

The Government of the Hong Kong Special Administrative Region
Invitation to Quotation

Quotation Reference:	This Quotation Form with the Schedule duly completed and the “OFFER TO BE BOUND” section duly signed must be submitted to the _____	Quotation Issue Date:
Quotation Subject:	* [address (by post or by hand delivery): _____ _____ (attention: _____) / facsimile no. (by facsimile): _____ / email address (by email): _____] before _____ (time) on _____ (date) (Quotation Closing Time).	Procuring Department Reference:
In case of queries regarding these Quotation Documents, please contact:	Late Quotations will not be accepted.	Requisition No.:
at email address:	*Delete as appropriate.	
Facsimile no.:		

SCHEDULE

Item No.	Description of Goods	(a) Quantity (expressed in number of such unit)	Unit	(b) Unit Rate (viz., an all-inclusive price payable for the Goods per unit inclusive of delivery on the delivery terms as stated further below) HK\$	(a) x (b) Total Estimated Contract Price for the Item specified opposite HK\$	Name of Manufacturer and Place of Origin

Discount allowed for payment made in full within 14 working days from date of receipt of invoice or acceptance of Goods, whichever is the later _____ %

Procuring Department and Delivery Location: Delivery Terms: As specified in the Terms of Quotation (Supplement) Delivery Schedule: Special Remarks:	<p style="text-align: center;">OFFER TO BE BOUND</p> <ol style="list-style-type: none"> Having read the Quotation Documents comprising the Interpretation, the Terms of Quotation, the General Conditions of Contract and all other documents (if any) attached to the Quotation Form, I/we, the Supplier mentioned below, agree to be bound by all of the terms and conditions as stipulated therein. I/We, the Supplier mentioned below, do hereby agree to supply all and any of the Goods at the prices quoted by me/us in the Schedule free of all other charges, subject to and in accordance with the terms and conditions of the Quotation Documents. Place of business of the Supplier (in address form) _____ _____ <p>Signed by the Supplier / Signed by an authorised signatory for and on behalf of the Supplier: _____ Name and title of the authorised signatory of the Supplier (where applicable): _____ Name of the Supplier: _____ Date: _____ Telephone no.: _____ Facsimile no.: _____ Email address: _____</p>
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Quotation Reference: _____

Suppliers from a place outside Hong Kong are requested to provide their banker's details for payment by telegraphic transfer for the Goods received and accepted:

Banker's Name : _____

Banker's Address : _____

Name of Account : _____

Account Number : _____

Bank Sorting Code : _____

Questionnaire

Suppliers are requested to complete the following questionnaire even if they are not submitting quotation for this requirement and to return this document to the Procuring Department on or before the Quotation Closing Time. Your co-operation in enabling us to update our records is appreciated.

- Are you interested in this line of business?
- Is the time allowed sufficient for a quotation to be submitted?
- Would you be prepared to submit quotation for future demands?
- I am / we are unable to submit a quotation for the following reason(s):

Yes	No

(Please tick against the box where applicable)

- ☐ Requirement is out of our range of supply.
- ☐ Required quotation specifications cannot be met.
- ☐ Delivery schedule cannot be met.
- ☐ Quotation Closing Date cannot be met.
- ☐ Others (Please specify) _____

Completed by

Name of Contact Person : _____

Name of Company : _____

Date : _____

INTERPRETATION

In this form, unless the context otherwise requires:

“Contract” means the contract between the Government and the Contractor entered into following from the Invitation to Quotation, and reference to the terms thereof shall include:

- the terms set out in the Quotation Documents, including those Quotation Documents completed and returned by the Contractor as part of its Quotation subject to such changes as the Government and the Contractor may agree;
- the Quotation and the Documentation attached thereto; and
- a letter of acceptance sent by post or by facsimile or by email from the Government accepting the Quotation from the Contractor and/or an acceptance in the form of a written order for the Goods (“letter of acceptance”);

“Contractor” means the Supplier whose Quotation is accepted by the Government;

“Documentation” has the meaning given to it in Clause 3(b) of the General Conditions of Contract;

“F.I.S.” means free into store, i.e. the Contractor is responsible for the delivery of the Goods, at its own cost, to the designated storage area of the delivery location(s) in Hong Kong as specified in the Schedule in accordance with all requirements of the Contract;

“Goods” means each item of goods or articles to be supplied by the Contractor to the Government as specified in the Schedule and/or Technical Specifications (if any); where the Goods are supplied and delivered in batches, reference to “Goods” shall mean the Goods in the quantities covered by all or any of the batches;

“Government” means the Government of the Hong Kong Special Administrative Region of the People's Republic of China;

“Government Representative” means:
(a) the head of the Procuring Department;
(b) any public officer of the Government authorised by (a) for the purpose of the Contract; and

- any other public officer authorised by the public officer referred to in (b) for the purpose of the Contract.

