

## General Conditions of Contract for the Supply of Goods

### 1. Interpretation

“Buyer” – means The University of Hong Kong incorporated under the University of Hong Kong Ordinance (Cap. 1053).

“Seller” – means a party (a) to whom this Invitation to Quotation is addressed, or (b) who is submitting a Quotation or (c) whose Quotation is accepted by the Buyer.

“Goods” – means equipment, articles, materials, services and technology to be supplied by the Seller to the Buyer referred to in the Price Schedule and described in the Specification or, as the context requires, any several part or combination thereof.

“Contract” or “Agreement” – means the agreement for the supply of Goods to the Buyer arising out of this Invitation to Quotation, Seller’s Quotation and negotiation, if any, consequent thereon.

“Order” – means an order for the supply of the Goods placed by the Buyer to the Seller.

“Specification” – means the technical description of the Goods contained in the Invitation to Quotation or, as the context requires, in the detailed technical proposal relative to any Order.

“Drawing” – means the Buyer’s drawing unless specified otherwise.

“Price Schedule” – means any of the Price Schedule annexed to this Invitation to Quotation.

“Contract Period” – means the time as stipulated in this Invitation to Quotation or Price Schedule or any extended period which is mutually agreed by the Buyer and Seller.

### 2. Application of Terms

(a) These Conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

(b) No terms or conditions endorsed upon, delivered with or contained in the Seller’s quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

(c) These Conditions apply to all the Buyer’s purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Buyer.

### 3. Quantity

(a) The quantity shown in the Price Schedule is an estimate of probable requirements and such estimate must be regarded as being given for the assistance of the Seller on the best evidence available when preparing the Invitation to Quotation and not as being a figure to which the Buyer binds himself to adhere. The Seller must be prepared to supply the quantity given in the Price Schedule or Order placed during the Contract Period.

(b) Any quantity delivered in excess of the quantity ordered as shown in an Order shall be at the Seller’s risk for which the Buyer shall not be responsible in anyway. Buyer may return such excess quantity and Seller will pay or undertake to pay the transportation, collection or other costs incurred by the Buyer in so doing. Seller shall also be responsible for the storage charges and the Buyer’s costs and expenses for arranging for the return of the excess quantity.

### 4. Inspection and Acceptance

(a) The Seller shall notify the Buyer or its agent at least 7 days before shipment in order that an inspection of the goods and packing may be carried out.

(b) If the results of such inspection cause the Buyer to be of the opinion that the Goods do not conform or are unlikely to conform with the Specification and/or patterns supplied or advised by the Buyer to the Seller, without prejudice to any rights and remedies the Buyer may have against the Seller, the Buyer shall be entitled to inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity and in addition, the Buyer shall have the right to require and witness further inspection.

(c) The Buyer or its agents shall be allowed to conduct such routine inspections at interim production stages of the goods and/or on the arrival of the goods in the place of destination to ensure the Buyer’s quality requirements are duly complied with.

(d) Notwithstanding any such inspection, the Seller shall remain fully responsible for the Goods including any specification, quality and defects (whether minor or otherwise) and any such inspection shall not diminish or otherwise affect the Seller’s obligations under the Contract.

(e) Delivery of the Goods shall be subject to such inspection and accordingly shall not be deemed to have been accepted unless either:

(i) The Buyer shall furnish the Seller with an Acceptance Note for those Goods which require installation, commissioning and acceptance test, etc.; or

(ii) The Goods, except those mentioned in (i), are not rejected within 60 days of delivery to the Buyer.

**5. Rejection**

- (a) Without prejudice to any statutory rights the Buyer may reject any Goods or cancel any Order which do not strictly conform to the Buyer's requirements, as detailed in the Order/Specification or which are damaged, spoiled or soiled or have any quality issue or contain any defects (minor or otherwise). The Buyer will make no payment for any Goods rejected in this manner in addition to any rights and remedies which the Buyer may have against the Seller.
- (b) Within 2 days of being notified in writing of the rejection of any Goods delivered, the Seller shall at its own cost remove the same from the site to which they were delivered. Alternatively the Buyer may return the rejected Goods to the Seller at the Seller's risk and expense.
- (c) Within 7 days of notification of rejection, the Seller shall at the Buyer's election at its own cost replace such Goods with satisfactory Goods or in the case where replacement Goods have to be obtained from sources outside Hong Kong, the Seller must advise the Buyer the delivery date when replacement Goods will be delivered unless with the notification of rejection, the Buyer shall have notified the Seller that he does not require the replacement of such Goods. The Buyer shall reserve the right to obtain the Goods from any other source in replacement of the rejected Goods, which are not replaced by the Seller within a reasonable time. The Seller shall pay to the Buyer any additional expenditure over and above the contract price reasonably incurred by the Buyer and shall further compensate any loss and damage suffered by the Buyer.

