

## **General Conditions of Contract**

### **General Conditions of Contract for Minor Works** **Electrical and Mechanical Services Department**

#### 1. Definitions and Interpretation

Definitions and  
Interpretation

“Constructional Plant” means all appliances or things of whatsoever nature required for the execution of the Works but does not include Plant, materials or other things intended to form or forming part of the permanent work or vehicles engaged in transporting any personnel, Constructional Plant, Plant, materials or other things to or from the Site.

“Contract” means the Quotation and the acceptance thereof by way of Services Order or Letter of Acceptance by the Employer, Drawings, General Conditions of Contract for Minor Works, Specification, Schedule of Particulars and priced Schedule of Quantities.

“Contractor” means the person, firm or company whose Quotation has been accepted by the Employer and includes the Contractor’s personal representatives, and successors.

“Employer” means the Government of the Hong Kong Special Administrative Region.

“Engineer” means the Chief Engineer or such other person as may be appointed from time to time by the Director of Electrical and Mechanical Services and notified to the Contractor.

“Engineer’s Representative” means any person or persons appointed from time to time by the Engineer and notified to the Contractor to perform the duties set forth in Clause 3.

“Guarantee Period” means the guarantee period named in the Form of Quotation (Engineering) commencing on the day following the date of acceptance of the Works or any Section or part thereof by the Engineer or Engineer’s Representative in accordance with Clause 5.

“Plant” means the machinery, equipment and apparatus of all kinds other than the Constructional Plant to be supplied and installed by the Contractor for the Works.

“Service Order” means the Department Order for Provision of Service (G.F.220) issued to the Contractor.

“Site” means the lands and other places provided by the Employer for the purpose of the execution of the Works.

“Specification” means the specifications referred to in the Contract and any modification thereof or addition thereof as may from time to time be

## **General Conditions of Contract**

furnished or approved in writing by the Engineer.

“Temporary Works” means all temporary work of every kind required for the carrying out, completion and maintenance of the Works. “Test” means any test prescribed by the Contract or instructed by the Engineer or Engineer’s Representative and includes commissioning of the Works and any commissioning test.

“Works” means all the works and things to be executed, supplied and or carried out by the Contractor under the Contract.

### **2. Extent of Contract**

Extent of Contract

The Contractor shall, subject to the provisions of the Contract, execute the Works and provide all labour, materials, equipment, transport to and from Site or in and about the Works and everything whether of a temporary or permanent nature required in and for such execution so far as the necessity for providing the same is specified in or reasonably to be inferred from the Contract.

### **3. Duties and Powers of the Engineer and the Engineer’s Representative**

Duties and Powers of the Engineer and the Engineer’s Representative

(1) The Engineer shall carry out such duties as are specified in the Contract with due expedition. The Contractor shall take instructions, orders or directions only from the Engineer and the Engineer’s Representative.

(2) The duties of the Engineer’s Representative are to watch and inspect the Works, to test and examine any material and equipment to be used and workmanship employed by the Contractor in connection with the Works and to carry out such duties and exercise such powers vested in the Engineer as may be delegated to him by the Engineer.

### **4. General Obligations of the Contractor**

General Obligations of the Contractor

#### **(1) Design Responsibility**

Except as may be provided for in the Contract, the Contractor shall be responsible for the design of the Works and shall in completing the designs use all necessary skill and care. The Contractor shall ensure that all equipment and materials required by the design to be incorporated into the Works are fit for the purpose intended by the Contract.

#### **(2) Inspection of the Site**

(i) The Contractor shall be deemed to have inspected and examined

## **General Conditions of Contract**

the Site and its surroundings and to have satisfied himself, before submitting his Quotation, on all matters affecting his Quotation and the execution of the Works.

- (ii) No claim by the Contractor for additional payment shall be allowed on the ground of any misunderstanding in respect of the matters referred to in sub-clause (i) of this Clause or otherwise or on the ground of any allegation or fact that incorrect or insufficient information was given to him by any person whether in the employ of the Employer or not, or on the ground that he did not or could not foresee any matter which may in fact affect or have affected the execution of the Works.

### (3) Work to be to the Satisfaction of the Engineer

Save in so far as it is legally or physically impossible the Contractor shall execute, complete and maintain the Works in strict accordance with the Contract to the satisfaction of the Engineer and shall comply with the Engineer's instructions on any matter related to the Contract, whether mentioned in the Contract or not.

