

TENDER DOCUMENTS
GENERAL CONDITIONS OF CONTRACT

INDEX

1	DEFINITIONS	2
2.	FORMATION OF CONTRACT AND VALIDITY	2
3.	CONTRACTUAL OBLIGATION	3
4.	INDEPENDENT CONTRACTOR.....	4
5.	CONTRACTOR TO INFORM HIMSELF	4
6.	SUFFICIENCY OF CONTRACT PRICES.....	4
7.	TENDER SECURITY & PERFORMANCE SECURITY	5
8.	SCOPE OF SUPPLIES.....	6
9.	ORGANIZATION.....	7
10.	DELIVERY.....	8
11.	CONTRACTOR'S OBLIGATION AS TO THE WORKS	9
12.	INSPECTION, ACCEPTANCE	12
13.	DEFECTS LIABILITY PERIOD	13
14.	REMEDIES AND POWER.....	14
15.	PRICES. PAYMENTS.....	16
16.	CONCLUDING PROVISIONS	16
17	FORCE MAJEURE	17
18	CONFIDENTIALITY	18
19	OFFERS, PAYMENTS, AGREEMENT AND PROMISES	19

1 DEFINITIONS

Employer means Companhia de Electricidade de Macau – CEM, S.A. (referred to as CEM hereafter).

Contractor means the person(s), firm, company, consortium, joint venture, whose Tender has been accepted by CEM and includes the Contractor's personnel, successors and permitted assignees.

Engineer means the person(s) appointed by CEM to act as Engineer for the purposes of the Contract .

Time for completion means the guaranteed time of completion of the Works as defined hereinafter.

Site(s) means all places where the Works are to be executed or other places provided by CEM for the purposes of the Contract.

Contract Price means the sum finally agreed upon subject to such additions hereto or deductions therefrom as may be made under the provisions hereinafter contained.

LOA letter of acceptance means letter notifying the selected Tenderer of the acceptance by CEM of his Tender and setting out the Contract conditions.

2. FORMATION OF CONTRACT AND VALIDITY

2.1 This Contract shall enter into force upon the signature of the Letter of Acceptance, notwithstanding the provisions set forth in the Instructions to Tenderers whereby, the Contractor shall arrange to commence the Works upon receipt of the Letter of Acceptance. It shall cease upon signature of the Defects Liability Certificate.

2.2 This Contract shall consist of the following documents including their amendments and other related documents:

- The Letter of Acceptance
- The Special Conditions of Contract
- These General Conditions of Contract
- The Technical Conditions and Specifications
- The Minutes of Clarification meetings (if applicable)
- The Tenderer's Proposal

Tender Documents / General Conditions of Contract

- 2.3 Each Contract document shall constitute an integral part of this Contract to the extent that each shall interpret and complement the other.
- 2.4 In case of apparent contradictions in the Contract documents, to the extent that they cannot be reconciled, the preceding document shall prevail over the documents that follow, in the sequence set forth here above and, for documents on the same level as per above list, that document issued at a later date shall prevail over the earlier ones.
- 2.5 The Contractor, by accepting the LOA waives his general and any particular terms and/or conditions of Business, except as otherwise agreed upon.
- 2.6 Except as otherwise provided for, no certificate given, no payment made nor any approval shall be construed as acceptance of faulty or defective works nor as relieving the Contractor of his obligation under this Contract to provide all the means necessary for a proper and professional execution of the Works.
- 2.7 If the Contractor intends to supply equipment which deviates from the description given in the Tender, it shall obtain prior written approval from CEM.

3. CONTRACTUAL OBLIGATION

- 3.1 The Contractor hereby declares that:
- he possesses the necessary professional qualifications, skilled personnel, expertise.
 - he will make available the necessary facilities, manpower and services to perform the Works in an efficient, workmanlike and timely manner in accordance with all the conditions and terms of this Contract.
- 3.2 CEM hereby agrees to pay the Contractor in consideration of the execution of the Works the Contract prices at the times and in the manner prescribed by the Contract.

