

# **SPECIAL FEATURES IN THE STANDARD FORM OF CONTRACT FOR MAINTENANCE AND RENOVATION WORKS FOR USE IN HONG KONG, FIRST EDITION 2013**

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## **Biography**

Mr. Tang has over 38 years' professional quantity surveying experience and was the principal draughtsman of the Standard Form of Contract for Maintenance and Renovation Works for use in Hong Kong, First Edition 2013.



## **Abstract**

The Hong Kong Institute of Surveyors has published a Standard Form of Contract for Maintenance and Renovation Works for use in Hong Kong, First Edition 2013 (First Amendments in December 2014) to cater to the need of major maintenance and renovation works, instead of using the current Standard Form of Building Contract which is mainly for new construction. This paper presents the key features introduced in the new form of contract to suit the special nature of major maintenance and renovation works.

**Keywords:** contract, maintenance, renovation, standard form

## **PREVAILING SITUATION**

Hong Kong is densely populated with blocks of high rise residential buildings. They are under multiple ownerships. After decades of development, a lot of these buildings require major repair and maintenance works such as repair of spalling concrete, re-surfacing of external facades, replacement of plumbing and drainage systems, refurbishment of lobbies and staircases, etc. which are the common properties of the multiple ownership. The market of the major repair and maintenance works is huge.

Generally, the Standard Form of Building Contract, which is basically for new construction, is used and adapted for these maintenance works in the private sector. Special conditions of contracts are introduced. Some of them are poorly drafted causing argument over interpretation. Some of them are very harsh. Some of the harsh terms are for the building professionals' convenience. Some are driven by the building owners who are mostly laymen pressing for commercial terms unusual to the construction industries.

Preliminaries clauses are also usually adapted from those used for new construction. They have become extensive because they have been added on top of those used for new construction and have accumulated from project after project. To play safe, irrelevant clauses are not readily deleted. This makes the Preliminaries rather complicated and cumbersome. Some of them are repetitive but inconsistent amongst themselves and with the Form of Contract.

The overall tender and contract documents are not easily understood by building owners. This also applies to the junior building professionals managing the contracts.

## **INITIATION FOR CHANGE**

New versions of the Standard Form of Building Contract (“SFBC”) were published in 2005 (with quantities version) and in 2006 (without quantities version) to reflect the latest legal development and the more complicated modern day construction practice. The documents have become thicker with more clauses. It was considered to be too complicated for repair and maintenance works. The building professionals would likely stay with the old versions when handling repair and maintenance works. On the initiation of the Building Surveying Division of the Hong Kong Institute of Surveyors, and with the co-operation of the Quantity Surveying Division, a Standard Form of Contract for Maintenance and Renovation Works was drafted and published in 2013 (“Standard Form”). The First Amendments were published in December 2014 mainly for the correction of typographical errors.

## **INTENDED PURPOSES**

The intended purposes of the Standard Form are as follows:

- Project types
  - tailor-made for major maintenance and renovation works
    - whether residential buildings or not
    - not involving nominated sub-contracts (which is the usual case)
  - also useful for fitting out works which do not involve nominated sub-contracts
  - to be managed by building professionals
    - who can be architects, engineers or surveyors, instead of traditionally “the Architect”
- Provisions
  - comparatively simple to read
  - simple yet comprehensive enough to cover all the basics
  - reduce the need for special contract conditions
  - reduce cumbersome preliminaries clauses
  - more structured for inserting and supplementing with project specific information
  - contain good and equitable practice
  - standard provisions will offer better persuasion to building owners to use more equitable terms
- Building owners
  - can understand their contractual rights and obligations more easily
- Building professionals
  - tasks to draft special contract conditions and preliminaries reduced
  - volume of paper reduced
  - easier to administer the contracts
- Contractors
  - less exposed to ambiguous harsh terms
  - able to offer better prices and end products

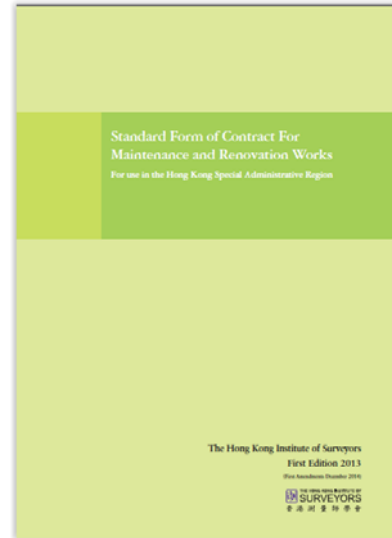
## CONTENTS

The Standard Form is made up of the following sections:

- Contract Agreement with options to sign as a deed or as a simple contract
- Particulars of Agreement
- Contract Conditions
- Appendix A – Surety Bond (Pro-forma)

To reflect the actual practice, the following documentary flow is specifically envisaged by the Recitals and Articles:

- Tender Documents (including Conditions of Tendering, Form of Tender, Special Contract Conditions, Specification, Schedule of Works and Drawings) → Tender Addenda → Tender → Tender Correspondence (including Letter of Award) → Contract Documents.



These documents together with the Standard Form of Contract make up the Contract Documents.

The pre-2005/2006 SFBC do not envisage Special Conditions of Contract, Tender Addenda and Tender Correspondence. SFBC 2005/2006 envisage Special Conditions of Contract and Tender Correspondence.

## PARTICULARS OF AGREEMENT

The Particulars of Agreement are a part of the Contract Agreement which shall be read in conjunction with the Particulars of Agreement.

Other than the signing section, the Contract Agreement does not require any filling in of information. Project specific particulars are to be inserted in the Particulars of Agreement which are in a table form.

The Particulars of Agreement serve the purposes of the traditional Appendix to the Conditions of Contract but have been expanded to cover all the essential project specific particulars which may vary between projects.

There are 32 Items for entry of project specific particulars:

- Contract Signing and Award Dates
- Project Title and Address
- Contract Title, Works Description and Site Locations (Site locations may be specific locations at the Project Address)
- Contract Parties
  - Employer – name and address
  - Contractor – name and address

Particulars of Agreement	
ITEM	DESCRIPTION OF CONTRACT TERMS
<b>Contract</b>	
1	Contract signing date
2	Contract Award Date (being the date of the letter issued by or on behalf of the Employer accepting the Contract to the Contractor)
3	Project Title
4	Project Address
5	Contract Title
6	Worked under maintenance
7	Locations of Site (name as the Project includes if not award)
<b>Contract Parties</b>	
8	Name of the Employer
9	Registered Address of the Employer
10	Name of the Contractor
11	Registered Address of the Contractor
<b>Contractors</b>	
12	Name of the Contract Administrator (as named in the Contract Agreement if not stated)
13	Registered Address of the Contract Administrator
14	Name of the Quantity Surveyor (as named in the Contract Agreement if not stated)
15	Registered Address of the Quantity Surveyor
<b>Contract type and price</b>	
16	Contract type (delete 'Nil' when inappropriate)
	Lump Sum Contract <input type="checkbox"/> Renumeration Contract <input type="checkbox"/> Retain-Only Contract <input type="checkbox"/>
	Clause 6.4.2 applies to this contract <input type="checkbox"/>
17	Contract Price (for Lump Sum Contract of Renumeration Contract only, state it date for Retain-Only Contract, Contract Price for Retain-Only Contract to be determined from time to time according to the Contract Conditions) <input type="checkbox"/>
<b>Notes</b>	
18	Site for Access to the Site
	Portions of the Site <input type="checkbox"/>
	Site <input type="checkbox"/>

- Consultants
  - Contract Administrator – name and address
  - Quantity Surveyor – name and address
- Contract Type and Price (to select one)
  - Lump Sum Contract
  - Remeasurement Contract
  - Rates Only Contract
- Time (see PHASING below)
  - Site Access Dates
  - Works Sections
  - Contract Periods
  - Rate of Liquidated Damages for Delayed Completion
  - Defects Liability Period
- Documents
  - Tender Documents
  - Tender Correspondence
- Payment Terms
  - Amount of advance payment
  - Method of recovery of advance payment
  - Retention Percentage
  - Maximum Retention
  - Period for Honouring Payment
- Insurances and Bond
  - Contractors' All Risks and Third Party Liability Insurance
    - Party responsible for taking out the insurance - The Employer / the Contractor
    - Percentage of professional fees in case of reinstatement
    - Amount for the removal of debris
    - Percentage for escalation clause
    - Material Damage insurance excesses in respect of each and every occurrence of loss or damage
    - Limit of indemnity for third party liability
    - Third party liability insurance excess in respect of each and every occurrence of loss or damage
  - Amount of Surety Bond
  - (No particulars needed for Employees' Compensation Insurance here – to be taken out by the Contractor by default in accordance with statutory requirements)
- Other Terms and Conditions (for entry of non-standard terms)

A set of partially completed Particulars of Agreement should be included in the Tender Documents for tendering. The fully completed and updated set should be used for signing the Contract.

