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Walkthrough the Standard Form of Building Contract Clause by Clause - Session 7

by
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【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
【 】 = 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	
22 Insurance of the Works # Clause 22 is rather complicated because of its drafting style, whereby clause 22 covers the general principle, clause 22A is applicable when the Contractor insures, clause 22B is applicable when the Employer insures, and clause 22C is applicable when an existing building is involved and the Employer insures. #	**20 Insurance of the Works against Fire, etc.**
Alternative clauses for Contractors' All Risks Insurance of the Works # "Contractors' All Risks" with the apostrophe after "s". # **22.1** Either clause 22A, 22B or 22C shall apply according to which of those clauses is specified in the Appendix and both parties shall comply with all the conditions in the insurance policy effected by either party.	
Basic requirements for Contractors' All Risks Insurance of the Works **22.2** The basic requirements for Contractors' All Risks Insurance of the Works are, unless otherwise set out in the 【Specification or Contract Bills】〖Contract〗 or as agreed between the parties, to provide insurance cover against any physical loss of or damage to the Works, existing constructions on the Site, temporary works or materials or goods that are the property of the insured or for which the insured is responsible while on the Site{, being fabricated or stored off-Site or in transit by road, rail, air or marine craft within Hong Kong or its territorial waters} including: # "set out in the Contract" is a simpler but equally effective phrase. #	**20[A]**[1] **20[A](1)** Without prejudice to his obligations under clause 1 of these Conditions, the Main Contractor shall in the joint names of the Employer and the Main Contractor insure against loss or damage by fire, lightning, explosion, storm, typhoon, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake,

1 Clause 20[A] is applicable to the erection of a new building if the Main Contractor is required to insure against loss or damage by fire, etc; clause 20 [B] is applicable to alterations of or extensions to an existing building; therefore strike out clause [A] or [B] as the case may require.

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# "existing constructions" can be foundations, hoardings, covered walkways, and other things taken over by the Contractor. To ensure sufficient coverage, the value of these things should be added to the sum insured. Alternatively, they can be insured not as part of the insured property but as part of the Principal's properties under the third party liability insurance provided that the limit of indemnity there is adequate enough to cover the value of such properties. # # "existing constructions" can be foundations, hoardings, covered walkways, and other things taken over by the Contractor. To ensure sufficient coverage, the value of these things should be added to the sum insured. # # "the insureds" is sometimes used to mean more than one insured party. Similarly, "the joint-insureds". # # Specialist Contractors and the values of their works should also be specifically added to the insured and to the sum insured. It is permissible to set out this requirement in the Specification or the Bills of Quantities instead of the Special Conditions of Contract. See clause 22.3. # # The above deletion has been suggested because standard insurance policy would not cover risks off-site. If required, an endorsement is required. # (a) costs and expenses in respect of shoring and propping up, testing, dismantling or demolishing part of the Works, existing constructions on the Site or temporary works, removing and disposing of debris and damaged materials or goods and protecting the Works, existing constructions on the Site, temporary works and materials or goods; (b) professional fees at the percentage stated in the Appendix; (c) all necessary extra costs of express freight or airfreight; and (d) all necessary extra overtime labour costs, # (a) to (d) all refer to matters incurred in the repair, reinstatement, redesign and supervision. # # (c) and (d) are not covered by standard insurance policy and would require endorsements. # incurred in the repair, reinstatement, redesign and supervision following damage to the Works, existing constructions on the Site, temporary works or materials or goods from any cause excluding: (e) the cost of repairing or replacing property which is defective solely due to natural wear and tear resulting from ordinary use or deterioration, rusting or corrosion; (f) loss or destruction of or damage to cash, banknotes, treasury notes, cheques, stamps, deeds, bonds, bills of exchange, promissory notes or securities; (g) loss or damage solely due to the total suspension of carrying out the Works where the insured failed to take reasonable precautions to protect the property insured and to avoid or reduce the amount of loss or damage; (h) loss of any property by disappearance or by shortage where the loss is revealed only by the making of an inventory or periodic stocktaking and is not traceable to an identifiable event;	aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion for the full value thereof, plus *four* percent to cover professional fees, all work executed and all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefor (including the value of any materials or goods which has in accordance with clause 30(2)(A) of these Conditions been included in any Interim Certificate under which the Main Contractor has received payment) but excluding temporary buildings, plant, tools and equipment owned or hired by the Main Contractor or any sub-contractor, and shall keep such work, materials and goods so insured until *two* weeks after Practical Completion of the Works. Such insurance shall be with insurers approved by the Architect and the Main Contractor shall deposit with him the policy or policies and the receipts in respect of premiums paid; and should the Main Contractor make default in insuring or continuing to insure as aforesaid the Employer may himself insure against any risk with respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premiums from any monies due or to become due to the Main Contractor. Provided always that if the Main Contractor shall independently of his obligations under this Contract maintain a policy of insurance which covers *(inter alia)* the said work, materials and goods against the aforesaid contingencies to the full value thereof plus the aforesaid percentage, then the maintenance by the Main Contractor of such policy shall, if the Employer's interest is endorsed thereon, be a discharge of the Main Contractor's obligation to insure in the joint names of the Employer and Main Contractor; if and so long as the Main Contractor is able to produce for inspection as and when he is reasonably required so to do by the Architect documentary