### (4) Care of the Works and Cleanliness at the Site

From the commencement to the completion of the Contract, the Contractor shall take full responsibility for the care of the Works and, for the care of any materials, equipment and things on the Site for the purpose of the Works. In case any damage, loss or injury shall happen to the Works contained therein or to any part thereof from any cause whatsoever, the Contractor shall at his own cost repair and make good the same and also remove wire ends and rubbish created out of the Works, so that at completion of the Contract the Works contained therein shall be in good order and condition and in conformity in every respect with the requirement of the Contract and the Engineer's instructions.

### (5) Damage to Persons and Property

- (i) The Contractor shall, except when directly caused by the acts or omissions of the Employer, indemnify and keep indemnified the Employer against all losses and claims for injury or damage to any person or property whatsoever, which may arise out of or in consequence of the execution of the Works and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereof.
- (ii) The Contractor shall make good or at the option of the Employer shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer

## **General Conditions of Contract**

and shall recompense the Employer in respect of any damage, loss or injury which may occur to any employee of the Employer by or arising out of or in consequence of the execution of the Works or in the carrying out of the Contract.

### **(6) Safety and Security of the Works**

- (i) The Contractor shall throughout the progress of the Works take full responsibility for the adequate stability and safety of all his operations on the Site and have full regard for the safety of all persons on the Site. The Contractors shall keep the Site and the Works in an orderly state appropriate to the avoidance of danger to all persons.
- (ii) The Contract shall in connection with Works provide all lights, guards, fences and warning signs and provide watchmen where and where necessary or required by the Engineer or by any competent statutory or other authority for the protection of the Works or for the safety and convenience of the public or others.
- (iii) The Contractor shall ensure that all parts of the Site where work is being carried out are so lighted as to ensure the safety of the all persons on or in the vicinity of the Site and of such work.

### **(7) Labour Returns**

The Contractor shall, as and when called upon to do so by the Engineer or the Engineer's Representative, submit to the Engineer or Engineer's Representative, information in a format specified by the Engineer or the Engineer's Representative on workers employed by the Contractor on site, including the worker categories, man-hours of workers and any other information as required by the Engineer or the Engineer's Representative.

## **5. Commencement, Completion and Acceptance of the Works**

Commencement,  
Completion and  
Acceptance of the  
Works

- (1) The Contractor shall commence the Works on the date of commencement of the Works as stated in the Services Order or as notified in writing by the Engineer or Engineer's Representative.
- (2) The Works and any part thereof shall be completed within the time or time stated in Section 2(a) of the Form of Quotation (Engineering) calculated from and including the date of commencement unless an extension of time is granted by the Engineer.
- (3) The Engineer or Engineer's Representative shall notify the Contractor in writing the date of acceptance of the Works.

## **General Conditions of Contract**

### **6. Remedy on Contractor's Failure to Perform**

Remedy on  
Contractor's Failure  
to Perform

If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer or Engineer's Representative in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor by deduction from moneys due to the Contractor under this Contract or under any other contract between the Employer and the Contractor.

### **7. Guarantee**

Guarantee

The Contractor shall fully guarantee that the Works and any part will perform as contemplated under the Contract for a period as stated in Section 2(b) of the Form of Quotation (Engineering) commencing from the date of acceptance of the Works by the Engineer or the Engineer's Representative.

### **8. Payment**

Payment

(1) Payment will be made after the completion of any Tests carried out pursuant to Clause 17 and submission of testing reports as required under the Contract and the acceptance of the Works by the Engineer or the Engineer's Representative.

(2) Notwithstanding sub-clause (1) of this Clause, the Employer may pay any sum at any time provided that the Engineer or the Engineer's Representative is satisfied with the Works completed so far and the invoice submitted by the Contractor. For the avoidance of doubt, satisfaction by the Engineer or the Engineer's Representative under this sub-clause does not constitute acceptance of the Works by the Engineer or the Engineer's Representative under sub-clause (1) of this Clause.

### **9. Compliance with the Construction Workers Registration Ordinance, Cap. 583**

Compliance with  
the Construction  
Workers  
Registration  
Ordinance, Cap.  
583

The Contractor shall provide the Engineer with all relevant information regarding their compliance with the Construction Workers Registration Ordinance, Cap. 583. The Contractor shall prepare and submit the required information in accordance with the requirements set out by the Engineer.

