

HONG KONG BAPTIST UNIVERSITY

GENERAL CONDITIONS OF CONTRACT FOR GOODS (ONE ENVELOPE)

1. Contractor's Acknowledgement and Contract Performance

- 1.1 The Contractor acknowledges and agrees that it has been supplied with sufficient information to enable it to supply to the University with the Goods, which shall comply fully with the requirements set out in the Technical Specifications and other provisions of the Contract. The Contractor shall not be entitled to any additional payment nor be excused from any liability under the Contract as a consequence of any misinterpretation by the Contractor of any matter or fact relating to the Technical Specifications or any other provisions of the Contract.
- 1.2 The Contractor further acknowledges that the University relies on the skill and judgment of the Contractor in the supply of the Goods and the performance of its obligations under the Contract.
- 1.3 The Contractor shall perform its obligations under the Contract:
- (a) with appropriately experienced, qualified and trained personnel and with all due care, skill and diligence;
 - (b) in accordance with Good Industry Practice; and
 - (c) in compliance with all applicable laws.
- 1.4 The Contractor shall be responsible for the accuracy of all drawings, documents and information supplied by the Contractor to the University in connection with the Goods. Without prejudice to any other provisions of the Contract, the Contractor shall indemnify the University against all losses and damages arising from, and costs and expenses incurred in connection with, any discrepancies, errors or omissions therein.

2. Warranties and Representations

- 2.1 The Contractor warrants, represents and undertakes that:
- (a) the Goods conform in all respects to the Technical Specifications and, where applicable, with any sample approved by the University;
 - (b) the Goods operate in accordance with the relevant technical specifications and correspond with the requirements of the Technical Specifications and any particulars specified in the Contract;
 - (c) the Goods are free from defects in design, materials and workmanship and are fit and sufficient for any particular purpose made known to the Contractor by the University and to the extent consistent with such particular purpose, for other purposes for which such Goods are ordinarily used;
 - (d) all consents, approvals, licences and certificates have been duly obtained for the manufacture, sale, supply and use of the Goods and the use of the Goods by the University will not contravene any applicable laws;
 - (e) the Contractor has full power, capacity and authority to enter into the Contract and to perform its obligations under the Contract;
 - (f) the Contract constitutes valid, legally binding obligations of the Contractor enforceable in accordance with its terms;
 - (g) all authorisations, approvals, consents, licences, exemptions and other requirements of any governmental, administrative or other authority or body in any relevant jurisdiction which are required to authorise the Contractor to execute, deliver and perform the Contractor's obligations under the Contract (including where its procedures so require, the consent of its parent company) have been duly and unconditionally obtained and are in full force and effect;
 - (h) all information supplied, and statements and representations made by or on behalf of the Contractor in or in relation to its Tender and the Contract are true, accurate and complete;
 - (i) no claim is being made and no litigation, arbitration or administrative proceeding is presently in progress, or to the best of the Contractor's knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
 - (j) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
 - (k) no proceedings or other steps have been taken and not discharged (nor to the best of its knowledge, are threatened) for the winding up or bankruptcy of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar office in relation to any of the Contractor's assets or revenue;
 - (l) it owns, has obtained and is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
 - (m) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or on its ability to fulfil its obligations under the Contract; and
 - (n) each of the Contractor and the Goods shall comply with all applicable laws of Hong Kong and the place where the Goods are manufactured or exported to Hong Kong, and all orders and regulations promulgated by the Government from time to time.
- 2.2 The warranties, representations and undertakings, expressed or implied, contained in Clause 2.1 and other provisions of the Contract (collectively, "**Warranties**" and each, a "**Warranty**") shall be true without limitation in time, save that in case of any Warranty expressed to be effective during the Contract Period, it shall be true on each day of the Contract Period as if it is repeated on each such day.
- 2.3 Each of the Warranties shall be separate and independent and without prejudice to any other Warranty, and shall not be limited by reference to or inference from any other Warranty or any other provision of the Contract.

