

**PUBLIC SECTOR**  
**STANDARD CONDITIONS OF CONTRACT**  
**FOR DESIGN AND BUILD**  
**2020**

Public Sector Standard Conditions of Contract for Design and Build 2020

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# CONTENTS

	Page	
<b>1</b>	<b>Definitions and Interpretation</b>	
1.1	Definitions	1
1.2	Singular and Plural	4
1.3	Headings and Marginal Notes	4
1.4	Joint and Several Liability	4
<b>2</b>	<b>Superintending Officer and Superintending Officer's Representative</b>	
2.1	Superintending Officer's Authority	4
2.2	Superintending Officer's Representative	4
2.3	Superintending Officer's Authority to Delegate	5
2.4	Appointment of Assistants	5
2.5	Instructions by Superintending Officer	5
2.6	Failure to Comply with Superintending Officer's Instructions	6
2.7	Urgent repairs	6
2.8	No Obligation to Exercise Powers	6
<b>3</b>	<b>Contract Documents</b>	
3.1	Contract Documents to Be Taken As Mutually Explanatory	6
3.2	Custody and Supply of Drawings and Documents	7
3.3	Drawings to be Kept on Site	7
3.4	Need for Further Information etc	7
3.5	Further Supplementary Information etc and Instructions	7
3.6	Use of Contractor's Proposals and Employer's Requirements	7
3.7	Confidentiality of Information Supplied to Contractor	8
3.8	Delay and Time	8
<b>4</b>	<b>General Obligations of the Contractor</b>	
4.1	Contractor's General Responsibilities	8
4.2	Employment of Qualified Personnel	9
4.3	Responsibility for Identifying Ambiguities, Discrepancies, etc	9
4.4	Security Deposit	10
4.5	Sufficiency of Tender	11
4.6	Patents, Trademarks, Copyrights, etc	11
4.7	Design, Specifications and Other Information	11
4.8	Prior Written Acceptance	11

<b>5</b>	<b>Sub-Surface and Ground Conditions</b>	
5.1	Inspection of Site and Geotechnical Information	12
5.2	Adverse Physical Conditions	12
5.3	Underground Services	12
<b>6</b>	<b>Works Designed by the Contractor</b>	
6.1	Contractor's Warranty of Design	13
6.2	Submission of Documents Prior to Commencement	13
6.3	Submission of Documents after Completion	14
6.4	Amendment and Modification of Accepted Design	14
<b>7</b>	<b>Notices and Fees</b>	
7.1	Generally	14
7.2	Variations Arising from Compliance	14
7.3	Cost of Compliance	15
<b>8</b>	<b>Setting Out</b>	
8.1	Accurate Setting Out	15
8.2	Errors in Setting Out	15
<b>9</b>	<b>Programme for the Works</b>	
9.1	Programme To Be Furnished	15
9.2	Revision of Programme	16
9.3	Acceptance of Programme	16
9.4	Failure to Submit Adequate Programme	16
<b>10</b>	<b>Quality in Construction</b>	
10.1	Plant, Materials, Goods and Workmanship	17
10.2	Contractor to Provide Everything Necessary for Testing	17
10.3	Cost of Samples	17
10.4	Cost of Test	18
10.5	Examination and Measurement of Works before Covering Up	18
10.6	Uncovering and Making Openings	18
10.7	Defects during the Progress of the Works	19
10.8	Default of Contractor in Compliance	19

<b>11</b>	<b>Administration</b>	
11.1	Days and Hours of Working	19
11.2	Contractor's Representative	20
11.3	Removal of Workmen and Other Personnel	20
11.4	Access for Superintending Officer	20
<b>12</b>	<b>Possession of Site and Commencement of Works</b>	
12.1	Commencement of Works	21
12.2	Site Possession	21
12.3	Failure to Give Possession	21
12.4	Rights of Access etc	21
12.5	Other Contractors	22
<b>13</b>	<b>Suspension</b>	
13.1	Suspension of Work	22
13.2	Suspension lasting more than 90 days	23
<b>14</b>	<b>Time for Completion</b>	
14.1	Contractor to Complete on Time	23
14.2	Extension of the Time for Completion	23
14.3	Notice	25
<b>15</b>	<b>Expediting Progress of Works</b>	
15.1	Notification to Expedite	26
15.2	Work to Expedite Progress	26
<b>16</b>	<b>Liquidated Damages</b>	
16.1	Payment by the Contractor	26
16.2	Reduction of Liquidated Damages	27
16.3	Employer's Common Law Rights for Damages	27
16.4	Extension of Time During Delay Period	27
<b>17</b>	<b>Substantial Completion</b>	
17.1	Certificate of Substantial Completion	28
17.2	Access for Remedial Work	28
17.3	Completion of Phase or Part	29

<b>18</b>	<b>Defects</b>	
18.1	Completion of Outstanding Works and Remedying Defects	29
18.2	Cost of Remedying Defects	30
18.3	Diminution in Value of Works	30
18.4	Notify and Search for Defects	30
18.5	Liability at Common Law	30
<b>19</b>	<b>Variations to the Works</b>	
19.1	Variations	31
19.2	Power to Order Variations	31
19.3	Submission of Quotations	31
<b>20</b>	<b>Valuation of Variations</b>	
20.1	Valuation Methods	32
20.2	Agreement on Valuation	33
20.3	Provisional Sum Items	34
20.4	Dayworks	34
<b>21</b>	<b>Measurement</b>	
21.1	Contractor to Attend Measurement	34
21.2	Contractor to Provide Assistance	35
21.3	Record of Measurements	35
21.4	Failure to Agree Measurements	35
<b>22</b>	<b>Claims for Loss and Expense</b>	
22.1	Reasons for Loss and Expense	35
22.2	Sufficiency of Loss and Expense	36
<b>23</b>	<b>Procedure for Claims</b>	
23.1	Notice of Claims	36
23.2	Contemporary Records	36
23.3	Substantiation of Claims	37
23.4	Access to Contractor's Books and Documents	37
23.5	Payment of Claims	37
23.6	Failure to Comply	38

<b>24</b>	<b>Construction Equipment, Temporary Works, Materials and Goods</b>	
24.1	Exclusive Use for the Works	38
24.2	Vesting	38
24.3	Employer Not Liable for Damage	38
24.4	Conditions for Hire of Construction Equipment	39
24.5	Revesting and Removal	39
24.6	Incorporation of Clause in Subcontracts	39
<b>25</b>	<b>General Responsibilities</b>	
25.1	Care of the Works	39
25.2	Excepted Risks	40
<b>26</b>	<b>Indemnity Provisions</b>	
26.1	Injury to Persons	41
26.2	Damage to Property	41
26.3	Contractor to Rectify Damage	41
<b>27</b>	<b>Insurance For Personal Injury, Work Injury Compensation and Property Damage</b>	
27.1	The Policies	42
27.2	Damage to Property when Contractor Not Negligent	42
27.3	Default in Insuring	43
<b>28</b>	<b>Insurance of the Works</b>	
28.1	Risks to be Insured	43
28.2	Application of Insurance Moneys	44
<b>29</b>	<b>Damage to Property of Employer or Government</b>	
29.1	Costs of Making Good Damage, Loss or Injury	44
<b>30</b>	<b>Assignment and Subcontracting</b>	
30.1	Assignment by Contractor	45
30.2	Subcontractors	45

<b>31</b>	<b>Termination by the Employer</b>	
31.1	Termination for Default	46
31.2	Effects of Termination for Default	47
31.3	Liquidated Damages after Termination	48
31.4	Termination Without Default	48
<b>32</b>	<b>Progress Payments and Final Account</b>	
32.1	Payment Claims	49
32.2	Payment Certificates	50
32.3	Correction of Certificates	50
32.4	Final Payment Claim	50
32.5	Interim Final Account, Final Account and Final Account Certificate	51
32.6	Period for Honouring Certificate	53
32.7	Claim and Payment of Goods and Services Tax	53
32.8	Delay in Certification	54
<b>33</b>	<b>Fluctuations</b>	
33.1	Schedule of Materials	54
33.2	Payment	55
33.3	Contractor in Delay	55
33.4	Subcontract Work	55
<b>34</b>	<b>Final Completion Certificate</b>	
34.1	Time for Issue	55
34.2	Certificate not Conclusive	55
<b>35</b>	<b>Settlement of Disputes</b>	
35.1	Reference to the Superintending Officer	56
35.2	Reference to Arbitration	56
35.3	Arbitration in Event of Termination	57
35.4	Powers of the Arbitrator	57
35.5	Reference to Adjudication	57
35.6	Mediation	57
<b>36</b>	<b>Recovery by the Employer</b>	58
<b>37</b>	<b>Governing Law &amp; Notices</b>	
37.1	Law	58
37.2	Notices	58
<b>38</b>	<b>Compliance with Prevailing Law</b>	59
<b>Option Module A</b>	<b>Unused Materials or Goods not Delivered to Site</b>	
<b>Option Module B</b>	<b>Lump Sum Advance Payment for Prefabricated Prefinished Volumetric Construction (PPVC)</b>	



# **PUBLIC SECTOR STANDARD CONDITIONS OF CONTRACT for Design and Build**

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## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In the Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them except where the context otherwise requires:

- (a) "Accredited Checker" means a person who is registered as an accredited checker under Section 16 of the Building Control Act (Cap 29).
- (b) "Appendix" means the appendix to these Conditions.
- (c) "Claimed Amount" means the whole or part of any payment claimed by the Contractor in a Payment Claim pursuant to Clause 32.1(1).
- (d) "Conditions" means the Standard Conditions and Particular Conditions (if any) of Contract for Design and Build contained in the Contract and Option Modules specified in the Appendix.
- (e) "Contract" means the Conditions and Appendix, the Specifications, Drawings, Schedule of Rates (if any), the Employer's Requirements, the Contractor's Proposals, the Tender, Letter of Acceptance, Agreement and such other letters and documents as the parties may expressly identify in writing and agree as forming part of the contract.
- (f) "Contract Sum" means the lump sum set out in the Letter of Acceptance (which shall be deemed to include all design fees whether specifically stated or otherwise), and shall be fixed subject only to adjustments expressly provided for in the Conditions.
- (g) "Contractor" means the person or firm or corporation whose Tender has been accepted by the Employer and includes the Contractor's legal personal representatives and any person to whom the rights or liabilities of the Contractor have been assigned or transferred with agreement in writing of the Employer under Clause 30.1.
- (h) "Contractor's Proposals" shall include the document called Contractor's Proposals (or any equivalent by any other name) and all Drawings, Specifications, calculations, manuals and other information submitted by the Contractor in response to the Employer's Requirements, including any variations, and/or amendments thereto.
- (i) "Construction Equipment" means all equipment, apparatus and things of whatsoever nature required for the execution and completion of both the Temporary Works and the Permanent Works and the remedying of any defects therein, but does not include Plant, materials, goods or work or other things intended to be part of the Works.
- (j) "Contractor's Representative" means the person duly appointed pursuant to Clause 11.2 of the Conditions.
- (k) "Date of Substantial Completion" means the date stated in a certificate issued pursuant to Clause 17.1 or Clause 17.3.

- (l) "Defects" means any part of the Works not executed, provided or completed in accordance with the Contract. For the avoidance of doubt and without limiting the generality of the expression the term shall be taken to include any item of Plant, material, goods or work incorporated or used in the Works which does not or may not conform to the relevant quality standards or pass the tests prescribed in or to be inferred from the Contract.
- (m) "Defects Liability Period" means the Defects Liability Period set out in the Appendix hereof, calculated from:
  - (i) the Date of Substantial Completion of the Works certified by the Superintending Officer in accordance with Clause 17; or
  - (ii) in the event of more than one Certificate of Substantial Completion having been issued by the Superintending Officer under Clause 17, the respective Dates of Substantial Completion so certified.
- (n) "Drawings" means the drawings referred to in the Contract including such drawings which have been prepared by the Contractor and accepted by the Superintending Officer pursuant to Clause 6.2 and such other drawings as may from time to time be issued or accepted in writing by the Superintending Officer, and where the context permits, such drawings as may be prepared and submitted by the Contractor in his Tender or at any time before the Contract.
- (o) "Employer" means the government or the statutory body specified in the Appendix.
- (p) "Employer's Requirements" means
  - (i) all requirements specifically set out in the Employer's invitation or other document by whatever name or description setting out the design and/or purpose (whether with or without specification or other details) of the Works;
  - (ii) all requirements not specifically set out in the Tender or any document, but which shall include such other requirements as a reasonably experienced contractor would consider as being necessary for the satisfactory design and completion of the Works; and
  - (iii) all requirements not specifically set out in the Tender or any document, but which shall include such other requirements as a reasonably experienced contractor would consider as being necessary for the purpose and integrity of the Works.
- (q) "Final Account Certificate" means the document issued by the Superintending Officer under Clause 32.5.
- (r) "Final Payment Claim" means a claim for payment made by the Contractor pursuant to Clause 32.4(1).
- (s) "Letter of Acceptance" means the formal acceptance by the Employer of the Tender.
- (t) "Loss and Expense" means:
  - (i) the direct relevant costs of labour, Plant, Construction Equipment, materials, or goods actually incurred; and
  - (ii) costs of an overhead nature actually and necessarily incurred on the Site but in either case only in so far they would not otherwise have been incurred and which were not and should not have been provided for by the Contractor; and

- (iii) 15% of any such costs, such 15% to be inclusive of and in lieu of any profits, head office or other administrative overheads, financing charges (including foreign exchange losses) and any other costs, loss or expense of whatsoever nature and howsoever arising.
- (u) "Option Module" means an Option Module appearing at the end of the Conditions.
- (v) "Payment Claim" means a claim for payment made by the Contractor pursuant to Clause 32.1(1).
- (w) "Payment Certificate" means a certificate issued by the Superintending Officer pursuant to Clause 32.2(1) or Clause 32.5(1)(a) in response to a Payment Claim or Final Payment Claim made by the Contractor.
- (x) "Permanent Works" means the works of a permanent nature (including Plant) to be designed, executed and completed (including the remedying of any Defects therein) in accordance with the Contract.
- (y) "Plant" means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
- (z) "Provisional Sum Items" means items of work which shall only be executed or provided upon instruction in writing by the Superintending Officer who may decide that the work in whole or in part or not at all may be carried out by the Contractor.
- (aa) "Rates" means those in the Schedule of Rates, including any modifications or additions thereto agreed in writing by the Employer and the Contractor.
- (ab) "Registered Inspector" means a person who is registered as a registered inspector under Section 5 of the Fire Safety Act (Cap 109A).
- (ac) "Response Amount" means the amount that the Superintending Officer proposes to pay to the Contractor in the Payment Certificate issued pursuant to Clause 32.2(1).
- (ad) "Site" means the lands and other places on, in, under, over or through which the Works are to be executed or carried out or any other lands or places provided by the Employer for the purposes of the Contract.
- (ae) "Specifications" means all specifications contained in the Contract including any modifications or additions thereto as may from time to time be issued or approved in writing by the Superintending Officer, and where the context permits, such specifications as maybe prepared and submitted by the Contractor in his Tender or at any time before the Contract.
- (af) "Superintending Officer" means the person, firm or corporation appointed as such by the Employer for the purposes of the Contract.
- (ag) "Superintending Officer's Representative" means the person, appointed from time to time by the Superintending Officer under Clause 2.2.
- (ah) "Tender" means the Contractor's offer to the Employer to design, execute and complete the Works for a lump sum as accepted by the Letter of Acceptance.
- (ai) "Temporary Works" means all works of a temporary nature of every kind (other than Construction Equipment) required or provided in or about the design, execution and completion of the Works and the remedying of any Defects therein.
- (aj) "Time for Completion" means time or times for the completion of the Works or any phase or

part of the Works set out in the Letter of Acceptance or Appendix subject to such extension or extensions of time (if any) as the Contractor may be allowed under the Contract.

- (ak) "Works" means the Temporary Works and the Permanent Works, and where the context requires, a phase or part of the Works.

## 1.2 **Singular and Plural**

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

## 1.3 **Headings and Marginal Notes**

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 Contract.

## 1.4 **Joint and Several Liability**

If the Contractor is a joint venture partnership, the individual partners or companies comprising the Contractor shall be deemed jointly and severally liable to the Employer under this Contract.

# 2 **SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER'S REPRESENTATIVE**

## 2.1 **Superintending Officer's Authority**

- (1) The authority of the Superintending Officer shall be that stated in or necessarily to be implied from the Contract. Any limitations on the authority of the Superintending Officer are set out in the Appendix.
- (2) Except as expressly stated in the Contract, the Superintending Officer shall have no authority to relieve the Contractor of any of his obligations under the Contract.

## 2.2 **Superintending Officer's Representative**

The Superintending Officer's Representative shall be appointed by and be responsible to the Superintending Officer and shall carry out such duties and exercise such authority as may be delegated to him by the Superintending Officer under Clause 2.3. For the avoidance of doubt, the Superintending Officer may appoint more than one Superintending Officer's Representative.

### 2.3 **Superintending Officer's Authority to Delegate**

The Superintending Officer may from time to time delegate to the Superintending Officer's Representative any of the duties or functions vested in the Superintending Officer other than those listed in the Appendix pursuant to Clause 2.1 and he may at any time revoke such delegation. Any such delegation or revocation shall be in writing and shall not take effect until a copy of such delegation and/or revocation has been delivered to the Contractor. Any act done by the Superintending Officer's Representative in accordance with such delegation shall have the same effect as though it had been done by the Superintending Officer. Provided that:

- (a) any failure of the Superintending Officer's Representative to disapprove any Plant, materials, goods or work shall not prejudice the authority of the Superintending Officer to disapprove such Plant, materials, goods or work and to give instructions for the rectification of any such Plant, materials, goods or work;
- (b) if the Contractor disputes any act of the Superintending Officer's Representative, he shall refer the matter to the Superintending Officer who shall confirm, reverse or vary (as the case may be) the act or decision of the Representative.

