

General Conditions of Contract

General Conditions of Contract for Maintenance Works **Electrical and Mechanical Services Department**

1. Definitions and Interpretation

Definitions and Interpretation

“Contract” means the Quotation and the acceptance thereof by way of Service Order or Letter of Acceptance by the Employer, Drawings, General Conditions of Contract for Maintenance Works, Specification and Schedule of Rates.

“Contractor” means the person, firm or company whose Quotation has been accepted by the Employer and includes the Contractor's personal representatives, and successors.

“Employer” means the Government of the Hong Kong Special Administrative Region.

“Engineer” means the Chief Engineer or such other person as may be appointed from time to time by the Director of Electrical and Mechanical Services and notified to the Contractor.

“Engineer’s Representative” means any person or persons appointed from time to time by the Engineer and notified to the Contractor to perform the duties set forth in Clause 2.

“Service Order” means the Departmental Order for Provision of Service (G.F.220) issued to the Contractor.

“Site” means the lands and other places provided by the Employer for the purpose of the execution of the Works.

“Specification” means the specifications referred to in the Contract and any modification thereof or addition thereto as may from time to time be furnished or approved in writing by the Engineer.

“Works” means all the works and things to be executed, supplied and or carried out by the Contractor under the Contract.

2. Duties and Powers of the Engineer and the Engineer’s Representative

Duties and Powers of the Engineer and the Engineer’s Representative

Save in so far as it is legally or physically impossible, the Contractor shall provide the maintenance service as specified in the Specification, to the satisfaction of the Engineer.

(1) The Engineer shall carry out such duties as are specified in the Contract with due expedition. The Contractor shall take instructions, orders or directions only from the Engineer and the Engineer’s Representative.

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- (2) The duties of the Engineer's Representative are to watch and inspect the Works, to test and examine any material and equipment to be used and workmanship employed by the Contractor in connection with the Works and to carry out such duties and exercise such powers vested in the Engineer as may be delegated to him by the Engineer.

3. Payment

Payment

- (1) In consideration of the said services, the Employer shall pay to the Contractor the respective sum or sums more particularly set out or referred to in Schedule of Rates, provided that if the Contractor shall, in breach of Clause 2, have failed to provide the services as specified in the Specification the Employer may without prejudice to other remedies
 - (a) withhold payment until such services have been duly carried out; or
 - (b) if any payment has been made in advance, demand a rebate of such sum or sums which the Contractor shall forthwith pay back to the Employer.
- (2) Payment will be made after the completion of any tests and submission of testing reports as required under the Contract and the acceptance of the Works by the Engineer or the Engineer's Representative.
- (3) Notwithstanding sub-clause (2) of this Clause, the Employer may pay any sum at any time provided that the Engineer or the Engineer's Representative is satisfied with the Works completed so far and the invoice submitted by the Contractor. For the avoidance of doubt, satisfaction by the Engineer or the Engineer's Representative under this sub-clause does not constitute acceptance of the Works by the Engineer or the Engineer's Representative under sub-clause (2) of this Clause.

4. Renewal of Contract

Renewal of Contract

This Contract is not automatically renewable. If the Contractor is desirous of renewing the Contract, he shall, at least three months prior to the expiry of this Contract submit to the Employer for its consideration a quotation for renewing the Contract for another term.

5. Accident or injury to workmen

Accident or injury to workmen

The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect of or in consequence of any accident or injury to any workman or other person in the employ of the Contractor or any sub-contractor save and except an accident or injury

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resulting from any act or default of the Employer, his agents or employees and the Contractor shall indemnify and keep indemnified the Employer against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

6. Damage to Persons and Property

Damage to Persons
and Property

- (1) The Contractor shall, except when directly caused by the acts or omissions of the Employer, indemnify and keep indemnified the Employer against all losses and claims for injury or damage to any person or property whatsoever, which may arise out of or in consequence of the execution of the maintenance work and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (2) The Contractor shall make good or at the option of the Employer shall pay to the Employer the cost of making good any damage, loss or injury which may occur to any property of the Employer and shall recompense the Employer in respect of any damage, loss or injury which may occur to any employee of the Employer by or arising out of or in consequence of the execution of the maintenance work or in the carrying out of the Contract.
- (3) The Contractor's liability to indemnify or recompense the Employer under sub-clauses (1) and (2) of this Clause shall be reduced proportionately to the extent that the act or neglect of the Engineer or the Employer, their respective agents or employees shall have contributed to the damage, loss or injury.

