

SPEAKERS AND PAPERS



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Introduction to The Standard Form of Contract for Maintenance and Renovation Works for Use In Hong Kong, First Edition 2013

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ABSTRACT

Hong Kong is densely populated with blocks of high rise residential buildings under multiple ownerships. The market of the major repair and maintenance works is huge, will persist for our lifetime, has provided a cushioning effect to the ups and downs of the capital works market, and deserves our professional service. The Hong Kong Institute of Surveyors has published a Standard Form of Contract for Maintenance and Renovation Works for use in Hong Kong, First Edition 2013 (First Amendments in December 2014) to cater to the need of major maintenance and renovation works, as a better alternative to using the Standard Form of Building Contract which is mainly for new construction. This paper presents the key features introduced in the new form of contract to suit the special nature of major repair and maintenance works, as well as renovation works.

Keywords: contract, maintenance, renovation, standard form

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FOREWORD

The Hong Kong Institute of Surveyors has published a Standard Form of Contract for Maintenance and Renovation Works for use in Hong Kong, First Edition 2013 (First Amendments in December 2014) to cater to the need of major maintenance and renovation works, instead of using the current Standard Form of Building Contract which is mainly for new construction. This article presents the key features introduced in the new form of contract to suit the special nature of major maintenance and renovation works.

PREVAILING SITUATION

Hong Kong is densely populated with blocks of high rise residential buildings. They are under multiple ownerships. After decades of development, a lot of these buildings require major repair and maintenance works such as repair of spalling concrete, re-surfacing of external facades, replacement of plumbing and drainage systems, refurbishment of lobbies and staircases, etc. which are the common properties of the multiple ownership. The market of the major repair and maintenance works is huge.

Generally, the Standard Form of Building Contract, which is basically for new construction, is used and adapted for these maintenance works in the private sector. Special conditions of contracts are introduced. Some of them are poorly drafted causing argument over interpretation. Some of them are very harsh. Some of the harsh terms are for the building professionals' convenience. Some are driven by the building owners who are mostly laymen pressing for commercial terms unusual to the construction industries.

Preliminaries clauses are also usually adapted from those used for new construction. They have become extensive because they have been added on top of those used for new construction and have accumulated from project after project. To play safe, irrelevant clauses are not readily deleted. This makes the Preliminaries rather complicated and cumbersome. Some of them are repetitive but inconsistent amongst themselves and with the Form of Contract.

The overall tender and contract documents are not easily understood by building owners. This also applies to the junior building professionals managing the contracts.

INITIATION FOR CHANGE

New versions of the Standard Form of Building Contract ("SFBC") were published in 2005 (with quantities version) and in 2006 (without quantities version) to reflect the latest legal development and the more complicated modern day construction practice. The documents have become thicker with more clauses. It was considered to be too complicated for repair and maintenance works. The building professionals would likely stay with the old versions when handling repair and maintenance works. On the initiation of the Building Surveying Division of the Hong Kong Institute of Surveyors, and with the co-operation of the Quantity Surveying Division, a Standard Form of Contract for Maintenance and Renovation Works was drafted and published in 2013 ("Standard Form"). The First Amendments were published in December 2014 mainly for the correction of typographical errors.

INTENDED PURPOSES

The intended purposes of the Standard Form are as follows:

- Project types
 - tailor-made for major maintenance and renovation works
 - whether residential buildings or not
 - not involving nominated sub-contracts (which is the usual case)
 - also useful for fitting out works which do not involve nominated sub-contracts
 - to be managed by building professionals
 - who can be architects, engineers or surveyors, instead of traditionally "the Architect"
- Provisions
 - comparatively simple to read
 - simple yet comprehensive enough to cover all the basics
 - reduce the need for special contract conditions
 - reduce cumbersome preliminaries clauses
 - more structured for inserting and supplementing with project specific information
 - contain good and equitable practice
 - standard provisions will offer better persuasion to building owners to use more equitable terms
- Building owners
 - can understand their contractual rights and obligations more easily
- Building professionals
 - tasks to draft special contract conditions and preliminaries reduced