The Government may change the Government Representative and/or his post title from time to time as it thinks fit without prior notice to the Contractor;

“Hong Kong” means the Hong Kong Special Administrative Region of the People's Republic of China;

“Intellectual Property Rights” means patents, trade marks, service marks, trade names, design rights, copyright, domain names, database rights, rights in know-how, new inventions, designs or processes, and other intellectual property rights whether now known or created in future (of whatever nature and wherever arising) and in each case whether registered or unregistered, and including applications for the grant of any such rights;

“Invitation to Quotation” means the invitation to quotation in the Quotation Form;

“Parties” means the Government and the Contractor; and “Party” (in upper or lower case) means any one of them;

“Place of Origin” means in relation to an item of the Goods as specified in the Schedule, the place of origin of that item which shall be the same as the place of manufacture of that item;

“Procuring Department” means the bureau or department of the Government identified as such in the Quotation Form;

“Quotation” means an offer to supply the Goods as submitted by a Supplier in response to the Invitation to Quotation;

“Quotation Closing Date” and “Quotation Closing Time” have the respective meanings given to the term in Paragraph 2 of the Terms of Quotation;

“Quotation Documents” means the documents issued by the Government for the purpose of the Invitation to Quotation, and reference to the terms thereof shall include the terms set out in:

- the Quotation Form containing, amongst others, the Schedule and the Offer to be Bound;
- this Interpretation section;

- (c) the Terms of Quotation;
- (d) the Terms of Quotation (Supplement) (if any);
- (e) the General Conditions of Contract;
- (f) the Special Conditions of Contract (if any);
- (g) the Technical Specifications (if any); and
- (h) all other documents attached to the Quotation Form whether as a schedule or other attachment by whatever name called;

“Quotation Form”	means the Quotation Form (G.F. 604) issued for the Invitation to Quotation including the Schedule and the Offer to be Bound;
“Receiving Officer”	means the public officer in charge of a Government department or bureau or establishment to which any of the Goods are to be delivered or such other public officer as he may authorise to accept delivery thereof;
“Special Conditions of Contract”	means the document titled “Special Conditions of Contract” attached to the Quotation Form (if any);
“Supplier”	means the person whose particulars are set out in the Offer to be Bound of the Quotation Form;
“Technical Specifications”	means the document titled “Technical Specifications” attached to the Quotation Form (if any);
“Terms of Quotation (Supplement)”	means the document titled “Terms of Quotation (Supplement)” attached to the Quotation Form (if any);
“time”	means a time of a day which shall be construed as a reference to Hong Kong time; and
“Warranties”	has the meaning given to it in Clause 3(a) of the General Conditions of Contract, viz., comprising the “Goods Warranty” (as defined in Clause 3(a) of the General Conditions of Contract), the “Authenticity Warranty” (as defined in Clause 3(b) of the General Conditions of Contract), and the “IPR Warranty” (as defined in Clause 12 of the General Conditions of Contract). These three Warranties shall each be referred to by its name identified with quotation marks above.

TERMS OF QUOTATION

- Suppliers are invited to submit Quotations for the supply of all the Goods mentioned in the Schedule. A Supplier’s Quotation will not be further considered if the “OFFER TO BE BOUND” section of the Quotation Form is not duly signed by or on behalf of the Supplier and submitted with its Quotation before the Quotation Closing Time. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Invitation to Quotation and a Quotation submitted by a Supplier in response to this Invitation to Quotation.
- A Quotation must be submitted before the quotation closing day (“Quotation Closing Date”) and quotation closing time on that day (“Quotation Closing Time”) as specified at the top of the Quotation Form. Depending on the permissible mode of submission of a Quotation (and submission by facsimile or by email is only allowed if a facsimile number and/or email address is/are provided at the top of the Quotation Form for this purpose but not otherwise), the Supplier shall submit a Quotation in any one of the following manner: Where a Quotation is submitted by post or by hand delivery, the Quotation shall be submitted in DUPLICATE in sealed envelope marked with the quotation reference and Quotation Closing Date and to be delivered by post or by hand delivery to the address as specified at the top of the Quotation Form. Where a Quotation is submitted by facsimile (if permitted), the Supplier shall write down the quotation reference and Quotation Closing Date on the Quotation and send it by facsimile to the facsimile number as specified at the top of the Quotation Form. Where a Quotation is submitted by email (if permitted), the Suppliers shall write down the quotation reference and Quotation Closing Date on the subject header of the email and the Quotation shall be attached to the email as a PDF file or other file format specified in the Terms of Quotation (Supplement) (if any). The email shall be sent to the email address as specified at the top of the Quotation Form. Regardless of the applicable mode of submission, late Quotations including Quotations posted or despatched or transmitted prior to, but received after, the Quotation Closing Time will not be considered. Should it be necessary for the Supplier to attach other enclosures to the Quotation, reference to these enclosures should be made on the Schedule.
- In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal or “extreme conditions” announced by the Government is/are in force, for any duration between _____ and _____ hours on the Quotation Closing Date, the latest date and time before which Quotations are to be deposited at the quotation box and/or transmitted to such facsimile number or email address referred to in Paragraph 2 of the Terms of Quotation will be extended to _____ hours on the next working day.
- Any amendments to the rates offered or any other part of the Quotation before the Quotation Closing Time must be signed by the Supplier or on behalf of the Supplier (as the case may be).