### 2.4 **Appointment of Assistants**

The Superintending Officer or the Superintending Officer's Representative may appoint in writing any number of persons to assist the Superintending Officer's Representative in the carrying out of his duties under Clause 2.2. The Contractor shall be notified in writing of the names, duties and authority (if any) of such assistants. Unless authorised in writing by the Superintending Officer, such assistants shall have no authority to issue any instructions to the Contractor save insofar as such instructions may be necessary to enable them to carry out their duties and to secure that the Plant, materials, goods or work are in accordance with the Contract.

### 2.5 **Instructions by Superintending Officer**

Instructions given by the Superintending Officer shall be in writing. Provided that if for any reason the Superintending Officer considers it necessary to give any such instruction orally, the Contractor shall comply with such instruction. Confirmation in writing of such oral instruction given by the Superintending Officer, whether before or after the carrying out of the instruction, shall be deemed to be an instruction within the meaning of this Clause. Provided further that if the Contractor, within 3 working days, confirms in writing to the Superintending Officer any oral instruction of the Superintending Officer and such confirmation is not contradicted in writing within the next 3 working days by the Superintending Officer, it shall be deemed to be an instruction of the Superintending Officer. However, should the Superintending Officer withdraw any such oral instructions at any time within the aforesaid period of 6 working days, then the Superintending Officer may certify pursuant to Clause 32, such sum as may be reasonable in respect of such Loss and Expense that the Contractor has incurred by reason of his compliance with the Superintending Officer's oral instruction that has been withdrawn. The provisions of this Clause shall equally apply to instructions given by the Superintending Officer's Representative and any assistants of the Superintending Officer or the Superintending Officer's Representative appointed pursuant to Clause 2.4. For the purposes of this Clause, the term "working days" shall exclude Sundays and public holidays.

## 2.6 Failure to Comply with Superintending Officer's Instructions

If the Contractor, after receipt of an instruction from the Superintending Officer or the Superintending Officer's Representative, fails to comply with it within 14 days (or within such period as may be stipulated in the instruction):

- (a) the Employer may employ and pay other persons to do whatever may be necessary to give effect thereto and may recover the amount of any cost, loss, expense and damage incurred or suffered in connection therewith;
- (b) the amount of any other loss or damage suffered or incurred by the Employer as a result of the Contractor's default shall be recoverable from the Contractor.

## 2.7 Urgent Repairs

If by reason of any accident or failure or other event occurring to or in connection with the Works, either during the execution of the Works or during the Defects Liability Period, any remedial or other work shall in the opinion of the Superintending Officer be urgently necessary and the Contractor is unable or unwilling at once to do such remedial or other work, the Superintending Officer may authorise the carrying out of such remedial or other work by a person other than the Contractor. If the remedial or other work so authorised by the Superintending Officer is work which in the opinion of the Superintending Officer the Contractor was liable to do or for which he was otherwise responsible under the Contract, the amount of any cost, loss, expense or damage incurred in carrying out the same shall be recoverable by the Employer from the Contractor.

## 2.8 No Obligation to Exercise Powers

- (1) The Superintending Officer, the Superintending Officer's Representative or any assistant appointed pursuant to Clause 2.4 shall at no time be under any obligation or duty to the Contractor either on behalf of the Employer or his own account to exercise or not to exercise any of his powers under the Contract, nor shall any failure to do so on his part in any way prejudice the rights of the Employer against the Contractor or render the Employer liable to the Contractor.
- (2) The provisions of this Clause shall not affect the liability of the Employer for any act or omission of the Superintending Officer, the Superintending Officer's Representative or any assistant appointed pursuant to Clause 2.4 acting on behalf of the Employer within the scope of the authority conferred on that person.

# 3 CONTRACT DOCUMENTS

## 3.1 Contract Documents to be Taken as Mutually Explanatory

The several documents and drawings forming the Contract are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between the Conditions and the other documents forming the Contract, the Conditions shall be given precedence. Within the Conditions, the Particular Conditions, if any, shall be given precedence. In the event of any conflict or inconsistency between the drawings, then the order of precedence shall be as prescribed in the Appendix.

### 3.2 **Custody and Supply of Drawings and Documents**

The Contractor shall supply to the Superintending Officer six copies of all Drawings, Specifications and other documents submitted by the Contractor and accepted by the Superintending Officer in accordance with Clause 6.2, together with a reproducible copy of any material which cannot be reproduced to an equal standard by photocopying. In addition, the Contractor shall supply such further copies of such Drawings, Specifications and other documents as the Superintending Officer may request in writing for the use of the Employer, who shall pay the cost of such copies.

### 3.3 **Drawings to be Kept on Site**

One copy of the Drawings, provided to or supplied by the Contractor as aforesaid, shall be kept on the Site by the Contractor and the same shall at all reasonable times be available for inspection and use by the Superintending Officer and by any other person authorised by the Superintending Officer in writing.

### 3.4 **Need for Further Information etc**

The Contractor shall give adequate notice in writing to the Superintending Officer:

- (a) of any further drawing, specification or other information which the Superintending Officer is required to provide under the Contract;
- (b) of any drawing, specification, instruction or other information which is required by any specific time, whenever the planning or execution of the Works is likely to be delayed or disrupted by its lack, and whether or not the need for it is shown on any programme accepted by the Superintending Officer under Clause 9.

The notice shall also state the consequences in terms of delay to the progress or completion of the Works or any part of the Works and any financial consequences should the Superintending Officer not comply with any of the requirements of the notice. The Superintending Officer shall on receipt of the notice comply with its requirements, provided that it is given in sufficient time for the Superintending Officer reasonably to prepare and issue the information required.

### 3.5 **Further Supplementary Information etc and Instructions**

The Superintending Officer may issue to the Contractor, from time to time, such further or revised drawing, specification or instruction as may in his opinion be necessary for the purposes of the execution and completion of the Works. The Contractor shall carry out and be bound by the same.

### 3.6 **Use of Contractor's Proposals and Employer's Requirements**

- (1) As between the parties, copyright and other intellectual property rights in the Contractor's Proposals shall remain with the Contractor. However, the Contractor shall be deemed to have given to the Employer a non-terminable transferable non-exclusive royalty-free licence to copy, use and communicate the Contractor's Proposals, including making and using modifications of them, for the purposes of completing, operating, maintaining, altering, repairing and demolishing the Works.
- (2)

- (2) As between the parties, copyright and other intellectual property rights in the Employer's Requirements shall remain with the Employer. The Contractor may, at his cost, copy, use and communicate the Employer's Requirements, but only if the said copying, use and communication is necessary for the design, execution and completion of the Works.

### **3.7 Confidentiality of Information Supplied to Contractor**

- (1) All information issued to the Contractor shall be used by the Contractor solely for the purpose of carrying out his duties, obligations and responsibilities under this Contract and not otherwise.
- (3) The Contractor acknowledges that all official information acquired in the course of the carrying out of his duties, obligations and responsibilities under the Contract are covered by the Official Secrets Act and are strictly confidential. Such information shall not be published or communicated by the Contractor to any unauthorised person in any form at any time without the prior express sanction of the Employer. Any breach of or neglect of this responsibility may render the Contractor liable to prosecution under the said Act.

### **3.8 Delay and Time**

If the Contractor shall have duly given notice pursuant to Clause 3.4 and if the Superintending Officer shall not have complied with any of its requirements and if thereby the progress or completion of the Works or any part of the Works has been materially affected then, subject to compliance by the Contractor with Clauses 14, 23 and 32, the Superintending Officer may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 such sum as may be reasonable in respect of any Loss and Expense incurred by the Contractor.

## **4 GENERAL OBLIGATIONS OF THE CONTRACTOR**

### **4.1 Contractor's General Responsibilities**

- (1) The Contractor shall, with due care and diligence, design, execute and complete the Works and remedy any Defects to the satisfaction of the Superintending Officer. The Contractor shall provide all superintendence, labour, Plant, Construction Equipment, materials, goods and all other things, whether of a temporary or permanent nature required in and for such design, execution and completion of the Works and remedying of any Defects. Nothing in this Clause shall affect the Contractor's responsibilities under common law to complete the Works.
- (2) Without prejudice to the generality of paragraph (1) of this sub-clause, and to the Contractor's obligations under the Contract,
  - (a) the Contractor shall be fully responsible for the design of the Works, and shall complete the design in accordance with the Employer's Requirements;
  - (b) the Contractor shall be fully responsible for the choice of materials, goods, plants, workmanship to enable the Works to be constructed and completed and/or be fully operational in accordance with the Employer's Requirements;



- (c) the Contractor shall be fully responsible for the preparation, development and coordinating of all design works and construction at all stages of the Works from design stage to completion and use of the Works, including the obtaining of all necessary licenses and approvals as may be required by the authorities or under any enactment, order, ruling or regulation;
- (d) the Contractor shall be fully responsible for the adequacy, stability and safety of all site operations and methods of construction, and for the removal, if so required under the Contract or by the Superintending Officer, of all Temporary Works;
- (e) the Contractor shall be fully responsible for the adequacy and integrity of the design and the Works, and for the Works being suitable or fit in all respects for the purpose for which the Works are constructed, and in accordance with the Employer's Requirements.

#### 4.2 **Employment of Qualified Personnel**

- (1) (a) The Contractor shall engage suitably qualified personnel as required by relevant applicable laws. All fees, costs and expenses so incurred by the Contractor shall be deemed to be included in the Contract Sum.
- (b) Where an Accredited Checker or Registered Inspector is required for the Works, they shall be engaged by the Employer.
- (2) No person shall be engaged by the Contractor under Clause 4.2(1) if the Superintending Officer objects to the engagement of such qualified personnel, in which event the Contractor shall promptly nominate and engage other suitably qualified personnel.
- (3) In addition, the Superintending Officer shall have the authority to object to the continued engagement of any qualified personnel under Clause 4.2(1) at any time. The Contractor shall, upon receiving notice in writing of such objection, cease to engage or allow the qualified personnel from carrying out any work or undertaking any duties in any capacity with respect to the Contract and shall promptly replace him with other suitably qualified personnel.
- (4) Upon the engagement of the qualified personnel under Clauses 4.2(1), (2) or (3), the Contractor shall not replace such persons as the qualified personnel without the prior written concurrence of the Superintending Officer.

#### 4.3 **Responsibility for Identifying Ambiguities, Discrepancies, etc**

- (1) Either the Superintending Officer or Contractor shall forthwith notify the other party in writing as soon as either becomes aware of any ambiguity, discrepancy, conflict, inconsistency or omission in or between any of the Contract documents that may at any time be found.

- (2) Where either party has been notified, the Superintending Officer insofar as it may affect the execution or completion of the Works shall then explain and adjust it and may issue to the Contractor an instruction so as to resolve the ambiguity, discrepancy, conflict, inconsistency or omission. If, in the opinion of the Contractor, compliance with any such instruction is likely to or has involved the Contractor in any Loss and Expense which could not have been reasonably foreseen by an experienced contractor (assuming a diligent perusal of the documents submitted prior to Contract), the Contractor shall forthwith notify the Superintending Officer in writing and subject to compliance by the Contractor with Clauses 14, 23 and 32, the Superintending Officer may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 such sum as may be reasonable in respect of such Loss and Expense.
- (3) In the event that instructions issued by the Superintending Officer to resolve such ambiguity, discrepancy, conflict, inconsistency or omission result in a reduction in the Contract Sum, such reduction shall be determined in accordance with Clause 20 and the Superintending officer shall be entitled to reduce any valuation of the Works made under Clause 32 accordingly.
- (4) For the avoidance of doubt, any ambiguities, discrepancies, conflict, inconsistencies or omissions in the Contractor's Proposals shall be resolved at the Contractor's own expense.

#### 4.4 Security Deposit

- (1) Within 14 days of the Letter of Acceptance or such other longer period as may be prescribed by the Employer in the Appendix, the Contractor shall deposit with the Employer an amount specified in the Appendix as and by way of security for the due performance of and observance by the Contractor of his obligations under the Contract.
- (2) The Contractor may, in lieu of the cash deposit in Clause 4.4(1) and for the same purposes, provide a guarantee for an equivalent amount from a Monetary Authority of Singapore (MAS)-approved bank or MAS-approved insurance company and in the prescribed form.
- (3) The term "Security Deposit" shall hereafter refer to:
  - (a) the cash deposited under Clause 4.4(1); or
  - (b) the cash proceeds of any or all demands on the guarantee provided pursuant to Clause 4.4(2).

The Employer may utilise the Security Deposit to make good any loss or damage sustained or likely to be sustained as a result of any breach of contract whatsoever by the Contractor, including any liquidated damages. If the amount of the Security Deposit utilised by the Employer to make good any such loss or damage is found to be greater than the amount of loss or damage actually sustained by the Employer, then the Employer shall pay the balance of the amount utilised by the Employer without the addition of interest to the Contractor or to the bank or insurer, as the case may be, upon issue of the Final Completion Certificate. Where the Security Deposit is made in cash, the Employer shall pay to the Contractor the unutilised amount without interest upon the issue of the Final Completion Certificate.

- (4) The provisions of this Clause shall not affect the rights and remedies expressly reserved herein to the Employer or bar the Employer from claiming loss, expense, costs or damages incurred or sustained or likely to be sustained by the Employer as a result of any breach of contract of whatsoever nature by the Contractor.

#### 4.5 **Sufficiency of Tender**

- (1) The Contractor shall be deemed to have satisfied himself before submitting the Tender as to the correctness and sufficiency of the Tender which shall be deemed to cover all his obligations under the Contract and all matters and things necessary for the proper design, execution and completion of the Works.
- (2) Without prejudice to the generality of Clause 4.5(1), the Contract Sum shall be based on all drawn and written information provided to the Contractor in the Contract. The Contractor shall be deemed to have reviewed all of the Contract and have satisfied himself that the drawn and written information provided in the Contract are sufficient and adequate to enable him to prepare and complete the Contractor's Proposals and bring the Works to full completion in accordance with the Contract, the requirements set out in the Employer's Requirements and to the satisfaction of the Superintending Officer.

#### 4.6 **Patents, Trademarks, Copyrights, etc**

The Contractor shall defend, indemnify and save harmless the Employer from and against all claims and proceedings for or on account of infringements of any patent rights, design, trademark name or copyright or other protected rights in respect of any Construction Equipment, Plant, materials, goods or design (submitted by the Contractor pursuant to his obligations under the Contract) used for or in connection with or for incorporation in the Works and from or against all loss, expense, costs or damages whatsoever in respect of such claims or proceedings or in relation thereto, except where such infringement results from compliance with the design or Specifications provided by the Superintending Officer.

#### 4.7 **Design, Specifications and Other Information**

The Contractor shall design and provide all necessary specification for the Works in accordance with the site plans and requirements of the Employer. Any design detail, plan, drawing, specification, note, annotation and information required shall be provided by the Contractor in such sufficient format, detail, extent size and scale and within such time as may reasonably be required to ensure effective execution of the Works and/or as otherwise required by the Superintending Officer.

#### 4.8 **Prior Written Acceptance**

The Contractor shall not make any material deviation, alteration, addition and/or omission from the accepted design without the prior acceptance in writing by the Superintending Officer. Any acceptance or approval by the Superintending Officer of such submission shall not relieve or in any way limit the responsibility of the Contractor under the Contract.

## **5 SUB-SURFACE AND GROUND CONDITIONS**

### **5.1 Inspection of Site and Geotechnical Information**

The Contractor shall be deemed to have inspected and examined the Site and its surroundings and to have satisfied himself before submitting the Tender as to the nature of the ground and sub-soil and the form and nature of the Site. The Employer shall upon request, provide any Geotechnical information obtained from site investigation, reports, publications and/or journals concerning the site, if available, save that the Employer need not provide such Geotechnical information that it deems to be confidential or sensitive. The provision of the geotechnical information by the Employer shall not relieve the Contractor from the responsibility of carrying out his own investigation and/or search for existing and other additional geotechnical information relevant to the Site.

### **5.2 Adverse Physical Conditions**

If the Contractor shall encounter adverse physical conditions (other than weather conditions or effects due to weather conditions on the Site) in the course of carrying out sub-surface works, which adverse physical conditions could not have been reasonably foreseen by an experienced contractor and the Contractor is of the opinion that additional cost will be incurred which would not have been incurred if such adverse physical conditions had not been encountered, he shall if he intends to make any claim forthwith give notice in writing to the Superintending Officer pursuant to Clauses 14 and 23. As soon as possible thereafter, the Contractor shall give details of the anticipated effects of such adverse physical conditions the measures he is taking or is proposing to take and the extent of the anticipated delay in or interference with the execution of the Works. If, in the opinion of the Superintending Officer, such adverse physical conditions could not have been reasonably foreseen by an experienced contractor, then subject to compliance by the Contractor with Clauses 14, 23 and 32 the Superintending Officer may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 such sum as may be reasonable in respect of such Loss and Expense (but not including any loss, expenses, costs or damages which are the Contractor's responsibility under Clause 4.1(2)(d)) to which the Contractor shall have been put by reason:

- (a) of complying with any instruction which the Superintending Officer may issue to the Contractor in connection therewith; and
- (b) of any proper and reasonable measures approved by the Superintending Officer which the Contractor may take in the absence of specific instructions from the Superintending Officer.

