.3.1 If the dispute is not resolved by the Designated Representatives within **28 days** of the dispute being referred to them, either of the Contract Parties may give a notice to the other party to refer the dispute to mediation.
- 12.3.2 The person to act as the mediator shall be agreed between the Contract Parties. If the Contract Parties are unable to agree on the person to act as the mediator within **21 days** after a written request by either party to do so, the mediator shall, on the written request of either party, be appointed by the President or Vice-President for the time being of the Hong Kong Institute of Surveyors.
- 12.3.3 Any such mediation shall, unless otherwise agreed by the Contract Parties, be conducted in accordance with and subject to the Hong Kong International Arbitration Centre Mediation Rules except those provisions in the Rules relating to the appointment of the mediator.

12.4 Reference to arbitration

12.4.1 If the dispute is not settled by mediation within **28 days** of the commencement of the mediation, either Contract Party may give a notice to the other party to refer the dispute to arbitration.

12.4.2 The person to act as the arbitrator shall be agreed between the Contract Parties. If the Contract Parties are unable to agree on the person to act as the arbitrator within **21 days** after a written request by either party to do so, the arbitrator shall, on the written request of either party, be appointed by the President or Vice-President for the time being of Hong Kong Institute of Surveyors. The President or Vice-President may, at his discretion, request the Hong Kong International Arbitration Centre to appoint the arbitrator.

12.4.3 The arbitration shall be a domestic arbitration conducted in accordance with the Arbitration Ordinance (Chapter 609, Laws of Hong Kong) and, unless otherwise agreed by the Contract Parties, with the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre except those provisions in the Rules relating to the appointment of the arbitrator.

12.5 Arbitrator's powers

12.5.1 The arbitrator's powers include:

- (a) rectifying the Contract to accurately reflect the true agreement made by the Contract Parties;
- (b) directing measurements or valuations to determine the rights of the Contract Parties;
- (c) assessing and awarding any sum which ought to have been the subject of or included in a certificate; and
- (d) opening up, reviewing and revising, without limitation, the giving, submitting or issuing of any agreement, approval, assessment, authorisation, certificate, confirmation, consent, decision, delegation, direction, dissent, determination, endorsement, instruction, notice, notification, opinion, request, requirement, statement, term

12.5.2 The place of arbitration shall be Hong Kong.

12.6 Contractor to continue to proceed diligently

The Contractor shall continue to proceed regularly and diligently with the Works despite a dispute having arisen, and shall continue to give effect to all instructions from the Contract Administrator unless and until revised by agreement between the Designated Representatives, by mediation or in arbitration under this Clause 12.

12.7 Governing law

This Contract shall be governed by and construed according to the laws for the time being in force in Hong Kong.

**APPENDIX A - SURETY BOND**  
**(PRO-FORMA)**

By this Bond, we (Note 1) \_\_\_\_\_  
\_\_\_\_\_ trading as (Note 2) \_\_\_\_\_  
at (Note 3) \_\_\_\_\_  
whose registered office is at (Note 4) \_\_\_\_\_ ('the Contractor')  
and \_\_\_\_\_  
\_\_\_\_\_ whose registered office is at \_\_\_\_\_ ('the Surety')  
are held and firmly bound unto \_\_\_\_\_  
\_\_\_\_\_ ('the Employer')  
in the sum of Hong Kong Dollars \_\_\_\_\_  
\_\_\_\_\_ (HK\$ \_\_\_\_\_) for the payment of  
which sum the Contractor and the Surety bind themselves, their successors and assigns, jointly and severally  
by these presents.

**Sealed** with our respective seals / **Signed and sealed** respectively (Note 5) and dated this \_\_\_\_\_ day of  
\_\_\_\_\_ 20 \_\_\_\_\_.

**Whereas** [By a contract dated the \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_\_ made between the Employer  
of the one part and the Contractor of the other part] [By a letter dated the \_\_\_\_\_ day of \_\_\_\_\_  
20 \_\_\_\_\_ sent by {the Contract Administrator on behalf of} the Employer to the Contractor to accept a  
tender submitted by the Contractor] (Note 6) for the \_\_\_\_\_  
\_\_\_\_\_ ('the Contract'), the Contractor has agreed to  
execute the Works as therein defined until the issue of the Defects Rectification Certificate and to perform  
the Contract in conformance with the provisions thereof;

**and whereas** pursuant to the terms of the Contract, the Contractor has agreed to obtain the guarantee of  
a surety to be bound unto the Employer in the sum of Hong Kong Dollars \_\_\_\_\_  
\_\_\_\_\_ (HK\$ \_\_\_\_\_) for the due performance of the Contract by the  
Contractor;

**and whereas** at the request of and for the account of the Contractor, the Surety has agreed to guarantee  
to the Employer the due performance by the Contractor of his obligations under the Contract.