## **General Conditions of Contract**

### **10. Variations**

Variations

- (1) The Engineer shall make any variation as he may consider necessary in the form, character or quality of any work detailed in the Specification or the Schedule of Quantities, or to order different work of any kind which is not detailed in the Specification or Schedule of Quantities and no such variation or order for different work shall in any way vitiate or invalidate the Contract.
- (2) No such variation shall be made without an order in writing from the Engineer.
- (3) The rate for any work which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work in the Schedule of Quantities shall be ascertained by the Engineer, based on the rates in the Contract so far as may be reasonable, and be agreed upon between the Engineer and the Contractor.

### **11. Information not to be divulged**

Information not to be divulged

- (1) The Contractor and its employees, agents, sub-contractors and any other persons engaged in connection with the Contract (collectively, "Related Persons" and each a "Related Person") shall not use or divulge any Confidential Information except for the proper performance of the Contract. This restriction does not apply
  - (a) to a disclosure of any Confidential Information to a Related Person in circumstances where such disclosure is necessary for the proper performance of the Contractor's duties and obligations under the Contract, provided that the Contractor has imposed on the Related Person an absolute and legally binding obligation to refrain from disclosing the Confidential Information to a third party,
  - (b) to a disclosure of any Confidential Information already known to the recipient other than as a result of disclosure by the Contractor or a Related Person in breach of its duty of confidence under this clause or otherwise,
  - (c) to a disclosure of any Confidential Information which is or becomes public knowledge other than as a result of disclosure by the Contractor or a Related Person in breach of its duty of confidence under this clause or otherwise,
  - (d) to a disclosure of any Confidential Information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or an order of a

## **General Conditions of Contract**

court or arbitral authority of a competent jurisdiction, or

- (e) to a disclosure of any Confidential Information with the prior written consent of the Employer.
- (2) Any disclosure of Confidential Information by the Contractor or any Related Person shall be in strict confidence and shall be on a “need to know” basis and extend only so far as may be necessary for the purpose of this Contract.
- (3) The Contractor shall take all necessary measures (including but not limited to security measures, and contractual provisions where appropriate) to ensure that Confidential Information is not used or divulged by the Contractor and each Related Person other than in the proper performance of the Contract.
- (4) The Contractor shall ensure that each Related Person is aware of and comply with the provisions of this clause and the Official Secrets Ordinance (Cap. 521).
- (5) If so requested by the Employer, the Contractor shall submit
  - (a) a separate confidentiality agreement executed in favour of the Employer on the terms and in the form prescribed by the Employer, and
  - (b) a separate confidentiality agreement executed by a Related Person in favour of the Employer on the terms and in the form prescribed by the Employer.
- (6) The Contractor shall promptly notify the Employer, the Engineer or the Engineer’s Representative of any breach or suspected breach of this clause by the Contractor or any Related Person. The Contractor and each Related Person shall give the Employer, the Engineer or the Engineer’s Representative all reasonable assistance in connection with any action or proceedings the Employer or any of its authorised users, assigns and successors-in-title may take to pursue against any party a breach or suspected breach of this clause.
- (7) The Contractor and each Related Person shall comply with the Personal Data (Privacy) Ordinance (Cap. 486) (“PDPO”). Neither the Contractor nor any Related Person uses personal data provided by the Employer, the Engineer, the Engineer’s Representative or a delegate of any of them (each a “Data Owner”) for any purpose other than that specified by the Data Owner or for the proper performance of the Contract. A Data Owner may, from time to time or prior to provision of any personal data, require the Contractor to demonstrate that adequate measures are in place to ensure compliance with the PDPO and that all personal data is protected against any inadvertent

## **General Conditions of Contract**

or unauthorised access, processing, erasure, loss and use. A Data Owner may prescribe restrictions on or conditions of use of the personal data, or instruct the Contractor to ensure security of the personal data. The Contractor shall comply, and shall ensure that each Related Person comply, with these restriction, conditions and instructions, at his own cost.

