



**THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION**

**GENERAL
CONDITIONS OF CONTRACT
FOR
DESIGN AND BUILD CONTRACTS**



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TABLE OF CONTENTS

<i>Clause</i>	<i>Page</i>
DEFINITIONS AND INTERPRETATION	
1(1) Definitions	1
(2) Singular and plural	2
(3) Marginal notes	2
(4) Payment	2
(5) Contract governed by Laws of Hong Kong	2
(6) Gender	2
SUPERVISING OFFICER, SUPERVISING OFFICER'S REPRESENTATIVE AND DESIGN CHECKER	
2 Duties and powers of the Supervising Officer, Supervising Officer's Representative and Design Checker.....	3
ASSIGNMENT AND SUB-CONTRACTING	
3 Assignment	4
4 Sub-contracting	4
CONTRACT DOCUMENTS	
5 Order of precedence of contract documents	5
6 Treatment of ambiguities or discrepancies	5
7 Copyright	6
8 Information not to be divulged	6
9 Use of English language	6
GENERAL OBLIGATIONS	
10 Contractor's obligations	6
11 Contractor to execute Articles of Agreement	6
12 Sureties or security	6
13 Inspection of the Site	7
14 Sufficiency of Tender	8
15 Works to be to the satisfaction of the Supervising Officer	9
16 Programme to be furnished	9
17 Contractor's superintendence	9
18 Contractor's employees	9
19 Setting-out	9
20 Safety and security of the Works	10
21 Care of the Works	10
22 Damage to persons and property	11
23 Design responsibility	12
24 Interference with traffic and adjoining properties	12
25 Remedy on failure to insure	12

<i>Clause</i>	<i>Page</i>
26 Accident or injury to workers	12
27 Contractor to give notice of injury	12
28 Patent rights and royalties	12
29 Giving of notices and payment of fees	13
30 Compliance with enactments and regulations	13
31 Notices to be written in English and Chinese	13
32 Site diary and labour returns	13
33 Fossils	13
34 Facilities for other persons	14
35 Clearance of the Site on completion	14
36 Publication of photographs of the Site or the Works	14
37 Offering gratuities	14
38 Site cleanliness	14
 LABOUR	
39 Engagement of labour	14
40 Fair wages	14
41 Passes	15
 MATERIALS, PLANT AND WORKMANSHIP	
42 Quality of Plant, materials, workmanship and tests	15
43 Access to the Site and places of manufacture	15
44 Examination of work before covering up	15
45 Uncovering and making openings	16
46 Removal of unsatisfactory Plant, material and work	16
 COMMENCEMENT, COMPLETION AND DELAYS	
47 Commencement of the Works	16
48 Possession of the Site	16
49 Time for completion	17
50 Extension of time for completion	17
51 Rate of progress	18
52 Liquidated damages for delay	19
53 Completion of the Works	19
 SUSPENSION OF THE WORKS	
54 Suspension of the Works	20
55 Suspension lasting more than 90 days	20
 MAINTENANCE AND DEFECTS	
56 Execution of work of repair	20
57 Temporary reinstatement	21
58 Investigating defects	21

VARIATIONS, VALUATIONS AND CLAIMS

59	Breakdown of the Contractor's rates and prices	22
60	Variations	22
61	Valuing Variations	23
62	Design development	24
63	Disturbance to the progress of the Works	24
64	Notice of claims	24

PROVISIONAL AND CONTINGENCY SUMS

65	Instructions on Provisional and Contingency Sums	25
66	Accounting of Provisional and Contingency Sums	25

COMMISSIONING TESTS

67	Commissioning Tests	25
----	---------------------------	----

PARTIAL POSSESSION

68	Partial possession	25
----	--------------------------	----

DRAWINGS

69	As-built drawings	25
70	Access to drawings on the Site	25

CONSTRUCTIONAL PLANT, PLANT, TEMPORARY BUILDINGS AND MATERIALS

71	Vesting of Constructional Plant and temporary buildings	26
72	Vesting of Plant and materials	26
73	Removal of Constructional Plant, Plant, temporary buildings and materials	26
74	Hired and hire-purchase Constructional Plant	26
75	Employer's expense in entering into hire or hire-purchase agreement	26
76	Liability for loss or damage to Constructional Plant	26
77	Incorporation of certain Clauses in sub-contracts	27

CERTIFICATES AND PAYMENTS

78	Contractor's interim statements	27
79	Interim and final payments, Retention Money and interest	27
80	Maintenance certificate	28

REMEDIES AND POWERS

81	Determination of the Contractor's employment	29
82	Work by persons other than the Contractor	30
83	Recovery of money due to the Employer	30

<i>Clause</i>		<i>Page</i>
SPECIAL RISKS AND FRUSTRATION		
84	Special risks	30
85	Frustration	31
SETTLEMENT OF DISPUTES		
86	Settlement of disputes	31
NOTICES		
87	Service of notices	32
DEFAULT OF THE EMPLOYER		
88	Default of the Employer	33
FLUCTUATIONS		
89	Contract price fluctuations	33
HEIGHT RESTRICTIONS		
90	Airport height restrictions	34
Annex		
	Articles of Agreement	35

**INDEX TO GENERAL CONDITIONS OF CONTRACT
FOR DESIGN AND BUILD CONTRACTS**

	<i>Clause</i>	<i>Page</i>
Access to drawings on the Site	70	25
Access to the Site and places of manufacture	43	15
Access, Contractor to satisfy himself, Alternative I	13(2)	7
Access, Contractor to satisfy himself, Alternative II	13(1)	8
Accident or injury to workers	26	12
Accounting of Provisional and Contingency Sums	66	25
Addition or amendment to statute, payment as a Variation	30(2)	13
Additional instructions	15	9
Adjoining properties—interference with	24	12
Agent of the Contractor	17(2)	9
Airport height restrictions	90	34
Alternative A, milestone payments	78(1) & 79	27
Alternative B, periodic payments	78(2) & 79	27
Alternative I, inspection of the Site	13	7
Alternative II, inspection of the Site	13	8
Ambiguities in Contract documents	12	6
Approval not by vesting	72	26
Arbitration	86	31
Articles of Agreement, Contractor to execute	11	6
As-built drawings	69	25
Assignment of the benefit of hired and hire-purchase Constructional Plant	74	26
Assignment of the Contract	3	4
Bankruptcy or liquidation of Contractor	81	29
Black Rainstorm Warning	50(7)	18
Bond	12	6
Breakdown of the Contractor's rates and prices.....	1(1) & 59	1 & 22
Care of the Works, Specialist Works.....	21	10
Certificate of completion of the Works	53	19
Certificate, maintenance.....	80	28
Certificates and payment—interim	78 & 79	27
Certificates, correction.....	79(5)	28
Cessation of the Employer's liability	80(3)	28
Claims, notices and records	64	24
Clearance of the Site on completion.....	35	14
Commencement, completion and delays.....	47–53	16–19
Commencement of the Works	47	16
Commencement of the Works, construction.....	47(2)	16
Commencement of the Works, design	47(1)	16
Commissioning Tests	1(1), 53 & 67	1, 19 & 25

	<i>Clause</i>	<i>Page</i>
Completion of the Works, certificate for	53	19
Completion of the Works, extension of time for	50	17
Completion of the Works, time for	49	17
Compliance with enactments, regulations	30	13
Conditions of Contract, order of precedence of contract documents	5	5
Conditions of hire of certain Constructional Plant	74	26
Constructional Plant	1(1)	1
Constructional Plant, conditions of hire	74	26
Constructional Plant, liability for loss or damage to	21 & 76	10 & 26
Constructional Plant not solely owned by the Contractor	74	26
Constructional Plant, re-vesting and removal	71, 73, 84(2) & 88(2)	26, 30 & 33
Constructional Plant, supply	10	6
Constructional Plant, un-removability if expressly prohibited	71	26
Constructional Plant, vesting	71	26
Contingency Sum	1(1), 65 & 66	1, 25
Contract	1(1)	1
Contract documents	1(1), 5 & 6	1 & 5
Contract governed by Laws of Hong Kong	1(5)	2
Contract Sum	1(1)	1
Contractor	1(1)	1
Contractor proposed Variations	60(5)	22
Contractor to execute Articles of Agreement	11	6
Contractor to give notice of injury	27	12
Contractor's design responsibility	10, 23 & 62	6, 12 & 24
Contractor's employees	18 & 39	9 & 14
Contractor's interim statements	78	27
Contractor's notice of completion of the Works	53(1)	19
Contractor's obligations	10	6
Contractor's Proposals	1(1)	1
Contractor's Proposals, ambiguities or discrepancies	6	5
Contractor's Proposals, persons named in the	4(4) & (5)	4 & 5
Contractor's superintendence	17	9
Copyright	7	6
Correction of certificate	79(5)	28
Cost	1(1)	1
Cost of samples and tests	42(3)–(7)	15
Covering up work, examination before	44	15
Covering up work, uncovering	45	16
Crops, damage to	22(1)	11
Damage to persons and property	22	11

	<i>Clause</i>	<i>Page</i>
Damage to the property of the Employer	22(2)	11
Damage to the Works and Specialist Works	21	10
Damage to the Works and Specialist Works, excepted risks	21(4)	10
Damage to the Works, special risks	84	30
Damages, liquidated	52	19
Default of the Employer	88	33
Defect, Contractor to search for, if required	58	21
Defective Plant, material and work	46 & 56	16 & 20
Defects	56–58	20–21
Definitions and interpretation	1	1
Delay, liquidated damages for	52	19
Design	4, 10, 23 & 62	4, 6, 12 & 24
Design, change	62	24
Design Checker	1(1), 2(2), 23 & 62	1, 3, 12 & 24
Design Checker, warranty	2(2)	3
Design Checking Procedures	1(1), 2, 23(2), 47(2) & 62	1, 3, 12, 16 & 24
Design development	62	24
Design, extension of time for defective or late design	50	17
Design responsibility generally	10, 23 & 62	6, 12 & 24
Design, warranty	4(8)	5
Designer	4(8)	5
Determination of the Contractor's employment generally	81	29
Determination of the Contractor's employment, payment after	81(5) & (6)	29
Discrepancies in documents	6	5
Dismissal of Contractor's employees	18	9
Disputes, settlement of	86	31
Disturbance to the progress of the Works	63	24
Documents mutually explanatory	6	5
Drawings, access by Supervising Officer to drawings on the Site	70	25
Drawings, as-built	69	25
Duties and powers of the Supervising Officer, the Supervising Officer's Representative and Design Checker	2	3
Emergency work	82(2)	30
Employer	1(1)	1
Employer's Requirements	1(1), 2, 5 & 28	1, 3, 5 & 12
Employer's liabilities limited by maintenance certificate	80(3)	28
Enactments and regulations, compliance with	30	13
Engagement of labour	39	14

	<i>Clause</i>	<i>Page</i>
Indemnity by the Employer	21(3) & (4), 22(2), 28 & 84	10, 11, 12 & 30
Independent consultant, designer	4(8)	5
Independent consultant's warranty	4(8)	5
Information not to be divulged	8	6
Injury to persons and damage to property	22	11
Injury, personal—giving of notice by the Contractor	27	12
Inspection and testing of materials and workmanship	42 & 44	15
Inspection of foundations	44	15
Inspection of the Site	13	7
Instructions of the Supervising Officer	15	9
Insurance, failure to effect—remedy	25	12
Intellectual property	7	6
Interest, payment of	52(3) & 79(4)	19 & 28
Interference with traffic and adjoining properties	24	12
Interim payment, milestones	78(1) & 79	27
Interim payment, periodic payments	78(2) & 79	27
Interim payments, valuations	79	27
Interim statements, Contractor's	78	27
Interpretation, definitions and	1	1
Labour returns and site diary	32	13
Labour supply	17, 18, 39 & 40	9 & 14
Liabilities, unfulfilled	80(3)	28
Liability for defects	56 & 58	20 & 21
Liability for loss or injury to Constructional Plant	21 & 76	10 & 26
Lighting, fencing, watching	20	10
Limit on liabilities, Employer to Contractor	80(3)	28
Liquidated damages for delay	52	19
Loss of or injury to Constructional Plant, liability for	21 & 76	10 & 26
Maintenance certificate and limit on the Employer's liabilities	80	28
Maintenance Period	1(1) & 56	1 & 20
Marginal notes	1(3)	2
Materials, fit for the purpose	23	12
Materials, no approval of by vesting	72	26
Materials, Plant and workmanship	42–46	15–16
Materials, quality	42	15
Materials, removal of unsatisfactory	46	16
Materials, supply	10	6
Mediation generally	86(5) & (6)	31 & 32
Method Statement Approach	13	7
Milestones	78(1)	27

	<i>Clause</i>	<i>Page</i>
English language, use of	9	6
Errors in contract documents	6	5
Errors in setting-out.....	19	9
Examination of work before covering up	44	15
Excepted risks	21(4)	10
Execution of work of repair	56	20
Extension of time, Contractor to give notice	50(1)	17
Extension of time, Contractor to provide particulars	50(4)	18
Extension of time, defective or late design	50	17
Extent of the Works	10 & 15	6 & 9
Failure to carry out work required, remedy	56(4), 73(2) & 82	21, 26 & 30
Fair wages	40	14
Faulty work, removal and replacement	46	16
Fees, giving notices and payment	29	13
Fencing, watching, lighting	20	10
Final account	79(6) & (7)	28
Final Contract Sum	1(1) & 89(2)	1 & 33
Final payment certificate	79(6) & (7)	28
Fluctuations	89	33
Fossils	33	13
Foundations, examination of	44	15
Frustration	85	31
Further instructions	15	9
Gender	1(6)	1
General Holiday	1(1) & 49(2)	1 & 17
General obligations	10-38	6-14
Government	1(1)	1
Granting extensions of time for completion	50	17
Gratuities, offering of	37	14
Ground conditions	13	7
Guarantee of insurance company or bank	12	6
Hire or hire-purchase payment of the Employer	75	26
Hired and hire-purchase Constructional Plant, conditions of	74	26
Hong Kong	1(1)	1
Incorporation of certain clauses in sub-contracts	77	27
Increased costs arising from special risks	84	30
Indemnity by the Contractor	21, 22, 24, 28, 30 & 57	10, 11, 12, 13 & 21

	<i>Clause</i>	<i>Page</i>
Indemnity by the Employer	21(3) & (4), 22(2), 28 & 84	10, 11, 12 & 30
Independent consultant, designer	4(8)	5
Independent consultant's warranty	4(8)	5
Information not to be divulged	8	6
Injury to persons and damage to property	22	11
Injury, personal—giving of notice by the Contractor	27	12
Inspection and testing of materials and workmanship	42 & 44	15
Inspection of foundations	44	15
Inspection of the Site	13	7
Instructions of the Supervising Officer	15	9
Insurance, failure to effect—remedy	25	12
Intellectual property	7	6
Interest, payment of	52(3) & 79(4)	19 & 28
Interference with traffic and adjoining properties	24	12
Interim payment, milestones	78(1) & 79	27
Interim payment, periodic payments	78(2) & 79	27
Interim payments, valuations	79	27
Interim statements, Contractor's	78	27
Interpretation, definitions and	1	1
Labour returns and site diary	32	13
Labour supply	17, 18, 39 & 40	9 & 14
Liabilities, unfulfilled	80(3)	28
Liability for defects	56 & 58	20 & 21
Liability for loss or injury to Constructional Plant	21 & 76	10 & 26
Lighting, fencing, watching	20	10
Limit on liabilities, Employer to Contractor	80(3)	28
Liquidated damages for delay	52	19
Loss of or injury to Constructional Plant, liability for	21 & 76	10 & 26
Maintenance certificate and limit on the Employer's liabilities	80	28
Maintenance Period	1(1) & 56	1 & 20
Marginal notes	1(3)	2
Materials, fit for the purpose	23	12
Materials, no approval of by vesting	72	26
Materials, Plant and workmanship	42–46	15–16
Materials, quality	42	15
Materials, removal of unsatisfactory	46	16
Materials, supply	10	6
Mediation generally	86(5) & (6)	31 & 32
Method Statement Approach	13	7
Milestones	78(1)	27