**6. Warranty**

By accepting this Contract, Seller warrants that the Goods sold under this Contract are free from any defects in materials, workmanship and fabrications and that all Goods delivered shall be of the quality, quantity, size description, and dimensions specified and shall be strictly in accordance with Buyer's specifications, drawings, and approval sample (if any), and of good and merchantable quality and suitable for the purpose(s) intended (the Seller hereby acknowledges that such purpose(s) have been declared or otherwise fully made known to the Seller), are of the latest model available and shall not be older than 24 months from their date of manufacture (unless specifically notified by the Seller to the Buyer and accepted by the Buyer). These warranties shall survive acceptance of and payment for the Goods and shall ensure to the benefit of the Buyer, its successors and the users of its products and shall not be deemed to be exclusive. Seller shall (at Buyer's option) refund any amount of purchase price paid or replace or repair any of the Goods which are found to be defective under normal use within a period of 12 months after the Goods have been put into service or 15 months from receipt of Goods by the Buyer or any warranty period specified in the Contract or Order whichever longer without any cost to the Buyer.

**7. Packing**

- (a) Goods shall be packed strictly as specified in the Order/Contract.
- (b) The Seller shall at its own costs be responsible for the packing of the Goods which shall be properly and suitably packed and secured so as to reach their destination in good condition with due regard being made to the nature of the Goods and condition prevailing on the route of shipment and mode of delivery.
- (c) Seller shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices.

**8. Delivery and Default**

- (a) The Goods shall be delivered, carriage paid, to such place of delivery as specified in the Order or as is agreed by the Buyer in writing prior to delivery of the Goods.
- (b) The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- (c) The Seller shall ensure that each delivery is accompanied by an invoice as specified in Clause 9(a).
- (d) Time and timeliness of deliveries are the essence of this Contract.
- (e) Unless otherwise stipulated by the Buyer in the Order, deliveries shall only be accepted by the Buyer in normal business hours.
- (f) If the Seller shall fail to deliver all or any scheduled Goods ordered within the time and in the manner as specified in such Order, the Buyer shall reserve the right to:
  - (i) cancel the Order in whole or in part without compensation;
  - (ii) refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - (iii) recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods in substitution from another supplier; and
  - (iv) impose a penalty at the rate of one percent per week for delay in delivery of the Goods to a maximum of 5% of the Order sum.

**9. Payment**

- (a) Upon delivery of the Goods, an invoice stating the Order number, particulars of the Goods delivered, the quantity, rate and value shall be sent to the Goods receiving department.

- (b) Unless otherwise agreed by the Buyer, no payments will be made until the Goods are duly accepted within the meaning of Clause 4. The Buyer will make payment within 30 days from the date of receipt of invoice or receipt of the Goods whichever the latest, but time for payment shall not be of the essence of the Contract. Where the Goods require installation and commissioning, payment is normally effected within 30 days from the date of a joint satisfactory acceptance test.
- (c) For reimbursement of materials purchased on behalf of the Buyer in the execution of the Contract, payment must be supported by an original invoice which will be retained by the Buyer.
- (d) The Buyer shall have the right to deduct or withhold part of or the whole payment due to incomplete or unsatisfactory service or inferior Goods supplied by the Seller including any breach of Warranty by the Seller.
- (e) Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Seller to the Buyer against any amount payable by the Buyer to the Seller under this Contract.

