



Festival Walk (2011) Limited

[Standard Terms and Conditions of Contract \(Works and Services\)](#)

[Standard Terms and Conditions of Contract \(Supplies\)](#)

September 2020

Festival Walk (2011) Limited

Standard Terms and Conditions of Contract (Works and Services) – September 2020

1.0 Definitions

- 1.1 In this Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby respectively assigned to them except where the content otherwise requires:
- 1.1.1 Certificate of Practical Completion : shall mean the certificate issued by the Employer's Representative pursuant to clause 4.4.
- 1.1.2 Conditions : shall mean these Standard Terms and Conditions of Contract.
- 1.1.3 Consultant : shall mean any technically qualified person and/or company appointed by the Employer for the purpose of the design, construction, completion and testing of the Works and/or any part thereof.
- 1.1.4 Contract : shall mean these Conditions and such other documents as are specified in the Tender Documents including the completed Form of Tender and Schedules, together with the Employer's Representative's written acceptance thereof on behalf of the Employer, but excluding any standard printed condition that may be included in such other documents where such standard printed condition originates from the Contractor.
- 1.1.5 Contractor : shall mean the company or persons engaged by the Employer to carry out the Works.
- 1.1.6 Contractor's Representative : shall mean the person appointed by the Contractor to supervise the Works on behalf of the Contractor and to receive instructions all as referred to in clause 2.4 hereof.
- 1.1.7 Date of Commencement : shall mean the date as shall be inserted in the Form of Tender (or by such other date as shall be confirmed in writing by the Employer's Representative).
- 1.1.8 Defects Liability Period : shall mean the period as stated in the Form of Tender.
- 1.1.9 Direct Contractor : shall mean any such contractor and/or sub-contractor employed on the Works by the Employer.
- 1.1.10 Employer : shall mean Festival Walk (2011) Limited and/or Mapletree North Asia Property Management Limited.
- 1.1.11 Employer's Representative : shall mean the person authorised by the Employer to supervise the Works and to issue instructions and certificates all as referred to in these Conditions.
- 1.1.12 Form of Tender : shall mean the form of tender as included in Section 1 of the Tender Documents.
- 1.1.13 General Specification : shall mean the respective specifications as more particularly described in Section 3 of the Tender Documents.
- 1.1.14 Insurer : shall mean the insurance company providing the Employees' Compensation Insurance under clause 7.1 of these Conditions.
- 1.1.15 Management Company : shall mean the company appointed by the Employer to manage the premises in which the Works have been or are being carried out.
- 1.1.16 Parties : shall mean the Contractor and the Employer.
- 1.1.17 Policy of Insurance : shall mean the policy of insurance as provided by the Contractor pursuant to clause 7.2.5 and 7.3 of these Conditions.
- 1.1.18 Provisional Sums : shall mean any such sum as shall be identified specifically as such in the Tender Documents.
- 1.1.19 Schedules : shall mean the Schedules as included in Section 5 of the Tender Documents.
- 1.1.19A Security Deposit : shall mean the security deposit as provided by the Contractor pursuant to clause 2.9.1 of these Conditions and the amount of the Security Deposit shall be identified specifically as such in the Form of Tender.
- 1.1.20 Site : shall mean Festival Walk
- 1.1.21 Tenants : shall mean the occupants of premises within or adjacent to the Site.
- 1.1.22 Time for Completion : shall mean the date as shall be inserted in the Form of Tender (or any extended time fixed in accordance with the provisions of clause 4.2 of these Conditions).

- 1.1.23 Works : shall mean all works required to be carried out by the Contractor in the design (to the extent required by the Contract), management, construction, completion and maintenance of the Works described in the Contract.

2.0 Intentions of the Parties

2.1 Contractor's Obligations

The Contractor shall, as required by the Employer, provide two sets of audited financial statements showing 3-year comparative figures, and a statement giving up-to-date details of any off-balance sheet liabilities if not covered by the audited financial statements, to evidence that the Contractor has at least positive net worth. The copies of audited financial statements shall be certified true and correct by independent auditor(s) or director(s) of the Contractor.

The Contractor shall, with due diligence and in a good and workmanlike manner, carry out and complete the Works in accordance with the Contract using materials and workmanship of the quality and standards therein specified and to the reasonable satisfaction of the Employer's Representative and in conformity with all reasonable directions and requirements of the Employer's Representative and as required by the Schedules as included in Section 5.0 hereto.

2.2 Assignment

The Contractor shall not, without the prior written consent of the Employer, assign this Contract.

2.3 Sub-contracting

2.3.1 No sub-contracting shall be allowed by the Contractor without the prior written consent by the Employer. The Contractor shall inform the Employer's Representative in writing the names of all sub-contractors, if any, and details of work covered by such sub-contracts. The Employer's Representative has all the rights to accept or reject part or all of such sub-contractors proposed by the Contractor.

2.3.2 The Contractor is responsible for the acts, obligations and omissions of all sub-contractors, their agents, servants and workmen as fully as if they were the acts, obligations and omissions of the Contractor, its agents, servants and workmen.

2.3.3 All sub-contractors engaged in this contract must be registered under the Voluntary Sub-contractor Registration Scheme (VSRS) administered by the Construction Industry Council.

2.4 Contractor's Representative

The Contractor shall, at all reasonable times, keep upon the Works a competent person in charge to supervise the Works on behalf of the Contractor. Any instructions given to such person in charge by the Employer's Representative shall be deemed to have been issued to the Contractor.

2.5 Removal of Person(s) from the Site

The Employer's Representative may (but not unreasonably or vexatiously) issue instructions requiring the removal from the Site of any person employed thereon. Any person so removed shall not be allowed to re-enter the Site.

2.6 Employer's Representative's Instructions

2.6.1 The Employer's Representative may issue written instructions which the Contractor shall forthwith carry out. If instructions are given orally they shall, within two (2) days, be confirmed in writing by the Contractor.

2.6.2 If within seven (7) days after receipt of a written notice from the Employer's Representative requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to carry out the work and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Contractor under this Contract or shall be recoverable from the Contractor by the Employer as a debt.

2.7 Order and Control of the Works

The Employer's Representative may issue instructions as he/she may deem necessary as to the order of proceeding and carrying out the Works, including ordering work to be carried out during night-time and during holiday periods.

2.8 Wage Protection for Cleansing Workers and Security Guards

The Contractor shall ensure the wages of the cleansing workers and security guards employed for the Works, whether they are the direct employees of the contractor or not, are not lower than the average market rate for similar posts as stipulated in the Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics.

If the cleansing workers or security guards have to work overtime, they should be suitably compensated accordingly.

2.9 Security Deposit / Performance Bond

2.9.1 The Contractor shall, as requested by the Employer, provide a valid Security Deposit in the form of cash, cheque or furnished by way of a irrevocable banker's guarantee or performance bond issued by a reputable bank, insurance company or finance company approved by the Employer in a form and on the terms prescribed by the Employer. The Security Deposit shall be equal to 5% of the contract sum or HK\$30,000 (whichever is higher) as stated in the Form of Tender. The Employer shall be entitled to utilize the Security Deposit towards satisfying any amount due and owing to the Employer by the Contractor under these Conditions.

The Security Deposit or the balance remaining shall be returned or refunded to the Contractor, free of interest, upon the end of the Defects Liability Period or the satisfactory completion of all obligations under this Contract, whichever is later.

3.0 Variations

3.1 The Employer's Representative may, without invalidating the Contract, order an addition to or omission from or other changes in the Works or the order or period in which they are to be carried out and any such instruction shall be valued by the Employer's Representative on a fair and reasonable basis, using where relevant, prices in the Schedules.

3.2 Measurement of Variations

Where the valuation of a variation requires measurement, such measurements shall be taken jointly by the Employer's Representative and the Contractor, in the circumstance the Contractor declines or fails to participate in such measurement, such measurement by the Employer's Representative shall be deemed agreed by the Contractor.

3.3 Provisional Sums

The Employer's Representative shall issue instructions as to the expenditure of any Provisional Sums and such instructions shall be valued or the price agreed in accordance with either clauses 3.1 or 3.2 hereof.

3.4 Invoices & Vouchers

The Employer reserves the right to inspect all invoices and vouchers in respect of any materials purchased by the Contractor for the Works.

3.5 Correction of Inconsistencies

Any inconsistency in or between the Tender Drawings, the General Specification and the Schedules shall be corrected by the Employer's Representative and any such correction which results in an addition, omission or other change to the Works shall be treated as a variation. Nothing contained in the Tender Drawings, the General Specification or the Schedules shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

4.0 Commencement and Completion

4.1 Commencement and Completion

The Works shall commence on the Date of Commencement and shall be completed within the Time for Completion.

4.2 Extension of Time for Completion

If and whenever it becomes reasonably apparent that the progress of the Works is being or is likely to be delayed and may not be completed within the Time for Completion stated in the Form of Tender (or any extended time fixed in accordance with the provisions of this clause) for reasons beyond the control of the Contractor, including compliance with any instruction of the Employer's Representative (for which such issue is not due to a default of the Contractor), then the Contractor shall so forthwith give written notice of the cause or causes of delay and the Employer's Representative who shall if in his/her opinion agree that such causes are outside the control of the Contractor make, in writing, such extension of time for completion as may be reasonable. Causes within the control of the Contractor include but are not limited to any default of the Contractor or of sub-contractors engaged by him in connection with the Works and of any supplier of goods or materials for the Works.

