

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. 保險及約保證	11. 終止	12. 爭議解決	附件
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9. GENERAL OBLIGATIONS 一般責任

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舊稿

9.1 Statutory obligations 法定責任

- a. 強積金法例文件、勞工法例文件及僱員補償保險文件全文，均存於總承包商辦公室，並可透過預約安排供分包商省覽。
- b. 分包商須瞭解並確認其於合約中所承擔的義務、工作和責任，並不會因上述之安排有任何影響或增減。總承建商於遵從及執行香港特別行政區有關之法例時，不論是建築物條例、勞工法例、工業安全條例、強制性公積金計劃條例等等，分包商亦需有義務及責任共同遵守及執行。

9.4 Care of Works 工程的保護

- a. 分包商必須負責轄下各項已完成工程的保護工作。

9.6 Provision of all things necessary 提供一切必需的

- a. 分包商須依照總承包商/上家承包商所提供的文件及圖則，完成本分包工程。分包商的工作包括工地管理及安全監管。分包商須負責一切工具、器材以至配套用品等。上家承包商與總承包商所簽訂的合同內所有規條，分包商亦必須遵守，分包商可於辦公時間內約見上家承包商，以安排查閱合同內容。

9.7 Labour and site management team 人力及現場管理班子

- a. 分包商與上家承包商簽訂分包合同後，必須立即安排人手負責工地管理，並將駐工地代表的個人資料呈交上家承包商參考。未得上家承包商同意，經核准的駐工地代表不得更換。
- b. 如分包商或其駐工地代表缺席工地例會，並且沒有合理原因，上家承包商可收取行政費用，每人每次缺席須支付協議特定事項說明的金額。
- c. 分包商必須聘用可合法在港工作的員工施工。如發現分包商聘用非法勞工進行任何形式的工作，上家承包商可向警方舉報。分包商必須承擔因此引發的一切法律責任。同時，上家承包商保留一切循法律途徑追究的權利。

9.8 Payment management to employees of all tiers 各層僱員的付款管理

- a. 分包商的駐工地代表必須每天向上家承包商遞交工地的工人數目、工人名單及施工進度表。
- b. 分包商必須妥善保存工人的出勤及發薪記錄，以及每日出勤人數，於每月月底提交給上家承包商整理，以及呈交有關部門、最終項目委托方及總承包商。
- c. 分包商必須為本身及所僱用的工人，按法例規定按時繳納強積金供款，並在上家承包商要求時提交有關記錄。

9.9 Temporary site facilities 現場臨時設施

- a. 上家承包商將提供平水墨線、通道照明、水電接駁位置、照明工具。
- b. 工作台由分包商負責搭建及拆卸。
- c. 合同單價已包括一切現場搬運及現場開料費用，分包商不得藉詞材料搬運路程過遠及開料過難，而索取額外款項。
- d. 分包商可採用總承包商所提供的設備把材料送進工地，並且必須依照工地人員的指示安排運送材料的時間。
- e. 分包商帶進工地的所有物料及機械，必須詳列清單，並即日交予上家承包商核對存錄，作為日後撤出工地時的擁有權憑證。如清單有所更改，分包商必須於同日通知上家承包商。

9.11 Cleanliness and tidiness 清潔及整齊

- a. 分包商必須負責轄下各項已完成工程的清潔及保護工作。
- b. 本分包工程所產生的廢料，全部均必須由分包商裝妥，並搬運至總承包商指定的地點，由總承包商運離工地。尼龍袋由分包商提供。

9.13 Safety measures 安全措施

- a. 分包商必須按《職業安全及健康條例》、《工廠及工業經營條例》、以及兩條法例的所有附屬法例，聘用合資格人員施工。同時，分包商必須督導、訓練及監察其員工，確保遵守工地安全規定。
- b. 分包商必須按相關法例和總承包商及上家承包商的規定，參與各項工地安全訓練及會議。
- c. 分包商須自行訂立符合法例要求的安全計劃書，並在上家承包商要求時呈交上家承包商。
- d. 分包商的員工若違反工地安全法例或最終項目委托方、總承包商或上家承包商所訂立的安全規定，則分包商必須就相關的後果承擔一切責任，包括民事和刑事責

