HKIS QSD PQSL Series 2014
Walkthrough the Standard Form of Building Contract Clause by Clause - Session 4

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
14 August 2014 (Thursday)
at
Surveyors Learning Centre

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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
【 】 = text in "With Quantities" only 『 』 = text in "Without Quantities" only { } = Essential amendments for Special Conditions < > = Alternative changes for Special Conditions 《 》 = Desirable but not essential changes # # = note to pay attention to text to pay attention to	
The General Conditions	**The Conditions hereinbefore referred to:**
6 Statutory obligations	**4 Statutory Obligations, Notices, Fees and Charges**
Statutory Requirements **6.1** The Contractor shall comply with and give the notices required by any Ordinance, regulation, rule, order or by-law applicable to the Works ('the Statutory Requirements') which are to be complied with by the Contractor. # The phrase "which are to be complied with by the Contractor" is important. #	**4(1)** The Main Contractor shall comply with and give all notices required by any Act or Ordinance of Government, any instrument, rule or order made under any Act or Ordinance of Government, or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the Works or with whose systems the same are or will be connected.▼ ……
Compliance with the Statutory Requirements **6.2** (1) The Contractor shall immediately notify the Architect if the Contractor finds that carrying out the Works in compliance with the Contract or with an Architect's instruction requiring a Variation will infringe the Statutory Requirements. # The word "if" is important. However, very often, the Specification or Preliminaries Bill may require the Contractor to do an active check. # (2) If the Architect agrees with the Contractor, he shall issue an instruction to resolve the infringement as soon as practicable after	**4(1)** ……▼The Main Contractor before making any variation from the Contract Drawings or the Contract Bills necessitated by such compliance shall give to the Architect a written notice specifying and giving the reason for such variation and the Architect may issue instructions in regard thereto. If

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	receipt of the notice and the instruction shall, if appropriate, require a Variation. # If the Architect does not consider that there is any infringement and instructs the Contractor to proceed without making changes, the Contractor proceeds accordingly, and this in fact results in an infringement, the Contractor may escape contractual liability towards the Employer. However, it should be cautioned that this would not relieve his statutory liability towards others. # # The old Forms require the Contractor to proceed in compliance with the Statutory Requirements if the Architect does not respond. The new Forms are silent in this respect. If the Architect does not respond, the Contractor should continue to seek clarification with proper declarations to protect his rights. #		within *seven* days of having given the said written notice the Main Contractor does not receive any instructions in regard to the matters therein specified, he shall proceed with the work conforming to the Act or Ordinance of Government, instrument, rule, order, regulation or byelaw in question and any variation thereby necessitated shall be deemed to be a variation required by the Architect.
	Fees or charges		
6.3	(1) The Contractor shall pay all fees or charges legally demandable under the Statutory Requirements . # "legally demandable" should mean those legally demandable upon the Contractor. The Contractor should pay first before getting reimbursement under sub-clause (2). # (2) The net amount of those fees or charges paid by the Contractor shall be added to the Contract Sum unless they: # Only the net amount is reimbursed with no mark-up. # (a) are fees or charges that the Contractor is liable to pay under the Statutory Requirements~~{, and the liability was known prior to the date for submission of tenders and has not been increased~~ irrespective of any changes to the Statutory Requirements after the date for submission of tenders~~}~~; # The phrase suggested to be deleted is a new introduction to the new Forms to reduce the Contractor's risk. However, it would be difficult to draw a line between fees and charges payable purely by reason of him being a contractor and that payable by him as one of the general public (the latter kind to be allowed for as a general inflation). # (b) are priced, or are required to be allowed for, in the Contract Bills; # It is usual for the Contract Bills or the Specification to contain provisions to require the Contractor to allow for all fees and charges except when they are provided for by a Provisional Sum. If the same provisions are retained when used in conjunction with the new Forms without change, this would mean paragraph (b) is invoked. Once paragraph (b) is invoked, no reimbursement will be given even though paragraph (a) may also be invoked, leaving paragraph (a) no protection to the Contractor. The suggested change to paragraph (a) above is to minimize the complication. # (c) are provided for by a Provisional Sum; or # The old Forms refer to "prime cost sum" which should be a sum reserved for Nominated Sub-Contractors or Suppliers. This role is not applicable to local authority or statutory undertaker. Therefore, provisional sums are usually provided instead of prime cost sums when using the old Forms. The use of "provisional sum" in the new Forms reflects this practice. # (d) arise out of a default, delay or failure by the Contractor or a	**4(2)**	The Main Contractor shall pay and indemnify the Employer against liability in respect of any fees or charges (including any rates or taxes) legally demandable under any Act or Ordinance of Government, any instrument, rule or order made under any Act or Ordinance of Government, or any regulation or byelaw of any local authority or of any statutory undertaker in respect of the Works. Provided that the amount of any such fees or charges (including any rates or taxes) shall be added to the Contract Sum unless they (a) arise in respect of work executed or materials or goods supplied by a local authority or statutory undertaker for which a prime cost sum is included in the Contract Bills or for which a prime cost sum has arisen as a result of Architect's instructions given under clause 11(3) of these Conditions, or (b) are provided for in the Contract Bills.