4.3 Damages for Non-completion

If the Contractor fails to complete the Works by the Time for Completion and the Employer's Representative certifies in writing in his/her opinion the same ought reasonably so to have been completed, then the Contractor shall pay to the Employer as Liquidated Damages the sum or sums stated in the Form of Tender for each day or part of a day during which the Works shall so remain or have remained incomplete. The Employer may deduct such sum or sums from the Security Deposit and any monies due to the Contractor or it may recover them from the Contractor as a debt.

4.4 Practical Completion

As soon as in the opinion of the Employer's Representative the Works shall have been substantially completed and shall have satisfactorily passed any tests that may be prescribed in the Contract, the Employer's Representative shall on receiving a written undertaking by the Contractor to finish any outstanding Works within the period agreed and stated in the undertaking issue a Certificate of Practical Completion to the Contractor in respect of the whole of the Works and completion of the Works shall be deemed for all purposes of the Contract to have taken place on the day named in such certificate.

4.5 Defects Liability

4.5.1 Any defects, excessive shrinkages or other faults to the Works which appear within the Defects Liability Period commencing from the date of completion named in the Certificate of Practical Completion issued pursuant to clause 4.4 hereof, and are due to materials or workmanship not in accordance with the Contract, shall be made good by the Contractor entirely at its own cost and with all possible speed.

4.5.2 The Employer's Representative shall certify the date when in his/her opinion the Contractor's obligations under this clause 4.5.1 have been discharged.

4.5.3 If the Contractor fails to remedy such defects, shrinkages or faults within seven (7) days of the Employer's Representative giving written notice of such defects, shrinkages or faults appearing, the Employer may proceed to do so at the risk and expense of the Contractor and without prejudice to such other rights as the Employer may have under the Contract. All costs incurred thereby by the Employer may be deducted by the Employer from the Security Deposit and any monies due or to become due to the Contractor or shall be recoverable from the Contractor by the Employer as a debt.

5.0 Payment

5.1 *Progress Payment and Retention*

The Employer's Representative shall, if requested by the Contractor, at intervals of not less than one month or at other intervals separately agreed, certify progress payments to the Contractor in respect of the value of the Works properly executed, including any amounts either ascertained or agreed under Clause 3.0 hereof, and the value of any materials and goods which have been reasonably and properly brought upon the Site for the purpose of the Works and which are adequately stored and protected against the weather and other casualties, less a retention as stated in the Form of Tender and less any previous payments made by the Employer. The Employer shall pay to the Contractor the amount so certified within thirty (30) days of the date of the certificate.

5.2 *Payment upon Reaching Practical Completion*

The Employer's Representative shall, if requested by the Contractor, after the date of completion named in the Certificate of Practical Completion pursuant to clause 4.4 hereof, certify payment to the Contractor of the total value of the Works less the percentage of retention stated in the Form of Tender to be paid to the Contractor under this Contract so far as that value of the Works is ascertainable at the date of completion and provided the Works have been properly executed. Such certified payment shall include such work as have been either ascertained or agreed under clause 3.0 hereof, less the amount of any progress payments previously made by the Employer. The Employer shall pay to the Contractor the amount so certified within thirty (30) days of the date of such certificate of payment.

5.3 *Release of Retention*

The release of retention money shall not become due until the expiration of the Defects Liability Period or until after the satisfactory completion of making good of defects which shall have been so certified by the Employer's Representative pursuant to Clause 4.5.2 herein, whichever is the later.

6.0 Statutory Obligations

6.1 *Statutory Obligation, Notices, Fees and Charges*

The Contractor shall comply with, and give all notices required by, any statute, any statutory instrument, any laws, ordinances, orders, regulations or bylaws applicable to the Works (hereinafter called 'the statutory requirements') and shall pay all fees and charges in respect of the Works legally recoverable from him. If the Contractor finds any divergence between the statutory requirements and the Contract or between the statutory requirements and any instruction of the Employer's Representative, it shall immediately give to the Employer's Representative a written notice specifying the divergence. Provided the Contractor shall have complied with this latter obligation, the Contractor shall not be liable to the Employer under this Contract if the Works do not comply with the statutory requirements where and to the extent that such non-compliance of the Works results from the Contractor having carried out work in accordance with the Contract or any instruction of the Employer's Representative.

6.2 *Construction Sites (Safety) Regulations*

6.2.1 The Contractor shall comply with the Construction Sites (Safety) Regulations issued under the Factories and Industrial Undertakings Ordinance.

6.2.2 Furthermore the Contractor shall comply with all government regulations concerning safety on the Site. The Contractor shall obtain and display prominently upon all structures or temporary huts on the Site throughout the construction period and remove on completion, posters, in both English and Chinese, drawing attention to safety on site. These posters are obtainable normally free of charge from the Labour Department, Government of the Hong Kong Special Administrative Region.

6.2.3 The Contractor shall provide sufficient safety helmets, safety shoes, protective and waterproof clothing and devices such as ear muffers and protective glasses where appropriate for the use of all personnel working on site and other authorised persons visiting the Site.

6.2.4 The Contractor shall provide on the Site for the use of all site personnel and for the duration of the Contract one set of the latest Construction Sites (Safety) Regulations, the Factories and Industrial Undertakings Ordinance concerning safety officers, safety supervisors and any other safety matters. The Contractor shall also provide any revisions or new safety regulations that may be introduced by the Government of the Hong Kong Special Administrative Region during the duration of the Contract.

6.3 *Construction Industry Council Ordinance and Construction Workers Registration Ordinance*

The Contractor shall submit notices to the Construction Industry Council (CIC) for any construction operations as required by the Construction Industry Council Ordinance (Cap. 587) and Construction Workers Registration Ordinance (Cap. 583).

6.4 *Pneumoconiosis and Mesothelioma (Compensation) Ordinance*

The Contractor shall submit notices to the Pneumoconiosis Compensation Fund Board (PCFB) for any construction operations as required by the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

6.5 *Prevention of Corruption*

The Employer shall be entitled to determine this Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give to any person having a relationship with the award or performance of this Contract any gift or consideration of any kind or if the Contractor shall have committed any offence under the Prevention of Corruption Ordinance.

7.0 Insurance

7.1 Employees' Compensation Insurance

- 7.1.1 Without prejudice to its liability to indemnify the Employer under this clause 7.1 and clause 7.2, the Contractor shall take out and maintain in the joint names of the Employer, the Contractor and sub-contractors of any tier insurance coverage to follow the standard Accident Insurance Association of Hong Kong Employees' Compensation Policy wording to indemnify all of the liabilities of the Contractor or, as the case may be, of each sub-contractor of any tier and their respective employees and other persons who may be employed on the Works in respect of any damages or compensation payable under any Ordinance, Statute or at common law in respect, or in consequence of, any death, accident, illness or injury to any work people or other person in the employment of the Contractor or any sub-contractor arising out of, or in the course of, or caused by the carrying out of the Works.
- 7.1.2 Such policies shall be extended to include an "Indemnity to Principal" clause and Festival Walk (2011) Limited, Mapletree North Asia Property Management Limited and/or their subsidiaries shall be a named insured. Any term or condition of any endorsement having either the same wording or similar meaning as the following shall be removed from such policies prior to the commencement of the Works:
- "The Company shall not be liable under this Endorsement (except under the Legislation) in respect of any injury by accident or disease to or resulting from any act default or neglect of the Principal, its servants or agents".***
- 7.1.3 The Employees' Compensation Insurance to be taken out and maintained by the Contractor pursuant to clause 7.1.1 shall be on a "joint names" basis and the policy shall be issued in the name of the "Contractor and of all contractors whilst engaged about the Business" and the Employer. The policies shall be taken out with an Insurer to be approved in writing by the Employer and the policies and premium receipts shall be deposited with the Employer's Representative prior to the commencement of the Works.
- 7.1.4 The limit of liability under the policies to be taken out and maintained by the Contractor pursuant to clause 7.1.1 shall meet the statutory insurance requirements laid down in the Employees' Compensation Ordinance. Such policies shall cover the period from the commencement of the Works until the date certified by the Employer's Representative pursuant to clause 4.5.2, that all obligations under clause 4.5.1 with respect to defects, excessive shrinkages or other faults to the Works shall be or have been fully discharged.

