

PREAMBLE TO THE GENERAL CONDITIONS OF CONTRACT AND ADDENDUM

DEFINITION

The Conditions of Contract applicable to this contract shall be document entitled: “JKR SARAWAK GENERAL CONDITIONS OF CONTRACT PWD 75 (VER. 2021)”.

Copies of the General Conditions of Contract are not bound into the Tender Document but are available separately.

The completed Appendix to the General Conditions of Contract is included in this document as in the Appendix to Form of Tender (Works).

ADDENDUM TO GENERAL CONDITIONS OF CONTRACT

It is agreed that the below shall replace the stated clause in the General Conditions of Contract and be read as if it was part of the General Conditions of Contract:

“Clause 4.2 Contract Documents to be Mutually Explanatory”

Refer to Addendum No. 1 (Rev. 1.0) to The JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 10 Performance Security”

Refer to Addendum No. 1 (Rev. 1.0), 2 and 3 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 25 Insurance”

Refer to Addendum No. 2 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 36 Partial Occupation by Employer”

Refer to Addendum No. 3 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 38 Final Certificate”

Refer to Addendum No. 2 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 40 Delay and Extension of Time”

Refer to Addendum No. 1 (Rev. 1.0) and 2 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 41 Claims of Loss and Expense Caused by Delay”

Refer to Addendum No. 1 (Rev. 1.0) to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 42 Claims, Disputes and Dispute Resolution”

Refer to Addendum No. 2 to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

“Clause 54 Advance Payment”

Refer to Addendum No. 1 (Rev. 1.0) to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021).

This **Addendum No. 1** (Rev. 1.0) to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021) consisting of five (5) pages (including this page) which is and shall be read and construed as part of the said Contract.

..... Signature of Contractor Signature of Officer
(Name in full)	(Name in full)
I.C. No.	Designation
In the capacity of	
Duly authorised to sign for and on behalf of	Duly authorised to sign for and on behalf of the Government

..... Contractor's Chop or Seal Official Chop
Witness	Witness
Name in full	Name in full
I.C. No.	
Occupation	Designation.....
Address	Address

**ADDENDUM NO. 1 (Rev. 1.0) TO THE JKR SARAWAK GENERAL CONDITIONS
OF CONTRACT
PWD 75 (VER. 2021)**

NO.	AMENDMENTS
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The General Conditions of Contract shall be amended as indicated below and be read as if it is part of the General Conditions of Contract.

1. Page 4-5, Clause 4.2 – Contract Documents to be Mutually Explanatory

Substitute Clause 4.2.2 with the following:

“4.2.2 Contract based on Bills of Quantities

- (a) Form of Agreement
- (b) Letter of Acceptance
- (c) Correspondence and/or Minutes of Meetings referred to in that Letter of Acceptance
- (d) Form of Tender
- (e) Addenda
- (f) Conditions of Tendering
- (g) General Conditions of Contract
- (h) Bills of Quantities
- (i) Drawings
- (j) Specifications of Particular Application or Special Specification
- (k) Standard Specification”

2. Page 13, Clause 10 – Performance Security

Add the following to Clause 10.3:

10.3 Validity

“The minimum period of the Performance Security is(words)(figures)..... months.”

3. Page 48-49, Clause 40.5 – Causes of Delay

Substitute Clause 40.5(a)(xiii) with the following and add in new clauses, Clause 40.5(a)(xiii) and Clause 40.5(a)(xiv) after Clause 40.5(a)(xii):

Clause 40.5(a)(xiii)

“where in relation to any work items under this Contract for which a Provisional Sum and/or provisional quantity has been allowed, the final aggregated value of all such work items is more than twenty (20) percent greater than the aggregated value allowed for all such work items, owing to increased scope of work or quantities; or”

Clause 40.5(a)(xiv)

“by delay on the part of nominated sub-contractor and/or nominated suppliers of their works, and such delay shall be caused by the same reasons affecting their work as stated above in the sub-clauses (i) to (xiii) inclusive (provided that the same are not due to any act, negligence, default or breach of supplier and/or the Contractor, or any of the servants or agents of such nominated subcontractor or nominated supplier or the Contractor). “

4. Page 51, Clause 41 – Claims of Loss and Expense Caused By Delay

Substitute Clause 41 with the following:

“If the regular progress of the Works or any part thereof has been materially affected by reasons as stated under Clause 40.5 (a)(iii), (vi), (ix) and (xiv) (and no other), and the Contractor has incurred direct loss and/or expense beyond that reasonably contemplated and for which he would not be reimbursed by a payment made under any other provisions in this Contract, then the Contractor shall make his claim for such direct loss and/or expense in accordance with Clause 42, except that in the case of ongoing delays, the time limit for the provision of the substantiated claim shall apply from when the cause of the delay has ceased, or such other time as agreed by the Superintending Officer.”

