

Determination

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a sample agreement for
engaging the existing NSC to
complete the works as a direct
contractor upon the determination
of the previous MC

Ref. 2022.4

Agreement with NSC for Direct Contract after MC Insolvency

22nd July 1996

Ma Leung & Associates
22/F., Asian House,
No. 1 Hennessy Road,
Wanchai,
Hong Kong

Attention : Mr. Simon Leung/Mr. Patrick Chiu

Dear Sirs,

Redevelopment of Laws Industrial Plaza
at 786 - 788 Cheung Sha Wan Road, Hong Kong
Curtain Wall and Cladding Works
Draft Form of Agreement for Outstanding Works

by Direct Contractor

We refer to the draft Form of Agreement submitted by YKK at the previous meeting held at your office on 15/7/96.

We have preliminarily examined the Agreement and our comments are marked on the enclosed draft copy of the Agreement for your reference. In particular, please note the following points :-

1. The whole Agreement should be drafted between the Employer and a 'Completion Contractor' who shall be responsible to finish the outstanding works (including original Sub-Contract works and variation works) and defect rectification works for the Curtain Walling and Cladding Sub-Contract subsequent to the automatic determination of the employment of Pentad under the Main Contract and therefore the same to all the Sub-Contractors including YKK as the Curtain Nominated Sub-Contractor.

YKK is happened to be the 'Completion Contractor' elected by the Employer in this case should the Agreement be reached.

(Cont'd)

2. The value of the Completion Contract works as mentioned in paragraph 1 above shall mean the Completion Contract Sum, (Clause 3 of the draft Agreement refers) which should be a separate account from the outstanding amount due to or from YKK under the original Nominated Sub-Contract between YKK and Pentad. The outstanding amount shall be settled between YKK and the liquidator/official receiver of Pentad according to the relevant statutes regarding bankruptcy and upon the finalisation of the Main Contract account between the Employer and the liquidator/official receiver. Clause 2 of the draft Agreement is therefore not valid and should be deleted.

Shall be
paid under
the previous contract → X

It should be further noted that the Completion Contract Sum shall only include prices for the works which had not been paid by Pentad under the original Nominated Sub-Contract and the Employer under the original Main Contract. (Recital Clause 4 of the draft Agreement refers)

3. The actual scope of the Completion Contract Works, the relevant amendments to the standard form of Contract proposed and the contract particulars such as the contract period, amount of retention money, rate of liquidated damages, insurance provisions etc. are all to be further defined and agreed between the Employer and YKK.

When the payment in respect of works being certified but not yet handed after the date of determination 27

4. The liability of YKK for the warranty of the curtain wall and cladding system under the original Nominated Sub-Contract (in consideration of the works carried out by the previous direct contractor engaged by the Employer) and under this Completion Contract should be resolved and clearly defined in the Agreement.

Yours faithfully,

Levett and Bailey

Encl.

HKY/AH/KS/tm

c.c. Kingdom Land Development Ltd.

c/o Laws (REA) Ltd. - Mr. Raymond Law/Mr. Ambrose Chan

YKK- Mr. I. Mugita