

**HKIS QSD PQSL Series 2014**  
**Walkthrough the Standard Form of Building Contract Clause by Clause - Session 2**  
 by  
**Sr. TANG Ki-cheung**  
 FHKIS RPS(QS) FSZCEA MHKIVM  
 Director of K C Tang Consultants Ltd.  
 Quantity Surveyors . Construction Cost and Contract Consultants Ltd.  
 on  
**9 May 2014 (Friday)**  
 at  
**Surveyors Learning Centre**



【SFBCwQ.2005】 【SFBCnQ.2006】	SFBCwQ.1986(2ndAmend.July1999)
Agreement & Schedule of Conditions of Building Contract for use in the Hong Kong Special Administrative Region, Private Edition – 【With Quantities, 2005 Edition】 【Without Quantities, 2006 Edition】	Agreement and Schedule of Conditions of Building Contract for use in Hong Kong, First RICS (HK Branch) Edition 1986 (with quantities) incorporating up to Second amendments published in July, 1999
<p>【】 = text in “With Quantities” only          【】 = text in “Without Quantities” only          {} = Essential amendments for Special Conditions          &lt; &gt; = Alternative changes for Special Conditions          &lt; &gt; = Desirable but not essential changes          ## = note to pay attention to          text to pay attention to</p>	
<b>The General Conditions</b>	<b>The Conditions hereinbefore referred to:</b>
<i>Definitions</i>	
1.6 (Cont'd)	
<i>supplier</i> : a person who enters into a supply contract with the Contractor to supply materials or goods and includes a Nominated Supplier.	
<i>suspend</i> : to cease operations for a period of time on an activity in which work has commenced.  # "suspend" occurs after commencement. #	
<i>Tender Documents</i> : the documents and drawings referred to in the first recital of the Articles, or a certified true copy of those documents and drawings.  # "Tender Documents" does not refer to the documents but also include drawings.  # It does not appear necessary to include the phrase regarding a certified true copy. #	
<i>Valuation</i> : the valuation made by the Quantity Surveyor, in accordance with the valuation rules under clause 13.4, of work carried out in response to an Architect’s instruction requiring a Variation, remeasurement of Provisional Quantities and Provisional Items or to expend Provisional Sums.  # "Valuation" is now capitalised with a defined meaning. #	
<i>Variation</i> : a change instructed by the Architect to the design, quality or	<b>11(2)</b> The term 'variation' as used in

【SFBCwQ.2005】 【SFBCnQ.2006】	SFBCwQ.1986(2ndAmend.July1999)
<p>quantity of the Works including:</p> <p># "Variation" is now capitalised with a defined meaning. #</p> <p>(i) an alteration to the type, standard or quality of any of the materials or goods comprising the Works;</p> <p>(ii) the addition, substitution or omission of work; and</p> <p>(iii) the removal from the Site of materials or goods and the demolition and removal of work except where provided for in the Contract or where the materials, goods or work are not in accordance with clause 8.1;</p> <p>or the imposition of an obligation or restriction instructed by the Architect regarding:</p> <p># Variation has been extended to cover imposition of an obligation or restriction which is not physical work. Although the phrase "a change instructed by the Architect" cannot connect directly with "the imposition of", that should still be applicable. #</p> <p>(iv) access to the Site or use of any parts of the Site;</p> <p>(v) limitation of working space;</p> <p>(vi) limitation of working hours; or</p> <p>(vii) the sequence of carrying out or completing work;</p> <p>or the addition or alteration to or omission of such obligations or restrictions imposed by the Contract.</p> <p># It appears that "or the imposition of ...." and "or the addition or alteration to ...." can actually be combined to simply read "or the addition or alteration to or omission of an obligation or restriction imposed by the Contract as instructed by the Architect regarding ....". #</p>	<p>these Conditions means the alteration or modification of the design, quality or quantity of the Works as shown upon the Contract Drawings and described by or referred to in the Contract Bills, and includes the addition, omission or substitution of any work, the alteration of the kind or standard of any of the materials or goods to be used in the Works, and the removal from the site of any work, materials or goods executed or brought thereon by the Main Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with this Contract.</p>
<p>Works: the work briefly described in the Articles of Agreement and shown upon, described by or referred to in the Contract including any change made to the work in accordance with the Contract.</p> <p># "Works" include changes to avoid argument that the Works refer to the original work only. #</p>	
<p>↑ <i>Tenders based on Schedule of Quantities and Rates</i></p> <p><b>1.7</b> (1) The quality and quantity of the work included in the Contract Sum shall be deemed to be as shown upon the Contract Drawings and described in the Specification.</p> <p>(2) The Contractor shall be deemed to have estimated his own quantities of the Works and shall submit, with his tender, a Schedule of Quantities and Rates setting out a build-up of the Contract Sum.</p> <p>(3) The accuracy of the quantities in the Schedule of Quantities and Rates submitted by the Contractor shall be at the sole risk of the Contractor and the cost of any under or over estimation of quantities shall be deemed to have been allowed for in the rates <del>(of for)</del> the item concerned.</p> <p>(4) The rates in the Schedule of Quantities and Rates shall form part of the Contract and shall be used for valuing Variations and estimating interim payments.</p>	

