

# Draft STANDARD FORM OF DOMESTIC SUB-CONTRACT<sup>1,2</sup>

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<sup>1</sup> This Standard Form is intended for use on major sub-contracts, i.e. not only for 1st tier sub-contracts but also for 2nd or lower tier sub-contracts, except for the less sophisticated trade sub-contracts.

<sup>2</sup> It is not recommended to proceed with the Sub-Contract Works before a formal contract award. The contractual implications of work or services done before formal contract award should be recorded in writing in advance of the act and covered eventually by the letter awarding this Sub-Contract.

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**SUB-CONTRACT AGREEMENT****This Sub-Contract Agreement**

(which terms shall be read in conjunction with the Sub-Contract Particulars annexed hereto) is made between the Contractor of the one part and the Sub-Contractor of the other part.

**Recitals****Whereas:**

Recital 1: The Contractor has secured a contract to execute the whole or part of the Project on the Project Site ("Head Contract Works") commissioned by the Employer.

Recital 2: The Contractor wishes to sub-contract out part of the Head Contract Works ("the Sub-Contract Works").

Recital 3: The Contractor has provided the Sub-Contractor with Tender Documents showing and describing the whole of the Sub-Contract Works to be done.

Recital 4: The Sub-Contractor has submitted a tender ("the Tender") based on the Tender Documents (as may be modified by any tender addenda issued by the Contractor to the Sub-Contractor before the submission of the Tender).

Recital 5: To the extent that the Contractor and the Sub-Contractor (collectively "the Contract Parties") have after tender submission until the acceptance of the Tender further clarified or adjusted the requirements of the Tender Documents and the proposals in the Tender, such clarifications or adjustments have been exchanged between them in writing.

**Now**

the Contract Parties hereby agree as follows:

**Article 1: Object of this Sub-Contract**

The Sub-Contractor will carry out and complete the Sub-Contract Works shown or described in the Sub-Contract Documents defined in Article 4 hereof for the consideration hereinafter provided.

**Article 2: Sub-Contract Price**

The Contractor will pay to the Sub-Contractor the Sub-Contract Price stated in the Sub-Contract Particulars, or such other sum as shall become payable at the times and in the manner stated in this Sub-Contract.

**Article 3: Sub-Contract Periods**

The Sub-Contractor will complete the Sub-Contract Works Sections within the respective Sub-Contract Period or Periods or such extended period or periods as may be authorized under this Sub-Contract.

**Article 4: Sub-Contract Documents**

The documents constituting this Sub-Contract (“the Sub-Contract Documents”) consist of the following:

- (a) this Sub-Contract Agreement;
- (b) the Sub-Contract Particulars annexed hereto and superseding the one included in the Tender Documents;
- (c) the Tender Correspondence;
- (d) the Sub-Contract Conditions annexed hereto as may be modified by the Special Sub-Contract Conditions included in the Tender Documents; and
- (e) the Tender Documents as completed by the Sub-Contractor when submitting the Tender.

**Attestation**

This Sub-Contract Agreement is dated \_\_\_\_\_ and signed by both of the Contract Parties before witnesses:

The Contractor \_\_\_\_\_

Company Chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

The Sub-Contractor \_\_\_\_\_

Company Chop (if company) \_\_\_\_\_

Signature of legal or authorized representative \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

Signature of witness \_\_\_\_\_

Name \_\_\_\_\_ Position \_\_\_\_\_

## SUB-CONTRACT PARTICULARS

(Note: When completing the Particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
<b>Project</b>			
1	Project Title		
2	Project Site (address of the site of the Project)		
3	Employer		
4	Head Contract Works (Brief Description)		
<b>Sub-Contract</b>			
5	Sub-Contract Award Date (being the date of the letter issued by or on behalf of the Contractor awarding this Sub-Contract to the Sub-Contractor)		
6	Sub-Contract Works (Brief Description)		
7	Locations of Site (such parts of the Project Site designated for the Sub-Contract Works; same as the Project Site if not stated)		
<b>Contract Parties</b>		The Contractor and the Sub-Contractor	
8	Name of the Contractor		
9	Address of the Contractor	Registered / Business / Correspondence (delete as appropriate):	
10	Name of the Sub-Contractor		
11	Address of the Sub-Contractor	Registered / Business / Correspondence (delete as appropriate):	
<b>Contract Type and Price</b>			
12	Contract Type (select only one choice by entering a tick or "yes" in the box against the chosen choice)	(a)	Lump Sum Contract
		(b)	Remeasurement Contract
		(c)	Rates Only Contract

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
13	Sub-Contract Price (for Lump Sum Contract or Remeasurement Contract only) or Estimated Total Value for insurance purposes (for Rates Only Contract only, to be reviewed and reported to insurers as necessary to ensure adequate coverage at all times)	(HK\$ _____)	
14	Approach to remeasurement for Remeasurement Contract or Rates Only Contract (select only one choice by entering a tick or "yes" in the box against the chosen choice)	(a)	By remeasuring the first set of working drawings issued by the Contractor for construction and treating subsequent changes as Variations
		(b)	By remeasuring the final set of working drawings compiled from these issued from time to time by the Contractor for construction
		(c)	By remeasuring the as-built drawings approved by _____ (insert the name of a third party)
		(d)	By remeasuring the as-built drawings mutually agreed
		(e)	By actual site remeasurement
		For authorized work properly carried out only, including abortive work caused by the Contractor.	

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)																						
15	Price treatment if, based on the final quantities, the value represented by all actual unit costs deviates from the value represented by all the prime cost rates beyond the extent stated here	<p>In lieu of the adjustment for the net difference only between the actual unit cost and the prime cost rate as described in Clause 6.11.5, if:</p> $\sum [FQ \times AUC] / \sum [FQ \times PC] - 1 > \pm \text{___}\%$ <p>then the following amount shall be added to or subtracted from the final Sub-Contract Price as the case may be:</p> <p>(a) for all prime cost rates which are for supply only:</p> $\sum [FQ \times (AUC - PC) \times (1 + \text{___}\%OC) \times (1 + \text{___}\%P\&O)]$ <p>(b) for all prime cost rates which are for supply and fix / install / apply:</p> $\sum [FQ \times (AUC - PC) \times (1 + \text{___}\%P\&O)]$ <p>where:  <math>\sum</math> = sum of those in [ ]            FQ = final quantity of a prime cost rate item            AUC = actual unit cost of that item            PC = prime cost rate for that item            %OC = % to cover other costs (delivering, fixing and wastage)            %P&amp;O = % to cover profits and overheads</p>																						
16	Percentage mark-up on costs for profits and overheads when calculating fair rates or daywork rates based on actual costs (to be agreed if none stated)	(a)	<table border="1"> <tr> <td data-bbox="834 1167 1130 1220">Materials</td> <td data-bbox="1130 1167 1430 1220">%</td> </tr> <tr> <td data-bbox="834 1220 1130 1272">(b) Direct labour</td> <td data-bbox="1130 1220 1430 1272">%</td> </tr> <tr> <td data-bbox="834 1272 1130 1325">(c) Construction plant</td> <td data-bbox="1130 1272 1430 1325">%</td> </tr> <tr> <td data-bbox="834 1325 1130 1392">(d) Sub-sub-contract prices</td> <td data-bbox="1130 1325 1430 1392">%</td> </tr> </table>	Materials	%	(b) Direct labour	%	(c) Construction plant	%	(d) Sub-sub-contract prices	%													
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(c) Construction plant	%																							
(d) Sub-sub-contract prices	%																							
17	Labour rates for carrying out work on daywork basis (exclusive of mark-up for profits and overheads) <sup>5</sup>	<table border="1"> <tr> <td colspan="3" data-bbox="760 1392 1430 1444">Working for a full normal working day</td> </tr> <tr> <td data-bbox="760 1444 834 1497">(a)</td> <td data-bbox="834 1444 1130 1497">Skilled labour</td> <td data-bbox="1130 1444 1430 1497">\$ / day</td> </tr> <tr> <td data-bbox="760 1497 834 1549">(b)</td> <td data-bbox="834 1497 1130 1549">Semi-skilled labour</td> <td data-bbox="1130 1497 1430 1549">\$ / day</td> </tr> <tr> <td data-bbox="760 1549 834 1602">(c)</td> <td data-bbox="834 1549 1130 1602">General workers</td> <td data-bbox="1130 1549 1430 1602">\$ / day</td> </tr> <tr> <td colspan="3" data-bbox="760 1602 1430 1654">Working overtime after a full normal working day:</td> </tr> <tr> <td data-bbox="760 1654 834 1707">(d)</td> <td data-bbox="834 1654 1130 1707">Every 2 hours up to 4 hours</td> <td data-bbox="1130 1654 1430 1707">= ___ normal day</td> </tr> <tr> <td data-bbox="760 1707 834 1785">(e)</td> <td data-bbox="834 1707 1130 1785">Every 2 hours beyond 4 hours overtime</td> <td data-bbox="1130 1707 1430 1785">= ___ normal day</td> </tr> </table>		Working for a full normal working day			(a)	Skilled labour	\$ / day	(b)	Semi-skilled labour	\$ / day	(c)	General workers	\$ / day	Working overtime after a full normal working day:			(d)	Every 2 hours up to 4 hours	= ___ normal day	(e)	Every 2 hours beyond 4 hours overtime	= ___ normal day
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(e)	Every 2 hours beyond 4 hours overtime	= ___ normal day																						

<sup>5</sup> Refer to a separate sheet if more classification is required.



Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)
		Rates for working on shift or on holidays shall be agreed.
18	Percentage addition for administrative charge on payment on behalf of the defaulting party	
	<b>Time</b>	
19	Dates for Access to the Site	
	Portion of the Site	Date
	(a)	
	(b)	
	(c)	
	(d)	
	(e)	
20	Time for Completion (Delete either Item 20 or Item 21)	
	A. The Sub-Contract Works shall be commenced, carried out and completed (in sections if so stated) at such times to suit the commencement dates and dates for completion of the relevant sections of the Head Contract Works stated below, subject to extension of time according to this Sub-Contract.	
	B. Names of relevant sections of the Head Contract Works (A Sub-Contract Works Section shall mean such part of the Sub-Contract Works required to be completed within a section of the Head Contract Works) (Whole = whole of the Head Contract Works)	
	Phase / Section / Stage / Whole	Description
	(a)	
	(b)	
	(c)	
	(d)	
	(e)	
	C. Programme of the relevant sections of the Head Contract Works and Damages for Delayed Completion (The rate of liquidated damages stated below shall be that payable by the Sub-Contractor for each calendar day of delay to the completion of the relevant section of the Head Contract Works caused by delayed completion of the relevant Sub-Contract Works Section. If none or "N/A" stated, then general damages shall apply.)	

Item	Entities or Defined Terms		Particulars or Definitions (stated on the right of or under each item)			
		Phase / Section / Stage / Whole	Commencement Date <sup>6</sup>	Date for Completion <sup>7</sup>	Durations in Calendar Days	Rate of Liquidated Damages for each Calendar Day's Delay
	(a)					HK\$
	(b)					HK\$
	(c)					HK\$
	(d)					HK\$
	(e)					HK\$
21	Time for Completion (Delete either Item 20 or Item 21)					
	A. The Sub-Contract Works Sections shall be commenced on the commencement dates, carried out and completed on or before their own completion dates stated below, subject to extension of time according to this Sub-Contract.					
	B. Names of Sub-Contract Works Sections (Whole = whole of the Sub-Contract Works)					
		Phase / Section / Stage / Whole	Description			
	(a)					
	(b)					
	(c)					
	(d)					
	(e)					
	C. Programme of Sub-Contract Works Sections and Damages for Delayed Completion (The rate of liquidated damages stated below shall be that payable by the Sub-Contractor for each calendar day of delay to the completion of the relevant Sub-Contract Works Section, notwithstanding the Contractor's liability under the Head Contract. If none or "N/A" stated, then general damages shall apply.)					
		Phase / Section / Stage / Whole	Commencement Date <sup>8</sup>	Date for Completion <sup>9</sup>	Durations in Calendar Days	Rate of Liquidated Damages for each Calendar Day's Delay
	(a)					HK\$
	(b)					HK\$
	(c)					HK\$
	(d)					HK\$

<sup>6</sup> Alternatively, state a mechanism to determine the Commencement Date.

<sup>7</sup> Alternatively, state a mechanism to determine the Date for Completion, e.g. number of calendar days or working days commencing from a certain commencement date)

<sup>8</sup> Same as Footnote 6.

<sup>9</sup> Same as Footnote 7.