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- o volume of paper reduced
- o easier to administer the contracts
- Contractors
 - o less exposed to ambiguous harsh terms
 - o able to offer better prices and end products

CONTENTS

The Standard Form is made up of the following sections:

- Contract Agreement (7 pages)
 - o 4 Recitals
 - o 4 Articles
 - Object of this Contract
 - Contract Price
 - Contract Periods
 - Contract Documents
 - o Signing section
 - Options to sign as a deed or as a simple contract
- Particulars of Agreement (5 pages)
- Contract Conditions (37 pages)
- Appendix A – Surety Bond (Pro-forma) (4 pages)



The traditional terms of “Articles of Agreement”, “Conditions of Contract” and “Special Conditions of Contract” have been simplified to “Contract Agreement”, “Contract Conditions” and “Special Contract Conditions”. The traditional “Appendix to the Conditions of Contract” has been replaced with “Particulars of Agreement”.

To reflect the actual practice, the following documentary flow is specifically envisaged by the Recitals and Articles:

- Tender Documents (including Conditions of Tendering, Form of Tender, Special Contract Conditions, Specification, Schedule of Works and Drawings) → Tender Addenda → Tender → Tender Correspondence (including Letter of Award) → Contract Documents.

These documents together with the Standard Form of Contract make up the Contract Documents.

The pre-2005/2006 SFBC do not envisage Special Conditions of Contract, Tender Addenda and Tender Correspondence. SFBC 2005/2006 envisage Special Conditions of Contract and Tender Correspondence.

PARTICULARS OF AGREEMENT

The Particulars of Agreement are a part of the Contract Agreement which shall be read in conjunction with the Particulars of Agreement.

Other than the signing section, the Contract Agreement does not require any filling in of information. Project specific particulars are to be inserted in the Particulars of Agreement which are in a table form.



The Particulars of Agreement serve the purposes of the traditional Appendix to the Conditions of Contract but have been expanded to cover all the essential project specific particulars which may vary between projects.

There are 32 Items for entry of project specific particulars:

- Contract Signing and Award Dates
- Project Title and Address
- Contract Title, Works Description and Site Locations (Site locations may be specific locations at the Project Address)
- Contract Parties
 - o Employer – name and address
 - o Contractor – name and address
- Consultants
 - o Contract Administrator – name and address
 - o Quantity Surveyor – name and address
- Contract Type and Price (to select one)
 - o Lump Sum Contract
 - o Remeasurement Contract
 - o Rates Only Contract
- Time (see PHASING below)
 - o Site Access Dates
 - o Works Sections
 - o Contract Periods
 - o Rate of Liquidated Damages for Delayed Completion
 - o Defects Liability Period
- Documents
 - o Tender Documents
 - o Tender Correspondence
- Payment Terms
 - o Amount of advance payment
 - o Method of recovery of advance payment
 - o Retention Percentage
 - o Maximum Retention
 - o Period for Honouring Payment
- Insurances and Bond
 - o Contractors’ All Risks and Third Party Liability Insurance

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- Party responsible for taking out the insurance – The Employer/the Contractor
- Percentage of professional fees in case of reinstatement
- Amount for the removal of debris
- Percentage for escalation clause
- Material Damage insurance excesses in respect of each and every occurrence of loss or damage
- Limit of indemnity for third party liability
- Third party liability insurance excess in respect of each and every occurrence of loss or damage
 - Amount of Surety Bond
 - (No particulars needed for Employees' Compensation Insurance here – covered by the Conditions)
- Other Terms and Conditions (for entry of non-standard terms)

A set of partially completed Particulars of Agreement should be included in the Tender Documents for tendering. The fully completed and updated set should be used for signing the Contract.

SIMPLIFICATION

Terms have been simplified:

- “Contract Agreement” used for “Articles of Agreement”
- “Contract Conditions” used for “Conditions of Contract”
- “Special Contract Conditions” used for “Special Conditions of Contract”
- “Materials” defined to mean materials and goods, and include equipment or machinery for incorporation into the Works, eliminating the need to write “materials and goods” or “materials, goods and equipment” all the time
- “Plant” defined to mean construction plant, equipment or machinery used for carrying out the Works

Instead of trimming down based on SFBC 2005/2006, the clauses have been completely re-written with a view of making them as simple as possible but keeping the principle of SFBC 2005/2006. The Standard Form consists of 48 pages vs 98 pages for SFBC 2005/2006. In particular, the clauses on insurances have been very much simplified.

