

GENERAL CONDITIONS OF CONTRACT

1. **Total Quantities:-**

Except with the written consent of the Council 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 against such goods in the schedule hereto.
2. **Sub-contracts:-**

The Contractor shall not, without the written consent of the Council assign or otherwise transfer this contract or any part, share or interest therein. The written consent, if given, does not relieve the Contractor in any way from his obligations to the Council under the Contract.
3. **Scheduled goods, Specifications and Proof Notes:-**
 - (a) Scheduled goods shall be the qualities and sorts described and equal in all respects to any specifications or drawings mentioned in the schedule hereto, or to any specifications, drawings or samples supplied by the Contractor before acceptance of his Tender.
 - (b) Any drawings and specifications reasonably required for the Contractor'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 Contractor shall furnish the Council with a proof note or certificate showing that the schedule goods have been subjected to the normal tests for such goods or such tests as the Council may reasonably require.
4. **Delivery:-**

The Contractor shall, on receipt of a written order signed by the Council, or by any person duly authorised by him, supply and deliver in accordance with the delivery conditions specified in the Schedule and to the destination named in such order, the quantities of scheduled goods therein specified within the time (not being manifestly unreasonable) specified in such order or if no such time is specified then within 14 days of the lodging of such order and in this connection, time shall be deemed to be the essence of the Contract. Each delivery shall be accompanied by a copy of the Order and the Contractor shall ensure that he obtained a receipt thereof from the Receiving Officer but such receipts shall not constitute an acknowledgement that the goods therein mentioned are acceptable or satisfactory.
5. **Inspections and Acceptances:-**

All deliveries of scheduled goods will be subject to inspection and accordingly shall not be deemed to have been accepted unless either.

 - (a) the Council shall furnish the Contractor with an Acceptance Note, or
 - (b) the goods are not rejected within 30 days of delivery in Hong Kong.
6. **Rejections:-**
 - (a) Without prejudice to any statutory rights the Council may reject any scheduled goods which do not strictly conform with the conditions of Sub-clause (a) of Clause 3 herefor which are damaged, spoilt and soiled.
 - (b) Within 24 hours of being notified in writing of the rejection of any goods delivered the Contractor shall remove the same.
 - (c) Within 7 days of notification of rejection, the Contractor 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 Special Administration Region, the Contractor must advise the Council the delivery date when replacement goods will be delivered unless with the notification of rejection, the Council shall have notified the Contractor that he does not require the replacement of such goods. Unless otherwise provided in the Contractor's offer, the Council reserves the right to apply to Clause 8 of these General Conditions of Contract 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 requirements of the Council.
7. **Payment for Supplies:-**

With every delivery of goods under this Contract, an Invoice stating the Order Number, Particulars of Goods delivered, the Quantity, Rate and Value shall be sent by the Contractor to the place of delivery or as otherwise directed. Unless otherwise agreed by the Council, no payments for supplies will be made until the same are deemed to have been accepted within the meaning of Clause 5 of this Part. Invoices in respect of deliveries will be included in the next available pay-list after the date of acceptance.
8. **Default:-**

If the Contractor shall fail to deliver all or any scheduled goods ordered within the time specified in such order or as otherwise provided in Clause 4 of this Part, the Council shall immediately thereupon be at liberty to terminate this Contract by Notice in writing addressed to the Contractor but without prejudice to any claims to the Council for breach of contract and, in particular, the right of the Council to procure the balance of the scheduled goods then outstanding from any other source and the Contractor shall be liable for any sum or sums in excess (hereinafter called "any excess") of the prices quoted by the Contractor.
9. **Tendering of Rejected Goods:-**

If it shall prove to the satisfaction of the Council that the Contractor has offered for delivery any goods which have previously been rejected by the Council, the latter shall immediately thereupon be at liberty to terminate this contract in manner provided in Clause 8 of this Part and subject to the provisions of such clause.
10. **Deposits:-**
 - (a) Any sum deposited by the Contractor may be applied by the Council against any excess arising by virtue of termination under Clauses 8 and 9 of this Part and accordingly the same of the balance (if any) thereof shall not be returnable to the Contractor until the date when but for such termination the contract would have expired.
 - (b) The provision of Sub-clause (a) of this clause shall apply equally in the case of termination, without lawful excuse, of this Contract by the Contractor.
 - (c) The application of any deposit as aforesaid shall be without prejudice to the right of the Council to recover from the Contractor any excess not wholly absorbed by the said deposit.
11. **Extension of Contractual Period:-**

Orders, for scheduled goods, placed not less than 14 days before the expiration of the contractual date 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.
12. **Consent to Disclosure:-**

The Council shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the awarded contract, without any further reference to the successful tenderer, the name of the successful tenderer, product description, brand name, model number and country of origin and the contract amount.
13. **Recovery of Sums Due:-**

