

THE HONG KONG UNIVERSITY OF SCIENCE AND TECHNOLOGY
General Conditions of Contract for the Supply of Goods and/or Services

1. Interpretation

"Conditions" means:

- (a) (in the case of a Contract formed between HKUST and the Supplier pursuant to HKUST's tendering process) (1) subject to Clause 2(d), these General Conditions of Contract for the Supply of Goods and/or Services, (2) any specific and/or special conditions specified by HKUST in the Invitation to Tender and (3) any variation of the aforesaid terms and conditions and/or any other terms and conditions which have been expressly accepted by HKUST in writing in accordance with Clause 2(b) or 2(c); or
- (b) (in the case of a Contract formed between HKUST and the Supplier by HKUST's issuance of an Order in acceptance of the Supplier's offer for the Goods and/or Services as contained in the Seller's quotation) (1) subject to Clause 2(d), these General Conditions of Contract for the Supply of Goods and/or Services, (2) any specific and/or special conditions specified by HKUST in the Order and (3) any variation of the aforesaid terms and conditions and/or any other terms and conditions which have been expressly accepted by HKUST in writing in accordance with Clause 2(b) or 2(c).

"Contract" means the agreement for the Supplier's supply of Goods and/or Services to HKUST (a) formed pursuant to HKUST's tendering process and comprising the related Invitation to Tender, the Schedule of Requirements, the Supplier's Tender and HKUST's acceptance thereof (by way of issuance of an Order or otherwise in writing) or, as the case may be, (b) formed by HKUST's issuance of an Order to accept the Supplier's offer for the Goods and/or Services as contained in the Seller's quotation.

"Contract Period" means:

- (a) the time as stipulated in the Contract or any extended period which is mutually agreed by HKUST and Supplier in writing, plus any period for the rectification of defects under Clause 8(e); or
- (b) if no period is stipulated in the Contract, the period commencing from HKUST's acceptance of the Supplier's Tender or quotation (as applicable) and ending on the date upon which all Goods and/or Services ordered have been supplied by the Supplier to HKUST as required under the Contract.

"Goods" means equipment, articles, materials, services and technology to be supplied by the Supplier to HKUST under the Contract, as described in the Specification, or, as the context requires, any several part or combination thereof.

"HKUST" means The Hong Kong University of Science and Technology at Clear Water Bay, Kowloon, Hong Kong.

"Intellectual Property Rights" means patents, rights to inventions, utility models, copyright and related rights (including rights in computer software), trade marks, service marks, trade names, business names, domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, rights in designs, rights in layout-design (topography) of integrated circuits, database right, rights in confidential information (including know-how and trade secrets), rights in processes and any other intellectual property rights of whatever nature and wherever arising, in each case whether registered or unregistered and whether now known or created in future, and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

"Order" means a purchase order or other written order for the Goods and/or Services issued by HKUST to the Supplier, which shall constitute HKUST's acceptance of the Supplier's offer for the Goods and/or Services as contained in the Seller's quotation subject to the Conditions, save that if any Order is issued by HKUST against or pursuant to a pre-existing Contract, the Order shall be treated as HKUST's delivery instruction to the Supplier subject to the terms and conditions of such Contract.

"Representative" means the authorized persons from the Facilities Management Office (FMO) of HKUST or any officer appointed by HKUST for the purpose of coordinating and ensuring that the Services performed by Supplier comply with the requirements of the Contract.

"Schedule of Requirements" means any Schedule of Requirements annexed to the Invitation to Tender relating to the Contract.

"Services" means all the services to be executed, supplied or done by the Supplier under the Contract, as referred to in the Schedule of Requirements and described in the Specification, including without limitation, any installation, warranty and/or maintenance services to be executed, supplied or done in respect of the Goods), or, as the context requires, any several part or combination thereof.

"Specification" means:

- (a) the technical description of the Goods and/or Services contained in the Contract or, as the context requires, in the detailed technical proposal related to the Contract or the applicable Order (if any); and
- (b) any other specifications of Goods and/or Services, or any drawings or samples of the Goods have been supplied by the Supplier and approved by HKUST.

"Supplier" means:

- (a) (in the case of a Contract formed or to be formed pursuant to HKUST's tendering process) a party (i) to whom the Invitation to Tender is addressed, or (ii) who is submitting a Tender or (iii) whose Tender is accepted by HKUST; or
- (b) (in any other case) the supplier of the Goods and/or Services (i) as specified in the Contract or (ii) to whom the Order is addressed.

Unless otherwise specified or the context otherwise requires, references to Clauses in this document are to clauses of these General Conditions of Contract for the Supply of Goods and/or Services.