4. INDEPENDENT CONTRACTOR

Nothing contained in this Contract or any sub-Contract awarded by the Contractor or any agreement between the Contractor and any third party shall create any Contractual relationship between CEM and any third party, except as otherwise agreed upon.

5. CONTRACTOR TO INFORM HIMSELF

5.1 The Contractor shall be deemed upon signature of this Contract as having investigated and satisfied himself concerning the general and local conditions in Macau and particularly, but without limitation, with respect of the following:

- access to and conditions of work in CEM premises
- local laws and regulations
- handling and storage facilities

and all other matters which can in anyway affect the performance of the Works or the cost associated with it.

5.2 Failure of the Contractor to acquaint himself with any applicable conditions will not relieve him from his responsibility to properly estimating the difficulties or the cost of performing the Works at CEM's satisfaction.

6. SUFFICIENCY OF CONTRACT PRICES

The Contractor shall be deemed to have satisfied himself as to the correctness and sufficiency of the prices which shall cover all his obligations under this Contract and all matters, and things necessary for the proper execution of the Works.

7. TENDER SECURITY & PERFORMANCE SECURITY

- 7.1 The Contractor shall guarantee the due fulfillment of its obligations under this Contract by providing at his own expense a Performance Security in the form described below.
- 7.2 The Performance Security shall remain in force until **30 days after the date of Taking Over Certificate** insofar as the Contractor has by that date fulfilled his obligations.
- 7.3 The Performance Security shall preferably be in the form of an unconditional bank Security or a certified cheque, in an amount of 10% of the Contract price.

Bank security shall be payable in Macau and shall be issued by one of the approved banks. It must be payable to CEM on first demand, without any need for judicial settlement and despite any objection by the Contractor or the bank.

Certified cheque shall be payable to CEM in Macau and drawn on one of the approved banks in Macau.

- 7.4 Due authority for an extension of the validity of this Performance Security shall be lodged by the Contractor with the Bank of Guarantor concerned if such extension is desired by CEM.
- 7.5 Should the Contractor fail to produce evidence of the establishment of the Performance Security on time, CEM shall be entitled to:
- seize the Tender Security (if applicable);
 - terminate the Contract without compensation for the Contractor.

Before applying such measure, CEM will send the Contractor a registered letter giving formal notice regarding the establishment of the Performance Security. This notice shall set a new time limit which will take effect from the date of postage of the letter.

- 7.6 Should the Contract price be changed by means of Variation Orders, the Contractor shall adjust the security accordingly. Should the Contractor fail to do so, CEM may deduct such equal amount from future payments and use it to replenish the Performance Security.

8. SCOPE OF SUPPLIES

8.1 SCOPE OF SUPPLY-SERVICES

- 8.1.1 By signing this contract, the Contractor shall be deemed to accept the obligation of supplying everything necessary for the object mentioned in the Contract agreement.
- 8.1.2 The Contractor shall accept the responsibility for the completeness and faultless execution of the Works, which shall be done on the basis of proven design principles, and in accordance with the latest state of the art, in such a manner that a maximum of operational reliability and efficiency is assured.
- 8.1.3 The Contractor shall apply to CEM if he so requires for any clarification concerning obscurities or discrepancies in the Contract documents. He shall be responsible for any error or loss resulting from his failure to timely obtain such clarification.

8.2 VARIATION ORDERS

- 8.2.1 The word "Changes" as used hereafter, means substitutions, additions, deletion, modifications in this scope of the Contract.
- 8.2.2 Changes shall be administered according to the following procedure:
- CEM issues instructions to Contractor, on his own behalf or upon suggestions made by the Contractor to carry out changes.
 - The Contractor submits a proposal, a cost estimate and the impact on the time schedule for completion.
 - CEM issues a Variation Order.
 - In case of urgency - in the event that an urgent decision is required with regards to changes to be carried out and in order not to disrupt the Works, verbal instructions may be given but shall be confirmed in writing as soon as feasible.

8.3 SUBLETTING

8.3.1 The Contractor shall not Contract with any sub-Contractor or any vendor who is to supply equipment, materials, service, or to perform Works at site without prior written consent of CEM. The Contractor shall be responsible for all acts, defaults, neglects of his subcontractor, and for the observance by these sub-contractors of the terms and conditions of this Contract.