Item	Entities or Defined Terms			Particulars or Definitions (stated on the right of or under each item)				
	(e)						HK\$	
22	Maximum amount of liquidated damages payable for the whole Sub-Contract			HK\$				
23	Normal daily working hours							
24	Defects Liability Period			Commencing on the day following the Substantial Completion of the relevant Sub-Contract Works Section (or the whole if not divided into sections) until:				
<b>Documents</b>								
25	Tender Documents comprising (delete "Yes" if not applicable)			Attached hereto	Bound separately and signed	Not provided		
	(a)	Conditions of Tendering		Yes	Yes	Yes		
	(b)	Form of Tender		Yes	Yes	Yes		
	(c)	Sub-Contract Particulars (partially completed by the Contractor for tendering)		Yes	Yes	Yes		
	(d)	Special Sub-Contract Conditions		Yes	Yes	Yes		
	(e)	Tender Specification		Yes	Yes	Yes		
	(f)	Pricing Schedules		Yes	Yes	Yes		
	(g)	Schedule of Tender Drawings		Yes	Yes	Yes		
	(h)	Tender Drawings		Yes	Yes	Yes		
	(i)	Other documents (e.g. tender addenda, which are listed separately here but should be regarded as part of one of the above documents):						
26	Tender Correspondence (being documents submitted by the Sub-Contractor with the Tender mentioned in Recital 4 in addition to the Tender Documents and further written exchanges mentioned in Recital 5, and accepted by the Contract Parties to form part of this Sub-Contract)							
		Date	Ref.	Media (e.g. letter / fax / email)	From	To	Title	With Attachments
	(a)							Yes / No
	(b)							Yes / No
	(c)							Yes / No
	(d)							Yes / No

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
	(e)		Yes / No
	Abbreviations:		
27	Order of precedence for interpretation of the Sub-Contract Documents (as below with higher priority given first, unless otherwise changed by the Numerical Order)		Numerical Order
	(a)	Sub-Contract Agreement	
	(b)	Sub-Contract Particulars	
	(c)	Tender Correspondence	
	(d)	Form of Tender or the Tender	
	(e)	Special Sub-Contract Conditions	
	(f)	Sub-Contract Conditions	
	(g)	Pricing Schedules	
	(h)	The Preliminaries section of the Sub-Contract Specification	
	(i)	Sub-Contract Drawings	
	(j)	Sections of the Sub-Contract Specification other than the Preliminaries section	
	If the Pricing Schedules, Sub-Contract Specification and Sub-Contract Drawings are referring to the tender / contract documents for the Head Contract, then the order of precedence of the referred parts shall follow that stated in the tender / contract documents of the Head Contract <sup>10</sup> <The appropriateness of this option to be specifically subject to legal vetting.>		Yes / No
	<b>Payments</b>		
28	Retention Percentage	10%	
29	Maximum Retention (not applicable to Rates Only Contract)	5% of the original Sub-Contract Price stated in Item 13 above	
30	Payment Application Due Date	The ____ of each month	
31	Payment Advice Due Date	The ____ of each month	
32	Payment Invoice Due Date	The ____ of each month	
33	Payment Due Date	The ____ of each month	
	(If any of the Due Dates stated in Items 30 to 33 falls on a public holiday, the Due Date shall be the next working day.)		
	<b>Excusable Events and Compensable Events</b>		
34	Delays or disruptions by reason of (excluding that part of the event caused by or due to a breach of contract or other default of the Sub-Contractor or any person for whom he is responsible) <sup>11</sup>	Excusable Events	Compensable Events

<sup>10</sup> To avoid doubt, it is preferred to specify the exact order of precedence instead of referring to elsewhere.

<sup>11</sup> Adjust the list and descriptions as appropriate.

Item	Entities or Defined Terms	Particulars or Definitions (stated on the right of or under each item)	
(a)	force majeure	Yes	No
(b)	inclement weather conditions and/or their adverse consequences	Yes	No
(c)	the issuance of tropical cyclone warning signal No. 8 or above or of a Black Rainstorm Warning, and/or the adverse consequences of cyclone or rainstorm	Yes	No
(d)	an Excepted Risk	Yes	Yes
(e)	fire, lightning, explosion, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them	Yes	No
(f)	late provision by the Contractor of instructions or information expressly specified by this Sub-Contract to be provided by a specific time, or expressly requested for by the Sub-Contractor reasonably in advance for the progressing of the Sub-Contract Works	Yes	Yes
(g)	such opening up for inspection of work covered up or such testing of materials or work and the consequential making good which are additional to the contract requirements, were instructed by the Contractor, and proved that the materials and work are according to this Sub-Contract	Yes	Yes
(h)	the carrying out of a Variation or the happening of an event deemed to be a Variation	Yes	Yes
(i)	increase in the work to be carried out pursuant to provisional items in this Sub-Contract of sufficient magnitude that the increase could not have been apparent from this Sub-Contract	Yes	Yes
(j)	a postponement of the Date for Access to any portion of the Site beyond the permissible extent specified by this Sub-Contract	Yes	Yes
(k)	a postponement of the Commencement Date of a Sub-Contract Works Section beyond the permissible extent specified by this Sub-Contract	Yes	Yes
(l)	a suspension of the provision of the whole or a portion of the Site as instructed by the Contractor beyond the permissible extent specified by this Sub-Contract	Yes	Yes
(m)	a suspension of the progress of the whole or a part of a Sub-Contract Works Section as instructed by the Contractor beyond beyond the extent specified by this Sub-Contract	Yes	Yes
(n)	a postponement or suspension of the Sub-Contractor's work on site due to a lack of effective Employees' Compensation Insurance or Contractors' All Risks and Third Party Liability Insurance to be maintained by the Contractor to cover the Sub-Contractor's people or activities on site	Yes	Yes
(o)	a delay or disruption caused by other contractors on the Project Site	Yes	Yes

Item	Entities or Defined Terms		Particulars or Definitions (stated on the right of or under each item)	
	(p)	a delay caused by a statutory undertaker or utility company carrying out work in pursuance of its statutory obligations rather than a commercial contract, and failing to commence or to carry out its work in due time provided that the Sub-Contractor has taken all practicable measures to cause it to commence, carry out and complete its work on time	Yes	No
	(q)	a failure of the Contractor to supply or supply on time materials that he agreed to provide for the Sub-Contract Works	Yes	Yes
	(r)	a delay by a Government department in giving an approval or a consent which is not the Sub-Contractor's responsibility to obtain	Yes	Yes
	(s)	an unreasonable delay by a Government department in giving an approval or a consent which is the Sub-Contractor's responsibility to obtain, provided that any disallowance of approval or consent attributable to the Sub-Contractor's lack of adequate submission shall not be considered as unreasonable	Yes	No
	(t)	a special circumstance considered by the Contractor as sufficient grounds to fairly entitle the Sub-Contractor to an extension of time	Yes	No
	(u)	an act of prevention, a breach of contract or other default by the Contractor or any person for whom he is responsible	Yes	Yes
<b>Other terms and conditions</b>				
35				

**APPENDIX A TO SUB-CONTRACT PARTICULARS –  
Contractors' All Risks and Third Party Liability Insurance Policy or Synopsis**

(Note: When completing the particulars, text added shall be shown in italics, and text deleted shall be shown as struck through.)

		(delete "Yes" if not applicable)
1	The policy or synopsis is attached hereto	Yes
2	The policy or synopsis is the same as those described in the following part and clause of the Tender Documents or Tender Correspondence  _____	Yes
3	The synopsis is as described below	Yes
(a)	Percentage of professional fees in case of reinstatement	Not less than ___ %
(b)	Amount for the removal of debris	Not less than \$ _____
(c)	Percentage for escalation clause	Not less than ___ %
(d)	Material damage insurance excess in respect of each and every occurrence of loss or damage	Amount or % of loss or damage not more than
(1)	Generally	\$ _____
(2)	Loss of or damage to scaffolding, shuttering, formwork, timbering, screens, fencing and hoardings	___ % or \$ _____ , whichever is the greater
(3)	Loss of or damage to the Insured Property caused by water	___ % or \$ _____ , whichever is the greater
(e)	Third party liability insurance's limit of indemnity for any one occurrence (but unlimited in the aggregate amount for the period of insurance)	Amount not less than
(1)	Generally	\$ _____
(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	\$ _____
(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	\$ _____
(f)	Third party liability insurance excess in respect of each and every occurrence of loss or damage	Amount or % of loss or damage not more than
(1)	Generally	\$ _____

			(delete "Yes" if not applicable)
	(2)	Loss or damage arising from subsidence, collapse, vibration, or the weakening or removal of support to any property, land or building	___ % or \$ _____ , whichever is the greater
	(3)	Loss or damage to Principals' properties which are not covered by the Materials Damage section of the insurance	___ % or \$ _____ , whichever is the greater
	(4)	Loss of or damage caused by water	___ % or \$ _____ , whichever is the greater
	(5)	Loss of or damage to existing underground services	___ % or \$ _____ , whichever is the greater
	(6)	Loss of or damage to oil filled cable, fibre-optic cable or telephone cable of 4,000 pairs or more	___ % or \$ _____ , whichever is the greater
	(g)	Indemnity in respect of liability for death, bodily injury, illness or disease arising out of or in the course of undertaking any activity in connection with an insured contract in respect of any person to whom any part of the insured contract has been sub-contracted, including but not limited to self-employed person(s) and/or sole proprietor	Covered / excluded (delete as appropriate)



**SUB-CONTRACT CONDITIONS****1. INTERPRETATIONS**

- 1.1 **Terms:** The same term used in the Sub-Contract Agreement, the Sub-Contract Particulars and the Sub-Contract Conditions have the same meaning.
- 1.2 **Words** in the singular: include the plural and vice versa.
- 1.3 **Words** in the masculine: include the feminine and the neuter.
- 1.4 **Headings** in the Sub-Contract Agreement or the Sub-Contract Conditions: are for identification purposes only and do not restrict or enlarge the scope of application of the articles or clauses under the headings.
- 1.5 **Footnotes:** are for guidance only and do not form part of this Sub-Contract.
- 1.6 Any **day:** means a calendar day unless otherwise stated as working day.
- 1.7 Within **1 day:** means within **24 hours**
- 1.8 Commencing or starting **from a certain day:** means that certain day is day 1 for counting
- 1.9 Commencing or starting **after a certain day:** means the day following that certain day is **day 1** for counting.
- 1.10 **Person:** includes an individual, firm, partnership, or body corporate.
- 1.11 **Person for whom a party is responsible:** includes any person employed or engaged or appointed or brought or invited by the party upon or in connection with the Project.
- 1.12 **Person for whom the Employer is responsible:** excludes the Contractor and the Sub-Contractor and any person for whom either of them is responsible.
- 1.13 **Person by whom the Contractor is responsible:** excludes the Sub-Contractor and any person for whom he is responsible.
- 1.14 The **Main Contractor:** means the person appointed directly by the Employer to execute the main portion of the Project and having overall control and management of the Project Site. The Contractor may or may not be the Main Contractor.
- 1.15 The **Site:** means one or more areas or spaces, whether continuous or not, on plan or on elevation, as stated in the Sub-Contract Particulars to be made available by the Contractor to the Sub-Contractor for the Sub-Contractor to carry out and complete the permanent portion of the Sub-Contract Works or for the Sub-Contractor to place his materials and temporary site facilities
- 1.16 **Materials:** means materials and goods, and includes equipment or machinery for incorporation into the Sub-Contract Works.
- 1.17 **Construction plant:** means construction plant, equipment or machinery used for carrying out the Sub-Contract Works.

- 1.18 **Temporary site facilities:** includes construction plant (including cranes, materials hoists, workmen lifts, gondolas), tools, implements, safety belts, safety helmets, safety appliances, access routes, roads, footpaths, gangways, ladders, working platforms, scaffolding, catch fans, hoardings, covered walkways, screens, gates, gantries, enclosures, barriers, tarpaulins, safety nets, safety screens, site offices, mess rooms, workshops and stores, sanitary convenience, drainage, telephone, water and electricity supply, lighting, directory and warning signs, planking and strutting, shoring, props, falsework, formwork, refuse bins, etc. all as may be provided on site temporarily.
- 1.18 The **Sub-Contract Drawings:** means the Tender Drawings included in the Tender Documents, and any other drawings as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Contractor to form part of this Sub-Contract.
- 1.19 The **Sub-Contract Specification:** means the Tender Specification included in the Tender Documents, and any other specification as may be prepared by the Sub-Contractor and submitted with his Tender and expressly accepted in the Tender Correspondence by the Contractor to form part of this Sub-Contract.
- 1.20 The **Pricing Schedules:** means a document (whether it may be called schedule of works, bills of quantities, schedule of quantities and rates, schedule of rates, quotations or other similar names) included in the Sub-Contract Documents and showing the Sub-Contractor's rates and prices for the execution of the Sub-Contract.
- 1.21 The **Sub-Contract Price Build-up:** means the build-up of the Sub-Contract Price for Lump Sum Contract or Remeasurement Contract as given in the Pricing Schedules and/or the Tender Correspondence.
- 1.22 A **Sub-Contract Rate:** means a rate inserted in the Pricing Schedules as may be modified by the Tender Correspondence, and includes for all labour costs, material costs, construction plant and tool costs, indirect costs, overheads, profits, taxes, and costs of all ancillary work and liability indispensably necessary for the item of work to which the Sub-Contract Rate applies, and shall not be adjusted for error made by the Sub-Contractor in building up the Sub-Contract Rate.
- 1.23 A **Variation:** means a change (addition, omission, substitution, alteration, modification, etc.) as instructed by the Contractor to the design, quality or quantity of the Sub-Contract Works or to the time or manner for carrying out the Sub-Contract Works from that provided for in this Sub-Contract, and includes other events deemed by the Sub-Contract Conditions to be a Variation.
- 1.24 **Substantial Completion:** may be called "Practical Completion" depending on the term used in the Contract. In that case, the terms "Substantial Completion", "Substantial Completion Certificate" and "substantially completed" in this Sub-Contract shall be read as "Practical Completion", "Practical Completion Certificate" and "practically completed" respectively.
- 1.25 **Defects Liability Period:** means the period after Substantial Completion during which defects arising are to be rectified.
- 1.26 **Maintenance Period:** means the period after Substantial Completion during which periodical service and maintenance beyond defects rectification are to be carried out. Some Main Contracts and insurance policies use the term "Maintenance Period" to mean "Defects Liability Period" used here.