- Quotation shall be valid for acceptance for _____ days from the Quotation Closing Date (“Quotation Validity Period”). If Suppliers have not received any letter of acceptance or any order from the Government within the aforesaid Quotation Validity Period, Suppliers may assume that their Quotations have not been accepted.
- Suppliers are requested to state the unit rate for the Goods inclusive of all taxes payable and the charge for delivery on the terms as specified in the Quotation Documents, the name of manufacturer, and the Place of Origin of the Goods in the space provided in the Schedule.
- The Government is not bound to accept the lowest or any Quotation and reserves the right to accept all or any part of any Quotation at any time within the Quotation Validity Period. The accepted item and quantity of the Goods (if any) shall be specified in the letter of acceptance or a written order.
- Suppliers should make certain the prices quoted are accurate before submitting their Quotations. After the Quotation Closing Time, unless it is the Government which initiates any request for clarification, the Government will not accept any request from a Supplier for price adjustment on grounds that a mistake has been made in the Quotation.
- The prices to be quoted by the Supplier shall be in Hong Kong dollars or the currency of the Place of Origin of the Goods (i.e. the place of the manufacture of the Goods).
- If the prices are quoted in the currency other than Hong Kong dollars as permitted in Paragraph 9 of the Terms of Quotation (where applicable), (i) for the purpose of price assessment, the prices quoted will be converted to Hong Kong dollars based on the official opening selling rate of such currency quoted by the Hong Kong Association of Banks on the Quotation Closing Date; and (ii) unless otherwise specified in the Terms of Quotation (Supplement), payment to the successful Supplier will be made in Hong Kong dollars.
- Notwithstanding anything to the contrary in the Quotation Documents, the Government reserves the right to disqualify a Supplier on the grounds that the Supplier 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.
- Warranty against Collusion
 - The Supplier must ensure that the Quotation is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with any other person (except as provided in sub-paragraphs below).
 - the Government;

- (ii) a joint venture partner with which the Supplier has submitted the Quotation, and such joint venture arrangement has already been notified to the Government in the Supplier's Quotation;
 - (iii) Supplier's consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;
 - (iv) Supplier's professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to the Supplier's Quotation;
 - (v) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;
 - (vi) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and
 - (vii) any person other than the above, provided that the Government has given prior written consent.
- (b) In the event that a Supplier is in breach of any of the representations, warranties and/or undertakings in Paragraph 12(a) above, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:
- (i) reject the Supplier's Quotation;
 - (ii) if the Government has accepted the Quotation, withdraw its acceptance of the Supplier's Quotation; and
 - (iii) if the Government has entered into the Contract with the Supplier, terminate the Contract under Clause 9.1(f) of the General Conditions of Contract.
- (c) The rights of the Government under Paragraph 12(b) above are in addition to and without prejudice to any other rights or remedies available to it against the Supplier.

13. Warning against Bribery

The offer of an advantage to any public officer with a view to influencing the award of the Contract is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong

Kong). Any such offence committed by a Supplier or any of its officers (including directors), employees or agents will render its Quotation null and void. Where a Contract has been awarded, the Government reserves the right to terminate the Contract under Clause 9.1(g) of the General Conditions of Contract.

14. Consent to Disclosure

Without prejudice to Paragraph 16 of the Terms of Quotation, the Government shall have the right to disclose, without further reference to the successful Supplier, whenever it considers appropriate or upon request (written or otherwise) by any third party (which may have been a Supplier) information on the awarded Contract, the name and address of the successful Supplier, a brief description of the Goods supplied, the accepted sum of the Contract and the date of award of the Contract. In submitting a bid, each Supplier irrevocably and unconditionally authorises the Government to make any of the disclosure aforesaid.

15. Intellectual Property Rights in respect of the Quotations

The Government, its authorised users, assigns and successors-in-title shall have the right to do any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong) in respect of the Quotations and all the related documents or materials submitted by the Suppliers, for purposes including but not limited to quotation evaluation, the disclosure made pursuant to Paragraphs 14 and 16 of the Terms of Quotation and all other purposes incidental thereto.

16. Authentication of Documents

By submitting a Quotation, the Supplier authorises the Government to obtain from

- (a) any person whose particulars are set out in the Quotation or Documentation attached to the Quotation submitted by the Supplier including the manufacturer; and
- (b) any issuing body of any of the Documentation,

all such information which the Government considers appropriate and relevant including information to verify the legitimacy, completeness, authenticity and accuracy of any Documentation submitted by the Supplier (or by the Contractor, if submitted after the Contract has been awarded). If any consent from any other person is required for the Government to obtain any such information, the Supplier (and, where applicable, the Contractor) represents that such consent has been duly obtained.