2. Application of Terms

- (a) The Conditions are the only conditions upon which HKUST is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- (b) No terms or conditions endorsed upon, delivered with or referred to in the Supplier's quotation, or any acknowledgement or acceptance of any Order, any specification or similar document delivered by the Supplier or any other counter-offer made to HKUST by or on behalf of the Supplier will form part of the Contract, save to the extent expressly accepted by HKUST in the Contract, the applicable Order (if any) or otherwise in writing. The Supplier waives any right which it otherwise might have to rely on such terms and conditions.
- (c) The Conditions apply to all Goods and/or Services (as applicable) supplied to HKUST under the Contract, and any variation to the Conditions shall have no effect unless expressly agreed in writing by HKUST.
- (d) For the avoidance of doubt, any terms and/or conditions specified by HKUST in the Invitation to Tender or any Order (as

applicable) relating to the Contract and any variation or other terms and/or conditions expressly accepted by HKUST in writing in accordance with Clause 2(b) or Clause 2(c) shall take precedence and prevail over these General Conditions of Contract for the Supply of Goods and/or Services in the event of any inconsistency or conflict.

3. **Quantity and Specification**

- (a) The Goods and/or Services supplied to HKUST by the Supplier shall conform in all respects to the Specification.
- (b) The following terms shall apply to the Goods supplied to HKUST by the Supplier:
 - (i) the quantity shown in the Schedule of Requirements is an estimate of probable requirements and such estimate must be regarded as being given for the assistance of the Supplier on the best evidence available when preparing the Invitation to Tender and not as being a figure to which HKUST binds himself to adhere. The Supplier must be prepared to supply the quantity given in the Order(s) placed by HKUST during the Contract Period; and
 - (ii) any quantity delivered by the Supplier to HKUST in excess of the quantity ordered as shown in an Order shall be at the Supplier's risk for which HKUST shall not be responsible in anyway. HKUST may return such excess quantity and the Supplier will be solely responsible for and pay the storage expenses incurred by HKUST for such excess quantity and transportation, collection and any other costs incurred by HKUST in returning such excess quantity.
- (c) Unless otherwise specified in the Contract, if any Services are to be supplied by the Supplier under the Contract, the Supplier shall provide all resources including labour, goods and materials, tools and equipment as required for the completion of the Services, and the price payable by HKUST for such Services as specified under the Contract shall be inclusive of all the fees, costs and expenses payable for all such resources.

4. **Packing of the Goods**

- (a) The Goods shall be packed strictly in accordance with the requirements, if any, specified under the Contract and/or the applicable Order.
- (b) The Supplier shall at its own cost be responsible for the packing of the Goods which shall be properly and suitably packed and secured so as to reach their destination in good condition, with due regard being made to the nature of the Goods and condition prevailing on the route of shipment and mode of delivery.
- (c) The Supplier shall separately number all cases, packages, etc., showing the corresponding numbers on the invoices.

5. **Delivery**

- (a) The following terms shall apply to the Goods supplied to HKUST by the Supplier:
 - (i) the Goods shall be delivered, carriage paid, to such place of delivery as specified in the Contract or the applicable Order (as the case may be) or as is agreed by HKUST in writing prior to delivery of the Goods;
 - (ii) the date for delivery shall be specified in the Contract or the applicable Order (as the case may be), or if no such date is specified, then delivery shall take place within 28 days of the Contract or the applicable Order (as the case may be); and
 - (iii) the Supplier shall ensure that each delivery is accompanied by an invoice as specified in Clause 9(a).
- (b) The Supplier shall perform the Services at the location specified in the Contract or the applicable Order (as the case may be) on or before the date for delivery specified in the Contract or the applicable Order (as the case may be), unless otherwise instructed or agreed by HKUST in writing in advance.
- (c) If the Services are required to be performed in HKUST's premises, the Supplier shall comply, and shall ensure and procure all the workmen of the Supplier and its sub-contractors (if any) to comply, with the additional terms and conditions specified in the Annex to these General Conditions of Contract for the Supply of Goods and/or Services when they perform the Services in HKUST's premises.
- (d) Time and timeliness of deliveries are the essence of the Contract.
- (e) Unless otherwise stipulated by HKUST in the Contract and/or the applicable Order (as the case may be), deliveries shall only be accepted by HKUST in normal business hours.
- (f) Without prejudice to any other rights and remedies HKUST may have, if the Supplier shall fail to deliver all or any Goods and/or Services within the time and in the manner as specified in the Contract or the applicable Order (as the case may be), or any Goods and/or Services delivered are in any way not in full compliance with the terms of the Contract or the applicable Order (as the case may be), HKUST has the right, at its sole and absolute discretion, to take any one or more of the following actions:
 - (i) cancel the applicable Order in whole or in part;
 - (ii) reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that if HKUST has already paid the price of such Goods to the Supplier, a full refund for the Goods so returned shall be paid forthwith by the Supplier to HKUST;
 - (iii) refuse to accept any subsequent deliveries of the Goods and/or Services which the Supplier attempts to make under such Contract or the applicable Order, without any liability to the Supplier;
 - (iv) recover from the Supplier any expenditure incurred by HKUST in obtaining such Goods and/or Services in substitution from another supplier; and/or
 - (v) deduct from the original price payable by HKUST for such Goods and/or Services as specified under the Contract at the rate of 0.5% per week for delay in delivery from the due date as specified in the Contract or the applicable Order (as the case may be) until the date of delivery to HKUST, up to a maximum of 5% of the original price.

6. **Inspection & Acceptance**

The following terms shall apply to the supply of any Goods to HKUST by the Supplier:

- (a) The Supplier shall notify HKUST or its agent at least 7 days before shipment in order that an inspection of the goods and packing may be carried out.

- (b) If the results of any such inspection cause HKUST to be of the opinion that the Goods do not conform or are unlikely to conform with the Specification, without prejudice to any rights and remedies HKUST may have against the Supplier, HKUST shall be entitled (but not obliged) to inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity, and in addition, HKUST shall have the right to require and witness further inspection.
- (c) HKUST or its agents shall be allowed to conduct such routine inspections at interim production stages of the goods and/or on the arrival of the goods in the place of destination to ensure HKUST's quality requirements are duly complied with.
- (d) Notwithstanding any such inspection, the Supplier shall remain fully responsible for the Goods and any such inspection shall not diminish or otherwise affect the Supplier's obligations under the Contract.
- (e) Delivery of the Goods shall be subject to inspection and/or testing for acceptance by HKUST in accordance with the Specification and accordingly shall not be deemed to have been accepted by HKUST unless either:
 - (i) HKUST furnishes the Supplier with an Acceptance Note for those Goods which require installation, commissioning and acceptance test, etc.; or
 - (ii) the Goods, except those mentioned in paragraph (i) above, are not rejected within 60 days of delivery to HKUST.

For the avoidance of doubt, any receipt or acknowledgement which may be issued and/or made by HKUST upon Supplier's delivery of any Goods and/or Services shall not constitute an acknowledgement that Goods and/or Services mentioned therein are acceptable or satisfactory under this Clause 6(e).

The following terms shall apply to the supply of any Services to HKUST by the Supplier:

- (f) The Supplier shall prepare and submit to HKUST full reports (including interim reports where required by HKUST) of the results of all Services carried out pursuant to the Contract with all due speed in such form or manner and in such detail as is necessary in order to meet the requirements of HKUST.
- (g) The Supplier shall permit HKUST to enter the premises of the Supplier and inspect progress from time to time upon reasonable notice.
- (h) All Services performed shall be subject to inspection and/or testing for acceptance by HKUST in accordance with the Specification and accordingly shall not be deemed to have been accepted unless either:
 - (i) HKUST shall so certify; or
 - (ii) the Services are not rejected as being unsatisfactory by HKUST within 21 days of the date upon which they were executed and offered to HKUST as having been completed.

7. **Rejection**

- (a) Without prejudice to any rights and remedies HKUST may have against the Supplier, HKUST is entitled to reject any Goods and/or Services supplied to HKUST which do not strictly conform to the Specification or which are damaged, spoiled or soiled, or to cancel any Order relating to such Goods and/Services. HKUST will not be liable to make any payment for any Goods and/or Services so rejected or for any Order so cancelled (as the case may be).
- (b) HKUST has the right, at its option, to (i) return the rejected Goods to the Supplier at the Supplier's risk and expense or (ii) demand the Supplier to remove the same from the site to which they were delivered at the Supplier's cost within 2 days of HKUST's notification in writing of the rejection of any Goods delivered.
- (c) Unless HKUST's notification of rejection expressly waives the requirement for the Supplier to replace the relevant Goods, within 7 days of HKUST's notification of rejection, the Supplier shall at its own cost replace such Goods with satisfactory Goods, save that in the case where replacement Goods have to be obtained from sources outside Hong Kong, the Supplier must at its own cost replace obtain such replacement Goods as soon as possible and promptly advise HKUST the earliest delivery date when replacement Goods will be delivered to HKUST.
- (d) Unless HKUST's notification of rejection expressly waives the requirement for the Supplier to rectify the rejected Services, within 24 hours of HKUST's notification of rejection, the Supplier shall at its own cost take all necessary actions to rectify the rejected Services.
- (e) Without prejudice to any rights and remedies HKUST may have against the Supplier, HKUST shall reserve the right to obtain or procure any Goods and/or Services then outstanding or rejected by HKUST under Clause 7(a) above, which are not replaced by the Supplier within the period prescribed in Clause 7(c) or 7(d) (as the case may be) or, where replacement Goods have to be obtained from sources outside Hong Kong, within a reasonable time, from any other source. The Supplier shall pay to HKUST any additional expenditure incurred by HKUST in excess of the contract price of the relevant Goods and/or Services (as the case may be) under the Contract.

8. **Warranty**

- (a) The Supplier warrants that:
 - (i) the Goods sold under the Contract are (1) free from defects in materials, workmanship and fabrications; (2) of the quantity, size description, and dimensions specified, and are strictly in conformity with, the Specification; and (3) of good and merchantable quality; and suitable and fit for the purpose(s) intended (the Supplier hereby acknowledges that such purpose(s) have been declared or otherwise fully made known to the Supplier); and
 - (ii) unless otherwise permitted under the Specification or the Conditions, the Goods sold under the Contract are new and unused;
 - (iii) at the date of delivery of any of the Goods sold under the Contract, the Supplier will have full, clear and unencumbered title to such Goods, and the full and unrestricted right, power and authority to sell, transfer and deliver such Goods to HKUST.
 - (iv) from the date of delivery of any of the Goods sold under the Contract, HKUST shall acquire a valid and unencumbered title to such Goods.
- (b) The Supplier warrants that:
 - (i) any and all Services supplied under the Contract will be carried out in accordance with the Specification with all due

- speed, utmost care and skill and diligence and to the highest industry standards and in compliance with the requirements of all relevant ordinances and another regulations which may from time to time be in force;
- (ii) the Supplier's workmen possess the necessary qualifications and experience and are competent to carry out the Services; and
 - (iii) the Services shall be carried out and completed at the intervals and within the times as required by the Specification and/or the applicable Order (as the case may be).
- (c) The Supplier warrants that it has obtained, and it will maintain throughout the Contract Period, all licences, authorisations, consents, approvals, permits or registrations necessary for it to provide the Goods and/or Services (as the case may be) and to perform the Contract.
 - (d) The warranties in Clauses 8(a) to 8(c) above shall apply in addition to the warranties, conditions and terms implied under the applicable law (including without limitation, the Sale of Goods Ordinance (Cap. 26) and the Supply of Services (Implied Terms) Ordinance (Cap. 457) and shall survive acceptance of and payment for the Goods and/or Services (as applicable).
 - (e) If HKUST finds that any Goods and/or Services supplied do not conform to any of the warranties under this Clause 8 within a period of 15 months from the date of delivery of the Goods or performance of the Services (as the case may be) or any other warranty period specified in the Contract or the applicable Order (whichever the longer), without prejudice to any rights and remedies HKUST may have against the Supplier, the Supplier shall, at HKUST's sole option, (i) refund the price paid by HKUST for such defective Goods or Services (as the case may be); or (ii) replace the defective Goods or re-perform such defective Services (as the case may be), in each case at the Supplier's expense.

9. **Payment**

- (a) With delivery of the Goods, an invoice stating the Order number, particulars of the Goods delivered, the quantity, rate and value shall be sent by the Supplier to HKUST's Finance Office at HKUST, Clear Water Bay, Kowloon, Hong Kong.
- (b) Unless otherwise agreed by HKUST, no payments will be made until the Goods are deemed to have been accepted within the meaning of Clause 6. HKUST will make payment within 30 days from the date of receipt of invoice or receipt of the Goods whichever the latest, but time for payment shall not be of the essence of the Contract. Where the Goods require installation and commissioning, payment is normally effected within 30 days from the date of a joint satisfactory acceptance test.
- (c) For reimbursement of materials purchased on behalf of HKUST in the execution of the Contract, payment must be supported by an original invoice which will be retained by HKUST.
- (d) Without prejudice to any other right or remedy, HKUST shall have the right to deduct or withhold part of or the whole payment due to incomplete or unsatisfactory Services or inferior Goods and/or Services supplied by the Supplier.
- (e) Without prejudice to any other right or remedy, HKUST reserves the right to set off any amount owing at any time from the Supplier to HKUST against any amount payable by HKUST to the Supplier under the Contract.

10. **Liability for Damages or Compensation**

- (a) HKUST and its employees, workmen and agents shall not be liable for or in respect of any damages, loss or compensation under the Fatal Accidents Ordinance (Cap. 22), the Employees' Compensation Ordinance (Cap. 282) or at Common Law or under any applicable laws by or in consequence of any accident or injury to or death of any workman or other person arising out of or in connection with (i) the performance of the Contract by the Supplier, its sub-contractor, assignee or agent or (ii) defects of or in the Goods and/or Services, save and except any such injury or death caused by the negligence of HKUST or any of its employees, and the Supplier shall indemnify and keep indemnified HKUST 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) HKUST and its employees, workmen or agents shall not be liable for or in respect of any loss of or damage to any property of the Supplier or its sub-contractors or that of the employees, workmen or agents of the Supplier or its sub-contractors or any third party unless such damage is directly caused by the negligence of HKUST or any of its employees.
- (c) The Supplier shall indemnify HKUST against any loss of or damage to any property of HKUST or of any of its employees, workmen or agents or any injury to any employee, workmen or agent of the HKUST arising out of or in connection with the negligence of the Supplier, its sub-contractors or any of their respective employees, workmen or agents.
- (d) In the event of any of the employees, workmen or agents of the Supplier or its sub-contractors suffering any injury or death in the course of or arising out of the Contract and whether there be a claim for compensation or not, the Supplier shall within 7 clear working days give notice in writing of such injury or death to the Representative.

11. **Insurance**

- (a) The Supplier shall effect a policy of insurance against all claim, demands or liability with an insurance company approved by HKUST and shall continue such insurance during the Contract Period and shall when required, produce the originals of such policy of insurance together with the receipt of payment of the premium to HKUST for inspection or deposit the same with HKUST for safe-keeping during the Contract Period.
- (b) If the Supplier shall fail to effect and keep in force the insurance referred to in Clause 11(a) or any other insurance which it is required to effect under the terms of the Contract, then and in any such case, without prejudice to any rights and remedies HKUST may have against the Supplier, HKUST is entitled (but not obliged) to effect and keep in force any such insurance and pay such premium as may be necessary therefor. HKUST is entitled to recover the amount so paid by HKUST as aforesaid as a debt due from the Supplier and the Supplier shall, upon HKUST's demand, indemnify HKUST against such amount in full forthwith.

12. **Intellectual Property Rights and Infringement**

- (a) The copyright and other Intellectual Property Rights in and to all work done and all reports prepared and submitted by the Supplier (together with the source code, if applicable) pursuant to the Contract shall remain the sole and exclusive property of HKUST. The Supplier assigns and agrees to assign to HKUST all of the Supplier's rights to and interests of such work including source code, information, inventions, systems, programs and related documentation including improvements and modifications thereto,

and other works of authorship made, developed, written or conceived by the Supplier during Contract Period and HKUST shall have the sole right to use publish and turn to account the results of all such work.

- (b) The Supplier shall not cause or permit anything which may damage or endanger any Intellectual Property Rights of HKUST or HKUST's title thereto or assist or allow others to do so. HKUST reserves the right to take legal action against any unauthorized use of HKUST's intellectual properties, including but not limited to photos, graphics and text.
- (c) The Supplier warrants and undertakes to HKUST that the Goods and/or Services supplied under the Contract shall not infringe upon any Intellectual Property Rights of any third party.
- (d) The Supplier shall indemnify and hold HKUST and all persons for whom HKUST act as agent in respect of the Contract, and their respective employees and agents, harmless against all liability, loss, cost, expense and damage arising out of or in connection with any claim or action brought against any of them alleging infringement of any Intellectual Property Rights in respect of the Goods and/or Services supplied under the Contract, and the Supplier undertakes to defend or settle such claim or action entirely at its own expense.
- (e) The Supplier shall irrevocably waive, and undertake to procure at its own cost and expense all authors of the work done by the Supplier to irrevocably waive, all moral rights (whether past, present or future) in such items. The waiver shall operate in favour of HKUST, its assigns, authorised users and successors-in-title and shall take effect from the date of submission of any such items to HKUST.

13. **Termination**

- (a) HKUST shall have the right at any time to terminate the Contract in whole or in part by giving the Supplier 14 days' written notice, in which case all work on the Contracts shall be discontinued forthwith upon the Supplier's receipt of such notice and HKUST shall pay to the Supplier the fair and reasonable costs and expenses actually incurred by the Supplier directly for work-in-progress at the time of termination as compensation to the Supplier in full and final settlement of all of HKUST's liability to the Supplier arising out of or in connection with the Contract and the termination thereof.
- (b) HKUST may at any time by notice in writing immediately terminate the Contract without any liability to the Supplier upon the occurrence of any of the following events:
 - (i) if the Supplier commits a breach of any of the terms and conditions of the Contract and, in the case of a breach which in the opinion of HKUST is capable of remedy, the Seller fails to remedy such breach within 7 days (or such longer period as HKUST may approve in writing) after the date of HKUST's written notice to the Supplier requiring such breach to be remedied; or
 - (ii) if the Supplier ceases or threatens to cease to carry on all or a material part of its business; or
 - (iii) if the Supplier is or is deemed to be unable to pay its debts as they fall due, suspends making payments on any of its debts; or
 - (iv) if there is any material adverse change in the Supplier (including without limitation, its financial position, business and/or the affairs) such that in the opinion of HKUST the capability of the Supplier to adequately to fulfil its obligations under the Contract has been materially undermined or otherwise placed in jeopardy; or
 - (v) if the Supplier, being an individual, 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 composition under the Bankruptcy Ordinance (Cap. 6) 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 purports so to do; or
 - (vi) if the Supplier, being a company, shall pass a resolution or take any other corporation action or procedure for its winding-up, dissolution or reorganisation, or the Court shall make an order for the liquidation of its assets, 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
- (c) HKUST's exercise of its right under this Clause 13, Clause 14(b) or 23(b) shall not prejudice or affect any right or action or remedy which HKUST may have against the Supplier.
- (d) Notwithstanding anything to the contrary in the Contract, HKUST shall not be liable to the Supplier for any direct, indirect, consequential or other loss, damage or expense of any kind whatsoever arising out of or in connection with the Contract (and/or the termination thereof), whether sustained by the Supplier or any other person.

14. **No Corrupt Payments or Gifts**

- (a) The Supplier shall not at any time during or after the Contract Period in relation to the Contract or any other arrangements with HKUST offer or cause or permit to be offered in contravention of the provisions of the Prevention of Bribery Ordinance (Cap. 201) ("PBO") any advantage within the meaning of PBO to any employee or officer of HKUST or to any member of any council, senate, court, board, committee or other body of HKUST.
- (b) If the Supplier 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 the Contract or any other contract or order, HKUST shall be at liberty forthwith to terminate the Contract and shall hold the Supplier liable for any loss or damage which the Supplier may thereby sustain. The Supplier acknowledges that under the PBO, 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.

15. **Non-Exclusive Contract**

HKUST reserves the right, notwithstanding the conclusion of any contract between HKUST and the Supplier, to call for quotations from and to place orders with other suppliers in respect of the supply of the Goods and/or Services. However, the Supplier will be obliged to accept orders placed by HKUST under the Contract.

16. **Confidentiality and Personal Data Privacy**

- (a) The Supplier shall not at any time during or after the Contract Period:
 - (i) divulge or communicate to, or allow to be divulged or communicated to, any person any confidential information

relating to the business or finances or affairs of HKUST ("**Confidential Information**") whether arising out of or in connection with the Contract, the Goods and/or the Services or otherwise, other than to persons who have signed a secrecy undertaking in a form approved by HKUST;

- (ii) use any Confidential Information for any purpose other than the performance of the Contract; and
 - (iii) permit any person to assist in the provision of the Goods and/or the Services unless such person has signed a secrecy undertaking in a form approved by HKUST.
- (b) The Supplier undertakes to procure that its agents or employees shall not disclose, exploit or use directly or indirectly any Confidential Information obtained by virtue of the Contract.
 - (c) All documents, records, correspondence, equipment or other property containing or relating to any Confidential Information and/or the business or affairs of HKUST kept in the possession or under the control of the Supplier and all copies thereof or extracts therefrom (in whatever form they may be kept) made by or on behalf of the Supplier pursuant to the Contract are and shall remain the property of HKUST and shall be returned to HKUST upon termination of the Contract for any reason.
 - (d) If and to the extent that the Supplier (and/or any sub-contractors of the Supplier) shall collect, disclose, use, transfer or otherwise process any personal data for or on behalf of HKUST in the course of the Supplier's provision of any Services and/or performance of the Contract, the Supplier shall comply, and ensure and procure all the workmen of the Supplier and its sub-contractors (if any) to comply, with all of the following:
 - (i) comply with the Personal Data (Privacy) Ordinance (Cap. 486 of the Laws of Hong Kong) and HKUST's Personal Data Privacy Policy Statement and the Personal Information Collection Statement applicable to the Services, as in force from time to time; and
 - (ii) comply with HKUST's Personal Data Privacy Terms for Contract, as in force from time to time, and any other terms in relation to the collection, disclosure, use, transfer and/or processing of personal data as may be included in the Contract or otherwise prescribed by HKUST; and
 - (iii) without limiting the generality of the foregoing, take all appropriate steps to protect the personal data processed by it pursuant to the Contract to prevent any unauthorised or accidental access, processing, erasure, loss or use thereof, and return or destroy any personal data so processed by it after the Contract Period has expired in accordance with statutory requirements and HKUST's policy and instruction.

17. Assignment and Sub-Contracting

- (a) The Supplier shall not, without the prior consent in writing of HKUST, assign, delegate or transfer the Contract or any part of it to any other person, except for reason of company amalgamation or solvent restructuring in which the Supplier is the resulting or surviving entity of such amalgamation or restructuring (as the case may be) and all the obligations on the part of the Supplier under the Contract shall remain legal, valid, binding and enforceable after such amalgamation or restructuring (as the case may be).
- (b) The Supplier shall not, without the prior consent in writing of HKUST, sub-contract or sub-let the Contract or any part thereof other than for any part of the Goods and/or Services of which the makers or suppliers (as applicable) are named in the Contract or the Specification. If the Supplier sub-contracts the Contract or any part thereof to a third party, the Supplier shall remain liable for all its obligations under the Contract, and the Supplier shall be responsible for the acts, defaults or negligence of any sub-contractor as if they were the acts, defaults or negligence of the Supplier.

18. Force Majeure

HKUST reserves the right at its option either (a) to order the Supplier to suspend shipments of Goods and/or the performance of the Services covered by the Contract or (b) to cancel the Contract in whole or in part at any time without any liability to the Supplier, in each case without any liability to the Supplier, if the performance of the Contract by the Supplier is made impossible or delayed or interrupted in whole or in part as a result of government order, decree or other compulsive requirements, embargoes, acts of civil or military authorities, acts of the public enemy, inability to secure transportation facilities, strikes, fires or other law or order or regulation or other contingencies beyond control of, and occurs without the fault or negligence of, the Supplier.

19. Indemnity

- (a) The Supplier shall indemnify and keep indemnified HKUST from and against any and all loss, damage, claim, liability (whether criminal or civil) and expenses including legal fees and costs that may be incurred by HKUST resulting from:
 - (i) any act neglect or default of the Supplier or any of its employees or agents; or
 - (ii) any breach of the Contract in respect of any matter arising from the supply of the Goods and/or Services resulting in any successful claim by any third party; or
 - (iii) any virus, worm or other infection to and from HKUST's computer systems as a result of the work carried out or the Goods and/or Services supplied by the Supplier; or
 - (iv) any hacking into HKUST's computer systems as a result of the work carried out by the Supplier, and any damage resulting from such hacking.
- (b) The Supplier shall promptly notify HKUST of any potential claim in respect of any matter arising from the supply of the Goods and/or Services, and shall not make any admission in relation to any such claim.

20. General

- (a) Each right or remedy of HKUST under the Contract is without prejudice to any other right or remedy of HKUST, whether under the Contract or at law.
- (b) If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed not to form part of the Contract without modifying the remaining provisions of the Contract, and shall not in any way affect the validity and enforceability of the remaining provisions of the Contract, which shall continue in full force and effect.
- (c) Failure or delay by HKUST in enforcing or partially enforcing any provision of the Contract will not be construed as waiver of

any of its rights under the Contract.

- (d) Any waiver by HKUST of any breach of, or any default under, any provision of the Contract by the Supplier will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- (e) In providing any services pursuant to the Contract, the Supplier shall be an independent contractor and not the servant or employee of HKUST. Nothing in the Contract shall be construed as creating a partnership, joint venture, or agency relationship between HKUST and the Supplier, or as authorising the Supplier to act as agent for HKUST. The Supplier shall not have authority to act in the name or on behalf of HKUST or otherwise to bind HKUST in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Use of Name

The Supplier 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.

22. Smoking

HKUST is a non-smoking campus. Any person found smoking on campus (including all indoor and outdoor areas) is liable to a fine under the Smoking (Public Health) Ordinance (Cap. 371).

23. National Security and Compliance with laws, regulations, etc.

- (a) The Supplier shall comply with all applicable laws and regulations (including but not limited to legislation of Hong Kong related to public health, public order, public safety, national security and anti-discrimination), and policies and codes of practice as may be notified by HKUST from time to time, in the performance of the Contract.
- (b) Notwithstanding anything to the contrary in any quotation, the Invitation to Tender and other tender documents, the Contract or any Order, HKUST has the right to immediately terminate the Contract by notice, upon the occurrence of any of the following events:
 - (i) the Supplier has engaged or is engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
 - (ii) the continued engagement of the Supplier or the continued performance of the contract is contrary to the interest of national security or the public interest of Hong Kong, public morals, public order or public safety; or
 - (iii) HKUST reasonably believes that any of the events mentioned above is about to occur.
- (c) The Supplier shall not employ or otherwise engage, whether directly or indirectly, any illegal workers in the performance of the Contract.

24. Governing Law and Dispute Resolution

- (a) The Contract is governed by the laws of Hong Kong.
- (b) Any dispute, controversy, difference or claim arising out of or relating to the Contract, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English.

Annex

Additional Terms and Conditions for the Performance of Services in HKUST's premises

1. Protection of Property

When carrying out the Services, the Supplier shall protect all the building finishes and nearby equipment that may be affected by the Services during the Contract Period. Any damage that occurs in carrying out the Services shall be reported to HKUST at once and the Supplier shall undertake to repair, replace or make good the damage at his own expense, failing which, HKUST may deduct such sums from payment due to the Supplier for reinstatement of such damage.

2. Protection of the Public

The Supplier shall take every precaution, including without limitation, providing adequate barriers, warning signs and lights to avoid danger to the public or others. The safety measures to be taken by the Supplier shall be the sole responsibility of the Supplier.

3. Occupational Safety and Health Ordinance

- (a) The Supplier shall, so far as is reasonably practicable, take all necessary steps to ensure the health and safety at work of all its employees performing the Supplier's obligations under the Contract. Without prejudice to the foregoing, the Supplier shall for the purpose of the Contract:
 - (i) provide and maintain plant and systems of work that are safe and without risks to health;
 - (ii) make arrangements to ensure the safety and absence of risks to health in connection with the use, handling, storage and transportation of plant or substances;
 - (iii) provide information, instruction, training and supervision to its employees;

- (iv) maintain the workplace, as far as is within its control, safe and without risks to health; and
- (v) ensure that the Supplier's employees take care for the safety and health of other persons who may be affected by the act or omission of the Supplier's employees and cooperate with the Supplier and such other persons to ensure compliance with any applicable statutory requirements including those under the Occupational Safety and Health Ordinance (Cap. 509).

(b) The Supplier shall fully indemnify HKUST from and against all claims, actions, proceedings, demands and suits brought against and/or fines and penalties imposed on HKUST arising directly or indirectly out of or in connection with the failure of the Supplier to comply with sub-clause (a) or any other obligations imposed under any applicable statutory requirements and all costs and expenses in connection therewith.

4. Typhoon Precaution

Whenever typhoon signal No. 1 or above is hoisted, the Supplier shall ensure that all unstable items at the site of the Services are secured and that all loose items scattered around are cleared and removed from site immediately.

5. Site Visit

Tenderers are required to visit the site and acquaint themselves with the site conditions before submitting any tender or quotation to HKUST. The Supplier shall be deemed to have full notice of all aspects of the site and its conditions, whether or not the Supplier or any of its employees, agents and representatives has in fact visited the site or made enquiries in respect thereof. The Supplier shall not be entitled to make any claim against HKUST, and HKUST shall not be liable to the Supplier, in respect of the site and/or its conditions.

6. Site Supervisor

The Supplier shall engage a suitably qualified full time site supervisor as representative to liaise with the Representative on matters relating to the Services, for the receipt of site instructions and implementation of the safety and health requirements stipulated in clauses 3(a) and 10 of this Annex.

7. Site Access

The Supplier's employees and workmen shall observe all rules and regulations issued by HKUST with regard to access to site, security control, issuing of passes and the like prior to commencement of the Services.

8. Temporary Electricity and Water Supply

If necessary for the performance of the Services, temporary electricity and water supply will be provided by HKUST to the Supplier free of charge. The Supplier shall however make its own arrangement for taking the supply at the points designated by HKUST, which might not be close to the site of the Services.

9. Installation of Electrical Works

If any electrical works shall be carried out by any employee, sub-contractor or agent of the Supplier for the performance of the Services, all such electrical works shall be carried out by Registered Electrical Workers of appropriate grade and comply with all relevant regulations and codes of practice. The Supplier must be an approved registered electrical contractor by the Electrical and Mechanical Services Department (EMSD) of the Hong Kong Government and shall submit to HKUST copies of "Certificate of Registered Electrical Worker" prior to commencement of the electrical work and the "Work Completion Certification Form WRI/WRI (A)" immediately upon completion of the Services.

10. Statutory and HKUST Safety and Environmental Protection Requirements

The Supplier shall comply with the enactments, orders or regulations issued by the Hong Kong Government in the execution of the Contract. The Supplier shall also comply with all relevant safety and health requirements contained in the Safety and Environmental Protection Manual compiled by the Health, Safety and Environment Office ("HSEO") of HKUST. A copy of the said manual is available for inspection at HSEO.

11. Clearance of Rubbish

Unless permitted by the Representative, the Supplier shall, at its sole cost, remove, or cause to be removed, all rubbish, crates, surplus materials, etc., from the site as soon as possible each day during the progress of the Services so as to maintain unhindered access and allow easy inspection of the Services. The Supplier shall further comply with any order from the Representative in connection with the removal of rubbish or clearing the site.

12. Hot Works Permit

Prior to commencement of any hot work, the Supplier must obtain the Hot Work Permit from HSEO of HKUST. All hot work must comply with the Hot Work Permit Procedures issued by HKUST.

13. Working Hours

The permitted working hours are normally 08:30 to 17:30 on working days (except Sundays and public holidays), but the Supplier may be required to work during non-office hours, on Sundays or on public holidays depending on the availability of the areas concerned.

14. Execution of Works

The Services shall be executed with minimal disruption and inconvenience to ongoing activities and facilities in the building and the Supplier's working programme and/or method statement is to be agreed with the Representative prior to commencement of the Services.

15. Variations

HKUST may, at any time during the Contract Period, issue instructions in writing to the Supplier for alteration, addition, omission, substitution or other variation with regard to the quality or quantity of the Services. No variation required by HKUST shall vitiate the Contract. The Supplier shall carry out such variations and be bound by the same conditions, so far as are applicable, as though the said variations

were stated in the Contract. The additional price, if any, payable by HKUST for such variations shall be calculated in accordance with provisions of the Contract, but if there are no applicable provisions in the Contract to determine the same, the amount shall be such sum as is reasonably assessed by HKUST.

16. Lump Sum Contract

The Contract is a lump sum fixed price contract. The items and quantities allowed in the Contract or those quoted by the Supplier are for reference only. Unless it is expressly stipulated by HKUST in the Contract that the quantities of any items are provisional and will be remeasured on completion of the Works, the contract sum shall not be subject to change if the final quantities installed or provided are different from the quantities allowed in the Contract or those quoted by the Supplier.

17. Defects Liability Period

The Defects Liability Period ("DLP") shall be twelve calendar months after the Services have been certified by HKUST as being complete, or such period as otherwise agreed in the Contract or otherwise in writing between HKUST and the Supplier. Any defects or faults which may appear within the DLP due to materials or workmanship not being in compliance with the Contract shall be made good by the Supplier at his own cost within one calendar month from the date of notice given by HKUST to the Supplier or any other dates as agreed with the Representative in writing.

18. Reimbursement

If the Contract requires HKUST to reimburse the Supplier for any materials purchased by the Supplier on behalf of HKUST, the Supplier shall submit to HKUST the original receipt or sales invoice (in such form as may be approved by HKUST) and such other documentation as may be reasonable required by HKUST in order to process and arrange the reimbursement, and all such receipt, sales invoice and documentation shall be retained by HKUST. The Supplier acknowledges and agrees that any receipt or sales invoice addressed to any third party other than the Supplier will not be accepted by HKUST for any application of reimbursement.

19. The Supplier's Employees, Workmen and Agents

The Supplier shall be responsible for the conduct of the employees, workmen and agents of the Supplier and its sub-contractors whilst they are in the premises of HKUST and in the vicinity of HKUST, and shall ensure that they will behave accordingly. HKUST shall be entitled to require the Supplier to remove or replace any of the employees, workmen or agents of the Supplier and its sub-contractors from the premises of HKUST and refuse to admit any such persons if their admission becomes undesirable in the reasonable opinion of HKUST.

20. Liaison with Other Parties

The Supplier shall liaise and cooperate with HKUST's other departments, contractors, consultants and agents for the efficient maintenance and management of the campus during the performance of the Services.

21. University Property

Where HKUST provides identity cards, materials, equipment, etc., for the use of the Supplier, such items shall be returned to HKUST immediately after the Services have been performed or upon HKUST's demand, and the Supplier shall be responsible for, and forthwith make good, any loss or damage sustained.

22. Uniform

The employees, workmen and agents of the Supplier and its sub-contractors when working in HKUST's premises are required to wear uniform which clearly shows their company name.