For the purpose of this Clause, adverse physical conditions shall be deemed to include unforeseen sub-surface and ground conditions and all underground services which are in use. The cost of diversion of underground services would be borne by the Employer unless otherwise specified.

### **5.3 Underground Services**

Information on underground services obtained from the relevant service providers may be provided by the Employer. The provision of the information on underground services shall not relieve the Contractor from the responsibility of engaging licensed cables/services detection workers to carry out all cables/services detection work. In the event of any damage to the underground services, the Contractor shall be liable for all costs and charges incurred.

## **6 WORKS DESIGNED BY THE CONTRACTOR**

### **6.1 Contractor's Warranty of Design**

- (1) The Contractor shall be fully responsible for the suitability, adequacy, integrity, durability and practicality of the Contractor's Proposals.
- (2) The Contractor warrants, absolutely and independent of fault, that the Contractor's Proposals meet the Employer's Requirements and is fit for the purpose thereof. Where there is any inadequacy, insufficiency, impracticality or unsuitability in or of the Employer's Requirements or any part thereof, the Contractor's Proposals shall take into account, address or otherwise rectify such inadequacy, insufficiency, impracticality or unsuitability.
- (3) The Contractor shall indemnify the Employer against any damage, expense, liability, loss or claim which the Employer might incur, sustain or be subject to arising from any breach of the Contractor's design responsibility and/or warranty set out in this Clause and under common law.
- (4) The Contractor further accepts and is deemed to have checked and accepted full responsibility for the Contractor's Proposal, and warrants, absolutely and independent of fault, that the same meets the Employer's Requirements:
  - (a) notwithstanding that such design may be or may have been prepared, developed or issued by the Employer, any of the Contractor's consultants, his subcontractors and/or his qualified professionals/persons or caused to be prepared, developed or issued by others;
  - (b) notwithstanding any warranties, guarantees and/or indemnities that may be or may have been submitted by any other person; and
  - (c) notwithstanding that the same may have been accepted by the Superintending Officer.
- (5) The Contractor shall be fully responsible for the choice of Plant, materials, goods, workmanship, preparing, developing and coordinating all design works to enable that part of the Works to be constructed and/or be fully operational in accordance with the Contract requirements (including but not limited to the securing of all approvals that may be required by the authorities or under any enactment, order ruling or regulation).

### **6.2 Submission of Documents Prior to Commencement**

The Contractor shall not proceed with the execution of any part of the Permanent Works until he has submitted to the Superintending Officer such Drawings, Specifications, manuals, calculations and other information as shall be necessary to demonstrate the suitability, adequacy, integrity, durability and practicality of such design and the Superintending Officer has issued his acceptance in writing of such design. Acceptance by the Superintending Officer of such submission shall not relieve or in any way limit the responsibility of the Contractor under Clauses 4.1 and 6.1.

### 6.3 **Submission of Documents after Completion**

Upon the Date of Substantial Completion (or the latest Date of Substantial Completion if there is more than one Date of Substantial Completion), the Contractor shall submit for the acceptance of the Superintending Officer operation and maintenance manuals together with Drawings of the Permanent Works designed by the Contractor as completed in sufficient detail to enable the Employer to operate, maintain, dismantle, reassemble and adjust the Permanent Works incorporating such design.

### 6.4 **Amendment and Modification of Accepted Design**

The Superintending Officer may instruct the Contractor at any time, before, during or after the execution or completion of the Works to amend or modify the design provided by the Contractor in respect of any deficiency of any kind or nature discovered by the Superintending Officer and to carry out such work as is necessary to give effect to such amended or modified design in accordance with the Superintending Officer's instruction. All work necessary (including re-design work) or variations required as a result of such an instruction and their costs shall be the entire responsibility of and shall be borne by the Contractor.

## 7 **NOTICES AND FEES**

### 7.1 **Generally**

The Contractor shall comply with and give notices required by any law, regulation or by-law, or by any public authority or public service company, relating to the Works or, in the case of a public authority or public service company, with whose systems the same are or will be connected. The Contractor shall pay and indemnify the Employer against any fees or charges imposed by law, regulation or by-law, or by any public authority or public service company in respect of the Works.

### 7.2 **Variations Arising from Compliance**

The Contractor shall, before making any variation from the Contractor's Proposals necessitated by the compliance with Clause 7.1, give to the Superintending Officer notice in writing specifying and giving the reasons for such variation and applying for instructions in reference thereto. Provided that if the Contractor does not receive instructions from the Superintending Officer within 7 days from the date of the receipt of his application by the Superintending Officer, he shall proceed with the Works conforming to the law, regulation, by-law or requirements of the public authority or public service company in question. Any variation necessitated as aforesaid which could not have been reasonably foreseen by an experienced contractor at the time of submission of the Tender (and if it is not required by or in consequence of any deficiency or fault in the design) shall be deemed a variation under Clause 19 and dealt with as such.

### 7.3 **Cost of Compliance**

The Contractor shall be wholly responsible for compliance with the requirements of any law, regulation, by-law or public authority as stipulated in Clause 7.1 notwithstanding that such written law is enforced by the Employer or that such public authority is, or is part of, the Employer. The Employer shall be deemed not to be responsible or liable for:

- (a) any costs imposed by any requirements of any law, regulation, by-law or public authority; or
- (b) any default or delay by any public authority in the enforcement or implementation of any law, regulation or by-law.

## **8 SETTING OUT**

### 8.1 **Accurate Setting Out**

The Contractor shall be responsible for:

- (a) the accurate setting out of the Works in relation to the original points, lines and levels of reference given by the Superintending Officer in writing;
- (b) the correctness of the position, levels, dimensions and alignment of all parts of the Works; and
- (c) the provision of all necessary instruments, equipment, apparatus and labour in connection with the foregoing responsibilities.

### 8.2 **Errors in Setting Out**

If at any time during the execution of the Works, any error appears in the positions, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Superintending Officer shall, at his own cost, rectify such error to the satisfaction of the Superintending Officer.

## **9 PROGRAMME FOR THE WORKS**

### 9.1 **Programme to be Furnished**

- (1) Within 30 days after the date of the Letter of Acceptance or such other time as the Superintending Officer may reasonably require, the Contractor shall submit to the Superintending Officer a programme for the Works in the form and in compliance with the requirements specified in the Contract or otherwise required in writing by the Superintending Officer. The Contractor shall, whenever required by the Superintending Officer, furnish him with such further particulars and information as the Superintending Officer may reasonably require for the purpose of determining the acceptability of the programme for the Works.

- (2) Within 30 days of receiving the programme and any further particulars and information required in relation to it, the Superintending Officer shall notify the Contractor in writing if it is accepted or unacceptable. If the Contractor is not so notified, the programme shall be deemed to be accepted.
- (3) If the programme is not acceptable to the Superintending Officer, he shall notify in writing the Contractor of his reasons for rejecting it and the Contractor shall within 14 days of receiving such notification submit a programme acceptable to him. Subject to Clause 31.1, the Superintending Officer shall within a further 14 days of the submission of such further programme notify the Contractor in writing whether such further programme is accepted or unacceptable. If the Contractor is not so notified, such further programme shall be deemed to be accepted. If it is not acceptable, then the same procedure as set out above shall apply.

## 9.2 **Revision of Programme**

Should it appear to the Superintending Officer at any time that the actual progress of the Works does not conform with the programme accepted under Clause 9.1, the Superintending Officer may instruct in writing the Contractor to supply additional particulars or to submit a revised or modified programme (or both) in order to show and to ensure completion of the Works within the Time for Completion. The Contractor shall comply with such an instruction within 7 days or such other period as the Superintending Officer may specify in the instruction.

## 9.3 **Acceptance of Programme**

The acceptance by the Superintending Officer of the programme or of any revised or modified programme shall not relieve the Contractor of any of his obligations to execute and complete the Works in accordance with the Contract and by the Time for Completion, and such acceptance shall not be construed as the grant of an extension of time under Clause 14 or as a waiver of or fetter on the exercise by the Superintending Officer of his powers under Clause 15 or by the Employer or the Superintending Officer under Clause 31.

## 9.4 **Failure to Submit Adequate Programme**

In the event that the Contractor fails to comply with Clauses 9.1 and/or 9.2, without prejudice to any other rights and remedies which may be available to the Employer or the Superintending Officer, the Superintending Officer shall have the power to certify that ten percent (10%) of all moneys that may be due to the Contractor as interim payments be retained by the Employer, in addition to such other retentions as may be allowed under the terms of this Contract, until such time that the Superintending Officer is satisfied that the Contractor has complied with the requirements of Clauses 9.1 and/or 9.2. The amount retained by the Employer shall only be released to the Contractor, without interest, upon a certificate by the Superintending Officer that it may be paid.



## **10 QUALITY IN CONSTRUCTION**

### **10.1 Plant, Materials, Goods and Workmanship**

- (1) All Plant, materials, and goods shall be of good quality and of their respective kinds described in the Contract, be suitable and fit for the purpose for which they are required under the Contract and in accordance with the instructions of the Superintending Officer and shall in all cases conform with any contractual description or specification contained in the Contract.
- (2) All workmanship shall be of a good standard and without prejudice to the aforesaid, of the standard contained or referred to in the Contract and in accordance with the instructions of the Superintending Officer.
- (3) All Works shall be carried out in a good and workmanlike manner.
- (4) All Plant, materials, goods, workmanship and Works shall be subjected from time to time to such tests as the Superintending Officer may by instruction require at the place of manufacture, fabrication or preparation, or on the Site or at such other place or places as may be specified in the Contract, or at all or any of such places.
- (5) No manufactured Plant, goods or equipment shall be modified or varied in any way unless:
  - (a) such modifications will not affect the manufacturer's warranty given; and
  - (b) the Contractor obtains the approval in writing of the Superintending Officer for the carrying out of such modifications.

### **10.2 Contractor to Provide Everything Necessary for Testing**

The Contractor shall provide everything necessary as are required for examining, measuring and testing any Plant, materials goods or workmanship and shall supply samples of materials, before incorporation in the Works, for testing as may be selected and required by the Superintending Officer.

### **10.3 Cost of Samples**

Save as otherwise expressly provided in the Contract, samples shall be supplied by the Contractor at his own cost.

#### 10.4 **Cost of Test**

The cost of making any test required by the Superintending Officer shall be borne by the Contractor if the need for such a test is provided in the Contract (unless the Contract provides otherwise) or if the test is in the opinion of the Superintending Officer required in consequence of some prior failure or breach of contract or other default of the Contractor. The cost of making any test which is not so required shall be borne by the Contractor only if the test shows that the relevant Plant, materials, goods or workmanship were not in accordance with the Contract or did not meet the Superintending Officer's instructions or satisfaction. If the test shows otherwise, then subject to compliance by the Contractor with Clauses 14, 23 and 32 the Superintending Officer may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 the cost of the test and/or for any Loss and Expense which the Contractor may have incurred as a result of such test. The cost of the test shall be valued in accordance with Clause 20 as if it were a variation ordered under Clause 19 but shall not otherwise be construed as variation to the Works for the purpose of Clause 19 or 20.

#### 10.5 **Examination and Measurement of Works before Covering Up**

No Works shall be covered up or put out of view without the approval of the Superintending Officer or the Superintending Officer's Representative and the Contractor shall afford full opportunity for the Superintending Officer or the Superintending Officer's Representative to examine and measure any of the Works which is about to be covered up or put out of view. The Contractor shall give due notice to the Superintending Officer's Representative whenever any such Works are ready or about to be ready for examination and the Superintending Officer's Representative shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor in writing accordingly, attend for the purpose of examining and measuring such Works. If the Contractor shall fail and/or neglect to comply with the provisions of this Clause:

- (a) the Superintending Officer may require the Contractor to uncover any part or parts of the Works or to do all such things as are necessary for the Superintending Officer or the Superintending Officer's Representative to inspect the Works as constructed and the cost of such requirements as directed by the Superintending Officer shall be borne by the Contractor whether or not such part or parts uncovered are found to be executed in accordance with the Contract and the Contractor shall not be entitled to any extension of time for any delay thereby caused; and
- (b) the additional cost of any measures or requirements carried out by or directed by the Superintending Officer shall be borne by the Contractor.

#### 10.6 **Uncovering and Making Openings**

The Contractor shall uncover any part or parts of the Works or make openings in or through the same as the Superintending Officer may from time to time instruct in writing and shall reinstate and make good such part or parts to the satisfaction of the Superintending Officer. If any such part or parts have been covered up or put out of view after compliance with the requirements of Clause 10.5 and are found to be executed in accordance with the Contract, then subject to compliance by the Contractor with Clauses 14, 23 and 32 the Superintending Officer may grant an extension of time pursuant to Clause 14, and may certify pursuant to Clause 32 such sum as may be reasonable to cover the costs of uncovering, making openings in or through, reinstating and making good the same and any Loss and Expense but in any other case all such costs and any Loss and Expense shall be borne by the Contractor and the Contractor shall also not be entitled to any extension of time for any delay caused by such instruction.

## 10.7 Defects during the Progress of the Works

Either the Superintending Officer or the Contractor shall forthwith notify the other party in writing as soon as either finds any defect during the progress of the Works. The Superintending Officer may instruct the Contractor in writing to do any or all of the following:

- (a) To demolish and reconstruct any work so that it is in accordance with the Contract.
- (b) To remove from or not to bring to the Site any materials or goods which in the opinion of the Superintending Officer are or may not be in accordance with the Contract and to replace such materials or goods with materials or goods which are in accordance with the Contract.
- (c) To remove from the Site any Plant which in the opinion of the Superintending Officer is not or may not be in accordance with the Contract and to provide Plant which is in accordance with the Contract by the provision of new or alternative or repaired Plant.

The Superintending Officer's instruction may specify the time or times within which the Contractor is to comply with the instruction. If the Contractor disputes the instruction of the Superintending Officer, he shall nevertheless comply with it but he may take action in accordance with and subject to Clauses 14, 23, 32 or 35. If the Superintending Officer or an arbitrator should decide that the Superintending Officer was not justified either wholly or in part in giving the instruction, then provided that the Contractor shall have complied with Clauses 14, 23 and 32 the Superintending Officer may certify (or the arbitrator may award) any Loss and Expense incurred by the Contractor and may grant an extension of time pursuant to Clause 14.

## 10.8 Default of Contractor in Compliance

If the Contractor should fail or refuse to comply with an instruction of the Superintending Officer pursuant to Clause 10.7, the Employer shall be entitled without prejudice to any other rights and remedies to employ and pay others to carry out the subject-matter of the instruction and the amount of any loss, expense, costs or damages suffered or incurred by the Employer shall be recoverable from the Contractor.

# 11 ADMINISTRATION

## 11.1 Days and Hours of Working

Subject to any provision to the contrary contained in the Contract, and subject to any written law on noise pollution (including the Environmental Protection and Management (Control of Noise at Construction Sites) Regulations, no work which requires supervision shall be carried out during the night or on Sundays or on public holidays without the written permission of the Superintending Officer except when such work is rendered unavoidable or necessary for the saving of life or property or for the safety of the Works, in which case the Contractor shall inform the Superintending Officer at the earliest possible opportunity of the same. For the purposes of this Clause, the term "night" shall mean the period from 6.00 p.m. to 8.00 a.m.

## 11.2 **Contractor's Representative**

- (1) The Contractor shall appoint a competent and authorised person to represent him (hereinafter called the "Contractor's Representative") and shall notify in writing the Employer and the Superintending Officer of the name of such person. The Contractor's Representative shall be constantly on the Site during normal working hours and shall give his whole time to the superintendence of the Works including the remedying of any Defects after the Date of Substantial Completion. Any instructions given to him by the Superintending Officer shall be deemed to have been given to the Contractor.
- (2) The Superintending Officer shall be empowered to object to the appointment or employment or continued employment of any person appointed or employed as the Contractor's Representative and upon receipt from the Superintending Officer of a notice of objection in writing, the Contractor shall forthwith remove him from the Site provided always that the Superintending Officer shall not issue such a notice of objection unreasonably or vexatiously.

## 11.3 **Removal of Workmen and Other Personnel**

The Contractor shall use or employ in and about the execution of the Works only such persons as are careful, skilled and experienced in their respective vocations, trades and callings and the Superintending Officer shall be at liberty to object to and require the Contractor to remove immediately from the Works any such person employed by the Contractor in or about the execution of the Works who in the opinion of the Superintending Officer misconducts himself or is incompetent or negligent in the proper performance of his duties and whose continued presence is undesirable or unacceptable. Such persons shall not be again used or employed upon the Works without the prior written permission of the Superintending Officer.

## 11.4 **Access for Superintending Officer**

The Superintending Officer and any person authorised by him to examine or inspect the Works shall at all reasonable times have access to the Works and to the factories, workshops or other places where any Plant, materials, goods or work are being fabricated, prepared or stored for the Contract. The Contractor shall ensure that subcontracts shall contain provisions entitling the Superintending Officer and any person authorised by him to have such access.

## **12 POSSESSION OF SITE AND COMMENCEMENT OF WORKS**

### **12.1 Commencement of Works**

The Contractor shall commence the Works:

- (a) on the date specified in the Letter of Acceptance; or
- (b) if no date is specified in the Letter of Acceptance, on the date specified in an instruction in writing to that effect from the Superintending Officer.

Thereafter the Contractor shall proceed with due diligence and expedition and without delay in accordance with the Contract and in accordance with the programme or any revised or modified programme accepted by the Superintending Officer pursuant to Clause 9. The Time for Completion shall run from the date on which the Contractor is to commence the Works under this Clause.