17. Export Ban

The Government does not accept any Goods to be offered in the Schedule which is subject to a ban on, or a policy of denial of request for, export or re-export to Hong Kong from the Place of Origin (whether or not via any other place), and that no exemption from the

export ban or policy will be available based on the law or regulation or policy of the Place of Origin of such Goods ("Export Ban"). The Supplier shall not offer any such Goods from such Place of Origin; otherwise its Quotation will not be considered further. To prove that there is no such Export Ban in respect of the Goods offered by the Supplier in the Schedule as at the Quotation Closing Date, the Supplier shall supply such documentary evidence as part of its Quotation before the Quotation Closing Date. Such documentary evidence covering all item(s) of the Goods may include any one or more of the following items: (a) valid and binding Export Licence (as defined in Clause 4 of the General Conditions of Contract); (b) approval in principle issued by competent authorities of the Place of Origin(s); (c) past export record of the relevant item of the Goods (or goods of the same type) from the same Place of Origin to Hong Kong and for a user similar to the Procuring Department within twenty-four (24) months prior to the date of the Invitation to Quotation (or such other period as stipulated by the Government in the Terms of Quotation (Supplement)); (d) a legal opinion issued by firm(s) of lawyers practicing in the Place of Origin(s) no earlier than one (1) month prior to the Quotation Closing Date confirming that there is no Export Ban affecting the Goods from the applicable Place of Origin; (e) evidence that the Goods have already been delivered to Hong Kong from the Place of Origin prior to the submission of the Quotation; and/or (f) other evidence as may be requested in the Terms of Quotation (Supplement). Where the Supplier does not supply such evidence whether by the Quotation Closing Date or upon subsequent request by the Government, the Government may disqualify its Quotation.

GENERAL CONDITIONS OF CONTRACT

1. Total Quantities

- (a) The Government is not obliged to order more than 80% (eighty per cent) of the estimated quantity specified in respect of each item of the Goods in the Schedule 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 the Goods requested by the Government Representative in accordance with the requirements of the Contract at the same unit rates specified in the Schedule.
- (b) Where the Government Representative requests the Contractor to supply quantities of the Goods below or 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 by the revised quantities and the same unit rates specified in the Schedule shall apply to the revised quantities of the Goods.

2. Assignment

Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the Government, 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 Contractor shall be personal to it.

3. Goods, Specifications and Proof Notes

- (a) The Goods shall be of merchantable quality, fit for the purpose for which the Goods are commonly intended and for those purposes as may be specified in the Contract, free from any defect in design, material and workmanship, and comply with all requirements and specifications set out in the Contract including without limitation the Schedule and the Documentation (and those set out in the Technical Specifications which form part of the Quotation Documents (if any)) (“Goods Warranty”). The Goods Warranty, the Authenticity Warranty (as defined in sub-clause (b) below) and the IPR Warranty (as defined in Clause 12 of the General Conditions of Contract) are collectively referred to as “Warranties”.
- (b) All statements, information, and documents supplied by the Contractor including, without limitation, those information submitted in its Quotation, test reports and certifications as well as other documentary evidence, in each case from time to time whether before or on or after the date of the letter of acceptance (collectively, “Documentation”) shall be genuine, true, complete and accurate (“Authenticity Warranty”). The Government reserves the power to request from time to time (and even after delivery of the Goods) such additional Documentation to be submitted at such time as the Government may stipulate whereupon the Contractor must submit the requested additional Documentation to the Government within 14 days or within the time specified in the request.
- (c) The Goods shall be subject to the inspection by the Government Representative or the Receiving Officer to his satisfaction, and such tests (as specified in the Special Conditions of Contract (if any)) to ensure that they comply with all requirements of the Contract. Where the Goods are required to comply with specifications covered by a specified standard under the Goods Warranty, unless otherwise waived by the Government, a test report may either be requested from the Contractor under sub-clause (b) above as additional Documentation to be arranged by the Contractor at its cost, or separately obtained by the Government through the appointment of an accredited laboratory to determine whether the Goods delivered (or where applicable such sample of the Goods in such quantity as adequate for the test to be determined by the Government) does indeed comply with all specifications covered by such standard. However, where the Government is to arrange the test separately, the Government may at its option appoint an accredited laboratory which has the accreditation to do testing of one or more specifications but not the entire standard. Other tests

may be further specified in the Special Conditions of Contract or the Technical Specifications. All such inspection and test reports shall be completed as soon as possible and normally within 30 days after the delivery of the Goods to the specified delivery location(s) or otherwise within the period as stated in the Special Conditions of Contract or the Technical Specifications (if any). Except that in the case of a test report which is to be separately arranged by the Government (but not otherwise), and where it is not feasible to obtain such test report within the aforementioned period, then the aforesaid 30 days’ deadline shall not apply. Without prejudice to other rights and claims of the Government, all costs incurred by the Government to arrange the laboratory test under this sub-clause (c) shall be borne by the Contractor if based on the relevant test report, any sample of an item of the Goods fails to comply with any one or more specifications covered by a specified standard under the Goods Warranty applicable to that item.

- (d) Where the Goods are supplied in batches, the inspection and tests as mentioned in sub-clause (c) above shall relate to the batch of Goods to which the inspection and tests relate. The 30 days as mentioned in sub-clause (c) above shall mean 30 days after the delivery of that batch of Goods.