7. Variations

Variations

- (1) The Engineer shall make any variation as he may consider necessary in the form, character or quality of any work detailed in the Specification or the Schedule of Rates, or to order different work of any kind which is not detailed in the Specification or Schedule of Rates and no such variation or order for different work shall in any way vitiate or invalidate the Contract.
- (2) No such variation shall be made without an order in writing from the Engineer.
- (3) The rate for any work which is not the same as or similar in character to or is not executed under the same or similar conditions or circumstances to any item of work in the Schedule of Rates shall be ascertained by the Engineer, based on the rates in the Contract so far as may be reasonable, and be agreed upon between the Engineer and the Contractor.

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8. Repair Work

Repair Work

Repairs necessitated by reasons of negligence or misuse of the equipment by the Employer's staff and/or any other cause beyond the Contractor's control shall be carried out by the Contractor if so required by the Engineer at an additional charge to be agreed upon between the Engineer and the Contractor.

9. Assignment

Assignment

The Contractor shall not assign the Contract or any interest there in without the written consent of the Employer and any assignment shall be in a form approved by the Employer.

10. Sub-contracting

Sub-contracting

The Contractor shall not sub-contract any of the Contractor's duties without written approval from the Engineer.

11. Remedy on Contractor's failure to Perform

Remedy on
Contractor's failure
to Perform

If the Contractor shall fail to carry out any work required under the Contract or refuse to comply with any instruction or order given by the Engineer in accordance with the Contract within a reasonable time, the Engineer may give the Contractor 14 days' notice in writing to carry out such work or comply with such instruction. If the Contractor fails to comply with such notice, the Employer shall be entitled to carry out such work or instruction by his own workmen or by other contractors. Without prejudice to any other remedy, all additional expenditure properly incurred by the Employer in having such work or instruction carried out shall be recoverable by the Employer from the Contractor by deduction from moneys due to the Contractor under this Contract or under any other contract between the Employer and the Contractor.

12. Compliance with the Construction Workers Registration Ordinance, Cap. 583

Compliance with the
Construction Workers
Registration
Ordinance, Cap. 583

The Contractor shall provide the Engineer with all relevant information regarding their compliance with the Construction Workers Registration Ordinance, Cap. 583. The Contractor shall prepare and submit the required information in accordance with the requirements set out by the Engineer.

13. Labour Returns

Labour Returns

The Contractor shall, as and when called upon to do so by the Engineer or the Engineer's Representative, submit to the Engineer or Engineer's Representative, information in a format specified by the Engineer or the Engineer's Representative on workers employed by the Contractor on site,

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including the worker categories, man-hours of workers and any other information as required by the Engineer or the Engineer's Representative.

14. Information not to be divulged

Information not to be divulged

- (1) The Contractor and its employees, agents, sub-contractors and any other persons engaged in connection with the Contract (collectively, "Related Persons" and each a "Related Person") shall not use or divulge any Confidential Information except for the proper performance of the Contract. This restriction does not apply
 - (a) 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,
 - (b) 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,
 - (c) 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,
 - (d) 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
 - (e) to a disclosure of any Confidential Information with the prior written consent of the Employer.
- (2) Any disclosure of Confidential Information by the Contractor or any Related Person shall be in strict confidence and shall be on a "need to know" basis and extend only so far as may be necessary for the purpose of this Contract.
- (3) The Contractor shall take all necessary measures (including but not limited to security measures, and contractual provisions 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 shall ensure that each Related Person is aware of and comply with the provisions of this clause and the Official Secrets

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Ordinance (Cap. 521).

- (5) If so requested by the Employer, the Contractor shall submit
 - (a) a separate confidentiality agreement executed in favour of the Employer on the terms and in the form prescribed by the Employer, and
 - (b) a separate confidentiality agreement executed by a Related Person in favour of the Employer on the terms and in the form prescribed by the Employer.
- (6) The Contractor shall promptly notify the Employer, the Engineer or the Engineer's Representative of any breach or suspected breach of this clause by the Contractor or any Related Person. The Contractor and each Related Person shall give the Employer, the Engineer or the Engineer's Representative all reasonable assistance in connection with any action or proceedings the Employer 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 shall comply with the Personal Data (Privacy) Ordinance (Cap. 486) ("PDPO"). Neither the Contractor nor any Related Person uses personal data provided by the Employer, the Engineer, the Engineer's Representative 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 shall comply, and shall ensure that each Related Person comply, with these restriction, conditions and instructions, at his own cost.
- (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) The Employer, the Engineer, the Engineer's Representative or a delegate of any of them may use any information provided by the Contractor under the Contract but shall not divulge such information except for the purpose of
 - (a) carrying out any repair, amendment, extension or other work

