

**STANDARD CONDITIONS OF
NOMINATED SUB-CONTRACT
2008**

**for use in conjunction with the
PUBLIC SECTOR STANDARD CONDITIONS OF CONTRACT
FOR CONSTRUCTION WORKS**

Standard Conditions of Nominated Sub-Contract 2008
(for use in conjunction with the Public Sector Standard Conditions of Contract for Construction Works)

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STANDARD CONDITIONS OF NOMINATED SUB-CONTRACT 2008
for use in conjunction with
THE PUBLIC SECTOR STANDARD CONDITIONS OF CONTRACT
FOR CONSTRUCTION WORKS

Definitions

- 1 (1) In the Sub-Contract (as hereinafter defined) the following words and expressions shall have the meanings herein assigned to them except where the context otherwise requires:
- (a) "Sub-Contract" shall mean the Sub-Contract Agreement (if any) between the Contractor and Sub-Contractor, the Sub-Contract Tender, the Sub-Contract Letter of Acceptance, the documents referred to in the Sub-Contract Tender and/or Sub-Contract Letter of Acceptance, the Conditions of Nominated Sub-Contract (hereinafter referred to as "the Conditions") comprising the Conditions and the Appendix thereto, the Specification applicable to the Sub-Contract (if any), the Drawings applicable to the Sub-Contract (if any), the Bills of Quantities/Schedule of Rates any amendment letters issued by or on behalf of the Employer before the date of the Sub-Contract Letter of Acceptance or Sub-Contract Agreement whichever is the later and all these documents taken together shall be deemed to form one Sub-Contract and shall be complementary to one another.
 - (b) "Superintending Officer" (or the initials S.O.) shall mean the person, firm or corporation appointed as such by the Employer for the purposes of the Main Contract.
 - (c) "Contractor" shall mean the person or firm or corporation who has signed or entered into the Main Contract with the Employer and shall include the Contractor's legal personal representatives and permitted assigns.
 - (d) "Sub-Contractor" shall mean the person or firm or corporation whose Sub-Contract Tender has been accepted and who has or have signed or entered into the Sub-Contract and shall include the Sub-Contractor's legal personal representatives and permitted assigns.
 - (e) "Sub-Contract Works" shall mean the design (to the extent provided for by the Sub-Contract) and all or any portion of the work, materials, goods or articles wherever the same are being manufactured or prepared and which are to be used in the carrying out of the Sub-Contract and whether the same may be on the Site or not.
 - (f) "Main Contract" shall mean the contract made between the Employer and the Contractor of which the number and date are set out in the Sub-Contract Agreement or if there is no Sub-Contract Agreement the contract between the Employer and Contractor which includes the subject-matter of the Sub-Contract Works.
 - (g) "Employer" shall mean the government or the statutory body who has entered into the Main Contract with the Contractor.
 - (h) "Sub-Contract Tender" shall mean the Sub-Contractor's written estimate or quotation for the Sub-Contract Works
 - (i) "Sub-Contract Letter of Acceptance" shall mean the Contractor's formal written acceptance of the Sub-Contract Tender.
 - (j) "Payment Claim" means a claim for payment made by the Sub-Contractor pursuant to Clause 27(1).

- (k) "Claimed Amount" means the whole or part of any payment claimed by the Sub-Contractor in a Payment Claim pursuant to Clause 27(1).
 - (l) "Payment Response" means a notification issued by the Contractor pursuant to Clause 27(2) in response to a Payment Claim made by the Sub-Contractor.
 - (m) "Response Amount" means the amount that the Contractor proposes to pay to the Sub-Contractor in the Payment Response issued pursuant to Clause 27(2).
- (2) The Definitions as contained in Clause 1.1 of the Main Contract shall apply mutatis mutandis in the Sub-Contract insofar as the terminology or terms or words used in the Main Contract and as defined in Clause 1.1 of the Main Contract are used or applicable to or referred to in the Sub Contract and are not defined in the Sub-Contract.

Singular and Plural

- 2 Words importing the singular shall also include the plural and vice versa where the context requires.

Heading and Marginal Notes

- 3 The headings and marginal notes in the Conditions shall not be deemed to be part of the Conditions or be taken into consideration in the interpretation or construction of the Conditions or of the Sub-Contract.

Notices of the Main Contract to the Sub-contractor

- 4 The Sub-Contractor shall be deemed to have notice of all the provisions of the Main Contract except the detailed rates and/or prices of the Contractor.

