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**Civil Engineering and Development Department Library of
Standard Special Conditions of Contract
for use with General Conditions of Contracts for Term Contracts
for Civil Engineering Works 2002 Edition**

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- (g) “utility undertaking” means any person, undertaking, company, organization or government department and includes any office, division, sub-division, section, sub-section, unit or group within a government department which engages in or is so engaged in supplying or providing utilities (including electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the Works under the Contract, including the contractors and sub-contractors of any tier of such person, undertaking, company, organization or government department.

WBTC No.
18/2000A
Mandatory

(h) “Engineer’s Sub-delegate” means any person, company or firm appointed from time to time by the Engineer’s Representative and notified in writing to the Contractor to perform the duties set forth in Special Conditions of Contract Clause SCC 30(4)*. The person appointed may be described by name or as holder for the time being of a Public Office.

Item (h) is only applicable to term contracts for minor works and landscape works.

** The Clause No. refer to the SCC Clause in this Library and should be suitably amended for individual contracts*

(i) “Independent Checking Engineer” means the person, firm or company employed by the Contractor and responsible for the independent checking of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer and who shall be independent of the Designer and the Contractor.

DEVB
TC(W) No.
3/2014

Items (i), (j), (k), (l) and (m) are to be used where cost saving design at contract stage is allowed

(j) “Designer” means the person, firm or company responsible for the design of the Cost Savings Design whose qualifications, skill and experience are deemed satisfactory by the Employer.

(k) “Cost Savings Design” means the design proposal to any part of the Works submitted by the Contractor under Special Condition of Contract Clause 54A(1)* and any amplification or amendment thereto and accepted by the Employer with or without amendments, including, where applicable, any further design which the Contractor has to carry out as a result of any amendment to the design required under sub-clause (6) or (7) of SCC 54A* and/or any variation to the works for the Cost Savings Design ordered by the Engineer.

** The Clause No. refer to the SCC Clause in this Library and should be suitably amended for individual contracts*

(l) “Check Certificate” means a certificate, in the form specified in the Appendix []# to the Special Conditions of Contract, issued by the Independent Checking Engineer certifying that the Cost Savings Design has been independently checked and complies in all respects with the terms and conditions of the Contract.

#Appendix C to DEVB TCW No. 3/2014

(m) “Certified Working Drawing” means a drawing prepared by the Designer and endorsed as being checked and approved by the Independent Checking Engineer.

- | | |
|--|---|
| <p>(n) “Site Workers” means the construction workers engaged for construction work on the Site who are registered under the Construction Workers Registration Ordinance (“CWRO”) (Cap. 583) and includes those drivers and truck drivers who are registered construction workers under the CWRO, whether or not registered for a trade division, and are not self-employed persons, employed by the Contractor or his sub-contractor of all tiers including specialist sub-contractors and Designated Sub-contractors, for the execution of the Works on the Site.</p> | <p>SDEV’s memo (02VKU-01-3) in DEVB(W) 510/17/01 dd. 16.12.2016</p> <p>SDEV’s memo (02YWL-01-2) in DEVB(W) 510/17/01 dd. 5.2.2018</p> |
| <p>(o) “Assistant Clerical Officer (Labour Relations)” means any person, or persons appointed from time to time by the Engineer and notified in writing to the Contractor to perform the duties specified in the Contract.</p> | <p>Item (o) is to be adopted for consultant-administered contracts only</p> |
| <p>(p) “Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising), and in each case whether registered or unregistered and including applications for grant of such rights.</p> | <p>SDEV’s memo DEVB(Trg) 133/3(10) dd. 23.1.2017</p> <p>To be adopted for contracts with a construction period of not less than 12 months</p> |

SCC 1 (Cont'd)

Marginal
Notes

Guidelines

(2) General Conditions of Contract Clause 1(1) is amended by adding the following at the end of the definition for “Works”:

(a) "and the resultant work of the Cost Saving Design”.

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 2A	<p>(1) The Contractor is required to [obtain the guarantee/provide the cash security deposit]* referred to in Clause 12 of the General Conditions of Contract.</p> <p>(2) The Contractor shall provide the requisite [guarantee/cash security deposit]* to the Employer within [] days of the acceptance of the Tender.</p> <p>(3) Notwithstanding any other provision of the Contract :</p> <p style="padding-left: 40px;">(a) submission by the Contractor of the requisite [guarantee/cash security deposit]* in accordance with the foregoing provisions of this Clause shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract; and</p> <p style="padding-left: 40px;">(b) failure by the Contractor to provide the requisite [guarantee/cash security deposit]* in accordance with the foregoing provisions of this Clause shall entitle the Employer either to suspend the Whole of the Works or to terminate the Contract forthwith by notice in writing to that effect, notwithstanding that the Contractor may have been permitted to proceed with the Whole of the Works, and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such suspension or termination.</p> <p style="text-align: center;">*Delete whichever is inappropriate</p> <p style="text-align: center;">OR</p>	Sureties or security	WBTC No. 10/97 & 10/97A. This SCC is to be adopted where a bond or cash security deposit is required.
SCC 2B	General Conditions of Contract Clause 12 is deleted.	Sureties or security	This SCC is only applicable to term contracts for minor works and landscape works.

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 3A	<p>(1) "Safety Plan" means the Safety Plan referred to in sub-clause (4) of this Special Condition of Contract, including any revised or updated version, setting out details of the safety management system that the Contractor will implement on any Site, together with any other measures and information required by the Contract to ensure safety and health in the execution of the Whole of the Works.</p> <p>(2) The Contractor shall submit within *14 days of the date of the Employer's letter of acceptance of the Tender/7 days of the date for commencement of the first Works Order/7 days of the date for commencement of the Contract Period three copies of a draft Safety Plan to the Engineer.</p> <p>(3) Within 7 days from the submission of the draft Safety Plan, the Contractor shall arrange and hold an ad hoc meeting (or meetings if necessary) with the Engineer's Representative to discuss the draft Safety Plan. Where the Engineer is of the opinion that the draft Safety Plan does not meet the requirements of the Contract he shall request that the Contractor remedy the deficiency prior to submitting the Safety Plan to the Engineer in accordance with sub-clause (4) of this Special Condition of Contract.</p> <p>(4) The Contractor shall submit within *35 days of the date of the Employer's letter of acceptance of the Tender/21 days of the date for commencement of the first Works Order/21 days of the date for commencement of the Contract Period six copies of the Safety Plan to the Engineer.</p> <p>(5) The Contractor shall review the Safety Plan at monthly intervals and shall revise and update the Safety Plan if necessary.</p>	Safety Plan	WBTC No. 14/98, 30/2000 and ETWB TCW No. 30/2002. This SCC is applicable to term contracts with Safety Plan requirement.

- (6) The Contractor shall comply with the Safety Plan in the execution of the Whole of the Works and ensure his employees and sub-contractors of all tiers comply with the Safety Plan. The Contractor shall provide any other party working on any Site including Specialist Contractors and utility undertakings with a copy of the Safety Plan and shall request those parties comply with it. The Contractor shall report any person who fails to comply with the Safety Plan to the Engineer.
- (7) If the Engineer is of the opinion that the Safety Plan does not meet the requirements of the Contract, the Engineer may by notice in writing require the Contractor to revise or update the Safety Plan and the Contractor shall comply with that requirement within 7 days of the date of the notice.
- (8) The Contractor shall provide all facilities, access and assistance to the Engineer to periodically verify that the Safety Plan is being properly and fully implemented. If the Engineer is of the opinion that the Safety Plan is not being properly and fully implemented and the failure may adversely affect the safety and health of any person or the safety of any property on or adjacent to any Site, the Engineer may notify the Contractor in writing of such failure and the Contractor shall then take all necessary steps to rectify that failure immediately. For the avoidance of doubt, this Special Condition of Contract does not limit or take away from the Engineer any power under the Contract including the power to suspend the progress of any Works or any part thereof pursuant to General Conditions of Contract Clause 56(1).

SCC 3A	(Cont'd)	<u>Marginal Notes</u>	<u>Guidelines</u>
	<p>(9) This Special Condition of Contract shall not relieve the Contractor from any of his obligations or responsibilities under the Contract.</p> <p>(* Delete or amend as appropriate to suit contract arrangements)</p>		
SCC 3B	<p>(1) The Contractor shall be entitled to the sums set out in the Site Safety section of the Schedule of Rates, provided that the Contractor shall have complied to the extent specified for each item.</p> <p>(2) General Conditions of Contract Clause 79 is amended by adding the following:</p> <p>(4) Notwithstanding the provisions of General Conditions of Contract Clause 79, there shall be no interim payment for any Site Safety items.</p>	Payment for site safety	<p>Applicable only to Pay for Safety Scheme contracts</p> <p>Sub-clause (2) is optional and is mainly for use in GI term contracts with funding comes from the departments ordering the GI.</p>

	<u>Marginal Notes</u>	<u>Guidelines</u>
<p>SCC 4A</p> <p>(1) All structural concrete for incorporation into the Whole of the Works shall be produced at a certified plant and supplied by a concrete supplier certified under the Quality Scheme for the Production and Supply of Concrete by Hong Kong Quality Assurance Agency or other certification bodies accredited by the Hong Kong Accreditation Service.</p> <p>(2) Under exceptional circumstances, such as, where the supply of structural concrete to the location of the concrete work from a qualified supplier as required in sub-clause (1) of this Special Condition of Contract proves to be impracticable, and subject to prior agreement of the Engineer, structural concrete for incorporation into the Works may be produced and supplied in accordance with quality procedures submitted to and accepted by the Engineer.</p>	<p>Quality assurance for structural concrete</p>	<p>ETWB TCW No. 57/2002</p> <p>The SCC shall be included in public works contracts (except for those located at remote areas such as outlying islands or where the volume of structural concrete involved is less than 50m³)</p> <p>SCC for supply of structural concrete on LPM contracts approved by S for W in his memo ref. (32) in WB(W) 206/32/02(97) Pt. 14 of 6.2.98</p>

OR

	<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 4B	<p>The Contractor shall submit to the Engineer for approval within 30 days of the date of the Employer's letter of acceptance of the Tender a quality system for production and supply of structural concrete for incorporation into the Works. The quality system shall contain detailed information as required by the Quality System for Production and Supply of Structural Concrete at Annex 1* attached. All structural concrete shall be produced and supplied in accordance with the quality system approved by the Engineer.</p>	<p>ETWB TCW No. 57/2002</p> <p>For public works contracts located at remote areas such as outlying islands or where the volume of structural concrete involved is less than 50m³, this SCC should be included, while the Special Condition of Tender promulgated at Appendix A to ETWB TCW No. 57/2002 is optional and may be included in contracts where particular difficulties in the production of structural concrete are envisaged.</p> <p>* for "Annex 1", please refer to ETWB TCW No. 57/2002.</p>

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 5A	<p>General Conditions of Contract Clause 92 is deleted and replaced by the following:</p> <p>No adjustment shall be made to any final payment certificate on account of any contract price fluctuation.</p>	Deletion of contract price fluctuations	<p>ETWB TCW No. 21/2003 & SDEV's memo ref. DEVB(PS) 107/3 dated 18.7.2008</p> <p>For term contract with the approval of Head of Department not to use the CPF provision.</p>
OR			
SCC 5B	<p>General Conditions of Contract Clause 92 is amended as follows:</p> <p>(1) The "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects" in lines 3 and 4 of General Conditions of Contract Clause 92(1) shall be deleted and replaced by the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003=100)"; and</p> <p>(2) "column 7" in line 3 of General Conditions of Contract Clause 92(4) shall be deleted and replaced by "column 4".</p>	Contract price fluctuations	<p>ETWB TCW No. 21/2003, SDEV's memo ref. DEVB(PS) 107/3 dated 18.7.2008 & SDEV's memo ref. in DEVB(PS) 107/3 dated 20.1.2014</p> <p>For term contracts with a Contract Period of more than 48 months</p>
OR			

**Marginal
Notes**

Guidelines

SCC 5C General Conditions of Contract Clause 92 is amended as follows:

ETWB TCW No. 21/2003, SDEV's memo ref. DEVB(PS) 107/3 dated 18.7.2008 & SDEV's memo ref. in DEVB(PS) 107/3 dated 20.1.2014

(1) General Conditions of Contract Clause 92(1) shall be deleted and replaced by "For those items included in the Schedule of Proportions, the sum payable in any final payment certificate certified by the Engineer pursuant to Clause 78(3) (other than sums due under this Clause) shall be increased or decreased in accordance with the provisions of this Clause if there shall be any changes in the Index Figures."

For term contracts with a Contract Period of not more than 48 months

(2) General Conditions of Contract Clause 92(3)(a) shall be deleted and replaced by

“ “Index Figure” shall mean:

(i) In respect of composite selected labour trades, the weighted average of the "Average Daily Wages of Workers Engaged in Public Sector Construction Projects as Reported by Main Contractors" compiled by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region. The weighting for each selected trade is determined in accordance with the information provided by the Contractor in the Appendix to the Schedule of Proportions.

(ii) In respect of all other items in the Schedule of Proportions, the appropriate Index Figure listed in the "Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003=100)" compiled by the Census and Statistics Department of the Government of the Hong Kong Special Administrative Region."

(3) General Conditions of Contract Clause 92(5) shall be deleted and the following shall be added as General Conditions of Contract Clause 92(3)(e) after General Conditions of Contract Clause 92(3)(d):

“92(3)(e) “Schedule of Proportions” shall mean the Schedule of Proportions (irrespective of the actual constituents of the work) submitted by the Contractor with its Tender with the Calculated Proportions column completed by the Engineer Designate after receipt of the Tender.”

- (4) “column 7” in line 3 of General Conditions of Contract Clause 92(4) shall be deleted and replaced by "column 4".

OR

SCC 5D	General Conditions of Contract Clause 92 is amended as follows:	<u>Marginal Notes</u>	<u>Guidelines</u>
		Contract price fluctuations	See ETWB TCW No. 21/2003 for SCC 5D(1).
	(1) The “Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects” in lines 3 and 4 of sub-clause (1) shall be deleted and replaced by the “Index Numbers of the Costs of Labour and Materials used in Public Sector Construction Projects (April 2003=100)”.		Sub-clauses (2) and (3) are mainly for use in GI term contracts.
	(2) Sub-clause (1) – Delete the words after the words “applicable to” in line 6 to the end, and replace by:		
	“the items for composite labour for civil engineering contracts (hereinafter called “labour”) and diesel fuel (hereinafter called “fuel”).”		
	(3) Sub-clause (4) – Delete the words after the words “net sum of the” in line 3 to the end, and replace by:		
	“product obtained by multiplying 0.4 by a fraction the numerator of which is the Current Index Figure for labour minus the Base Index Figure for labour and the denominator of which is the Base Index Figure for labour and the product obtained by multiplying 0.1 by a fraction the numerator of which is the Current Index Figure for fuel minus the Base Index Figure for fuel and the denominator of which is the Base Index Figure for fuel”.		
	(4) Sub-clause (5) is deleted.		

**Marginal
Notes**

Guidelines

SCC 6

- (1) Without limiting the Contractor's obligations and responsibilities under General Conditions of Contract Clause 24, the Contractor shall procure before the date of commencement of the Contract Period, in the joint names of the Contractor, the Employer and the Contractor's sub-contractors of any tier (if sub-contractors are to be engaged) an insurance policy effective from the date of commencement of the Contract Period until the date of the issue of the final certificate, against any damage, loss or injury which may occur to any property including that of the Employer (other than the Works), or to any person by or arising out of or in consequence of the execution of the Whole of the Works or in the carrying out of the Contract otherwise than due to the matters referred to in the proviso to the General Conditions of Contract Clause 24.
- (2) (a) Such insurance shall be effected with an insurer for at least the amount stated in the Appendix to the Form of Tender and the insurance policy shall be consistent with the terms in the specimen in the Appendix to these Conditions and shall at least cover the risks stipulated therein.
- (b) The Contractor shall lodge with the Employer through the Engineer or the Engineer's Representative the originals or certified true copies of the policy or policies of insurance and copies of the receipts for payment of the current premiums. Such insurance shall be effected with an insurer and in terms approved by the Employer (which approval shall not be unreasonably withheld).

**Third party
insurance**

*Appendix B to
ETWB TC(W)
No. 7/2005

Pursuant to
ETWB TC(W)
No. 7/2005, risk-
based assessment
on insurance
procurement
should be properly
documented and
endorsed by a D2
rank officer or
above.

Care of Works
insurance is
normally not
required under
term contracts, in
which case
Section I (Material
Damage) of the
specimen
insurance policy
should be crossed
out in the
specimen third
party insurance
policy appended
to the Special
Conditions of
Contract.

(c) In the event that through no fault of the Contractor it becomes impracticable for the Contractor to procure an insurance policy consistent with the terms in the specimen policy, the Employer may accept an insurance policy with modified terms as may be proposed by the Contractor subject to the adjustment to payments otherwise due to the Contractor in accordance with the Contract as may be agreed between the Employer and the Contractor or determined by the Engineer in accordance with sub-clause (2)(d) of this Clause.

(d) Any proposal submitted by the Contractor for modifications to the terms in specimen policy shall be accompanied with a proposal on the adjustment to payments otherwise due to the Contractor in accordance with the Contract. If the Employer agrees to the proposed adjustment, the adjustment shall be effected by the Engineer in the next interim payment or interim payments. In the event of the Employer and the Contractor failing to reach agreement on the adjustment, the Engineer shall determine the amount of such adjustment as shall in his opinion be reasonable and the adjustment shall be effected by the Engineer in the next interim payment or interim payments.

(e) The Contractor shall, if so required in writing by the Employer at any time during the continuance of the Contract, procure an insurance policy or, where the Contractor has already procured an insurance policy in accordance with sub-clauses (1) and (2)(a) to (c) of this Clause, a replacement insurance policy with modified terms. In such an event, the Engineer and the Contractor shall agree on an adjustment to payments otherwise due to the Contractor in accordance with the Contract and failing such agreement the Engineer shall determine the adjustment as shall in his opinion be reasonable and the adjustment as agreed between the Engineer and the Contractor or, as the case may be, determined by the Engineer shall be effected by the Engineer in the next interim payment or interim payments.

**Marginal
Notes**

Guidelines

SCC 7

- (1) Any claim received by the Employer or the Engineer in respect of matters for which the Contractor is required under the Contract to indemnify the Employer will be passed to the Contractor who shall likewise inform the Employer and the Engineer of any such claim which is submitted directly to him by a claimant. The Contractor shall keep the Employer and the Engineer informed as to the progress made towards settlement.

- (2) When a claim involves alleged damage to crops or property on agricultural lands the District Lands Officer shall be informed by the Engineer's Representative and representative or representatives of the District Lands Office will be present at the negotiations and any payment in settlement of the claim shall be made through the District Lands Officer to the claimant. The Contractor shall do everything necessary including notifying his insurers, if any, of the claim received, to ensure that the claim is settled without delay. If in the opinion of the Employer the Contractor or his insurers, if any, are delaying settlement the Employer may make direct payment to the claimant in settlement of all outstanding amounts which in the opinion of the Employer are due to him and shall without prejudice to any other method of recovery have the right to deduct by way of set-off, in accordance with General Conditions of Contract Clause 86 the sums so paid.

