**Section IV General Obligations**

**IV:1 *Contractor*’s Management Team**

| **IV:1** | ***Contractor*’sManagement Team** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor* provides a team of suitably qualified and experienced staff to manage and supervise the contract throughout the execution of the *works* (referred to as “**the Team**” in this clause). The Team consists of members in the following disciplines:   1. Construction Manager, 2. Site Agent, 3. Site Engineer, 4. Site Superintendent, 5. Site Supervisor, 6. Surveyor, 7. Quantity Surveyor, 8. Foremen, 9. Safety Officer and Safety Supervisor, 10. Environmental Officer and Environmental Supervisor, 11. Geotechnical Engineer and Geotechnical Supervisor, 12. Technical Manager, and 13. Coordinator for dealing with Excavation Permit Management System and application for Excavation Permit.   [*to be updated by project office*]  Each Team member possesses at least the minimum qualification and experience required for the job identified above is stated in the Particular Specification. | SDEV’s memo ref (027RU-01-3) in DEVB(W) 510/17/01 dated 16.7.2010  Modified from SCC68 & 68A  Project office to review to include this ACC where appropriate |
| (2) | The *Contractor* provides suitably qualified and experienced staff in the following disciplines for providing assistance to the Team:   1. Liaison Officer, 2. Site Clerk, and 3. any other staff responsible for management, administration, planning, coordination or supervision of the Site, the *works* and the contract, preparation of technical, financial and contractual submissions and operation of the *Contractor*’s site accommodation.   [*to be updated by project office*] |  |
| (3) | Each Team member and assistant is an employee of the *Contractor*. If the *Contractor* is an unincorporated joint venture, employees of the joint venture participants are regarded as an employee of the *Contractor*.  If instructed by the *Project Manager*, the *Contractor* submits documentary proof on the employment status, such as employment contracts, tax returns, payment of salaries or provides a formal declaration to the effect that such a staff member is under the direct employment of the *Contractor*. |  |
| (4) | All Team members and assistants are prohibited to be given a subcontract to any part of the *works* or to have a vested interest in any of Tier Subcontractors. |  |
| (5) | Within two weeks of the Contract Date, the *Contractor* submits to the *Project Manager* a list of staff with qualifications and experience proposed for the Team and its assistant for acceptance. |  |
| (6) | With the exception of the Construction Manager, each Team member and assistant works full time\* in the Working Areas.  [\**Consider whether some of the staff may only be needed part time, such as surveyors.*] |  |
| (7) | The *Contractor* informs the *Project Manager* of any changes in Team member or assistant and proposes a replacement person with qualifications and experience for acceptance. |  |

**IV:2 Giving of Notices and Payment of Fees**

| **IV:2** | **Giving of Notices and Payment of Fees** | **Guidelines** |
| --- | --- | --- |
| (1) | If required to Provide the Works, the *Contractor* gives all notices and pay all licences, levies, premiums or other fees required to be given or paid by reason of any enactment or any regulations or bye-laws of any local or other duly constituted authority, including any new fee and any change in existing fees which   1. comes into effect on or after the date 10 days prior to the *tender closing date*, or 2. is enacted or introduced before the date 10 days prior to the *tender closing date* but the effective date of which is only ascertainable on or after the date 10 days prior to the *tender closing date*. | ETWB TCW No. 23/2004  Modified from SCC60(2) |

**IV:3 *Contractor*’s Joint Venture**

| **IV:3** | ***Contractor*’s Joint Venture** | **Guidelines** |
| --- | --- | --- |
| (1) | For the purpose of this clause, the following expressions bear the same meanings as those given in paragraph 6 of the Environment, Transport and Works Bureau Technical Circular (Works) No. 50/2002 on Contractors’ Joint Venture,   1. “incorporated joint venture” 2. “participant” 3. “shareholder” and 4. “unincorporated joint venture”. | ETWB TC(W) No. 5/2003  Modified from SCC45  ETWB TCW No. 50/2002 (as amended in SETW memo ref. (01656-01-3) in ETWB(W)511/34/01 dated 4.8.2006)  Modified from SCC31 |
| (2) | If the *Contractor* is a partnership or an unincorporated joint venture,   1. the liability of each partner of the partnership or participant of the unincorporated joint venture under the contract shall be joint and several and 2. the Articles of Agreement for use in the contract is in the form as attached at **Appendix** [*insert reference*] to the *additional conditions of contract*, with such modification as may be necessary. |
| (3) | If the *Contractor* is an incorporated joint venture,   1. within two weeks of the Contract Date, the *Contractor* provides to the *Client* a joint venture guarantee in the form set out in **Appendix** [*insert reference (the relevant appendix to the tender documentation. See Appendix D of SETW’s memo ref. (01656-01-3) in ETWB(W)511/34/01 dated 4 August 2006 for the Form of Joint Venture Guarantee)*] to the *additional conditions of contract* executed by all the shareholders of the *Contractor* and 2. notwithstanding any other provisions of the contract, the *Contractor*’s failure to provide a joint venture guarantee in strict accordance with the sub-clause (a) above constitutes a breach of the contract entitling the *Client* to damages and entitles the *Client* to terminate the contract forthwith by notice in writing to that effect and the *Contractor* is not entitled to any compensation whatsoever as a consequence of such termination. |  |
| (4) | The *Contractor* does not make any changes to the percentage participation of each participant or shareholder in the joint venture during the continuance of the contract unless prior written consent from the *Client* is obtained in accordance with sub-clause (5) below. |  |
| (5) | If the *Contractor* considers a change to the percentage participation of each participant or shareholder in the joint venture is necessary because   1. any participant or shareholder in the joint venture 2. presented an application for bankruptcy, 3. had a bankruptcy order made against it, 4. agreed to carry out the contract under a committee of inspection of its creditors, 5. had a winding-up order made against it, 6. had a provisional liquidator appointed to it, 7. passed a resolution for winding-up (other than in order to amalgamate or reconstruct), 8. had an administration order made against it or had an administrator appointed over it, 9. had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets, or 10. made an arrangement with or assignment in favour of its creditor, and 11. it is necessary for Providing the Works,   the *Contractor* provides the *Client* with detailed substantiation and requests for the *Client’s* consent before any such change is made. The *Client* may in its absolute discretion accept or reject the request and informs the *Contractor* in writing whether consent is given within two weeks from the date of receipt of such request. |  |
| (6) | The *Client* may terminate if any participant or shareholder in the joint venture   1. presented an application for bankruptcy, 2. had a bankruptcy order made against it, 3. had a winding-up order made against it, 4. had a provisional liquidator appointed to it, 5. passed a resolution for winding-up (other than in order to amalgamate or reconstruct), 6. had an administration order made against it or had an administrator appointed over it, 7. had a receiver, receiver and manager, or administrative receiver appointed over the whole or a substantial part of its undertaking or assets, or 8. made an arrangement with its creditors. |  |