8.3.2 CEM shall not be responsible for delays and costs incurred by the Contractor because of disapproval of a sub-contractor or vendor or the late submittal of his name for approval.

8.4 ASSURED QUALITY

The Contractor warrants that upon delivery, all materials and equipment will be new, free from material and structural defects and the most suitable for the services required, as per CEM specifications

9. ORGANIZATION

9.1 CONTRACTOR REPRESENTATIVE

Before commencing the Works the Contractor shall appoint a competent, English-speaking Project Manager to represent and act for the Contractor during the execution of the Works. The authority of the Project Manager shall be clearly defined and the scope of this authority with any possible limitation shall be submitted to CEM.

9.2 TIME SCHEDULE WORK CHART

9.2.1 The Contractor shall submit to CEM's approval a detailed time schedule.

9.2.2 All the Works shall be performed in accordance with this time schedule.

9.2.3 After approval by CEM this time schedule shall become an integral part of the Contract Document. The time schedule cannot be altered except if the alteration is approved in writing by CEM.

9.3 TECHNICAL DOCUMENTS

9.3.1 The Contractor, if applicable, shall submit to CEM's approval the drawings, specifications, etc. requested in the Technical Documents, in accordance with the contractual Time Schedule.

9.3.2 All the documentation drawings sent by CEM to the Contractor remain CEM's property and shall not be reproduced and/or disclosed to any third party without CEM's written consent.

10. DELIVERY

10.1 PACKING - MARKING

The Contract Price shall be deemed to include the cost of proper packing and protection in accordance with international practices. The Contractor shall mark any parts of any delivery so as to assure a clear identification of the contents.

In order to protect the environment, please use highly reusable / recyclable / recoverable materials and minimal use of packing material but sufficient to protect the goods during delivery.

10.2 TRANSPORTATION - HANDLING

The Contractor shall be responsible for the shipment and handling up to the site of installation of all materials to be supplied under this Contract at his cost and risk. The Contractor shall inform CEM at least 2 working days in advance of any delivery.

10.3 DELIVERY

All materials shall be delivered to site.

10.4 TRANSFER OF TITLE AND RISKS

All equipment and material supplied under this Contract shall become the property of CEM upon signature of the Taking Over Certificate.

The risks for the Works shall pass to CEM upon the same date.

10.5 LIQUIDATED DAMAGES

If the Contractor fails to complete the Works and hand over of the same in accordance with the Specifications at the specified time for completion, a liquidated damage shall apply as defined in the *Special Conditions of Contract*.

11. CONTRACTOR'S OBLIGATION AS TO THE WORKS

11.1 GENERAL RESPONSIBILITIES

11.1.1 The Contractor shall provide all labour including the supervision thereof, all other things and services to perform the Works in accordance with the Contract and within the specified time.

11.1.2 The Contractor must anticipate in his schedules that the performance of the Works may interfere with the concurrent activity of CEM. The Contractor shall cooperate with CEM to avoid any delay or hindrance which may be caused by this activity. No extension of time for completion shall be granted and no extra payment be made to the Contractor as a result of such temporary interferences, except if otherwise agreed upon. The Works shall be proceed strictly according to the instructions as stated in the Technical Specifications.