- (8) The provisions of this clause shall survive the completion or termination of the contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion or termination.
- (9) The Employer, the Engineer, the Engineer's Representative or a delegate of any of them may use any information provided by the Contractor under the Contract but shall not divulge such information except for the purpose of
- (a) carrying out any repair, amendment, extension or other work connected with the Works,
  - (b) exercising their rights or carrying out their duties under the Contract,
  - (c) the use, alteration or demolition of the Works,
  - (d) giving publicity to the Works, or
  - (e) the Employer's duties under the Code on Access to Information.
  - (f) cost estimation or analysis of the Employer's work connected or unconnected with the contract, and compiling tender estimate for use by the Government and the public, provided that for this purpose:
    - (i) the Employer does not disclose the contract number, contract title and Contractor's name to a third party, and
    - (ii) when the Employer discloses other information to a third party, the Employer obtains an undertaking from the third party to not disclose it for any other purpose,
  - (g) complying with any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction, or
  - (h) initiating, defending or resolving any dispute to which the Employer is a party.
- (10) Without prejudice to any other provision of the contract, the



## **General Conditions of Contract**

Contractor shall indemnify and keep the Employer and its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all proceedings, actions, claims, demands, losses, liabilities, damages, costs, legal costs, professional and other expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) of any nature whatsoever which the Employer or its authorised users, assigns and successors-in-title may suffer, sustain or incur, whether directly or consequentially, as a result of or in relation to any breach of confidence (whether under the contract or otherwise) or this provision by the Contractor or a Related Person.

- (11) In this clause, "Confidential Information" means any information, drawings, specifications, documents, contracts, design materials and data (including without limitation any personal particulars, records and personal data (as defined in the PDPO) and materials of any nature (in or on whatever media)) accessible by the Contractor under the contract or provided by the Employer, the Engineer or the Engineer's Representative for the purposes of or in the course of performing the contract.

### **12. Ethical Commitment**

Ethical Commitment

- (1) If the Contractor or any of his agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Engineer or to any member of the Engineer's staff, the Employer may terminate forthwith the employment of the Contractor under the Contract, and to hold the Contractor liable for any loss or damage which the Employer may thereby sustain.
- (2) The Contractor shall prohibit his employees, agents, and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.
- (3) The Contractor shall require his employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (4) The Contractor shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the

## **General Conditions of Contract**

performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.

- (5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

### **13. Contractor's interim statements**

Contractor's  
interim statements

- (1) The Contractor shall submit to the Engineer during the progress of Works a statement showing: -
- (a) the estimated contract value of the work done in accordance with the Contract up to the relevant specified time with sums payable in respect of daywork, and adjustments for variations listed separately;
  - (b) a list of materials and unfixed Plant delivered to the Site for use in the permanent work and their estimated contract value;
  - (c) all further estimated sums which the Contractor considers to be due to him under the Contract.
- (2) (not used)
- (3) The Contractor shall also submit a signed declaration in a form prescribed in Appendix to GCC for Minor Works or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in GCC Clauses 11 and 12 as part of the Contractor's interim statement. If the Contractor fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period.

### **14. Acknowledgement of being notified of the ethical requirements**

Acknowledgement of  
being notified of the  
ethical requirements

The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents or sub-contractor who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention and Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of

## **General Conditions of Contract**

imprisonment.

### **15. Limiting the Tiers of Sub-contracting**

Limiting the Tiers of  
Sub-contracting

- (1) For the purposes of this Clause, the first tier of sub-contracting means the contracts between the Contractor and his sub- contractors. The second tier means the sub-contracts between any of the sub-contractors of the first tier and his sub- contractors. The foregoing shall apply with necessary modifications to subsequent tiers of sub-contracting.
- (2) Notwithstanding General Conditions of Contract Clause 4 on sub-contracting and subject to sub-clause (3) of this Clause, the sub-contracting of any part of the Works by the Contractor shall be limited as follows:
  - (a) sub-contracting of any part of the Works requiring entry of human beings into confined space that forms part of a sewerage or drainage system, or any part of the Works involving high-risk operations(s) shall be limited to the first tier of sub-contracting; and
  - (b) sub-contracting of any part of the Works not falling under sub-clause (2)(a) above shall be limited to two tiers (i.e. the first tier and second tier) of sub- contracting.
- (3)
  - (a) The Contractor may submit a proposal to the Engineer for an extra tier of sub-contracting for any part of the Works which has been sub-contracted in compliance with the limit in sub-clauses (2)(a) or (2)(b), whichever is applicable, of this Clause and with other provisions of the Contract.
  - (b) The Engineer shall not be obliged to consider the Contractor's proposal for an extra tier of sub- contracting unless the proposal is submitted in writing to the Engineer at least 14 days before the sub-contractor of the relevant tier of sub-contracting enters into any sub-contract for the extra tier of sub-contracting and the proposal is accompanied by an explanation with supporting evidence on the need for the extra tier of sub-contracting.
  - (c) A proposal which has been made in strict compliance with sub-clause (3)(b) above is taken to have been approved by the Engineer if it is not expressly rejected by the Engineer in writing within 14 days from the date of receipt by the Engineer of the Contractor's proposal.
  - (d) The rejection of the Contractor's proposal for any reason by the Engineer shall not entitle the Contractor to any extension of time or additional payment nor does it relieve the Contractor from any liability or obligation under the Contract.