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sub-contractor to comply with the Statutory Requirements or the Contract.	
Statutory undertakers and utility companies # "local authority and statutory undertakers" in the old Forms has been replaced with "statutory undertakers and utility companies" in the new Forms. In the old Forms, "statutory undertakers" is meant to be "utility companies". Water and drainage connections are usually done by Government Departments, not utility companies. With the change of the phrase in the new Forms, whether "statutory undertakers" would be changed to mean Government Departments, not utility companies, is to be seen. Searching the Laws of Hong Kong on 1st September 2014 could not find the words "statutory undertaker". UK Forms of Contract and legal textbooks treat "local authority" and "statutory undertakers" as two separate things. In spite of the possibility that "statutory undertakers and utility companies" does not cover Government Departments, this only applies to clause 6.4. Clauses 6.1 to 6.3 can still apply to Government Departments. # **6.4** (1) Statutory undertakers or utility companies carrying out work in pursuance of their statutory obligations and not having a contractual relationship with the Employer, the Contractor or any person for whom the Contractor is responsible shall be classified as statutory undertakers or utility companies and not Nominated Sub-Contractors or persons engaged by the Employer under clause 30 and the fees or charges for their work shall be regarded as fees and charges legally demandable under the Statutory Requirements and processed in accordance with clause 6.3. # It has been decided in UK court cases that statutory undertakers or utility companies would not have a contractual relationship with persons commissioning them to carry out work in pursuance of their statutory obligations. Clause 6.3 is introduced in the new Forms to clarify that statutory role as distinct from the role of a sub-contractor engaged by the Contractor or a person engaged by the Employer. However, apart from their statutory roles, some utility companies are offering services beyond their statutory roles, e.g. providing utility mains to the site is a statutory role but extending from the mains to the individual flat units is a private commercial deal. Sub-clauses (3) and (4) are therefore introduced to deal with the latter situation. It should be admitted that sometimes it is difficult to distinguish whether a statutory undertaker or utility company is carrying out work pursuant to its statutory duty or contractual duty. # (2) The Contractor shall allow those persons reasonable access to the Site, permit them to carry out their work and provide them with the facilities referred to in clause 31. (3) Statutory undertakers or utility companies engaged under contracts with the Employer to carry out work directly connected with or ancillary to but not forming part of the Works shall be classified as Specialist Contractors as referred to in clause 30.1. (4) Statutory undertakers or utility companies engaged under contracts with the Contractor or a Nominated Sub-Contractor to carry out work forming part of the Works shall be classified as sub-contractors or sub-sub-contractors as the case may be.	
7 Setting out the Works	**5 Levels and Setting out of the Works**
Setting out and levels (1) The Architect shall provide the Contractor with accurately	**5** The Architect shall determine

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	dimensioned setting out drawings containing the information and levels necessary for him to set out the Works. # "at ground level" in the old Forms has been removed, probably the Works can be in existing premises not requiring setting out at ground level. Neither the old Forms nor the new Forms require the Employer to provide site boundary pegs but sometimes the Employer does so. # (2) The Contractor shall be responsible for accurately setting out the Works and shall correct any error arising from inaccurate setting out at his own cost unless the Architect accepts the error without correction subject to a reasonable reduction in the Contract Sum having regard to the Employer's loss of value of the Works and any expenses that he may incur arising from the inaccurate setting out. # This sub-clause does not give any guidance as to how the loss of value should be determined. The principle of determining common law damages should be referred to. It is suggested that the most expensive cost would likely be the cost of rectifying the inaccurate setting out by persons other than the Contractor, and the Employer always has a duty to mitigate his loss, therefore, the loss of value of the Works should be no more than the cost of rectification by others. However, what if the inaccurate setting out is only discovered after the building is already certified completed, the floor area has been reduced by reason of the inaccurate setting out, and rectification is no longer practicable? Can the Employer seek damages due to loss of sales or rental values? What if the floor plan encroaches outside the site boundary resulting in additional land premium to be paid, can the Employer seek damages? There are always risks of facing such arguments. # # Note that clause 8.3(c) uses the words "having regard to the reduction in the value of the materials, goods or work" which should have a more restricted meaning than "loss of value of the Works". #		any levels which may be required for the execution of the Works, and shall furnish to the Main Contractor by way of accurately dimensioned drawings such information as shall enable the Main Contractor to set out the Works at ground level. Unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly, the Main Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out.
8	**Materials, goods, workmanship and work**	**6**	**Materials, Goods and Workmanship to Conform to Description, Testing and Inspection**
	Types, standards and quality		
8.1	(1) The Contractor must provide all materials and goods of the types, standards and quality described in the Contract to the Architect's satisfaction. (2) Where the Contractor is responsible for the selection of the materials and goods in accordance with a performance specification or otherwise, the materials and goods must be fit for the purpose stated in the Contract. # This means that "fit for the purpose" is applicable to all cases of selection by the Contractor. # (3) If any of the specified materials or goods are not procurable, then the Contractor shall submit alternative proposals for materials or goods of similar type and standard and of comparable quality and price to the Architect for his approval; and (a) if the proposed alternative materials or goods are of similar type and standard and of comparable quality and price to those specified, and the Architect approves them, the substitution of the alternative materials or goods for those specified shall be made with no adjustment to the Contract Sum; or	**6(1)** **6(2)**	All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described in the Contract Bills. The Main Contractor shall upon the request of the Architect furnish him with vouchers to prove that the materials and goods comply with sub-clause (1) of this Condition.

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	(b) if the proposed alternative materials or goods are not of similar type and standard or comparable quality or price to those specified, and the Architect approves them, he shall instruct a Variation to adjust the type, standard, quality or price. # For the old Forms, it has been suggested that if any specified material, goods or workmanship is not procurable, it should be re-specified by the Architect and this should be treated as a variation. It has also been argued that it is the Contractor's risk and he should find alternatives without cost or time implications. Sub-clause (3) introduced in the new Forms clarifies the implications by putting this as the Contractor's risk. The most likely result of paragraph (b) would be a reduction to the contract rate, though paragraph (b) can also mean an increase. The price range to be regarded as "comparable" would be a room for argument. To avoid argument, whether paragraph (a) or (b) should apply and the cost effect in case paragraph (b) applies should be properly documented in the Architect's approval or instruction rather than leaving the matter to be resolved at the Final Account. # (4) The Contractor shall provide the Architect, upon his request, with vouchers, test certificates or other evidence to satisfy the Architect that the materials and goods comply with the Contract. (5) The Contractor's workmanship must be of the standard and quality described in the Contract to the Architect's satisfaction. # Materials and goods rely on others to supply and manufacture. It should be reasonable to separate "workmanship" from "materials and goods" because it would be unreasonable for the Contractor after tendering to say that his workmen cannot do it. "Workmanship" should refer to the further work to the materials and goods, not workmanship in producing the materials and goods. # (6) All work must be carried out in a proper and workmanlike manner in accordance with the Contract or, in the absence of any specific performance requirements, to the Architect's satisfaction. # Workmanship does not have the "fit for the purpose" requirement, but competent skill and care as required by clause 2.3 should still apply. #		
	Inspection and tests		
8.2	(1) The Contractor shall carry out or, if so required by the Contract, arrange for a third party to carry out, the tests specified in the Contract in compliance with the specified testing procedures. {Unless a different time period is specified in the Contract, the Contractor shall notify the Architect in writing before concealed work is covered up and give him at least two full days' notice to inspect it.} # A default notice period is preferred to avoid a sudden call for inspection of work to be concealed, which may take place outside normal working hours. # (2) In addition to the tests specified in the Contract, the Architect may instruct the Contractor to open up for inspection any work covered up and to carry out, or arrange for a third party to carry out, tests of materials and goods (whether or not already incorporated in the Works) and work which has been carried out. (3) The cost of the testing, the opening up for inspection and any consequential making good shall be added to the Contract Sum unless: (a) the inspection or test is provided for in the Contract 【《~~Bills~~》】;	**6(3)**	The Architect may issue instructions requiring the Main Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