**Now** the conditions of the above written Bond are:

1. The words and expressions in this Bond shall have the same meaning as in the Contract.
2. The Contractor shall duly perform and observe all the terms, provisions, conditions, obligations, stipulations and specification of the Contract according to the true purport intent and meaning thereof and to the reasonable satisfaction of the Contract Administrator appointed by the Employer in respect of the Works or if on default by the Contractor the Surety shall satisfy and discharge the damages sustained by the Employer thereby as certified by the said Contract Administrator up to the amount of the above written Bond then his obligation shall be null and void but otherwise his obligation shall be and remain in full force and effect.
3. No alterations in the terms of the Contract made by agreement between the Employer and the Contractor or in the extent or nature of the Works to be executed and no allowance or extension of time given or to be given by the Employer under the Contract nor any indulgence, forbearance, forgiveness, payment or concession to the Contractor in or in respect of any matter or thing concerning the Contract on the part of the Employer or any failure of supervision to

prevent any fault by the Contractor shall in any way release the Surety from any liability under the above written Bond.

- 4. This Bond shall be binding upon the Contractor and the Surety and their respective successors and assigns jointly and severally (provided that the Contractor and Surety may not assign their respective rights and liabilities hereunder without the prior written consent of the Employer) and shall inure to the benefits of the Employer and his successors and assigns.
- 5. This Bond shall remain valid for receipt of claims as aforesaid until the date of issue of the Defects Rectification Certificate for the whole of the Works pursuant to the Contract and any release of the Surety from the Bond shall be expressly subject to any claims made before this date.
- 6. This Bond shall be governed and construed in accordance with the laws of the Hong Kong Special Administrative Region and the Surety hereby agrees to the non-exclusive jurisdiction of the Courts of the Hong Kong Special Administrative Region.

SIGNED, SEALED AND DELIVERED by the Contractor in the presence of : ) (Note 7)  
)  
)  
)  
)  
)  
\_\_\_\_\_  
(Signature of witness) )  
)  
)  
)  
)  
\_\_\_\_\_  
(Name and occupation of witness) )

OR

THE COMMON SEAL of the Contractor was hereunto affixed in the presence of : ) (Note 8)  
)  
)  
)  
)  
\_\_\_\_\_  
(Signature of witness) )  
)  
)  
)  
\_\_\_\_\_  
(Name and occupation of witness) )

OR

SIGNED, SEALED AND DELIVERED for and on behalf of and as ) (Note 9)  
lawful attorney of the Contractor under Power of Attorney dated )  
)  
)  
)  
)  
by \_\_\_\_\_ )  
in the presence of: )  
)  
\_\_\_\_\_)  
(Signature of witness) )  
)  
)  
)  
\_\_\_\_\_)  
(Name and occupation of witness) )  
)

THE COMMON SEAL of the Surety was hereunto affixed in the ) (Note 8)  
presence of : )  
)  
)  
\_\_\_\_\_)  
(Signature of witness) )  
)  
)  
\_\_\_\_\_)  
(Name and occupation of witness) )  
)

OR

SIGNED, SEALED AND DELIVERED for and on behalf of and as ) (Note 9)  
lawful attorney of the Surety under Power of Attorney dated )  
)  
)  
\_\_\_\_\_)  
by \_\_\_\_\_ )  
in the presence of: )  
)  
\_\_\_\_\_)  
(Signature of witness) )  
)  
)  
\_\_\_\_\_)  
(Name and occupation of witness) )  
)



## Notes

- (1) Insert names of sole proprietor or all partners of the firm or, in the case of a limited company, state registered name of the company.
- (2) Insert name of firm or delete in the case of a limited company.
- (3) Insert address of firm or delete in the case of a limited company.
- (4) Insert registered address of limited company, or delete in the case of a firm.
- (5) Delete "Sealed with our respective seals" in the case of a firm.  
Delete "Signed and sealed respectively" in the case of a limited company.
- (6) Delete content in [ ] and { } as appropriate, select according to whether the Contract is signed or not.
- (7) For use in the case of a sole proprietor or where all partners of a firm execute.
- (8) For use in the case of a limited company executing under its common seal.
- (9) For use in the case of a firm or a limited company executing through an attorney.

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