2.4 Unless otherwise expressly excluded from or provided to the contrary in the Contract, the rights, duties and liabilities imposed on a seller and the rights conferred on a buyer under the Sale of Goods Ordinance (Chapter 26 of the Laws of Hong Kong) and the Trade Descriptions Ordinance (Chapter 362 of the Laws of Hong Kong) apply to bind the Contractor and the University respectively.

3. **Costs and Expenses**

Save as otherwise expressly provided for in the Contract, the Contractor shall comply with all provisions of the Contract and its obligations under the Contract at its own costs and expenses.

4. **Total Quantities**

4.1 The Contractor irrevocably undertakes and agrees to sell and deliver to the University, in accordance with the terms and conditions of the Contract, such quantity of the Goods of total value up to 130% of the Estimated Contract Price.

4.2 [The quantities of each item of Goods specified in the Price Schedule are estimates only and the quantity of Goods actually ordered and purchased by the University of total value may be up to 50% less or 50% more than the Estimated Contract Price, without confining to any particular item. Within such limits, the Contractor shall be bound to supply the Goods in the quantities ordered in accordance with the provision of the Contract and at the rate/unit price set out paragraph 1(a) of the Price Schedule. The Contractor shall have no claim against the University for failure to order the estimated quantities.]

4.3 Notwithstanding Clause 4.1 and any other provision of the Contract, the Contractor agrees that the University has no obligation to purchase from it such quantity of the Goods which in total value exceeds 70% of the Estimated Contract Price.

4.4 For the purposes of Clauses 4.1, 4.2 and 4.3, the total value of the Goods shall be calculated by multiplying the total number of pieces of Goods ordered by the University under Clause 6.1 by the rate/unit price set out in paragraph 1(a) of the Price Schedule.

5. **The Goods**

5.1 All Goods supplied by the Contractor to the University under the Contract shall be of merchantable quality, fit for purpose, and comply in all respects with the Technical Specifications.

5.2 Notwithstanding Clause 5.1, the Goods will not be regarded to be “fit for purpose” unless:

- (a) if the University has made known to the Contractor any particular purpose for which the Goods are being bought, the Goods are reasonably fit for the purpose so disclosed by the University, whether or not that is a purpose for which such goods are commonly supplied; and
- (b) to the extent consistent with any particular purpose referred to in paragraph (a) above, the Goods are fit for the purpose for which goods of that kind are commonly bought.

5.3 The Contractor shall be liable to the University under the terms of the Contract whether or not the Goods are manufactured by it.

5.4 The University shall provide the Contractor with drawings and information reasonably required for the Contractor's guidance in the execution of the Contract free of charge. If required by the University, the Contractor shall return all such drawings to the University upon the expiry or early termination of the Contract.

6. **Order and Delivery**

6.1 Whenever required by the University by a written order signed by the University Representative (“**Order**”) specifying:

- (a) the quantity of the Goods to be supplied and delivered to the University;
- (b) the destination for delivery of the Goods referred to in paragraph (a) above;
- (c) the date and time for delivery of the Goods referred to in paragraph (a) above; and
- (d) the conditions, if any, applicable to the delivery of the Goods referred to in paragraph (a) above,

the Contractor shall supply and deliver to the University the quantity of the Goods so specified in the Order in accordance with the Order and the provisions of the Contract.

6.2 If no date and time for delivery of the Goods is specified in an Order, the Contractor shall deliver the quantity of the Goods specified in the Order within 14 working days from the date of the Order.

6.3 Time shall be of the essence as regards each delivery of the Goods specified in an Order.

6.4 Each delivery of the Goods shall be accompanied by a copy of the Order issued for that delivery.

6.5 In respect of each Order, the Contractor shall upon delivery of the Goods to the destination (each as specified in the Order), obtain a receipt from the Receiving Officer, but no such receipt shall constitute an acceptance by the University of the Goods that are received, or an acceptance or acknowledgement by the University of the condition, quantity or the nature of such Goods.

6.6 Notwithstanding any provision of the Contract, due delivery of any Goods to the University shall not be regarded to have taken place unless and until such Goods are accepted by the University under the Contract.

