

SFBCwiQ.2005	SFBCwiQ.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	First RICS (HK Branch) Edition 1986 (with quantities) incorporating up to Second amendments published in July, 1999
23 Possession, commencement and completion	21 Possession, Completion and Postponement
<p><i>Possession of Site</i></p> <p>23.1 (1) The Employer shall give possession of the Site to the Contractor on or before the Date for Possession of the Site stated in the Appendix.</p> <p>(2) Where the Contract provides for the Employer to give possession of the Site to the Contractor in two or more parts on the dates stated in the Appendix, the Employer shall give possession of the Site to the Contractor in parts on or before those dates.</p>	<p>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 to the provisions for extension of time contained in clauses 23 and 33(1)(c) of these Conditions.</p>
<p><i>Commencement and completion</i></p> <p>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.</p>	
<p><i>Postponement or suspension</i></p> <p>23.3 The Architect may issue instructions regarding:</p> <p>(a) the postponement of the Date for Possession of the Site or a part of the Site;</p> <p>(b) the postponement of the Commencement Date of the whole or a part of the Works; or</p> <p>(c) the postponement or suspension of the whole or a part of the Works.</p>	<p>21(2) The Architect may issue instructions in regard to the postponement of any work to be executed under the provisions of this Contract.</p>
24 Damages for non-completion	22 Damages for Non-completion
<p><i>Architect to certify Contractor's failure to complete on time</i></p> <p>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.</p> <p>(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.</p>	<p>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 Employer may deduct such sum from any monies due or to become due to the Main Contractor under this Contract.</p>
<p><i>Liquidated and ascertained damages</i></p> <p>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</p>	

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<p>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.</p> <p>(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.</p> <p>(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.</p> <p>(4) The Employer may recover the liquidated and ascertained damages from the Contractor under clause 40 or as a debt.</p>	
<p><i>Refund if Completion Date revised</i></p> <p>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.</p>	
<p>25 Extension of time</p>	<p>23 Extension of Time</p>
<p><i>Contractor's first notice of delay</i></p> <p>25.1 (1) As soon as practicable but in any case within 28 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 Clause 25 as the "first notice") to the Architect.</p> <p>(2) The first notice shall:</p> <p>(a) state the likelihood and estimated length of the delay beyond the Completion Date;</p> <p>(b) set out the material circumstances including the cause of the delay; and</p> <p>(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.</p> <p>(3) The listed events are as follows:</p>	<p>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,</p>
<p>(a) force majeure;</p>	<p>23... (a) by <i>force majeure</i>, or</p>
<p>(b) inclement weather conditions, being rainfall in excess of twenty millimetres in a twenty-four hour period (midnight to midnight) as recorded</p>	<p>23... (b) by reason of inclement weather or the subsequent effects of such inclement weather; for the purpose of this sub-clause 'inclement</p>

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<p>by the Hong Kong Observatory station nearest to the Site, and/or its <i><their></i> consequences adversely affecting the progress of the Works;</p> <p>(c) the hoisting of tropical cyclone warning signal No. 8 or above or the announcement of a Black Rainstorm Warning <i><and/or its consequences adversely affecting the progress of the Works></i>;</p>	<p>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</p>
<p>(d) the Excepted Risks;</p>	<p>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</p>
<p>(e) loss or damage caused by a Specified Peril <i><excluding storm and tropical cyclone></i>;</p>	<p>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</p>
<p>(f) an Architect's instruction under clause 2.4 to resolve an ambiguity, discrepancy in or divergence between the documents listed in that clause;</p>	<p>23... (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or</p>
<p>(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;</p>	<p>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</p>
<p>(h) an Architect's instruction under clause 13.1 requiring a Variation;</p>	<p>23... (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or</p>
<p>(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;</p>	
<p>(j) an Architect's instruction under clause 23.3 regarding:</p> <p>(i) the postponement of the Date for Possession of the Site or part of the Site;</p> <p>(ii) the postponement of the Commencement Date of the whole or a part of the Works; or</p> <p>(iii) the postponement or suspension of the whole or a part of the Works, unless :</p> <ul style="list-style-type: none"> • 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; 	<p>23... (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or</p>
<p>(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</p>	<p>23... (k) by reason of compliance with the provisions of clause 34 of these Conditions or with Architect's instructions issued thereunder,</p>

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party of an object of antiquity found on the Site;	
(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);	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;	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
(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);	
(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;	
(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;	
(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;	
(s) the failure of the Employer to give possession of the Site or, under clause 23.1(2), a part of the Site on the Date for Possession of 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;	
(t) unreasonable delay by a Government department in giving an approval or a consent which causes delay to the Works;	
(u) a special circumstance considered by the	

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<p>Architect as sufficient grounds to fairly entitle the Contractor to an extension of time; and</p>	
<p>(v) an act of prevention, a breach of contract or other default by the Employer or any person for whom the Employer is responsible.</p>	
	<p>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</p> <p>**(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</p> <p>▼...</p> <p>** This sub-clause shall be deemed to be part of the Contract only if specifically so stated in the Contract Bills.</p>
<p>(4) The Contractor shall:</p> <p>(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</p> <p>(b) do all that may reasonably be required to the Architect's satisfaction to proceed with the Works.</p>	
<p><i>Contractor's second notice</i></p> <p>25.2 The Contractor shall, as soon as practicable but in any case within 28 days of giving the first notice, submit a second notice (referred to in clause 25 as the 'second notice') to the Architect giving:</p> <p>(a) substantiation that the listed event is the cause of the delay; and</p> <p>(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);</p> <p>or, where the listed event has a continuing effect the Contractor shall:</p> <p>(c) give the Architect a statement to that effect together with:</p>	