### **12.2 Site Possession**

Save insofar as the Contract may expressly provide, the Employer shall, on or before the date when the Contractor is to commence the Works pursuant to Clause 12.1, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence the construction of the Works and will from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works in accordance with the Contract. The Contractor's licence to occupy and use the Site for the purposes of carrying out the Works shall not be exclusive and shall be subject to the Employer's rights under Clause 12.5 and as otherwise provided in the Contract to enter so much of the Site as may not be required by the Contractor for the purposes of the Works either because a phase or part of the Works has been completed (whether or not a Certificate of Substantial Completion has been issued in respect such phase or part) or because work is not actively being carried out on that phase or part of the Works at that time.

### **12.3 Failure to Give Possession**

If the Employer shall fail to give possession of the Site or any part of the Site in accordance with Clause 12.2, then subject to compliance with Clauses 14, 23, and 32 the Superintending Officer may grant an extension of time pursuant to Clause 14 and may certify pursuant to Clause 32 any Loss and Expense which the Contractor may have incurred by reason of such failure.

### **12.4 Rights of Access etc**

The Contractor shall at his own expense be responsible for obtaining any rights of way or of access (including rights of over-sailing) that may be required by him or his methods of operation for the purposes of the execution and completion of the Works. The Contractor shall also provide at his own cost and expense any additional accommodation or land outside the Site required by him for the purpose of the Works.

## 12.5 Other Contractors

- (1) The Employer reserves the right to employ or otherwise engage any persons to carry out on Site, work which does not form any part of the Works, whether or not information with respect to such work is provided in the Contract. Every person so deployed shall be deemed to be a person for whom the Employer is responsible and not to be a subcontractor. The Contractor shall permit the execution of any work by any such person deployed by the Employer on 7 days' written notice given by the Superintending Officer, or where the Superintending Officer deems the work to be urgent, then as soon as practicable. For the avoidance of doubt, any properly authorised authority or statutory boards who may be deployed in the execution on or near the Site of any work not in the Contract shall not be regarded as contractors of the Employer and shall not be deemed to be a person for whom the Employer is responsible.
- (2) If any part of the Works depends for proper execution or results upon the work of any such person employed or engaged by the Employer as aforesaid, the Contractor shall inspect and promptly report in writing to the Superintending Officer any apparent discrepancies or defects in such work that may materially and adversely affect the execution of the Works. Failure of the Contractor so to report to the Superintending Officer shall constitute acceptance by the Contractor of such person's work as fit and proper to receive into the Works.

## 13 SUSPENSION

### 13.1 Suspension of Work

- (1) The Contractor shall, on the instruction in writing of the Superintending Officer, suspend the progress of the Works or any phase or part of the Works for such time or times and in such manner as the Superintending Officer may consider necessary and shall, during such suspension, properly protect and secure the Works or such phase or part of the Works so far as is necessary in the opinion of the Superintending Officer.
- (2) Subject to Clauses 13.2, 23 and 32, the Superintending Officer may certify any Loss and Expense which the Contractor may have incurred in giving effect to the instruction beyond any loss, expense, costs or damages which would have been incurred or for which the Contractor had or ought to have allowed in the Tender and, subject to Clause 14, may grant the Contractor an extension of time unless such instruction, loss, expense, costs or damages or extension is:
  - (a) otherwise provided for in the Contract; or
  - (b) necessary by reason of some default on the part of the Contractor or is caused by an event which it was or would have been the Contractor's responsibility to have overcome; or
  - (c) necessary for the proper execution of the Works or for the safety of the Works or any part of the Works.

### 13.2 **Suspension Lasting More than 90 Days**

If the progress of the Works or any part of the Works is suspended on the instruction in writing of the Superintending Officer for more than 90 days, the Contractor may, unless such suspension is otherwise provided for in the Contract, or continues to be necessary by reason of some default on the part of the Contractor, or for the proper execution of the Works, or for the safety of the Works or any part of the Works, serve a notice in writing on the Superintending Officer requiring permission within 30 days from the receipt of such notice to proceed with the Works or that part of the Works which is suspended. If such permission is not granted within such period of 30 days, the Contractor may by a further notice in writing so served elect to treat the suspension where it affects part only of the Works as an omission of such part under Clause 19.1 or, where it affects the whole of the Works, as if the Employer had at the expiry of such period of 30 days given a Notice of Termination pursuant to Clause 31.4 in which event the Contractor shall be entitled to be paid in accordance with the provisions of Clause 31.4(2).

## 14 **TIME FOR COMPLETION**

### 14.1 **Contractor to Complete on Time**

The Contractor shall complete the Works and any phase or part of the Works within the Time or Times for Completion stated in:

- (a) The Letter of Acceptance; or
- (b) The Appendix, as the case may be.

### 14.2 **Extension of the Time for Completion**

The time within which the Works or any phase or part of the Works is to be completed may be extended by the Superintending Officer either prospectively or retrospectively and before or after the Time for Completion by such further period or periods of time as may reasonably reflect delay in completion of the Works which, notwithstanding due diligence and the taking of all reasonable steps by the Contractor to avoid or reduce such delay, will or has been caused by any of the following events:

- (a) An event which is beyond the Contractor's reasonable control (a force majeure event).
- (b) Exceptionally adverse weather conditions or severe haze conditions the assessment of which shall be in accordance with the relevant provision in the Contract.
- (c) Industrial action by workmen, strikes, lock-outs or embargoes affecting any of the trades employed upon the Works or in the preparation, manufacture or transportation of materials or goods required for the Works and provided the same are not due to any unreasonable act or default of the Contractor or of any subcontractor or of any person employed or engaged upon or in connection with the Works or who may be on site in connection with the Works. Provided that this event shall only apply if the industrial action by workmen, strike, lock-out or embargo causing the delay is in Singapore.
- (d) One or more of the "excepted risks" referred to in Clause 25.2.

- (e) Compliance with the requirements of any law, regulation, by-law or public authority or public service company as stipulated in Clause 7.1.
- (f) Fire, storm, lightning, high winds, earthquake or flooding.
- (g) Ordering of test by the Superintending Officer which is not provided by the Contract pursuant to Clause 10.4 and the uncovering or making openings for inspection of any work pursuant to Clause 10.6, unless the test or inspection showed that the Plant, materials, goods or workmanship had not been in accordance with the provisions of the Contract.
- (h) The issue of any instruction for a variation.
- (i) The issue of an instruction by the Superintending Officer in relation to a Provisional Sum Item but only if and to the extent that such instruction gives rise to a variation of the work described under the Provisional Sum Item.
- (j) Failure of the Employer to give possession of the Site or any part of the Site to the Contractor in as required by Clause 12.2.
- (k) Subject to Clause 13.1(2) an instruction by the Superintending Officer to suspend any work.
- (l) The Contractor not having received from the Superintending Officer within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice has been given by the Contractor in accordance with Clause 3.4.
- (m) Acts or omissions of other contractors engaged by the Employer in executing work not forming part of the Contract.
- (n) Any act of prevention or breach of contract by the Employer not mentioned in this Clause.
- (o) Any search instructed by the Superintending Officer under Clause 18.4 and such search reveals any defect, shrinkage or other fault for which the Contractor is not liable.
- (p) Adverse physical conditions which fall within Clause 5.2.
- (q) Epidemics or pandemics resulting in shortages of the labour, goods, materials or Construction Equipment required for the Works or inability to proceed with any part of the Works.
- (r) Any other ground for extension of time expressly mentioned in the Contract and not mentioned in this Clause 14.2.

Provided always that the Contractor shall not be entitled to any extension of time where the instructions, or acts of the Employer or the Superintending Officer are necessitated by or intended to cure any default of or breach of contract by the Contractor and such disentitlement shall not set the Time for Completion at large.



### 14.3 Notice

- (1) If the Contractor is of the opinion that the progress or completion of the Works is or will be or has been delayed by any of the events stated in Clause 14.2, he shall forthwith notify the Superintending Officer in writing of such event and shall in any case do so within 60 days of the occurrence of such event. If the Contractor is of the opinion that the event is one which entitles him to an extension of time under Clause 14.2, he shall in that notice and in any case not later than the 60 day period set out above inform the Superintending Officer, together with the appropriate Contract references, of the reasons why there will or may be delay to the completion of the Works or any part or section of the Works, the length of the delay and of the extension of time required, and the effect of the event on the programme accepted under Clause 9. Both the submission of a notice in writing and of the further information within the 60 day period set out above shall be conditions precedent to any entitlement to an extension of time. Subject also to compliance with Clause 14.3(2) hereof, the Superintending Officer shall notify the Contractor in writing within 60 days of the receipt of the notice in writing whether in his opinion the event is one which does or might entitle the Contractor to an extension of time.
- (2) If the Superintending Officer is of the opinion that the notice given by the Contractor or the accompanying references or reasons are insufficient to enable him to decide on the Contractor's application, the Superintending Officer may require the Contractor to provide within 14 days or such other period as may be required by the Superintending Officer such further particulars concerning any event and the circumstances of the delay, the measures planned and/or taken to prevent or minimise delay and any further information which the Superintending Officer may reasonably require.
- (3) When the Superintending Officer has received sufficient information to enable him to decide the Contractor's application, he shall, within a reasonable time, make in writing to the Contractor such extension of time, if any, of the whole or any phase or part of the Works (as the case may be) as may in his opinion be fair, reasonable and necessary for the completion of the Works. The Superintending Officer shall take into account the effect, or extent, of any work omitted under the Contract and shall also take into account whether the event in question is one which will delay completion of the Works. The Superintending Officer shall also take into account any delays which may operate concurrently with the delay due to the event or events in question and which are due to acts or default on the part of the Contractor.
- (4) Provided that the Contractor shall have complied with the requirements of Clause 14.3(1), if the Contractor shall not have provided the Superintending Officer with sufficient information to enable him to decide the Contractor's application, the Superintending Officer may nevertheless make in writing to the Contractor such extension of time of the whole or any phase or part of the Works (as the case may be) as may in his opinion appear to be fair, reasonable and necessary for completion of the Works on the information available to him, taking into account all the matters set out in Clause 14.3(3).
- (5) Provided that the Contractor shall have complied with the requirements of Clause 14.3(1), if the Contractor is dissatisfied with any extension of time made or not made by the Superintending Officer and shall dispute it, he shall not in any reference to the Superintending Officer or to any arbitrator pursuant to Clause 35 or otherwise (or to any other tribunal) claim a greater extension of time than that notified pursuant to Clause 14.3(1) or advance new or additional grounds not submitted to the Superintending Officer before he made his decision, nor shall the Superintending Officer or the arbitrator (or any other tribunal) in considering the dispute make a decision taking into account information which was not available to the Superintending Officer at the time when the Superintending Officer made his original decision to make or not to make an extension of time.

## **15 EXPEDITING PROGRESS OF WORKS**

### **15.1 Notification to Expedite**

If for any reason which does not entitle the Contractor to an extension of time, the rate of progress of the Works or any phase or part of the Works is at any time, in the opinion of the Superintending Officer, too slow to achieve completion by the Time for Completion of the Works or the relevant phase or part of the Works, the Superintending Officer shall notify in writing the Contractor accordingly. The Contractor shall thereupon take such steps as are necessary to expedite progress and to complete the Works or the relevant phase or part of the Works in accordance with the Contract. Such steps shall include, if required by the Superintending Officer, the preparation of a revised or modified programme for acceptance pursuant to Clause 9. Unless the Superintending Officer shall issue an instruction for variation as described in Clause 19.1(f), the Contractor shall not be entitled to any additional payment whatsoever for taking any of the steps referred to herein.

### **15.2 Work to Expedite Progress**

If, as a result of any notice given by the Superintending Officer under Clause 15.1, the Contractor considers that it is necessary to do any work at night or on Sundays or on public holidays, he shall be entitled to seek the consent of the Superintending Officer so to do, which consent shall not be unreasonably withheld.

## **16 LIQUIDATED DAMAGES**

### **16.1 Payment by the Contractor**

- (1) If the Works shall not have been substantially completed within the Time for Completion or any extended time made pursuant to Clause 14, the Contractor shall pay or allow to the Employer liquidated damages calculated at the rate or rates stated in the Appendix hereto for the period during which the Works shall so remain incomplete and the Employer may recover the amount of such liquidated damages from the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.
- (2) The provisions of Clause 16 shall apply mutatis mutandis to any phase or part of the Works for which a separate rate of liquidated damages is stated in the Appendix hereto.

## 16.2 **Reduction of Liquidated Damages**

If, before the Time for Completion has expired, the Superintending Officer has issued a Certificate of Substantial Completion in respect of any part of the Works (or, where applicable, in respect of any part of any phase or part of the Works set out in the Appendix), the Contractor shall nevertheless remain liable for liquidated damages for any failure to complete the remainder of the Works by the Time for Completion but such liquidated damages in respect of the remainder of the Works (or, where applicable, in respect of the remainder of that particular phase or part of the Works) shall, for any period of delay after the date stated in such Certificate of Substantial Completion, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part so certified bears to the value of the whole of the Works (or, where applicable, of that particular phase or part of the Works).

## 16.3 **Employer's Common Law Rights for Damages**

In the event that the Employer for whatever reason shall not be entitled in law to recover liquidated damages, the Employer shall remain entitled to recover such loss, expense, costs or damages as he would have been entitled under common law as if the provisions in this Clause relating to the payment of liquidated damages had not formed part of the Contract. The Contractor's liability to pay the Employer such loss, expense, costs or damages shall not be limited in any way whatsoever by the amount of liquidated damages for which he might otherwise have been liable.

## 16.4 **Extension of Time During Delay Period**

For the avoidance of doubt, if the Contractor shall have failed to complete the Works or any phase or part of the Works by the Time for Completion and the execution of the Works thereafter is delayed by any of the events set out in Clause 14.2(g) to (p) inclusive, the Employer's right to liquidated damages shall not be affected thereby but, subject to compliance by the Contractor with Clause 14, the Superintending Officer shall grant an extension of time pursuant to Clause 14. Such extension of time shall be added to the Time for Completion of the Works (or of the relevant phase or part).

## **17 SUBSTANTIAL COMPLETION**

### **17.1 Certificate of Substantial Completion**

- (1) When the Contractor considers that the whole of the Works have been substantially completed, and where applicable, where the Temporary Occupation Permit has been obtained by the Contractor, he may give notice in writing to that effect to the Superintending Officer accompanied by an undertaking, in the prescribed form, to complete any outstanding work during the Defects Liability Period. Within 21 days of the receipt of such notice and undertaking the Superintending Officer shall either:
- (a) issue to the Contractor a Certificate of Substantial Completion, with a copy to the Employer, stating the date on which in his opinion the Works were substantially completed in accordance with the Contract; or
  - (b) give instructions in writing to the Contractor specifying all the works which in his opinion are required to be done by the Contractor before the issue of a Certificate of Substantial Completion.

Provided that the Superintending Officer may, at his discretion and without the receipt of any notice or undertaking from the Contractor, exercise either of the powers given to him in Clause 17.1(1)(a) and Clause 17.1(1)(b).

- (2) If the Superintending Officer has given instructions pursuant to Clause 17.1(1)(b):
- (a) he may notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the works specified therein and such defects shall comprise part of the said instructions; and
  - (b) the Contractor shall not be entitled to be issued the Certificate of Substantial Completion until the works specified in the said instructions have been completed to the satisfaction of the Superintending Officer.

### **17.2 Access for Remedial Work**

Upon the Date of Substantial Completion, the Contractor's licence to occupy the Site for the purposes of carrying out the Works shall terminate save that the Contractor shall be permitted to re-enter the Site to carry out any outstanding work (and the rectification of defects during the Defects Liability Period) with due expedition and without delay, upon giving reasonable notice in writing to the Superintending Officer.

### 17.3 **Completion of Phase or Part**

- (1) In accordance with the procedure set out in Clause 17.1, the Contractor may request the Superintending Officer to issue a Certificate of Substantial Completion in respect of:
  - (a) any phase or part of the Works in respect of which a separate Time for Completion is provided in the Appendix;
  - (b) any substantial part of the Works which has been both completed to the satisfaction of the Superintending Officer and, otherwise than as provided for in the Contract, occupied or used by the Employer; or
  - (c) any part of the Works in respect of which the Superintending Officer has issued an instruction for early occupation or use by the Employer prior to the completion of the whole of the Works (where such prior occupation or use is not provided for in the Contract or has not been agreed by the Contractor).
- (2) The provisions of Clause 17.1 shall apply mutatis mutandis to the provisions of Clause 17.3(1).

## 18 **DEFECTS**

### 18.1 **Completion of Outstanding Works and Remedying Defects**

To the intent that the Works shall, at or before the expiration of the Defects Liability Period, be in the condition required by the Contract and shall meet all other requirements of the Contract, the Contractor:

- (a) shall complete with due expedition and without delay any work outstanding at the Date or Dates of Substantial Completion (whether or not the subject of any undertaking to do so) and as may be instructed by the Superintending Officer; and
- (b) shall execute all such works of amendment, reconstruction and remedying defects, shrinkages or such other faults of whatever nature as the Superintending Officer may at any time during the Defects Liability Period or within 14 days after its expiration instruct the Contractor to execute.

For the avoidance of doubt, the obligation of the Contractor to comply with this Clause shall not in any way prejudice the Employer's rights under the provisions of any guarantee relating to the Works or any phase or part of the Works required by the Contract or provided by any supplier or subcontractor.

## 18.2 **Cost of Remedying Defects**

All work referred to in Clause 18.1(b) shall be executed by the Contractor at his own cost if the necessity for such work is in the opinion of the Superintending Officer, due to:

- (a) the fact that it is a Defect; or
- (b) any fault in the design of the whole or any part of the Works; or
- (c) the 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 the necessity for the execution of any work is other than one of the causes set out in paragraphs (a) - (c) above, subject to compliance by the Contractor with Clause 23, such work shall be valued in accordance with Clause 20 as if it were a variation ordered under Clause 19 but shall not otherwise be construed as a variation to the Works for the purposes of Clause 19 or 20.

