

PURCHASE ORDER
TERMS AND CONDITIONS
(FOR GOODS)

1. INTERPRETATION

The following definitions and rules of interpretation shall apply in these Terms and Conditions.

Definitions

- “Business Day”** : means a day other than a Saturday, Sunday or public holiday in Hong Kong.
- “Contract”** : means the legally binding contract formed between HKSTPC and the Supplier for the supply of Goods which consists of these Terms and Conditions and any relevant provisions relating to the supply of the Goods that are contained in the Tender Invitation and the Tender Submission and, if issued by HKSTPC, the Purchase Order.
- “Customer Materials”** : means all equipment, tools, drawings, specifications, data, plans, and any other materials or information, whether of a confidential nature or not, in any form or media provided by HKSTPC to the Supplier.
- “Delivery Date”** : means the date or dates for the delivery of any of the Goods as specified in the Purchase Order, the Tender Invitation and/or the Tender Submission, as the case maybe.
- “Delivery Location”** : means the address or addresses for the delivery of any of the Goods as specified in the Purchase Order, the Tender Invitation and/or the Tender Invitation, as the case maybe.
- “Force Majeure Event”** : means any acts of God, war, insurrection, riot, civil or social unrest, sabotage, boycott, embargo, explosion, fire, earthquake, flood, unavoidable accident, the outbreak of any disease, virus epidemic, riot, public disorder, violent demonstrations, blockade, government regulations, legal proceedings.
- “Goods”** : means the goods that are to be acquired by HKSTPC from the Supplier, details of which are set out in the Tender Invitation, the Tender Submission and, if issued by HKSTPC, the Purchase Order.
- “HKSTPC”** : means Hong Kong Science and Technology Parks Corporation.
- “Intellectual Property Rights”** : means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including

but not limited to know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Purchase Order” means the purchase order for the Goods which is issued by HKSTPC and which these Terms and Conditions form an integral part or if, for whatever reason is not issued by HKSTPC, these Terms and Conditions shall on their own govern the purchase of the Goods under this Contract.

“Supplier” : means the company or entity who is engaged by HKSTPC to provide the Goods.

“Tender Invitation” : means the request for quotation or the request for proposal, as the case maybe, that has been issued by HKSTP to invite tender submissions from third parties (including the Supplier) for the provision of the Goods.

“Tender Submission” : means the quotation or proposal, as the case maybe, that is submitted by the Supplier to HKSTPC in response to the Tender Invitation.

HKSTPC and the Supplier shall, where the context permits, individually be referred to as a **“Party”** and collectively as the **“Parties”**.

2. LEGALLY BINDING CONTRACT

2.1. The Supplier hereby acknowledges and accepts that, notwithstanding whether a Purchase Order is issued by HKSTPC, it is legally bound by these Terms and Conditions once it has been selected by HKSTPC as the Supplier pursuant to the selection procedure of the Tender Invitation.

2.2. HKSTPC shall not be bound by and the Supplier hereby expressly excludes any other terms and conditions stipulated in any of the Supplier’s forms and documents.

3. WARRANTIES

3.1. The Supplier warrants that, for a period of eighteen (18) months from the date of acceptance or as otherwise agreed between the Supplier and HKSTPC, the Goods to be rendered to HKSTPC shall:

3.1.1. correspond with the applicable specification(s), drawing(s), description(s) or sample(s) provided to HKSTPC;

3.1.2. be new;

3.1.3. be completely free from defects in design, material and workmanship;