Whenever under this contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any contract with the Council.
14. **Liability for Damages or Compensation:-**
 - (a) The Council shall not be liable for or in respect of any damages or compensation under any statutes (including without limitation the Fatal Accidents Ordinance (Chapter 22), Employee's Compensation Ordinance (Chapter 282)), 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 Contractor or any Sub-Contractor and the Contractor shall indemnify and keep indemnified the Council against any claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- (b) The Contractor shall effect a policy of insurance against all liability to pay damages or compensation as aforesaid in respect of all workmen and other persons (other than the employees of the Council) who may be employed on any work done in pursuance of this contract with an insurance company approved by the Council (which approval shall not be unreasonable withheld) and shall continue such insurance during the whole of the time that any persons are employed by him on any work done in pursuance of this contract and shall when required, deposit with the Council for safe keeping during the currency of the Contract such policy of insurance together with the receipt of payment of the current premium. Provided always that in respect of any persons employed by any Sub-Contractor the Contractor's obligation to effect a policy of insurance as aforesaid under this clause shall be satisfied if the Sub-Contractor shall have effected such policy of insurance in respect of such persons but the Contractor shall require the Sub-contractor to deposit with the Council, when required, such policy of insurance and the receipt for payment of the current premium.
- (c) If the Contractor 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 cases the Council may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Council as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- (d) In the event of any workmen or other person employed on any work done in pursuance of this Contract whether in the employ of the Contractor or a Sub-Contractor suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall without delay give notice in writing of such personal injury to the Council.
15. **Indemnity:-**
The Contractor shall indemnify the Council against any loss of or damage to any property of the Council or of any of its employees or agents or any injury to any employee or agent of the Council arising out of the negligence of the Contractor or any of its employees, subcontractors or agents.
16. **Advertising materials:-**
The Contractor shall submit to the Council all advertising or other publicity materials relating to this Contract or anything in connection with this Contract. The Contractor shall not publish or use any advertising or other publicity materials without the prior written consent of the Council.
17. **Compliance with laws:-**
The Contractor hereby declares its compliance with all relevant legislations and regulations in the provision of goods and services and indemnifies the Council for any breaches and losses.
18. **Bankruptcy:-**
The Council may at any time by notice in writing summarily terminate this Contract without entitling the Contractor to compensation in any of the following events:-
- (a) If the Contractor 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
- (b) If the Contractor, 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 Council.
19. **Governing Law and Jurisdiction**
This Contract shall be governed by and construed in accordance with the Laws of The Hong Kong Special Administrative Region and each party hereby submits to the non-exclusive jurisdiction of The Courts of the Hong Kong Special Administrative Region as regards, any claim or matter arising out of or in connection with this Contract.
20. These General Conditions shall apply to the extent to which they are not inconsistent with the special Conditions (if any) set out in this Tender.

TERMS OF TENDER

1. Except where the context otherwise requires the following expressions in this form and the General Conditions of Contract shall have the following meanings:-
'Council' means the Hong Kong Productivity Council;
'Tenderer' means the person or persons and/or the firm or the Company whose name appears in the quotation overleaf;
'Contractor' means the Tenderer whose tender is accepted as hereinafter provided;
'Scheduled Goods' means the articles, materials or services referred to in the Schedule contained in the quotation overleaf;
'Contractual period' means the period determined by the date the order is placed and the delivery date specified in the quotation;
'Contract' means the contract hereunder and reference to the terms thereof shall include the terms of tender overleaf unless inconsistent with the context of such reference.
2. All goods or services not otherwise specified shall be in accordance with recognised specifications where such exist.
3. The Tenderer shall be required to check the number of pages of the tender documents and should he find any missing or indistinct he must inform the Council at once and have the same rectified.
4. Should the Tenderer for any reason whatsoever be in doubt as to the precise meaning of any item or figure contained in the tender documents, he must inform the Council in order that the correct meaning may be decided before the date of submission of tenders.
5. In the event of the Tender discovering a genuine error in his tender after it has been deposited, attention in writing may be drawn to the error and an amendment submitted, which, provided that the amendment shall have been deposited on or before the time fixed for receipt of tenders, may be accepted.
6. Tenders shall, unless otherwise indicated by the Council, remain open for 90 days after the latest date by which the same should be lodged as hereinbefore provided.
7. The Tenderer should use the Schedule only for quotation of prices. Prices for supply of scheduled goods/services shall be net prices.
8. The quantity shown against each item in the Schedule is an estimate of probable requirements and such estimate must be regarded as being given for the assistance of the Contractor on the best evidence available and not as being a figure to which the Council binds itself to adhere.
9. Tenderers who do not receive a notification within 14 days of the expiration of the 90 days mentioned in Clause 6 above should assume that their respective tenders have not been accepted.
10. All samples submitted for consideration must be collected by unsuccessful Tenderers within 7 days upon the receipt of notification from the Council. If at the expiration of such 7 days no arrangements have been made with the Council for the collection of such samples the Tenderer shall be deemed to have given up all title thereto and the Council may dispose of the same without being responsible to the Tenderer in respect thereof.
11. If the tenderer shall be found to have offered or given any gratuity, bonus, discount bribe, loan or any other gift or consideration as an inducement or reward to any employee of the Council in relation to this or any other Council contracts, the Council shall be liberty forthwith cancel the contract, as the case may be, and shall hold the contractor liable for any loss or damages which the Council may thereby sustain.