4. Licences

Without prejudice to any other provision of the Contract, if not already done so, the Contractor shall apply for and procure the issue of licences for the performance of the Contractor’s obligations as required under the Contract and under all applicable laws and regulations including without limitation the licence for the export of the Goods from the Place of Origin or where applicable the place of re-export to Hong Kong (“Export Licence”). All costs payable arising from the application and issuance shall be borne by the Contractor. Where (a) there is any Export Ban (as defined in Paragraph 17 of the Terms of Quotation) which is announced or enacted as a law or regulation or policy in the Place of Origin after the date of the letter of acceptance, or; (b) regardless of whether the Export Ban has started before or after any applicable delivery date as long as there remains all or some quantities of the Goods not yet delivered by the applicable delivery date as at the time of termination; (c) the Contractor cannot provide proof with documentary evidence satisfactory to the Government that it has obtained lawful and valid exemption from the export ban for the export of the Goods within seven (7) days (or such longer period as the Government may allow) after the request of the Government; and (d) the Government does not agree to postpone the delivery date to the date when the Export Ban will expire (all of (a) to (d) collectively constituting “Frustration Event due to an Export Ban”), the Government will terminate the Contract under Clause 9.1(i) of the General Conditions of Contract.

5. Delivery

The Contractor shall, on receipt of a written order to be issued and signed by the Government Representative or any person duly authorised by him within the Quotation Validity Period or within a longer order period as specified in the Special Conditions of Contract (if any), supply and deliver the Goods in accordance with the delivery conditions specified in the Contract including F.I.S. or the applicable Incoterms as therein specified, delivery location, delivery time and date, and quantities to be covered by each delivery to a delivery location. If any of such delivery details are not mentioned in the Contract, the Government Representative will issue an order to specify the details. Time shall be of the essence of the Contract including the aforesaid delivery time(s) whether stated in the Contract or in the order. Each delivery shall be accompanied by a copy of the order, and the Contractor shall ensure that it has obtained a receipt from the Receiving Officer upon delivery, but such receipts shall not constitute any acceptance or any acknowledgement that the Goods therein mentioned is acceptable or satisfactory. Without prejudice to the obligations of the Contractor to provide all necessary documentation where Incoterms other than F.I.S. are applicable, to prove the Place of Origin of the Goods, if requested by the Government, the Contractor shall have to provide (whether before or at the same time as delivery) documentary evidence satisfactory to the Government (“Place of Origin Evidence”). This may include certificate of origin to be issued by a body acceptable to the Government or evidence of shipment (whether by air or by sea or by landed transport) of the Goods from the Place of Origin to Hong Kong (or where applicable via a place of re-export). Failure to provide such Place of Origin Evidence shall entitle the Government refuse acceptance of the Goods.

6. Acceptance

Those quantities and items of the Goods which have been delivered in accordance with the time requirements specified in the Contract shall only be treated as to have been accepted when:

- (a) the Government Representative or the Receiving Officer furnishes the Contractor with the acceptance note in respect such quantities and items of Goods which shall only be issued after such quantities have successfully passed the inspection and where applicable tests as referred to in Clause 3(c) of the General Conditions of Contract to the satisfaction of the Government Representative or the Receiving Officer; or
- (b) (this sub-clause (b) is not applicable if the Goods have been paid for completely before acceptance) the Government settles the total price for the Goods under Clause 8(a) of the General Conditions of Contract;

whichever date is the earlier.

- (c) For the avoidance of doubt, where the Goods are delivered in batches, the above acceptance shall concern the batch(es) of Goods to which the acceptance note or payment relates, but not otherwise.

7. Rejections

- (a) If all or any quantity of the Goods delivered fails to comply with the Goods Warranty, or the Authenticity Warranty or the IPR Warranty, or fails any inspection and/or any tests as referred to in Clause 3(c) of the General Conditions of Contract or fails to be supported by Place of Origin Evidence as required under Clause 5 of the General Conditions of Contract, regardless of which failure as aforementioned, the Goods to which the failure relates (or whose sample being tested to which the failure relates) shall be known as “defective Goods”. In the case that the defective Goods are sample or any unit(s) thereof taken from the total quantity of an item of the Goods under Clause 3(c) of the General Conditions of Contract, the total quantity of such item of the Goods shall be the defective Goods. The Government Representative may before any acceptance under Clause 6(a) or 6(b) of the General Conditions of Contract (i) reject all such defective Goods; and if opted by the Government, require the Contractor to replace the defective Goods with brand new Goods (and in the case that the defective Goods are in breach of the IPR Warranty, the Contractor must propose another brand and model for the replacement Goods which must be acceptable to the Government); and/or (ii) terminate the Contract under any of the applicable sub-clause of Clause 9.1 of the General Conditions of Contract. Alternatively, the Government may choose to affirm the Contract but pursue its rights and claims against the Contractor arising from the breaches of any provisions of Contract due to the defective Goods and/or other breaches. To prove that there has been a breach of the Authenticity Warranty or the IPR Warranty, whether for the purposes of rejection under sub-clause (a)(i) above, or termination of the Contract under Clause 9.1 of the General Conditions of Contract or rescission of the Contract under Clause 11(b)(ii)(2) of the General Conditions of Contract, it shall be sufficient that the Government has reasonable ground to believe that there has been such a breach without the need to wait for the outcome of any other related investigation or proceedings by any regulatory or Government body or any other third party (if any).
- (b) If the Government rejects the defective Goods in accordance with Clause 7(a)(i) above (“rejected Goods”), and regardless of whether or not the Government also requires the supply of the replacement Goods, unless and to the extent the Government would retain the same for further investigation or as evidence in future proceedings, the Contractor shall remove the rejected Goods at its own expenses and within one (1) week of being notified in writing by the Government Representative of the rejection (or within such longer period as the Government may allow in such notice). If the Contractor fails to remove the rejected Goods within such period, the Government Representative may dispose of the rejected Goods as it sees fit and all costs incurred by the Government shall be reimbursed to the Government by the

Contractor immediately upon demand. No liability shall attach to the Government in respect of such disposal. Since the rejected Goods are or include defective Goods, the Contractor shall be liable to remove and replace the same even if the original packaging has been removed.

- (c) If required by the Government Representative under Clause 7(a)(i) above, the Contractor shall following the rejection replace the rejected Goods. The Contractor must advise the Government the delivery date of such replacement Goods and such date must be agreed to by the Government Representative in writing. If the Contractor fails to deliver the replacement Goods by the agreed date or the Government does not agree to any date for the delivery of the replacement Goods proposed by the Contractor, the Government will terminate the Contract under Clause 9.1(c) of the General Conditions of Contract.
- (d) Any replacement Goods under Clause 7(c) above shall be subject to the same requirements as set out in the Contract in relation to the original Goods (including any inspection and/or any tests as referred to in Clause 3(c) of the General Conditions of Contract).
- (e) In the event that the Contractor offers for delivery any Goods which have previously been rejected by the Government Representative or the Receiving Officer, the Government shall immediately thereupon be at liberty to terminate this Contract in the manner provided in Clause 9.1(c) of the General Conditions of Contract.
- (f) By default, where there are defective Goods identified, all Goods delivered together with the defective Goods may be rejected under Clause 7(a)(i) above. However, where the inspection or test(s) mentioned in Clause 3(c) of the General Conditions of Contract has covered all quantities of the Goods delivered (but not just a sample or some unit(s) to be taken therefrom) and not all Goods have been identified as defective Goods, the Government has the option, but not the obligation, to accept those Goods which have not been identified as defective Goods.
- (g) Where the Goods are delivered in batches, if opted by the Government, at the option of the Government, the rejection under Clause 7(a)(i) above may relate to the entire batch of Goods, as well as all quantities of the Goods in other batches which have not been delivered or have not been accepted in the manner specified in Clause 6 of the General Conditions of Contract; whereupon references to “rejected Goods” shall include all quantities of all such batches of the Goods.

8. Payment for Goods

- (a) Invoicing and Payment

When the Goods are delivered under this Contract, an invoice stating the order number, the particulars of the Goods delivered and the quantity, the unit rate for the Goods and the amount payable for the Goods based on such unit rate shall be sent by the Contractor to the place of delivery or as otherwise directed by the Government Representative. Save and to the extent of any payment before acceptance as provided for in the Contract (if any), no payment for any Goods delivered will be made until and unless the Goods satisfies and complies with all requirements of the Contract including those specified in or referred to in Clause 3 of the General Conditions of Contract and further the Government has accepted the Goods under Clause 6(a) of the General Conditions of Contract or by electing to pay for the Goods under Clause 6(b) of the General Conditions of Contract. Subject to the fulfilment of the foregoing, but not otherwise, payment for the Goods delivered will be made within 30 days after the Government Representative’s receipt of the invoice for such Goods or after the issue of the acceptance note in respect of such Goods (whichever is later or applicable). If the Government has rejected the Goods under Clause 7(a)(i) of the General Conditions of Contract, there shall be no payment for such Goods and any payment before acceptance shall be refunded immediately upon demand by the Government plus interest to accrue in the manner as mentioned in Clause 10(d) of the General Conditions of Contract.

- (b) Method of Payment for Contractor from a place outside Hong Kong

Unless otherwise specified by the Contractor and agreed by the Government in writing, in the case of a Contractor from a place outside Hong Kong, payment for the Goods under Clause 8(a) above will be made by telegraphic transfer to the Contractor’s bank account to be notified to the Government at the time of submission of its Quotation. All charges payable to the bank outside Hong Kong and all bank charges chargeable as a result of any special request(s) by the Contractor are to be borne by the Contractor.

9. Termination

- 9.1 If any one of the following events occurs:

- (a) the Contractor fails to deliver all or any of the Goods ordered within the time specified in the Contract or otherwise specified in the order or such later date as the Government may have subsequently agreed in writing (if any);

- (b) all Goods are rejected by the Government under Clause 7(a)(i) of the General Conditions of Contract and no replacement is requested by the Government under that same Clause 7(a)(i) of the General Conditions of Contract;
- (c) the replacement Goods are requested by the Government under Clause 7(a)(i) of the General Conditions of Contract but they have not been delivered because the Government does not agree with the proposed delivery date or otherwise they have not been delivered within the period agreed to by the Government as mentioned in Clause 7(c) of the General Conditions of Contract or are also rejected under Clause 7(a)(i) or 7(e) of the General Conditions of Contract as being or comprising defective Goods;
- (d) there is any breach of any provision of the Contract;
- (e) there is any breach of any of the Warranties;
- (f) any event or circumstance occurs which enables the Government to terminate the Contract under Paragraph 12(b)(iii) of the Terms of Quotation;
- (g) the occurrence of any event or circumstance as specified in the Contract which enables the Government to terminate the Contract;
- (h) a court order has been made for the liquidation or dissolution or bankruptcy of the Contractor (provisional or otherwise); or
- (i) the occurrence of a Frustration Event due to an Export Ban as mentioned in Clause 4 of the General Conditions of Contract;

without prejudice to its right to rescind the Contract under Clause 11(b) of the General Conditions of Contract, the Government shall thereupon be at liberty to terminate this Contract by giving not less than seven (7) days' prior written notice to the Contractor. For the avoidance of doubt, except under the ground as specified in Clause 9.1(i) above (but which ground of termination may only be exercised by the Government), the Contractor may not base any other event allegedly beyond its control (including any alleged force majeure event) as a ground for the suspension or termination of the Contract without the prior written agreement of the Government.

