

**GUIDE ON THE CIDB STANDARD FORM  
OF CONTRACT FOR BUILDING WORKS  
2022 EDITION**

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### **INTRODUCTION**

The construction industry's evolution is vital to embrace innovation, enhance efficiency, and adapt to changing demands. Technological advancements, sustainable practices, and digital solutions can streamline processes, reduce costs, and improve project outcomes. Embracing modular construction, automation, and remote collaboration post-pandemic enhance resilience. Evolving safety protocols and regulations ensures workers well-being. By integrating these changes, the industry would be able to meet modern challenges, accelerate project timelines, which contributes to sustainable development, and ultimately fostering growth and competitiveness in a rapidly changing global landscape.

The construction industry was confronted with a myriad of challenges in the aftermath of the COVID-19 pandemic. Supply chain disruptions, material shortages, and labor limitations had disrupted project timelines and escalated costs. Remote work adoption and the need for enhanced safety measures had brought complexities to a physical presence reliant construction industry. Financing uncertainties due to economic instability and fluctuating demands had impacted project feasibility and funding sources. Amidst these challenges, collaborative contracts have emerged as a pivotal tool to navigate this new construction landscape.

Collaborative contracts offer a framework for stakeholders to collectively address these challenges/issues. They encourage mutual understanding, shared risk, and path to collaborative problem-solving. In the context of supply chain disruptions, collaborative contracts promote a joint approach to sourcing alternatives and managing delays, fostering adaptability in project execution.

Collaborative contracts facilitate effective communication among project participants, vital for managing remote work and health protocols. Early involvement of stakeholders enables streamlined decision-making and quicker adjustments to evolving conditions, ensuring smoother project progress. Financial uncertainties find resolution through shared budget oversight and risk allocation, ensuring projects remain financially viable.

In a broader sense, collaborative contracts align project goals, enhancing project efficiency, quality, and stakeholder satisfaction. They offer a mechanism for innovative solutions, promoting the use of technology, modular construction, and sustainable practices to tackle post-pandemic challenges creatively.

In essence, the significance of collaborative contracts lies in their ability to unite stakeholders in overcoming the complexities that COVID-19 introduced. By fostering cooperation, mutual accountability, and adaptable strategies, these contracts empower the construction industry to emerge stronger and more resilient in a transformed business environment.

Understanding these, CIDB had initiated a revision and revamp of the CIDB Standard Form of Contract 2000 Edition to cater to this with a firm objective to lead the industry to face the challenges of the present and future years. A technical committee comprising industry stakeholders with representatives from Master Builders Association Malaysia (MBAM), Real Estate and Housing Developers Association (REHDA), Pertubuhan Arkitek Malaysia (PAM), Institution of Engineers Malaysia (IEM), Royal Institution of Surveyors Malaysia (RISM) and the Malaysian Bar was formed and set to task together with a team of drafters. The result is the CIDB Standard Form of Contract for Building Work 2022 Edition where the spirit of the original CIDB Standard Form of Contract 2000 Edition in its form, layout, language, and optional modules were retained with the collaborative contract philosophy adopted. The CIDB Standard Form of Contract 2022 Edition promotes shared responsibility, risk mitigation, and open communication among project stakeholders, fostering efficient problem-solving, reduced disputes, and streamlined project delivery in the construction industry.

It bears mention that the CIDB Standard Form of Contract 2022 Edition is a fruition of public involvement incorporating public comments and feedback and numerous workshops, round table sessions as well as simulation session with industry stakeholders evaluating the applicability and readiness of this contract to potential users until the final version of the same being completed and officially published on 16<sup>th</sup> November 2023. This form of contract, being a collaborative contract is designed to ensure collaboration between Parties in managing project issues and risks, by moving away from traditional construction contracts which are typically adversarial in nature.

## **CIDB Standard Form of Contract for Building Works 2022 Edition; What's New and the Salient Features.**

### **(A) Early Warning System**

One of its salient feature of the CIDB SFC 2022 Edition is the Early Warning System ("EWS") incorporated under Clause 24.3.

To this end, the Superintending Officer ("SO") as the contract administrator is responsible for preparing and managing an early warning register that serves as a record of any matters which could:

- (i) increase the contract sum or the Contractor's total cost;
- (ii) delay the time for completion of the works;
- (iii) delay the achievement of a key date or milestone specified in the works programme; or impair the performance of the contract or works.

Hence, in the event the Contractor or SO becomes aware of any such matter, he/she may provide an early warning to the other party and this will be subsequently entered into the early warning register.

Early warning meetings shall be held at the interval prescribed under the contract and such times notified by the SO. If the attendance of the Contractor's subcontractors or any other person involved in the project is necessary for such meeting, the SO or Contractor may instruct these persons to attend. During such meetings, attendees shall cooperate on making and considering proposals for managing the matters listed in the early warning register, deciding on the actions to be taken, and whether a matter can be removed from the early warning register.

In short, EWS is a platform and mechanism contractually provided to Parties to identify potential issues that could have an adverse impact on the cost of the works, the time for completing the works, or the works itself as soon as such issues become apparent and intended to be a risk management tool to help Parties to address any issues and possible consequences in an efficient manner.

### **(B) Compensation Events in Place of Variation and Extension of Time Provisions**

The CIDB SFC 2022 Edition also has replaced the clauses on variations, extension of time and loss and expenses in its previous edition with an *all-in-one* clause on 'Compensation Events' under Clause 32.

'Compensation Event' is defined under Clause 31 and this includes amongst others, instructions for variations, failure of the Employer to give possession of Site as required under the Contract, and any other breach by the Employer. In short, these are events that could delay the Contractor's progress of the works and/or result in the Contractor incurring additional cost which could in turn, give rise to Contractor's entitlement to claim for an extension of time and/or an adjustment of the Contract sum.

With an all-encompassing Clause 32, the Contractor's claims for additional time and/or cost would be managed together rather than separately, thereby providing simplicity. The procedure for the assessment of compensation events thereunder is prescriptive and with procedure divided into the various stages:

- i. notification by either SO or the Contractor, depending on the compensation event in question;
- ii. the Contractor's submission of quotations for consideration;
- iii. how the compensation event will be assessed;
- iv. instructions by the SO; and
- v. implementation of the Compensation Event.

### ***(C) Enhancement of Dispute Resolution Mechanism***

The dispute resolution mechanism has been enhanced under Clause 48. A dispute resolution board ("**DRB**") is incorporated.

To this end, if a party disagree with the decision by the SO on a dispute, the party may refer the dispute to DRB consist of one or three persons nominated by the Parties who shall decide on the disputes arising during the course of the construction works. Parties are to share the cost of remuneration of the DRB.

Decision of the DRB shall be final and binding unless either party refers the same to a Tribunal of Competent Jurisdiction (which is basically wither a reference to arbitration or submission to Court jurisdiction, as opted by the Parties).

Parties may also refer disputes to mediation in accordance with the CIDB Malaysia Mediation Rules in force at the material time and the Mediator appointed shall be a CIDB Malaysia Accredited Mediator. If Parties are unable to achieve a settlement during Mediation, either party may refer the dispute to a Tribunal of Competent Jurisdiction as defined above,

The dispute resolution mechanism is designed to encourage Parties to resolve disputes in first attempt (DRB or mediation) before referring the same to Tribunal of Competent Jurisdiction.

## **ARTICLES OF AGREEMENT**

### **Recitals**

Recital (1) defines the term “Works” as used in the Conditions. It is to be noted that under Clause 1.1 of the Conditions, “Works” include any design (if such design is a requirement of the Contract) and Variations.

Recital (2) merely states that the Employer has accepted a Tender by the Contractor. Tender has been defined in the Conditions which is “the Contractor’s priced offer to the Employer for the design (to the extent required by the Contract), execution and completion of the Works”

Recital (3) emphasize the commitment of the Employer and the Contractor to forge a collaborative contracting model, which emphasize on cooperative and collaborative partnership to achieve a successful execution and completion of the Works.

### **Article 1**

This article stipulates the general obligations of the Contractor which includes the design (to the extent required by the Contract), execution and completion of the Works and remedying of Defects.

### **Article 2**

This article stipulates the Contract Sum. The term “Contract Sum” has been defined under this article as not only the original contract sum but also “such sum as may become payable under the provisions of the Contract”. The Contract Sum therefore includes the amount of Variations ascertained by the SO from time to time.

### **Article 3**

This article stipulates the underlying collaborative relationship of the Contract, mandating both parties to collaborate and work together to perform their respective obligations under the Contract for the successful execution and completion of the Works.

### **Article 4**

This article stipulates the various documents forming the Contract or Contract Documents. The documents are listed in order of priority in any particular contract. If the order of priority is changed for any reason, then it would be necessary to amend the order the documents are listed to reflect the order of priority intended.

## Article 5

The SO who shall administer the Contract is named in this article. It is noted that the SO is the person and not his firm who shall administer the Contract. In Clause 1.1 of the Conditions, the SO is defined as an individual, the principal, partner of a partnership or a director of a corporation and such individual, principal, partner or director **must** be a full member of a professional body connected to the construction industry and registered under the law relevant. In other words, the SO may be an Architect, Engineer, Quantity Surveyor etc registered under the relevant laws.

The Employer is obligated under this article to appoint a succeeding SO in the event of the death or the existing SO ceasing to be the SO within 30 days thereof [See sub- clause 6. 1(g)]. Should the Employer fails to appoint a new SO it shall be deemed to be a default on the part of the Employer for which the Contractor shall be entitled to determine his employment under the Contract [See sub-clause 45.1(a)(iii)].

It is to be noted that the successor SO shall not disregard or overrule any decision, approval or instruction of the previous SO unless he is satisfied that such action will not result in the Contractor having to incur loss or unless it is a Variation.

## Article 6

The Architect is named in this article. The Architect's role is to act as the SO's Representative assisting the SO on all matters concerning architecture including matters involving the authorities. The Architect shall be professionally qualified, namely a Professional Architect or any other form of practice registered under the Architects Act 1967 and approved by the Board of Architects, Malaysia.

## Article 7

The Civil and Structural Engineer is named in this article. The role of the Civil and Structural Engineer is to assist the SO in respect of civil engineering and structural matters. If civil engineering and structural engineering matters are carried out by different engineers, then it may be appropriate to amend this article to reflect such variance. The Civil and Structural Engineer shall be a Professional Engineer or any other form of practice registered under the Registration of Engineers Act 1967 and approved by the Board of Engineers, Malaysia.



## **Article 8**

The Mechanical and Electrical Engineer is named in this article. The role of the Mechanical and Electrical Engineer is to assist the SO on matters pertaining to mechanical and electrical engineering. The Mechanical and Electrical Engineer shall be a Professional Engineer or any other form of practice registered under the Registration of Engineers Act 1967 and approved by the Board of Engineers, Malaysia.

## **Article 9**

The Quantity Surveyor is named in this article. The Quantity Surveyor is to act as the SO's Representative assisting the SO on all quantity surveying matters. The Quantity Surveyor shall be a Consultant Quantity Surveyor or any other form of practice, registered under the Quantity Surveyor Act 1967 and approved by the Board of Quantity Surveyors, Malaysia.

## **Article 10**

This article enables the Specialist Consultants such as Landscape Architect, Interior Design Architect, Acoustic Consultants, etc. to be named. If there are more specialist consultants appointed than the spaces provided then appropriate insertions may be made to this article.

## **Article 11**

This article affirms that if any dispute or difference arises in connection or from this Contract, then such dispute or difference shall be resolved in accordance with Clause 48 (Settlement of Disputes).

## **Article 12**

This article reiterates that the definitions given in the Conditions of Contract shall apply to the articles above stated.

## **Conditions of Contract**

### **Clause 1: DEFINITIONS AND INTERPRETATION**

A comprehensive list of definitions is included under Clause 1.1. The intention of having a comprehensive list of definitions is to clarify the words and terms used in the Conditions. Most definitions are self-explanatory. However, there are some definitions included in the Conditions which are new and worth noting.

#### **Construction Plant**

‘Construction Plant’ means all plants, tools, appliances or other things of whatever nature required for the construction, completion of the Works or rectification of Defects, but does not include Equipment, materials or goods or other things intended to form or forming part of the Works. It is pertinent to note that under Clause 33.2(b), Construction Plant owned by the Contractor or by a company which is a subsidiary of the Contractor shall when on Site, be deemed to be the property of the Employer until the completion of the Works when the Construction Plant will be re-vested to the Contractor. Note that “Construction Plant” differs from ‘Equipment’.

#### **Defects**

Broadly speaking Defects includes all elements of the Works not conforming to the standards, specification, quality, quantity and purpose intended in the Contract Documents. In practice issues concerning Defects under Clause 27 will have to be dealt with objectively. Where discretionary judgement is involved, it has to be assessed professionally and with reasonableness.

#### **Excepted Risks**

There are 3 scenarios where the Contractor would be absolved from his obligation of taking the risks. The first being war risks and other similar risks. The second position is when the Works is used or occupied by the Employer and the third scenario is that the Contractor is not responsible for the design if such design is not within his scope of obligations under the Contract.

#### **Practical Completion**

Practical Completion under CIDB SFC 2022 Edition is defined under Clause 1.1 as “completion of to include any Test on Completion under Clause 21 and/or the Contract.

For Practical Completion for Works that include ‘*Equipment which requires a license for its operation*’, would include completion which would enable any such Equipment incorporated in the Works to obtain

necessary operating license from relevant authority (ie. permit from the Machinery Department for the operation of lifts).

The above is provided however that the existence of minor outstanding works and defects do not affect the functional use of the Works.

### **Superintending Officer**

The Superintending Officer (SO) is named as the person in Article 5. Most importantly the SO must be a person who is a “full member of a professional body connected to the construction industry” and must be certified and registered in accordance with the applicable laws

### **Variation**

Variation is now defined in accordance to Clause 28.1 and the term ‘Variation’ is defined under Clause 1.1.

### **Clause 2: SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER’S REPRESENTATIVE**

Clause 2.1 stipulates the duties and authorities of the SO. Any limitation on the authority of the SO shall be stipulated in the Appendix. Note in particular Sub-clause 2.1(c): the SO is obligated to act reasonably and timeously in carrying out his duties and authority under the Contract.

Under Clause 2.2, the SO can appoint as many SO’s Representatives (suitably qualified person) as he deems fit. The representatives of the SO are answerable to the SO, and they are accountable for carrying out the tasks and using the power that has been granted to them by the SO under Clause 2.3. The parties must be given written notice of the names and contact information for the SO's Representatives immediately after they are appointed.

Clause 2.3 provides for the SO to delegate his duty or authority to the SO’s Representative but he could not delegate those duty or authority which has been limited by the Employer.

Any such delegation or revocation shall be in writing and shall not be effective until a copy of the notice of such delegation or revocation has been delivered to the Contractor.

Any question with regards to the duty or authority of the SO’s Representative shall be referred to the SO who shall have the power to confirm, reverse or vary the decision/act of the SO’s Representative.

### **Clause 3: SUPERINTENDING OFFICER'S INSTRUCTIONS**

Under Clause 3.3(a) All SO's instructions shall be in writing. No provision is allowed in this Contract for verbal instruction. The intention is quite clear, as there is a need to instill some discipline in the industry to maintain proper records of instruction issued by the SO.

Clause 3.1 requires the Contractor to comply with the SO's instruction within a certain time frame. If the instruction (measured by its nature and extent) is capable of being implemented within 14 days, then the instruction must be implemented and completed by the Contractor within 14 days. However, if the instruction cannot be implemented within 14 days then the Contractor must commence the implementation of the instruction within 14 days and complete it within a time to be stipulated by the SO. Failure by the Contractor in any of the above event would entitle the Employer to employ others to give effect to the instruction. The Employer may, in accordance with Clause 49, recover any direct costs, losses, expenses, and damages incurred or suffered in connection with such employment. It is to be noted that SO's instruction under this clause excludes any instruction for Variation provided under Clause 28.

Clause 3.2 is similar to other standard forms wherein the Contractor is entitled to request the SO to stipulate the provision of the Conditions by which he issued the instruction.

Clause 3.4 removes any doubt as to the power of the SO to issue instruction directly to any of the Nominated Sub-Contractors.

Clause 3.5 enables the SO to issue instruction for urgent repairs and if the Contractor refuses to carry out such work then the SO may instruct others to carry out such work, costs of which to be recoverable following Clause 49.

### **Clause 4: CONTRACT DOCUMENTS**

Clause 4.1 should be consistent with Article 4 of the Articles of Agreement.

Clauses 4.2, 4.3, 4.5, 4.7 and 4.9 are very similar to provisions in other standard forms of contract.

Under Clause 4.2 the Employer through the consultants will furnish a duplicate of the Contract Documents to the Contractor free of charge. In addition, under Clause 4.3, the SO will also provide the Contractor two sets of Drawings and two copies of the Specification and unpriced Schedule of Works or Bills of Quantities to the Contractor free of charge. Out of the 2 sets of documents given, the Contractor must keep 1 set at the Site Office (Clause 4.5).

Clause 4.4 requires the Contractor to provide the SO with copies of all drawings other than as-built drawings under Clause 4.10, including shop drawings that detail any work, specifications, and other documents prepared and submitted by the Contractor and accepted by the SO in the quantities specified in the Appendix.

Clause 4.6 requires the Contractor to give adequate notice to the SO if he requires any further drawings or other information which will enable him to construct the Works. What is deemed as 'adequate notice' is that the SO is given sufficient time to reasonably prepare and issue the requisite drawings, specifications or information required. Clause 4.7 in turn will require the SO to issue such supplementary or revised drawings, specifications or instructions which may be necessary for the Contractor's execution and completion of the Works.

Clause 4.8 provides that if the notice pursuant to Clause 4.6 is given and if the progress of the Works is delayed by any failure on the part of the SO to provide the necessary information, any loss and expense incurred by the Contractor if any shall be dealt with in accordance to compensation events procedure under Clause 32.

Clause 4.9 reiterates the responsibility of the respective party to maintain confidentiality on information relating to the Contract. None of the rates in the Schedule of Rates or Bills of Quantities (whichever is relevant) may be disclosed or used, except for the purposes of the Contract, unless the Parties have otherwise agreed or if required by law. This includes neither the Employer nor the SO, nor their authorised representatives.

Clause 4.10 requires the Contractor to submit as-built drawings and operation and maintenance manuals. The Contractor must provide the Employer with drawings and manuals detailing the Works or any section of the Works as-built in the quantities specified in the Appendix within 3 months of the Works' Practical Completion, and any installation, within the same period, unless otherwise specified in the Contract Documents.