7. **Delivery Documents (For Goods sold on FOB or CIF Terms)**

7.1 The Contractor shall ensure that all the delivery and shipping documents and/or the airway bill relating to the Goods are received by the Purchasing and Support Services Section, Finance Office, Hong Kong Baptist University, Room 307, 3/F, Riviera Gardens, No. 2-12 Yi Lok

Street, Tsuen Wan, New Territories, Hong Kong, at least 7 working days prior to the arrival of the vessel or aircraft on which the Goods are carried unless other arrangements have been agreed upon by the University in writing beforehand. If the Contractor fails to comply with this Clause, the Contractor shall be liable for all landing and demurrage charges incurred due to such failure.

- 7.2 If any of the Goods supplied by the Contractor fails to conform to the Technical Specifications or the Contractor fails to deliver to the University the quantity of the Goods specified in an Order, without prejudice to any other provision of the Contract, the Contractor shall also indemnify the University against all additional delivery and handling charges incurred by the University in connection therewith.

8. Documentation

The Contractor shall obtain all necessary export licences, certification and other documentation for the supply and delivery of the Goods to the University in accordance with the Contract.

9. Inspection and Acceptance

- 9.1 All Goods delivered to the University shall be subject to such inspection and/or testing as specified in the Contract and such other inspection and/or testing as the University considers appropriate. The Contractor shall provide all reasonable assistance to the University in relation to all such inspection and testing free of charge. Without prejudice to the generality of the foregoing, the University Representative may by giving reasonable prior notice to the Contractor, inspect or test the Goods either in the form of a finished product or in the process of manufacture.

- 9.2 If required by the University Representative, the Contractor shall deliver to the University Representative a proof note or a certificate showing that the Goods have been subjected to and passed the tests as specified in the Contract and such other tests referred to in Clause 9.1.

- 9.3 No failure by the University to make a complaint at any time of an inspection or test, and no approval or consent given during or after such inspection or test shall constitute a waiver by the University of any rights or remedies it has or may have in respect of the Goods. The University reserves all its rights to reject the Goods whether under the provisions of the Contract, in law or otherwise.

- 9.4 No Goods delivered to the University shall be regarded to have been accepted by the University unless and until the earlier of:

- (a) the date on which the University Representative or the Receiving Officer serves on the Contractor in respect of such Goods a written notice to the effect that the University has unconditionally accepted those Goods (“**Acceptance Note**”); or
- (b) a period of 30 days has expired from the date of a receipt issued under Clause 6.5 in respect of such Goods and no such Goods have been rejected by the University.

- 9.5 Unless otherwise provided for in the Special Conditions of Contract, risk and property in the Goods shall only pass to the University after the University’s acceptance of the Goods in accordance with the Contract.

10. Rejections

- 10.1 If any Goods supplied by the Contractor is not fit for purpose or of merchantable quality, or fails to comply with the Technical Specifications, Special Conditions of Contract (if any), any drawings and specifications (if any) supplied to the Contractor or other provisions of the Contract, notwithstanding any acceptance of the Goods by the University pursuant to the Contract (including the University’s issuance of an Acceptance Note), the University may by notice in writing signed by the University Representative (“**Rejection Notice**”) reject those Goods.

- 10.2 Upon the issuance of a Rejection Notice, the University may exercise all or any of the following rights:

- (a) require the Contractor to remove the Goods specified in the Rejection Notice within the period prescribed in the Rejection Notice;
- (b) require the Contractor to repair the Goods specified in the Rejection Notice promptly and in any event no later than a date prescribed in the Rejection Notice;
- (c) require the Contractor to replace the Goods specified in the Rejection Notice promptly, and deliver to the University the replacement Goods no later than a date specified by the University Representative; and/or
- (d) terminate the Contract forthwith.

- 10.3 If the University rejects any Goods, the Contractor shall forthwith refund to the University all monies, if any, previously paid by the University to the Contractor in respect of the rejected Goods.

- 10.4 If the Contractor fails to remove any Goods in accordance with a requirement made under Clause 10.2(a), the University may dispose of the Goods as it sees fit. The University shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal and the Contractor shall pay the University all costs and expenses incurred by the University for the disposal.

