

**TENDER DOCUMENTS**

**GENERAL CONDITIONS OF CONTRACT**

**PLD-CS190/25/33**

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# 1 DEFINITIONS

*Employer* meansCompanhia 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. This Contract will be **valid for 3 years**. Renewal of contract for subsequent equal period, is subject to mutual written agreement of both parties, within 30 days before expiry.

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

The Letter of Acceptance

* The Instruction to Tenderers

The Technical Conditions and Specifications

The Special Conditions of Contract

These General Conditions of Contract

The Minutes of Clarification meetings (if applicable)

The Tenderer's Proposal

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 Service 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 Service.

2.7 If the Contractor intends to supply equipment and service 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 Service.

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# 7. 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 end of the contract period** 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 equivalent to 3 months of the average monthly bill or as stated in the *Special Conditions of Contract.*

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

8.2.1The 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

The Contractor shall not Contract with any sub-Contractor or any vendor who is to supply equip­ment, materials, service, or to perform Service 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.

# 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 TECHNICAL DOCUMENTS

9.2.1 The Contractor, if applicable, shall submit to CEM's approval the drawings, specifications, etc. request­ed in the Technical Specification.

9.2.2 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. PENALTIES & CONTRACT TERMINATION**

If the contractor fails to perform the works in accordance with the Specifications, penalties shall apply as defined in the Technical Specifications.

CEM reserves the right to terminate the whole contract or part of the contract at any time, at CEM sole discretion, if the contractor fails to comply with any of the contract terms & conditions; or if the quality of the service does not comply with CEM quality standards as stated in the Tender Documents; or if there is no improvement after repeated warning of poor performance of the works or improper attitude from the Contractor.

If the contractor fails to perform the works in accordance with the Specifications, penalties shall apply as specified in the Special Conditions of Contract. Upon the termination of contract according to this clause, the Contractor is not entitled to claim for any compensation or loss.

# 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 Service in accordance with the Contract and within the specified time.

11.1.2 The Service shall be proceed strictly according to the instructions as stated in the Technical Specification.

11.1.3 If awarded, the contractor commits to employing only local workers or giving priority to local workers.

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.

* + 1. 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.
    2. 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.
    3. 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.
    4. 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.

* + 1. The Contractor shall 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.

**12. INSPECTION, ACCEPTANCE**

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

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

**13. REMEDIES AND POWER**

13.1 REJECTION

13.1.1 If the Service or parts thereof are found defective or faulty or not in accordance with the Contract documents, CEM shall have the right to reject the Service or part thereof.

13.1.2 The Contractor's claim for any payment connected with the rejected Service is void by the act of rejection and the Contractor shall immediately reimburse to CEM any payments for the rejected parts of the Service.

13.2 EVENTS OF DEFAULT

13.2.1

1. If the Contractor abandons the Works
2. if he seriously violates any of the conditions or provisions of this Contract
3. if he does not comply fully with the Macau Labour Law when employing non-resident(s) of Macau for the Works
4. if he refuses or fails to perform properly any portion of the Works
5. if the Works or part thereof are sublet without the required approval by CEM
6. 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.

13.2.2 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.

13.2.3 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.

13.2.4 CEM shall not be liable for any damages, loss of antici­pated profits on account of such termination.

13.2.5 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.

13.2.6 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. PRICES. PAYMENTS

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

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

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

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

14.5 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.

# 15. CONCLUDING PROVISIONS

15.1APPLICABLE LAWS

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

15.1.2 The proper Law shall be the Laws of Macau Special Administrative Region of the People’s Republic of China.

* + 1. 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.
    2. 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.
    3. 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)

1. **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

# 17 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 confidence 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.

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# 18 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. Any violation to the above will lead to disqualification of proposal.