**Third party
claims in
respect
of damage
on and
to
agricultural
lands**

WBTC No. 28/92

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 8A	<p>General Conditions of Contract Clause 4 is amended by adding the following:</p> <p>(6)(a) If the Contractor is not included in the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” maintained by the Employer for:</p> <p><u>(list the type(s) of materials or specialist work and the Group(s), Category(ies) and Class(es) as appropriate)</u></p> <p>or the “List of Approved Contractors for Public Works” maintained by the Employer for:</p> <p><u>(list the Group(s) and Category(ies) as appropriate)</u></p> <p>then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s), Category(ies) and, where appropriate, Class(es), for the execution of the respective part(s) of the Whole of the Works. Provided that the Contractor shall not without the written consent of the Engineer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group, Category and, where appropriate, Class.</p> <p>(b) The Contractor shall notify the Engineer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.</p>	Sub-contracting	<p>Standard SCC for Sub-contracting promulgated in the S for W’s memo ref. WB(W) 209/32/10 dated 23.3.2001</p> <p>For use where both the List of Approved Suppliers of Materials and Specialist Contractors for Public Works and the List of Approved Contractors for Public Works are involved.</p> <p>In SCC 8A to SCC 8C, the sub-clause no. (6) may be changed taking into account other SCC Clauses amending GCC Clause 4.</p>

OR

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 8B	<p>General Conditions of Contract Clause 4 is amended by adding the following:</p> <p>(6)(a) If the Contractor is not included in the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” maintained by the Employer for:</p> <p><u>(list the type(s) of materials or specialist work and the Group(s), Category(ies) and Class(es) as appropriate)</u></p> <p>then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s), Category(ies) and Class(es), for the execution of the respective part(s) of the Whole of the Works. Provided that the Contractor shall not without the written consent of the Engineer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group, Category and Class.</p> <p>(b) The Contractor shall notify the Engineer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.</p>	<p>Sub-contracting</p>	<p>Standard SCC for Sub-contracting promulgated in the S for W’s memo ref. WB(W) 209/32/10 dated 23.3.2001</p> <p>For use where only the List of Approved Suppliers of Materials and Specialist Contractors for Public Works is involved.</p>

OR

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 8C	<p>General Conditions of Contract Clause 4 is amended by adding the following:</p> <p>(6)(a) If the Contractor is not included in the “List of Approved Contractors for Public Works” maintained by the Employer for:</p> <p><u>(list the Group(s) and Category(ies) as appropriate)</u></p> <p>then he shall enter into written sub-contract(s) with the approved listed contractor(s), in the relevant Group(s) and Category(ies), for the execution of the respective part(s) of the Whole of the Works. Provided that the Contractor shall not without the written consent of the Engineer enter into a sub-contract with an approved listed contractor who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in the relevant Group and Category.</p> <p>(b) The Contractor shall notify the Engineer in writing the engagement of an approved listed contractor within 7 days of the date of the relevant sub-contract.</p>	Sub-contracting	<p>Standard SCC for Sub-contracting promulgated in the S for W’s memo ref. WB(W) 209/32/10 dated 23.3.2001</p> <p>For use where only the List of Approved Contractors for Public Works is involved.</p>

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 9	<p>(1) When considered necessary by the Contractor or specified in the Contract or subsequently ordered by the Engineer, the design of any Temporary Works shall be checked and certified by an engineer independent of the Contractor and not associated with the design of the Temporary Works.</p> <p>(2) The design so certified shall be referred to as the certified design. The independent checking engineer shall be a professionally qualified engineer and a member of the Hong Kong Institution of Engineers or the Institution of Civil Engineers, UK or equivalent, whom the Contractor considers has suitable experience and be acceptable to the Engineer.</p> <p>(3) The independent checking engineer before certifying the design of any Temporary Works in the checking certificate shall :</p> <p>(a) examine the Contractor’s detailed design and method statements concerning the design, erection, use and removal of the Temporary Works, and</p> <p>(b) consider the ground conditions, the adequacy of foundations and support of the Temporary Works and any other factors which may affect the stability and safety of such Temporary Works during their erection, use and removal</p> <p>so that he shall be able to certify that the Temporary Works are properly and safely designed using all reasonable skill and care.</p>	Independent checking of the design, erection, use and removal of Temporary Works	WBTC No. 3/97

- (4) Before commencing construction of any such Temporary Works identified as requiring independent certification, the Contractor shall submit to the Engineer in sufficient time for the Engineer to comply with sub-clause (5) of this Special Condition of Contract:
- (a) design details and method statements concerning the design, erection, use and removal of the Temporary Works, and
 - (b) the original checking certificate signed by both the independent checking engineer and by or on behalf of the Contractor.
- (5) Further to the provisions of the General Conditions of Contract Clause 7, the Engineer shall examine the documentation referred to in sub-clause (4) of this Special Condition of Contract and shall satisfy himself that it contains no obvious deficiency and that the independent checking engineer has carried out his duties set out in sub-clause (3) of this Special Condition of Contract. Upon being so satisfied the Engineer shall issue his consent in writing for such work to commence, which shall be issued with due regard to the Contractor's programme and the Contractor's actions under sub-clause (4) of this Special Condition of Contract.
- (6) The Contractor shall ensure that such Temporary Works are erected, used and removed in accordance with the certified design and method statements. If the Contractor wishes to deviate from the certified design, the Contractor shall submit to the Engineer further certification that any change has been properly and safely designed and has been checked and found satisfactory by the independent checking engineer, in accordance with his duties set out in sub-clause (3) of this Special Condition of Contract, prior to the commencement of construction of such Temporary Works in accordance with sub-clause (4) of this Special Condition of Contract.

- (7) In all cases where the loading of such Temporary Works is applied as a separate operation after completion of their construction, before such loading is applied, the Contractor shall submit to the Engineer a further certificate signed by or on behalf of the Contractor and by the independent checking engineer confirming that the same has been constructed in accordance with the certified design. In all cases where the loading is an integral part of the construction of such Temporary Works, the Contractor shall submit to the Engineer such a certificate as soon after the construction of the same as is reasonably possible.
- (8) No checking certificate certified by the independent checking engineer, with or without amendment, shall absolve the Contractor from his liability under the Contract for the design, erection, use or removal of the Temporary Works.
- (9) Where any Temporary Works are specified in the Contract or considered necessary by the Contractor to be independently checked, the Contractor shall bear the Cost of such independent checking. However, should the Engineer subsequently order any Temporary Works to be independently checked, then the Engineer shall ascertain the additional cost incurred and shall certify such Cost in accordance with General Conditions of Contract Clauses 78 and 79.
- (10) Where the Engineer requires, the Contractor shall provide a method statement for any Temporary Works not subject to an independent check and including but not limited to excavation and temporary access structures.

- (11) If at any time and for any reason related to the work of the independent checking engineer, the Engineer is dissatisfied with the performance of the independent checking engineer, the Engineer shall notify the Contractor in writing giving reasons for such dissatisfaction. If the independent checking engineer does not remedy the situation within a reasonable time, the Engineer may, by a further notice in writing, require the Contractor to dismiss the independent checking engineer and the Contractor shall do so with immediate effect and not re-employing him again in connection with the Whole of the Works and shall replace the independent checking engineer with a replacement selected in accordance with sub-clause (2) of this Special Condition of Contract.

	<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 10	<p>(1) Within three months of the acceptance of the Tender, the Contractor shall book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking. If the Contractor is a joint venture, the date of audit for the ISO 9001:2015 certification shall mean that of the specified participant or shareholder in the statement submitted in accordance with SCT [][@].</p> <p>(2) Notwithstanding any other provisions in the Contract, compliance with sub-clause (1) of this Clause shall be a condition precedent to the Contractor's entitlement to any payment or any further payment as the case may be under the Contract.</p> <p>(3) Sub-clauses (1) and (2) of this Clause are not applicable if the Contractor or, where the Contractor is a joint venture, its specified participant or shareholder has already obtained the ISO 9001:2015 certification on or before the date of acceptance of the Tender.</p> <p>[@] Insert the clause number of the SCT dealing with ISO 9000 certification for the Contractor.</p>	<p>ISO 9000 certification for the Contractor</p> <p>WBTC No. 13/2001 For contracts requiring the Contractor to have obtained ISO 9000 certification</p> <p>SDEV's memo ref. DEVB(W) 520/83/01 dd. 4.4.2018</p>

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 11	General Conditions of Contract Clause 4 is amended by adding the following:	ISO 9000 certification for sub-contractor	WBTC No. 13/2001
	(7) The approved listed contractor to be engaged in accordance with sub-clause (6) of this Clause for [specify the relevant categories and/or groups of works]: shall either :-		SDEV's memo ref. DEVB(W) 520/83/01 dd. 4.4.2018
	(a) have obtained an ISO 9001:2015 certificate acceptable to the Employer with the scope of certification acceptable to the Engineer; or		For contracts where the Contractor is required to enter into written sub-contracts with the sub-contractors on the Categories and/or Groups of the Lists shown in Appendix C of WBTC No. 13/2001
	(b)(i) have obtained a confirmation from a certification body acceptable to the Employer, stating that a full review of the Quality Manual of its Hong Kong office has been carried out in Hong Kong and such Quality Manual has been found to be in conformity with the requirements of the ISO 9001:2015; and		In this SCC, the sub-clauses no. (7) and (8) may be changed taking into account other SCC Clauses amending GCC Clause 4
	(ii) submit an undertaking to the Engineer that within three months of the execution of the sub-contract, it would book with the certification body the date of audit for the ISO 9001:2015 certification; with detailed documented quality system procedures ready at the time of booking.		

- (8) (a) If the works specified in sub-clause (7) of this Clause are to be carried out by the Contractor itself, in which case the Contractor must be listed in the relevant category and/or group, it shall within three months of the acceptance of the Tender, book with a certification body acceptable to the Employer the date of audit for the ISO 9001:2015 certification, with detailed documented quality system procedures ready at the time of booking. If the respective works are to be carried out through a sub-contract by an approved listed contractor, then the Contractor shall procure that the approved listed contractor shall carry out such booking within three months of execution of the sub-contract.

- (b) Notwithstanding any other provisions in the Contract, compliance with sub-clause (8)(a) of this Clause shall be a condition precedent to the Contractor's entitlement to any payment, or any further payment, as the case may be, for the works specified in sub-clause (7) of this Clause under the Contract.

- (c) Sub-clauses (8)(a) and (8)(b) of this Clause are not applicable if the Contractor has already obtained ISO 9001:2015 certification on or before the acceptance of the Tender or, as the case may be, the approved listed contractor has already obtained the ISO 9001:2015 certification on or before the date of execution of the sub-contract.

**Marginal
Notes**

Guidelines

SCC 12 (1) All Works[, except Establishment Works,]* ordered under the Contract at or near the end of the Contract Period shall have an anticipated completion date within the period of 90 days after the expiry of the Contract Period. Any Works[, except Establishment Works,]* which has an estimated time for completion exceeding 90 days after the expiry of the Contract Period shall not be ordered.

**Issue of
Works
Order**

Sub-clause (2) shall only be used for term contracts with Establishment Works.

The definition of “Establishment Works” in SCC 1 of this library shall be included if SCC 12(2) is used.

[(2) Establishment Works ordered under the Contract at or near the end of the Contract Period shall have an anticipated completion date within the period of 455 days after expiry of the Contract Period. Any Establishment Works, which have an estimated time for completion exceeding 455 days after the expiry of the Contract Period shall not be ordered.]*

* Delete as appropriate

SCC 13		<u>Marginal Notes</u>	<u>Guidelines</u>
	Pursuant to General Conditions of Contract Clause 55(1), the Contractor shall report in writing to the Engineer when the Works stipulated in any Works Order have been satisfactorily completed using the form as shown in the Appendix to these Conditions.	Report on completion of the Works	Not mandatory The form is available in Annex to Appendix A to this Circular.

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 14	<p>(1) The quantities shown in the Schedule of Rates are approximate and are given as a guide to assist tenderers in compiling their rates. No guarantee is given by the Employer that any or all of the items or quantities shown will be ordered.</p> <p>(2) The Contractor shall not be entitled to claim against the Employer if the actual quantity of any item varies above or below the quantity shown in the Schedule of Rates.</p>	Quantities	For use with term contracts where approximate quantities are provided in the Schedule of Rates.

**Marginal
Notes**

Guidelines

SCC 15

Subject to any provision to the contrary contained in this Contract, no Works shall be carried out beyond Normal Working Hours without the permission in writing of the Engineer save when the Works are unavoidable or absolutely necessary for:

- (a) preventing injury to any person or saving the life of any person, or
- (b) preventing damage to property where the circumstances placing the property in danger could not reasonably have been foreseen and where the immediate carrying out of such work is necessary in order to prevent damage to that property,

in which case the Contractor shall immediately advise the Engineer.

**Working
beyond
Normal
Working
Hours**

Not mandatory

When used,
“Normal Working
Hours” shall be
defined in the
Specification.

**Marginal
Notes**

Guidelines

SCC 16

CAD drawings shall be prepared conforming to the CAD Standard for Works Projects version ___ (or later versions as agreed between the Employer and the Contractor from time to time) as posted on the Development Bureau's web site <http://www.devb.gov.hk/cswp>.

**Computer-
Aided-
Drafting
(CAD)
Standard
for Works
Projects**

ETWB TCW Nos.
38/2002 and
38/2002A

	<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
<p>SCC 17</p> <p>(1) All reports prepared by the Contractor in accordance with the Contract requirements shall be the property of the Employer and the copyright thereof shall be vested in the Employer.</p> <p>(2) All cores, samples and other materials recovered from the Investigation Stations shall be deemed to be the property of the Employer and the Contractor shall not dispose of any such material and samples unless as directed by the Engineer.</p>	<p>Ownership of documents and copyright</p>	<p>Not mandatory.</p> <p>When used, the term “reports” shall be defined in the Specification.</p> <p>For use in GI term contracts. The term “Investigation Stations” shall be defined in the Specification.</p>

**Marginal
Notes**

Guidelines

SCC 18

- (1) Notwithstanding the General Conditions of Contract Clause 8(2) but subject to sub-clause (3) of this Special Condition of Contract, any contract rates or related information provided by the Contractor in connection with the Contract may be used by the Employer for the sole purpose of cost estimation or cost analysis for his other works which may or may not be connected with the Contract.
- (2) Subject to sub-clause (3) of this Special Condition of Contract, the Employer may also furnish such information to any third party engaged by the Employer for the sole purpose of cost estimation or cost analysis provided that he shall obtain from such third party an undertaking to maintain the confidentiality of the same and not to use it for any other purpose.
- (3) In connection with the use and/or furnishing of the contract rates and related information under sub-clauses (1) and/or (2) of this Special Condition of Contract, the Employer shall ensure that the Contract number, title and the Contractor's name are not used or furnished.

Contract information to be used for cost estimation or cost analysis for the Employer's other works

WBTC No.
3/2002

**Marginal
Notes**

Guidelines

SCC 19

- (1) “Public Cleaning Areas” means those public areas of the Site where no work is to be carried out other than cleaning by the Contractor in a Works Order and which have to be maintained open to the general public throughout the progress of the Works in such Works Order, the extent of which is specified in the para. 1(a) of the Particular Specification* Clause No. []. For the avoidance of doubt, the Site of such Works Order includes Public Cleaning Areas.
- (2) “Daily Cleaning” means daily cleaning and tidying up of the Site forming part of a Works Order in accordance with Particular Specification Clause No. []*.
- (3) “Weekly Tidying” means weekly overall cleaning and tidying up of the Site forming part of a Works Order in accordance with Particular Specification Clause No. []*.
- (4) “Cleaning Day” means a day on which “Daily Cleaning” is to be carried out.
- (5) “Cleaning Week Day” means a day on which “Weekly Tidying” is to be carried out.
- (6) From the date for commencement stated in the Works Order to the date for completion of a Works Order, the Contractor shall, unless otherwise instructed by the Engineer (except on a General Holiday), carry out either Daily Cleaning or Weekly Tidying. The time for commencing Weekly Tidying and the day of every week for the Cleaning Week Day shall be agreed with the Engineer’s Representative within seven days after the date for commencement stated in the Works Order. If a day on which the Weekly Tidying falls on a General Holiday, then it shall be carried out on the day following which is not a General Holiday.

**Site
cleanliness
and tidiness**

DEVB TCW No. 8/2010

SDEV’s memo ref. DEVB(W) 505/91/01 dd. 17.5.2017

The sample Particular Specification clause is in Appendix B(b) of DEVB TCW No. 8/2010

*Please insert the PS or Specification Clause No. on Daily Cleaning and Weekly Tidying

- (7) The Engineer has absolute discretion to instruct the Contractor to cease or suspend all or part of the Daily Cleaning and/or Weekly Tidying of the Site for a Works Order at any time during the progress of the Works in such Works Order. Such instruction shall not constitute a variation under Clause 62 of the General Conditions of Contract and the Contractor shall not be entitled to be reimbursed of any expenses arising out of or in relation thereto the instruction.
- (8) The Engineer's Representative has the power to instruct the Contractor to clean and tidy up the areas around the Site of a Works Order if to the judgment of the Engineer's Representative, the rubbish and debris are likely connected with the Works or disposed of by the persons working on the Site, and the Contractor shall not be entitled to claim for any additional cost due to such cleaning and tidying up work performed outside the Site boundary of such Works Order.
- (9) The Contractor's cleaning and tidying work shall only be entitled to be measured for payment as either "Daily Cleaning" or "Weekly Tidying" for each day, but not more of either, when carried out on any one Cleaning Day or Cleaning Week Day. For the avoidance of doubt, measurement for the items for "Daily Cleaning" and "Weekly Tidying" for each Works Order shall be made for the Public Cleaning Areas of such Works Order. Daily Cleaning and Weekly Tidying for the areas of the Site other than the Public Cleaning Areas for a Works Order shall be deemed to be included in the rates of other items of work for such Works Order and shall not be measured for payment. It shall be a condition precedent that the Daily Cleaning and Weekly Tidying of the Site including areas other than the Public Cleaning Areas in a Works Order are performed to the satisfaction of the Engineer's Representative before the Contractor is entitled to payment for the respective item for "Daily Cleaning" and "Weekly Tidying" under such Works Order.
- (10) The Contractor shall not be entitled to any payment for Daily Cleaning or Weekly Tidying carried out if in the opinion of the Engineer, such work has not been satisfactorily performed on the relevant working day.

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 20	(1) Further to General Conditions of Contract Clauses 19(1) and 41(1), the Contractor shall ensure the employment and provision of registered skilled workers, registered skilled workers (provisional), registered semi-skilled workers, registered semi-skilled worker (provisional) (as defined in section 2(1) of the Construction Workers Registration Ordinance (Cap 583)) for each of the relevant specified trade division at the Site at all times in accordance with the minimum percentage requirement specified in Particular Specification Clause **.	Employment of Skilled Workers	DEVB TCW No. 4/2017 ** Please insert the PS Clause No. on Employment of Skilled Workers.

SCC 21	(1) For the purpose of this Special Condition of Contract -	<u>Marginal Notes</u>	<u>Guidelines</u>
		Year 2000 warranty of Contract Computer Facilities	ETWB TCW No. 12/2004
	(a) "Contract Computer Facilities" means the Contract Computer Facilities defined in Clause **__ of the Particular Specification;		Mandatory for all contracts that incorporate provisions for contract computer facilities
	(b) "Commencement Date" means the date on which the Contract Computer Facilities are delivered to the Engineer's office;		
	(c1) <i>"End Date" means the expiry of the Maintenance Period or if there is more than one such period, the expiry of the latest Maintenance Period.</i>		Sub-clause (1)(c1) should be used if the computer facilities are to be returned to the Contractor upon the expiry of the Maintenance Period.
	OR		
	(c2) <i>"End Date" means a date **__ calendar years from the expiry of the Maintenance Period or if there is more than one such period, the expiry of the latest Maintenance Period.</i>		Sub-clause (1)(c2) should be used if the computer facilities are to be transferred to the Government upon the expiry of the Maintenance Period.
	(2) The Contractor shall warrant that the Contract Computer Facilities are Year 2000 compliant as specified in clause **__ of the Particular Specification. The period of the warranty (the "warranty period") shall commence on the Commencement Date and shall subsist until the End Date.		

- (3) Notwithstanding any provisions of the General Conditions of Contract, the Contractor shall during the warranty period and upon a notice regarding Year 2000 non-compliance given by the Engineer promptly carry out necessary work to the Contract Computer Facilities so as to render the Contract Computer Facilities Year 2000 compliant. If the Contractor shall fail to carry out rectification work to render the Contract Computer Facilities Year 2000 compliant promptly, the Employer shall be entitled to engage his employees or agents or other contractors to carry out such work. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work carried out shall be recoverable by the Employer from the Contractor.
- (4) The liability of the Contractor under this Special Condition of Contract shall not in any way be affected by an independent inquiry or investigation into the Year 2000 compliance of the Contract Computer Facilities or any matter related thereto whether carried out by or on behalf of the Employer or any liability or right of action which may arise out of such inquiry or investigation.
- (5) For the avoidance of doubt, the Contractor shall indemnify and keep indemnified the Employer against all losses, claims, costs, demands and expenses that may arise out of or in consequence of any breach of this Special Condition of Contract.