## **Clause 5:       WORKS PROGRAMME AND METHOD STATEMENT**

Works programme and method statement are contractual requirements although the works programme and the method statement are not part of the Contract Documents (Clause 5.2). The works programme and method statement are not included in the Contract Documents and their approval by the SO does not relieve the Contractor of their contractual obligations.

The Contractor must submit a works programme and method statement for approval by the SO after the Letter of Award, outlining the sequence, logic, and critical path for the works, including various activities and milestones, and describing the arrangement, sequence, and method of construction, including temporary works, by the Date of Commencement.

Clause 5.3 requires the Contractor to obtain the approval of the SO in respect of the works programme and method statement. The SO's approval of the works programme and method statement signifies agreement with the proposed order of work and construction method. The approved program can be used in disputes to determine a reasonable sequence for providing information or site possession, but does not alter contractual obligations. If the SO fails to respond within 14 days, the program is considered approved.

Clause 5.5 provides that the Contractor can begin work pending SO's approval, but disapproval may influence dispute resolution regarding site possession or supplementary information.

Clause 5.6 requires the Contractor to periodically modify or revise the works programme and method statement to account for changes in circumstances affecting progress, and these changes must be approved by the SO pursuant to Clause 5.3. Note that although the programme is not part of Contract documents, it is used for continuous monitoring of progress or Works and under Clause 32.4(b), works programmes will be used for assessment of Compensation Event.

## **Clause 6: GENERAL OBLIGATIONS OF THE EMPLOYER**

This provision highlights the Employer's core duties.

The Employer is responsible for granting the Contractor access to the Site, obtaining necessary approvals, and providing reasonable evidence of financial arrangements which enable the Employer to pay the Contract Sum within 14 days of the Contractor's request. The Employer must pay the Contractor in accordance with Clause 42, and cannot obstruct/interfere with the Contractor's performance or cannot interfere/influence with issuance of any certificate by the SO. If the SO dies or ceases to be the SO, the Employer must nominate a successor.

This clause (which may not found in other standard forms) seeks to highlight the fundamental obligations of the Employer, such as:

- Give the Contractor right of access and possession of the Site;
- Obtain development or planning approvals and building plan approval;
- Pay the Contractor in accordance to the Contract;

- Do not obstruct or interfere with the performance of the Contract by the Contractor;
- Do not interfere or influence the issue of any certificate by the SO;
- Appoint a replacement SO.

#### **Clause 7: GENERAL OBLIGATIONS OF THE CONTRACTOR**

Clause 7.1 provides that the Contractor shall be responsible in ensuring that their personnel are duly and properly registered with CIDB, and such registration remains valid for the duration of the Contract. Failure to do so is a breach of this clause.

Clause 7.2 The Contractor is responsible for designing, executing, and completing the Works, ensuring defects are rectified to the satisfaction of the SO, and providing all necessary supervision, labor, construction plant, equipment, materials, goods, and other items, both temporary and permanent, as required by the Contract.

All construction processes and techniques must be safe, stable, and adequate, and this responsibility falls on the Contractor. They are not liable for any temporary works or works that were not designed by them or their subcontractors. Even with the SO's approval, the contractor is entirely accountable if the Contract expressly permits them to design a portion of the Works. (Clause 7.3)

According to Clause 7.4, regardless of whether a subcontractor or supplier is nominated or hired privately, the Contractor is liable for any harm, loss, or damage brought on by their repudiation, failure, or breach of contract. They must hold the Employer harmless from any losses, costs, liabilities, damages, or other claims resulting from such violations.

Clause 7.5 provides that the Contractor shall notify the SO right away if they find a discrepancy in or between the Contract Documents. Subject to Clause 4.1, the SO will clarify and correct the disparity, as well as provide an instruction to address it. An instruction is deemed a Variation if it leads to an increase in or decrease in the Contract Sum.

#### **Clause 8: NOTICES**

Notices must be delivered in writing and to the address listed in the Articles of Agreement, according to the Contract. Deliveries can be made by hand, courier, mail, or any other method listed in the Appendix. Both parties must provide the other party and the SO 14 days' notice if the address changes, and in the case of the SO, both parties must give each other 14 days' notice.

**Clause 9: PATENT RIGHTS, TRADEMARKS, ROYALTIES**

This provision is quite similar to other standard provisions in other standard forms.

**Clause 10: COMPLIANCE WITH STATUTORY REQUIREMENTS**

**Clause 10.1:**

- requires the Contractor to comply with all laws, regulations, by-laws, orders, and directives issued by any statutory authority, public authority, or public service company relating to the Works or their systems, quite similar to other standard provisions in other standard forms;
- specifically includes the Contractor's obligation to pay levies imposed by CIDB and the Contractor to keep the Employer indemnified against penalties and liability for breach of any the above stated;
- The Employer is responsible for obtaining planning, zoning, capital contribution, and security deposit for the permanent connection to their systems and be liable for any default or delay by any authority in enforcing or implementing the Statutory Requirements, provided the Contractor fulfills their contractual obligations and taken all necessary actions.

**Clause 10.2:**

- requires the Contractor to inform the SO of any adjustments needed to comply with Clause 10.1 and the SO to issue such instructions necessary;
- If such SO's directions are not issued within 7 days, the Contractor shall proceed with works to conform to Statutory Requirements.
- Variations for such works are considered Variations unless they relate to issues under the Contractor's responsibilities, such as design flaws.

**Clause 10.3:**

- provides that if a change in Statutory Requirements (including Statutory Orders) after tender which results in additional or reduced costs for the Contractor, such to be certified the SO and deducted/added to the Contract Sum.



**Clause 11: ENVIRONMENTAL MATTERS**

The Contractor must adhere to the Environmental Quality Act 1974 and its subsequent amendments to or re-enactment of the said Act or any Statutory Orders relevant, considering the preservation and social implications of water, air, soil, flora, and fauna during the works. Any measures taken in compliance with this clause are considered part of the Contract Sum.

**Clause 12: SETTING OUT**

Clause 12.1(a) provides that SO is responsible to provide reference points, lines, and levels for the Contractor to set out the Works at ground level.

Clause 12.1(b) provides that the Contractor is responsible for accurate setting out, correcting position, levels, dimensions, and alignment, and providing necessary tools, equipment, and labor.

Clause 12.2 provides that the Employer is responsible for the time and cost of rectification due to reference points, lines, and levels provided by the SO under sub-clause 12.1(a), whereas the Contractor is responsible for the time and cost implications of rectification due to errors in sub-clause 12.1(b).

If the SO deems it impractical or inconvenient for the Employer to rectify an error caused by the Contractor, they may instruct that the error be not remedied, thereby applying Clause 27.4.

**Clause 13: SITE ADMINISTRATION**

Clause 13.1 deals with days and hours of working, quite similar to other standard provisions.

Clause 13.2 requires the Contractor to appoint a competent “Contractor’s Representative” who shall be authorized to receive SO’s instructions on the Contractor’s behalf. The Contractor must inform the Employer and SO in writing of the Contractor’s Representative appointed. Any instructions or notices given to such “Contractor’s Representative” by the SO shall be deemed to have been given to the Contractor.

Clause 13.3 empowers the SO to require the removal of any person employed by the Contractor who, in the opinion of the SO, misconducts himself or is incompetent for the performance of his duties. This includes for example and not limited to continuously absence on site, negligence, etc.

Clause 13.4 deals with the access for SO and persons authorized by SO to the Site or other place where any materials are stored.

#### **Clause 14: SAFETY AT THE SITE**

The Contractor is required to ensure compliance with the Occupational Safety and Health Act, 1994, as amended by the current law, all relevant safety-at-work requirements imposed by Statutory Requirements, and any directive or order by relevant authorities or the SO during the execution of the Works, collectively known as the "*Safety Requirements*."

Clause 14.2 requires the Contractor to submit a Safety and Health Programme and Clause 14.3 requires the Contractor to appoint a safety officer who shall implement the Safety Requirements including training on the same.

Clause 14.4 requires the Contractor to institute the safety measures including provision of safety equipment.

#### **Clause 15: QUALITY IN CONSTRUCTION**

Clause 15.1 provides that with the objective to ensure quality construction, the contract requires all equipment, materials, goods, and workmanship to be of the specified types and quality, subject to regular tests at their manufacturing, fabrication, or preparation sites, or as required by the SO.

Clause 15.2 requires the Contractor to submit a quality plan to the SO for approval Clause 15.3 requires the Contractor to provide samples at his own cost.

Clause 15.4 deals with cost of tests carried out, such provision being quite similar to other standard conditions.

Clause 15.5 requires the Contractor to notify the SO before any work is covered up. If the Contractor fails to notify the SO before covering up then the SO is entitled to instruct the Contractor to open up the work for examination, and the Contractor is liable for both delays and cost whether or not such work is done in accordance with the Contract.

Clause 15.7 is provided to enable the SO to instruct the Contractor to rectify any Defect when the Works is still in progress.

#### **Clause 16: LABOUR**

Clause 16 is a standard provision similar to other standard form.

#### **Clause 17: COMMENCEMENT OF WORKS AND POSSESSION OF SITE**

Clause 17.1 provides that the Contractor must commence the Works on the date specified in the Letter of Award or Appendix, or 14 days after an instruction from the SO. The Time for Completion runs from the said specified date. The Contractor must thereafter proceed with due diligence and expedition without delay, following the Contract and accepted works programme and/or method statement.

Preconditions for commencement include the submission of the Performance Security Deposit, deposition of insurance policies, and submission of Code Numbers and Social Security Numbers of all workmen registered under SOCSO.

Clause 17.2 allows possession of Site and Date of Commencement to be given in sections.

If no Date of Commencement is given for whatever reason, Clause 17.3 provides for the Contractor to require the SO to stipulate a date after notification is given. If the SO fails to stipulate a date after the requisite period after notification, or stipulates a date after the expiry of suspension period, the Contractor shall be entitled to deem the Works as having been suspended.

Where there is a delay in giving possession of site, such can be dealt with as a Compensation Event in accordance to the Compensation Procedure under Clause 32.

Clause 17.4 provides that the Employer must grant the Contractor primary access to the Site, but the Contractor must obtain any additional rights, including easement, at their own expense for the Works' execution and completion, and provide any additional accommodation or facilities outside the Site.

#### **Clause 18: OTHER CONTRACTORS**

Clause 18.1 preserves the Employer's right to employ other direct contractors to carry out non-Contract works (the Works) on Site.

Clause 18.2 requires the Contractor to inspect the works done by other contractors if the execution of the Works under the Contract is dependent on the works previously carried out by others, e.g. piling works. The Contractor must report to the SO regarding any discrepancy or defect found in such work. Failure to do so will mean that the Contractor has accepted the other contractors' works as fit and proper.

## **Clause 19:      SUSPENSION**

Clause 19.1 empowers the SO to order suspension of the whole or any part of the Works. The Contractor is entitled to loss and expense arising from such suspension unless such suspension is allowed in the Contract or is due to default of the Contractor.

Upon the SO's instruction, the Contractor must suspend all or a portion of the Work's execution. When necessary or in line with the SO's orders, the Contractor must safeguard the Works during this suspension.

The SO will confirm any costs the Contractor incurs due to the suspension, as per the Compensation Procedure in Clause 32. The Officer may also extend the project time, if necessary for the proper execution or safety of the work. This is covered under sections 19.2, 32, and 42.

Clause 19.2 stipulates the Suspension Events which would entitle the SO to order such suspension and if the Suspension Period exceeds the period stated in the Appendix then the Contractor can give notice to the SO requiring permission to recommence the suspended works within 14 days of receipt.

If the suspension event persists or permission to commence work isn't granted after the said 14 days, the Contractor can determine their employment under Clause 45.1 if the suspension affects the entire or substantially whole works, or treat the suspended part as an omission under Clause 28.

### **Illustration**

1. *Contractor X is working on a construction project to build a new office building.*
2. *Clause 19.1 of the Contract empowers the SO to order the suspension of the Works if necessary.*
3. *Due to unforeseen circumstances such as extreme weather conditions or a safety concern on-site, the SO decides to order the suspension of a portion of the Works involving the installation of the building's exterior cladding.*
4. *Upon receiving the instruction from the SO, Contractor X suspends all activities related to the installation of the exterior cladding.*

5. *During the suspension period, the Contractor X ensures that the Site was properly secured to prevent any damage to the existing structure or materials.*
6. *As a result of the suspension, Contractor X incurs additional costs such as demobilization of equipment and labor, storage of materials, and extended overhead expenses.*
7. *Contractor X submits a claim for loss and expense incurred during the suspension period in accordance to Compensation Claims Procedure under Clause 32, citing Clause 19.1 of the Contract, as the suspension was not due to any default on their part.*
8. *The SO reviews the same and approves compensation for Contractor X for the loss and expense incurred during the suspension period, as per the provisions of the Contract.*

#### **Clause 20: TIME FOR COMPLETION**

Clause 20.1 stated that the Contractor must complete the Works within the specified Time or Times for Completion, unless extended by Clause 32.6(b)(ii) where Compensation Events alters the Time for Completion as notified by SO to the Contractor in a Certificate of Extension of Time.

Clause 20.2 sets out the procedure for certification of “Practical Completion”. The SO must inspect the Works and conduct a Test on Completion within 14 days of receiving a written notice that the Works have achieved sufficient completion. The SO may issue a Certificate of Practical Completion if the Works have achieved Practical Completion and have sufficiently passed the Test on Completion, with the Contractor committing to complete minor outstanding works within the Defects Liability Period. The SO is solely responsible for determining minor outstanding works that do not impact the intended use and occupation of the Works. The Certificate must state the Date of Completion and hand over to the Employer. If the SO has given instructions, the Contractor cannot receive the Certificate of Practical Completion until the specified works are completed to the SO's satisfaction.

Clause 20.3 reiterates the Contractor’s right to access to the Site for remedial works after the completion of the Works.

#### **Clause 21: TEST ON COMPLETION**

Clause 21.1 obliges the Contractor to perform the Test on Completion in line with the Contract's requirements. This requires the Contractor to notify and arrange with the SO to carry out such 'Test on Completion' before the Certificate of Practical Completion can be issued.

Clause 21.2 provides that if the SO fails to appoint a test time within 14 days of the Contractor's notice or fails to attend, the Contractor can proceed with the test in their absence, but must inform the SO and provide all test reports.

Clause 21.3 mandates the Employer to provide utilities for a Test on Completion upon written request, provided the permanent connection is completed by the relevant authority or public utility company. The Contractor can either reimburse the Employer or the Employer can recover the cost under Clause 49.

In the event of a failed test, the Contractor is obliged to carry out repeated test in accordance with Clause 21.4.

## **Clause 22: SECTIONAL COMPLETION**

The Contract Documents can outline different completion times for different sections of the Works, with separate Liquidated Damages provided for each section.

In such circumstances, the Contract provisions on Certificate of Practical Completion, Access of Remedial Works, Delay and Extension of Time, Non-Completion and Damages for Delay in Completion, Defects Liability After Completion, Insurance of the Works, and Retention Monies and Final Account and Final Certificate (unless contrary stated) apply as if each section was a separate contract between the Employer and the Contractor.

The Contractor's Performance Security Deposit, deposited under Option Module F cannot be released or refunded until the Certificate of Practical Completion of the entire or last section of the Works is issued, unless otherwise agreed and stated in the Appendix.

### **Illustration**

1. *Contractor X is awarded the Contract to construct a multi-story commercial building comprising several sections, including the main structure, electrical works, plumbing works, and finishing works.*
2. *The Contract specify different completion times for each section of the works, with separate liquidated damages (LDs) provided for each section to incentivize timely completion.*
3. *Upon completion of each section, Contractor X submits a request for a Certificate of Practical Completion (CPC) to the Employer.*

4. *The Employer reviews the completed section and issues a CPC for that specific section, indicating that it meets the required standards for practical use.*
5. *In case of any defects or remedial works required after the issuance of the CPC for a particular section, Contractor X is granted access to carry out such works as per the contract provisions.*
6. *If Contractor X encounters delays beyond their control during the construction process, they may apply for an extension of time (EOT) for each section affected, following the procedures outlined in the contract.*
7. *If Contractor X fails to complete any section within the agreed-upon timeframe, they may incur LDs as specified in the contract for that particular section.*
8. *After the completion of each section, defects liability period commences, during which Contractor X is responsible for rectifying any defects that arise.*
9. *The contract requires Contractor X to maintain insurance coverage for the works, including each section separately, until practical completion is achieved for the entire project.*
10. *A performance security deposit is deposited by Contractor X under Option Module F of the Contract.*
11. *The performance security deposit cannot be released or refunded until the Certificate of Practical Completion for the entire project or the last section of the works is issued by the Employer, unless otherwise agreed upon by both parties.*

#### **Clause 23: PARTIAL OCCUPATION BY THE EMPLOYER**

Clauses 23 provides situations whereby the Employer may take possession and occupy ‘any part of the Works’ before the completion of the whole of the Works.

##### **With the Contractor’s consent**

Under Clause 23.1, the Employer may take possession of ‘a portion of the Works’ prior to Practical Completion **with the Contractor's written consent**. Following that, the SO will issue a Certificate of Practical Completion within 14 days and certify the estimated value for that ‘portion of the Works’ (This will be termed as ‘the Occupied Part’), which value shall be deemed as the total value of the Occupied Part for the purposes of this Clause 23.

This will then allow the Contractor the release of part of retention monies, relief of liability to insure, reduction of Liquidated Damages for delay and commencement of Defects Liability Period for ‘the Occupied Part’ (Clause 23.2).

### **Without the Contractor's consent**

Under Clause 23.3, if the completion of the Works has been unduly delayed and a Certificate of Non-Completion is in place, the Employer may access and occupy a portion of the Works **without the Contractor's agreement**. The provisions under Clauses 23.1 and 23.2 shall apply as if the Contractor had consented to the Employer in taking possession of such part and the Contractor is required to remove their construction plant or temporary works from the relevant section.