**IV:4 Non-Payment of Wages**

| **IV:4** | **Non-Payment of Wages** | **Guidelines** |
| --- | --- | --- |
| (1) | **Person employed by the *Contractor***  If a claim for non-payment of wages for a person employed by the *Contractor* to Provide the Works is filed in the office of the Labour Department,proof thereof is furnished to the satisfaction of the Commissioner of Labour, andthe claim is not disputed, the *Contractor* promptly pays the claimant.  Where the claim is disputed, or if the Commissioner for Labour otherwise finds necessary, the *Contractor* pays the claimant in accordance with an award or order of the Labour Tribunal,an award or order of the the Minor Employment Claims Adjudication Board,a judgment of the District Court,a judgment of the Court of First Instance ora judgement of the Court of Appeal. If the *Contractor* does not pay the claimant in accordance with this sub-clause, the *Client* may pay the claimant. The cost incurred by the *Client* is paid by the *Contractor*. | **Reference**  modified from GC40  SDEV’s memo ref.(02VKU-01-3) in DEVB(W)510/17/01 dated 16.12.2016 and (02YWL-01-2) in DEVB(W)510/17/01 dated 5.2.2018  modified from SCC67A |
| (2) | **Person employed by Tier Subcontractor** If a claim for non-payment of wages for a person employed by a Tier Subcontractor to Provide the Works is reported to the Assistant Clerical Officer (Labour Relations) within seven working days of the final due date for payment as stated in section 23 of the Employment Ordinance (Cap. 57),proof thereof is furnished to the satisfaction of the Commissioner of Labour, andthe claim is not disputed, the *Contractor* promptly pays or ensures the Tier Subcontractor pays the claimant.  Where the claim is disputed, or if the Commissioner for Labour otherwise finds necessary, the *Contractor* pays or ensures the Tier Subcontractor pays the claimant in accordance with an award or order of the Labour Tribunal,an award or order of the Minor Employment Claims Adjudication Board,a judgment of the District Court,a judgment of the Court of First Instance ora judgement of the Court of Appeal. If the *Contractor* or Tier Subcontractor does not pay the claimant in accordance with this sub-clause, the *Client* may pay the claimant. The cost incurred by the *Client* is paid by the *Contractor*. |  |
| (3) | **Self-employed person**  Sub-clauses (1) and (2) of this clause apply equally to a self-employed person who is found to be an employee of the *Contractor* or a Tier Subcontractor by the following an award or order of the Labour Tribunal,an award or order of the Minor Employment Claims Adjudication Board,a judgment of the District Court,a judgment of the District Court,a judgment of the Court of First Instance, ora judgement of the Court of Appeal. |  |

**IV:5 Third Party Claims in Respect of Damage on and to Agricultural Lands**

| **IV:5** | **Third Party Claims in Respect of Damage on and to Agricultural Lands** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor* does not cause damage to crops or property on agricultural lands. If the *Contractor* receives a claim for damage to crops or property on agricultural land, the *Contractor* informs the *Client* and the *Project Manager*. The *Contractor* keeps the *Client* and the *Project Manager* informed of the progress in settling any such claim. | WBTC No. 28/92  Modified from SCC 13 |
| (2) | The *Project Manager* informs the District Lands Officer of any claim for damage to crops or property on agricultural lands, and representative of the District Lands Office attends any negotiations. Any payment in settlement of the claim is paid by the *Contractor* through the District Lands Officer to the claimant. The *Contractor* takes all necessary action to ensure that the claim is settled without delay including notifying its insurers of the claim. If the *Client* considers that the *Contractor* or its insurers are delaying settlement, the *Client* may make direct payment to the claimant and then such sums are paid by the *Contractor* or deducted from the amount due to the *Contractor*. | **Optional** for contracts where the possibly of damage to agricultural crops and/or property on agricultural lands might arise |