## **General Conditions of Contract**

- (4) The Contractor shall comply with and shall ensure that all sub-contractors (irrespective of any tier) shall comply with the provisions of this Clause. If the Contractor or any of the sub- contractors (irrespective of any tier) fails to comply with the provisions of this Clause, the Engineer shall, without prejudice to any other rights and remedies, have full power to order the removal of any sub-contractor which has been engaged in contravention of any of the provisions of this Clause from the Site and/or the Works.
- (5) In this Clause, unless the context otherwise requires, “confined space” has the same meaning as that adopted in the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap.59AE).

### **16. Contractor’s superintendence**

Contractor’s  
superintendence

- (1) The Contractor shall give or provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfilment of the Contractor’s obligations under the Contract.
- (2) The Contractor shall ensure that he is all times represented on the Site by a competent and authorized agent who shall be deemed to be approved by the Engineer provided the agent is not expressly disapproved by the Engineer in writing within 14 days from the serving of a notice in writing upon the Engineer by the Contractor of the appointment of the agent. The authorized agent shall be constantly on the Site and shall give his whole time to the superintendence of the Works.
- (3) The Engineer shall have the power to withdraw his approval of the authorized agent at any time. If such approval shall be withdrawn the Contractor shall, after receiving notice in writing of such withdrawal, remove the agent from the Site forthwith and shall not thereafter employ him again on the Site in any capacity and shall replace him by another competent agent approved by the Engineer.
- (4) The authorized agent shall receive on behalf of the Contractor directions and instructions from the Engineer and the Engineer’s Representative.

### **17. Quality of Plant, materials and workmanship and Tests**

Quality of Plant,  
materials and  
workmanship and  
Tests

- (1) All Plant, materials, and workmanship shall be of the respective character, quality or kind required by the Contract and in accordance with the Engineer’s instructions and shall be subjected to such examinations, measurements or Tests as the Contract shall require or as ordered by the Engineer or the Engineer’s Representative at the place of manufacture, or on the Site, or at such other place or places

## **General Conditions of Contract**

as may be specified in the Contract, or at all or any such places. All Plant and materials shall be of recent manufacture and not previously used.

- (2) The Contractor shall provide such assistance, instruments, machines, labour and other facilities as may be necessary for examining, measuring or testing any work and the quality, weight or quantity of any Plant and/or material used and, before incorporation into the Works, shall supply for examining, measuring or testing such samples of Plant and/or materials as may be selected or required by the Engineer or the Engineer's Representative.
- (3) The Contractor shall bear the expense and costs of any examination, measurement or Test and of complying with the requirements of sub-clause (2) of this Clause, including without limitation any transportation costs and shall reimburse the Employer in respect of the costs of the Engineer in attending such examination, measurement or Test, if such examinations, measurements or Tests and all repetitions thereof are clearly intended or provided for in the Contract.
- (4) If any examination, measurement or Test not so intended or provided for in the Contract is ordered by the Engineer or the Engineer's Representative, then such expense and costs of such examination, measurement or Test including those of the Engineer's attendance shall be borne by the Contractor if the examination, measurement or Test shows the Plant, materials or workmanship not to be in accordance with the Contract or with the Engineer's instructions but otherwise such expense and costs shall be borne by the Employer.
- (5) In the event that any Test shows that the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship, the Contractor shall propose and carry out at his own expense further or any other Tests as the Engineer may approve.
- (6) Sub-clauses (4) and (5) of this Clause shall apply to any series of Tests carried out on any part of the Works the results of which indicate that in the opinion of the Engineer the Contractor has failed to comply with the requirements of the Contract or with the Engineer's instructions in respect of Plant, materials or workmanship notwithstanding there being satisfactory individual Tests included in any such series of Tests.
- (7) Notwithstanding the above, testing carried out in the Employer's laboratories in connection with the Works shall be free of charge.
- (8) If the Contractor is required by the Contract or ordered by the

## **General Conditions of Contract**

Engineer to carry out any examination, measurement or Test, then the Contractor shall give notice to the Engineer specifying the procedures that the Contractor intends to adopt and the time and location of the examination, measurement or Test. If no period of notice is specified in the Contract then reasonable notice shall be given by the Contractor having regard to the type and location of the material, Plant and workmanship to be examined, measured or tested.