- 10.5 Risk in all Goods rejected or returned by the University to the Contractor remains with the Contractor (irrespective of the location of the Goods) and they shall be returned to the Contractor at the Contractor’s expense.

11. Place of Origin

The University reserves the right to reject any Goods which were not manufactured in the place as specified in the Contract. The Contractor shall ensure that the Goods supplied are of the same source (in terms of manufacturer and place of origin) as stated in the Contract.

12. Survey Expenses

If the University discovers any defect in the Goods, the University may, at the costs and expenses of the Contractor, appoint a surveyor or an expert in the appropriate field to investigate into and/or establish the nature of the defect.

13. Payment of the Contract Price

- 13.1 In consideration of the Contractor's due and proper performance of all its obligations in accordance with the Contract, the University shall pay the Contractor the Contract Price in accordance with the payment timetable set out in the Price Schedule.
- 13.2 Notwithstanding any provision in the Contract, unless otherwise agreed in writing by the University, in respect of any Goods delivered to the University, the University shall not have any obligation to pay the Contractor any Contract Price for such Goods unless and until the Goods have been accepted by the University in the manner prescribed in the Contract. The University shall pay the Contractor the Contract Price within 30 days after the date of acceptance of the Goods.
- 13.3 The Contract Price is inclusive of all charges (including the costs of packaging, packing, shipping, carriage, insurance, unloading of the Goods and inland freight, broker's fees, custom house's fees, duties, imposts and levies) and all other costs and charges for the sale and delivery of the Goods to the destination specified in the Orders. Subject to Clause 4 and save as otherwise expressly provided for in the Contract, the Contractor shall not be entitled to any adjustment in the Contract Price for any reason (including foreign exchange fluctuations).
- 13.4 In the event that the Contractor has made a standing offer to supply the Goods to the University if and when demanded during the Contract Period, the Contractor and the University hereby acknowledge and agree that the consideration for the standing offer shall be 1 Hong Kong dollar, payable by the University to the Contractor, if demanded, and that the Contractor irrevocably undertakes to keep the standing offer open throughout the Contract Period.
- 13.5 The Contractor shall invoice the University for any payment of the Contract Price. In respect of each delivery of the Goods, the Contractor shall deliver to the University at the destination of the delivery or at such other address specified by the University Representative, an invoice setting out the Order number of the delivery, the particulars of the Goods delivered (including the quantity, rate and value of such Goods), the amount of Contract Price payable for the Goods and such other information as the University Representative may require from time to time.
- 13.6 Notwithstanding any provision of the Contract, the University is entitled to withhold payment of all or any part of the Contract Price and any other sum payable by the University to the Contractor under the Contract if:
- (a) the Contractor fails to observe or perform any provision of the Contract;
 - (b) the University disputes on any reasonable ground its obligation to pay the amount in question;
 - (c) the University has reasonable grounds to believe that the Contractor is or will be liable to the University under any provision of the Contract for the loss or damage suffered by the University; or
 - (d) withholding of payment is required by any applicable law.
- 13.7 No payment made by the University under the Contract shall prejudice or carry any implication whatsoever on any rights or cause of action which has accrued or may accrue, or any remedy available, to the University in respect of any breach of the Contract by the Contractor.