7.2 Injury to Persons and Property and Employer's Indemnity

- 7.2.1 Without prejudice to its liability to provide Employees' Compensation Insurance pursuant to clause 7.1, the Contractor shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim, or proceedings whatsoever suffered or incurred as a result of the personal injury to or the death of any person whomsoever, arising out of or in the course of or caused by the carrying out of the Works, whether pursuant to the Employees' Compensation Ordinance or otherwise howsoever, unless the same is shown to be due solely to any negligent or wilful act of the Employer, or its servants or agents (but excluding Direct Contractors).
- 7.2.2 The Contractor shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim or proceedings whatsoever, suffered or incurred as a result of any injury or damage whatsoever to any property real or personal arising out of or in the course of or caused by 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 its servants or agents (but excluding Direct Contractors).
- 7.2.3 Without prejudice to the generality of the indemnities referred to in clauses 7.2.1 and 7.2.2 the Contractor shall indemnify and keep indemnified the Employer in respect of any cost, expense, liability, loss, damage, claim or proceedings whatsoever which arise from:
- (i) any operations by the Contractor which unnecessarily or improperly interfere with the convenience of the public or access to, use, occupation or enjoyment of public or private roads, footpaths or properties, or the conduct of any business thereon;
 - (ii) any failure by the Contractor to ascertain the exact position of cables, pipes and other utilities and equipment located on, under or above the Site or in the vicinity of the Works at any time during the execution thereof and the Contractor shall ensure that no damage is caused to such installations; and
 - (iii) the Contractor causing any environmental pollution of whatsoever nature.
- unless the same is shown to be due solely to any negligent or wilful act of the Employer, or its servants or agents (but excluding Direct Contractors).
- 7.2.4 The Contractor shall give immediate notice to the Employer's Representative of any claim received by the Contractor from any third party which arises from the carrying out of the Works and shall co-operate as reasonably required by the Employer's Representative in any attempt by the Employer's Representative or the Employer to negotiate any settlement of any such claim.
- 7.2.5 Insurance against Injury to Persons and Property
- (i) The Contractor shall effect and maintain at its own expense for the benefit of and in the joint names of the Employer, the Contractor and sub-contractors of any tier, a policy of third party liability insurance with a policy limit not less than [Hong Kong Dollars ten (10) million] any one occurrence and not limited in the aggregate.
 - (ii) The Employer shall not be liable for or in respect of any damages or compensation in respect of or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-contractor of any tier. Without prejudice to clause 7.2.1, the Contractor shall indemnify and keep indemnified the Employer against all such damages and compensation and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto, unless the same is shown to be due solely to any negligent or wilful act of the Employer, or its servants or agents (but excluding Direct Contractors).
 - (iii) The Contractor shall be responsible for and accepts to bear the cost of all excess payment due under the term of the Policy of Insurance, which the Contractor shall be deemed to have allowed at the time of award of this Contract.

7.3 *Insurance of the Works (Existing Building and New Works)*

- 7.3.1 Without limiting the obligation and responsibilities of the Contractor under clause 7.1 or otherwise, the Contractor shall insure at its own expense in the joint names of the Employer **and its subsidiaries**, the Contractor and any sub-contractors of any tier, the Works covering the construction period and Defects Liability Period, and its works and properties of the Employer against claims arising out of any remedial works carried out beyond the Defects Liability Period and for the full replacement value the construction plant and equipment brought on to the Site for the purpose of the Works.
- 7.3.2 Upon the occurrence of any event giving rise to a claim under any insurance maintained pursuant to subclause 7.3.1, the Contractor shall without any delay on its part, restore and repair the Works, replace any goods and materials which have been damaged or destroyed, remove all debris from the Site, comply with any further or other requirements set out in the Policy of Insurance or as instructed by the Employer's Representative pursuant to clause 2.6 hereof, continue with the execution and completion of the Works and with the performance of its obligations under the Contract.
- 7.3.4 To the extent that any such loss or injuring arises from any of the excepted risks, or from any act, neglect or omission of the Employer or its servants or agents (but excluding for the avoidance of doubt, Direct Contractors, if any) the Contractor shall if required by the Employer's Representative repair and make good the same as aforesaid and the said work of repair and making good shall be valued in accordance with clause 3.0 hereof.
- 7.3.5 The Contractor shall be responsible for and accepts to bear the cost of all excess payment due under the terms of the Policy of Insurance, which the Contractor shall be deemed to have allowed at the time of award of this Contract.
- 7.3.6 Without limiting its obligation and responsibilities under the contract the Contractor shall insure at this own expense and for the full replacement value the construction plant and equipment brought on to the Site for the purpose of the Works.

7.4 *Evidence of Insurance*

The Contractor shall produce, and shall cause any sub-contractors to produce, such evidence as the Employer or Employer's Representative may reasonably require not later than 7 days after the award of contract works that the insurances referred to in clause 7.0 hereof have been taken out and are in force at all material times.

8.0 Determination

8.1 *Determination by the Employer*

The Employer may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Contractor forthwith determine the employment of the Contractor under this Contract if the Contractor shall make default in any one or more of the following respects:

- 8.1.1 If the Contractor without reasonable cause fails to proceed diligently with the Works or wholly suspends the carrying out of the Works before completion provided that the Employer's Representative has given seven (7) days notice of the intention to terminate and the Contractor has not improved its rate of progress.
- 8.1.2 If the Contractor becomes bankrupt or makes any composition or arrangement with its creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver of its business appointed or the like.
- 8.1.3 If the Contractor refuses or persistently neglects to comply with a notice from the Employer's Representative requiring him to remove defective work, improper materials or goods and dangerous or unsafe conditions.

In addition to the above, the Employer has reserved rights to terminate the Contract without assigning any reason by giving at least 60 days notice by registered post or recorded delivery to the Contractor.

In the event of the Employer determining the employment of the Contractor as aforesaid the Contractor shall immediately give up possession of the Site and the Employer shall not be bound to make any further payment to the Contractor until after completion of the Works.

Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Employer may possess.

8.2 *Determination by the Contractor*

The Contractor may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Employer provided that the Contractor has given twenty- eight (28) days notice of the intention to terminate and the Employer has not rectified such default forthwith determine the employment of the Contractor under this Contract if the Employer shall make default in any one or more of the following respects:

- 8.2.1 If the Employer persistently fails to make any progress payment due under the provisions of clause 5.0 hereof within thirty (30) days of such payment being due except for Contractor's default;
- 8.2.2 If the Employer or any person for whom he/she is responsible interferes with or obstructs the carrying out of the Works or fails to make the premises available for the Contractor in accordance with clause 4.1 hereof;
- 8.2.3 If the Employer suspends the carrying out of the Works for a continuous period of at least one (1) month except for Contractor's default;
- 8.2.4 If the Employer becomes bankrupt or makes any composition or arrangement with its creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver of its business appointed or the like.

Provided that the employment of the Contractor shall not be determined under clauses 8.2.1, 8.2.2 or 8.2.3 hereof unless the Employer has continued the default for fourteen (14) days after receipt by registered post or recorded delivery of a notice from the Contractor specifying such default.

In the event of the Contractor determining the employment of the Contractor as aforesaid the Employer shall pay to the Contractor, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of the Works begun and executed provided such Works shall have been carried out in accordance with the standards specified in the Contract, materials on site and the removal of all temporary buildings, plant, tools and equipment. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Contractor may possess.

9.0 Provision of Materials

- 9.1 The Contractor shall provide and shall be deemed to have allowed for all labour and materials necessary to carry out the Works including any such other works whether specifically mentioned or not, if in the reasonable opinion of the Employer's Representative, they are necessary for the completion of the Contract.
- 9.2 In addition, the Contractor shall provide:-
 - 9.2.1 Plant including special and mechanical plant, fuel and running expenses, all tools and all timber for temporary work, etc.
 - 9.2.2 Scaffolding of all descriptions, tarpaulins, temporary screens, catch fans, fences, partitions, dust sheets, etc.
 - 9.2.3 Haulage and handling of plant, materials and debris.
 - 9.2.4 Hoardings necessary for safety.
 - 9.2.5 Any other thing necessary for the completion of the Works.

10.0 Provision of Labour

- 10.1 The Contractor shall provide skilled technicians and a competent foreman whilst carrying out the Works.
- 10.2 Such workforce shall comply with all reasonable instructions or directions given to them by the Employer's Representative whilst working on the Site.
- 10.3 All work carried out by such workforce shall be performed in accordance with the General Specification and to the satisfaction of the Employer's Representative.
- 10.4 Notwithstanding clause 10.2 above such workforce shall at all times be deemed to remain under the direct supervision and control of the Contractor.
- 10.5 The Contractor shall ensure that a foreman fluent in English and Cantonese is on duty at all times.
- 10.6 The Contractor is to ensure that only persons who are lawfully employable as defined in the Immigration Ordinance are allowed to be employed on site.

11.0 Materials and Workmanship

- 11.1 Without prejudice to any other warranty expressly given or implied by operation of law the Contractor warrants that:-
 - a. all materials, goods and things provided by him in accordance with the Contract correspond as to description, quality and condition with the terms stated in the Contract, and
 - b. all materials or goods provided by him in accordance with the Contract are of merchantable quality and of sound materials and good workmanship, and
 - c. where selection of materials or goods is made by the Contractor that the same shall be the best of their respective kinds and fit for their purpose, and
 - d. all materials or goods provided by the Contractor in accordance with the Contract will conform with any sample, mock-up, pattern, drawing or design approved by the Employer's Representative or any other Consultant engaged by the Employer, and
 - e. all persons engaged or employed by the any Contractor in the performance of the Contract are suitably skilled, experienced and qualified to perform the work allotted to them, and
 - f. where matters of design, specification or selection of materials are carried out by the Contractor that specialist skill and care has been or shall be applied in carrying out the same and that the same shall be fit for their purpose, and
 - g. the Contract Works when completed shall comply with all requirements of the laws then in force in the Hong Kong Special Administrative Region and shall be fit for their intended purposes.
- 11.2 The Employer's Representative may at any time require the removal from the Site and replacement forthwith of any materials, goods, or persons the subject of the warranties contained in sub-clause (1) which do not in his/her opinion comply with such warranties or are otherwise not in accordance with the Contract.
- 11.3 The Employer's Representative may if he/she shall so require instruct the Contractor to open up for inspection and testing any work whether completed or not to ascertain whether the same shall comply with the terms of the Contract provided that if it shall be ascertained that the same do so comply then the Contractor shall have the like right to payment (if any) against the Employer under the Contract. The Employer's Representative shall have the right to order the rectification, removal, repair, making good or replacement of any work executed which is not in accordance with the Contract.

