



THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

GENERAL
CONDITIONS OF CONTRACT
FOR
CIVIL ENGINEERING WORKS



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APPENDIX 26
Appendix B

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

Temporary
reinstatement

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

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

Investigating
defects

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

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

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

MEASUREMENT, VARIATIONS, VALUATIONS AND CLAIMS

59. (1) Except where any statement in the Bills of Quantities expressly shows to the contrary the Bills of Quantities shall be deemed to have been prepared and measurements shall be made according to the procedures set forth in the Method of Measurement stated in the Preamble to the Bills of Quantities.

Bills of
Quantities and
measurement

(2) The quantities set out in the Bills of Quantities are estimated quantities and they are not to be taken as the actual and correct quantities of the work to be executed.

(3) Any error in description in the Bills of Quantities or item omitted therefrom shall not vitiate the Contract nor release the Contractor from the execution of the whole or any part of the Works according to the Drawings and Specification or from any of his obligations or liabilities under the Contract. The Engineer shall correct any such error or omission, shall ascertain the value of the work actually carried out in accordance with Clause 61, and shall certify in accordance with Clause 79.

Provided that there shall be no rectification of any error, omission or wrong estimate in any description, quantity or rate inserted by the Contractor in the Bills of Quantities.

- (4) (a) For the purpose of calculating the Final Contract Sum the Engineer shall ascertain and determine by measurement the quantity of work executed in accordance with the Contract. Subject to (b) of this sub-clause such work shall be valued at the rates set out in the Bills of Quantities or if there are no appropriate rates in the Bills of Quantities then at other rates determined in accordance with the Contract.
- (b) Should the actual quantity of work executed in respect of any item be substantially greater or less than that stated in the Bills of Quantities (other than an item included in the daywork schedule if any) and if in the opinion of the Engineer such increase or decrease of itself shall render the rate for such item unreasonable or inapplicable, the Engineer shall determine an appropriate increase or decrease of the rate for the item using the Bills of Quantities rate as the basis for such determination and shall notify the Contractor accordingly.
- (5) (a) When any part of the Works is required to be measured the Engineer shall inform the Contractor who shall forthwith attend or send a representative to assist the Engineer in making such measurement and shall furnish all particulars required by him. Should the Contractor not attend or neglect or omit to send such representative then the measurement made by the Engineer shall be taken to be the correct measurement of the work.
- (b) For the purpose of measuring such permanent work as is to be measured by records and drawings the Engineer's Representative shall prepare records and drawings month by month of such work and the Contractor, as and when called upon to do so in writing, shall within 14 days attend to examine and agree such records and drawings with the Engineer's Representative and shall sign the same when so agreed and if the Contractor does not so attend to examine and agree any such records and drawings they shall be taken to be correct.
- (c) If after examination of such records and drawings the Contractor does not agree the same or does not sign the same as agreed they shall nevertheless be taken to be correct unless the Contractor shall, within 14 days of such examination, lodge with the Engineer for a decision by the Engineer a statement in writing of the respects in which such records and drawings are claimed by the Contractor to be incorrect.

Variations

60. (1) The Engineer shall order any variation to any part of the Works that is necessary for the completion of the Works and shall have the power to order any variation that for any other reason shall in his opinion be desirable for or to achieve the satisfactory completion and functioning of the Works. Such variations may include:

- (a) additions, omissions, substitutions, alterations, changes in quality, form, character, kind, position, dimension, level or line;
- (b) changes to any sequence, method or timing of construction specified in the Contract; and
- (c) changes to the Site or entrance to and exit from the Site.

(2) No variation shall be made by the Contractor without an order in writing by the Engineer. No variation shall in any way vitiate or invalidate the Contract but the value of all such variations shall be taken into account in ascertaining the Final Contract Sum.

Valuing variations

61. (1) The Engineer shall determine the sum which in his opinion shall be added to or deducted from the Contract Sum as a result of an order given by the Engineer under Clause 60 in accordance with the following principles:

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

Provided that if the nature or extent of any variation ordered in accordance with Clause 60 relative to the nature or extent of the Works or any part thereof shall be such that in the opinion of the Engineer any rate contained in the Contract for any item of work is by reason of such variation rendered unreasonable or inapplicable then a new rate shall be agreed between the Engineer and the Contractor for that item, using the Contract rates as the basis for determination.

(2) In the event of the Engineer and the Contractor failing to reach agreement on any rate under the provisions of sub-clause (1) of this Clause, the Engineer shall fix such rate as shall in his opinion be reasonable and notify the Contractor accordingly.

62. (1) The Engineer may, if in his opinion it is necessary or desirable, order in writing that any work to be carried out as a result of a variation ordered under Clause 60 shall be executed on a daywork basis. Daywork

(2) The Contractor shall then be paid for such work under the conditions and at the rates set out in the Contract or if no such conditions and rates have been included, at such rates as the Engineer shall determine as being reasonable.

(3) The Contractor shall furnish to the Engineer such receipts or other vouchers as may be necessary to prove the sums paid and before ordering materials shall, if so required by the Engineer, submit to the Engineer quotations for the same for his approval.

(4) In respect of all work executed on a daywork basis the Contractor shall during the continuance of such work deliver each working day to the Engineer's Representative a list, in duplicate, of the names and occupations of and time worked by all workers employed on such work on the previous working day and a statement, also in duplicate, showing the descriptions and quantity of all materials and Constructional Plant used thereon or therefor. One copy of such lists and statements shall be agreed as correct or be rejected with stated reasons, be signed by the Engineer's Representative and returned to the Contractor within 2 days exclusive of General Holidays.

(5) At the end of each month the Contractor shall deliver to the Engineer's Representative a priced statement of the labour, materials and Constructional Plant used on a daywork basis.

Provided that if the Engineer shall consider that for any reason the sending of such statement by the Contractor in accordance with the foregoing provision was impracticable the Engineer shall nevertheless be entitled to authorize payment for such work either as daywork, on being satisfied as to the time employed and the Constructional Plant and materials used thereon, or at such value as shall in the Engineer's opinion be reasonable.

(6) The Contractor shall inform the Engineer's Representative in advance whenever the Contractor proposes to carry out daywork ordered by the Engineer and shall afford every facility for the Engineer's Representative to check all time and materials for which the Contractor proposes to charge therefor.

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

- (a) the Contractor not having received in due time necessary instructions, orders, directions, decisions, Drawings, specifications, details or levels from the Engineer for which the Contractor specifically applied in writing on a date which, having regard to the time for completion of the Works prescribed by Clause 49 or to any extension of time then granted by the Engineer, was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for the Contractor to receive the same, or
- (b) any variation ordered in accordance with Clause 60, or
- (c) the opening up for inspection in accordance with Clause 45 of any work covered up or the testing of materials or workmanship not required by the Contract but directed by the Engineer or the Engineer's Representative in accordance with Clause 42(1) unless the inspection or test showed that the work, materials or workmanship were not in accordance with the Contract, or
- (d) delay caused by any person or any company, not being a utility undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works, or
- (e) late delivery of material, plant or equipment by the Employer,