**IV:6 Pay for Safety Performance Merit Scheme**

| **IV:6** | **Pay for Safety Performance Merit Scheme** | **Guidelines** |
| --- | --- | --- |
| (1) | For the purpose of this clause,  “**PFSPMS**” means the Pay for Safety Performance Merit Scheme and  “**performance-tied payment items**” means the performance-tied payment items listed in the *incentive schedule* for Performance-tied Payment Items of the PFSPMS in **Appendix** [*insert reference*] to the Contract Data Part one. | SDEV’s memo ref. (02LSV-01-1) in DEVB(W) 516/70/03 dated 22.11.2013 |
| (2) | The *Contractor* complies with the requirements and submits Monthly Reports on Safety Performance (refer to as “**Monthly Report**” in this clause) and relevant documentary proof for the performance-tied payment items as required by section [*insert reference*] of the Particular Specification on “Report on Safety Performance and Payment for Performance-tied Payment Items”. |  |
| (3) | The *Project Manager* assesses the amounts for the performance-tied payment items submitted in each Monthly Report in accordance with the Assessment Rules for the Performance-tied Payment Items of the PFSPMS and the *incentive schedule* for the Performance-tied Payment Items of the PFSPMS in **Appendix** [*insert reference*] to the Contract Data Part one in accordance with NEC Clause X20.4 and notifies the *Contractor* of the assessed amounts. The *Contractor* includes the assessed amounts in its next application for payment statement submitted in accordance with NEC Clause 50.2. |  |
| (4) | 1. If the *Contractor* or the *Project Manager* considers that adjustment of any of the Monthly Reports, including those submitted and agreed by the *Project Manager* previously, is required, the *Contractor* revises and re-submits the relevant Monthly Report to the *Project Manager* for correction and acceptance. |  |
|  | 1. Any accident which is suspected to be a reportable accident is counted as a reportable accident in the Monthly Report for the month in which the accident occurs. Without prejudice to the generality of sub-clause (a) above, if it is subsequently concluded that the accident is not a reportable accident, the *Contractor* revises and re-submits the relevant Monthly Report to the *Project Manager* for correction and acceptance. |  |

**IV:7 ISO 9000 Certification for the *Contractor***

| **IV:7** | **ISO 9000 Certification for the *Contractor*** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor*, or where the *Contractor* is a joint venture, its specified participant or shareholder in the statement submitted in accordance with Special Conditions of Tender Clause *[insert the clause number of the SCT dealing with ISO 9000 certification for the Contractor]* either   1. has obtained ISO 9000 certificate acceptable to the *Client* with the scope of certification acceptable to the *Project Manager* on or before the Contract Date or 2. within three months of the Contract Date, books with a certification body acceptable to the *Client* the date of audit for the ISO 9001 certification; with detailed documented quality system procedures ready at the time of booking. | WBTC No. 13/2001  SDEV’s memo ref. DEVB(W) 520/83/01 dated 4.4.2018 and DEVB(W) 510/33/02 dated 14.2.2020.  Modified from SCC28 |
| (2) | If sub-clause(1)(b) above applies and the *Contractor* does not make such booking, the *Client* withholds payment until such booking is made and the *Contractor* is not entitled to interest in that period \*[provided that this condition precedent does not apply to the advanced payment under NEC Clause X14].  [*\*include the words in [square brackets] only when Secondary Option Clause X14 is adopted.*] |