- 11.4 All materials and goods to be provided by the Contractor in accordance with the Contract shall be subjected from time to time to such tests as the Employer's Representative may direct at the place of manufacture or fabrication or at such other place or places whether on or off the Site as the Employer's Representative may direct or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing the same and shall supply samples of materials, goods or things before incorporation in the Works for testing as may be required by the Employer's Representative. The cost of the same shall be payable to the Contractor to the extent that the same is expressly stated in the Contract.
- 11.5 The Contractor shall give notice to the Employer's Representative on Site prior to the covering up of any work and in default of so doing the Employer's Representative may require the same to be uncovered at the Contractor's expense.
- 11.6 The Contractor shall give and shall procure that its sub-contractors of any tier give to the Employer's Representative or any of the other Consultants of the Employer, as the case may be, and their respective representatives, full access to the Contract Works and to the workshops or other places where work is being prepared or goods or materials are being manufactured for the Works so that they may test, inspect or examine the same. The Contractor shall assist the Employer's Representative or any of the other Consultants of the Employer and their respective representatives during the course of any such visits as aforesaid.

12.0 Operation and Maintenance Manuals

- 12.1 The Contractor is to co-ordinate the preparation and assembly of all operation and maintenance manuals submission to the Employer's Representative for comment and/or endorsement.
- 12.2 The Contractor shall action any comment made by the Employer's Representative upon the consolidated document and shall make re-submissions as necessary until the Employer's Representative is satisfied therewith and gives his/her endorsement.
- 12.3 Draft operation and maintenance manuals complete with provisional record drawings, software listing (if any) and setting out the operation and maintenance procedures in accordance with the requirements set out in the Contract are to be made available at least one month before the programmed date for site testing and commissioning to allow the Employer's representatives (and/or Management Company) to become familiar with the installation.
- 12.4 These draft manuals shall be of the same format as the final manuals but with temporary insertion for items which cannot be finalised until the Works are completed, tested and accepted.
- 12.5 Finalised and endorsed manuals including final record drawings shall be provided not later than the seven (7) days after the issue of the Certificate of Practical Completion.
- 12.6 The Contractor is to provide one (1) electronic copy and two (2) hard copies of the endorsed document, all such manuals and instruction shall be available in both English and Chinese.
- 12.7 The provision of these manuals and the final record drawings shall be a condition precedent to the release of the last portion of retention under clause 5.3 of the Conditions.

13.0 Workmen Living on Site

- 13.1 None of the Contractor's personnel shall be permitted to live on Site.

14.0 Security

- 14.1 Prior to the commencement of the Works, the Contractor shall issue to the Employer's Representative a list of all personnel to be engaged on the Works. Such a list shall contain the names, addresses and Hong Kong identity numbers of all personnel engaged on the Works.
- 14.2 The Contractor's Representative and all such personnel engaged on the Works shall sign in daily at a location to be designated by the Employer's Representative for the duration of the Works.

15.0 Interference with Services

- 15.1 The Contractor must take all steps necessary to prevent interference with services, such as gas, water, electricity, lights and power, telephones, buried cables or other installations.

16.0 Occupation of Premises

- 16.1 The Contractor's attention is drawn to the fact that the building in which the Site is located may be occupied and the Contractor must carry out the Works and arrange for deliveries of materials and the like in such a manner and at such times that shall cause the least possible inconvenience and disturbance to other contractors, Tenants and the users of the building. The Contractor shall be required to ensure that the Site is left in a safe, tidy and clean condition on completion of each day's work.

17.0 Noisy Work

- 17.1 Demolition, drilling and other excessively noisy operations, if required, are to be carried out at times to be agreed on Site with the Employer's Representative.

18.0 Protection of the Public

- 18.1 The Contractor shall safeguard the work whilst in progress with sufficient warning notices and with temporary fencing, catch fans, barriers, etc. as necessary to protect the public.

19.0 Watching and Care of the Works

- 19.1 The Contractor shall watch and take care of the whole of the Works from the date work commences to the date of completion named in the Certificate of Practical Completion.

19.2 It is the Contractor's duty to provide all personal protective equipment and clothing for its workmen and to ensure that it is being properly used whilst engaged in any work which is carried out on the site.

20.0 Fire Escapes

20.1 The Contractor is to ensure that all corridors, fire escape routes and the like are kept clear at all times and not blocked by equipment or materials.

21.0 Lighting and Power

21.1 The Employer shall make no charge to the Contractor for the electricity consumed for carrying out and completing the Works. However, the Employer reserves the right to require the Contractor to arrange for its own temporary electricity meter with the power company at its own cost if in the opinion of the Employer the demand is large or likely to cause an overload to the Employer's distribution system.

21.2 If connection to the Employer's supply is agreed, the Contractor shall at its own cost arrange for all connections to the Employer's electricity supply, all cabling, conduits, distribution boards and the like and for all tools and lighting.

21.3 All electrical connections and fittings used for this purpose shall be in good and safe condition and conform to the relevant guidelines and regulations including those of the Labour Department and Electrical and Mechanical Services Department.

22.0 Water for the Works

22.1 All water is to be clean, fresh and free from any deleterious matter. The Contractor shall be permitted to use the water services available within the building.

22.2 The Contractor shall at its own cost arrange for all connections to the Employer's water supply and for all pipes and tanks for distribution of water supply.

23.0 Schedule of Condition

23.1 Prior to the start of the Works the Contractor shall agree with the Employer's Representative a Schedule of Condition describing the condition of the existing buildings or services within the vicinity of the Works. Should there be any damage to the existing buildings or services arising during the Works and not previously scheduled, such damage shall be put right at the Contractor's expenses.

24.0 Removing Construction Waste, Rubbish and Cleaning down

24.1 The Contractor shall dispose of all construction waste, debris and rubbish as it accumulates and carry out the Works in a clean and orderly manner. All related cost, charges and fees incurred shall be borne by the Contractor unless otherwise specified.

24.2 Immediately prior to completion of the Works the Contractor shall, as appropriate, remove all splashes, deposits, temporary markings, covering, protections, wrappings and tapes, ease and adjust doors, clean down paintwork and touch up any damage, and generally leave the building and equipment clean and tidy.

24.3 All keys shall be clearly labelled and handed over on completion.

25.0 Site Access

25.1 The Contractor shall make all necessary arrangements with the statutory authorities and the Hong Kong Police for the occupation of the public highway and footpaths, if any, which may be used or crossed to carry out the Works.

26.0 Notices

26.1 Any notice or written instruction to be given to the Contractor under this Contract may be served by delivering to the Contractor's registered office.

26.2 Any notice or communication to be given to the Employer under this contract may be served by registered post, by recorded delivery or by leaving at the Employer's registered office.

27.0 Governing Law

27.1 The construction, validity and performance of this contract and all disputes or differences arising hereunder shall in all respects be governed by the laws of the Hong Kong Special Administrative Region.

28.0 Intellectual Property Rights

28.1 All plans, documents and other materials and works prepared or created by the Contractor pursuant to this Contract shall be the property of the Employer and all copyrights in and to all such items belong to and vest in the Employer absolutely. The Contractor acknowledges and agrees not to contest the exclusive ownership by the Employer of such items and Intellectual Property Rights.

28.2 The Employer retains all copyrights in all drawings, specifications, documents and reports supplied to the Contractor by the Employer in connection with this Contract.

28.3 The Contractor warrants and represents to the Employer that the Works and any materials prepared by the Contractor pursuant to this Contract do not infringe the copyright of any third party.

28.4 The Contractor agrees to indemnify on demand and hold harmless the Employer and its employees, directors, agents and officers from and against any and all costs, damages, expenses, losses, claims or liability incurred by it (including all costs and expenses which the Employer may reasonably incur in defending any proceedings) arising, directly or indirectly, out of any disputes, claims or proceedings brought by a third party alleging that the Works and any materials prepared by the Contractor pursuant to this Contract infringe any third party's copyright.

29.0 Settlement of Disputes - Arbitration

- 29.1 In the event of any dispute or difference between the Employer and the Contractor whether arising during the progress or after the completion or abandonment of the Contract or after the determination of the Contract howsoever in regard to the construction of the Contract or any matter or thing of whatsoever nature arising out of the Contract or in connection therewith then either the Employer or the Contractor shall give written notice to the other to such effect and such dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties as the Arbitrator, or, upon failure so to agree within fourteen (14) days after the date of the aforesaid written notice, of a person to be appointed as the Arbitrator on the request of either the Employer or the Contractor by the president of the Hong Kong Institute of Arbitrators.
- 29.2 The Arbitrator shall, without prejudice to the generality of his/her powers, have power to rectify the Contract so that it accurately reflects the true agreement made by the Employer and the Contractor, to direct such measurements and/or valuations as may in his/her opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.
- 29.3 The award of such Arbitrator shall be final and binding on the parties provided that with the exception of the formalities of his/her appointment the Arbitrator may not pursue the reference until after completion of the whole of the Works as certified by the Employer's Representative pursuant to clause 4.4 hereof.
- 29.4 If before making his/her final award the Arbitrator dies or otherwise ceases to act as the Arbitrator, the Employer and the Contractor shall forthwith appoint a further Arbitrator, or, upon failure so to appoint within fourteen (14) days of any such death or cessation, then either the Employer or the Contractor may request the president of the Hong Kong Institute of Arbitrators to appoint such further Arbitrator. Provided that no such further Arbitrator shall be entitled to disregard any direction of the previous Arbitrator or to vary or revise any award of the previous Arbitrator except to the extent that the previous Arbitrator had power so to do under the Arbitration Rules and/or with the agreement of the parties and/or by the operation of law.

