

11. Variations, Provisional and Prime Cost Sums

- (1) The Architect may issue **instructions** requiring a **variation** and he may **sanction** in writing any variation made by the Main Contractor **otherwise** than pursuant to an instruction of the Architect.
- No variation required by the Architect or subsequently sanctioned by him shall **vitate** this Contract.
- (2) The term '**variation**' as used in these Conditions means
- the **alteration** or **modification** of the **design, quality or quantity** of the Works as shown upon the Contract Drawings and described by or referred to in the [Contract Bills | Specification], and includes
- the **addition, omission or substitution** of any work,
- the alteration of the **kind or standard** of any of the materials or goods to be used in the Works, and
- the **removal** from the site of any work, materials or goods executed or brought thereon by the Main Contractor for the purposes of the Works other than work, materials or goods which are not in accordance with this Contract.
- (3) The Architect shall issue instructions in regard to the expenditure
- of **prime cost\*\*1** and **provisional sums** included in the [Contract Bills | Specification or Summary of Tender] and
- of prime cost sums which **arise as a result of instructions** issued in regard to the expenditure of provisional sums.
- (4) All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Main Contractor for which provisional sums are included in the [Contract Bills | Specification or Summary of Tender] (other than work for which a tender made under clause 27(g) of these Conditions has been accepted) shall be **measured and valued** by the Quantity Surveyor who shall give to the Main Contractor an opportunity
- of being present at the time of such measurement and
- of taking such notes and measurements as the Main Contractor may require.
- The valuation
- of variations and

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<sup>1</sup> The term 'prime cost' may be indicated by the abbreviation 'P.C.' in any document relating to this Contract (including the Contract Bills), and wherever the abbreviation is used it shall be deemed to mean 'prime cost'.

of work executed by the Main Contractor for which a provisional sum is included in the [Contract Bills | Specification or Summary of Tender] (other than work for which a tender has been accepted as aforesaid)

unless otherwise agreed shall be made in accordance with the following rules:

- (a) The prices in the [Contract Bills | Schedule of Rates] shall determine the valuation of work of **similar character executed under similar conditions** as work priced therein;
  - (b) The said prices, where work is not of a similar character **or** executed under similar conditions as aforesaid, shall be the **basis** of prices for the same so far as may be reasonable, failing which a **fair valuation** thereof shall be made;
  - (c) Where work cannot properly be measured and valued the Main Contractor shall be allowed **daywork rates**:
    - (i) at the rates inserted by the Main Contractor in the [Contract Bills | Schedule of Rates or in the Form of Tender]; or
    - (ii) where no such rates have been inserted, the Quantity Surveyor shall determine rates that are reasonable;
    - (iii) where materials are specifically provided for work valued under sub-clause (4)(c) of this Condition such materials shall be valued at cost plus the cost of packing, carriage and delivery with an addition of fifteen per cent (15%) for overheads and profit.
- Provided that in any case vouchers, specifying the time daily spent upon the work (and if required by the Architect the workmen's names) and the materials employed, shall be delivered for verification to the Architect or his authorised representative not later than the end of the week following that in which the work has been executed;
- (d) The prices [in the Contract Bills | contained in the Schedule of Rates] shall determine the valuation of **items omitted**; provided that if omissions substantially vary the **conditions** under which any **remaining items** of work are carried out the prices for such remaining items shall be valued under rule (b) of this sub-clause.
  - (e) If required by the Architect the Main Contractor shall within *fourteen* days of the Architect's written request submit a detailed estimate of the value of any variation.
- (5) Effect shall be given to the measurement and valuation of variations under sub-clause (4) of this Condition in Interim Certificates and by adjustment of the Contract Sum; and effect shall be given to the measurement and valuation of work for which a provisional sum is included in the [Contract Bills | Specification or Summary of Tender] under the said sub-clause in Interim Certificates and by adjustment of the Contract Sum in accordance with clause 30(5)(c) of these Conditions.

- (6) If upon written application being made to him by the Main Contractor, the Architect is of the opinion that a variation or the execution by the Main Contractor of work for which a provisional sum is included in the [Contract Bills | Specification or Summary of Tender] (other than work for which a tender made under clause 27(g) of these Conditions has been accepted) has involved the Main Contractor in **direct loss and/or expense** for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause (4) of this Condition and if the said application is made within a reasonable time of the loss or expense having been incurred, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.