- 1.27 **Defects Rectification Certificate**<sup>12</sup>: may be called "Certificate of Completion of Making Good Defects" or "Maintenance Certificate" depending on the term used in the Contract. In that case, the term "Defects Rectification Certificate" in this Sub-Contract shall be read as "Certificate of Completion of Making Good Defects" or "Maintenance Certificate", as the case may be.
- 1.28 **Excepted Risks**: means:
- (a) war (whether war be declared or not) in which Hong Kong is actively engaged, the invasion of Hong Kong, acts of terrorists in Hong Kong, civil war, rebellion, revolution or military or usurped power in Hong Kong, riot, commotion or disorder in Hong Kong other than amongst the employees of the Sub-Contractor or any person for whom he is responsible;
  - (b) any direct consequence of the faulty design not provided by the Sub-Contractor;
  - (c) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel or from radioactive toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; and
  - (d) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds.
- 1.29 **Excusable Events**: are events listed in the Sub-Contract Particulars, and are at the risk of the Contractor, if they occur, in so far as the time to complete the Sub-Contract Works is concerned.
- 1.30 **Compensable Events**: are events listed in the Sub-Contract Particulars, and are at the risks of the Contractor, if they occur, in so far as the price of the Sub-Contract Works is concerned, and are listed in the Sub-Contract Particulars.
- 1.31 **Event definitions**: The scope of each of the event definitions listed in the Sub-Contract Particulars is mutually exclusive. Any deletion or scope reduction of an event definition shall not expand the scope of the remaining unchanged event definitions.
- 1.32 **Money recoverable from the Contractor by the Sub-Contractor**: shall be added to the Sub-Contract Price and added to the next periodical payment issued after the amount is ascertained, unless the Contractor requests to settle and settles the payment separately without adjustment to the Sub-Contract Price.
- 1.33 **Money recoverable from the Sub-Contractor by the Contractor**: shall be deducted from the Sub-Contract Price and deducted from the next or further payments issued after the amount is ascertained until the amount is fully deducted. If the balance of the final Sub-Contract Price less retention fund is inadequate to cover the amount not yet deducted, the residue amount may be recovered from the Sub-Contractor by the Contractor as a debt.<sup>13</sup>
- 1.34 **Sub-Contractor's submissions** for comment or approval: shall be submitted by the Sub-Contractor to the Contractor in good time before use. The Contractor shall reply in writing within a reasonable time.
- 1.35 **Contractor's approval**: No approval, disapproval or comment made by the Contractor on the Sub-Contractor's submissions shall in any way relieve or reduce the Sub-Contractor's obligations and liabilities under this Sub-Contract.

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<sup>12</sup> The Standard Form does not refer to "Defects Rectification Certificate" elsewhere but the term is retained here because it may be used in other parts of the Sub-Contract Documents.

<sup>13</sup> This clause does not specify set-off under other contracts.

**2. SITE****2.1 Provision or possession of Site**

2.1.1 The provision of the Site shall be:

- (a) by the Contractor to the Sub-Contractor;
- (b) in such portions on such access dates stated in the Sub-Contract Particulars;
- (c) for the sustained use (but not exclusive possession);
- (d) for the carrying out and completion of the Sub-Contract Works; and
- (e) not excluding legitimate occupiers and users for the time being on the Site to have continued use of such portions of the Site not immediately required by the Sub-Contractor for carrying out the Sub-Contract Works.

2.1.2 The security of the Site shall be the Contractor's responsibility unless the Sub-Contractor takes exclusive possession.

2.1.3 If exclusive possession of any portion of the Site is stated in this Sub-Contract, the Sub-Contractor shall:

- (a) take over the relevant portion of the Site upon the respective access date;
- (b) take responsibility for the reasonable care thereof; and
- (c) take up security responsibility thereof.

**2.2 Use of Site**

2.2.1 Entry and exit points to the Site:

- (a) shall be at locations shown or described in this Sub-Contract or, if not shown or described, to be determined by the Main Contractor, and
- (b) such locations may be subject to subsequent re-location and re-sizing as directed by the Main Contractor from time to time to suit the sequence and progress of the Main Contract Works.

2.2.2 For access, usage of roads and parking:

- (a) the Sub-Contractor shall comply with all relevant regulations or restrictions of the Police, other Government authorities, and the Property Manager (i.e. the person providing estate, property or facility management services to the estate, park, campus, premises, etc. where the Site is) shall be complied with by the Sub-Contractor;
- (b) the Contractor shall submit all necessary applications and pay any necessary fees and charges, unless otherwise specified by this Sub-Contract; and
- (c) the Sub-Contractor shall submit early requests for the applications together with his documents in support of the applications.

### 2.2.3 House rules of Property Manager:

- (a) in regard to the day to day operation and use of the premises in which the Site is situated and in regard to any special restrictions on works of any nature within the premises: shall be complied with by the Sub-Contractor with payment and subsequent release of security deposit, if required; and
- (b) becoming more stringent than those announced by the Property Manager before the award of this Sub-Contract and this affects the Sub-Contract Works: shall be deemed to be a Variation.

## 2.3 Site conditions

### 2.3.1 Site conditions shall be deemed to:

- (a) include the location, general site conditions, type of soil if underground work is required, accessibility, storage space, restrictions for loading and off-loading materials, and any other conditions which may affect his carrying out of the Sub-Contract Works;
- (b) have been thoroughly acquainted by the Sub-Contractor by site visits before entering into this Sub-Contract; and
- (c) have been fully considered when pricing for the Sub-Contract Price, with no claim for extra payment or extension of the completion times to be allowed on the grounds of ignorance or misinterpretation of the site conditions.

### 2.3.2 Site investigation and condition survey reports or other information which may be made available to the Sub-Contractor before the award of this Sub-Contract shall be:

- (a) the whole record of such investigation or survey as has been carried out;
- (b) supplied for the Sub-Contractor's information only; and
- (c) supplied in good faith without any warranty on the part of the Contractor as to their accuracy or comprehensiveness in terms of coverage.

## 2.4 Access during Defects Liability Period

For rectification of defects arising during the Defects Liability Period:

- (a) access to specific locations on the Site shall be provided by the Contractor to the Sub-Contractor;
- (b) the Sub-Contractor shall restrict himself to the specific locations and shall leave the Site as soon as the defects have been rectified;
- (c) when existing facilities such as gondolas or lifting platforms are available for day to day use by the Employer or the Property Manager, and such existing facilities are useful for rectifying defects, the Contractor shall assist to apply for the use of such existing facilities by the Sub-Contractor subject to payment by the Sub-Contractor of reasonable amounts for consumables and other costs due to the use of the facilities; and
- (d) when such existing facilities are not available, the Sub-Contractor shall provide his own temporary facilities required for rectifying defects.

## 2.5 Objects of antiquity

If objects of antiquity are found on the Site by the Sub-Contractor:

- (a) they shall be deemed to be the property of the Employer;
- (b) the Sub-Contractor shall report immediately to the Contractor upon discovery, who shall issue instructions to deal with the issue;
- (c) the Sub-Contractor shall permit others appointed by the Employer to carry out examination, excavation or removal of the object of antiquity; and
- (d) a compliance with the Contractor's instructions in this regard shall be deemed to be a Variation.

## 3. WORKS

### 3.1 Sub-Contract Works

3.1.1 The Sub-Contract Works include:

- (a) permanent work required to be carried out and completed by the Sub-Contractor under this Sub-Contract (unless otherwise specified by this Sub-Contract or unless the Sub-Contractor has provided the design for whatever reasons, the design of permanent work shall be the responsibility of the Contractor who shall carry out the design or obtain the design from others and issue it to the Sub-Contractor);
- (b) design or development of design of any part of the permanent work to the extent specified by this Sub-Contract, with reasonable skill and care in all cases, and to meet the performance requirements specified by the Sub-Contract and to fit the purpose if so specified by this Sub-Contract, to the Contractor's approval before implementation;
- (c) temporary work required for the carrying out and completion of the permanent work, including design of the temporary work to fit the purpose, excluding those work or design specifically excluded from this Sub-Contract;
- (d) services required to be carried out and completed by the Sub-Contractor under this Sub-Contract;
- (e) care and custody of materials supplied by the Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works after they are handed over to the Sub-Contractor;
- (f) testing and commissioning of all mechanical, hydraulic, plumbing, drainage, fire services, electrical or electronic parts of the Sub-Contract Works;
- (g) service and maintenance specified by this Sub-Contract to be carried out after Substantial Completion of the Sub-Contract Works; and
- (h) provision of warranties and guarantees specified by this Sub-Contract.

3.1.2 The Sub-Contract Works exclude:

- (a) materials supplied by the Contractor for incorporation by the Sub-Contractor into the Sub-Contract Works before they are handed over to the Sub-Contractor; and
- (b) work or services specified by this Sub-Contract to be carried out, provided, procured, given, issued, etc. by the Contractor, which shall be deemed to be free of charge.

### 3.2 General attendance

General attendance to be provided by the Contractor for the Sub-Contractor's use in a proper manner includes:

- (a) all temporary site facilities which may be established on the Site by the Contractor or the Main Contractor for shared use by various trades, unless otherwise specified by this Sub-Contract;
- (b) working platform or scaffolding complete with catch fans for work higher than 2 m above the supporting surface below; and
- (c) spaces on the Site for the erection of the Sub-Contractor's offices, workshops and stores.

## 4. TIME

### 4.1 Contract commencement

This Sub-Contract shall be deemed to take effect and commence on the date of a letter issued by or on behalf of the Contractor awarding this Sub-Contract to the Sub-Contractor, irrespective of when the Sub-Contract Agreement is signed.

### 4.2 Commencement and completion of Works

#### 4.2.1 The Sub-Contractor shall:

- (a) submit all applications required by law to be submitted by him and pay all associated charges before the commencement of work on site or when the same fall due, as the case may be;
- (b) commence the Sub-Contract Works Sections according to the programme stated in either Item 20 or Item 21 of the Sub-Contract Particulars;
- (c) observe the normal daily working hours as stated in the Sub-Contract Particulars, and any working days and working hours restrictions which may be imposed under this Sub-Contract or at law;
- (d) do all that may reasonably be required to proceed with the Sub-Contract Works expeditiously; and
- (e) complete the Sub-Contract Works Sections on or before the current Date for Completion, where the current Date for Completion means:
  - (1) the original programmed date to complete the relevant Sub-Contract Works Section in order to meet the Head Contract's Date for Completion stated in Item 20 of the Sub-Contract Particulars (if Item 20 is applicable), adjusted for extension of time under this Sub-Contract; or
  - (2) the Date for Completion of the relevant Sub-Contract Works Section stated in Item 21 of the Sub-Contract Particulars (if Item 21 is applicable), adjusted for extension of time under this Sub-Contract.

#### 4.2.2 The Contractor shall:

- apply to the relevant party or Government authority for working outside the restricted time which may be imposed under this Sub-Contract or at law, when requested by the Sub-Contractor, at the Sub-Contractor's expense but without extra charge.

### 4.3 Delays and disruptions

The Sub-Contractor shall:

- (a) give a notice of delay or disruption to the Contractor within **14 days** after the commencement of an event causing or likely to cause delay or disruption to the regular progress of the Sub-Contract Works or delay to the completion of any Sub-Contract Works Section beyond its current Date for Completion becoming apparent;
- (b) state in the notice of delay or disruption in detail:
  - (1) the event and relevant circumstances causing or likely to cause the delay or disruption;
  - (2) the estimated extent of the delay or disruption to the progress;
  - (3) the estimated length of the delay to the completion;
  - (4) whether the Sub-Contractor considers that he is or may become entitled to:
    - (i) an extension of time due to the event being an Excusable Event listed in the Sub-Contract Particulars; and
    - (ii) reimbursement for direct loss and/or expense due to the event being an Compensable Event listed in the Sub-Contract Particulars; and
  - (5) an estimate of the likely amount, if direct loss and/or expense is expected to be incurred;
- (c) submit updated notices of delay and disruption at **monthly** intervals, if the delay or disruption is of continuing or repetitive nature;
- (d) submit all notices of delays not later than any of the following:
  - (1) the current Date for Completion of the relevant Sub-Contract Works Section;
  - (2) its extended Date for Completion previously claimed by the Sub-Contractor; and
  - (3) its Date of Substantial Completion;
- (e) submit his monetary claim for reimbursement for direct loss and/or expense with evidence of the amounts claimed:
  - (1) as soon as the amounts are fully known and reasonably calculable; and
  - (2) in any case not later than **3 months** after the direct loss and/or expense having been incurred, progressive submission permitted;
- (f) bear the consequence of his own non-submission, late submission or insufficient submission of notices or information; and
- (g) use his best endeavours continuously to prevent or mitigate delay or disruption to the progress of the Sub-Contract Works however caused, and to prevent the completion of the Sub-Contract Works from being delayed or further delayed, but without any obligation to accelerate the carrying out of the Sub-Contract Works to recover delay caused by an Excusable Event.



