

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

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舊稿

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

- a. 在以下情況下，上家承包商可在給予分包商◁天書面通知後，終止僱用分包商：
 - i. 分包商持續違反合同條文；
 - ii. 分包商未有按上家承包商的書面指示，有效及持續履行合同責任；
 - iii. 分包商無力償還債務；或
 - iv. 分包商干犯刑事罪行。
- b. 若分包商破產，分包商的僱用即時終止。
- c. 上家承包商終止僱用分包商後，分包商必須撤出工地。上家承包商並可：
 - i. 另聘他人承辦餘下工程；
 - ii. 扣押分包商帶進工地的一切機械和物料，以待確認價值並償予上家承包商；
 - iii. 扣除代分包商僱用他人承辦餘下工程的款項後，餘款發予分包商；
 - iv. 扣除款項後發現有不敷之數，向分包商進行追討；以及
 - v. 經法律途徑追索。

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

- a. 在以下情況下，分包商可發出書面通知，終止其受僱：
 - i. 上家承包商無限期暫停施工；
 - ii. 上家承包商延期施工超逾協議特定事項說明的期限；
 - iii. 上家承包商在施工方面未有支援分包商；或
 - iv. 上家承包商未有合理原因而不按合同規定支付工程款項予分包商。
- b. 若上家承包商破產，分包商的僱用即時終止。
- c. 分包商在合同終止後，可就因此而蒙受的損失向上家承包商索償。分包商必須以書面提出申索，並提供所需理據及詳情。賠償款額必須經雙方議定，當中可包括：
 - i. 分包商所完成工程的款額；及
 - ii. 終止合同所引致的損失。

11.3 Termination by Ultimate Project Client or Upper-tier Contractors 最終項目委托方或再上層承包商的終止

- a. 如最終項目委托方或再上層承包商終止與上家承包商簽訂的承包合同，則本分包合同必須予以終止。若終止合同並非因為分包商犯錯而引致，則分包商已完成的工程，將會按合同單價支付工程款項。
- b. 接到最終項目委托方或再上層承包商的終止合同通知後，上家承包商必須在協議特定事項說明的期限內通知分包商。

新稿

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

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

- (a) the Sub-Contractor without reasonable cause fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects) or completely or substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects) before substantial completion of the whole of the Sub-Contract Works;
- (b) the Sub-Contractor without reasonable cause fails persistently to rectify defects after substantial completion of the whole of the Sub-Contract Works and the Client-Contractor pursuant to Clause 7.6.3 employs others to rectify the defects for 5 times or more and the total cost of rectifying defects exceeds \$100,000;
- (c) the Sub-Contractor without the written consent of the Client-Contractor assigns this Sub-Contract;
- (d) the Sub-Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented or made against him or enters into compulsory or voluntary liquidation except for the purpose of reconstruction or has a provisional liquidator or receiver appointed, unless the Client-Contractor, the Sub-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment; or
- (e) the Sub-Contractor (or any person for whom the Sub-Contractor is responsible with or without the knowledge of the Sub-Contractor) is convicted of a bribery offence described in Clause 9.13.1.

Provided that the employment of the Sub-Contractor shall not be determined due to Clauses 11.1.1(a) to (c) unless the event either has continued for 7 days after receipt by registered post or recorded delivery of a warning notice of determination from the Client-Contractor specifying such event or at any time thereafter has repeated, and the Client-Contractor has certified during the continuation or resumption of the event not more than 14 days before the notice of determination.

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

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

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

- (a) the Client-Contractor fails to make any payment due under this Sub-Contract within 14 days of such payment being due;
- (b) the commencement or carrying out of the whole or substantially the whole of the Sub-Contract Works has been postponed or suspended as instructed by the Client-Contractor or the Client-

Contractor due to no breach or default of the Sub-Contractor or postponed or suspended due to any combination of the Compensable Events for a continuous period of more than 3 months beyond any stipulated periods of postponement or suspension in this Sub-Contract; or

(c) the Client-Contractor becomes bankrupt or makes a composition or arrangement with his creditors or has a petition for compulsory winding-up presented or made against him or enters into compulsory or voluntary liquidation except for the purpose of reconstruction or has a provisional liquidator or receiver appointed, unless the Sub-Contractor, the Client-Contractor and his trustee in bankruptcy, liquidator or receiver, as the case may be, agree in writing before or after the notice of determination to the continuation or reinstatement of the Sub-Contractor's employment.

Provided that the employment of the Sub-Contractor shall not be determined due to Clauses 11.2.1(a) to (b) unless the event has continued for 14 days after receipt by registered post or recorded delivery of a warning notice of determination from the Sub-Contractor specifying such event or, except for sub-clause (b), at any time thereafter has repeated, and the notice of determination is issued during the continuation or resumption of the event.

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

11.3 Termination by Ultimate Project Client or Upper-tier Contractors 最終項目委托方或再上層承包商的終止

11.4 Consequences of determination 終止僱用的後果

11.4.1 In the event of determination of the employment of the Sub-Contractor as Clause 11.1 or 11.2, this Clause 11.4 shall apply.

11.4.2 The Sub-Contractor shall immediately give up any possession of the Site and demobilize his people from the Site except those necessary to attend to site security, site survey and handover but only for the time specified by the Client-Contractor as being reasonably required for that purpose.

11.4.3 In case of determination by the Client-Contractor, the Sub-Contractor shall not without the consent of the Client-Contractor remove from the Site any materials, plant and facilities.

11.4.4 In case of determination by the Sub-Contractor, the Sub-Contractor may after informing the Client-Contractor remove from the Site any materials, plant and facilities.

11.4.5 Any removal by the Sub-Contractor of materials, plant and facilities shall be carried out with due care and with suitable safety provisions provided so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.

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

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

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

11.4.9 If instructed to do so by the Client-Contractor, the Sub-Contractor shall, without payment from the Client-Contractor, terminate or assign as far as possible the contracts with his suppliers and sub-sub-contractors to enable the Client-Contractor or other persons appointed by the Client-Contractor to employ and pay the suppliers and sub-sub-contractors to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.

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

11.4.11 In case of determination by the Client-Contractor, the balance of payment from one Contract Party to the other shall be computed by calculating the expenses at sub-clause (a) below and then making the deductions or additions at sub-clauses (b) to (d) below:

- (a) the expenses incurred by the Client-Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination, but including the additional costs of employment of consultants and site staff for the necessary time until the settlement of the final payment under this Sub-Contract;
- (b) addition for the total amount previously paid to the Sub-Contractor;
- (c) addition for the additional costs and direct loss and/or expense caused to the Client-Contractor by the determination, including damages for delayed completion of any Sub-Contract Works Section for the period until the original completion date of the contract for completion; and
- (d) deduction for the total amount that would have been payable for completing the Sub-Contract Works calculated in accordance with this Sub-Contract if the determination had not occurred.

11.4.12 If the Client-Contractor does not employ other persons to commence the Sub-Contract Works left outstanding within 6 months after determination, the expenses, costs, direct loss and/or expense, and period of delay for the purpose of Clause 11.3.11 shall be assessed on the assumption that the employment had commenced by the end of the said 6 months.

11.4.13 In case of determination by the Sub-Contractor, the balance of payment from one Contract Party to the other shall be computed by calculating the gross valuation at sub-clause (a) below and then making the deductions or additions at sub-clauses (b) to (d) below:

- (a) the gross valuation of the Sub-Contract Works in accordance with Clause 6.16.4(a), excluding materials removed by the Sub-Contractor after determination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has or will transfer these materials with proper ownership to the Client-Contractor;
- (b) deduction for liquidated damages which may accrue up to the date of determination;
- (c) addition for the additional costs and direct loss and/or expense caused to the Client-Contractor by the determination; and
- (d) deduction for the total amount previously paid to the Sub-Contractor.

11.4.14 The Client-Contractor and the Sub-Contractor shall as soon as practicable exchange their computations of the balance of payment in Clause 11.4.11 or Clause 11.4.13 with supporting documentation, discuss and agree the balance of payment. Upon agreement, the Client-Contractor shall issue a Final Account (in lieu of that under Clause 6.17) showing a summary computation of the balance of payment. If the Client-Contractor considers that he has taken into account all the representation of the Sub-Contractor but still fails to obtain the Sub-Contractor's agreement, he may issue his an unilateral Final Account to the Sub-Contractor and declare it as such.

11.4.15 The Client-Contractor shall issue the Final Certificate (in lieu of that under Clause 6.18.1) certifying the balance of payment due to the Sub-Contractor or due to the Client-Contractor as the case may be within 14 days after the agreement of the Final Account or after 1 month has lapsed after the issue of the unilateral Final Account, whichever is later. The amount stated as due in the Final Certificate shall be a debt payable as the case may be by the Client-Contractor to the Sub-Contractor or by the Sub-Contractor to the Client-Contractor within the Period for Honouring Payment stated in the Sub-Contract Agreement calculated from the date of the Final Certificate, and Clause 6.18.2 shall still apply, unless either of the Contract Parties has expressed his disagreement to the Final Certificate and notified the other party no later than the due date for payment to resolve the dispute in accordance with Clause 12.

11.4.16 Before the agreement of the Final Account, the liable Contract Party shall pay the undisputed portion of the up-to-date balance of payment once every 2 months.

終止: (last edited 2011-05-19 14:20:15 by KCTang)