#### **Illustration**

*Contractor X was appointed to construct a new office building for the Employer. According to the Contract, the Employer has the option to occupy parts of the building before the entire Project is completed as follows:-*

#### ***Scenario 1: Occupation of Part with Consent***

*Contractor X and the Employer agree that the Employer can occupy the ground floor of the building before the entire project reaches practical completion. They formalize this agreement in writing.*

*Within 14 days of the Employer taking possession of the ground floor, the SO inspects the area and issues a Certificate of Practical Completion for that part of the building. The estimated value of the ground floor is assessed and certified by the SO.*

#### ***Consequential Effects:***

- 1. Contractor X receives a proportion of the first half of the retention monies based on the value of the occupied ground floor.*
- 2. Any defects in the occupied ground floor are treated separately, following the procedures outlined in the contract.*
- 3. The value of the building insured under the contract is reduced by the value of the occupied ground floor.*
- 4. The rate of liquidated damages for delay is adjusted proportionately based on the value of the occupied ground floor.*
- 5. Upon the expiration of the defects liability period or the issuance of the Certificate of Making Good Defects for the ground floor, Contractor X receives the second half of the retention monies.*
- 6. The limit of retention is reduced by the amount of retention monies released for the occupied ground floor.*



**Scenario 2: Occupation of Part without Consent**

1. *Due to Project delays, the Employer exercises its right to occupy a portion of the building without Contractor X's consent.*
2. *However, this can only happen if a Certificate of Non-Completion has been issued by the SO and if the occupation won't unreasonably disrupt the completion of the remainder of the Project.*
3. *Contractor X is instructed by the SO to remove any construction equipment or temporary structures from the relevant part of the building.*
4. *The provisions of the Contract regarding occupation of parts apply, just as if Contractor X had consented to the Employer. taking possession.*

**Clause 24: EARLY WARNING**

As explained about, Clause 24 is one of the salient features of a collaborative agreement. The Contractor and SO may alert each other as soon as either becomes aware of potential issues that could increase the Contract Sum or Contractor's total costs, delay completion, meet key milestones, or impact the Contract's performance.

With the exception of compensation event notifications under Clause 32, the SO is obligated under Clause 24.2 to enter early warning matters notified in the Early Warning Register.

The 'Early Warning Register' is a register of early warning matters duly notified by the SO or Contractor, with description and prevention methods of such early warnings matters. The form of the Early Warning Register is prepared and, issued by the SO to the Contractor within two weeks of commencement.

Within two weeks after the start of the project, the SO must direct the Contractor to attend an early warning meeting. Later meetings will take place at certain intervals stated in the Appendix (default is on a monthly basis) and at other times as notified by the SO or the Contractor. Subcontractors must attend if their presence might influence the choice of activities.

Attendees will try to find ways to avoid or lessen the consequences of each early warning matter listed in the Early Warning Register, make decisions, remove issues from the Register, and assess actions that were taken and documented in the Register. Based on decisions reached at each meeting, the SO shall update the Early Warning Register and provide it to the Contractor within two weeks.

## **NOTIFICATION BY CONTRACTOR**

### **Illustration 1:**

#### **Early Warning Notification: Increase in Cost**

*Contractor X discovers unexpected ground conditions that will require additional resources to address.*

*Contractor X promptly notifies the SO.*

*The SO records this in the Early Warning Register and schedules an early warning meeting.*

### **Illustration 2:**

#### **Early Warning Notification: Delay in Completion Time**

*Due to unforeseen weather conditions, Contractor X anticipates a delay in completing a crucial phase of the Project.*

*Contractor X notifies the SO.*

*The SO records it in the Early Warning Register. An early warning meeting is convened to discuss mitigation strategies.*

### **Illustration 3:**

#### **Early Warning Notification: Key Date Delay**

*Contractor X realises that a subcontractor may not meet a key milestone outlined in the works program.*

*Contractor X informs the SO.*

*The SO recorded it in the Early Warning Register. Both parties collaborate in an early warning meeting to address the issue and minimize its impact on the project timeline.*

### **Illustration 4:**

#### **Early Warning Notification: Impaired Contract Performance**

*During routine inspections, Contractor X identifies a design flaw that could compromise the functionality of a building component.*

*Contractor X raises this concern with the SO.*

*The SO includes it in the Early Warning Register. Together, they strategize in an early warning meeting to rectify the issue and ensure contract compliance.*

**Illustration 5:**

**Early Warning Meeting Outcome: Mitigation Plan**

*Following discussions at an early warning meeting, Contractor X proposes a revised construction method to mitigate the impact of a potential delay.*

*The SO updates the Early Warning Register with the agreed-upon actions and issues a revised version to Contractor X within the specified timeframe. If the proposed actions necessitate a change in the scope of the works, the SO issues instructions accordingly, along with the updated Early Warning Register.*

**NOTIFICATION BY SO**

**Illustration 1:**

**Scenario:** *The SO notices a potential increase in the Contract Sum due to unforeseen ground conditions discovered during excavation.*

**Action Taken:**

*The SO notifies Contractor X immediately of the matter.*

*A meeting is scheduled within two weeks to discuss potential solutions and mitigation strategies.*

*At the meeting, both parties collaborate to explore cost-saving measures and adjust the project budget accordingly.*

*The SO updates the Early Warning Register with details of the ground condition issue and the agreed-upon actions. If the proposed solution involves a change in the scope of work, SO issues an instruction for the change along with the revised Early Warning Register.*

### **Illustration 2:**

**Scenario:** *The SO identifies a delay in obtaining necessary permits for construction activities, which may impact the Time for Completion.*

**Action Taken:**

*The SO promptly notifies Contractor X of the permit delay.*

*An early warning meeting is arranged within the specified timeframe to strategize ways to mitigate the delay.*

*During the meeting, both parties discuss alternative approaches to expedite the permit approval process.*

*The agreed-upon actions and their responsible parties are documented in the Early Warning Register by the SO.*

*If the delay persists and affects the project timeline significantly, the SO revises the Early Warning Register accordingly and issues any necessary instructions for scope changes.*

### **Illustration 3:**

**Scenario:** *The SO recognizes a potential delay in meeting a critical milestone outlined in the works program due to adverse weather conditions.*

**Action Taken:**

*The SO promptly informs Contractor X about the weather-related concern.*

*A meeting is scheduled within the designated timeframe to discuss contingency plans and adjustments to the project schedule.*

*At the meeting, both parties brainstorm strategies to minimize the impact of adverse weather on the project timeline.*

*The decisions made and the proposed actions are recorded in the Early Warning Register by the SO.*

*If necessary, the SO revises the Early Warning Register following subsequent meetings to reflect any changes in the project timeline.*

**Illustration 4:**

**Scenario:** *The SO identifies a design flaw that may impair the overall performance of the completed structure.*

**Action Taken:**

*The SO promptly notifies Contractor X of the design issue.*

*An early warning meeting is convened within the stipulated timeframe to address the design flaw.*

*Both parties collaborate to devise corrective measures and adjust the project plans accordingly.*

*The agreed-upon actions and their implementation timeline are documented in the Early Warning Register by the SO.*

*If resolving the design flaw requires modifications to the project scope, the SO issues appropriate instructions along with the updated Early Warning Register.*

**Illustration 5:**

**Scenario:** *The SO observes a material shortage that could potentially increase the Contractor's total cost.*

**Action Taken:**

*The SO promptly informs Contractor X about the material shortage issue.*

*An early warning meeting is arranged within the specified timeframe to discuss possible solutions.*

*At the meeting, both parties explore alternative material sourcing options and cost-saving measures.*

*The decisions reached during the meeting are recorded in the Early Warning Register by the SO.*

*If resolving the material shortage involves changes to the project scope or budget, the SO updates the Early Warning Register accordingly and issues any necessary instructions to Contractor X.*

**Clause 25: EXPEDITING PROGRESS OF WORKS**

If the SO deems the progress rate of the Works or any section of the Works too slow to meet the Time for Completion, the Contractor must be instructed accordingly. The Contractor must take necessary actions to expedite progress and complete the Works in compliance with the instruction, including creating a revised or modified Works program or Method and the Contractor is not entitled to any additional payment for taking such steps to expedite progress unless the SO issues an instruction for Variation.

## **Clause 26: NON-COMPLETION AND DAMAGES FOR DELAY IN COMPLETION**

Clause 26.1 empowers the SO to issue a Certificate of Non-Completion (“CNC”) if The Works are not completed within the Time for Completion or revised Time for Completion.

The CNC is issued to the Contractor, with a copy to the Employer, and to the Nominated Sub-Contractor or Nominated Supplier (if it involves a Nominated Sub-Contractor or Nominated Supplier where Option Module C applies) and should not be issued unreasonably or vexatiously.

If a later Time for Completion is fixed/revised, the CNC ceases to be valid.

According to Clause 26.2, the Employer upon receiving a CNC, can recover from the Contractor, Liquidated Damages (“LD”) calculated at the rate stated in the Appendix, from the Time for Completion or any extended Time for Completion until the Date of Practical Completion, capped at the Limit of Liquidated Damages provided in the Appendix (if none is stated, at 10% of Contract Sum). Sub-clause 26.2(b) reinforces the requirement for the Contractor to complete the Works or obligations and liabilities under the Contract notwithstanding the imposition of LAD.

The loss, expense, costs or damages to which an Employer would have been legally entitled at law can still be recovered in the event it is not possible for the Employer to recover liquidated damages. (Clause 26.3).

Pursuant to Clause 26.4, any delay in the completion of the Works due to Compensation Events under Clauses 31.1(a), (e) to (t) after issuance the CNC would not impair the Employer's right to Liquidated Damages. Instead, a fair, reasonable, and necessary extension of time shall be granted by the SO if the Contractor complies with Compensation Events Procedure under Clause 32, and such extension is added to the Time for Completion for the Works or any section of the Works. The Employer is then required to compensate or repay the Contractor for any Liquidated Damages recovered under Clause 26.2 for the said extension of time granted.

### **Illustration 1:**

**Scenario:** The SO determines that Contractor X has not completed the construction of a building within the agreed Time for Completion.

**Action Taken:**

*The SO issues a Certificate of Non-Completion to Contractor X, indicating the delay in project completion.*

*A copy of the certificate is sent to the Employer as per the contract requirements.*

*Contractor X is notified of the certificate, highlighting the need to address the delay.*

*The Employer is entitled to recover Liquidated Damages from Contractor X for the period from the Time for Completion to the Date of Practical Completion.*

*The SO ensures that the issuance of the Certificate of Non-Completion is not unreasonable or vexatious, as per contract stipulations.*

### **Illustration 2:**

**Scenario:** *Despite the issuance of the Certificate of Non-Completion, Contractor X faces delays due to unforeseen compensation events outlined in Clause 31 of the contract.*

#### **Action Taken:**

*Contractor X notifies the SO of the compensation events causing delays after the issuance of the Certificate of Non-Completion.*

*The SO evaluates the impact of these events on the project timeline and grants an extension of time accordingly, as per Clause 32.*

*The extension of time granted is fair, reasonable, and necessary to accommodate the delays caused by the compensation events.*

*Any Liquidated Damages recovered by the Employer for the period covered by the extension of time are repaid to Contractor X.*

### **Illustration 3:**

**Scenario:** *The Employer decides to deduct Liquidated Damages from payments due to Contractor X following the issuance of the Certificate of Non-Completion.*

#### **Action Taken:**

*The Employer deducts Liquidated Damages from payments owed to Contractor X, as allowed by the contract terms.*

*Contractor X is informed of the deduction and the rationale behind it.*

*The deducted amount is within the limit specified in the contract's Appendix as the Limit of Liquidated Damages.*

*Contractor X continues to fulfill their obligations under the contract despite the deduction of Liquidated Damages.*

**Illustration 4:**

**Scenario:** *Despite facing delays resulting in the issuance of the Certificate of Non-Completion, Contractor X successfully completes the project within a revised Time for Completion.*

**Action Taken:**

*Contractor X diligently works to complete the project within the revised Time for Completion, as determined by the SO.*

*Upon achieving Practical Completion, Contractor X notifies the SO, who verifies the completion of the project.*

*Any Liquidated Damages recovered by the Employer for the period up to the revised Time for Completion are repaid to Contractor X.*

*The project is considered officially completed, and Contractor X fulfills their remaining obligations under the contract.*

**Illustration 5:**

**Scenario:** *The Employer seeks legal action to recover damages beyond Liquidated Damages, as permitted by the contract, due to non-completion of the project within the agreed Time for Completion.*

**Action Taken:**

*The Employer, unable to recover Liquidated Damages for whatever reason, exercises their right to seek additional damages.*

*Legal proceedings are initiated by the Employer to recover loss, expenses, costs, or damages as permitted by law.*

*Contractor X is notified of the legal action and the reasons behind it.*

*The outcome of the legal proceedings determines the extent of damages recoverable by the Employer from Contractor X.*

**Clause 27: DEFECTS LIABILITY AFTER COMPLETION**

Any minor outstanding work must be finished by the Contractor within the Defects Liability Period (“DLP”), or within time as determined by the SO.

The SO can issue instructions to the Contractor to complete any minor outstanding works during the DLP, but in any case, this must occur no later than 14 days after the DLP expiry date.



The Employer's rights under any guarantees or warranties offered by suppliers and subcontractors are unaffected by the Contractor's duty to abide by this Clause 27.1 (c). Cost to be borne by the Contractor.

Clause 27.3 states that if a contractor fails to fulfill their obligations, the Employer can hire and pay others to rectify Defects. The SO will assess and certify the cost of the work, which can be recovered from the Contractor under Clause 49.

There may be situations where it is impracticable or cause difficulties to the Employer to have the Contractor to rectify or complete incomplete works. In this case, the SO can make a valuation of the diminution in value due to existence of such defects/incomplete works, and the amount certified will be deducted from the Contract Sum (Clause 27.4). The Employer may recoup this amount under Clause 49.

Clause 27.5 empowers the SO to order search for the cause of any Defect. Clause 27.6 requires the SO to issue the Certificate of Making Good Defects (“**CMGD**”).

Clause 27.7 reiterates the Employer’s common law rights even though the Contractor may have fulfilled their obligation in making good Defects. This would cover Contractor’s liability for latent defects.

## **Clause 28:      VARIATIONS**

"Variation" refers to any change in the original Contract intention, including and not restricted to changes to the use, quantity, addition or omission, changes in the character, quality, or nature of the Works, changes in level, elevations, layout and dimensions, changes in the Contractor's temporary work, limitations on working hours, space, access or use of the Site, execution and completion in specific order, postponement of Works desired by Employer, or requirements to complete the Works/part earlier than the Time for Completion.

This term excludes instructions arising due to or intended to cure any default or breach of contract by the Contractor.

Clause 28.1 empowers the SO to issue an instruction involving Variation. Note however, if BQ forms part of the contract, no instruction is required if it involves provisional quantities. If the instruction issued by

the SO does not specifically state that it is a Variation, but the Contractor considers that it involves a Variation, then the Contractor must write to the SO requesting him to specify that the said instruction involves a Variation. The SO can either confirm, modify or rescind the said instruction.

When it is a Variation or confirmed as a Variation, the Contractor has a duty to carry out the instruction with due diligence and expedition pending the valuation of the Variation. By virtue of Sub-clause 28. 1(d) the Contractor can no longer excuse himself for not carrying out any Variation for reason that the valuation thereof has not yet been ascertained or agreed.

The SO has the power to issue an instruction requiring a Variation, and such is one of the Compensation defined under Clause 31, subject to SO Notification of Compensation Events under Clause 32.1(a).

If Option Module A Bills of Quantities is applicable, no instruction is needed as it involves provisional quantities.

Variations do not invalidate the Contract, but their effect will be valued according to Clause 29.

The Contractor must follow the SO's directive even if it is not specifically said that it is a variation but the Contractor considers that it involves a Variation, the Contractor to comply with the instruction and proceed to claim for such as a 'Compensation Event' under Clause 31.1(a), in accordance with Compensation Events Procedure under Clause 32. Specifically, the Contractor must provide the Contractor's Notification under Clause 32.1(b). Why is it important to have the Variation be classified as Compensation Event? The answer is to allow the Contractor to submit Quotation and claim for the variation work.

In other words, without limiting their rights or remedies, the Contractor must carry out the work directed by the SO regardless of whether it qualifies as a variation. Until the SO values a variation as a Compensation Event, the Contractor must expeditiously and diligently complete all variations. The SO may revoke, affirm, or modify the instruction if the Contractor provides notification that they are unable to get the necessary tools, supplies, or products.

What if eventually the Variation is not classified as Compensation Event by the SO? The clause provides that the rights and remedies for the Contractor is preserved, thus enabling the Contractor to have the decision of the SO reviewed by way of Settlement of Disputes under Clause 48.

### **Illustration 1:**

**Scenario:** The SO issues an instruction requiring Contractor X to change the layout and dimensions of a particular section of the building.

**Action Taken:**

The SO issues a written instruction to Contractor X, specifying the changes needed to the layout and dimensions.

Contractor X acknowledges the instruction and proceeds to make the necessary alterations to the building layout and dimensions.

Once the changes are completed, Contractor X informs the SO of the completion.

The SO evaluates the Variation and determines its impact on the project's scope and cost.

The Variation is then valued according to Clause 29, and any additional costs attributable to Contractor X's default are borne by Contractor X.

### **Illustration 2:**

**Scenario:** The SO instructs Contractor X to demolish a section of the existing structure to accommodate a new extension.

**Action Taken:**

Upon receiving the written instruction from the SO, Contractor X begins the process of demolishing the designated section of the structure.

Contractor X ensures that the demolition is carried out safely and efficiently, adhering to all relevant safety regulations.

Once the demolition is completed, Contractor X notifies the SO of the task's completion.

The SO assesses the Variation and its implications on the project timeline and budget.

Any costs associated with the Variation are valued as per Clause 29, with Contractor X being responsible for any additional costs resulting from their default.

### **Illustration 3:**

**Scenario:** The SO orders Contractor X to increase the working hours for a specific phase of the project to expedite its completion.

**Action Taken:**

Contractor X receives the written instruction from the SO to extend the working hours for a particular project phase.

*Contractor X informs their workforce of the revised working hours and ensures necessary adjustments to schedules and resources.*

*The increased working hours are implemented as instructed by the SO.*

*Contractor X notifies the SO of the successful implementation of the revised working hours.*

*The SO evaluates the impact of the Variation and values it accordingly, considering any additional costs resulting from Contractor X's default.*

#### **Illustration 4:**

**Scenario:** *The SO directs Contractor X to alter the method of working for a specific construction task to improve efficiency.*

**Action Taken:**

*Contractor X receives the written instruction from the SO detailing the required changes to the method of working.*

*Contractor X assesses the feasibility of the proposed alterations and devises a plan to implement them.*

*Once the changes are implemented, Contractor X notifies the SO of their completion.*

*The SO evaluates the Variation's impact on the project and values it according to Clause 29.*

*Any additional costs resulting from Contractor X's default are borne by Contractor X, as per the contract terms.*

#### **Illustration 5:**

**Scenario:** *The SO instructs Contractor X to add an additional floor to the building as per the Employer's request.*

**Action Taken:**

*Contractor X receives the written instruction from the SO to add an extra floor to the building.*

*Construction of the additional floor commences as instructed by the SO.*

*Contractor X notifies the SO upon the completion of the additional floor.*

*The SO assesses the Variation's impact and values it accordingly, ensuring any additional costs resulting from Contractor X's default are borne by Contractor X.*

## **Clause 29: VALUATION OF VARIATIONS**

Clause 29.1 provides the various valuation methods. Most of the valuation methods are similar to other standard forms.