**10. Liability for Damages or Compensation**

- (a) The Buyer shall not be liable for or in respect of any damages or compensation under the Fatal Accidents Ordinance, the Employees' Compensation Ordinance or at Common Law by or in consequence of any accident or injury to any workman or other person whether in the employment of the Seller or his Sub-Contractor and the Seller shall keep the Buyer indemnified in full against all direct, indirect, or consequential liability, loss, demands, proceedings, costs, charges and expenses (including legal and other professional fees and expenses) whatsoever in respect thereof or in relation thereto.
- (b) The Seller shall effect a policy of insurance against all claim, demands or liability with an insurance company approved by the Buyer (which approval shall not be unreasonably withheld) and shall continue such insurance during the duration of the Contract and shall when required, deposit with the Buyer for safe keeping during the Contract such policy of insurance together with the receipt of payment of the current premium.
- (c) If the Seller shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such case, the Buyer may effect and keep in force any such insurance and pay such premium of payment as may be necessary for the purpose and from time to time deduct the amount so paid by the Buyer as aforesaid from any moneys due or which may become due to the Seller or recover the same as a debt due from the Seller.

**11. Infringement**

- (a) The Goods supplied should not infringe upon the patent, trade mark, registered design or copyright of any third party.
- (b) Seller shall undertake to defend or settle such claim or action entirely at its own expense and hold harmless Buyer and those for whom Buyer may act as agent against all loss, damage, claim or other costs and expenses by reason of any actions or proceedings arising from any infringement of third party patent, trade mark, registered design or copyright in respect of the Goods supplied by the Seller under this Contract.

**12. Termination**

- (a) The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller a written notice with a notification period of [14 days] whereupon all work on the Contracts shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- (b) The Buyer may at any time by notice in writing summarily terminate the Contract without entitling the Seller to compensation in any of the following events:
  - (i) if the Seller commits a breach of any of the terms and conditions of the Contract; or
  - (ii) if the Seller ceases or threatens to cease to carry on its business; or
  - (iii) if the financial position of the Seller deteriorates to such an extent that in the opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under this Contract has been placed in jeopardy; or
  - (iv) if the Seller shall at any time be adjudged bankrupt, or shall have a receiving order or order for administration of his estate made against him or shall take any proceedings or liquidation or compensation under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors, or purpose so do; or
  - (v) if the Seller, being a Company shall pass a resolution or the Court shall make an order for the liquidation of its affairs, or a Receiver or Manager on behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a Receiver or Manager. Provided always that such determination shall not prejudice or affect any right or action or remedy, which shall have accrued or shall accrue thereafter to the Buyer.

**13. Dispute**

If any dispute arises between the Buyer and the Seller in reference to the supply of the Goods or performance of the Contract, or any part thereof, the Buyer on the one hand or the Seller on the other may forthwith give to the other written notice requiring the matter to be referred to a single arbitrator, in accordance with the Domestic Rules of the Hong Kong International Arbitration Centre whose decision shall be final and binding on both parties. The costs of such reference shall be at the discretion of the arbitrator. The Laws of Hong Kong will apply.

**14. Offering Gratuities**

The Seller shall not, and shall procure that his employees, agents and subcontractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in connection with the tendering and execution of this contract. Failure to so procure or any act of offering, soliciting or accepting advantage committed by the Seller or by an employee, agent or sub-contractor of the Seller shall, without affecting the Seller's liability for such failure and act, result in his Quotation being invalidated. The Seller shall be liable for any losses or damages which the University of Hong Kong may thereby sustain.

**15. Non-Exclusive Contract**

The Buyer reserves the right, notwithstanding the conclusion of a contract between the Buyer and the Seller, to call for quotations from and to place orders with other suppliers in respect of the supply of the Goods. However, the Seller will be obliged to accept orders placed by the Buyer under the Contract.

**16. Illegal Worker**

The Seller undertakes not to employ illegal workers in the execution of the Contract.

**17. Assignment and Sub-contracting**

- (a) Unless otherwise provided for in the Contract, the Seller shall not, without the prior written consent of the Buyer, assign, transfer, sub-contract or otherwise dispose of any of its interests, rights, benefits or obligations under the Contract. The performance of the Contract by the Seller shall be personal to it.
- (b) A sub-contracting of the Contract shall not relieve the Seller of any of its obligations or duties under the Contract, and the Seller shall remain fully liable to the Seller and be responsible for the acts and omissions of its sub-contractors as though they were its own.