任，以及最終項目委托方、總承包商及上家承包商收取的行政費用。上家承包商可在付予分包商的任何款項扣減有關費用，分包商不得異議。

- e. 分包商必須按法例及最終項目委托方、總承包商和上家承包商的規定，自費採購本身及屬下員工所需的一切個人防護安全設備及工具，並更新和提升有關設備及工具。

9.14 Environmental protection measures 環保措施

- a. 分包商必須按現行及日後法例以及最終項目委托方、總承包商和上家承包商所訂明的環保規定施工。

新稿

9.1 Statutory obligations 法定責任

9.1.1 The Sub-Contractor shall comply with, give all notices and make all applications required by, any ordinance, regulation, rule or order of the Government or statutory undertakers or utility companies (not falling within the meaning of Specialist Sub-Contractors) applicable to the Sub-Contract Works and shall pay any fees, charges or taxes legally demandable except for those fees, charges or taxes for which the Client-Contractor is legally responsible.

9.1.2 If either of the Contract Parties discharges the liability of the other party in regard to payment of fees, charges or taxes, then the amount paid plus 10% for administrative charges shall become money recoverable from the party liable for such fees, charges or taxes by the other party, without further adjustment to the prices allowed in this Sub-Contract for the like liability.

9.1.3 If the Sub-Contractor considers that a change to the Sub-Contract Works is necessary to comply with any statutory requirement, he shall give a written notice specifying the change to the Client-Contractor. If the Sub-Contractor does not receive any instructions from the Client-Contractor within 7 days of having given such a written notice, he shall proceed with the change, which shall be deemed to be a Variation.

9.2 Intellectual property 知識產權

The prices for all work shall be deemed to include for 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 Sub-Contractor is responsible, materials, plant, methods or anything whatsoever used in carrying out the Sub-Contract Works. The Sub-Contractor shall indemnify the Client-Contractor against any claim involving an infringement or alleged infringement of intellectual property rights.

9.3 Assignment 轉讓

The Sub-Contractor shall not assign this Sub-Contract without the written consent of the Client-Contractor.

9.4 Care of Works 工程的保護

The Sub-Contractor shall take responsibility for the care of the work within a Sub-Contract Works Section, materials supplied by him or persons for whom he is responsible for incorporation into the work, and materials supplied by the Client-Contractor and handed over to the Sub-Contractor or persons for whom his is responsible for incorporation into the work, except for loss or damage arising from the Excepted Risks, from commencement of the Sub-Contract Works Section until the work or materials are incorporated into the Client-Contract Works or 14 days after the determination of the employment of the Sub-Contractor, whether valid or not, whichever is the earlier.

9.5 Injury to persons and property and indemnity 人身財產的損傷和保障

Without prejudice to Clause 9.4, the Sub-Contractor shall be liable for and shall indemnify the Ultimate Client, Upper-tier Contractors, Client-Contractor and their respective sub-contractors against any damage, expense, liability or loss in respect of any claims or proceedings for:

- (a) bodily injury to, disease contracted by or the death of any person arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, except to the extent that the injury, disease or death of that person is due to any act or neglect of the Client-Contractor or any person for whom the Client-Contractor is responsible; and
- (b) injury or damage to real or personal property arising out of, or in the course of, or by reason of the carrying out of the Sub-Contract Works and whether arising on or off the Site, to the extent that the injury or damage is due to a breach of contract or other default of the Sub-Contractor or any person for whom the Sub-Contractor is responsible.

9.6 Provision of all things necessary 提供一切必需的

The Sub-Contractor shall provide all labour, materials, temporary site facilities, site and head office management necessary for the completion of the Sub-Contract Works.

9.7 Labour and site management team 人力及現場管理班子

9.7.1 The labour provided by the Sub-Contractor shall be adequate in number, of the appropriate trades, skillful and competent in their respective callings, and managed by a site management team consisting of foremen, supervisors, co-ordinators, safety officers, etc. and headed by a construction manager full-time on site authorized and able to communicate with and take instructions from the Client-Contractor and capable of managing the Sub-Contract Works.

9.7.2 The persons employed upon the Sub-Contract Works shall be legally employable in Hong Kong. They shall not live on the Site, except for watchmen approved by the Client-Contractor. They shall be properly equipped with tools, safety belts, safety helmets, safety appliances, and shall wear proper uniforms and bear identification cards. Illegal immigrants shall not be allowed to enter the Site.