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connected with the Works,

- (b) exercising their rights or carrying out their duties under the Contract,
 - (c) the use, alteration or demolition of the Works,
 - (d) giving publicity to the Works, or
 - (e) the Employer's duties under the Code on Access to Information.
 - (f) cost estimation or analysis of the Employer's work connected or unconnected with the contract, and compiling tender estimate for use by the Government and the public, provided that for this purpose:
 - (i) the Employer does not disclose the contract number, contract title and Contractor's name to a third party, and
 - (ii) when the Employer discloses other information to a third party, the Employer obtains an undertaking from the third party to not disclose it for any other purpose,
 - (g) 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
 - (h) initiating, defending or resolving any dispute to which the Employer is a party.
- (10) Without prejudice to any other provision of the contract, the Contractor shall indemnify and keep the Employer 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 Employer or its authorised users, assigns and successors-in-title may suffer, sustain or incur, whether directly or consequentially, as a result of or in relation to any breach of confidence (whether under the contract or otherwise) or this provision 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 Employer, the Engineer or the Engineer's Representative for the purposes of or in the course of

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performing the contract.

15. Ethical Commitment

Ethical Commitment

- (1) If the Contractor or any of his agents or employees shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Employer or to the Engineer or to any member of the Engineer's staff, the Employer may terminate forthwith the employment of the Contractor under the Contract, and to hold the Contractor liable for any loss or damage which the Employer may thereby sustain.
- (2) The Contractor shall prohibit his employees, agents, and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract.
- (3) The Contractor shall require his employees, agents and sub-contractors who are involved in this Contract to declare in writing to the Contractor any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.
- (4) The Contractor shall prohibit his employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract. The Contractor shall also require their sub-contractors and agents to impose similar restriction on their employees by way of a contractual provision.
- (5) The Contractor shall take all necessary measures (including by way of contractual provisions and/or providing training workshops where appropriate) to ensure that his employees, agents and sub-contractors are aware of the prohibitions in this clause.

16. Contractor's interim statements

Contractor's interim statements

- (1) During the progress of any Works the Contractor may submit a statement requesting an interim payment for such Works in respect of the following: -
 - (a) the estimated value of the work carried out in accordance with

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the Contract; and

- (b) (not used)
- (c) any other estimated sum to which the Contractor considers to be due to him under the Contract.

(2) (not used)

- (3) The Contractor shall also submit a signed declaration in a form prescribed in Appendix to GCC for Maintenance Works or approved by the Employer to confirm compliance with the provisions on ethical commitment and confidentiality as stated in GCC Clauses 14 and 15 as part of the Contractor's interim statement. If the Contractor fail to submit the declaration as required, the Employer shall be entitled to withhold payment until such declaration is submitted and the Contractor shall not be entitled to interest in that period.

17. Acknowledgement of being notified of the ethical requirements

Acknowledgement of being notified of the ethical requirements

The Contractor acknowledges that he has been reminded that dishonesty, theft and corruption on his part or those of his employees, agents or sub-contractor who are involved in the Contract may lead to prosecution under, without limitation, section 9 of the Prevention and Bribery Ordinance, Cap 201; section 17, section 18D or section 19 of the Theft Ordinance, Cap 210 and section 161 of the Crimes Ordinance, Cap 200. These offences commonly carry upon conviction terms of imprisonment.

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APPENDIX to GCC for Maintenance Works

COMPLIANCE WITH THE ETHICAL COMMITMENTS & PDPO REQUIREMENTS

(Appendix to GCC 16)

To: The Engineer of the Contract

Contract No.: _____

Contract Title: _____

In accordance with the General Conditions of Contract for Maintenance Works Clause 16, we confirm that we have complied with the following provisions and have ensured that our directors, employees, sub-contractors and agents are aware of the following provisions:

- (a) Prohibiting our directors, employees, agents and sub-contractors who are involved in this Contract from offering, soliciting or accepting any advantage as defined in section 2 of the Prevention of Bribery Ordinance, Cap 201 when conducting business in connection with this Contract;
- (b) Requiring our directors, employees, agents and sub-contractors who are involved in this Contract to declare in writing to us any conflict or potential conflict between their personal/financial interests and their duties in connection with this Contract. In the event that a conflict or potential conflict is disclosed, we will take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed;
- (c) Prohibiting our directors and employees who are involved in this Contract from engaging in any work or employment other than in the performance of this Contract, with or without remuneration, which could create or potentially give rise to a conflict between their personal/financial interests and their duties in connection with this Contract and requiring our sub-contractors to do the same;
- (d) Taking all measures as necessary to protect any Confidential Information or personal data as defined in the Personal Data (Privacy) Ordinance entrusted to us by or on behalf of the Employer from being divulged to a third party other than those allowed in this Contract.

(Name of the Contractor)

(Name of the Signatory)

(Position of the Signatory)

(Date)

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