The valuation method for varied work can be based on the Rates for the Works as set out in the Contract, which may be used if the varied work is similar to the work described in the Contract Documents, or if it involves significant changes in the quantity of the work. If these methods do not apply, the valuation will be based on fair market rates and prices. If none of these methods are applicable, the valuation will be based on Daywork rates and prices of necessary equipment, materials, labor, and additional construction plant.

Note in particular the procedures for Variation to be based on “Daywork”; the following conditions must be fulfilled:

- There must be an instruction to say that the varied work is to be carried out under “Dayworks”
- In addition to the rates for materials plant and labour, the Contractor is entitled to a mark up an additional 15% to cover supervision, overheads and profits
- Contractor must maintain daily records of labour, plant and materials used

Work omitted is valued at the rates specified in the Contract; however, if the omission modifies the conditions for the remaining work, the values for such work shall be calculated in accordance with the valuation methods for varied work as described above.

### **Clause 30: MEASUREMENT**

Clauses 30.1 to 30.4 set out the procedure for the Contractor and the SO to measure the Works for purposes of valuation.

Clause 30.1 provides that the SO must inform the Contractor when a part of the Works needs to be measured. The Contractor must attend or send a representative to take necessary measurements for valuation, including compensation events. They must also provide necessary documents and information for the measurement and other necessary details for the valuation.

The contractor is required to pay for whatever support, staff, and equipment that the SO needs to measure the works.

Clause 30.3 requires the representatives of the Contractor and SO to record and sign any measurements taken jointly. In the absence of the Contractor's attendance or the sending of a representative, the SO's measurements are deemed accurate, final, and binding on the Contractor unless there is a clear error.

In the event the contractor disagrees with measurements taken by the SO, he must inform the SO within 14 days of the measurements being taken. The notification must provide a detailed explanation of the measurement in question, backed by relevant documents and other relevant information.

The SO must inform the Contractor within 14 days of receiving submitted documents or information, either confirming their measurement or amending it.

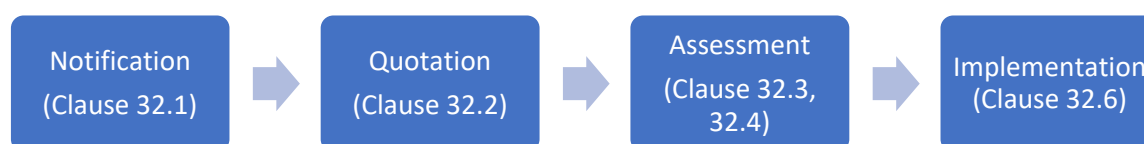
### **Clause 31:      COMPENSATION EVENT**

This clause is a distinct feature of Collaborative Contract, where Compensation Event is part of the main provision in relation to time (extension of time) and costs (Contract Sum, Variations, loss and expenses).

Clause 31 defined events classified as ‘Compensation Event’ to which the Contractor is compensated subject to Compensation Claims Procedure under Clause 32.

### **Clause 32:      COMPENSATION EVENTS PROCEDURE**

While the preceding clause provides for events classified as ‘Compensation Event’, Clause 32 provides the procedure/mechanism in dealing with such events. It is important to understand the procedure upon the occurrence of Compensation Event, as it will affect the rights and obligations of the parties.



#### **(A) Notification**

Clause 32.1 emphasizes on the Notification Compensation Events given either by:

- (i) the SO (“**SO Notification**”); or
- (ii) the Contractor (“**Contractor’s Notification**”).

<p><b><u>SO Notification</u></b></p> <p>The SO must notify the Contractor of a Compensation Event arising from his own instruction, notification, issuance of certificate, or change in his decision.</p> <p>The 'SO Notification' includes instruction to the Contractor to submit quotations, <b>unless</b> Compensation Event is due to the Contractor's fault or doesn't impact the Contract Sum, Works completion, or Completion Date/Time.</p>	<p><b><u>Contractor's Notification:</u></b></p> <p>On the other hand, if the Contractor thinks a Compensation Event has occurred or expected to occur <b>(and where no SO Notification was given)</b>, the Contractor must notify the Compensation Event to the SO.</p> <p>This termed as 'Contractor's Notification'.</p> <p>If not notified within 30 days of being aware of the compensation event, the Contract Sum or Time for Completion cannot be adjusted.</p> <p>SO must reply to the Contractor's Notification within 14 days from receipt or longer period which Contractor agrees.</p> <p>The SO to notify and instruct the Contractor to submit a quotation if he agrees that it's a Compensation Event. On the contrary, if the SO thinks that the event is not a Compensation Event, he shall notify the Contractor and provide an explanation if the event is attributable to the Contractor, <b>unexpected, unnoticed, unaffected by the SO</b>, or not even a compensation event as categorised under Clause 31.1.</p> <p><b><u>What if the SO fail to respond to Contractor's Notification?</u></b></p> <p>The Contractor may give written notice to the SO and if the SO does not respond to the Contractor's Notification within 14 days. This notice is termed as 'Failure Notice'. Failure of the SO to respond that continues for longer than 7 days will result in the event being deemed as 'Compensation Event' and the Contractor is required to provide a quote.</p> <p>It has to be noted that, a Compensation Event shall not be notified after Practical Completion or the Time for Completion, whichever comes first,.</p>
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## **(B) Quotation**

It has to be noted that, one important element in dealing with compensation event is the submission of Quotation by the Contractor (Clause 32.2). The Contractor should factor in all costs involved in remedying the Compensation Event, including claim for loss and expenses and cost incurred during extension of time. Accordingly, the issue relating to claim for loss and expenses in the previous contract edition is addressed in this Contract via the submission of Quotation.

Clause 32.2 provides that, following discussion of various methods, the SO may instruct the Contractor to submit alternative quotations for compensation events.

Quotes must include the Contractor's evaluation of any proposed adjustments to the Contract Sum, any delay to the Time for Completion, and key dates.

The Contractor must submit Quotation within 21 days of receiving the instruction to provide quote. The SO has 14 days to accept, instruct, or notify the Contractor that the Architect will be making the assessment. If the SO fails to do so, the Contractor may send a failure notice outlining which quotation be proposed to be used. If the SO still fails to respond for a further 7 Days thereof, the submitted quotation is deemed accepted by the SO.

## **(C) Assessing Compensation Events**

Clause 32.3 provides guidance to the parties in assessing Compensation Events.

There are 2 assessments required, for Contract Sum and Time (Date for Completion).

<b><u>Contract Sum Assessment</u></b>	<b><u>Time (Date for Completion)</u></b>
The change to the Contract Sum for a Compensation Event defined under Clause 31.1(a) and not a Variation under Clause 28, is assessed based on the effect on the actual cost of work done by the <i>relevant date</i> , the forecast cost of work not done by the relevant date, and any administrative fee resulting from the change.	As for Date for Completion, delay to the Date for Completion is assessed by the length of time that planned completion (in works programme current at the <i>relevant date</i> ) is delayed due to Compensation Event.  Factors such as previous extensions, work omissions or decreases due to remeasurement of provisional quantities, and any delay that affect



<p>For Compensation Event defined under Clause 31.1(a), namely instructions for Variations (Clause 28), rates or lump sums can be agreed upon between the SO and Contractor subject to valuation pursuant to Clause 29.</p> <p>Accordingly, the Contract Sum cannot be reduced unless a compensation event reduces the cost of executing the Works, either through a proposed change in the scope of works or a correction to an earlier compensation event.</p>	<p>the critical path or operate concurrently with the delay due to the compensation event or events, including Contractor 's acts or defaults.</p>
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#### What is meant by 'relevant Date'?

The '*relevant date*' for a Compensation Event arising from a SO's instruction, notification, issuance of certificate, or decision change is the '*date of the communication*', while for other Compensation Events, it's the '*date of the notification*'.

Clause 32.3(g) provides that if the SO states in its instruction that the Contractor did not provide an early warning of an event which an experienced contractor could have given, the compensation event will be assessed as if the Contractor had given the early warning. The assessment is based on the assumption that the Contractor reacts competently and promptly to the event, and that any costs and time are reasonably incurred.

Clause 32.4 provides that the SO to assess the compensation event as provided by Clause 32.4 even if the Contractor fails to submit the necessary details within the specified time frame, or if the SO determines that the Contractor has not assessed the event correctly, or if the Contractor submits a quotation without a programme or alterations, or if the SO has not accepted the latest works programme for any reason stated in the Contract.

The SO must inform the Contractor of their assessment of a Compensation Event and provide details within the time frame allowed for the Contractor to submit a quotation for the same event. If the SO fails to assess the event within the time frame, the Contractor can notify the SO. If multiple quotations are submitted, the notification specifies which one is to be used. If the failure persists for 7 days, the quotation is deemed accepted by the SO.

There can be a situation where the SO may issue instruction for a proposed instruction. The SO may instruct the Contractor to submit a quotation for the proposed instruction, with a deadline specified. Subsequently, upon receiving the quotation, the SO shall respond to the quotation either by instructing to submit a revised quotation with reasons, or issue an instruction with notification as a compensation event and acceptance of the quotation, or a notification that the quotation is not accepted. If the officer doesn't respond within the specified time, the quotation is rejected.

#### **(D) Implementation of Compensation Events**

A Compensation Event is implemented when the SO notifies the Contractor that the Contractor's quote has been accepted or of the assessment made or when the Contractor's quotation is deemed to have been accepted by the SO in the relevant provisions.

Once implemented, adjustments to the Contract Sum and Time for Completion are made accordingly by incorporating the change in interim certificates (for Contract Sum) and Certificate of Extension of Time (for Time for Completion).

With regard to Time for Completion, the SO may modify the Time for Completion assessment of an implemented compensation event at any time if in his opinion, it is reasonable and appropriate before issuance of the Final Certificate under Clause 42.

The assessment of an implemented compensation event is not revised except as provided in the Conditions.

#### **Summary of Procedure**

##### ***Notification of Compensation Events***

- 1. SO notifies Contractor X immediately of Compensation Event caused by SO's actions.*
- 2. Contractor X notifies SO of compensation events he believes to have occurred within 30 days.*
- 3. SO replies to Contractor X's notification within 14 days, determining if it's a Compensation Event.*

##### ***Assessment of Compensation Events***

- 1. If SO fails to reply within 14 days, Contractor X sends Failure Notice.*
- 2. If no response within 7 days of Failure Notice, event is deemed a compensation event.*
- 3. Contractor X can propose alternative ways to deal with events.*
- 4. Quotations must be submitted within 21 days of instruction.*

5. *SO must respond within 14 days:*
  - a) *Accept quotation, OR*
  - b) *Instruct revised quotation*
  - c) *Notify assessment by SO.*

#### **Assessing Compensation Event**

1. *Changes to Contract Sum assessed based on actual and forecasted costs.*
2. *Relevant date determined by type of compensation event.*
3. *Contract Sum not reduced unless specific criteria met.*
4. *Delay assessed based on planned vs. actual completion time.*
5. *Only unfinished, affected operations considered for delay assessment.*

#### **Assessment by SO**

1. *SO assesses if Contractor X doesn't submit quotations or details on time.*
2. *If no assessment within allowed time, Contractor X can notify failure.*
3. *If no response to notification, Contractor X's quotation is accepted.*

#### **Proposed Instructions**

1. *SO may instruct Contractor X for proposed instructions.*
2. *Contractor X submits quotation within 21 days.*
3. *SO responds by proposed instruction date:*
  - a) *Instructs revised quotation*
  - b) *Issues instruction with or without acceptance of quotation*
  - c) *Notifies non-acceptance.*
4. *If no response within stipulated time, quotation is not accepted.*

#### **Implementing Compensation Event**

1. *Implemented upon SO's acceptance or assessment.*
2. *Changes in Contract Sum and/or Time for Completion reflected in certificates.*
3. *SO may revise Time for Completion assessment before Final Certificate issuance if fair.*
4. *Implemented event assessment not revised except as per Conditions.*

**Clause 33: CONSTRUCTION PLANT, TEMPORARY WORKS, MATERIALS AND GOODS**

Clause 33 is retained in the Contract.

This clause sets out the ownership entitlement of the Construction Plant, Temporary Works, Equipment, materials and goods brought to the Site. Property in the Equipment, materials and goods when payment is made, shall pass to the Employer. Property in Construction Plant and Temporary Works which are owned by the Contractor or by a company which is a subsidiary of the Contractor shall, when on Site, be deemed to be the property of the Employer.

Notwithstanding the vesting of such property right, the Employer shall not be responsible for the, loss or damage of such Plant, Equipment, materials or goods (Clause 33.3)

Clause 33.4 requires the Contractor to secure a term in the rental agreement of any Construction Plant or Temporary Works that upon the determination of the Contract. the owner of such Construction Plant or Temporary Works will, if requested by the Employer, agree to hire such Plant or Temporary Works to the Employer on the same terms.

When the Works is completed or when the Construction Plant or Temporary Works are removed from the Site the property in such Construction Plant or Temporary Works shall be re-vested with the Contractor. (Clause 33.5)

**Clause 34: GENERAL RESPONSIBILITIES OF THE CONTRACTOR**

Clause 34 is also retained in the Contract.

Clause 34 puts the onus on the duty of care for the Works, as long as the Site is still in his possession, to the Contractor. During the Defects Liability Period, the Contractor has the same duty of care for any outstanding works which are to be completed by him.

**Clause 35: INDEMNITY PROVISIONS**

Clauses 35.1 and 35.2 are general indemnity provisions in respect of injury to persons or damage to property. The Contractor liability could be under contract or at law.

Clause 35.3 sets out the contribution of the parties according to the proportion of each party's negligence or omission. Although the matter concerning contribution according to liability is well established at law, this is now clearly expressed in this condition.

Clause 35.4 requires the Contractor to act on the instruction of the SO to rectify any damage or loss. If the Contractor's liability is reduced by the Employer's contribution then the proportion in which the Employer is liable shall be treated as a Variation.

Clause 35.5 empowers the SO to employ others to rectify any damage or loss if the Contractor fails to comply with the SO's instruction. If the damage involves property belonging to any authority, then the Employer reserves the right to pay such authority and the amount paid shall be recoverable from the Contractor.

#### **Clause 36:      INSURANCE FOR PERSONAL INJURY AND PROPERTY DAMAGE**

Clause 36 requires the Contractor to take out Third Party Insurance; the amount insured is to be stated in the Appendix.

Other provisions relating to this requirement are similar to other standard forms. They include provisions empowering the Employer to take out the insurance in the event of default by the Contractor.

The Contractor must purchase third party insurance, as required by Clause 36, and the Appendix must specify the amount covered.

Other clauses pertaining to this condition are typical of other standard forms. The Clause also contains provision that permit the Employer to purchase the insurance in the event that the Contractor is in default.

#### **Clause 37:      INSURANCE FOR WORKMEN**

Clause 37.1 requires the Contractor to register all workmen under the Employee's Social Security Scheme (SOCSO) in accordance with the Employees' Social Security Act, 1969 or any subsequent amendments.

They must submit their Code Number and Social Security Numbers to the SO for verification and make necessary contributions from Commencement to Practical Completion, providing evidence of payment.

Take note that the requirement under this clause covers both local and foreign workers alike.

According to Clause 37.2, the contractor must maintain a Workmen's Compensation Insurance Policy for all foreign workers under the Workmen's Compensation Act 1952, Workmen's Compensation (Foreign Workers Compensation Scheme) (Insurance) Order 1998, or any subsequent amendments. If a subcontractor insures foreign workers, the contractor's obligations to insure are satisfied. The insurance policy must be maintained in the joint names of the employer, contractor, and sub-contractors from Commencement to Practical Completion, and covered during the Defects Liability Period. The insurance must be with an approved insurer and the contractor must deposit the originals and receipts.

Clause 37.3 imposed the requirement on the Contractor to maintain insurance policies for workmen not registered under SOCSO, in accordance with the Employees' Social Security Act, 1969.

If the Contractor fails to comply any of the above, the Employer can pay the unpaid premiums or contributions and recover the amount under Clause 49.

#### **Clause 38: INSURANCE OF THE WORKS**

There are three variants; the first is where the insurance is taken by the Contractor (Clause 38A), the second is where the insurance is taken by the Employer (Clause 38B) and the third is where the Works is within an existing Building or Structure, in which case the insurance will be taken by the Employer.

The insurance to be taken will be the Contractor's All Risks Policy and the insured amount includes the Contract Sum, the professional fees (as stated in the Appendix) and the amount for removal of debris (also as stated in the Appendix).

The Contractor's All Risks Insurance is defined in Clause 1.1.

Clause 38A.1 requires the Contractor to take out the All Risks Insurance. This requirement is waived under Clause 38A.4 if the Contractor maintains a General Policy and produce an endorsement from the insurance company confirming that the Works is covered under the said Global Insurance.

Generally, the Contractor bears the cost of any excess, whether or not the insurance is taken by him or by the Employer (Clauses 38A.5, 38B.3 and 38C.3)

In the event of any damage or loss, any money received from the insurance company will in the first place be paid to the Employer. The Contractor will be paid progressively by the Employer out of the insurance money received according to the progress of the rectification work. The Contractor is not entitled to any amount more than the insurance money received even though the cost of rectification may be more than the insurance money received (Clause 38A.6, 38B.4 and 38C.4).

#### **Clause 39:      ANTIQUITIES AND FOSSILS**

Common provision retained in the Contract. Any work required by SO to protect or remove any artefacts is deemed as a Variation.

#### **Clause 40:      ASSIGNMENT AND SUB-CONTRACTING**

The gist of Clause 40.1 is, the Contractor cannot assign the entire or any part of the Contract without the Employer's prior consent, which the Employer should reasonably provide. The Contractor must secure payment due to their bankers or financial institutions, or assign relief to their insurers if they have already discharged their loss or liability.

Clause 40.2 mandates that the Employer must obtain the Contractor's consent before assigning the Employer's rights or interests under the Contract to a third party, ensuring the assignee has the necessary financial capacity to fulfill their obligations. However, prior consent is not required if the assignment favors the Employer's bankers or financiers.

The Employer and Contractor are obligated to provide necessary documents upon written request to the other party within a reasonable time.