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(b) the inspection or test shows that the materials, goods, workmanship or work are not in accordance with clause 8; (c) the inspection or test was considered necessary by the Architect because, as a result of the failure of a previous inspection or test, further investigation of similar materials, goods or work was required to establish to his satisfaction their compliance with clause 8; or # This is an express right introduced in the new Forms. However, whether it would extend the scope from sampling check to 100% check of all other similar items would remain to be seen. # (d) the work was carried out without the inspection notice required by the Contract{ or was carried out in a recklessly non-conforming manner}. # Work carried out in a recklessly non-conforming manner may still result in acceptable quality as revealed by subsequent testing, e.g. pouring of concrete under rain, but this is a gamble to be avoided. #	
Materials, goods, workmanship or work not in accordance with Contract **8.3** The Architect may, if any materials, goods, workmanship or work are not in accordance with the Contract, instruct: # The old Forms only empower the Architect to require the removal from the site of non-conforming items, the natural consequence would be similar to paragraph (a) or (b) in the new Forms. Paragraphs (c) and (d) in the new Forms expand the options and authority. # (a) the removal from the Site and the replacement of materials and goods that are not in accordance with clause 8; # This refers to materials and goods. # (b) the repair or demolition, removal and reconstruction of work which, in respect of materials, goods or workmanship, is not in accordance with clause 8; # This refers to work. # (c) the acceptance, without replacement or reconstruction, of some or all of the materials, goods or work that are not in accordance with clause 8, subject to a reasonable reduction in the Contract Sum having regard to the reduction in the value of the materials, goods or work; and # The value would bear some relationship with the contract value or Variation value not done and with the costs of replacement or reconstruction saved. # (d) a Variation for alternative remedial work to some or all of the materials, goods or work as is reasonably necessary in consequence of them not being in accordance with clause 8, with no extension of time or addition to the Contract Sum. # The actual situation may make it impracticable to replace or reconstruct according to the original design, and it may be better to change the design. The Contractor would obviously object if the alternative design is much more expensive. The Employer would obviously expect some reduction to the Contract Sum if the alternative design is cheaper. # # The Architect would not have a free choice between paragraph (a)	**6(4)** The Architect may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with this Contract.

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or (b), (c) and (d). He is obliged to act reasonably and to mitigate the costs. Therefore, the final choice would probably be the result of discussions with the Contractor. #	
Rectifying defects **8.4** The Architect may instruct the Contractor to rectify defects which appear before the commencement of the Defects Liability Period. # Legal textbooks say that contractors have an implied obligation to deliver the works free of defects upon completion. Therefore, this clause appears to be stating the obvious. In practice, minor defects are often tolerated when certifying Substantial Completion. This clause gives the Architect an express power to instruct, but it could also be read to imply that the Architect may tolerate defects appearing before Substantial Completion to be rectified after Substantial Completion. #	
Dismissal from the Works **8.5** The Architect may instruct the Contractor to dismiss any individual from the Works for incompetence, misconduct or other similar reasons.	**6(5)** The Architect may (but not unreasonably or vexatiously) issue instructions requiring the dismissal from the Works of any person employed thereon.
9 Intellectual property rights	**7 Royalties and Patent Rights**
{ ~~Intellectual property in design of the Works~~ **~~9.1~~** ~~The Contractor shall pay the cost of any royalty, license fee or other sum legally demandable for the use of intellectual property in connection with the design of the permanent Works other than works under a Nominated Sub-Contract or materials and goods supplied under a Nominated Supply Contract, and the cost shall be added to the Contract Sum.~~} # The arrangement is that the Contractor should pay first and get reimbursed later. The design of the permanent Works should by default be provided by the Architect free of royalty, license fee or other similar sum. It would be strange to ask the Contractor to pay the Architect first and get reimbursed from the Employer. # # Nominated Sub-Contract Works and Supply Contract Goods are to be dealt with separately. # # This clause is suggested to be deleted and re-written at clause 9.3. #	
{ ~~Intellectual property in materials and goods~~ **~~9.2~~** ~~The Contractor shall pay the cost of any royalty, license fee or other sum legally demandable for the use of intellectual property in connection with the incorporation of materials and goods into the permanent Works other than materials and goods supplied under a Nominated Sub-Contract or a Nominated Supply Contract. The cost shall be added to the Contract Sum unless the Contractor was responsible for the selection of the materials and goods in accordance with a performance specification or otherwise in which case the case shall be deemed to be included in the Contract Sum.~~} # The arrangement is also that the Contractor should pay first and get reimbursed later. Cost reimbursement does not apply to materials selected by the Contractor. "Selection in accordance with a performance specification or otherwise" would mean any selection. Supply according to a specified brand and model should not mean selection by the Contractor. Supply of a model within a specified brand may mean	**7** All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum, and the Main Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Main Contractor infringing or

