

合同協議	協議特定事項	1. 釋義	2. 工地	3. 工程	4. 工期	5. 合同基礎	6. 價款	7. 質量	8. 分包商的文件	9. 一般責任	10. 保險及履約保證	11. 終止	12. 爭議解決	附件
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11. TERMINATION 終止

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11.1 Determination by Client-Contractor 上家承包商終止僱用

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

11.1.1 在下列一種或多種情況下，上家承包商可以，但不能無理或惡意地，以掛號郵件或有記錄的派遞，向分包商發出通知，立即終止分包商按本分包合同的僱用：

(a) the Sub-Contractor without reasonable cause fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects) or completely or substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects) before substantial completion of the whole of the Sub-Contract Works;

(a) 於整個分包工程充份竣工前，分包商在沒有合理因由下，未能有規律和勤奮地進行本分包工程（包括修補缺陷）或完全或大規模地暫停進行本分包工程（包括修補缺陷）；

(b) the Sub-Contractor without reasonable cause fails persistently to rectify defects after substantial completion of the whole of the Sub-Contract Works;

(b) 於整個分包工程充份竣工後，分包商在沒有合理因由下，持續地未能修補缺陷；

(c) the Sub-Contractor without the written consent of the Client-Contractor assigns this Sub-Contract or sublet the whole or substantially the whole of the Sub-Contract Works to the same person; or

(c) 分包商未得上家承包商書面同意，轉讓本分包合同，把整個或差不多整個分包工程再分包給同一人；或

(d) the Sub-Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented 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 Client-Contractor, the Sub-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 Sub-Contractor's employment.

(d) 分包商破產、或與其債權人作出債務重整協議或安排、或已有提交強制清盤呈請、或已進入強制或自動清盤(為重組而清盤則除外)、或已有委任臨時清盤人或破產管理人，除非上家承包商、分包商和他相關的破產受託人或清盤人或破產管理人，於終止通知書發出之前或之後，書面同意繼續或恢復分包商的僱用。

Provided that the employment of the Sub-Contractor shall not be determined under Clauses 11.1.1(a) to (c) unless the Client-Contractor has previously issued a warning notice of determination specifying the

event by registered post or recorded delivery to the Sub-Contractor, the event has continued for not less than 14 days after receipt of the warning notice (7 days in the case of a repeated event), and the notice of determination is issued during the continuation of the event.

惟分包商的受僱不可按第11.1.1(a)至(c)條而終止，除非上家承包商之前以掛號郵件或有記錄的派遞向分包商發出說明有關情況的警告會終止僱用的通知書，而有關情況於收到警告後持續不少於14天(屬於重覆的情況，則為7天)，並且終止通知乃於該事件持續期間發出。

11.1.2 In the event of the Client-Contractor determining the employment of the Sub-Contractor as aforesaid, the Sub-Contractor shall reimburse the Client-Contractor all additional costs and direct loss and/or expense caused to the Client-Contractor by the determination. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Client-Contractor may possess.

11.1.2 如果上家承包商如上所述終止僱用分包商，分包商須補償上家承包商因此而引致的所有額外費用和直接損失及/或支出。在任何情況下，終止僱用的權利不損害上家承包商可能擁有的任何其他權利或補救措施。

