

GENERAL TERMS AND CONDITIONS OF PURCHASE (“GTC”) (HK SAR)

1. CONTRACT DOCUMENTS

- 1.1 In these GTC, the “Buyer” shall mean the company stated in the Purchase Order or in the Letter of Acceptance, for which the invoice is to be sent. The GTC shall govern the supply of the Goods & Services by your company (“Supplier”) to the Buyer. The term “Goods & Services” shall mean all goods, including parts or units thereof, and/or services/works which the Supplier is required to supply and/or perform, as the case may be, under the Contract as set out in the Specifications.
- 1.2 A contract by the Buyer with the Supplier is formed and binding when the Purchase Order or the Letter of Acceptance is (a) executed by the authorized representative of each party, (b) accepted by (i) acknowledgement, (ii) commencement of performance or (iii) receipt of goods, whichever is the earliest.
- 1.3 The contract documents (“Contract”) shall comprise of (a) GTC, (b) specifications in the Request for Proposal (or by whatever name) (“Specifications”), (c) Letter of Acceptance (if any), (d) Purchase Order and (e) the Supplier’s quotation offer to the Buyer (“Supplier’s Quotation”). The Buyer does not intend to enter into a contract other than under the GTC. Any purchase order of the Buyer is expressly made conditional on the Supplier’s assent to the GTC without deviation. However, if there is a conflict among the provisions of the Contract aforementioned, the following order of precedence shall apply (a) Purchase Order; (b) Letter of Acceptance (if any); (c) Specifications; (d) GTC; (e) Supplier’s Quotation.
- 1.4 The Supplier warrants that it has the expertise, experience and professionalism to provide the Goods & Services and shall supply the Goods & Services with all reasonable care, skill and diligence. The Supplier further warrants that it has the necessary regulatory and business licenses as well as permits to undertake the provision of the Goods & Services.
- 1.5 The Supplier represents and warrants to the Buyer that the Goods & Services will and have been designed, manufactured or will be supplied to perform in compliance with all applicable laws, regulations and codes, as well as fit for the purpose.
- 1.6 The Supplier is deemed to have obtained for itself all the necessary information and satisfied itself the risks, obligations and all matters and things necessary which it is to undertake under the Contract upon the submission of its quotation.
- 1.7 For the purpose of the Contract, the Supplier shall be an independent contractor and not agent or employee or partner of the Buyer.

2. SCOPE OF CONTRACT

- 2.1 The Supplier shall carry out and complete the supply of the Goods & Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods & Services shall be new and unused.
- 2.2 The contract period (where applicable) shall be specified in the Purchase Order or the Letter of Acceptance or the Specifications.

3. DELIVERY

- 3.1 The Supplier shall deliver the Goods & Services at the place(s) and in the manner specified in the Purchase Order or the Specifications. The Supplier shall obtain a receipt or howsoever described from the Buyer in the form of sign-off by the Buyer’s authorised representative and Buyer’s company stamp. The issue of such receipt shall in no way relieve the Supplier from his responsibilities under the Contract.
- 3.2 Without prejudice to the Supplier’s obligation to deliver the Goods & Services on time, in the event the Supplier for any reason anticipates any difficulty in delivering by 5pm on the delivery date as specified in the Purchase Order/Specifications or such extended date agreed in writing by the Buyer (“Delivery Date”), the Supplier shall immediately notify the Buyer in writing with reasonable details.
- 3.3 Title to the Goods & Services shall pass to the Buyer upon delivery in the case of goods and upon installation in the case of services/works.

4. REMOVAL AND REPLACEMENT

- 4.1 When notified in writing by the Buyer, the Supplier shall forthwith at his own cost, remove and replace the Goods & Services that are found to be damaged, defective or in any way inferior to approved samples, or not in accordance with the Purchase Order or Specifications, failing which the Buyer shall have the right to purchase replacement elsewhere or to make good any damage in any manner it deems necessary and all cost, loss, expense and damage incurred shall be recoverable from the Supplier as debt due and recoverable under Clause 5.2.

5. PAYMENT

- 5.1 The Buyer shall pay the Supplier within 45 days upon supply of the Goods & Services in accordance with Clause 3.1 and upon receipt of invoice and other documents in accordance with Clause 5.3, subject to any adjustments or deductions expressly provided for in the Contract and provided that no payment shall be considered as evidence of the quality of any Goods & Services to which such payment is made nor shall it relieve the Supplier from his responsibility under Clause 4.
- 5.2 Without limiting the Buyer’s rights under the Contract, the amount of any payment or debt owed by the Supplier to the Buyer under the Contract may be deducted by the Buyer from any monies payable by the Buyer to the Supplier pursuant to the Contract.
- 5.3 The Supplier shall submit such invoices and other documents as the Buyer may require for the purposes of making payment.
- 5.4 Except as expressly provided herein, there shall be no adjustment to the Contract Sum following any increase in costs of raw materials, labour, taxes for the supply of the Goods & Services.

