**Section II Definitions and Contract Documents**

**II:1 Definitions**

| **II:1** | **Definitions** | **Guidelines** |
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|  | Unless otherwise specified, in the contract: |  |
|  | **Assistant Clerical Officer (Labour Relations)** means any person appointed from time to time by the *Project Manager* and notified in writing to the *Contractor* to act as the Assistant Clerical Officer (Labour Relations) for the purpose of the contract. |  |
|  | **ACC Clause** means a clause of the *additional conditions of contract*. |  |
|  | **erratically priced** means the situation where an item/activity or certain items/activities in pricing documents submitted in accordance with NEC Clause 26 and Section VI of the *additional conditions of contract* are priced or structured in such a way as to suggest significant and unjustified:   1. inconsistency, irregularity or non-uniformity as compared with item/activity or items/activities of the same or similar nature in the same pricing document or another pricing documents submitted by the *Contractor* for the contract, or 2. deviation from prevailing market prices in respect of the same or similar item or activity or items or activities. |  |
|  | **General Holiday** means every Sunday and other day which is a general holiday by virtue of the General Holidays Ordinance (Cap. 149). |  |
|  | **Government** means the Government of the Hong Kong Special Administrative Region. |  |
|  | **Hong Kong** means the Hong Kong Special Administrative Region. |  |
|  | **Intellectual Property Rights** means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered and including applications for the grant of any such rights. |  |
|  | **NEC Clause** means a clause in the *conditions of contract* other than the *additional conditions of contract*. |  |
|  | **Particular Specification** means the part named “Particular Specification” in the Scope provided by the *Client*. |  |
|  | **Site Worker** means any person who is   1. working in the Working Areas. For the purpose of this definition, a truck driver engaged for any part of the *works* is regarded as working in the Working Areas unless he is only engaged by a supplier to deliver Equipment, Plant and Material to the Site, 2. employed by the *Contractor* or a Tier Subcontractor for Providing the Works, and 3. a registered construction worker under the Construction Workers Registration Ordinance (Cap. 583), whether or not registered for a trade division thereunder. |  |
|  | **SOP Clause** means a clause in the Security of Payment Provisions in **Appendix** [*insert reference*] to the *additional conditions of contract*. |  |
|  | **SOP Provisions** means the Security of Payment Provisions in **Appendix** [*insert reference*] to the *additional conditions of contract*. |  |
|  | **Tender Submissions** bears the meaning as assigned to it in ACC Clause II:2(1). |  |
|  | **utility undertaking** means any person, undertaking, company, organisation or Government department and includes any office, division, sub-division, section, subsection, unit or group within a Government department which engages in or is so engaged in supplying or providing utilities (including electricity, lighting, traffic control, telecommunications, cable television, gas, water, drainage, sewerage and tramway) and any associated work and the supply or provision of which does not form part of the *works* under the contract, including the contractors and subcontractors of such person, undertaking, company, organisation or Government department. |  |
|  | “**Modular Integrated Construction (MiC)**” means a construction method whereby freestanding volumetric modules with finishes, fixtures, fittings, furniture, building services installation and/or other installations, manufactured off-Site and then transported to the Site for assembly.  “**MiC works**” are the works constructed by MiC method. \*Schedule Nr. [X] of the Activity Schedule contains activities relating to MiC works [***for Option A***] / Bill Nr. [X] of the Bill of Quantities contains items relating to MiC works [***for Option B***]. | For milestone payment for MiC works  ***Reference***  SDEV’s memo ref. DEVB(PSGO) 100/1 dated 18.3.2024  \* Delete/revise as appropriate |
|  | “**Multi-trade Integrated Mechanical, Electrical and Plumbing (MiMEP)**” means the integration of multi-trade building services equipment/components into a single volumetric assembly of prefabricated modules, with necessary support and minor architectural elements, manufactured off-Site, and then transported to the Site for installation.  “**MiMEP works**” are the works constructed by prefabricated modules of MiMEP. \*Schedule Nr. [Y] of the Activity Schedule contains activities relating to MiMEP works [***for Option A***] / Bill Nr. [Y] of the Bill of Quantities contains items relating to MiMEP works [***for Option B***]. | For milestone payment for MiMEP works  ***Reference***  SDEV’s memo ref. DEVB(PSGO) 100/1 dated 18.3.2024  \* Delete/revise as appropriate |