- 3.1.4. be of merchantable quality and fit for their intended purpose made known to the Supplier by HKSTPC, whether expressly or by implication, and/or as set out in the Tender Invitation, and which the Supplier acknowledges and accepts that HKSTPC relies solely on the Supplier's expertise, experience and judgment to ensure that the Goods achieve are merchantable quality and fit for their intended purpose; and
 - 3.1.5. be in compliance with all applicable statutory and regulatory requirements.
- 3.2. All Goods ordered are subject to final inspection, testing, and acceptance by HKSTPC which shall be without prejudice to any other rights and remedies available to HKSTPC:
 - 3.2.1. if any Goods do not correspond with the requirements in this Clause 3, HKSTPC reserves the right to reject the Goods or to require the Supplier to, at the Supplier's own cost, take immediate remedial actions;
 - 3.2.2. HKSTPC may conduct further inspection and testing after the Supplier has carried out the relevant remedial actions;
 - 3.2.3. if the rejected Goods have been paid for, HKSTPC shall have the right to return the rejected Goods and the Supplier shall, without delay, without any off-set or deductions (including without limitation for any administrative fees and/or expenses), refund the paid amount to HKSTPC;
 - 3.2.4. the Supplier shall cover all costs incurred in case of rejected Goods, including but not limited to all inspection, handling and transportation expenses; and
 - 3.2.5. the Supplier shall remain fully responsible for the Goods until HKSTPC has accepted the Goods and that any inspection or testing that are conducted by HKSTPC for the purpose of determining whether the Goods are acceptable shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.3. The Supplier shall ensure that, throughout the term of this Contract, it has and maintains all relevant licences, permissions, authorisations, consents and permits that it requires in order to fully carry out its obligations under this Contract.
- 3.4. The Supplier shall ensure that the Goods are properly packed and secured during shipment and delivery so as to ensure that the Goods are not damaged when they reach the Delivery Location.
- 3.5. Where a Delivery Date is specified for the delivery of any of the Goods, time shall be of the essence and the Supplier undertakes to HKSTPC that the relevant Goods shall be delivered to HKSTPC:
 - 3.5.1. on the Delivery Date or according to the schedule specified;
 - 3.5.2. to the Delivery Location; and
 - 3.5.3. during HKSTPC's normal business hours, or as otherwise instructed in writing by HKSTPC.
- 3.6. The Supplier shall ensure that quantity of each shipment of the Goods that are delivered to HKSTPC correspond to the quantity stated in the relevant packing list, bill of lading, airway bill and/or any other documentation, as applicable, that have been issued by the Supplier to HKSTPC for the customs clearance.

4. PRICE AND PAYMENT

- 4.1. Unless otherwise specified in the Purchase Order, Tender Invitation and/or the Tender Submission, the price(s) submitted by the Supplier for the Goods includes all charges and expenses directly and indirectly incurred by the Supplier in respect of the performance of the Contract including, without limitation, any import fees and/or duties, the cost of packaging, shipping, insuring and for the delivery of the Goods.
- 4.2. No extra charges by the Supplier or its agents shall be effective unless agreed in writing with HKSTPC.
- 4.3. The Supplier shall, without delay, render to HKSTPC invoices and such other documentation as HKSTPC may reasonably require including but not limited to any bills of lading, airway bills, custom forms, export licenses and permits, country of origin statements, packing lists, delivery receipts and such other documentation..
- 4.4. Provided that the Goods have been accepted by HKSTPC in accordance with Clause 5 below, HKSTPC shall settle payment for the Goods to the Supplier in Hong Kong Dollars within thirty (30) days after the relevant invoice date. The Supplier shall not issue any invoice in respect of any Goods unless and until HKSTPC has confirmed acceptance of the relevant Goods.
- 4.5. If HKSTPC fails to fulfill its payment obligation in a timely fashion, it must be given notice of default and granted a reasonable term by the Supplier to fulfill its payment obligation before HKSTPC can be deemed by the Supplier to be in default.
- 4.6. Without prejudice to any other rights of HKSTPC, it shall be entitled to suspend or withhold payment if the Goods rendered by the Supplier are unsatisfactory to HKSTPC.
- 4.7. HKSTPC may, in its sole discretion and at any time, set off any liability of HKSTPC to the Supplier, whether such liability is actual or contingent, liquidated or unliquidated, and whether or not such liability arises from the provision of the Goods. Any exercise by HKSTPC of its rights under this Clause 4 shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

5. ACCEPTANCE, TITLE AND RISK

- 5.1. Risk of loss or damage to the Goods shall remain with Supplier until HKSTPC has expressly given its acceptance of the Goods in writing. Where applicable, HKSTPC shall determine whether to accept the Goods by conducting acceptance testing of the Goods in accordance with the acceptance testing procedures and criteria as specified in the Contract and acceptance of the Goods shall be determined by the outcome such testing procedures and criteria and evidenced by a letter of acceptance from HKSTPC.
- 5.2. Title in the Goods shall pass from the Supplier to HKSTPC upon express written acceptance of the Goods by HKSTPC in accordance with Clause 5.1 without prejudice to any rights to reject, claim damages and/or any other remedies available to HKSTPC after such express acceptance.