#### 4.4 Extensions of time for Excusable Events

The Contractor shall:

- (a) be entitled not to form his opinion as to the extent of delays or disruptions before the Sub-Contractor submits a notice of delay or disruption under Clause 4.3 or in respect of a notice submitted later than the latest time specified by Clause 4.3;
- (b) be entitled to take into account only of the information currently submitted by the Sub-Contractor when considering extension of time, without an obligation to demand for further information from the Sub-Contractor;
- (c) notify, within **30 days** after the receipt of the Sub-Contractor's notice of delay or disruption under Clause 4.3, the Sub-Contractor his opinion on the extent of delay or disruption to progress or delay to completion that the Excusable Event specified by the Sub-Contractor in his notice has caused or is likely to cause to the relevant Sub-Contract Works Section;
- (d) grant an extension of time by fixing a later Date for Completion for the relevant Sub-Contract Works Section to compensate the working time lost, if there is a delay to completion due to an Excusable Event;
- (e) grant an extension of time for any Excusable Event that occurs in the period of delay after the relevant current Date for Completion but before the Substantial Completion of a Sub-Contract Works Section;
- (f) add, if the Excusable Event commences after the relevant current Date for Completion, the extension of time so granted to the total of extensions of time previously granted when fixing a new Date for Completion, even though the date so fixed may still be earlier than the end of the Excusable Event; and
- (g) review and adjust, at his own discretion, any extension of time previously granted in light of further evidence at any time before settling the Final Account, but not reducing the extension of time previously granted unless any previous extension has been based upon incorrect information provided by the Sub-Contractor;

#### 4.5 Monetary compensations for Compensable Events

The Contractor shall:

- (a) be entitled not to certify payment for reimbursement for direct loss and/or expense if the monetary claim is submitted later than the time specified by Clause 4.3;
- (b) be entitled to take into account only of the information currently submitted by the Sub-Contractor when considering monetary compensation, without an obligation to demand for further information from the Sub-Contractor;
- (c) assess and certify the amount of any direct loss and/or expense compensable to the Sub-Contractor, within **30 days** after the receipt of the Sub-Contractor's monetary claim, and taking into account his own opinion on the time effect of delays and disruptions;
- (d) add the amount which may be assessed from time to time to the Sub-Contract Price and include it in the next periodical payment to the Sub-Contractor; and
- (e) review and adjust his valuation of the cost effect in light of further evidence at any time before settling the Final Account, and account for any adjustment so resulted in the next periodical payment to the Sub-Contractor.

**4.6 Damages for delayed completion**

4.6.1 The Contractor may:

- (a) recover from the Sub-Contractor liquidated damages for delayed completion of any Sub-Contract Works Section at the respective rate using the method of calculation stated in Item 20 or 21 of the Sub-Contract Particulars;
- (b) review and adjust the damages for delayed completion calculated and already recovered;
- (c) release any excess amount to the Sub-Contractor (without interest if the previous calculation was done on reasonable basis), if there is any subsequent adjustment to the extension of time;
- (d) relieve the Sub-Contractor corresponding from paying damages for delayed completion if:
  - (i) Item 20 of the Sub-Contract Particulars applies; and
  - (ii) the Contractor is relieved from paying damages for delay to the completion of the Head Contract Works partly or wholly without any waiver of monetary claim by the Contractor;
- (e) give the Sub-Contractor an opportunity to agree a corresponding relief and waiver arrangement, if the relief of the Contractor requires a waiver of monetary claim by the Contractor; and
- (f) release any excess amount of damages to the Sub-Contractor without interest.

4.6.2 If a part of a Sub-Contract Works Section is certified or deemed to be substantially completed according to Clause 4.7, the rate of liquidated damages for the remainder of the Works Section shall be = original rate of liquidated damages for the Works Section x (1 - estimated value of the part completed / the estimated value of the Works Section).

**4.7 Substantial Completion**

4.7.1 A Sub-Contract Works Section shall be considered as substantially completed, when:

- (a) all the work within it have been completed;
- (b) its places are clean and tidy with the Sub-Contractor's temporary site facilities demobilized from the places to the satisfaction of the Contractor; and
- (c) it is ready for handover to the Contractor, excluding only:
  - (1) work or services specifically specified by this Sub-Contract to be carried out after Substantial Completion; and
  - (2) minor work which is not essential for the occupation, use or functioning of the Sub-Contract Works.

- 4.7.2 The procedures for certifying substantial completion of a Sub-Contract Works Section If the Sub-Contractor considers that Substantial Completion of a Sub-Contract Works Section is imminent shall be as follows:
- (a) invitation by giving a reasonable advance written notice from the Sub-Contractor to the Contractor to carry out a completion inspection;
  - (b) carrying out of the inspection by the Contractor;
  - (c) notification within **7 days** of the completion inspection from the Contractor to the Sub-Contractor of whether there is any outstanding work essential to Substantial Completion;
  - (d) completion of outstanding work by the Sub-Contractor;
  - (e) invitation by the Sub-Contractor of the Contractor to re-inspect as appropriate;
  - (f) demobilization from the locations of the Sub-Contract Works Section (subject to item l below);
  - (g) making the place clean, tidy and ready for handover to the Contractor;
  - (h) satisfaction of the Contractor that the state of Substantial Completion has been achieved;
  - (i) issuance of a Substantial Completion Certificate to the Sub-Contractor to confirm the fact and the date;
  - (j) taking over by the Contractor of the relevant Section or part of the Sub-Contract Works not later than **14 days** after the state of Substantial Completion is reached;
  - (k) taking over by the Contractor of the responsibility for the care and custody of the relevant Section or part thereafter;
  - (l) staying of the Sub-Contractor if desired after Substantial Completion at such portion of the Site which has been designated for his placement of temporary site facilities and which are not immediately required for the occupation or use by others for a longer time; and
  - (m) demobilization of the Sub-Contractor not later than **7 days** after the Contractor's instruction to demobilize from such portion of the Site.
- 4.7.3 Alternatively, if any part of the Head Contract Works is certified under the Head Contract to have been substantially completed without specifically excluding the Sub-Contract Works, any part of the Sub-Contract Works included in that part of the Head Contract Works shall be deemed to have been substantially completed on the date certified.

## 5. CONTRACT BASIS

### 5.1 Interpretation of Sub-Contract Documents

- 5.1.1 The various parts of the Sub-Contract Documents are mutually explanatory to each other and shall be interpreted as a whole as far as possible. In case of any contradictions or discrepancies amongst them:
- (a) the order of precedence for interpretation shall follow that stated in the Sub-Contract Particulars;
  - (b) documents issued later in time shall take precedence;

- (c) particular specification shall take precedence over general specification;
- (d) detailed drawings shall take precedence over general drawings;
- (e) specification and drawings specially prepared for the Sub-Contract Works shall take precedence over standard specification and drawings; and
- (f) the contradictions or discrepancies shall be corrected according to the Sub-Contract and shall not vitiate the Sub-Contract nor release the Contract Parties' obligations under the Sub-Contract.

5.1.2 No other documents exchanged before the award of this Sub-Contract shall form part of this Sub-Contract, or affect the meaning and interpretation of the Sub-Contract Documents, unless otherwise agreed in writing by the Contract Parties.

## 5.2 Supplementary information

The Contractor shall:

- (a) issue supplementary drawings or specifications to clarify or amplify the Sub-Contract Documents but not changing the Sub-Contract Works, if so requested by the Sub-Contractor or on his own initiative; and
- (b) issue an instruction for carrying out the Works according to the aforesaid supplementary information, if the Sub-Contractor considers that the supplementary information may change the Sub-Contract Works and makes such a request.

## 5.3 Instructions

Instructions in regard to any matter in connection with the Sub-Contract Works:

- (a) shall be issued in writing by the Contractor to the Sub-Contractor;<sup>14</sup>
- (b) may be issued at any time before the completion of defects rectification;
- (c) shall be complied with by the Sub-Contractor within a reasonable time after receipt:
  - (1) if the Sub-Contractor fails to comply, the Contractor may issue a notice in writing requiring the Sub-Contractor to comply; and
  - (2) if the Sub-Contractor still fails to comply within **3 working days** after the receipt of the said notice, then the Contractor may without further notice employ and pay other persons to carry out any work whatsoever to give effect to such instruction, and all extra financial implications incurred in connection with such employment shall be recoverable from the Sub-Contractor by the Contractor; and
- (d) may state that it should have no price or time implications:
  - (1) if the Sub-Contractor disagrees, he shall notify the Contractor his disagreement in writing within **6 working days** after receipt so that the Contractor may revise or withdraw the instruction; and
  - (2) if the instruction is not revised or withdrawn, it shall still be valid but the price and time implications shall be determined according to this Sub-Contract.

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<sup>14</sup> There is no express provision on oral instructions, verbal instructions, or confirmation of oral / verbal instructions, etc.

**6. PRICES****6.1 Lump Sum Contract**

6.1.1 If the Contract Type stated in the Sub-Contract Particulars is a "Lump Sum Contract", the Sub-Contract Price stated in the Sub-Contract Particulars shall:

- (a) be deemed to be inclusive of all costs, profits and overheads necessary for the completion of the Sub-Contract Works originally described in this Sub-Contract; and
- (b) not be adjusted except for:
  - (1) Variations;
  - (2) adjustments of provisional quantities or provisional sums; and
  - (3) other adjustments permitted under or specified by this Sub-Contract.

6.1.2 Any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Sub-Contract Particulars shall be corrected to give an aggregate error which shall be deemed to have been accepted by the Contract Parties with no adjustment to the Sub-Contract Price.

**6.2 Remeasurement Contract**

6.2.1 If the Contract Type stated in the Sub-Contract Particulars is a "Remeasurement Contract", the Sub-Contract Price stated in the Sub-Contract Agreement and the quantities building up the Sub-Contract Price shall:

- (a) be deemed to be provisional; and
- (b) be finally recalculated by remeasuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or specified by this Sub-Contract.

6.2.2 Unless otherwise specified by this Sub-Contract, any arithmetical errors made by the Sub-Contractor when calculating the Sub-Contract Price stated in the Sub-Contract Particulars shall be ignored in the final calculation.

**6.3 Rates Only Contract**

If the Contract Type stated in the Sub-Contract Particulars is a "Rates Only Contract", the Sub-Contract Price shall finally be calculated by measuring the authorized work properly carried out and valuing the same at the Sub-Contract Rates, subject only to other adjustments permitted under or specified by this Sub-Contract.

**6.4 Adjustment for rises or falls in costs of labour and materials**

Unless otherwise specified by this Sub-Contract, the Sub-Contract Price shall not be adjusted for rises or falls in the costs of labour and materials or exchange rates of currencies.

**6.5 Firm quantities**

6.5.1 Quantities set out by the Contractor in the Sub-Contract Price Build-up shall be taken as firm quantities unless otherwise described as provisional or for reference only.

6.5.2 For work represented by firm quantities, the quantities included in the Sub-Contract Price shall be the firm quantities, notwithstanding any discrepancies between such quantities and the Sub-Contract Drawings or the Sub-Contract Specification.

6.5.3 Firm quantities are not subject to remeasurement when settling the Final Account, and are only varied by Variations.

6.5.4 If a firm quantity or its description does not, according to the specified method of measurement, match the Sub-Contract Drawings or the Sub-Contract Specification and the Contractor confirms in writing that correction of the same is necessary for the actual carrying out of the work, the correction shall be deemed to be a Variation.

## 6.6 Reference quantities

6.6.1 The quantities in the Sub-Contract Price Build-up shall be taken as for reference only:

- (a) if the quantities were estimated by the Sub-Contractor; or
- (b) if the quantities were set out by the Contractor and were described as for reference only.

6.6.2 The Sub-Contractor shall be deemed to have:

- (a) estimated all reference quantities; or
- (b) verified the accuracy of the reference quantities and make necessary correction of the quantities when submitting the Tender,

based on the Sub-Contract Drawings and the Sub-Contract Specification when submitting the Tender.