**II:2 Tender Submissions**

| **II:2** | **Tender Submissions** | **Guidelines** |
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| (1) | The Tender Submissions are, subject to sub-clause (2) below, the submissions on technical resources and technical proposals made by the *Contractor* in its tender. | This ACC II:2 **only** used when tenders are evaluated using a **marking scheme**.  ***Reference***  ETWB TC(W) No. 8/2004 Appendix C & SDEV’s memo ref. DEVB(W)546/84/01 of 30.10.2009 Modified from SCC54 |
| (2) | If any provision in the Tender Submissions purports to   1. impose any obligation on the *Client*, the *Project Manager* or the *Supervisor* which is not an obligation of the *Client*, the *Project Manager* or the *Supervisor*, as the case may be, under the contract, 2. confer any right or option on the *Contractor* which is not a right or option of the *Contractor* under the contract, or 3. conflict or contradict other documents forming part of the contract, unless it imposes additional obligations on the *Contractor* within the meaning of this sub-clause,   then such provision has no contractual effect and is omitted from the Tender Submissions and the Scope. A provision imposes additional obligations on the *Contractor* if it imposes higher requirements in terms of quality or quantity than other documents forming part of the contract, or otherwise imposes more onerous requirements on the *Contractor* than other documents forming part of the contract. |
| (3) | Notwithstanding NEC Clause 24.1, if any of the following events occur, the *Contractor* acts in accordance with this sub-clause:   1. If a *key person* is not identified in the Tender Submissions, or if a *key person* identified in the Tender Submissions does not meet the minimum qualification/experience requirements specified in the Scope provided by the *Client*, the *Contractor* proposes the *key person* or substitute person (as the case may be) and submits the name, relevant qualifications and experience of such person to the *Project Manager* for acceptance within 7 days of the Contract Date. A reason for not accepting a proposed person is that the proposed person does not meet the minimum qualification/experience requirements specified in the Scope provided by the *Client*; 2. If the *Contractor* is unlikely to provide or maintain any team structure or staff (including *key person*) identified in the Tender Submissions or necessarily inferred therefrom, it informs the *Project Manager* immediately and proposes a substitute person for the *Project Manager*'s acceptance. A reason for not accepting a proposed person is that the experience and qualification of such person is not as good as the person he/she is replacing,   and the savings of cost to the *Contractor* as a result of such events, if any, are assessed by the *Project Manager* and deducted from the Prices. |  |
| (4)\* | Subject to sub-clause (5) below, the *Contractor* provides all Equipment including the Equipment identifiedin the Tender Submissions or necessarily inferred therefrom. | \*Sub-clauses ACC II:2(4) to (5) **only** used when tenderers are required to submit a proposal on Equipment which is to be assessed and marked. |
| (5)\* | If any of the following events occur, the *Contractor* acts in accordance with this sub-clause:   1. If an essential Equipment required in [*insert reference*] of the Particular Specification (“**Essential Equipment**”) is not identified in the Tender Submissions, or if an Essential Equipment is identified in the Tender Submissions but it does not meet the minimum requirements specified in [*insert reference*] of the Particular Specification (“**Minimum Requirements**”), the *Contractor* proposes the model or substitute model (as the case may be) of such Essential Equipment to the *Project Manager* foracceptance. A reason for not accepting a proposed Essential Equipment is that it does not meet the Minimum Requirements; 2. If the *Contractor* is unlikely to provide or maintain an Equipment identified in the Tender Submissions or necessarily inferred therefrom, it informs the *Project Manager* immediately and proposes changes to the Tender Submissions for the *Project Manager*’s acceptance. The *Project Manager* may give any reason for not accepting the proposal,   and the savings of cost to the *Contractor* as a result of such events, if any, are assessed by the *Project Manager* and deducted from the Prices. |
| (6) | In the event that   1. an ambiguity or inconsistency arises from the Tender Submissions, 2. an illegal or impossible requirement is found in the Tender Submissions, or 3. the *Contractor* decides not to execute the *works* in accordance with the Tender Submissions for any other reasons,   the *Contractor* proposes changes to the Tender Submissions to the *Project Manager*. The proposed changes conform with the Scope provided by the *Client*. Upon receipt of the proposed changes, the *Project Manager* may give any of the following instructions:   1. request the *Contractor* to provide further information, including the time and financial implications of the proposed changes, 2. approve the proposed changes, 3. refuse the proposed changes for any reason, and 4. give any other instructions on the proposed changes and any matters relating to execution of the *works* in accordance with the proposed changes.   If the *Project Manager* approves the proposed changes and there is savings of cost to the *Contractor* as a result of such event, the *Project Manager* assesses the savings and deducts it from the Prices. |  |
| (7) | An instruction given by the *Project Manager* under this clause is not a compensation event. |  |