**IV:8 Intellectual Property Rights**

| **IV:8** | **Intellectual Property Rights** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor* shall be fully responsible for its design under the contract (including the *Contractor*’s design) as well as the general performance of the contract. For the purpose of this clause, *Contractor*’s design includes but is not limited to *Contractor*’s Design and Cost Savings Design. |  |
| (2) | The *Contractor* does not infringe any Intellectual Property Rights of any person, whether or not the *Contractor*’s design or any machine, work, method or material or anything whatsoever required for any works is developed, adopted, produced or used by itself, its Tier Subcontractors or the manufacturers of any proprietary product or system selected by it to Provide the Works and/or in the performance of the contract. |  |
| (3) | Except in respect of those Intellectual Property Rights referred to in sub-clause (5) of this clause, the *Contractor* hereby undertakes and warrants to the *Client* that the *Contractor* is the sole legal and beneficial owner of all Intellectual Property Rights subsisting in the *Contractor*’s design. |  |
| (4) | Upon the issue of the certificate of Completion of the *works*, or after termination, abandonment or breach of the contract, the *Contractor* is deemed to have granted to the *Client*, its authorised users and the subsequent owners and occupiers of the *works* free of all fees a transferable, non-exclusive, worldwide, perpetual and irrevocable licence (carrying the right to grant sub-licenses) to utilize, use and copy the *Contractor*’s design, the resultant works of such design, “as constructed” drawings and other drawings and documents (including maintenance manuals) provided by the *Contractor* in connection with the construction of the *works* and/or the subsequent alteration, extension and maintenance thereof and for any purpose connected with construction, use, maintenance, alteration or demolition of the *works* (unless otherwise stated in the Scope) and for other purpose as stated in the Scope and the contract. If different certificates of Completion have been issued for different *sections* or parts of the *works* pursuant to NEC Clause 30.2, the expression “certificate of Completion”, for the purpose of this sub-clause, means the last of such certificates. |  |
| (5) | To the extent that legal and beneficial ownership of any Intellectual Property Rights in the *Contractor*’s design, the resultant works of such design, “as constructed” drawings and other drawings and documents (including maintenance manual) provided by the *Contractor* in connection with the *Contractor*’s design is vested in anyone other than the *Contractor*, the *Contractor* procures at its own cost and expense that the relevant legal and beneficial owner grants a licence together with an indemnity to the *Client*, its authorised users and the subsequent owners and occupiers of the *works* upon the same terms mutatis mutandis as those set out in sub-clauses (4) and (8) of this clause respectively. |  |
| (6) | For the avoidance of doubt, any license and indemnity granted pursuant to this clause is not determined if the *Contractor* for any reason ceases to be employed in connection with the *works* or the *Contractor*’s obligation to Provide the Works be terminated. |  |
| (7) | Upon the *Client*’s request, the *Contractor* is to do such acts and execute all such deeds and documents (or procure that the same be done or executed) as the *Client* or the subsequent owners or occupiers of the *works* may require for granting to the *Client*, its authorised users and the subsequent owners and occupiers of the *works* all or any of the rights referred to in this clause. The *Contractor* bears its own costs and expenses in relation thereto. |  |
| (8) | The *Contractor* shall indemnify the *Client*, its authorised users and the subsequent owners and occupiers of the *works* and keep the *Client*, its authorised users and the subsequent owners and occupiers of the *works* fully and effectively indemnified against all proceedings, actions, costs, claims, demands, damages, losses, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any compensation and costs which may be agreed to be paid in settlement of any proceedings and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the use or possession of the *Contractor*’s design or any part(s) thereof or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, or the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorised users and subsequent owners or occupiers of the *works* of the *Contractor*’s design or any part(s) thereof or the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it infringes any Intellectual Property Rights or any other right of any person.  For avoidance of doubt, the indemnity herein applies where the proceedings concerned are subsequently withdrawn or settled or where the allegations of infringement are subsequently found to be unsubstantiated. |  |
| (9) | The *Contractor* warrants that   * 1. the provision of the *Contractor*’s design or any part or component of the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and /or in the performance of the contract and the use, operation or possession and/or the alteration, extension or maintenance by the *Client*, its authorised users and subsequent owners or occupiers of the *works* of the *Contractor*’s design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it will not infringe any Intellectual Property Rights or any other rights of any person, and |  |
|  | * 1. in respect of any article, component, process or invention in the *Contractor*’s design or the resultant works of such design or any machine, work, method or material or anything whatsoever required for any works developed, adopted, produced or used by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it to Provide the Works and/or in the performance of the contract, the Intellectual Property Rights of which are vested in a third party, the *Contractor*, Tier Subcontractors or the manufacturers have or shall have obtained a valid and continuing licence under which they are entitled to use the relevant article, component, process or invention to Provide the Works and/or in the performance of the contract and the *Client*, its authorised users and the subsequent owners and occupiers of the works are entitled to use, operate and possess, and/or alter, extend and maintain the *Contractor*’s design or any part(s) thereof and the resultant works of such design, or any machine, work, method or material or anything whatsoever required for any works provided by the *Contractor*, Tier Subcontractors or the manufacturers of any proprietary product or system required or selected by it. |  |
| (10) | The *Contractor* shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the *Contractor*’s design to irrevocably waive, all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of the *Client*, its authorised users and the subsequent owners and occupiers of the *works* and shall take effect upon the grant of licence to the *Client*, its authorised users and the subsequent owners and occupiers of the *works*. |  |
| (11) | The provisions of this clause shall survive the Completion or termination and shall continue in full force and effect notwithstanding such Completion or termination. |  |

**IV:9 Intellectual Property Rights relating to Site Uniform**

| **IV:9** | **Intellectual Property Rights relating to Site Uniform** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor* warrants to the *Client* that:   1. the design including but not limited to the *Contractor*’s logo and/or any logo of a Subcontractor employed by the *Contractor* to carry out any part of the *works*, manufacture and supply of the site uniform (hereinafter collectively referred to in this clause as “**design of the site uniform**”) in accordance with Clause [*insert reference*] of the Particular Specification does not and will not infringe any Intellectual Property Rights of any party, and 2. in respect of the design of the site uniform including but not limited to the supply or use of any materials or articles by the *Contractor*, the Intellectual Property Rights of which are vested in a third party: 3. the *Contractor* has or shall have obtained a valid and continuing licence under which the *Contractor* is entitled to sub-license the third party Intellectual Property Rights for itself and for the *Client*, its authorised users, assigns and successors-in-title, or 4. the *Contractor* has or shall have obtained the grant of all necessary clearances for itself and for the *Client*, its authorised users assigns and successors-in-title prior to the supply or use of such materials or articles. | SDEV memo ref. DEVB(Trg) 133/3 (10) of 23.1.2017  Modified from SCC U1 at Annex A1 of the above memo |
| (2) | The *Contractor* shall indemnify the *Client*, its authorised users, assigns and successors-in-title and keep the *Client*, its authorised users, assigns and successors-in-title fully and effectively indemnified against all actions, costs, claims, demands, damages, expenses (including without limitation the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings (where the settlement has first been proposed or approved in writing by/on behalf of the *Contractor*) and liabilities of whatsoever nature arising out of or in connection with any allegation and/or claim that the design of the site uniform, its possession or use infringes any Intellectual Property Rights of any party. |  |
| (3) | For the avoidance of doubt, the design, manufacture, supply and/or use by the *Contractor* of the anti-heat stress uniform of the Hong Kong Polytechnic University referred to in Clause [*insert reference*] of the Particular Specification shall not in any way relieve the *Contractor* from the warranty under sub-clause (1) above or the indemnity under sub-clause (2) above. |  |
| (4) | The provisions of this clause shall survive Completion or termination and shall continue in full force and effect notwithstanding such Completion or termination. |  |