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(i) loss or damage to materials, goods or work directly resulting from {~~its~~ their} own defect in materials, goods or workmanship or fault, defect, error or omission in design, plan or specification but not excluding resultant damage to any other materials, goods or work which are lost or damaged as a consequence of those defective materials, goods or work; (j) loss or damage to property during the period between 14 days after Substantial Completion and the date of issue of the Defects Rectification Certificate other than loss or damage arising from a cause occurring prior to the commencement of that period, or caused in the course of remedying defects or the testing and commissioning of building services or other installations; # The "14 days" is to match that stated in clause 22.4(1). # (k) loss or damage to plant, equipment and temporary buildings and their contents owned or hired by the Contractor or any person for whom the Contractor is responsible; # This is insurable if these items and their values are specifically included in the calculation of the sum insured. # (l) 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; (m) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; and (n) non-negotiable exclusions imposed by the insurance market. # (e) to (n) except (k) are matters which are usually excluded by insurance policies, but such exclusions do not by themselves mean similar exclusions from the respective liabilities of the Employer or the Contractor. Although (e) to (n) attempt to define the exclusions in greater details, there is a chance that the wording is not the same as that used in the insurance policies. The inconsistency may lead to rejection of the policies if the Architects or the Quantity Surveyors checking the policies stick to the wording literally. Since the respective liabilities would not be affected, as long as the exclusions in the insurance policies are standard (i.e. the usual standard exclusions) and the required coverage is not significantly affected, they should be accepted. No insurance is worse than insurance with some defects. #	evidence that the said policy is properly endorsed and maintained then the Main Contractor shall be discharged from his obligation to deposit a policy or policies and receipts with the Architect but on any occasion the Employer may (but not unreasonably or vexatiously) require to have produced for his inspection the policy and receipts in question.
Specific requirements for Contractors' All Risks Insurance of the Works **22.3** The specific terms and conditions required for the Contractors' All Risks Insurance of the Works if required to be different from the basic terms shall be as set out in the 【Specification or the Contract Bills】〖Contract〗 or shall be as agreed between the parties but in any case the terms cannot be beyond the best terms currently available.	

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Insurance of the Works to be in joint names and period of insurances **22.4** (1) The Contractors' All Risks Insurance of the Works shall be effected and maintained in the joint names of the Employer, the Contractor, his sub-contractors and their respective sub-contractors of all tiers and suppliers. The insurance cover shall run from the Commencement Date {or the Date for Possession of the Site whichever is earlier <alternatively: or the Date for Entering the Site whichever is earlier>} until 14 days after the issue of the Substantial Completion Certificate for the Works or 14 days after the determination of the employment of the Contractor, whether valid or not, whichever is earlier. (2) If the Contract provides for sectional completion of the Works or the Employer has taken possession of a Relevant Part, the obligation {~~of the party responsible for effecting~~ to effect} the Contractors' All Risks Insurance of the Works shall terminate in relation to any Section or Relevant Part 14 days after Substantial Completion of that Section or Relevant Part. # There is a subtle difference between "the obligation of the party … shall terminate" and "the obligation to effect … shall terminate" since the former can also mean to include obligation other than effecting the insurance. # { ~~(3) The insurances shall include:~~ ~~(a) a cross liability clause to the effect that the insurances shall cover the Employer, the Contractor, his sub-contractors and their sub-contractors of all tiers and suppliers as separate insured, and~~ ~~(b) a waiver of any right of subrogation which the insurers may have against any of the insured.~~} # Unlike the third party liability insurance, a cross liability clause and the corresponding waiver are not available in the usual Contractors' All Risks Insurance policies because they should not be applicable. The insured property is jointly owned by the joint-insureds. If it is damaged by one of the joint-insureds negligently, it is still covered. #	
Parties' obligations if loss or damage occurs **22.5** In the event of loss or damage to work, materials or goods caused by a peril covered by the Contractors' All Risks Insurance of the Works 《,》 the Contractor shall: (a) notify the Architect of the extent, nature and location of the loss or damage immediately upon discovering it; (b) follow all of the requirements in the insurance policy, prepare and submit the insurance claim and negotiate with the insurers to achieve a fair settlement; and (c) restore lost or damaged work, remove and dispose of any debris, repair or replace materials or goods which have been stolen, lost, destroyed or damaged, and proceed with carrying out the Works with due diligence and in accordance with the Contract immediately after any inspection required by the insurers has been carried out. # The Contractor shall carry on with the Works after inspection by the insurers while the Old Forms specify "upon acceptance of any claim under the insurances" which will be much later and is undesirable. #	