11.2 Determination by Sub-Contractor 分包商終止受僱

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

11.2.1 在下列一種或多種情況下，分包商可以，但不能無理或惡意地，以掛號郵件或有記錄的派遞，向上家承包商發出通知，立即終止分包商按本分包合同的受僱：

- (a) the Client-Contractor fails to make any payment due under this Sub-Contract by the payment being due;
- (a) 上家承包商未能如期支付按本分包合同應予支付的款項；
- (b) the commencement or carrying out of the whole or substantially the whole of the Sub-Contract Works has been postponed or suspended as instructed by the Client-Contractor due to no breach or default of the Sub-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 Sub-Contract; or
- (b) 整個或差不多整個分包工程的開始或執行，按上家承包商不是因為分包商違約或過失而發出的指示而延遲或暫停，或因任何組合的可賠償事件而延遲或暫停，連續超過本分包合同已預定延遲或暫停的時間3個月；或
- (c) the Client-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 Sub-Contractor, the Client-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 Sub-Contractor's employment.
- (c) 上家承包商破產、或與其債權人作出債務重整協議或安排、或已有強制清盤呈請、或已進入強制或自動清盤(為重組而清盤則除外)、或已有委任臨時清盤人或破產管理人，除非上家承包商、分包商和他相關的破產受託人或清盤人或破產管理人，於終止通知書之前或之後，書面同意繼續或恢復分包商的僱用。

Provided that the employment of the Sub-Contractor shall not be determined due to Clauses 11.2.1(a) and (b) unless the Sub-Contractor has previously issued a warning notice of determination specifying the event by registered post or recorded delivery to the Client-Contractor, the event has continued for not less than 14 days after receipt of the warning notice (7 days in the case of a repeated event), and the notice of determination is issued during the continuation of the event.

惟分包商的受僱不可按第11.2.1(a)及(b)條而終止，除非分包商之前以掛號郵件或有記錄的派遞向上家承包商發出說明有關情況的警告會終止僱用的通知書，而有關情況於收到警告後持續不少於14天(屬於重覆的情況，則為7天)，並且終止通知乃於該事件持續期間發出。

11.2.2 In the event of the Sub-Contractor determining his employment as aforesaid, the Client-Contractor shall reimburse the Sub-Contractor all additional costs and direct loss and/or expense caused to the Sub-Contractor by the determination. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Sub-Contractor may possess.

11.2.2 如果分包商如上所述終止受僱，上家承包商須補償分包商因此而引致的所有額外費用和直接損失及/或支出。在任何情況下，終止的權利不損害分包商可能擁有的任何其他權利或補救措施。

11.3 Termination of Client-Contractor's Contract 上家承包商的合同被終止

11.3.1 If for any reason the Client-Contractor's contract for the Client-Contract Works is terminated or his employment under the contract is determined, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time.

11.3.1 無論如何，如果上家承包商的上家承包工程的合同被終止，或他按該合同的的僱用被終止，分包商按本分包合同的僱用亦同時終止。

11.4 Measures after determination 終止僱用後的措施

11.4.1 If Clause 11.1 or 11.2 or 11.3 is invoked, Clauses 11.4 and 11.5 shall apply.

11.4.1 如果啟動了第11.1或11.2或11.3條，第11.4及11.5條將適用。

11.4.2 The Sub-Contractor shall immediately give up any 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 Client-Contractor as being reasonably required for that purpose.

11.4.2 分包商須立即放棄對工地的任何佔用及從工地撤走他的人員，惟需處理工地保安、現場盤點及交接工作的人員除外，但僅限於上家承包商規定的因此而合理需要的時間。

11.4.3 If Clause 11.1 is invoked or if Clause 11.3 is invoked by reason of termination by the Upper-Tier Contractor, the Sub-Contractor shall not without the consent of the Client-Contractor remove from the Site any materials, plant and facilities provided by him but shall do so when instructed by the Client-Contractor.

11.4.3 如果啟動了第11.1或第11.3條因再上層承包商的終止而啟動了，分包商未經上家承包商同意，不得從工地移走任何物料、機械及設施，但在上家承包商指示時則要這樣做。

11.4.4 If Clause 11.2 is invoked or Clause 11.3 is invoked by reason of termination by the Client-Contractor, the Sub-Contractor may after informing the Client-Contractor remove from the Site any materials, plant and facilities provided by him.

11.4.4 如果啟動了第11.2條或第11.3條因上家承包商的終止而啟動了，分包商可在通知上家承包商後，從工地移走任何他提供的物料、機械及設施。

11.4.5 When removing materials, plant and facilities, the Sub-Contractor shall exercise due care and provide suitable safety provisions so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.