### **18. Rejection and removal of unsatisfactory Plant and material**

Rejection and  
removal of  
unsatisfactory Plant  
and material

- (1) The Engineer shall during the progress of the Works have the power to order in writing:
  - (a) the rejection and the removal from the Site within such time as may be specified in the order of any Plant or material which in the opinion of the Engineer is not in accordance with the Contract,
  - (b) the substitution of proper and suitable Plant or material, and
  - (c) the removal and proper re-execution, notwithstanding any previous examination, measurement or Test thereof or any interim payment therefor, of any work which, in respect of Plant, materials or workmanship, is not in accordance with the Contract.
- (2) The Contractor shall bear the expense of uncovering, dismantling, breaking up and removal from the Site of any Plant, material or work not in accordance with the Contract and the Contractor shall also bear the expense of reinstating and making good all consequential damage to the Works resulting from such uncovering, dismantling, breaking up or removal.
- (3) Where the rectification of any work or replacement of any Plant or material by the Contractor which does not comply with the Contract would involve the removal and re-execution of the original permanent work the Engineer may but shall not be obliged to give directions for a variation of the Works in lieu of such removal and re-execution at no additional expense to the Employer.

Provided that if in the opinion of the Engineer such variation has involved the Contractor in expense in excess of that which would have been involved in the removal and re-execution of the original permanent work then the Engineer shall value such excess in accordance with Clause 10 and shall make payment in accordance with Clause 8.

- (4) In the event that the Engineer exercises any of his powers under sub-

## **General Conditions of Contract**

clause (1) of this Clause concerning materials supplied by the Employer, and if in the opinion of the Engineer the Contractor could not have reasonably ascertained that the material was not in accordance with the Contract then the Engineer shall ascertain the cost incurred, and shall make payment in accordance with Clause 8.

- (5) Unless authorized otherwise by the Engineer, all replacement parts, which during the progress of the Works, including the Guarantee Period, are required to be fitted to any Plant, shall be genuine proprietary standard parts produced or recommended by the manufacturer of the Plant.
- (6) The Engineer's power under this clause shall be in addition to, and without prejudice to, other powers of the Engineer under this Contract.

### **19. Execution of work of repair**

Execution of work of repair

- (1) The Works shall at or as soon as practicable after the expiry of the Guarantee Period be delivered up to the Employer in the condition required by the Contract, fair wear and tear excepted.
- (2) During the Guarantee Period or within 14 days after its expiry, the Engineer may by notice in writing require the Contractor to carry out any work of repair or rectification, or make good any defect identified within the Guarantee Period, and the Contractor shall carry out such work within the Guarantee Period or as soon as practicable thereafter and where the Engineer requires such work to be carried out urgently, the Contractor shall carry out such work in compliance with such terms contained in the notice imposed by the Engineer as the Engineer may consider necessary and reasonable in the circumstances.
- (3) All such work shall be carried out by the Contractor at his own expense if the necessity for such work shall, in the Engineer's opinion, be due to the use of Plant, materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract. If in the opinion of the Engineer such necessity shall be due to any other cause, then the Engineer shall value the work as if it were a variation ordered in accordance with Clause 10 and shall certify in accordance with Clause 8.
- (4) If the Contractor fails to carry out any or all work of repair or rectification or make good any defect and in such terms (if any) as required by the Engineer under sub-clause (2) of this Clause the Employer shall be entitled after giving reasonable notice in writing to

## **General Conditions of Contract**

the Contractor, to have such work carried out by his own workers or by other contractors and if such work is work which the Contractor would have been required to carry out at his own expense the Employer shall be entitled to recover from the Contractor the expenditure incurred in connection therewith.

- (5) If during the Guarantee Period the Works cannot be used by reason of any defect identified within the Guarantee Period, then the Engineer may extend the Guarantee Period by a period equal to the time during which the Works cannot be used but the Guarantee Period for the Works shall not, unless otherwise provided in the Contract, be extended beyond two years from and including the day following the date of acceptance of the Works pursuant to Clause 5(3).
- (6) If any work is carried out under this Clause which for any reason, in the opinion of the Engineer, necessitates the extension of the Guarantee Period in respect of the Works, then the Engineer may so extend the Guarantee Period.

