

General Conditions of Contract

1. Total Quantities

Except with the written consent of The University of Hong Kong (“the University”) no orders may be placed and no deliveries may be made for the supply of the scheduled goods which would with other orders then placed and deliveries then made exceed the quantities specified for such goods in the schedule hereto.

2. Sub-Contracts

Unless otherwise provided for in the Contract, the Seller shall not, without the prior consent of the University, 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.

3. Scheduled Goods, Specifications and Proof Notes

- (a) Scheduled goods shall be of the qualities and sorts described and in all respects in accordance with any specifications or drawings mentioned in the schedule hereto, or to any specifications, drawings or samples supplied by the Seller and approved by the University before acceptance of his tender.
- (b) Any drawings and specifications reasonably required for the Seller’s guidance in the execution of this contract shall be furnished free of charge but shall be returned on completion of the contract.
- (c) If required the Seller shall furnish the University with a proof note or certificate showing that the scheduled goods have been subjected to the normal tests for such goods or such tests as the University may reasonably require.

4. 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 University in writing prior to delivery of the Goods. 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. The Seller shall ensure that each delivery is accompanied by an invoice as specified in Clause 7.
- (b) 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 University 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 University 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.

5. Inspection and Acceptance

Delivery of Goods shall be subject to inspection and accordingly shall not be deemed to have been accepted unless either:

- (a) The Director of Finance, the University or the authorized person of the receiving department (“the Receiving Officer”), shall furnish the Seller with an Acceptance Note for those goods which require installation, commissioning and acceptance test, etc.; or
- (b) The Goods, except those mentioned in (a) are not rejected within 60 days of delivery to the University.

6. Rejection

- (a) Without prejudice to any statutory rights the University of the Receiving Officer may reject any Goods or cancel any Order which do not strictly conform to the University’s requirements, as detailed in the Order or which are damaged, spoiled or soiled or have any quality issue or contain any defects (minor or otherwise).
- (b) Within 2 days of being notified in writing of the reject of any Goods delivered, the Seller shall at its own cost remove the same from the site to which they were delivered.
- (c) Within 7 days of notification of rejection, the Seller shall replace such goods with satisfactory goods specified in the Order or in the case where replacement goods have to be obtained from sources outside Hong Kong, the Seller must advise the University, the delivery date when replacement goods will be delivered unless with the notification of rejection, the University of the Receiving Officer shall have notified the Seller that he does not require the replacement of such goods. Unless otherwise provided in the Seller’s offer, the University reserves the right to apply to Clause 4 of this Part in the event that replacement delivery cannot be made within the 7 days period referred to above and the goods are urgently required to meet essential requirement of the University.

7. Payment

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. Unless otherwise agreed by the Buyer, no payments will be made until the Goods are duly accepted within the meaning of Clause 5. The University will make payment within 30 days from the date of receipt of invoice or receipt of the Goods whichever the latest. Where the Goods require installation and commissioning, payment is normally effected within 30 days from the date of joint satisfactory acceptance test. For reimbursement of materials purchased on behalf of the University in the execution of the Contract, payment must be supported by an original invoice which will be retained by the University.

8. Extension of Contractual Period

Order for scheduled Goods, place before expiration of the contractual period shall remain in force until fulfilled in accordance with the terms of this contract notwithstanding the intervening expiration of this Contract by effluxion of time.

9. Recovery of Sums Due

Whenever under this Contract any sum of money shall be recoverable from or payable by the Seller, the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under this or any contract with any department of the University.

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 University 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 University (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 University 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 from time to time deduct the amount so paid by the University as aforesaid from moneys due or which may become due to the Seller or recover the same as a debt due from the University.
- (d) In the event of any worker or other person employed on any work done in pursuance of the Contract whether in the employment of the Seller or his Sub-Contractor suffering any personal injury and whether there be a claim for compensation or not, the Seller shall without delay give notice in writing of such personal injury to the University.

11. Bankruptcy

The University may at any time by notice in writing summarily terminate this Contract without entitling the Seller to compensation in any of the following events:

- (a) 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 if distress or attachment or other process of execution shall be taken or issued against the Seller or his assets or undertakings or if he shall make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or if he attempts or purports so to do, or
- (b) If the Seller, being a company, shall pass a resolution for winding up or if petitions or proceedings shall be taken by any creditor of the Seller for the winding up of the Seller 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.
- (c) 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 University.

12. Disputes

If any dispute arises between the Receiving Officer or the University and the Seller in reference to the supply of the Goods or performance of the Contract, or any part thereof, the University 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.

13. Assignment of Benefits

The Seller shall not be at liberty to assign the benefit of this Contract to any other party without the prior written consent of the University which shall be entitled as its absolute discretion to refuse consent or grant consent on such terms and conditions as it may impose.

14. Warranty

All products supplied are to be guaranteed against faulty workmanship and faulty materials for a period of twelve months from the date of final acceptance of goods or the period specified in such Order.

15. Infringement

The product supplied should not infringe upon the patent or copyright of any third party. In the case of any claim or action brought against the University alleging infringement of any patent or copyright in respect of the products supplied, the Seller shall undertake to defend or settle such claim or action at the Seller's own expenses.

16. 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 execution of this contract. Failure to so procure or any act of offering, soliciting or accepting advantage committed by the Seller or by any employee, agent or sub-contractor of the Seller shall, without affecting the Seller's liability for such failure and act, result in his contract being invalidated. The Seller shall be liable for any losses or damages which the University of Hong Kong may thereby sustain. The Seller is also reminded that under the Prevention of Bribery Ordinance of Hong Kong, it is an offense to offer any advantage to an employee of the University as an inducement to or reward for giving assistance or using influence in the promotion, execution or procuring of any contract with the University.

17. Illegal Worker

The Seller undertakes not to employ illegal works in the execution of the Contract. The University reserves the right to debar any Seller or its sub-contractor from bidding for future contracts should they be found to have employed illegal workers to work on contracts entered into by the University.

18. 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).

19. Governing Law

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

20. These General Conditions shall apply to the extent that they are not inconsistent with any terms and conditions set in the relevant tender document, supply agreement or contract as specified on this order.