

IEM PRACTICE NOTE

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# MANAGING MATERIAL PRICE FLUCTUATION IN CONSTRUCTION CONTRACTS ARISING FROM GLOBAL SUPPLY DISRUPTIONS

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UNDER IEM CONDITIONS OF CONTRACT  
(IEM.CE 2024, IEM.CE 2011 & IEM.ME 2012)

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CONTRACT

COST ESCALATION

DISRUPTIONS

## **1.0 INTRODUCTION**

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- 1.1** This Practice Note (“PN”) provides guidance on the administration of contracts affected by significant fuel price fluctuation and supply chain disruptions arising from global supply disruptions due to the recent geopolitical development in the middle east.
- 1.2** These developments have led to substantial increases in construction costs in Malaysia, particularly in relation to transportation, logistics, and key construction materials such as reinforcement steel and concrete.
- 1.3** This Practice Note provides guidance to Engineers on administering ongoing projects affected by such material price fluctuations, and on contractual provisions that may be considered for new projects.
- 1.4** The PN is applicable to projects administered under the IEM.CE 2024, IEM.CE 2011 and IEM.ME2012 (hereinafter collectively referred to as the “IEM COC”).
- 1.5** This PN clarifies the contractual entitlement under IEM COC for time, variation and cost claims raised by the Contractors pursuant to this circumstance.

## 2.0 MATERIAL PRICE FLUCTUATION UNDER IEM COC

- 2.1** “Contract Sum” means the sum set out in the Letter of Acceptance and is fixed subject only to adjustments expressly provided by the Conditions as defined in Clause 1.1(9).
- 2.2** IEM.CE 2011 and IEM.CE 2024 allowed for upward price fluctuation for cement, steel reinforcement, bitumen and diesel under Option Module B if parties agreed to the application of Option Module B at the time of contract.
- 2.3** IEM.ME 2012 does not contain any Option Module for price fluctuation.
- 2.4** Generally, IEM COC does not allow Contract Sum to be adjusted for material price fluctuation unless Option Module B under IEM.CE 2011 and IEM.CE 2024 has been agreed by the parties to be applicable.
- 2.5** In the absence of a material price fluctuation provision in the IEM COC, increases in the market price of material, fuel or transportation caused by the geopolitical development in the middle east do not, in themselves and without more, constitute to:
- 2.5.1** A variation under Clause. 51;
  - 2.5.2** A clause in IEM COC which entitles the Contractor to claim under Clause 53;
  - 2.5.3** Any circumstance or occurrence entitling the Contractor to an extended Date for Completion by reason of an express provision of the Contract under Clause 44.1;
  - 2.5.4** An Employer’s Risk event under Clause 20.4 amongst other “*war (irrespective if the war is declared or not) or hostilities, invasion and act of foreign enemies*” and “*any operation of the forces or nature which an experienced contractor could not have reasonably foreseen or priced for*”; and
  - 2.5.5** Be considered as an adverse physical conditions (other than climatic) under Clause 12.2 and 11.4.

- 2.6** There is no definition for Force Majeure in the IEM COC. Therefore, relief must therefore be founded on express provisions of the Contract rather than any general doctrine of force majeure.”
- 2.7** Therefore, Contractors are accordingly deemed to have allowed price fluctuations when preparing and submitting their tenders.

### **3.0 FOR ONGOING PROJECTS**

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- 3.1** Claims for material price fluctuation for IEM.CE 2011 and IEM.CE 2024:
- 3.1.1** If Option Module B is applicable, the material price fluctuation for the four (4) items stipulated is certifiable and all others are not certifiable unless contractually justified.;
  - 3.1.2** If Option Module B is not applicable, the material price fluctuation for all materials is not certifiable unless contractually justified.
- 3.2** In IEM.ME 2012, material price fluctuation is not certifiable.
- 3.3** Delay (Time) as a result of material price fluctuation under IEM COC is not ordinarily certifiable unless linked to an express relevant event under the Contract such as the Employer’s supplied material under Clause 33.1(9).
- 3.4** Parties are encouraged to discuss and find an amiable solution to this issue of material price fluctuation with the project overall benefits as a common objective through a supplementary agreement as strict contractual enforcements for such unprecedented event may not achieve the intended commercial outcome for the project and interest of the parties.

## 4.0 FOR NEW PROJECTS

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- 4.1 It is recommended to agree on the applicability of Option Module B for price fluctuation and include material price fluctuation clauses for all other materials based on the formula in Option Module B as a baseline model with reference to a published index (such as the CIDB Building Material Cost Index or the DOSM Producer Price Index or any other agreed published index).
- 4.2 The material price fluctuation clauses shall be applicable for upward as well and downward for it to be fair to both parties instead of upward only as per current Option Module B.
- 4.3 Alternatively, parties to further define the risk allocation about the material price fluctuation.
- 4.4 Parties can also adopt other suitable procurement strategies to mitigate the material price fluctuation risk.

## 5.0 ROLE OF ENGINEER AS THE CONTRACT ADMINISTRATOR

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- 5.1 The Engineer must act impartially and must not certify any payment on a compassionate or ex gratia basis in the absence of contractual entitlement.
- 5.2 The Engineer being the Contract Administrator is encouraged to act as a facilitator for the parties to reach a pragmatic amiable solution to move forward with the project in the absence of any express provisions with regards to the material price fluctuations.

## 6.0 CONCLUSION

- 6.1 Under the IEM Conditions of Contract, the allocation of risk is clear and deliberate. In the absence of express provisions to the contrary, fluctuations in material prices, fuel costs and logistics arising from market or geopolitical events remain a risk borne by the Contractor.
- 6.2 The contractual framework does not provide for automatic adjustment of the Contract Sum nor entitlement to additional payment or extension of time solely because of such material escalation. The Engineer, in administering the Contract, must therefore adhere strictly to the express provisions of the Contract and certify only what is contractually due.
- 6.3 Notwithstanding the strict contractual position, it is recognised that unprecedented and sustained disruptions may give rise to commercial and practical challenges affecting project viability and completion. In such circumstances, parties are encouraged to adopt a pragmatic and collaborative approach, including the consideration of supplementary agreements where appropriate, in order to achieve the intended commercial outcome of the project.
- 6.4 For future projects, greater emphasis should be placed on clear risk allocation and the incorporation of appropriate price fluctuation mechanisms to address volatility in material costs, thereby reducing uncertainty and potential disputes.
- 6.5 Ultimately, a balanced approach which upholds contractual discipline while allowing for practical commercial solutions will best serve the interests of the parties and facilitate the successful delivery of the Works in a volatile market environment.

## ACKNOWLEDGMENT & DISCLAIMER

This Practice Note (PN 2026-01) has been prepared by the IEM Standing Committee on Professional Practice and has undergone a comprehensive review by the Sub-Committee on Engineering Contracts. This document is issued by The Institution of Engineers, Malaysia (IEM) to offer clarity on specific subject matters and to provide a standardized guidance framework for members during periods of global supply disruption.

*This Note serves as a **guiding reference only**. It does not supersede the express terms of any individual contract, and the specific facts, circumstances, and contractual peculiarities of each project must be taken into account. Engineers are required to exercise their independent professional judgment and technical discipline when applying the principles contained herein to ensure the best interests of the project and the parties involved.*