Provided that:-

- (a) any extension under this sub-clause shall not be for a period longer than the original Guarantee Period named in the Form of Quotation (Engineering), and
- (b) the Guarantee Period for the Works shall not, unless otherwise provided in the Contract, be extended beyond two years from and including the day following the date of acceptance of the Works pursuant to Clause 5(3).
- (7) The provision of sub-clauses (5) and (6) of this Clause shall apply equally to any Section or any part or substantial part of the Works.
- (8) If the nature of any work carried out under this Clause is such that, in the opinion of the Engineer, it is necessary to repeat any Test carried out pursuant to Clause 17 then the Engineer may require the Contractor to repeat the Test and the work shall not be considered complete until satisfactory results are obtained. The provisions of sub-clause (3) of this Clause shall apply to a Test required by the Engineer pursuant to this sub-clause.

### **20. Vesting of Constructional Plant and temporary buildings**

All Constructional Plant and temporary buildings owned by the Contractor shall when brought onto the Site be and become the property of the Employer but may be removed from the Site by the Contractor at any time unless removal is expressly prohibited by the Engineer in writing. Upon removal as aforesaid such Constructional

Vesting of  
Constructional Plant  
and temporary  
buildings



## **General Conditions of Contract**

Plant and temporary buildings shall re-vest in the Contractor. Upon completion of the Works the remainder of such Constructional Plant and temporary buildings shall re-vest in the Contractor.

### **21. Vesting of Plant and materials**

Vesting of Plant and materials

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

### **22. Recovery of money due to the Employer**

Recovery of money due to the Employer

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

### **23. Right of Government to terminate for convenience**

Right of Government to terminate for convenience

- (1) Notwithstanding the provisions of any other clause in the Contract, the Employer shall, in addition to any other power enabling it to terminate the Contract, have power to terminate the Contract at any time by notice in writing to the Contractor and the termination shall take effect on a date specified in the notice but without prejudice to the claims of either party in respect of any antecedent breach thereof. Upon receipt of the notice of termination the Contractor shall, unless directed by the Engineer pursuant to sub-clause (4) hereunder, suspend all the work and stop incurring further expenditure with respect to any work under the Contract except for work which is necessary for the protection of life or property or for the safety of the Works.
- (2) Except as provided in sub-clause (3) of this Clause, the Employer shall

## **General Conditions of Contract**

not terminate the Contract under this Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.

- (3) The Employer is entitled to terminate the Contract under this Clause and thereafter to execute the Works himself or to arrange for the Works to be executed by another contractor if the Engineer shall certify in writing to the Employer that in his opinion the completion of the Works will be delayed by a period of not less than one year due to interfacing problems or programme slippages of associated works outside the scope of the Contract.
- (4) After the issue of the notice of termination to the Contractor under sub-clause (1), the Engineer shall as soon as practicable and in any case not later than the date of termination specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:
  - (a) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works;
  - (b) the protection of work executed under the Contract or any work required to leave the Site in a clean and safe condition;
  - (c) the removal of all Constructional Plant, Temporary Works and temporary buildings from the Site;
  - (d) the removal of materials placed on the Site;
  - (e) the removal of any debris or rubbish and the clearing and making good of the Site;
  - (f) the termination or assignment of any sub-contracts and contracts, including those for the hire of Plant, services and insurance, entered into by the Contractor for the purposes of or in connection with the Contract;
  - (g) the assignment of warranties for materials placed on the Site; and
  - (h) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.
- (5) All Constructional Plant, Temporary Works, temporary buildings and materials properly brought on to the Site shall be removed by the Contractor as and when they cease to be required in accordance with

## **General Conditions of Contract**

directions given by the Engineer under sub-clause (4). The Constructional Plant, Temporary Works, temporary buildings and materials which have become the property of the Employer under Clauses 20 and 21 shall upon such removal re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Temporary Works, temporary buildings or materials as aforesaid, the Employer may

- (a) sell any such Constructional Plant, Temporary Works, temporary buildings or materials which has become the property of the Employer under Clauses 20 and 21 and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale shall pay the balance, if any, to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provision of Clause 22; or
- (b) dispose the same in a manner which the Employer considers most appropriate and any costs, charges and expenses so incurred shall be recoverable by the Employer from the Contractor in the manner aforesaid.

Provided that in the event of any such Constructional Plant not solely owned by the Contractor and the Contractor fails to remove such Constructional Plant, the Employer may return such Constructional Plant at the expense of the Contractor to the person, firm or company from whom such Constructional Plant was held by the Contractor and any expense so incurred may be recovered by the Employer from the Contractor in the manner aforesaid.