14. Guarantee of the Quality of the Goods

- 14.1 Without prejudice to Clause 5.1, the Contractor shall, for a period of 12 months after the date of the University's acceptance of any Goods or a longer period specified in the Special Conditions of Contract ("**Guarantee Period**"), guarantee the quality of such Goods and that they are free from faulty materials or workmanship.
- 14.2 In respect of any Goods accepted by the University, the Contractor shall whenever required by the University by notice in writing to the Contractor, make good and remedy (whether by repair or replacement as the University may elect) to the reasonable satisfaction of the University all defects in the Goods (whether arising from defective design, materials, workmanship or otherwise) discovered at any time during the Guarantee Period and specified by the University in the notice. The Contractor shall promptly comply with a notice issued under this Clause and have the defects made good and remedied to the University's reasonable satisfaction no later than the date specified by the University in the notice.
- 14.3 If the Contractor fails to make good or remedy any defects in accordance with Clause 14.2, the University may, after notifying the Contractor of its intention, arrange to make good and remedy the defects by repair or replacement at the Contractor's risk and expense.
- 14.4 In the event that the Contractor is required under the Contract to replace any defective Goods but it does not at the same time call for the return of the defective Goods, no responsibility for the defective Goods shall rest upon the University, and the University may dispose of them after a reasonable time in whatever manner as it sees fit. The Contractor shall compensate the University all costs and expenses incurred in connection with the disposal. The University shall not be liable to the Contractor (in contract, tort or otherwise) in respect of such disposal.
- 14.5 The Contractor undertakes (a) not to employ illegal workers in the execution of the Contract, and (b) to offer to all employees who participate in the discharge of the obligations of the Contractor under the Contract all the relevant statutory entitlements under the applicable law in Hong Kong including but not limited to those prescribed under the Employment Ordinance (Chapter 57), Factories and Industrial Undertakings Ordinance (Chapter 59), Employees' Compensation Ordinance (Chapter 282), Occupational Safety and Health Ordinance (Chapter 509) and Minimum Wage Ordinance (Chapter 608)..

15. Intellectual Property Rights

- 15.1 The Contractor warrants that the Goods supplied under the Contract and the process for their manufacture do not infringe the Intellectual Property Rights of any third party.
- 15.2 The Contractor shall notify the University in writing immediately if any claim for infringement or alleged infringement of any Intellectual Property Rights is lodged against it whether during or after the expiry of the Contract Period in respect of the Goods.
- 15.3 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs and other material (collectively, "**IP Materials**"):
- (a) furnished to or made available to the Contractor by or on behalf of the University shall remain the property of the University; and
 - (b) prepared by or for the Contractor for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the University.

- 15.4 The Contractor hereby assigns to the University, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials referred to in Clause 15.3(b). The assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documents reasonably required by the University to give effect to the assignment.
- 15.5 The Contractor waives and shall procure a waiver of all moral rights (whether past, present or future) subsisting in copyright produced by the Contractor in the performance of the Contract. In this Clause, “**moral rights**” means the moral rights referred to in the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong).
- 15.6 The Contractor further undertakes to procure that each third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the University a non-exclusive licence, or if it is a licensee of those rights, shall grant to the University an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. The licence or sub-licence shall be non-exclusive, irrevocable, worldwide, perpetual, royalty-free, transferable and sub-licensable. Without prejudice to the foregoing, the University may novate, transfer or assign the licence or sub-licence, or further sub-licence it to any replacement contractor or any other third party supplying services to the University.
- 15.7 Without prejudice to any other provision of the Contract, the Contractor shall indemnify the University and keep the University fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or in relation to any infringement or alleged infringement of any Intellectual Property Rights in connection with the use or possession of the Goods by the University.
- 15.8 In the event of a claim being received by the University alleging or the University having grounds to believe that the Goods supplied hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, the University may:
- (a) forthwith terminate the Contract in respect of the Goods not yet received by the University; or
 - (b) suspend the performance of the Contract until the claim in question is resolved to the satisfaction of the University provided that the election to suspend performance under the Clause shall not preclude the University from terminating the Contract any time thereafter.
- 15.9 The University shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 15.8 irrespective of whether the Goods are later found by a court of law to have infringed any person’s Intellectual Property Rights or not.
- 15.10 The rights of the University under Clauses 15.8 and 15.9 shall be without prejudice to the provisions of Clauses 15.2 and 15.7.
- 16. Contract Deposit**
- 16.1 If and when required by the University, as security for the due and faithful performance of the Contract by the Contractor, the Contractor shall deposit with the University (via the Director of Finance) within 21 days from the date of Tender Acceptance, an amount equivalent to 2% of the Estimated Contract Price (“**Contract Deposit**”).
- 16.2 The Contractor shall pay the Contract Deposit either in cash or in the form of a banker’s guarantee. If the Contractor pays the Contract Deposit by way of a banker’s guarantee, the banker’s guarantee must comply with the following:
- (a) it must be issued by a bank that holds a valid banking licence granted under the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) and acceptable to the University for the purpose of issuing Contract Deposits;
 - (b) unless otherwise agreed by the University, it must be on the terms set out at Part II of the Terms of Tender (Supplement) (if any); and
 - (c) the banker’s guarantee shall come into effect on the date of commencement of the Contract Period unless another date is specified in the Tender Acceptance as the date on which the banker’s guarantee is to take effect. In the event that another date is so specified, the banker’s guarantee shall take effect no later than such date.
- 16.3 If the Contractor fails to comply with Clause 16.1 or 16.2, the University may terminate the Contract immediately.
- 16.4 Without prejudice to Clause 16.3, if the Contractor fails to comply with Clause 16.1 or 16.2, the University may withhold from any sum due or payable by the University to the Contractor from time to time, such amount which in aggregate does not exceed the amount of Contract Deposit payable to the University under Clause 16.1. The University may apply the amount so withheld to satisfy the Contractor’s obligation under Clause 16.1 in full or in part, and to the extent that the amount is so applied, the latter amount shall be treated as Contract Deposit paid in cash pursuant to Clause 16.1.
- 16.5 If:
- (a) the Contractor fails to comply with any provision of the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker’s guarantee, to recover the amount of costs, losses, damages or expenses suffered or incurred by the University arising from or relating to such failure; or
 - (b) any amount is due or payable by the Contractor to the University under the Contract, the University may deduct from the Contract Deposit paid in cash, or call on the banker’s guarantee, to recover the amount due or payable, in each case irrespective of whether or not a demand for payment has been made against the Contractor.
- 16.6 The Contract Deposit (whether paid in cash or in the form of the banker’s guarantee) may be deducted or called on by the University without the University first having recourse to any other security or rights or taking any other steps or proceedings against the Contractor or any other person, and may be enforced for any balance due after resorting to any one or more of other means of obtaining payment or discharge of the monies, obligations and liabilities owing by the Contractor to the University.
- 16.7 If any deduction is made by the University from the Contract Deposit or a call is made on the banker’s guarantee any time prior to the expiry or termination of the Contract, the Contractor shall, within 21 days after the date of the written demand by the University, deposit a further sum or provide a further banker’s guarantee, in a sum equal to the amount so deducted or so called, which further sum shall be added to the residue and form part of the Contract Deposit. If the Contractor is required to provide a further banker’s guarantee under this Clause, the