## **SIMPLIFICATION**

Terms have been simplified:

- “Contract Agreement” used for “Articles of Agreement”
- “Contract Conditions” used for “Conditions of Contract”
- “Special Contract Conditions” used for “Special Conditions of Contract”
- “Materials” defined to mean materials and goods, and include equipment or machinery for incorporation into the Works, eliminating the need to write “materials and goods” or “materials, goods and equipment” all the time
- “Plant” defined to mean construction plant, equipment or machinery used for carrying out the Works

Instead of trimming down based on SFBC 2005/2006, the clauses have been completely re-written with a view of making them as simple as possible but keeping the principle of SFBC 2005/2006. The Standard Form consists of 48 pages vs 98 pages for SFBC 2005/2006. In particular, the clauses on insurances have been very much simplified.

Provisions for Nominated Sub-Contracts and Nominated Supply Contracts have been omitted because they are not usually required for maintenance and renovation works.

## **PHASING**

The pre-2005/2006 SFBC do not envisage phased possession of the Site nor phased completion of the Works (though there is an optional Sectional Completion clause). SFBC 2005/2006 do envisage phasing and use such expressions as “the whole or parts of the Site” and “the Works or a Section”.

To simplify, the Standard Form assumes phasing by default, simply uses the expressions “Portion of the Site” and “Works Section”, and requires the following entries in the Particulars of Agreement:

- For different Portions of the Site – freely defined as Portion / Area / Zone A or 1, etc.
  - Date for Access to the Site
- For different Works Sections – freely defined as Phase / Section / Stage A or 1, etc.
  - Names of Works Sections
  - Contract Periods – with Commencement Date and Completion Date stated as exact dates or by means of a mechanism to determine such dates, and with the Durations in calendar days stated
  - Rate of Liquidated Damages per calendar day for Delayed Completion (If none or “N/A” stated, general damages apply)
  - Defects Liability Period

If there is no phasing, “the Whole” can be used for the Portions and Works Sections.

Each Works Section is to have its own Substantial Completion Certificate and Defects Rectification Certificate.

## **MORE ENCOMPASSING TERMS**

More encompassing terms have been used:

- “Contract Administrator” introduced to replace the usually used term “Architect” to provide more flexibility. He can be an architect, engineer or surveyor.
- “Schedule of Works” introduced to replace Bills of Quantities, Schedule of Rates, Schedules of Quantities and Rates, and Summary of Tender. It can be with quantities or without quantities. Unlike Schedule of Rates whose descriptions are to define the coverage of the rates only, its descriptions can define the scope and quality of the work items and the Works as a whole. This can reduce the need to duplicate the detailed descriptions of the scope of the Works in the Specification.

## **MORE STRUCTURED**

Contract Conditions – Unlike the rather random order of the clauses in SFBC 2005/2006 or their predecessors, the Contract Conditions are structured into 12 sections, with the intention of making them easier and more logical to read, and making it easier for preliminaries clauses to be arranged in similar fashion to supplement with project specific details:

1. Interpretations
2. Site
3. Works
4. Time
5. Contract Basis
6. Prices
7. Quality
8. Contractor’s Documents
9. General Obligations
10. Insurances and Bond
11. Determination
12. Dispute Resolution

Comprehensive checklists - To eliminate the task of searching over the entire Contract Conditions for relevant clauses, and facilitate easier administration, comprehensive checklists have been given for:

- computation of the net interim amount payable; and
- computation of the final Contract Price.

Excusable Events and Compensable Events - Events eligible for extension of time and monetary compensation are now called “Excusable Events” and “Compensable Events” respectively, instead of “listed events” and “qualifying events” in SFBC 2005/2006, to facilitate easier understanding. They have been presented in a tabular format for easier reading:

<b>Event Code</b>	<b>Delays or disruptions by reason of</b>	<b>Excusable Events</b>	<b>Compensable Events</b>
A	Force majeure	Yes	No
B	Inclement weather conditions .... and/or their consequences .....	Yes	No
	.....		