Sub-Contractor's Liability under Incorporated Provisions of the Main Contract

- 5 The Sub-Contractor shall:
- (a) observe, perform and comply with all the provisions of the Main Contract on the part of the Contractor to be observed, performed and complied with so far as they relate and apply to the Sub-Contract Works (or any phase or part of the same) and are not repugnant to or inconsistent with the express provisions of the Sub-Contract as if all the same were severally set out herein, and
 - (b) indemnify and save harmless the Contractor, against and from:
 - i) any breach, non-observance or non-performance by the Sub-Contractor, his servants or agents of the provisions of the Main Contract or any of them; and
 - ii) any act or omission of the Sub-Contractor, his servants or agents which involves the Contractor in any liability to the Employer under the Main Contract; and
 - iii) any loss, expense, costs, damages, liability or claim due to or resulting from any negligence or breach of duty on the part of the Sub-Contractor, his servants or agents (including any wrongful use by him or them of the scaffolding, hoisting facilities and any other means of access referred to in Clause 13 of the Sub-Contract or other property belonging to or provided by the Contractor); and
 - iv) any loss or damage resulting from any claim under the common law or any statute in force for the time being by an employee of the Sub-Contractor in respect of personal injury arising out of or in the course of his employment.

- (c) observe, perform and comply with the directions and requirements of the Contractor with respect to the deployment of personnel registered under the Construction Registration of Tradesmen scheme as prescribed in the Building Control (Licensing of Builders) Regulations such that the said directions and requirements shall always be reasonable in proportion to the value of Sub-Contract vis-à-vis the value of the Main Contract.

Provided that nothing in the Sub-Contract contained shall impose any liability on the Sub-Contractor in respect of any negligence or breach of duty due solely to any act or omission on the part of the Employer, the Contractor, his other Sub-Contractors or their respective servants or agents nor create any privity of contract between the Sub-Contractor and the Employer or any other Sub-Contractor.

Warranty of Suitability

- 6 In so far as and to the extent that there has been reliance by the Employer or the Superintending Officer or the Contractor upon the skill and judgment of the Sub-Contractor in regard to the design or suitability of a part or parts or all of the work, materials, goods or articles in the Sub-Contract the Sub-Contractor undertakes that such part or parts or all of the Sub-Contract Works shall be reasonably fit for the purpose for which they are known to be required.

Security Deposit

- 7 (1) The Sub-Contractor shall within 7 days from the receipt of the Sub-Contract Letter of Acceptance or such other longer period as may be prescribed by the Employer in the Appendix, deposit with the Contractor an amount specified in the Appendix as a bond (hereinafter called "the Security Deposit for Sub-Contract") for the due performance and observance by the Sub-Contractor of all the stipulations, conditions and agreements herein contained. The Security Deposit for Sub-Contract shall be by way of a guarantee from a Monetary Authority of Singapore (MAS)-bank or MAS-approved insurance company and in the form prescribed by the Superintending Officer. The Sub-Contractor may, at his discretion, elect to furnish the Security Deposit for Sub-Contract in cash instead. All cash received by the Contractor pursuant to this clause shall be held in a separate bank account on trust for the Sub-Contractor.
- (2) The Security Deposit for Sub-Contract shall be released or paid as the case may be to the Sub-Contractor at the end of the Defects Liability Period or when all shrinkages, defects and other faults in the Sub-Contract Works which the Contractor shall be liable to make good under the Main Contract shall be made good by the Sub-Contractor in accordance with the Sub-Contract whichever is the later.
- (3) The Contractor shall be entitled to set off against the Security Deposit for Sub-Contract any sums or losses incurred by him on account of the Sub-Contractor's failure to perform or observe any of the stipulations, conditions and agreements herein contained.

Execution of the Sub-Contract Works

- 8 In the absence of express provision to the contrary the Sub-Contractor will execute complete and maintain the Sub-Contract Works in conformity with the Sub-Contract documents, the Specification and other Main Contract documents and with all reasonable directions and requirements of the Contractor and will also do all things necessary so that no breach shall occur of any of the Contractor's obligations to the Employer under this Main Contract arising out of the Sub-Contract Works.

Instructions of Superintending Officer

- 9 The Sub-Contractor shall comply with all instructions of the Superintending Officer under the Main Contract in so far as they relate to the Sub-Contract Works, and in particular the provisions of Clauses 2, 10 & 19 of the Main Contract Conditions shall, mutatis mutandis, apply to the Sub-Contract and the Sub-Contract Works.