## 18.3 **Diminution in Value of Works**

If any Defect which the Contractor would otherwise have been liable to rectify at his own cost is such that in the opinion of the Superintending Officer it will be impracticable or inconvenient to rectify, the Superintending Officer shall ascertain the diminution in the value of the Works to the Employer due to such Defect and the amount of the diminution shall be recoverable by the Employer.

## 18.4 **Notify and Search for Defects**

Either the Superintending Officer or the Contractor shall forthwith notify the other party in writing as soon as either becomes aware of any Defect, shrinkage or other fault in the Works which appears at any time from the commencement of Works to the end of the Defects Liability Period. Upon sending or receiving such notification in writing, the Superintending Officer may instruct the Contractor to search under the direction of the Superintending Officer for the cause of the Defect, shrinkage or other fault. If such Defect, shrinkage or other fault is one for which the Contractor is liable under the Contract or the necessity for such a search is caused by the Contractor or arises from some default by the Contractor, the cost of the work carried out in searching as aforesaid shall be borne by the Contractor and the Contractor shall in such case remedy such Defect, shrinkage or other fault at his own cost.

## 18.5 **Liability at Common Law**

The provisions of Clause 18.1 to 18.4 shall not derogate in any way whatsoever from the Contractor's liability under the Contract or otherwise for defective work at common law.

## **19 VARIATIONS TO THE WORKS**

### **19.1 Variations**

The term "variation" shall mean any change in the original Contract intention as deduced from the Contract as a whole describing or defining the Works to be carried out and shall include but is not restricted to:

- (a) an increase or decrease in the quantity of any part of the Works;
- (b) an addition to or omission from the Works;
- (c) a change in the character, quality or nature of any part of the Works;
- (d) a change in the levels, lines, positions and dimensions of any part of the Works;
- (e) the demolition of or removal of any part of the Works no longer desired by the Employer or the Superintending Officer;
- (f) a requirement to complete the Works or any phase or part by a date earlier than the relevant Time for Completion.

For the avoidance of doubt the term "variation" shall include any changes as aforesaid which may be designed to alter the use to which the Works will be put, but shall exclude any instruction (which would otherwise be a variation) which has arisen due to or is necessitated by or is intended to cure any default of or breach of contract by the Contractor.

### **19.2 Power to Order Variations**

The Superintending Officer may at any time issue an instruction in writing requiring a variation. If or to the extent that an instruction does not state that it requires a variation but the Contractor considers that it does require a variation, the Contractor shall within 14 days from the date of receipt of the instruction notify in writing the Superintending Officer who may, if he thinks fit, within 14 days from the date of receipt of the Contractor's notification, confirm, modify, rescind or contradict in writing the instruction and the Contractor shall then comply forthwith.

### **19.3 Submission of Quotations**

The Superintending Officer may, before issuing an instruction for any variation, require the Contractor to submit a quotation for any proposed variation and the Contractor shall be obliged to submit such quotation in writing at his own cost. The Superintending Officer may before or after issuing an instruction under Clause 19.2 accept in writing the Contractor's quotation and the provisions of Clause 20 shall not apply to the valuation of that variation nor shall the Contractor be entitled to any Loss and Expense in respect of that instruction or any other compensation, damages or other amount whatsoever other than a valuation made in accordance with the accepted quotation. An instruction requiring a variation shall not be treated as an acceptance of any quotation.

## 20 VALUATION OF VARIATIONS

### 20.1 Valuation Methods

Subject to Clause 19.3, all variations shall be valued as follows:

- (a) Where there is an increase or decrease in the scope of the Contractor's design services from changes of whatever nature in the Employer's Requirements, the Superintending Officer shall assess the amount of design fee to be paid to the Contractor or recovered from the Contractor, as the case may be, based on a percentage of the value of the varied work as set out in the Appendix; or
- (b) Subject to Clause 20.1(a) above,
  - (i) Where the varied work is of a similar character to, is executed under similar conditions as and does not significantly change the quantity of work described in the Contract, the Rates for the Works as set out in the Contract shall determine the valuation; or
  - (ii) Where the varied work is of similar character to work described in the Contract but is not executed under similar conditions of such work described in the Contract or involves significant changes in the quantity of such work described in the Contract, the Rates for the Works as set out in the Contract shall be the basis for determining the valuation but with a fair allowance for any differences in such conditions and/or quantity; or
- (c) Where (a) and (b) above do not apply, then by measurement and valuation at fair market rates and prices;
- (d) Where none of the above methods is applicable or appropriate in the circumstances of the particular varied work, then the valuation shall be based on the cost of necessary Plant, materials or goods labour and any additional equipment necessary for the execution of the varied work plus 15 per cent. This percentage shall be deemed to compensate adequately the Contractor in respect of all supervision, the use of Construction Equipment, overheads, profit and all other costs or damages incurred in or connected with the execution of the varied work;
- (e) The Rates for the Works as set out in the Contract shall determine the valuation of items omitted; provided that if omissions vary the conditions under which any remaining items of work are carried out, the values for such remaining items shall be determined under Clauses 20.1(b) or (c) or (d) as the case may be.



## 20.2 Agreement on Valuation

- (1) The Contractor shall carry out all variations instructed by the Superintending Officer pending the valuation of the variations by the Superintending Officer.
- (2)
  - (a) Upon progressive completion of the variation works, the Contractor may submit his claim for the variations in his Payment Claims in accordance with clause 32.1. The Superintending Officer shall certify such amounts as are due to the Contractor for the variations in accordance with clause 32.2.
  - (b) When the Contractor considers that the respective variation works have been substantially completed, he may give notice in writing to that effect to the Superintending Officer. The Superintending Officer shall either:
    - (i) certify in writing that the variation works in his opinion were substantially completed; or
    - (ii) give instructions in writing specifying the works which in his opinion are required to be done.

Provided that the Superintending Officer may, at his discretion and without the receipt of any notice from the Contractor, exercise either Clause 20.2(2)(b)(i) or Clause 20.2(2)(b)(ii).

- (c) The Contractor shall, within 30 days from the date of the Superintending Officer's certification, submit to the Superintending Officer a valuation of the said variations (with such details and particulars including invoices and receipts as the Superintending Officer may require for the purpose of valuing the said variations) based on the completed variation works. Thereafter, the Contractor shall include his claim for this valuation in the next Payment Claim to be submitted by the Contractor under Clause 32.1.
- (d) The Superintending Officer shall, within 60 days from the date of his certification, value the total amount due for the said variations based on the completed variation works and shall notify the Contractor in writing of the value of the variations. Thereafter, the Superintending Officer shall certify the amounts due to the Contractor for the said variations in the next Payment Certificate to be issued by the Superintending Officer under Clause 32.2.
- (e) The Contractor shall, within 30 days of the receipt of the Superintending Officer's notice of the value of the variations, give notice of any disagreement in writing to the Superintending Officer and shall at the same time set out the valuation which he considers should have been made, giving full details and particulars and the appropriate Contract references. If the Contractor does not give notice of his disagreement with the valuation of the Superintending Officer within 30 days of receipt of the Superintending Officer's valuation, he shall be deemed to have accepted the valuation and such valuation shall be final and binding on the Contractor and shall not thereafter be disputed or questioned by the Contractor in any way whatsoever.
- (f) Following receipt of the Contractor's notice of disagreement, the Superintending Officer may amend the whole or any part of any valuation previously made and make the necessary adjustment in the next Payment Certificate.

- (g) Any notice of disagreement submitted by the Contractor in accordance with Clause 20.2(2)(e) which is not dealt with or resolved by the Superintending Officer's amendment in the next Payment Certificate shall be reconsidered by the Superintending Officer when the Superintending Officer issues the Interim Final Account in accordance with Clause 32.5(1) and (2).

### 20.3 **Provisional Sum Items**

Where the Contractor is instructed by the Superintending Officer to execute or provide some or all of the Plant, materials, goods or work described as a Provisional Sum Item, the valuation of that instruction shall be made in accordance with Clause 20.1 (unless otherwise provided in the Contract).

### 20.4 **Dayworks**

- (1) The Superintending Officer may, if in his opinion it is necessary and desirable, order in writing that any work to be carried out as a result of an instruction ordered under Clause 19.2 shall be executed on a daywork basis.
- (2) The Contractor shall then be paid for such work at the daywork rates set out in the Contract or if no such rates are available as provided, then at the rates determined by Superintending Officer as prevailing when the work is actually carried out
- (3) It is a condition precedent to payment that the Contractor shall submit to the Superintending Officer the daywork sheets specifying the number of man-hours spent on the work on a daily basis, and statement showing any Plant, Construction Equipment, material and goods necessary in respect of all works executed on a daywork basis for verification within 3 days after the work has been executed.
- (4) The Contractor shall inform the Superintending Officer in advance whenever he proposes to carry out works on a daywork basis.

## 21 **MEASUREMENT**

### 21.1 **Contractor to Attend Measurement**

The Superintending Officer shall give reasonable notice to the Contractor when he requires any part of the Works to be measured. The Contractor shall then:

- (a) forthwith attend or send a properly qualified and authorised representative to take jointly with the Superintending Officer any measurements of the Works that may be necessary for the purposes of any valuation, including the valuation of any variation; and
- (b) supply documents and information necessary for the taking or calculation of any measurement and all other particulars that may be reasonably required by the Superintending Officer for the purposes of establishing an agreed measurement.

### 21.2 **Contractor to Provide Assistance**

The Contractor shall at his own cost provide the Superintending Officer with assistance and with every appliance necessary for measuring the Works.

### 21.3 **Record of Measurements**

Any measurements taken jointly shall be recorded at the time and signed by the representative of the Contractor and the Superintending Officer. If the Contractor does not attend or send a representative to take the measurements jointly with the Superintending Officer, the measurements made by the Superintending Officer notified in writing to the Contractor shall be taken to be correct and shall be final and binding on the Contractor.

### 21.4 **Failure to Agree Measurements**

If the Contractor attends or sends a representative but there is no agreement on the whole or part of the measurements, the Contractor shall notify in writing the Superintending Officer within 14 days of the date upon which the measurements were taken of the respects in which the measurements taken by the Superintending Officer are not accepted as correct. Such notice shall set out in detail the documents and other information in justification.

## **22 CLAIMS FOR LOSS AND EXPENSE**

### 22.1 **Reasons for Loss and Expense**

The Contractor shall be entitled to recover as Loss and Expense sustained or incurred by him and for which he would not be reimbursed by any other provision of the Contract, all loss, expense, costs or damages of whatsoever nature and howsoever arising as a result of the regular progress and/or completion of the Works or any phase or part of the Works having been disrupted, prolonged or otherwise materially affected by:

- (a) the issue of an instruction for a variation;
- (b) the issue of an instruction in relation to Provisional Sum Items but only if and to the extent that such instruction on a true interpretation of the Contract as a whole, constitutes a variation in kind or extent, from the Works described under the Provisional Sum Items;
- (c) failure of the Employer to give possession of the Site to the Contractor in accordance with Clause 12.2;
- (d) the suspension by the Superintending Officer of any work for a cause which entitles the Contractor to recover Loss and Expense;
- (e) the Contractor not having received from the Superintending Officer within a reasonable time necessary Drawings, instructions or other information in regard to the Works for which notice in writing had been given by the Contractor in accordance with Clause 3.4;
- (f) the issue of an instruction by the Superintending Officer under any of Clauses 3.5, 4.3, 10.4, 10.6, 18.2, 18.4 and 25.1(3) but only if the Employer is liable to pay to the Contractor any Loss and Expense by reason of such an instruction;
- (g) adverse physical conditions of which notice in writing has been given pursuant to Clause 5.2;

- (h) acts or omissions of other contractors engaged by the Employer in executing work not forming part of this Contract; or
- (i) any act of prevention or breach of contract by the Employer not mentioned in this Clause.

Provided always that the Contractor shall not be entitled to any such Loss and Expense where it arises from or is necessitated by or is intended to cure any default or breach of contract by the Contractor.

## 22.2 **Sufficiency of Loss and Expense**

The Contractor shall not be entitled to recover any loss, expense, costs or damage whatsoever resulting from any disruption, prolongation or other material effect to the regular progress or completion of the Works or any phase or part of the Works except in accordance with the express provisions of the Contract.

# 23 **PROCEDURE FOR CLAIMS**

## 23.1 **Notice of Claims**

- (1) Whenever the Contractor intends to claim any payment pursuant to the Contract (other than Clause 20), he shall give notice in writing of his intention to do so to the Superintending Officer within 60 days after the event giving rise to his claim has first arisen and shall comply with Clause 23.2 to 23.4. The notice shall specify the event and its consequences, and the giving of such a notice shall be a condition precedent to any entitlement that the Contractor may have.
- (2) The fact that the Contractor does not or may not know whether the valuation of a variation has been agreed or whether the Superintending Officer has decided to include in any certificate any amount in respect of any claim shall not excuse the Contractor from the requirement to give a notice under Clause 23.1(1).

## 23.2 **Contemporary Records**

Upon the happening of any event in respect of which the Contractor may intend to make a claim, the Contractor shall keep such contemporary records as may reasonably be necessary to support any claim he may subsequently wish to make. Without necessarily admitting the Employer's liability, the Superintending Officer may, on receipt of a notice under Clause 23.1, inspect such contemporary records and may instruct the Contractor to keep any further contemporary records which he considers to be material to the claim of which notice has been given. The Contractor shall permit the Superintending Officer to inspect all records kept pursuant to this Clause and shall supply him with copies of such records as and when the Superintending Officer so instructs.

### 23.3 **Substantiation of Claims**

Within 30 days, or such other time as may be agreed by the Superintending Officer, of giving notice under Clause 23.1, the Contractor shall send to the Superintending Officer an account in writing giving detailed particulars of the amount claimed and the grounds upon which the claim is based, together with particulars of any claim for extension of time made pursuant to Clause 14 and for any Loss and Expense associated therewith (where applicable). Where the event giving rise to the claim has a continuing effect, such account shall be considered to be an interim account and the Contractor shall, at such intervals as the Superintending Officer may require, send such further interim accounts giving the accumulated amount of the claims and any further grounds upon which they are based. Within 30 days of the end of the effects resulting from the event, the Contractor shall send to the Superintending Officer a final account of the claims. The obligation to give particulars of any claim for an extension of time under this Clause shall not release the Contractor from his obligations under Clause 14.3(1).

### 23.4 **Access to Contractor's Books and Documents**

In order to verify any claim submitted under this Clause, the Superintending Officer shall have access to all books, documents, papers or records in the possession, custody or control of the Contractor that are material to the claim for the purpose of making audit, examination, excerpts and transcriptions. Such books, documents, papers or records shall remain available in accordance with this Clause until all claims, arbitration or litigation have been finally disposed of. The Contractor shall use his best endeavours to ensure that all books, documents, papers or records in the possession custody or power of a subcontractor or supplier where material to the claim are similarly made available.

### 23.5 **Payment of Claims**

- (1) Subject to compliance with Clause 23.1 to Clause 23.4, the Contractor shall be entitled to have included in any payment certified by the Superintending Officer pursuant to Clause 32 such amount in respect of any claim as the Superintending Officer may consider due to the Contractor.
- (2) If the Contractor fails to supply the Superintending Officer with sufficient substantiation of the whole of any amount claimed, the Contractor shall only be entitled to payment in respect of such part of the amount as may have been substantiated to the satisfaction of the Superintending Officer.
- (3) The inclusion by the Superintending Officer in any certificate under Clause 32 of any amount in respect of any claim or any payment by the Employer in respect of any such amount shall not:
  - (a) prejudice the Employer's right to dispute the Contractor's entitlement to the amount certified either in principle, or as to its quantification or from referring such dispute for decision pursuant to Clause 35; and
  - (b) be taken into account by the Superintending Officer or any arbitrator (or other tribunal) in deciding whether the Contractor shall repay to the Employer the whole or any part of such amount.

### 23.6 **Failure to Comply**

If the Contractor shall have complied with Clause 23.1 but shall not have complied fully or at all with any of the provisions of Clause 23.2 to 23.4, the Superintending Officer shall be entitled to make such assessment, valuation or opinion as shall be reasonable on the basis of the information available to him. If the Contractor should dispute such an assessment, valuation or opinion, such dispute shall be decided by the Superintending Officer or the arbitrator (or other tribunal) on the basis only of the information available to the Superintending Officer at the time when he made his assessment, valuation or opinion and no account shall be taken of any information which the Contractor did not supply to the Superintending Officer, whether or not he could have done so.

## 24 **CONSTRUCTION EQUIPMENT, TEMPORARY WORKS, MATERIALS AND GOODS**

### 24.1 **Exclusive Use for the Works**

All Construction Equipment, Temporary Works, Plant, materials and goods provided by the Contractor shall, when brought on to the Site, be deemed to be exclusively intended for the execution of the Works and the Contractor shall not remove the same or any part of such Construction Equipment, Temporary Works, Plant, materials or goods except for the purpose of moving it from one part of the Site to another, without the consent in writing of the Superintending Officer. Provided that consent shall not be required for vehicles engaged in transporting any staff, labour, Construction Equipment, Temporary Works, Plant, materials or goods to and from the Site.

### 24.2 **Vesting**

All Construction Equipment, Temporary Works, Plant, materials and goods owned by the Contractor, or by any company in which the Contractor has a controlling interest, shall, when on the Site, be deemed to be the property of the Employer. Provided always that the vesting of such property in the Employer shall not prejudice the right of the Contractor to the sole use of the said Construction Equipment, Temporary Works, Plant, materials and goods for the purpose of the Works nor shall it affect the Contractor's responsibility to operate and maintain the same under the provisions of the Contract.