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Contractor's payment not more than insurance proceeds **22.6** The Contractor shall not be entitled to any payment in respect of the replacement, repair or restoration of the loss or damage and the removal and disposal of debris other than the amount received under the Contractors' All Risks Insurance of the Works {less the amount to cover professional fees} unless and to the extent that the loss or damage was caused or contributed to by a breach of contract or other default by the Employer or any person for whom the Employer is responsible. # This implies that the insurance compensation should be paid to the Employer first before being paid to the Contractor. In practice, the Employer would not bother to be involved for small claims and let the Contractor deal with the insurers directly. #	**20[A](2)** Upon acceptance of any claim under the insurances aforesaid the Main Contractor with due diligence shall restore work damaged replace or repair any unfixed materials or goods which have been destroyed or injured remove and dispose of any debris and proceed with the carrying out and completion of the Works. All monies received from such insurances (less only the aforesaid percentage) shall be paid to the Main Contractor by instalments under certificates of the Architect issued at the Period of Interim Certificates named in the appendix to these Conditions. The Main Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the monies received under the said insurances.
Insurance without prejudice to Contractor's obligations **22.7** The effecting and maintaining of Contractors' All Risks Insurance of the Works by either party is without prejudice to the Contractor's obligation for the care of the Works under clause 2.1. # This reinforces the principle that the insurance clause does not affect the liability clause which is clause 2.1. #	
{ Deductibles and exclusions **22.8** Any deductible or excess or exclusion included in the Contractors' All Risks Insurance of the Works shall be borne by the parties who would have been liable in the absence of the insurances in proportion to their contributing liabilities.}	
22A Insurance of the Works by the Contractor	
Contractor to effect Contractors' All Risks Insurance of the Works **22A.1** The Contractor shall effect and maintain Contractors' All Risks Insurance of the Works for the full reinstatement value of the Works and all other costs set out in clauses 22.2 and 22.3. # The full reinstatement value should at least cover the original Contract Sum inclusive of contingencies to cover the increase to the final Contract Sum, value of existing constructions, value of specialist works, value of materials and goods supplied by the Employer for incorporation into the Works, future inflation, etc. plus professional fee. #	

【SFBCwQ.2005】〖SFBCnQ.2006〗	SFBCwQ.1986(2ndAmend.July1999)
Insurer to be approved and remedy if Contractor fails to insure **22A.2** (1) The Contractors' All Risks Insurance of the Works shall be effected with insurers approved by the Architect. The Contractor shall deposit with the Architect evidence of cover prior to the commencement of the Works {or taking possession of the Site <alternatively: or entering the Site>} and produce the premium receipt and any relevant endorsements as soon as practicable afterwards, followed by a copy of the insurance policy as soon as it becomes available. # A properly signed cover note issued by the insurers would be an evidence of cover. # # If there is no evidence of cover, the Contractor should not be allowed to commence actual work on site. # (2) If the Contractor defaults in effecting or in maintaining the Contractors' All Risks Insurance of the Works, the Employer may effect and maintain it himself and recover the cost of the insurance premium from the Contractor in accordance with clause 40 or as a debt. # There is no mention of administrative charge. #	
Use of annual policy maintained by Contractor **22A.3** (1) If the Contractor maintains an annual policy of insurance which provides cover no less than that required under clause 22A.1, an endorsement attached to the annual policy naming the Works, the Employer, the Contractor, his sub-contractors and their respective sub-contractors of all tiers and suppliers shall be a discharge of the Contractor's obligations under clause 22A.1. (2) The Contractor shall produce the annual policy of insurance, premium receipt and the endorsement for inspection by the Architect prior to the commencement of the Works {or taking possession of the Site <alternatively: or entering the Site>} and the annual premium receipt within 14 days after each renewal date.	
22B Insurance of the Works by the Employer	
Employer to effect Contractors' All Risks Insurance of the Works **22B.1** The Employer shall effect and maintain Contractors' All Risks Insurance of the Works for the full reinstatement value of the Works and all other costs set out in clauses 22.2 and 22.3.	
Remedy if Employer fails to insure **22B.2** (1) The Employer shall provide evidence to the Contractor that the Contractors' All Risks Insurance of the Works under clause 22B.1 has been effected and is being maintained prior to the commencement of the Works {or the Contractor taking possession of the Site <alternatively: or the Contractor entering the Site>} and produce the premium receipt and any relevant endorsements as soon as practicable afterwards, followed by a copy of the insurance policy as soon as it becomes available. (2) If the Employer defaults in effecting or in maintaining the Contractors' All Risks Insurance of the Works, the Contractor may effect and maintain it himself and the cost of the insurance premium shall be added to the Contract Sum. # There is no mention of administrative charge. #	

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22C Insurance of existing building and insurance of the Works by the Employer	
Employer to effect insurance against Specified Perils to the existing building	**20[B]****[2]
22C.1 Where the Works are to be carried out to and/or within an existing building, the Employer shall effect and maintain a policy of insurance against the Specified Perils for the full cost of reinstatement, repair or replacement of loss or damage to that existing building which is to be extended or within which the Works are to be carried out together with its contents and all other costs set out in clauses 22.2 and 22.3. The insurance cover shall run from the Date for Possession of <alternatively: the Date for Entering> the Site stated in the Appendix until 14 days after the issue of the Substantial Completion Certificate for the Works or 14 days after the determination of the employment of the Contractor, whether valid or not, whichever is earlier. # Although this clause says "Where the Works are to be carried out to and/or within an existing building, the Employer shall effect and maintain …", this clause is only applicable if so declared in the Appendix to the Conditions of Contract. # # This arrangement is rarely used. If the existing building is under multiple ownership, and if the Employer is only one of the owners of the building, it would not be possible for him to insure for the whole building. This also applies if the Employer is the incorporated owners of the building, he would only be responsible for the common areas of the building. Although the common areas may have annual third party liability insurance and limited property damage insurance, the incorporated owners would not change the existing policies, which require low premia, to cover the Works to disturb the track record. This situation would also apply even if the building is under the sole ownership of the Employer. Therefore, the usual practice is to effect a Contractors' All Risks and Third Party Liability Insurance for the Works and endorse it to cover the existing building not for the full value but as Principal's properties for a limited amount of indemnity. #	**20[B]** The existing structures together with all the contents thereof owned by him or for which he is responsible and the Works and all unfixed materials and goods delivered to, placed on or adjacent to the Works and intended therefor (except temporary buildings, plant, tools and equipment owned or hired by the Main Contractor or any sub-contractor) shall be at the sole risk of the Employer as regards loss or damage by fire, lightning, explosion, storm, typhoon, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped therefrom, riot and civil commotion, and the Employer shall maintain adequate insurance against those risks**[3]. If the Employer shall at any time fail upon request to produce any receipt showing such a policy as aforesaid to be effective then the Main Contractor may in the name and on behalf of the Employer insure the existing structures together with the aforesaid contents; the Works and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies, and for that purpose shall have such right of entry and inspection as may be required to make a survey and inventory of the existing structures and the aforesaid contents and shall upon production of the receipt for any premium paid by him be entitled to have its amount added to the Contract Sum. If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then

