

## General Conditions of Contract for the Provision of Services

### 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.

“Inspection Officer” – means the officer appointed by the Buyer for the purpose of inspection the services performed in pursuance of the Contract.

“Services” – means materials, services and technology to be provided 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 Services 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 provision of the Services placed by the Buyer to the Seller.

“Specification” – means the technical description of the Services 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. Total Services and Variation

(a) The Services to be performed under the Contract shall be as laid down in the Technical Specifications shall be carried out, as and when required, to the satisfaction of the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the Buyer will not be responsible for Services performed on oral instructions issued by any person whomsoever.

(b) The Seller shall not extend the Services beyond the requirements specified in the Technical Specifications except as directed in writing by the Buyer; but the Buyer may, subject to the proviso hereinafter contained, at any time during the Contract Period by notice in writing direct the Seller to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract Period, and the Seller shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Schedule.

(c) Where a variation has been made to the Contract, the amount to be added to or deducted from the Contract Price in accordance with that variation shall be determined in accordance with the rates specified in the Price Schedule so far as the same may be applicable and where rates are not contained in the Price Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

### 4. Quality of Services

(a) The Services shall be as specified in the Price Schedule and shall fulfil all the conditions and terms in Technical Specifications, any drawings and specifications (if any) supplied to the Seller or other provisions of the Contract.

(b) Any drawings and specifications reasonably required for the Contractor’s guidance in the execution of the Contract shall be provided by the Buyer free of charge but shall be returned on completion of the Contract.

### 5. Inspection and Acceptance

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless the Inspecting Officer shall so certify.

### 6. Rejection

(a) Without prejudice to any statutory rights the Buyer may reject any Services or cancel any Order which do not strictly conform to the Buyer’s requirements. The Buyer will make no payment for any Services 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 Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

**7. Deduction / Withholding of Payment**

The Buyer shall have the right to deduct or withhold part of or the whole payments due to incomplete or unsatisfactory service rendered by the Seller. If the Seller fails to rectify such defects within a reasonable time, the Buyer shall have the right to employ another party to carry out the services and the Seller shall be liable for any additional costs so incurred.

**8. Warranties and Representations**

(a) By accepting this Contract, Seller warrants, represents and undertakes that:

- (i) the Services conform in all respects to the Technical Specifications and correspond with the requirements of the Technical Specifications and any particulars specified in the Contract;
- (ii) all consents, approvals, licences and certificates have been duly obtained for the execution of the Services and use of the Services by the University will not contravene any applicable laws;
- (iii) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
- (iv) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
- (v) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect;
- (vi) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Quotation and the Contract are true, accurate and complete;
- (vii) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (viii) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (ix) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
- (x) it owns, has obtained and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract; and
- (xi) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract.

(b) The warranties, representations and undertakings, expressed or implied, shall be true without limitation in time, save that in case of any warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.

(c) Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

(d) Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a seller and the rights conferred on a buyer under the Supply of Services (Implied Terms) Ordinance (Chapter 457 of the Laws of Hong Kong) and the Trade Descriptions Ordinance (Chapter 362 of the Laws of Hong Kong) apply to bind the Contractor and the University respectively.

**9. Payment**

(a) Unless otherwise agreed by the Buyer, payment of the Services completed will be made by cheque within 30 days from the date of receipt of invoice. Payment will only be made against an original invoice which should be sent to the Services Receiving Office.

(b) 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. Any receipt or sales invoice addressed to a third party will not be entertained by the Buyer.

(c) The Buyer shall have the right to deduct or withhold part of or the whole payment due to incomplete or unsatisfactory service supplied by the Seller including any breach of Warranty by the Seller.

- (d) 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. 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.

**12. Dispute**

If any dispute arises between the Buyer and the Seller in reference to the supply of the Services 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.

**13. 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 Quotation 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.

**14. 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 Services. However, the Seller will be obliged to accept orders placed by the Buyer under the Contract.

**15. Illegal Worker**

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

**16. 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.

**17. Force Majeure**

Buyer reserves the right at its option either to suspend the Services 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.

**18. Remedies**

Without prejudice to any other right or remedy which the Buyer may have, if any Services 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 Services have been accepted by the Buyer:

- (a) to rescind the Order;
- (b) to reject the Services (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 Services so returned shall be paid forthwith by the Seller;
- (c) to refuse to accept any further deliveries of the Services but without any liability to the Seller;
- (d) to carry out at the Seller's expense any work necessary to make the Services comply with the Contract; and
- (e) to claim such damages as may have been sustained in consequence of the Seller's breaches of the Contract.

**19. 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.

**20. Intellectual Property Rights**

- (a) The Seller warrants that the execution of and the use of the Services under the Contract 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 Quotation.
- (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.

**21. 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.

**22. 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 Services.

**23. 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.

**24. 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).

**25. 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.

**26. Governing Law**

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