Any arbitration arising under this Contract in accordance with 29.1 shall take place in Hong Kong and the Arbitrator shall have no power to decide otherwise and the provisions of the Arbitration Ordinance (Cap 341) as amended from time to time shall apply to any arbitration under the Contract.

30.0 Environmental, Health and Safety Management Plan

- 30.1 The Contractor shall comply with all current legislations and regulations concerning environmental protection, health & safety at work. For situations that current regulations or codes are inapplicable, the Contractor shall complete the Works in a manner which, as far as reasonably practicable, eliminates or reduces environmental pollution and health & safety hazard to workers.
- 30.2 The Contractor shall be fully conversant with the Works and identify tasks and work procedures that may have adverse effect on the environment and health & safety of the workers. The Contractor is required to prepare an Environmental, Health & Safety Management Plan (EHSMP) for the Works.
- 30.3 The EHSMP shall be submitted, together with tender document, in a prescribed format as attached in Section 7.
- 30.4 The Employer's Representative shall review the details of the EHSMP and conduct verification check on the proposed EHS measures during the course of work to ensure the proposed measures are fully implemented.
- 30.5 Without prejudice to the EHSMP as required in Clause 30.0.2, the Contractor shall observe the following environmental, health & safety requirements but they are by no means exhaustive.

A. Environmental Requirements

- i) The Contractor shall take all reasonable steps to implement environmental protection measures including but not limited to the following where applicable.
- monitoring and control of dust emissions
 - monitoring and control of noise emissions
 - monitoring and control of wastewater emissions
 - storage and disposal of solid waste.
 - storage and handling of dangerous goods
 - storage, handling and disposal of chemical and hazardous waste.
 - minimisation and recycling of waste.
 - rodent, vermin and pest control.
- ii) The Contractor shall be responsible for the safe and controlled disposal of all waste arising from the Works.
- The Contractor shall take all practical measures and precautions to avoid nuisance or disturbance arising from the execution and completion of the Works. The Contractor shall:
- where at all possible, suppress the nuisance at source rather than abate the nuisance once generated
 - select, operate and maintain all Contractor's equipment and/or plant so as to cause minimum nuisance or disturbance, including the release of pollutants
 - repair promptly all leakages and refrain from using any Contractor's equipment and/or plant which leaks.
- iii) Demolition, drilling and other excessively noisy operations, if required, shall be carried out at times to be agreed on Site with the Employer's Representative.
- iv) The Contractor shall execute the Works in such a manner as to minimize any adverse impact on the quality of the water within and in the vicinity of the Works.

- v) Areas where water is regularly used for dust suppression purposes, shall be laid to fall to specially constructed settlement tanks (silt traps) to permit sedimentation of particulate matter. Where possible, after settlement, the supernatant water shall be reused for dust suppression and rinsing. Water used for dust suppression purposes shall not be discharged directly to the sea or any other waters.
- vi) The Contractor shall carry out the Works in such a manner as to minimise adverse impact on air quality.
- vii) Effective water sprays shall be used during the delivery and handling of raw material when dust is likely to be created, and to dampen stored materials during dry and windy weather. Stockpiles of friable material shall be covered and dampened down during dry and windy weather. Stockpiles of material or debris shall be dampened prior to their movement.
- viii) The Contractor shall take all necessary measures to prevent avoidable generation and emissions of dust including, without limitation, the use of screens, dust sheets and tarpaulins. All open-topped vehicles leaving the Works area which may generate dust shall be covered.
- ix) The Contractor shall at all times maintain a clean and tidy site so that there is no loose debris, packaging or other material capable of being transported by wind.
- x) The Contractor shall ensure that:
 - all solid waste is placed within appropriate bins or other containers which are properly covered, closed or sealed to prevent attraction by vermin and spillage during storage or transportation.
 - all putrescible (wet) waste shall be disposed of as soon as reasonably practical and shall not, in normal conditions, remain within the Site for more than 24 hours.
 - an appropriate waste collection point shall be designated within the Site for the collection and short-term storage of waste.
 - accumulation of waste within the Site shall be minimised as far as practicable.
 - all construction waste suitable for reclamation and land formation shall be segregated. Waste suitable for recycling or resale shall also be segregated and stored on site until disposed.
 - excavated materials shall be reused as backfill wherever possible subject to compliance with the specification.
- xi) The Contractor shall ensure that all materials used (or supplied for use) to undertake the Works shall comply with all relevant environmental legislation and Codes of Practice. In addition they must be environmentally acceptable and have a lesser or reduced effect on human health and the environment (unless otherwise specified) when compared with competing products that serve the same purpose.

B. Health & Safety Requirements

- i) The Contractor shall provide their staff with suitable safety equipment and shall supervise and direct their staff to be in proper dressing in the site area. Should the situation of the job require using personal protective equipment such as safety harnesses, fall arrestors, independent lifelines, goggles, gloves, masks, breathing apparatus or ear plugs, the Contractor shall be so equipped as to furnish their staff with such equipment and shall compel them to use the same effectively.
- ii) Electric wires provided by the Contractor themselves shall be connected in accordance with laws of Hong Kong and rules of electricity supply. Stranded conductors or connecting sockets plugs and cables, etc not in accordance with their original designs are strictly prohibited. All electric wires shall be earthed properly.
- iii) All the moving parts of machinery such as woodworking machines, conveyer belts, abrasive wheels, etc. shall be fitted with approved protective guards so as to ensure the safety of workers. Should the Contractor fail to comply with the aforementioned rules, the Employer may at its sole discretion either disconnect the relevant sections of the electric wires or terminate electricity supply to the Contractor.
- iv) Without prejudice to the other provisions, working platforms shall be constructed for any workplace where there is a potential hazard of falling from a height of 2 metres or more. All sides of the working platform shall have protective guardrails (900 – 1150 mm high), intermediate guardrails (450 mm – 600 mm high) and toe boards (200 mm high). Passageway for proper access shall be equipped and the platform surface for standing purpose shall be covered entirely.
- v) All ladders at work site shall be used to provide safe means of access and egress but not to be used as a working platform. All ladders shall be equipped with metal spreader fixing the width of a ladder on each side. Other means of spreader, e.g. tying strings or wires are strictly prohibited.
- vi) Dangerous or chemical substances used by the Contractor shall be properly stored in a safe place. Their containers and storage areas shall be posted with warning notice and statutory labels prominently. Sufficient fire extinguishers shall be equipped nearby for storage of flammable substances and the store shall be kept well ventilated. Good housekeeping shall be maintained. All tools, machines and materials must be properly stored and shall not be placed on staircases, passageways or scaffolding.
- vii) In the course of loading or unloading materials which requires removing the guardrails, chains or folding doors installed at the outskirts of floor edges, material hoists, loading platforms and lift shafts, the Contractor shall reinstate the same to the original place immediately after use.
- viii) Prior to using self own machineries, the Contractor shall ensure all machineries to be checked, inspected and examined and issued with certificates in accordance with statutory requirements.
- ix) Should the Contractor's project involve works such as working in confined space, excavation, mechanical delivery, temporary gondola, or scaffolding, etc., the Contractor shall complete and submit all statutory forms or relevant documents as prescribed in laws of Hong Kong, such a Constriction Sites (Safety) Regulations, Factories and Industrial Undertakings (Lifting Appliances and Lifting Gear) Regulations, etc. to the Employer for record.
- x) The Contractor's machinery and equipment must strictly comply with the stipulations in statutory regulations. Whenever there is a situation that the Employer suffers any loss or damage arising from any personal injury thereof, the Contractor shall be held

solely responsible for the whole indemnity. At the same time, the Employer has the authority to suspend the Contractor's work forthwith and to demand the Contractor to take remedial action to rectify the situation to a level accepted by the Employer before resuming the work.

- xi) Safety installations e.g. scaffolding or relevant machineries and devices provided by the Employer shall be used properly by the Contractor. No damage or obstruction to their normal functioning is allowed.
- xii) Storage of oxy-acetylene cylinders shall not exceed legal limit. All welding equipment shall be equipped with safety devices including non-returning valve and flashback arrester. Before operation, the Contractor shall check whether the oxy-acetylene cylinders are in stable and safe condition.
- xiii) For the sake of minimizing foot injuries, the Contractor workers shall wear safety footwear when working in the site area.
- xiv) The Contractor must appoint one supervisor in charge of safety issue. The appointed supervisor shall monitor the safety performance of their workers.
- xv) Injuries to any worker of the Contractor must be reported on the same day to the works or project in-charge of the Employer for record and all the particulars of the injured person shall be submitted within 7 days.
- xvi) The Contractor's staff and workers engaging in our works must be holders of valid certificates of 1 day Labour Department Mandatory Safety Training. The Employer shall have the power to remove the Contractor's worker who has not complied with the above clause.
- xvii) The Contractor shall submit safety plan, method statements, risk assessments, material safety data sheets, and other safety related documents requested by the Employer within the prescribed period.
- xviii) Employer's representative(s) will inspect sites regularly and to monitor whether the Contractor or their staff have breached any regulation and issue verbal or written warnings in case of breaches, or failure to follow outstanding matters or recommendations. If the Contractor fails to complete the safety measures within the prescribed time after receiving such warning, the Employer could suspend the Contractor works and expel their workers from the site immediately.
- xix) The Contractor's tendering qualification will temporarily be suspended for 6 months in the event of:
 - a) negligence of the Contractor on H&S issues causing the Employer to be sued by government bodies or other concerned party(s); or leading to serious injuries or fatal accident; or
 - b) the Contractor violating the same safety rule for more than 3 times at Festival Walk within 1 year.
- xx) Should the Contractor's insufficient monitoring cause the Employer to be prosecuted by Government authorities and/or sued by other concerned party(s), all the losses and damages incurred to the Employer shall wholly be borne by the Contractor.