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selection by the Contractor. How about supply of a specific type and kind of materials? It may be difficult to draw a line between selection by the Contractor and selection by the Architect. This difficulty may lead to contractual argument. # # Nominated Sub-Contract Works and Supply Contract Goods are to be dealt with separately. # # This clause is suggested to be deleted and re-written at clause 9.3. #	being held to have infringed any patent rights in relation to any such articles, processes and inventions. Provided that where in compliance with Architect's instructions the Main Contractor shall supply and use in carrying out the Works any patented articles, processes or inventions, the Main Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes and inventions and all royalties damages or other monies which the Main Contractor may be liable to pay to the persons entitled to such patent rights shall be added to the Contract Sum.
Intellectual property{~~ in plant and equipment~~} **9.3** (1) {The Contractor shall pay the cost ~~The payment~~} of 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, goods,} plant, equipment, machinery, methods or anything whatsoever used in carrying out the Works {(other than works under a Nominated Sub-Contract or materials and goods supplied under a Nominated Supply Contract). The cost} shall be deemed to be included in the Contract Sum{, subject only to clause 9.4. The Contractor shall require the Nominated Sub-Contractors and Nominated Suppliers to comply with their corresponding obligations under the Nominated Sub-Contracts or Nominated Supply Contracts}. # This refers to construction plant and equipment provided by the Contractor at his own choice. Therefore, the royalties, license fees or other similar sums shall be deemed to be included in the Contract Sum. # # In view of the problematic clauses 9.1 and 9.2, the amended clause 9.3 deems that the Contract Sum includes all royalties, license fees or other similar sums except for those related to the design for which the Contractor is not responsible, Nominated Sub-Contract Works and Supply Contract Goods, and Variations. This keeps the principle used in the old Forms. It does not appear to increase the risks of the Contractor since the Contractor has the opportunity to allow for the costs in the Contract Sum, but the trouble of interpretation would be reduced. # # Since the Contractor is liable for any infringement by his sub-contractor or supplier under sub-clause (2), but the amended sub-clause (1) excludes Nominated Sub-Contractors and Suppliers in the early part, the additional sentence at the end of sub-clause (1) is to impose some responsibility on the Contractor to re-establish the chain of responsibility and liability. # (2) The Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expense arising from the Contractor or any sub-contractor or supplier infringing or being held to have infringed any of the intellectual property rights referred to in clause 9.3(1).	
Payment of royalties included in Valuation	

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9.4	If the Contractor uses any intellectual property in compliance with an Architect's instruction requiring a Variation, any royalty, license fee or other sum legally chargeable which the Contractor pays in connection with that instruction shall be included in the Valuation of the Variation. # When contract rates are used for the Valuation, since the contract rates should be deemed to be inclusive of the cost of royalties, license fees or other similar sums, extra payment for royalties and the like would need to be justified, e.g. disproportional changes between royalties and basic cost of the work. #		
10	**Contractor's site management team** # This change from a simple “Foreman-in-charge” in the old Forms reflects the sophistication of modern day contracts. #	**8**	**Foreman-in-Charge**
	Contractor’s site management team		
10.1	(1) The Contractor shall maintain the site management and supervisory team (referred to in clause 10 as ‘the team’) listed in clause 3.1(1)(c) on the Site for as long as is necessary for the satisfactory fulfilment of his obligations under the Contract. (2) The team shall be of sufficient strength with personnel of appropriate qualifications, seniority and experience, having regard to the size, complexity and nature of the Works, to properly organise, manage, plan, supervise and co-ordinate the carrying out of the Works.		
	Construction manager		
10.2	(1) The team shall be headed by an experienced and competent construction manager approved by the Architect. # The title and position of “construction manager” is now formalized. “site agent” is used traditionally. There is no longer requirement for English-speaking as in the old Forms. The words “constantly on the site” in the old Forms have also been removed. # (2) An instruction issued by the Architect to the construction manager shall be deemed to have been issued to the Contractor. (3) The Architect may instruct the Contractor to replace the construction manager or a member of the team for incompetence or misconduct. (4) The Contractor shall not remove or replace the construction manager or any member of the team unless requested by or agreed to by the Architect.	**8**	The Main Contractor shall constantly keep upon the Works a competent foreman-in-charge and any instructions given to him by the Architect shall be deemed to have been issued to the Main Contractor. Provided that if the Architect so requires, the foreman-in-charge shall be English-speaking or, an interpreter through whom the Architect may give instructions shall be employed constantly on the site of the Works.
11	**Access for the Architect to the Works**	**9**	**Access for Architect to the Works**
	Contractor to give access The Contractor shall give the Architect and any person authorised by the Architect access, at all reasonable times, to the Works or any place where materials or goods are being manufactured or stored, work is being prepared or design is being carried out, and shall ensure that all his sub-contractors and suppliers do the same. # Access to the Works should cover access to anywhere within the Site. The “place” should be intended to mean places outside the Site, and can include design offices to reflect modern day possibility. #	**9**	The Architect and his representatives shall at all reasonable times have access to the Works and to the workshops or other places of the Main Contractor where work is being prepared for the Contract, and when work is to be so prepared in workshops or other places of a sub-contractor (whether or not

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			a Nominated Sub-Contractor as defined in clause 27 of these Conditions) the Main Contractor shall by a term in the sub-contract so far as possible secure a similar right of access to those workshops or places for the Architect and his representatives and shall do all things reasonably necessary to make such right effective.
12	**Architect's representative**	**10**	**Clerk of Works**
	Architect's representative		
12.1	The Architect and/or the Employer may appoint an architect, engineer, clerk of works or other person as the Architect's representative to be resident on the Site and acting under the direction of the Architect. # The old Forms distinguish between Clerk of Works and Architect's representative, although in practice a Clerk of Works can also be engaged by the Architect. The new Forms put them all under the term of "Architect's representative". # The Architect's representatives' duties shall be to: (a) watch and inspect the Works; (b) inspect and test materials and goods; (c) check that the types, standards and quality of the materials and goods, the standard and quality of the Contractor's workmanship and the quality of his work are in accordance with the requirements of the Contract, # There is no obvious reason why "standards" and "standard" are used at the same time. # (d) check, amend as necessary, and where appropriate sign the records submitted to him by the Contractor for approval; and # Some Architect's representatives are reluctant to sign Contractor's records. Signing is important. # (e) carry out the duties and exercise the powers delegated to him by the Architect under clause 12.2, and the Contractor shall give the Architect's representative every reasonable facility for the performance of these duties. # Under the old Forms, the Clerk of Works or the Architect's representative shall act solely as inspector without the authority to give directions unless confirmed by an Architect's instruction. The new Forms expand the power of the Architect's representative. With proper delegation of authority under clauses 12.2 and 12.3, that power can include issue of instructions. #	**10**	The Employer shall be entitled to appoint a Clerk of Works or the Architect a representative whose duty shall be to act solely as inspector on behalf of the Employer under the directions of the Architect, and the Main Contractor shall afford every reasonable facility for the performance of that duty. If any directions are given to the Main Contractor or to his foreman upon the Works by the Clerk of Works or the Architect's representative the same shall be of no effect unless given in regard to a matter in respect of which the Architect is expressly empowered by these Conditions to issue instructions and unless confirmed in writing by the Architect within *two* working days of their being given. If any such directions are so given and confirmed then as from the date of confirmation they shall be deemed to be Architect's instructions.
	Delegation of duties and powers		
12.2	(1) The Architect may, from time to time, delegate any of his duties and powers under the Contract to the Architect's representative as defined under clause 12.1.		