### 24.3 **Employer not Liable for Damage**

The Employer shall not at any time be liable for loss or damage to any of the said Construction Equipment, Temporary Works, materials or goods nor for any loss, expense, costs, damages, liability or claim arising from the presence or use of the said Construction Equipment, Temporary Works, materials or goods.

#### **24.4 Conditions for Hire of Construction Equipment**

With a view to securing, in the event of termination under Clause 31, the continued availability, for the purpose of executing the Works, of any hired Construction Equipment, the Contractor shall not bring on to the Site any hired Construction Equipment unless there is an agreement for the hire of such Construction Equipment (which agreement shall be deemed not to include an agreement for hire purchase) which contains a provision that the owner of such Construction Equipment will, on request in writing made by the Employer within 7 days after the date on which the termination has become effective, and on the Employer undertaking to pay all hire charges in respect of such Construction Equipment from such date, hire such Construction Equipment to the Employer on the same terms in all respects as the same was hired to the Contractor save that the Employer shall be entitled to permit the use of such Construction Equipment by any other contractor employed by Employer for the purpose of executing and completing the Works and remedying any Defects therein under the terms of Clause 31.

#### **24.5 Revesting and Removal**

Upon the removal, with the consent of the Superintending Officer under Clause 24.1, of any such Construction Equipment, Temporary Works, materials or goods as have been deemed to have become the property of the Employer under Clause 24.2, the property therein shall be deemed to revest in the Contractor and, upon completion of the Works and the making good of all Defects, the property in the remainder of such Construction Equipment, Temporary Works and materials shall, subject to Clause 31, be deemed to revest in the Contractor.

#### **24.6 Incorporation of Clause in Subcontracts**

The Contractor shall, where entering into any subcontract for the execution of any part of the Works, incorporate in such subcontract (by reference or otherwise) the provisions of this Clause in relation to the Construction Equipment, Temporary Works, materials or goods brought on to the Site by the subcontractor.

### **25 GENERAL RESPONSIBILITIES**

#### **25.1 Care of the Works**

- (1) From the date of commencement of the Works until 14 days after the Date of Substantial Completion (or the latest date if more than one) certified by the Superintending Officer pursuant to Clause 17, the Contractor shall take full responsibility for the care of the whole Works or of any phase or part of the Works which has not been substantially completed as well as any Plant, materials, or goods intended for or connected with the Works and all Construction Equipment, Temporary Works, materials, goods, structures, other works, workers' quarters on the Site and any other things of whatsoever nature required by the Contractor for the purposes of the Contract.
- (2) The Contractor shall take full responsibility for the care of any outstanding work which he shall have undertaken or shall be obliged to complete during the Defects Liability Period until such outstanding work has been completed to the satisfaction of the Superintending Officer.

- (3) (a) In the event of any damage, loss or injury to the Works or parts of the Works from any cause whatsoever (except the "excepted risks" as defined in Clause 25.2), the Contractor shall, at his own cost, make good with all reasonable expedition such damage, loss or injury to the satisfaction of the Superintending Officer and shall notwithstanding such damage, loss or injury proceed with the construction and completion of the Works in all respects in accordance with the Contract and the Superintending Officer's instructions.
- (b) In the event of any damage, loss or injury to the Works happening from any of the "excepted risks", the Contractor shall, if and to the extent required by any instruction in writing of the Superintending Officer, rectify and make good the same. Subject to compliance by the Contractor with Clause 23, the Superintending Officer shall certify pursuant to Clause 32 any Loss and Expense incurred by the Contractor in complying with the instructions of the Superintending Officer.
- (c) In the event of damage, loss or injury to the Works happening from an excepted risk and also from a risk for which the Contractor is responsible under Clause 25.1(1) and 25.1(2), the Superintending Officer shall, when certifying the amount, make a fair apportionment of the costs so that the Employer shall not be obliged to pay costs for which the Contractor was responsible under the Contract.

## 25.2 **Excepted Risks**

The "excepted risks" are:

- (a) insofar as they occur in Singapore and directly affect the execution of the Works:
- (i) war and hostilities (whether war be declared or not), invasion, act of foreign enemies;
  - (ii) rebellion, revolution, insurrection or military or usurped power or civil war;
  - (iii) riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his subcontractors and arising from the conduct of the Works;
  - (iv) ionising radiations, or contamination by radio activity 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;
  - (v) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (b) the use or occupation of the Employer of any part of the Works, except as may be expressly provided in the Contract.



## **26 INDEMNITY PROVISIONS**

### **26.1 Injury to Persons**

- (1) The Contractor shall be liable for and shall indemnify the Employer against any loss, expense, costs, damages, liability or claim whatsoever in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Works, unless the same is shown to be due solely to any negligent or wilful act of the Employer or of any person for whom the Employer is responsible.
- (2) For the avoidance of doubt, the indemnity provided by the Contractor under Clause 26.1 shall include any damages or compensation payable at common law or under any statute in respect of or in consequence of any accident, illness or injury to any workman or other person in the employment of the Contractor or any subcontractor or any person employed or engaged upon or in connection with the Works or who may be on site in connection with the Works, save and except an accident, illness or injury resulting solely from any act or default of the Employer, or of any person for whom the Employer is responsible.

### **26.2 Damage to Property**

Without prejudice to his liabilities in regard to completing the Works under Clause 4.1, the Contractor shall be liable for and shall indemnify the Employer against any loss, expense, costs, damages, liability or claim due to injury or damage of any kind to any property real or personal (including any property of the Employer other than the Works) insofar as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, unless the Contractor proves to the satisfaction of the Superintending Officer that it was not due to any negligence, omission, breach of contract or default of the Contractor, or of any person for whom the Contractor is responsible including the Contractor's servants or agents or any subcontractors and their servants or agents.

### **26.3 Contractor to Rectify Damage**

Without prejudice to the provisions of Clause 26.2, where injury or damage of any kind arises to any property out of or in the course of or by reason of the carrying out of the Works, the Superintending Officer shall be entitled to instruct the Contractor to rectify any such injury or damage at any time before the issue of the Final Completion Certificate and the Contractor shall upon receipt of such an instruction forthwith comply with the same. If the Contractor later establishes that he would not be liable for such injury or damage by virtue of Clause 26.2 or otherwise, the Superintending Officer's instruction shall be deemed to have been and shall be treated as a variation issued pursuant to Clause 19.1 and, notwithstanding the issue of a Final Account Certificate, shall be entitled to be paid in respect of such variation.

## **27 INSURANCE FOR PERSONAL INJURY, WORY INJURY AND PROPERTY DAMAGE**

### **27.1 The Policies**

- (1) Without prejudice to his liability to indemnify the Employer under Clause 26, the Contractor shall, before commencement of any work under the Contract, maintain:
  - (a) such insurances (subject to any limitations permitted by the Specifications or other Contract documents) as are necessary to cover the liability of the Contractor or, as the case may be, of any such subcontractor, in respect of personal injuries or death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Works or the subcontract works;
  - (aa) such approved policy as required under the Work Injury Compensation Act or regulations (including any subsequent amendment or re-enactment of the Act or regulations); and
  - (b) such insurances as may be specifically required by the Contract in respect of injury or damage to property real or personal (other than the Works) arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission, breach of contract or default of the Contractor, his servants or agents or any person employed or engaged upon or in connection with the Works or who may be on site in connection with the Works. Such insurances shall be subject to such limitations as to the extent of liability for any one accident as may be set out in the Appendix hereto.

The Contractor's insurances shall provide for the Employer's interests to be noted as "Principal" (for Employer's Liability) or as an "Additional Insured" with a "cross liability" provision (for Third Party Liability).

- (2) Any such insurance and approved policy as referred to in Clause 27.1(1) shall be placed with an insurer; and
  - (a) approved by the Superintending Officer;
  - (b) approved by such approving authority as the relevant law may prescribe in the case of any insurance or approved policy that is regulated by law;

and the Contractor shall deposit with the Superintending Officer before the commencement of any work on Site a copy of the insurance and approved policy and no later than 14 days thereafter a copy of the receipts in respect of the premiums paid under such insurance or approved policy.

### **27.2 Damage to Property when Contractor Not Negligent**

- (1) The Contractor shall, before commencement of any work under the Contract, maintain in the joint names of the Employer and Contractor such insurances for such amounts of indemnity as may be specified in the Specifications or other Contract documents in respect of any loss, expense, costs, damages, liability or claim which the Employer may incur or sustain due to injury or damage of any kind to property real or personal (including property of the Employer but not the Works themselves) caused by collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising out of or in the course of or by reason of the carrying out of the Works except injury or damage:

- (a) caused by any breach of contract, negligence, omission or default of the Contractor, his servants or agents or of any subcontractor, his servants or agents or any other person responsible for the provisions of any Plant, materials, goods or work for the Works; and
  - (b) from any of the "excepted risks" as defined in Clause 25.2.
- (2) Any such insurance as is referred to in Clause 27.2(1) shall be placed with an insurer approved by the Superintending Officer and the Contractor shall deposit with the Superintending Officer before the commencement of any work on Site a copy of the policy or policies of insurance and no later than 14 days thereafter the receipts in respect of the premiums paid under such policy or policies.

### 27.3 **Default in Insuring**

Should the Contractor or any subcontractor default in taking out or maintaining any insurance or approved policy as stipulated in Clauses 27.1 and 27.2, the Employer (without prejudice to any other rights and remedies available) may himself insure against any risk with respect to which the default has occurred and the amount paid by him in respect of premiums shall be recoverable from the Contractor.

## 28 **INSURANCE OF THE WORKS**

### 28.1 **Risks to be Insured**

- (1) Without limiting his obligations or responsibilities under Clause 25, the Contractor shall, before commencement of any work under this Contract, in the joint names of the Employer and the Contractor, insure against all damage, loss or injury from whatever cause arising (other than the "excepted risks" as defined in Clause 25.2) for which he is responsible under the terms of the Contract, the Permanent Works, any Temporary Works and all unfixed Plant, materials and goods delivered on or adjacent to the Site for incorporation into the Works (but excluding tools and Construction Equipment owned or hired by the Contractor or any subcontractors) and any structures or other works erected on or adjacent to the Site to the value of not less than the Contract Sum shown in the Letter of Acceptance. The Contractor shall keep such Permanent Works, Temporary Works, materials, goods, structures or works so insured until 14 days after the Defects Liability Period.
- (2) Such insurance shall be effected with an insurer in terms approved by the Superintending Officer and the Contractor shall deposit with the Superintending Officer before the commencement of any work on Site a copy of the policy or policies of insurance and no later than 14 days thereafter the receipts in respect of the premiums paid under such policy or policies. Each policy taken out pursuant to Clause 28 shall provide expressly for the payment in the first place to the Employer of any insurance moneys due under the policy.
- (3) In the event that the Contractor defaults in taking out or maintaining such insurance policies as aforesaid, the Employer (without prejudice to any other rights or remedies available) may himself insure against any risk in respect of which the default has occurred and any amount paid by him in respect of premiums shall be recoverable from the Contractor.

- (4) Where the Contractor maintains a general policy of insurance with insurers approved by the Superintending Officer covering contracts as well as the Contract against the aforesaid insured risks, and in the like terms as to payment of insurance moneys to the Employer, then the maintenance by the Contractor of such policy shall, if the Employer's interest is endorsed thereon, be a discharge of the Contractor's obligations to insure in joint names. In such a case, the production by the Contractor, as and when required by the Superintending Officer, of current certificates of insurance from the insurers confirming the existence and continuance of the relevant cover required by this Clause shall be a sufficient discharge of the Contractor's aforesaid obligation to deposit the policy or policies and receipts for premiums paid with the Employer. Such certificates shall state expressly any exclusions or limitations of liability or insurance excesses under the policy.

## **28.2 Application of Insurance Moneys**

- (1) Upon the occurrence of any damage, loss or injury to the Works or unfixed Plant, materials or goods prior to completion from any cause whatsoever the Contractor shall (subject to Clause 25.1) proceed immediately to rectify and make good the same free of charge. Any moneys, if and when received under the policies of insurance under this Clause shall be paid in the first place to the Employer and then (less only the aforesaid percentage for professional fees, if any) released to the Contractor by instalments on the interim certificates of the Superintending Officer.
- (2) The amounts released as aforesaid shall be calculated as from the date of receipt of the moneys in proportion to the extent of the work of restoration, replacement or repair previously carried out by the Contractor.

## **29 DAMAGE TO PROPERTY OF EMPLOYER OR GOVERNMENT**

### **29.1 Costs of Making Good Damage, Loss or Injury**

- (1) In the case of damage, loss or injury to property belonging to the Employer (other than property forming part of the Works) or the government or any other statutory or public authority (hereinafter called the "relevant authority") caused by the Contractor, or any person for whom the Contractor is responsible including the Contractor's servants or agents or any subcontractors and their servants or agents arising directly or indirectly out of or in relation to or in connection with the design, construction or completion of the Works under the Contract, the cost of making good such damage, loss or injury shall be recoverable by the Employer from the Contractor on presentation of an itemised certificate from the Employer or the relevant authority specifying the amount payable save and to the extent that the Contractor may prove to the satisfaction of the Superintending Officer that the amount or any part of it was not caused by any negligence, omission, breach of contract or default of the Contractor, or any person for whom the Contractor is responsible as set out above. The cost of making good such damage, loss or injury shall be recoverable by the Employer from the Contractor whether or not the Employer is liable in law to the relevant authority for the damage, loss or injury.

- (2) Provided always that:
- (a) Upon payment or deduction of such cost being made, the Employer shall, where the property does not belong to the Employer, pay the amount to the relevant authority and furnish to or procure for the Contractor such discharge or release as the Contractor may reasonably require.
  - (b) If the cost which the Contractor is liable to pay has not been ascertained at the time any moneys payable to the Contractor are due for release to him, then the Employer may withhold a sum which is, in the opinion of the Superintending Officer, sufficient to cover such liability. As soon as the cost payable by the Contractor has been ascertained and deducted from the sum retained, the balance if any shall be released to the Contractor.
- (3) Nothing herein shall affect in any way any other remedy at law that the owners of the property which has suffered damage, loss or injury may have against the Contractor.

## **30 ASSIGNMENT AND SUBCONTRACTING**

### **30.1 Assignment by Contractor**

The Contractor's performance by himself and his servants of a main contractor's principal functions of controlling the Site with his own Site staff, co-ordinating the work of any subcontractors and ordering of materials and goods for the Works, is of the essence of the Contract and unless the Employer shall agree in writing, the Contractor shall neither assign his interests, rights or benefits under the Contract nor transfer his liability nor make arrangements for the vicarious performance of such functions by any other person nor make arrangements whereby the execution of the Works is carried out by another person or persons.

### **30.2 Subcontractors**

The Contractor shall ensure that all subcontractors, appointed directly by the Contractor, are registered with the Building and Construction Authority or other government registration body at the time of their appointment. Except where expressly provided by the Contract, the Contractor shall not engage or permit the engagement of any subcontractor without the prior written consent of the Superintending Officer, which consent shall not be unreasonably withheld.

## 31 TERMINATION BY THE EMPLOYER

### 31.1 Termination for Default

- (1) If in the opinion of the Superintending Officer the Contractor:
  - (a) has abandoned the Contract;
  - (b) has, without reasonable cause, failed to commence the Works in accordance with the Contract;
  - (c) has failed to comply with his obligations under Clause 9 or has failed to execute the Works in accordance with a programme accepted under Clause 9 whereby the Works or any phase or part will be completed within the Time for Completion or any extended time or has otherwise failed to proceed with the Works with due diligence or expedition;
  - (d) has persistently failed to remove Plant, materials, goods or work from the Site or to pull down and replace work following the expiry of 14 days from receipt by the Contractor of a written notice by the Superintending Officer to the effect that the Plant, materials, goods or work have been condemned and rejected by the Superintending Officer;
  - (e) has acted in breach of Clause 30.1 or 30.2; or
  - (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 Contract;

then the Superintending Officer may issue a certificate (called hereafter a "Termination Certificate") identifying the nature of the default to the Employer with a copy to the Contractor at the same time.

- (2) If the Contractor:
  - (a) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a composition with creditors or if, being a company, any winding up order of any kind is made, or a receiver or manager or judicial manager of the Contractor's undertaking or assets is appointed, or possession taken or execution levied by creditors or debenture holders or under a floating charge;
  - (b) has offered or given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Contract with the Employer, or for showing or forbearing to show favour or disfavour to any person in relation to this Contract or any other Contract with the Employer, or if any of the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor), or if in relation to this Contract or any other contract with the Employer the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Penal Code or the Prevention of Corruption Act or any re-enactment or modification of such Code or Act 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 Acts;
  - (c) has failed to provide the security deposit in accordance with Clause 4.4;

- (d) has failed to insure the Works or to deposit insurance policies or receipts for premiums as required by Clauses 27 and 28;
- (e) shall have been issued with a Termination Certificate or a copy thereof and either:
  - (i) the default in the Termination Certificate has not been made good within 7 days; or
  - (ii) the said default has been repeated within 30 days of the Termination Certificate; or
  - (iii) any other default such as would entitle the Superintending Officer to issue a Termination Certificate has been committed by the Contractor within 30 days of the issue of the original Termination Certificate,

then unless such termination is prohibited by written law, the Employer, without prejudice to any other rights and remedies available to him, may give to the Contractor notice in writing of the termination of the employment of the Contractor whereupon the Contractor's employment under the Contract shall terminate. Upon receipt of the Employer's notice, the Contractor shall immediately vacate and surrender possession of the Site to the Employer, leaving all Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials upon the Site, other than those which the Contractor may be specifically directed in writing by the Superintending Officer to remove.