<b>Event Code</b>	<b>Delays or disruptions by reason of</b>	<b>Excusable Events</b>	<b>Compensable Events</b>
G	Late provision by the Contract Administrator of instructions or information (including clarification of any ambiguity, discrepancy in or divergence ....., and including outstanding or new information) required for the progressing of the Works ....	Yes	Yes
	.....		
U	An act of prevention, a breach of contract or other default by the Employer or any person for whom the Employer is responsible	Yes	Yes

## **UPDATING**

To keep in line with modern day legal development since the pre-2005/2006 SFBC:

- “Excepted Risks” has been adapted from that used in SFBC 2005/2006, but “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” in SFBC 2005/2006 has been removed from the definition because it is considered to be too wide in scope.
- “Excusable Events” and “Compensable Events” have been respectively adapted (with suitable adjustments) from the “listed events” and “qualifying events” used in SFBC 2005/2006. Like SFBC 2005/2016:
  - When an Excusable Event occurs in the period of delay after the (extended) Completion Date but before the substantial completion of a Works Section, extension of time shall still be granted but only for the net duration of the delay rather than granting the gross period until the end of the delay.
  - While the Contractor shall continuously use his best endeavours to prevent or mitigate delay or disruption to the progress of the Works however caused, and to prevent the completion of the Works from being delayed or further delayed, the use of best endeavours by the Contractor shall not require the Contractor to accelerate the carrying out of the Works to recover delay caused by an Excusable Event.
- “Separate Contractor” has been defined, like SFBC 2005/2006, to exclude any statutory undertaker or utility company carrying out work in pursuance of its statutory obligations and not having a contractual relationship with the Employer, the Contractor or any person for whom the Employer or the Contractor is responsible. Pre-2005/2006 SFBC do not have such distinction.
- “Variations” has been expanded, like SFBC 2005/2006, to include, apart from physical changes, a change to the time or manner for carrying out the Works.
- Like SFBC 2005/2016, the dispute resolution procedures have been expanded from arbitration only to:
  - Reference to Designated Representatives;
  - Reference to Mediation; and
  - Reference to Arbitration.

Users who would like to stay with the pre-2005/2006 SFBC should be aware of the legal development.

To keep in pace with the new terms used in SFBC 2005/2006:

- “Substantial Completion Certificate” used to replace “Practical Completion Certificate” in pre-2005/2006 SFBC; and
- “Defects Rectification Certificate” used to replace “Certificate of Completion of Making Good Defects” in pre-2005/2006 SFBC.

## **TAILOR-MADE ENHANCEMENTS**

There are enhancements to suit the need of maintenance and renovation works. They are generally not available in the pre-2005/2006 SFBC. This made the Standard Form to have 48 pages vs 32 pages for the pre-2005/2006 SFBC.

### **Interpretations**

Building Manager - The likely presence of a Building Manager, being the person providing estate, property or facility management services to the premises where the Site is (the Site can be within a part of existing premises), is recognized.

Counting days - The method of counting days has been clarified, e.g. within 1 day = within 24 hours, commencing from date X = date X is day 1, commencing after date X = date X + 1 is day 1.

### **Site**

Provision of Site – This is by way of granting access to the site rather than giving exclusive possession to reflect the usual nature of carrying out the works while the buildings are continued to be occupied and used by owners and tenants. This can be in phases as stipulated in the Particulars of Agreement.

Site access - The Employer is only responsible for providing access to the Site through land or premises which are under his control. Where the Employer is the landlord or the incorporated owners or the Building Manager of the premises in which the Site is situated, any individual units of the premises which are separately owned or rented (such as residential flats, car parking spaces, offices, shops, workshops, stores, and the like) shall be deemed to be under the control of the Employer.

House rules - The Contractor shall comply with the house rules of the Building Manager and pay any deposit temporarily required as security for loss or damage, but any restrictions on access or working hours more stringent than those announced by the Building Manager prior to the award of the Contract and affecting the Works shall be deemed to be a Variation.

