

INTERPRETATION

In this form, unless the context otherwise requires:

- “Contract” means the contract herein including the contents of the Schedule overleaf and these general conditions;
- “Contractor” means the supplier whose quotation has been accepted;
- “Goods” means the articles and/or materials referred to in the Schedule overleaf;
- “Government” means The Government of the Hong Kong Special Administrative Region;
- “Government Representative” means the Head of Requisitioning Department acting for and on behalf of Government or any duly authorized officer for the time being performing his duties;
- “Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain name, database rights, rights in know-how and other intellectual property rights (of whatever nature and wheresoever arising) in each case whether registered or unregistered and including applications for the grant of any such rights;
- “Receiving Officer” means the officer in charge of a Government department or establishment to which any goods are to be delivered or such other officer as he may authorize to accept delivery thereof.

GENERAL CONDITIONS OF CONTRACT

1. TOTAL QUANTITIES

- (a) Government is not obliged to order more than 80% (eighty per cent) of the estimated quantity specified in respect of each item of Goods in the Schedule hereto but may require the Contractor to supply up to 20% (twenty per cent) more than the quantity of any item specified in the Schedule. Within such limits, the Contractor shall supply the quantity of Goods requested by the Government Representative in accordance with clause 4 of this Part at the

rates specified in the Schedule.

- (b) Where the Government Representative requests the Contractor, in accordance with clause 4 of this Part, to supply quantities of Goods in excess of those specified in the Schedule and within the limits referred to in sub-clause (a) above, the quantities specified in the Schedule shall be deemed to be amended to the extent of such excess and the rates specified shall apply to the amended quantities of Goods.

2. ASSIGNMENT

The Contractor shall not, without the written consent of the Government Representative, assign or otherwise transfer this Contract or any part share or interest therein, and the performance of this Contract by the Contractor shall be deemed to be personal to him.

3. GOODS, SPECIFICATIONS AND PROOF NOTES

- (a) The Goods supplied under this Contract shall be of merchantable quality, fit for the purpose for which goods of that kind are commonly bought, and comply with the specification as described in the Schedule. If the Goods are not fit for the purpose or of merchantable quality or fail to comply with the specification and notwithstanding the provisions of clause 5, the Government Representative may by notice in writing at any time and from time to time (i) reject all or part of the Goods delivered hereunder, or (ii) require the Contractor to repair or replace all or part of the Goods delivered hereunder or (iii) terminate the Contract forthwith.
- (b) Any drawings and information reasonably required for the Contractor's guidance in the execution of this Contract shall be furnished to him free of charge. Drawings which are furnished shall be returned on completion of the Contract, if required.
- (c) The Contractor, if required, shall furnish the Government Representative with a proof note or a certificate showing that the Goods have been subjected to the normal tests for such goods or such tests as the Government Representative may reasonably require.

4. DELIVERY

- (a) The Contractor shall, on receipt of a written order signed by the Government Representative or any person duly authorized by him, supply and deliver the Goods in accordance with the delivery conditions specified in the Contract and to the destination named in such order, the quantities of Goods therein specified within the time or times specified in such order, or if no

time is specified, then within 14 clear working days from the date of such order and for this purpose, 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 obtains a receipt from the Receiving Officer, but such receipts shall not constitute an acknowledgement that the Goods therein mentioned are acceptable or satisfactory.

(b) The Contractor shall at his own expense deliver the Goods to the destination specified in the order.

~~(c) Acceptance on C.I.F. Terms~~

~~If the accepted offer is on a C.I.F. basis, the Contractor must ensure that all Delivery and Shipping Documents are received by the Officer in Charge of the Inward Logistics Section, Government Logistics Department, Room M17, Government Logistics Centre, 11 Chong Fu Road, Chai Wan, Hong Kong seven (7) clear working days prior to the arrival of the vessel on which the Goods are carried, unless other arrangements have been agreed upon in writing. Failure to present the necessary documents within the stipulated agreed time shall render the Contractor liable for any landing and demurrage charges incurred due to the late arrival of such documents. In the case of Goods not conforming to the quotation specification (including short supply), the Contractor shall be liable for the payment of all additional delivery and handling charges incurred by the Government in connection herewith.~~

5. INSPECTION AND ACCEPTANCE

All Goods delivered shall be subject to inspection and/or testing and shall be deemed to have been accepted when:

(a) the Government Representative, or the Receiving Officer furnishes the Contractor with the acceptance note: or

(b) a period of 30 clear working days has expired from the date of delivery and Goods have not been rejected;

whichever date is the earlier.

6. REJECTIONS

(a) If the Government rejects any Goods in accordance with clause 3(a), the Contractor shall remove the same at his own expenses and within 48 hours of being notified in writing by the Government Representative of the rejection. If the Contractor fails to remove the Goods

within such period, the Government Representative may dispose of the Goods as he sees fit. No liability shall attach to the Government in respect of such disposal.

- (b) If required by the Government Representative under clause 3(a)(ii), the Contractor shall within a reasonable period of time following the rejection replace the Goods rejected. In the case where replacement goods have to be obtained from sources outside Hong Kong, the Contractor must advise the Government of the delivery date of such replacement goods and such date must be to the satisfaction of the Government Representative.
- (c) In the event that the Contractor offers for delivery any goods which have previously been rejected by the Receiving Officer or the Government Representative the latter shall immediately thereupon be at liberty to terminate this Contract in the manner provided in clause 9.

7. EMPTIES

If the Contractor in his quotation has requested the return of empties to him, he shall be obliged to collect the same at his own expenses upon the expiration of 28 clear working days from the date of delivery of the Goods herein or any later date which may be determined by the Government and the Government shall not incur any liability in respect of any loss of or damage to such empties whilst under their control.

8. PAYMENT FOR GOODS

When Goods are delivered under this Contract, an invoice stating the order number, the particulars of Goods delivered and the quantity, rate and value of each item shall be sent by the Contractor to the place of delivery or as otherwise directed by the Government Representative. Unless otherwise agreed by the Government Representative, no payment for Goods delivered will be made until the same have been accepted within the meaning of clause 5 of this Part. Once accepted, payment will be made within 30 clear working days.

9. DEFAULT

If the Contractor fails to deliver all or any of the Goods ordered within the time specified in the order or as otherwise provided in clause 4 of this Part, or the Goods are rejected in accordance with clause 3(a), or the replacement Goods are not delivered within the period mentioned in clause 6(b), the Government Representative shall immediately thereupon be at liberty to terminate this Contract by notice in writing under his hand addressed to the Contractor, but

without prejudice to any claims by the Government Representative for breach of Contract and, in particular, his right to procure any Goods then outstanding from any other source, and the Contractor shall be liable for any sums so incurred in excess of the contract price.

10. RECOVERY OF SUMS DUE

Whenever under this Contract any sum of money shall be recoverable by Government from or payable to Government 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 other Government contract.

11. LIABILITY AND INDEMNITIES

- (a) Government and its employees or agents shall not be under any liability whatsoever for or in respect of:
- (i) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the Government or any of its employees or agents or otherwise).
 - (ii) any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of the Government or any of its employees or agents.'
- (b) The Contractor shall indemnify the Government and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Government or any of its employees or agents in respect of:
- (i) any loss, damage, injury or death referred to in sub-clause (a) of this clause (save and except injury or death caused by the Negligence of Government or any of its employees or agents).
 - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- (c) In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of this Contract and whether there be a claim for compensation or not, the Contractor shall within 7 clear working days give notice in writing of such injury or death to the Government Representative.
- (d) For the purposes of this clause "Negligence" shall have the same meaning as that assigned to

it in Section 2(1) of the Control of Exemption Clauses Ordinance.

12. BANKRUPTCY

The Government Representative may at any time by notice in writing terminate this Contract without entitling the Contractor to any 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 this estate made against him, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to 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 assets or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen 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 Government.

13. CORRUPT GIFTS

- (a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance for the time being in force or any subsidiary legislation made thereunder or under any law of a similar nature in relation to this Contract or any other Government contract, the Government Representative may, on behalf of the Government, terminate this Contract, without entitling the Contractor to any compensation therefor.
- (b) The Contractor shall be liable for all losses and expenses necessarily incurred by the Government as a result of such termination of this Contract.

14. GUARANTEE

- (a) Without prejudice to the generality of clause 3(a) hereof, the Contractor will guarantee the quality of the Goods, and any part or portion thereof, for a period of 12 months from the date of acceptance thereof.

- (b) Notwithstanding clause 5 of this Part, the Contractor shall make good as soon as possible, all defects in the Goods arising from defective design, materials, workmanship or any other cause discovered within the said period referred to in sub-clause (a) above.
- (c) In the event of any defect in the Goods being discovered, the Government Representative shall inform the Contractor in writing of the nature of the defect, and if the Government Representative does not reject the Goods, the Contractor will repair the defective Goods to the satisfaction of the Government Representative, free of all costs to the Government.
- (d) In the event that the Contractor is required to replace any defective Goods but he does not at the same time call for the return of the defective Goods, no responsibility for the defective Goods shall rest upon the Government, and the Government may dispose of them after a reasonable time in whatever manner as it sees fit.
- (e) If any defects are not made good within a reasonable time, the Government may, after serving notice of intent on the Contractor, proceed to rectify the defects by repair or replacement at the Contractor's risk and expense without prejudice to any other rights which the Government may have against the Contractor.
- (f) The Contractor shall remain liable to the Government under the terms of this clause whether or not the Goods, or any part thereof, were manufactured by him, and the Contractor shall ensure that the supplier of any Goods not manufactured by him shall be under the same liability to the Contractor as the liability undertaken by the Contractor to the Government pursuant to this clause.

15. INTELLECTUAL PROPERTY RIGHTS

- (a) The Contractor hereby warrants that the Goods supplied under this Contract and the process for their manufacture do not infringe the Intellectual Property Rights of any third party.
- (b) The Contractor hereby undertakes to inform the Government immediately if any claim for infringement or alleged infringement of Intellectual Property Rights is lodged against them during the currency of this Contract in respect of the Goods supplied under this Contract.
- (c) The Contractor shall indemnify the Government and keep the Government fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or incurred by reason of infringement or alleged infringement of any Intellectual Property Rights in

connection with the use or possession of the Goods or any part thereof by the Government.

- (d) In the event of a claim being received by the Government alleging or the Government having grounds to believe that the Goods supplied hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, the Government Representative may, at its election, either
- (i) forthwith terminate this Contract in respect of the Goods not yet received by the Government; or
 - (ii) suspend the performance of this Contract until the claim in question is resolved to the satisfaction of the Government provided that election to suspend performance under this clause shall not preclude the Government from terminating this Contract any time after such election.
- (e) The Government shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 15(d) above irrespective of whether the Goods are later found by a court of law to have infringed any person's Intellectual Property Rights or not.
- (f) The rights of the Government under Clause 15 (d) and (e) shall be without prejudice to the provisions of clauses 15 (a) to (c) above.

16. GOVERNMENT REGULATIONS

- (a) The Contractor shall be responsible for complying with the enactments, orders, regulations or other instruments issued by the Government or other competent authority in the country of manufacture.
- (b) The Contractor shall indemnify the Government against any penalty, loss or cost arising as a result of the Contractor's failure to comply with any of the said enactments, orders, regulations, or other instruments and in addition, the Government reserves the right to claim full compensation in the event of the whole or any part of the Contract not being completed as a result of such failure to comply.

17. These General Conditions of Contract shall apply to the extent which they are not inconsistent with the Special Conditions of Contract (if any) set out hereinafter.