With regards to sub-contracting, under Clause 40.4, the Contractor is not allowed to subcontract the entire Works. No sub-contracting of part of the Works is allowed without the prior SO's consent, unless otherwise

specified in the Contract. This consent does not relieve the Contractor from liability or obligation under the Contract, and they are responsible for the acts, defaults, and neglects of sub-contractors, their agents, servants, or workmen. As an example, the Contractor remained liable under Clause 7.1 even if they have sub-contracted part of the Works with consent of the SO.

It shall be a condition in any sub-contract allowed, that the employment of the sub-contractor will be determined immediately upon the Contractor's employment determination under the Contract, unless the Employer exercises their right to assign benefits under Clause 44.3.

#### **Clause 41: PRIME COST AND PROVISIONAL SUMS**

Clause 41.1 sets out procedures for the adjustment of Prime Cost Sums. Sub-clause 41.1(b) provides for the Contractor to participate in the tenders of PC Sum items which are stated in the Appendix. If the Contractor's tender is accepted, he will not be entitled to "profit and attendance charges" which he may have allowed in the Contract.

Clause 41.2 sets out the procedures for the adjustment of Provisional Sums. Note that under Sub-clause 41.2(b) the SO may convert a Provisional Sum item to a PC Sum item. In such event the Contractor shall be allowed the same profit and attendance charges allowed for other PC Sum items included in the Contract.

#### **Clause 42: PAYMENT**

Clause 42 sets out in detail the procedures for payment claims to be made and assessed and provides remedies in the event of default in payment.

Clause 42. 1 requires the Contractor to submit a Statement of Work Done which would incorporate all the items listed in sub-clauses (a) to (e) therein.

Under Clause 42.2 the SO must issue an Interim Certificate within 21 Days of receiving the said Statement of Work Done.

The SO is mandated under Clause 42.2(c) to issue Interim Certificates at predetermined intervals specified in Appendix until the Date of Practical Completion, or the final part of the Works, if the Works are completed in sections. If additional funds are determined to be owed by the Employer to the Contractor, Interim Certificates will be granted as quickly as possible, provided that the SO is not compelled to issue a fresh Interim Certificate within a month of the preceding one.



When the Contractor's or SO's total amounts in the Statement of Work Done or Appendix are less than the minimum amount specified in the Appendix, the SO may, at their discretion, issue an Interim Certificate under subclause 42.2(a), with the exception of the Penultimate Certificate or Final Certificate.

Within 21 days of receiving the Statement of Work Done, the SO is required to notify the Contractor in writing if he chooses not to provide an interim certificate.

However Sub-clause 42.2(d) provides that except for the Penultimate Certificate under Clause 42.6, the SO is not required to issue an Interim Certificate if the amount claimed or the amount certified is less than the minimum amount stated in the Appendix. The SO must notify the Contractor if he is not issuing an Interim Certificate.

Clause 42.3 is with regards to Retention Monies. The Limit of Retention Monies shall be as stated in the Appendix. One significant feature of the Contract is the requirement under Sub-clause 42.3(c)(ii) for the Employer to deposit the amount of Retention Monies deducted in a separate banking account held in trust by the Employer. Although the Contractor is not entitled from the interests accrued from the said account, he is at least assured that the Retention Monies is kept aside until he has fulfilled his obligations under the Contract. The Employer's right of deduction from the Retention Monies is also clearly stipulated under Sub-clauses 42.3(c)(iii) to (v).

Clause 42.4 enables the SO to make corrections in respect of any error found in previous certificates. Any over payment by reason of such correction shall be recoverable by the Employer under Clause 49

Clauses 42.5 to 42.8 set out the procedures for payment on completion of the Works.

Clause 42.5 provides that within three months following the Date of Practical Completion, the Contractor must submit to the SO a "Statement at Completion".

Clause 42.6 requires the SO to issue to the Contractor a Penultimate Certificate attesting to the amount owed to the Contractor within six months after obtaining the Statement at Completion.

Pursuant to Clause 42.7, the Contractor must submit a Final Claim Statement within 30 days of receiving a Certificate of Making Good Defects or completion in sections. The statement should detail the final

amounts the Contractor is entitled to. If supporting documents are not provided, the SO may make a fair assessment based on available information. If the Contractor fails to submit the Final Claim Statement within the 30-day period, the Employer may give notice, allowing the SO to prepare the Final Account based on available information.

Clause 42.8 relates to Final Account and Final Certificate. The Contractor must submit the Final Claim Statement within 30 days of receiving a Certificate of Making Good Defects. The SO must issue a draft Final Account within 90 days, and within 30 days of receiving the final account, the Contractor must inform the SO if they accept it or if they disagree. If there is disagreement, the SO may amend the amount or not. If there is no disagreement within 30 days, or after the expiry of 30 days following the issue of the Final Account, the SO must issue a Final Certificate.

### **Illustration**

***1. Scenario: Contractor X submits the Statement of Work Done to the SO.***

*Contractor X submits the Statement of Work Done to the SO, detailing the work completed and the amounts they believe they are entitled to.*

***2. Action: SO issues an Interim Certificate.***

*Within 21 days of receiving the Statement of Work Done, the SO reviews the submission. If all conditions are met as per sub-clauses 42.2(c) and (d), the SO issues an Interim Certificate to the Employer, with a copy to Contractor X. This certificate outlines the amounts the SO believes Contractor X is entitled to under the Contract, after deducting retention monies, previously certified amounts, and any deductions allowed under the Contract.*

***3. Consideration: Inclusion in the Interim Certificate.***

*The Interim Certificate includes only the value of equipment, materials, or goods delivered by Contractor X to the site for incorporation into the Works from the time they are reasonably, properly, and adequately protected against damage, loss, or injury.*

***4. Timing: Frequency of Interim Certificates.***

*Interim Certificates are issued by the SO at intervals specified in the Appendix, up to the Date of Practical Completion. After the Certificate of Practical Completion is issued, further Interim Certificates are issued as and when additional amounts payable to Contractor X are ascertained. However, the SO is not obligated to issue an Interim Certificate within one month of issuing a previous one.*

*5. Discretion: SO's Authority.*

*The SO may exercise discretion in issuing Interim Certificates, especially if the total amounts claimed by Contractor X or considered by the SO to be entitled are less than the minimum amount stated in the Appendix.*

*6. Notification: Communication regarding Interim Certificate.*

*If the SO decides not to issue an Interim Certificate, they must notify Contractor X in writing within 21 days of receiving the Statement of Work Done.*

Clauses 42.9 and 42.10 deal with payment and provides remedy for default in payment.

Within 21 days after the date of the relevant certificate, or within a certain length of time thereafter, the Employer shall pay to the Contractor any sum owed under a certificate issued by the SO. The Contractor will receive simple interest at the rate listed in the Appendix for any amount that remains unpaid beyond the due date and until the payment is made by the Employer if they are unable to make the payment within the allotted time. Subject to their rights with respect to the Payment Bond, suspension of responsibilities under the Contract, and termination of employment under Clause 45.1, the Contractor shall have the right to interest under subclause 42.9(b). It has to be noted that the Employer's recovery right under Clause 49 governs this entitlement.

Clause 42.10 makes provision for the Contractor to suspend Work if payment continues to be delayed. However, there are procedures to be followed before Contractor is entitled to suspend Works due to default by the Employer in honouring the Interim Certificate, as follows:

- a. If Employer fails to pay any amount and such failure continues for a further 14 Days from the date such amount is due for payment, the Contractor shall give a notice of his intention to suspend Works.
- b. If the Employer shall continue to default in payment 14 Days after the receipt of the said notice, the Contractor may suspend wholly or partly the further execution of the Works or reduce the rate of execution of the Works.
- c. If the Employer subsequently pays the amount plus interest due, then the Contractor must proceed with the Works with due diligence.
- d. The Contractor is entitled to extension of time for the period of suspension and such extension of time shall allow a reasonable period for remobilization.

- e. the loss and expense incurred by the Contractor arising from such suspension and resumption shall be dealt with in accordance to Clause 32.

It is also important to note that the Contractor is entitled to determination of Contract under Clause 45 if there is default in payment by the Employer. The right to suspension under Clause 42.10 is without prejudice to the right to determination under Clause 45.

Clause 42.11 is a deemed payment provision. If the Employer exercises his right of recovery with regard to any payment owed to the Contractor in line with Clause 42, the amount that the Employer so recovers or deducts will be considered as payment made by the Employer to the Contractor under Clause 42.

Clause 42.12 provides that the Employer to pay the Contractor damages (interest of otherwise) should there be delay or failure by the SO in certifying payment due or payable to the Contractor under Clause 42.

Clause 42.13 is a standard provision disclaiming any finality regarding acceptance of standards or quality of work done notwithstanding any payment other than payment made pursuant to the Final Certificate. (See Clause 43)

#### **Illustration**

***1. Scenario: Employer fails to make payment within the Period of Honouring Certificate.***

*Contractor X completes work as per the terms of the Contract and submits an Interim Certificate for payment to the Employer. However, the Employer fails or neglects to make the payment within the Period of Honouring Certificate.*

***2. Action: Contractor X issues notice of intention to suspend work.***

*Contractor X, after 14 days of the failure or neglect of payment by the Employer, issues a notice of intention to suspend the execution of the Works due to non-payment.*

***3. Consequence: Suspension or reduction of work.***

*If the Employer continues the default for another 14 days after receiving the notice, Contractor X is entitled to suspend wholly or partly the execution of the Works or reduce the rate of execution of the Works.*

#### *4. Resolution: Payment by the Employer.*

*If the Employer subsequently pays the amount due, including interest as per the contract terms, Contractor X's entitlement to suspend work under Clause 42.10(a) lapses, and they resume normal working as soon as reasonably possible.*

#### *5. Responsibilities during suspension: Protection and securing of Works.*

*During the suspension period, Contractor X is obligated to protect and secure the Works to prevent any damage or loss.*

#### *6. Extension of Time for Completion.*

*The Time for Completion is deemed to be extended by the period of suspension and a reasonable period for the resumption of normal working.*

#### *7. Compensation for Loss and Expense.*

*If Contractor X incurs any loss and expense due to the suspension and resumption of work, including costs for protecting and securing the Works, the SO will ascertain the amount, and it will be added to the Contract Sum as per Clause 32.*

#### *8. Contractor's rights and remedies.*

*The Contractor's right to suspend work under Clause 42.10 is without prejudice to their right of determination under Clause 45 or any other right or remedy they may possess under the Contract.*

#### **Clause 43: EFFECT OF SUPERINTENDING OFFICER'S CERTIFICATE**

Clause 43.1 is a general provision disclaiming any conclusiveness of any certificate regarding sufficiency of design or of the quality of work done.

Clause 43.2 clarifies the effect of the Final Certificate when it is issued.

It is provided that unless either party has commenced proceedings under Clause 48 (Settlement of Disputes) within 30 Days of the issuance of the Final Certificate, the Final Certificate shall be conclusive evidence with regards to:

- a. Quality of works executed
- b. Award of extension of time as revised/extended, and
- c. Reimbursement of loss and expense.

Sub-Clause 43.2(b) further provides that the Final Certificate would have the same effect of conclusiveness after either:

- a. The proceedings under Clause 48 (mediation or reference to tribunal of competent jurisdiction, ie. arbitration or Court proceedings) have concluded and the award, agreement, settlement or judgment has been incorporated in the Final Certificate, or
- b. After a lapse of 12 months either party has commenced proceedings but neither has taken steps to progress in such proceedings, whichever is the earlier.

#### **Illustration**

##### ***1. Scenario: Interpretation of Clause 43.1***

*Contractor X receives a certificate from the SO indicating the completion of a particular phase of the project. However, there are still some defects in the works. Clause 43.1 reminds Contractor X that the certificate does not absolve them of the responsibility to rectify these defects, emphasizing that no certificate issued shall be considered conclusive evidence of sufficiency of design or executed works.*

##### ***2. Implications of Clause 43.2, particularly concerning the Final Certificate***

*Upon completion of the project, Contractor X receives the Final Certificate from the SO. Despite the provisions of Clause 43.1, the Final Certificate serves as conclusive evidence regarding the quality of works, adherence to specified standards, and final settlement of claims. This certificate has significant implications for Contractor X, as it marks the completion of the project and finalizes any outstanding disputes or claims.*

### **3. Ongoing Proceedings at the Time of Issuing the Final Certificate**

*In a situation where Contractor X and the Employer are engaged in ongoing mediation or tribunal references at the time of issuing the Final Certificate, Clause 43.2(b) stipulates that the Final Certificate will still hold significance. It will either incorporate the terms of any concluded proceedings or be subject to any terms agreed upon in partial settlement within a specified timeframe.*

### **4. Conclusiveness of the Final Certificate**

*Upon issuance, the Final Certificate becomes conclusive evidence regarding the matters specified in Clause 43.2(c), including the quality of works and final settlement of claims. Contractor X must pay close attention to any objections they wish to raise and ensure they do so within the designated time frame to avoid limiting their ability to challenge the Final Certificate.*

### **5. Challenging the Final Certificate**

*If Contractor X wishes to challenge the Final Certificate, they must act promptly within the specified time frame and under the circumstances outlined in the Contract. Failure to do so within the designated period may restrict their ability to challenge the Final Certificate, and it will be considered conclusive evidence on all matters except those directly related to ongoing or future proceedings.*

## **Clause 44: DETERMINATION BY THE EMPLOYER**

Clause 44.1 sets out the procedure for determination of Contractor's employment under the Contract by the Employer arising from any of the Specified Default by the Contractor.

Sub-clause 44.1(b) provides that if the Contractor continues with the Specified Default for 14 Days after the default notice from the SO, then within 10 Days after the expiry of the 14 Days, the Employer shall by further notice determine the Contractor's employment.

Subclause 44.1(c) provides that the Employer cannot determine the Contractor's employment without first issuing a default notice specifying the default for the Contractor to remedy. Determination can be exercised if the Contractor does nothing after the default notice expires. This subclause states that the Employer may nevertheless determine the Contractor's employment by further notice if the Contractor repeats a Specified Default at a later date, irrespective of whether the Employer does not initially give the further notice to ascertain the Contractor's employment.

Clause 44.2 enables the Employer to determine the employment of the Contractor “forthwith” in the event of the Contractor’s bankruptcy or insolvency. No notice of default is required.

Clause 44.3 provides in detail the respective rights liabilities of the parties in the event of such determination.

Accordingly, no amount shall be certified as due to the Contractor, nor shall the Employer be obligated to pay to the Contractor any amount concerning the Contract, whether certified by the SO or not (including damages and amounts for which the Employer was liable at the date of determination), until the Defects Liability Period of the entire Works has expired, and until the SO has issued the Certificate of Determination Costs in compliance with Clause 44.4.

Clause 44.4 provides that the SO must assess the ultimate cost to the Employer of completing the Works after determining the Contractor's employment and other contractors' engagement, and ascertain the direct loss or damage caused to the Employer. The SO must issue a Certificate of Determination Cost, outlining the Completion Cost and the Final Contract Sum, within the specified time period, provided the Certificate of Determination Cost is issued within the timeline stated in the Appendix.

Clause 44.5 provides specifically how the Notice of Determination under Clause 44 are to be served.

### **Illustration**

#### ***1. Determination Due to Default by Contractor***

*Contractor X fails to commence the Works within the specified timeframe outlined in the Contract, as per Clause 44.1(a)(i). Despite receiving notice of default from the SO, Contractor X persists with the*



*default for 14 days. In accordance with Clause 44.1(b), the Employer issues a further notice, determining the employment of Contractor X under the Contract.*

## *2. Determination Due to Bankruptcy or Insolvency*

*Due to financial mismanagement, Contractor X becomes insolvent, triggering Clause 44.2(b) of the contract. Upon confirmation of Contractor X's insolvency, the Employer issues a notice, terminating Contractor X's employment under the Contract, as per Clause 44.2.*

## *3. Effects of Determination of Contractor's Employment*

*Upon determination of Contractor X's employment under the contract, as outlined in Clause 44.3, the Employer repossesses the Site. Contractor X is required to cease all operations, remove personnel and equipment, and yield possession of the Site. Failure to comply with instructions may lead to the Employer selling any property left on the Site, as stated in Clause 44.3(b).*

## *4. Assessment of Determination Costs*

*Following repossession of the Site by the Employer, the SO assesses the Completion Cost and Final Contract Sum in accordance with Clause 44.4. The Certificate of Determination Cost is issued, detailing the difference between the Final Contract Sum and Completion Cost. Depending on the outcome, Contractor X may owe a debt to the Employer or vice versa.*

## *5. Notices under Clause 44*

*Any notices or further notices under Clause 44 must be delivered by hand or registered post, as stated in Clause 44.5. Contractor X receives notice of determination through registered post, and the notice is deemed received seven days after posting.*

## **Clause 45: DETERMINATION BY THE CONTRACTOR**

Clause 45 provides the right of the Contractor to determine his own employment in the event of the occurrence of the Specified Default by the Employer, such as failure to honour the certificate within the period of honouring, interference with the issuance of certificate and failure to appoint a replacement SO.

Under these circumstances, the Contractor must give a 14-Day default notice and if the Employer continues with the Specified Default, the Contractor may within 10 Days after the expiry of the 14-Day notice by a further notice determine his own employment under the Contract.

Sub-clause 45.1(c) is similar to sub-clause 44.1(c).

Clause 45.2 provides for determination without notice as in the case when the Employer becomes bankrupt or insolvent.

Clause 45.3 sets out the rights and liabilities of the parties in the event of determination.

Note under Sub-clause 45.3(b), the Contractor subject to compliance with Clause 32 is entitled to the cost of removal and other direct loss and/or damage arising from the determination in addition to the cost of works executed and materials or goods supplied.

