

Form of design checker's warranty

APPENDIX 'E' SCC FORM OF DESIGN CHECKER'S WARRANTY

Independent
Checker

Independent
Design
Checker → E

APPENDIX 'E'

SPECIAL CONDITIONS OF CONTRACT

FORM OF DESIGN CHECKER'S WARRANTY



THIS WARRANTY is made the day of 200

IN FAVOUR OF [NAME OF EMPLOYER] (the "Employer")

WHEREAS :

1. The Independent Checker has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain function, duties and obligations forming part of the check of the design of those Works and Temporary Works and the quality control of the Works to be carried out by the Contractor under the terms of a contract with the Employer dated 200 (the "Contract") for the execution of the Student Hostels Phase 3 Development, Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong.
2. The Contract requires the Contractor to obtain from the Independent Checker a warranty in accordance with the provisions of Clause 1 hereof and to give the undertakings contained in Clause 2 hereof insofar as these matters relate to the Works.

THIS DEED WITNESSES as follows :

1. The Independent Checker warrants to the Employer that he shall exercise all reasonable skill, care and diligence in performing his functions, duties and obligations under the appointment agreement and shall perform those functions, duties and obligations in such a manner as not to cause the Contractor to be in breach of the Contract.
2. The Independent Checker undertakes that in the event of a failure to perform any of his functions, duties and obligations in accordance with Clause 1 hereof he shall indemnify the Employer against any losses or damages sustained by the Employer arising out of such failure.
3. This undertaking and warranty is not intended to be in substitution for any rights that the Employer may have either against the Contractor or the Independent Checker at Common Law.
4. The Employer shall be entitled to assign the benefit of his Warranty at any time without the consent of the Independent Checker being required.

Assignment of benefit

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3. In any event that any claim, dispute or difference shall arise under or in connection with this Warranty the same shall be referred to arbitration in Hong Kong Special Administrative Region in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules. Any such reference shall be a domestic arbitration for the purposes of Part II of the Arbitration Ordinance.

IN WITNESS WHEREOF this Warranty has been executed as a Deed on the day first before written.

SIGNED, SEALED AND DELIVERED by or on behalf of the said Independent Checker

..... Date

OR

THE COMMON SEAL of the Independent Checker was hereunto affixed

..... Date

In the presence of

Name ID Card No.
(CAPITAL LETTERS)

Address

Occupation

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Handwritten signature/initials

APPENDIX 'E' SCC
FORM OF DESIGN CHECKER'S WARRANTY

GUIDANCE NOTES

(a) The wording for the Warranty set out on page SCC/E/1 is predicated on the basis of one Independent Checker for the whole of the Works. In the event that there is more than one Independent Checker there shall be designated a Principle Independent Checker and the remaining Independent Checkers shall be described as Supplementary Independent Checkers. The Supplementary Independent Checkers shall each be named in accordance with the elements of the Works to be checked. For example, if there is to be a Supplementary Independent Checker for the Electrical & Mechanical Works, he shall be referred to as the Electrical & Mechanical Independent Checker. Recital 1 of each of the Warranties will need to be modified as shown below.

(b) Wording for the Principal Independent Checker

"The Independent Checker has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain functions, duties and obligations as therein mentioned comprising principally the checking of the design of, and the quality control of, the Works to be executed by the Contractor under the terms of a contract between the Contractor and the Employer dated [] ("the Contract") for the design and construction of the Student Hostels Phase 3 Development Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong but with the exception of those parts of the said Works in relation to which the Contractor has appointed, respectively, a [name of the supplementary Independent Checker*] Independent Checker and a [name of the Supplementary Independent Checker*] Independent Checker."

*e.g. Structural, Landscape, etc.

(c) Wording for Supplementary Independent Checker

"The Independent Checker has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain functions, duties and obligations as therein mentioned comprising principally the checking of the design of, and the quality control of, the [description of the element of Works#] to be executed by the Contractor under the terms of a contract between the Contractor and the Employer dated [] ("the Contract") for the design and construction of the Student Hostels Phase 3 Development, Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong."

e.g. structural element of the Works

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FORM OF DESIGN CHECKER'S WARRANTY

(d) It will also be necessary to provide to the Employer a full description of the element of the Works to be checked by the Supplementary Independent Checker or Checkers. This full description can be contained in the terms of appointment between the Contractor and the Independent Checker a copy of which must be passed to the Employer in accordance with Clause 2(2)(f) of the General Conditions of Contract.

(e) If the Independent Checkers are a partnership then the Warranty should be signed, sealed and delivered by affixing a small red seal to the right-hand edge of the Warranty immediately below the line "SIGNED, SEALED AND DELIVERED by or on behalf of the said Independent Checker" and above ".....Date". If the Independent Checkers are a Limited Company then the Common Seal of the Company should be affixed in accordance with the Memorandum and Articles of Association of the company on the right hand edge of the Warranty immediately below the line "THE COMMON SEAL of the Independent Checker was hereunto affixed" and above "..... Date". In order to make the Common Seal legible it should be impressed over a large red seal. In both cases the Witness section should be completed and, in the case of the affixing of the Common Seal, the nature of the Witness should comply with the requirements set out in the Memorandum and Articles of Association of the Company.