### 31.2 **Effects of Termination for Default**

- (1) In the event of the termination of the employment of the Contractor under Clause 31.1, the Employer shall have the right to employ its own qualified professionals/persons and contractors to continue with the design, execution and completion of the Works. The Contractor shall, upon request by the Superintending Officer, furnish such letter of release and hand over such information, drawings, specifications, designs and other documents and information as the Superintending Officer shall require to enable the Employer to continue with the design, execution and completion of the Works.
- (2) The Employer or any other contractor appointed by him may use for completion of the Works any of the Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials left upon the Site pursuant to Clause 31.1 as the Employer may think proper. Further the Employer shall have a lien over all of the said Construction Equipment, Plant, Temporary Works, temporary buildings, structures, tools, goods, equipment and unfixed materials and may sell any of the same and apply the proceeds of sale in or towards the satisfaction of any sums due or becoming due to him from the Contractor under the Contract.
- (3) The Superintending Officer shall, as soon as may be practicable after such repossession of the Site by the Employer pursuant to this Clause, determine what amount (if any) had, at the time of such repossession been reasonably earned by or would reasonably accrue to the Contractor in respect of work then actually done by him under the Contract, the value of any of the unfixed or partially fixed Plant, materials or goods, the value of any Construction Equipment, Temporary Works, temporary buildings, structures, tools or equipment and the amount received from any proceeds of sale.
- (4) No sum shall be certified as due to the Contractor nor shall the Employer be liable to pay to the Contractor any sum (including damages and amounts for which the Employer was liable

at the date of termination) in respect of the Contract until the expiry of the Defects Liability Period of the whole of the Works and thereafter until the Superintending Officer has ascertained and certified an amount (called hereafter “the Employer’s Cost”) representing the total of the cost to the Employer of completion and remedying of any Defects, damages for delay in completion (if any) as provided by Clause 31.3 or otherwise and all other expenses incurred by the Employer. The Contractor shall then be entitled to receive only such sum (if any) as the Superintending Officer may certify would have been payable to the Contractor upon due completion of the Works by the Contractor after deducting the Employer’s Cost. If the Employer’s Cost exceeds the sum which would have been payable to the Contractor upon due completion by the Contractor, then the Contractor shall, upon demand, pay to the Employer such excess and such excess shall be deemed a debt due by the Contractor to the Employer and shall be recoverable accordingly.

### 31.3 **Liquidated Damages after Termination**

If the employment of the Contractor has been terminated for default pursuant to Clause 31.1 and completion of the Works or any phase or part by the Employer or by other contractors or persons appointed by the Employer to complete the Works, phase or part has been delayed beyond the Time for Completion, the following provisions shall have effect:

- (a) The Employer shall be entitled to the same liquidated damages for delay as those which would have been payable if the Contractor had completed the Works or phase or part on the actual completion date of the Employer or the other contractors or persons appointed by the Employer.
- (b) For the purpose of giving effect to the above, the Superintending Officer shall, upon the completion of the Works or phase or part issue a certificate. Such certificate shall state the date upon which the Contractor should have completed the Works or phase or part and shall also state the full period of delay for which the Contractor is responsible and shall compute the total damages due to the Employer therefor. The certificate shall give credit for events occurring after the termination of the Contractor's employment which would have entitled the Contractor to an extension of time had he duly executed and completed the Works or phase or part and duly complied with Clause 14. In assessing the period of delay, the Superintending Officer shall also reduce the period of delay to the extent that there has been any failure by the Employer or by any other contractors or persons engaged by the Employer to use due diligence and expedition in arranging for or completing the remaining parts of the Works or phase or part.
- (c) Upon the issue of a certificate under Clause 31.3(b), the amount of damages certified by such certificate shall be immediately recoverable by the Employer from the Contractor.

### 31.4 **Termination Without Default**

- (1) The Employer may at any time give the Contractor a written Notice of Termination. This shall have the effect of immediately terminating the employment of the Contractor under the Contract and the Contractor shall immediately thereafter vacate the Site, remove all his Construction Equipment and labour force from the Site and surrender possession of the Site to the Employer.



- (2) In the event of a Notice of Termination under Clause 31.4(1) or where Clause 13.2 is applicable, the Superintending Officer shall subject to compliance by the Contractor with Clause 23 certify payment to the Contractor:
- (a) for all work executed prior to the date of termination at the Rates for the Works set out in the Contract including
    - (i) the amounts payable in respect of any other items shown and separately priced in the Contract including those for Construction Equipment, Temporary Works and the like, so far as the work comprised therein has been carried out or performed, and a proper proportion of any such items which have been partially carried out or performed;
    - (ii) the cost of Plant, materials or goods reasonably ordered for the Works which have been delivered to the Contractor or of which the Contractor is legally liable to accept delivery, and where such Plant, materials or goods will become the property of the Employer upon such payments made by him; and
  - (b) any Loss and Expense suffered by the Contractor in connection with or as a consequence of the termination.

The Superintending Officer shall expeditiously certify the amounts payable to the Contractor under this Clause, and the Contractor shall provide all reasonable assistance to the Superintending Officer. In the event that the Contractor does not submit the necessary information required, the Superintending Officer shall make his certification on the information available. The amount certified shall be paid by the Employer less any sums previously paid or due to or recoverable by the Employer from the Contractor.

## **32 PROGRESS PAYMENTS AND FINAL ACCOUNT**

### **32.1 Payment Claims**

- (1) The Contractor shall submit to the Employer (with a copy to the Superintending Officer), at monthly intervals (on the day of each month specified by the Superintending Officer following the month in which the Contract is made), a claim for payment (hereafter referred to as the “Payment Claim”) in such form as the Superintending Officer may from time to time prescribe. 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 Contractor considers himself to be entitled up to the last day of the monthly interval in question in respect of:
- (a) the value of the Permanent Works executed;
  - (b) any other items shown and separately priced in the Contract including those for Construction Equipment, Temporary Works and the like;
  - (c) the value of materials, Plant and goods delivered by the Contractor on the Site for incorporation in the Permanent Works but not incorporated in such Works;
  - (d) any other sum to which the Contractor is entitled pursuant to Clause 23.5; and

- (e) any amount due to the Contractor under an Option Module.
- (2) The Contractor may submit such monthly statements up to the Superintending Officer's issue of the Interim Final Account in Clause 32.5(1) and (2).

### 32.2 **Payment Certificates**

- (1) Within 14 days of receiving a Payment Claim duly submitted pursuant to Clause 32.1, the Superintending Officer shall issue a certificate (hereafter referred to as the "Payment Certificate") to the Contractor (with a copy to the Employer) showing the amounts, which may consist of deduction of any sums which have been or may become due and payable by the Contractor to the Employer under the Contract or otherwise (hereafter referred to as the "Response Amount") to which the Contractor is in his opinion entitled in respect of the Claimed Amount. The Superintending Officer shall substantiate with reasons in his Payment Certificate if the Response Amount is less than the Claimed Amount or if payments are withheld. Such Payment Certificate issued by the Superintending Officer shall comply fully with the requirements for Payment Response made in contemplation of the Act.
- (2) The Payment Certificate issued under Clause 32.2(1) shall be deemed the Payment Response from the Employer, which meaning shall be the same ascribed in the Act if the Employer does not provide any response within 14 days from the Payment Claim. Where the Employer provides a Payment Response in compliance with the Act within 14 days from the Payment Claim, the Employer's Payment Response shall take precedence over the Payment Certificate issued pursuant to Clause 32.2(1) and shall constitute the Payment Response defined in the Act.

### 32.3 **Correction of Certificates**

The Superintending Officer may by any certificate make any correction or modification in respect of any error whether arithmetical or otherwise in any previous certificate which has been issued by him and make such adjustments as may be necessary in the amount of payment due and payable to the Contractor to take into account any over or under valuation in any previous certificate. Where the amount paid by the Employer to the Contractor pursuant to any error in a previous certificate exceeds any amount due and payable to the Contractor under any subsequent interim certificate or the Final Account Certificate, such excess shall be recoverable by the Employer from the Contractor.

### 32.4 **Final Payment Claim**

- (1) Within 90 days of the Date of Substantial Completion (or the last Date of Substantial Completion, if more than one), the Contractor shall submit in writing to the Employer (with a copy to the Superintending Officer) a claim for final payment in such form as the Superintending Officer may prescribe (hereafter referred to as the "Final Payment Claim").

- (2) This Final Payment Claim shall show the final amounts to which the Contractor considers himself to be entitled in respect of all the matters set out in Clause 32.1. If or to the extent that the measurements of the Works have not been completed by the Superintending Officer pursuant to Clause 21.1 (other than by reason of any failure on the part of the Contractor), the Contractor shall set out his best estimates of the relevant measurements and amounts due in respect of the Works. The Final Payment Claim shall also show all adjustments which the Contractor considers should be made to the Contract Sum. Insofar as substantiation of any claim has not been provided pursuant to Clause 23.3 or 23.4, the Contractor shall provide such substantiation with such a Final Payment Claim. Failure by the Contractor to provide with the Final Payment Claim such substantiation in respect of any event occurring before the Date of Substantial Completion shall subject to Clause 23.5(2) and 23.6 bar the Contractor from advancing any claim for such an amount.
- (3) The Final Payment Claim made under this Clause shall constitute a Payment Claim made under the Act, provided always that the requirements for the Final Payment Claim made are fully complied with under the Act.

### 32.5 Interim Final Account, Final Account and Final Account Certificate

- (1)
  - (a) Within 21 days of receiving the Final Payment Claim duly submitted by the Contractor pursuant to Clause 32.4, the Superintending Officer shall provide the Contractor with an interim assessment of the draft final account (hereafter referred to as the "Interim Final Account") and at the same time issue the Payment Certificate based on this Interim Final Account. The Interim Final Account shall be the Superintending Officer's interim assessment of the matters set out in Clause 32.5(3). The Payment Certificate issued by the Superintending Officer under this Clause shall comply fully with the requirements for Payment Response made in contemplation of the Act.
  - (b) The Payment Certificate issued under Clause 32.5(1)(a) shall be deemed the Payment Response from the Employer, which meaning shall be the same ascribed in the Act if the Employer does not provide any response within 21 days from the Final Payment Claim. Where the Employer provides a Payment Response in compliance with the Act within 21 days from the Final Payment Claim, the Employer's Payment Response shall take precedence over the Payment Certificate issued pursuant to Clause 32.5(1)(a) and shall constitute the Payment Response defined in the Act.
- (2)
  - (a) In the event the Contractor fails to submit the Final Payment Claim pursuant to Clause 32.4, the Superintending Officer shall in any event issue his Interim Final Account within 150 days from the Date of Substantial Completion (or the last Date of Substantial Completion, if more than one). Within 30 days after his issue of the Interim Final Account, the Superintending Officer shall issue a payment certificate certifying the amount due to the Contractor (if any) based on his Interim Final Account. For the avoidance of doubt, the Interim Final Account or payment certificate issued under this Clause 32.5(2)(a) shall not be subject to the Act.
  - (b) If the Contractor does not agree to the Interim Final Account issued under Clause 32.5(2)(a), he may submit his grounds of dispute in writing to the Superintending Officer. The Superintending Officer may amend the disputed amount (or other amounts not in dispute) and issue to the Contractor a notice of amendment to the Interim Final Account or, if he decides not to issue a notice of amendment to the Interim Final Account, he shall inform the Contractor accordingly.

- (3) The Superintending Officer shall not later than 30 days after the end of the Defects Liability Period (or the latest if there are more than one such period) provide the Contractor with a draft of the final account (hereinafter referred to as the "Final Account"). The Final Account shall show:
- (a) the adjustments which the Superintending Officer considers should be made to the Contract Sum;
  - (b) the amounts to which the Superintending Officer considers that the Contractor is entitled under the express provisions of the Contract; and
  - (c) the amounts to which the Superintending Officer considers that the Employer is entitled under the express provisions of the Contract.
- (4) Within 30 days of the receipt by the Contractor of the Final Account, the Contractor shall notify the Superintending Officer in writing as to whether or not the amounts set out in the Final Account are accepted by the Contractor. If the Contractor does not accept an amount, he shall submit his grounds of dispute in writing to the Superintending Officer within the said 30 days. Any amount in respect of which the Contractor has not submitted his grounds of dispute within the said 30 days shall be deemed to have been accepted by and shall be final and binding on the Contractor.
- (5) Within 30 days of the Superintending Officer's receipt of the Contractor's grounds of dispute, the Superintending Officer may amend the disputed amount (or other amounts not in dispute) and issue to the Contractor a notice of amendment to the Final Account or, if he decides not to issue a notice of amendment to the Final Account, he shall inform the Contractor accordingly. Any grounds of dispute submitted by the Contractor in accordance with Clause 32.5(4) which is not dealt with or resolved by the Superintending Officer's notice of amendment shall be resolved in accordance with Clause 35.
- (6) The Superintending Officer shall issue a Final Account Certificate:
- (a) within 30 days of the acceptance or deemed acceptance by the Contractor of Final Account or of the amendment to the Final Account as the case may be; or
  - (b) where there is no agreement on the whole or any part of the Final Account, within 30 days from the date the Superintending Officer in writing informs the Contractor that he would not issue a notice of amendment to the Final Account.
- (7) The Final Account Certificate shall certify the difference between:
- (a) the Contract Sum as adjusted in accordance with the terms of the Contract by the Superintending Officer together with any further amounts which the Superintending Officer considers the Contractor to be entitled pursuant to the express provisions of the Contract; and
  - (b) the amounts so far certified for payment (whether or not paid),

and the difference shall be a debt payable by the Employer to the Contractor or the Contractor to the Employer as the case may be.

- (8) The Superintending Officer may, within 30 days of the issue of the Final Account Certificate or the Final Completion Certificate, whichever is the later, amend the Final Account and/or Final Account Certificate in the event of any error or accidental inclusion or exclusion of any Plant, materials, goods or work or figure in any computation. The provision of Clause 32.5(4) and 32.5(5) shall apply, mutatis mutandis, with respect to such amendments.
- (9) For the avoidance of doubt, the Superintending Officer shall not be obliged to issue a Final Account Certificate before the Final Completion Certificate referred to in Clause 34.1 shall have been issued, and the issue of a Final Account or a Final Account Certificate before the issue of the Final Completion Certificate shall not relieve the Contractor from his obligations and liabilities arising during the Defects Liability Period.

### 32.6 **Period for Honouring Certificate**

The amount due to the Contractor under any certificate issued by the Superintending Officer pursuant to Clause 32 or any other term of the Contract shall (subject to the Employer's right to deduct or set-off any sum or damages for which the Contractor is or may be liable under the Contract or in any other way) be paid by the Employer to the Contractor:

- (a) Where the Contractor is a taxable person under the Goods and Services Tax Act, within 21 days or such other time period as may be stipulated in the Appendix after the date the tax invoice (as referred to in Clause 32.7(3)) is submitted to the Employer; or
- (b) In any other case, within 21 days or such other time period as may be stipulated in the Appendix after the expiry of the period within which the Payment Response is required to be provided under the Building and Construction Industry Security of Payment Act. The Contractor shall submit to the Employer an invoice within 7 days of the date of payment response.

Where a time period is stipulated in the Appendix, that time period shall prevail. In the event that the Employer fails to make payment within the times stipulated, the Employer shall pay to the Contractor interest at the rate stated in the Appendix (or at the rate of 5% a year if none is stated) upon all sums unpaid from the date by which the same should have been paid.

### 32.7 **Claim and Payment of Goods and Services Tax**

- (1) The Contractor shall be deemed not to have allowed in his tender for goods and services tax (hereafter called "GST") chargeable under the Goods and Services Tax Act (hereafter in Clause 32.7 called "the Act") for the supply of goods, services or works required under the Contract.
- (2) Unless the Contractor is not a taxable person under the Act, the Employer shall reimburse the Contractor any GST charged on the goods, services or works required under the Contract.
- (3) The Contractor, when submitting the Payment Claims required by Clause 32.1 and the Final Payment Claim required by Clause 32.4, shall also show the amount which he considers himself to be entitled in respect of GST payable to him by the Employer. Upon issue of each certificate the Contractor shall forthwith prepare and submit to the Employer within 7 days the tax invoice under the Act in respect of the certificate. The amount of GST in the invoice shall accord with the amount of GST stated in the relevant certificate.

- (4) If the Employer notifies the Contractor that it intends to apply to the Comptroller of Goods and Services Tax for approval to issue to itself tax invoices in respect of the certificates, or that it has obtained such approval, the Contractor shall give his written agreement that, if such approval is or has been granted, he will not issue tax invoices in respect of such certificates. If such approval is or has been granted by the Comptroller of Goods and Services Tax then the Contractor shall not issue tax invoices in respect of such certificates, provided that the Employer may, at any time by notice in writing served on the Contractor, reimpose on him the obligations contained in Clause 32 above.
- (5) If any dispute, difference or question shall arise between either the Employer or the Contractor and the Comptroller of Goods and Services Tax in relation to any tax chargeable or alleged to be chargeable in connection with the Contract or the Works or any part thereof, each shall render to the other such support and assistance as may be necessary to resolve the dispute, difference or question.
- (6) Clause 35 shall not apply to any dispute, difference or question arising under Clause 32.7.

### 32.8 **Delay in Certification**

Under no circumstances shall the Employer be liable to pay to the Contractor any damages, whether by way of interest or otherwise, for any failure or delay by the Superintending Officer in certifying any payment due or payable to the Contractor.