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<p>(i) substantiation that the listed event is the cause of the delay; and</p> <p>(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;</p> <p>(d) make further submissions to the Architect at intervals not exceeding 28 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</p> <p>(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).</p>	
<p><i>Fixing new Completion Date</i></p> <p>25.3 (1) After receipt of the Contractor's 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 second notices to be the cause of the delay.</p> <p>(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 days after the receipt of the particulars submitted with the second notice under clause 25.2(b) or clause 25.2(e), as the case may be.</p> <p>(3) If, after receiving the first and second notices, the Architect decides not to fix a later date as a new Completion Date:</p> <p>(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 days of receipt of the particulars submitted with the second notice under clause 25.2(b) or clause 25.2(e), as the case may be; and</p> <p>(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).</p> <p>(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</p>	<p>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.</p>

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<p>he is able to on the information available.</p> <p>(5) If after fixing a new Completion Date under clause 25.3, the Architect issues an instruction under:</p> <p>(a) clause 13.1 for the omission of work or the omission or diminution of an obligation; or</p> <p>(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,</p> <p>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.</p> <p>(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.</p> <p>(7) The Architect may fix a new Completion Date under clause 25 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).</p> <p>(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.</p>	
<p><i>Contractor's default involved in the delay</i></p> <p>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.</p>	
<p><i>Rate of progress</i></p> <p>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</p>	

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<p>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.</p> <p>(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.</p>	
<p><i>Nominated Sub-Contractors and Suppliers to be kept informed</i></p> <p>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.</p> <p>(2) The Architect shall notify each Nominated Sub-Contractor and Nominated Supplier of any new Completion Date fixed under clause 25.3.</p>	
<p>26 Delay recovery measures</p>	
<p><i>Delay recovery measures</i></p> <p>26.1 Where the Architect considers that the Contractor would, by carrying out delay recovery measures (referred to in clause 26 as "the measures"), be able to extinguish, or significantly reduce, any extension of time which the Contractor would otherwise be entitled to under clause 25, the Architect shall, after receiving written directions from the Employer, state the saving in time that he wants the Contractor to achieve and instruct the Contractor to submit within 14 days:</p> <p>(a) a description of the proposed measures necessary to achieve the saving required by the Architect and a detailed quotation for carrying out those measures with full supporting particulars;</p> <p>(b) the Contractor's own estimate of the saving in time that could be achieved by carrying out the measures if the Contractor has reservations about achieving the saving in time requested by the Architect; and</p> <p>(c) details of any other terms and conditions required by the Contractor in consideration for agreeing to carry out the measures.</p>	
<p><i>Delay recovery proposals</i></p> <p>26.2 (1) The description of the proposed measures, the quotation, the Contractor's own estimate of the saving in time that could be achieved, if appropriate, and the details of the other terms and conditions referred to in clause 26.1 shall be referred to in clause 26 as the "delay recovery proposals".</p>	

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<p>(2) Within 14 days of receiving the delay recovery proposals, the Architect shall notify the Contractor in writing that either the delay recovery proposals are agreed, or disagreed, or that he wishes to discuss and agree revised proposals with the Contractor.</p>	
<p><i>Contractor to carry out delay recovery measures</i></p> <p>26.3 (1) If the Architect agrees with the Contractor's delay recovery proposals, or the revised delay recovery proposals resulting from the discussions under clause 26.2(2), and, after receiving written directions from the Employer, instructs the Contractor to carry out the measures in accordance with the agreement, the Contractor shall carry out the measures in accordance with the Architect's instructions and shall be paid for carrying them out in accordance with the terms of the agreement.</p> <p>(2) If the Architect and the Contractor cannot reach agreement on the Contractor's delay recovery proposals within 14 days of the Architect's notice to discuss them under clause 26.2(2), the Architect may, after receiving written directions from the Employer, instruct the Contractor to carry out the measures in the absence of an agreement and the Contractor shall do so in accordance with the Architect's instruction and:</p> <p>(a) the Contractor shall prepare and submit to the Quantity Surveyor all the information and documents relating to the cost of carrying out the measures that the Quantity Surveyor may reasonably require; and</p> <p>(b) the Quantity Surveyor shall ascertain the amount of additional payment to be made to the Contractor for carrying out the measures, based on the extra cost incurred by the Contractor with the addition of 15 percent for overheads and profit, within a reasonable time after receiving the information and documents under clause 26.3(2)(a).</p>	
<p><i>Extension of time to cover shortfall in recovering delay</i></p> <p>26.4 If by carrying out the measures the Contractor reduces, but does not completely extinguish the delay to the completion of the Works or any Section for which the Contractor would have been entitled to an extension of time under clause 25 in the absence of the delay recovery proposals, then, subject to the terms of the agreement between the Architect and the Contractor under clause 26, the Contractor shall, nevertheless, be granted an extension of time for the duration of the unextinguished delay.</p>	
<p><i>Contractor to be reimbursed for the cost of preparing the proposal if delay recovery not instructed</i></p> <p>26.5 (1) If the Architect and the Contractor do not reach an agreement about the terms of the Contractor's</p>	

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<p>delay recovery proposals and the Architect does not instruct the Contractor to carry out these proposals, then the Contractor shall be reimbursed for the cost of preparing the proposals.</p> <p>(2) The Contractor shall submit to the Quantity Surveyor a statement of his costs with full supporting details and the Quantity Surveyor shall ascertain the amount of additional payment to be made as reimbursement to the Contractor.</p>	