**II:3 Disclosure**

| **II:3** | **Disclosure** | **Guidelines** |
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| (1) | The *Contractor* and its employees, agents, associates, Tier Subcontractors and consultants, and any other persons engaged in connection with the contract (collectively, “**Related Persons**” and each a “**Related Person**”) do not use or divulge any Confidential Information other than in the proper performance of the contract. This restriction does not apply   1. to a disclosure of any Confidential Information to a Related Person in circumstances where such disclosure is necessary for the proper performance of the *Contractor*’s duties and obligations under the contract, provided that the *Contractor* has imposed on the Related Person an absolute and legally binding obligation to refrain from disclosing the Confidential Information to a third party, 2. to a disclosure of any Confidential Information already known to the recipient other than as a result of disclosure by the *Contractor* or a Related Person in breach of its duty of confidence under this clause or otherwise, 3. to a disclosure of any Confidential Information which is or becomes public knowledge other than as a result of disclosure by the *Contractor* or a Related Person in breach of its duty of confidence under this clause or otherwise, 4. to a disclosure of any Confidential Information in circumstances where such disclosure is required pursuant to any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction, or 5. to a disclosure of any Confidential Information with the prior written consent of the *Client*. | WBTC No. 3/2002  Modified from SCC40 |
| (2) | Any disclosure of Confidential Information by the *Contractor* or any Related Person is in strict confidence, and on a “need to know” basis and extends only so far as may be necessary for the purpose of the contract. |  |
| (3) | The *Contractor* takes all necessary measures (including but not limited to security measures, and contractual provisions contained in subcontracts of any tier or other relevant contracts where appropriate) to ensure that Confidential Information is not used or divulged by the *Contractor* and each Related Person other than in the proper performance of the contract. |  |
| (4) | The *Contractor* ensures that each Related Person is aware of and complies with the provisions of this clause and the Official Secrets Ordinance (Cap. 521). |  |
| (5) | If so requested by the *Client*, the *Contractor* submits   1. a separate confidentiality agreement executed in favour of the *Client* on the terms and in the form prescribed by the *Client*, and 2. a separate confidentiality agreement executed by a Related Person in favour of the *Client* on the terms and in the form prescribed by the *Client*. |  |
| (6) | The *Contractor* promptly notifies the *Client* of any breach or suspected breach of this clause by the *Contractor* or any Related Person. The *Contractor* and each Related Person give the *Client*, its authorised users, assigns and successors-in-title all reasonable assistance in connection with any action or proceedings the *Client* or any of its authorised users, assigns and successors-in-title may take to pursue against any party a breach or suspected breach of this clause. |  |
| (7) | The *Contractor* and each Related Person comply with the Personal Data (Privacy) Ordinance (Cap. 486) (“**PDPO**”). Neither the *Contractor* nor any Related Person uses personal data provided by the *Client*, the *Project Manager*\*, the *Supervisor*# or a delegate of any of them (each a “**Data Owner**”) for any purpose other than that specified by the Data Owner or for the proper performance of the contract. A Data Owner may, from time to time or prior to provision of any personal data, require the *Contractor* to demonstrate that adequate measures are in place to ensure compliance with the PDPO and that all personal data is protected against any inadvertent or unauthorised access, processing, erasure, loss and use. A Data Owner may prescribe restrictions on or conditions of use of the personal data, or instruct the *Contractor* to ensure security of the personal data. The *Contractor* complies, and ensures that each Related Person complies, with these restriction, conditions and instructions. Such compliance is not a compensation event. | \* Revise as appropriate  # Delete as appropriate |
| (8) | The provisions of this clause shall survive the Completion\* or termination of the contract (howsoever occasioned) and shall continue in full force and effect notwithstanding such Completion\* or termination. |  |
| (9) | Unless otherwise specified in the contract, the *Client*, the *Project Manager*\*, the *Supervisor*# and a delegate of any of them may use any information provided by the *Contractor* under the contract but they shall not divulge such information except for the purpose of   1. exercising their rights or carrying out their duties under the contract, 2. the use, alteration or demolition of the *works*\*, 3. giving publicity to the *works*\*, 4. the *Client*’s duties under the Code on Access to Information, 5. reporting to the Public Accounts Committee in accordance with NEC Clause W4.6, 6. cost estimation or analysis of the *Client*’s work connected or unconnected with the contract, and compiling price indices (including tender price indices) for use by the Government and the public, provided that for this purpose: 7. the *Client* does not disclose the contract number, contract title and *Contractor*’s name to a third party, and 8. when the *Client* discloses other information to a third party, the *Client* obtains an undertaking from the third party to not disclose it for any other purpose, 9. complying with any law, regulation, rule of any relevant stock exchange, or an order of a court or arbitral authority of a competent jurisdiction, or 10. initiating, defending or resolving any dispute to which the *Client* is a party. | \* Revise as appropriate  # Delete as appropriate |
| (10) | Without prejudice to any other provision of the contract, the *Contractor* shall indemnify and keep the *Client* and its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all proceedings, actions, claims, demands, losses, liabilities, damages, costs, legal costs, professional and other expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) of any nature whatsoever which the *Client* or any of its authorised users, assigns and successors-in-title may suffer, sustain or incur (whether or not directly or consequentially) as a result of or in relation to any breach of confidence (whether under the contract or otherwise) or this clause by the *Contractor* or a Related Person. |  |
| (11) | In this clause, “**Confidential Information**” means any information, drawings, specifications, documents, contracts, design materials and data (including without limitation any personal particulars, records and personal data (as defined in the PDPO) and materials of any nature (in or on whatever media)) accessible by the *Contractor* under the contract or provided by the *Client*, the *Project Manager*\*, the *Supervisor*# or a delegate of any of them for the purposes of or in the course of performing the contract. |  |