**18. Force Majeure**

Buyer reserves the right at its option either to suspend shipments of Goods covered by this Contract or to cancel this Contract in whole or in part at any time without any liability to the Seller if the performance of this Contract by the Seller is made impossible or delayed or interrupted in whole or in part as a result of government order, decree or other compulsive requirements, embargoes, acts of civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, fires or other law or order or regulation or other contingencies beyond control of Buyer and/or Seller.

**19. Remedies**

Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Seller fails to comply with, any of the terms of this Contract, the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

- (a) to rescind the Order;
- (b) to reject the Goods (in whole or in part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods so returned shall be paid forthwith by the Seller;
- (c) at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- (d) to refuse to accept any further deliveries of the Goods but without any liability to the Seller;
- (e) to carry out at the Seller's expense any work necessary to make the Goods comply with the Contract; and
- (f) to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

**20. General**

- (a) Each right or remedy of the Buyer under this Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.
- (b) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- (c) Failure or delay by the Buyer in enforcing or partially enforcing any provision of this Contract will not be construed as waiver of any of its rights under this Contract.
- (d) Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

**21. Intellectual Property Rights**

- (a) The Seller warrants that the Goods supplied under the Contract and the process for their manufacture do not infringe the Intellectual Property Rights of any third party.
- (b) The Seller shall indemnify the Buyer in the event that the rights infringed or is alleged to infringe the Intellectual Property Rights of any person.
- (c) The Seller shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the Quotation or any part thereof to irrevocably waive all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of the University, its assigns, authorised users and successors-in-title and shall take effect from the date of submission of its tender.
- (d) Without prejudice to any other provision of the Contract, the Seller shall indemnify the Buyer and keep the Buyer fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or in relation to any infringement or alleged infringement of any Intellectual Property Rights in connection with the Services or any IP Materials therein.
- (e) In the event of a claim being received by the Buyer alleging or the Buyer having grounds to believe that the Service executed hereunder or any IP Materials therein are infringing or have otherwise infringed the Intellectual Property Rights of a third party, the Buyer may:
  - (i) Forthwith terminate the Contract by the Buyer in respect of the Services not yet executed; or
  - (ii) Suspend the performance of the Contract until the claim in question is resolved to the satisfaction of the Buyer provided that the election to suspend performance under the clause shall not preclude the Buyer from terminating the Contract any time thereafter.
- (f) The Buyer shall not be liable to pay any cost or compensation to the Seller by reason of any termination under (e) irrespective of whether the Services of any IP materials therein are later found by a court of law to have infringed any person's Intellectual Property Right or not.

**22. Smoking**

The University of Hong Kong is a non-smoking campus. Any person found smoking on campus (including all indoor and outdoor areas) is liable to a fine under the Smoking (Public Health) Ordinance, Laws of Hong Kong.

**23. Confidentiality**

- (a) The Seller shall treat as confidential all information and data supplied by the Buyer for its performance of the Contract. The Seller may release such confidential information to its employees who are engaged in the performance of the Contract.
- (b) The Seller shall not at any time divulge, disclose or otherwise furnish to any third party any information relating to the Buyer's affairs or business which comes to the knowledge of the Seller during the course of its provision of the Goods.

**24. Conflicts with General Conditions or Amendments thereto**

Where Specific or Special Conditions of Contract in the Technical / Functional Specification are also used in the Contract, they will take precedence in the event of conflicts with the General Conditions or amendments thereto.

**25. Compliance with All Applicable Legal and Other Requirements**

The Seller is required to comply with all applicable legal and other requirements (in particular the anti-discrimination ordinances of Hong Kong and the University's Equal Opportunity Policy, in connection of which they must also implement appropriate measures to ensure compliance by their employees and any sub-contractors to be engaged, including proper training).

**26. National Security**

- (a) Notwithstanding anything to the contrary in the Quotation, the Buyer reserves the right to disqualify the Seller on the grounds that the Seller has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.
- (b) The Buyer may immediately terminate the Contract upon the occurrence of any of the following events: (i) the Seller has engaged or is engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; (ii) the continued engagement of the Seller or the continued performance of the Contract is contrary to the interest of national security; or (iii) the Buyer reasonably believes that any of the events mentioned above is about to occur.

**27. Governing Law**

This Contract/Agreement shall be governed by the laws of the Hong Kong Special Administrative Region.