6. REMEDIES

- 6.1. If the Goods are not delivered on the relevant Delivery Date, or do not comply with the warranties under Clause 3 or as otherwise agreed in the Contract, then, without limiting any of its other rights or remedies, and whether or not it has expressly accepted the Goods, HKSTPC may exercise any one or more of the following remedies:
- 6.1.1. terminate the Contract with immediate effect by giving written notice to the Supplier without liability;
 - 6.1.2. reject the Goods (in whole or in part) by giving notice in writing to the Supplier before or after delivery and return the rejected Goods to the Supplier at the Supplier's own risk and expense;
 - 6.1.3. require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 6.1.4. refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 6.1.5. recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and/or
 - 6.1.6. claim damages for any additional costs, loss or expenses incurred by HKSTPC which are in any way attributable to the Supplier's failure to perform and fulfil its obligations under the Contract.
- 6.2. These Terms and Conditions shall extend to any substitute or remedial Goods provided by the Supplier.
- 6.3. HKSTPC's rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and/or common law.

7. INDEMNITY

- 7.1. The Supplier shall indemnify HKSTPC against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation) and all interest, penalties and legal costs and all other professional costs and expenses suffered or incurred by HKSTPC arising out of, as a result of or in connection with:
- 7.1.1. any claim made against HKSTPC for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, as a result of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
 - 7.1.2. any claim made against HKSTPC by a third party for death, personal injury or damage to property arising out of, as a result of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
any claim made against HKSTPC by a third party arising out of, as a result of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

7.2. This Clause 7 shall survive termination and expiry of the Contract.

8. TERMINATION

8.1. Without prejudice to any of its other rights or remedies, HKSTPC may terminate the Contract with immediate effect by giving the Supplier written notice if:

8.1.1. there is a change of control of the Supplier; or

8.1.2. the Supplier's financial position deteriorates to such an extent that in HKSTPC's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

8.1.3. the Supplier commits a material breach of any of these Terms and Conditions or any conditions of the Contract and such breach is irremediable or if such breach is remediable but the Supplier fails to remedy that breach within a reasonable period of time as determined by HKSTPC in its sole and absolute opinion; or

8.1.4. the Supplier shall have a receiver or an administrative receiver appointed or shall pass a resolution for winding-up (other than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Supplier shall become subject to an administrative order or shall enter into any voluntary arrangement with its creditors or suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

For the purpose of this Clause 8, the term "control" (including the correlative terms "controlling", "controlled by", and "under common control with") shall mean possession directly or indirectly, through one (1) or more intermediaries, of the power to direct or cause the direction of management and policies of a person, whether through ownership of voting securities or other equity interests, or by shareholders' agreement or otherwise.

9. CONSEQUENCES OF TERMINATION

9.1. On termination of the Contract for any reason, the Supplier shall immediately deliver to HKSTPC all materials, information, operating manuals, guides, specifications and any other information relating to Goods that have already been delivered and accepted by HKSTPC and return all Customer Materials to HKSTPC. If the Supplier fails to do so or fails to do so within a reasonable period of time as determined by HKSTPC in its sole and absolute opinion, then HKSTPC shall have the right to enter the Supplier's premises and take possession of all Customer Materials. Until such Customer Materials have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purposes not connected with the Contract.

9.2. Termination or expiry of the Contract shall not affect any of the rights, remedies, obligations or liabilities of both the Supplier and HKSTPC that have accrued up to the date of termination or expiry. Clauses that expressly or by implication survive termination of the Contract shall continue in full force and effect.

9.3. Any provision of the Contract that expressly or by implication is intended to come into or continue to be in force on or after termination or expiry of the Contract shall remain in full force and effect.

10. INSURANCE

10.1. During the term of the Contract, the Supplier shall maintain, at its own cost and with a reputable insurance company, valid professional indemnity insurance and public liability insurance coverage for an insured sum that is adequate to cover liabilities that may arise under or in connection with the Contract and shall, on HKSTPC's request, produce a certificate of insurance showing the insured sum.

11. INTELLECTUAL PROPERTY RIGHTS

11.1. The Supplier guarantees that the Goods provided hereunder will not infringe upon any Intellectual Property Rights of any third party(ies).

11.2. To the extent that any of the Goods incorporate and/or utilize any Intellectual Property Rights that are owned by the Supplier, the Supplier grants to HKSTPC a fully paid-up, worldwide, exclusive, royalty-free perpetual and irrevocable licence to use such Intellectual Property Rights in the Goods. Where the Goods incorporate and/or utilize any third party Intellectual Property Rights (other than those owned by the Supplier), the Supplier shall, at the Supplier's own cost, procure that all such consents, licenses authorizations and/or permissions have been obtained from such third parties so as to enable HKSTPC to enjoy the full and unfettered use of the Goods.

11.3. All Customer Materials are the exclusive property of HKSTPC.

12. SAFETY

12.1. The Goods shall be provided by employees, contractors, and agents of the Supplier in a manner which conforms to the applicable laws and regulations, including, if applicable, the rules and regulations in the Safety, Health and Environment (SHE) Handbook of HKSTPC, as well as any procedures and instructions intended to prevent accidents, injuries and losses.

12.2. All containers for hazardous chemicals and flammable materials shall be labelled accordingly so as to facilitate proper handling and storage.

13. FORCE MAJEURE

13.1. Neither Party shall be in breach of the Contract nor be liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure is attributable to a Force Majeure Event.

13.2. HKSTPC shall have the right to suspend or cancel the provision of the Goods or any part thereof in case of a Force Majeure Event and the Supplier shall make the corresponding adjustments to the total Contract price.

- 13.3. If a Party is prevented, hindered or delayed from or in performing any of the obligations under the Contract due to any Force Majeure event, it shall notify the other Party in writing of the occurrence of such event and the circumstances thereof within two (2) Business Days after the occurrence of such event.
- 13.4. The Party or Parties affected by the event of Force Majeure shall use reasonable efforts to mitigate the effect thereof upon its or their performance of the Contract and to fulfil its obligations under the Contract.
- 13.5. If the performance of the Contract is substantially prevented, hindered or delayed for a single period of more than thirty (30) days or an aggregate period of more than sixty (60) days on account of one or more events of Force Majeure, the Parties shall negotiate in good faith to attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Agreement by giving written notice to the other, but without prejudice to either Party's rights.

14. ASSIGNMENT

- 14.1. The Supplier shall not assign any of its interests, rights and obligations under the Contract nor shall it subcontract performance of all or any part of the Contract without the prior written consent of HKSTPC.

15. CONFIDENTIALITY

- 15.1. The Supplier undertakes that it shall not at any time during the Contract, and for a period of two (2) years after the termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients of HKSTPC, except as permitted by Clause 15.2 below.
- 15.2. The Supplier may only disclose HKSTPC's confidential information:
- 15.2.1. To its employees, officers, representatives, subcontractors, or advisors on a need-to-know basis and for the purposes of performing its obligations under the Contract. It shall ensure that its employees, officers, representatives, subcontractors, or advisors to whom it discloses such confidential information comply with this Clause 15; or
 - 15.2.2. As may be required by law, the court or any governmental or regulatory authority; or
 - 15.2.3. HKSTPC has given prior written consent to the disclosure of confidential information.
- 15.3. Neither Party shall use the other Party's confidential information for any purposes other than to perform its obligations under the Contract.
- 15.4. This Clause 15 shall survive the termination or expiry of the Contract.

16. WAIVER

- 16.1. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 16.2. Acceptance of, or payment for, all or part of the Goods supplied according to the Contract shall not be deemed to be a waiver by HKSTPC of its right to any remedies, including but not limited to, claims for any losses, costs incurred or damages, and to cancel all or any part thereof, due to any delay or failure to abide by these Terms of Conditions, the Tender Invitation and/or the Tender Submission.

17. AMENDMENTS AND VARIATION

Any amendments to the Contract shall only come into effect if agreed by both Parties in writing.

18. GOVERNING LAW AND JURISDICTION

- 18.1. These Terms and Conditions shall be governed by and construed in accordance with the laws of the Hong Kong.
- 18.2. The Parties submit to the exclusive jurisdiction of the courts of Hong Kong.