**2 Clause 20[A] is applicable to the erection of a new building if the Main Contractor is required to insure against loss or damage by fire, etc; clause 20 [B] is applicable to alterations of or extensions to an existing building; therefore strike out clause [A] or [B] as the case may require.
**3 In some cases it may not be possible for the Employer to take out insurance against certain of the risks mentioned in this clause. This matter should be arranged between the parties at the tender stage and the clause amended accordingly.

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	(a) The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Main Contractor under or by virtue of this Contract. (b) (i) If it is just and equitable to do so the employment of the Main Contractor under this Contract may within *twenty-eight* days of the occurrence of such loss or damage be determined at the option of either party by notice by registered post, or recorded delivery from either party to the other. Within *seven* days of receiving such a notice (but not thereafter) either party may give to the other a written request to concur in the appointment of an arbitrator under clause 35 of these Conditions in order that it may be determined whether such determination will be just and equitable. (ii) Upon the giving or receiving by the Employer of such a notice of determination or, where a reference to arbitration is made as aforesaid, upon the arbitrator upholding the notice of determination, the provisions of sub-clause (2) (except sub-paragraph (vi) of paragraph (b)) of clause 26 of these Conditions shall apply. (c) If no notice of determination is served as aforesaid, or, where a reference to arbitration is made as aforesaid, if the arbitrator decides against the notice of determination, then (i) the Main Contractor with due diligence shall reinstate or make good such loss or damage, and proceed with the carrying out and completion of the Works;

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	(ii) the Architect may issue instructions requiring the Main Contractor to remove and dispose of any debris; and (iii) the reinstatement and making good of such loss or damage and (when required) the removal and disposal of debris shall be deemed to be a variation required by the Architect.
Employer to effect Contractors' All Risks Insurance of the Works **22C.2** The Employer shall effect and maintain Contractors' All Risks Insurance of the Works for the full reinstatement value of the Works in and/or to the existing building and all other costs set out in clauses 22.2 and 22.3.	
Remedy if Employer fails to insure **22C.3** (1) The Employer shall provide evidence to the Contractor that the insurances under clauses 22C.1 and 22C.2 have been effected and are being maintained prior to the commencement of the Works {or the Contractor taking possession of the Site <alternatively: or the Contractor entering the Site>} and produce the premium receipts and any relevant endorsements as soon as practicable afterwards, followed by a copy of each of the insurance policies as soon as they become available. (2) If the Employer defaults in effecting or in maintaining the insurances under clauses 22C.1 and/or 22C.2, the Contractor may effect and maintain them himself and the cost of the insurance premiums shall be added to the Contract Sum. # There is no mention of administrative charge. # (3) The Contractor shall be given the right of entry and inspection to carry out a survey and make an inventory of the existing building and its contents if the clause 22C.1 insurance is to be effected and maintained by the Contractor under clause 22C.3(2). # It can be seen that clauses 22A, 22B and 22C have a lot of common provisions. These clauses could have been combined to become more compact. #	
23 Possession, commencement and completion	**21 Possession, Completion and Postponement**
Possession of Site <alternatively: Entering the Site> **23.1** (1) The Employer shall give possession of the Site to <alternatively: give entry to the Site with sufficient work locations to commence work by> the Contractor on or before the Date for Possession of <alternatively: the Date for Entering> the Site stated in the Appendix. <add when alternative used: Exclusive possession of the Site is not to be given to the Contractor.>	**21(1)** On the Date for Possession stated in the appendix to these Conditions possession of the site shall be given to the Main Contractor who shall thereupon begin the Works and regularly and diligently proceed with the same, and who shall complete the same on or before the Date for Completion stated in the said appendix subject nevertheless