	<i>Clause</i>	<i>Page</i>
Minimum interim payment	79(2)	28
Money due to the Employer, recovery	83	30
No approval by maintenance certificate	80(2)	28
No approval by vesting	72	26
No liability for war risks	84	30
Notice of accident or injury to workers	27	12
Notice of claims	64	24
Notice of completion, Contractor's	53(1)	19
Notice of delay	50(1)	17
Notice to resume work after suspension	55	20
Notices, giving of and payment of fees	29	13
Notices, Government, to be written in English and Chinese	31	13
Notices, service of	87	32
Notification of extensions of time	50(2)	18
Obligations, general	10–38	6–14
Obligations, unfulfilled	80(3)	28
Offering gratuities	37	14
Omissions, alterations and additions	60–62	22–24
Openings, uncovering and making	45	16
Opportunities for other contractors	34	14
Order of work, Contractor to furnish programme	16	9
Ordering Variations, limitations	1(1), 30(2) & 60	1, 13 & 22
Other persons, facilities for	34	14
Outbreak of war, riot	84	30
Outstanding work after completion	53(3)	19
Partial possession	68	25
Passes	41	15
Patent rights and royalties	28	12
Payment after determination of the Contractor's employment	81(5) & (6)	29
Payment for Variations not proceeded with	60(4)	22
Payment generally	1(4)	1
Payment if Contract terminated by special risks	84(3)	30
Payment in event of frustration	85	31
Payment of claims	63 & 64	24
Payment of interest	52(3) & 79(4)	19 & 28
Payment of Retention Money	79(3)	28
Payment on certificate	79	27
Payment, certificates and	78 & 79	27
Payment, for repairs in Maintenance Period	56(3) & 58(2)	21 & 22
Payment, milestones	78(1) & 79	27

	<i>Clause</i>	<i>Page</i>
Payment, periodic	78(2) & 79	27
Payments, interim	79	27
Periodic payments	78(2) & 79	27
Person	1(1)	1
Photographs	36	14
Plant, fit for the purpose	23	12
Plant, liability for loss or damage	21 & 76	10 & 26
Plant, no approval by vesting	72	26
Plant, quality	42	15
Plant, re-vesting and removal	42 & 73	15 & 26
Plant, vesting	71	26
Plant, supply	10	6
Portion	1(1)	1
Possession of the Site	48	16
Powers of the Supervising Officer to fix rates	61(3)	23
Powers, remedies and	81-83	29-30
Programme to be furnished, revised	16, 50(5) & 51	9 & 18
Progress, disturbance to	63	24
Progress, rate of	51	18
Property and persons, damage to	22	11
Provisional Sums	1(1), 65 & 66	1 & 25
Provisional Sums and Contingency Sum, use of	65	25
Public Office	1(1)	1
Publication of photographs of the Site or the Works	36	14
Quality of Plant, materials, workmanship and tests	42	15
Quotation, lump sum	60(4) & 61	22 & 23
Rate of progress	51	18
Rates, power of the Supervising Officer to fix	61(3)	23
Recovery of money due to the Employer	83	30
Reduction of liquidated damages	52(2)	19
Regulations and enactments, compliance with	30	13
Reinstatement, temporary	57	21
Release of Retention Money	79(3)	28
Remedies and powers	81-83	29-30
Remedy on Contractor's failure to carry out work required	56(4), 73(2) & 82	21, 26 & 30
Remedy on failure to insure	25	12
Removal of Constructional Plant and/or Plant on termination	81(1), 84(2) & 88(2)	29, 30 & 33
Removal of Constructional Plant, Plant, temporary buildings and materials	73	26
Removal of Contractor's employees	18	9
Removal of unsatisfactory Plant, material and work	46	16

	<i>Clause</i>	<i>Page</i>
Repair work, execution of	56 & 58	20 & 21
Replacement of unsatisfactory Plant, material and work	46	16
Retention Money	1(1)	1
Retention Money, payment	79(3)	28
Return of liquidated damages	52(3)	19
Returns of labour	32	13
Re-vesting and removal of Constructional Plant	71, 73 & 88(2)	26 & 33
Review of extensions granted	50(2)	18
Riot, outbreak of	84	30
Risks, excepted	21(4)	10
Risks, special	84	30
Roads, interference with access	24	12
Royalties and patent rights	28	12
Rubbish, removal of	35	14
Rules of valuing variations	61	23
Safety and security of the Works	20	10
Samples	42	15
Search for Defects	58	21
Section	1(1)	1
Security or sureties	12	6
Service of notices, generally	87	32
Setting-out	19	9
Settlement of disputes, arbitration	86	31
Singular and plural	1(2)	1
Site	1(1)	1
Site cleanliness, toilet facilities	38	14
Site diary and labour returns	32	13
Site, clearance of on completion	35	14
Site, inspection of	13	7
Site, possession of	48	16
Site, Supervising Officer's access to drawings on the Site	70	25
Special risks and increased costs	84	30
Specialist Contractor	1(1)	1
Specialist Works, care of	21	10
Statement of final account	79(6)	28
Sub-contracting	4	4
Sub-contractors, employment of	4	4
Sub-contractors, responsibility of the Contractor for acts and defaults of	4	4
Sub-contracts, incorporation of certain clauses in	77	27
Sub-surface Assessment	13	7
Sub-surface conditions	13	7
Sufficiency of Tender	14	8

	<i>Clause</i>	<i>Page</i>
Superintendence, Contractor's	17	9
Supervising Officer and Supervising Officer's Representative	1(1) & 2	1 & 3
Supply of Plant, Constructional Plant, materials and labour	10, 17, 18, 39 & 40	6, 9 & 14
Sureties or security	12	6
Suspension lasting more than 90 days, notice to resume work	55	20
Suspension of the Works	54	20
Temporary reinstatement	57	21
Temporary Works	1(1)	1
Tender	1(1)	1
Tender, sufficiency of	14	8
Termination of the Contract	88	33
Termination of the Contractor's employment	81 & 84	29 & 30
Tests, commissioning	67	25
Tests, general	42	15
Time for completion	49	17
Time for completion, extension of	50	17
Toilet facilities	38	14
Traffic, interference with	24	12
Uncovering and making openings	45	16
Unfulfilled obligations	80(3)	28
Unsatisfactory work, Plant and materials, removal of	46	16
Urgent work by person other than the Contractor	82(2)	30
Use of English language	9	6
Use of Provisional Sum and the Contingency Sum	65	25
Valuation at date of determination of the Contractor's employment	81(2)	29
Valuations, interim	79	27
Valuing Variations	61	23
Variation	1(1), 30(2), 60 & 61	1, 13, 22 & 23
Variations, addition or amendment to statute	30(2)	13
Variations, Contractor proposed	60(5)	22
Variations, limits on ordering	1(1), 30(2) & 60	1, 13 & 22
Variations, ordering	30(2) & 60	13 & 22
Variations, payment for Variations not proceeded with	60(4)	22
Vesting of Constructional Plant and temporary buildings	71	26
Vesting of Plant and materials not to imply approval	72	26
War, outbreak of	84	30
Warranty, by designer who is an independent consultant	4(8)	5
Warranty, design	4(8)	5
Warranty, Design Checker	2(2)	3
Watching and lighting	20	10
Work by persons other than the Contractor	56(4) & 82	21 & 30

	<i>Clause</i>	<i>Page</i>
Work of repair, execution of	56	20
Work required, remedy on Contractor's failure to carry out	56(4) & 73(2)	21 & 26
Work, examination of before covering up	44	15
Work, suspension of	54 & 55	20
Work, unsatisfactory—removal of	46	16
Workers, accident or injury to	26	12
Workmanship, materials, Plant and	42–46	15–16
Workmanship, quality	42	15
Works	1(1)	1
Works to be to the satisfaction of the Supervising Officer	15	9
Works, care of	21	10
Works, certificate of completion of	53	19
Works, commencement of	47	16
Works, commencement of construction	47(2)	16
Works, commencement of design	47(1)	16
Works, extension of time for completion	50	17
Works, safety and security	20	10
Works, time for completion	49	17

GENERAL CONDITIONS OF CONTRACT

DEFINITIONS AND INTERPRETATION

1. (1) In the Contract the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires: Definitions
- “breakdown of the Contractor’s rates and prices” means the breakdown of rates and prices provided by the Contractor in accordance with the Employer’s Requirements showing the build-up of the Contract Sum.
- “Commissioning Tests” means any test to be carried out on any item of Plant.
- “Constructional Plant” means all appliances or things of whatsoever nature required for the execution of the construction and maintenance of the Works but does not include materials or other things intended to form or forming part of the permanent work or vehicles engaged in transporting any personnel, Constructional Plant, Plant, materials or other things to or from the Site.
- “Contingency Sum” means the sum provided for work or expenditure which cannot be foreseen at the time the tender documents are issued.
- “Contract” means the Articles of Agreement, the Tender and the acceptance thereof by the Employer (including such further agreed documents as may be expressly referred to in or by the same), General Conditions of Contract, Special Conditions of Contract (if any), Employer’s Requirements and Contractor’s Proposals.
- “Contract Sum” means the sum referred to in the Contractor’s Proposals at the date of the acceptance of the Tender for the execution of the Works.
- “Contractor” means the person, firm or company whose Tender has been accepted by the Employer and includes the Contractor’s personal representatives, successors and permitted assigns.
- “Contractor’s Proposals” means the proposals for the Works submitted by the Contractor in response to the Employer’s Requirements, including a statement of the Contract Sum and the completed breakdown of the Contractor’s rates and prices.
- “Cost” means expenditure reasonably incurred including overheads whether on or off the Site and depreciation in value of Constructional Plant owned by the Contractor but excluding profit.
- “Design Checker” means any person, company or firm appointed by the Contractor in accordance with the Employer’s Requirements to perform the duties set forth in Clause 2(2).
- “Design Checking Procedures” means the procedures set out in the Employer’s Requirements for the checking of the Contractor’s design for the Works.
- “Employer” means the Government of the Hong Kong Special Administrative Region.
- “Employer’s Requirements” means the requirements of the Employer with regard to the Works.
- “Final Contract Sum” means the sum to be ascertained and paid in accordance with the provisions hereinafter contained for the execution of the Works in accordance with the Contract.
- “General Holiday” means every Sunday and other day which is a general holiday by virtue of the General Holidays Ordinance (Cap.149).
- “Government” means the Government of the Hong Kong Special Administrative Region.
- “Hong Kong” means the Hong Kong Special Administrative Region.
- “Maintenance Period” means the maintenance period named in the Appendix to the Form of Tender commencing on the day following the date of completion of the Works or any Section or part thereof certified by the Supervising Officer in accordance with Clause 53.
- “person” includes any public body and any body of persons, corporate or unincorporate.
- “Plant” means the machinery, equipment and apparatus of all kinds other than Constructional Plant to be supplied and installed by the Contractor for the Works.
- “Portion” means a part of the Site separately identified in the Contract.
- “Provisional Sum” means a sum provided for work or expenditure which has not been quantified or detailed at the time the tender documents are issued.
- “Retention Money” means the sum retained by the Employer as retention money in accordance with the Contract.

“Section” means a part of the Works identified as such and more particularly described in the Employer’s Requirements for which a time for completion is stipulated in the Appendix to the Form of Tender.

“Site” means the lands and other places including the sea under, over, on, in or through which the Works are to be constructed and any other land or places provided by the Employer for the purpose of the execution of the Works.

“Specialist Contractor” means any contractor employed by the Employer to execute Specialist Works.

“Specialist Works” means any work separately identified in the Contract and connected with or ancillary to the Works which may from time to time be carried out on the Site by a Specialist Contractor.

“Supervising Officer” means the person, company or firm appointed from time to time by the Employer and notified in writing to the Contractor to act as the Supervising Officer for the purposes of the Contract. The person appointed may be described by name or as the holder for the time being of a Public Office.

“Supervising Officer’s Representative” means any person, company or firm appointed from time to time by the Supervising Officer and notified in writing to the Contractor to perform the duties set forth in Clause 2(1)(e). The person appointed may be described by name or as the holder for the time being of a Public Office.

“Temporary Works” means all temporary work of every kind required for the construction, completion and maintenance of the Works.

“Tender” means the Contractor’s tender for the Contract.

“Variation” means:

- (a) a change in the Employer’s Requirements which makes necessary the alteration or modification of the design, quality or quantity of the Works as described by or referred to in the Employer’s Requirements or in the Contractor’s Proposals, otherwise than such as may be reasonably necessary for the purposes of rectification pursuant to Clause 58, including:
 - (i) the addition, omission or substitution of any work, and
 - (ii) the alteration of the kind or standard of any of the Plant or materials to be used in the Works; or
- (b) the addition, alteration or omission of any obligations or restrictions imposed by the Employer in the Employer’s Requirements in regard to:
 - (i) access to the Site or use of any specific part of the Site, and/or
 - (ii) limitations of working space, and/or
 - (iii) limitations of working hours, and/or
 - (iv) the execution or completion of the work in any specific order.

“Works” means the work or services (including design) to be carried out, constructed, completed, maintained and/or supplied in accordance with the Contract and includes Plant and Temporary Works, all as more particularly described or referred to in the Employer’s Requirements and the Contractor’s Proposals.

Singular and plural

(2) Words importing the singular only also include the plural and vice versa where the context requires.

Marginal notes

(3) The index and marginal notes or headings in the General Conditions of Contract, Special Conditions of Contract (if any), the Employer’s Requirements and the Contractor’s Proposals shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction thereof.

Payment

- (4) (a) Unless otherwise provided, all payments shall be made in Hong Kong dollars.
- (b) No adjustment shall be made to the Final Contract Sum on account of any variation in the exchange rate between the Hong Kong dollar and any other currency.

Contract governed by Laws of Hong Kong

(5) The Contract shall be governed by and construed in all respects according to the laws for the time being in force in Hong Kong.

Gender

(6) Words importing one gender (whether masculine, feminine or neuter) shall be taken to include any other gender where the context requires.

SUPERVISING OFFICER, SUPERVISING OFFICER'S REPRESENTATIVE
AND DESIGN CHECKER

2. (1) (a) The Supervising Officer shall carry out the duties and may exercise the powers specified in or necessarily to be implied from the Contract.
- (b) Before carrying out any such duty or exercising any such power, the Supervising Officer may be required under the terms of his appointment by the Employer to obtain confirmation that the Employer has no objection to the Supervising Officer's proposed course of action and in the event of an objection, to act in accordance with the Employer's direction. If the Supervising Officer is subject to any such requirement, particulars thereof shall be set out in the Appendix to the Form of Tender.
- (c) The Contractor's rights under the Contract shall not be prejudiced in any way by any failure on the part of the Supervising Officer to comply with the requirements particularized in the Appendix to the Form of Tender or any other requirements of his appointment by the Employer.
- (d) Except as expressly stated in the Contract, the Supervising Officer shall have no power to amend the terms and conditions of the Contract nor to relieve the Contractor of any of his obligations under the Contract.
- (e) The duties of the Supervising Officer's Representative are to watch and inspect the Works, to test and examine any Plant or material to be used and workmanship employed by the Contractor in connection with the Works and to carry out such duties and exercise such powers vested in the Supervising Officer as may be delegated to him by the Supervising Officer in accordance with the provisions of sub-clause (1)(f) of this Clause.
- (f) The Supervising Officer may from time to time delegate to the Supervising Officer's Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Supervising Officer and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Any written instruction or written approval given by the Supervising Officer's Representative to the Contractor within the terms of such delegation but not otherwise shall bind the Contractor and the Employer as though it had been given by the Supervising Officer.

Duties and powers of the Supervising Officer, Supervising Officer's Representative and Design Checker

Provided that:

- (i) failure of the Supervising Officer's Representative to disapprove any work, Plant or material shall not prejudice the power of the Supervising Officer thereafter to disapprove such work, Plant or material;
- (ii) if the Contractor or the Employer shall be dissatisfied by reason of any decision of the Supervising Officer's Representative they may refer the matter to the Supervising Officer who shall confirm, reverse or vary such decision.
- (g) No act or omission by the Supervising Officer or the Supervising Officer's Representative in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon him by any of the provisions of the Contract.
- (2) (a) Where the Employer's Requirements so require, the Contractor shall appoint a Design Checker who is independent of the Contractor and of the Contractor's designer to check the design of the permanent work and/or Temporary Works prepared by the Contractor's designer to ensure that the design complies in all respects with the Contract. The checking of the permanent work and/or Temporary Works prepared by the Contractor's designer shall be in a manner prescribed in the Employer's Requirements.
- (b) The appointment of the Design Checker under sub-clause (2)(a) shall be approved by the Employer. The Employer reserves the right to revoke its approval if at any time it has substantial cause for dissatisfaction with the conduct or performance of the Design Checker. In this event, the Contractor shall make a new appointment which shall also be subject to the Employer's approval.
- (c) There shall be included in the agreement between the Contractor and the Design Checker the following provisions which the Contractor shall use his best endeavours to ensure are observed:

- (i) that the Design Checker in the exercise of his functions, duties and obligations under the terms of the said agreement shall act fairly and impartially,
 - (ii) that the Design Checker shall not use or divulge, except for the purpose of carrying out his functions, duties and obligations under the Contract, any information provided by the Employer or the Contractor in connection with the Contract,
 - (iii) that the Design Checker shall execute under seal and provide to the Employer a warranty in the form set out in the Employer's Requirements, and
 - (iv) that the Design Checker shall provide such assistance to the Supervising Officer as is reasonably required by the Supervising Officer.
- (d) The Contractor shall deliver a copy of the executed agreement between the Contractor and the Design Checker to the Supervising Officer within 14 days of the Design Checker's appointment.
- (e) The Contractor shall be responsible for the Design Checker's fees and the costs and expenses incurred by the Design Checker in connection with the checking of the Contractor's design.
- (f) A certificate issued or any other act done by the Design Checker under the Contract shall not relieve the Contractor from any of his duties, responsibilities, obligations and liabilities under the Contract.
- (g) The Contractor shall be responsible for submitting to the Employer within 14 days of the appointment of the Design Checker a warranty duly executed by the Design Checker in favour of the Employer in the form appearing in the Employer's Requirements with only such amendments as may previously have been approved by the Supervising Officer in writing.
- (h) Further to Clause 53, it shall be a condition precedent to the issue of the certificate of completion of the Works that the Contractor shall have submitted to the Employer the duly executed warranty in strict accordance with Clause 2(2)(g).