【SFBCwQ.2005】 【SFBCnQ.2006】	SFBCwQ.1986(2ndAmend.July1999)
<p>(5) Where any item which is required by the Contract has not been specifically priced in the Schedule of Quantities and Rates, the cost shall be deemed to have been included in the rates for other items. ]</p> <p># Compare with clause 14 of the With Quantities Form. #</p> <p># This clause 1.7 for the Without Quantities Form should have been inserted at clause 14, instead of disturbing the clause number below and leaving clause 14 not used. #</p> <p># This clause assumes that the Schedule of Quantities and Rates is to be submitted by the Contractor during tendering. Only the rates would form part of the Contract. The quantities would not. While the descriptions of the items included in the Schedule of Quantities and Rates would be significant when applying the unit rates. The quality and quantity of the work included in the Contract Sum should be based on the Contract Drawings and the Specification. Therefore, without further stipulations, the item descriptions included in a pro-forma Schedule of Quantities and Rates issued for tendering cannot be considered as a supplement to the Contract Drawings and the Specification. Care should be exercised when relying on the item descriptions to supplement the Contract Drawings and the Specification. Some QS consultants would use the term "Schedule of Works" to declare that this forms part of the Specification, and the item descriptions supplement the Contract Drawings and the Specification, while leaving the quantities and rates to be entered by the tenderers. #</p>	
<p><i>The role of the Engineer</i></p> <p>【1.7】 【1.8】</p> <p>(1) The Architect may, from time to time, delegate any of his duties and powers under the Contract to an Engineer.</p> <p>(2) The delegation shall be in writing and copied to the Contractor. It shall specify the duties and powers that are delegated and shall remain in force until changed or terminated in writing by the Architect.</p> <p>(3) Where in the context of the wording of a clause in the Conditions or where recognition of the Engineer's statutory responsibility requires it, the word 'Architect' in the Conditions shall be deemed to be read as 'Engineer'.</p> <p># A role introduced in the new Forms. It can be structural, M&amp;E or others. #</p>	
<p><i>Sectional completion of the Works</i></p> <p>【1.8】 【1.9】</p> <p>(1) Where sectional completion of the Works is provided for in the Contract, a reference to the Works shall be deemed to mean the Works or a Section.</p> <p># ... as the case may be. #</p> <p>(2) The phrase 'the whole of the Works' means the Works including all Sections.</p> <p># Sub-clause (2) serves as an emphasis only. The Works should also mean the whole of the Works. If a Section is referred to, it is better to use the term "the Section". #</p>	
<p><i>Communications</i></p>	

<p style="text-align: center;">【SFBCwQ.2005】 【SFBCnQ.2006】</p>	<p style="text-align: center;">SFBCwQ.1986(2ndAmend.July1999)</p>
<p>【1.9】 【1.10】                      Unless otherwise stated, all notices, certificates and other communications under the Contract between the Employer, the Architect, the Quantity Surveyor and the Contractor shall be in writing.</p> <p># It is important to exchange matters of contractual implication in writing.                      #</p>	
<p style="text-align: center;"><i>Notices of default or determination to be sent by special delivery</i></p> <p>【1.10】 【1.11】                      All notices of default or determination under clauses 35, 36 and 37 shall be sent by special delivery.</p>	
<p style="text-align: center;"><i>Parties to act reasonably and expeditiously</i></p> <p>【1.11】 【1.12】                      (1) The parties, the Architect and the Quantity Surveyor shall act reasonably and expeditiously in all matters under the Contract including, without limitation, giving or withholding consent, approval or agreement, valuing Variations and certifying.</p> <p># It is a very significant point introduced into the New Forms. It is unlikely that the Employer would dare to ask for a deletion of this Clause. #</p> <p>(2) All requirements shall be reasonable requirements and, without limitation, the term "to the Architect's satisfaction" shall be construed as meaning to the Architect's reasonable satisfaction and the term "practicable" shall mean reasonably practicable.</p> <p># Also a very significant point introduced into the New Forms. #</p>	
<p><b>2 Contractor's obligations</b></p>	<p><b>1 Main Contractor's Obligations</b></p>
<p style="text-align: center;"><i>Contractor's obligations</i></p> <p><b>2.1</b> (1) The Contractor shall in compliance with the Contract:</p> <p># The traditional responsibility for carrying out and completing the Works has very much been expanded in line with present day practice. While this imposes obligations upon the Contractor, this also reserves the rights and means to do so to the Contractor. #</p> <p>(a) organize, manage, plan and supervise the carrying out of the Works;</p> <p>(b) co-ordinate the carrying out of the Works including the interface between his own work and the work carried out by each Domestic Sub-Contractor, Nominated Sub-Contractor, Specialist Contractor, statutory undertaker and utility company;</p> <p>(c) assist in the coordination of their work by each Domestic Sub-Contractor, Nominated Sub-Contractor, Specialist Contractor, statutory undertaker and utility company with the work of each of the others;</p> <p>(d) design sufficient, safe and adequate temporary works to enable the Contractor to comply with his other obligations under the Contract, except where the design of any temporary works is a statutory obligation of any person other than the Contractor or any person for whom the Contractor is responsible;</p> <p># The design responsibility for temporary works rests with the Contractor by default. #</p>	<p><b>1(1)</b> The Main Contractor shall upon and subject to these Conditions carry out, take full responsibility for the care of, and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in these Conditions in every respect to the reasonable satisfaction of the Architect.</p>