### **Illustration**

#### ***1. Determination by Contractor Due to Employer's Default***

*Contractor X issues a notice to the Employer specifying defaults, such as non-payment within the Period of Honouring Certificate or interference with the issuance of certificates by the SO as per Clause 45.1(a). If the Employer persists with the default for 14 days from receipt of the notice, Contractor X can determine their employment under the contract by issuing a further notice, as outlined in Clause 45.1(b).*

#### ***2. Determination by Contractor Without Notice***

*Upon discovering that the Employer has become bankrupt or insolvent, Contractor X can immediately determine their employment under the contract without notice, in accordance with Clause 45.2. The determination takes effect upon receipt of the notice by the Employer.*

#### ***3. Effects of Determination***

*Upon determination of Contractor X's employment under the contract, they are required to promptly remove all their equipment, materials, and goods from the Site, as stated in Clause 45.3(a). The SO*

*certifies payment to Contractor X for work completed, work partially completed, loss and expense, and other direct losses incurred due to the determination, as per Clause 45.3(b).*

#### **4. Contractor's Lien**

*In addition to other remedies, Contractor X may exercise a lien on all unfixed equipment, materials, or goods that have become the property of the Employer under Clause 33 until all payments due to Contractor X are settled, as per Clause 45.3(c).*

#### **5. Notices under Clause 45**

*Any notices or further notices under Clause 45 must be delivered either by hand or registered post. Contractor X issues a notice to the Employer via registered post, and the notice is deemed received seven days after posting, in compliance with Clause 45.4.*

### **Clause 46:      TERMINATION WITHOUT DEFAULT**

Clause 46.1 enables the Employer to terminate the Contract at any time by giving the Contractor 30-Day notice provided the termination is not done to enable the Employer to execute Works himself or to appoint another. This termination must not be made in bad faith, unreasonably or vexatiously.

Clause 46.2 provides for mutual termination to be affected. Accordingly, the Contract may be terminated by both parties by mutual consent in writing. The date indicated in the written agreement that both Parties have signed will mark the effective termination of the Contract.

Clause 46.3 provides that the Contractor is entitled to be compensated in the same manner as Clause 45.

#### **Illustration**

##### **1. Employer's Right to Terminate**

*The Employer, under Clause 46.1(a), decides to terminate the contract with Contractor X by giving 30 days' notice. It's important to note that the termination cannot be done with the intention of executing the works themselves or appointing another contractor to complete them. This clause ensures that termination is not utilized for ulterior motives.*

## **2. Termination Procedure**

*Upon the expiry of the 30-day notice period, as stipulated in Clause 46.1(b), the termination of the contract becomes effective. This termination is subject to the conditions outlined in Clause 46.1(c), ensuring that it is not done in bad faith, unreasonably, or vexatiously.*

## **3. Mutual Termination**

*Contractor X and the Employer may mutually agree to terminate the contract, as per Clause 46.2. This termination becomes effective upon a written agreement signed by both parties, specifying the date of termination.*

## **4. Effects of Termination**

*In the event of termination under either Clause 46.1 or Clause 46.2, the provisions of Clause 45.3 apply. This means that the respective rights and liabilities of both parties, including payment for work done and the removal of equipment, materials, and goods from the site, are governed by the terms outlined in Clause 45.3.*

### **Clause 47: TERMINATION ON CORRUPTION, UNLAWFUL AND ILLEGAL ACTIVITIES**

The Employer can terminate the Contract if it is found that the Contractor, its personnel, servants, agents, or employees are involved in corruption, unlawful or illegal activities related to the Contract or any other agreements with the Employer. The Employer can do this by providing immediate written notice to the Contractor. Upon termination, the Employer is entitled to all losses, costs, damages, and expenses incurred by the Employer.

### **Clause 48: SETTLEMENT OF DISPUTES**

This clause relates to settlement of disputes. Accordingly, parties may refer disputes to the prescribed dispute resolution mechanisms, as follows.

#### Clause 48.1 on Reference of Dispute to the SO

If a dispute arises between the Employer, SO, and Contractor regarding the Contract, whether during the execution of the Works or after their completion, or before or after the Contractor's employment determination, the dispute must first be referred to SO for his decision. The decision, which must be final and binding on the parties to the Contract, must be given in writing within 14 days of receiving the reference. If the Contract has already been repudiated or the Contractor's employment determined, the Contractor must continue with the Works, and the Employer and Contractor must give effect to the SO's decision unless revised by the Dispute Resolution Board or a competent tribunal.

#### Clause 48.2 on Reference to Dispute Resolution Board

Dispute Resolution Board is the new feature for dispute resolution under this new collaborative contract.

Accordingly, if the SO fails to provide a decision within 14 days of receiving a dispute or disagreement, the Employer or Contractor may give notice within 30 days to the SO and the Dispute Resolution Board (DRB) of their intention to refer the dispute or difference for a decision.

The DRB will be deemed to have received the request when the sole DRB Member or chairman receives the request. Both parties must provide the DRB with all necessary information, access to the Site, and facilities for decision-making. The DRB will assist parties in resolving disputes and is not considered as arbitrators. The DRB may visit the Site, inspect the Works, review potential disputes, facilitate settlement, and make recommendations.

Clause 48.3 and 48.4 illustrate the manner of appointment of DRB.

Clause 48.5 provides for the effect of DRB decision.

Within 21 days of receiving a reference or the predetermined deadline, the DRB will provide a final, legally enforceable judgement. Unless the disagreement is brought up to a tribunal of competent jurisdiction, the judgement is final and binding on all parties to the contract.

The Contractor must continue with the Works unless the Contract is repudiated, the Contractor's employment is determined, or the Works are completed. The Contractor, SO, and Employer must follow the DRB's decisions, unless revised by mediation or a competent tribunal under Clause 48.6 or 48.7.

### Clause 48.6 on Reference to Mediation

This Contract promotes collaboration between the parties. As such, parties are encouraged to work on settlement of dispute by way requesting for mediation at any moment despite the matter is already referred to other dispute resolution mechanism.

Disputes are mediated by Accredited Mediators following the CIDB Mediation Rules. A settlement agreement is created after a resolution is achieved and delivered to the SO. Clause 48.7 allows any party to take the matter to a competent tribunal if a solution cannot be achieved. The settlement agreement's provisions must be carried out by the SO.

Clause 48.7 elaborates on reference of dispute to Tribunal of Competent Jurisdiction, in the form of reference to Arbitration or Submission to Court. This is an alternative clause, namely parties need to determine and agrees on the two options and prescribed it in the Appendix. The purpose is to enable parties to benefit from the advantages of respective mechanism.

Accordingly, the Employer or Contractor may notify the other party and the SO of their intention to submit the issue to arbitration or court if the DRB does not give a decision by the deadline or if either party is unhappy with the outcome.

Clause 48.8 prescribes the mechanism for dispute settlement in the event of determination. Accordingly, if a dispute arises relating to the employment of a contractor or the termination, repudiation, or abandonment of a contract by either party, it cannot be referred to the SO or DRB for decision under Clause 48.1 and Clause 48.2, but rather to Tribunal of Competent Jurisdiction under Clause 48.7 or mediation under Clause 48.6.

### ***Illustration***

#### **Reference to the SO**

##### ***1. Initial Dispute Resolution***

*If any dispute arises between the Employer, SO, and the Contractor regarding the Contract, it must first be referred to the SO for a decision, as outlined in Clause 48.1(a). Both parties must send a copy of the reference to the other party to ensure transparency.*

## **2. SO's Decision**

*Within 14 days of receiving the reference, the SO must provide a written decision, as per Clause 48.1(b). This decision is final and binding unless either party chooses to escalate the matter to the Dispute Resolution Board (DRB).*

## **3. Escalation to DRB**

*If dissatisfied with the SO's decision or if no decision is provided within the stipulated time, either party may escalate the matter to the DRB, as per Clause 48.2(a). The DRB will then review the dispute and provide recommendations for resolution.*

## **4. Composition of the DRB**

*The DRB consists of individuals appointed by both parties, with a third member acting as chairman, as per Clause 48.3. The remuneration of DRB members is shared equally between the parties, and they are not liable to be sued or called as witnesses.*

## **5. Failure to Agree on DRB**

*If the parties fail to agree on the composition of the DRB, the Chief Executive of CIDB will appoint the DRB member, as per Clause 48.4(a). Each party is responsible for the costs associated with this appointment.*

## **6. Decision of the DRB**

*The DRB must provide its decision within 21 days of receiving the reference, as outlined in Clause 48.5(a). This decision is final and binding unless either party opts for mediation or refers the matter to a tribunal of competent jurisdiction.*

## **7. Settlement through Mediation**

*Parties may choose to resolve disputes through mediation, as per Clause 48.6. If mediation is successful, the resolution is recorded in a settlement agreement, which both parties must adhere to.*

## **8. Tribunal of Competent Jurisdiction**

*If disputes remain unresolved after mediation or DRB intervention, either party may refer the matter to a tribunal of competent jurisdiction, as outlined in Clause 48.7.1. This tribunal has the authority to make binding decisions on the dispute.*

### *9. Settlement in the Event of Determination*

*Disputes related to the determination of the Contractor's employment or termination of the contract are not referred to the SO or DRB but are settled through dispute resolution or mediation, as per Clause 48.8.*

*These provisions ensure a structured approach to resolving disputes and differences that may arise during the execution of the contract, promoting fairness and efficiency in dispute resolution.*

### **Clause 49: RECOVERY BY THE EMPLOYER**

This Clause protects the Employer's right to recover from the Contractor such amount due from the Contractor under the Contract and the Employer can exercise the right of deduction from any money due to the Contractor or recover from the Contractor as a debt.

### **Clause 50: GOVERNING LAW**

This clause provides the law applicable to the Contract.

### **Clause 51: TAXES AND DUTIES**

Clause 51.1 requires the Contractor to pay all taxes and duties under the Malaysian Law.

Clause 51.2 provides for reimbursement of additional costs incurred by the Contractor arising from any change in Statutory Requirements after the date of the Letter of Award.

### **Clause 52: MISCELLANEOUS PROVISIONS**

Clause 52.1 requires the Contractor to conduct his business in such manner that will not violate the applicable laws.



Clause 52.2 is a common provision protecting the rights, powers and remedies of the Employer in the event of any breach on his part.

Clause 52.3 protects the interest of the Employer and will not permit any notice of garnishment to be given against the property of the Contractor, which is in the possession of the Employer.

Clause 52.4 provides that all stamp duties on the Contract shall be borne by the Employer.

## **OPTION MODULES**

As stated before, in order to provide flexibility to the CIDB Form of Contract without having too many variants, optional modules are provided in addition to the Standard Conditions.

### **Option Module A:      BILLS OF QUANTITIES**

This Option Module is applicable if Bills of Quantities form part of the Contract Documents.

Clause A2(a) provides that the Bills of Quantities shall form part of the Contract and be the basis of Contract Sum.

Sub-clause A2(b) further provides that any error in description or in quantity or in omission of items in the Bills of Quantities shall be corrected by the SO and treated as a Variation.

Clause A3 provides for treatment of “Provisional” quantities. Provisional quantities are subject to re-measurement. Although SO’s instruction is required but the re-measurement shall be deemed to be a Variation. Valuation shall be at the Rates of the Works (see Definition in Clause 1) irrespective of the actual measured quantities. As such, the Contractor is not entitled to any enhanced rates if the actual quantities are much lower than the Provisional quantities.

Clause A4 requires the method of measurement to be specified in the Bills of Quantities, ie the Preambles to the Bills of Quantities should specify the standard method of measurement used as the basis of measurement and any deviation from the specified standard method of measurement should also be stated in the Preambles.

### **Option Module B:      UNFIXED EQUIPMENT MATERIALS OR GOODS STORED OFF SITE**

This Option Module enables the Contractor to receive payment in respect of Equipment, materials or goods stored off site. Note that payment on Equipment, materials or goods will be allowed in an Interim Certificate only if all the pre-conditions stipulated therein are fulfilled.

## **Option Module C:       NOMINATED SUB-CONTRACTORS AND/OR NOMINATED SUPPLIERS**

This Option Module should be read in conjunction with Clause 41.

Clause C1 sets out the definition of a 'Nominated Sub-Contractor' ("**NSC**") and a 'Nominated Supplier' ("**NS**"). There are three possibilities where an NSC or NS can be nominated are first, when it is stated in the Contract, second when the SO issues an instruction for the expenditure of a PC Sum item and third, when the SO issues an instruction to convert a Provisional Sum to a PC Sum (Clause 41.2(b)).

Clause C2 sets out the nomination procedures. There are 2 possible grounds for the Contractor to object to nomination of an NSC or NS. The first is on the ground of financial standing or solvency or technical competence. The second is on the ground that the NSC or NS declines to accept some of the fundamental terms of a nominated sub-contract as stated.

However, the Contractor cannot raise objection to a nomination if the NSC or NS was named in the original tender documents and if prior to tender for the NSC or NS, the Contractor has agreed with the SO on the list of selected NSC or NS.

If reasonable objection is raised the SO can do one of the following:

- Nominate an alternative NSC or NS
- Arrange for the Contractor to carry out the Works or supplies
- Give instruction to vary the Works including omission of the works from the Contract and employ others to carry out the works or supplies.

Clause C3 sets out payment procedures for the NSC/NS. The Contractor is obliged to pay the NSC/NS within 7 Days after the Period of Honouring Certificate or after the receipt of payment to the Employer, whichever is the earlier. In the event of default in payment to the NSC/NS, the Employer is entitled to pay direct to the NSC/NS (Sub-clause (d))

Clause C4 requires the Contractor to take full responsibility for the acts and omission of the NSC/NS, except for NSC/NS appointed pursuant to Clause C2(c).

Clause C5 requires the Contractor to take responsibility for the design if such design is provided by the NSC under the sub-contract.

#### **Option Module D:       WORKS DESIGNED BY THE CONTRACTOR**

In the current market, many contractors and sub-contractors have developed the capability to provide design solutions and contracts or sub-contracts are awarded on the basis of design provided by the contractor or sub-contractor. This Option Module sets out the responsibility of the Contractor for the design and the procedures for him to submit his design and drawings for approval before he executes the works.

Clause D1 stipulates the Contractor's design responsibility. Note his design responsibility is similar to that of an architect or engineer or other like professionals i.e. duty of reasonable care.

Clause D2 provides the procedures for submission and approval of design documents prior to execution of the works. The acceptance or approval of the designed documents by the SO shall not relieve the responsibility of the Contractor. Sub-clause D2(g) enables the SO to vary the works designed by the Contractor by making necessary changes to the Employer's Requirements.

Further, the SO has power to instruct the Contractor to make modification to his design if in his opinion there is deficiency in the Contractor's design. The Contractor is not entitled to extra cost or time in this instance (Clause D4).

Clause D3 is reiterating the requirements of Clause 4.10 for the Contractor to submit as-built drawings and operations and maintenance manuals.

#### **Option Module E:       PAYMENT BOND**

This Option Module is not found in other standard forms in Malaysia, although the practice of requiring the Employer to submit payment bond to the Contractor is quite common in the USA.

Payment bond when submitted by the Employer to the Contractor will provide the Contractor some security that payment due to him will be made.

### **Option Module F: PERFORMANCE SECURITY DEPOSIT**

Clause F1 stipulates the requirement to submit the Performance Security Deposit, the timing of submission (within 14 days of the Letter of Award), the amount (as stipulated in the Appendix) and the form of the Performance Security Deposit.

Clause F2 stipulates the validity period of the Performance Security Deposit. Note however Clause F2 requires the Contractor to ensure that the Performance Security Deposit, if it is in the form of a bank bond, to be valid until the issuance of the Certificate of Practical Completion. If the Contractor fail to renew the validity of the bank bond, as will happen in the event the Works is delayed, then the Employer reserves the right to withhold any money from the Contractor to the amount equal to the amount of the Performance Security Deposit.

Clause F3 makes any demand on the Performance Security Deposit conditional upon the issuance of a notice of default by the SO. Further the notice of default must state the following:

- That the Contractor has committed a breach of contract;
- In what manner the Contractor has breached; and
- An estimated amount of the loss or damage payable to the Employer.

The Employer's right to recovery from the Performance Security Deposit is limited to the amount estimated by the SO.

Clause F4 deals with the release of the Performance Security Deposit or any balance remaining to the Contractor.

# **GUIDE ON THE CIDB STANDARD FORM OF CONTRACT FOR BUILDING WORKS 2022 EDITION**

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## **- Frequently Asked Questions (FAQs)**

## **FREQUENT QUESTIONS AND ANSWERS**

### **CLAUSE 1- DEFINITION AND INTERPRETATION**

#### **Qualifications as a “registered professional or practices” under the Contract**

**1. What criteria determines a registered professional or practices under the Contract?**

Individuals or entities designated as registered professionals or practices include Architects, Civil and Structural Engineers, Mechanical and Electrical Engineers, Quantity Surveyors. These professionals must be approved by their respective regulating Acts and Boards, emphasizing their adherence to industry standards and regulations. The title "registered professional or practices" underscores the importance of ensuring that those carrying out professional duties within the contract framework meet the required standards set forth by regulatory authorities.

#### **Specific qualifications of a “Quantity Surveyor” under the collaborative contract**

**2. What is the role of a Quantity Surveyor in the Contract, and what qualifications must they possess?**

The collaborative contract defines the Quantity Surveyor as a registered Consultant Quantity Surveyor or practices, approved by the regulating Act and Board. This designation highlights the professional responsibility of the Quantity Surveyor within the contract. To qualify, they must meet the standards set by the regulating Act and Board, emphasizing the importance of their role in managing and assessing project costs. This specific classification ensures that the Quantity Surveyor engaged in the collaborative contract is recognized and approved by the relevant regulatory authorities, ensuring competence and compliance with industry standards.

### **CLAUSE 2 - SUPERINTENDING OFFICER AND SUPERINTENDING OFFICER’S REPRESENTATIVE**

**3. In what way are references to the Superintending Officer in the Contract inclusive of the appointed Superintending Officer's Representatives?**

Reference to the Superintending Officer in the Contract extends to include the Superintending Officer's Representatives appointed under Clause 2.2. This means that the actions, decisions, and authority of the Superintending Officer's Representatives are considered equivalent to those of

the Superintending Officer mentioned in the Contract. Therefore, any obligations, rights, or duties attributed to the Superintending Officer also encompass the Superintending Officer's Representatives, emphasizing their role as authorized extensions of the Superintending Officer in the contractual framework.

### **CLAUSE 3 – SUPERINTENDING OFFICER**

**4. How does the Contractor respond to instructions from the Superintending Officer, and what is the timeframe for implementation?**

The Contractor is required to promptly comply with instructions issued by the Superintending Officer as expressly empowered by the Conditions. If an instruction is reasonably capable of being implemented within 14 Days, the Contractor must complete the implementation within that timeframe. If the nature and extent of an instruction make it impossible to be implemented within 14 Days, the Contractor must initiate the implementation within 14 Days and proceed with due diligence to complete it within the timeframe specified by the Superintending Officer.

**5. What are the consequences if the Contractor does not comply with the Superintending Officer's instructions within the stipulated timeframe?**

If the Contractor fails to comply with the Superintending Officer's instructions within the requisite 14 Days (or within the period specified in the instruction for certain cases), the Employer has the right to engage and pay other individuals to carry out the necessary actions to implement the instruction. The Contractor is then liable for all direct costs, losses, expenses, and damages incurred by the Employer in connection with this engagement. The recovery of these costs is facilitated under Clause 49.