5. Page 59, Clause 54 – Advance Payment

Insert New Clause 54 after Clause 53:

“54 ADVANCE PAYMENT

54.1 The Contractor, upon written application to the Employer shall be entitled to an advance payment on the Contract amounting to 25% of the value of the Contract Sum less Provisional Sums (hereinafter referred to as the “Builder’s Work”) but subject to a maximum of RM10 million or whichever is lower and the Nominated Sub-Contractor shall be entitled to an advance payment on the Nominated Sub-Contract amounting to 20% of the value of the Nominated Sub-Contract Sum but subject to a maximum

of RM5 million or whichever is lower, on compliance with the following conditions:

- (a) on return of the Letter of Acceptance duly signed by the Contractor together with the Performance Bond, insurance policies, confirmation from SOCSO Authorities and the receipts for all premium paid;
- (b) production of a Banker's Guarantee in the approved format equal in value to the advance proposed to be paid;
- (c) Submission of the Banker's Guarantee not later than 3 months from the date of the possession of Site.

54.2 The advance payment shall be recouped when the cumulative total value of the Builder's Work executed and certified (including the amount certified for materials on site) reaches twenty-five percent (25%) of the total contract value of Builder's work, by way of a fixed percentage deduction from the total certified value of the Builder's Work executed and certified (including the amount certified for materials on site) during the period covered by an Interim Certificate, in all the subsequent Interim Certificates on the basis that the advance payment made shall be fully recovered in the Interim Certificate in which the cumulative total certified value of the Builder's Work executed and certified (including the amount certified for materials on site) reaches seventy-five percent (75%) of the total contract value of the Builder's Work. The deduction shall be calculated as follows:

$$\text{RM D} = 200 \frac{A}{B} \text{ percent of RM P}$$

Where RM D = cumulative deduction to be made in Interim Certificate

RM A = total amount of advance paid,

RM B = total contract value of Builder's Work

RM P = gross certified value of Builder's Work executed (including the amount certified for materials on site) or agreed cumulative scheduled payments in excess of 25% of RM B

- 54.3 The liability under the advance guarantee shall be terminated upon realization by the Government of the full sum of advance paid. However, if the full sum of the advance paid cannot be realised before the completion date of the contract or any authorised extension thereof or if the contract been determined before the date of the completion, then the balance of the advance repayable to the Government shall be recovered from the advance guarantee.

For the avoidance of doubt, notwithstanding anything contained in this clause the Parties hereby agree that the entitlement under this clause shall always be subject to the approval of the Employer.”

This **Addendum No. 2** to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021) consisting of five (5) pages (including this page) which is and shall be read and construed as part of the said Contract.

..... Signature of Contractor Signature of Officer
(Name in full)	(Name in full)
I.C. No.	Designation
In the capacity of	
Duly authorised to sign for and on behalf of	Duly authorised to sign for and on behalf of the Government

..... Contractor's Chop or Seal Official Chop
Witness	Witness
Name in full	Name in full
I.C. No.	
Occupation	Designation.....
Address	Address

**ADDENDUM NO. 2 TO THE JKR SARAWAK GENERAL CONDITIONS
OF CONTRACT
PWD 75 (VER. 2021)**

NO.	AMENDMENTS
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The General Conditions of Contract shall be amended as indicated below and be read as if it is part of the General Conditions of Contract.

1. Page 12, Clause 10.1 – Due Performance

Substitute Clause 10.1 with the following:

“The Contractor shall at his own expense provide a Performance Security amounting to five (5) percent of the original Contract Sum for the due performance of the Contract. The Performance Security shall be in either of the following forms:

- (a) a bond with a licensed bank or such other financial institution(s) incorporated in Malaysia acceptable to the Employer and shall be in the form and terms approved by the Employer; or
- (b) a continuing guarantee sum where the Contractor shall allow deduction of ten (10) percent from interim payments until the total amount deducted aggregate to a sum equivalent to five (5) percent of the Contract Sum.”

2. Page 27, Clause 25.1(b)(ii) – Workmen’s Compensation Insurance for Local Workmen not Subject to SOCSO

Substitute Clause 25.1(b)(ii) with the following:

“Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the date of possession of Site until the date of issuance of Certificate of Completion of Making Good Defects and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of Works and rectification of Defects pursuant to Clause 37.”

3. Page 28, Clause 25.1(c)(iii) – Workmen’s Compensation Insurance for Foreign Workers

Substitute Clause 25.1(c)(iii) with the following:

“Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and any sub-contractors from the date of possession of Site until the date of issuance of Certificate of Completion of Making Good Defects and in such manner that the Employer, the Contractor and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 37.”