Assignment and Sub-letting of Sub-Contract Works

- 10 The Sub-Contractor shall not assign the Sub-Contract nor sub-let the Sub-Contract Works or any portion of the same without the written consent of both the Contractor and the Superintending Officer provided that the consent of the Contractor shall not be unreasonably withheld and that in case of any difference of opinion between the Contractor and the Superintending Officer the opinion of the Superintending Officer shall prevail.

Provision of Water, etc for Sub-Contract Works

- 11 If and so far as it is so provided in the Main Contract (but not otherwise) the Contractor shall supply at his own cost all necessary water, electricity, lighting, watching and attendance for the purposes of the Sub-Contract Works. Subject as aforesaid the Sub-Contractor shall make all necessary provision in regard to the said matters and each of them.

Temporary Workshops, etc

- 12 Save as otherwise provided in the Main Contract, the Sub-Contractor shall at his own expense provide and erect all necessary workshops, sheds or other buildings for his employees and workmen at such places on the Site as the Contractor shall specify and the Contractor shall give all reasonable facilities to the Sub-Contractor for such erection.

Sub-Contractor's Use of Scaffolding, Hoisting Facilities & Any Other Means of Access

- 13 The Sub-Contractor, his employees and workmen in common with all other persons having the like right shall for the purposes of the Sub-Contract Works (but not further or otherwise) be entitled to use any scaffolding, hoisting facilities and any other means of access belonging to or provided by the Contractor, while they remain in existence upon the Site. The Contractor shall give reasonable notice to the Sub-Contractor prior to the removal of any scaffolding, hoisting facilities and any other means of access.

Contractor and Sub-Contractor not to make Wrongful Use of or Interference with the Property of the Other

- 14 The Contractor and the Sub-Contractor respectively, and their respective servants or agents shall not wrongfully use or interfere with the plant, ways, scaffolding, temporary works, appliances or other property respectively belonging to or provided by the other of them or be guilty of any breach or infringement of any law or bye-law, regulation, order or rule made thereunder or by any local or other public or competent authority.

Provided that nothing herein contained shall prejudice or limit the rights of the Contractor or of the Sub-Contractor in the carrying out of their respective statutory duties or contractual duties under the Sub-Contract or under the Main Contract.

Plant, Tools, Construction Equipment, Temporary Works, Materials and Goods for Sub-Contractor

- 15 (1) The plant, tools, equipment or other property belonging to or provided by the Sub-Contractor, his servants or agents (other than Plant, materials, goods or articles properly on Site for use in the Sub-Contract Works) shall be at the sole risk of the Sub-Contractor, and any loss or damage to the same or caused by the same shall be the sole liability of the Sub-Contractor who shall indemnify the Contractor against any loss, expense, cost, damages, liability or claim in respect thereof. Any insurance against any such loss, claim or proceedings shall be the sole concern of the Sub-Contractor.
- (2) There is incorporated in the Sub-Contract mutatis mutandis the provisions of Clause 24 of the Main Contract dealing with Construction Equipment, Temporary Works, materials and goods so as to apply to Construction Equipment, Temporary Works, materials and goods provided by the Sub-Contractor or owned by the Sub-Contractor or by any company in which the Sub-Contractor has a controlling interest.

Right of Access of Contractor and Superintending Officer

- 16 The Contractor and the Superintending Officer and all persons duly authorized by them or either of them shall at all reasonable times have access to any work, materials, goods and articles which are to be used in the carrying out of the Sub-Contract whether the same may be on the Site or not, unless the Superintending Officer shall certify in writing that the Sub-Contract has reasonable grounds for refusing such access.

Programme for the Sub-Contract Works

- 17 (1) The Sub-Contractor shall, within such time as may be agreed between himself and the Main Contractor submit to the Contractor a written or recorded programme for the Sub-Contract Works in such form as the Main Contractor may require. If no time is agreed for such submission then the submission shall be within 14 days of the date of the Sub-Contract Letter of Acceptance.
- (2) Within 14 days of receiving the programme, the Contractor shall inform the Sub-Contractor in writing whether the programme is accepted. If the Sub-Contractor's programme is not accepted then the Sub-Contractor shall revise his programme to the satisfaction of the Contractor. Such revision shall be made within 14 days of receipt by the Sub-Contractor of the Contractor's written information that the programme is not accepted. If the Sub-Contractor is not so notified the programme shall be deemed to be accepted.
- (3) Should it appear to the Contractor that the execution of the Sub-Contract Works does not conform with this accepted or deemed to be accepted programme for the Sub-Contract Works, then the Contractor may in writing require the Sub-Contractor to submit a revised programme. The Contractor may require any necessary revisions to the revised programme such that the revised programme allows or enables the Contractor to complete the Works on time and in accordance with any Main Contract programme.
- (4) The acceptance by the Contractor of any revised programme shall not relieve the Sub-Contractor of any of his obligations under the Sub-Contract and such acceptance shall not be construed as a grant of an extension of time by the Contractor or as a waiver of or fetter on the exercise by the Contractor of his powers and rights under the Sub-Contract.
- (5) In the event that the Sub-Contractor fails to comply with Clause 17(1) or Clause 17(2) above the Contractor may, without prejudice to any of his other rights and remedies available to the Contractor under the Sub-Contract, withhold a maximum of five percent (5%) of such interim sums included in progress payments by the Employer in respect of the Sub-Contract Works until the Sub-Contractor has complied with the requirements of the same. The amount withheld by the Contractor shall not earn interest and shall be released to the Sub-Contractor upon the latter complying with Clause 17(1) and if so required