9.2 The Government may immediately terminate the Contract upon the occurrence of any of the following events:

- (a) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the

occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;

- (b) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
- (c) the Government reasonably believes that any of the events mentioned above is about to occur.

9.3 Notwithstanding anything herein to the contrary, the Government may at any time and from time to time during the duration of the Contract, at its discretion and without cause, suspend or terminate the Contract or any part thereof by giving the Contractor one month's written notice of such suspension or termination.

10. Termination Consequences

Upon expiry or early termination of the Contract (howsoever occasioned) including under Clause 9 of the General Conditions of Contract ("Termination"):

- (a) the Contract shall be of no further force and effect, but without prejudice to:
 - (i) the Government's rights and claims under the Contract or otherwise at law against the Contractor arising from antecedent breaches of the Contract by the Contractor (including any breach(es) which entitle the Government to terminate the Contract);
 - (ii) the rights and claims which have accrued to a Party prior to the Termination; and
 - (iii) the continued existence and validity of those provisions which are expressed to or which in their context by implication survive the Termination (however occasioned);

- (b) the Government shall not be responsible for any claim, legal proceeding, liability, loss, damage or any cost or expense, suffered or incurred by the Contractor arising out of or in relation to the Termination; without prejudice to the generality of the foregoing, Goods not already accepted under Clause 6 of the General Conditions of Contract shall no longer be payable by the Government;

- (c) without prejudice to the other rights and claims of the Government, in the event of the Termination under Clause 9 of the General Conditions of Contract, except in the case of Termination under Clause 9.1(i) of the General Conditions of Contract, the Contractor shall be liable to compensate the Government for all losses, damage, costs, expenses and liabilities incurred or sustained by the Government arising

from the Termination and any antecedent breach of the Contract prior to the Termination;

- (d) the Contractor shall forthwith refund to the Government without any deduction all amounts previously paid under the Contract (if any) for the rejected Goods which have not been accepted as well as the Goods in other batches (viz., those Goods as mentioned in Clause 7(g) of the General Conditions of Contract which have also not been accepted); and unless in the case of Termination under Clause 9.1(i) of the General Conditions of Contract, interest shall be payable on the refund to accrue at the rate of 1% above the rate per annum which shall be a simple average of the rates per annum announced by the note-issuing banks of Hong Kong from time to time to be its prime lending rate for Hong Kong dollars from the date of payment by the Government to the actual date of complete refund by the Contractor; for the avoidance of doubt, this sub-clause (d) does not apply to Goods which have been accepted under Clause 6 of the General Conditions of Contract;

- (e) unless and to the extent the Government would retain the same for further investigation or as evidence in future proceedings, the Contractor shall remove the rejected Goods from the Government's premises at the Contractor's own cost and expenses within seven (7) days after the date of the Termination, failing which the Government shall be free to dispose of the same without liability to the Contractor and the Contractor shall reimburse the Government all costs and expenses incurred by the Government for the disposal immediately upon demand; and

- (f) where the Termination is under Clause 9.3 above, in relation to any Goods which have not been accepted prior to the Termination, the parties shall negotiate in good faith concerning the amount payable by the Government to the Contractor for work done and costs incurred by the Contractor for arranging such Goods to be delivered.

11. Warranty Services for the Goods and Consequences of Breach of any of the Warranties due to Misrepresentation

- (a) The Contractor shall, for a period of twelve (12) months after the date of the Government's acceptance of any Goods ("Warranty Period") provide the warranty and after-sale services free of charge to the Government ("Warranty Services"). The Contractor warrants that all Goods will throughout the Warranty Period continue to comply with the Goods Warranty. Without prejudice to the other rights and claims of the Government, unless and to the extent the Goods have been consumed, the Contractor's liability for breach of this Goods Warranty shall, subject to the written agreement or the reasonable direction of the Government, provide a refund for, replace or repair any Goods within 30 days after the issue of a notice from the Government notifying the Contractor of any non-compliance.