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(2) The delegation shall be in writing and shall be copied to the Contractor. It shall specify the duties and powers that are delegated and remain in force until changed or terminated in writing by the Architect.	
Instruction to bind parties **12.3** (1) The Architect's representative shall issue all instructions in writing and an instruction from the Architect's representative shall bind the parties if: (a) the Architect has the power to give it; and (b) it is within the terms of the delegation. (2) The Contractor may, within 7 days of receiving an instruction from the Architect's representative, submit an objection to the Architect who shall confirm, reverse or vary that instruction within a further 7 days, failing which the instruction shall have no effect.	
13 Variations, Provisional Quantities, Provisional Items and Provisional Sums	**11 Variations, Provisional and Prime Cost Sums**
Architect's authority to issue instructions requiring a Variation **13.1** (1) The Architect may issue an instruction requiring a Variation provided that: (a) the Contractor has the right of reasonable objection to a Variation which imposes or changes an obligation or restriction on the Contractor regarding access to the Site, use of any part of the Site or limitation of working space or working hours and the Architect shall, upon receipt of the Contractor's objection, either confirm or withdraw the instruction, and if the instruction is confirmed, the Contractor may refer the matter to arbitration under clause 41; # The new Forms expand the scope of Variation in clause 1.6 to include a change to the manners of carrying out the Works. Such manners have traditionally been regarded as entirely at the Contractor's discretion. This paragraph (a) retains the Contractor's right to reasonable objection to any instructed change to the manners. The types of manners reserved are the same as those in clause 1.6 with the omission of "the sequence of carrying out or completing work" probably unintentionally. (b) the Contractor's written consent is given to an instruction either nominating a sub-contractor to carry out work included in the Contract 【Bills】 which is to be carried out by the Contractor or omitting work in order for it to be carried out by others; and (c) the instruction or accumulation of instructions shall not fundamentally change the scope or nature of the Works. (2) The instruction requiring a Variation shall describe the change required to the design, quality or quantity of the Works or the imposition of or change to any obligation or restriction on the Contractor and where appropriate the Architect shall issue revised drawings and/or schedules. (3) The Contractor has no right to carry out work involving a Variation without a written instruction from the Architect or confirmation of an oral instruction from the Contractor except in the event of an emergency as provided for in Clause 4.4. # An instruction may or may not result in a Variation. A Variation must	**11(1)** The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Main Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this Contract.

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have an authorizing Architect's instruction. A good practice would be to issue a confirmatory Architect's instruction to confirm a confirmation of oral instruction from the Contractor. Clause 4.4 requires a confirmatory Architect's instruction for emergency work. #	
Instructions for Provisional Quantities, Provisional Items and Provisional Sums **13.2** The Architect shall issue an instruction for: (a) the carrying out of work or the provision of goods covered by Provisional Quantities or Provisional Items in the Contract 【Bills】, Nominated Sub-Contracts or Nominated Supply Contracts; and # This may mean a specific instruction for an item or a group of Provisional Quantities or Provisional Items. However, very often, a set of revised drawings issued after the award of the Contract under an Architect's instruction may cover whatever changes made as well as confirmed details for related Provisional Quantities or Provisional Items, and the Architect may not be detailed enough to state that the Provisional Quantities or Provisional Items are to be carried out as shown on the revised drawings. If the intention of the instruction is clear enough to have all work shown on the revised drawings to be carried out, then there is no reason why the instruction cannot be regarded as the authorizing instruction for the Provisional Quantities or Provisional Items. # (b) the expenditure of Provisional Sums included in the Contract【Bills】, Nominated Sub-Contracts or Nominated Supply Contracts. # Similar to the comments against paragraph (a), an instruction may not be very specific that it is authorizing the expenditure of Provisional Sums. A reasonable interpretation of the intention of the instruction should be exercised. #	**11(3)** The Architect shall issue instructions in regard to the expenditure of prime cost** and provisional sums included in the Contract Bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums. ** The term 'prime cost' may be indicated by the abbreviation 'P.C.' in any document relating to this Contract (including the Contract Bills), and wherever the abbreviation is used it shall be deemed to mean 'prime cost'.
Valuation of Contractor's work **13.3** The Quantity Surveyor shall measure and value work carried out by the Contractor in response to an Architect's instruction under: (a) clause 13.1 requiring a Variation; (b) clause 13.2(a) for the remeasurement of Provisional Quantities and Provisional Items; and (c) clause 13.2(b) to expend a Provisional Sum, and the Valuation shall be made in accordance with the rules set out in clause 13.4. # The valuation rules under the old Forms only cover variations and work covered by provisional sums. The new Forms expand the scope to cover Provisional Quantities and Provisional Items. #	
Valuation rules **13.4** (1) Where the Valuation relates to the carrying out of: (a) additional or substituted work which can be properly valued by measurement; # Work which cannot be properly valued by measurement is to be valued according to paragraph (a). #	**11(4)** All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Main Contractor for which provisional sums are included in the Contract Bills (other than