Clause 17(2).

Variations

- 18 (1) The Contractor shall forthwith issue to the Sub-Contractor any written instructions of the Superintending Officer issued under the Main Contract affecting the Sub-Contract Works including the ordering of any variation to the Sub-Contract Works.
- (2) The Contractor may require in writing the Sub-Contractor to submit a written quotation for any proposed variation and the Sub-Contractor shall be obliged to submit a written quotation at his own cost.
- Provided always that the Sub-Contractor may of his own accord submit at his own cost a quotation for any proposed variation.
- (3) In the event that the Superintending Officer in writing approves and/or accepts any quotation of the Sub-Contractor then the provisions of Clause 19 shall not apply to the valuation of the variation for which the accepted quotation was given and the Contractor and Sub-Contractor and Superintending Officer shall be bound by such accepted quotation. In addition, the Sub-Contractor shall not be entitled to any loss or expense in respect of the instructions requiring such variation or any other compensation, damages or other amount whatsoever.
- (4) Should the Sub-Contractor consider that any instruction or action of the Superintending Officer relating to the Sub-Contract Works involves a variation or should otherwise entitle the Contractor and/or the Sub-Contractor to additional payment under the terms of the Main Contract (other than Clause 20 of the Main Contract) or of the Sub-Contract then the Sub-Contractor shall within 30 days of such instruction or action by the Superintending Officer give notice in writing to the Contractor who shall make the necessary claims and give the necessary notices and in so doing the Contractor shall comply with any and all of the requirements of the Main Contract for the making of the claims.

Sub-Contract Sum - Valuation of Variations

- 19 (1) The price of the Sub-Contract Works (hereinafter referred to as "the Sub-Contract Sum") shall be the sum specified in the Sub-Contract Agreement or the Sub-Contract Letter of Acceptance (whichever is the later) or such other sum as shall become payable by reason of any authorised variation or under any other provision of the Sub-Contract.
- (2) The value of all authorised variations shall be determined by the Superintending Officer in accordance with the provisions of the Main Contract relating to authorised extras, omissions and variations.
- Provided that where the Sub-Contractor has annexed to the Sub-Contract a Schedule of Prices for measured work, such prices shall be allowed to the Sub-Contractor in determining the value of authorised variation in substitution for any prices which would otherwise be applicable under this clause.

Contractor's Right to Deduction or Set Off

- 20 The Contractor shall notwithstanding anything in the Sub-Contract be entitled to deduct from or set off against any money due from the Contractor to the Sub-Contractor under the Sub-Contract any sum or sums which the Sub-Contractor is or may be liable to pay to the Contractor under the Sub-Contract.

Defects, Shrinkages, etc

- 21 (1) All defects, shrinkages or other faults in the Sub-Contract Works which the Contractor (whether at his own cost or not) shall be liable to make good under the Main Contract, shall be made good by the Sub-Contractor within a reasonable time after the receipt by him from the Contractor of the Superintending Officer's instructions or a copy thereof relating to the same.

Provided that where the Contractor is liable to make good such defects, shrinkages or other faults but not at his own cost, then the Contractor shall secure similar benefits for the Sub-Contractor and shall account to the Sub-Contractor for any money or credit actually received by him in respect of the same.

- (2) If the Contractor (whether by himself or any other Sub-Contractor) shall execute any work (whether permanent or temporary) to the Main Contract Works or to any part of the same required by the Superintending Officer or rendered necessary by reason of defects, shrinkages or other faults in the Sub-Contract Works due to materials or workmanship not being in accordance with the Sub-Contract, then the Sub-Contractor shall pay to the Contractor the cost of the execution of such work.