[ SFBCwQ.2005 ] [ SFBCnQ.2006 ]	SFBCwQ.1986(2ndAmend.July1999)
<p>(e) carry out any work involved in the development of the Architect's design that may be specified in the Contract; {carry out the design of any part of the permanent Works that may be specified in the Contract;}</p> <p># Amendment in {} would be required if the Contractor's responsibility is not limited to design development. It is in fact very difficult to distinguish between design development and primary design.. #</p> <p>(f) prepare all shop drawings and co-ordination drawings required by the Contract;</p> <p># A narrower meaning of "shop drawings" would be those required for manufacture off-site or at workshop on site. However, a wider meaning would include "installation drawings" to be developed by the Contractor for building services installations for on-site installation. #</p> <p>(g) carry out the maintenance of mechanical and electrical {equipment systems}, where required to do so by the Contract for the period of time so specified;</p> <p># "maintenance" should mean something more than defects rectification. "equipment" would be too limited, and "systems" should be preferred. #</p> <p>(h) take responsibility for the care of the Works, except for loss or damage arising from the Excepted Risks, from the Commencement Date {or the Date for Possession of the Site whichever is earlier} <del>alternatively: or the Date for Entering the Site whichever is earlier</del> until 14 days after Substantial Completion of the Works or 14 days after the determination of the employment of the Contractor, whether valid or not, whichever is earlier, except that the Contractor's responsibility for the care of the Works shall terminate in relation to a Section or Relevant Part 14 days after the Employer takes possession of that Section or Relevant Part; and</p> <p># It may be possible that the official Commencement Date is later than the Date for/of Possession, and there could be some preparatory work during the interim period. Such preparatory work should be deemed to be part of the Works requiring the care of the Contractor. #</p> <p># Although not dealt with here, there could also be liability towards employees and third party during this interim period. #</p> <p># The period of 14 days after Substantial Completion gives some float time for certification and demobilisation. Government Standard Forms specify a longer period of 28 days after Substantial Completion. #</p> <p>(i) carry out the construction of and complete the Works using materials, goods and workmanship of the types, standards and quality specified in the Contract.</p> <p>(2) Where the Contract requires the Contractor to prepare details, to carry out the design or the development of the Architect's design, unless the requirement of fitness for purpose is specifically stated, the design or the development of the Architect's design shall be carried out with reasonable skill and care and the Contractor shall be responsible to the Employer for such work.</p> <p># If "fit for the intended purpose" is desired, it should be specifically stated. #</p>	
<p><i>Contractor's responsibility</i></p>	