**IV:10 Relevant Imported Items**

| **IV:10** | **Relevant Imported Items** | **Guidelines** |
| --- | --- | --- |
| (1) | If the *Project Manager* certifies Special Payment for any Relevant Imported Item in a *Project Manager*’s certificate and the amount certified as due to the *Contractor* in the *Project Manager*’s certificate has been paid by the *Client*, the *Contractor* delivers the Relevant Imported Item to the Site within 6 months from the date of payment. | SDEV memo ref. DEVB(W) 510/33/02 dated 8.7.2022 and 22.11.2023 |
| (2) | Subject to sub-clause (3), if the *Contractor* fails to comply with sub-clause (1), then, without prejudice to any other right or remedy that the *Client* may have against the *Contractor*, the *Client* is entitled to deduct the Special Payment paid by the *Client* for that Relevant Imported Item from the amount due to the *Contractor* in 6 equal monthly instalments, or to otherwise recover the amount of the Special Payment made from the *Contractor.* |  |
| (3) | On the expiry or earlier termination of the contract for any reason, all Special Payments made by the *Client* for Relevant Imported Items that are not yet delivered by the *Contractor* to the Site on the date of expiry or termination of the contract is immediately recoverable by the *Client* from the *Contractor* as a debt. |  |
| (4) | The *Project Manager* may cease to accept any new application for Special Payment for Relevant Imported Items on giving the Contractor not less than 30 days’ written notice in advance. The date on which the cessation takes effect is hereinafter referred to as the “**Cessation Date**”. |  |
| (5) | With effect from the Cessation Date, the *Contractor* does not make, and the *Project Manager* does not accept, any new application for Special Payment. Notwithstanding the cessation, the *Project Manager* continues to process an application for Special Payment that is submitted before the Cessation Date and for which an assessment has not yet been made by the *Project Manager* under NEC Clause 50. |  |

**IV:11 Prohibition of Imposing Administrative Charges for Reporting Site Accidents and Elimination of Under-reporting of Site Accidents**

| **IV:11** | **Prohibition of Imposing Administrative Charges for Reporting Site Accidents and Elimination of Under-reporting of Site Accidents** | **Guidelines** |
| --- | --- | --- |
| (1) | The *Contractor* does not impose charges of any form on any Tier Subcontractor, or deduct any amount from the payment to which any Tier Subcontractor is entitled, for reporting accidents and processing any claims for compensation under the Employees’ Compensation Ordinance (Cap. 282) on behalf of the Tier Subcontractor. | SDEV’s memo ref. DEVB(W) 516/80/03 dated 3.8.2022 |
| (2) | Where injury by accident arising out of and in the course of the employment is caused to any person employed to Provide the Works or in connection with the contract, the *Contractor* notifies the Commissioner for Labour in such form and manner as required by the law and reports the matter to the *Project Manager* in the form prescribed in the contract without delay. This sub-clause applies irrespective of whether the person is in the employ of the *Contractor* or a Tier Subcontractor, and whether the person claims for compensation. |  |
| (3) | The *Contractor* makes necessary arrangements to ensure that all Tier Subcontractors report all accidents on the Working Areas involving their employees via their upper tier subcontractors (if applicable) to the *Contractor* without delay. Such arrangement shall be incorporated in the Safety Plan and Subcontractor Management Plan required under the contract. |  |
| (4) | The *Client* is not liable for any accident or injury to any worker or other person in the employ of the *Contractor* or any Tier Subcontractors or any damages or compensation payable at law in respect of or in consequence of any such accident or injury, save and except an accident or injury resulting from any act or default of the *Client*, his agents or employees and the *Contractor* indemnifies and keeps indemnified the *Client* against all such damages and compensation, save and except as aforesaid and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto. |  |
| (5) | The compliance of this clause by the *Contractor* is entirely without prejudice to and does not relieve the *Contractor* from any of its obligations or responsibilities under the contract, the Factories and Industrial Undertakings Ordinance (Cap. 59), the Occupational Safety and Health Ordinance (Cap. 509) and the Employees’ Compensation Ordinance (Cap. 282), and all their subsidiary legislation. |  |

**IV:12 Assessment of the Price for Work Done to Date for each Stage of MiC Works**

| **IV:12** | **Assessment of the Price for Work Done to Date for each Stage of MiC Works** | **Guidelines** |
| --- | --- | --- |
| (1) | The provisions of this Clause shall apply in assessing the Price for Work Done to Date for \*activities relating to MiC works in Schedule Nr. [X] of the Activity Schedule and shall be read in conjunction with NEC Clause 11.2(32)[***for Option A***]  /work covered by items relating to MiC works in Bill Nr. [X] and shall be read in conjunction with NEC Clause 11.2(33)[***for Option B***]. | SDEV’s memo ref. DEVB(PSGO) 100/1 dated 18.3.2024  \* Delete/revise as appropriate |
| (2) | For the purposes of this Clause, the following terms shall have the meaning assigned to them below:  “relevant activity”, in relation to a Stage means the activity specified in relation to such stage in Column 3 of the table in this sub-clause;  “Stage” means a stage of the MiC works specified in Column 1 of the table in this sub-clause; and  “Sum for each Stage of MiC works” in relation to a Stage means the sum calculated by applying the percentage specified in relation to such Stage in Column 2 of the table in this sub-clause to the total of the Prices of \*Schedule Nr. [X] of the Activity Schedule [***for Option A***]    /Bill Nr. [X] of the Bill of Quantities [***for Option B***].   |  |  |  | | --- | --- | --- | | **Column 1**  **Stage** | **Column 2**  **Percentage of the Sum for MiC works** | **Column 3**  **Activity** | | Stage 1 | 4% | Drawings for all MiC modules approved | | Stage 2 | 8% | Mock-up for all MiC modules approved | | Stage 3 | 8% | Preparatory works necessary for commencement of fabrication of all MiC modules completed | | Stage 4 | 35% | MiC modules completed off-Site (before delivery to the Site) | | Stage 5 | 25% | MiC modules delivered to the Site | | Stage 6 | 20% | MiC modules fixed-in-final position | |  |
| (3) | For each of Stages 1, 2 and 3, the *Contractor* shall include the Sum for each Stage of MiC works in the application for payment pursuant to NEC Clause 50.2 after the relevant activity is completed. The *Contractor* shall submit to the *Project Manager* all relevant supporting documents and substantiate the completion of the relevant activity and the Sum for each Stage of MiC works. For the avoidance of doubt, the *Project Manager* shall not certify any payment for Stage 1, Stage 2 or Stage 3 before the completion of the relevant activity of the respective Stage. |  |
|  |  |  |
| (4) | For each of the Stages 4, 5 and 6, the *Contractor* shall include the proportion of the Sum for each Stage of MiC works which corresponds to the proportion of the relevant activity completed in the application for payment submitted pursuant to NEC Clause 50.2. The *Contractor* shall submit to the *Project Manager* all relevant supporting documents and substantiate the proportion of the relevant activity completed and the proportion of the Sum for each Stage of MiC works. |  |
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| (5) | For Stage 3, the relevant supporting documents required to be submitted in support of an application for payment includes, but is not limited to, the subcontract(s) with MiC subcontractor(s), invoice of payment to MiC subcontractor(s), progress report(s), progress photo(s) and video(s). For the avoidance of doubt, the *Project Manager* shall not certify any payment for Stage 3 if no supporting documents has been provided by the *Contractor*, or if the *Project Manager* is not satisfied that the relevant activity has been completed. |  |
|  |  |  |
| (6) | For Stage 4, if the *Contractor* wishes to apply for interim payment before the MiC works are delivered to the Site, the *Contractor* shall comply with the requirements under ACC Clause IV:[13]***[Insert clause number of the ACC for Interim Payment for Off-Site Manufacture of MiC Works]****.* |  |