Provided that if the Contractor shall pay or allow the Employer the value of, or other agreed sum (not exceeding such cost as aforesaid) in respect of, such work in lieu of executing the same, then the Sub-Contractor shall pay or allow the Contractor such value or other agreed sum as aforesaid.

- (3) If the Sub-Contractor shall execute any work to or in connection with the Sub-Contract Works (whether permanent or temporary) required by the Contractor or by the Superintending Officer or rendered necessary by reason of any defects, shrinkages or other faults in the Main Contract Works due to materials or workmanship not being in accordance with the Main Contract, then the Contractor shall pay or allow the Sub-Contractor the cost of the execution of such work.

Provided that if instead of the Sub-Contractor actually executing such work and in lieu of the same the Contractor shall pay or allow the Employer the value of, or other agreed sum (not exceeding such cost as aforesaid) in respect of such work, then the Contractor shall indemnify the Sub-Contractor against any loss, expense, costs, damages, liability or claims in respect of failure to execute such work.

Third Party Claims and Indemnities

- 22 (1) The Sub-Contractor shall indemnify the Contractor against any liability of the Contractor to indemnify the Employer under Clause 26 or Clause 29 or both of the Main Contract in so far as the liability may arise out of or in the course of or by reason of the carrying out of the Sub-Contract Works and is not due to any negligence, omission, breach of contract or default on the part of the Contractor his servants and/or agents or any other sub-contractors directly or indirectly employed by the Contractor or for whom the Contractor is responsible or their servants and/or agents.
- (2) The indemnities given by the Sub-Contractor under this Clause shall not be defeated or reduced by reason of any failure on the part of the Contractor or the Superintending Officer to supervise or control the work or temporary works or working methods of the Sub-Contractor in any case where it is not the Contractor's or Superintending Officer's duty or

contractual obligation to do so under the provision of the Sub-Contract.

Insurance

- 23
- (1) The Sub-Contractor shall before commencement of any work under the Sub-Contract ensure that the Contractor has obtained or taken out and that there is in force the necessary insurance policy or policies in accordance with the Clauses 27 and 28 of the Main Contract.
 - (2) The Sub-Contractor shall observe, perform and fulfill all terms, conditions, undertakings and obligations on behalf of the insured contained in such insurance policies as the Contractor may obtain and/or take out pursuant to Clauses 27 and 28 of the Main Contract so far as the same concern the Sub-Contractor.
 - (3) Upon request by the Sub-Contractor the Contractor shall, within 3 days of such request, supply to the Sub-Contractor copies of any relevant insurance policy and of the receipts for the premiums paid in respect of such insurances provided always that the Sub-Contractor shall pay to the Contractor the copying charges for such copies as he may reasonably require.

Completion of the Sub-Contract Works

- 24
- (1) The Sub-Contractor shall complete the Sub-Contract Works and any phase or part of the Sub-Contract Works within the time or times stipulated in the Appendix of the Sub-Contract or within such extended period of time as granted by the Contractor with the consent of the Superintending Officer pursuant to this Clause. If there is no time stipulated in the Appendix to the Sub-Contract then the Sub-Contractor shall complete the Sub-Contract Works and any phase or part of the Sub-Contract Works subject to any extended period within the time as instructed in writing by the Contractor with the consent in writing of the Superintending Officer.
 - (2) The Sub-Contractor shall be entitled to be granted by the Contractor subject to the consent of the Superintending Officer such extension of time as may reasonably reflect delay in the completion of the Sub-Contract Works or any phase or part of the Sub-Contract Works which will or might be or has been caused by any of the events (save only and to the extent of delays caused or contributed to by himself) set out in Clause 14.2 of the Main Contract (with where appropriate, the Sub-Contractor substituted for the Contractor in that Clause) and also for delays caused by any wrongful and/or negligent act or default or delay or breach of this Sub-Contract by the Contractor, his servants and/or agents.
 - (3) The Sub-Contractor shall, as a condition precedent to such an extension of time, make such application to the Contractor, with a copy to the Superintending Officer, as may be required, mutatis mutandis, by Clause 14.3 of the Main Contract. Such application by the Sub-Contractor shall be made at such time as will enable the Contractor to comply with the Contractor's obligation in Clause 14.3 to notify the Superintending Officer in writing within 60 days of the occurrence of the relevant event.
 - (4) Upon the receipt of such an application or a copy of such an application from the Sub-Contractor, the Contractor shall within the said 60 days in Clause 14.3 of the Main Contract send any written representation he may have to the Superintending Officer.
 - (5) The Contractor in deciding on an application for an extension of time by the Sub-Contractor shall apply mutatis mutandis the provisions of Clause 14 of the Main Contract and subject to the consent of the Superintending Officer issue the appropriate extension or extensions.
 - (6) In the event that the Sub-Contractor fails substantially to complete the Sub-Contract Works within the time or times stipulated in the Appendix to the Sub-Contract and as provided for in Sub-Clause (1) above then the Contractor may at any time:
 - (a) deduct from monies due or to become due to the Sub-Contractor under the Sub-