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(b) work which is the subject of Provisional Quantities or Provisional Items; or (c) work involved in the expenditure of Provisional Sums, the work shall be measured and shall be valued in accordance with the following rules: # Rules (i) to (iii) are not at a level under paragraph (c) but are applicable to paragraphs (a) to (c). Following the style of numbering elsewhere, they should be numbered as (d) to (f). #	work for which a tender made under clause 27(g) of these Conditions has been accepted) shall be measured and valued by the Quantity Surveyor who shall give to the Main Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Main Contractor may require. The valuation of variations and of work executed by the Main Contractor for which a provisional sum is included in the Contract Bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed shall be made in accordance with the following rules:
(i) where the work is the same as or similar in character to and is carried out under the same or similar conditions to work priced in the 【Contract Bills,】『Schedule of Quantities and Rates,』 and the Variation does not substantially change the quantity of that work, the rates in the 【Contract Bills】『Schedule of Quantities and Rates』 for that work shall determine the Valuation; # In short, contract rates for work of similar character executed under similar conditions, if no substantial change in quantity. The former part is similar to the old Forms, the latter part a new addition to the new Forms. #	**11(4)…**(a) The prices in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein;
(ii) where the work is the same as or similar in character to work priced in the 【Contract Bills】『Schedule of Quantities and Rates』 but is not carried out under the same or similar conditions, or the Variation substantially changes the quantity of that work, the rates in the 【Contract Bills】『Schedule of Quantities and Rates』 for that work shall determine the Valuation but with a fair adjustment for the difference in conditions or quantity; # In short, pro-rata rates for work of similar character but not under similar conditions, or if quantity substantially changed. The former part is different from the old Forms which say “work not of a similar character or executed under similar conditions”. Work not of a similar character is to be valued according to rule (iii) below. # # This clarifies that pro-rata rates should be based on contract rates with a fair adjustment for the difference in conditions or quantity. Re-rating of the labour and plant is not intended for. # (iii) where the work is not the same as or similar in character to any work priced in the 【Contract Bills】『Schedule of Quantities and Rates』 《,》 the work shall be valued at fair rates; and # In short, fair rates for work not of a similar character. A change to a different type of tiles requiring the same method of laying would appear to fall within rule (iii) not (ii). The old Forms permit the use of pro-rata rates in this case. On the other hand, the old Forms permit fair rates if pro-rata rates are not reasonable, this is more flexible. The wording of Clause 11(4)(b) of the old Forms appear to be better. #	**11(4)…**(b) The said prices, where work is not of a similar character or executed under similar conditions as aforesaid, shall be the basis of prices for the same so far as may be reasonable, failing which a fair valuation thereof shall be made;

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(iv) the word 'conditions' in clause 13.4(1) shall mean physical conditions and not financial conditions. # "financial conditions" is probably intended to exclude re-rating due to under-pricing or exclude the general effects of general inflation or fluctuations in exchange rates, but this may have side-effects not favourable to the Contractor if this is interpreted literally. If by reason of a change in the physical conditions, the economy of scale (share of fixed costs) is changed, then this should be admitted. If the time of carrying out a Variation is very different from the original time the contract work is carried out, the extra effect of inflation over the general effect should be admitted. This should also apply if the exchange rates are very bad when the Variation is carried out. Therefore, a reasonable interpretation of "financial conditions" should be "financial conditions which are not the consequence of the changes in physical conditions". #	
(2) Where the Valuation relates to work which cannot be properly measured and valued under clause 13.4(1) the work may, with the prior consent of the Architect, be carried out as daywork and provided that the Contractor: (a) gives at least 7 days' notice to the Architect before carrying out the work, or where the work is required urgently, as much prior notice as practicable; and (b) submits vouchers specifying the time spent daily carrying out the work, the workmen's names, the materials and goods and the plant and equipment employed to the Architect for verification within 14 days of the work being carried out, # 14 days of the work instead of within the next week of the work in the old Forms. # the work shall be valued at prime cost comprising labour, materials, goods, plant and equipment plus overheads and profit; and: # The phrase "valued at prime cost comprising labour, materials, goods, plant and equipment plus overheads and profit; and", though spelling out the underlying principle, can in fact be deleted without affecting the meaning. Keeping it here may contradict paragraph (c) if the contract daywork rates are under-priced or over-priced significantly. # (c) priced at the daywork rates in the Contract 【Bills】; or (d) where there are no daywork rates in the Contract 【Bills】, priced at: (i) the labour rates contained in the record of Average Daily Wages of Workers Engaged in {~~Government Building and~~ Public Sector} Construction Projects published by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region current at the date when the work is carried out; (ii) the net cost of materials and goods plus the cost of packing, carriage and delivery; (iii) the cost of hiring plant and equipment specifically provided for the work together with the cost of transportation, fuel, maintenance and insurance; and # If the plant and equipment are self-owned, the cost of owning and maintaining should be converted to running cost as if hiring.	**11(4)…**(c) Where work cannot properly be measured and valued the Main Contractor shall be allowed daywork rates: (i) at the rates inserted by the Main Contractor in the Contract Bills; or (ii) where no such rates have been inserted, at the rates given in the Standard Day Labour and Plant Hire Schedules agreed between the Public Works Department and the Building Contractors' Association Limited current at the date the work is carried out; (iii) where materials are specifically provided for work valued under sub-clause (4)(c) of this Condition such materials shall be valued at cost plus the cost of packing, carriage and delivery with an addition of fifteen per cent (15%) for overheads and profit. Provided that in any case vouchers, specifying the time daily spent upon the work (and if required by the Architect the workmen's names) and the materials employed, shall be delivered for verification to the Architect or his