**IV:13 Interim Payment for Off-Site Manufacture of MiC Works**

| **IV:13** | **Interim Payment for Off-Site Manufacture of MiC Works** | **Guidelines** |
| --- | --- | --- |
| (1) | For purposes of this Clause,  “Stage 4” of MiC works and “relevant activity” shall have the same meaning as defined under ACC Clause IV:[12](2)*.* ***[Insert clause number of the ACC for Assessment of the Price for Work Done to Date for each Stage of MiC Works]***  “Qualified MiC Works” shall mean MiC works completed off-Site which satisfy the following requirements:   1. have met all the contractual requirements and geometric configurations; 2. are the *Contractor*’s absolute and unencumbered property; 3. are ready for shipment to the Site for erection, or are in the course of transportation to the Site for inclusion in the *works* but are yet to be delivered to the Site; and 4. are set apart and have been clearly and visibly marked, individually or as a set, as follows:   “Property of the Government of the Hong Kong Special Administrative Region. For use in ***[contract no. and title]***. Destination: **[*Site address*]**”. | SDEV’s memo ref. DEVB(PSGO) 100/1 dated 18.3.2024 |
| (2) | Should the *Contractor* apply for interim payment for a proportion of relevant activity in Stage 4 of MiC works pursuant to ACC Clause IV:[12](4) ***[Insert clause number of the ACC for Assessment of the Price for Work Done to Date for each Stage of MiC Works]*** and NEC Clause 50.2 (“**Stage 4 Interim Payment**”) before the MiC works relating to the proportion of relevant activity in Stage 4 of the MiC works (“**Relevant Works**”) are delivered to the Site, the *Contractor* shall:   1. submit to the *Project Manager*, on or before the assessment date at the end of each *assessment interval*, all relevant documents and information to show that the Relevant Works satisfied the requirements of Qualified MiC Works;   (b) upon request, provide the *Project Manager* or the *Client* with any documents or information relating to the Relevant Works;  (c) be responsible for the arrangement and all associated costs in connection with and provide assistance to facilitate the visits of the *Project Manager*’s delegate to any off-Site manufacture / fabrication / assembly yard(s) to verify whether the proportion of the relevant activity in Stage 4 of MiC works has been completed;  (d) submit a duly executed vesting certificate (“**Certificate**”) in relation to the Relevant Works in the form annexed at Appendix [*insert reference*] to the *additional conditions of contract* together with its application for payment; and  (e) if the Relevant Works are manufactured by a Subcontractor, submit a duly signed letter from the Subcontractor for the Relevant Works in the form annexed at Appendix [*insert reference* ] to the *additional conditions of contract*. |  |
|  |  |  |
| (3) | For the avoidance of doubt, if no Certificate or letter as described in sub-clause (2)(d) or (2)(e) has been submitted, or if the *Project Manager* is not satisfied that the Relevant Works have met all the requirements of Qualified MiC Works, no Stage 4 Interim Payment shall be certified and any application for Stage 4 Interim Payment shall be made and processed upon the delivery of the Relevant Works to the Site. |  |
| (4) | If the *Project Manager* certifies Stage 4 Interim Payment in a *Project Manager*’s Certificate:   1. The Relevant Works shall, notwithstanding NEC Clauses 70 and 71, be and become the property of the *Client* when the *Client* pays the amount certified as due to the *Contractor* in the *Project Manager*’s certificate. 2. The Relevant Works shall not be removed without an instruction or the prior written consent of the *Project Manager* and may be inspected by the *Project Manager*’s delegate on reasonable notice. 3. Without prejudice to the generality of NEC Clause 81.1, any claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the Relevant Works and any loss of or damage to the Relevant Works are the *Contractor*’s liabilities, and the *Contractor* shall procure such insurance as is necessary to cover such liabilities. 4. The *Contractor* shall be responsible for the cost of storage, handling, transporting, insurance and visits of the *Project Manager*’s delegate to any off-Site manufacture / fabrication / assembly yard(s) of the Relevant Works.   The operation of this sub-clause and the *Client*’s payment of any Stage 4 Interim Payment shall not be deemed to imply any acceptance by the *Project Manager* of any Relevant Works or prevent the rejection by the *Project Manager* of any Relevant Works at any time. |  |
|  |  |  |
| (5) | Neither the *Contractor* nor a Subcontractor nor any other person shall have a lien or charge on the Relevant Works which have become the property of the *Client* under sub-clause (4) for any sum due to the *Contractor*, Subcontractor or other person and the *Contractor* shall take all such steps as may reasonably be necessary to ensure that the title of the *Client* and the exclusion of any such lien or charge are brought to the notice of the Subcontractor and any other person dealing with the Relevant Works. |  |
|  |  |  |
| (6) | In the event of the termination of the contract for any reason, the *Contractor* shall, at its own cost, deliver the Relevant Works to the Site. If the *Contractor* fails to promptly perform that delivery, the *Client* may enter any premises and, at the *Contractor*’s cost, collect the Relevant Works and take them to the Site or to any other location. |  |