## **33 FLUCTUATIONS**

### 33.1 **Schedule of Materials**

- (1) The Contract Sum shall be adjusted upwards or downwards to take account of any rise or fall in material prices respectively during the currency of the Contract. Such price adjustments shall be calculated based on the fluctuations in the material price indices. For the purpose of this clause, the material price indices shall be those as published by the Building and Construction Authority.
- (2) The materials applicable for price adjustments shall be specified in the Appendix. The Conditions, Specifications or Contract Documents shall set out the methodology, based on the fluctuations in the material price index of each of material specified in the Appendix, to work out the price adjustments.
- (3) On delivery of the said materials to Site, the Contractor shall notify the Superintending Officer the delivery of the materials. Upon availability of the material price index of the said material, the Contractor shall submit to the Superintending Officer what he considers to be the price adjustment, which is worked out based on the methodology set out in Clause 33.1(2).
- (4) Provided that sufficient substantiation has been given of the price adjustment, the Superintending Officer shall ascertain the amount which in his opinion represents the price adjustment to which the Contractor is entitled to be paid or the Employer is entitled to credit and shall so notify the Contractor in writing.

**33.2 Payment**

Effect shall be given to the Superintending Officer's ascertainment of the amount of the difference by inclusion in the Contractor's Payment Claim made pursuant to Clause 32.1(1) and in the Superintending Officer's certificates issued under Clause 32.

**33.3 Contractor in Delay**

No further upward or downward adjustments in respect of the prices of materials delivered after the Time for Completion or any extension thereof, whichever is the later, shall apply in the event the Contractor is in delay.

**33.4 Subcontract Work**

This Clause shall apply to materials specified in the Schedule of Material Prices purchased by any subcontractors (but not to nominated subcontractors unless expressly incorporated into their sub-contracts).

## **34 FINAL COMPLETION CERTIFICATE**

**34.1 Time for Issue**

Within 30 days after the expiration of the Defects Liability Period (or if different Defects Liability Periods shall become applicable to different phases or parts of the Works, the latest of such Periods) or as soon thereafter as any work instructed pursuant to Clause 18 shall have been completed, whichever is later, and upon the issuance of the Certificate of Statutory Completion, the Superintending Officer shall issue to the Contractor, with a copy to the Employer, a Final Completion Certificate.

**34.2 Certificate not Conclusive**

No certificate of the Superintending Officer shall of itself be conclusive evidence that the Works have been completed or that any Plant, materials, goods or work to which it relates are in accordance with the Contract.

## **35 SETTLEMENT OF DISPUTES**

### **35.1 Reference to the Superintending Officer**

- (1) If a dispute or difference of whatsoever kind shall arise between the Employer or the Superintending Officer or the Superintending Officer's Representative and the Contractor in connection with or arising out of the Contract or the execution of the Works, whether during the execution of the Works or after their completion and whether before or after any termination of the Contract or the Contractor's employment, including any dispute or difference as to any opinion, instruction, determination, decision, certificate or valuation of the Superintending Officer or the Superintending Officer's Representative, it shall in the first place be referred by either party in writing to the Superintending Officer for his decision. Such reference shall state that it is made pursuant to this Clause and a copy shall be sent to the other party to the Contract.
- (2) No later than the expiry of 30 days after the date upon which the Superintending Officer received such reference, the Superintending Officer shall give notice of his decision in writing to the Employer and to the Contractor and shall for information state therein that it is given pursuant to this Clause. Such decision shall identify the reference pursuant to which it is made and shall be final and binding on the parties to this Contract unless, as hereinafter provided, either party shall require that the decision should be referred to arbitration.
- (3) Unless the Contract has already been repudiated or the employment of the Contractor terminated or the carrying out of the Works completed, the Contractor shall, in case of any reference, continue to proceed with the Works in accordance with his obligations under the Contract and the Contractor and the Employer shall give effect forthwith to every decision of the Superintending Officer unless and until the same shall be revised by an arbitrator as hereinafter provided (or as may be otherwise ordered by a Court of competent jurisdiction).

### **35.2 Reference to Arbitration**

If either the Employer or Contractor is dissatisfied with the decision of the Superintending Officer made pursuant to Clause 35.1 hereof, or if the Superintending Officer fails to give notice of his decision on or before the expiry of the 30 day period following the date on which the Superintending Officer received the reference, then the Employer or the Contractor may, within 90 days from the date of receipt of the aforesaid decision of the Superintending Officer, or within 90 days from the date of expiry of the aforesaid 30 day period (as the case may be) give notice to the other party with a copy for information to the Superintending Officer of his intention to refer the decision or the dispute or difference that had not been decided to an arbitrator. The arbitrator may be agreed upon by the parties or failing such agreement, shall be a person to be nominated on the application of either party by the Chairman of the Singapore International Arbitration Centre. Subject to Clause 35.3, such reference shall not, without the Employer's consent in writing, be initiated before the Date of Substantial Completion of the Works (or if there is more than one such Date of Substantial Completion, the latest) or alleged Date of Substantial Completion of the Works. 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.



### 35.3 **Arbitration in Event of Termination**

Notwithstanding Clause 35.1, if the dispute or difference concerns the termination of the employment of the Contractor or the repudiation or abandonment of the Contract by either party, such dispute or difference shall not be referred to the Superintending Officer for decision pursuant to Clause 35.1 but shall be referred to an arbitrator in accordance with Clause 35.2. Any dispute or difference raised by the Contractor in connection with the termination of his employment or the repudiation or abandonment of the Contract by the Employer shall be referred to arbitration within 60 days of the notice of termination or act of repudiation or abandonment. Failure to do so within such period shall bar the Contractor absolutely from pursuing such dispute or difference in any arbitration or court proceedings whatsoever.

### 35.4 **Powers of the Arbitrator**

An arbitrator appointed pursuant to Clause 35.2 or Clause 35.3 hereof shall have full power to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute or difference which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given, subject to any provision of the Contract which may constitute a decision or certificate or other document as final or binding or any document or event or omission as barring or preventing a claim being advanced by one party against the other.

### 35.5 **Reference to Adjudication**

- (1) Notwithstanding Clause 35.1, if a dispute or difference involves a Payment Claim or Payment Response to which the Building and Construction Industry Security of Payment Act applies, the 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 35.5(1), both parties may by mutual agreement refer the dispute or difference to mediation under Clause 35.6 and/or to arbitration under Clause 35.2.

### 35.6 **Mediation**

- (1) 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 mediation centre specified in the Appendix, in accordance with its prevailing prescribed form, rules and procedures.
- (2) For avoidance of doubt, 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. However, the period between the time of receipt of the formal Notice for mediation and the rejection of the Notice or the time of termination of mediation for that matter shall not be taken into account in computing any periods under clause 35.2 and 35.3.

## **36 RECOVERY BY THE EMPLOYER**

- 36.1 Wherever in the Contract provision is made for the Employer to recover any amount from the Contractor such amount may be deducted from or reduced by any sum due or to become due at any time thereafter from the Employer to the Contractor under this contract between the Employer and the Contractor or may be recovered by the Employer from the Contractor as a debt.

## **37 GOVERNING LAW & NOTICES**

### **37.1 Law**

- (1) The law governing this Contract and any arbitration commenced under these Conditions shall be the law of Singapore, and any such arbitration shall be held in Singapore. The application to this contract of the United Nations Convention on Contracts for International Sale of Goods is hereby expressly excluded.
- (2) Unless otherwise expressly stated in this Contract, a person who is not a party to this 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 Contract, all provisions in this 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.

### **37.2 Notices**

- (1) The Contractor shall provide in his Form of Tender an address in Singapore, email address and facsimile number, for service of document, hereinafter referred to as "the Service Address".
- (2) The Contractor shall give 14 days written notice to the Superintending Officer before any change in the Service Address.
- (3) Except as provided in Clause 37.2(5), all certificates, notices or instructions to be given to the Contractor by the Employer or the Superintending Officer under the terms of the Contract shall be sent by post, email or facsimile transmission to or left at the Service Address.

- (4) Where any certificate, notice, or instruction to be given to the Contractor under Clause 37.2(3) is:
- (a) sent by ordinary post, it shall be deemed to be duly served on the Contractor on the 4<sup>th</sup> working day after the day it was posted;
  - (b) sent by email, it shall be deemed to be duly served on the Contractor at the time of entering the information system addressed to the email address; and
  - (c) sent by a facsimile transmission, it shall be deemed to be duly served on the Contractor at the time of transmission, subject to receipt on the sending facsimile machine of a notification (by electronic or other means) of a successful transmission to the facsimile number.
- (5) All certificates and notices under Clauses 31 and 35 shall be given by pre-paid registered mail or hand delivery to:
- (a) in the case of the Contractor, the Service Address; and
  - (b) in the case of the Superintending Officer or the Employer, such address as the Superintending Officer shall in writing notify the Contractor.
- (6) Without prejudice to any other method of service that is authorised by law, service of any originating process by the Employer or Superintending Officer on the Contractor shall be deemed to be due service if it is posted to or left at the Service Address.

## **38 COMPLIANCE WITH PREVAILING LAW**

- 38.1 Nothing in these Conditions shall be interpreted as authorising or permitting the doing of any act that is prohibited by any written law.

## **OPTION MODULES**

## **OPTION MODULE A**

### **UNUSED MATERIALS OR GOODS NOT DELIVERED TO SITE**

A1.0 The amount of payment certified by the Superintending Officer under Clause 32.2 hereof may at the discretion of the Superintending Officer and provided that the same is claimed by the Contractor, include the value of unused materials or goods not delivered to the Site provided always that:

- (a) the invoices and receipts of payment for such materials or goods are submitted with the Payment Claims required under Clause 32.1 hereof;
- (b) such materials or goods are intended for inclusion in the Permanent Works;
- (c) nothing remains to be done to such materials or goods to complete the same up to the point of their incorporation in the Works;
- (d) such materials or goods are in Singapore and have been and are either set apart at the premises where they have been manufactured or assembled or are suitably stored and in any case visibly marked or identified in a manner as directed by the Superintending Officer and properly protected from loss and damage;
- (e) the progress of the Contract is such that the Superintending Officer is satisfied that the materials or goods cannot be fully and properly incorporated into the Works;
- (f) the Superintending Officer is satisfied that there is inadequate storage space at the Site or that such materials or goods if brought to the Site cannot be adequately protected against weather or other casualties and hazards;
- (g) if the materials or goods for which payment has been made by the Employer become defective due to improper storage or protection, the Superintending Officer shall have the authority to omit or reduce the value of such materials or goods in any interim-certificate;
- (h) the Contractor furnishes to the Employer on or before submitting his claim under Clause 32.1 hereof an on-demand bond drawn in terms and issued by a Surety acceptable to the Employer for the value claimed for the materials or goods, to be enforceable so long as the Superintending Officer is satisfied that such materials or goods have not been delivered to the Site;
- (i) should it be ascertained at any time that any materials or goods for which payment has been made by the Employer have been moved from the premises being the place of manufacture, assembly or storage to another destination other than the Site or should the Contractor fail to deliver any materials or goods for which payment has been made by the Employer to the Site as and when directed by the Superintending Officer without reasonable cause or have an intent to deceive or defraud the Employer, such amount paid by the Employer for any such materials or goods moved or delivered shall be recovered from the Contractor; and
- (j) the Contractor will take all steps necessary to ensure that the property in and ownership of the materials or goods for which payment has been made passes to the Employer and it is hereby agreed that where such property and ownership has already passed to the Contractor, such property and ownership shall forthwith pass to the Employer

## **OPTION MODULE B**

### **LUMP SUM ADVANCE PAYMENT FOR PREFABRICATED PREFINISHED VOLUMETRIC CONSTRUCTION (PPVC)**

#### **B1.0 Definitions and Interpretation**

The following words and expressions shall have the meanings assigned to them unless the context otherwise requires:

- (1) “Advance Payment” means the payment of an amount specified in the Appendix to be made in advance by the Employer to the Contractor in respect of design and fabrication works for off-site prefabrication of PPVC Works.
- (2) “Advance Payment Guarantee” means a guarantee for the Advance Payment in the prescribed form issued by:
  - (a) a bank or insurance company registered with the Monetary Authority of Singapore, or
  - (b) a licensed finance company registered with the Monetary Authority of Singapore,under which the issuer, as primary obligor, unconditionally and irrevocably promises to pay, on the Employer’s demand, a sum or sums the Employer claims in connection with the Advance Payment made.
- (3) “Prefabricated Prefinished Volumetric Construction” or “PPVC” shall have the same meaning in the Contract as its definition in the Building Control (Buildability and Productivity) Regulations 2011.
- (4) “PPVC Works” means the materials or goods which are constructed in accordance with PPVC and intended for inclusion in the Permanent Works.

#### **B2.0 Advance Payment Guarantee**

- (1) As a condition precedent to any Advance Payment being made by the Employer, the Contractor shall, prior to or at the time such Advance Payment is required to be made, at his own cost, deliver to the Employer an Advance Payment Guarantee with an initial validity period ending three (3) months after the recovery period stated in the Appendix for an amount equal to the amount of the Advance Payment.
- (2) The Employer may call on the Advance Payment Guarantee to obtain repayment of the Advance Payment (less any sum repaid by deduction from a sum due to the Contractor from the Employer in accordance with Clause B5.0) if the Contractor:
  - (a) has abandoned the Contract or has his employment under the Contract terminated under Clause 31;
  - (b) has, without reasonable cause, failed to commence the Works in accordance with the Contract;
  - (c) has failed to execute the Works in accordance with a programme accepted under Clause 9 whereby the Works or any phase or part will be completed within the Time for Completion or any extended time or has otherwise failed to proceed with the Works with due diligence and expedition;
  - (d) has committed an act of bankruptcy or becomes bankrupt or insolvent or makes a

composition with creditors or if, being a company, any winding up order of any kind is made, or a receiver or manager or judicial manager of the Contractor's undertaking or assets is appointed, or possession taken or execution levied by creditors or debenture holders or under a floating charge; or

- (e) has failed to deliver a renewal or new Advance Payment Guarantee to the Employer at least 30 days before the expiry date of the expiring Advance Payment Guarantee referred to in Clause B2.0(4).

If the cash proceeds of any or all calls on the Advance Payment Guarantee utilised by the Employer to obtain repayment of any such amount is found to be greater than the amount actually due to the Employer under the Contract, then the Employer shall pay the balance of the amount recovered by the Employer without the addition of interest, to the Contractor or to the bank, insurer or finance company, as the case may be.

- (3) The Employer shall be entitled to call on the Advance Payment Guarantee as soon as it is satisfied that the conditions for calling on the Advance Payment Guarantee have been fulfilled, notwithstanding that the Contractor disputes the same.
- (4) The Contractor shall ensure that the Advance Payment Guarantee remains effective until after the Employer fully recovers the Advance Payment by deductions from sums due to the Contractor from the Employer in accordance with Clause B5.0. In the event that the Employer is unlikely to be able to fully recover the Advance Payment in accordance with Clause B5.0 before the expiry date of the Advance Payment Guarantee, the Contractor shall without demand, secure its renewal or obtain a new Advance Payment Guarantee, but with a validity period ending not less than 6 months after the expiry date of the Advance Payment Guarantee. If such renewal or new Advance Payment Guarantee is not delivered to the Employer at least 30 days before the expiry date of the expiring Advance Payment Guarantee, the Employer shall have the right to call on the expiring Advance Payment Guarantee. For the purposes of this Clause B2.0(4), unless the context otherwise requires, a reference to "Advance Payment Guarantee" includes a renewal or new Advance Payment Guarantee.

### **B3.0 Cumulative Remedies**

The provisions of this Option Module shall not affect the rights and remedies expressly reserved herein to the Employer or bar the Employer from claiming losses, expenses, costs or damages incurred or sustained or likely to be sustained by the Employer as a result of any breach of contract of whatsoever nature by the Contractor.

### **B4.0 Employer's Obligation**

Within 28 days from the date of the receipt of the Advance Payment Guarantee and security deposit under Clause 4.5 by the Employer, the Employer shall pay to the Contractor the Advance Payment. If the Employer fails to pay to the Contractor the Advance Payment, the Employer shall not call on the Advance Payment Guarantee and the Contractor may terminate the Advance Payment Guarantee, upon giving 14 days' notice in writing to the Superintending Officer.

### **B5.0 Recovery of the Advance Payment by Deductions from Sums Due to the Contractor from the Employer**

The Employer shall be entitled to recover the Advance Payment by equal instalments (each, an "Instalment Amount") at such intervals specified in the Appendix (each, an "Interval") within the recovery period specified in the Appendix or such other longer period as may be allowed by the

Employer after the recovery start date specified in the Appendix, by deducting an Instalment Amount from the Claimed Amount under a Payment Claim duly submitted pursuant to Clause 32.1. The Superintending Officer shall show the Instalment Amount in the Payment Certificate issued under Clause 32.2(1). Where the Employer provides a Payment Response in accordance with Clause 32.2(2), the Employer shall show the Instalment Amount in that Payment Response. If, at the end of an Interval,

- (a) the Employer is unable to deduct an Instalment Amount from the Claimed Amount under a Payment Claim duly submitted pursuant to Clause 32.1; or
- (b) the Contractor fails to submit a Payment Claim pursuant to Clause 32.1,

the Employer may deduct the outstanding Instalment Amount from the Claimed Amount under any subsequent Payment Claim duly submitted pursuant to Clause 32.1 at the end of any subsequent Interval. For the avoidance of doubt, the Employer may not call on the Advance Payment Guarantee to obtain repayment of an Instalment Amount, unless any of the conditions stated in Clause B2.0(2) is met.