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#	authorised representative not later than the end of the week following that in which the work has been executed;
(iv) the percentages for overheads and profit on the prime cost of the labour, materials, goods, plant and equipment that are {~~included~~ stated} in the Contract 【Bills】or, where no such percentages are {~~included~~ stated} in the Contract 【Bills】, at 15 percent. # Since all the contract rates are supposed to include some overheads and profit, it would be difficult to argue that there are no such percentages for overheads and profit in the Contract (or Contract Bills). "included" in the Contract should mean "stated". #	
(3) Where the Valuation relates to the omission of work included in the 【Contract Bills】『Schedule of Quantities and Rates』: (a) the rates for the work in the 【Contract Bills】『Schedule of Quantities and Rates』 shall determine the Valuation of the work omitted; and (b) if in the Quantity Surveyor's opinion the Contractor has reasonably incurred expense which has become wholly or partly unnecessary as a result of the omission of the work, a fair adjustment shall be made to the Valuation in respect of that expense. # Essentially, this refers to a case where the economy of scale (share of fixed costs) is changed. #	**11(4)…**(d) The prices in the Contract Bills shall determine the valuation of items omitted; provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (b) of this sub-clause.
(4) Where the Valuation does not relate to additional or substituted work or the omission of work but relates only to other matters not involving measured work such as the imposition of or change to an obligation or restriction and the rules in clauses 13.4(1), 13.4(2) or 13.4(3) cannot reasonably be applied, a fair valuation shall be made. (5) An appropriate allowance shall be made in a Valuation under clause 13.4 for any percentage {~~or lump sum~~} adjustment made to the 【Contract Bills】『Schedule of Quantities and Rates』. # Lump sum adjustments in the Contract Bills or Schedule of Quantities and Rates are supposed to be lump sums not affected by adjustments to the Contract Sum. There is no reason why such lump sum adjustments should be correspondingly adjusted in line with the Variations. # (6) If compliance with a Variation instructed under clause 13.1 or a deemed Variation under clause 14.3 substantially changes the conditions under which other work is carried out, and results in the rates in the 【Contract Bills】『Schedule of Quantities and Rates』 for this work becoming unreasonable or inapplicable, then new rates shall be determined based upon the rates in the 【Contract Bills】『Schedule of Quantities and Rates』 adjusted by a fair allowance for the difference in the conditions. # This offers another chance to adjust the contract rates further to the right under clauses 13.4(1)(ii) and 13.4(3)(b) to adjust when a Variation increases or decreases the quantity of work substantially. # (7) In addition to the Valuation by daywork under clause 13.4(2) of work which cannot be properly measured and valued under clause 13.4(1), the Architect may instruct the Contractor, with the Contractor's agreement, to carry out any other work, including work which can be properly measured and valued under clause 13.4(1), to be valued on a daywork basis in accordance with clause 13.4(2). # Daywork valuation can also be adopted in any case if mutually agreed, even when the work can be properly measured and valued. #	

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(8) If the Architect instructs a Variation for additional work after Substantial Completion, clause 13.4(1) shall not apply and a fair valuation shall be made. # It is now a clear message of fair rates for Variations carried out after Substantial Completion. #	
	11(4)…(e) If required by the Architect the Main Contractor shall within *fourteen* days of the Architect's written request submit a detailed estimate of the value of any variation.
(9) No allowance is to be made under clause 13.4 for direct loss and/or expense due to delay to the progress of the Works, disruption, or any other cause for which the Contractor can be reimbursed by payment under any other provision of the Conditions. # Under the old Forms, if the basic valuation of variations and work covered by provisional sums cannot adequately cover the Contractor's loss and expense, he may rely on Clause 11(6) to claim for compensation for the direct loss and/or expense of whatsoever nature. If the relevant instruction is late, he may also reply on Clause 24(1)(a) to claim for compensation of direct loss and/or expense due to disturbance of regular progress. A request under Clause 11(6) appears to be not so serious nor drawing much attention as a claim under Clause 24(1)(a). QSs and contractors tend to handle the full effect of variations and work covered by provisional sums under Clause 11 rather than under Clause 24. # # The new Forms now entitle the Contractor to be compensated under clause 27(2)(c) for the direct loss and/or expense due to delay and disruption. This sub-clause (9) appears to require all delay and disruption effects of variations and work covered by all kinds of provisional items to be dealt with under clause 27(2)(c). # # The use of the words "can be reimbursed" is problematic in the sense that if the Contractor cannot actually get reimbursed under, say, clause 27(2)(c), can he come back to clause 13.4 to get reimbursed? Why can't the sub-clause simply say that the delay and disruption effects must be dealt with under clause 27(2)(c)? # # Note also the words "due to delay…, disruption or any other cause" in this sub-clause. Clause 27(2(c) can only deal with delay and disruption but not any other cause. Why insert the words "any other cause"? Why can't clause 13.4 be allowed to deal with the full effects of variations and work covered by any kind of provisional items? Sub-clause (6) appears to offer such opportunity if not restricted by sub-clause (9). #	**11(6)** If upon written application being made to him by the Main Contractor, the Architect is of the opinion that a variation or the execution by the Main Contractor of work for which a provisional sum is included in the Contract Bills (other than work for which a tender made under clause 27(g) of these Conditions has been accepted) has involved the Main Contractor in direct loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause (4) of this Condition and if the said application is made within a reasonable time of the loss or expense having been incurred, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.
Adjustment of Contract Sum **13.5** Effect shall be given to a Valuation under clause 13.3 by adjustment of the Contract Sum. # Effect shall also be given in Interim Certificates but this is stated in clause 32.2(3)(a). #	**11(5)** Effect shall be given to the measurement and valuation of variations under sub-clause (4) of this Condition in Interim Certificates and by adjustment of the Contract Sum; and effect shall be given to the measurement and valuation of work for which a provisional