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	(2) Where the Contract provides for the Employer to give possession of <alternatively: give entry to> the Site to the Contractor in two or more parts on the dates stated in the Appendix, the Employer shall give possession of <alternatively: give entry to> the Site to the Contractor in parts on or before those dates. # This permits pre-determined phased possession of the Site. The Old Forms do not have such a choice unless by way of special amendment. #		to the provisions for extension of time contained in clauses 23 and 33(1)(c) of these Conditions.
	Commencement and completion		
23.2	The Contractor shall commence the Works on the Commencement Date stated in the Appendix or when instructed to do so by the Architect, proceed regularly and diligently with the Works and complete the Works, and, where sectional completion is provided for in the Contract, any Section on or before the Completion Date of the Works or that Section stated in the Appendix. # As commented at clause 1.6, the introduction of the term "Commencement Date" causes problem. #		
	Postponement or suspension		
23.3	The Architect may issue instructions regarding: (a) the postponement of the Date for Possession of <alternatively: the Date for Entering> the Site or a part of the Site; (b) the postponement of the Commencement Date of the whole or a part of the Works; or (c) the postponement or suspension of the whole or a part of the Works. # The definition of "postponement" has been clarified to cover postponement of possession, of commencement and during construction. The Old Forms use "postponement of any work to be executed" which may be argued to exclude postponement of giving possession of the Site. #	**21(2)**	The Architect may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract.
24	**Damages for non-completion**	**22**	**Damages for Non-completion**
	Architect to certify Contractor's failure to complete on time		
24.1	(1) If the Contractor fails to complete the Works or a Section by the Completion Date, the Architect shall issue a certificate to that effect confirming that all claims for extensions of time have been addressed in accordance with clause 25 and stating the date by which the Works or Section ought to have been completed. # The Old Forms do not specifically require that all claims for extensions of time have been addressed. # # The certificate is usually called "Certificate of Non-Completion", though this term has not been mentioned in the Old Forms and the New Forms. # (2) If a new Completion Date is fixed after the issue of the certificate referred to in clause 24.1(1), the fixing of the new Completion Date shall cancel that certificate and the Architect shall, if appropriate, issue another certificate to correspond to the new Completion Date.	**22**	If the Main Contractor fails to complete the Works by the Date for Completion stated in the appendix to these Conditions or within any extended time fixed under clause 23 or clause 33(1)(c) of these Conditions and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Main Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said appendix as Liquidated and Ascertained Damages for the period during which the Works shall so remain or have remained incomplete, and the

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	Employer may deduct such sum from any monies due or to become due to the Main Contractor under this Contract.
Liquidated and ascertained damages **24.2** (1) If the Architect issues a certificate under clause 24.1(1), the Contractor shall, if required to do so by a notice from the Employer, pay or allow to the Employer liquidated and ascertained damages at the rate per day referred to in clause 24.2(3) for the period between the Completion Date and the Date of Substantial Completion. # A notice from the Employer is required before liquidated and ascertained damages can be imposed. # # Clause 32.2(4)(c) permits the deduction from the gross valuation of Interim Certificate any other amount which is required by the Contract to be deducted from the Contract Sum. This clause 24.2(1) does not require the liquidated and ascertained damages to be deducted from the Contract Sum. Therefore, liquidated and ascertained damages should not be deducted from Interim Certificates, but should be handled separately. Government General Conditions of Contract expressly permit the deduction from payment certificates. # # The "period between" means (Date of Substantial Completion – Completion Date), i.e. the period of culpable delay. # (2) The Employer's notice under clause 24.2(1) shall not be given either before the certificate under clause 24.1(1) is issued or after the Final Certificate is issued. # It is therefore important that the notice should be issued before the Final Certificate is issued. Clause 32.8(4) permits the deduction from the balance of payment under the Final Certificate all deductions authorised by the Contract or authorised by law to be set off. # # Clause 32.7 dealing with the computation of the Final Contract Sum does not mention the deduction of liquidated and ascertained damages from the Final Contract Sum. However, if the Final Contract Sum is mutually agreed, there is no reason why the deduction of liquidated and ascertained damages cannot be made from the Final Contract Sum and reflected in the final account so that the Final Contract Sum represents the final total amount payable to the Contractor. # (3) The rate per day of liquidated and ascertained damages for the Works or a Section shall be as stated in the Appendix and adjusted in accordance with clause 18.4 in regard to the completion of any Relevant Part. # The rate of liquidated and ascertained damages should be a genuine pre-estimate at the time of tendering of the loss suffered by the Employer due to delayed completion of the Works or a Section. It would amount to a penalty which would not be enforceable if the rate is set higher than the genuine pre-estimate. It would still be applicable if the eventual actual loss is higher or lower than the genuine pre-estimate. The losses which can be considered are: loss of interest on capital invested without return, additional supervision charges, loss of profit (sales or rentals less expenditure) which can be generated after completion of the Works, additional expense to use alternative accommodation in the absence of the completed Works, etc. #	

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(4) The Employer may recover the liquidated and ascertained damages from the Contractor under clause 40 or as a debt. # The Employer can made deductions when honouring Interim Certificates and Final Certificate provided prior notices have been properly given. #	
Refund if Completion Date revised **24.3** If the Architect fixes a later Completion Date under clause 25.3, the Employer shall refund to the Contractor the amount of liquidated and ascertained damages paid or allowed to the Employer under clause 24.2 for the period from the original Completion Date up to the later Completion Date plus interest at 1% below the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter A, Laws of Hong Kong) within 28 days of the Architect fixing the later Completion Date. # This is an improvement over the Old Forms by expressly specifying refund and interest. #	
25 Extension of time	**23 Extension of Time**
Contractor's first notice of delay **25.1** (1) As soon as practicable but in any case within 28 <alternatively: 14 for short contract period> days of the commencement of an event likely to cause delay to the completion of the Works or a Section beyond the Completion Date becoming apparent, the Contractor shall give notice (referred to in {~~Cc~~}lause 25 as the "first notice") to the Architect. # Notice should be given for any event likely to cause delay, not just events entitling to extension of time. # # The benchmark date to measure delay is the (currently extended) Completion Date, not the realistic completion date which may be later or earlier. # (2) The first notice shall: (a) state the likelihood and estimated length of the delay beyond the Completion Date; # More properly, the length of the delaying event itself and the length of the delay caused to the Completion Date should be stated, because there may be float time to use. # # Again, the benchmark date to measure delay is the (currently extended) Completion Date, not the realistic completion date. # (b) set out the material circumstances including the cause of the delay; and (c) state if the Contractor considers that he is or may become entitled to an extension of time due to the effects of an event listed in clause 25.1(3) (referred to in clause 25 as a "listed event") and if so identify which of the listed events he believes to be the cause of the delay. # The UK JCT Forms of Contract call "listed event" as "relevant event". The United States contracts call it "excusable event". #	**23** Upon it becoming reasonably apparent that the progress of the Works is delayed, the Main Contractor shall forthwith give written notice of the cause of the delay to the Architect, and if in the opinion of the Architect the completion of the Works is likely to be or has been delayed beyond the Date for Completion stated in the appendix to these Conditions or beyond any extended time previously fixed under either this clause or clause 33(1)(c) of these Conditions,