6. PRICES

- 6.1 The Contract Sum means the grand total lump sum set out in the Purchase Order or in the Letter of Acceptance (“Contract Sum”), shall be fixed and subject only to adjustments or deductions expressly provided for in the GTC. The Contract Sum is inclusive of all taxes and duties.

7. INSPECTION

- 7.1 The Buyer shall have the right to inspect or test the Goods & Services before delivery. Inspection or testing of any Goods & Services shall not relieve the Supplier of any of its obligations under the Contract, nor shall it constitute acceptance or approval of any Goods & Services or constitute or operate as a waiver of any defect, non-conformity or any rights or remedies available under the Contract or at law.

8. DELAY IN SUPPLY AND DELIVERY

- 8.1 Subject to Clause 10.1, in the event the Supplier fails to deliver the Goods & Services by the Delivery Date, the Buyer shall have the right to one or more of the following:
- (a) to terminate the Purchase Order forthwith or refuse to accept any delivery made after the Delivery Date without compensation and obtain the Goods & Services from other sources and any additional cost, loss and expense incurred as a result of the Supplier’s default shall be deducted from any money due to the Supplier or shall be recoverable from the Supplier; and/or
- (b) to deduct from any moneys due to the Supplier or require the Supplier to pay, a sum calculated at 1% of the Contract Sum for each day of delay (including Sundays and Public Holidays), as liquidated damages.

9. SUB-CONTRACTING AND ASSIGNMENT

- 9.1 The Supplier shall not sub-contract or assign this Contract or any part of this Contract without the prior written consent of the Buyer. In the event that the Supplier is permitted to sub-contract, he shall remain fully liable for the proper performance of his entire obligations under the Contract and for the act, default, or omission of any assignee or approved subcontractor, their agents or servants.

10. FORCE MAJEURE

- 10.1 Neither party shall be liable for any failure to perform his obligations under this Contract if the failure results from an event which is beyond the reasonable control of either party. Provided Always that the affected party shall immediately notify the other party and the affected party shall resume that obligation as soon as the event ceases or abates. For purposes of this Contract, such acts shall include acts of God, civil or military authority, civil disturbance, wars, terrorism or other catastrophes. For the avoidance of doubt, the provisions of this Contract shall remain in force with regard to all other obligations under the Contract which are not affected by the said events.
- 10.2 If the event shall continue for a period exceeding 1 month, the Buyer may at any time thereafter give notice to the Supplier to terminate the Contract forthwith.

11. INSURANCE

- 11.1 The Supplier shall effect and maintain a public liability insurance policy with an insurance company approved by the Buyer for a sum not less than HKD\$5,700,000 and workmen compensation insurance in such amount required by law against all claims, demands and liabilities in accordance with all applicable laws and regulations.

12. DATA PROTECTION

- 12.1 The Supplier may collect, use, transfer, retain, disclose or otherwise process (collectively, “Process”) information that can be linked to specific individuals (“Personal Data”) to ensure due delivery of the Goods & Services by the Supplier, its employees and agents under this Contract, as well as to comply with regulatory requirements, or for quality or risk management purposes (“Purposes”). Where the Supplier is required to provide the Buyer with Personal Data in connection with the performance of the Contract and/or Purposes, the Supplier warrants that he has obtained such individual’s consent to do so in accordance with the Personal Data (Privacy) Ordinance (Cap 486).
- 12.2 The Supplier further warrants that he will Process Personal Data provided by the Buyer in accordance with the terms and conditions set out in the Personal Data (Privacy) Ordinance (Cap 486).

13. INDEMNIFICATION

- 13.1 Where intellectual property rights remain with the Supplier, the Supplier shall be deemed to have given to the Buyer a non-terminable, transferable, non-exclusive royalty-free licence, to all such rights to do everything necessary in order for the Buyer to use the Goods & Services.
- 13.2 Without prejudice to any other right or remedy available to the Buyer, the Supplier shall indemnify the Buyer and their successors and assigns against all liabilities, claims, losses, damages, costs and expenses (including lawyer’s fees) whatsoever which the Buyer may incur whether directly or as a result of:
- (a) personal injury or death of any person or in respect of any loss or damage attributable to any defect in the Goods and Services; and
- (b) any third party claim or in connection with any act, default or omission of the Supplier (or its officers, employees, agents or subcontractors) in relation to the supply of the Goods and Services, including but not limited to infringement of any intellectual property rights or the Employment Ordinance and all other applicable laws and regulations of Hong Kong Special Administrative Region.