Provisions for Nominated Sub-Contracts and Nominated Supply Contracts have been omitted because they are not usually required for maintenance and renovation works.

PHASING

The pre-2005/2006 SFBC do not envisage phased possession of the Site nor phased completion of the Works (though there is an optional Sectional Completion clause). SFBC 2005/2006 do envisage phasing and use such expressions as “the whole or parts of the Site” and “the Works or a Section”.

To simplify, the Standard Form assumes phasing by default, simply uses the expressions “Portion of the Site” and “Works Section”, and requires the following entries in the Particulars of Agreement:

	Time				
18	Date for Access to the Site	Portions of the Site	Date		
		Portion/Area/Zone X or 1	◇		
		Portion/Area/Zone Y or 2	◇		
19	Names of Works Sections	Phase/Section/Stage	Description		
		Phase A or 1	◇		
		Phase B or 2	◇		
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
		Phase A or 1	◇	◇	◇
		Phase B or 2	◇	◇	◇
21	Rate of Liquidated Damages for Delayed Completion (If none or “N/A” stated, general damages apply)	Works Sections	Rate HK\$/calendar day		
		Phase A or 1	◇		
		Phase B or 2	◇		
22	Defects Liability Period	Works Sections	Durations in calendar months after Completion Date of each Works Section		
		Phase A or 1	◇		
		Phase B or 2	◇		

If there is no phasing, “the Whole” can be used for the Portions and Works Sections.

Each Works Section is to have its own Substantial Completion Certificate and Defects Rectification Certificate.

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MORE ENCOMPASSING TERMS

More encompassing terms have been used:

- “Contract Administrator” introduced to replace the usually used term “Architect” to provide more flexibility. He can be an architect, engineer or surveyor.
- “Schedule of Works” introduced to replace Bills of Quantities, Schedule of Rates, Schedules of Quantities and Rates, and Summary of Tender. It can be with quantities or without quantities. Unlike Schedule of Rates whose descriptions are to define the coverage of the rates only, its descriptions can define the scope and quality of the work items and the Works as a whole. This can reduce the need to duplicate the detailed descriptions of the scope of the Works in the Specification.

MORE STRUCTURED

Contract Conditions – The order of the clauses in SFBC 2005/2006 or their predecessors does not follow any logical order probably because of the result of various additions to their predecessors over more than a hundred years. Unlike their rather random order, the Contract Conditions are structured into 12 sections, with the intention of making them easier and more logical to read, and making it easier for preliminaries clauses to be arranged in similar fashion to supplement with project specific details:

1. Interpretations
2. Site
3. Works
4. Time
5. Contract Basis
6. Prices
7. Quality
8. Contractor’s Documents
9. General Obligations
10. Insurances and Bond
11. Determination
12. Dispute Resolution

Comprehensive checklists – To eliminate the task of searching over the entire Contract Conditions for relevant clauses, and facilitate easier administration, comprehensive checklists have been given for:

- computation of the net interim amount payable; and
- computation of the final Contract Price (see below).

Excusable Events and Compensable Events – Events eligible for extension of time and monetary compensation are now called “Excusable Events” and “Compensable Events” respectively, instead of “listed events” and “qualifying events” in SFBC 2005/2006, to facilitate easier understanding. They have been presented in a tabular format for easier reading (see below).