4. Page 28, Clause 25.2(c) – All Risks Insurance

Substitute Clause 25.2(c) with the following:

“Such insurance policy or policies shall be effected and maintained in the joint names of the Employer and the Contractor and the sub-contractors from the date of possession of Site until the date of issuance of Certificate of Completion of Making Good Defects, notwithstanding any arrangement for sectional completion or partial occupation by the Employer under this Contract, and in such manner that the Employer, the Contractor, nominated sub- contractors and any sub-contractors are also covered during the Defects Liability Period for any claim which may arise in the course of the execution of the Works and rectification of Defects pursuant to Clause 37 or the date of determination of the employment of the Contractor under Clause 44 or termination of the Contract under Clause 45, whichever is the earlier.”

5. Page 45, Clause 38.2(a) – Final Certificate shall be Conclusive Evidence

Substitute Clause 38.2(a) with the following:

“The Final Certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether under Clause 42 or otherwise) that the Works have been properly carried out and completed, properly and accurately measured and valued in accordance with this Contract, save as regards any matter in respect of which notice in writing shall have been given in accordance with Clauses 42 before the Final Certificate has been issued and save in so far it is proven in the said proceedings that any sum mentioned in the said certificate is erroneous by reason of:

- (i) fraud, dishonesty or fraudulent concealment relating to the Works or any part thereof or to any matter dealt with in the said certificate; or

- (ii) any defect (including any omission) in the Works which reasonable inspection or examination at any reasonable time during the course of the execution of the Works or before the issue of the said certificate would not have disclosed; or
- (iii) any accidental inclusion or exclusion of any work, material or figure in any computation or any mathematical error in any computation.”

6. Page 47, Clause 40.1 – Condition Precedent Notice

Substitute Clause 40.1 with the following:

- “(a) Where the progress of the Works is delayed by a cause or causes in such a manner which might reasonably be expected to result in delay in the Works reaching Practical Completion within the relevant time referred to in Clause 34, it is a condition precedent that the Contractor shall, as soon as practicable and (other than for exceptionally inclement weather as covered below) in any event not later than seven (7) days after the cause of the delay first arose, give a notice in writing to the Superintending Officer:
- (i) stating, with as much detail as is possible, the nature of the cause of the delay and, where possible, the extent of the delay; and
 - (ii) stating the steps being taken to alleviate and otherwise deal with the delay and the cause thereof.
- (b) If, for any reason, Clause 40.1(a) is not fully satisfied, then the Contractor shall not be entitled to an extension of time for Practical Completion of the Works. The Employer shall have no liability whatsoever to the Contractor relating to or arising from the Contractor’s inability or failure to satisfy Clause 40.1(a).”

7. Page 48, Clause 40.3 – Decision by Superintending Officer

Substitute Clause 40.3 with the following:

“Subject to compliance with Clause 40.1 and 40.2, unless otherwise decided by the Superintending Officer, and subject to the Contractor having provided the Superintending Officer with such other information and material as the Superintending Officer may request in order to demonstrate and support the effect on the critical path of the Works and the delay in the Works reaching Practical Completion, he shall, upon it becoming reasonably apparent that the progress of the Works is delayed and the Contractor has provided such other information and material as the Superintending Officer may have requested and subject to Clause 11.4, determine what, if any, extension of time for Practical

Completion of the Works shall be granted to the Contractor and shall thereupon notify the Contractor in writing accordingly.”

7. Page 51, Clause 42.1 – Contractor’s Claims and Conditions Precedent

Substitute Clause 42.1 with the following:

“The Contractor shall not have any right to submit any claims, initiate any action or proceedings against the Employer, whether in contract or tort (including negligence), unjust enrichment or, in so far as legally possible, pursuant to any other principle of law in respect of any matter, fact or thing whatsoever arising out of or in connection with or under this Contract or the Works (hereinafter referred to as “the event”), unless:

- (a) the Contractor has given the Superintending Officer written notice of his intention to claim not later than fourteen (14) days after the Contractor could reasonably have been aware of the event;
- (b) the Contractor lodges the claim within thirty (30) days after giving the notice in writing pursuant to the preceding paragraph, the form of the claim complying with Clause 42.1(c) below and when lodging the claim, the Contractor provides the Superintending Officer with sufficient detailed particulars to enable the Superintending Officer to make an informed decision in respect of the claim; and
- (c) provided always that each claim is in writing and specifies:
 - (i) the basis for the claim, whether based on a term of the contract or otherwise, and if based on a term of the contract, clearly identifying the specific term;
 - (ii) the facts relied upon in support of the claim in sufficient detail to permit verification;
 - (iii) details of the quantifications of the sums or amounts claimed, sufficient to show clearly the sums or amounts claimed in respect of the claim and the manner in which they have been calculated; and
 - (iv) all receipts, invoices, delivery orders, payslips and any other documentary evidence submitted for verification of the claim shall be certified by Contractor’s auditors or chartered accountants.