** Provide details to suit the specific contract.

SCC 22	General Conditions of Contract Clause 4 is amended by adding the following:	<u>Marginal Notes</u>	<u>Guidelines</u>
	<p>(9) (a) Notwithstanding the foregoing sub-clauses of this Clause, the Contractor shall within 30 days of the Employer's letter of acceptance of the Tender submit a Sub-contractor Management Plan (SMP) to the Engineer for information and comments, if any.</p> <p>(b) The Contractor shall then submit quarterly the updated SMP till the issuance of the certificate of completion or where there is more than one such certificate, the issuance of the last certificate of completion to the Engineer for information and comments, if any. Should there be any major changes in the Contractor's sub-contracting arrangement during the period before the next quarterly reporting, the Contractor should notify immediately such changes to the Engineer in writing. The quarterly updated SMP required under this paragraph (b) shall be submitted within one month from each quarterly period. For the avoidance of doubt, the first quarterly period shall commence from the date of submission of the SMP by the Contractor pursuant to paragraph (a) of this sub-clause. Any interim notification of changes by the Contractor shall not affect his obligation to submit the quarterly updated SMP. In case there is no change to the previous SMP, the contractor shall declare such status in writing instead of submitting the same SMP again.</p>	Management of Sub-contractors	<p>ETWB TCW No. 47/2002</p> <p>In this SCC, the sub-clause no. (9) may be changed taking into account other SCC Clauses amending GCC Clause 4.</p> <p>as modified by “Enhancement Measures for Subcontractor Management Plan (SMP)” in SDEV’s memo ref. DEVB(W) 109/11/01 Pt. 9 dd. 19.12.2008, SDEV’s memos ref. DEVB(PS) 109/11/01 Pt/ 9 dd. 16.5.2017 and DEVB(W) 510/94/02 dd. 7.8.2020</p> <p>Mandatory for use with all GCCs</p>

- (c) The SMP submitted under paragraphs (a) and (b) of this sub-clause shall contain detailed information as required by the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x] to these Special Conditions of Contract.
- (d) The Engineer may upon receipt of the SMP comment on the SMP and notify the Contractor of such comments in writing. If the Engineer is of the opinion that the SMP submitted under paragraphs (a) and (b) of this sub-clause does not meet the requirements of the Contract, the Engineer may, by written notice, require the Contractor to revise or update the SMP and the Contractor shall comply with that requirement within 14 days of the date of the notice. No approval of the SMP is required from the Engineer.
- (e) Subject to the provisions of other Special Conditions of Contract stating to the contrary, the Contractor shall ensure that his sub-contractors shall not sub-contract the whole of the works sub-contracted to them.
- (f) The Contractor shall employ his own staff to manage and supervise his sub-contractors.
- (g) For the purpose of this clause and the Guidelines on Scope and Contents of the Sub-contractor Management Plan at Appendix [x] to these Special Conditions of Contract, the term 'sub-contractor' means all types of sub-contractor including without limitation Designated Sub-contractor and specialist sub-Contractor.

- (h) The Contractor shall, upon written request by the Engineer (which may be issued by the Engineer from time to time or at any time), produce to the Engineer documentary proof to demonstrate to the satisfaction of the Engineer that the Contractor has complied with all the provisions in the latest SMP submitted under paragraphs (a) and (b) of this sub-clause. Such documentary proof includes, but is not limited to, documents of sub-contracts, reports from sub-contractors on their further sub-contracting arrangement and daily attendance records of site workers. For the purpose of determining the extent of documentary proof, the Engineer shall made reference to the Guidelines on documentary proof to demonstrate the compliance of the provisions in the SMP at Appendix [y] to these Special Conditions of Contract. The Engineer may make as many separate written requests as he thinks fit. The provisions of this sub-clause shall be without prejudice to sub-clause 5 of this Clause.

[x] insert Appendix [x] to SCC[x] in Annex A to SDEV's memo ref. () in DEVB(W) 510/94/02 dated 7 Aug 2020.

[y] insert Appendix [y] to SCC [x] in SDEV's memo ref. DEVB(W) 109/11/01 Pt. 9 dated 19 Dec 2008.

**Marginal
Notes**

Guidelines

SCC 23

General Conditions of Contract Clause 8 is amended by adding the following as sub-clause (3):

**Confidentiality
clauses**

ETWB TCW
No. 29/2003

- (3) Notwithstanding sub-clause (2) of this Clause, but subject to the following provisions, the Employer may disclose the outline of any dispute and the terms of settlement for which a settlement agreement has been reached with the Contractor or the outcome of the arbitration or any other means of resolution of dispute to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Employer shall inform the Contractor. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute without the written consent of the Contractor but such consent shall not be unreasonably withheld. The Contractor shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the settlement agreement, arbitration award or, as the case may be, outcome of other means of resolution of dispute. The Contractor may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Employer to disclose such specified information to the said Committee strictly on a confidential basis. If the Employer considers that there are legitimate grounds to accede to the Contractor's request, the Employer shall convey the request to the said Committee for its consideration.

**Marginal
Notes**

Guidelines

SCC 24 (1) For the purpose of this Clause and except when the context otherwise requires,

“Authority” means the Authority referred to in the Ordinance.

“Economic Cost” means the economic costs referred to in Schedule 3 of the Ordinance.

“Emergency Excavation” has the same meaning as “emergency excavation” defined in the Ordinance.

“Emergency Excavation Permit” means any emergency excavation permit issued by the Authority in respect of the Works or any part thereof under the Ordinance, including any amendment of the excavation permit.

“Excavation Permit” means any excavation permit issued by the Authority in respect of the Works or any part thereof under the Ordinance, including any extension and amendment of the excavation permit.

“Nominated Permittee” has the same meaning as “nominated permittee” defined in the Ordinance.

“Ordinance” means the Land (Miscellaneous Provisions) Ordinance, Cap. 28.

“Permittee” has the same meaning as “permittee” defined in the Ordinance.

“Street Maintained by the Highways Department” has the same meaning as “street maintained by the Highways Department” defined in the Ordinance.

**Permits for
excavation
works under
Land
(Miscellaneous
Provisions)
Ordinance
Cap. 28**

SDEV’s memo
ref.
(02B0P-01-7)
in
DEVB(W)
510/70/01
dated 18.3.2011

- (2) (a) In relation to any Works Order involving excavation in Street Maintained by the Highways Department that requires Excavation Permit or Emergency Excavation Permit under the Ordinance, the Employer shall be the Permittee and the Contractor shall be nominated by the Employer as the Nominated Permittee of the Excavation Permit or the Emergency Excavation Permit. The Contractor shall not withhold his consent to the nomination and agreement to comply with the conditions in the Excavation Permit or the Emergency Excavation Permit or, in the case where such consent and agreement have been given, shall not withdraw his consent to the nomination and agreement to comply with the conditions in the Excavation Permit or the Emergency Excavation Permit. The Contractor shall take all necessary actions to comply with the conditions stipulated in the Excavation Permit or the Emergency Excavation Permit including those conditions applicable to the Permittee and shall use his best endeavours to assist the Employer and his agents, employees or workers to comply with the same.

- (b) In relation to any Works Order involving excavation in land other than Street Maintained by the Highways Department that requires Excavation Permit under the Ordinance, the Contractor shall apply to the Authority for an Excavation Permit or for an exemption under section 10B of the Ordinance as the case may be for the relevant works and, where an Excavation Permit has been applied for, the Contractor shall be the Permittee. Pursuant to General Conditions of Contract Clause 20, the Contractor may be ordered by the Engineer to carry out emergency works from time to time. In relation to such emergency works requiring excavation in unleased land not being Street Maintained by the Highways Department and requiring Excavation Permit under the Ordinance, the Contractor shall apply to the Authority, with assistance from the Employer if necessary, an Excavation Permit or Excavation Permits covering the unleased land within the Designated Contract Area/Contract Area* not being Streets Maintained by the Highways Department or to apply for exemption under section 10B of the Ordinance for execution of such emergency works and, where an Excavation Permit or Excavation Permits have been applied for, the Contractor shall be the Permittee. The Contractor shall also be responsible to apply for renewal of such Excavation Permit or Excavation Permits or, as the case may be, exemption until completion of the Whole of the Works.
- (3) General Conditions of Contract Clause 84(1) is amended by adding “or” at the end of item (g) and adding the following after item (g):
- (h) has unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit or Emergency Excavation Permit for

excavation in Street Maintained by the Highways Department required for execution of the Works or any part thereof, or

- (i) has failed to obtain the approval to be a Nominated Permittee from or has his approval withdrawn by the Authority in relation to any Excavation Permit or Emergency Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of the Works or any part thereof,

(3A) Notwithstanding sub-clause (3) of this Clause, if the Contractor shall have unreasonably withheld or withdrawn his consent to be the Nominated Permittee of and his agreement to comply with the conditions in any Excavation Permit or Emergency Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of the Works or any part thereof, or if the Contractor shall have failed to obtain the approval to be a Nominated Permittee from or have his approval withdrawn by the Authority in relation to any Excavation Permit or Emergency Excavation Permit for excavation in Street Maintained by the Highways Department required for execution of the Works or any part thereof, the Engineer may give the Contractor 14 days' notice to rectify such situation. If the Contractor fails to comply with such notice, the Employer may but shall not be obliged to carry out such works by its own workers or to nominate other contractors to be the Nominated Permittee and shall have such works carried out by those other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such works carried out shall be recoverable by the Employer from the Contractor.

- (4) In relation to any Excavation Permit or Emergency Excavation Permit referred to in sub-clause (2)(a) of this Clause or any extension in respect thereof,

- (a) save as expressly provided elsewhere in the Contract, the Employer shall pay all prescribed fees under the Ordinance but the Employer shall be entitled to recover from the Contractor all prescribed fees for the Excavation Permit or Emergency Excavation Permit as may be required for carrying out any work of repair or rectification, or making good any defect, imperfection, shrinkage, settlement or other fault and the necessity for such work is, in the Engineer's opinion, due to the use of materials or workmanship not in accordance with the Contract or due to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied on the Contractor's part under the Contract as specified in the General Conditions of Contract Clause 58(3);

[Version A of sub-clause (4)(b) and (c)] #

- (b) the Employer shall notify the Contractor of any Emergency Excavation Permit or Emergency Excavation Permits held by him in connection with the Works or any part thereof and shall do so within a reasonable time after such permit or permits are granted to him;
- (c) with the exception of Works Orders involving Emergency Excavation, the Engineer shall notify the Contractor on or before the commencement of the Works whether an Excavation Permit has been obtained or has been applied for. If no Excavation Permit has been obtained or applied for but the Contractor considers that the Works to be carried out under the Works Order or any part thereof requires Excavation Permit to be applied for by the Employer, or if during the course of the Works or during the continuance of the Contract a revision to an Excavation Permit has become necessary, the Contractor shall notify the Engineer immediately;

[Version B of sub-clause (4)(b) and (c)] ##

- (b) the Engineer shall notify the Contractor on or before the commencement of the Works whether an Excavation Permit or an Emergency Excavation Permit in connection with the Works or any part thereof has been obtained or has been applied for by the Employer. If an Excavation Permit or an Emergency Excavation Permit has been obtained or has been applied for, the Employer shall notify the Contractor of any Excavation Permit or any Emergency Excavation Permit held by him in connection with the Works or any part thereof and shall do so within a reasonable time after such permit is granted to him;
- (c) if no Excavation Permit or Emergency Excavation Permit has been obtained or applied for but the Contractor considers that the Works or any part thereof to be carried out requires an Excavation Permit or, as the case may be, an Emergency Excavation Permit, the Contractor shall notify the Engineer immediately and request the Employer to apply for it. The Engineer shall notify the Contractor when an Excavation Permit or an Emergency Excavation Permit has been obtained. If during the course of the Works or during the continuance of the Contract a revision to an Excavation Permit has become necessary, the Contractor shall notify the Engineer immediately;

- (d) the Contractor shall pursuant to section 10I of the Ordinance before the commencement of the Works or any part thereof covered by the Excavation Permit or, in the case of the Emergency Excavation Permit, when required by the Engineer in writing send to the Authority a notice in writing using the prescribed form enclosed in Appendix [][@] to these Special Conditions of Contract or, if so required by the Engineer, using such other form as may be required by the Engineer giving his consent to be the Nominated Permittee of the Excavation Permit or, as the case may be, the Emergency Excavation Permit and agreement to comply with the conditions in the Excavation Permit or, as the case may be, the Emergency Excavation Permit;
- (e) the Contractor shall advise the Engineer promptly the need for an extension to an Excavation Permit or the need for an Excavation Permit for Emergency Excavation that has to be maintained for more than 7 days pursuant to section 10D of the Ordinance and request the Employer to apply for such extension or such Excavation Permit for the satisfactory completion of the Works or any part thereof;
- (f) the Contractor shall render all necessary assistance to the Employer in the process of any application for an Excavation Permit or any extension in respect thereof or for an Emergency Excavation Permit, including supply of all necessary information to the Engineer;

@ For the prescribed form, please refer to Form No. HYD 83 available in HyD's website

- (g) the Employer shall not be liable in any way for failing to submit any application for an Excavation Permit and any extension in respect thereof or for an Emergency Excavation Permit unless the Contractor shall have complied with his obligations under sub-clause (4)(a), (c), (d), (e) and (f) of this Clause and shall have allowed the Employer sufficient time to prepare the application; and
- (h) the Employer shall be entitled to recover from the Contractor any fees including Economic Cost paid by the Employer for an extension in respect of a permit referred to in sections 10A(3) and 10D(4) of the Ordinance and may but shall not be bound to deduct the amount either in whole or in part in accordance with the provisions of Clause 86 of the General Conditions of Contract.

Provided that the Employer shall return to the Contractor any refund from the Authority of any fees including Economic Cost so recovered or deducted. The Contractor shall provide all necessary assistance or information to the Employer to assist him in applying to the Authority for any review under the Ordinance for the purpose of refund of fees including Economic Cost.

Provided that on application of the Contractor the Engineer is of the opinion that the need for such extension is partly or wholly caused by:

- (i) the progress of the Works or any part thereof being materially affected by variation orders issued under Clause 62 of the General Conditions of Contract; or
- (ii) an instruction issued under Clause 5 of the General Conditions of Contract; or

- (iii) a disturbance for which the Employer, the Engineer or a person or company, not being a utility undertaking, engaged by the Employer in supplying materials or in executing work directly connected with but not forming part of the Works is responsible,

the Engineer shall determine a fair share of the fees including Economic Cost to be borne by the Employer who shall return such share to the Contractor.

For the avoidance of doubt, the opening up for inspection in accordance with General Conditions of Contract Clause 47 of any work covered up or put out of view after compliance with the requirements of General Conditions of Contract Clause 46, or the testing of materials or workmanship not required by the Contract but directed by the Engineer or the Engineer's Representative in accordance with General Conditions of Contract Clause 44(1) shall not be regarded as a disturbance within the meaning of paragraph (iii) in the last proviso to this sub-clause (4)(h) unless the inspection or test not required by the Contract showed that the work, materials or workmanship were in accordance with the Contract.

- (5) In relation to any Excavation Permit referred to in sub-clause (2)(b) of this Clause or any extension in respect thereof, the Contractor shall pay all prescribed fees under the Ordinance.

- (5A) In relation to any Excavation Permit or any Emergency Excavation Permit referred to in sub-clause (2)(a) or (2)(b) of this Clause and without prejudice to Clause 32 of the General Conditions of Contract, the Contractor shall conform in all respects with the conditions stipulated in any Excavation Permit or any Emergency Excavation Permit to the extent that such conditions are to be observed by the Contractor under the Ordinance or under the Contract and shall indemnify and keep indemnified the Employer, his agents, employees and workers against all penalties or liabilities of every kind for breach of any such conditions stipulated in any Excavation Permit or any Emergency Excavation Permit applicable to any Works, whether such conditions are stipulated in the Excavation Permit or the Emergency Excavation Permit to be observed by the Permittee, the Nominated Permittee or both the Permittee and the Nominated Permittee if and to the extent that such breach is attributable to the act, default or neglect of the Contractor, his agents, employees or workers, his sub-contractors at all tiers, or the agents, employees or workers of his sub-contractors at all tiers.
- (6) The Contractor shall continue to be responsible for liaising with utility undertakings and other relevant parties identified in the Contract in connection with the execution of the Works, including without limitation co-ordinating and agreeing a programme with the relevant utility undertakings or other parties where such is applicable.
- (7) It is incumbent upon the Contractor to plan and programme his Works to cater for restrictions imposed by the Authority.

(8) The Contractor shall allow for in his plan and programme his obligation to comply with this Clause (including without limitation sub-clause (2)(a) and (b), sub-clause (4)(a), (c), (d), (e) and (f) and sub-clauses (5A), (6) and (7) of this Clause) and the time that may be taken by the Authority to process the application for an Excavation Permit and any extension in respect thereof or for an Emergency Excavation Permit.

* *Select as appropriate.*

Version A of sub-clause (4)(b) and (c) is to be used in relation to term contracts adopting the approach for the Employer to apply for an Emergency Excavation Permit in the form of a block permit covering the entire Contract Area on or before commencement of the Contract.

Version B of sub-clause (4)(b) and (c) is to be used in relation to term contracts adopting the approach for the Employer to apply for an Emergency Excavation Permit for a Works Order only when there is a need to do so.

**Marginal
Notes**

Guidelines

SCC 25

General Conditions of Contract Clause 89 is deleted and replaced by the following :

**Settlement of
Disputes**

SDEV's memo
ref. () in
DEVB(W)
510/10/01
dated
4.12.2014

Mandatory for
use with all
GCC

* Delete as
appropriate.

(89)(1) If any dispute or difference of any kind whatsoever shall arise between the Employer and the Contractor in connection with or arising out of the Contract or the carrying out of the Works including any dispute as to any decision, instruction, order, direction, certificate or valuation by the Engineer whether during the progress of the Whole of the Works or after their completion and whether before or after the termination, abandonment or breach of the Contract, it shall be referred to and settled by the Engineer who shall state his decision in writing and give notice of the same to the Employer and the Contractor. Unless the Contract shall have been already terminated or abandoned the Contractor shall in every case continue to proceed with the Whole of the Works with all due diligence and he shall give effect forthwith to every such decision of the Engineer unless and until the same shall be revised in mediation or arbitration as hereinafter provided. Such decision shall be final and binding upon the Contractor and the Employer unless either of them shall require that the matter be referred to mediation or arbitration as hereinafter provided. If the Engineer shall fail to give such decision for a period of 28 days after being requested to do so or if either the Employer or the Contractor be dissatisfied with any such decision of the Engineer then either the Employer or the Contractor may within 28 days after receiving notice of such decision, or within 28 days after the expiry of the said decision period of 28 days, as the case may be, request that the matter be referred to mediation in accordance with and subject to The Government of the Hong Kong Special Administrative Region Construction Mediation Rules or any modification thereof being in force at the date of such request.

- (2) If the matter cannot be resolved by mediation, or if either the Employer or the Contractor do not wish the matter to be referred to mediation then either the Employer or the Contractor may within the time specified herein require that the matter shall be referred to arbitration in accordance with and subject to the provisions of the Arbitration Ordinance and any such reference shall be deemed to be a submission to arbitration within the meaning of such Ordinance.
- (3) Any reference to arbitration shall be made within 90 days of:
- (a) the receipt of a request for mediation and subsequently the recipient of such request having failed to respond, or
 - (b) the refusal to mediate, or
 - (c) the failure of the mediation proceedings to produce a settlement acceptable to the Employer and the Contractor, or
 - (d) the abandonment of the mediation, or
 - (e) where the Engineer has failed to give a decision within the 28 days allowed under sub-clause (1) of this Clause after being requested to do so, the expiry of the subsequent period of 28 days for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that subsequent period of 28 days, or
 - (f) where the Engineer has given a decision within the 28 days allowed under sub-clause (1) of this Clause, the expiry of the period of 28 days after receipt of the notice of the Engineer's decision for the Employer or the Contractor to request that the matter be referred to mediation, and neither the Employer nor the Contractor having requested mediation within that period of 28 days.

- (4) The arbitrator appointed shall have full power to open up, review and revise any decision (other than a decision under Clause 48(3) not to vary any Works), instruction, order, direction, certificate or valuation by the Engineer and neither party shall be limited in the proceedings before such arbitrator to the evidence or arguments put before the Engineer for the purpose of obtaining his decision above referred to. Save as provided for in sub-clauses (5) and (6) of this Clause no steps shall be taken in the reference to the arbitrator until after the completion or alleged completion of the Whole of the Works unless with the written consent of the Employer and the Contractor.

Provided that:

- (a) the giving of the last certificate of completion in accordance with Clause 55 shall not be a condition precedent to the taking of any step in such reference;
- (b) no decision given by the Engineer in accordance with the foregoing provisions shall disqualify him from being called as a witness and giving evidence before the arbitrator on any matter whatsoever relevant to the dispute or difference so referred to the arbitrator as aforesaid.
- (5) In the case of any disputes or difference as to the exercise of the Engineer's powers under Clause 84(1) the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be complete.
- (6) In the case where the Contract has been terminated or abandoned, the reference to the arbitrator may proceed notwithstanding that the Whole of the Works shall not then be or be alleged to be complete.