11.2 HEALTH, SAFETY AND SECURITY RULES

- 11.2.1 CEM is committed to the overall objective of ZERO ACCIDENTS not only in its own activities but also in those performed by its contractors. As such, CEM requires that contractors fully comply with the prevailing health and safety legislation and best practices, as well as with the specific health and safety contract requirements. In regard of the importance that such compliance has for CEM and to foster contractor's awareness and commitment to the above objective, a set of rules as described in the document "SHE Non-Compliance in Contracts Managed by CEM", shall apply to any contract celebrated with CEM if applicable. In the event of breaching the rules set forth in the said document by the Contractor, fines/penalties will be applied on the Contractor accordingly without prejudice to the right of CEM to claim the Contractor for indemnification due to such non-compliance.
- 11.2.2 CEM shall have the right to ask for the removal from the site(s) of any employee of the Contractor or any one of his sub-contractors who infringes any of the health, safety and security rules in force in CEM. Such instructions by CEM shall have an immediate effect.
- 11.2.3 The Contractor shall at all times conduct his operation in such a manner as to avoid any risk of bodily harm, damage to CEM's property and third parties. An Insurance covering these risks must be exhibit to CEM before the commencement of the work. The insurance shall be arranged in the amount required in the *Special Conditions of Contract* by one of the companies in the list of CEM accepted insurers stated therein.
- 11.2.4 The Contractor shall maintain enough insurance against his responsibility to compensate his workers in accordance with Decree-Law No. 40/95/M, dated 14 August 1995.
- 11.2.5 The Contractor shall maintain enough insurance for any vehicles involved in the work in accordance with Decree-Law No. 57/94/M, dated 28 November 1994.

- 11.2.6 The contractor shall not smoke in CEM premises as CEM is a smoke free workplace. Smoking is only allowed at designated smoking areas.
- 11.2.7 The Contractor shall comply with the requirements stated in the document “Health and Safety Manual For CEM Contractors” where the standards set out shall be regarded as the minimum to be achieved. Compliance with the set out in the said manual shall not relieve the Contractor of any of his duties or his responsibilities under the Contract.
- 11.2.8 The Contractor shall ensure that all their employees working in construction or engineering sites shall hold valid “Construction Industry Occupational Safety Cards” issued by DSAL (The Labour Affairs Bureau of MSAR) in accordance with Law No. 3/2014, issued on 8 April 2014. Copies of the valid “Construction Industry Occupational Safety Cards” shall be made available when demanded by CEM.

11.3 EXTENSION OF TIME FOR COMPLETION

- 11.3.1 If by reason of changes instructed in writing by CEM or any cause beyond the control of the Contractor, the Contractor shall have been delayed/impeded in the execution of the Works he shall request in writing an extension of time for completion of the Works. An extension of time which CEM considered reasonable may be granted in writing without thereby prejudicing the validity of the Contract.
- 11.3.2 The Contractor shall have no other claim against CEM in respect of delays arising from the occurrences hereabove mentioned provided that the scope of Works has not been changed.

11.4 CARE OF THE WORKS

- 11.4.1 From the commencement until Taking Over or until the completion of any outstanding Work that the Contractor shall have undertaken to finish during the defects liability period, the Contractor shall take full responsibility for the care of the Works and of the site(s).

- 11.4.2 In case any damage, loss or deterioration shall happen to the Works or to the sites from any cause which may be inputted to the Contractor, the Contractor shall at his own cost repair and make good the same. If the Contractor fails to do so, the cost of repairing and making good by third party shall be born by the Contractor.
- 11.4.3 Debris, waste materials are to be cleared and disposed of in a proper manner by the Contractor.
- 11.4.4 The Contractor is fully responsible for maintaining the site(s) in clean and tidy conditions. In the event the Contractor fails to do so CEM may arrange for cleaning and tidying to be carried out by another party at the expense of the Contractor.

12. INSPECTION, ACCEPTANCE

12.1 INSPECTION

CEM may determine to undertake any inspection at the sites and shall have the right to reject any part of the Works found unsatisfactory where upon such rejected works shall be corrected, revised or replaced at the Contractor's expense.

CEM shall decide whether, in his opinion, the Works are effectively in conditions to be accepted.

12.2 TAKING OVER

12.2.1 The Taking Over Certificate indicates that the Contractor has satisfactorily fulfilled his contractual obligations up to the date of issuing the certificate.

12.2.2 After Taking Over, it shall mark the commencement of the defects liability period and the transfer of property and risks to CEM.

12.2.3 The Taking Over shall be recorded in a certificate signed by both parties. This certificate may be issued even if minor faults or deficiencies still exist. These faults and deficiencies shall be recorded in the certificate and shall be remedied by the Contractor with due promptness.