**6. Does the provision for compliance with Superintending Officer's instructions cover all types of instructions, and how are Variations handled?**

The instructions from the Superintending Officer under this provision **do not include** instructions for Variation under Clause 28. The Contractor is specifically exempted from the obligation to comply with instructions related to Variations under Clause 28. This clarifies that the procedures and timeframes described in this provision specifically pertain to certain instructions and not those related to variations in the Contract.



**7. When is the Contractor entitled to request clarification on the provision empowering a Superintending Officer's instruction under Clause 3.2?**

The Contractor can request clarification when they receive an instruction from the Superintending Officer. If the Contractor has doubts or needs clarification on the specific provision within the Conditions that empowers the issued instruction, they are entitled to request the Superintending Officer to specify in writing the relevant provision. This allows the Contractor to have a clear understanding of the contractual basis for the instruction they have received.

**8. What is the outcome if the Superintending Officer provides the empowering provision in response to the Contractor's request for clarification?**

If the Superintending Officer receives a request from the Contractor to specify the provision empowering the instruction and promptly complies with that request, the Contractor is required to comply with the instruction. Unless either party, before compliance, issues a notice of intention to refer the matter to dispute resolution under Clause 48.2, the instruction shall be deemed to have been empowered by the specified provision. In other words, if the Contractor complies with the instruction after receiving the specified provision, it is considered legally authorized under the Contract, and the matter is deemed resolved for all contractual purposes.

## **CLAUSE 4.6 – NEED FOR FURTHER DRAWINGS**

**9. What happens if the Superintending Officer fails to meet the requirements under Clause 4.6 or delays issuing necessary drawings, specifications, or instructions under Clause 4.7, leading to a significant impact on the progress or completion of the Works?**

In such a scenario, where the Superintending Officer does not comply with requirements under Clause 4.6 (provided the Superintending Officer is given sufficient time to reasonably prepare and issue the drawings, specification or information required) or delayed in providing necessary supplementary or revised drawings, specifications, or instructions as per Clause 4.7, and this adversely affects the progress or completion of the Works, the Contractor is entitled to claim for any loss and expense incurred. The procedure to address such loss and expense is detailed in the compensation events procedure under Clause 32 of the Contract. This mechanism ensures that the Contractor has a recourse for any adverse effects on their progress or additional costs incurred due to delays or non-compliance by the Superintending Officer.

## **CLAUSE 5 - WORKS PROGRAMME AND METHOD STATEMENT**

**10. Why is the approval of the works programme and method statement by the Superintending Officer important?**

The Superintending Officer's approval of the works programme and method statement signifies his/her agreement with the proposed order or sequence of working in the works programme and the method of construction outlined in the method statement. This approval serves as an acknowledgment that the proposed plans align with the contractual requirements, providing clarity on how the construction activities will proceed.

**11. Does the approval of the works programme or method statement change the contractual obligations between the parties?**

The approval of the works programme or method statement by the Superintending Officer does not alter the contractual obligations related to the Time for Completion or the reasonable timeframes for giving or receiving information or possession of the Site. While the approved plans may be considered in disputes related to determining a reasonable order or sequence for supplying outstanding information or details or giving possession of the Site, they do not modify the fundamental contractual obligations of the parties.

**12. What is the consequence if the Superintending Officer does not respond within the given timeframe to the Contractor's submission of the works programme or method statement?**

If the Superintending Officer fails to respond within 14 Days from the date of receiving the Contractor's submission, the works programme and/or method statement shall be deemed to have been approved by the Superintending Officer. This provision ensures that the approval process does not cause unnecessary delays, and if the Superintending Officer does not provide a response within the stipulated time, the submitted plans are considered approved by default.

## **CLAUSE 7 – GENERAL OBLIGATIONS OF THE CONTRACTOR**

**13. Under what circumstances does the Contractor take on the responsibility for the design of a part of the Works under the Contract?**

Clause 7.3(b) specifies that if the Contract explicitly assigns the design responsibility for a part of the Works to the Contractor (in accordance with Option Module D), the Contractor is fully responsible for the design of that specific portion. This is irrespective of any approvals granted by the Superintending Officer. This provision emphasizes that when the Contract requires the

Contractor to handle the design of a particular section, the Contractor also assumes complete responsibility for its adequacy and safety.

## **CLAUSE 24 – EARLY WARNING**

**14. What is the purpose of the ‘Early Warning’ regime?**

The Early Warning regime serves as a tool/platform for parties, ie. the Contractor and the Superintending Officer to proactively identify and address any matters that could potentially impact the Contract, such as increasing costs, delays, or performance issues.

**15. When should the Superintending Officer issue the Early Warning Register form to the Contractor?**

The Superintending Officer shall prepare the form of the Early Warning Register and issue it to the Contractor within two weeks after the Date of Commencement of Works under the Contract.

**16. Who attends the Early Warning Meetings, and what is their role?**

Attendees at early warning meetings include the Contractor, the Superintending Officer, and other relevant parties as agreed upon between the Contractor and Superintending Officer. Their role is to cooperate in proposing solutions to mitigate the effects of identified matters, deciding on actions to be taken, and reviewing and revising the Early Warning Register.

**17. How often are Early Warning Meetings held?**

The first Early Warning Meeting must be scheduled within two weeks of the Date of Commencement, and subsequent meetings are to be held at intervals specified in the Appendix of the Contract (or if none is stated, to be held on a monthly basis), and at such times that may be notified by the Superintending Officer or the Contractor.

**18. What happens if a decision made during an Early Warning Meeting requires a change to the scope of the Works?**

If a decision at an Early Warning Meeting necessitates a change to the scope of the Works, the Superintending Officer will issue an instruction for such change along with the revised Early Warning Register, reflecting the decisions made during the meeting.

**19. What type of matters should be included in the Early Warning Register?**

The Early Warning Register should include any matters that could potentially increase the Contract Sum or the Contractor's total cost, delay the Time for Completion, delay meeting key dates or milestones, or impair the performance of the Contract or the Works.

**20. Is early warning notification required for matters that are already identified as compensation events under Clause 31?**

No, early warning notification is not required for matters already identified as compensation events under Clause 31 that have been previously notified under Clause 32.

**21. What happens if a matter is identified after the initial Early Warning Register has been issued?**

If a matter is identified after the initial issuance of the Early Warning Register, it should be promptly notified to the Superintending Officer or the Contractor, who will then include it in the register during subsequent revisions.

**22. Are subcontractors required to attend Early Warning Meetings?**

Subcontractors are required to attend early warning meetings if their attendance would assist in deciding the actions to be taken regarding the identified matters.

**23. How are decisions made during Early Warning Meetings recorded and communicated?**

Decisions made during Early Warning Meetings are recorded in the Early Warning Register, which is revised by the Superintending Officer after each meeting. The revised register is then issued to the Contractor within two weeks of the meeting.

**24. What happens if actions recorded in the Early Warning Register need to be revised or updated?**

If actions recorded in the Early Warning Register need to be revised or updated, the parties involved will review and decide on the appropriate actions to be taken during subsequent Early Warning Meetings. The Superintending Officer will then revise the register accordingly and issue the updated version to the Contractor.

**25. Can decisions made during Early Warning Meetings impact the overall progress of the project?**

Yes, decisions made during Early Warning Meetings can significantly impact the progress of the project, as they may involve changes to the scope of Works, adjustments to timelines, allocation of resources, and implementation of risk mitigation strategies.

**26. Are Early Warning Meetings legally binding in terms of decision-making?**

Early Warning Meetings facilitate collaborative decision-making, but the decisions made during these meetings are typically binding as per the terms outlined in the contract.

**27. What happens if the Contractor disagrees with a decision made during an Early Warning Meeting?**

If the Contractor disagrees with a decision made during an Early Warning Meeting, they may raise their concerns during the meeting or through formal channels outlined in the Contract, such as dispute resolution procedures.

## **CLAUSE 28 - VARIATION**

**28. What is considered a 'Variation' under the Contract?**

A 'Variation' means any change in the original intention of the contract as deduced from the Contract Documents. This includes changes in quantity, quality, nature, layout, and dimensions of the works, among other factors listed in Clause 28.1.

**29. Who has the authority to order Variations in under the Contract?**

The Superintending Officer has the authority to issue written instructions requiring Variations at any time during the project, subject to the SO issuing the SO Notification under Clause 32.1(a). This power is outlined in Clause 28.2(a) of the contract.

**30. What happens if a Variation is issued without proper notification?**

Variations issued without proper notification may still be valid but should be valued according to Clause 29. However, any additional cost attributable to default or breach of contract by the Contractor is borne by the Contractor, as specified in Clause 28.2(b).

**31. What should a Contractor do if they believe an instruction constitutes a Variation?**

If a Contractor believes that an instruction constitutes a Variation, they should comply with the instruction and proceed accordingly, as stated in Clause 28.2(c). The Contractor should also follow the procedures outlined in Clause 32.1(b).

**32. How should Contractors handle Variations while awaiting valuation by the Superintending Officer?**

Contractors must carry out Variations diligently and promptly while awaiting valuation by the Superintending Officer, as per Clause 28.2(e). If the required equipment, materials, or goods are not readily available, Contractors must notify the Superintending Officer promptly with supporting particulars for further instructions.

**33. Is there a limit to the types of changes that can be considered Variations in the Contract?**

No, as long as it falls under the definition of Variation which is any change in the original Contract intention as shown in the Contract Documents as a whole. These includes various changes that deviate from the original Contract intention, as outlined in Clause 28.1. Also, changes which may be intended to alter the use to which the Works will be put but excludes instructions arising due to or necessitated or intended to cure the Contractor's default or breach of the Contract.

**34. What happens if there is a dispute regarding whether an instruction constitutes a Variation?**

In case of a dispute, the Contractor is still required to comply with the instruction given by the Superintending Officer unless instructed otherwise, as per Clause 28.2(d). Compliance is however without prejudice to the Contractor's rights and remedies regarding the matter.

**35. Can Contractors delay executing Variations if required materials are not readily available?**

Contractors are expected to carry out Variations with due diligence and expedition, even if required materials are not readily available. However, if obtaining materials poses significant challenges, Contractors should promptly notify the Superintending Officer with supporting details for further guidance, as per Clause 28.2(e).

**36. Who bears the additional costs associated with Variations?**

Any additional costs attributable to Variations arising from default or breach of Contract by the Contractor are borne by the Contractor, as specified in Clause 28.2(b). However, costs resulting from other factors are typically valued and handled according to Clause 29.

**37. What happens if a Variation is issued due to the Employer's request or necessity?**

Variations requested or necessitated by the Employer or Superintending Officer are valid and must be executed by the Contractor promptly, subject to proper notification and valuation procedures outlined in the Contract as set out above. The Contractor should adhere to the instructions provided while maintaining diligent project management practices.

## **CLAUSE 29 – VALUATION OF VARIATION**

### **38. How are variations valued in accordance with the Contract?**

Variations are valued using specific methods outlined in the Contract under Clause 29. These methods include:

- a) Using Rates for the Works as set out in the Contract for similar work under similar conditions.
- b) Adjusting Rates for the Works for variations in conditions or quantities.
- c) Valuation at fair market rates and prices if neither of the above methods applies.
- d) Valuation based on Daywork rates and prices if none of the above methods are applicable or appropriate.

### **39. When are Rates for the Works used for valuation?**

Rates for the Works are used for valuation when the varied work is of a similar character to that described in the Contract Documents, executed under similar conditions, and does not significantly change the quantity of the work.

### **40. What factors determine whether Rates for the Works are adjusted for valuation?**

Rates for the Works may be adjusted for variations in conditions or quantities. Factors such as changes in working conditions, quantity variations, or significant differences in the nature of the work may warrant adjustments.

### **41. How is valuation conducted if Rates for the Works are not applicable?**

If Rates for the Works are not applicable, variations are valued at fair market rates and prices. This ensures that the valuation reflects the current market conditions and industry standards.

### **42. Under what circumstances are Daywork rates and prices used for valuation?**

Daywork rates and prices are used for valuation when none of the other methods are applicable or appropriate for the varied work. This method requires an instruction from the Superintending Officer and entails additional compensation to cover overheads, profit, and other associated costs.

### **43. What documentation is required for valuation based on Daywork rates and prices?**

Contractors must maintain proper daily records specifying the time spent by each worker, details of Construction Plant and Equipment used, and records of materials or goods employed in the execution of the varied work. This documentation is essential for accurate valuation and may be requested by the Superintending Officer.

**44. How are omitted works valued in the Contract?**

Omitted works are valued using the Rates for the Works as set out in the Contract. However, if the omission affects the conditions under which remaining works are carried out, the valuation for the remaining works may be determined using other methods outlined in the contract.

**45. What is the purpose of adjusting Daywork rates by an additional percentage?**

An additional 15% on Daywork rates is provided to adequately compensate the Contractor for supervision, overheads, profit, and other associated costs incurred in executing the varied work.

**46. Who authorizes the execution of work on a Daywork basis?**

The Contractor must receive an instruction and/or acceptance of a quote from the Superintending Officer authorizing the execution of work on a Daywork basis as a condition precedent to any right to payment under this method.

## **CLAUSE 31- COMPENSATION EVENTS**

**47. What is a 'Compensation Event' under Clause 31 of the Contract?**

A compensation event refers to an event or circumstance that impacts the Contract Sum or Time for Completion under the contract, necessitating adjustments. See Clause 31.1.

## **CLAUSE 32- COMPENSATION EVENTS PROCEDURE**

**48. Who initiates the notification process for Compensation Events?**

The Superintending Officer initiates the process by notifying the Contractor of a Compensation Event (if compensation event arise from his/her instructions or notification, certificate etc) but the Contractor can also notify the Superintending Officer if they believe an event qualifies as a Compensation Event. See Clause 32.1(a) and (b).

**49. What happens if the Contractor fails to notify the Superintending Officer of a Compensation Event within the specified time frame?**



If the Contractor fails to notify the Superintending Officer within 30 days of becoming aware of the event, the Contract Sum or Time for Completion won't be adjusted, except in certain circumstances outlined in the procedure. See Clause 32.1(b).

**50. What if the Superintending Officer do not reply to the Contractor's Notification of Compensation Event?**

If the Superintending Officer fails to respond within the specified time frame, ie. 14 days upon receipt of the Contractor's Notification, the Contractor may notify the Superintending Officer in writing of his failure to respond ("**Failure Notice**"). If the Superintending Officer still do not reply within a further 7 Days, the event may be deemed a compensation event and the Contractor shall proceed to submit quotation(s) on the said compensation event. See Clause 32.1(e).

**51. What happens if the Superintending Officer fails to respond to a quotation submitted by the Contractor within the specified time frame?**

If the Superintending Officer fails to respond within the given time frame, the Contractor may issue a Notice of Failure. If the Superintending Officer still do not reply within a further 7 Days, the Contractor's quotation is deemed accepted. See Clause 32.4(d).

**52. How is the effect of a Compensation Event assessed?**

The effect of a Compensation Event is assessed based on various factors including cost implications, time delays, and any administrative fees resulting from the change.

**53. What rights do the Employer and the Contractor have regarding Compensation Events?**

The Employer and the Contractor's only rights in respect of Compensation Event is the right to adjustments of the Contract Sum and Time for Completion.

**54. Under what circumstances can the Contract Sum be reduced due to a Compensation Event?**

The Contract Sum can only be reduced if the Compensation Event leads to a reduction in the cost of executing the Works and meets specific criteria outlined in the procedure under Clause 32.

**55. Can the Superintending Officer revise their assessment of a Compensation Event after it has been implemented?**

Yes, the Superintending Officer may revise their assessment of Time for Completion if he/she deems it fair and reasonable to do so before the issuance of the Final Certificate.

**56. What happens after a Compensation Event is implemented?**

Once a compensation event is implemented, the Contract Sum and/or Time for Completion are adjusted accordingly, and relevant notifications or certificates are issued by the Superintending Officer.

**CLAUSE 37 – INSURANCE FOR WORKMEN**

**57. What is the purpose of Clause 37 in the Contract?**

Clause 37 outlines the requirements for the Contractor regarding the registration of workmen under the Employee's Social Security Scheme (SOCSO), provision of Workmen's Compensation Insurance for foreign workers, and insurance for workmen not subject to SOCSO.

**58. What is SOCSO, and who is responsible for registering workmen under it?**

SOCSCO refers to the Employee's Social Security Scheme. According to Clause 37.1, the Contractor is responsible for registering all workmen subject to registration under SOCSO in accordance with the Employees' Social Security Act, 1969 or any subsequent modifications.

**59. What are the responsibilities of the Contractor regarding Workmen's Compensation Insurance for foreign workers?**

Under Clause 37.2, the Contractor is required to take out and maintain a Workmen's Compensation Insurance Policy for all foreign workers, as per the relevant laws and regulations. If subcontractors employ foreign workers, they must also ensure the subcontractors are appropriately insured.

**60. Does the Contractor need to provide insurance coverage for workmen not subject to SOCSO under the Contract?**

Yes, according to Clause 37.3, the Contractor must take out and maintain an insurance policy for workmen not subject to registration under SOCSO. This coverage should be in place from the Date of Commencement until the Date of Practical Completion, including the Defects Liability Period.

**61. What happens if the Contractor fails to comply with the insurance requirements outlined in the Contract?**

In case of default by the Contractor in complying with the provisions of Clauses 37.1, 37.2, or 37.3, the Employer has the right to pay the premiums or contributions when due and remain unpaid

and recover the amount from the Contractor, as stated under Clause 37.4, without prejudice to any other rights or remedies available.

**62. Who approves the insurance provider for the policies mentioned in the Contract?**

Clause 37.2(d) and 37.3(c) state that any insurance referred to in these clauses must be placed with an insurer approved by the Superintending Officer.

## **CLAUSE 40 – ASSIGNMENT AND SUB-CONTRACTING**

**63. Can the Contractor assign any part of the Contract without the Employer's consent?**

No, according to Clause 40.1, the Contractor cannot assign the whole or any part of the Contract, or any benefit or interest in or under the Contract, without the prior consent of the Employer, except in specific circumstances outlined under Clause 40.1(a) and (b). Having said that, the Employer cannot unreasonably withhold consent for assignments.

**64. Under what circumstances can the Contractor assign payment due under the Contract?**

The Contractor can assign payments due or to become due under the Contract to their bankers, financial institutions, or corporations as security without the consent of the Employer, as stated in Clause 40.1(a).