(7) (a) Subject to paragraphs (b) and (c) of this sub-clause, the Domestic Arbitration Rules (2014) of the Hong Kong International Arbitration Centre (the Arbitration Rules) shall apply to any arbitration instituted in accordance with this Clause.

(b) Notwithstanding any provision of the Arbitration Rules, the place of meetings and hearings in the arbitration shall be Hong Kong unless the parties otherwise agree.

(c) Article 20.1 of the Arbitration Rules shall be deleted and replaced by:

“20.1(a) The arbitration proceedings are private and confidential between the parties and the arbitrator. Subject to the provisions of section 18 of the Ordinance and these Rules, no information relating to the arbitration shall be disclosed by any person without the written consent of each and every party to the arbitration. Disclosures are permissible where disclosures –

- (a) are necessary for implementation or enforcement;
- (b) are required by the parties’ auditors or for some other legitimate business reason;
- (c) are required by any order of the courts of Hong Kong or other judicial tribunal;
- (d) are necessary for the making of claims against any third party or to defend a claim brought by any third party.

20.1(b) Notwithstanding Article 20.1(a) and subject to the following provisions, the party comprising the Government of the Hong Kong Special Administrative Region (the Government party) may disclose the outline of any dispute with the other party and the outcome of the arbitration to the Public Accounts Committee of the Legislative Council upon its request. Before disclosures are made to the said Committee, the Government party shall inform the other party. Disclosures shall not be made to the said Committee before expiry of the first 6 months from the date of the outcome of the arbitration without the written consent of the other party but such consent shall not be unreasonably withheld. The other party shall be deemed to have given his consent to disclosures on the expiry of the first 6 months from the date of the outcome of the arbitration. The other party may, if he considers necessary to protect the sensitive nature of certain information relating to him, request the Government party to disclose such specified information to the said Committee strictly on a confidential basis. If the Government party considers that there are legitimate grounds to accede to the other party's request, the Government party shall convey the request to the said Committee for its consideration. "

- (8) All the provisions in Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this Clause.
- (9) For the purposes of this Clause, "Arbitration Ordinance" means the Arbitration Ordinance (Cap. 609) or any statutory modification thereof for the time being in force.

**Marginal
Notes**

Guidelines

SCC 26

General Conditions of Contract Clause 8(1) is deleted and replaced by the following:

**Information not
to be divulged**

ETWB TCW
No. 3/2004

(1) The Contractor shall not use or divulge, except for the purpose of the Contract, any information provided by the Employer, the Engineer or the Engineer's Representative in the Contract or in any subsequent correspondence or documentation. Any disclosure to any person or agent or sub-contractor for the purpose of the Contract shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract. The Contractor shall take all necessary measures (including by way of contractual provisions where appropriate) to ensure that information is not divulged for purposes other than that of this Contract by such person, agent or sub-contractor. The Contractor shall indemnify and keep indemnified the Employer against all loss, liabilities, damages, costs, legal costs, professional and other expenses of any nature whatsoever the Employer may suffer, sustain or incur, whether direct or consequential, arising out of or in connection with any breach of the aforesaid non-disclosure provision by the Contractor or his employees, agents or sub-contractors.

**Marginal
Notes**

Guidelines

SCC 27

General Conditions of Contract Clause 39 is amended by referring to the Clause as sub-clause (1) and by adding the following:

**Ethical
commitment**

ETWB TCW
No. 3/2004

(2) The Contractor shall prohibit his employees, agents, and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.

(3) The Contractor shall require his employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

(4) The Contractor shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.

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

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 28	<p>General Conditions of Contract Clause 79 is amended by adding the following as sub-clause (4):</p> <p>(4) The Contractor shall also submit a signed declaration in a form prescribed or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in SCC Clauses [26 and 27]# as part of the Contractor's interim statement at a frequency of once every ___* months. If the Contractor fails to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest as provided for under General Conditions of Contract Clause 81 in that period.</p>	Contractor's interim statements	<p>ETWB TCW No. 3/2004</p> <p><i># The Clauses No. refer to the SCC Clauses in this Library</i></p> <p><i>* frequency to be specified by the Division, normally such period shall be 6 months unless otherwise directed by ETWB</i></p>

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 29	The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents or sub-contractor who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention and Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.	Acknowledgement of being notified of the ethical requirements	ETWB TCW No. 3/2004

**Marginal
Notes**

Guidelines

SCC 30

General Conditions of Contract Clause 2(2), 2(3), 2(4) and 2(5) are deleted and replaced by the following:

(2) The Engineer may nominate more than one Engineer's Representative. The duties of such Representative(s) are to watch and inspect the Whole of the Works, to test and examine any material to be used and workmanship employed by the Contractor in connection with the Whole of the Works and to carry out such duties and exercise such powers vested in the Engineer as may be delegated to him/them by the Engineer in accordance with the provisions of sub-clause (3) of this Clause.

(3) The Engineer may from time to time delegate to the Engineer's Representative any of the duties and powers vested in him. Any such delegation shall be in writing signed by the Engineer and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Such delegation shall continue in force until such time as the Engineer shall notify the Contractor in writing that the same is determined.

(4) The Engineer may from time to time give any of the Engineer's Representatives authority to delegate and such Engineer's Representative may thereupon from time to time delegate to the Engineer's Sub-delegate(s) any of the duties and powers that have been vested in him by the Engineer under sub-clause (3) of this Clause. Such authority to delegate shall be in writing signed by the Engineer and no such authority to delegate shall take effect until a copy thereof has been delivered to the Contractor. Any such delegation by the Engineer's Representative shall be in writing signed by the Engineer's Representative and shall specify the duties and powers thereby delegated. No such delegation shall have effect until a copy thereof has been delivered to the Contractor. Such delegation shall continue in force until such time as the Engineer's Representative shall notify the Contractor in writing that the same is determined.

**Duties and
power of the
Engineer and
Engineer's
Representative**

This SCC is only applicable to term contracts for minor works and landscape works.

(5) Any written instruction or written approval given by the Engineer's Representative or the Engineer's Sub-delegate under sub-clause (4) of this Clause to the Contractor within the terms of such delegation, but not otherwise, shall bind the Contractor and the Employer as though it had been given by the Engineer.

Provided that

- (a) failure of the Engineer's Representative or the Engineer's Sub-delegate to disapprove any work or material shall not prejudice the power of the Engineer thereafter to disapprove such work or material;
 - (b) if the Contractor or the Employer shall be dissatisfied by reason of any decision of the Engineer's Representative they may refer the matter to the Engineer who shall thereupon confirm, reverse or vary such decision and likewise if they shall be dissatisfied by reason of any decision of the Engineer's Sub-delegate they shall in the first instance refer the matter to the Engineer's Representative who shall either confirm, reverse or vary such decision or refer the matter to the Engineer who shall confirm, reverse or vary such decision.
- (6) No act or omission by the Engineer or the Engineer's Representative or the Engineer's Sub-delegate in the performance of any of his duties or the exercise of any of his powers under the Contract shall in any way operate to relieve the Contractor of any of the duties, responsibilities, obligations or liabilities imposed upon him by any of the provisions of the Contract.

(7) Where a person is appointed to be the Engineer or the Engineer's Representative or the Engineer's Sub-delegate as the case may be and is described as the holder for the time being of a Public Office it is declared that any person for the time being lawfully discharging the functions of that Public Office or any part of such functions and any person appointed to act in or perform the duties of such Public Office or any part of such duties for the time being may carry out the duties and may exercise the powers of the Engineer or the Engineer's Representative or the Engineer's Sub-delegate as the case may be.

**Marginal
Notes**

Guidelines

SCC 31

(1) Subject to sub-clause (2) of this Clause, the provision, maintenance and subsequent removal of measures for lighting, signing and guarding and maintenance of traffic flow including traffic diversions and other works arising therefrom (hereinafter referred to as Traffic Measures) in any Works Order shall be measured in accordance with the Method of Measurement and the Contractor shall be paid for such Traffic Measures in accordance with the relevant Contract Rates.

Measurement and payment for traffic measures

This SCC is only applicable to term contracts for minor works and landscape works

(2) The following Traffic Measures shall not be measured and no payment shall be made to the Contractor for the Traffic Measures so provided :

- (a) if the Traffic Measures or any part thereof for a Works Order does not comply with the requirement of the Contract for any part of a day, the maintenance of the whole of the Traffic Measures for that Works Order shall not be measured for that day;
- (b) any over-provision of Traffic Measures;
- (c) any Traffic Measures required to be provided due to the default of the Contractor, including but not limited to rectification of defects of the Works; or
- (d) Traffic Measures required in the period beyond the time for completion of the Works Order or extended time thereof.

Marginal
Notes

Guidelines

SCC 32

Pursuant to General Conditions of Contract Clause 34(1) the Engineer shall have power to waive the requirement of maintaining a site diary for any Works Order with an estimated value not exceeding \$250,000.00. The diary shall be provided by the Engineer.

Site diary

This SCC is only applicable to term contracts for minor works and landscape works

**Marginal
Notes**

Guidelines

SCC 33

General Conditions of Contract Clause 74 is deleted and replaced by the following:

**Hire and hire-
purchase
Constructional
Plant**

ETWB TCW
No. 9/2004

- (1) In respect of any item or items of Constructional Plant brought onto the Site, the Contractor shall upon written request by the Engineer (which may be issued by the Engineer from time to time or at any time during the continuance of the Works) produce to the Engineer proof of ownership of such item or items of Constructional Plant to the satisfaction of the Engineer or, where any item of Constructional Plant is not solely owned by the Contractor, a written undertaking, in a form approved by the Employer, from the owner of the relevant item of Constructional Plant to the Employer that:
- (a) the owner of the Constructional Plant will consent to the assignment by the Contractor to the Employer of the benefit of any hiring or hire-purchase or other agreement made with the Contractor in respect of the relevant Constructional Plant in the event of either the determination of the Contractor's employment or termination of the Contract by the Employer in accordance with the provisions of the Contract or the abandonment of the Contract by the Contractor before completion of the Works; and
 - (b) subject to any assignment under paragraph (a) of this sub-clause, the owner of the Constructional Plant will permit the Employer, or any other contractor employed by the Employer, to use the relevant Constructional Plant for the purpose of completion of the Works.

The Engineer may make as many separate written requests as he thinks fit during the continuance of the Works.

- (2) In the event that the Engineer shall certify in writing to the Employer that the Contractor has failed to comply with any written request referred to in sub-clause (1) of this Clause within 28 days of the date of issue of the written request and without prejudice to any other rights or remedies available to the Employer, the Employer may, subject to the proviso to this sub-clause, withhold a sum equal to the sum certified for payment by the Engineer in accordance with Clause 79 from each interim payment otherwise due to the Contractor in accordance with the Contract until such time as such failure to comply with the relevant written request is rectified to the satisfaction of the Engineer or until the item or, as the case may be, all the items of Constructional Plant specified in the relevant written request shall be removed from the Site by the Contractor in accordance with the provisions of the Contract, whichever is the earlier and upon such time the total sum withheld by the Employer shall be returned to the Contractor without interest in the next interim payment. Provided that the total sum withheld by the Employer on the ground of failure to comply with any written request referred to in sub-clause (1) of this Clause shall not exceed an amount equal to the market value or as the case may be the total market value of the relevant item or items of Constructional Plant as determined by the Engineer and notified in writing by the Engineer to the Employer and the Contractor.
- (3) The application of sub-clauses (1) and (2) of this Clause is limited to items of Constructional Plant which, in the Engineer's opinion, are essential to the completion of the Works and are difficult to replace in the event of determination of the Contractor's employment under Clause 84.

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 34	<p>General Conditions of Contract Clause 52 is amended by adding following after sub-clause (1)(b)(ix) :</p> <p>(ixa) Any utility work directly connected with but not forming part of the Works and which in the opinion of the Engineer could not have been foreseen by an experienced contractor based on the information available as at the tender closing date, or</p>	Extension of time for unforeseen utility work	ETWB TCW No. 17/2004

SCC 35	General Conditions of Contract Clause 4 is amended by adding the following:	<u>Marginal Notes</u>	<u>Guidelines</u>
	<p>(10)[^] If the Contractor is not included in the “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer, the Contractor shall enter into a written sub-contract with a specialist contractor to carry out the arboricultural work to trees within the Site, including but not limited to planting, replanting, transplanting, tree surgery work and control of pest and disease. Unless otherwise agreed by the Engineer, such specialist contractor shall be selected from the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer. Provided that the Contractor shall not without the written consent of the Engineer enter into a written sub-contract with a specialist contractor on the prevailing “List of Approved Suppliers of Materials and Specialist Contractors for Public Works” under the category of “Landscaping: Class I – General Landscape Work” as maintained by the Employer who is then suspended from tendering (whether by way of mandatory suspension, voluntary suspension or automatic suspension) in respect of the works in that category. The Contractor shall submit details of the specialist contractor to the Engineer for checking of compliance with this Clause at least seven (7) days prior to entering into a written sub-contract with the specialist contractor.</p>	<p>Preservation and protection of trees</p>	<p>DEVB TC(W) 7/2015</p> <p>Cyber Manual for Greening</p> <p>In this SCC, the sub-clause No. (10) of GCC Clause 4 may be changed taking into account other SCC Clauses amending GCC Clause</p>

- SCC 36**
- (1) The Contractor acknowledges that the estimated total expenditure on the Contract stated in the Appendix to the Form of Tender is given *for information only/ for the purpose of the tender assessment for joint venture tenderers only [**delete as appropriate*], and in entering into the Contract, he does NOT do so in reliance on the estimated total expenditure.
- (2) The Employer does not give any representation, warranty or guarantee that the actual total expenditure on the Contract will not differ, whether substantially or otherwise, from the estimated total expenditure on the Contract. The Contractor shall not be entitled to any compensation or additional payment in the event that the actual total expenditure on the Contract differs, whether substantially or otherwise, from the estimated total expenditure on the Contract.
- Estimated Total Expenditure**

- SCC 37**
- (1) The Contractor acknowledges that the weighting factors shown in the Schedule of Contract Percentages used for the purpose of tender assessment only, and in entering into the Contract, he does NOT do so in reliance on the weighting factors.
 - (2) The Employer does not give any representation, warranty or guarantee that the weighting factors or any part thereof bears any relation to the actual proportion of any item of works to the Whole of the Works. The Contractor shall not be entitled to any compensation or additional payment in the event that the actual proportion of any item of works to the Whole of the Works differs, substantially or otherwise, from the weighting factors or any part thereof.

**Weighting
Factor**

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 38	(1)	This Special Condition of Contract shall apply to works within the Railway Protection Area as shown on the Drawings and shall be read in conjunction with the General Conditions of Contract.	DEVB TCW No. 1/2019
	(2)	Further to Clause 1 of the General Conditions of Contract the following words and expressions shall have the meaning hereby assigned to them except when the context otherwise requires :- “Competent Person” means the person assigned by the MTR Corporation Limited from time to time for the purposes of Clause (6)(o) of the Particular Specification for Works within the Railway Protection Area. "Isolation" means isolation of the electrical equipment, which is the disconnection of a section of such equipment from all sources of electricity supply. “MTRCL” means the MTR Corporation Limited. "Possession" means possession of a specific section of track or tracks under the sole control of a Competent Person trained and qualified by MTRCL. “Railway” means all the railway lines in the Hong Kong Special Administrative Region operated by MTRCL.	SDEV’s memo (01R6R-01-1) in DEVB(W) 710/83/01 dated 21.4.2008
		Works within the Railway Protection Area	
		Definitions	

“Railway Protection Area” means the area enclosed by the railway protection boundary as shown on railway protection plans, which is situated approximately 30 m outside the outer surface of the railway structures/installations, the railway fence/wall, or the nearest rail if there is no railway fence/wall, but it encompasses the whole of any lot as appropriate where any part lies within the 30m distance. At the railway stations, the area enclosed by the boundary is more extensive. The railway protection plans can be inspected at MTRCL or viewed from the official website of MTRCL.

“Restriction” means train speed restriction, which is a limitation of the normal permitted speed of rail traffic over a specified length of the railway track.

- (3)(a) The Contractor shall have regard to the Particular Specification for Works within the Railway Protection Area and shall comply strictly with the requirements as set out therein. The Contractor shall comply with any instructions given by MTRCL through the Engineer with regard to planning, method of working, safety requirements and on any other matters which may affect the operation of the railway. Provided that if a situation occurs which in the opinion of either the Contractor or MTRCL may give rise to or actually constitute an emergency and either the Contractor or MTRCL considers that it is not practicable to communicate through the Engineer, then the Contractor and MTRCL may communicate directly with each other and MTRCL may give a direct instruction to the Contractor to carry out any remedial or other works or repairs and such instruction shall be regarded for the purposes of this Contract as an instruction from the Engineer.

Compliance with requirements

- (3)(b) Should the Contractor be unwilling or unable at once to comply with a direct instruction from MTRCL under the provisions of this Clause, the Contractor shall not prevent and shall permit MTRCL or MTRCL's workers or contractors to carry out the remedial works or other works or repairs required by the direct instruction.
- (3)(c) If in the opinion of the Engineer, the Contractor was obligated under the Contract to carry out the remedial or other works or repairs referred to in sub-clause(3)(b), all costs and charges which are in the opinion of the Engineer properly incurred by the MTRCL in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract(s) with the Employer.
- (3)(d) The Contractor shall notify the Engineer as soon as possible of any direct instruction received from MTRCL under the provisions of this Clause.
- (4)(a) Where any part of the Works has to be carried out during the period of Restriction, Possession or Isolation and the period of such Restriction, Possession or Isolation is set out in the Contract, the Contractor shall plan and execute that part of the Works so that such period is not exceeded and so that no further periods are required.

**Work on or
near
railway track**

- (4)(b) If no period of Restriction, Possession or Isolation is set out in the Contract, the Contractor shall before commencing any work through the Engineer liaise with MTRCL who will decide if any part of the Works is to be carried out during a period of Restriction, Possession or Isolation. MTRCL may alter or cancel the said period whenever MTRCL considers necessary. The decision of MTRCL in that event shall be binding on the Contractor. Any claims by the Contractor for extension of time or additional payment shall be supported by such contemporaneous records as may reasonably be necessary for consideration by the Engineer in consultation with MTRCL.
- (4)(c) After the method of carrying out the works has been agreed with MTRCL (and taking into account any provisional arrangements which had been made), the Contractor shall in all cases other than for emergency works submit written notice of his programme of works, which shall include details of any Restriction, Possession or Isolation previously notified as being necessary by MTRCL, to the MTRCL at least ten calendar weeks in advance of the proposed commencement of works within the Railway Protection Area.
- (4)(d) When an entry into the area where there is a period of Restriction, Possession or Isolation is necessary, the Contractor shall be responsible for initiating the necessary action to obtain the requisite approval from MTRCL. The Contractor shall be solely responsible for all delays caused through failure to submit the necessary application for approval, submission of inadequate information or late submission of any such application.

- (4)(e) The Contractor shall organize the execution of the works during any period of a Restriction and/or Possession and/or Isolation so that MTRCL will be able to remove such Restriction, Possession or Isolation at the time set out in the Contract or the time previously agreed by MTRCL. Should the Contractor in the opinion of the Engineer or MTRCL not make sufficient or adequate arrangements (including the provision of standby plant) for completing the whole or any stage of the works within the time set out in the Contract or agreed with MTRCL, MTRCL may at his discretion cancel the Restriction and/or Possession and/or Isolation, or MTRCL may employ other contractor(s) to finish or to carry out such works as is necessary to enable the Restriction and/or Possession and/or Isolation to end at the earliest possible moment.
- (4)(f) A period of Restriction and/or Possession and/or Isolation cannot normally be extended and if the Contractor fails to carry out the works during any such period he shall be required to re-apply to MTRCL for a further period of Restriction and/ or Possession and/or Isolation.
- (4)(g) All expenses which in the opinion of the Engineer are properly incurred by the MTRCL as a result of the MTRCL making necessary arrangements in accordance with sub-clause (4)(e) to assist the Contractor or carrying out any necessary works in accordance with sub-clause (4)(e) shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor whether under this or any other contract(s) with the Employer.