further banker's guarantee must comply with the requirements in Clauses 16.2(a) and (b) and shall come into operation on the date of its execution.

- 16.8 If based on the Orders issued by the University under Clause 6.1, the University determines that the total Contract Price payable by it for such Orders is likely to exceed the Estimated Contract Price, the University may, by written notice to the Contractor, require the Contractor to submit to the University such additional amount as further Contract Deposit such that the Contract Deposit shall at all times during the Contract Period be an amount equivalent to 2% of the estimated Contract Price specified by the University in the notice.
- 16.9 If a notice is issued by the University under Clause 16.8, the Contractor shall within 21 days deliver to the University the additional amount of further Contract Deposit required in the notice in the form of either cash or a further banker's guarantee. The further banker's guarantee must comply with the requirements in Clauses 16.2 (a) and (b) and shall come into operation on the date of its execution. A further Contract Deposit paid by the Contractor to the University shall form part of the Contract Deposit.
- 16.10 If the Contractor fails to comply with Clause 16.7, 16.8 or 16.9, the University may terminate the Contract immediately.
- 16.11 Upon the expiry or termination of the Contract:
- (a) if the Contract Deposit is paid in cash, on condition that the Contractor has performed and discharged all its obligation under the Contract to the University's satisfaction, the University shall, after deducting the sums due from the Contractor to the University, return the balance of the Contract Deposit in cash and without interest to the Contractor 3 months after the expiry or termination of the Contract; or
 - (b) if the Contract Deposit is paid by way of a banker's guarantee, the banker's guarantee shall be discharged and released in accordance with its terms.

17. Variations

Subject to the provisions of the Contract, no waiver, cancellation, alteration or amendment of or to the provisions of the Contract shall be valid unless made by an instrument in writing and duly signed by the Contractor and the University.