Subject to Clause 11.4, the Superintending Officer shall thereafter determine the amount considered to be due to the Contractor, if any, and advise the Contractor of his assessment, and the Contract Sum shall be adjusted accordingly.”

This **Addendum No. 3** to the JKR Sarawak General Conditions of Contract PWD 75 (VER. 2021) consisting of three (3) pages (including this page) which is and shall be read and construed as part of the said Contract.

..... Signature of Contractor Signature of Officer
(Name in full)	(Name in full)
I.C. No.	Designation
In the capacity of	
Duly authorised to sign for and on behalf of	Duly authorised to sign for and on behalf of the Government

..... Contractor's Chop or Seal Official Chop
Witness	Witness
Name in full	Name in full
I.C. No.	
Occupation	Designation.....
Address	Address

**ADDENDUM NO. 3 TO THE JKR SARAWAK GENERAL CONDITIONS
OF CONTRACT
PWD 75 (VER. 2021)**

NO.	AMENDMENTS
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The General Conditions of Contract shall be amended as indicated below and be read as if it is part of the General Conditions of Contract.

1. Page 13, Clause 10.4 – No Early Release of Performance Security

Substitute Clause 10.4 with the following:

“For the avoidance of doubt, nothing contained in the Contract Documents, Clause 35 and Clause 36 hereof shall entitle the Contractor to the release of the whole or any part of the Performance Security deposited by him. The Performance Security shall be released only upon the issuance of the Final Certificate.”

2. Page 42-43, Clause 36 – Partial Occupation by Employer

Clause 36.2 shall now be “Occupation of Part without Consent”. Thus, Clause 36.3 (a) and (b) shall now be Clause 36.2 (a) and (b).

Substitute Clause 36.2 (a) with the following and add in new Clauses 36.2 (c), (d) and (e) after Clause 36.2 (b):

“36.2 Occupation of Part without Consent

- (a) Notwithstanding Clause 36.1, the Employer may enter and occupy any part of the Works prior to the completion of the whole of the Works without the consent of the Contractor, provided that:
 - (i) the completion of the Works has been delayed, and
 - (ii) such entry and occupation of such part of the Works by the Employer can be effected without any unreasonable disturbance to the Contractor’s arrangements for completing the remainder of the Works.
- (c) In the event of a delay in the completion of the Works and a Certificate of Non-Completion has been issued by the Superintending Officer pursuant to Clause 39.1, the Employer may, at its discretion, consider an appropriate reduction of the Liquidated and Ascertained Damages in respect of the portions of the Works that have been completed and occupied, in accordance with Clause 36.2(a).

- (d) The Contractor shall be entitled to a reduction of the Liquidated and Ascertained Damages only if the following conditions are met:
 - (i) The Contractor has made reasonable efforts to proceed with the Works regularly and diligently; and
 - (ii) The Contractor has achieved ninety percent (90%) physical progress based on the works programme endorsed by the Superintending Officer pursuant to Clause 14.3.
- (e) For the purposes of this clause, Clause 36.1(a) and (b) shall apply mutatis mutandis to any part of the Works occupied by the Employer without the Contractor's consent."

Clause 36.3 shall now be "Consequential Effect". Thus, Clause 36.2 (a), (b) and (c) shall now be Clause 36.3 (a), (b) and (c).

Substitute Clause 36.3 (a) and (b) with the following, while Clause 36.3 (c) remains unchanged:

"36.3 Consequential Effect

- (a) Upon the expiry of the Defects Liability Period for the occupied part, whether or not occupied with the Contractor's consent, and upon the Superintending Officer's satisfaction that all Defects in the occupied part, as required to be rectified under Clause 37, have been duly made good by the Contractor, the Superintending Officer shall issue a certificate to that effect.
- (b) Notwithstanding the partial occupation of any part of the Works by the Employer, with or without its consent, the Contractor shall insure and keep insured the Works in the manner as stipulated under Clause 25 and the Contractor shall give notice to the insurer of such partial occupation."

Note:

There is no express requirement for a Certificate of Partial Occupation to be issued or for the commencement date of the Defects Liability Period to be determined when the Employer enters and occupies part of the Works without consent, except as provided in Clause 36.2 (b) (Occupation of Part without Consent), which states that 'the provisions of this clause shall apply in the same manner as if the Contractor had consented to the Employer taking possession of such part'. This differs from Clause 36.1(a) and (b), where the Superintending Officer is required to issue a Certificate of Partial Occupation and the Defects Liability Period commences on the date the Employer takes possession and occupies such part.