<p style="text-align: center;">【SFBCwQ.2005】 【SFBCnQ.2006】</p>	<p style="text-align: center;">SFBCwQ.1986(2ndAmend.July1999)</p>
<p><b>2.2</b> The Contractor shall remain wholly responsible for carrying out and completing the Works in accordance with the Contract whether or not the Architect or the Architect's representative, if appointed:</p> <p>(a) visits the Works or a place where materials or goods are being manufactured or stored, work is being prepared, or design is being carried out;</p> <p>(b) inspects or tests any materials or goods;</p> <p>(c) exercises his powers under clause 8; or</p> <p>(d) includes the value of any materials, goods or work in an Interim Certificate.</p>	
<p style="text-align: center;"><i>Contractor's skill and care</i></p> <p><b>2.3</b> The Contractor shall exercise in the performance of his obligations under the Contract all the skill, care and diligence to be expected of a competent contractor experienced in carrying out work of a similar scope, nature and size to the Works.</p>	
<p style="text-align: center;"><i>Contractor to inform Architect if he finds ambiguities in documents</i></p> <p><b>2.4</b> (1) The Contractor shall immediately inform the Architect <b>if</b> the Contractor finds an ambiguity or discrepancy in or divergence between the following documents:</p> <p>(a) the Contract Drawings;</p> <p>(b) the Specification;</p> <p><b>【(c) the Contract Bills;】</b></p> <p><b>【(d) 【(c)】 the descriptive schedules and other similar documents referred to in clause 5.3 【(d)】 【(c)】 ;</b></p> <p><b>【(e)】 【(d)】 the Nominated Sub-Contract documents and the Nominated Supply Contract documents referred to in clauses 5.4 and 5.5; and</b></p> <p><b>【(f)】 【(e)】 the further drawings, details, descriptive schedules and similar documents referred to in clauses 5.6 provided from time to time during the carrying out of the Works.</b></p> <p>(2) If the Architect agrees with the Contractor, he shall issue an instruction to resolve the ambiguity, discrepancy or divergence as soon as practicable after receipt of the notice from the Contractor and the instruction shall, if considered appropriate by the Architect, require a Variation.</p>	<p><b>1(2)</b> If the Main Contractor shall find any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills he shall immediately give to the Architect a written notice specifying the discrepancy or divergence, and the Architect shall issue instructions in regard thereto.</p>
<p><b>3 Master programme</b></p> <p style="color: blue;"># Entirely new clause added to the new Forms. #</p>	
<p style="text-align: center;"><i>Master programme to be submitted</i></p> <p><b>3.1</b> (1) The Contractor shall submit to the Architect within the time stated in the Appendix:</p> <p>(a) 6 copies of a master programme prepared for his own purposes for organising, managing, planning, supervising and co-ordinating the carrying out of the Works and completing them by the Completion Date;</p>	

[SFBCwQ.2005] [SFBCnQ.2006]	SFBCwQ.1986(2ndAmend.July1999)
<p>(b) a method statement describing the methods of construction and the resources that he intends to use to carry out the Works;</p> <p>(c) a list of the names and details of the site management and supervisory team personnel, referred to in clause 10, with job descriptions and details of their durations on the Site; and</p> <p>(d) a list of the plant, equipment and temporary works which he intends to supply, use or construct, as the case may be.</p> <p>(2) The master programme shall:</p> <p>(a) show the activities and the sequence in which the Contractor proposes to carry out the Works;</p> <p>(b) show the periods of time estimated for each activity; and</p> <p>(c) make allowance for the carrying out of Specialist Works, insofar as a general description of these works is given in the Contract, and work by statutory undertakers and utility companies as referred to in clause 6.4(1).</p> <p>(3) The Contractor shall submit 6 copies of any other programme that may be required by the Contract at the time or times so specified.</p> <p>(4) Where any other part of the Contract sets out requirements in respect of the submissions to be made by the Contractor under clause 3.1, the submissions shall be made in accordance with those requirements.</p>	
<p><i>Programmes to be updated</i></p> <p><b>3.2</b> (1) The Contractor shall regularly update the master programme and any other programme used in carrying out the Works to reflect the current status of the progress of the Works, and shall submit 6 copies of the updated programme to the Architect at the intervals stated in the Contract (or, if this is not stated, at <b>{3 1}</b> month intervals) and in any event within <b>{28 7}</b> days of:</p> <p>(a) an Architect's decision to fix a new Completion Date under clause 25.3;</p> <p>(b) the Employer taking possession of a Section or a Relevant Part of the Works;</p> <p>(c) the determination of the employment and re-nomination of a Nominated Sub-Contractor; or</p> <p>(d) the termination of a supply contract and re-nomination of a Nominated Supplier.</p> <p>(2) The programme shall be revised to indicate the modifications that the Contractor believes are necessary to achieve completion of the Works by the Completion Date if the Contractor decides to take action in response to the Architect's notice under clause 25.5.</p> <p>(3) Programme updates shall be based upon the logic, activities and durations shown in the previous programme. Any change to the programme structure apart from activity status that may be necessary shall be clearly indicated and explained to the Architect.</p>	
<p><i>Programme and other documents not to be documents forming the Contract</i></p>	



【SFBCwQ.2005】 【SFBCnQ.2006】	SFBCwQ.1986(2ndAmend.July1999)
<b>3.3</b> Neither the programme, the method statement nor other document submitted under clause 3 shall be documents forming the Contract and no comment made by the Architect on any of these documents shall impose an obligation on the Employer.	