- (b) (i) Where there is any breach of any of the Goods Warranty or the Authenticity Warranty or the IPR Warranty due to any misrepresentation or failure to provide Place of Origin Evidence upon the request by the Government, and the breach is discovered before acceptance under Clause 6 of the General Conditions of Contract, the Government may reject the Goods under Clause 7(a)(i) of the General Conditions of Contract as defective Goods, and/or terminate the Contract under Clause 9.1(b) or 9.1(c) of the General Conditions of Contract; (ii) Where there has been acceptance of the Goods under Clause 6 of the General Conditions of Contract before the breach of any of the Warranties is discovered, the Government may either (1) terminate the Contract under Clause 9.1(e) of the General Conditions of Contract to claim for compensation under Clause 10(c) but not refund under Clause 10(d) of the General Conditions of Contract, or (2) rescind the Contract ("Rescission"). The Government will proceed with Rescission under (ii)(2) if in the reasonable opinion of the Government, the case for Rescission is justified. Otherwise, the Government may proceed with Termination under (ii)(1) above. If there is a Termination pursuant to (i) or (ii)(1) above, the applicable consequences specified in Clause 10 of the General Conditions of Contract shall apply. If there is a Rescission, the Contract shall be void ab initio. For those Goods which have been delivered but not paid and even if accepted under Clause 6 of the General Conditions of Contract, used or consumed (where applicable), the Government will not pay for them. In respect of the quantity of the unconsumed Goods which can be returned to the Contractor, and even if they have been delivered, paid (or partially paid) for, and accepted under Clause 6(a) or 6(b) of the General Conditions of Contract, the Contractor shall refund all purchase price for such Goods paid by the Government within seven (7) days after the first written demand of the Government plus interest to accrue in the manner as mentioned in Clause 10(d) of the General Conditions of Contract. In respect of those Goods which have been used or consumed, the Contractor shall pay compensation to the Government for all of its losses, damage, costs, expenses and liabilities incurred or sustained arising from the breach of the Warranty. Where there are also ongoing investigations or proceedings by other regulatory or Government body, the Government Representative may, upon the request of such body, pass the entire quantity (or any part thereof) to such body for such investigation or proceedings (and/or retain such quantity for its own future proceedings) and upon such passing, the Goods so passed shall be deemed to have been returned to the Contractor for determining the rights of the Government under this Clause. In addition, in the case of Rescission, other consequences specified in Clauses 10(b), (c) and (e) of the General Conditions of Contract shall also apply and references therein to "Termination" shall mean the Rescission.

12. Intellectual Property Rights

The Contractor hereby warrants and represents that the Goods, and all other materials (tangible or intangible, in whatever medium and including their drafts) supplied under the Contract (if any) (collectively, "Deliverables"), the process of their design, manufacture, production, development, preparation, branding or packaging, or any use, operation, possession, distribution, export, import or sale by the Contractor or the Government of such Goods and Deliverables under the Contract (as the case may be), the performance of the Contract or any services under the Contract, and the exercise by the Government, its authorised users, assigns and successors-in-title of any of the rights granted under the Contract, do not infringe the Intellectual Property Rights or any other right of any person (collectively, "IPR Warranty").

13. Laws and Regulations

Without prejudice to Clause 17(a) of the General Conditions of Contract, the Contractor shall comply with all applicable laws and regulations in the performance of the Contract including the laws and regulations of Hong Kong, and those applicable laws and regulations of the Place of Origin and where applicable place of re-export of the Goods.

14. Recovery of Sums Due

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

15. Contracts (Rights of Third Parties) Ordinance

The Government and the Contractor hereby declare that nothing in this Contract confers or purports to confer on any person not being a party to this Contract any benefit or any right to enforce any term of this Contract under or pursuant to or for the purposes of the Contracts (Rights of Third Parties) Ordinance (Chapter 623 of the Laws of Hong Kong).

16. United Nations Convention on Contracts for the International Sale of Goods not applicable

The Parties hereby agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

17. Governing Law and Jurisdiction

- (a) The Contract shall be governed by and construed in all respects in accordance with the laws of Hong Kong.
- (b) Where the Contractor whose place of business is in Hong Kong or the Mainland of the People's Republic of China, the

Parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters or dispute arising out of or in connection with or in relation to the Contract.

- (c) Where the Contractor whose place of business is not in a jurisdiction which is Hong Kong or the Mainland of the People's Republic of China, any dispute arising from the Contract shall be adjudicated by arbitration to be held in accordance with the Hong Kong International Arbitration Centre Domestic Arbitration Rules prevailing at the time when a notice of arbitration is issued by a Party ("Arbitration Rules") except that regardless of whether the Arbitration Rules providing anything to the contrary, unless the Parties otherwise agree in writing: (i) the arbitration hearing must be held in Hong Kong and that the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong) shall apply to the arbitration (including the whole of Schedule 2); and (ii) without prejudice to section 18(2) of the Arbitration Ordinance, the Government may on its own disclose any information relating to (1) the arbitral proceedings under the arbitration agreement; and (2) an award made in those arbitral proceedings.

18. These General Conditions of Contract shall apply to the extent which they are not expressly deleted in the Special Conditions of Contract (if any) set out hereinafter. In the event of any inconsistency of the documents comprised in the Contract, the documents signed or issued by the Government must prevail over any documents signed or issued by the Contractor; and in the case of inconsistency amongst documents signed or issued by the Government, the Government will determine which document shall prevail.

19. In the event of any conflict or inconsistency between the English text and the Chinese text of the Quotation Form, the Interpretation, the Terms of Quotation and the General Conditions of Contract, the English text of these documents shall prevail.

TERMS OF QUOTATION (SUPPLEMENT)
attached to the Quotation Form (if any)

SPECIAL CONDITIONS OF CONTRACT
attached to the Quotation Form (if any)

Other documents attached to the Quotation Form (if any)