UPDATING

To keep in line with modern day legal development since the pre-2005/2006 SFBC:

- “Excepted Risks” has been adapted from that used in SFBC 2005/2006, but “a cause due to any neglect or default of the Architect, the Employer or any person for whom the Architect or the Employer is responsible” in SFBC 2005/2006 has been removed from the definition because it is considered to be too wide in scope.
- “Excusable Events” and “Compensable Events” have been respectively adapted (with suitable adjustments) from the “listed events” and “qualifying events” used in SFBC 2005/2006. Like SFBC 2005/2016:
 - o When an Excusable Event occurs in the period of delay after the (extended) Completion Date but before the substantial completion of a Works Section, extension of time shall still be granted but only for the net duration of the delay rather than granting the gross period until the end of the delay.
 - o While 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.
- “Separate Contractor” has been defined, like SFBC 2005/2006, to exclude 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. Pre-2005/2006 SFBC do not have such distinction.
- “Variations” has been expanded, like SFBC 2005/2006, to include, apart from physical changes, a change to the time or manner for carrying out the Works.

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- Like SFBC 2005/2006, the dispute resolution procedures have been expanded from arbitration only to:
 - o Reference to Designated Representatives;
 - o Reference to Mediation; and
 - o Reference to Arbitration.

Users who would like to stay with the pre-2005/2006 SFBC should be aware of the legal development.

To keep in pace with the new terms used in SFBC 2005/2006:

- “Substantial Completion Certificate” used to replace “Practical Completion Certificate” in pre-2005/2006 SFBC; and
- “Defects Rectification Certificate” used to replace “Certificate of Completion of Making Good Defects” in pre-2005/2006 SFBC.

TAILOR-MADE ENHANCEMENTS

There are enhancements to suit the need of maintenance and renovation works. They are generally not available in the pre-2005/2006 SFBC. This made the Standard Form to have 48 pages vs 32 pages for the pre-2005/2006 SFBC.

1. Interpretations

Definitions – They have been introduced to simplify subsequent wording.

Building Manager – The likely presence of a Building Manager, being the person providing estate, property or facility management services to the premises where the Site is (the Site can be within a part of existing premises), is recognized.

Counting days – The method of counting days has been clarified. 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.

Defects Rectification Certificate – This term has been used, like SFBC 2005/2006, to replace “Certificate of Completion of Making Good Defects” in pre-2005/2006 SFBC, but with no intentional change of meaning.

Excepted Risks – Their definition has been introduced. They are:

- (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.

(a), (c) and (d) are the same as those newly introduced in SFBC 2005/2006. (b) has been intended to improve “the Architect’s design of the Works insofar as damage, loss or injury is the direct consequence of the design” as used in SFBC 2005/2006. “a cause due to any neglect or default of the Architect, the Employer or any person for whom the Architect or the Employer is responsible” in SFBC 2005/2006 has been removed from the definition because it is considered to be too wide in scope.

Excusable Events and Compensable Events – “Excusable Events” (with extension of time) and “Compensable Events” (with monetary compensation) have been introduced and adapted from the “listed events” and “qualifying events” in SFBC 2005/2006 to keep in line with modern day legal development since the pre-2005/2006 SFBC. They have been presented in a tabular format for easier reading:

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Event Code	Delays or disruptions by reason of	Excusable Events	Compensable Events	Event Code	Delays or disruptions by reason of	Excusable Events	Compensable Events
A	Force majeure	Yes	No	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
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	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
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	O	A delay or disruption caused by a Separate Contractor	Yes	Yes
D	An Excepted Risk	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
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 any person for whom the Contractor is responsible	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
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 affected	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
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	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
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	T	A special circumstance considered by the Contract Administrator as sufficient grounds to fairly entitle the Contractor to an extension of time	Yes	No
I	The carrying out of a Variation or the happening of an event deemed to be a Variation	Yes	Yes	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
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				

Separate Contractor – This term has been defined, like SFBC 2005/2006, to exclude 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. Pre-2005/2006 SFBC do not have such distinction.

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Substantial Completion Certificate – This term has been used, like SFBC 2005/2006, to replace “Practical Completion Certificate” in pre-2005/2006 SFBC, but with no intentional change of meaning. Each Works Section is to have its own Substantial Completion Certificate and Defects Rectification Certificate.

2. Site

Provision of Site – This is by way of granting access to the site rather than giving exclusive possession to reflect the usual nature of carrying out the works while the buildings are continued to be occupied and used by owners and tenants. This can be in phases as stipulated in the Particulars of Agreement.