Site investigation or condition survey reports - As usual, any site investigation or condition survey reports or other information which may be made available to the Contractor prior to the award of this Contract are given without any warranty on the part of the Employer as to their accuracy or completeness, and they shall be deemed to be supplied for the Contractor's information only. However, it has been clarified that they must be the whole record of such investigation or survey as has been carried out.



## Works

Works - As a catch-all definition to avoid the fine argument that the Works are for “build only” not including design, service and maintenance, “the Works” has been defined to include:

- permanent work required to be carried out and completed by the Contractor under the Contract;
  - temporary work required for the carrying out and completion of the permanent work;
  - services required to be carried out and completed by the Contractor under the Contract;
  - materials supplied by the Employer for incorporation by the Contractor into the Works after they are handed over to the Contractor;
  - design of any part of the permanent work if this is specified to be part of the Works;
  - service and maintenance required to be carried out after substantial completion of the Works; and
  - provision of warranties and guarantees,
- but exclude:
- materials supplied by the Employer for incorporation by the Contractor into the Works but only until such time when they are handed over to the Contractor;
  - materials or workmanship or method or work which is not in accordance with the Contract; and
  - work or services carried out by the Contractor without authority under the Contract.

Design responsibility – The following have been clarified:

- design of permanent work – the Employer shall engage the Contract Administrator or other designers to carry out the design work;
- development of “design intent drawings” (if declared as such) into detailed design of the components making up the complete system, installation or fitting, basically by way of shop drawings - the Contractor shall be responsible;
- development of design of schematic and layout drawings of building services installations into shop or installation drawings – the Contractor shall be responsible;
- design of temporary work – the Contractor shall be responsible; and
- Contractor’s design to be approved and be fit for the intended purpose.

Testing and commissioning - Before they may be certified as substantially completed, all mechanically, hydraulically, electrically or electronically operated parts of the Works and any parts of the Works connected by and including pipes, ducts, conduits, trunking, wiring or cables shall be tested and commissioned in accordance with the requirements of this Contract.

Equal and approved - For a material where the Contractor is permitted to propose “equal and approved” or “approved equal” brands or models, the Contractor may propose a brand or model of the same kind of material equal in performance and quality to that originally specified or proposed in the Contract. Traditionally, such proposal should have no cost effect. However, there have been cases where the standard of performance and quality is not precise enough and the prices of the alternatives apparently meeting the standard are too cheap. On the other hand, it would not be reasonable to accept only more expensive alternatives. It is therefore clarified that no cost reduction shall be required if the alternative brand or model is not cheaper than the cheapest of those originally specified or proposed in this Contract by more than 10%, otherwise a share of the cost saving shall be proposed.

Contractors' alternative proposals - For other cases, as usual, the Contractor's alternative proposals shall not be adopted without the prior written approval by the Contract Administrator. The approval shall have no effect on the Contract Price or the Completion Date unless the effect is specifically stated in the written approval, in which case, the approval shall be deemed to be a Variation instruction. Under no circumstances shall the approval relieve the Contractor of his responsibilities under this Contract.

## **Time**

Extension of time - Early and progressive submission of extension of time and delay and disruption monetary claims has been encouraged with time frames specified (as good practice rather than as time limits). It was noted when drafting the Standard Form that in spite of the usual contract practice of specifying a short period of time after the commencement of a delay or disruption event as the time limit for submitting notices and claims, Contractors are still late in submitting their notices and claims, and Contract Administrators are late in ascertaining the claims pending the Employers' blessing. It was considered that for maintenance and renovation works, Contractors are less sophisticated, laymen building owners as Employers would want to be consulted before granting time and monetary compensation, and Contract Administrators would want to play safe. Therefore, short and strict time bars were considered to be not practicable nor desirable, a more practical approach has been adopted:

- A more relaxed time bar with longer time has been specified for the Contractor to submit extension of time and delay and disruption monetary claims:
  - Extension of time claims to be submitted regularly but not later than the Completion Date of the relevant Works Section or its extended completion date previously claimed by the Contractor; and
  - Delay and disruption monetary claims to be submitted regularly but not later than 3 months after the direct loss and/or expense having been incurred, progressive submissions permitted for continuing events.
- On the other hand, with the relaxed time limit, the Contractor shall bear the consequence of his own non-submission, late submission or insufficient submission of notices or information. The Contract Administrator and the Quantity Surveyor are only obliged to act based on information received without an obligation to demand for further information from the Contractor.
- An extension of time is to compensate the working time lost. This means that working days should be suitably converted to calendar days.
- Extension of time granted shall not be reduced unless it has been based upon incorrect information provided by the Contractor.