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	sum is included in the Contract Bills under the said sub-clause in Interim Certificates and by adjustment of the Contract Sum in accordance with clause 30(5)(c) of these Conditions.
Contractor's right to be present during measurement on Site **13.6** Where it is necessary to measure work on the Site for a Valuation, the Quantity Surveyor shall give the Contractor an opportunity to be present and to take his own measurements.	**11(4) …** be measured and valued by the Quantity Surveyor who shall give to the Main Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Main Contractor may require. **…**
Variation necessitated by fault of Contractor **13.7** If and to the extent that an instruction requiring a Variation arose as a result of a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible《,》 the Quantity Surveyor shall take the effect of the breach or default into account in the Valuation of the Variation.	
Valuation of Nominated Sub-Contractor's work or Nominated Supplier's materials and goods **13.8** The Valuation of work carried out by a Nominated Sub-Contractor or materials and goods supplied by a Nominated Supplier in response to an Architect's instruction: (a) for a variation to the sub-contract works or to the materials and goods to be supplied under a supply contract; (b) under clause 13.2(a) for the remeasurement of Provisional Quantities and Provisional Items in any bills of quantities included in the sub-contract or supply contract; and (c) under clause 13.2(b) to expend Provisional Sums included in the sub-contract or supply contract; shall be made in accordance with the Nominated Sub-Contract or Nominated Supply Contract. # Perhaps, a shorter clause may be "The Valuation of work carried out by a Nominated Sub-Contractor or materials and goods supplied by a Nominated Supplier shall be made in accordance with the Nominated Sub-Contract or Nominated Supply Contract." #	
{ Contractor's estimate before formal instruction **13.9** Before issuing an instruction pursuant to clause 13.1 or 13.2, the Architect may request the Contractor to submit a detailed estimate of the cost and time effects of the proposed instruction and the Contractor shall comply with the request. The subsequent issue of the instruction by the Architect shall not be construed as acceptance of the estimate unless specifically so stated in the instruction. The acceptance of such estimate shall not be a prerequisite to the execution of the instruction by the Contractor.} # Added to avoid a Contractor's argument that an instruction to proceed after a quotation has been submitted is deemed to be an acceptance of	

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the quotation. #	
{ *Contractor's proposal* **13.10** Any proposal made by the Contractor and approved by the Architect shall be deemed to have no cost or time effect on the Contract unless the Contractor expressly states that there should be cost or time effect when submitting the proposal and the Architect confirms in writing to treat this proposal as a Variation when accepting the proposal.} # Added to avoid the ambiguity created by a silence over whether a Contractor's proposal should or should not have cost and time effect. #	

The following are in response to questions asked during the session.	
25 Extension of time	**23 Extension of Time**
Fixing new Completion Date **25.3** (5) If after fixing a new Completion Date under clause 25.3, the Architect issues an instruction under: (a) clause 13.1 for the omission of work or the omission or diminution of an obligation; or (b) clause 13.2 resulting in a substantial reduction of the work to be carried out, provided that the variance was not apparent from the Contract Drawings, the Architect may fix an earlier Completion Date, though not earlier than the Completion Date stated in the Appendix, if it is fair and reasonable to do so. # In light of the omission or reduction of work or obligations, the Architect can fix an earlier Completion Date but not earlier than the original contract Completion Date.# # The Government General Conditions of Contract for Building Works 1999 Edition only permits the omission or reduction to be taken into account when granting further extension of time, but does not require the currently extended completion date be advanced. # (6) If the Architect gives an extension of time to the Contractor under clause 25.3 because of a listed event that occurs in the period of delay after the Completion Date but before the Date of Substantial Completion, 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 listed event may have occurred later than the date that the Architect fixes as the new Completion Date. # If a listed event begins 10 weeks after the currently extended Completion Date and lasts for 1 week, the extension of time should be a net extension of 1 week instead of a gross extension of 11 weeks. The approach is called "dotting-on" or a "dot-on procedure". This sub-clause (6) is introduced to reflect the court decision at Amalgamated Building Contractors v. Waltham Holy Cross (1952). # (7) The Architect may fix a new Completion Date under clause 25 earlier or later than that previously fixed, during the period of delay between the Completion Date and the Date of Substantial Completion (if Substantial Completion takes place later than the Completion Date) if it is fair and reasonable to do so having regard to any of the listed events, whether by reviewing a previous decision, taking into account any further and better	

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particulars that may be submitted by the Contractor, or by taking into account any extension of time granted under clause 25.3(6). # The Architect may after the currently extended Completion Date but before the Date of Substantial Completion review his previous extension of time. He is entitled to fix an earlier or later date than previously fixed. # Fixing a later date may be due to some further evidence submitted by the Contractor or due to some new extension under sub-clause (6) or due to correction of the Architect's errors in his previous extension of time. # # Fixing an earlier date may be due to some new omission or reduction pursuant to sub-clause (5) or due to correction of the Architect's errors in his previous extension of time. # # The following is observed when the wording is analysed in greater detail: • "having regard to any of the listed events" – listed events would not cover the Architect's errors or sub-clause (5) • "by reviewing a previous decision" – this may cover the Architect's errors • "taking into account any further and better particulars that may be submitted by the Contractor" – the Contractor is unlikely to submit information with the intention of facing a reduction of extension of time • "taking into account any extension of time granted under clause 25.3(6)" – this is superfluous because sub-clause (6) itself is sufficient for an extension of time. # # It then appears that this sub-clause does not cover clause 25.3(5) to give a chance to fix an earlier date. The remaining chance would be a correction of the Architect's error. Fixing an earlier date for whatever reasons when the currently extended Completion Date has already passed will leave the Contractor no chance to adopt any preventative or remedial measures. If the spirit of extension of time is to fix a future target date for the Contractor to meet, this reduction of extension of time previously fixed is not reasonable, especially when this is a result of the Architect's errors. The words "earlier or" were added at the very final stage when the new Forms were put into print without being noticed by a lot of those people invited to give comments on the drafts, and this addition appears to be inappropriate. # # If sub-clause (7) does not cover sub-clause (5), sub-clause (7) does not appear to be really necessary if the words "within 90 days" in sub-clause (8) is changed to "not later than 90 days" whereby a review of extension of time can be made any time. # (8) The Architect shall finally decide the overall extension of time, if any, that he considers the Contractor is entitled to under clause 25, whether by reviewing any extension of time previously granted or otherwise, and shall fix the Completion Date, which may be the same as but not earlier than the Completion Date previously fixed, within 90 days after Substantial Completion or such later date as may be agreed by the parties. # This sub-clause does not permit fixing an earlier Completion Date. "or otherwise" is of unlimited scope. "such later date as may be agreed" would leave the 90 days' restriction open, unless the Architect stands firm and the Employer accepts the possibility of resorting to dispute resolution. #	