6.6.3 For work represented by reference quantities, the quantities as included in the Sub-Contract Price shall be those based on the Sub-Contract Drawings and the Sub-Contract Specification, notwithstanding:

- (a) any discrepancies between the reference quantities and the Sub-Contract Drawings or the Sub-Contract Specification; and
- (b) any deviations from the specified method of measurement.

## 6.7 Provisional quantities

Quantities described as "provisional" in the Sub-Contract Price Build-up shall be:

- (a) considered as estimates only:
  - (1) the Contractor shall not bear any responsibility for their accuracy; and
  - (2) the Sub-Contract Rates shall not be adjusted because the final quantities differ from the provisional quantities;<sup>15</sup>
- (b) remeasured on completion of the relevant work based on the as-built records or, if mutually agreed, site measurement (excluding work done without authority); and
- (c) valued at the Sub-Contract Rates after remeasurement.

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<sup>15</sup> If it is considered necessary to do so, separate Sub-Contract Rates should be inserted in the Sub-Contract Price Build-up for valuation when the final quantities differ from the provisional quantities beyond a certain extent. The extent may be judged by individual quantity or by value of a group of related items. This principle should also be used for firm quantities which are originally very small but may be increased many times due to Variations.

**6.8 Lump sum priced items**

In the case of preliminaries items or measured items whose units are "Item" or "Sum" or "Lot" or the like, i.e. items where the prices against them are lump sum prices:

- (a) if there is no change to the scope of work as given in the item description after execution, the whole lump sum price shall be included in the final price;
- (b) if the work is not executed, the lump sum price shall not be included in the final price; and
- (c) unless otherwise specified by this Sub-Contract, if there is a significant change to the scope of work as given in the item description, the lump sum price shall be adjusted in proportion to the change in scope on a fair and reasonable basis.

**6.9 Method of measurement**

6.9.1 The method of measurement referred to or stated in the Sub-Contract Documents shall:

- (a) be deemed to have been used in measuring the quantities in the Sub-Contract Price Build-up;
- (b) be used when settling the Final Account; and
- (c) in case of discrepancies between different methods of measurement stated in various parts of the Sub-Contract Documents, take this order of precedence for interpretation: the method described in the item descriptions, special method, and standard method.

6.9.2 If more number of (but not duplicating) detailed items than those specifically required by the method of measurement have been measured in the Sub-Contract Price Build-up for the same work, the same method as was adopted shall be used when settling the Final Account.

6.9.3 If fewer number of items than those specifically required by the method of measurement have been measured in the Sub-Contract Price Build-up:

- (a) for the work represented by firm or provisional quantities, the missing measurement shall be corrected and the correction shall be deemed to be a Variation; and
- (b) for the work represented by reference quantities, the cost of the items not measured shall be deemed to have been allowed for in the other Sub-Contract Rates, the missing measurement shall be deemed to be a modification of the method of measurement and such modified method of measurement shall be used when settling the Final Account.

6.9.4 If the Sub-Contract Documents are silent as to the method of measurement used, the method of measurement which is reasonably apparent from the Sub-Contract Documents shall be used when settling the Final Account, subject to the conditions that:

- (a) all quantities shall be measured the net quantities as fixed in position with no allowance for wastage and, for work measured superficially, for laps; and
- (b) ancillary items shown on the Sub-Contract Drawings or described in the Sub-Contract Specification but not measured separately in the Sub-Contract Price Build-up shall not be measured separately when valuing Variations, unless the proportion of the ancillary items to the principal items have been significantly varied by Variations.

**6.10 Provisional sums**

If a sum described as "provisional sum" is included in the Sub-Contract Price Build-up:

- (a) The sum shall be expended only as and when instructed by the Contractor.
- (b) The relevant work shall be valued based on the Valuation Rules stated in Clause 6.13.
- (c) When settling the Final Account, the sum shall be deducted from and the said value shall be added to the Sub-Contract Price.

**6.11 Prime cost rates**

6.11.1 If a prime cost rate ("PC Rate") is included in the description of an item in the Pricing Schedules or the Sub-Contract Price Build-up for materials delivered to a designated place:

- (a) the prime cost rate is a provisional allowance for the unit supply cost delivered to the designated place only of such materials qualified by the PC Rate; and
- (b) the Sub-Contract Rate for the item shall be deemed to have allowed in addition for all wastage, all other materials required for the item, taking delivery at the designated place, delivery to fixing locations, fixing, profits and overheads.

6.11.2 If the prime cost rate is described as for supply and fix / install / apply:

- (a) the provisional allowance is for the unit supply and fixing cost charged by a sub-sub-contractor for the item; and
- (b) the Sub-Contract Rate for the item shall be deemed to have allowed in addition for the Sub-Contractor's other costs, profits and overheads.

6.11.3 The Sub-Contractor shall not be obliged to enter into a contract with a supplier or sub-sub-contractor selected by the Contractor for the purposes of supplying materials or carrying out work covered by a PC Rate if the supplier or sub-sub-contractor requires unreasonable payment terms, or has poor financial standing or poor track records.

6.11.4 When settling the Final Account, the Sub-Contract Rate shall be adjusted by the net difference between the prime cost rate and the actual unit cost and shall be applied to the net quantity of the item measured as fixed, installed or applied in position, exclusive of wastage.

6.11.5 If, based on the final quantities, the value represented by all the actual unit costs deviates from the value represented by all the prime cost rates beyond the extent stated in the Sub-Contract Particulars, a reasonable adjustment shall be made for the corresponding increase or decrease in delivering, fixing and wastage costs, profits and overheads so caused beyond the said extent.

**6.12 Variations**

6.12.1 The Contractor may issue instructions from time to time requiring a Variation.

6.12.2 All Variations shall be valued based on the Valuation Rules stated in Clause 6.13, and the Sub-Contract Price shall be adjusted accordingly. Valuation of work is not a condition precedent to its execution by the Sub-Contractor.



**6.13 Valuation Rules**

The "Valuation Rules" are:

- (a) The Sub-Contract Rates shall be used for valuing work added to or omitted from the Sub-Contract and of the same or similar character to and carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply.
- (b) If the work is not of the same or similar character to or not carried out under the same or similar conditions to the work to which the Sub-Contract Rates apply, the Sub-Contract Rates for comparable work shall be used as the base with adjustment for the difference in character or conditions.
- (c) If the work is an omission which substantially varies the character of or the conditions under which any remaining items of work are carried out, such that the corresponding Sub-Contract Rates are no longer reasonable, then such remaining items of work shall be valued according to paragraph (b) above.
- (d) If there are no Sub-Contract Rates which can reasonably form a basis for valuing the work, fair rates shall be used. Fair rates 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 this Sub-Contract or, in the absence of market rates, based on actual costs plus the percentage for profits and overheads as stated in the Sub-Contract Particulars.
- (e) If it is foreseen that the work to be carried out cannot be properly measured and valued to reflect the costs:
  - (1) the Contract Parties may pre-agree that the work shall be valued on a daywork basis;
  - (2) the time of labour and construction plant engaged or properly left idling and the quantities of materials used or properly wasted shall be recorded by the Sub-Contractor and endorsed by an authorized representative of the Contractor; and
  - (3) the materials, labour and construction plant involved shall be valued at daywork rates stated in this Sub-Contract or, in the absence of such rates, based on reasonable actual costs plus the percentage for profits and overheads as stated in the Sub-Contract Particulars.
- (f) If the work is instructed to be carried out after Substantial Completion of the relevant Sub-Contract Works Section through no fault of the Sub-Contractor, fair rates shall be used, with appropriate reimbursement for extra costs incurred by the Sub-Contractor including preliminaries not recovered elsewhere.

**6.14 Payment timeline**

The payment timeline shall be as follows:

- (a) On or before each Payment Application Due Date stated in the Sub-Contract Particulars until the release of final payment, the Sub-Contractor shall submit to the Contractor applications for payment with supporting computation and documents.
- (b) On or before the next Payment Advice Due Date stated in the Sub-Contract Particulars, the Contractor:
  - (1) may check and amend the payment application;
  - (2) may make appropriate deductions for work or materials not according to this Sub-Contract subject to the Contractor complying with Clause 6.15.4; and
  - (3) shall issue a Payment Advice to the Sub-Contractor to notify him the net amount payable and the details of its computation.
- (c) On or before the next Payment Invoice Due Date stated in the Sub-Contract Particulars:
  - (1) the Contract Parties shall discuss and agree any adjustments to the Payment Advice as may reasonably be requested by the Sub-Contractor; and
  - (2) the Sub-Contractor shall submit an invoice to the Contractor for the net amount payable as stated in the Payment Advice subject to any agreed adjustments.
- (d) On or before the next Payment Due Date stated in the Sub-Contract Particulars, the Contractor shall pay to the Sub-Contractor the net amount payable as stated in the Payment Advice subject to any agreed adjustments. If the Contractor fails to do so, without prejudice to the Sub-Contractor's other rights and remedies, the Sub-Contractor:
  - (1) shall be entitled to, in addition to the amount payable, interest at 1% below the judgment debt rate prescribed from time to time by the Rules of the High Court for the period from the next Payment Due Date until full payment of the amount payable;
  - (2) may suspend the carrying out of the Sub-Contract Works, if the Contractor continues to fail to pay the full amount payable to the Sub-Contractor within the period prescribed in the Sub-Contractor's written notice to the Contractor specifying:
    - (i) the Contractor's failure to pay;
    - (ii) the amount payable; and
    - (iii) the Sub-Contractor's intention to suspend the carrying out of the Sub-Contract Works if the amount payable remains not fully paid within a prescribed period of not less than **14 days** after the receipt by the Contractor of the notice; and
  - (3) shall, after suspension as aforesaid, resume the carrying out of the Sub-Contract Works within **14 days** after the receipt of the full amount payable from the Contractor.

**6.15 Payment valuation**

6.15.1 The net amount payable to the Sub-Contractor under each payment shall be computed by calculating the gross valuation at paragraph (a) below and then making the deductions or additions at paragraphs (b) to (d) below:

- (a) the gross valuation of the Sub-Contract Works:
  - (1) being the estimated total value of:
    - (i) materials not pre-maturely delivered to site;
    - (ii) off-site materials which are specified by this Sub-Contract or agreed by the Contractor to be paid for, which are properly stored, protected and insured against loss or damage, and properly labelled as for the Sub-Contract Works; and
    - (iii) work partly or fully completed up to the relevant Payment Application Due Date;
  - (2) excluding those materials supplied by the Contractor and those materials or work which are not according to this Sub-Contract; but
  - (3) taking into account the effect of the items stated in Clause 6.16.1, whether or not the cost effects have been finally agreed;
- (b) deduction for retention fund according to the following:
  - (1) the retention fund shall be calculated by applying the Retention Percentage stated in the Sub-Contract Particulars on the gross valuation mentioned in Clause 6.15.1(a), subject to a maximum equal to the Maximum Retention stated in the Sub-Contract Particulars;
  - (2) upon the Substantial Completion of a Sub-Contract Works Section and the submission of any warranties and guarantees required under this Sub-Contract for that Sub-Contract Works Section, one half of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor without interest in the next periodical payment;
  - (3) after **14 days** after the expiry of the Defects Liability Period of a Sub-Contract Works Section, the balance of the retention fund held in respect of the Sub-Contract Works Section shall be released to the Sub-Contractor in the next periodical payment; a sum may be retained for the estimated cost of rectification of defects listed by the Contractor but not yet rectified, and the sum shall be released progressively based on the progress of the rectification of defects;
  - (4) provided always that until the full release of the retention, the Contractor's interest in the retention fund shall be fiduciary as trustee for the Sub-Contractor (but without obligation to invest), and the Contractor may have recourse to the retention fund otherwise due to the Sub-Contractor to recover sums due to the Contractor from the Sub-Contractor;
- (c) deduction for any other sums including damages for delayed completion due from the Sub-Contractor to the Contractor under this Sub-Contract or otherwise, subject to the Contractor complying with Clause 6.15.5; and
- (d) deduction for the total amount previously paid to the Sub-Contractor under this Sub-Contract.

- 6.15.2 The inclusion of materials or work in any payment valuation shall not be regarded as evidence that the materials and work are according to the requirements of this Sub-Contract.
- 6.15.3 A payment valuation shall be an estimate only, based every time on the latest information available at the time of the valuation with corrections permissible for errors made in previous payment valuations.
- 6.15.4 As a condition precedent to the Contractor exercising his right to make any deduction against payment due to the Sub-Contractor under Clause 6.14.(b)(ii) or 6.15.1(c), the Contractor shall issue to the Sub-Contractor a written notice of intention to deduct which shall state that:
- (a) it is a notice issued under this clause;
  - (b) the factual and contractual basis for the intended deduction; and
  - (c) the amount of the intended deduction with detailed breakdown.