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(3) The listed events are as follows: # By a legal rule of construction “expressio unius est exclusio alterius” (the express mention of one thing excludes all others), a list of events will exclude events not listed. Events not listed will not be entitled to extension of time. # “Neutral event” means an event caused not by the Employer or the Contractor. Neutral events are entitled to extension of time only if so stated, but there will be no financial compensation. Except as aforesaid, the Contractor has to take the risks of encountering neutral events. However, if by reason of a Variation or a listed event or an event caused by the Employer or any person for whom the Employer is responsible, the Contractor has encountered a greater extent of the neutral events, the valuation of the Variation or the assessment of the extension of time for the listed event should take into account the additional cost and time caused by the increased extent of the neutral events. A typical example would be that extension of time should be further granted for days of inclement weather occurring during the period of extension to compensate the working days lost even though the listed event (b) has been deleted. #	
(a) force majeure; # Neutral event. #	**23…** (a) by *force majeure*, or
(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 {~~its~~ their} consequences adversely affecting the progress of the Works <alternatively: delete this item entirely except for projects susceptible to weather>; # Neutral event. # # “nearest to the Site” is introduced to the New Forms. # # “consequences” is intended to mean those caused by the inclement weather conditions but happening after the time of the inclement weather conditions, e.g. floods, landslides, etc. # # “adversely affecting the progress of the Works” should be applicable to all listed events. # (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} <alternatively: delete this item entirely except for projects susceptible to weather>; # Neutral event. # # Theoretically, the full effect including the after-effects should be taken into consideration. However, since (b) mentions “consequences” while (c) does not, the suggested additional phrase is to avoid different interpretations caused by the presence and the absence of the word “consequences”. #	**23…** (b) by reason of inclement weather or the subsequent effects of such inclement weather; for the purpose of this sub-clause 'inclement weather' is defined as rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded at the Royal Observatory or the hoisting of Typhoon Signal No. 8 or higher, or

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(d) the Excepted Risks {excluding item (c) of the definition of Excepted Risks in clause 1.6)}; # Neutral event. # # "Excepted Risks" is introduced to the New Forms. Item (c) of the Excepted Risks refers to "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". This would overlap with most of the listed events, is too wide in scope and should therefore be excluded here to avoid the overlap. #	**23…** (d) by reason of civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
(e) loss or damage caused by a Specified Peril {excluding storm and tropical cyclone}; # Neutral event. # # Storm and tropical cyclone are part of the Specified Perils but this would overlap with listed events (b) and (c). Exclusion is therefore suggested. #	**23…** (c) by reason of loss or damage occasioned by any one or more of the contingencies referred to in clause 20[A] or [B] of these Conditions, or
(f) an Architect's instruction under clause 2.4 to resolve an ambiguity, discrepancy in or divergence between the documents listed in that clause;	**23…** (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or
(g) an Architect's instruction under clause 8.2 requiring the opening up for inspection of work covered up or the testing of materials, goods or work and the consequential making good where the cost of that opening up, testing and making good is required by that clause to be added to the Contract Sum; # "where" = "provided". If the cost is not required by clause 8.2(3) to be added to the Contract Sum, it means that the opening up, testing and making good are the Contractor's responsibility without extension of time entitlement. #	**23…** (i) by reason of the opening up for inspection of any work covered up or of the testing of any of the work, materials or goods in accordance with clause 6(3) of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract, or
(h) an Architect's instruction under clause 13.1 requiring a Variation; # There is only one place in the Conditions of Contract mentioning "deemed to be a Variation". It is at clause 14.3(1) regarding error in or omission from the Contract Bills. It is unlikely that deemed Variation will have extension of time entitlement. #	**23…** (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or
(i) an Architect's instruction under clause 13.2 resulting in an increase in the work to be carried out of sufficient magnitude to cause delay, provided that the variance was not apparent from the Contract Drawings; # Newly introduced to the New Forms, but note the proviso which is important. #	
(j) an Architect's instruction under clause 23.3 regarding: (i) the postponement of the Date for Possession of <alternatively: the Date for Entering> the Site or part of the Site; (ii) the postponement of the Commencement Date of the whole or a part of the Works; or	**23…** (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or