ASSIGNMENT AND SUB-CONTRACTING

Assignment

3. The Contractor shall not assign the Contract or any interest therein without the written consent of the Employer and any assignment shall be in a form approved by the Employer.

Sub-contracting

4. (1) The Contractor shall not sub-contract the execution of the whole of the construction element of the Works. The Contractor shall be permitted, unless expressly prohibited by the Contract, to sub-contract the execution of a part of the construction of the Works either on the basis of the provision by the sub-contractor of labour, Plant and materials or by the provision of labour.

(2) The Contractor shall be permitted to sub-contract the execution of a part of the construction element of the Works on the basis of provision of Constructional Plant by the sub-contractor, provided that such sub-contracting is not expressly prohibited by the Supervising Officer in writing within a period of 14 days from receipt by the Supervising Officer of a request in writing from the Contractor.

(3) Notwithstanding that the Contract has not prohibited sub-contracting under sub-clause (1) of this Clause and the Supervising Officer has not prohibited sub-contracting under sub-clause (2) of this Clause the Supervising Officer, if in his opinion he considers it necessary, shall have full power to order the removal of any sub-contractor from the Site and/or the Works, which power shall not be exercised unreasonably.

(4) The Contractor shall within 14 days from the date of the letter of the acceptance of the Tender appoint the persons named in the Contractor's Proposals to execute the design element of the Works or parts thereof as the case may be failing which the Employer shall be entitled at its sole option:

- (a) to require the Contractor to continue his attempt to appoint such persons as may be approved by the Supervising Officer within a specified period of time; or
- (b) to terminate the Contract forthwith, in which event, the Contractor shall (without prejudice to the Employer's other rights or remedies) forthwith refund to the Employer all sums previously paid to the Contractor (if any) and the Employer shall not be under any obligation to make any or any further payments to the Contractor which would otherwise be payable under the Contract.

(5) Any substitution or replacement of any person referred to by his name in the Contractor's Proposals for the purpose of executing the design element of the Works or parts thereof as the case may be shall be affected with the agreement of the Supervising Officer and shall be affected without delay and the substitute or replacement shall be no less well qualified in terms of experience and training than the person for whom he is substituting or whom he is replacing.

(6) The sub-contracting of the execution of any part of the construction element of the Works or the design element of the Works or any part thereof shall not relieve the Contractor from any liability or obligation under the Contract particularly in respect of the provision of superintendence in accordance with Clause 17 and his design responsibility under Clause 23, and he shall be responsible for the acts, defaults and neglects of any sub-contractor or the agents, employees or workers of any sub-contractor as fully as if they were the acts, defaults or neglects of the Contractor, his agents, employees or workers.

(7) It shall be the duty of the Contractor if so required by the Supervising Officer to furnish the Supervising Officer with full particulars of any sub-contractor employed or to be employed on the Works.

(8) (a) Where the Contractor appoints a designer who is an independent consultant not employed by the Contractor under a contract of service, then the Contractor shall include in the terms of appointment between the Contractor and the independent consultant, the following provisions which the Contractor shall use his best endeavours to ensure are observed:

(i) that the independent consultant shall not use or divulge, except for the purpose of carrying out his functions, duties and obligations under the Contract, any information provided by the Employer or the Contractor in connection with the Contract,

(ii) that the independent consultant shall execute under seal and provide to the Employer a warranty in the form set out in the Employer's Requirements, and

(iii) that the independent consultant shall provide such assistance to the Supervising Officer as is reasonably required by the Supervising Officer.

(b) The Contractor shall be responsible for submitting to the Employer within 14 days of the appointment of the independent consultant a warranty duly executed by the independent consultant in favour of the Employer in the form appearing in the Employer's Requirements with only such amendments as may previously have been approved by the Supervising Officer in writing.

(c) For the avoidance of doubt it is declared that nothing in the warranty shall be interpreted as altering the rights and duties of the Employer and the Contractor under the Contract.

(d) Further to Clause 53, it shall be a condition precedent to the issue of the certificate of completion of the Works that the Contractor shall have submitted to the Employer the duly executed warranty in strict accordance with Clause 4(8)(b).

CONTRACT DOCUMENTS

5. The several documents forming the Contract shall be construed according to the following order of precedence:

Order of
precedence of
contract
documents

(a) The Special Conditions of Contract (if any);

(b) These General Conditions of Contract;

(c) Employer's Requirements;

(d) Other documents forming the Contract.

6. (1) Subject to Clause 5, the several documents forming the Contract are to be taken as mutually explanatory of one another but in case of ambiguities or discrepancies (other than ambiguities or discrepancies within the Contractor's Proposals) the same shall be explained by the Supervising Officer who shall issue to the Contractor instructions clarifying such ambiguities or discrepancies. Where the Contractor makes a request in writing to the Supervising Officer for instructions under this Clause the Supervising Officer shall respond within 7 days of receipt of such request.

Treatment of
ambiguities or
discrepancies

Provided that:

(a) if in the opinion of the Supervising Officer compliance with such instructions shall involve the Contractor in any expense which by reason of any ambiguity or discrepancy

the Contractor did not and had no reason to anticipate at time of tender, the Supervising Officer shall value such expense in accordance with Clause 61, and shall certify in accordance with Clause 79;

- (b) if in the opinion of the Supervising Officer compliance with such instructions shall involve the Contractor in any saving then the Supervising Officer shall value such saving and deduct the same from the Contract Sum accordingly.

(2) Where there is an ambiguity or discrepancy within the Contractor's Proposals the Contractor shall inform the Supervising Officer in writing of his proposed amendment to remove the ambiguity or discrepancy; and (subject always to compliance with statutory requirements) the Supervising Officer may either issue instructions on such ambiguity or discrepancy or accept the Contractor's proposed amendment and the Contractor shall be obliged to comply with the instructions or acceptance by the Supervising Officer without cost to the Employer. If in the opinion of the Supervising Officer compliance with such instructions or acceptance of the Contractor's proposed amendment shall involve the Contractor in any saving then the Supervising Officer shall value such saving and deduct the same from the Contract Sum accordingly.

Copyright

7. (1) All patents, copyright, know-how and other intellectual property incorporated or utilised in the Works, including but not limited to any rights in any documents prepared for the purposes of the Contract or the Works shall remain vested in the Contractor.

(2) Upon the issue of the certificate of completion of the Works or after termination, abandonment or determination of the Contractor's employment, entry and expulsion in accordance with Clause 81(1), frustration, termination in accordance with Clause 84 or where the Supervising Officer has appointed other contractors to perform work pursuant to Clause 82 the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a non-exclusive licence to utilise such patents, copyright, know-how and other intellectual property which has been provided or procured by the Contractor provided that the Employer shall make use of such patents, copyright, know-how or other intellectual property solely in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.

Information not to be divulged

8. (1) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer or the Supervising Officer in the Contract or in any subsequent correspondence or documentation.

(2) The Employer may use any information provided by the Contractor in accordance with the Contract but shall not divulge such information except for the purpose of the Contract or for the purpose of carrying out any repair, amendment, extension or other work connected with the Works.

Use of English language

9. The Contract, all correspondence in connection with the Contract and drawings or other documents provided by the Contractor under the Contract shall be in English.

GENERAL OBLIGATIONS

Contractor's obligations

10. The Contractor shall, subject to the provisions of the Contract, execute the Works and provide all labour, materials, Plant, Constructional Plant, Temporary Works, transport to and from the Site or in and about the Works and everything whether of a temporary or permanent nature required in and for such execution so far as necessary for providing the same is specified in or reasonably to be inferred from the Contract and for that purpose shall complete the design for the Works including the selection of any specification for any kind and standard of the material, workmanship and Plant to be supplied in connection with the Works so far as not specified in the Contract.

Contractor to execute Articles of Agreement

11. The Contractor when called upon to do so, shall enter into and execute Articles of Agreement which will be prepared at the expense of the Employer in the form annexed hereto with such modifications as may be necessary.

Sureties or security

12. If the Contract so requires, the Contractor shall either:

- (a) at his own expense obtain the guarantee in the form provided by the Employer of an insurance company or bank, in either case to be approved in writing by the Employer, to be jointly and severally bound together with him to the Employer in the sum stated in the Form of Tender for the due performance of the Contract, or

- (b) deposit with the Director of Accounting Services, the Government of the Hong Kong Special Administrative Region, as security for the due performance of the Contract the sum stated in the Form of Tender.

Provided that when the certificate of completion with respect to the Works is issued, the said guarantee or deposit sum shall be released or repaid to the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression "certificate of completion" shall, for the purpose of this Clause, mean the last of such certificates.

13. (1) For the purposes of this Clause, "Method Statement" means the Contractor's planned method of working and resources, as quantified and supported by rates and prices (which rates and prices make up a lump sum for the work relating to the Method Statement) together with the Contractor's design assumptions and assessment of sub-surface conditions (the "Sub-surface Assessment") submitted by the Contractor at the time of Tender solely for the purposes of Clause 13.

Inspection of the Site
Alternative I
(Method Statement Approach)

(2) The Contractor shall be deemed to have examined and inspected the Site and its surroundings and to have satisfied himself before submitting his Tender, as regards existing roads or other means of communication with and access to the Site, the nature of the ground and sub-soil, the form and nature of the Site, the risk of injury or damage to property, the nature of materials (whether natural or otherwise) to be excavated, the nature of the work and materials necessary for the execution of the Works, the accommodation he may require and generally to have obtained his own information on all matters affecting his Tender and the execution of the Works.

(3) Except as provided by the other sub-clauses of this Clause, no claim by the Contractor for additional payment shall be allowed on the ground of any misunderstanding in respect of the matters referred to in sub-clause (2) of this Clause or otherwise or on the ground of any allegation or fact that incorrect or insufficient information was given to him by any person whether in the employ of the Employer or not or of the failure of the Contractor to obtain correct and sufficient information, nor shall the Contractor be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may in fact affect or have affected the execution of the Works.

(4) The Contractor shall within 7 days of being given possession of the Site pursuant to Clause 48 commence site investigation activities to ascertain the nature of the sub-surface conditions at those areas of the Site which having regard to the Contractor's intended design may have a significant impact on the viability of the design.

(5) In the event of the sub-surface conditions encountered being in the opinion of the Supervising Officer significantly better than those indicated in the Sub-surface Assessment the Contractor shall, within 7 days of the receipt of the Supervising Officer's notice in writing of his opinion, submit proposals to take account of the sub-surface conditions encountered. If any re-design arising from such proposals is such as to allow a significant change in:

- (i) the selected construction methods, and/or
- (ii) the design, and/or
- (iii) resources, and/or
- (iv) Temporary Works,

the Supervising Officer may, after consulting the Contractor, by notice in writing determine the appropriate cost and/or time implications pertaining to the Method Statement, using the Method Statement and the Sub-surface Assessment as the basis for such determination and adjust the Contract Sum and/or revise the time for completion accordingly.

- (6) (a) If the Contractor at any time considers the sub-surface conditions are significantly worse than those indicated in the Sub-surface Assessment and such as to necessitate significant change in:

- (i) the selected construction methods, and/or
- (ii) the design, and/or
- (iii) resources, and/or
- (iv) Temporary Works,

he shall within 7 days of it becoming apparent that the sub-surface conditions will give rise to a claim notify the Supervising Officer in writing, together with his proposals to deal with those changes for the purposes of sub-clause (7)(a) of this Clause.

- (b) If the Contractor fails to comply with the notice provisions contained in sub-clause (6)(a) of this Clause, the Supervising Officer shall not consider those changes for the purpose of valuation under sub-clause (7)(a) of this Clause.
- (7) (a) If after receipt of written notice from the Contractor under sub-clause (6)(a) of this Clause the Supervising Officer agrees that the sub-surface conditions are significantly worse than those indicated in the Sub-surface Assessment such as to necessitate significant change in:
- (i) the selected construction methods, and/or
 - (ii) the design, and/or
 - (iii) resources, and/or
 - (iv) Temporary Works,
- the Supervising Officer shall value those changes he considers necessary to deal with the sub-surface conditions and, if the Supervising Officer considers that the Contractor is fairly entitled to an extension of time for the completion of the Works or any Section thereof, grant an extension of time and shall adjust the Contract Sum accordingly. The Sub-surface Assessment and the Method Statement shall represent the yardstick for such valuation and extension of time.
- (b) Provided always for each set of circumstances, that it shall be a condition precedent to any valuation or granting of any extension of time that the Contractor shall at the Contractor's cost establish to the satisfaction of the Supervising Officer that:
- (i) the selected design, construction methods, resources and/or Temporary Works and the programme were appropriate to the sub-surface conditions envisaged in the Sub-surface Assessment, and
 - (ii) the change in the design, construction methods, resources and/or Temporary Works is directly necessitated by the sub-surface conditions encountered being significantly worse than the Sub-surface Assessment; and
 - (iii) any revision to the programme and extension of time sought is directly necessitated by the sub-surface conditions aforesaid.

In the event the Contractor fails to demonstrate the same to the satisfaction of the Supervising Officer, the Contractor shall not be entitled to a valuation or extension of time under sub-clause (7)(a) of this Clause.

(8) The Employer does not approve the Method Statement nor accept that the rates and prices making up the lump sum are correct and sufficient to cover all the Contractor's risks, liabilities and obligations set out or implied in the Contract and all matters and things necessary for the proper execution of the Works.

(9) Any decision by the Supervising Officer on the sub-surface conditions and/or valuation and/or revision of time for completion under sub-clauses (5) and (7) of this Clause shall not relieve the Contractor of his responsibility for the execution of the Works.

Alternative II

13. (1) The Contractor shall be deemed to have examined and inspected the Site and its surroundings and to have satisfied himself, before submitting his Tender, as regards existing roads or other means of communication with and access to the Site, the nature of the ground and sub-soil, the form and nature of the Site, the risk of injury or damage to property, the nature of materials (whether natural or otherwise) to be excavated, the nature of the work and materials necessary for the execution of the Works, the accommodation he may require and generally to have obtained his own information on all matters affecting his Tender and the execution of the Works.

(2) No claim by the Contractor for additional payment shall be allowed on the ground of any misunderstanding in respect of the matters referred to in sub-clause (1) of this Clause or otherwise or on the ground of any allegation or fact that incorrect or insufficient information was given to him by any person whether in the employ of the Employer or not or of the failure of the Contractor to obtain correct and sufficient information, nor shall the Contractor be relieved from any risk or obligation imposed on or undertaken by him under the Contract on any such ground or on the ground that he did not or could not foresee any matter which may in fact affect or have affected the execution of the Works.

Sufficiency of Tender

14. The Contractor shall be deemed to have satisfied himself before submitting his Tender as to the correctness and sufficiency of his Tender for the Works which shall, except in so far as it is otherwise provided in the Contract, cover all his risks, liabilities and obligations set out or implied in the Contract and all matters and things necessary for the proper execution of the Works.

15. Save in so far as it is legally or physically impossible (except where the physical impossibility arises from the Contractor's design of the Works) the Contractor shall execute the Works in strict accordance with the Contract to the satisfaction of the Supervising Officer and shall comply with and adhere strictly to the Supervising Officer's instructions on any matter related to the Contract whether mentioned in the Contract or not.

Works to be to the satisfaction of the Supervising Officer

16. (1) Within 14 days of the acceptance of the Tender or within such other period of time as may be specified in the Contract the Contractor shall submit to the Supervising Officer a programme showing the sequence, method and timing, including (in so far as such work is described in the Contract) due allowance for the carrying out of Specialist Works and work by utility undertakings, in which the Contractor proposes to carry out the Works and shall, whenever required by the Supervising Officer, furnish for the Supervising Officer's information, particulars in writing of the Contractor's arrangements for carrying out the Works and of the Plant, Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be.

Programme to be furnished

(2) The submission to the Supervising Officer of such programme, or revised programme in accordance with Clauses 50 or 51, or the furnishing of such particulars shall not relieve the Contractor of any duty or responsibility under the Contract.

17. (1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Supervising Officer may consider necessary for the proper fulfilment of the Contractor's obligations under the Contract.

Contractor's superintendence

(2) The Contractor shall ensure that he is at all times represented on the Site by a competent and authorized English-speaking agent who shall be deemed to be approved by the Supervising Officer provided such agent is not expressly disapproved by the Supervising Officer in writing within 14 days from the serving of a notice in writing upon the Supervising Officer by the Contractor of the appointment of such agent. Such agent shall be constantly on the Site and shall give his whole time to the superintendence of the Works.