#### **6.16 Settlement of Final Account**

- 6.16.1 The "Final Account" is a statement of the computation of the final Sub-Contract Price payable to the Sub-Contractor taking into account the following:
- (a) using the Sub-Contract Price stated in the Sub-Contract Particulars in the case of a Lump Sum Contract or Remeasurement Contract as the base figure for further adjustments according to paragraphs (c) to (n) below;
  - (b) measurement and valuation of final quantities according to Clause 6.3 in the case of a Rate Only Contract to obtain the base figure for further adjustments according to paragraphs (c) to (n) below;
  - (c) adjustment of provisional quantities according to Clause 6.7 in the case of a Lump Sum Contract or Remeasurement Contract;
  - (d) adjustment of lump sum priced items according to Clause 6.8;
  - (e) adjustment of provisional sums according to Clause 6.10;
  - (f) adjustment of prime cost rates according to Clause 6.11;
  - (g) adjustment for Variations according to Clause 6.12;
  - (h) addition for the value of any direct loss and/or expense according to Clause 4.5;
  - (i) deduction for failure to rectify defects according to Clauses 7.6.3 and 7.6.4;
  - (j) adjustment due to either Contract Party's failure to pay statutory fees, charges or taxes according to Clause 9.1.2;
  - (k) addition due to the Contractor's failure to insure according to Clause 10.3.2;
  - (l) adjustment for rises or falls in costs of labour and materials if so stated in this Sub-Contract;
  - (m) deduction for damages for delayed completion according to Clause 4.6;
  - (n) exclusion of materials or workmanship or method or work which is not according to this Sub-Contract;

- (o) exclusion of work or services carried out by the Sub-Contractor without authority under this Sub-Contract; and
  - (p) other additions to or deductions from the Sub-Contract Price specified by this Sub-Contract.
- 6.16.2 Within **3 months** after the completion of the whole of the Sub-Contract Works, the Sub-Contractor shall submit his proposed Final Account calculated according to this Sub-Contract with all factual evidence and relevant calculation details to the Contractor for checking. The Contractor shall send his draft Final Account to the Sub-Contractor for agreement as soon as practicable.
- 6.16.3 In the absence of a submission by the Sub-Contractor, the Contractor may compute the Final Account based on the information available to him and send it to the Sub-Contractor for agreement.
- 6.16.4 The Sub-Contractor and the Contractor shall discuss and agree the details of the Final Account from time to time and shall agree the whole Final Account as soon as possible not later than **12 months** after Substantial Completion.
- 6.16.5 If the 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 a unilateral Final Account by registered post or recorded delivery to the Sub-Contractor and declare it as such in writing.
- 6.16.6 Within **3 months** after the receipt of the unilateral Final Account:
- (a) If the Sub-Contractor does not raise written objection to the unilateral Final Account by registered post or recorded delivery to the Contractor, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor.
  - (b) If the Sub-Contractor raises written objection, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.
- 6.16.7 The agreed or deemed agreed Final Account shall be deemed to have taken into account all factors affecting the computation of the final Sub-Contract Price and known at the time of agreement, but shall not:
- (a) prejudice the Sub-Contractor's liability for rectifying defects not considered in Clause 6.16.1(i) and the Sub-Contractor's responsibility to complete work valued in the Final Account but not yet done at the time of Final Account; and
  - (b) release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.
- 6.16.8 The cost incurred by the Sub-Contractor in preparing the Final Account shall be deemed to have been included in the Sub-Contract Price.

## 6.17 Final payment

Within **30 days** after the completion of all defects rectification according to Clauses 7.6.1 to 7.6.4 or **30 days** after the agreement or deemed agreement of the Final Account, whichever is the later, the balance of the final Sub-Contract Price after deducting the amount previously paid to the Sub-Contractor shall be paid to the Sub-Contractor or, in the case of a negative balance, refunded to the Contractor, subject only to appropriate adjustments for all further factors affecting the computation of the final Sub-Contract Price and arising or known after the agreement of the Final Account.

## 7. QUALITY

### 7.1 Quality liability

The Sub-Contractor shall be fully liable for the site operations, construction methods and the stability, safety and quality of all of his work, whether completed or not, except for loss or damage arising from the Excepted Risks.

### 7.2 Materials, workmanship and methods to comply with Sub-Contract

7.2.1 The Sub-Contract Works shall be carried out, tested and inspected using the materials, workmanship and methods shown on the Drawings or described in the Specification or the Pricing Schedules, in conformity with the whole of this Sub-Contract.

7.2.2 If any of the specified materials (other than those custom made for this Sub-Contract) is no longer available from the market due to cessation of production, then the Sub-Contractor shall propose alternatives of equivalent standard for the approval by the Contractor. This shall be deemed to be a Variation only if the cessation of production occurs after the award of this Sub-Contract. No adjustment to any Date for Completion shall be made.

7.2.3 Alternatively, if the specified materials ceased to be produced after the award of this Sub-Contract are forming a substantial part of this Sub-Contract, the Contract Parties may agree to omit them from this Sub-Contract or terminate this Sub-Contract with no compensation.

7.2.4 Alternatives not due to cessation of production shall not be used unless otherwise approved by the Contractor with the price and time implications agreed.

### 7.3 Material samples

The Sub-Contractor shall submit material samples and/or catalogues for approval before ordering materials or commencing work. Approved material samples shall be kept on site to serve as the standard for subsequent acceptance of the materials or workmanship.<sup>16</sup>

### 7.4 Mock-up construction and performance testing

The type and number of mock-up construction and performance testing, and the extent and number of re-modelling of the mock-ups shall be as those specified by this Sub-Contract. Any deviation shall be deemed to be a Variation.

### 7.5 Testing and inspection

7.5.1 The Sub-Contractor shall:

- (a) carry out all tests and inspections specified by this Sub-Contract to be carried out or, if so specified, arrange for them to be carried out by independent parties approved by the Contractor, and subsequently make good all work disturbed all at the Sub-Contractor's expense unless the tests and inspections are covered by provisional quantities or provisional sums;

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<sup>16</sup> If it is intended that material samples submitted before the award of this Sub-Contract should not be substituted, the specific items should be specified in the Tender Correspondence.

- (b) carry out, if so instructed by the Contractor, tests and inspections additional to those specified by this Sub-Contract, and subsequently make good all work disturbed, all at the Contractor's expense as a Variation, unless the additional tests or inspections show that the relevant work or materials are not according to the requirements of this Sub-Contract (if provisional quantities or provisional sums are included for tests or inspections, the first attempts of tests or inspections shall not be considered as additional for the purposes of this clause but shall be included in the adjustments of provisional quantities or provisional sums);
- (c) complete the testing and inspection report as soon as possible after the tests and inspections; and
- (d) submit the report to the Contractor immediately upon its completion.

7.5.2 For work to be covered up, the Sub-Contractor:

- (a) shall notify the Contractor in writing at such mutually pre-agreed time before the work is covered up to allow the Contractor to inspect such work; and
- (b) may carry out his own inspection and cover up, if the Contractor fails to inspect as notified.

7.5.3 For work already covered up, if the Contractor instructs for the work to be opened up for inspection or re-inspection, the Sub-Contractor shall open up the work and subsequently make good all work disturbed, all at the Contractor's expense as a Variation unless:

- (a) the opening up and inspection show that the relevant work is not according to the requirements of this Sub-Contract; or
- (b) the Sub-Contractor fails to give the notice required by Clause 7.5.2(a).

## 7.6 Defects liability

7.6.1 The Sub-Contractor shall replace or rectify any item of materials or work which is found, at any time before the expiry of the Defects Liability Period stated in the Sub-Contract Particulars of the Sub-Contract Works Section it belongs to, to be not according to this Sub-Contract at his own cost on his own initiative or as and when instructed by the Contractor to do so.

7.6.2 At any time not later than **14 days** after the expiry of the Defects Liability Period, the Contractor may issue one or more lists of defects to the Sub-Contractor for the Sub-Contractor to rectify. The Sub-Contractor shall rectify all defects on the lists of defects within such reasonable times as directed by the Contractor or, if not so directed, within a reasonable time of receipt of a list.

7.6.3 If the Sub-Contractor fails to rectify defects within the aforesaid reasonable time, then the Contractor may issue a written notice to the Sub-Contractor informing him of the Contractor's intention to employ others to rectify the defects specified in the notice at the expense of the Sub-Contractor. If the Sub-Contractor continues to fail to proceed to rectify the defects for a further period of **7 days** or if the Sub-Contractor fails to carry on diligently thereafter, then the Contractor shall be entitled to employ others to rectify the defects, and to recover the extra cost of so doing from the Sub-Contractor.

7.6.4 The Contract Parties may agree payment in lieu of rectification.

7.6.5 The expiry of the Defects Liability Period of any Sub-Contract Works Section shall discharge the Sub-Contractor from any further obligation to carry out the work of rectifying defects in that Sub-Contract Works Section which reasonable inspection could have found before the expiry, but it shall not prejudice the Sub-Contractor's obligations under a warranty or guarantee or the Contractor's other rights and remedies either under this Sub-Contract or at law regarding defective work or latent defects or other breaches of contract.

## 7.7 Warranties and guarantees

7.7.1 The Sub-Contractor shall:

- (a) submit such warranties or guarantees as may be specified by this Sub-Contract in the form as specified; and
- (b) assign (so far as he is lawfully able to do so) to the Contractor the benefits of all manufacturers', suppliers' and sub-sub-contractors' warranties or guarantees for materials or work insofar as they are standard sales ancillary benefits of the suppliers or sub-sub-contractors of all tiers or they are specified by this Sub-Contract.

7.7.2 The submission of the aforesaid warranties and guarantees satisfactorily in full compliance with this Sub-Contract shall be a pre-requisite to the release of the retention fund releasable upon Substantial Completion of the relevant Sub-Contract Works Section.

## 8. SUB-CONTRACTOR'S DOCUMENTS

### 8.1 Sub-Contractor's drawings, calculations and method statements

8.1.1 The Sub-Contractor shall submit all such design drawings, shop drawings and installation drawings, calculations and method statements as he is required to prepare under this Sub-Contract to the Contractor for approval in sufficient time as to ensure that no delay to the Sub-Contract Works will be caused.

8.1.2 If any Variation is introduced during the approval process, the Contractor shall, on his own initiative or when requested by the Sub-Contractor, issue an Instruction for the Variation.

### 8.2 Programmes

8.2.1 The Contractor shall provide the Sub-Contractor with his current master programme as soon as possible after the award of this Sub-Contract, and when the master programme is revised.

8.2.2 After the Contractor's request with or without a current master programme, the Sub-Contractor shall submit his programme, within **14 days** for the first programme or within **7 days** for revised programmes updated as necessary, to show his intended tasks, sequence and time for proceeding with the Sub-Contract Works to suit so far as practicable the master programme or the Contractor's request for the Contractor's reference and comments as necessary, and proceed according to the programme, unless otherwise commented by the Contractor.

### 8.3 Progress reports

If so required by the Contractor, the Sub-Contractor shall submit the daily reports, weekly reports with progress photographs, and records of delivery and removal of construction plant and materials in reasonable number of copies in the pre-approved format to the Contractor regularly until **14 days** after the Substantial Completion of the whole of the Sub-Contract Works and when work is carried out during the Defects Liability Period.



#### **8.4 As-built drawings and records**

Within **30 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit as-built drawings and records for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Contractor, and shall additionally submit as-built records according to any relevant statutory requirements.

#### **8.5 Operating instructions and maintenance manuals**

Within **14 days** after the Substantial Completion of a Sub-Contract Works Section, the Sub-Contractor shall submit operating instructions and maintenance manuals for the relevant Sub-Contract Works Section in the specified number of copies of prints (minimum 2) and electronic files stored on suitable media to the Contractor.

### **9. GENERAL OBLIGATIONS**

#### **9.1 Statutory obligations**

9.1.1 The Sub-Contractor shall:

- (a) 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
- (b) pay any fees, charges, levies or taxes legally demandable upon the Sub-Contractor, except that fees, charges, levies or taxes in connection with submissions to the Government or statutory undertakers or utility companies specifically for the Sub-Contract Works shall be restricted to those listed in this Sub-Contract.

9.1.2 If either of the Contract Parties pay fees, charges, levies or taxes on behalf of the other party, then the paying party may recover from the liable party the amount paid plus administrative charges at the percentage stated in the Sub-Contract Particulars, without further adjustment to the prices allowed in this Sub-Contract for the original liability not fulfilled.

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 Contractor, and wait for the Contractor's instruction before proceeding further with the affected work.

#### **9.2 Intellectual property**

9.2.1 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, construction plant, methods or anything whatsoever used in carrying out the Sub-Contract Works.

9.2.2 The Sub-Contractor shall indemnify the Contractor against any claim involving an infringement or alleged infringement of intellectual property rights.

### 9.3 Assignment and subletting

- 9.3.1 The Contractor or the Sub-Contractor shall not assign this Sub-Contract without the written consent of the other Contract Party, except that the Sub-Contractor may assign the benefits but not obligations under this Sub-Contract to a bank for the sole purpose of obtaining financing this Sub-Contract.
- 9.3.2 The Sub-Contractor shall not sublet the whole or substantially the whole of this Sub-Contract to the same person, without the written consent of the Contractor.