Determining time and cost effects - To remedy the situation of some contracts of specifying a time limit for the Contractor to submit notices and claims without at the same time specifying a time limit for the Contractor Administrator and the Quantity Surveyor to respond, the Standard Form requires the Contract Administrator and the Quantity Surveyor respectively to respond within 14 days after the receipt of an extension of time notice or monetary claim, while subsequent review is permitted in light of further evidence at any time before issuing the Final Certificate.

Handover after completion - 14 days have been specified for the Contractor to hand over a Works Section after substantial completion and 7 days for demobilizing from the residual retained areas.

## **Contract basis**

Interpretation of Contract Documents - The order of precedence of the Contract Documents has been clarified, with wider coverage, as:

1. Contract Agreement;
2. Tender Correspondence;
3. Form of Tender or the Tender;
4. Special Contract Conditions;
5. Schedule of Works;
6. the Preliminaries section of the Contract Specification;
7. Contract Conditions;
8. Contract Drawings; and
9. Sections of the Contract Specification other than the Preliminaries section (i.e. Technical Specification).

Documents issued later in time shall take precedence. Particular specification shall take precedence over general specification. Detailed drawings shall take precedence over general drawings. Specification and drawings specially prepared for the Works shall take precedence over standard specification and drawings.

## **Prices**

Types of contract - To offer greater flexibility and reduce the need to amend a standard form suiting one type to suit another type, optional clauses have been included to deal with the three different common types of contract, which may be selected in the Particulars of Agreement:

- Lump Sum Contract
  - basically quantities are to be estimated by the Tenderers at their own risks;
  - there is also a clause dealing with cases where the quantities are at the Employer's risks; however, if full scale Bills of Quantities are to be used, this clause may need special conditions to make it more comprehensive;
- Remeasurement Contract; and
- Rates Only Contract.

Measurement and pricing clauses - Clauses have also been introduced to deal with:

- Arithmetical errors;
- Provisional quantities;
- Method of measurement;
- Provisional sums; and
- Prime cost rates.

It may be argued that these clauses should, as usual practice, be included in the Conditions of Tendering, Preliminaries or Preambles. Because of their common nature, these matters are usually encountered, but there are no standard Conditions of Tendering, Preliminaries or Preambles amongst building professionals. This makes the wording of the clauses and therefore interpretations vary amongst building professionals. It was therefore considered more appropriate to deal with these common matters in the Standard Form.

Valuation - The valuation rules for valuation of Variations and of work carried out by the Contractor covered by a provisional sum are basically the same as those used in the traditional forms of contracts, being Contract Rates → pro-rata rates → star rates → daywork rates, but with the following enhancements:

- The terms “pro-rata rates” and “star rates” have been formally used. (While they have been used in everyday work, they have not been formally used in the traditional forms of contracts.)
- It has been clarified that a pro-rata rate shall use the Contract Rates for comparable items as the base with adjustment for the net difference in costs due to the difference in character or conditions plus the same percentage for profits and overheads as used in the relevant Contract Rates.
- It has also been clarified that a star rate shall be derived from market rates including rates used on other comparable projects fairly adjusted to take into consideration the nature and conditions under which the work is carried out under the present Contract or from first principle based on actual costs plus the percentage for profits and overheads generally used in the Contract Rates.
- If there is any disagreement as to the percentage for profits and overheads generally used in the Contract Rates, 15% shall be used for mark-up on the costs of direct labour, materials and plant. If the work is sub-contracted, then 10% shall be used for mark-up on the subcontract prices. For the SFBC 2005/2006 or their predecessors, 15% is usually taken as a convenient but not mandatory norm for all cases.

Contractor’s claims for extras - The usual practice that any changes made to the Contractor’s submissions such as drawings, samples or catalogues in consequence of any comments made by the Contract Administrator shall not be a Variation has been retained, but it has been clarified that if the Contractor disagrees, he shall, immediately upon the receipt of the relevant comment or instruction, write to the Contract Administrator to seek clarification.