11.4.5 分包商在移走任何物料、機械及設施時，須小心謹慎及提供適當的安全設施，從而不會影響留在工地的工作及其他物件的安全和穩定性或危及人身安全。

11.4.6 The Client-Contractor or the Ultimate Client or any Upper Tier Contractor may provide site security to prevent improper removal and unauthorised access and provide safety measures to protect the Sub-Contract Works, people and adjoining properties.

11.4.6 上家承包商或最終委託方或任何再上層承包商可提供工地保安以防止不當的移走和未經授權的進出，及提供安全措施以保護本分包工程、人員和毗鄰物業。

11.4.7 The Client-Contractor and the Sub-Contractor shall jointly take records of the status and quantities of the work done and materials, plant and facilities on site.

11.4.7 上家承包商及分包商須就已施工工作和工地上的物料、機械及設施的狀況及數量，共同予以紀錄。

11.4.8 The Client-Contractor or the Ultimate Client or any Upper Tier Contractor may employ and pay other persons to carry out and complete the Sub-Contract Works and use or dispose of the materials, plant and facilities left on the Site after invoking Clause 11.4.3 or 11.4.4.

11.4.8 上家承包商或最終委託方或任何再上層承包商可聘用及支付其他人士進行和完成本分包工程，並使用或出售第11.4.3或11.4.4條啟動後仍留在工地的物料、機械及設施。

11.4.9 If instructed to do so by the Client-Contractor, the Sub-Contractor shall, without charge, terminate or assign as far as possible the contracts with his suppliers and sub-sub-contractors to enable them to be employed and paid to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.

11.4.9 如果上家承包商指示，分包商須無償盡可能終止或轉讓其下供應商及再分包商的合同，使他們可受僱及獲得支付繼續按現有合同相約條款提供他們的服務、保證、擔保。

11.4.10 The additional costs incurred in implementing the above procedures and measures shall be part of the additional costs due to determination.

11.4.10 執行上述程序及措施所招致的額外費用，應屬於終止僱用的額外費用的一部份。

11.5 Final Account after determination 終止僱用後的結算

11.5.1 If Clause 11.1 is invoked, the balance of the expenses at sub-clause (a) below after making the deductions or additions at sub-clauses (b) to (d) below shall be computed, and the Sub-Contractor shall be liable for a positive balance and be entitled to recover a negative balance:

11.5.1 如果啟動了第11.1條，須先計算下列(a)款的支出，再按下列(b)至(d)款作出扣減或增加而取得餘額，分包方商負責支付正餘額，有權取回負餘額：

(a) the expenses incurred by the Client-Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination;

(a) 上家承包商為完成本分包工程所招致的開支，惟於終止僱用後指示的工程變更費用除外；

(b) addition for the total amount previously paid to the Sub-Contractor;

(b) 加入已經支付給分包商的總金額；

(c) addition for the additional costs and direct loss and/or expense caused to the Client-Contractor by the determination, including damages for delayed completion of the Sub-Contract Works calculated up to the original completion date of the completion sub-contract; and

(c) 加入因終止僱用而對上家承包商構成的額外費用和直接損失及/或支出，包括本分包工程延誤竣工造成之損失賠償（計算到善後的分包工程的原定竣工日為止）；及

(d) deduction for the total amount that would have been payable for completing the Sub-Contract Works calculated in accordance with this Sub-Contract if the determination had not occurred.

(d) 減去如果沒有終止僱用而完成本分包工程，按照本分包合同計算本應支付的總金額。

11.5.2 If the Client-Contractor does not employ other persons to commence the Sub-Contract Works left outstanding within 6 months after determination, the costs, direct loss and/or expense, and period of

delay for the purpose of Clause 11.5.1 shall be assessed on the assumption that the employment had commenced by the end of the said 6 months.