Contract some or all of the liquidated damages calculated in accordance with Clause 24(7); and/or

- (b) recover the same from the Sub-Contractor, whether in full or in part.
- (7) The liquidated damages for delay on the part of the Sub-Contractor shall be calculated in accordance with the liquidated damages specified in the Appendix to the Sub-Contract. In the event that the Appendix to the Sub-Contract does not specify liquidated damages or that the Contractor for whatever reason shall not be entitled in law to recover liquidated damages, then the Contractor shall be entitled to claim damages for any delay due to or contributed to by the default of the Sub-Contractor.
- (8) The provisions of Clause 24(6) and Clause 24(7) above shall apply mutatis mutandis to any phase or part of the Sub-Contract Works for which a separate amount of liquidated damages is payable as stated in the Appendix to the Sub-Contract.

Determination of the Sub-Contract by the Contractor

- 25 (1) If in the opinion of the Contractor, the Sub-Contractor:
- (a) has abandoned the Sub-Contract;
 - (b) has, without reasonable cause, failed to commence the Sub-Contract Works in accordance with the Sub-Contract;
 - (c) has failed to comply with his obligations under Clause 8 or has failed to execute the Sub-Contract Works in accordance with a programme accepted or deemed to be accepted under Clause 17 whereby the Sub-Contract Works or any phase or part will not be completed within the Sub-Contract Time for Completion or any extended time or has otherwise failed to proceed with the Sub-Contract Works with due expedition and without delay (whether or not the Sub-Contract Works or any phase or part is thereby likely not to be completed by the Sub-Contract Time for Completion);
 - (d) has persistently failed to remove work, Plant, materials, goods or articles from the Site or to pull down and replace work following the expiry of 7 days from receipt by the Sub-Contractor of a written notice by the Contractor with the consent of the Superintending Officer to the effect that the work, Plant, materials, goods or articles have been condemned and rejected by the Contractor with the consent of the Superintending Officer;
 - (e) has acted in breach of Clause 10 of the Sub-Contract;
 - (f) has persistently refused or failed to comply with a written instruction from the Superintending Officer which the Superintending Officer is empowered to give under the Main Contract or with a written instruction of the Contractor which the Contractor is empowered to give under the Sub-Contract;
- then the Contractor may with the consent of the Superintending Officer issue a notice in writing (hereinafter called a "Termination Notice") to the Sub-Contractor specifying the default.
- (2) If the Sub-Contractor:
- (a) has offered or given or agreed to give to any person or body any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or foreborne to do any action in relation to the obtaining or execution of the Sub-Contract or for showing or forbearing to show any favour or disfavour to any person in relation to the Sub-Contract or any other contract

with the Contractor or Employer or if any of the like acts shall have been done by any person employed by the Sub-Contractor or acting on his behalf (whether with or without the knowledge of the Sub-Contractor) or if in relation to the Sub-Contract or any other contract with the Contractor or Employer the Sub-Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code or any statutory amendment or reamendment thereof or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under the said Penal Code;

- (b) has failed to provide the Security Deposit for Sub-Contract in accordance with Clause 7;
- (c) shall have been issued with a Termination Notice and either the default specified in the Termination Notice has not been made good within 7 days or the said default or similar default has been repeated within 30 days of the receipt by the Sub-Contractor of the Termination Notice; or
- (d) becomes bankrupt or insolvent or if being a company a winding-up order of any kind (other than for the purposes of amalgamation or reconstruction) is made or if a receiver or manager of the Sub-Contractor's undertaking or assets is appointed or possession taken or execution levied by creditors or debenture holders or under a floating charge

then the Contractor without prejudice to other rights and remedies available to him may give to the Sub-Contractor notice in writing of the termination of the employment of the Sub-Contractor upon receipt of which the Sub-Contractor's employment under the Sub-Contract shall terminate.