The Contractor shall also abide by all legislation, regulations, by-laws, or and any subsequent amendments made within the effective period of this Contract.

31.0 Contracts (Rights of Third Party) Ordinance

31.1 Any person, firm, company or corporation who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any of its terms except and to the extent this Contract expressly provides otherwise without prejudice to any right of the Employer or the Contractor provided in this Contract which is also applicable to and enforceable by or against such third party without resorting to the Contracts (Rights of Third Parties) Ordinance."

32.0 No Amendment

32.1 The terms of this Contract shall not be amended unless agreed in writing and signed by the authorities representatives of both Parties.

33.0 Force Majeure

33.1 "Force Majeure Event" means the occurrence of:

- (a) Exceptionally adverse weather conditions;
- (b) Fire (provided and to the extent that it is not due to any act negligence, default, omission or breach by the Contractor), storm, lightning, high winds, earthquake or any other natural disaster;
- (c) War, hostilities, insurgency, terrorism, civil commotion or riots;
- (d) Industrial action by workmen, strikes, lockouts or embargoes affecting directly the Works; or
- (e) Pandemic situations

which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this Contract;

33.2 Neither Party shall be in breach of its obligations under this Contract (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Contract) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Clause shall not apply to that extent).

- 33.3 As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.
- 33.4 The Contractor shall, and shall procure that its Subcontractors shall, at all times take all reasonable steps within their respective powers to:
- (a) prevent Force Majeure Events affecting the performance of the Company's obligations under this Contract;
 - (b) mitigate the effect of any Force Majeure Event; and
 - (c) comply with its obligations under this Contract.
- The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.
- 33.5 Should paragraph 33.2 apply as a result of a single Force Majeure Event for a continuous period of more than [180] days then the parties shall endeavor to agree any modifications to this Contract (which may be equitable having regard to the nature of the Force Majeure Event and which is consistent with applicable laws and regulations).

Festival Walk (2011) Limited
Section 2 of Standard Terms and Conditions of Contract (Supplies) – September 2020

1.0 Definitions

- 1.1 In this Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby respectively assigned to them except where the content otherwise requires:
- 1.1.1 Certificate of Acceptance : shall mean the certificate issued by the Employer's Representative pursuant to clause 4.4.
- 1.1.2 Conditions : shall mean these Standard Terms and Conditions of Supply Contract.
- 1.1.3 Consultant : shall mean any technically qualified person and/or company appointed by the Employer for the purpose of the design and testing of the Supplies and/or any part thereof.
- 1.1.4 Contract : shall mean these Conditions and such other documents as are specified in the Tender Documents including the completed Form of Tender and Schedules, together with the Employer's Representative's written acceptance thereof on behalf of the Employer, but excluding any standard printed condition that may be included in such other documents where such standard printed condition originates from the Supplier.
- 1.1.5 Time of Delivery : shall mean the date or period as shall be inserted in the Form of Tender for the delivery of Supplies (or any extended time fixed in accordance with the provisions of clause 4.2 of these Conditions).
- 1.1.6 Employer : shall mean Festival Walk (2011) Limited and/or Mapletree North Asia Property Management Limited.
- 1.1.7 Employer's Representative : shall mean the person authorised by the Employer to manage the Supplies and to issue instructions and certificates all as referred to in these Conditions.
- 1.1.8 Form of Tender : shall mean the form of tender as included in Section 1 of the Tender Documents.
- 1.1.9 Insurer : shall mean the insurance company providing the Employees' Compensation Insurance under clause 7.1 of these Conditions.
- 1.1.10 Management Company : shall mean the company appointed by the Employer to manage the premises in which the Supplies have been or are being delivered.
- 1.1.11 Parties : shall mean the Supplier and the Employer.
- 1.1.12 Provisional Sums : shall mean any such sum as shall be identified specifically as such in the Tender Documents.
- 1.1.13 Schedules : shall mean the Schedules as included in Section 4 of the Tender Documents.
- 1.1.13A Security Deposit : shall mean the security deposit as provided by the Supplier pursuant to clause 2.7.1 of these Conditions and the amount of the Security Deposit shall be identified specifically as such in the Form of Tender.
- 1.1.14 Site : shall mean Festival Walk
- 1.1.15 Specifications : shall mean the respective specifications as more particularly described in Section 3 of the Tender Documents.
- 1.1.16 Supplier : shall mean the company or persons engaged by the Employer to furnish the Supplies.
- 1.1.17 Supplier's Representative : shall mean the person appointed by the Supplier to coordinate with Employer's Representative on behalf of the Supplier and to receive instructions all as referred to in clause 2.4 hereof.
- 1.1.18 Supplies : shall mean the goods, equipment, materials, parts or other things required to be delivered as described in the Contract.
- 1.1.19 Warranty Period : shall mean the period as stated in the Form of Tender pursuant to clause 4.5.
- 1.1.20 Time for Release of Retention : shall mean the date or period, counted from the date of Certificate of Acceptance, as stated in the Form of Tender.

2.0 Intentions of the Parties

2.1 *Supplier's Obligations*

The Supplier shall, as required by the Employer, provide two sets of audited financial statements showing 3-year comparative figures, and a statement giving up-to-date details of any off-balance sheet liabilities if not covered by the audited financial statements, to evidence that the Supplier has at least positive net worth. The copies of audited financial statements shall be certified true and correct by independent auditor(s) or director(s) of the Supplier.

The Supplier shall, with due diligence and in a good and workmanlike manner, deliver the Supplies in accordance with the Contract using materials and workmanship of the quality and standards therein specified and to the reasonable satisfaction of the Employer's Representative and in conformity with all reasonable directions and requirements of the Employer's Representative and as required by the Schedules as included in Section 4.0 hereto.

2.2 *Assignment*

The Supplier shall not, without the prior written consent of the Employer, assign this Contract.

2.3 *Subcontracting*

The Supplier is responsible for the acts, obligations and omissions of all subcontractors, their agents, servants and workmen as fully as if they were the acts, obligations and omissions of the Supplier, its agents, servants and workmen.

2.4 *Supplier's Representative*

The Supplier shall, at all reasonable times, assign a competent person to coordinate with the Employer on behalf of the Supplier. Any instructions given to such person in charge by the Employer's Representative shall be deemed to have been issued to the Supplier.

2.5 *Removal of Person(s) from the Site*

The Employer's Representative may (but not unreasonably or vexatiously) issue instructions requiring the removal from the Site of any person employed thereon. Any person so removed shall not be allowed to re-enter the Site.

2.6 *Employer's Representative's Instructions*

2.6.1 The Employer's Representative may issue written instructions which the Supplier shall forthwith carry out. If instructions are given orally they shall, within two (2) days, be confirmed in writing by the Supplier.

2.6.2 If within seven (7) days after receipt of a written notice from the Employer's Representative requiring compliance with an instruction the Supplier does not comply therewith, then the Employer may employ and pay other persons to deliver the Supplies and all costs incurred thereby may be deducted by the Employer from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier by the Employer as a debt.

2.7 *Security Deposit / Performance Bond*

2.7.1 The Supplier shall, as requested by the Employer, provide a valid Security Deposit in the form of cash, cheque or furnished by way of a irrevocable banker's guarantee or performance bond issued by a reputable bank, insurance company or finance company approved by the Employer in a form and on the terms prescribed by the Employer. The Security Deposit shall be equal to 5% of the contract sum or HK\$30,000 (whichever is higher) as stated in the Form of Tender. The Employer shall be entitled to utilize the Security Deposit towards satisfying any amount due and owing to the Employer by the Supplier under these Conditions.

The Security Deposit or the balance remaining shall be returned or refunded to the Supplier, free of interest, upon the end of the Warranty Period or the satisfactory completion of all obligations under this Contract, whichever is later.

3.0 Variations

3.1 The Employer's Representative may, without invalidating the Contract, order an addition to or omission from or other changes in the Supplies or the order or period in which they are to be delivered and any such instructions shall be valued by the Employer's Representative on a fair and reasonable basis, using where relevant, prices in the Schedules.

3.2 *Measurement of Variations*

Where the valuation of a variation requires measurement, such measurements shall be taken jointly by the Employer's Representative and the Supplier, in the circumstance the Supplier declines or fails to participate in such measurement, such measurement by the Employer's Representative shall be deemed agreed by the Supplier.

3.3 *Provisional Sums*

The Employer's Representative shall issue instructions as to the expenditure of any Provisional Sums and such instructions shall be valued or the price agreed in accordance with either clauses 3.1 or 3.2 hereof.

3.4 *Invoices & Vouchers*

The Employer reserves the right to inspect all invoices and vouchers in respect of any fees, cost and expense borne by the Supplier for the Supplies.

3.5 *Correction of Inconsistencies*

Any inconsistency in or between the Tender Drawings, the Specifications and the Schedules shall be corrected by the Employer's Representative and any such correction which results in an addition, omission or other change to the Supplies shall be treated as a variation.

Nothing contained in the Tender Drawings, the Specifications or the Schedules shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

4.0 Delivery

4.1 Commencement

The Supplier shall commence and arrange for the manufacturing, fabrication or transporting of the Supplies after receiving Employer's Representative instructions to proceed and shall deliver the Supplies on or before the Time of Delivery as stated in the Form of Tender.