### 9.4 Care of Works

- 9.4.1 The Sub-Contractor shall take responsibility for the care of the work included in any Sub-Contract Works Section, materials supplied by him or any person for whom he is responsible for incorporation into the work, and materials supplied by the Contractor and handed over to the Sub-Contractor or any person for whom he is responsible for incorporation into the work, except for loss or damage arising from vandalism in such portion of the Site for which the Contractor is responsible for security or arising from the Excepted Risks, from commencement of the Sub-Contract Works Section until **14 days** after the Substantial Completion of the Sub-Contract Works Section, or until the determination of the employment of the Sub-Contractor or termination of the Sub-Contract (once invoked, whether validly or not), whichever is the earlier.
- 9.4.2 The Contractor shall carry out acceptance inspections at appropriate times agreed with the Sub-Contractor.

### 9.5 Injury to persons and property and indemnity

Without prejudice to Clause 9.4, the Sub-Contractor shall be liable for and shall indemnify the Contractor 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 for those due to any act or neglect of the Contractor or any person for whom he is responsible; and
- (b) loss 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, due to a breach of contract or other default of the Sub-Contractor or any person for whom he is responsible.

### 9.6 Provision of all things necessary

Unless otherwise specified by this Sub-Contract, 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 Workforce

- 9.7.1 The labour and supervisors provided by the Sub-Contractor upon the Sub-Contract Works shall be legally employable, adequate in number, of the appropriate trades, competent in their respective callings, properly equipped with tools, safety belts, safety helmets and safety appliances, shall wear proper attire and bear identification cards, and shall not live on the Site. The Sub-Contractor shall be liable for and shall indemnify the Contractor against all consequences of employing those not legally employable.

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

#### **9.8 Payment management to employees of all tiers**

9.8.1 The Sub-Contractor shall himself and ensure his sub-sub-contractors of all tiers pay to the employees all wages, subsidies and reimbursable according to the employment contracts, and require both parties to the employment contracts to contribute to mandatory provident funds. If the Sub-Contractor fails to comply with these requirements, the Contractor is entitled to pay on his behalf the amounts in arrear and recover the same from the Sub-Contractor, plus administrative charges at the percentage stated in the Sub-Contract Particulars.

9.8.2 The Sub-Contractor shall comply with the requirements of the Contractor in connection with the keeping and submission of daily labour records, wage payment records, mandatory provident fund contribution records, etc.

#### **9.9 Temporary site facilities**

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 Contractor, up-kept and maintained regularly in good conditions with minimum downtime, relocated as necessary, and removed from the Site when no longer required.

#### **9.10 Checking of documents and site conditions**

9.10.1 Before ordering a material or carrying out an item of work, the Sub-Contractor shall, to the extent relevant to this Sub-Contract:

- (a) check the latest set of documents and, if available for access, the latest site dimensions and conditions to identify any documentary or physical contradictions, discrepancies, divergences, uncertainties, conflict between various trades, non-buildability, and obvious non-compliance with statutory requirements;
- (b) co-ordinate and resolve those resolvable by himself; and
- (c) notify those to be resolved by the Contractor or amounting to a Variation for his resolution or instruction.

9.10.2 Drawings to be used shall be those drawings issued by the Contractor for construction or the design drawings, shop drawings and installation drawings prepared by the Sub-Contractor and approved by the Contractor for construction, whichever is the latest at the time of use.

9.10.3 Figured dimensions on drawings shall be taken in preference to scaled in all cases.

9.10.4 The Sub-Contractor shall counter-check the scale of any drawing transmitted electronically for the accuracy of the stated scale and make appropriate adjustments when scaling.

#### **9.11 Setting out**

9.11.1 The Sub-Contractor shall ensure that the Sub-Contract Works are constructed at the correct positions.

9.11.2 The Contractor shall provide adequate and accurate principal setting out points and levels to the Sub-Contractor such that the Sub-Contractor can properly set out his own lines and levels for the Sub-Contract Works.

9.11.3 The Contractor or the Sub-Contractor shall respectively be responsible for all the consequences of inaccurate setting out and as-constructed positions caused by himself notwithstanding any verification by the other party.

#### **9.12 Cleanliness and tidiness**

The Sub-Contractor shall keep his working areas and the Sub-Contract Works clean and tidy at all times, and free from accumulation of rubbish.

#### **9.13 Protection**

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 from injury, disease, death, loss, damage, nuisance, fire hazard, etc. caused by or arising out of the carrying out of the Sub-Contract Works.

#### **9.14 Safety measures**

The Sub-Contractor shall implement safety measures in compliance with statutory requirements and any other requirements as may be specified by this Sub-Contract.

#### **9.15 Environmental protection measures**

The Sub-Contractor shall implement environmental protection measures in compliance with statutory requirements and any other requirements as may be specified by this Sub-Contract.

### **10. INSURANCES**

#### **10.1 Employees' Compensation Insurance**

10.1.1 An Employees' Compensation Insurance shall be arranged as follows:

- (a) party responsibility for taking out and maintaining the insurance: the Contractor himself or others caused by the Contractor;
- (b) parties insured: in the joint name of:
  - (1) the Sub-Contractor and his sub-sub-contractors of all tiers; and
  - (2) other parties involved on the Project, and included at the discretion of the party responsible for taking out the insurance, without lowering the limit of indemnity;
- (c) coverage: to indemnify the insured against their legal liabilities under and independent of the Employees' Compensation Ordinance to pay compensation, damages and claimant's costs and expenses and also to indemnify them against their own costs and claims in that connection, all in respect of bodily injury or death sustained by any employees employed by any of them by accident occurring or occupational disease contracted during the period of insurance and arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract; and
- (d) period of insurance: for the full period of construction, defects liability and/or maintenance.

10.1.2 The Sub-Contractor shall:

- (a) notify the Contractor within **24 hours** after he is aware of any employees employed by him or his sub-sub-contractors of all tiers sustaining death or total or partial incapacity by accident or occupational disease arising out of and in the course of the employees' employment on the Sub-Contract Works or in connection with this Sub-Contract, for the Contractor to serve notice to the Commissioner for Labour on his behalf; and
- (b) notify the Contractor immediately after any fatal accident.

## **10.2 Contractors' All Risks and Third Party Liability Insurance**

10.2.1 A Contractors' All Risks and Third Party Liability Insurance shall be arranged as follows:

- (a) party responsibility for taking out and maintaining the insurance: the Contractor himself or others caused by the Contractor;
- (b) parties insured: in the joint name of:
  - (1) the Sub-Contractor and his sub-sub-contractors of all tiers (whether or not they are self-employed persons or sole proprietors or partners); and
  - (2) other parties involved on the Project, and included at the discretion of the party responsible for taking out the insurance, without lowering the limit of indemnity;
- (c) insured properties: include the Sub-Contract Works, relevant temporary work and unfixed materials as part of the insured properties to enjoy the same coverage;
- (d) policy terms:
  - (1) according to the insurance policy or synopsis in Appendix A hereto (containing terms not inferior to those made known in writing to the Sub-Contractor before the award of this Sub-Contract); and
  - (2) containing a clause in the Third Party Liability section of the insurance to cover any and all of the insured as separate and distinct parties as if a separate policy had been issued to each of them to cover their mutual claims with stipulation that the insurers agree to waive all subrogation rights which the insurers may have against any of the insured; and
- (e) period of insurance: for the full period of construction, defects liability and/or maintenance; it is permissible that the insured properties under the Materials Damage section of the insurance policy are covered for a shorter period until some limited time after Substantial Completion.

10.2.2 The Sub-Contractor shall:

- (a) bear the additional premium payable if he considers that the insurance coverage is inadequate to cover his contractual or legal liabilities and requires that the coverage be increased or the amounts of excesses be reduced;
- (b) notify the insurers and the Contractor of the details of the occurrence of any peril covered by the insurance immediately upon he becomes aware of it; and
- (c) in the event of loss or damage covered by the Material Damage section of the insurance, immediately after any inspection required by the insurers has been carried out, remove and dispose of any debris, repair or replace any materials damaged, destroyed, lost or stolen, restore work damaged, destroyed or lost, and continue with the carrying out and completion of the Sub-Contract Works with due diligence.

### **10.3 Maintaining insurances**

10.3.1 The Contractor shall, either by himself or cause others to, maintain and extend as necessary the aforesaid insurances to be in full force for the required periods of insurance. Copies of the cover notes, policies and their schedules and endorsements of the aforesaid insurances shall be made available for inspection by the Sub-Contractor upon request.

10.3.2 If the Contractor at any time fails upon request to produce evidence showing that any of the aforesaid insurances is effectively maintained then, without prejudice to his other rights and remedies, the Sub-Contractor may postpone or suspend his work on site until the insurance policy is effective and may in the joint name and on behalf of both parties insure against any risk, loss or damage with respect to which the default shall have occurred, and shall be entitled to recover from the Contractor the premium paid plus administrative charges at the percentage stated in the Sub-Contract Particulars. This shall be deemed to be a Variation.

### **10.4 Compliance with insurance conditions**

The Sub-Contractor shall, with all due diligence and at his own cost, conform to the terms and conditions of the aforesaid insurances and all reasonable requirements of the insurers in connection with the prevention of accidents, the submission and settlement of claims, the recovery of losses, and shall bear at his own cost the consequences of any failure to do so.

### **10.5 Insurances not affecting liability**

10.5.1 The presence of the aforesaid insurances shall not prejudice or reduce the Sub-Contractor's liability or responsibility under this Sub-Contract.

10.5.2 The party who would have been liable in the absence of the insurance cover shall be responsible for the amounts of excesses, losses, damage, fees, costs and expenses not compensated by the insurances.

10.5.3 Administrative charges incurred by a Contract Party in connection with handling insurance claims shall not be charged against the other Contract Party.

### **10.6 Insurances of materials before delivery**

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to materials occurring before their delivery to the Site shall be the Sub-Contractor's own concern.

**10.7 Insurances of construction plant and temporary buildings**

Unless covered by the insurance in Appendix A hereto, the taking out of insurances against risks of loss or damage to construction plant and temporary buildings owned or hired by the Sub-Contractor or any person for whom he is responsible shall be the Sub-Contractor's own concern.

**11. TERMINATION****11.1 Determination by Contractor**

11.1.1 In any one or more of the following events, without prejudice to any other rights or remedies which the Contractor may possess, the Contractor may by notice by registered post or recorded delivery to the Sub-Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

- (a) before the Substantial Completion of the whole of the Sub-Contract Works, the Sub-Contractor, having given consideration of the effects of Excusable Events:
  - (1) fails to proceed regularly and diligently with the Sub-Contract Works (including rectifying defects); or
  - (2) completely or substantially suspends the carrying out of the Sub-Contract Works (including rectifying defects);
- (b) the Sub-Contractor is in breach of Clause 9.3 regarding assignment and subletting; or
- (c) the Sub-Contractor becomes bankrupt, or makes a composition or arrangement with his creditors, or has a petition for compulsory winding-up presented 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 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.

Provided that in the case of Clause 11.1.1(a) or (b), the Contractor has previously issued a notice of default specifying the event under this clause to the Sub-Contractor, and then a warning notice of determination by registered post or recorded delivery later than **7 days** but not later than **2 months** after the receipt of the notice of default when the event had been continued or repeated, and the event has continued for not less than **7 days** after the receipt of the warning notice of determination up to the time when the notice of determination is issued.

11.1.2 The Sub-Contractor shall reimburse the Contractor all the direct loss and/or expense caused to the Contractor by the determination.

## 11.2 Determination by Sub-Contractor

11.2.1 In any one or more of the following events, without prejudice to any other rights or remedies which the Sub-Contractor may possess, the Sub-Contractor may by notice by registered post or recorded delivery to the Contractor forthwith determine the employment of the Sub-Contractor under this Sub-Contract:

- (a) the Contractor is in breach of Clause 9.3 regarding assignment;
- (b) the Contractor fails to issue a payment advice by the Payment Advice Due Date in respect of a payment application received from the Sub-Contractor before the relevant Payment Application Due Date; or the Contractor fails to make the payment stated as due under the Payment Advice by the relevant Payment Due Date;
- (c) 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 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 periods of postponement or suspension specified by this Sub-Contract; or
- (d) the 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 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 in the case of Clause 11.2.1(a) or (b), the Sub-Contractor has previously issued a notice of default specifying the event under this clause to the Contractor, and then a warning notice of determination by registered post or recorded delivery later than **7 days** but not later than **2 months** after the receipt of the notice of default when the event had been continued or repeated, and the event has continued for not less than **7 days** after the receipt of the warning notice of determination up to the time when the notice of determination is issued.

11.2.2 The Contractor shall reimburse the Sub-Contractor all the direct loss and/or expense caused to the Sub-Contractor by the determination.

## 11.3 Termination of Head Contract by himself

If for any reason the Head Contract is terminated by the Contractor or his employment under the Head Contract is determined by himself, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.