**IV:14 Assessment of the Price for Work Done to Date for each Stage of MiMEP Works**

| **IV:14** | **Assessment of the Price for Work Done to Date for each Stage of MiMEP Works** | **Guidelines** |
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| (1) | The provisions of this Clause shall apply in assessing the Price for Work Done to Date for \*activities relating to MiMEP works in Schedule Nr. [Y] of the Activity Schedule and shall be read in conjunction with NEC Clause 11.2(32)[***for Option A***]  /work covered by items relating to MiMEP works in Bill Nr. [Y] and shall be read in conjunction with NEC Clause 11.2(33)[***for Option B***]. | SDEV’s memo ref. DEVB(PSGO) 100/1 dated 18.3.2024  \* Delete/revise as appropriate |
| (2) | For the purposes of this Clause, the following terms shall have the meaning assigned to them below:  “relevant activity”, in relation to a Stage means the activity specified in relation to such stage in Column 3 of Tables A and B in this sub-clause;  “Stage” means a stage of the MiMEP works specified in Column 1 of Tables A and B in this sub-clause; and  “Sum for each Stage of MiMEP works with mock-up” in relation to a Stage means the sum calculated by applying the percentage specified in relation to such Stage in Column 2 of Table A in this sub-clause to the total of the Prices of MiMEP works with mock-up in \*Schedule Nr. [Y] of the Activity Schedule [***for Option A***]  /Bill Nr. [Y] of the Bill of Quantities [***for Option B***].  “Sum for each Stage of MiMEP works without mock-up” in relation to a Stage means the sum calculated by applying the percentage specified in relation to such Stage in Column 2 of Table B in this sub-clause to the total of the Prices of MiMEP works without mock-up in \*Schedule Nr. [Y] of the Activity Schedule [***for Option A***]  /Bill Nr. [Y] of the Bill of Quantities [***for Option B***]. |  |
|  | **Table A - MiMEP works with mock-up**   |  |  |  | | --- | --- | --- | | **Column 1**  **Stage** | **Column 2**  **Percentage of the Sum for MiMEP works with mock-up** | **Column 3**  **Activity** | | Stage 1 | 4% | Drawings for MiMEP modules approved | | Stage 2 | 8% | Mock-up for MiMEP modules approved | | Stage 3 | 8% | Preparatory works necessary for commencement of fabrication of MiMEP modules completed | | Stage 4 | 35% | MiMEP modules completed off-Site (before delivery to the Site) | | Stage 5 | 25% | MiMEP modules delivered to the Site | | Stage 6 | 20% | MiMEP modules fixed-in-final position | |  |
|  |  |  |
|  | **Table B –MiMEP works without mock-up**   |  |  |  | | --- | --- | --- | | **Column 1**  **Stage** | **Column 2**  **Percentage of the Sum for MiMEP works without mock-up** | **Column 3**  **Activity** | | Stage 1 | 4% | Drawings for MiMEP modules approved | | Stage 2 | - | Not used | | Stage 3 | 16% | Preparatory works necessary for commencement of fabrication of MiMEP modules completed | | Stage 4 | 35% | MiMEP modules completed off-Site (before delivery to the Site) | | Stage 5 | 25% | MiMEP modules delivered to the Site | | Stage 6 | 20% | MiMEP modules fixed-in-final position | |  |
| (3) | The *Contractor* shall include in the application for payment submitted pursuant to NEC Clause 50.2:   1. the proportion of the Sum for each Stage of MiMEP works with mock-up which corresponds to the proportion of the relevant activity completed; and 2. the proportion of the Sum of each Stage of MiMEP works without mock-up which corresponds to the proportion of the relevant activity completed.   The *Contractor* shall submit to the *Project Manager* all relevant supporting documents and substantiate the proportion of relevant activity completed and the sum included in the application for payment. |  |
|  |  |  |
| (4) | For Stage 3 ofMiMEP works (whether with or without mock-up), the relevant supporting documents required to be submitted in support of an application for payment includes, but is not limited to, the subcontract(s) with MiMEP subcontractor(s), invoice of payment to MiMEP subcontractor(s), progress report(s), progress photo(s) and video(s). For the avoidance of doubt, the *Project Manager* shall not certify any payment for Stage 3 if no supporting documents has been provided by the *Contractor*, or if the *Project Manager* is not satisfied that the relevant proportion of the activity has been completed. |  |
|  |  |  |
| (5) | For Stage 4 of MiMEP works (whether with or without mock-up), if the *Contractor* wishes to apply for interim payment before the MiMEP works are delivered to the Site, the *Contractor* shall comply with the requirements under ACC Clause IV:[15]***[Insert clause number of the ACC for Interim Payment for Off-site Manufacture of MiMEP Works]****.* |  |
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**IV:15 Interim Payment for Off-Site Manufacture of MiMEP Works**