Form of designer's warranty

Designer's
Warranty

APPENDIX 'F' SCC FORM OF DESIGNER'S WARRANTY

APPENDIX 'F'

SPECIAL CONDITIONS OF CONTRACT

FORM OF DESIGNER'S WARRANTY

THIS WARRANTY is made the day of 200

IN FAVOUR OF [NAME OF EMPLOYER] (the "Employer")

WHEREAS :

1. The designer has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain function, duties and obligations forming part of the Contractor's design obligations for the Works to be carried out by the Contractor under the terms of a contract with the Employer dated 200 (the "Contract") for the execution of the Student Hostels Phase 3 Development, Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong.
2. The Contract requires the Contractor to obtain from his designer a warranty in accordance with the provisions of Clause 1 hereof and to give the undertakings contained in Clause 2 hereof insofar as these matters relate to the Works.

- reasonable skill and care

THIS DEED WITNESSES as follows : - for purpose

1. The designer warrants to the Employer that he shall exercise all reasonable skill, care and diligence in performing his functions, duties and obligations under the appointment agreement and shall perform those functions, duties and obligations in such a manner as not to cause the Contractor to be in breach of the Contract.
2. The designer undertakes that in the event of a failure to perform any of his functions, duties and obligations in accordance with Clause 1 hereof he shall indemnify the Employer against any losses or damages sustained by the Employer arising out of such failure.
3. This undertaking and warranty is not intended to be in substitution for any rights that the Employer may have either against the Contractor or the designer at Common Law.
4. The Employer shall be entitled to assign the benefit of his Warranty at any time without the consent of the Independent Checker being required.

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In any event that any claim, dispute or difference shall arise under or in connection with this Warranty the same shall be referred to arbitration in Hong Kong Special Administrative Region in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules. Any such reference shall be a domestic arbitration for the purposes of Part II of the Arbitration Ordinance.

IN WITNESS WHEREOF this Warranty has been executed as a Deed on the day first before written.

SIGNED, SEALED AND DELIVERED by or on behalf of the said designer

..... Date

THE COMMON SEAL of the designer was hereunto affixed

..... Date

In the presence of

Name ID Card No.
(CAPITAL LETTERS)

Address

Occupation

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APPENDIX 'F' SCC
FORM OF DESIGNER'S WARRANTY

GUIDANCE NOTES

The wording for the Warranty set out on page SCC/F/1 is predicated on the basis of one designer for the whole of the Works. In the event that there is more than one designer there shall be designated a Principle designer and the remaining designer shall be described as Supplementary designers. The Supplementary designers shall each be named in accordance with the elements of the Works to be designed. For example, if there is to be a Supplementary designer for the Electrical & Mechanical Works he shall be referred to as the Electrical & Mechanical designer. Recital 1 of each of the Warranties will need to be modified as shown below.

Wording for the Principal designer

"The designer has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain functions duties and obligations forming part of the design obligations to be carried out by the Contractor under the terms of a contract between the Contractor and the Employer dated [] ("the Contract") for the design and construction of the Student Hostels Phase 3 Development, Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong but with the exception of those parts of the said functions duties and obligations in relation to which the Contractor has appointed, respectively, a [name of the supplementary designer*] designer and a [name of the Supplementary designer*] designer."

*e.g. Structural, Landscape, etc.

Wording for Supplementary designer

"The designer has contracted with [name of Contractor] ("the Contractor") under the terms of an agreement dated (the "appointment agreement") to carry out certain functions, duties and obligations in relation to the [description of the element of Works#] which form part of the Contractor's design obligations to be carried out by the Contractor under the terms of a contract between the Contractor and the Employer dated [] ("the Contract") for the design and construction of the Student Hostels Phase 3 Development, Cornwall Street, Kowloon Tong, Kowloon for City University of Hong Kong."

e.g. structural element of the Works

(d) It will also be necessary to provide to the Employer a full description of the element of the Works to be designed by the Supplementary designer or designers. This full description can be contained in the terms of appointment between the Contractor and the designer a copy of which must be passed to the Employer in accordance with Clause 4(9) of the General Conditions of Contract.

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(e) If the designers are a partnership then the Warranty should be signed, sealed and delivered by affixing a small red seal to the right-hand edge of the Warranty immediately below the line "SIGNED, SEALED AND DELIVERED by or on behalf of the said designer" and above ".....Date". If the designers are a Limited Company then the Common Seal of the Company should be affixed in accordance with the Memorandum and Articles of Association of the company on the right hand edge of the Warranty immediately below the line "THE COMMON SEAL of the designer was hereunto affixed" and above "..... Date". In order to make the Common Seal legible it should be impressed over a large red seal. In both cases the Witness section should be completed and, in the case of the affixing of the Common Seal, the nature of the Witness should comply with the requirements set out in the Memorandum and Articles of Association of the Company.