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REDAS DESIGN & BUILD CONDITIONS OF CONTRACT

On 8 August 2001 REDAS officially launched its Design & Build Conditions of Contract for Private Sector Works.

Prior to the introduction of the REDAS Design & Build Conditions of Contract (“the Conditions”) most Private Sector Developers in Singapore adopted with modifications the English JCT Design and Build Conditions of Contract 1998 for their Design and Build Projects.

With the publication of the REDAS D & B Form, there is now available to the real estate and construction industry in Singapore a Form of building contract for Design and Build Projects which takes into account local norms and conditions. There is reference in the Form to local terms such as Temporary Occupation Permit, Certificate of Statutory Completion, and to local organisations such as the Singapore Mediation Centre and the Singapore International Arbitration Centre.

This article shall discuss and examine the essentials of the REDAS D & B Conditions.

Contract Documents:

It is to be noted that the language used in the Conditions is relatively straightforward and devoid of legalese. The Conditions starts off by defining in clause 1.1, the more common and important terms used in the Conditions, for instance, the Employer’s Representative, the Sub Contractor, Construction Documents and Variations.

The Conditions set out in clause 1.7, the various documents which constitute the Contract Documents. Although these documents like the Contractor’s Proposals and the Tender do not have any order of priority, in the event of any discrepancies in the documents, the Employer’s Requirements shall prevail. This seems to be sensible from the Employer’s point of view as his design intent and specific requirements which are of paramount importance to him are reflected in the Employer’s Requirements.

Employer’s Representative:

The Employer’s Representative is tasked to carry out the contract administration responsibilities such as the

certification of progress payments, ensuring that the works are carried out in accordance with the contract provisions and the grant of time extensions. There are no restrictions in terms of qualifications on the appointment of the Employer’s Representative.

Named Sub Contractors:

The Conditions adopt the concept of “Named Sub Contractors”. Essentially, the Employer may require the Contractor to enter into sub contracts for specialised works with the Sub Contractors named in the Contract. This is similar to the concept of Nominated Sub Contractors under most traditional building contracts. However the Employer must at the time of tender inform the Contractor of the price, terms and conditions of the contracts already made with Named Sub Contractors so that the Contractor is fully aware of the same.

Information on Contractor’s Domestic Sub Contractors:

Clause 2.3.3 of the Conditions places an obligation on the Contractor upon the Employer’s request to set out the names of the domestic sub contractor which he intends to engage for the Project in order that the Employer would have an opportunity to comment on their suitability.

Fitness for Purpose:

Not unexpectedly, the Conditions require the Contractor at clause 4.1 to ensure that his design for the Works is fit for its intended purpose. It is noted that the Public Sector Design and Build Conditions of Contract adopt a similar but more stringent “fitness for purpose” clause.

Completion:

The Employer’s Representative issues a “Handing Over Certificate” when the Works are completed. The Contractor is required to apply for such a Certificate to be issued when the Works have been completed in accordance with the Contract and the Temporary Occupation Permit for the project has been issued.

Payment:

During the course of the Works, the Contractor submits his claims for progress payments. The Employer’s Representative would assess these claims and issue the interim payment certificate for payment by the Employer.

As in most forms of building contract, there is a retention sum, the first half of which is to be released after the issue of the Handing Over Certificate while the second half would be released after the issue of the Maintenance Certificate or the issue of the Certificate of Statutory Completion by the authorities whichever is the later.

The Employer's Representative shall issue the Final Payment Certificate within 3 months after the receipt of the Final Statement from the Contractor or the issue of the Maintenance Certificate whichever is the later. However if the Contractor fails to submit his Final Statement despite a written request from the Employer's Representative to do so, the Employer's Representative may proceed to prepare and issue the Final Statement subject to any objections which the Contractor may make within a limited time.

Termination by the Employer:

The Employer may terminate the Contractor's employment either for default by the Contractor or without any default on his part. Where the termination is made without any default by the Contractor, the Contractor is entitled to such compensation including loss of profits (if any) on any uncompleted part of the Works at the time of termination.

Where the termination is based upon default on the grounds of the Contractor failing to proceed with due diligence or failing to comply with the written instructions of the Employer's Representative or on the grounds of insolvency, the termination is effected by the Employer giving a Notice of Termination to the Contractor.

Notwithstanding the termination of the Contractor's employment, the Employer may retain and use the Construction Documents and all plans and drawings relating to the Works until the completion of the Works. However, the copyright of all drawings and documents prepared by the Contractor shall remain with him.

Further, in the case of termination for default, the Employer may engage the Contractor's design consultants to complete the Works.

Failure by Employer to pay Interim Payment Certificate:

Suspension of works:

The Contractor has the option to either suspend his works or terminate his employment under the Contract when the Employer fails to make payment due under an Interim Payment Certificate.

Under clause 31.1.1, where the Employer fails to make payment due under an Interim Payment Certificate then upon the expiry of 28 days from the due date and after giving a 14 day Written Notice to the Employer, the Contractor may suspend his works. Such suspension shall not affect the rights of the Contractor to terminate his employment under the Contract.

Termination by Contractor:

Under the Conditions, the Contractor may after the expiry of the relevant 28-day Notice in Writing given to the Employer, terminate his employment. In such event the Contractor may claim against the Employer for any loss of profits on the uncompleted Works at the time of termination.

Right to take over Works in lieu of Termination:

In certain circumstances where the Employer finds that it is not practical to terminate the Contractor's employment for default, he can choose to give a Notice of Taking Over in lieu of a Notice of Termination to the Contractor.

Upon the issue of this Notice of Taking Over, the Employer can take over and complete part of the Works without having to terminate the Contractor's employment.

Dispute Resolution:

The Parties may refer their dispute to the Singapore Mediation Centre for mediation. However, reference to mediation is not compulsory and the Parties may decide to refer their dispute directly to arbitration instead.

Where the dispute is referred to arbitration pursuant to clause 33.2, the Parties may by agreement appoint an arbitrator of their choice. If they are unable to agree on the choice of an arbitrator among themselves, the appointment shall be made by the Chairman of the Singapore International Arbitration Centre ("SIAC") and the arbitration shall be conducted under the SIAC International Arbitration Rules.

Editorial Note:

The above article examines only the more relevant terms of the REDAS D & B Conditions, and the reader is urged to read the Conditions itself to fully acquaint himself of the Conditions as a whole.

Chan Tan & Partners were engaged by REDAS to assist in the drafting of the REDAS D & B Conditions.