(3) The Supervising Officer shall have the power, which power shall not be unreasonably exercised, to withdraw his approval of the authorized agent at any time. If such approval shall be withdrawn the Contractor shall, after receiving notice in writing of such withdrawal, remove the agent from the Site forthwith and shall not thereafter employ him again on the Site in any capacity and shall replace him by another competent English-speaking agent approved by the Supervising Officer.

(4) Such authorized agent shall receive on behalf of the Contractor directions and instructions from the Supervising Officer and the Supervising Officer's Representative.

18. (1) The Contractor shall provide and employ and shall ensure that any of his sub-contractors shall provide and employ in connection with the execution of the Works:

Contractor's employees

- (a) only such technical personnel as are skilled and experienced in their respective trades and callings and such sub-agents, foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and
- (b) such skilled, semi-skilled and unskilled labour as is necessary for the proper and timely execution of the Works, and
- (c) such skilled and qualified designers as are necessary for the proper and timely design of the Works.

(2) The Supervising Officer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor or by a sub-contractor in or about the execution of the Works who in the opinion of the Supervising Officer misconducts himself or is incompetent or negligent in the proper performance of his duties or fails to comply with any particular provision with regard to safety or whose employment is otherwise considered by the Supervising Officer to be undesirable and such person shall not be again employed upon the Works without the written permission of the Supervising Officer.

(3) Any person so removed from the Works shall be replaced as soon as possible by a competent substitute.

(4) The Supervising Officer's power of removal under sub-clause (2) of this Clause shall not be unreasonably exercised.

19. (1) The Contractor shall be responsible for the true and proper setting-out of the Works in relation to original points, lines and levels of reference and for the correctness of the position, level, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labour in connection therewith.

Setting-out

(2) If at any time during the progress of the Works any error shall appear or arise in the position, level, dimensions or alignment of any part of the Works the Contractor shall draw the attention of the Supervising Officer to the same and on being required so to do the Contractor shall at his own cost rectify such error to the satisfaction of the Supervising Officer. The checking of any setting-out or any line or level by the Supervising Officer shall not in any way relieve the Contractor of his responsibility for the correctness thereof.

(3) The Contractor shall carefully protect and preserve all bench-marks, sight-rails, pegs and other things used in setting out the Works.

Safety and security of the Works

20. (1) The Contractor shall throughout the progress of the Works take full responsibility for the adequate stability and safety of all operations on the Site other than those of Specialist Contractors and utility undertakings and have full regard for the safety of all persons on the Site. The Contractor shall keep the Site and the Works in an orderly state appropriate to the avoidance of danger to all persons.

(2) The Contractor shall in connection with the Works provide and maintain all lights, guards, fences and warning signs and provide watchmen when and where necessary or required by the Supervising Officer or by any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others.

(3) The Contractor shall ensure that all parts of the Site where work is being carried out are so lighted as to ensure the safety of all persons on or in the vicinity of the Site and of such work.

(4) The Contractor, after obtaining any necessary approval from any relevant authority, shall submit to the Supervising Officer proposals showing the layout of pedestrian routes, lighting, signing and guarding for any road opening or traffic diversion which may be required in connection with the execution of the Works. No such road opening or traffic diversion shall be brought into operation or use unless the proposals submitted have been previously approved by the Supervising Officer and properly provided and implemented on the Site.

Care of the Works

21. (1) From and including the date for commencement of the Works notified by the Supervising Officer in accordance with Clause 47 until 28 days after the date of completion of the Works certified by the Supervising Officer in accordance with Clause 53 or until the date the Employer takes over the Works, if earlier, the Contractor shall take full responsibility for the care of the Works and any Specialist Works (except the stability and safety of the operations of Specialist Contractors and utility undertakings referred to in Clause 20(1)) or any part thereof, and for the care of any Plant, Constructional Plant, temporary buildings and materials and things whatsoever on the Site or delivered to or placed on the Site in connection with or for the purpose of the Works or any Specialist Works.

Provided that if the Supervising Officer shall issue a certificate of completion in respect of any Section or part of the Works before he shall issue a certificate of completion in respect of the Works the Contractor shall cease to be responsible for the care of that Section or part of the Works 28 days after the date of completion certified by the Supervising Officer in respect of that Section or part and the responsibility for the care thereof shall thereupon pass to the Employer.

Provided further that the Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken to finish during the Maintenance Period until such outstanding work is complete, and shall continue to be responsible for all things which are required to be retained on the Site during the Maintenance Period including Plant, Constructional Plant, temporary buildings and materials and other facilities provided for the use of the Supervising Officer, the Supervising Officer's Representative and their staff.

(2) In case any damage, loss or injury from any cause whatsoever, except the "excepted risks" as defined in sub-clause (4) of this Clause, shall happen to the Works or any Specialist Works or any part thereof, or to any Plant, Constructional Plant, temporary buildings, materials and things whatsoever on the Site, the Contractor shall at his own expense and with all possible speed make good or at the option of the Employer shall pay to the Employer the cost of making good any such damage, loss or injury to the satisfaction of the Supervising Officer and shall, notwithstanding such damage, loss or injury, proceed with the execution of the Works in all respects in accordance with the Contract and the Supervising Officer's instructions.

(3) To the extent that any damage, loss or injury arises from any of the "excepted risks" defined in sub-clause (4) of this Clause, the Contractor shall, if instructed by the Supervising Officer, repair and make good the same at the expense or proportionate expense of the Employer. Any sum payable under this Clause by the Employer shall be valued by the Supervising Officer in the same manner as a sum payable in respect of a Variation ordered in accordance with Clause 60.

(4) The "excepted risks" are:

(a) outbreak of war (whether war be declared or not) in which Hong Kong shall be actively engaged;

- (b) invasion of Hong Kong;
- (c) act of foreign terrorists in Hong Kong;
- (d) civil war, rebellion, revolution or military or usurped power in Hong Kong;
- (e) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on the Works or Specialist Works;
- (f) a cause due to the occupation by the Employer, its agents, employees or other contractors of any part of the Works for a purpose other than carrying out of Specialist Works, such purpose being authorized and required by the Employer;
- (g) a cause due to any neglect or default by the Employer or its employees or agents in the course of their employment;
- (h) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component thereof provided always that the same are not caused in whole or in part by the Contractor or any sub-contractor.

22. (1) The Contractor shall, except if and so far as the Contract otherwise provides, indemnify and keep indemnified the Employer against all losses and claims for injury or damage to any person or property whatsoever, other than surface or other damage to land or crops on the Site, which may arise out of or in consequence of the execution of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Damage to persons and property

(2) The Contractor shall make good or at the option of the Employer shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury which may occur to any agent or employee of the Employer by or arising out of or in consequence of the execution of the Works or in the carrying out of the Contract.

Provided that:

- (a) the Contractor's liability to indemnify or recompense the Employer under sub-clauses (1) and (2) of this Clause shall, subject to sub-clause (3) of this Clause, be reduced proportionately to the extent that the act or neglect of the Employer, its respective agents or employees shall have contributed to the damage, loss or injury;
- (b) nothing herein contained shall be deemed to render the Contractor liable for or in respect of or to indemnify the Employer against any compensation or damages for or with respect to:
 - (i) the use or occupation of land provided by the Employer for the Works, or for the purpose of executing the Works, or interference, whether temporary or permanent, with any right of way, light, air or water or other easement or quasi easement which is the unavoidable result of the execution of the Works in accordance with the Contract, or
 - (ii) the right of the Employer to construct the Works on, over, under, in or through any land, or
 - (iii) injuries or damage to persons or property which are the unavoidable result of the proper execution of the Works in accordance with the Contract provided that they could not have been avoided by the Contractor having adopted any alternative design which would have complied with the Contract and which in all the circumstances would have been reasonable for the Contractor to adopt, or

for or in respect of all claims, demands, proceedings, damages, costs, charges and expenses in respect thereof or in relation thereto.

(3) The indemnities given herein by the Contractor shall not be rendered ineffective or reduced by reason of any negligence or omission of the Employer or the Supervising Officer or the Supervising Officer's Representative in watching and inspecting the Works, or in testing and examining any material to be used and workmanship employed by the Contractor in connection with the Works, or in supervising or controlling the Contractor's site operations or methods of working or Temporary Works, or in detecting or preventing or remedying defective work or services, or in ensuring proper performance or any other obligation of the Contractor.

Design
responsibility

23. (1) The Contractor shall, unless it is otherwise provided in the Contract, have in respect of any defect or insufficiency in the design of the Works (including any further design which the Contractor has to carry out as a result of a Variation) the like liability to the Employer, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on the design of the Works, provided always that:

- (a) where the Employer has relied upon the Contractor to select Plant and materials required by the design to be incorporated in the Works the Contractor shall ensure that all such Plant and materials are reasonably fit for the purpose intended by the Contract.
- (b) subject to sub-clause (a) above in no circumstances shall the Contractor be obliged to ensure that the design is fit for the purpose intended by the Contract.

(2) In preparing the design and complying with his obligations under Clause 23(1), the Contractor shall, where prescribed in the Employer's Requirements, comply in all respects with the Design Checking Procedures.

(3) No examination or lack of examination of whatsoever nature by the Employer, its agents or employees of the Contractor's drawings, documents, calculations or details relating to the execution of the Works or otherwise nor any certification, comment, rejection or approval expressed by such persons in regard thereto, either with or without modification, shall in any respect relieve or absolve the Contractor from any obligations or liability under or in connection with the Contract.

Interference with
traffic and
adjoining
properties

24. (1) All operations necessary for the construction and maintenance of the Works shall be carried on so as not to interfere unnecessarily or improperly with:

- (a) the convenience of the public, or
- (b) the access to, use and occupation of public or private roads or footpaths or to or of properties whether in the possession of the Employer or any other person.

(2) The Contractor shall save harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

Remedy on
failure to insure

25. If the Contractor shall fail to effect and keep in force any insurance which he may be required to effect by any Special Condition of Contract then and in any such case the Employer may effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and such premiums, together with expenses incurred shall be recoverable by the Employer from the Contractor.

Accident or
injury to workers

26. The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any worker or other person in the employ of the Contractor or any sub-contractor save and except an accident or injury resulting from any act or default of the Employer, its agents or employees and the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation, save and except as aforesaid and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

Contractor to
give notice of
injury

27. In the event of any worker or other person employed on the Works or in connection with the Contract whether in the employ of the Contractor or a sub-contractor suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall, without delay, notify the Commissioner for Labour in such form and manner as required by the Employees' Compensation Ordinance (Chapter 282) and shall report the matter to the Supervising Officer in the form prescribed in the Contract.

Patent rights and
royalties

28. The Contractor shall indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design, trademark or name or other protected rights in respect of any Constructional Plant, Plant, machine, work, method or material or anything whatsoever required for the Works and from and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. Except when otherwise specified in the Contract the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation (if any) for getting stone, sand, gravel, clay or other materials required for the Works.

Provided that where in compliance with the Employer's Requirements (save where it is specified in the Employer's Requirements that a patented article, process, design or invention is required) or with a Variation under Clause 60 (other than a Variation ordered under sub-clause (5) of Clause 60) the Contractor shall incorporate into permanent work any patented article, process or invention, the Contractor shall be reimbursed by the Employer for any expenses, costs or damages which the

Contractor may have had to pay to the persons entitled to such patented article, process or invention in respect of any infringement of any patent rights, design, trademark, name or other protected rights in relation to such article, process or invention.

Provided further that the Contractor shall notify the Supervising Officer as soon as the Contractor is aware of any incorporation of patented articles, processes or inventions as a condition precedent to any such reimbursement.

29. The Contractor shall give all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulation or bye-law of any local or other duly constituted authority in relation to the execution of the Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by the Works and if any new fee is imposed or if any existing fee is increased after the date of submission by the Contractor of the Tender, all such new fees or increases shall also be at the expense of the Contractor.

Giving of notices and payment of fees

30. (1) The Contractor shall conform in all respects with:

- (a) the provisions of any enactment,
- (b) the regulations or bye-laws, of any local or duly constituted authority, and
- (c) the rules and regulations of such public bodies and statutory authorities as are referred to in Clause 29,

Compliance with enactments and regulations

and any additions or amendments thereto during the continuance of the Works, which are applicable to the Works, and shall keep the Employer indemnified against all penalties and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules.

(2) Notwithstanding the Contractor's obligations under sub-clause (1) of this Clause and the definition of "Variation" in Clause 1(1), in the event that there is any addition or amendment to any such enactment, regulation, bye-law or rule after the date of submission by the Contractor of the Tender and where in the opinion of the Supervising Officer the Employer's Requirements (as to the design of the permanent work) are precluding conformity with such addition or amendment, the Supervising Officer shall order a Variation to ensure conformity with such addition or amendment provided that the Contractor shall not be entitled to any additional payment (notwithstanding the provisions of Clause 61 and Clause 63) or any extension of time for completion of the Works or any Section (notwithstanding the provisions of Clause 50(1)(b)(v)) as a result of such order unless, in the Supervising Officer's opinion, such addition or amendment could not reasonably have been foreseen by the Contractor at the date of submission by the Contractor of the Tender.

31. Any notice required to comply with any enactment or the rules and regulations of the Government of the Hong Kong Special Administrative Region or other competent authority and which the Contractor may have to exhibit either for the benefit of the public or for the benefit of his employees shall be written in English and Chinese.

Notices to be written in English and Chinese

32. (1) The Supervising Officer's Representative will record daily in the Supervising Officer's site diary information with regard to labour, Plant, Constructional Plant, materials, utilities, work carried out and instructions issued to the Contractor and all other facts that may affect the progress or quality of the Works.

Site diary and labour returns

(2) The authorized agent or representative of the Contractor shall sign the site diary daily indicating his agreement to the information recorded. If the authorized agent or representative of the Contractor does not agree with any of the items recorded in the site diary he may draw reference to the points of disagreement in writing in the site diary.

(3) The Contractor shall, as and when called upon to do so by the Supervising Officer, make available to the Supervising Officer or such other person as the Supervising Officer may direct, such information as the Supervising Officer considers necessary to enable him properly to keep and maintain his site record, but in any event and without prejudice to the generality of the foregoing, the Contractor shall deliver to the office of the Supervising Officer's Representative by not later than 1.00 p.m. on each working day a return in such form as the Supervising Officer may prescribe showing in detail the numbers of the several classes of labour on the Site that day together with the numbers of the several classes of labour so employed during the preceding twenty-four hours who were not included in the return for the previous day together with such information concerning materials, Plant, Constructional Plant and other such matters as the Supervising Officer's Representative may require.

33. All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site shall, as between the Employer and the Contractor, be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workers or any other persons from removing or damaging any such article

Fossils

or thing and shall immediately upon discovery thereof and before removal acquaint the Supervising Officer or the Supervising Officer's Representative of such discovery and carry out at the expense of the Employer the instructions of the Supervising Officer as to the disposal of the same.

Facilities for
other persons

34. (1) The Contractor shall in accordance with the requirements of the Supervising Officer afford all reasonable facilities for any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer, any utility undertaking or other duly constituted authority.

(2) If however the Contractor shall on the written request of the Supervising Officer either:

- (a) make available any road or way for the maintenance of which the Contractor is responsible to, or
- (b) permit the use by any Constructional Plant on the Site by, or
- (c) provide any other service of whatsoever nature to,

any person who may be carrying out, on or adjacent to the Site, any work not included in the Contract but required by the Employer, any utility undertaking or other duly constituted authority, the Employer shall pay to the Contractor in respect of such use or service such sum which the Supervising Officer may value in the same manner as a sum payable in respect of a Variation ordered in accordance with Clause 60.

Clearance of the
Site on
completion

35. As soon as practicable after the issue of the certificate of completion as provided for in Clause 53 the Contractor shall clear away and remove from the Site or, where the certificate of completion relates to a Section or part of the Works, the relevant part of the Site, all surplus materials and rubbish of any kind whatsoever and leave the Site or the relevant part thereof and the Works or the relevant Section or part thereof in a clean and tidy condition.

Publication of
photographs of
the Site or the
Works

36. (1) The Contractor shall not publish or otherwise circulate photographs of the Site or of the Works or any part thereof or anything therein except with the permission in writing of the Employer.

(2) No such permission shall exempt the Contractor from complying with any statutory provision in regard to the taking and publication of photographs.

Offering
gratuities

37. If the Contractor or any of his agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Supervising Officer or to any member of the Supervising Officer's staff or to the Design Checker (if any), the Employer may terminate forthwith the employment of the Contractor under the Contract, and to hold the Contractor liable for any loss or damage which the Employer may thereby sustain.

Site cleanliness

38. The Contractor shall provide and maintain efficient and hygienic toilet facilities for the use of all persons on the Site and keep the Site in a clean and hygienic condition.