Provided further that the Employer shall not at any time be liable for the loss of or damage to any Constructional Plant, Temporary Works, temporary buildings or materials which the Contractor shall fail to remove from the Site under this sub-clause.

- (6) If –
  - (a) the Contractor is unable or unwilling with all reasonable despatch to carry out any work or other matter specified in directions given to him by the Engineer in terms of sub-clause (4), or
  - (b) the Employer considers that any other urgent work not specified in directions given to the Contractor under sub-clause (4) shall

## **General Conditions of Contract**

be carried out by a person other than the Contractor, the Engineer may authorize the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provision of Clause 22.

(7) In the event of termination of the Contract under this Clause the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination to be valued in accordance with the Contract and in addition, subject to sub-clause (8):

- (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion, as certified by the Engineer, of all such items the work or service comprised therein has been partially carried out or performed;
- (b) the cost of materials ordered for the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery or any advanced payment made for materials ordered for the Works, such materials becoming the property of the Employer upon such payment being made by the Employer;
- (c) a sum to be certified by the Engineer being any cost reasonably incurred by the Contractor for the purpose of completing the Works in so far as such cost shall not have been paid in accordance with any other sub-clause of this Clause or any other Clause under the Contract.
- (d) the additional cost of removal, as compare to removal if the contract had been performed to completion, under sub-clause (5) of all Constructional Plant, Temporary Works, temporary buildings and materials from the Site and, if required by the Contractor, return thereof to the Contractor's country of origin or to any other destination at no greater cost and certified by the Engineer as reasonable;
- (e) a sum to be certified by the Engineer being any reasonable sum expended by the Contractor because of the termination of the Contract in respect of

## **General Conditions of Contract**

(i) the uncompleted part of any sub-contract and other contracts (including those for the hire of Plant, services and insurance), and

(ii) the curtailment of any contract of employment,

entered into exclusively in connection with the Contract.

Provided always that against any payments due from the Employer under this sub-clause the Employer shall be entitled to be credited with rebates from insurance, credit value of Plant/equipment for the Engineer's use prematurely re-delivered to the Contractor and any outstanding balances due from the Contractor for advances in respect of Plant and materials and any sum paid in advance by the Employer to the Contractor in respect of the execution of the Works.

- (8) The Contractor shall, in any sub-contract or contract made by him in connection with or for the purposes of the Contract, reserve the power to determine such sub-contract or contract in the event of the termination of the Contract by the Employer in accordance with the provisions of this Clause upon terms similar to the terms of this Clause. The Contractor shall not be entitled to compensation of any expenditure resulting from non-compliance with this requirement.
- (9) Within 90 days after the date of issue of the notice of termination under sub-clause (1), the Contractor shall submit to the Engineer a statement of account and supporting documentation showing in detail the value in accordance with the Contract of the work done as of the date of termination together with all further sums which the Contractor considers to be due to him under this Clause. Within 90 days after receipt of the statement of account and of all information reasonably required for its verification, the Engineer shall value and certify the sum which in his opinion is finally due to the Contractor on termination under this Clause and within a further 21 days the Employer shall make payment of the certified sum to the Contractor.
- (10) Payment to the Contractor under sub-clause (7) shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Contract under this Clause.
- (11) This Clause shall survive and remain in force after termination of the Contract in accordance with this Clause.

## **General Conditions of Contract**

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**General Conditions of Contract**

**APPENDIX to GCC for Minor Works**

**COMPLIANCE WITH THE ETHICAL COMMITMENTS & PDPO REQUIREMENTS**

**(Appendix to GCC 13)**

To:           The Engineer of the Contract

Contract No.: \_\_\_\_\_

Contract Title: \_\_\_\_\_

In accordance with the General Conditions of Contract for Minor Works Clause 13, we confirm that we have complied with the following provisions and have ensured that our directors, employees, sub-contractors and agents are aware of the following provisions:

- (a) Prohibiting our directors, employees, agents and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract;
- (b) Requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
- (c) Prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract and requiring our sub-contractors to do the same;
- (d) Taking all measures as necessary to protect any Confidential Information or personal data as defined in the Personal Data (Privacy) Ordinance entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Contract.

\_\_\_\_\_

(Name of the Contractor) .....

(Name of the Signatory) .....

(Position of the Signatory) .....

(Date) .....

## **General Conditions of Contract**

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