- (3) Upon termination of the Sub-Contractor's employment under Clause 25(2) above the Sub-Contractor shall immediately vacate and surrender possession of the Site to the Contractor leaving all Construction Equipment, Temporary Works, temporary buildings, tools, Plant, equipment, unfixed materials, goods and articles upon the Site other than those which the Sub-Contractor may be specifically directed in writing by the Superintending Officer or the Contractor to remove.
- (4) In the event of the termination of the Sub-Contractor's employment under Clause 25(2) above then Clause 31.3 of the Main Contract shall apply mutatis mutandis to the Sub-Contract with the reference to Clause 14 in Clause 31.3 of the Main Contract being replaced by Clause 24 of the Sub-Contract.
- (5) In the event of termination of the Sub-Contractor's employment under the above provisions then Clause 31.2 of the Main Contract shall apply mutatis mutandis to the Sub-Contract.

Determination of Main Contract

- 26 (1) If for any reason the Contractor's employment under the Main Contract is terminated or determined (whether due to any default of the Contractor or otherwise), then the employment of the Sub-Contractor under the Sub-Contract shall thereupon also be terminated or determined.
- (2) In the event of the Sub-Contractor's employment being terminated or determined under Clause 26(1), then Clause 31.4(2) of the Main Contract shall apply mutatis mutandis to the Sub-Contract and the Contractor shall pay the amount due to the Sub-Contractor.

Provided always that where the termination or determination of the Main Contract was caused or contributed to by any default or breach of contract by the Sub-Contractor, then the Sub-Contractor shall be liable to the Contractor for any loss or damage suffered by the Contractor in consequence of such default or breach of contract.

Payment Claims and Payment Responses

- 27 (1) The Sub-Contractor shall submit to the Contractor, at monthly intervals (on the day of each month specified by the Contractor following the month in which the Sub-Contract is made), a claim for payment (hereafter referred to as "Payment Claim"). For the purposes of payment claims made under this Clause, the Payment Claim shall have the same meaning ascribed in the Building and Construction Industry Security of Payment Act (hereafter referred to as the "Act"). The Payment Claim shall be made in compliance with the requirements of the Act and shall show the amounts (hereafter referred to as the "Claimed Amount") to which the Sub-Contractor considers himself to be entitled up to the last day of the monthly interval in question in respect of the value:-
- (a) of the Sub-Contract Works; and
 - (b) of any variations authorized under and all other amounts due under the Sub-Contract; and
 - (c) of the Plant, materials, goods and articles delivered upon the Site for use in the Sub-Contract Works.

Provided that the Payment Claim shall only include the value of the said Plant, materials, goods and articles as and from such time as they are reasonably, properly and not prematurely brought upon the Site and then only if adequately stored and/or protected against weather and other casualties.

- (2) The Contractor shall within 14 days of receipt of the Sub-Contractor's Payment Claim issue a notification to the Sub-Contractor (hereafter referred to as the "Payment Response") notifying the amounts (hereafter referred to as the "Response Amount") to which the Sub-Contractor is in his opinion entitled in respect of the Claimed Amount. The Contractor shall substantiate with reasons in his Payment Response if the Response Amount is less than the Claimed Amount or if payments are withheld. Such Payment Response issued by the Contractor shall comply fully with the requirements for Payment Response made in contemplation of the Act.

Payments to the Sub-Contractor

- 28 (1) If the Sub-Contractor is a taxable person under the Goods and Services Tax Act (Cap. 117A) (hereafter referred to as "GST Act"), the Contractor shall pay to the Sub-Contractor the Response Amount:
- (a) where the Sub-Contractor submits to the Contractor within 7 days upon receipt of the Payment Response the tax invoice in respect of the GST payable to him under the GST Act, within 28 days of the Sub-Contractor's receipt of the Payment Response.
 - (b) in all other situations, within 28 days after the Sub-Contractor submits to the Contractor the tax invoice in respect of the GST payable to him under the GST Act.
- (2) If the Sub-Contractor is not a taxable person under the GST Act, the Contractor shall pay to the Sub-Contractor the Response Amount within 28 days of the Sub-Contractor's receipt of the Payment Response.
- (3) In the event that the Contractor fails to make payment within the times stipulated, the Contractor shall pay to the Sub-Contractor interest at the rate stated in the Appendix (or at the rate of 5% a year if none stated) upon all sums unpaid from the date by which the same should have been paid.

Clause 28 was amended w.e.f. 01/12/15. Refer to the List of Clarifications and Editorial Amendments for Nominated Sub-Contract 2008 for amendments made.