(5)(a) MTRCL shall have the right to cancel or alter the date and the timing of any Restriction, Possession or Isolation whether such date and timing are set out in the Contract or have been previously agreed, if in his opinion, it is necessary to do so for the safe and uninterrupted running of rail traffic. In such an event MTRCL shall make alternative arrangements as soon as practicable.

Cancellation of Restrictions, Possession or Isolations at short notice

(5)(b) Subject to any default by the Contractor under sub-clause (4)(e), if the Contractor suffers delay or incurs expense due to MTRCL cancelling or altering at short notice the date or the timing of any Restriction, Possession or Isolation set out in the Contract or previously agreed by MTRCL, the Engineer shall on application by the Contractor and following receipt from the Contractor of particulars, as full and detailed as possible, value and certify such sum, if any, as the Engineer considers fair and reasonable.

(5)(c) General Conditions of Contract for Term Contract Clause 52(1)(b) is amended by adding the following after sub-clause (b)(x): “or (xi) subject to any default by the Contractor under sub-clause (4)(e) of SCC [38]#, cancellation or alteration by MTRCL at short notice of the date or timing of any Restriction, Possession or Isolation set out in the Contract or previously agreed to by MTRCL; or” and “(xii) delay on the part of any Designated Sub-contractor for any reason specified in sub-clause (1)(b)(xi) of this Clause and which the Contractor has taken all reasonable steps to avoid or reduce.”

The Clauses No. refer to the SCC Clauses in this Library. Pls amend as appropriate.

SCC 39	(1) Where the Contractor is an incorporated joint venture it shall within fourteen (14) days of the acceptance of the Tender provide to the Employer a joint venture guarantee in the form set out in Appendix []* executed by all the shareholders of the Contractor. For the purposes of this Clause, the expressions “incorporated joint venture” and “shareholder” appearing herein shall bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.	<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
		Contractors’ joint venture	<p data-bbox="1257 293 1426 353">ETWB TCW No. 50/2002</p> <p data-bbox="1257 387 1426 566">ETWB memo ref. (01656-01-3) in ETWB(W) 511/34/01 dated 4.8.2006</p> <p data-bbox="1257 600 1426 808">SDEV’s memo ref. (03487-01-1) in DEVB(W) 510/83/05 dated 31.12.2019</p> <p data-bbox="1257 842 1426 1055">[For contract which joint venture is allowed under the meaning of ETWB TCW No. 50/2002]</p>
	(2) Notwithstanding any other provisions of the Contract, failure by the Contractor to provide a joint venture guarantee in strict accordance with sub-clause (1) of this Clause shall constitute a breach of the Contract entitling the Employer to damages and shall entitle the Employer to terminate the Contract forthwith by notice in writing to that effect and the Contractor shall not be entitled to any compensation whatsoever as a consequence of such termination.		
	(3) The Contractor shall not make any changes to the percentage participation of each participant or shareholder in a joint venture during the continuance of the Contract unless prior written consent from the Employer is obtained in accordance with sub-clause (4) of this Clause.		
	(4) In the event that the Contractor considers a change to the percentage participation of each participant or shareholder in a joint venture is necessary because		

(a) any participant or shareholder in a joint venture shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement with or assignment in favour of his creditors or shall agree to carry out the Contract under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes or amalgamation or reconstruction); and

(b) satisfactory completion of the Works,

the Contractor shall write to the Employer with detailed substantiation requesting the Employer's consent before any changes are made. The Employer may in his absolute discretion accept or reject the request but shall within 14 days from the date of receipt of such request inform the Contractor in writing whether consent is given.

* [] insert the relevant appendix to the tender documentation. See Appendix D of ETWB TC(W) 50/2002 as amended by ETWB memo ref. (01656-01-3) in ETWB(W) 511/34/01 dated 4.8.2006 for the Form of Joint Venture Guarantee.

	<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 40	<p>(1) Where the Contractor is a partnership or an unincorporated joint venture, the liability of each partner of the partnership or participant of the unincorporated joint venture under the Contract shall be joint and several.</p> <p>(2) In relation to such Contractor only, the Articles of Agreement referred to in General Conditions of Contract Clause 11 shall mean []*, with such modification as may be necessary.</p> <p>(3) For the purpose of this Clause, the expression “unincorporated joint venture” and “participant” shall bear the same meanings as those given in paragraph 6(a) of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture.</p> <p>* Specify the Articles of Agreement, which is “the Articles of Agreement as shown in Appendix E to the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture”.</p>	<p>Joint and Several Liability of Partners and Unincorporated Joint Venture Participants</p> <p>ETWB TCW No. 5/2003</p> <p>Mandatory for use with all GCCs</p>

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 41	<p>(1) The Contractor shall employ at least the minimum number of technician apprentices and building or civil engineering graduates as specified in the Contract.</p> <p>(2) Where the Contractor employs the technician apprentice(s) pursuant to sub-clause (1) of this Clause, the Contractor shall ensure that all employed technician apprentice(s) attend a course of instruction at an approved technical institution leading to the award of either a Higher Certificate in Building Studies, Civil Engineering, Building Services or other comparable alternative qualification.</p> <p>(3) Where the Contractor employs the building or civil engineering graduate(s) pursuant to sub-clause (1) of this Clause, the Contractor shall ensure that all employed graduate(s) are provided with practical training on site for a minimum of 12 months or 70% of the Contract Period as stipulated in the Form of Tender, whichever is longer, and follow established training guidelines for the relevant disciplines as far as possible.</p>	Technician Apprentices & Building and Civil Engineering Graduates	ETWB TCW No. 12/2003, for contracts exceeding \$50M only

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 42	<p>General Conditions of Contract Clause 4 is amended by adding the following:</p> <p>(11)* (a) For the purpose of this sub-clause (11)*, the following words and expressions shall have the meaning hereby assigned to them:</p> <p>“RSTCS” means the Registered Specialist Trade Contractors Scheme managed by the Construction Industry Council and as referred to in the Rules and Procedures applicable to the aforesaid Registered Specialist Trade Contractors Scheme.</p> <p>“Group 1” and “Group 2” means the classification of contractors into Group 1 and Group 2 under each trade of the Register of Specialist Trade Contractors.</p> <p>(b) Where the Contractor is to sub-contract part of the Works execution of which involves trades available in the RSTCS, the Contractor shall only engage, for the purposes of execution of such part of the Works, sub-contractor(s) who has satisfied all of the following criteria:</p> <p>(i) the sub-contractor is the sub-contractor stated in the Contractor's latest updated submission of the Sub-contractor Management Plan;</p> <p>(ii) the sub-contractor has completed registration under the relevant trade(s) available in the RSTCS before the commencement of the works under the relevant sub-contract; and</p>	<p>Engagement of sub-contractors who are registered under the respective trades and groups available in the Registered Specialist Trade Contractors Scheme</p>	<p>ETWB TCW No. 13/2004</p> <p>SDEV's memo ref. DEVB(W) 510/94/02 dd. 11.8.2020</p> <p>* The clause nos. refer to the SCC Clauses in this library and should be amended for individual contracts</p>

- (iii) if the sub-contractor is registered under a trade in the Register of Specialist Trade Contractors and if the value of relevant sub-contract exceeds the tender limit of Group 1, the sub-contractor has been admitted into Group 2 before the commencement of the works under the relevant sub-contract.

The Contractor shall not engage a sub-contractor who is suspended or in the process of an appeal against his suspension from registration in the RSTCS unless the suspension is lifted before the commencement of the works under the relevant sub-contracts. The foregoing shall also apply to the Contractor's engagement of Designated sub-contractors and sub-contractors for specialist works referred to in Special Condition of Contract Clause SCC 8A, 8B, 8C or 35*.

- (c) The Contractor shall ensure that where any part of the part of the Works sub-contracted to :-
 - (i) a sub-contractor engaged under sub-clause (11)* (b) of this Clause;
 - (ii) a Designated Sub-contractor; or
 - (iii) a sub-contractor for specialist works referred to in Special Condition of Contract Clause SCC 8A, 8B, 8C or 35*

execution of which involves trades available in the RSTCS is further sub-contracted (irrespective of any tier), only sub-contractors (irrespective of any tier) who have satisfied all of the following criteria are engaged for the purposes of execution of such part of the part of the Works:

- (i) the sub-contractor is the sub-contractor stated in the Contactor's latest updated submission of the Sub-contractor Management Plan;
- (ii) the sub-contractor has completed registration under the relevant trade(s) available in the RSTCS before the commencement of the works under the relevant further sub-contract; and
- (iii) if the sub-contractor is registered under a trade in the Register of Specialist Trade Contractors and if the value of relevant sub-contract exceeds the tender limit of Group 1, the sub-contractor has been admitted into Group 2 before the commencement of the works under the relevant further sub-contract.

The Contractor shall also ensure that a sub-contractor (irrespective of any tier) who is suspended or in the process of an appeal against his suspension from registration in the RSTCS shall not be engaged for the aforesaid further sub-contracting (irrespective of any tier) unless the suspension is lifted before the commencement of the works under the relevant further sub-contracts.

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 43	General Conditions of Contract Clause 52(1)(c)(iii) is deleted and replaced by the following:	Labour Shortage	DEVB TCW No. 5/2013
	(iii) a shortage of Constructional Plant, or		

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 44	<p>(1) General Conditions of Contract Clause 1(1) is amended by adding the following definition :</p> <p>“ “Change in Law” means any addition or amendment to any enactment, regulations, bye-laws or rules listed in Appendix []¹ to these Special Conditions Contract</p> <p>(a) made on or after the date 10 days prior to the tender closing date; or</p> <p>(b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date and the Contract does not expressly provide for the parties’ respective rights and obligations in relation to compliance with such addition or amendment upon its commencement.”</p>	Changes in Law	<p>ETWB TCW No. 23/2004</p> <p>SDEV’s memo ref. () in DEVB(W) 510/10/01 dated 20.12.2012</p> <p>Mandatory for use with all GCCs</p>
	<p>(2) General Conditions of Contract Clause 31 is deleted and replaced by the following:</p> <p>“31. The Contractor shall give all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulations or bye-laws of any local or other duly constituted authority in relation to the execution of any Works and by the rules and regulations of all public bodies and statutory authorities whose property or rights are affected or may be affected in any way by any Works, including any new fee and any change in existing fees</p> <p>(a) made on or after the date 10 days prior to the tender closing date; or</p> <p>(b) made before the date 10 days prior to the tender closing date and the commencement date of which is only ascertainable on or after the date 10 days prior to the tender closing date.”</p>		

- (3) General Conditions of Contract Clause 32 shall be amended by replacing "and any additions or amendments thereto any such enactment, regulations, bye-laws or rules " by the following :

"and any additions or amendments thereto or any new enactment, regulations, bye-laws or rules made during the continuance of the Works, which are applicable to the Works, and shall be responsible for the payment of all penalties and fines and discharge of all liabilities under such enactment, regulations, bye-laws or rules and shall keep the Employer indemnified against all penalties and fines and liabilities of every kind for breach of any such enactment, regulations, bye-laws or rules. For the avoidance of doubt, the Contractor shall, under no circumstances, be paid by the Employer for any penalties, fines and liabilities under such enactment, regulations, bye-laws or rules nor shall the Final Contract Sum be adjusted for that purpose."

- (4) The following shall be added as Clause 32A after General Conditions of Contract Clause 32:

“32A(1) The final account for such Works, shall subject to sub-clause (2) of this clause, be adjusted to take account any increase or decrease in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract resulting from any Change in Law

(2) If the Engineer is of the opinion that the Contractor has been or is likely to be involved in decrease in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract resulting from any Change in Law or upon written application by the Contractor to the Engineer the Engineer is of the opinion that the Contractor has been or is likely to be involved in increase in Cost (but excluding overheads whether on or off the Site) to the Contractor in the execution of the Contract for which the Contractor would not be reimbursed by a payment made under any other provision of the Contract resulting from any Change in Law , the Engineer shall value the decrease or, as the case may be, ascertain the increase and shall certify in accordance with Clause 78.”

- (5) General Conditions of Contract Clause 52 is amended by:-

- (a) adding the following as sub-clause (1)(b)(ixb) before sub-clause (1)(b)(x):

“(ixb) any Change in Law, or”

1 *Incorporate the amended list of enactment promulgated in SDEV's memo ref. DEVB(W)510/10/01 dd. 20.12.2012.*

**Marginal
Notes**

Guidelines

SCC 45

- (1) Notwithstanding the provisions of any other clause in the Contract, the Employer shall, in addition to any other power enabling it to terminate the Contract, have power to terminate the Contract at any time by notice in writing to the Contractor and the termination shall take effect on a date specified in the notice but without prejudice to the claims of either party in respect of any antecedent breach thereof. Upon receipt of the notice of termination the Contractor shall, unless directed by the Engineer pursuant to sub-clause (4) hereunder, suspend all the work and stop incurring further expenditure with respect to any work under the Contract except for work which is necessary for the protection of life or property or for the safety of the Works.
- (2) Except as provided in sub-clause (3) of this Clause, the Employer shall not terminate the Contract under this Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.
- (3) The Employer is entitled to terminate the Contract under this Clause and thereafter to execute the Works himself or to arrange for the Works to be executed by another contractor if the Engineer shall certify in writing to the Employer that in his opinion the completion of the Works will be delayed by a period of not less than one year due to interfacing problems or programme slippages of associated works outside the scope of the Contract.
- (4) After the issue of the notice of termination to the Contractor under sub-clause (1), the Engineer shall as soon as practicable and in any case not later than the date of termination specified in the notice give directions with which the Contractor shall comply with all reasonable despatch as to all or any of the following matters:

Right of the Employer to terminate for convenience

ETWB TCW
No. 23/2004

SDEV's memo
ref. () in
DEVB(W)
510/10/01
dated
20.12.2012

Mandatory for
use with all
GCCs

- (a) the performance of further work in accordance with the provisions of the Contract, where such further work is necessary for the protection of life or property or for the safety of the Works;
- (b) the protection of work executed under the Contract or any work required to leave the whole of all Sites in a clean and safe condition;
- (c) the removal of all Constructional Plant, Temporary Works and temporary buildings from all Sites;
- (d) the removal of materials placed on all Sites;
- (e) the removal of any debris or rubbish and the clearing and making good of the whole of all Sites;
- (f) the termination or assignment of any sub-contracts and contracts, including those for the hire of plant, services and insurance, entered into by the Contractor for the purposes of or in connection with the Contract;
- (g) the assignment of warranties for materials placed on the site; and
- (h) any other matter arising out of the Contract with regard to which the Employer may decide that directions are necessary or expedient.

- (5) All Constructional Plant, Temporary Works, temporary buildings and materials properly brought on to such Sites shall be removed by the Contractor as and when they cease to be required in accordance with directions given by the Engineer under sub-clause (4). The Constructional Plant, Temporary Works, temporary buildings and materials which has become the property of the Employer under Clauses 71 and 72 of the General Conditions of Contract shall upon such removal re-vest in the Contractor. If the Contractor shall fail to remove any such Constructional Plant, Temporary Works, temporary buildings or materials as aforesaid, the Employer may
- (a) sell any such Constructional Plant, Temporary Works, temporary buildings or materials which has become the property of the Employer under Clauses 71 and 72 of the General Conditions of Contract and after deducting from any proceeds of sale the costs, charges and expenses of and in connection with such sale shall pay the balance, if any, to the Contractor but to the extent that the proceeds of sale are insufficient to meet all such costs, charges and expenses the excess shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provisions of Clause 86 of the General Conditions of Contract; or
 - (b) dispose the same in a manner which the Employer considers most appropriate and any costs, charges and expenses so incurred shall be recoverable by the Employer from the Contractor in the manner aforesaid.

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

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

(6) If –

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

the Engineer may authorize the carrying out of such work or such other urgent work by a person other than the Contractor and if such work or other work is work which, in the opinion of the Engineer, the Contractor was liable to do at his own expense under the Contract, all costs, charges and expenses properly incurred in carrying out the same shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any money due or which may become due to the Contractor whether under this or any other contract with the Employer in accordance with the provisions of Clause 86 of the General Conditions of Contract.

- (7) In the event of termination of the Contract under this Clause the Contractor shall be paid by the Employer, in so far as such items have not already been covered by payment on account made to the Contractor, for all work executed prior to the date of termination to be valued in accordance with the Contract and in addition, subject to sub-clause (8):
- (a) the sums payable in respect of preliminary items in so far as the work or service comprised therein has been carried out or performed and a proper proportion, as certified by the Engineer, of all such items the work or service comprised therein has been partially carried out or performed;
 - (b) the cost of materials ordered for any of the Works which have been delivered to the Contractor or of which the Contractor is liable to accept delivery or any advanced payment made for materials ordered for the Works, such materials becoming the property of the Employer upon such payment being made by the Employer;
 - (c) a sum to be certified by the Engineer being any Cost reasonably incurred by the Contractor for the purpose of completing any of the Works in so far as such Cost shall not have been paid in accordance with any other sub-clause of this Clause or any other Clause under the Contract;
 - (d) the additional cost of removal, as compare to removal if the contract had been performed to completion, under sub-clause (5) of all Constructional Plant, Temporary Works, temporary buildings and materials from all Sites and, if required by the Contractor, return thereof to the Contractor's country of origin or to any other destination at no greater cost and certified by the Engineer as reasonable;

(e) sum to be certified by the Engineer being any reasonable sum expended by the Contractor because of the termination of the Contract in respect of

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

(ii) the curtailment of any contract of employment,

entered into exclusively in connection with the Contract.

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

(8) The Contractor shall, in any sub-contract or contract made by him in connection with or for the purposes of the Contract, reserve the power to determine such sub-contract or contract in the event of the termination of the Contract by the Employer in accordance with the provisions of this Clause upon terms similar to the terms of this Clause. The Contractor shall not be entitled to compensation of any expenditure resulting from non-compliance with this requirement.

- (9) Within 90 days after the date of issue of the notice of termination under sub-clause (1), the Contractor shall submit to the Engineer a statement of account and supporting documentation showing in detail the value in accordance with the Contract of the work done as of the date of termination together with all further sums which the Contractor considers to be due to him under this Clause. Within 90 days after receipt of the final account and of all information reasonably required for its verification, the Engineer shall issue a payment certificate stating the sum which in his opinion is finally due to the Contractor on termination under this Clause. The sum shall be paid to the Contractor by the Employer within 21 days of the date of the certification.
- (10) Payment to the Contractor under sub-clause (7) shall be in full and final settlement of all claims, costs and charges incurred by the Contractor as a result of the Contract under this Clause.
- (11) This Clause shall survive and remain in force after termination of the Contract in accordance with this Clause.
- (12) General Conditions of Contract 7 is amended by adding “or Special Conditions of Contract Clause SCC 45* after “Clause 84” on line 3 of Sub-clause (2).

* The clause no. refers to the SCC Clause in this library and should be amended for individual contracts

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 46A	<p>(1) The Contractor shall employ an independent tree specialist (hereinafter referred to as ITS) in accordance with this Clause for the preservation and protection of the Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹ during the period as stated in the Contract.</p> <p>(2) The ITS shall be a degree holder of any of the disciplines of agriculture, arboriculture, botany, forestry, horticulture, landscape architecture, landscape design, landscape management or landscape science or a discipline of equivalent subject acceptable to the Engineer and shall have specialized knowledge and training in the above fields. The ITS shall also have at least 3 years' documented or demonstrable experience gained whether in Hong Kong or elsewhere in the physiology and care of major tree species commonly found in Hong Kong. In the nomination for the employment pursuant to sub-clause (3) of this Clause, the ITS shall provide to the Engineer a declaration of "no conflict of interest" in the discharge of his duties specified under the Contract.</p> <p>(3) Within 7 days of the date of the Employer's letter of acceptance of the Tender, the Contractor shall nominate a candidate to be the ITS for the approval of the Engineer. The Contractor shall enter into a written contract of employment with the ITS and ensure that the employment of the ITS shall commence within 7 days of the date of the Engineer's approval of the employment of the ITS. In the event that the Contractor fails to comply with any of the requirements in this sub-clause, the Employer shall be entitled to employ an ITS forthwith and deduct all costs, charges and expenses arising from or in connection with the employment of an ITS in accordance with the provisions of GCC Clause 86 and/or recover such costs, charges and expenses as a debt from the Contractor.</p>	Independent tree specialist	<p>ETWB TCW No. 29/2004</p> <p>Cyber Manual for Greening</p> <p>SCC 46A to 46D are to be used where the existing trees to be preserved and protected include Old and Valuable Trees from the register at the website: http://www.lcsd.gov.hk/LEIS/URE/LP/gc/tree</p>

- (4) The Contractor shall ensure that the ITS carries out his duties specified in the Contract. In the event that the ITS is unable or refuses to carry out such duties or, in the opinion of the Engineer, is not performing satisfactorily, the Engineer may withdraw his approval of the ITS at any time. If such approval is withdrawn, the Contractor shall, within 7 days of the notice of withdrawal by the Engineer, nominate a replacement ITS for the approval of the Engineer. The Contractor shall enter into a written contract of employment with the replacement ITS and ensure that the employment of the replacement ITS shall commence within 7 days of the date of the Engineer's approval of the employment of the replacement ITS. In the event that the Contractor fails to comply with any of the requirements in this sub-clause, the Employer shall be entitled to employ a replacement ITS forthwith and deduct all costs, charges and expenses arising from or in connection with the employment of a replacement ITS in accordance with the provisions of GCC Clause 86 and/or recover such costs, charges and expenses as a debt from the Contractor.
- (5) The wages payable to the ITS shall be paid by the Contractor. It shall be a condition precedent for the Contractor to submit satisfactory evidence to the Engineer that the ITS has been paid for his services rendered, such evidence including but not limited to receipts for payment of the ITS, before the Contractor is entitled to claim for payment of the item(s) of works for which the services of the ITS are required under the Contract.