LABOUR

Engagement of
labour

39. (1) The Contractor shall make his own arrangements in regard to the provision of such labour, skilled and unskilled, as may be required for the execution of the Works and shall use all diligence in arranging for a sufficient and suitable supply of such labour but all such arrangements shall be in accordance with general local usage and subject to such regulations as the Government of the Hong Kong Special Administrative Region may from time to time require to be observed.

(2) As far as practicable all labour both skilled and unskilled shall be engaged in Hong Kong.

Fair wages

40. (1) The Contractor shall pay rates of wages and observe hours and conditions of labour which are not less favourable than the general level of wages, hours and conditions observed by other employers whose general circumstances in the trade or industry in which the Contractor is engaged are similar.

(2) The Contractor shall in respect of all persons employed by him, whether in carrying out this Contract or otherwise, in every workshop or other place occupied or used by him for carrying out the Works comply with the general conditions required by this Clause.

(3) The Contractor shall be responsible for the observance of this Clause by sub-contractors employed in the carrying out of the Works.

(4) In the event of default being made in the payment of any money in respect of wages of any person employed by the Contractor in and for carrying out this Contract and if a claim therefor is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or it is found necessary by the Commissioner for Labour, proof of final

determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour, the Employer may, failing payment of the said money by the Contractor, make payment of such claim on behalf of the Contractor to that person and any sums so paid shall be recoverable by the Employer from the Contractor.

41. (1) The Contractor shall arrange the issue of passes for the admission of workers to the Site or to any part thereof and in such event any person who fails to show his pass on demand to any duly authorized person may be refused admission.

Passes

(2) If required by the Supervising Officer the Contractor shall submit a list of the names of all his workers to whom passes have been issued together with two photographs of each person and shall satisfy the Supervising Officer of their bona fides and identity.

MATERIALS, PLANT AND WORKMANSHIP

42. (1) All Plant, materials and workmanship shall be of the respective character, quality or kind required by the Contract and shall be subjected to such examinations, measurements or tests as the Contract shall require or as ordered by the Supervising Officer or the Supervising Officer's Representative at the place of manufacture, or on the Site, or at such other place or places as may be specified in the Contract, or at all or any such places.

Quality of Plant, materials, workmanship and tests

(2) The Contractor shall provide such assistance, instruments, machines, labour and other facilities as may be necessary for examining, measuring or testing any work and the quality, weight or quantity of any Plant and/or material used and, before incorporation into the Works, shall supply for examining, measuring or testing such samples of Plant and/or materials as may be selected or required by the Supervising Officer or the Supervising Officer's Representative.

(3) The Contractor shall bear the expense and costs of any examination, measurement or test and of complying with the requirements of sub-clause (2) of this Clause, including without limitation any transportation costs and shall reimburse the Employer in respect of the costs of the Supervising Officer in attending such examination, measurement or test, if such examinations, measurements or tests and all repetitions thereof are clearly intended or provided for in the Contract.

(4) If any examination, measurement or test not so intended or provided for in the Contract is ordered by the Supervising Officer or the Supervising Officer's Representative, then such expense and costs of such examination, measurement or test including those of the Supervising Officer's attendance shall be borne by the Contractor if the examination, measurement or test shows the Plant, materials or workmanship not to be in accordance with the Contract but otherwise such expense and costs shall be borne by the Employer, and shall be valued in accordance with Clause 61.

(5) In the event that any test shows that the Contractor has failed to comply with the requirements of the Contract in respect of Plant, materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other tests as the Supervising Officer may approve.

(6) Sub-clauses (4) and (5) of this Clause shall apply to any series of tests carried out on any part of the Works the results of which indicate that in the opinion of the Supervising Officer the Contractor has failed to comply with the requirements of the Contract in respect of Plant, materials or workmanship notwithstanding there being satisfactory individual tests included in any such series of tests.

(7) Notwithstanding the above, testing carried out in the Employer's laboratories in connection with the Works shall be free of charge.

43. The Supervising Officer and any person authorized by him shall at all times have access to the Works and to the Site and to the place of design and to all workshops and places where Plant, materials or manufactured articles are being stored or prepared or from where Plant, materials or manufactured articles are being supplied by the Contractor or any sub-contractor, and the Contractor shall render every assistance to the Supervising Officer and any person so authorized by him to obtain access when required to such other workshops and places from where Plant, materials or manufactured articles are being obtained for incorporation into the Works.

Access to the Site and places of manufacture

44. (1) No work shall be covered up or put out of view without the approval of the Supervising Officer or the Supervising Officer's Representative and the Contractor shall afford full opportunity for the Supervising Officer or the Supervising Officer's Representative to examine and measure any work which is about to be covered up or put out of view and to examine any foundation before permanent work is placed thereon.

Examination of work before covering up

(2) The Contractor shall give reasonable notice to the Supervising Officer's Representative whenever any such work or foundation is ready for examination and the Supervising Officer or the Supervising Officer's Representative shall, without unreasonable delay and unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining any such foundation.

Uncovering and making openings

45. (1) The Contractor shall uncover any part of the Works or make such openings in or through the same as the Supervising Officer may from time to time direct and shall reinstate and make good any such part in accordance with the Contract.

(2) If any such part has been covered up or put out of view after compliance with the requirements of Clause 44 and is found to be executed in accordance with the Contract, the expense of uncovering, making openings in or through, reinstating and making good the same shall be valued by the Supervising Officer in accordance with Clause 61 but in any other case the expense shall be borne by the Contractor.

Removal of unsatisfactory Plant, material and work

46. (1) The Supervising Officer shall during the progress of the Works have the power to order in writing:

- (a) the removal from the Site within such time as may be specified in the order of any Plant or material which in the opinion of the Supervising Officer is not in accordance with the Contract,
- (b) the substitution of proper and suitable Plant or material, and
- (c) the removal and proper re-execution, notwithstanding any previous examination, measurement or test thereof or any interim payment therefor, of any work which, in respect of Plant, materials or workmanship, is not in accordance with the Contract.

(2) The Contractor shall bear the expense of uncovering, breaking up and removal from the Site of any Plant, material or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works resulting from such uncovering, breaking up or removal.

(3) Where the rectification of any work or replacement of Plant or any material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Supervising Officer may but shall not be obliged to give directions for a Variation in lieu of such removal and re-execution at no additional expense to the Employer.

Provided that if in the opinion of the Supervising Officer such Variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Supervising Officer shall value such excess in accordance with Clause 61, and shall certify in accordance with Clause 79.

(4) In the event that the Supervising Officer exercises any of his powers under sub-clause (1) of this Clause concerning materials supplied by the Employer, and if in the opinion of the Supervising Officer the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Supervising Officer shall ascertain the Cost incurred, and shall certify in accordance with Clause 79.

COMMENCEMENT, COMPLETION AND DELAYS

Commencement of the Works

47. (1) The Contractor shall commence and proceed with the design of the Works with due diligence and expedition and so as to enable the Contractor to comply with his obligations as to commencement, progress and completion of construction and with all other time-related obligations under the Contract.

(2) The Contractor shall commence construction of the Works on the date for commencement of construction of the Works as notified in writing by the Supervising Officer and shall proceed with the same with due diligence and expedition. The date so notified by the Supervising Officer shall be within the period of time after the date of acceptance of the Tender as stated in the Appendix to the Form of Tender. The Contractor shall not carry out work on the Site before the notified date for commencement of construction save to the extent the Supervising Officer agrees to the same.

Provided that the construction of any part of the Works shall not commence until the Supervising Officer has given his consent for construction to proceed under the Design Checking Procedures.

Possession of the Site

48. (1) Save in so far as the Contract may prescribe the extent of Portions of the Site of which the Contractor is to be given possession from time to time and the order in which such Portions shall be

made available to him and, subject to any requirement in the Contract as to the order in which the construction of the Works shall be executed, the Employer shall give to the Contractor on the date for commencement notified by the Supervising Officer in accordance with Clause 47 possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the programme referred to in Clause 16 and otherwise in accordance with such reasonable proposals in writing as the Contractor shall make to the Supervising Officer. The Employer shall from time to time, as the Works proceed, give to the Contractor possession of such further parts of the Site as may be required to enable the Contractor to proceed with construction of the Works with due despatch in accordance with the said programme or proposals, as the case may be.

(2) If upon written application having been made by the Contractor to the Supervising Officer, the Supervising Officer is of the opinion that the Contractor has been involved in additional expenditure by reason of the progress of the construction of the Works or any part thereof having been materially affected by the failure of the Employer to give possession in accordance with this Clause then the Supervising Officer shall ascertain the Cost incurred, and shall certify in accordance with Clause 79.

(3) The Contractor shall bear all expenses and charges for special or temporary wayleaves required by him in connection with access to the Site.

49. (1) The Works and any Section thereof shall be completed within the time or times stated in the Contract calculated from and including the date for commencement of construction of the Works notified by the Supervising Officer in accordance with Clause 47 or such extended time as may be determined in accordance with Clause 50 or such revised time for completion as may be notified under Clause 13 (if appropriate) or agreed under Clause 60 as the case may be.

Time for completion

(2) General Holidays shall be included in the time for completion unless otherwise stated in the Contract.

50. (1) (a) As soon as practicable but in any event within 28 days after the cause of any delay to the progress of the Works or any Section thereof has arisen, the Contractor shall give notice in writing to the Supervising Officer of the cause and probable extent of the delay.

Extension of time for completion

Provided that as soon as the Contractor can reasonably foresee that any order or instruction issued by the Supervising Officer is likely to cause a delay to the progress of the Works or any Section thereof the Contractor shall forthwith give notice in writing to the Employer and Supervising Officer and specify the probable effect and extent of such delay. Such notice shall not in any event be given later than 28 days after the Supervising Officer has issued the relevant order or instruction.

(b) If in the opinion of the Supervising Officer the cause of the delay is:

- (i) inclement weather and/or its consequences adversely affecting the progress of the Works, or
- (ii) the hoisting of tropical cyclone warning signal No. 8 or above, or
- (iii) a Black Rainstorm Warning, or
- (iv) an instruction issued by the Supervising Officer under Clause 6, or
- (v) a Variation ordered under Clause 60, or
- (vi) the Contractor not being given possession of the Site or any Portion or part thereof in accordance with the Contract or is subsequently deprived of it by the Employer, or
- (vii) a disturbance to the progress of the Works for which the Employer or the Supervising Officer or a Specialist Contractor is responsible including but not restricted to any matter referred to in Clause 63, or
- (viii) the suspension of the Works in accordance with Clause 54 in so far as the suspension is not occasioned by the circumstances described in Clause 54(2)(a) to (d), or
- (ix) any utility undertaking or other duly constituted authority failing to commence or to carry out in due time any work directly affecting the execution of the Works, provided that the Contractor has taken all practical steps to cause the utility undertaking or duly constituted authority to commence or to proceed with such work, or
- (x) any special circumstance of any kind whatsoever,

then the Supervising Officer shall within a reasonable time consider whether the Contractor is fairly entitled to an extension of time for the completion of the Works or any Section thereof.

- (c) Notwithstanding the powers of the Supervising Officer under the provisions of this Clause to decide whether the Contractor is fairly entitled to an extension of time the Contractor shall not be entitled to an extension of time for the completion of the Works or any Section thereof if the cause of the delay is:
- (i) a suspension occasioned by the circumstances described in Clause 54(2)(a) to (d), or
 - (ii) a shortage of Constructional Plant or labour, or
 - (iii) defective or late design by the Contractor, or
 - (iv) failure of the Contractor to interpret properly the Employer's Requirements or identify any ambiguity or discrepancy therein which could have been reasonably foreseen by an experienced contractor, or
 - (v) change in quantities as described in the breakdown of the Contractor's rates and prices other than by way of a Variation ordered under Clause 60.

(2) If in accordance with sub-clause (1) of this Clause the Supervising Officer considers that the Contractor is fairly entitled to an extension of time for the completion of the Works or any Section thereof, the Supervising Officer shall within a reasonable time determine, grant and notify in writing to the Contractor such extension. If the Supervising Officer decides that the Contractor is not entitled to an extension, the Supervising Officer shall notify the Contractor in writing accordingly.

Provided that the Supervising Officer in determining any such extension shall take into account all the circumstances known to him at that time.

Provided further that the Supervising Officer shall, if the Contractor shall so request in writing, make a subsequent review of the circumstances causing delay and determine whether any further extension of time for completion should be granted.

(3) For the avoidance of doubt if the Supervising Officer grants an extension of time in respect of a cause of delay occurring after the Employer is entitled to recover liquidated damages in respect of the Works or any Section, the period of extension of time granted shall be added to the prescribed time or previously extended time for the completion of the Works or, as the case may be, the relevant Section.

(4) For the purposes of determining whether or to what extent the Contractor may be entitled to an extension of time under sub-clause (1)(b) of this Clause the Supervising Officer may require the Contractor to submit full and detailed particulars of the cause and extent of the delay to the progress of the Works. Where such full and detailed particulars are required by the Supervising Officer, they shall be submitted in writing by the Contractor to the Supervising Officer as soon as practicable in order that the Contractor's claim may be investigated at that time by the Supervising Officer. If the Contractor fails to comply with the provisions of this sub-clause, the Supervising Officer shall consider such extension only to the extent that the Supervising Officer is able on the information available.

(5) Whenever the Supervising Officer grants an extension of time for completion in accordance with this Clause, the Contractor shall revise the programme referred to in Clause 16 accordingly.

(6) Except as provided elsewhere in the Contract, any extension of time granted by the Supervising Officer to the Contractor shall be deemed to be in full compensation and satisfaction for any loss or injury sustained or sustainable by the Contractor in respect of any matter or thing in connection with which such extension shall have been granted and every extension shall exonerate the Contractor from any claim or demand on the part of the Employer for the delay during the period of such extension but not for any delay continued beyond such period.

(7) For the purpose of this Clause, "Black Rainstorm Warning" means a warning issued by the Director of the Hong Kong Observatory of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm signal commonly referred to as Black.

Rate of progress

51. (1) If the rate of progress of the Works or any Section thereof is at any time in the opinion of the Supervising Officer too slow to ensure completion by the time for completion prescribed by Clause 49 or extended or revised time for completion prescribed by Clauses 13 (if appropriate), 50 and 60 as the case may be, the Supervising Officer may so inform the Contractor in writing and the Contractor shall immediately take such steps as are necessary to expedite the completion of the Works or any Section thereof. The Contractor shall inform the Supervising Officer of such proposed steps and revise the programme referred to in Clause 16 accordingly.

(2) Notwithstanding the provisions of sub-clause (1) of this Clause and subject to compliance with any enactment, regulation or bye-law, the Supervising Officer shall be empowered to instruct the Contractor in writing to carry out the Works or any part thereof during any hours of the day where the Supervising Officer considers it necessary owing to the default, negligence, omission or slow progress of the Contractor.

(3) The Contractor shall not be entitled to any additional payment for complying with any instruction given in accordance with this Clause.

52. (1) If the Contractor fails to complete the Works or where the Works are divided into Sections any Section within the time for completion prescribed by Clause 49 or such extended time as may be granted in accordance with Clause 50 or such revised time for completion as may be notified under Clause 13 (if appropriate) or agreed under Clause 60, then the Employer shall be entitled to recover from the Contractor liquidated damages and may but shall not be bound to deduct such damages either in whole or in part, in accordance with the provisions of Clause 83. The payment of such damages shall not relieve the Contractor from his obligations to complete the Works or from any other of his obligations under the Contract.

Liquidated
damages for
delay

(2) The liquidated damages shall be calculated using the rate per day prescribed in the Contract, either for the Works or for the relevant Section, whichever is applicable.

Provided that, if the Supervising Officer certifies completion under Clause 53 of any part of the Works before completion of the Works or any part of any Section before the completion of the whole thereof, then the rate per day of liquidated damages for the Works or the relevant Section shall from the date of such certification be reduced in the proportion which the value of the part so certified bears to the value of the Works or the relevant Section, as applicable, both values as of the date of such certification shall be determined by the Supervising Officer.

(3) The period for which liquidated damages shall be calculated shall be the number of days from the prescribed date for completion or any extension or revision thereof of the Works or the relevant Section until and including the certified date of completion.

Provided that, if the Supervising Officer subsequently grants an extension of time which affects the period described above, then the Employer shall reimburse the Contractor the liquidated damages for the number of days so affected at the rate described in sub-clause (2) of this Clause together with interest at the rate provided for in Clause 79(4) within 28 days of the granting of such extension of time.

(4) All monies payable by the Contractor to the Employer pursuant to this Clause shall be paid as liquidated damages for delay and not as a penalty.

53. (1) When the Works have been substantially completed and have satisfactorily passed any final test (including the Commissioning Tests) that may be prescribed by the Contract, the Contractor may serve notice in writing to that effect to the Supervising Officer, accompanied by an undertaking to carry out any outstanding work during the Maintenance Period, requesting the Supervising Officer to issue a certificate of completion in respect of the Works. The Supervising Officer shall, within 21 days of the date of receipt of such notice either:

Completion of
the Works

(a) issue a certificate of completion stating the date on which, in the Supervising Officer's opinion, the Works were substantially completed in accordance with the Contract and the Maintenance Period shall commence on the day following the date of completion stated in such certificate, or

(b) give instructions in writing to the Contractor specifying all the work which, in the Supervising Officer's opinion, is required to be done by the Contractor before such certificate can be issued, in which case the Contractor shall not be permitted to make any further request for a certificate of completion and the provisions of sub-clause (2) of this Clause shall apply.

(2) Notwithstanding the provisions of sub-clause (1) of this Clause, as soon as in the opinion of the Supervising Officer the Works have been substantially completed and satisfactorily passed any final test (including the Commissioning Tests) which may be prescribed by the Contract, the Supervising Officer shall issue a certificate of completion in respect of the Works and the Maintenance Period shall commence on the day following the date of completion stated in such certificate.

(3) The Contractor shall carry out any outstanding work as soon as practicable after the issue of the certificate of completion or as reasonably directed by the Supervising Officer and in any event before the expiry of the Maintenance Period. The Contractor's obligation to provide, service and maintain site offices, latrines and the like, shall continue for as long as may be necessary for the completion of any outstanding work.

(4) The provisions of sub-clauses (1), (2) and (3) of this Clause shall apply equally to any Section.

(5) (a) The Supervising Officer shall give a certificate of completion in respect of any part of the Works which has been completed to the satisfaction of the Supervising Officer and is required by the Employer for permanent occupation or use before the completion of the Works or any Section.

(b) The Supervising Officer, following a written request from the Contractor, may but shall not be bound to give a certificate of completion in respect of any substantial part of the Works which has been completed to the satisfaction of the Supervising Officer before the completion of the Works or any Section and is capable of permanent occupation and/or permanent use by the Employer.

(c) When a certificate of completion is given in respect of a part of the Works such part shall be considered as completed and the Maintenance Period for such part shall commence on the day following the date of completion stated in such certificate.

(6) Any certificate of completion given in accordance with this Clause in respect of any Section or part of the Works shall not be deemed to certify completion of any ground or surface requiring reinstatement unless the certificate shall expressly so state.

(7) For the purposes of this Clause the term "Works" shall exclude any maintenance work executed in accordance with Clause 56.

SUSPENSION OF THE WORKS

Suspension of
the Works

54. (1) The Contractor shall upon the written order of the Supervising Officer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Supervising Officer may consider necessary and shall during such suspension properly protect and secure the Works so far as is necessary in the opinion of the Supervising Officer.

(2) If upon written application by the Contractor to the Supervising Officer, the Supervising Officer is of the opinion that the Contractor has been involved in additional expenditure by reason of a suspension order given by the Supervising Officer under this Clause then the Supervising Officer shall ascertain the Cost incurred and shall certify in accordance with Clause 79, unless such suspension order is:

(a) otherwise provided for in the Contract, or

(b) necessary by reason of weather conditions affecting the safety or quality of the Works or any part thereof, or

(c) necessary by reason of some default on the part of the Contractor or any person carrying out the Works, or

(d) necessary for the proper execution of the Works or for the safety of the Works or any part thereof or for the safety and health of any person or the safety of any property on or adjacent to the Site in as much as such necessity does not arise from any act or default of the Supervising Officer or the Employer or from any of the excepted risks defined in Clause 21.

Suspension
lasting more
than 90 days

55. If the progress of the Works or any part thereof is suspended on the written order of the Supervising Officer and if written permission to resume work is not given by the Supervising Officer within a period of 90 days after the date of suspension then the Contractor may, unless such suspension is occasioned by the circumstances described in Clause 54(2)(a) to (d), serve a notice in writing on the Supervising Officer requiring permission within 28 days after the receipt of such notice to proceed with the Works or that part thereof in regard to which progress is suspended. If within the said 28 days the Supervising Officer does not grant such permission the Contractor by a further notice in writing served on the Supervising Officer may, but is not bound to, elect to treat the suspension where it affects part only of the Works as an omission of such part pursuant to a Variation under Clause 60 or where it affects the Works as an abandonment of the Contract by the Employer.

MAINTENANCE AND DEFECTS

Execution of
work of repair

56. (1) The Works shall at or as soon as practicable after the expiry of the Maintenance Period be delivered up to the Employer in the condition required by the Contract, fair wear and tear excepted.

(2) All maintenance work whether or not required urgently by the Supervising Officer shall be carried out by the Contractor during the Maintenance Period or within 14 days after its expiry, and the Supervising Officer may by notice in writing require the Contractor to carry out maintenance work including any work of repair or rectification, or make good any defect, imperfection, shrinkage, settlement or other fault identified within the Maintenance Period, and the Contractor shall carry out such work within the Maintenance Period or as soon as practicable thereafter, and where the Supervising Officer requires such maintenance work to be carried out urgently, the Contractor shall carry out such work in compliance with such terms contained in the notice imposed by the Supervising Officer as the Supervising Officer may consider necessary and reasonable in the circumstances.

(3) All such work shall be carried out by the Contractor at his own expense if the necessity for such work shall, in the Supervising Officer's opinion, be due to the use of Plant, materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Supervising Officer such necessity shall be due to any other cause, the Supervising Officer shall value the work as if it were a Variation ordered in accordance with Clause 60, and shall certify in accordance with Clause 79.

(4) If the Contractor fails to carry out any outstanding work as required by Clause 53(3) or fails to carry out any maintenance work and in such terms (if any) as required by the Supervising Officer under sub-clause (2) of this Clause the Employer shall be entitled after giving reasonable notice in writing to the Contractor, to have such work carried out by its own workers or by other contractors and if such work is work which the Contractor would have been required to carry out at his own expense the Employer shall be entitled to recover from the Contractor the expenditure incurred in connection therewith.

57. If in the course or for the purpose of the construction or maintenance of the Works or any part thereof, any highway or other road or way shall have been broken into then notwithstanding any other provision of the Contract:

Temporary
reinstatement

- (a) if the permanent reinstatement of such highway or other road or way is to be carried out by the appropriate authority or by some person other than the Contractor, the Contractor shall at his own expense and independently of any requirement of or notice from the Supervising Officer be responsible for the making good of any subsidence or shrinkage or other defect, imperfection, settlement or fault in the temporary reinstatement of such highway or other road or way and for the execution of any necessary repair or amendment thereof from whatever cause the necessity arises until the end of the Maintenance Period in respect of the Works beneath such highway or other road or way or until the authority or other person as aforesaid shall have taken possession of the Site for the purpose of carrying out permanent reinstatement, whichever is the earlier. The Contractor shall indemnify the Employer against and from any damage or injury to the Employer or to third parties arising out of or in consequence of any neglect or failure of the Contractor to comply with the foregoing obligations or any of them and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (b) as from the end of such Maintenance Period or the taking of possession as aforesaid, whichever is the earlier, the Employer shall indemnify the Contractor against and from any damage or injury as aforesaid arising out of or in consequence of or in connection with the said permanent reinstatement or any defect, imperfection or failure of or in such work of permanent reinstatement and against and from all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto;
- (c) where the authority or other person as aforesaid shall take possession of the Site as aforesaid in Portions or parts the responsibility of the Contractor under paragraph (a) of this Clause shall cease in regard to any such Portion or part at the time possession thereof is so taken but shall during the continuance of the said Maintenance Period continue in regard to any Portion or part of which possession has not been so taken and the indemnities given by the Contractor and the Employer respectively under paragraphs (a) and (b) of this Clause shall be construed and have effect accordingly.

58. (1) At any time prior to the issue of the maintenance certificate in accordance with Clause 80 the Contractor shall, if instructed by the Supervising Officer in writing, investigate the cause of any defect, imperfection or fault under the directions of the Supervising Officer.

Investigating
defects

Provided that if the Supervising Officer at his absolute discretion so decides, the Employer shall be entitled, after giving reasonable notice in writing to the Contractor, to have such investigation carried out by its own workers or by other contractors.

(2) If such defect, imperfection or fault shall be one for which the Contractor is liable in accordance with the provisions of the Contract, the expense incurred in investigating as aforesaid shall be borne by the Contractor and he shall in such case repair, rectify and make good such defect, imperfection or fault together with any consequential damage at his own expense.

(3) If such defect, imperfection or fault shall be one for which the Contractor is not so liable, then the Supervising Officer shall value any investigation and remedial work carried out by the Contractor as aforesaid in accordance with Clause 61, and shall certify in accordance with Clause 79.

VARIATIONS, VALUATIONS AND CLAIMS

Breakdown of
the Contractor's
rates and prices

59. (1) The Contractor is deemed to have included in the Contract Sum all costs, expenses and profit necessary for the proper execution of the Works.

(2) Subject to Clause 60, no change in quantities as described in the breakdown of the Contractor's rates and prices shall entitle the Contractor to any additional payment.

Variations

60. (1) The Supervising Officer may order in writing any Variation that is necessary for the completion of the Works or is in his opinion desirable for or to achieve the satisfactory completion and functioning of the Works. The Contractor shall forthwith carry out such Variation in accordance with the Supervising Officer's instruction. Provided that no Variation shall require significant alteration or modification in the design already checked under Clause 23(2) without the consent of the Contractor which consent shall not be unreasonably delayed or withheld.

(2) No Variation ordered by the Supervising Officer shall in any way vitiate or invalidate the Contract but all such Variations shall be valued in accordance with Clause 61.

(3) Any Variation ordered by the Supervising Officer may include a requirement for the Contractor to prepare and submit within 14 days of the Contractor receiving the Variation order, a lump sum quotation in writing for complying with the order.

(4) (a) Notwithstanding sub-clause (3) of this Clause, prior to ordering a Variation, the Supervising Officer may request the Contractor to submit a lump sum quotation in writing within 14 days of receipt of such request, or within such other time as may be agreed between the Supervising Officer and the Contractor.

(b) In the event that the Contractor is not subsequently instructed by the Supervising Officer to execute the Variation referred to in Clause 60(4)(a) above, the Contractor shall be entitled to any Cost incurred in the preparation of the lump sum quotation which Cost shall be ascertained by the Supervising Officer and shall be certified in accordance with Clause 79.

(5) (a) The Contractor may propose a Variation by submitting in writing to the Supervising Officer a proposal together with sufficient details and justification to show that:

(i) the time for construction of the Works can be reduced, and/or

(ii) the future maintenance cost can be reduced, and/or

(iii) the quality of design and/or the construction of the Works can be enhanced, and/or

(iv) the Contract Sum can be reduced by the amount of the lump sum reduction that the Contractor can offer to the Employer, and

(v) in any event:

(i) the quality of the design or construction of the Works is not prejudiced, or

(ii) the proposed Variation is in the interests of the Employer.

(b) The Supervising Officer shall within 14 days of receipt of the Contractor's proposed Variation and supporting detailed information under sub-clause (5)(a) of this Clause, or within such time as may be agreed between the Contractor and the Supervising Officer, but solely at the discretion of the Supervising Officer, confirm whether or not he agrees to the proposed Variation and, if so, order the Contractor in writing to carry out the proposed Variation under this sub-clause.

(c) No adjustment shall be made to the Contract Sum by virtue of this sub-clause except the reduction pursuant to sub-clause (5)(a)(iv) of this Clause.

61. (1) The Supervising Officer shall determine the sum (if any) which in his opinion shall be added to or deducted from the Contract Sum as a result of a Variation order given by the Supervising Officer under Clause 60 (other than a Variation ordered under sub-clause (5) of Clause 60) in accordance with the following principles:

- (a) by valuation in accordance with sub-clause (4) of this Clause, or
- (b) by acceptance of a lump sum quotation prepared and submitted by the Contractor to the Supervising Officer in accordance with sub-clauses (5) and (6) of this Clause.

(2) The valuation of any Variation ordered by the Supervising Officer in accordance with sub-clause (1) of Clause 60 shall include the Cost (if any) of any disturbance to, or prolongation of both varied and unvaried work.

(3) In the event of the Supervising Officer and the Contractor failing to reach agreement on any rate or price under the provisions of sub-clause (4) of this Clause, the Supervising Officer shall fix such rate or price as shall in his opinion be reasonable and notify the Contractor accordingly.

(4) The Supervising Officer shall determine the value of a Variation as follows:

- (a) Any item of work omitted shall be valued at the rate or price set out in the Contract for such work or, in the absence of such a rate or price, at a rate or price agreed between the Supervising Officer and the Contractor.
- (b) Any work carried out which is the same as or similar in character to and executed under the same or similar conditions and circumstances to any item of work priced in the Contract shall be valued at the rate or price set out in the Contract for such item of work.
- (c) Any work carried out which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work priced in the Contract shall be valued at a rate or price based on the rates or prices in the Contract so far as may be reasonable, failing which, at a rate or price agreed between the Supervising Officer and the Contractor.

Provided that if the nature or extent of any Variation ordered in accordance with sub-clause (1) of Clause 60 relative to the nature or extent of the Works or any part thereof shall be such that in the opinion of the Supervising Officer any rate or price contained in the Contract for any item of work is by reason of such Variation rendered unreasonable or inapplicable then a new rate or price shall be agreed between the Supervising Officer and the Contractor for that item, using the Contract rates or prices as the basis for determination and taking into account the provisions of sub-clause (2) of this Clause.

(5) Any lump sum quotation submitted by the Contractor to the Supervising Officer in accordance with sub-clause (3) or (4) of Clause 60 shall indicate how the lump sum was calculated by showing separately full details of:

- (a) the cost of complying with the order,
- (b) the cost of preparing the lump sum quotation,
- (c) the Cost (if any) of any disturbance to or prolongation of varied and unvaried work as a consequence of complying with the order, and
- (d) such other information as will enable the Supervising Officer to evaluate the lump sum quotation.

(6) The Supervising Officer shall notify the Contractor not later than 14 days from the receipt of any such lump sum quotation (or such other time as may be agreed between the Supervising Officer and the Contractor) whether or not it has been accepted. If accepted, the amount specified in the lump sum quotation, or otherwise agreed between the Supervising Officer and the Contractor, shall be the full sum to which the Contractor is entitled for complying with that order.

(7) In the event that a lump sum quotation is submitted in accordance with sub-clause (3) or (4) of Clause 60 and the lump sum quotation is not accepted by the Supervising Officer, then the work ordered under sub-clause (1) of Clause 60 shall be valued in accordance with sub-clause (4) of this Clause.

(8) The Contractor shall supply the Supervising Officer with any further information reasonably requested by the Supervising Officer within 14 days of the request to enable him to value any Variation ordered under sub-clause (1) of Clause 60.

(9) The Supervising Officer shall within 28 days of the receipt of the information requested under sub-clause (8) of this Clause notify the Contractor of his valuation.

Design
development

62. Should the Contractor for any reason wish to change his design of the Works after the design has been checked under Clause 23(2), he shall comply in all respects with the Design Checking Procedures.

Disturbance to
the progress of
the Works

63. If upon written application by the Contractor to the Supervising Officer, the Supervising Officer is of the opinion that the Contractor has been or is likely to be involved in expenditure for which the Contractor would not be reimbursed by a payment made under any other provision in the Contract by reason of the progress of the Works or any part thereof having been materially affected by:

- (a) any Variation ordered in accordance with Clause 60 (other than a Variation where the relevant lump sum quotation submitted in accordance with sub-clause (3) or (4) of Clause 60 has been accepted by the Supervising Officer or a Variation ordered under sub-clause (5) of Clause 60), or
- (b) the opening up for inspection in accordance with Clause 45 of any work covered up or the testing of Plant, materials or workmanship not required by the Contract but directed by the Supervising Officer or the Supervising Officer's Representative in accordance with Clause 42(1) unless the inspection or test showed that the Plant, work, materials or workmanship were not in accordance with the Contract, or
- (c) delay caused by any person or any company, not being a utility undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Work, or
- (d) late delivery of material, plant or equipment by the Employer,

then the Supervising Officer shall ascertain the Cost incurred and shall certify in accordance with Clause 79.

Notice of claims

64. (1) If the Contractor intends to claim a higher rate or price than one notified to him by the Supervising Officer pursuant to Clause 61(3) or Clause 84(4)(b) the Contractor shall within 28 days of such notification give notice in writing of his intention to claim to the Supervising Officer.

(2) If the Contractor intends to claim any additional payment under the provisions of any Clause of the General Conditions of Contract or Special Conditions of Contract (if any) other than as mentioned in sub-clause (1) of this Clause, the Contractor shall within 28 days after the happening of the events giving rise to a claim serve notice in writing on the Supervising Officer of his intention to claim and the contractual provisions upon which the claim is based.

(3) The Contractor shall keep such contemporary records as may reasonably be necessary to support any claim and shall give to the Supervising Officer details of the records being kept in respect thereof. Without necessarily admitting the Employer's liability, the Supervising Officer may require the Contractor to keep and agree with the Supervising Officer's Representative any additional contemporary records as are reasonable and may in the opinion of the Supervising Officer be material to the claim. The Contractor shall permit the Supervising Officer and the Supervising Officer's Representative to inspect all records kept pursuant to this Clause and shall supply copies thereof as and when the Supervising Officer or the Supervising Officer's Representative shall so require.