Right of Sub-Contractor to Obtain Payment

- 29 If the Contractor shall fail to pay the Response Amount to the Sub-Contractor as hereinbefore provided, the Sub-Contractor may (but without prejudice to any other right or remedy) within 7 days after the due date for payment of the Response Amount inform the Superintending Officer of the Contractor's failure to make payment, and the Employer may (but shall not be bound to) pay the same upon a certificate from the Superintending Officer and deduct the amount so paid from any amount due to the Contractor. Any such payment shall not create privity of contract between the Employer and the Sub-Contractor.

Final Payment to the Sub-Contractor

- 30 If before the issue of the Final Account Certificate to the Contractor under the Main Contract, the Superintending Officer desires to secure final payment to the Sub-Contractor on completion of the Sub-Contract Works and shall in accordance with and subject to the provisions of the Main Contract relating to prime cost issue a certificate to the Contractor (with a copy to the Sub-Contractor) including an amount to cover such final payment, then the Contractor shall within 28 days of receipt of such certificate pay to the Sub-Contractor the amount so certified by the Superintending Officer as aforesaid.

Settlement of Disputes

- 31 (1) In the event of any dispute or difference between the Contractor and the Sub-Contractor involving a Payment Claim or Payment Response to which the Building and Construction Industry Security of Payment Act applies, the Sub-Contractor shall be entitled to make an adjudication application in accordance with the Building and Construction Industry Security of Payment Act, in which case the provisions of the Act shall apply.
- (2) Notwithstanding Clause 31(1), any dispute or difference between the Contractor and the Sub-Contractor as to any matter arising under or out of or in connection with the Sub-Contract or the Sub-Contract Works or as to any certificate, decision or instruction by the Superintending Officer shall be referred to and finally resolved by arbitration in Singapore. The arbitrator may be agreed upon by the parties or failing such agreement, shall be a person to be nominated upon the applications of either party by the Chairman of the Singapore International Arbitration Centre. Any such reference shall be deemed to be a submission to arbitration within the meaning of the arbitration Act or any re-enactment or modification thereof.
- (3) The party wishing to initiate such arbitration shall give notice in writing of arbitration to the other party with a copy to the Superintending Officer stating his intention to have the dispute referred to an arbitrator.
- (4) No reference for arbitration shall be initiated by either party before the Date of Substantial Completion or alleged Date of Substantial Completion of the Works unless the prior written consent of the other party has been obtained.
- Provided that if the dispute or difference concerns the termination of the employment of the Sub-Contractor or the repudiation or abandonment of the Sub-Contract by either party such dispute or difference may be referred to arbitration at any time after such termination or repudiation or abandonment.
- (5) An arbitrator appointed pursuant to this Clause shall have like powers to an arbitrator appointed under Clause 35 of the Main Contract.
- (6) Where an arbitrator has already been appointed under the Main Contract to deal with matters in dispute between the Employer and the Contractor, then if some or all such matters arise out of the same facts as the matters in dispute between the Contractor and the Sub-Contractor under this Sub-Contract, both parties shall use their best endeavours to secure the

appointment of the same arbitrator to decide the dispute under the Sub-Contract, and either party shall be entitled to request the Singapore Court to appoint the same arbitrator to do so, if necessary in place of an arbitrator already appointed under the Sub-Contract, whose authority shall, to the extent of any such common dispute only, be deemed to have been revoked upon any such new appointment of a common arbitrator. Any arbitrator with jurisdiction under both contracts shall have power to hear evidence of the matters in dispute under the Main Contract and generally to act as closely as possible in both arbitrations in accordance with the general principles of third party procedure in the Singapore Courts.

- (7) The parties agree that before referring any dispute or difference to arbitration or court proceedings, they shall consider resolving the dispute or difference through formal mediation. If both parties agree to attempt resolving the dispute through mediation, the parties agree to do so at the Singapore Mediation Centre in accordance with its prevailing prescribed form, rules and procedures. The provision herein shall not amount to any legal obligation on the part of either party to attempt mediation or the extent to which they shall do so, as a means of resolving their dispute or difference.

Governing Law

- 32 (1) The law governing this Sub-Contract and any arbitration commenced under these Conditions shall be the law of Singapore, and any such arbitration shall be held in Singapore.
- (2) Unless otherwise expressly stated in this Sub-Contract, a person who is not a party to this Sub-Contract shall have no right under the Contracts (Rights of Third Parties) Act to enforce any of its terms.
- (3) Where the Building and Construction Industry Security of Payment Act applies to this Sub-Contract, all provisions in this Sub-Contract shall be read to give effect to the provisions of the Act. For that purpose, the parties shall be entitled to such rights and be subject to such obligations as may be set out in the Building and Construction Industry Security of Payment Act.