12.2.4 Upon expiration of the defects liability period and after fulfillment of all claims related to the remedy of faults, the Works shall be deemed to be finally taken over.

13. DEFECTS LIABILITY PERIOD

13.1 The Contractor warrants the quality of the Works against all defects in the materials, equipment, workmanship for a period of **180 days** from and after the Taking Over or as stated in the *Special Conditions of Contract*.

13.2 The Contractor also warrants that the performance data stated in the Contract documents are met.

13.3 During the defects liability period, the Contractor shall repair, make good any defect, deficiency or fault arising from defective design, materials or workmanship or from any act or omission by the Contractor at his own cost and expenses including transport, handling and insurance, with all possible speed and with minimum disturbance to CEM's regular operations.

13.4 In the event that such a fault or deficiency as defined in 13.3 hereabove, affects systematically similar parts of the Works, CEM shall have the right to request the Contractor to replace, renew all parts of that nature even those not yet affected by the fault or deficiency.

13.5 The duration of the Defects Liability Period in respect of defects which have been remedied during the Defects Liability Period shall be of **180 days** from the date CEM takes over the remedied Works.

- 13.6 In the event that the Contractor finds more convenient to replace parts of the Works by parts of a different origin, he shall obtain a written agreement from CEM.
- 13.7 The Contractor and his guarantor shall be liable for the satisfaction and full performance of the Warranties as set forth herein.
- 13.8 The Contractor's defects liability shall not cover damage caused by incorrect treatment for which the Contractor is not responsible.

14. REMEDIES AND POWER

14.1 REJECTION

- 14.1.1 If the Works or parts thereof are found defective or faulty or not in accordance with the Contract documents, CEM shall have the right to reject the Works or part thereof.
- 14.1.2 The Contractor's claim for any payment connected with the rejected Works is void by the act of rejection and the Contractor shall immediately reimburse to CEM any advance payments received for the rejected parts of the Works.

14.2 EVENTS OF DEFAULT

14.2.1

- If the Contractor abandons the Works
- if he seriously violates any of the conditions or provisions of this Contract
- if he does not comply fully with the Macau Labour Law when employing non-resident(s) of Macau for the Works
- if he refuses or fails to perform properly any portion of the Works
- if CEM determines that the time schedule is not being maintained and particularly if the drawings submission, delivery of equipment, services, is delayed by more than 10 days for reasons for which the Contractor is responsible

- if the Works cannot be taken over within 1 month after the contractual date for Taking Over for reasons for which the Contractor is held responsible
- if the Works or part thereof are sublet without the required approval by CEM, and
- if 7 working days after receipt from CEM of a written notice of default, the Contractor fails to remedy or to provide satisfactory evidence that such fault will be corrected, then CEM may, without notice to the Contractor's guarantor, withhold any amount otherwise due under the Contract and terminate by written notice the Contractor's rights to proceed with the Works, with immediate effect.

- 14.2.2 Upon such termination, CEM shall have the right to complete and/or correct the Works by whatever method CEM may deem appropriate. The expense of so completing and/or correcting the Works will be charged to the Contractor and such expense will be deducted by CEM out of such moneys as may be due or may become due to the Contractor.
- 14.2.3 If such expense exceeds the sum which would have been payable under this Contract, the Contractor, his guarantor and sureties shall be liable for and shall pay to CEM upon demand the amount of such excess.
- 14.2.4 CEM shall not be liable for any damages, loss of anticipated profits on account of such termination.
- 14.2.5 Upon receipt of the termination notice, the Contractor shall deliver to CEM any data, plans, specifications, completed works, etc. as may have been acquired or prepared by the Contractor to CEM, subcontracts, purchase orders as designated by CEM.
- 14.2.6 Nothing contained herein shall prejudice the rights of CEM to take whatever action deemed to be appropriate to obtain the satisfactory performance of the Contract.

14.2.7 In the event the Works have been suspended for more than the half of the total time for completion for reasons beyond the control of the Contractor and CEM and not due to the fault or negligence of any party then both parties shall have the right to terminate the Contract and CEM shall pay to the Contractor all the amount due at that time.