(4) After the giving of a notice to the Supervising Officer under this Clause, the Contractor shall, as soon as is reasonable, send to the Supervising Officer a first interim account giving full and detailed particulars of the circumstances giving rise to the claim, the rate or sum claimed and the manner in which such rate or sum is calculated. Thereafter, at such intervals as the Supervising Officer may reasonably require, the Contractor shall send to the Supervising Officer further up-to-date accounts giving the accumulated total of the claim and any further full and detailed particulars in relation thereto.

(5) If the Contractor fails to comply with the notice provisions contained in sub-clauses (1) or (2) of this Clause in respect of any claim, such claim shall not be considered.

(6) If the Contractor fails to comply with the provisions of sub-clauses (3) or (4) of this Clause in respect of any claim the Supervising Officer may consider such claim only to the extent that the Supervising Officer is able on the information made available.

Provided that the Supervising Officer shall not be obliged to take into account when considering a claim any particulars of the claim received by him after the expiry of a period of 180 days calculated from the date of completion stated in the certificate of completion with respect to the Works. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to Clause 53, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.

PROVISIONAL AND CONTINGENCY SUMS

65. Any Provisional Sum and Contingency Sum included in the Employer's Requirements shall only be used upon the written instruction of the Supervising Officer.

Instructions on
Provisional and
Contingency
Sums
Accounting of
Provisional and
Contingency
Sums

66. Any Provisional Sum and the Contingency Sum shall be deducted from the Contract Sum and in lieu thereof shall be added the value of the work ordered by the Supervising Officer, determined in accordance with Clause 61.

COMMISSIONING TESTS

67. (1) The Contractor shall give to the Supervising Officer 14 days notice in writing of the date after which he will be ready to make the Commissioning Tests. Unless otherwise agreed the tests shall commence on such day or days as the Supervising Officer shall notify the Contractor in writing which shall be within 7 days of the date specified in the Contractor's notice.

Commissioning
Tests

(2) If the Supervising Officer fails to appoint a time for the commencement of Commissioning Tests in respect of any item of Plant or any other part of the Works after having been asked to do so or fails to attend at any time or place duly appointed for making the said tests the Contractor shall be entitled to proceed in the absence of the Supervising Officer and shall supply the Supervising Officer with full details of the results of such tests.

(3) The Contractor shall, at his own expense provide everything including labour, materials, electricity (save where a permanent supply is connected and the Contractor is entitled to use the same at the Employer's expense), fuel, water, stores and apparatus as may be required to carry out the Commissioning Tests efficiently.

(4) Any part of the Works which has failed to pass the Commissioning Tests shall, if required by the Supervising Officer, be re-tested within a reasonable time at the Contractor's expense.

PARTIAL POSSESSION

68. (1) If before completion of the Works the Employer wishes to take possession of any part or parts of the Works and the consent of the Contractor (which consent shall not be unreasonably withheld) has been obtained, then notwithstanding anything expressed or implied elsewhere in this Contract, the Employer may take possession thereof. The Contractor shall thereupon issue to the Employer a written statement identifying the part or parts of the Works taken into possession and giving the date when the Employer took possession.

Partial
possession

(2) For the purposes of Clauses 21, 52, 53 and 56 completion of the relevant part shall be deemed to have been certified by the Supervising Officer by the issue of a certificate of completion of the relevant part and the Maintenance Period in respect of the relevant part shall be deemed to have commenced on the relevant date.

(3) When any defect, shrinkage or other fault in the relevant part which the Supervising Officer may have required to be made good under Clause 56 shall have been made good he shall issue a notice to that effect.

(4) For the purpose of this Clause the term "Works" shall exclude any maintenance work executed in accordance with Clause 56.

DRAWINGS

69. Within 90 days of the completion of the Works or, where the Works is divided into Sections, each Section thereof, the Contractor shall without additional charge to the Employer supply for the retention and use of the Employer such drawings and information showing or describing the Works or the relevant Section as built, and concerning the maintenance and operation of the Works, or the relevant Section including any Plant and installations comprised in the Works or the relevant Section, as may be specified in the Contract.

As-built
drawings

70. One copy of all drawings and documents relating to the Works shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Supervising Officer and the Supervising Officer's Representative, and by any other person authorized by the Supervising Officer in writing, who shall have the right at all reasonable times to inspect at the premises of the Contractor or any of his sub-contractors all drawings of and all documents relating to the Works or any part thereof.

Access to
drawings on the
Site

**CONSTRUCTIONAL PLANT, PLANT, TEMPORARY BUILDINGS
AND MATERIALS**

Vesting of
Constructional
Plant and
temporary
buildings

71. All Constructional Plant and temporary buildings owned by the Contractor shall when brought onto the Site be and become the property of the Employer but may be removed from the Site by the Contractor at any time unless removal is expressly prohibited by the Supervising Officer in writing. Upon removal as aforesaid or under the terms of Clause 88(2) such Constructional Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works the remainder of such Constructional Plant and temporary buildings shall, subject to Clause 81, re-vest in the Contractor.

Vesting of Plant
and materials

72. All Plant and materials owned by the Contractor for incorporation in the Works shall be and become the property of the Employer upon delivery to the Site, and shall not be removed without an instruction or the prior written consent of the Supervising Officer. Plant and materials shall, subject to Clause 81, only re-vest in the Contractor to the extent that they may be found to be surplus to requirements upon or prior to completion of the Works. The operation of this Clause shall not be deemed to imply any approval by the Supervising Officer of such Plant or materials or prevent the rejection by the Supervising Officer of any Plant or material at any time.

Removal of
Constructional
Plant, Plant,
temporary
buildings and
materials

73. (1) Upon the certificate of completion of the Works being issued, or the last of such certificates where a certificate is issued for a part or parts of the Works before completion of the whole, the Contractor shall remove all Constructional Plant, temporary buildings and surplus Plant and materials from the Site, except those required to complete any outstanding work in accordance with Clause 53 or to discharge the Contractor's other obligations under the Contract.

(2) If the Contractor shall fail to remove from the Site any Constructional Plant, temporary buildings or surplus Plant and materials as aforesaid within such reasonable time after completion of the Works as may be allowed by the Supervising Officer, then the Employer may:

- (a) sell any such Constructional Plant, temporary buildings or surplus Plant and materials owned by the Contractor and after deducting from any proceeds of sale the charges and expenses of and in connection with such sale shall pay the balance (if any) to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such charges and expenses the excess shall be recoverable by the Employer from the Contractor, or
- (b) return Constructional Plant hired or the subject of a hire-purchase agreement to the firm or company from whom it was so hired by the Contractor, and recover the charges and expenses of and in connection with such return from the Contractor.

Hired and hire-
purchase
Constructional
Plant

74. Constructional Plant which is not solely owned by the Contractor shall not be brought onto the Site without the consent of the Supervising Officer, and the Supervising Officer shall have the power to withhold consent unless the owner of the Constructional Plant gives a written undertaking to the Employer that:

- (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Plant in the event of either the determination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works.
- (b) subject to any assignment under paragraph (a) of this Clause, the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works.

Employer's
expense in
entering into hire
or hire-purchase
agreement

75. In the event of the Employer entering into any agreement for hiring or hire-purchase under Clause 74 all sums paid by the Employer under the provisions of any such agreement and all expenses incurred by the Employer in entering into such agreement shall be deemed to be part of the cost of completing the Works, and shall be recoverable by the Employer from the Contractor.

Liability for loss
or damage to
Constructional
Plant

76. Save as stated in Clause 21, the Employer shall not at any time be liable for the loss of or damage to any of the Constructional Plant, temporary buildings, Plant or materials which have become the property of the Employer under Clauses 71 and 72 or loss of or damage to any hired or hire-purchase Constructional Plant brought onto the Site in accordance with Clause 74.

77. The Contractor shall when entering into any sub-contract for the execution of any part of the Works incorporate in such sub-contract the provisions of Clauses 71 to 76 and shall use his best endeavours to ensure that they are observed.

Incorporation of certain Clauses in sub-contracts

CERTIFICATES AND PAYMENTS

78. (1) Where Alternative A (milestone payments) in the Appendix to the Form of Tender applies to the Contract, the Contractor shall submit to the Supervising Officer upon completion of each milestone set out or referred to in the Appendix to the Form of Tender a statement showing:

Contractor's interim statements

- (a) the cumulative value at the relevant milestone, and
- (b) the amount of valuation of Variations or of instructions by the Supervising Officer in regard to the expenditure of Provisional and Contingency Sums included in the Employer's Requirements, and
- (c) all further sums which the Contractor considers to be due to him under the Contract.

(2) Where Alternative B (periodic payments) in the Appendix to the Form of Tender applies to the Contract, the Contractor shall deliver to the Supervising Officer at the end of each period of interim certificates stated in the Appendix to the Form of Tender a statement showing:

- (a) the estimated contract value of the work done in accordance with the Contract up to the end of such period, with sums payable in respect of instructions by the Supervising Officer in regard to the expenditure of Provisional and Contingency Sums included in the Employer's Requirements and adjustments for Variations listed separately;
- (b) a list of materials and unfixed Plant delivered to the Site for use in the permanent work and their estimated contract value; and
- (c) all further estimated sums which the Contractor considers to be due to him under the Contract.

(3) The statement shall be prepared on a form supplied by and at the expense of the Contractor and the style and number of copies shall be as the Supervising Officer shall determine. The Contractor shall complete the required number of copies of the statement and deliver them to the Supervising Officer for checking and, if necessary, correction in accordance with Clause 79. One corrected copy shall be returned to the Contractor.

79. (1) Within 7 days where Alternative A applies or 21 days where Alternative B applies (unless otherwise stated in either case in the Contract) of the date of delivery to the Supervising Officer of the Contractor's statement in accordance with Clause 78, the Supervising Officer shall value and certify and within a further 21 days of the date of certification by the Supervising Officer the Employer shall pay to the Contractor after deducting previous payments on account (if any) and any other sum deductible by the Employer under the Contract the sum which in the opinion of the Supervising Officer is properly due having regard to the progress of the Works where Alternative A applies or based on the rates or prices in the Contract where appropriate, where Alternative B applies, in respect of the following:

Interim and final payments, Retention Money and interest

- (a) the estimated value of the permanent works executed and the design, and
- (b) the estimated value of any Temporary Works or preliminary item for which a separate sum is provided in the breakdown of the Contractor's rates and prices, and
- (c) the estimated value of materials and unfixed Plant for inclusion in the permanent work and not being prematurely delivered to and being properly stored on the Site, and
- (d) any other sum to which, in the opinion of the Supervising Officer, the Contractor is entitled in accordance with the Contract.

Provided that the total certified sum shall be adjusted by the Supervising Officer to take into account:

- (i) the retention of the percentage stated in the Contract until the sum retained reaches the limit of Retention Money stated in the Contract; and
- (ii) any adjustment to be made for fluctuations in accordance with Clause 89.

Provided further that, for the purpose of interim payments, the value of the materials and unfixed Plant as referred to in (c) above for use in connection with any item of permanent work priced in the Contract shall be determined on the basis of the rate set out in the Contract for such work.

Provided further that the Supervising Officer may refuse to issue a certificate for an interim payment in the event of failure by the Contractor to supply the Supervising Officer, when prescribed in the Employer's Requirements, all the Check Certificates relating to the design of the Works in accordance with the Design Checking Procedures or to submit to the Supervising Officer the programme or any of its subsequent revisions in accordance with Clause 16.

(2) The Supervising Officer may refuse to issue a certificate for an interim payment for a sum less than the minimum payment stated in the Contract, but nothing in this Clause shall prevent the Supervising Officer from issuing a certificate at any time for any sum if in the opinion of the Supervising Officer it is desirable to do so.

(3) Within 14 days of the date of issue by the Supervising Officer of the maintenance certificate in accordance with Clause 80, the Supervising Officer shall issue a certificate for the payment of Retention Money and, subject to Clause 83, the Employer shall pay such Retention Money to the Contractor within 21 days of the date of such certificate.

(4) (a) In the event of failure by the Employer to make payment to the Contractor in compliance with the provisions of this Clause, the Employer shall pay to the Contractor interest at one percent below the judgment debt rate prescribed from time to time by the Rules of the Supreme Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from but not including the date on which the same should have been made.

(b) The Employer shall not under any circumstances be liable to pay to the Contractor interest on any sum payable to the Contractor under or arising out of the Contract, whether upon the certificate of the Supervising Officer or otherwise, at a rate in excess of one percent below the said judgment debt rate.

(5) The Supervising Officer shall have the power to omit from any certificate the value of any work done, materials or Plant supplied or services rendered with which the Supervising Officer may for the time being be dissatisfied and for that purpose, or for any other reason which to the Supervising Officer may seem proper, may by any certificate delete, correct or modify any sum previously certified by him.

(6) Within 90 days after the date of issue of the maintenance certificate the Contractor shall submit to the Supervising Officer a statement of final account and supporting documentation showing in detail the sums which the Contractor considers to be due to him under the Contract up to the date of the maintenance certificate. Within 90 days after receipt of the final account and of all information reasonably required for its verification, the Supervising Officer shall issue a final payment certificate stating the sum which in his opinion is finally due under the Contract up to the date of the maintenance certificate, and after giving credit to the Employer for all sums previously paid by the Employer and for all sums to which the Employer is entitled under the Contract the Supervising Officer shall state the balance (if any) due from the Employer to the Contractor or from the Contractor to the Employer as the case may be. Such balance shall be paid to or by the Contractor as the case may require within 28 days of the date of the certificate.

(7) If the Contractor fails to submit a statement of final account within 90 days of the date of the maintenance certificate in accordance with sub-clause (6) of this Clause the Supervising Officer shall be entitled to issue a final payment certificate without reference to the Contractor.

Maintenance
certificate

80. (1) Upon the expiry of the Maintenance Period, or where there is more than one such Period, upon the expiry of the latest Period and when all outstanding work referred to under Clause 53 and all work of repair, reconstruction, rectification and making good any defect, imperfection, shrinkage and other fault referred to in Clause 56 shall have been completed the Supervising Officer shall issue a maintenance certificate stating the date on which the Contractor shall have completed his obligation to execute the Works.

(2) No certificate, other than the maintenance certificate, shall be deemed to constitute approval of any work or other matter in respect of which it is issued or shall be taken as an admission of the due performance of the Contract or any part thereof.

Provided that the maintenance certificate shall not be deemed to constitute approval of any work or other matter in respect of which it is issued which has not been carried out in accordance with the Contract and which the Supervising Officer could not with reasonable diligence have discovered before the issue of the maintenance certificate.

(3) The issue of any certificate including the maintenance certificate shall not be taken as relieving either the Contractor or the Employer from any liability the one towards the other arising out of or in any way connected with the performance of their respective obligations under the Contract. Provided that the Employer shall not be liable to the Contractor for any matter or thing arising out of or in connection with the Contract or the execution of the Works unless the Contractor shall have made a claim in relation thereto in accordance with the time limits specified in Clause 50 or Clause 64.

REMEDIES AND POWERS

81. (1) If the Contractor shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Contractor shall assign the Contract without the consent in writing of the Employer first obtained or shall have an execution levied on his goods or if the Supervising Officer shall certify in writing to the Employer that in his opinion the Contractor:

Determination of
the Contractor's
employment

- (a) has abandoned the Contract, or
- (b) without reasonable excuse has failed to commence the Works in accordance with Clause 47, or
- (c) has suspended the progress of the Works for 14 days after receiving from the Supervising Officer notice in writing to proceed, or
- (d) has failed to comply with an order from the Supervising Officer given in accordance with Clause 46, or
- (e) despite previous warning by the Supervising Officer in writing is failing to proceed with the Works with due diligence or is persistently in breach of any of his obligations under the Contract, or
- (f) has sub-contracted the execution of the whole of the construction element of the Works, or
- (g) has to the detriment of good workmanship or in defiance of the Supervising Officer's instruction to the contrary sub-contracted any part of the Works,

then the Employer may after giving at least 7 days' notice in writing to the Contractor enter upon the Site and the Works and expel the Contractor therefrom without thereby avoiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer or the Supervising Officer by the Contract and the Employer may complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of the Constructional Plant, temporary buildings, Plant and materials which become the property of the Employer under Clauses 71 and 72 as the Employer may think proper and the Employer may at any time sell any of the said Constructional Plant, temporary buildings, unfixed Plant and unused materials and apply the proceeds of sale in or towards the satisfaction of any sum due or which may become due to the Employer from the Contractor under the Contract.

(2) As soon as may be practicable after such entry and expulsion by the Employer, the Supervising Officer shall ascertain and record:

- (a) the quantity of work completed up to the time of such entry and expulsion, and
- (b) the unfixed Plant, the quantity of unused or partially used materials and list any Constructional Plant and temporary buildings which have become the property of the Employer under the Contract as at the time of such entry and expulsion.