Site access – The Employer is only responsible for providing access to the Site through land or premises which are under his control. 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.

House rules – The Contractor shall comply with the house rules of the Building Manager and pay any deposit temporarily required as security for loss or damage, but any restrictions on access or working hours more stringent than those announced by the Building Manager prior to the award of the Contract and affecting the Works shall be deemed to be a Variation.

Site investigation or condition survey reports – As usual, 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 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. However, it has been clarified that they must be the whole record of such investigation or survey as has been carried out.

3. Works

Works – As a catch-all definition to avoid the fine argument that the Works are for “build only” not including design, service and maintenance, “the Works” has been defined to include:

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

The Works exclude:

- 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;
- materials or workmanship or method or work which is not in accordance with the Contract; and
- work or services carried out by the Contractor without authority under the Contract.

Design responsibility – The following have been clarified:

- design of permanent work – the Employer shall engage the Contract Administrator or other designers to carry out the design work;
- development of “design intent drawings” (declared as such) into detailed design of the components making up the complete system, installation or fitting, basically by way of shop drawings – the Contractor shall be responsible;
- development of design of schematic and layout drawings of building services installations into shop or installation drawings – the Contractor shall be responsible;
- design of temporary work – the Contractor shall be responsible; and
- Contractor’s design to be approved and be fit for the intended purpose.

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.

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Equal and approved – For a material where the Contractor is permitted to propose “equal and approved” or “approved equal” brands or models, the Contractor may propose a brand or model of the same kind of material equal in performance and quality to that originally specified or proposed in the Contract. Traditionally, such proposal should have no cost effect. However, there have been cases where the standard of performance and quality is not precise enough and the prices of the alternatives apparently meeting the standard are too cheap. On the other hand, it would not be reasonable to accept only more expensive alternatives. It is therefore clarified that 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.

Contractors’ alternative proposals – For other cases, as usual, the Contractor’s alternative proposals shall not 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.

4. Time

Extension of time – Early and progressive submission of extension of time and delay and disruption monetary claims has been encouraged with time frames specified (as good practice rather than as time limits).

It was noted when drafting the Standard Form that in spite of the usual contract practice of specifying a short period of time after the commencement of a delay or disruption event as the time limit for submitting notices and claims, Contractors are still late in submitting their notices and claims, and Contract Administrators are late in ascertaining the claims pending the Employers’ blessing. It was considered that for maintenance and renovation works, Contractors are less sophisticated, laymen building owners as Employers would want to be consulted before granting time and monetary compensation, and Contract Administrators would want to play safe. Therefore, short time bars were considered to be not practicable nor desirable, a more practical approach has been adopted:

- A more relaxed time bar with longer time has been specified for the Contractor to submit extension of time and delay and disruption monetary claims:
 - o Extension of time claims to be submitted regularly but not later than the Completion Date of the relevant Works Section or its extended completion date previously claimed by the Contractor; and
 - o Delay and disruption monetary claims to be submitted regularly but not later than **3 months** after the direct loss and/or expense having been incurred, progressive submissions permitted for continuing events.
- On the other hand, with the relaxed time limit, the Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information. The Contract Administrator and the Quantity Surveyor are only obliged to act based on information received without an obligation to demand for further information from the Contractor.

It has been clarified that 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, but 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.

An extension of time is to compensate the working time lost. This means that working days should be suitably converted to calendar days.

When an Excusable Event occurs in the period of delay after the Completion Date but before the substantial completion of a Works Section, extension of time shall still be granted but only for the net duration of the delay rather than granting the gross period until the end of the delay. Extension of time granted shall not be reduced unless it has been based upon incorrect information provided by the Contractor.

Determining time and cost effects – To remedy the situation of some contracts of specifying a time limit for the Contractor to submit notices and claims without at the same time specifying a time limit for the Contractor Administrator and the Quantity Surveyor to respond, the Standard Form requires the Contract Administrator and the Quantity Surveyor respectively to respond within **14 days** after the receipt of an extension of time notice or

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monetary claim, while subsequent review is permitted in light of further evidence at any time before issuing the Final Certificate.