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(iii) the postponement or suspension of the whole or a part of the Works, unless: • notice of the postponement or suspension is given in the Contract; or • the postponement or suspension was caused by a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible; # Expanded definition to tie in with clause 23.3. #	
(k) compliance with clause 34.1 or with an Architect's instruction under clause 34.2 requiring the Contractor to permit the examination, excavation or removal by a third party of an object of antiquity found on the Site;	**23…** (k) by reason of compliance with the provisions of clause 34 of these Conditions or with Architect's instructions issued thereunder,
(l) late instructions from the Architect, including those to expend a Prime Cost Sum or a Provisional Sum, or the late issue of the drawings, details, descriptive schedules or other similar documents referred to in clause 5.6 except to the extent that the Contractor failed to comply with clause 5.7(2); # Clause 5.7(2) requires the Contractor to request for information sufficiently in advance. #	**23…** (f) by reason of the Main Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause or clause 33(1)(c) of these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
(m) delay caused by a delay on the part of a Nominated Sub-Contractor or Nominated Supplier in respect of an event for which the Nominated Sub-Contractor or Nominated Supplier is entitled to an extension of time under the sub-contract or supply contract {except for events due to an act of prevention, a breach of contract or other default of the Contractor or any person for whom the Contractor is responsible}; # The change from "by delay on the part of" in the Old Forms to "delay caused by a delay on the part of" is intended to emphasise that it is the critical delay which matters. # # The Old Forms have been criticised that any delay on the part of (due to) Nominated Sub-Contractors or Nominated Suppliers can lead to extension of time to the Main Contract. The New Forms try to remedy this by specifying that the delay would be restricted to those entitling to an extension of time under the sub-contract or supply contract." # # Strictly speaking, if a Nominated Sub-Contractor is entitled to extension of time, there would be no delay on his part. More correctly, it is a delay to the Sub-Contract Works' progress or completion. #	**23…** (g) by delay on the part of Nominated Sub-Contractors or Nominated Suppliers which the Main Contractor has taken all practicable steps to avoid or reduce, or

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# The suggested exception is important because the sub-contract or supply contract would permit extension of time for the Contractor's fault. Without the exception, a Contractor's fault would entitle the Sub-Contractor and Supplier to extension of time under the sub-contract or supply contract which in turn would entitle the Contractor himself to extension of time under the Main Contract. # # Not really a neutral event. Presumably there is a possibility for financial compensation, but this is not a qualifying event under clause 27. However, if the sub-contract or supply contract permits extension of time, except for those due to the Contractor's fault, it is likely that the same ground is a listed event here. There is a possibility for financial compensation if that listed event is also a qualifying event under clause 27. #	
(n) delay caused by a sub-contractor or supplier nominated by the Architect under clause 29.2(6) despite the Contractor's valid objection, subject to clause 29.2(7); # Newly introduced to the New Forms. Clause 29.2(7) specifies the detailed conditions. #	
(o) delay caused by the nomination of a replacement Nominated Sub-Contractor or Nominated Supplier under clause 29.13 including any prolongation of the period of the relevant sub-contract or the time for the supply and delivery of materials and goods, provided that the determination of the employment of the original Nominated Sub-Contractor or the termination of the original Nominated Supply Contract was not in the opinion of the Architect a consequence of a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible; # Newly introduced to the New Forms to reflect the legal development that delay in re-nomination and the subsequent longer time to complete should not be the Contractor's responsibility. # # Though not really a neutral event, no financial compensation under clause 27. #	
(p) delay caused by a Specialist Contractor;	**23…** (h) by delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
(q) delay caused by a statutory undertaker or utility company referred to in clause 6(4)(1) 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 and to carry out and complete its work on time; # Newly introduced to the New Forms to distinguish them from Specialist Contractors. # # Neutral event after the distinction. #	
(r) the failure of the Employer to supply or supply on time materials, goods, plant or equipment that he agreed to provide for the Works; # Newly introduced to the New Forms. #	

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(s) the failure of the Employer to give possession of the Site <alternatively: give entry to the Site> or, under clause 23.1(2), a part of the Site on the Date for Possession of <alternatively: the Date for Entering> the Site or the part of the Site stated in the Appendix, or the Employer subsequently depriving the Contractor of the whole or a part of the Site; # Newly introduced to the New Forms. There is some overlap with listed event (j)(i). #	
(t) unreasonable delay by a Government department in giving an approval or a consent which causes delay to the Works; # Neutral event. # # Newly introduced to the New Forms. # # Not a qualifying event under clause 27 to have financial compensation. However, if the delay affects the issue of the Architect's drawings, then it may be treated as part of the late issue of information by the Architect under listed event (l) which is also a qualifying event under clause 27. Therefore, this listed event essentially relates to approvals and consents which the Contractor is responsible to obtain. #	
(u) a special circumstance considered by the Architect as sufficient grounds to fairly entitle the Contractor to an extension of time; and # Newly introduced to the New Forms. # # Restricted to neutral event only, when listed event (v) exists and covers those caused by the Employer. No financial compensation. #	
(v) an act of prevention, a breach of contract or other default by the Employer or any person for whom the Employer is responsible. # Newly introduced to the New Forms. #	
# The optional extension of time provisions for the inability to secure labour, goods and materials in the Old Forms have been deleted. #	**23…** (j) **(i) by the Main Contractor 's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to secure such labour as is essential to the proper carrying out of the Works, or **(ii) by the Main Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to secure such goods and/or materials as are essential to the proper carrying out of the Works, or