11.5.2 如果上家承包商於終止僱用後6個月內，仍未僱用他人開展遺下尚未完成的本分包工程，則第11.5.1條所指的費用、直接損失及/或支出、及延誤期，只能按有關的僱用於該6個月期屆滿時開始的假設來作出評估。

11.5.3 If Clause 11.2 or 11.3 is invoked, the balance of the gross valuation at sub-clause (a) below after making the deductions or additions at sub-clauses (b) to (e) below shall be computed, and the Client-Contractor shall be liable for a positive balance and be entitled to recover a negative balance:

11.5.3 如果啟動了第11.2或11.3條，須先計算下列(a)款的累計估值，再按下列(b)至(e)款作出扣減或增加而取得餘額，上家承包商負責支付正餘額，有權取回負餘額：

(a) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.4(a), excluding materials removed by the Sub-Contractor after determination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Client-Contractor;

(a) 根據第6.16.4(a)條計算的本分包工程累計估值，不包括終止受僱後由分包商移走的物料，但包括分包商已支付、或受法律約束須予支付、及已經或將會向上家承包商轉移產權的物料；

(b) deduction for liquidated damages which may accrue up to the date of determination;

(b) 減去截至終止受僱日為止所累計的誤期完工的預定賠償額；

(c) addition for the additional costs and direct loss and/or expense caused to the Sub-Contractor by the determination;

(c) 加入因終止受僱而對分包商構成的額外費用和直接損失及/或支出；

(d) deduction for the additional costs and direct loss and/or expense caused to the Client-Contractor in case his contract is terminated or his employment is determined by his Upper-Tier Contractor due to some breach of contract or other default by the Sub-Contractor; and

(d) 減去因分包商的違約行為或其他過失，使到上家承包商被其再上層承包商終止合同或終止受僱，對上家承包商構成的額外費用和直接損失及/或支出；及

(e) deduction for the total amount previously paid to the Sub-Contractor.

(e) 減去已經支付給分包商的總金額。

11.5.4 In lieu of Clauses 6.17 and 6.18, the Client-Contractor and the Sub-Contractor shall as soon as practicable exchange their computations of the balance of payment in Clause 11.5.1 or Clause 11.5.3 with supporting documentation, discuss and agree the balance of payment. Upon agreement, the Client-Contractor shall issue a Final Account showing a summary computation of the balance of payment.

11.5.4 取代了第6.17及6.18條，上家承包商及分包商須盡快，交換他們按第11.5.1或11.5.3條的付款餘額計算及證明文件，並就付款餘額進行討論及取得同意。取得同意後，上家承包商須發出一份結算書，表明付款餘額的計算概要。

11.5.5 If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he may issue a unilateral Final Account by registered post or recorded delivery to the Sub-Contractor and declare it as such. If within 3 months of receipt by the Sub-Contractor of the unilateral Final Account, the Sub-Contractor makes no objection to the unilateral Final Account or does not invoke the dispute resolution procedures, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor.

11.5.5 如果若上家承包商認為他已考慮了分包商的所有申述，惟仍未能取得分包商的同意，上家承包商可以用掛號郵件或有記錄的派遞，向分包商發出單方結算書，並聲明此即單方結算書。若分包商在收到單方結算書後3個月內沒有提出反對或沒有啟動爭議解決的程序，該單方結算書便被視為已獲分包商同意。

11.5.6 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.

11.5.6 就結算取得同意前，有責任的合同一方須每兩個月支付一次最新的付款餘額的無爭議的部份。

11.5.7 The balance of payment due by one Contract Party to the other shall be made within 14 days after the signature of the Final Account or after the deemed agreement of the unilateral Final Account.

11.5.7 合同一方欠另一方的付款餘額須在結算書簽署或單方結算書被視為已獲同意後14天內支付。

11.5.8 The Final Account issued under Clause 11.5.4 or 11.5.5 shall be deemed to have taken account of all factors except for any latent defects or matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment, not discovered by the innocent party at the time of the issue.

11.5.8 按第11.5.4或11.5.5條發出的結算書被視為已考慮了所有的因素，惟在發出時無辜的一方不知道的隱蔽性缺陷或受賄賂行為、舞弊、欺詐或蓄意隱瞞影響的事項除外。

終止 (last edited 2011-11-01 17:46:57 by KCTang)