**65. What conditions apply to the assignment of the Contractor's rights to obtain relief from any other party liable under the Contract?**

Under Clause 40.1(b), the Contractor can assign their right to obtain relief from any other party liable under the Contract to their insurers, but only in cases where the insurers have discharged the Contractor's loss or liability.

**66. How about the Employer? Can the Employer assign their rights under the Contract?**

According to Clause 40.2, the Employer cannot assign their rights, interests, or benefits under the Contract without the written consent of the Contractor, except in specific circumstances outlined under the said clause.

**67. What conditions must the Employer meet to obtain consent for assignment from the Contractor?**

The Employer must provide reasonable evidence that the assignee will fulfill the provisions of Option Module E (if applicable) in place of the Employer. See Clause 40.2.

**68. Are there any obligations regarding the execution of documents for assignment?**

Yes, both the Employer and the Contractor are obligated to execute necessary documents for assignment within a reasonable time following a written request by the other party. See Clause 40.3.

**69. Can the Contractor sub-contract any part of the Works without prior consent?**

The Contractor cannot sub-contract the whole of the Works without prior consent, as stated in Clause 40.4(a). Additionally, any sub-contracting of part of the Works requires the prior consent of the Superintending Officer, except in certain circumstances outlined in the clause.

**70. What responsibilities does the Contractor bear when sub-contracting work?**

The Contractor remains responsible for the acts, defaults, and neglects of any sub-contractor, their agents, servants, or workmen as if they were the acts, defaults, or neglects of the Contractor, as stated in Clause 40.4(a).

**71. What happens to sub-contracts assigned upon termination of the Contractor's employment under the Contract?**

Upon termination of the Contractor's employment, the employment of the sub-contractor under the sub-contract which had been assigned shall determine immediately (such conditions to be stated), unless the Employer exercises their right for the assignment of benefits of the sub-contract under Clause 44.3, as outlined in Clause 40.4(b).

## **CLAUSE 42 - PAYMENT**

- **STATEMENT OF WORK**

**72. What is the 'Statement of Work' Done under Clause 42.1(a)?**

The Statement of Work Done is a document that the Contractor submits to the Superintending Officer at specified intervals, as outlined in the Appendix of the Contract (or if none is stated, to

be submitted monthly). It details the amounts the Contractor believes they are entitled to up to the last day of the relevant interval for various aspects of the project.

**73. What does the Statement of Work Done typically include?**

The Statement of Work Done includes the following:

- a. The value of works properly executed, including any work done as per the Superintending Officer's instructions.
- b. Other items separately priced in the Contract, such as Construction Plant, Temporary Works, etc.
- c. Percentage values of Equipment, materials, or goods delivered by the Contractor on-site for incorporation into the Works.
- d. Any other sums the Contractor believes they are entitled to under the Contract, with itemization and reference to relevant Contract provisions.
- e. Amounts due to the Contractor under any Option Module.

**74. How often is the Statement of Work Done submitted?**

The frequency of submission is at such intervals specified in the Appendix of the Contract (or if none is stated, to be submitted monthly).

**75. Can the Contractor request stage payments for the Works?**

Yes, the Contractor can request stage payments for the Works or any part of the Works as stipulated in the Appendix of the contract. This is included in the Statement of Work Done.

**76. What is the purpose of itemizing sums with reference to relevant Contract provisions?**

Itemizing sums with reference to relevant Contract provisions ensures transparency and clarity regarding the entitlement of the Contractor. It helps in understanding the basis for the amounts claimed by the Contractor.

**77. Are there any specific formats prescribed for the Statement of Work Done?**

The form of the Statement of Work Done is determined by the Superintending Officer and may be subject to change over time as per their instructions. The Contractor must comply with the prescribed format.

- **INTERIM CERTIFICATES**

**78. What is the purpose of Interim Certificates in the Contract?**

Interim Certificates are issued by the Superintending Officer to the Employer (with a copy to the Contractor) within 21 days of receiving the Statement of Work Done. These certificates detail the amounts the Contractor is entitled to under the Contract, excluding retention monies, previously certified amounts, and any deductions allowed under the Contract. See Clause 42.2.

**79. How are Interim Certificates calculated?**

The Superintending Officer calculates the amounts in the Interim Certificate based on their opinion of what the Contractor is entitled to, as stated in the Statement of Work Done, after deducting retention monies, previously certified amounts, and any deductions allowed under the Contract.

**80. When are Interim Certificates issued?**

Interim Certificates are issued at specified intervals, as outlined in the Appendix, up to the Date of Practical Completion. After the issuance of the Certificate of Practical Completion, further Interim Certificates are issued as and when additional amounts payable to the Contractor are ascertained by the Superintending Officer.

**81. Is there a minimum threshold for issuing Interim Certificates?**

Yes, as per sub-clause 42.2(d), the Superintending Officer may exercise discretion in issuing Interim Certificates if the total amounts stated in the Statement of Work Done or the total amounts the Superintending Officer believes the Contractor is entitled to are less than the minimum amount stated in the Appendix.

**82. What happens if the Superintending Officer decides not to issue an Interim Certificate?**

If the Superintending Officer decides not to issue an Interim Certificate, they must notify the Contractor in writing within 21 days of receiving the Statement of Work Done, as per Clause 42.3(e).

**83. What is the significance of the inclusion criteria for Interim Certificates in Clause 42.2(b)?**

Clause 42.2(b) specifies that Interim Certificates shall only include the value of Equipment, materials, or goods delivered to the Site for incorporation in the Works from the time they are reasonably, properly, and not prematurely brought to the Site and adequately protected against damage, loss, or injury. This ensures that only properly delivered and protected items are included in the valuation.

*\*Note: These FAQs provide insights into the valuation process and issuance of Interim Certificates as outlined in Clause 42.2 of the contract. For detailed inquiries or specific guidance, it is recommended to consult legal professionals familiar with the contract and relevant regulations.*

- **RETENTION MONIES**

**84. What are Retention Monies, and how are they calculated under the Contract?**

Retention Monies are a portion of the Contract sum that is withheld by the Employer for a specified period as security for the satisfactory completion of the Works. According to Clause 42.3(a), Retention Monies are calculated by applying the Retention Percentage to the amounts certified by the Superintending Officer in respect of items listed in Clause 42.1.

**85. How are Retention Monies managed by the Employer under the Contract?**

Retained amounts are held by the Employer in a separate banking account, designated as being held on trust for the Contractor, until the limit of retention is reached. The Employer provides a statement of this separate banking account to the Contractor when making payments in respect of each Interim Certificate. The Employer benefits from any interest accrued in this account and is not obligated to account for it to the Contractor.

**86. Can the Employer deduct amounts from the Retention Monies under the Contract?**

Yes, the Employer has the right to deduct amounts from the Retention Monies as certified by the Superintending Officer. The Contractor's beneficial interest in the Retention Monies is subject to the Employer's right of deduction for any certified amounts. The Employer must inform the Contractor in writing of the reason for any deduction.

**87. When are Retention Monies released to the Contractor under the Contract?**

Upon the issue of the Certificate of Practical Completion, the Contractor is entitled to the release of half of the total Retention Monies. After the expiration of the Defects Liability Period or the issue of the Certificate of Making Good Defects, whichever is later, the Contractor is entitled to the release of the residual amount of the Retention Monies. The Superintending Officer issues Interim Certificates certifying the release of Retention Monies in both cases.

**88. Are there any exceptions to the Retention Percentage?**

Yes, according to Clause 42.3(d), certain payments are exempt from the Retention Percentage. These include royalties, damages, fees paid in compliance with Statutory Requirements, amounts payable under specific clauses regardless of being deemed a Variation, loss and expense, and proceeds from insurance policies.

**89. How does the Contractor ensure they receive their entitled Retention Monies?**

The Contractor must adhere to the provisions of the contract and ensure that all work is completed satisfactorily and in accordance with the Contract requirements. Additionally, they should closely

monitor the issuance of Interim Certificates and the certification process by the Superintending Officer to ensure timely release of Retention Monies.

- **SUSPENSION FOR NON-PAYMENT**

**90. What is the Period of Honouring Certificate mentioned in Clause 42.10(a)?**

The Period of Honouring Certificate refers to the timeframe within which the Employer is obligated to make payment of any amount due to the Contractor as per the Interim Certificate. If the Employer fails to make this payment within the specified period, the Contractor may take certain actions as outlined in the clause.

**91. What actions can the Contractor take if the Employer fails to make payment within the specified period?**

If the Employer fails to make payment within the Period of Honouring Certificate and continues such default for 14 days after receiving notice from the Contractor, the Contractor may suspend wholly or partly the execution of the Works or reduce the rate of execution of the Works, as per Clause 42.10(a).

**92. What happens if the Contractor suspends work due to non-payment and the Employer subsequently pays the amount due?**

If the Contractor suspends work due to non-payment but the Employer subsequently pays the amount due, including interest, the Contractor's entitlement to suspend work lapses, and they are required to resume normal working as soon as reasonably possible, as per Clause 42.10(b).

**93. What provisions apply if the Contractor suspends work due to non-payment under Clause 42.10?**

If the Contractor suspends work pursuant to Clause 42.10, the following provisions shall apply:

- i) The Contractor must protect and secure the Works during the period of suspension;
- ii) The Time for Completion is extended by the period of suspension and a reasonable period for resumption of normal working;
- iii) Any loss and expense incurred by the Contractor due to the suspension and resumption of work shall be ascertained by the Superintending Officer and added to the Contract Sum according to Clause 32.



**94. Does the Contractor's right to suspend work under Clause 42.10 affect their right of determination under Clause 45?**

No, the Contractor's right to suspend work under Clause 42.10 is independent of their right of determination under Clause 45 or any other right or remedy they may possess under the Contract. It is not a condition precedent to the right of determination under Clause 45, as stated in Clause 42.10(d).

**CLAUSE 43 – EFFECT OF SUPERINTENDING OFFICER’S CERTIFICATE**

**95. What is the significance of Clause 43.1 in the Contract?**

Clause 43.1 emphasizes that no certificate issued by the Superintending Officer in the Contract shall be considered as conclusive evidence regarding the sufficiency of design, executed works, or any equipment, materials, or goods. It also specifies that such certificates do not relieve the Contractor from liability to rectify any defects.

**96. Can you explain the implications of Clause 43.2, especially regarding the Final Certificate?**

Clause 43.2 addresses the effect of the Final Certificate issued by the Superintending Officer. Despite the provisions of Clause 43.1, the Final Certificate holds significant weight in any proceedings related to the Contract. It serves as conclusive evidence regarding the quality of works, adherence to specified standards of satisfaction, revised dates for completion or extensions of time, and final settlement of claims between the parties.

**97. When does the Final Certificate become conclusive evidence, and are there any exceptions?**

The Final Certificate becomes conclusive evidence upon its issuance *(unless a formal notice of mediation, reference to tribunal of competent jurisdiction or other proceedings pursuant to Clause 48 within 30 days after it is issued)*.

**98. Can the Final Certificate be challenged after its issuance?**

Once issued, the Final Certificate carries substantial weight and can only be challenged within the specified time frame and under specific circumstances outlined in the Contract as stated above. Failure to raise objections within the designated period may limit the grounds for challenging the Final Certificate.

## **CLAUSE 44 – DETERMINATION BY THE EMPLOYER**

**99. What circumstances may lead to the determination (termination) of the Contractor's employment by the Employer under the Contract?**

Clause 44.1 outlines various defaults by the Contractor that could lead to the determination of their employment under the Contract. These include failure to commence the works, suspension of works without cause, failure to comply with instructions, or persistent refusal to comply with contractual obligations. See Clause 44.1(a)(i) to (vii).

**100. What if the Contractor continues its specified default despite after receiving notice of default?**

If the Contractor persists in the specified default after receiving notice of default for 14 Days, the Employer may within 10 Days thereafter issue a further notice to determine (terminate) the Contract. This determination takes effect upon the Contractor's receipt of the further notice.

**101. What if the Contractor becomes bankrupt or insolvent?**

Clause 44.2 allows the Employer to determine (terminate) the Contractor's employment if the Contractor becomes bankrupt, insolvent, or faces certain legal actions such as winding up orders. The determination takes effect immediately upon the Contractor's receipt of the notice.

**102. What are the effects of the determination (termination) of the Contractor's employment under Clause 44.3?**

Upon determination (termination) of the Contractor's employment, the Employer is entitled to repossess the Project site, and the Contractor must cease all operations. The Employer may complete the Contract works themselves or through other contractors, and any outstanding payments to subcontractors may be deducted from amounts owed to the Contractor.

**103. How is the determination (termination) cost calculated under Clause 44.4?**

The determination cost includes payments made to the Contractor, costs incurred by the Employer to complete the works, sums paid to subcontractors or suppliers, and any direct losses or damages incurred by the Employer due to the determination. The Certificate of Determination Cost compares the Final Contract Sum with the Completion Cost to determine any outstanding debts payable by either party.

**104. How should notices under Clause 44 be delivered?**

Notices under Clause 44 should be delivered either by hand delivery or courier with an acknowledgment of receipt obtained, or by registered post, in which case they are deemed received 7 days after the date of posting.

**CLAUSE 45 – DETERMINATION BY THE CONTRACTOR**

**105. Under what circumstances can a Contractor terminate their own employment under the Contract?**

A Contractor can terminate their own employment under the Contract if the Employer defaults in payment, interferes with certificate issuance, or fails to appoint a succeeding Superintending Officer within the specified timeframe, as outlined in Clause 45.1(a).

**106. What steps must the Contractor take before terminating their employment under the Contract?**

Before terminating their employment under the Contract, the Contractor must give notice to the Employer specifying the Employer's default or defaults. If the Employer's default persists for 14 days after the receipt of the said notice, the Contractor may issue a further notice to terminate their employment under the Contract. See Clause 45.1(b).

**107. Can the Contractor terminate their employment under the Contract without notice?**

Yes, the Contractor can terminate their employment without notice if the Employer becomes bankrupt, insolvent, or undergoes certain legal processes outlined in Clause 45.2.

**108. What are the effects of termination of the Contractor's employment by the Employer under the Contract?**

Upon termination, the Contractor must promptly remove their equipment, materials, and goods from the Project site. The Superintending Officer shall subject to the Contractor's compliance with Clause 32, certify payment to the Contractor for completed works, partial works, loss and expense, and other costs incurred due to termination, as stated in Clause 45.3(b).

**109. How should notices of termination be delivered to the Employer?**

Notices of termination must be delivered either by hand or courier with an acknowledgment of receipt obtained, or by registered post. If sent by registered post, the notice is deemed received seven days after posting, as per Clause 45.4.

## **CLAUSE 46 – TERMINATION WITHOUT DEFAULT**

**110. Can the Employer terminate the Contract at any time?**

Yes, the Employer has the right to terminate the Contract by providing a 30-day notice, as stated in Clause 46.1(a). However, the Employer cannot terminate the Contract under this clause with the intention to execute the works themselves or appoint another contractor to do so. Additionally, the termination must not be made in bad faith, unreasonably, or vexatiously. See Clause 46.1(c).

**111. How does termination occur under Clause 46.1(b)?**

After the expiry of 30 days from the receipt of the termination notice by the Contractor, the Contract shall be terminated, as per Clause 46.1(b).

**112. Is mutual termination possible under this Contract?**

Yes, either party can terminate the Contract by mutual agreement in writing following Clause 46.2.

**113. What happens after termination under Clauses 46.1 or 46.2?**

In the event of termination under either Clause 46.1 or Clause 46.2, the provisions of Clause 45.3 will apply. Clause 45.3 outlines the effects of termination, including the responsibilities of both parties regarding the removal of equipment, materials, and goods from the site.

## **CLAUSE 48 – SETTLEMENT OF DISPUTES**

**114. What should be done if a dispute arises between the Employer or Superintending Officer and the Contractor?**

If a dispute arises in connection with or arising out of the Contract between the Employer or Superintending Officer and the Contractor, it should be first referred to the Superintending Officer for a decision, as outlined in Clause 48.1. Both parties must send a copy of the reference to the other party.

**115. What happens if the Superintending Officer fails to give a decision within the specified time frame of within 14 days of receiving the reference?**

If the Superintending Officer fails to give a decision within 14 days of receiving the reference, the dispute can be referred to the Dispute Resolution Board (DRB) by either party, as per Clause 48.2.

**116. What if either party is dissatisfied with the Superintending Officer's decision?**

Similarly, the decision of the Superintending Officer can within 30 days of the said decision, be referred to the Dispute Resolution Board (DRB) by either party. See Clause 48.2(a).

**117. How is the Dispute Resolution Board (DRB) appointed?**

The DRB consists of members appointed by both parties. If the parties fail to agree on the appointment of DRB members, the Chief Executive of CIDB appoints the members, as per Clause 48.4.

**118. What is the role of the DRB in resolving disputes?**

The DRB reviews disputes, facilitates settlements, and makes recommendations based on site visits, inspections, and reviews of relevant information, as outlined in Clause 48.2.

**119. Can disputes be referred to mediation?**

Yes, parties may refer disputes to mediation by serving a Request for Mediation to the other party and the Superintending Officer, as per Clause 48.6. The mediation process follows the CIDB Mediation Rules and aims to reach a settlement agreement.

**120. What happens if mediation fails to resolve the dispute?**

If mediation fails to resolve the dispute, either party may refer it to a *Tribunal of Competent Jurisdiction* under Clause 48.7.

**121. What is the *Tribunal of Competent Jurisdiction*?**

It simply either arbitration or Court, depending on what is specified by parties in the Appendix. If none specified, the default position is arbitration.

**122. Is arbitration an option for dispute resolution?**

Subject to what is the Tribunal of Competent Jurisdiction specified by the parties in the Appendix. If none specified, Clause 48.7.1A will apply. Hence, should that be the case, arbitration would be an option if the DRB fails to give a decision within the specified time frame, or if either party is dissatisfied with the DRB's decision, such dispute can be referred to arbitration. See Clause 48.7.1A.

**123. Can disputes be taken to Court for resolution?**

Subject to what is the Tribunal of Competent Jurisdiction specified by the parties in the Appendix. If Court is specified, Clause 48.7.1B will apply.

**124. What happens if the dispute concerns termination or determination of the Contractor's employment under the Contract?**

Disputes concerning termination or determination of the Contractor's employment should be referred to dispute resolution under Clause 48.7 or may be referred to mediation pursuant to Clause 48.6, as per Clause 48.8.

**125. Are there any limitations on initiating dispute resolution procedures?**

Arbitration or Court proceedings cannot be initiated before the Date of Practical Completion of the Works, except for specific questions. See Clause 48.7.1A(c) or Clause 48.7.1B(b), whichever applicable.

NOTES: