

GENERAL CONDITIONS OF CONTRACT

1 Issue of Order:-

This Order shall constitute an acceptance of the Seller's offer by The Hong Kong University of Science & Technology (HKUST) for the goods as contained in the Seller's quotation subject to the terms and conditions of this Order. If it is issued against a binding supply agreement or contract, this Order shall be treated as the delivery instruction to the Seller subject to the terms and conditions of the relevant agreement/contract therein.

2 Acknowledgement of Order:-

To ensure this Order has been received, the Seller is requested to acknowledge receipt of this Order by signing and returning the Order Acknowledgement of this Order to HKUST immediately.

3 Amendment:-

No revision to this Order or any variation of or addition to the terms of purchase will be accepted by HKUST unless expressly confirmed in writing referring explicitly to such revision, variation or addition.

4 Scheduled goods and Specifications:-

(a) Scheduled goods shall be of 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 Seller before acceptance of this Order.

(b) Any drawings and specifications reasonably required for the Seller's guidance in the execution of this Order shall be furnished to him free of charge but shall be returned on completion of this Order.

5 Seller's Conditions:-

Any terms and conditions imposed by the Seller which are inconsistent with or additional to the terms and conditions stated herein shall not be binding upon HKUST unless expressly accepted in writing by HKUST.

6 Delivery and Default:-

If the Seller shall fail to deliver all or any scheduled Goods ordered within the time specified in such Order, the Buyer shall reserve the right either:

(a) to impose a penalty at the rate of half of one percent per week for delay in delivery of the Goods to a maximum of 5% of the Order sum; or

(b) to terminate the Order in writing to the Seller but without prejudice to any claims to the Seller for breach of contract and in particular the right of the Buyer to procure the balance of the scheduled Goods then outstanding from any other source and the Seller shall be liable for any sum or sums in excess of the prices quoted by the Seller.

7 Inspection and Acceptance:-

Delivery of goods shall be subject to inspection and accordingly shall not be deemed to have been accepted unless either:

(a) the Director of Finance, HKUST or the authorized person of the receiving department, shall furnish the Seller with an Acceptance Note for those goods which require installation, commissioning and acceptance test, etc; or

(b) the goods, except those mentioned in (a) are not rejected within 60 days of delivery to HKUST.

8 Rejections:-

(a) Without prejudice to any statutory rights the Receiving Officer or the Director of Finance, HKUST, may reject any scheduled goods which do not strictly conform with the conditions of sub-clause (a) of Clause 4 wherefore which are damaged, spoilt and soiled.

(b) Within 48 hours of being notified in writing of the rejection of any goods delivered the Seller shall remove the same from HKUST at his own expense.

(c) Within 7 days of notification of rejection, the Seller 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, the Seller must advise the Director of Finance, HKUST, the delivery date when replacement goods will be delivered unless with the notification of rejection, the Director of Finance, HKUST, shall have notified the Seller that he does not require the replacement of such goods. Unless otherwise provided in the Seller's offer, the Director of Finance, HKUST, reserves the right to apply to Clause 6 of this Part 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 HKUST.

9 Payment for Supplies:-

With delivery of goods under this Order, an Invoice stating the PO ID, Particulars of Goods delivered, the Quantity, Rate and Value shall be sent by the Seller to the Finance Office, HKUST. Unless otherwise agreed by the Director of Finance, HKUST, no payments for supplies will be made until the same are deemed to have been accepted within the meaning of Clause 7 of this Part. Payment will normally be made within 30 days after receipt of the Goods or its acceptance test supported by an original invoice. For reimbursement of materials purchased on behalf of HKUST, payment must be supported by an original invoice which will be retained by HKUST.

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10 Recovery of Sums Due:-

Whenever under this Order any sum of money shall be recoverable from or payable by the Seller, the same may be deducted from any sum then due or which at any time thereafter may become due to the Seller under this or any other Order with HKUST.