4.2 Extension of Time for Delivery

If and whenever it becomes reasonably apparent that the progress of the Delivery is being or is likely to be delayed and may not be completed by the Time of Delivery stated in the Form of Tender (or any extended time fixed in accordance with the provisions of this clause) for reasons beyond the control of the Supplier, including compliance with any instructions of the Employer's Representative (for which such issue is not due to a default of the Supplier), then the Supplier shall so forthwith give written notice of the cause or causes of delay and the Employer's Representative who shall if in his/her opinion agree that such causes are outside the control of the Supplier make, in writing, such extension of time for Delivery as may be reasonable. Causes within the control of the Supplier include but are not limited to any default of the Supplier and of any supplier of goods or materials for the Supplies.

4.3 Damages for Non-delivery

If the Supplier fails to deliver the Supplies by the Time of Delivery and the Employer's Representative certifies in writing in his/her opinion the same ought reasonably so to have been completed, then the Supplier shall pay or allow to the Employer as Liquidated Damages the sum or sums stated in the Form of Tender for each day or part of a day during which the Supplies shall so remain or have remained incomplete. The Employer may deduct such sum or sums from the Security Deposit and any monies due to the Supplier or it may recover them from the Supplier as a debt.

4.4 Acceptance

As soon as in the opinion of the Employer's Representative the Supplies shall have been delivered and shall have satisfactorily passed any tests that may be prescribed in the Contract, the Employer's Representative shall certify the Date of Acceptance of the Supplies and issue a Certificate of Acceptance to the Supplier for the whole of the Supplies or any part thereof, and delivery of the Supplies shall be deemed for all purposes of the Contract to have taken place on the day named in such certificate.

4.5 Warranty Period

4.5.1 The Supplier shall duly execute and/or deliver any direct warranty in favour of the Employer.

4.5.2 The Supplier shall indemnify and keep indemnified the Employer against any liability, claim, proceedings, damages, loss, expense or costs which the Employer may suffer or incur in respect of any breach of the aforesaid warranties.

4.5.3 Any defects or other faults to the Supplies which appear within the Warranty Period commencing from the Date of Acceptance named in the Certificate of Acceptance issued pursuant to clause 4.4 hereof, and are due to materials or workmanship not in accordance with the Contract, shall be made good by the Supplier entirely at its own cost and with all possible speed.

4.5.4 If the Supplier fails to remedy such defects or faults within seven (7) days of the Employer's Representative giving written notice of such defects or faults appearing, the Employer may proceed to do so at the risk and expense of the Supplier and without prejudice to such other rights as the Employer may have under the Contract. All costs incurred thereby by the Employer may be deducted by the Employer from the Security Deposit and any monies due or to become due to the Supplier or shall be recoverable from the Supplier by the Employer as a debt.

5.0 Payment

5.1 Stage Payment and Retention

The Employer's Representative shall, if requested by the Supplier, at intervals of not less than one month or at other intervals separately agreed, certify stage payments to the Supplier in respect of the value of the Supplies delivered, including any amounts either ascertained or agreed under clause 3.0 hereof, less the percentage of retention as stated in the Form of Tender and less any previous payments made by the Employer. The Employer shall pay to the Supplier the amount so certified within thirty (30) days of the date of such certificate of payment.

5.2 Payment upon Delivery

The Employer's Representative shall, if requested by the Supplier, after issue of the Certificate of Acceptance pursuant to clause 4.4 hereof, certify payment to the Supplier of the total value of the Supplies less the percentage of retention stated in the Form of Tender to be paid to the Supplier under this Contract so far as that value of the Supplies is ascertainable and provided the Supplies have been properly delivered. Such certified payment shall include such Supplies as have been either ascertained or agreed under clause 3.0 hereof, less the amount of any progress payments previously made by the Employer. The Employer shall pay to the Supplier the amount so certified within thirty (30) days of the date of such certificate of payment.

5.3 Release of Retention

The release of retention money shall not become due until the expiration of the Warranty Period or at the end of the Time for Release of Retention, whichever is the earlier, provided that any defects or faults to the Supplies are duly addressed and rectified to the satisfaction of the Employer's Representative.

6.0 Statutory Obligations

6.1 Statutory Obligation, Notices, Fees and Charges

The Supplier shall comply with, and give all notices required by, any statute, any statutory instrument, any laws, ordinances, orders, regulations or bylaws applicable to the Supplies (hereinafter called 'the statutory requirements') and shall pay all fees and charges in respect of the Supplies legally recoverable from him. If the Supplier finds any divergence between the statutory requirements and the Supplies or between the statutory requirements and any instructions of the Employer's Representative, it shall immediately give to the Employer's Representative a written notice specifying the divergence. Provided the Supplier shall have complied with this latter obligation, the Supplier shall not be liable to the Employer under this Contract if the Supplies do not comply with the statutory requirements where and to the extent that such non-compliance of the Supplies results from the Supplier having delivered in accordance with the Contract or any instructions of the Employer's Representative.

6.2 Prevention of Corruption

The Employer shall be entitled to determine this Contract and to recover from the Supplier the amount of any loss resulting from such cancellation if the Supplier shall have offered or given or agreed to give to any person having a relationship with the award or performance of this Contract any gift or consideration of any kind or if the Supplier shall have committed any offence under the Prevention of Bribery Ordinance.

7.0 Insurance

7.1 Employees' Compensation Insurance

Without prejudice to its liability to indemnify the Employer under this clause 7.1 and clause 7.2, the Supplier shall take out and maintain in the joint names of the Supplier and subcontractor of any tier insurance coverage to follow the standard Accident Insurance Association of Hong Kong Employees' Compensation Policy wording to indemnify all of the liabilities of the Supplier or, as the case may be, of each subcontractor of any tier and their respective employees and other persons who may be employed on the Supplies in respect of any damages or compensation payable under any Ordinance, Statute or at common law in respect, or in consequence of, any death, accident, illness or injury to any person in the employment of the Supplier or any subcontractor arising out of, or in the course of, or caused by the execution of the Contract.

7.2 Injury to Persons and Property and Employer's Indemnity

7.2.1 Without prejudice to its liability to provide Employees' Compensation Insurance pursuant to clause 7.1, the Supplier shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim, or proceedings whatsoever suffered or incurred as a result of the personal injury to or the death of any person whomsoever, arising out of or in the course of or caused by the execution of the Contract.

7.2.2 The Supplier shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim or proceedings whatsoever, suffered or incurred as a result of any injury or damage whatsoever to any property real or personal arising out of or in the course of or caused by the execution of the Contract.

7.3 Evidence of Insurance

The Supplier shall produce such evidence as the Employer or Employer's Representative may reasonably require not later than 7 days after the award of supply contract that the insurance referred to in clause 7.1 hereof have been taken out and are in force at all material times.

7.4 Custody of Supplies

The Supplier shall be responsible for the loss and expense concerning the custody of Supplies prior to the acceptance of the Supplies by the Employer's Representative under clause 4.4.

8.0 Determination

8.1 Determination by the Employer

The Employer may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Supplier forthwith determine the employment of the Supplier under this Contract if the Supplier shall make default in any one or more of the following respects:

8.1.1 If the Supplier without reasonable cause suspends the production or delivery of Supplies provided that the Employer's Representative has given seven (7) days notice of the intention to terminate and the Supplier has not improved its rate of progress.

8.1.2 If the Supplier becomes bankrupt or makes any composition or arrangement with its creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver of its business appointed or the like.

8.1.3 If the Supplier refuses or persistently neglects to comply with a notice from the Employer's Representative such as requiring him to rectify defects or remove improper materials or goods.

In the event of the Employer determining the employment of the Supplier as aforesaid the Employer shall not be bound to make any further payment to the Supplier.

Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Employer may possess.

8.2 *Determination by the Supplier*

The Supplier may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Employer provided that the Supplier has given twenty-eight (28) days notice of the intention to terminate and the Employer has not rectified such default forthwith determine the employment of the Supplier under this Contract if the Employer shall make default in any one or more of the following respects:

- 8.2.1 If the Employer persistently fails to make any stage payment due under the provisions of clause 5.0 hereof within thirty (30) days of such payment being due.
- 8.2.2 If the Employer or any person for whom he/she is responsible interferes with or obstructs or fails to make the premises available for the delivery of Supplies.
- 8.2.3 If the Employer suspends the production or delivery of Supplies for a continuous period of at least one (1) month.
- 8.2.4 If the Employer becomes bankrupt or makes any composition or arrangement with its creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver of its business appointed or the like.

Provided that the employment of the Supplier shall not be determined under clauses 8.2.1, 8.2.2 or 8.2.3 hereof unless the Employer has continued the default for fourteen (14) days after receipt by registered post or recorded delivery of a notice from the Supplier specifying such default.

In the event of the Supplier determining the employment of the Supplier as aforesaid the Employer shall pay to the Supplier, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of the Supplies delivered provided such Supplies shall have been delivered in accordance with the standards specified in the Contract. Provided always that the right of determination shall be without prejudice to any other rights or remedies which the Supplier may possess.