18. Liability and Indemnities

- 18.1 Neither the University nor any of its employees or agents shall be under any liability whatsoever for or in respect of:
- (a) any loss of or damage to any of the Contractor's property or that of its employees or agents however caused (whether by any Negligence of the University or any of its employees or agents or otherwise); or
 - (b) any injury to or death of the Contractor (in the case where the Contractor is a natural person) or any of its employees or agents, save and except any such injury or death caused by the Negligence of the University or any of its employees or agents.
- 18.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify each of the University and its employees and agents (each an "**Indemnified Person**") against:
- (a) any and all claims (whether or not successful, compromised, settled, withdrawn or discontinued, in whole or in part), actions, investigations, demands, proceedings or judgments, joint or several, threatened, brought or established against an Indemnified Person ("**Claims**"); and
 - (b) any and all liabilities, losses, damages, costs, charges or expenses (including (i) all legal fees and other awards, costs, payments, charges and expenses and (ii) any loss or damage sustained by or any injury to or death of any person in consequence of any Negligence of the Contractor or any of its employees, sub-contractors or agents) which an Indemnified Person may pay or incur as a result of or in relation to any Claims,

which in any case arise directly or indirectly in connection with, out of or in relation to:

- (i) the performance or breach of any provisions of the Contract by the Contractor, its employees, agents or sub-contractors;
- (ii) the negligence, recklessness, tortious acts or wilful omission of the Contractor, its employees, agents or sub-contractors;
- (iii) any default, unauthorised act or wilful misconduct of the Contractor, its employees, agents or sub-contractor; or
- (iv) the non-compliance by the Contractor, its employees, agents or sub-contractor with any applicable law, or regulation, order or requirement of any government agency or authority.

- 18.3 The indemnity under Clause 18.2 shall not apply to any injury or death caused by the Negligence of an Indemnified Person.
- 18.4 In the event of any person 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 Contractor shall verbally inform the University Representative as early as practicable and deliver to the University a written report within 7 working days after the occurrence of the injury or death, or on an earlier date specified by the University Representative.
- 18.5 For the purposes of this Clause, "**Negligence**" shall have the same meaning as that assigned to it in section 2(1) of the Control of Exemption Clauses Ordinance (Chapter 71 of the Laws of Hong Kong).
- 18.6 The indemnities, payment and compensation given in pursuance of the Contract by the Contractor shall not be affected or reduced by reason of any failure or omission of the University in enforcing any of the terms and conditions of the Contract.

19. Termination

- 19.1 If:
- (a) the Contractor fails to deliver to the University any Goods specified in an Order within the time as specified in the Order or in

accordance with Clause 6.2;

- (b) any Goods are rejected pursuant to the Contract;
- (c) the Contractor fails to deliver to the University replacement Goods by the date specified by the University Representative under Clause 10.2;
- (d) the Contractor offers to deliver or delivers to the University any Goods which have previously been rejected by the Receiving Officer or the University Representative;
- (e) the Contractor commits a fundamental breach of any term of the Contract;
- (f) the Contractor is in breach of any other provision of the Contract which in the opinion of the University is not capable of remedy;
- (g) the Contractor commits a breach of any other provision of the Contract which is capable of remedy and fails to remedy the same within 7 days of service of notice by the University (or such longer period as specified in the notice) requiring such remedy;
- (h) the Contractor has made a material misrepresentation (including submission of false statement or inaccurate information) during the tendering process of the Contract;
- (i) the Contractor or any officer (including director), employee or agent of the Contractor commits an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) or any law of a similar nature in relation to the Contract or any other contract made by the Contractor with the University;
- (j) it is found that the Contractor has committed a breach of any provision in the Confirmation Letter for Compliance with Anti-Collusion Provisions in Tender and Certificate relating to Bona Fide Tender in Appendix 3 of Part 8 of the Tender Form, or any representation or warranty in the Contract regarded to be given under Paragraph 14.1 of the Terms of Tender;
- (k) it is found that the Contractor has employed illegal workers in breach of the undertaking under Clause 14.5; or
- (l) the University is given the right to terminate the Contract under any other provision of the Contract,

the University may by written notice to the Contractor terminate the Contract immediately.