- (6) The duties of the ITS shall include:
- (a) conducting an initial survey of Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹ and an initial site survey and initial soil tests of *its/their tree protection *zone/zones and submitting a report on the same comprising the details and within the time frames as stipulated in Appendix []² to the Particular Specification;
 - (b) preparing monitoring reports on Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹ and submitting each monitoring report comprising the details and within the time frames as stipulated in Appendix []³ of the Particular Specification;
 - (c) conducting a final survey of Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹ and a final site survey and final soil tests of *its/their tree protection *zone/zones and submitting a report on the same comprising the details and within the time frames as stipulated in Appendix []² of the Particular Specification;
 - (d) providing arboricultural advice in the preparation of method statements and any reports on repair of damage, supervising arboricultural work, and providing on-site advice in relation to site control within the tree protection *zone/zones and at *its/their adjacent areas, for the preservation and protection measures for Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹ as stipulated in the Contract; and
 - (e) any other services or duties specified in the Contract.

- SCC 46B** (1) The Contractor shall take all reasonable measures, including but not limited to the stipulations in the Contract, to preserve and protect Old and Valuable *Tree/Trees (*Tree/Trees No. __)¹;
- (2) If Tree No. __⁴ dies or becomes moribund as determined by the ITS and such death or moribundity occurs before the expiry of the Maintenance Period or where there is more than one such Period, before the expiry of the last Period, the Contractor shall be liable to pay to the Employer a sum equal to the cost that the Employer has expended for nurturing, preservation, protection and maintenance of that tree. This sum⁴ for Tree No. __⁴ is quantified and stated in the Appendix to the Form of Tender. The payment of such sum shall not relieve the Contractor from any of his obligations under the Contract. Provided that if the death or moribundity of Tree No. __⁴ is not due to neglect or failure on the part of the Contractor to comply with any of his express or implied obligations under the Contract as determined by the Engineer, the Contractor shall not be liable to pay such sum to the Employer.
- SCC 46C** (1) General Conditions of Contract Clause 1(1) is amended by adding the following:
- In SCC []⁵, all references to “tree”, “Old and Valuable Tree”, “tree protection zone” and “arboricultural work” are as respectively defined in the Particular Specification.
- “ Aftercare to Old and Valuable Trees” means the regular monitoring and other operations specified to be performed for Old and Valuable Trees (*Tree/Trees No. __)¹ during the period stated in the Contract for such regular monitoring and other operations.

Preservation and protection of Old and Valuable Trees

Definition (Preservation and protection of existing trees including Old and Valuable Trees)

SCC 46D

- (1) As soon as in the opinion of the Engineer the Works other than Aftercare to Old and Valuable Trees have been substantially completed, the Engineer shall, notwithstanding the provisions of General Conditions of Contract Clause 49, notify the Contractor in writing of the date for commencement of the Aftercare to Old and Valuable Trees which shall be undertaken for the duration stated in the Contract. Such date for commencement shall be the day immediately following the date of certification of completion of the Works other than Aftercare to Old and Valuable Trees, or the last Section thereof, by the Engineer in accordance with General Conditions of Contract Clause 55.
- (2) Notwithstanding the provisions of General Conditions of Contract Clauses 55(3) & (4), no certificate of completion shall be given in respect of any part of the Aftercare to Old and Valuable Trees, provided that this shall not prevent the issuance of a certificate of completion in respect of the whole of the Aftercare to Old and Valuable Trees.

**Commencement
and completion
of Aftercare to
Old and
Valuable Trees**

- * *Delete as appropriate.*
- 1 *Insert the reference numbers of the Old and Valuable Trees*
 - 2 *Insert the appropriate reference. Refer to Appendix I of the Particular Specification in the Cyber Manual for Greening.*
 - 3 *Insert the appropriate reference. Refer to Appendix II of the Particular Specification in the Cyber Manual for Greening.*
 - 4 *Insert the appropriate reference number of the Old and Valuable Trees. Separate sum shall be applied to each tree if more than one Old and Valuable Tree is involved. Such sum for each Old and Valuable Tree shall be the genuine pre-tender estimate of the cost that the Employer has expended in nurturing, preservation, protection and maintenance of that particular tree.*
 - 5 *Insert the numbers of SCC Clauses on preservation and protection of trees (SCC35 in this library), independent tree specialist (SCC46A in this library), and preservation and protection of Old and Valuable Trees (SCC46B in this library).*

**Marginal
Notes**

Guidelines

SCC 47

(1) All Constructional Plant powered by diesel fuel, whether they belong to the Contractor or his sub-contractors, must only be replenished with ultra low sulphur diesel (ULSD) (defined as diesel fuel containing not more than 0.005% by weight of sulphur) when working on the Site. The Contractor shall maintain a summary record of all delivery notes of ULSD delivered to the Site, including those ordered by his sub-contractors, together with the details of consumption of such fuel by individual Constructional Plant on the Site and the date of arrival and departure of the Constructional Plant to and from the Site. The record of fuel deliveries shall be supported by the original receipts of delivery notes from oil companies. Both the record and delivery receipt shall be kept on the Site for inspection by the Engineer or his site supervisory staff upon request.

**Use of Ultra
Low Sulphur
Diesel**

S for ETW's memo ref. (014G7-01-1) in ETWB(W) 517/91/01 dated 19.6.2006

This SCC is to be used for contracts with Pay for Safety and Environmental Scheme.

(2) The Engineer or his Representative may order at any time any number of fuel samples to be taken from any diesel-operated Constructional Plant, fuel tank and/or container on the Site, except those which the Contractor can substantiate that the Constructional Plant, fuel tank and container concerned has/have been brought to the Site recently according to the summary record maintained pursuant to sub-clause (1), and has/have never been replenished with any fuel since its arrival. The sulphur content of the fuel samples shall be tested by a HOKLAS accredited laboratory using internationally recognized testing methods such as ASTM D2622, ISO 14596 and ISO 20884. The laboratory to carry out the test shall be proposed by the Contractor and agreed by the Engineer.

**Marginal
Notes**

Guidelines

SCC 48A

(1) Subject to those Casual Workers referred to in Clause Z.1(1) of Particular Specification “Section Z” on “Casual Workers”, all Site Workers shall be engaged in accordance with Clauses X.2 to X.5 of Particular Specification “Section X” on “Payment of Wages of Site Workers”. Such Site Workers shall be engaged with a written employment contract with their respective employers who shall be either the Contractor or any of his sub-contractors, as submitted in the Sub-contractors’ Management Plan required under SCC Clause []¹ of these Special Conditions of Contract. The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract which may as necessary be revised by the Engineer from time to time at Appendix [#]² to these Special Conditions of Contract as far as the Site Workers are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under this Contract.

**Payment of
Wages of Site
Workers**

SDEV’s memo
ref. (02VKU-
01-3) in
DEVB(W)
510/17/01
dated
16.12.2016

SDEV’s memo
ref. (02YWL-
01-2) in
DEVB(W)
510/17/01
dated 5.2.2018

SCC 48A to
48D are
optional for use
in in-house
term contract

(2) The Contractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by extending either the Contractor’s employees compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix [##]² to these Special Conditions of Contract and shall maintain such policy for the duration of the self-employed workers being engaged in the Contract. The Contractor shall inform the Engineer immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.

- (3) Truck drivers engaged for the Works (excluding those truck drivers engaged by suppliers to deliver material to the Site) may be either a Site Workers or a self-employed person.
- (4) (Not used)
- (5) Within 14 days of the commencement of the Contract, the Contractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Workers in accordance with Particular Specification "Section X" on "Payment of Wages of Site Workers". The Contractor shall submit a written declaration that all Site Workers' wages payable have been paid when the Contractor submits the instruction records as specified in Particular Specification Section X to the Engineer. Site Workers who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Particular Specification "Section X".
- (6) The Contractor shall provide suitably qualified staff to act as Assistant Clerical Officer (Labour Relations) referred to in Section Y of the Particular Specification to monitor payment of wages.
- (7) Pursuant to General Conditions of Contract Clause 4(3), failure to comply with Section X of the Particular Specification by any of the sub-contractors may render the removal of the sub-contractor from the Site and/or the Works.

- (8) (a) Without prejudice to any of the provision under General Conditions of Contract Clause 42 and in the event of default being made in the payment of any wages of any Site Workers employed by the Contractor or any of the sub-contractors in and for carrying out this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or by any of the responsible sub-contractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour; provided that the subject incident of default in payment of wages is reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap 57), the Employer may, after the Contractor or the sub-contractor, as the case may be, who is in default of paying any wages to the Site Workers, make payment of such wages or claim for wages on behalf of the Contractor or the subcontractor to the Site Workers and any sums so paid shall be recoverable by the Employer as a debt from the Contractor.
- (b) For the avoidance of doubt, Site Workers employed by the Contractor are not subject to the reporting requirement to the Assistant Clerical Officer (Labour Relations) under sub-clause 8(a) of this Clause.

(c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause 8(a) of this clause shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and public holidays excluded) of the final date for payment under section 23 of the Employment Ordinance (Cap 57).

(9) For the purpose of this Clause, "sub-contractors" means sub-contractors, irrespective of tiers, including specialist sub-contractors and Designated Sub-contractors.

- 1 SCC 22 in this library. Insert appropriate clause reference specific to the draft.
- 2 Refer to Appendices [#] and [##] to Special Conditions of Contract in SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016.

SCC 48B

- (1) Without prejudice to the generality of General Conditions of Contract Clause 18, the Contractor shall provide a team of suitably qualified and experienced staff to manage and supervise the Contract throughout the execution of the Works. All members of staff on the management/site supervision team (refer to as “the Team” in this Clause) must be under the direct employment of the Contractor. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines :-

(State minimum qualification requirements in the Particular Specification for each discipline if considered necessary.)

- (a) Project Manager;
 - (b) Site agent in accordance with General Conditions of Contract Clause 18;
 - (c) Site Engineers;
 - (d) Topographic Surveyors;
 - (e) Quantity Surveyors;
 - (f) Site Superintendent; and
 - (g) Site Foremen.
- (2) Members of staff on the Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers including specialist sub-contractors and Designated Sub-contractors under this Contract.
- (3) Within 14 days of the commencement of the Contract, the Contractor shall submit to the Engineer a list of staff with all necessary details which comprised the Team referred to in sub-clause (1) of this Clause.
- (4) The Contractor shall either provide documentary proof on the employment status of the staff on the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the Engineer or provide a formal declaration to the effect that such a staff is indeed under the direct employment of the Contractor. The declaration shall be signed by a person authorized to sign tenders on behalf of the Contractor.

**Contractor’s
Management
Team**

SDEV’s memo
ref. (02VKU-
01-3) in
DEVB(W)
510/17/01
dated
16.12.2016

SDEV’s memo
ref. (02YWL-
01-2) in
DEVB(W)
510/17/01
dated 5.2.2018

Optional for in-
house term
contract

SCC 48B (Cont'd)

**Marginal
Notes**

Guidelines

- (5) With the exception of the Project Manager, all members of staff in the Team shall be full time on Site during site working hours.
- (6) The Contractor shall inform the Engineer forthwith of any changes made to any of the staff on the Team.

SCC 48C

- (1) Without prejudice to the generality of General Conditions of Contract Clause 4, if any part of the Works is sub-contracted by the Contractor, the Contractor shall ensure that a clause on payment of wages of Site Workers in the form appearing in Appendix []¹ to these Special Conditions of Contract is included in all sub-contracts entered into with the Contractor. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that such clause in the form appearing in Appendix []¹ to these Special Conditions of Contract is included in all sub-contracts at lower tiers of sub-contracting.
- (2) The Contractor shall ensure that all sub-contractors engaged by the Contractor who are involved in the Contract shall include, observe and comply with the provisions which are in the terms of Clause [A] in Appendix []¹ to these Special Conditions of Contract in the relevant sub-contracts. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that sub-contractors who are involved in the relevant sub-contracts of the Contract shall include, observe and comply with the provisions in the relevant sub-contracts which are mutatis mutandis in the terms of Clause [A].

**Sub-contract
conditions**

SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016

SDEV's memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018

Optional for in-house term contract

- (3) The Contractor shall submit copies of the relevant sub-contracts of the Contract to the Engineer for the purpose of checking if the sub-contract provisions referred to in sub-clauses (1) and (2) of this Clause are included in the relevant sub-contracts as required under sub-clauses (1) and (2) of the Clause. Upon request by the Engineer, the Contractor shall provide the original documents of the relevant sub-contracts for inspection by the Engineer.
- (4) The Contractor shall comply with and shall ensure that all sub-contractors engaged by the Contractor shall comply with the provisions of this Clause; and shall, if necessary, within reasonable time enter into a supplemental agreement with his sub-contractor to ensure that the sub-contract complies with the requirements in sub-clauses (1) and (2) of this Clause and shall take all reasonable steps to ensure that sub-contractors at any lower tier of sub-contracting shall include, observe and enter into a supplemental agreement if necessary and as required under this sub-clause.
- (5) If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with the provisions of this Clause, the Engineer shall, without prejudice to any other rights and remedies, have full power to order the removal of the sub-contractor from the Site and/or the Works.

- 1 Insert the appropriate reference. Refer to Annex to the Special Conditions of Contract SCC[Y] in Annex B to SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016.

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 48D	(1) The Contractor shall comply with the requirements and procedures set out in Particular Specification Section [Y] for the employment and administration of Assistant Clerical Officer (Labour Relations) (“ACO(LR)”).	Reimbursement of Contractor’s actual payment and payment of Contractor’s associated expenses in providing Assistant Clerical Officer (Labour Relations)	SDEV’s memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016
	(2) The Engineer shall ascertain and certify for payment in accordance with General Conditions of Contract Clauses 78 and 79, the amount of actual payment made by the Contractor and of the Contractor’s associated expenses in providing ACO(LR) referred to in sub-clause (6) of SCC [] ² . For the avoidance of doubt, the actual payment includes the salary, overtime allowance, end-of-contract gratuity, medical and dental care expenses for ACO(LR) and the advertisement costs incurred in the recruitment of ACO(LR). Other costs or expenses, including but not limiting to those incurred for recruitment, employment, arranging for temporary or permanent replacement, training and employees’ compensation insurance shall be covered by the Contractor’s associated expenses which are determined in accordance with sub-clause (4).		SDEV’s memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018
	(3) The Contractor shall be reimbursed with the actual payment made to ACO(LR) as certified by the Engineer in accordance with General Conditions of Contract Clauses 78 and 79. The rules on “accountability” set under this sub-clause (3) must be satisfied before any salary and other direct payments related to ACO(LR) made by the Contractor is reimbursable:-		Optional for in-house term contract

- (i) the amount in respect of salary, end-of-contract gratuity and overtime payment shall have been paid by the Contractor to the ACO(LR) and as evidenced by receipts from the ACO(LR);
 - (ii) actual expenses incurred, if any, for advertising the recruitment of ACO(LR) in any local press shall be evidenced by relevant receipts; and
 - (iii) ACO(LR), or the Contractor shall be additionally accountable for the amount invoiced in respect of reimbursement of medical and dental care, i.e. only if it is actually spent by the ACO(LR) or settled by the Contractor, as the case may be, on the respective purposes, within the approved employment terms, and as evidenced by receipts from the respective service providers who provide service to the ACO(LR).
- (4) For the purposes of this Clause, the “Contractor’s associated expenses” refers to a percentage fee of the amount of actual payment made to ACO(LR) as certified by the Engineer in accordance with General Conditions of Contract Clauses 78 and 79 in providing ACO(LR). The rate of the percentage fee is as inserted by the Contractor in the column for Section Percentage for Item No. [] in the Schedule of Contract Percentages in the Appendix to Form of Tender and is to be used for arriving at the Value for Tender Assessment in respect of the item for reimbursement of actual payment made by the Contractor in providing Assistant Clerical Officer (Labour Relations).

- 2 Insert the appropriate reference. Refer to SCC 48A in this library.

**Marginal
Notes**

Guidelines

SCC 49A

(1) Subject to those Casual Workers referred to in Clause Z.1(1) of Particular Specification “Section Z” on “Casual Workers”, all Site Workers shall be engaged in accordance with Clauses X.2 to X.5 of Particular Specification “Section X” on “Payment of Wages of Site Workers”. Such Site Workers shall be engaged with a written employment contract with their respective employers who shall be either the Contractor or any of his sub-contractors, as submitted in the Sub-contractors’ Management Plan required under SCC Clause []¹ of these Special Conditions of Contract. The terms of the employment contract shall be not less favourable to the terms provided in the Specimen Employment Contract which may as necessary be revised by the Engineer from time to time at Appendix [#]² to these Special Conditions of Contract as far as the Site Workers are concerned. Payment of wages shall be made at least once per month. Employment contracts which stipulate a payment cycle in less frequent than once per month will not be permitted under this Contract.

**Payment of
Wages of Site
Personnel**

SDEV’s memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016

SDEV’s memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018

SCC 49A to 49C are optional for use in consultant-administered term contract

(2) The Contractor shall ensure that all workers who are self-employed persons engaged to work on the Site shall each be covered by a personal accident insurance plan with a minimum coverage of HK\$1,000,000 by extending either the Contractor’s employees compensation insurance policy or his third party liability and all risks insurance policy. Alternatively the Contractor shall arrange a separate personal accident insurance plan for all self-employed workers for a minimum cover of HK\$1,000,000 in the form specified in Appendix [##]² to these Special Conditions of Contract and shall maintain such policy for the duration of the self-employed workers being engaged in the Contract. The Contractor shall inform the Engineer immediately when the insurance policy of a self-employed worker has expired together with evidence showing its renewal as appropriate.

- (3) Truck drivers engaged for the Works (excluding those truck drivers engaged by suppliers to deliver material to the Site) may be either a Site Workers or a self-employed person.
- (4) (Not Used)
- (5) Within 14 days of the commencement of the Contract Period, the Contractor shall make necessary arrangements with a bank to implement the arrangement on payment of wages to Site Workers in accordance with Particular Specification “Section X” on “Payment of Wages of Site Workers”. The Contractor shall submit a written declaration that all Site Workers’ wages payable have been paid when the Contractor submits the instruction records as specified in Particular Specification Section X to the Engineer. Site Workers who are not able to open a personal bank account in Hong Kong shall be paid by personal cash cheques in accordance with Particular Specification “Section X”.
- (6) Pursuant to General Conditions of Contract Clause 4(3), failure to comply with Section X of the Particular Specification by any of the sub-contractors may render the removal of the sub-contractor from the Site and/or the Works.

- (7) (a) Without prejudice to any of the provision under General Conditions of Contract Clause 42 and in the event of default being made in the payment of any wages of any Site Workers employed by the Contractor or any of the sub-contractors in and for carrying out this Contract and if a claim therefore is filed in the office of the Labour Department and proof thereof (including, where the claim is disputed by the Contractor or by any of the responsible sub-contractors, as the case may be, or it is found necessary by the Commissioner for Labour, proof of final determination of the claim by an award or order of the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal) is furnished to the satisfaction of the Commissioner for Labour; provided that the subject incident of default in payment of wages is reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and public holidays excluded) of the final due date for payment as prescribed under section 23 of the Employment Ordinance (Cap 57), the Employer may, after the Contractor or the sub-contractor, as the case may be, who is in default of paying any wages to the Site Workers, make payment of such wages or claim for wages on behalf of the Contractor or the subcontractor to the Site Workers and any sums so paid shall be recoverable by the Employer as a debt from the Contractor.
- (b) For the avoidance of doubt, Site Workers employed by the Contractor are not subject to the reporting requirement to the Assistant Clerical Officer (Labour Relations) under sub-clause 7(a) of this Clause.