9.7.3 The Client-Contractor may require the replacement of any person employed upon the Sub-Contract Works who in the opinion of the Client-Contractor misconducts himself or is incompetent or negligent in the proper performance of his duties with suitable a substitute at no extra cost and time to this Sub-Contract.

9.8 Payment management to employees of all tiers 各層僱員的付款管理

9.9 Temporary site facilities 現場臨時設施

The temporary site facilities provided by the Sub-Contractor shall be adequate and appropriate for the intended purposes, safe and secured, causing minimum nuisance, placed at positions approved by the Client-Contractor, up-kept and maintained regularly in good conditions with minimum downtime, relocated as necessary to suit the progress and need of the Sub-Contract Works, and removed from the Site when no longer required.

9.10 Setting out 開線定位

The Sub-Contractor shall ensure that the Sub-Contract Works are constructed at the correct positions as shown on the Sub-Contract Drawings or further drawings issued by the Client-Contractor after the award of this Sub-Contract. The Client-Contractor shall provide principal setting out points and lines to the Sub-Contractor. The Sub-Contractor shall properly set out further lines and levels for the Sub-Contract Works, and provide instruments for the Client-Contractor to verify the setting out lines and levels or as-constructed positions if so required

by the Client-Contractor. Such verification shall not relieve the Sub-Contractor of his obligation to construct at the correct positions.

9.11 Cleanliness and tidiness 清潔及整齊

The Sub-Contractor shall keep the Site and the Sub-Contract Works clean and tidy with minimum accumulated rubbish at all times.

9.12 Protection 保護

Without prejudice to Clauses 9.4 and 9.5, the Sub-Contractor shall take every care and safety precaution necessary to protect all persons and properties, including but not limited to the following, from injury, disease, death, loss, damage, nuisance, fire hazard, etc. caused by reason of the carrying out of the Sub-Contract Works:

- (a) all workers or other persons on the Site;
- (b) all occupiers or users in the vicinity of the Site;
- (c) the public;
- (d) the Sub-Contract Works, materials for incorporation into the Sub-Contract Works, construction plant or temporary buildings used for the Sub-Contract Works;
- (e) existing building construction, finishes, fittings, services within the Site which are not to be modified under this Sub-Contract;
- (f) roads, loading and unloading points, temporary parking spaces, footpaths, corridors, staircases and lifts for travel within the Site or within the premises in which the Site is situated;
- (g) the premises where the Site is situated;
- (h) adjoining properties;
- (i) public properties, public roads and footpaths;
- (j) properties of the Public Utility Service Companies; and
- (k) existing trees and shrubs.

9.13 Safety measures 安全措施

9.14 Environmental protection measures 環保措施

9.15 Visitors 訪客

The Sub-Contractor shall not allow any unauthorised visitors on the Site. He shall keep a visitors book for persons authorised to visit the Site and provide safety helmets for such visitors.

9.16 Prevention of bribery offences

9.16.1 The Sub-Contractor shall not offer, give or agree to give to any person any bribe, commission, gift, loan or advantage of any kind as defined in the Prevention of Bribery Ordinance, Cap 201 as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the execution of this Sub-Contract or any other contract with the Client-Contractor, or for showing or forbearing to show favour or disfavour to any person in relation to this Sub-Contract or other contract with the Client-Contractor. By undertaking this Sub-Contract, the Sub-Contractor shall be deemed to have warranted that he has not committed similar bribery offences in relation to the obtaining of this Sub-Contract or any other contract with the Client-Contractor. Any commitment of the aforesaid offences by any person with the Sub-Contractor's prior authorization or subsequent acquiescence shall be deemed to be the Sub-Contractor's fault. The Sub-Contractor shall take all necessary measures

to ensure that his employees, agents, sub-sub-contractors, suppliers, or other persons for whom the Sub-Contractor is responsible comply with the foregoing provisions.

9.16.2 In case of a conviction of the bribery offences described in Clause 9.16.1, without prejudice to the liability of the Sub-Contractor at law, and without prejudice to the right of the Client-Contractor to determine the employment of the Sub-Contractor under Clause 11.1.1, the Sub-Contractor shall repay the loss incurred by the Client-Contractor due to such offence and such loss shall be deemed to be at least equal to the amount of the bribe, commission, gift, loan or advantage, no matter whether the Final Certificate has been issued and payment made or not.

一般責任 (last edited 2011-05-19 14:19:02 by KCTang)