19. NOTICES

- 19.1. Any notice or other communication given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid post at its registered office or its principal place of business; or sent by fax to its main fax number; or sent by email to the address provided by the Supplier in the Contract.
- 19.2. A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid post, on the second Business Day after posting; if sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 18.2, business hours means 9.00am to 6.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 19.3. This Clause 19.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

20. PROBITY

- 20.1 The Supplier shall observe the Prevention of Bribery Ordinance (Cap. 201) (“**PBO**”). The Supplier shall not, and shall procure that its directors, employees, consultants, agents, contractors and other personnel who are in any way involved in the Goods shall not, offer to or solicit or accept from any person any money, gifts or advantages (as defined in the PBO) in relation to the Goods.
- 20.2 If the Supplier and/or any of its directors, employees, contractors, agents, contractors and

other personnel who are in any way involved in the Goods commit any offence under the PBO in relation to this Goods, HKSTPC shall be entitled to terminate this Contract and shall hold the Supplier liable for any loss or damages HKSTPC may sustain arising from such termination.

21. ENTIRE AGREEMENT AND SUPERSESSION

21.1. The Parties acknowledge and accept that, subject to Clause 21.3, the Contract constitutes the entire agreement between them with regard to the Goods and supersedes all prior agreements, discussions, arrangements and undertakings, if any, between the Parties in respect of the Goods.

21.2. In the event of any inconsistencies among these Terms and Conditions, the Tender Invitation and/or the Tender Submission, these Terms and Conditions shall first and foremost prevail, with the Tender Invitation ranking second in priority and the Tender Submission ranking third in priority.

21.3. Notwithstanding Clause 21.1, in the event that the Parties enter into a separate legally binding agreement (the “**New Contract**”) to govern the terms and conditions upon which the Supplier is to provide the Goods referred to in this Contract, the Parties acknowledge and accept that once the New Contract has been duly executed by the Parties, these Terms and Conditions shall be superseded in their entirety by the New Contract and the provision of the Goods by the Supplier to HKSTPC shall be deemed as being governed by the New Contract from the date upon which the Supplier was selected by HKSTPC under the Tender Invitation.

22. GENERAL

22.1 **No prejudice to rights / waiver:** No failure to exercise, or delay in exercising, any right or remedy under the Contract will operate as a release or waiver of such right or remedy or any other right or remedy, nor will any single or partial exercise of any right or remedy under the Contract or provided by law preclude any other or further exercise of it or the exercise of any other right or remedy. A waiver of any breach of the Contract or any right of remedy under the Contract shall not be effective, or implied, unless that waiver is in writing and is signed by the Party against whom that waiver is claimed.

22.2 **Severability:** If any term in or provision of the Contract is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, the term or provision shall to that extent be deemed not to form part of the Contract and the enforceability of the remainder of the Contract shall not be affected and shall be enforced to the full extent permitted by law.

22.3 **Rights cumulative:** The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by law.

22.4 **Survival:** Termination shall not affect any rights and/or obligations accrued before the date of termination or any rights and/or obligations or provisions of the Contract expressed or intended to survive any termination of the Contract.

- 22.5 **Successors and Assigns:** The terms and conditions of the Contract shall be binding upon and shall inure to the benefit of the successors in interest and the assigns of the Parties, except that no assignment, transfer, pledge or mortgage by or through either Party in violation of the provisions of the Contract shall vest any rights in the assignee, transferee, pledgee, mortgagee or in any occupant.
- 22.6 **Further assurances:** Each Party shall execute such further documents and perform and procure such acts and things as may be necessary give full effect to each Party's obligations under the Contract.
- 22.7 **No partnership:** Nothing in the Contract shall be construed as creating a partnership, association, trust or joint venture between the Parties. Neither Party nor any of its employees, agents, representatives or contractors is deemed an employee, agent, contractor or representative of the other Party. Neither Party has the authority to bind nor to incur any liability on behalf of the other and neither is such authority implied.
- 22.8 **Exclusion of third parties:** Notwithstanding any other provisions of the Contract and save for expressly provided for in the Contract, any person who is not a party thereto shall not have any right under the Contracts (Rights of Third Parties) Ordinance (Cap.623) to enforce any provisions of the Contract. For the avoidable of doubt, this provision does not affect any right or remedy of a third party which exists or is available apart from the said Ordinance.