9.0 **Materials and Workmanship**

- 9.1 Without prejudice to any other warranty expressly given or implied by operation of law the Supplier warrants that:-
 - a. all materials, goods and things provided by him in accordance with the Contract correspond as to description, quality and condition with the terms stated in the Contract, and
 - b. all materials or goods provided by him in accordance with the Contract are of merchantable quality and of sound materials and good workmanship, and
 - c. where selection of materials or goods is made by the Supplier that the same shall be the best of their respective kinds and fit for their purpose, and
 - d. all materials or goods provided by the Supplier in accordance with the Contract will conform with any sample, mock-up, pattern, drawing or design approved by the Employer's Representative or any other Consultant engaged by the Employer, and
 - e. all persons engaged or employed by the any Supplier in the performance of the Contract are suitably skilled, experienced and qualified to perform the work allotted to them, and
 - f. where matters of design, specification or selection of materials are carried out by the Supplier that specialist skill and care has been or shall be applied in carrying out the same and that the same shall be fit for their purpose, and
 - g. the Supplies when delivered shall comply with all requirements of the laws then in force in the Hong Kong Special Administrative Region and shall be fit for their intended purposes.
- 9.2 The Employer's Representative may at any time require the removal from the Site and replacement forthwith of any materials, goods, or persons the subject of the warranties contained in sub-clause (1) which do not in his/her opinion comply with such warranties or are otherwise not in accordance with the Contract.
- 9.3 The Employer's Representative may if he/she shall so require instruct the Supplier to open up for inspection and testing any supplies whether completed or not to ascertain whether the same shall comply with the terms of the Contract provided that if it shall be ascertained that the same do so comply then the Supplier shall have the like right to payment (if any) against the Employer under the Contract. The Employer's Representative shall have the right to order the rectification, removal, repair, making good or replacement of any supplies delivered which is not in accordance with the Contract.
- 9.4 All materials and goods to be provided by the Supplier in accordance with the Contract shall be subjected from time to time to such tests as the Employer's Representative may direct at the place of manufacture or fabrication or at such other place or places whether on or off the Site as the Employer's Representative may direct or at all or any of such places. The Supplier shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing the same and shall supply samples of materials, goods or things before incorporation in the Supplies for testing as may be required by the Employer's Representative. The cost of the same shall be payable to the Supplier to the extent that the same is expressly stated in the Contract.
- 9.5 The Supplier shall give and shall procure that its subcontractor of any tier give to the Employer's Representative or any of the other Consultants of the Employer, as the case may be, and their respective representatives, full access to the workshops or other places where the Supplies is being prepared or goods or materials are being manufactured for the Supplies so that they may test, inspect or examine the same. The Supplier shall assist the Employer's Representative or any of the other Consultants of the Employer and their respective representatives during the course of any such visits as aforesaid.

10.0 Operation and Maintenance Manuals

- 10.1 The Supplier shall prepare and submit the maintenance manuals in printed and electronic versions to the Employer's Representative.
- 10.2 The Supplier shall action any comment made by the Employer's Representative on the document and shall make re-submissions as necessary until the Employer's Representative is satisfied therewith and gives his/her endorsement.
- 10.3 Draft operation and maintenance manuals complete with provisional record drawings, software listing (if any) and setting out the operation and maintenance procedures in accordance with the requirements set out in the Contract are to be made available at least one month before the programmed date for site testing and commissioning to allow the Employer's representatives to become familiar with the installation.
- 10.4 These draft manuals shall be of the same format as the final manuals but with temporary insertion for items which cannot be finalised until the Supplies are delivered, tested and accepted.
- 10.5 Finalised and endorsed manuals shall be provided not later than the seven (7) days after the issue of the Certificate of Acceptance.
- 10.6 The Supplier is to provide one (1) electronic copy and two (2) hard copies of the endorsed document, all such manuals and instruction shall be available in both English and Chinese.
- 10.7 The provision of these manuals shall be a condition precedent to the release of the last portion of retention under clause 5.3 of the Conditions.

11.0 Patents

- 11.1 The Supplier shall fully indemnify and save harmless the Employer's Representative against any action, claims, cost, charges or expenses arising out of or in connection with any infringement or alleged infringement or any letters patent, registered design, trade mark, trade name or copyright by reason of the Employer's Representative use or sale of the Supplies under the Contract.

12.0 Sustainable Materials

- 12.1 The Supplier shall ensure that all materials, manufacture, packing for the Supplies used shall comply with all relevant environmental legislation and Codes of Practice. In addition they must be environmentally acceptable and have a lesser or reduced effect on human health and the environment (unless otherwise specified) when compared with competing Supplies that serve the same purpose.

13.0 Protection of the Public

- 13.1 The Supplier shall provide sufficient warning notices and with temporary fencing, barriers, etc. as necessary to protect the public during the delivery of Supplies.

14.0 Fire Escapes

- 14.1 The Supplier is to ensure that all corridors, fire escape routes and the like are kept clear at all times and not blocked during the delivery of the Supplies.

15.0 Removing Construction Waste, Rubbish and Cleaning down

- 15.1 The Supplier shall dispose all construction waste, debris, packaging and rubbish as it accumulates on site. All related cost, charges and fees incurred shall be borne by the Supplier unless otherwise specified.

16.0 Site Access

- 16.1 The Supplier shall make all necessary arrangements with the statutory authorities and the Hong Kong Police for the occupation of the public highway and footpaths, if any, which may be used or crossed to deliver the Supplies.
- 16.2 The Supplier shall submit a detailed method statement for the delivery of Supplies to the Employer's designated store.

17.0 Notices

- 17.1 Any notice or written instruction to be given to the Supplier under this Contract may be served by delivering to the Supplier's registered office.
- 17.2 Any notice or communication to be given to the Employer under this Contract may be served by registered post, by recorded delivery or by leaving at the Employer's registered office.

18.0 Governing Law

- 18.1 The construction, validity and performance of this contract and all disputes or differences arising hereunder shall in all respects be governed by the laws of the Hong Kong Special Administrative Region.

19.0 Settlement of Disputes - Arbitration

- 19.1 In the event of any dispute or difference between the Employer and the Supplier whether arising during the progress or after the completion or abandonment of the Contract or after the determination of the Contract howsoever in regard to the construction of the Contract or any matter or thing of whatsoever nature arising out of the Contract or in connection therewith then either the Employer or the Supplier shall give written notice to the other to such effect and such dispute or difference shall be referred to the arbitration and final decision of a person to be agreed between the parties as the Arbitrator, or, upon failure so to agree within fourteen (14) days after the date of the aforesaid written notice, of a person to be appointed as the Arbitrator on the request of either the Employer or the Supplier by the president of the Hong Kong Institute of Arbitrators.

- 19.2 The Arbitrator shall, without prejudice to the generality of his/her powers, have power to rectify the Contract so that it accurately reflects the true agreement made by the Employer and the Supplier, to direct such measurements and/or valuations as may in his/her opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.
- 19.3 The award of such Arbitrator shall be final and binding on the parties provided that with the exception of the formalities of his/her appointment the Arbitrator may not pursue the reference until after the delivery of the whole of the Supplies.
- 19.4 If before making his/her final award the Arbitrator dies or otherwise ceases to act as the Arbitrator, the Employer and the Supplier shall forthwith appoint a further Arbitrator, or, upon failure so to appoint within fourteen (14) days of any such death or cessation, then either the Employer or the Supplier may request the president of the Hong Kong Institute of Arbitrators to appoint such further Arbitrator. Provided that no such further Arbitrator shall be entitled to disregard any direction of the previous Arbitrator or to vary or revise any award of the previous Arbitrator except to the extent that the previous Arbitrator had power so to do under the Arbitration Rules and/or with the agreement of the parties and/or by the operation of law.

Any arbitration arising under this Contract in accordance with clause 19.1 shall take place in Hong Kong and the Arbitrator shall have no power to decide otherwise and the provisions of the Arbitration Ordinance (Cap 341) as amended from time to time shall apply to any arbitration under the Contract.

20.0 Force Majeure

- 20.1 "Force Majeure Event" means the occurrence of:
- (a) Exceptionally adverse weather conditions;
 - (b) Fire (provided and to the extent that it is not due to any act negligence, default, omission or breach by the Contractor), storm, lightning, high winds, earthquake or any other natural disaster;
 - (c) War, hostilities, insurgency, terrorism, civil commotion or riots;
 - (d) Industrial action by workmen, strikes, lockouts or embargoes affecting directly the Works; or
 - (e) Pandemic situations
- which in each case directly causes either party to be unable to comply with all or a material part of its obligations under this Contract;
- 20.2 Neither Party shall be in breach of its obligations under this Contract (other than payment obligations) or incur any liability to the other Party for any losses or damages of any nature whatsoever incurred or suffered by that other (otherwise than under any express indemnity in this Contract) if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure Event except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure Event had not occurred (in which case this Clause shall not apply to that extent).
- 20.3 As soon as reasonably practicable following the date of commencement of a Force Majeure Event, and within a reasonable time following the date of termination of a Force Majeure Event, any Party invoking it shall submit to the other Party reasonable proof of the nature of the Force Majeure Event and of its effect upon the performance of the Party's obligations under this Agreement.
- 20.4 The Contractor shall, and shall procure that its Subcontractors shall, at all times take all reasonable steps within their respective powers to:
- (a) prevent Force Majeure Events affecting the performance of the Company's obligations under this Contract;
 - (b) mitigate the effect of any Force Majeure Event; and
 - (c) comply with its obligations under this Contract.

The Parties shall consult together in relation to the above matters following the occurrence of a Force Majeure Event.

- 20.5 Should paragraph 20.2 apply as a result of a single Force Majeure Event for a continuous period of more than [180] days then the parties shall endeavor to agree any modifications to this Contract (which may be equitable having regard to the nature of the Force Majeure Event and which is consistent with applicable laws and regulations).