Payment - The usual payment practice of: Contractor’s payment application → Quantity Surveyor’s valuation → Contractor Administrator’s certification → Contractor’s invoice → Employer’s payment, has been retained, with the following specific details:

- Payment applications are to be submitted at monthly intervals before substantial completion, and at bimonthly intervals thereafter.
- A Payment Certificate is to be issued within 14 days of receipt of the Contractor’s application.
- There is a reminder that any advance payment shall be made only after the provision by the Contractor of a surety bond in a form acceptable to the Contract Administrator and of a value not less than the amount of the advance payment.
- Unlike the SFBC 2005/2006 or before, it is permissible to deduct liquidated damages from the net amount payable.

Final Account - The Contractor’s proposed Final Account shall be submitted within 3 months from the completion of the whole of the Works. The whole Final Account shall be agreed as soon as possible not later than 1 month after the issue of the Defects Rectification Certificate. If the Quantity Surveyor considers that he has taken into account all the representation of the Contractor but still fails to obtain the Contractor’s agreement, he may issue a unilateral Final Account to the Contractor and declare it as such.

Final Certificate - The Contract Administrator shall issue the Final Certificate within 14 days after the issue of the Defects Rectification Certificate of the last Works Section or 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 the later. The Final Certificate is not final in respect of liabilities for any latent defects not discovered at the time of the Final Account, or matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.

## **Quality**

Warranties and guarantees - Apart from warranties and guarantees specifically required by the Contract, it may be possible that the Contractor's suppliers and sub-contractors provide standard warranties or guarantees. The Contractor shall assign the benefits of all such warranties or guarantees to the Employer (so far as he is lawfully able to do so). To prevent undue delay in the submission of warranties and guarantees, it has been specified that the submission of all warranties and guarantees satisfactorily in full compliance with the Contract shall be a pre-requisite to the release of one half of the retention fund upon substantial completion of the relevant Works Section.

## **General obligations**

Prevention of bribery offences - Clauses on Prevention of Bribery Offences with consequence of determination of the employment of the Contractor have been introduced to stress the importance.

## **Insurances and bond**

Insurances -

- Either the Employer or the Contractor may be specified in the Particulars of Agreement to take out the Contractors' All Risks and Third Party Liability Insurance.
- Use of a company master policy or annual policy is permissible.
- The Building Manager has been specified as one of the "the principals" for insurance purposes.
- A 15% administrative charge is to be imposed on insurance premium paid on behalf of the defaulting party who fails to insure.

Bond and cash security -

- A cash security equal to the amount of the Surety Bond may be withheld temporarily from the Payment Certificate if the Contractor so elects or if the Contractor fails to submit an approved Bond.
- Upon the issue of a Defects Rectification Certificate (rather than a Substantial Completion Certificate) of a Works Section and the settlement of all claims (if any), the amount of the Bond or cash security shall be reduced pro-rata to the ratio of the value of that Works Section to the final Contract Price currently estimated. Upon the issue of the Defects Rectification Certificate of the last Works Section and the settlement of all claims (if any), the Bond or the balance of the cash security shall be released to the Contractor without interests.

## **Determination**

Apart from the usual grounds for determination, the following grounds for determination by the Employer of the employment of the Contractor have been introduced:

- the Contractor without reasonable cause fails persistently to rectify defects after substantial completion of the whole of the Works and the Employer (pursuant to another clause) employs others to rectify the defects for 5 times or more and the total cost of rectifying defects exceeds \$100,000;
- the Contractor without reasonable cause fails to submit evidence of the Employees' Compensation Insurance and the Contractors' All Risks and Third Party Liability Insurance in the specified manner within 1 month after the Contract Award Date; and
- the Contractor (or any person for whom the Contractor is responsible with or without the knowledge of the Contractor) is convicted of a bribery offence.

## **CONCLUSION**

Conscious attempts have been made when drafting the Standard Form to make it simple yet comprehensive enough for maintenance and renovation works. Actual use of the Standard Form on some projects showed that the need for special contract conditions and cumbersome preliminaries clauses has been reduced, tenderers do not have qualifications against the Standard Form, and there is no apparent price premium on using the Standard Form. The Standard Form is still young, whether there are loop holes or hindrance to good contract and cost management is still to be seen.