Handover after completion – 14 days have been specified for the Contractor to hand over a Works Section after substantial completion and **7 days** for demobilizing from the residual retained areas.

5. Contract Basis

Interpretation of Contract Documents – The order of precedence of the Contract Documents has been clarified, with wider coverage, as:

- Contract Agreement;
- Tender Correspondence;
- Form of Tender or the Tender;
- Special Contract Conditions;
- Schedule of Works;
- the Preliminaries section of the Contract Specification;
- Contract Conditions;
- Contract Drawings; and
- Sections of the Contract Specification other than the Preliminaries section (i.e. Technical Specification).

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.

6. Prices

Types of contract – To offer greater flexibility and reduce the need to amend a standard form suiting one type to suit another type, optional clauses have been included to deal with the three different common types of contract, which may be selected in the Particulars of Agreement:

- Lump Sum Contract
 - o basically quantities are to be estimated by the Tenderers at their own risks;
 - o there is also a clause dealing with cases where the quantities are at the Employer's risks; however, if full scale Bills of Quantities are to be used, this clause may need special conditions to make it more comprehensive;
- Remeasurement Contract; and
- Rates Only Contract.

Measurement and pricing clauses – Clauses have also been introduced to deal with:

- Arithmetical errors;
- Provisional quantities;
- Method of measurement;
- Provisional sums; and
- Prime cost rates.

It may be argued that these clauses should, as usual practice, be included in the Conditions of Tendering, Preliminaries or Preambles. Because of their common nature, these matters are usually encountered, but there are no standard Conditions of Tendering, Preliminaries or Preambles amongst building professionals. This makes the wording of the clauses and therefore interpretations vary amongst building professionals. It was therefore considered more appropriate to deal with these common matters in the Standard Form.

Valuation – The valuation rules for valuation of Variations and of work carried out by the Contractor covered by a provisional sum are basically the same as those used in the traditional forms of contracts, being Contract Rates → pro-rata rates → star rates → daywork rates, but with the following enhancements:

- The terms “pro-rata rates” and “star rates” have been formally used. (While they have been used in everyday work, they have not been formally used in the traditional forms of contracts.)
- It has been clarified that 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.
- It has also been clarified that a star rate 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.

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- 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 subcontract prices. For the SFBC 2005/2006 or before, 15% is usually taken as a convenient but not mandatory norm for all cases.

Contractor's claims for extras – The usual practice that any changes made to the Contractor's submissions such as drawings, samples or catalogues in consequence of any comments made by the Contract Administrator shall not be a Variation has been retained, but it has been clarified that if the Contractor disagrees, he shall immediately upon the receipt of the relevant comment or instruction write to the Contract Administrator to seek clarification.

Payment – The usual payment practice of: Contractor's payment application → Quantity Surveyor's valuation → Contractor Administrator's certification → Contractor's invoice → Employer's payment, has been retained, with the following specific details:

- Payment applications are to be submitted at **monthly** intervals before substantial completion, and at **bimonthly** intervals thereafter.
- A Payment Certificate is to be issued within **14 days** of receipt of the Contractor's application.
- A comprehensive checklist of how to compute the net amount payable has been given.
- There is a reminder that any advance payment shall be made only after the provision by the Contractor of a surety bond in a form acceptable to the Contract Administrator and of a value not less than the amount of the advance payment.
- Unlike the SFBC 2005/2006 or before, it is permissible to deduct liquidated damages from the net amount payable.

Final Account – A comprehensive checklist of how to compute the final Contract Price has been given. The Contractor's proposed Final Account shall be submitted within **3 months** from the completion of the whole of the Works. The whole Final Account shall be agreed as soon as possible not later than **1 month** after the issue of the Defects Rectification Certificate. 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.

Final Certificate – 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. The Final Certificate is not final in respect of 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

This Section covers the usual matters like: Quality liability; Materials, workmanship and method to comply with Contract; Approval; Samples; Testing and inspection; Defects liability; and Warranties and guarantees.

Excepted Risks – The Contractor is exempted from loss or damage arising from the Excepted Risks.