| **IV:15** | **Interim Payment for Off-Site Manufacture of MiMEP Works** | **Guidelines** |
| --- | --- | --- |
| (1) | For purposes of this Clause,  “Stage 4” of MiMEP works and “relevant activity” shall have the same meaning as defined under ACC Clause IV:[14](2)*.* **[***Insert clause number of the ACC for Assessment of the Price for Work Done to Date for each Stage of MiMEP works***]**  “Qualified MiMEP Works” shall mean MiMEP works completed off-Site which satisfy the following requirements:   1. have met all the contractual requirements and geometric configurations; 2. are the *Contractor*’s absolute and unencumbered property; 3. are ready for shipment to the Site for erection, or are in the course of transportation to the Site for inclusion in the *works* but are yet to be delivered to the Site; and 4. are set apart and have been clearly and visibly marked, individually or as a set, as follows:   “Property of the Government of the Hong Kong Special Administrative Region. For use in ***[contract no. and title]***. Destination: **[*Site address*]**”. |  |
|  |  |  |
| (2) | Should the *Contractor* apply for interim payment for a proportion of the relevant activity in Stage 4 of MiMEP works pursuant to ACC Clause IV:[14](3) **[***Insert clause number of the ACC for Assessment of the Price for Work Done to Date for each Stage of MiMEP works***]** and NEC Clause 50.2 (“**MiMEP Stage 4 Interim Payment**”) before the MiMEP works relating to the proportion of the relevant activity in Stage 4 of MiMEP works (“**Relevant MiMEP Works**”) are delivered to the Site, the *Contractor* shall:   1. submit to the Project Manager, on or before the assessment date at the end of each assessment interval, all relevant documents and information to show that the Relevant MiMEP Works satisfied the requirements of Qualified MiMEP Works;   (b) upon request, provide the *Project Manager* or the *Client* with any documents or information relating to the Relevant MiMEP Works;  (c) be responsible for the arrangement and all associated costs in connection with and provide assistance to facilitate the visits of the *Project Manager*’s delegate to any off-Site manufacture / fabrication / assembly yard(s) to verify whether the proportion of the relevant activity in Stage 4 of MiMEP works has been completed;  (d) submit a duly executed vesting certificate (“**MiMEP** **Certificate**”) in relation to the Relevant MiMEP Works in the form annexed at Appendix [*insert reference*] to the *additional conditions of contract* together with its application for payment; and  (e) if the Relevant MiMEP Works are manufactured by a Subcontractor, submit a duly signed letter from the Subcontractor for the Relevant MiMEP Works in the form annexed at Appendix [*insert reference*] to the *additional conditions of contract*. |  |
|  |  |  |
| (3) | For the avoidance of doubt, if no MiMEP Certificate or letter as described in sub-clause (2)(d) or (2)(e) has been submitted, or if the *Project Manager* is not satisfied that the Relevant MiMEP Works have met all the requirements of Qualified MiMEP Works, no MiMEP Stage 4 Interim Payment shall be certified and any application for MiMEP Stage 4 Interim Payment shall be made and processed upon the delivery of the Relevant MiMEP Works to Site. |  |
|  |  |  |
| (4) | If the *Project Manager* certifies MiMEP Stage 4 Interim Payment in a *Project Manager*’s Certificate:   1. The Relevant MiMEP Works shall, notwithstanding NEC Clauses 70 and 71, be and become the property of the *Client* when the *Client* pays the amount certified as due to the *Contractor* in the *Project Manager*’s certificate. 2. The Relevant MiMEP Works shall not be removed without an instruction or the prior written consent of the *Project Manager* and may be inspected by the *Project Manager*’s delegate on reasonable notice. 3. Without prejudice to the generality of NEC Clause 81.1, any claims and proceedings from Others and compensation and costs payable to Others which arise from or in connection with the Relevant MiMEP Works and any loss of or damage to the Relevant MiMEP Works are the *Contractor*’s liabilities, and the *Contractor* shall procure such insurance as is necessary to cover such liabilities. 4. The *Contractor* shall be responsible for the cost of storage, handling, transporting, insurance and visits of the *Project Manager*’s delegate to any off-Site manufacture / fabrication / assembly yard(s) of the Relevant MiMEP Works.   The operation of this sub-clause and the *Client*’s payment of any MiMEP Stage 4 Interim Payment shall not be deemed to imply any acceptance by the *Project Manager* of any Relevant MiMEP Works or prevent the rejection by the *Project Manager* of any RelevantMiMEP Works at any time. |  |
|  |  |  |
| (5) | Neither the *Contractor* nor a Subcontractor nor any other person shall have a lien or charge on the RelevantMiMEP Works which have become the property of the *Client* under sub-clause (4) for any sum due to the *Contractor*, Subcontractor or other person and the *Contractor* shall take all such steps as may reasonably be necessary to ensure that the title of the *Client* and the exclusion of any such lien or charge are brought to the notice of the Subcontractor and any other person dealing with the Relevant MiMEP Works. |  |
|  |  |  |
| (6) | In the event of the termination of the contract for any reason, the *Contractor* shall, at its own cost, deliver the Relevant MiMEP Works to the Site. If the *Contractor* fails to promptly perform that delivery, the *Client* may enter any premises and, at the *Contractor*’s cost, collect the Relevant MiMEP Works and take them to the Site or to any other location. |  |