**II:4 Contingency sums, provisional sums and forecast total of the Prices**

| **II:4** | **Contingency sums, provisional sums and forecast total of the Prices** | **Guidelines** |
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| (1) | Notwithstanding the inclusion of contingency sums, provisional sums and forecast total of the Prices in the Grand Summary of the \**bill of quantities*/\**activity schedule*, the contingency sums, provisional sums and forecast total of the Prices shall not form part of the contract. | \* Delete as appropriate |
| (2) | The contingency sums and provisional sums are allowed as contingencies for the purpose of internal administration of the *Client* under the Stores and Procurement Regulations only. The forecast total of the Prices is included for tender evaluation purpose only and shall not affect the tendered total of the Prices which shall remain contractually binding. The *Contractor* shall not rely on any information supplied to it on the contingency sums, provisional sums or forecast total of the Prices as estimated changes to the Prices due to the effect of compensation events or other estimated payment which shall be assessed in accordance with the relevant contract terms. |  |

**II:5 Estimates for Tender Price Index (ETPI)**

| **II:5** | **Estimates for Tender Price Index (ETPI)** | **Guidelines** |
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| (1) | In case the *Contractor* did not submit the Estimates for Tender Price Index (“**ETPI**”) with its tender in accordance with Special Conditions of Tender Clause SCT [20]#, the *Project Manager* may instruct the *Contractor* to submit within two weeks an ETPI which is   1. fully priced as to each of the items, extended, cast and totaled as appropriate, 2. in the form as set out in **Appendix** [*insert reference*]to Special Conditions of Tender, 3. prepared in accordance with the Standard Method of Measurement for Civil Engineering Works 1992 Edition as amended by its subsequent corrigenda and as further amended in accordance with the General Preambles and the Particular Preambles in **Appendix** [*insert reference*]to Special Conditions of Tender. Such Standard Method of Measurement, General Preambles and Particular Preambles shall only be used for the preparation of the ETPI and shall not form part of the contract, and 4. accompanied by a summary at the end stating the total amount of all bills, which is the same as the tendered total of the Prices as stated in the “Grand Summary of the *activity schedule*”. | **Only** applicable for works tenders of Group C contracts issued under **CEDD, HyD, WSD and DSD** and adopting ECC Options A or C, where the tender price information are required for compilation of the Civil Engineering Works Tender Price Index (CEWTPI). |
| (2) | In case errors and/or omissions are found in the ETPI, the *Project Manager* may instruct the *Contractor* to submit further information and clarification related to the ETPI within the *period for reply* or a longer period to which the *Project Manager* has agreed. |
| (3) | Any instruction given by the *Project Manager* under sub-clauses (1) and (2) of this clause is not a compensation event. |  |
| (4) | The ETPI and anything stated therein shall **NOT** form part of the contract and shall **NOT** be taken into account in the performance of the contract except for the obligations under sub-clauses (1) and (2) of this clause. Regardless of any other provisions in the contract, the *Contractor* shall not make any claim for payment or otherwise against the *Client* on the basis of the ETPI or anything stated therein. |  |