Warranties and guarantees – Apart from warranties and guarantees specifically required by the Contract, it may be possible that the Contractor's suppliers and sub-contractors provide standard warranties or guarantees. The Contractor shall assign the benefits of all such warranties or guarantees to the Employer (so far as he is lawfully able to do so). To prevent undue delay in the submission of warranties and guarantees, it has been specified that the submission of all warranties and guarantees satisfactorily in full compliance with the Contract shall be a pre-requisite to the release of one half of the retention fund upon substantial completion of the relevant Works Section.

8. Contractor's Documents

This Section covers the usual matters like: Shop drawings, Construction method statement and programme, Progress reports, and As-built records.

9. General Obligations

This Section covers the usual matters like: Statutory obligations; Intellectual property; Assignment; Care of the Works; Injury to persons and property and indemnity to Employer; Provision of all things necessary; Labour and site management team; Temporary site facilities; Setting out; Cleanliness and tidiness; Protection; and Visitors.

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It may be argued that some of the clauses under “7. Quality”, “8. Contractor’s Documents”, and “9. General Obligations” should, as usual practice, be included in the Preliminaries. They have been included in the Contract Conditions to reduce the need to draft Preliminaries clauses to cover these usually encountered matters.

Administrative charge – A special provision has been introduced to impose a **10%** administrative charge on payment of statutory charges on behalf of the defaulting party.

Prevention of bribery offences – Clauses on Prevention of Bribery Offences with consequence of determination of the employment of the Contractor have been introduced to stress the importance:

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.

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: ... (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. ...*

10. Insurances and Bond

This Section covers Employees’ Compensation Insurance; Contractors’ All Risks and Third party liability Insurance; and Surety Bond or cash security.

As compared with SFBC 2005/2006, these clauses have been very much simplified.

Employees’ Compensation Insurance – It is the Contractor’s responsibility to take out Employees’ Compensation Insurance, to follow the statutory requirements.

Contractors’ All Risks and Third Party Liability Insurance – Either the Employer or the Contractor may be specified in the Particulars of Agreement to take out the Contractors’ All Risks and Third Party Liability Insurance. The Building Manager has been specified as one of the “the principals”.

Use of a company master policy or annual policy is permissible.

Administrative charge – A **15%** administrative charge is to be imposed on insurance premium paid on behalf of the defaulting party who fails to insure.

Bond and cash security – A cash security equal to the amount of the Surety Bond may be withheld temporarily from the Payment Certificate if the Contractor so elects or if the Contractor fails to submit an approved Bond.

Upon the issue of a Defects Rectification 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 Defects Rectification 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.

Pre-2005/2016 SFBC stipulate the release of the Surety Bond upon Practical Completion. SFBC 2005/2006 offer a choice between Substantial Completion and Defects Rectification Certificate.

11. Determination

This Section covers the determination by the Employer or by the Contractor himself of the Contractor’s employment. Apart from the usual grounds for determination, the following grounds for determination by the Employer of the employment of the Contractor have been introduced:

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- the Contractor without reasonable cause fails persistently to rectify defects after substantial completion of the whole of the Works and the Employer pursuant to another clause employs others to rectify the defects for 5 times or more and the total cost of rectifying defects exceeds \$100,000;
- the Contractor without reasonable cause fails to submit evidence of the Employees' Compensation Insurance and the Contractors' All Risks and Third Party Liability Insurance in the specified manner within **1 month** after the Contract Award Date; and
- 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.

12. Dispute Resolution

Like SFBC 2005/2016, the dispute resolution procedures are:

- Reference to Designated Representatives;
- Reference to Mediation; and
- Reference to Arbitration.

Pre-2005/2016 SFBC 2005/2016 only provides for arbitration.

13. Amendments

The following amendments in {} are recommended:

4.5 Notices and claims

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, {whichever is the later;} and the Contractor's monetary claim under Clause 4.5.3 shall not be submitted later than 3 months after the direct loss and/or expense having been incurred, progressive submission permitted.*

7.7 Warranties and guarantees

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 the benefits of all such warranties or guarantees to the Employer (so far as he is lawfully able to do so).*