11 Liability for Damages or Compensation:-

(a) The Buyer shall not be liable for or in respect of any damages, loss or compensation under the Fatal Accidents Ordinance, the Employees' Compensation Ordinance at Common Law or under any applicable laws by or in consequence of any accident or injury to any workman or any other person arising out of or in connection with (i) the performance of the Order by the Seller, its subcontractor, assignee or agent or (ii) defects of or in the Goods, and the Seller shall keep the Buyer indemnified in full against all direct, indirect, or consequential liability, loss, demands, proceedings, costs, charges and expenses (including legal and other professional fees and expenses) whatsoever in respect thereof or in relation thereto.

(b) The Seller shall effect a policy of insurance against all claim, demands or liability with an insurance company approved by the Buyer (which approval shall not be unreasonably withheld) and shall continue such insurance during the duration of the Contract and shall when required, deposit with the Buyer for safe keeping during the Contract such policy of insurance together with the receipt of payment of the current premium.

(c) If the Seller shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such case, the Buyer may effect and keep in force any such insurance and pay such premium of payment as may be necessary for the purpose and from time to time deduct the amount so paid by the Buyer as aforesaid from any moneys due or which may become due to the Seller or recover the same as a debt due from the Seller.

(d) In the event of any workmen or other person employed on any work done in pursuance of this Contract whether in the employment of the Seller or his Sub-Contractor suffering any personal injury and whether there be a claim for compensation or not, the Seller shall without delay give notice in writing of such personal injury to the Buyer.

12 Bankruptcy:-

The Director of Finance, HKUST may at any time by notice in writing summarily terminate this Order without entitling the Seller to compensation in any of the following events:-

(a) If the Seller shall at any time be adjudged bankrupt, or shall have a receiving order or order for administration of his estate made against him or shall take any proceedings or liquidation or compensation under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors, or purpose so do; or

(b) If the Seller, being a Company shall pass a resolution or the Court shall make an order for the liquidation of its affairs, or a Receiver or Manager on behalf of the debenture holders shall be appointed or circumstances shall arise which entitle the Court or debenture holders to appoint a Receiver or Manager. Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to HKUST.

13 Disputes:-

If any dispute arises between the Receiving Officer or the Director of Finance, HKUST and the Seller in reference to the performance of this Order, or any part thereof, HKUST on the one hand or the Seller on the other may forthwith give to the other written notice requiring the matter to be referred to a single arbitrator, in accordance with the Domestic Rules of the Hong Kong International Arbitration Centre whose decision shall be final and binding on both Parties. The costs of such reference shall be in the discretion of the arbitrator. The Laws of Hong Kong will apply.

14 Infringement:-

The product supplied should not infringe upon the patent or copyright of any third party. In the case of any claim or action brought against HKUST alleging infringement of any patent or copyright in respect of the products supplied, the Seller shall undertake to defend or settle such claim or action at the Seller's own expense.

15 Use of Name:-

The Seller shall not use, include or refer to the HKUST's name, proprietary marks, service marks, trademarks or logos, or any variation, adaptation or abbreviation thereof, whether registered, registrable or otherwise, or name of any member of staff of HKUST, for any purpose whatsoever, without the prior written consent of HKUST.

16 Anti-Smoking:-

Hong Kong Law prohibits smoking on the entire university campus (inclusive of indoor and outdoor areas). Please refrain from smoking whilst on campus.

17 Corrupt Gifts:-

If the Seller 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 HKUST in relation to this or any other Order, HKUST shall be at liberty forthwith to cancel this Order, as the case may be, and shall hold the Seller liable for any loss or

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damage which HKUST may thereby sustain. The Seller is also reminded that under the Prevention of Bribery Ordinance of Hong Kong, it is an offense to offer any advantage to an employee of HKUST as an inducement to or reward for giving assistance or using influence in the promotion, execution or procuring of any contract with HKUST.

18 ALL OF THE ABOVE TERMS AND CONDITIONS SHALL APPLY TO THE EXTENT THAT THEY ARE NOT INCONSISTENT WITH THE TERMS AND CONDITIONS SET IN THE RELEVANT SUPPLY AGREEMENT OR CONTRACT AS SPECIFIED ON THIS ORDER.