## 11.4 Termination of Head Contract by the other contract party

If for any reason the Head Contract is terminated by the other contract party employing the Contractor or his employment under the Head Contract is determined by the other contract party employing him, then the employment of the Sub-Contractor under this Sub-Contract shall also determine at the same time. This shall be without prejudice to any other rights or remedies which the Contract Parties may possess.



**11.5 Consequences after determination or termination**

11.5.1 Clauses 11.5 to 11.8 shall apply, only when Clause 11.1, 11.2, 11.3 or 11.4 is invoked.

11.5.2 The Sub-Contractor shall immediately give up any possession of the Site and demobilize his people (and hand tools normally carried by the workers without transportation aid) from the Site except those necessary to attend to site security, site survey and handover but only for the time specified by the Contractor as being reasonably required for that purpose.

11.5.3A If Clause 11.1 or 11.4 is invoked:

- (a) all materials or the Sub-Contractor's self-owned temporary site facilities (except hand tools as aforesaid):
  - (i) shall not be removed from the Site (unless instructed or agreed by the Contractor);
  - (ii) may be used by others for the completion of the Sub-Contract Works; and
  - (iii) may be sold or disposed of when no longer required;
- (b) temporary site facilities not owned by the Sub-Contractor:
  - (i) shall not be removed from the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site;
  - (ii) shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements have been reached);
  - (iii) may be used by others for the completion of the Sub-Contract Works before their removal from the Site; and
  - (iv) may be sold or disposed of by others when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.

11.5.3B If Clause 11.2 or 11.3 is invoked, all materials and temporary site facilities (except hand tools as aforesaid) provided by the Sub-Contractor:

- (a) shall not be used by others (except for safety or stability purposes) on the Site until **7 days** after the date of determination so as to provide an opportunity for agreeing arrangements for their continued use on the Site;
- (b) shall be removed from the Site by their owners or the Sub-Contractor after this period after giving advance notice (unless agreements for their use have been reached); and
- (c) may be sold or disposed of when their owners or the Sub-Contractor fail to remove them from the Site within **7 days** after being instructed to do so.

11.5.4 When removing materials or temporary site facilities, the Sub-Contractor and aforesaid owners shall exercise due care and provide suitable safety provisions so as not to affect the safety and stability of work and other objects remaining on site or endanger personal safety.

11.5.5 The Contractor shall so far as practicable provide or cause the person taking over the control of the Site to provide site security to prevent improper removal and unauthorised access and provide safety measures to protect the Sub-Contract Works, people and adjoining properties.

- 11.5.6 The Contractor and the Sub-Contractor shall as soon as practicable jointly take records of the status and quantities of the work done and materials and temporary site facilities on site.
- 11.5.7 Mutual agreements shall be made as far as possible to assign the contracts with the Sub-Contractor's suppliers and sub-sub-contractors of all tiers to enable them to be employed and paid to continue to provide their service, warranties, guarantees on similar terms to their existing contracts.
- 11.5.8 The additional costs incurred in implementing the above procedures and measures shall be part of the direct loss and/or expense due to determination.
- 11.5.9A If Clause 11.1 is invoked, the Contractor shall as soon as practicable employ and pay other persons or his own workers (collectively called "others" under this Clause 11) to carry out and complete the Sub-Contract Works. If the Contractor does not employ others within **6 months** after determination to carry out the Sub-Contract Works left outstanding, the employment shall be deemed to have been effected by the end of the said **6 months**.
- 11.5.9B If Clause 11.2 or 11.3 or 11.4 is invoked, the Sub-Contract Works may be carried out by others.

## 11.6 Computation of balance of payment

11.6.1A If Clause 11.1 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the total amount that would have been payable to the Sub-Contractor for completing the Sub-Contract Works calculated according to this Sub-Contract if the determination had not occurred.

Less:

- (2) the expenses incurred by the Contractor in completing the Sub-Contract Works, excluding the costs of Variations instructed after determination;
- (3) the total amount previously paid to the Sub-Contractor; and
- (4) the direct loss and/or expense caused to the Contractor by the determination, including damages for delayed completion of the Sub-Contract Works calculated up to the original completion date of the completion sub-contract.
- (b) The Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the Contractor employs other person to carry out the Sub-Contract Works.

11.6.1B If Clause 11.2 or 11.3 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works according to Clause 6.15.1(a), excluding materials removed by the Sub-Contractor after determination or termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Contractor;
- (2) the direct loss and/or expense caused to the Sub-Contractor by the determination or termination;

Less:

- (3) damages for delayed completion of the Sub-Contract Works according to Clause 4.6 which may accrue up to the date of determination or termination; and
- (4) the total amount previously paid to the Sub-Contractor.

- (b) The Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the determination or termination.

11.6.1C If Clause 11.4 is invoked:

- (a) The following shall be computed, and the Sub-Contractor shall be entitled to recover a positive balance or be liable for a negative balance:

Amount payable to the Sub-Contractor:

- (1) the gross valuation of the Sub-Contract Works according to Clause 6.15.1(a), excluding materials removed by the Sub-Contractor after termination, but including materials that the Sub-Contractor has paid for, or is legally bound to pay for, and has transferred or will transfer the ownership title to these materials to the Contractor;
- (2) the direct loss and/or expense caused to the Sub-Contractor by the termination, if Clause 11.4 is invoked not principally due to some breach of contract or other default by the Sub-Contractor;

Less:

- (3) damages for delayed completion of the Sub-Contract Works according to Clause 4.6 which may accrue up to the date of termination;
- (4) the direct loss and/or expense caused to the Contractor by the termination, if Clause 11.4 is invoked principally due to some breach of contract or other default by the Sub-Contractor; and
- (5) the total amount previously paid to the Sub-Contractor.

- (b) The Contractor and the Sub-Contractor shall exchange their computations of the balance of payment with supporting documentation as soon as practicable within **2 months** after the termination, except that the deduction for direct loss and/or expense caused to the Contractor may be raised later but within **1 month** after the receipt of direct loss and/or expense claim from the other contract party employing the Contractor.

#### **11.7 Final Account after determination or termination**

11.7.1 In lieu of Clauses 6.16 and 6.17, the Contractor and the Sub-Contractor shall discuss and agree the balance of payment as soon as practicable. Response with agreement or counter-offer to the other party's submission shall be made within **1 month** after receipt. Upon agreement, the Contractor shall issue a Final Account showing a summary computation of the balance of payment for signing by the Contract Parties.

11.7.2 If the 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 shall issue a unilateral Final Account by registered post or recorded delivery to the Sub-Contractor and declare it as such.

11.7.3 Within **1 month** after the receipt of the unilateral Final Account:

- (a) If the Sub-Contractor does not raise written objection to the unilateral Final Account by registered post or recorded delivery to the Contractor, the unilateral Final Account shall be deemed to have been agreed by the Sub-Contractor.
- (b) If the Sub-Contractor raises written objection, the unilateral Final Account shall become void. Any further unilateral Final Account shall still be governed by this clause.

11.7.4 The agreed or deemed agreed Final Account shall:

- (a) be deemed to have taken into account all factors affecting the computation of the final Sub-Contract Price and known at the time of agreement, but shall not prejudice the Sub-Contractor's liability for latent defects; and
- (b) not release the liabilities of the Contract Parties in respect of matters affected by any bribery offence, fraud, dishonesty or fraudulent concealment.

#### **11.8 Payments after determination or termination**

11.8.1 Before the agreement of the Final Account, the Contract Party liable for payment shall pay the other party once every **2 months** any outstanding balance of payment calculated by him at that time.

11.8.2 The final balance of payment due from one Contract Party to the other shall be paid within **14 days** after the signing of the Final Account or after the deemed agreement of the unilateral Final Account.

### **12. DISPUTE RESOLUTION**

#### **12.1 Appointment of dispute resolution advisor**

The Contract Parties may agree to jointly appoint a dispute resolution advisor based on a mutually agreed terms of reference on a regular basis during the course of this Sub-Contract to help resolve any disputes (including differences) between them that may arise under or in connection with this Sub-Contract. The Contract Parties shall equally share the payment to the dispute resolution advisor.

## 12.2 Procedures

Any disputes between the Contract Parties, including disagreement between them over any act or omission of the types stated in Clause 12.6.1(d) of the Contractor, which cannot be resolved with or without the appointment of a dispute resolution advisor shall be resolved according to Clauses 12.3 to 12.6. This clause does not preclude the Contract Parties from using other dispute resolution methods mutually agreed between themselves.

## 12.3 Reference to Designated Representatives

12.3.1 Each of the Contract Parties shall designate one of his own senior executives not involved in the daily operations of this Sub-Contract as his representative (called "the Designated Representative") within **14 days** after the Sub-Contract Award Date.

12.3.2 The dispute shall first be referred to the Designated Representatives who shall forthwith meet, discuss and endeavour to settle the dispute.

## 12.4 Reference to third-party neutral

12.4.1 If the dispute is not resolved by the Designated Representatives within **28 days** after the dispute being referred to them, before resorting to arbitration, the Contract Parties shall:

- (a) resolve the dispute using a mutually agreed more expedient and less costly method whereby a mutually agreed and appointed third-party neutral, being an expert in conducting the process or an expert in the matter in dispute, will, depending on the method selected, impartially advise, mediate, conciliate, adjudicate, certify, determine, adopt a shorter form of arbitration, or use other means to resolve the dispute such that the share of liabilities and costs between the Contract Parties can be established;
- (b) shall equally share the payment to the third-party neutral.
- (c) when proposing and agreeing on the dispute resolution method, state whether the method resorts to:
  - (i) a settlement agreement mutually agreed between the Contract Parties; or
  - (ii) a decision of the third-party neutral and whether such decision is for reference only, or temporarily binding unless otherwise overruled by arbitration, or final and binding.

12.4.2 The timeline for selecting the dispute resolution method shall be:

- (a) Within **5 days** (excluding Saturdays, Sundays and public holidays) after either Contract Party notifies the other in writing to resolve disputes according to this Clause 12.4, the Contract Parties shall exchange their own proposed lists of dispute resolution methods.
- (b) Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one method from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached within this period, facilitative mediation resorting to a settlement agreement mutually agreed between the Contract Parties shall be used.

12.4.3 The timeline for appointing the third party neutral shall be:

- (a) Within **5 days** (excluding Saturdays, Sundays and public holidays) after the selection of the dispute resolution method, the Contract Parties shall propose and exchange their own lists of persons to be appointed as the third-party neutral.
- (b) Within the next **5 days** (excluding Saturdays, Sundays and public holidays), they shall select one person from the combined list by progressive elimination of those having the greater difference in preferences. If no agreement is reached within this period, the person shall be the one nominated by the Hong Kong International Arbitration Centre upon the request of either Contract Party.
- (c) Within **5 days** (excluding Saturdays, Sundays and public holidays) after agreement or nomination, the appointment shall be concluded

12.4.4 Before or upon the appointment of the third-party neutral, the following shall be stated in writing by the Contract Parties, preferably with the assistance of the third-party neutral:

- (a) The scope of the dispute to be resolved and the terms of reference of the third-party neutral.
- (b) The rules to be followed for conducting the process.
- (c) The extent to which the information exchanged during the process is confidential, privileged and not be disclosed by the recipients of the information outside the process.

## 12.5 Reference to arbitration

12.5.1 If the dispute is not settled according to Clause 12.4 within **2 months** after the appointment of the third-party neutral or within such other time as agreed between the Contract Parties, either Contract Party may notify the other in writing to refer the dispute to arbitration.

12.5.2 The person to act as the arbitrator shall be agreed between the Contract Parties. If the Contract Parties are unable to agree on the person to act as the arbitrator within **14 days** after a written request by either Contract Party to do so, the arbitrator shall be the one appointed by the Hong Kong International Arbitration Centre upon the request of either Contract Party.

12.5.3 The arbitration shall be a domestic arbitration conducted according to the Arbitration Ordinance (Chapter 609, Laws of Hong Kong) and, unless otherwise agreed by the Contract Parties, according to the Domestic Arbitration Rules of the Hong Kong International Arbitration Centre.

12.5.4 The place of arbitration shall be Hong Kong.

## 12.6 Arbitrator's powers

12.6.1 The arbitrator's powers include:

- (a) rectifying this Sub-Contract to accurately reflect the true agreement made by the Contract Parties;
- (b) directing measurements or valuations to determine the rights of the Contract Parties;
- (c) assessing and awarding any sum which ought to have been the subject of or included in a payment; and

- (d) opening up, reviewing and revising, without limitation, the giving, submitting or issuing of any agreement, approval, assessment, authorisation, certificate, confirmation, consent, decision, delegation, direction, dissent, determination, endorsement, instruction, notice, notification, opinion, request, requirement, statement, termination or valuation.

**12.7 Sub-Contractor to continue to proceed diligently**

The Sub-Contractor shall continue to proceed regularly and diligently with the Sub-Contract Works despite a dispute having arisen, and shall continue to give effect to all instructions from the Contractor unless and until they are revised by dispute resolution under Clauses 12.3 to 12.6.

**12.8 Governing law**

This Sub-Contract shall be governed by and construed according to the laws for the time being in force in Hong Kong.