(c) For the further avoidance of doubt, where any self-employed worker is found by the Labour Tribunal or as the case may be the Minor Employment Claims Adjudication Board or a judgment of the District Court or, where the matter is subsequently further disputed by way of appeal, by a judgment of the Court of First Instance or the Court of Appeal to be an employee instead of a self-employed worker, sub-clause 7(a) of this clause shall apply to that self-employed worker provided that the subject incident of default in payment of wages is similarly reported to the Assistant Clerical Officer (Labour Relations) within 7 working days (Sundays and public holidays excluded) of the final date for payment under section 23 of the Employment Ordinance (Cap 57).

(8) For the purpose of this Clause, "sub-contractors" means sub-contractors, irrespective of tiers, including specialist sub-contractors and Designated Sub-contractors.

- 1 Special Conditions of Contract 22 in this library. Insert appropriate clause reference specific to the draft.
- 2 Refer to Appendices [#] and [##] to Special Conditions of Contract in SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016.

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 49B	<p>(1) Without prejudice to the generality of General Conditions of Contract Clause 18, the Contractor shall provide a team of suitably qualified and experienced staff to manage and supervise the Contract throughout the execution of the Works. All members of staff on the management/site supervision team (refer to as “the Team” in this Clause) must be under the direct employment of the Contractor. The Team shall comprise sufficient number of suitably qualified and experienced staff in the following disciplines :-</p> <p><i>(State minimum qualification requirements in the Particular Specification for each discipline if considered necessary.)</i></p> <ul style="list-style-type: none"> (a) Project Manager; (b) Site agent in accordance with General Conditions of Contract Clause 18; (c) Site Engineers; (d) Topographic Surveyors; (e) Quantity Surveyors; (f) Site Superintendent; and (g) Site Foremen. <p>(2) Members of staff on the Team are prohibited to be given a sub-contract to any part of the Works or to have a vested interest in any of the sub-contractors irrespective of tiers including specialist sub-contractors and Designated Sub-contractors under this Contract.</p> <p>(3) Within 14 days of the commencement of the Contract, the Contractor shall submit to the Engineer a list of staff with all necessary details which comprised the Team referred to in sub-clause (1) of this Clause.</p>	Contractor’s Management Team	<p>SDEV’s memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016</p> <p>SDEV’s memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018</p> <p>Optional for consultant-administered term contract</p>

- (4) The Contractor shall either provide documentary proof on the employment status of the staff on the Team, such as employment contracts, tax returns, payment of salaries and the like upon request by the Engineer or provide a formal declaration to the effect that such a staff is indeed under the direct employment of the Contractor. The declaration shall be signed by a person authorized to sign tenders on behalf of the Contractor.
- (5) With the exception of the Project Manager, all members of staff in the Team shall be full time on Site during site working hours.
- (6) The Contractor shall inform the Engineer forthwith of any changes made to any of the staff on the Team.

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 49C	<p>(1) Without prejudice to the generality of General Conditions of Contract Clause 4, if any part of the Works is sub-contracted by the Contractor, the Contractor shall ensure that a clause on payment of wages of Site Workers in the form appearing in Appendix []¹ to these Special Conditions of Contract is included in all sub-contracts entered into with the Contractor. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that such clause in the form appearing in Appendix []¹ to these Special Conditions of Contract is included in all sub-contracts at lower tiers of sub-contracting.</p> <p>(2) The Contractor shall ensure that all sub-contractors engaged by the Contractor who are involved in the Contract shall include, observe and comply with the provisions which are in the terms of Clause [A] in Appendix []¹ to these Special Conditions of Contract in the relevant sub-contracts. For sub-contractors at any lower tier of sub-contracting, the Contractor shall take all reasonable steps to ensure that sub-contractors who are involved in the relevant sub-contracts of the Contract shall include, observe and comply with the provisions in the relevant sub-contracts which are mutatis mutandis in the terms of Clause [A].</p> <p>(3) The Contractor shall submit copies of the relevant sub-contracts of the Contract to the Engineer for the purpose of checking if the sub-contract provisions referred to in sub-clauses (1) and (2) of this Clause are included in the relevant sub-contracts as required under sub-clauses (1) and (2) of the Clause. Upon request by the Engineer, the Contractor shall provide the original documents of the relevant sub-contracts for inspection by the Engineer.</p>	Sub-contract conditions	<p>SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016</p> <p>SDEV's memo ref. (02YWL-01-2) in DEVB(W) 510/17/01 dated 5.2.2018</p> <p>Optional for consultant-administered term contract</p>

- (4) The Contractor shall comply with and shall ensure that all sub-contractors engaged by the Contractor shall comply with the provisions of this Clause; and shall, if necessary, within reasonable time enter into a supplemental agreement with his sub-contractor to ensure that the sub-contract complies with the requirements in sub-clauses (1) and (2) of this Clause and shall take all reasonable steps to ensure that sub-contractors at any lower tier of sub-contracting shall include, observe and enter into a supplemental agreement if necessary and as required under this sub-clause.

- (5) If the Contractor or any of the sub-contractors (irrespective of any tier) fails to comply with the provisions of this Clause, the Engineer shall, without prejudice to any other rights and remedies, have full power to order the removal of the sub-contractor from the Site and/or the Works.

1 Insert the appropriate reference. Refer to Annex to the Special Conditions of Contract SCC[Y] in Annex A to SDEV's memo ref. (02VKU-01-3) in DEVB(W) 510/17/01 dated 16.12.2016.

	<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 50	<p>(1) For the purpose of this Clause, the first tier of sub-contracting means the contracts between the Contractor and his sub-contractors. The second tier means the sub-contracts between any of the sub- contractors of the first tier and his sub-contractors. The foregoing shall apply with necessary modifications to subsequent tiers of sub-contracting.</p> <p>(2) Notwithstanding General Conditions of Contract Clause 4 on sub-contracting a part of the Works and subject to sub-clauses (3) to (5) of this Clause and compliance with other provisions of the Contract, the sub-contracting of a part of the Works by the Contractor shall be limited to two tiers of sub- contracting.</p> <p>(3) Where any part of the Works has been sub-contracted out under sub-clause (2) of this Clause, the sub-contractor of the first or the second tier of sub-contracting (as the case may be) may, subject to sub-clause (4) of this Clause and compliance with other provisions of the Contract, engage in two additional tiers of sub-contracting with respect to a Relevant Portion of such part of the Works, except (i) where the Relevant Portion involves work or services to be carried out in any confined space, or (ii) where the Relevant Portion involves demolition or scaffolding work [or]**. For situations as stated in (i) or (ii), sub-contracting of the Relevant Portion by the sub-contractor of the first or the second tier (as the case may be) shall be limited to one additional tier of sub-contracting.</p> <p>(4) Notwithstanding sub-clauses (2) and (3) of this Clause, sub-contracting of any part of the Works requiring entry of human beings into confined space that form part of a sewerage or drainage system shall be limited to the first tier of sub-contracting and further sub-contracting by the first tier sub-contractor shall not be permitted.</p>	<p>Limiting the Tiers of Sub-contracting</p> <p>SDEV’s memo ref. (01TC9-01-5) in DEVB(W) 510/17/01 dated 17.7.2008 & SDEV’s memo ref. () in DEVB(W) 510/17/01 dated 6.9.2013</p> <p>Applicable to all public works contracts including maintenance contracts</p>

- (5) (a) Notwithstanding sub-clauses (3) and (4) of this Clause, the Engineer may upon request by the Contractor permit the Contractor to introduce an extra tier of sub-contracting for a part of the Works or a Relevant Portion which has been sub-contracted out in accordance with the provisions of the Contract (including without limitation on the foregoing provisions).
- (b) The Engineer shall not be obliged to consider a request for an extra tier of sub-contracting unless the request is made in writing to the Engineer at least 14 days before the sub-contractor of the relevant tier of sub-contracting enters into any sub-contract for the extra tier of sub-contracting and the request is accompanied by an explanation with supporting evidence on the need for the extra tier of sub-contracting.
- (c) A request which has been made in strict compliance with paragraph (b) above is taken to have been permitted by the Engineer if it is not expressly rejected by the Engineer in writing within 14 days from the date of receipt by the Engineer of the request from the Contractor.

(6) The Contractor shall comply with and shall ensure that all sub-contractors (irrespective of any tier) shall comply with the provisions of this Clause, General Conditions of Contract Clause 4 and other relevant provisions of the Contract (“Sub-contractor Provisions”). If the Contractor or any of the sub- contractors (irrespective of any tier) fails to comply with the Sub-contractor Provisions, the Engineer shall, without prejudice to any other rights and remedies, have full power to order the removal of any sub-contractor which has been engaged in contravention of any of the Sub-contractor Provisions from the Site and/or the Works.

(7) In this Clause, unless the context otherwise requires –

"confined space" has the same meaning as that adopted in the Factories and Industrial Undertakings (Confined Spaces) Regulation (Cap. 59AE);

"Relevant Portion" means a portion of any part of the Works which has been sub-contracted out to a sub-contractor of the first or the second tier of sub-contracting under sub-clause (2) of this Clause, and such portion comprises only work or services falling within the description of one or more of the “Construction Trades” which are listed under the trade classification of the Sub-contractor Registration Scheme;

"Sub-contractor Registration Scheme" means the Sub-contractor Registration Scheme managed by the Construction Industry Council.

*** Subject to the approval of Works Branch of the Development Bureau, project officers may insert other high-risk operations appropriate to the nature of the Contract.*

		<u>Marginal</u> <u>Notes</u>	<u>Guidelines</u>
SCC 51	<p>(1) The Contractor shall not dispose of construction and demolition materials generated by the Site at any place other than the disposal grounds designated in the Contract or directed by the Engineer or such alternative disposal grounds as proposed by the Contractor and approved by the Engineer in accordance with Particular Specification Clause [insert clause no.]*.</p> <p>(2) Notwithstanding any other provisions in the Contract, the Engineer's approval or disapproval of any alternative disposal ground proposed by the Contractor shall not in any way relieve the Contractor of any duty or responsibility under the Contract nor entitle the Contractor to any additional payment or extension of time.</p>	Disposal Grounds	<p>DEVB TCW No. 6/2010</p> <p>* Refer to Appendix C to DEVB TCW No. 6/2010</p> <p>Mandatory for use with all GCCs</p>

**Marginal
Notes**

Guidelines

SCC 52 (1) The Contractor warrants to the Employer that:

**Intellectual
Property Rights
relating to Site
Uniform**

SDEV's memo
ref. () in
DEVB(Trg)
133/3(10) dated
23.1.2017

(a) the design including but not limited to the Contractor's logo and/or any logo of a sub-contractor employed by the Contractor to carry out any part of the works, manufacture and supply of the site uniform (hereinafter collectively referred to in this Clause as "design of the site uniform") in accordance with Particular Specification Clause [X1]* does not and will not infringe any Intellectual Property Rights of any party; and

For all
contracts with
construction
period not less
than 12 months

* Refer to
Annex B2 to
Appendix I to
SDEV's memo
ref. () in
DEVB(Trg)
133/3(10) dated
23.1.2017

(b) in respect of the design of the site uniform including but not limited to the supply or use of any materials or articles by the Contractor, the Intellectual Property Rights of which are vested in a third party:

(i) the Contractor has or shall have obtained a valid and continuing licence under which the Contractor is entitled to sub-license the third party Intellectual Property Rights for himself and for the Employer, its authorized users, assigns and successors-in-title; or

(ii) the Contractor has or shall have obtained the grant of all necessary clearances for himself and for the Employer, its authorised users assigns and successors-in-title prior to the supply or use of any materials or articles.

- (2) Without prejudice to General Conditions of Contract Clause 30, the Contractor shall indemnify the Employer and keep the Employer fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where the settlement has first been proposed or approved in writing by/on behalf of the Contractor) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design of the uniform, its possession or use infringes any Intellectual Property Rights of any party.
- (3) For the avoidance of doubt, the design, manufacture, supply and/or use by the Contractor of the anti-heat stress uniform of the Hong Kong Polytechnic University referred to in Particular Specification Clause [X1]*, shall not in any way relieve the Contractor from the warranty under sub-clause (1) above or the indemnity under sub-clause (2) above.
- (4) The provisions of this Clause shall survive the completion or termination of the Contract or determination of the employment of the Contractor (howsoever occasioned) and shall continue in full force and effect notwithstanding such completion, termination or determination.

SCC 53 (1) Nothing in this Contract confers or purports to confer on any third party any benefit or any right pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of the Contract.

**Contracts
(Rights of Third
Parties)
Ordinance**

SDEV's memo
ref.
DEVB(W)510/
10/01 dated
28.8.2015

Mandatory for
use with all
GCCs

		<u>Marginal Notes</u>	<u>Guidelines</u>
SCC 54A	<p>(1) (a) The Contractor may at any time during the continuance of the Works submit to the Engineer in writing a Cost Savings Design proposal in respect of a part of the Works with sufficient details and justifications to show:</p> <p>(i) the Value of the Works can be reduced by an amount of a lump sum, and/or</p> <p>(ii) the time for completion of the Works or any Section thereof can be reduced, and/or</p> <p>(iii) the future maintenance or operation cost of the Works can be reduced, and/or</p> <p>(iv) the efficiency or value to the Employer of the completed Works can be improved, and/or</p> <p>(v) the construction productivity can be enhanced and/or the requirement for manpower resources can be reduced, and/or</p> <p>(vi) any other social benefits.</p> <p>In any event, the Contractor's liability for the construction of the Works is not prejudiced and the proposal shall be of benefit to the Employer.</p>	Cost Savings Design at Contract Stage	DEVB TCW No. 3/2014

- (b) Any proposal shall clearly state that it is submitted for consideration under this sub-clause and shall include (i) an estimate for consideration by the Employer of the amount to which the cost of carrying out the Works, as determined in accordance with Clause 63 of the General Conditions of Contract, that may be saved and (ii) a fully priced and detailed Schedule of Rates. In assessing the overall cost savings, the Employer will take into account the additional cost incurred for considering the Contractor's proposal including the Engineer's cost. The Cost Savings Design shall be subject to the Engineer's confirmation that it is compatible with the provisions of the Specification and the Drawings. The Contractor may propose modifications to the Specification in respect of particular methods of construction or materials not included in the Specification or shown on the Drawings.
- (c) Subject to acceptance of the Cost Savings Design, (i) the overall cost savings as assessed by the Employer and (ii) any revision (on the basis of the change in value as assessed by the Employer and change in time for completion of the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs) to the daily rate of liquidated damages and/or minimum liquidated damages for the Works or, as the case may be, the relevant Section to which the Cost Savings Design belongs shall be agreed with the Contractor. Before acceptance of the Cost Savings Design, the Engineer shall obtain confirmation from the Employer that the proposal is acceptable to the Employer and confirmation from both the Contractor and the Employer that (i) the overall cost savings and (ii) any revision as aforesaid to the daily rate of liquidated damages and/or minimum liquidated damages arising from the proposal are agreed to by both parties.

- (d) The Employer's decision to accept or reject the Cost Savings Design shall be conveyed to the Contractor in writing by the Engineer within a reasonable period, and neither the acceptance nor rejection of such proposal shall vitiate the Contract.
 - (e) If the Cost Savings Design is accepted, the agreed overall cost savings in lump sum for the part of the Works shall be equally shared between the Employer and the Contractor. For the avoidance of doubt, the acceptance of the Cost Savings Design shall not entitle the Contractor to claim additional costs or extension of time. If the proposal is rejected, the Contractor shall not be entitled to any payment or extension of time arising from his submission to the Engineer of the proposal and the Employer shall bear his own cost for considering the proposal submitted by the Contractor under this sub-clause except that the Contractor shall reimburse the Employer for the Engineer's cost for doing the same. The Employer shall be entitled to deduct such cost from any sums due to the Contractor under the Contract and/or recover such cost as a debt from the Contractor
- (2) (a) Further to General Conditions of Contract Clause 25, the Contractor shall have in respect of any defect or insufficiency in the Cost Savings Design the like liability to the Employer, whether under statute or otherwise, as would an appropriate professional designer holding himself out as competent to take on the Cost Savings Design, provided always that:
- (i) where the Employer has relied upon the Contractor to select equipment, plant, materials and goods required by the Cost Savings Design to be incorporated in the Works the Contractor shall ensure that all such equipment, plant, materials and goods are reasonably fit for the purpose for which they are intended and of good quality; and

(ii) subject to sub-clause (2)(a)(i) above and without prejudice to the generality of the warranty of the Contractor referred to in the second paragraph of this sub-clause (2)(a) in no circumstances shall the Contractor be obliged to ensure that the Cost Savings Design is fit for the purpose for which it is intended.

In addition, the Contractor shall warrant that the Cost Savings Design and its resultant work conforms to any performance specification or requirement referred to in the Contract and, without prejudice to the generality of General Conditions of Contract Clause 32 in respect of the Works, the provisions of General Conditions of Contract Clause 32 are complied with in respect of the Cost Savings Design and the resultant work.

- (b) The liability and warranty of the Contractor referred to in sub-clause (2)(a) above shall apply independent of any question of fault on the part of the Contractor or any sub-contractor and shall not be invalidated in any respect by any error made by the Contractor or sub-contractor in the Cost Savings Design or any submission to the Engineer for checking and/or approval.
- (c) The Designer shall prepare all calculations and drawings relating to the Cost Savings Design which shall be subject to a Check Certificate.
- (d) If at any time the Engineer has substantial cause for dissatisfaction with the conduct or performance of the Independent Checking Engineer, he shall notify the Employer accordingly. The Contractor shall, upon receiving written notice from the Employer, cease to employ such person, firm or company and shall immediately replace him by another whose qualifications, skill and experience are satisfactory to the Employer.

- (3) Within a reasonable period prior to the commencement of that part of the Works to be constructed in accordance with the Cost Savings Design, and from time to time as required by the Engineer, the Contractor shall submit to the Engineer:
- (a) two certified copies of the Cost Savings Design,
 - (b) Check Certificates,
 - (c) Certified Working Drawings, and
 - (d) satisfactory evidence of professional indemnity insurance as referred to in Special Condition of Contract Clause 54C (7)*.
- (4) The Engineer shall, within a reasonable period, notify the Contractor in writing whether or not the documents submitted meet the requirements of the Contract. The Contractor shall not commence the construction of such works until receipt of the confirmative notification in writing from the Engineer.
- (5) Notwithstanding General Conditions of Contract Clause 7, and prior to the commencement of the part of the Works of the Cost Savings Design, the Contractor shall supply to the Engineer ___ copies of the Certified Working Drawings together with one reproducible print of each drawing and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified. All drawings shall be fully figured copies with black lines on a white background of a size specified in the Contract and shall be detailed in S.I. units.

* The Clause No. refer to the SCC Clause in this Library and should be suitably amended for individual contracts

- (6) If at any time it becomes apparent to the Engineer that any drawing and/or document submitted by the Contractor does not comply with the Contract in any respect whatsoever, then all amendments deemed necessary by the Engineer shall be made therein by the Contractor, and such amended drawing and/or document shall be reviewed by the Designer and shall be subject to a further Check Certificate. The Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.
- (7) If at any time it becomes apparent to the Contractor that an amendment to the Cost Savings Design is required for the proper completion of that part of the Works involved in such design, then he shall :
- (a) immediately advise the Engineer of the proposed amendment,
 - (b) resubmit documents to the Engineer in accordance with sub-clause (3) of this Clause, provided that:
 - (i) the finished appearance of the Works shall remain substantially unaltered,
 - (ii) there shall be no additional payment made nor any extension of time granted to the Contractor, and
 - (iii) the Contractor shall bear the full cost of complying with this sub-clause, and shall reimburse the Employer the cost of any work or design done by the Employer which has been rendered abortive by any such amendments.