12. [Contract Bills | Quality and Quantity of the Work]

- (1) The **quality and quantity** of the work **included in the Contract Sum** shall be deemed to be that which is

[set out in the Contract Bills which Bills unless otherwise expressly stated in respect of any specified item or items shall be deemed to have been prepared in accordance with the principles of the Standard Method of Measurement of Building Works for use in Hong Kong last before published by the Royal Institution of Chartered Surveyors (Hong Kong Branch) and the Building Contractors' Association Limited,

but save as aforesaid nothing contained in the Contract Bills shall override, modify, or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

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shown upon the Contract Drawings or described in the Specification,

but save as aforesaid nothing contained in the Contract Drawings or the Specification shall override, modify, or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.]

- [w/o Quan. Only: (2) If any **discrepancy in or divergence** between the Contract Drawings and the Specification should arise, the **Specification shall take precedence** over the Contract Drawings unless otherwise stated in the Specification.]

- [(2) | (3)] Any **error in description or in quantity in or omission of items** from the [Contract Bills | Contract Drawings and/or the Specification] shall not vitiate this Contract but shall be corrected and deemed to be a variation required by the Architect.

- [w/o Quan. Only: (4) Any bills of quantities or other statements as to quantities of work which may at any time be supplied **to or by** the Main Contractor shall not form part of this Contract, and the rates contained in the Schedule of Rates shall apply notwithstanding any discrepancy between such rates and anything contained in any such bill or other statement.]

13. Contract Sum

The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions, and subject to clause [12(2) | 12(3)] of these Conditions any **error whether of arithmetic or not** in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto.

27. Nominated Sub-Contractors

The following provisions of this Condition shall apply where prime cost sums are included in the [Contract Bills | Specification or Summary of Tender] or arise as a result of Architect's **instructions** given in regard to the expenditure of provisional sums in respect of persons to be nominated by the Architect to supply and fix materials or goods or to execute work.

- (a) Such sums shall be deemed to be nett (no discount allowed) and shall be expended in favour of such persons as the Architect shall instruct, and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Main Contractor and are referred to in these Conditions as 'Nominated Sub-Contractors'. ....

28. Nominated Suppliers

The following provisions of this Condition shall apply where prime cost sums are included in the [Contract Bills | Specification or Summary of Tender], or arise as a result of Architect's **instructions** given in regard to the expenditure of provisional sums, in respect of any materials or goods to be fixed by the Main Contractor.

- (a) Such sums shall be deemed to be nett (no discount allowed) and the term prime cost when included or arising as aforesaid, shall be understood to mean the nett cost to be defrayed as a prime cost after deducting any trade or other discount, and shall include the cost of packing, carriage and delivery. Provided that, where in the opinion of the Architect the Main Contractor has incurred expense for special packing or special carriage, such special expense shall be allowed as part of the sums actually paid by the Main Contractor.
- (b) Such sums shall be expended in favour of such persons as the Architect shall instruct, and all specialists, merchants, tradesmen' or others who are nominated by the Architect to supply materials or goods are hereby declared to be suppliers to the Main Contractor and are referred to in these Conditions as 'Nominated Suppliers'. ....

30      Certificates and Payments

(4)      (c)      In the settlement of accounts

the amounts paid or payable under the appropriate contracts by the Main Contractor to Nominated Sub-Contractors or Nominated Suppliers,

the amount paid or payable by virtue of clause 4(2) of these Conditions in respect of fees or charges for which a provisional sum is included in the [Contract Bills | Specification or Summary of Tender],

the amounts paid or payable in respect of any insurances maintained in compliance with clause 19(2) of these Conditions,

the tender sum (or such other sum as is appropriate in accordance with the terms of the tender) for any work for which a tender made under clause 27(g) of these Conditions is accepted and

the value of any work executed by the Main Contractor for which a provisional sum is included in the [Contract Bills | Specification or Summary of Tender]

shall be set against the relevant prime cost or provisional sum

mentioned in the [Contract Bills | Specification or Summary of Tender] or

arising under Architect's instructions issued under clause 11(3) of these Conditions as the case may be,

and the balance, after allowing in all cases *pro rata* for the Main Contractor's profit at the rates shown in the [Contract Bills | Schedule of Rates], shall be added to or deducted from the Contract Sum.

Provided that no deduction shall be made in respect of any damages paid or allowed to the Main Contractor by any Nominated Sub-Contractor or Nominated Supplier.