15. PRICES. PAYMENTS

15.1 CEM shall pay the Contract prices as defined in the price schedule as compensation in full for the performance of the Works, for all responsibilities, liabilities of the Contractor under this Contract, for all damages, losses, which may arise out of the performance of the Works, for all risks connected to it, except as may be expressly provided for in this Contract.

15.2 The Contractor shall pay all taxes, duties etc. due or to become due in connection with the Works.

15.3 The payment will be made in accordance with the schedule provided in the *Special Conditions of Contract*.

15.4 Payments are made against invoices presented by the Contractor. Invoices shall be duly documented and shall be subject to CEM's approval.

15.5 Approved invoices shall be paid by CEM in the contractual currency(ies) within 45 calendar days after their receipt or as stated in the *Special Conditions of the Contract*.

Not approved invoices shall be returned to the Contractor within 10 working days after their receipt.

16. CONCLUDING PROVISIONS

16.1 APPLICABLE LAWS

16.1.1 The provisions of this Contract shall form a self contained source of Law for the interpretation of this Contract.

Tender Documents / General Conditions of Contract

- 16.1.2 The proper Law shall be the Laws of Macau Special Administrative Region of the People's Republic of China.
- 16.1.3 The Contractor shall comply with all provisions and conditions of the Law in force in Macau SAR, and shall be responsible and liable for any infringement by himself, his employees or by any sub-contractor or Contractor.
- 16.1.4 The Contractor shall ensure that all his employees and workers dedicated to perform the works possess legal working permits in accordance with the Law in force in Macau SAR.
- 16.1.5 Based on the Macau Law 1/89M which was printed on "Boletim Oficial" no. 16, 17 Abril/89, those overseas Contractors without branch office in Macau are required to perform a Commercial Registration (submission of M/1 Declaration Form) at Repartição de Finanças of Direcção dos Serviços de Finanças (Finance Bureau of Macau).

A copy of the Declaration Form and the latest Taxation Document should be presented to CEM before any payment will be effected, namely:

- Contribuição Industrial - Declaração de Início de Actividade / Alterações (M/1)
- Contribuição Industrial - Conhecimento de Cobrança (M/8)

17 FORCE MAJEURE

Neither party shall be liable for any delay or default in performing the Contract if such delay or default is caused by conditions beyond its control due to "Force Majeure" including:

- acts of God;
- war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;

- rebellion, revolution, insurrection, or military or usurped power, or civil war;
- contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- riot, commotion or disorder, unless solely restricted to employees of the Contractor or of his Subcontractors.

18 CONFIDENTIALITY

Each party shall keep confidential and not disclose or otherwise make available to any third party any confidential information, advice or material of any nature that is provided or made available by the other party, including but not limited to, any written reports or other data, without the prior written consent of the other party. This Section shall not apply to any information that:

- is in or comes into the public domain, other than as a result of breach by the recipient of its obligations under this Contract,
- the recipient acquires from a third party who owes no obligations of confidentiality to the other party to this Contract in respect thereof, or
- was already known to the recipient at the time it received such information from the other party to this Contract as shown by the recipient's prior written records.

If either party is requested or required by any legal or investigative process to disclose any information that it is not permitted to disclose, that party shall provide the other with prompt notice of each such request and the information requested so that the other party may seek to prevent disclosure or the entry of a protective order. If disclosure is required and a protective order is not obtained, the party from whom disclosure is required shall disclose only such information that it is advised by its counsel to be legally required to be disclosed.

19 OFFERS, PAYMENTS, AGREEMENT AND PROMISES

The Contractor hereby represents and warrants that neither the Contractor nor any of its officers, directors, employees, representatives and/or any agent acting on behalf of the Contractor has made or will make, directly or indirectly, any offer, payment, agreement or promise to pay money or anything of value, or has authorized or will authorize the offer, gift, agreement or promise to pay money or anything of value, in either case to any person or entity unlawfully to influence or induce any act, omission or decision of the CEM including, without limitation, in connection with this Contract, the negotiation, preparation, execution or performance of this Contract or the procurement process leading to the award of this Contract.