(3) In the event of such entry and expulsion, the Contractor shall at his own cost provide the Employer with one reproduceable copy of all such drawings or details or descriptions as the Contractor has prepared or previously provided and drawings and information relating to the Works thus far carried out.

(4) By the notice referred to in sub-clause (1) of this Clause or by further notice in writing within 28 days of the date thereof the Employer may require the Contractor to assign to the Employer and if so required the Contractor shall forthwith assign to the Employer the benefit of any agreement for the supply of any Plant or materials and/or for the execution of any work for the purposes of this Contract which the Contractor may have entered into.

(5) If the Employer shall enter and expel the Contractor in accordance with this Clause, the Employer shall not be liable to pay to the Contractor any money on account of the Contract until the expiry of the Maintenance Period or, where there is more than one such Period, until the expiry of the latest Period and thereafter until the cost of completion and maintenance, damages for delay in completion (if any) and all other expenses incurred by the Employer have been ascertained and the amount thereof certified by the Supervising Officer.

(6) The Contractor shall then be entitled to receive only such sum (if any) as the Supervising Officer may certify would have been payable to the Contractor upon due completion by him less the amount certified for the purposes of sub-clause (5) of this Clause. If the amount certified in accordance with sub-clause (5) of this Clause shall exceed the sum which would have been payable to the Contractor upon due completion by him then the Contractor shall upon demand pay to the Employer the amount of such excess.

Work by persons
other than the
Contractor

82. (1) If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Supervising Officer in accordance with the Contract within a reasonable time, the Supervising Officer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by its own workers or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor.

(2) If by reason of any accident or failure or other event occurring to, in, or in connection with the Works any remedial or other work shall in the opinion of the Supervising Officer be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Supervising Officer may authorize the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorized by the Supervising Officer is work which in the Supervising Officer's opinion the Contractor was liable to do under the Contract, all expenses properly incurred in carrying out the same shall be recoverable by the Employer from the Contractor. Provided that the Supervising Officer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

Recovery of
money due to
the Employer

83. (1) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of the Contract may be deducted by the Employer from monies due to the Contractor under the Contract including Retention Money and the Employer shall have the power to recover any balance not so deducted from monies due to the Contractor under any other contract between the Employer and the Contractor.

(2) All damages (including liquidated damages), costs, charges, expenses, debts or sums for which the Contractor is liable to the Employer under any provision of any other contract between the Contractor and the Employer may be deducted by the Employer from monies due to the Contractor under the Contract, including Retention Money.

SPECIAL RISKS AND FRUSTRATION

Special risks

84. (1) If during the currency of the Contract, there shall be:

- (a) an outbreak of war (whether war be declared or not) in any part of the world which, whether financially or otherwise materially affects the execution of the Works, or
- (b) an invasion of Hong Kong, or
- (c) civil war, rebellion, revolution or military or usurped power in Hong Kong, or
- (d) riot, commotion or disorder in Hong Kong otherwise than amongst the employees of the Contractor, any sub-contractor or Specialist Contractor currently or formerly engaged on the Works or Specialist Works, or
- (e) act of foreign terrorists in Hong Kong;

hereinafter comprehensively referred to as "the special risks", the Contractor shall, unless and until the Contract is terminated under the provisions of this Clause, use his best endeavours to complete the execution of the Works.

Provided that the Employer shall be entitled at any time after the occurrence of any of the special risks to terminate the Contract (with the exception of the provisions of this Clause and Clause 86) by giving written notice to the Contractor, and upon such notice being given the Contract shall terminate but without prejudice to the claims of either party in respect of any antecedent breach thereof.

(2) In the event of termination in accordance with the proviso to sub-clause (1) of this Clause, the Contractor shall with all reasonable despatch remove from the Site all Constructional Plant and temporary buildings and surplus Plant and materials and shall similarly allow his sub-contractors to do so.

(3) In the event of termination in accordance with the proviso to sub-clause (1) of this Clause, the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination at the rates or prices provided in the breakdown of the Contractor's rates and prices and in addition:

- (a) the amounts payable in respect of any preliminary items so far as the work or service comprised therein has been carried out or performed and a proper proportion as certified by the Supervising Officer of any such items the work or service comprised in which has been partially carried out or performed;

- (b) the Cost of materials or Plant reasonably ordered for the Works which shall have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery (such materials or Plant becoming the property of the Employer upon such payment being made by the Employer);
- (c) a sum to be certified by the Supervising Officer being any Cost reasonably incurred by the Contractor in the expectation of completing the Works in so far as such Cost shall not have been paid in accordance with any other sub-clause of this Clause.

(4) Whether the Contract shall be terminated in accordance with the proviso to sub-clause (1) of this Clause or not, the following provisions shall apply or be deemed to have applied as from the occurrence of any of the special risks notwithstanding anything expressed in or implied by the other terms of the Contract:

- (a) The Contractor shall be under no liability whatsoever whether by way of indemnity or otherwise for or in respect of damage to the Works (other than work condemned under Clause 46) or to property (other than property of the Contractor including property vested in the Employer under Clauses 71 and 72 or property hired by the Contractor for the purposes of executing the Works) whether of the Employer or of third parties or for or in respect of injury or loss of life which is wholly the consequence of the occurrence of any of the special risks and the Employer shall indemnify the Contractor against all such liabilities and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect of or in relation thereto.
- (b) If the Works or any Plant or material on the Site shall be destroyed or damaged by reason of any of the special risks, the Contractor shall nevertheless be entitled to payment for the Works and for any Plant or material so destroyed or damaged and the Contractor shall be entitled to recover from the Employer the expense incurred in making good any such destruction or damage to the Works and of replacing or making good such Plant or material so far as may be required by the Supervising Officer or as may be necessary for the completion of the Works, valued at rates or prices agreed upon between the Supervising Officer and the Contractor and based where possible on prime costs. In the event of the Supervising Officer and the Contractor failing to reach agreement on any rate or price the Supervising Officer shall fix such rate or price as shall in his opinion be reasonable and notify the Contractor accordingly.
- (c) Destruction, damage, injury or loss of life caused by the explosion or impact, whenever and wherever occurring, of any mine, bomb, shell, grenade, missile, munition or explosive of war shall be deemed to be a consequence of the special risks.

85. In the event of the Contract being frustrated whether by war or otherwise howsoever, the sum payable by the Employer to the Contractor shall be the same as that which would have been payable under Clause 84 if the Contract had been terminated in accordance with Clause 84.

Frustration

SETTLEMENT OF DISPUTES

86. (1) Any and all disputes shall be settled in accordance with the provisions of this Clause 86.

Settlement of disputes

(2) For the purpose of this Clause, dispute means any dispute or difference of any kind whatsoever between the Employer and the Contractor arising under, out of or in connection with the Contract or the carrying out of the Works including any dispute as to any decision, instruction, opinion, order, direction, certificate or valuation by the Supervising Officer whether during the progress of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract.

(3) For the purpose of this Clause 86 and notwithstanding sub-clause (2) of this Clause, a dispute shall be deemed to arise when either the Contractor or the Employer serves on the Supervising Officer and the other party a notice in writing stating the nature of the dispute.

(4) The Supervising Officer shall within 28 days of receipt of the notice referred to in sub-clause (3) of this Clause decide the dispute and notify the Employer and the Contractor in writing of his decision. Such decision shall be final and binding upon the Employer and the Contractor unless and until the same shall be revised in mediation or arbitration as hereinafter provided.

(5) Unless the Contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the Works with all due diligence and he shall give effect forthwith to every such decision of the Supervising Officer unless and until the same shall be revised in mediation or arbitration as hereinafter provided.

(6) If the Supervising Officer shall fail to give such decision in accordance with sub-clause (4) of this Clause or if either the Employer or the Contractor is dissatisfied with such decision then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiration of the said decision period of 28 days, as the case may be, request that the dispute be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

(7) If the dispute cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the dispute to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the dispute shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance (Cap.341) or any statutory modification thereof for the time being in force and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance. Any reference to arbitration shall be made within 90 days of:

- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
- (b) the refusal to mediate, or
- (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
- (d) the abandonment of the mediation, or
- (e) the Supervising Officer failing to make a decision for a period of 90 days after having being so requested to do so and subsequently neither the Employer nor the Contractor having requested mediation, or
- (f) the receipt of a notice of a decision by the Supervising Officer and subsequently neither the Employer nor the Contractor having requested mediation.

(8) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 46(3) not to order a Variation), instruction, opinion, order, direction, certificate or valuation by the Supervising Officer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Supervising Officer for the purpose of obtaining his decision referred to above. Save as provided for in sub-clause (9) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of a certificate of completion in accordance with Clause 53 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the Supervising Officer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute so referred to the arbitrator as aforesaid.

(9) In the case of any dispute as to the exercise of the Supervising Officer's powers under Clause 81(1) the reference to the arbitrator may proceed notwithstanding that the Works shall not then be or be alleged to be complete.

(10) The Hong Kong International Arbitration Centre Domestic Arbitration Rules shall apply to any arbitration instituted in accordance with this Clause unless the parties agree to the contrary.

(11) The reference to arbitration under sub-clause (7) of this Clause shall be a domestic arbitration for the purposes of Part II of the Arbitration Ordinance (Cap. 341).

NOTICES

Service of notices **87.** (1) Any notice to be given to the Contractor under the provisions of the Contract must be in writing and may be served:

- (a) personally, or
- (b) by post addressed to the Contractor's last known place of business or, in the event of the Contractor being
 - (i) a firm, to the last known place of residence of the owner or any of the partners thereof, or

- (ii) a company, to the registered office in Hong Kong of such company, or
- (c) by leaving such notice at the Contractor's last known place of business or, in the event of the Contractor being
 - (i) a firm, at the last known place of residence of the owner or any of the partners thereof, or
 - (ii) a company, at the registered office in Hong Kong of such company, or
- (d) by posting a copy in a conspicuous position upon the Site.

(2) Any notice to be given to the Supervising Officer under the provisions of the Contract may be served by post to or leaving such notice at the office of the Supervising Officer.

(3) Any notice to be given to the Employer, as distinct from the Supervising Officer, under the provisions of the Contract may be served by post or leaving such notice at the appropriate management office of the Employer.

(4) Notice may be served by facsimile only if the recipient has previously notified the other party and the Supervising Officer in writing that it is prepared to accept service of notices in that manner. It shall in any event be a condition of valid service by facsimile that the hard copy is subsequently sent forthwith to the recipient in accordance with sub-clauses (1), (2) or (3) of this Clause.

DEFAULT OF THE EMPLOYER

88. (1) In the event of the Employer failing to pay to the Contractor any sum certified in accordance with Clause 79 within 28 days after the same shall have become due under the provisions of the Contract the Contractor may give 14 days' notice in writing to the Employer to make payment of the sum due. Such notice shall make express reference to this Clause. In the event of failure by the Employer to make such payment within such 14 day notice period, the Contractor shall be entitled to terminate the Contract.

Default of the Employer

(2) So long as no notice pursuant to Clause 81(1) is given to the Contractor either before or during the 14 days' notice period provided in sub-clause (1) of this Clause, on expiration of that 14 days, the property in all Constructional Plant and temporary buildings brought upon the Site by the Contractor shall thereupon re-vest in him and he shall with all reasonable despatch remove the same from the Site.

(3) Nothing in this Clause shall prejudice the right of the Contractor to exercise, either in lieu of or in addition to the rights and remedies in this Clause specified, any other rights or remedies to which the Contractor may be entitled.

FLUCTUATIONS

89. (1) The sum payable in any interim or final payment certificate certified by the Supervising Officer as being due (other than sums due under this Clause) shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the Index Figures listed in the "Index Numbers of the Costs of Labour and selected Materials used in Public Sector Construction Projects" compiled by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region and applicable to those items included in the "Schedule of Proportions".

Contract price fluctuations

(2) The net total of such increases and decreases shall be given effect to in determining the Final Contract Sum.

(3) For the purpose of this Clause:

- (a) "Index Figure" shall mean any Index Figure appropriate to sub-clause (1) of this Clause.
- (b) "Base Index Figure" shall mean the appropriate Index Figure applicable to the date 42 days prior to the date for the return of tenders.
- (c) "Current Index Figure" shall mean the appropriate Index Figure to be applied in respect of any interim or final payment certificate by the Supervising Officer and shall be the appropriate Index Figure applicable to the date 42 days prior to:—
 - (i) the due date (or, as the case may be, extended or revised date) for completion of the Works, or

- (ii) the date of completion of the Works certified pursuant to Clause 53, or
 - (iii) the last day of the period or milestone to which the payment certificate relates,
- whichever is the earliest.

Provided that in respect of any work the value of which is included in any such certificate and which work forms part of a Section for which the due date (or, as the case may be, extended or revised date) for completion has passed without completion pursuant to Clause 53 being achieved, the Current Index Figure shall be the Index Figure applicable to the date 42 days prior to the due date (or, as the case may be, extended or revised date) for completion of that Section.

- (d) The “Effective Value” in respect of the Works or any Section of the Works shall be the difference between:
 - (i) the sum, exclusive of any increases or decreases made in accordance with this Clause, which in the opinion of the Supervising Officer is due to the Contractor under Clause 79, before deducting retention and before deducting previous payments on account, less all sums in respect of items based on actual cost or current prices and Plant and materials for any work under a Variation order that is to be valued on the basis of actual cost or current prices ; and
 - (ii) the sum calculated in accordance with (i) above and included in the last preceding interim payment certificate issued by the Supervising Officer.

Provided that in the case of the first certificate the Effective Value shall be the sum calculated in accordance with (i) above.

(4) The increase or decrease in the sums otherwise payable in an interim or final payment certificate pursuant to sub-clause (1) of this Clause shall be calculated by multiplying the Effective Value by a Price Fluctuation Factor which shall be the net sum of the products obtained by multiplying each of the calculated proportions given in column 4 of the “Schedule of Proportions” by a fraction the numerator of which is the relevant Current Index Figure minus the relevant Base Index Figure and the denominator of which is the relevant Base Index Figure.

Provided that if any appropriate Current Index Figure has not been published at the time of issue of any payment certificate, the increase or decrease in the sum payable in respect of that certificate will be provisionally calculated and added to or deducted from the sum payable in the certificate by the Supervising Officer using the latest published Current Index Figure and shall be corrected in the next Supervising Officer’s certificate following the publishing of the relevant Current Index Figure.

(5) The “Schedule of Proportions” shall (irrespective of the actual constituents of the work) be “the Schedule of Proportions to be used in calculating the Price Fluctuation Factor” submitted with the Tender and with the calculations duly completed.

HEIGHT RESTRICTIONS

Airport height
restrictions

90. The Contractor shall comply with all height restrictions contained in the Hong Kong Airport (Control of Obstructions) Ordinance, Cap. 301 as if the same applied to all Constructional Plant, machinery and other structures used or erected by the Contractor.

THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

CONTRACT NO. _____

TITLE _____

ARTICLES OF AGREEMENT made and entered into this _____ day
of _____ [] _____

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION
("the Employer") and

of _____

("the Contractor")

WHEREAS:

- A. The Employer is desirous of having the Works executed in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance by the Employer, the Employer's Requirements and the Contractor's Proposals.
- B. The Contractor has agreed to execute the Works subject to the following terms and conditions.

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. In these Articles of Agreement the words and expressions shall have the same meaning as may be respectively assigned to them in the General Conditions of Contract and the Special Conditions of Contract.
2. For the consideration hereinafter contained, the Contractor shall execute the Works to the satisfaction of the Supervising Officer in accordance with the General Conditions of Contract and the Special Conditions of Contract, the Tender and the acceptance by the Employer, the Employer's Requirements and the Contractor's Proposals.
3. The Contractor shall execute the Works within the period stipulated in the Contract or within such other time as may be determined by the Supervising Officer in accordance with the provisions of the Contract.
4. The Employer's Requirements and the Contractor's Proposals have been signed by the parties and are annexed hereto.
5. The Employer shall pay to the Contractor the Final Contract Sum at the times and in the manner specified in the Contract.

IN WITNESS these Articles of Agreement have been executed as a deed on the date first above written :

(a) SIGNED, SEALED AND DELIVERED by the)
Contractor in the presence of)
)
* _____)
)
witness _____)

or

(b) THE COMMON SEAL of the Contractor was)
hereunto affixed in the presence of)
)
* _____)
)
witness _____)

or

(c) SIGNED, SEALED AND DELIVERED for)
and on behalf of and as lawful attorney of)
the Contractor under power of attorney)
)
dated _____)
)
by * _____)
in the presence of)
)
* _____)
)
witness _____)

SIGNED, SEALED AND DELIVERED for)
and on behalf of the Employer by)
)
* _____)
)
_____)
(Name and appointment of the officer) in the)
presence of)
)
* _____)
)
witness _____)

Note: (a) For use where an individual contractor is a sole proprietor or where all partners of a firm execute.
(b) For use where a contractor which is a limited company executes under its common seal.
(c) For use where a contractor, whether a firm or a limited company, executes through an attorney.

* Name to be inserted in Block Capitals