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	▼… ** This sub-clause shall be deemed to be part of the Contract only if specifically so stated in the Contract Bills.
(4) The Contractor shall: (a) continuously use his best endeavours to prevent or mitigate delay to the progress of the Works, however caused, and to prevent the completion of the Works being delayed or further delayed beyond the Completion Date, provided that the words "best endeavours" shall not be construed to mean that the Contractor is obliged to spend additional money, without reimbursement under clause 26, to accelerate the carrying out of the Works to recover delay that the Contractor did not cause; and # This clarifies that the Contractor is not obliged to accelerate at extra costs to catch up delays not caused by him. Compare with clause 25.5. # (b) do all that may reasonably be required to the Architect's satisfaction to proceed with the Works.	
Contractor's second notice **25.2** The Contractor shall, as soon as practicable but in any case within {~~28~~ 14} days of giving the first notice, submit a second notice (referred to in clause 25 as the 'second notice') to the Architect giving: (a) substantiation that the listed event is the cause of the delay; and (b) particulars of the cause, effect and predictable length of the delay to the completion of the Works or a Section beyond the Completion Date in sufficient detail to enable the Architect to make a decision under clause 25.3(1); or, where the listed event has a continuing effect the Contractor shall: (c) give the Architect a statement to that effect together with: (i) substantiation that the listed event is the cause of the delay; and (ii) interim particulars including details of the cause and effect and an estimate of the length of the delay to the completion of the Works or a Section beyond the Completion Date; (d) make further submissions to the Architect at intervals not exceeding {~~28~~ 14} days giving further interim particulars and estimates of the length of the delay until it becomes possible to predict the length of the delay with reasonable accuracy; and (e) within 14 days after the delay can be predicted with reasonable accuracy, submit to the Architect final particulars of the cause, effect and predictable length of the delay to the Works or a Section beyond the Completion Date in sufficient detail to enable the Architect to make a decision under clause 25.3(1).	

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Fixing new Completion Date **25.3** (1) After receipt of the Contractor's {first or} second notice the Architect shall give an extension of time to the Contractor by fixing a later Completion Date if he is satisfied that the completion of the Works or a Section is being or is likely to be delayed beyond the Completion Date by the listed event stated by the Contractor in his first and{/or} second notices to be the cause of the delay. (2) The Architect shall give the extension of time, and the reasons for his decision as soon as practicable but in any case within {~~60~~ 28} days after the receipt of the particulars submitted with the second notice under clause 25.2. (3) If, after receiving the first and second notices, the Architect decides not to fix a later date as a new Completion Date: (a) the Architect shall notify the Contractor of this, giving the reasons for his decision, as soon as practicable but in any case within {~~60~~ 28} days of receipt of the particulars submitted with the second notice under clause 25.2; and (b) the Architect may revise his decision and fix a later date as the new Completion Date if the Contractor provides further and better particulars within 28 days of the Architect's notification under clause 25.3(3)(a). (4) If the Contractor fails to submit the notices within the time frame prescribed under clause 25.1 or clause 25.2 but a first notice is nevertheless submitted, the Architect shall, if he is satisfied that the completion of the Works or a Section has been delayed by the listed event stated in the Contractor's first notice, give an extension of time to the Contractor under clause 25.3 to the extent that he is able to on the information available. # Clause 25.1 refers to the first notice. However, this sub-clause is applicable when the time frame prescribed under clause 25.1 has not been met. It would appear that "a first notice" mentioned here refers not to the first notice under clause 25.1, but to any first notice submitted at any time after the time frame. # (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. #	**23…** …▼ then the Architect shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for completion of the Works. Provided always that the Main Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the Works.

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(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 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. #	

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# 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. #	
Contractor's default involved in the delay **25.4** Where and to the extent that a listed event resulting in delay to the completion of the Works or a Section beyond the Completion Date was, in the Architect's opinion, contributed to, or aggravated by a breach of contract or other default by the Contractor or any person for whom the Contractor is responsible, the Architect shall take the effects of that contribution or aggravation into account in fixing the new Completion Date. # This clause is not talking about the Contractor's concurrent delay such. It is talking about the Contractor's contribution to the extent of the delay caused by a listed event. #	
Rate of progress **25.5** (1) If, in the Architect's opinion, the rate of progress of the Works is, at any time, too slow to ensure that the Works will be completed by the Completion Date for any reason which does not entitle the Contractor to an extension of time under clause 25.3, the Architect may notify the Contractor accordingly. (2) After receiving the Architect's notification 《,》 the Contractor may, at his own discretion and with no entitlement to receive additional payment, take the measures that he considers necessary to expedite the progress to complete the Works by the Completion Date. # The Contractor is obliged to accelerate at his own costs to catch up his own delays. Compare with clause 25.1(4). #	

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Nominated Sub-Contractors and Suppliers to be kept informed **25.6** (1) Where the first notice includes a reference to work carried out by a Nominated Sub-Contractor or materials or goods supplied by a Nominated Supplier, the Contractor shall give a copy of the first and second notices to the Nominated Sub-Contractor or Nominated Supplier. (2) The Architect shall notify each Nominated Sub-Contractor and Nominated Supplier of any new Completion Date fixed under clause 25.3. # This is important so as not to keep the Nominated Sub-Contractors and Suppliers in the dark. #	