14. LIMITATION OF LIABILITY

- 14.1 The Buyer shall not be liable for any loss, damage or destruction of any property or any injury or death of the Supplier or any Supplier’s employees arising from or related to the Contract, except where caused by the proven gross negligence or willful default of the Buyer. In any event, the cumulative liability of the Buyer to the Supplier shall not exceed the Contract Sum.

15. TERMINATION

- 15.1 Notwithstanding Clause 8.1(a), the Buyer shall have the right to terminate the Contract for convenience by giving 30 days notice in writing and without having to assign any reason for doing so; and the Supplier shall have no claim for any damages or compensation. For the avoidance of doubt, any overpayment in the Contract Sum shall be refunded by the Supplier within 14 days of the Buyer’s demand for such refund whilst any underpayment in the Contract Sum shall be paid by the Buyer based on the Goods & Services supplied and/or performed. The Supplier shall accept the Buyer’s calculation of the amount to be refunded by Supplier or to be paid by the Buyer as final and conclusive, save for manifest error.
- 15.2 The Buyer may forthwith terminate this Contract by written notice to the Supplier if the Supplier is (i) unable to pay its debts or (ii) faced with a winding up petition or (iii) having a receiver or administrator appointed over its assets, or (iv) in breach of the Contract and does not remedy the breach to the satisfaction of the Buyer within 5 days of being asked to do so, without prejudice to any other rights or remedies available to the Buyer and for any antecedent breaches by the Supplier.

16. CONFIDENTIALITY

- 16.1 The Supplier shall keep confidential all information that he comes to know of pursuant to this Contract. This information shall not be used for any purpose other than for the performance of this Contract.
- 16.2 The employees and agents of the Supplier shall, if so required by the Buyer, sign an undertaking to safeguard confidential information whenever required by the Buyer.
- 16.3 The Supplier shall not list or name the Buyer nor shall the Supplier describe in general terms the Goods & Services provided under the Contract in any marketing materials without the prior written consent of the Buyer.
- 16.4 This Clause shall not apply to information that is or becomes publicly available without breach of any confidentiality obligation.
- 16.5 The provisions of this Clause shall survive completion or any termination of the Contract.

17. OWNERSHIP OF DOCUMENTATION

- 17.1 The Buyer shall own all the documentation generated for the purpose of the Contract.
- 17.2 The Supplier (including its officers, employees, agents or subcontractors) shall within 14 days upon the expiry or sooner determination of the Contract,
- (a) return all documents and copies received from the Buyer for the purpose of this Contract and all documents and copies produced in the course of supply of the Goods & Services; and/or
- (b) securely destroy and erase all softcopies of documentation that exist.

18. GENERAL

- 18.1 Any notice or other communication in connection with the Contract shall be sufficiently served if delivered by hand or registered post to the party’s office address stated in the Purchase Order or in Supplier’s Quotation or its registered office address.
- 18.2 If any provision(s) of the Contract shall be held illegal, invalid or unenforceable, the legality, validity or enforceability of any other provisions shall not be affected.
- 18.3 Any amendment or variation of this Contract shall be effective only if agreed in writing and signed by the authorized representatives of the parties.
- 18.4 A person who is not a party to the Contract shall have no right under the Contracts (Rights of Third Parties) Ordinance to enforce any of its terms.
- 18.5 No delay or indulgence by either party in enforcing the provisions of this Contract shall operate as a waiver or prejudice the rights of that party nor shall any single or partial exercise of any right or remedy preclude any further exercise of that right or remedy or the exercise of any other right or remedy.
- 18.6 The rights and remedies provided to the parties under this Contract are cumulative and not exclusive of any rights or remedies provided by law.
- 18.7 The Contract is governed by the laws of Hong Kong Special Administrative Region.

19. ANTI-CORRUPTION

- 19.1 The Supplier hereby represents, warrants and undertakes that:
- (a) it has not and shall not, directly or indirectly, offer and/or receive any bribe, gratification or kickback to and/or from any employees (including their nominees or agents) of the Buyer; and
- (b) it shall immediately inform the Buyer if it is aware of any employee of the Buyer requesting or soliciting, whether directly or indirectly, the Supplier for any bribe, gratification or kickback.

20. DISPUTE RESOLUTION

- 20.1 In the event of any dispute, disagreement or claim, the parties shall attempt to resolve through negotiation in good faith, failing which submit the dispute to the non-exclusive jurisdiction of the courts of the Hong Kong Special Administrative Region.

21. ENTIRE CONTRACT

- 21.1 Any information, qualification, deviation, assumption, representation, technical particular etc. which the Supplier furnished to the Buyer and contained in all letters and correspondence which are not specifically referred to in the Contract shall be of no contractual effect whatsoever and no claim by the Supplier shall be entertained by the Buyer.