- (8) On completion of the work constructed in accordance with the Cost Savings Design, the Contractor shall prepare and submit to the Engineer the 'as constructed' drawings of such work and shall supply to the Engineer two copies and one reproducible print of each of such drawings and, where specified in the Contract, the soft copy of the drawings prepared in accordance with the CAD standard so specified.
- (9) Notwithstanding General Conditions of Contract Clause 61, the work to be constructed in accordance with the Cost Savings Design shall be a lump sum item accompanied by a fully priced and detailed Schedule of Rates. The lump sum item shall include :
- (a) the cost of producing the Cost Savings Design,
 - (b) the cost and fees for obtaining the Check Certificates,
 - (c) the cost of providing the Engineer with all calculations, documents (including maintenance manuals), and drawings in connection with the Cost Savings Design,
 - (d) the full value of the work (including without limitation, spare parts) constructed in accordance with the Cost Savings Design and all the associated risks, liabilities and obligations of the Contractor under the Contract, and
 - (e) the cost of all samples and testing thereof and testing of the work constructed in accordance with the Cost Savings Design.
- (10) For the avoidance of doubt, any change in the quantities in the Bills of Quantities resulting from the acceptance by the Employer of the Cost Savings Design shall not entitle the Contractor to any adjustment of the rates in the said Bills of Quantities notwithstanding any other provisions in the Contract.

- (11) Variations to the works for the Cost Savings Design ordered by the Engineer shall be measured and valued at the rates ascertained in accordance with the principles of General Conditions of Contract Clause 63, at or based on the rates in the Schedule of Rates submitted with the Contractor's Cost Savings Design proposal. For the avoidance of doubt, amendments under sub-clause (6) of this Clause shall not be considered as variations within the meaning of this sub-clause.
- (12)(a) Except in respect of those intellectual property rights referred to in sub-clause (12)(c) of this Clause, the Contractor hereby undertakes and warrants to the Employer that the Contractor is the sole legal and beneficial owner of all intellectual property rights subsisting in the Cost Savings Design.
- (b) Upon the issue of the certificate of completion of the Works or after termination, abandonment or breach of Contract, the Contractor shall be deemed to have granted to the Employer and the subsequent owners or occupiers of the Works free of all fee a transferable, non-exclusive and irrevocable licence (carrying the right to grant sub-licences) to utilize the Cost Savings Design in connection with the execution of the Works and/or the subsequent alteration, extension and maintenance thereof and for no other purpose whatsoever without the prior written agreement of the Contractor. In the event of different certificates of completion having been issued for different Sections or parts of the Works pursuant to General Conditions of Contract Clause 55, the expression "certificate of completion" shall, for the purpose of this sub-clause, mean the last of such certificates.

- (c) To the extent that beneficial ownership of any intellectual property rights in the Cost Savings Design is vested in anyone other than the Contractor, the Contractor shall procure that the relevant beneficial owner shall grant a licence together with an indemnity to the Employer and the subsequent owners or occupiers of the Works upon the same terms mutatis mutandis as those set out in sub-clauses (12)(b) and (12)(f) of this Clause respectively.
- (d) For the avoidance of doubt, any licence and indemnity granted pursuant to this Clause shall not be determined if the Contractor shall for any reason cease to be employed in connection with the Works.
- (e) The Contractor shall at the request of the Employer, do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the Employer or the subsequent owners or occupiers of the Works may require for vesting in the Employer and the subsequent owners or occupiers of the Works all or any of the rights referred to in this Clause. The Contractor shall bear its own costs and expenses in relation thereto.
- (f) The Contractor hereby indemnifies the Employer against all claims, proceedings, actions, damages and losses incurred or sustained by the Employer in respect of infringement of intellectual property rights arising from the use of the Cost Savings Design (irrespective of whether the intellectual property rights therein are owned by the Contractor or other parties) by the Employer for purposes referred to in sub-clause (12)(b) of this Clause. For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or in the event that the allegations of infringement are subsequently found to be unsubstantiated. The Contractor shall at its own cost grant a like indemnity to the subsequent owners or occupiers of the Works upon request of the Employer.

SCC 54B	The following amendments to the General Conditions of Contract shall be made:-	<u>Marginal Notes</u>	<u>Guidelines</u>
		Amendments to GCC	DEVB TCW No. 3/2014
	<p>(a) Clause 51(1) Delete the “full stop” at the end of Sub-clause (c) and replace with “, or” and add sub-clause (d) “Such revised time for completion agreed under Special Conditions of Contract Clause SCC 54A*.”</p>		* The Clause No. refer to the SCC Clause in this Library and should be suitably amended for individual contracts
	<p>(b) Clause 53(1) Replace “too slow to ensure completion by the [prescribed]# time or extended time for completion,” by “too slow to ensure completion by the time for completion prescribed by Clause 51 or extended or revised time for completion prescribed by Clause 52 and Special Conditions of Contract Clause SCC 54A* as the case may be,”.</p>		#delete as appropriate
	<p>(c) Clause 54(1) Add “or such revised time as may be agreed in accordance with Special Conditions of Contract Clause SCC 54A*” immediately after “Clause 52” at the second line of this sub-clause.</p>		

**Marginal
Notes**

Guidelines

SCC 54C

- (1) Without limiting his obligations under the Contract, the Contractor shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the Cost Savings Design to be carried out by or on behalf of the Contractor pursuant to the Contract for any one occurrence or series of occurrences arising out of any one event, or each and every claim, for a period from the date of notification of acceptance of the Cost Savings Design until [] years after the date of the certificate of completion.
- (2) The Contractor shall procure that each of the Designer and Independent Checking Engineer appointed or engaged by the Contractor in connection with the design or checking of the Cost Savings Design, shall effect and maintain, with well established insurers of repute, professional indemnity insurance for a minimum amount as notified by the Employer to the Contractor in respect of his obligations in relation to the design or, as the case may be, checking of the Cost Savings Design, for any one occurrence or series of occurrences arising out of any one event, or each and every claim for a period from the respective dates of commencement of appointment or engagement of the Designer and Independent Checking Engineer until [] years after the date of the certificate of completion.
- (3) The professional indemnity insurance referred to in sub-clause (1) or (2) of this Clause shall respectively be effected with an insurer or insurers acceptable to the Employer. The Contractor shall immediately inform the Employer in writing if such insurance ceases to be available or otherwise is not maintained in accordance with this Clause or for any reason becomes void or unenforceable.

**Professional
Indemnity
Insurance for
Alternative
Designs at
Contract Stage**

DEVB TCW
No. 3/2014

- (4) If the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause is project specific, the maximum deductible/excess allowed under the insurance policy shall be limited to a maximum of 20% of the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.
- (5) (a) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy is twelve months or less, then either:
- (A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
- (B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or
- (C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 2 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

(b) If (i) the insurance policy effected pursuant to sub-clause (1) or (2) of this Clause contains a limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy, and (ii) the period of insurance under the insurance policy exceeds twelve months, then either:

(A) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall be reinstated in full upon exhaustion of the limit of indemnity by reason of indemnity payments made on account of any claim, loss, damage, liability, cost or expense paid or payable under the insurance policy until the total amount of indemnity payable by the insurer under the insurance policy reaches 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(B) the limit of indemnity in the aggregate for all claims for the period of insurance under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be; or

(C) the limit of indemnity for any one occurrence or series of occurrences arising out of any one event, or each and every claim under the insurance policy shall not be less than 3 times the minimum amount required under sub-clause (1) or (2) of this Clause, as the case may be.

(6) (a) The Contractor shall provide to the Employer within 60 days from the date of notification of acceptance of the Cost Savings Design and thereafter, in the case where the insurance policy effected pursuant to sub-clause (1) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:

(A) an undertaking that the current insurance policy effected pursuant to sub-clause (1) of this Clause complies with the terms in this Clause in the form in Appendix []* to these Special Conditions of Contract; and

* refer to
Appendix F to
DEVB TCW
9/2007

(B) a certified copy of the full insurance policy effected pursuant to sub-clause (1) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix []# to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.

refer to
Appendix G to
DEVB TCW
9/2007

(b) The Contractor shall provide to the Employer, within 60 days from the respective dates of appointment or engagement of his Designer and Independent Checking Engineer, and thereafter, in the case where the insurance policy effected pursuant to sub-clause (2) of this Clause does not cover the entire period of insurance required under that sub-clause, within 7 days of professional indemnity insurance being effected upon the expiry of the earlier insurance policy:

- (A)an undertaking that the current insurance policy effected pursuant to sub-clause (2) of this Clause complies with the terms of this Clause in the form in Appendix []* to these Special Conditions of Contract;
- (B)a certified copy of the full insurance policy effected pursuant to sub-clause (2) of this Clause for the approval of the Employer unless the Contractor can demonstrate to the satisfaction of the Employer that it is not reasonably practicable to provide a certified copy of the full insurance policy in which event the Contractor shall provide a certificate in the form in Appendix []# to these Special Conditions of Contract issued by the insurer or insurance broker of the insurance policy and any information relating to the insurance policy that the Employer may reasonably require.
- (7) If the Contractor shall fail upon request to produce to the Employer satisfactory evidence that there is in force professional indemnity insurance required under this Clause, the Employer may effect and keep in force any such insurance and pay such premium as may be necessary for that purpose. The Employer shall be entitled to deduct such premium, together with expenses incurred, in accordance with the provisions of General Conditions of Contract Clause 86 and/or to recover such amount as a debt from the Contractor.
- (8) In the event of different certificates of completion having been issued for the Works under different Works Orders pursuant to General Conditions of Contract Clause 55, the expression “certificate of completion” shall, for the purpose of this Clause, mean the last of such certificates, excluding the certificates of completion for Works Orders solely for Landscape Softworks and/or Establishment Works.

- (9) In determining the period of insurance under an insurance policy for the purpose of this Clause, any extension or renewal of the insurance policy shall be treated as a separate insurance policy and shall not have the effect of extending the period of insurance.

**Marginal
Notes**

Guidelines

SCC 55

(1) For the purposes of this Clause 55* of these Special Conditions of Contract the following words and expressions shall have the meaning hereby assigned to them:

“approved prefabrication yard” means a prefabrication yard included in the List;

“the List” means the List of Approved Steel Reinforcing Bar Prefabrication Yards maintained by the Government;

“rebar” means a steel reinforcing bar; and

“prefabricated rebar product” includes cut and bent rebar, reinforcement cage and threaded/coupled rebar produced in an off-site prefabrication yard.

(2) Subject to the provisions of this Special Condition of Contract, prefabricated rebar products supplied by an approved prefabrication yard may be used for any part or parts of the Works. The Contractor shall not use prefabricated rebar product supplied by yards not on the List for any part of the Works. Should the Contractor opt to use prefabricated rebar products for any part or parts of the Works, he shall engage an approved prefabrication yard to supply the prefabricated rebar products and submit a proposal (hereinafter referred to in this Clause as “the Contractor’s proposal”) including but not limited to the following information to the Engineer prior to the supply of prefabricated rebar products to the Site:

(a) the name of the approved prefabrication yard to be engaged by the Contractor (hereinafter referred to in this Clause as “the said approved prefabrication yard”);

(b) the part or parts of the Works where the prefabricated rebar products produced by the said approved prefabrication yard are to be used (hereinafter referred to in this Clause as “the works concerned”);

**Use of Off-site
Prefabricated
Steel
Reinforcing
Bar Products
Supplied by
Approved
Steel
Reinforcing
Bar
Prefabrication
Yard**

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No. 10/2018

* The clause no. refer to the SCC Clause in this library and should be amended for individual contracts

- (c) whether cutting and bending of rebars at the said approved prefabrication yard are involved;
 - (d) whether carrying out of the fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the said approved prefabrication yard is involved; if affirmative, records showing the said approved prefabrication yard has obtained separate approval from the Government for such fabrication process(es) to be carried out at the said approved prefabrication yard; and
 - (e) the storage and traceability system of rebar products within the Site for identifying the rebars and prefabricated rebar products produced by the said approved prefabrication yard and other rebars for on-site cutting and bending or for fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors for on-site installation. The Contractor shall seek the approval of the Engineer for such storage and traceability system prior to the delivery of prefabricated rebar products to the Site.
- (3) Further to sub-clause (2) above, upon delivery of the prefabricated rebar products to the Site, the Contractor shall submit to the Engineer the documents showing that such prefabricated rebar products are produced by the said approved prefabrication yard and are in compliance with the quality assurance scheme of the said approved prefabrication yard, and the prefabricated rebar products are in compliance with the Construction Standard CS2 / BS 4449 / BS 4482 / BS 8666 including amendments thereto and replacement thereof and other relevant prevailing technical memorandums, practice notes, codes of practice, specifications and etc. issued by the Government.

- (4) The requirements pertaining to the submission of particulars of reinforcement and testing of reinforcement under the Contract shall not apply in respect of the cut and bent rebars produced by the said approved prefabrication yard for the works concerned. Those requirements not to be applied include but are not limited to the following:
- (a) Submissions
General Specification for Civil Engineering Works 2006 Edition Clauses 15.12 and 15.17(a), (e) and (f); and
 - (b) Testing
General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.33A, 15.36 and 15.37.
- (5) Where the Contractor's proposal involves the carrying out of fabrication of reinforcement cages or threading / coupling of rebars using reinforcement connectors at the said approved prefabrication yard:
- (i) the Contractor shall ensure that the said approved prefabrication yard has obtained separate approval from the Government for such fabrication process(es) to be carried out at the said approved prefabrication yard and shall include such records as required under sub-clause (2)(d) above when submitting the Contractor's proposal to the Engineer under sub-clause (2) above;
 - (ii) the requirements pertaining to the submission of particulars of reinforcement and testing of reinforcement under the Contract, including but not limited to those listed in sub-clause (4) above, shall not apply in respect of reinforcement cages, if any, produced by the said approved prefabrication yard for the works concerned; and

- (iii) the requirements pertaining to the submission of particulars of reinforcement connectors and testing of reinforcement connectors under the Contract shall not apply in respect of the threaded / coupled rebars, if any, produced by the said approved prefabrication yard for the works concerned. Those requirements not to be applied include but are not limited to the following:
- (a) Submissions
General Specification for Civil Engineering Works 2006 Edition Clauses 15.15 and 15.17(d); and
 - (b) Testing
General Specification for Civil Engineering Works 2006 Edition Clauses 15.30, 15.31, 15.32, 15.35 and 15.40.
- (6) Save as expressly provided in sub-clauses (3) to (5) above, the engagement by the Contractor of the said approved prefabrication yard to supply prefabricated rebar products shall not relieve the Contractor from any liability or obligation under the Contract and shall not in any way limit or exclude any right or remedy which the Employer may have against the Contractor under the Contract.
- (7) In the event that the said approved prefabrication yard is removed from the List, the Contractor shall not use any rebar products produced on or after the date of removal from the List by the prefabrication yard concerned in the Works. The Contractor shall not be entitled to any extension of time, additional payment or compensation arising out of or in connection with the removal of the prefabrication yard concerned from the List.

SCC 56

(1) Subject to sub-clause (2) of this Clause, the Contractor shall within 6 months from the date for commencement of the Contract Period as notified by the Engineer (hereinafter referred to in this Clause as “the 6-month period”) employ a minimum total of []# ECMTS Graduates to work on the Site in a trade in which they graduated under the Enhanced Construction Manpower Training Scheme (hereinafter referred to in this Clause as “ECMTS”). For the purposes of this Clause:

(i) “ECMTS Graduate” means a graduate who has successfully completed a training course conducted by the Construction Industry Council under the ECMTS not more than 6 months preceding the date on which the graduate is first employed to work on the Site in accordance with this Clause, and for the avoidance of doubt, “ECMTS Graduate” does not include any graduate who has completed a training course conducted by a contractor or sub-contractor under the Contractor Cooperative Training Scheme administered by the Construction Industry Council; and

(ii) an ECMTS Graduate shall be taken as having successfully completed the relevant training course on the issue date specified in the certificate issued by the Construction Industry Council under the ECMTS.

(2) An ECMTS Graduate employed by a sub-contractor of the Contractor within the 6-month period to work on the Site in accordance with the provisions of this Clause shall be counted towards the minimum total number of ECMTS Graduates specified in sub-clause (1) of this Clause. For the purposes of this Clause, “sub-contractor” means any sub-contractor, irrespective of tier, including any Specialist Sub-contractor and Designated Sub-contractor.

Marginal Notes

Employment of CIC’s Graduates

Guidelines

SDEV’s memo ref. DEVB(Trg) 133/4 (9) dd. 7.12.2012

Applicable to contract with estimated total expenditure of over \$200M and with a construction period of 2 years or longer

insert the number required – see Note 3 in Appendix 1 to SDEV’s memo ref. DEVB(Trg) 133/4 (9) dd. 7.12.2012

- (3) Subject to sub-clause (5) of this Clause, each ECMTS Graduate shall be employed to work on the Site for at least 12 months (hereinafter referred to in this Clause as “the minimum 12-month employment period”). During the employment of the ECMTS Graduate, the Contractor or his sub-contractor, as the case may be, shall pay the ECMTS Graduate a wage of no less than the higher of the following:
- (i) HK\$10,000 per month for the first 6 months of the ECMTS Graduate’s employment and then a wage of no less than HK\$15,000 per month thereafter; or
 - (ii) the minimum wage as provided in the Minimum Wage Ordinance (Cap. 608).
- (4) If, within the 6-month period, the total number of ECMTS Graduate employed by the Contractor and his sub-contractors in accordance with this Clause is below the minimum total number specified in sub-clause (1) of this Clause for a reason beyond the reasonable control of the Contractor, the Contractor shall demonstrate to the Engineer that he has used all reasonable endeavours to comply with this Special Condition of Contract and seek the approval of the Engineer to defer the employment of the remaining ECMTS Graduates under this Clause.
- (5) (a) If the Contractor or his sub-contractor, as the case may be, is unable to employ the ECMTS Graduate to work on the Site for at least 12 months for any of the reasons listed below in this sub-clause (5)(a), the Contractor or his sub-contractor, as the case may be, may subject to sub-clauses (5)(b) and (5)(c) below employ the ECMTS Graduate for a shorter period:
- (i) there is no work or insufficient work under the Contract in the trade in which the ECMTS Graduate graduated; or

- (ii) the ECMTS Graduate resigns on his own accord; or
 - (iii) the ECMTS Graduate is incapacitated by physical or mental illness or is otherwise unable or unfit to discharge the duties of a ECMTS Graduate; or
 - (iv) the ECMTS Graduate has committed any act for which the Contractor or his sub-contractor, as the case may be, is entitled to terminate the employment contract without notice or payment in lieu under the law.
- (b) If any ECMTS Graduate is employed for a period shorter than the minimum 12-month employment period, the Contractor or his sub-contractor, as the case may be, shall within 2 months after the date on which the employment of such ECMTS Graduate ends, replace such ECMTS Graduate with a new ECMTS Graduate for the remaining time under the minimum 12-month employment period, unless:
- (i) there is no work or insufficient work under the Contract that is suitable for an ECMTS Graduate; or
 - (ii) the remaining time under the minimum 12-month employment period is less than 2 months; or
 - (iii) otherwise approved by the Engineer.
- (c) If the Contractor or his sub-contractor, as the case may be, is unable to replace the ECMTS Graduate in accordance with sub-clause (5)(b) of this Clause for a reason beyond the reasonable control of the Contractor, the Contractor shall demonstrate to the Engineer that he has used all reasonable endeavours to comply with sub-clause (5)(b) of this Clause and seek the approval of the Engineer to defer the replacement of the ECMTS Graduate.

- (6) The Contractor shall submit the names and particulars, as required by the Engineer, of the ECMTS Graduates employed to work on the Site.
- (7) The Contractor shall notify the Engineer in writing of any change in the employment terms of an ECMTS Graduate or of the intention of an ECMTS Graduate, the Contractor or his sub-contractor to terminate the employment contract of the ECMTS Graduate to work on the Site, within 3 working days of the Contractor or his sub-contractor knowing the change or intention, whichever is earlier, and provide with the written notification under this sub-clause (7) the reason for the change of employment terms or termination of the employment contract.
- (8) Nothing in this Special Condition of Contract shall derogate from or in any way affect the respective obligations of the Contractor and his sub-contractors to comply with the applicable law in Hong Kong, including relevant employment, labour and anti-discrimination legislation.

To : E/ER *

Contract No.

Works Order No.

Location: _____

Report on Completion of Works

Please be informed that the Works under the above Works Order were considered as complete within the meaning of Clause 55 of the General Conditions of Contract on _____.

The completed Works are available for your final inspection.

(Site Agent) (Date)

Remarks, if any, after inspection:

- *(a) In accordance with Clause 55 of the General Conditions of Contract I hereby certify that the Works under the above Works Order were completed on _____.
- *(b) Others (please give details)

(Signature of Engineer/
Engineer's Representative*) (Date)

* Delete as appropriate