19.2 The University may also by written notice to the Contractor terminate the Contract immediately upon the occurrence of any of the following events:

- (a) a proposal is made for a voluntary arrangement or any other composition, scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors;
- (b) if the Contractor is an incorporated body, a shareholders or members meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than voluntarily for the purpose of bona fide reconstruction or solvent amalgamation);
- (c) a petition is presented for the winding up or bankruptcy of the Contractor, which is not dismissed within 14 days after the petition is presented;
- (d) the Contractor is or becomes insolvent, or any order is made for the Contractor's bankruptcy;
- (e) an administrator, administrative receiver, receiver or similar officer is appointed over the whole or any part of the Contractor's business or assets;
- (f) the Contractor suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- (g) the University reasonably apprehends that any of the events mentioned above is about to occur; or
- (h) a Force Majeure Event occurs in such manner entitling the University to terminate the Contract under Clause 31.7.

19.3 On termination of the Contract for any reason, the University is under no further obligation to the Contractor under the Contract without thereby releasing the Contractor from any of its liabilities under the Contract, or affecting any rights and powers conferred upon the University by the Contract.

19.4 If the Contract is terminated under Clause 19.1, the Contractor is not entitled to claim any compensation arising from such termination. Subject to the aforesaid, the expiry or termination of the Contract shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force on or after such expiry or termination.

19.5 If the Contract is terminated under Clause 19.1 and the University makes other arrangements for the supply of any Goods from any other source, the University may recover from the Contractor all costs and expenses incurred in making the arrangements (including the costs and expenses incurred in conducting any tender or quotation as appropriate for procurement of the Goods then outstanding) and any additional expenditure incurred by the University in connection with a default by the Contractor referred to in Clause 19.1. If the Contract is so terminated, until the University has established the final cost of making other arrangements contemplated under this Clause, no further payments shall be payable by the University to the Contractor for the Goods supplied by the Contractor prior to termination and in accordance with the Contract for which payment has yet to be made by the University.

19.6 On the expiry or termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the University all confidential information, personal data and such other information, property and materials in the possession or under the control of the Contractor or any of its suppliers, sub-contractors and agents, which was obtained or produced in the course of providing the Goods;

- (b) assist and cooperate with the University to ensure an orderly transition of the provision of the Goods to such person specified by the University Representative and/or the completion of any work in progress; and
- (c) promptly provide all information concerning the provision of the Goods which may reasonably be requested by the University for the purposes of adequately understanding the manner in which the Goods have been provided or the purpose of allowing the University or a replacement contractor to conduct due diligence.

19.7 Save as otherwise expressly provided for in the Contract, no compensation whatsoever (including compensation for any loss or expense arising from any consequential loss or damage, or loss of opportunity, suffered or incurred by the Contractor) shall be payable by the University to the Contractor as a result of any suspension or early termination of the Contract by the University.

20. Recovery of Sums Due

Where the Contractor has incurred any liability to the University, whether at law or in equity and whether such liability is liquidated or unliquidated, the University may set off, whether by way of equitable set off or at common law the amount of such liquidated liability and a reasonable estimate of the amount of any unliquidated liability, against any sum then due or which at any time thereafter may become due from the University to the Contractor under the Contract or any other contract made between the University and the Contractor.

21. Conflict of Interest

21.1 The Contractor shall during the Contract Period and for 3 months thereafter:

- (a) ensure that it (including each and every employee of the Contractor) and each of its sub-contractors and each of their respective employees, officers and agents engaged in the discharge of the obligations hereunder, and each of their respective associates and associated persons, shall not undertake any service, task, or job or do anything whatsoever for or on behalf of any third party (other than in the proper performance of the Contract) which conflicts or which may be seen to conflict with the Contractor's duties or obligations under the Contract without the prior written approval of the University (which approval shall not be unreasonably refused or delayed); and
- (b) forthwith notify the University in writing of all or any facts which may reasonably be considered to give rise to a situation where the financial, professional, commercial, personal or other interests of the Contractor or any of the Contractor's sub-contractors or any of their respective employees, officers and agents deployed for the performance of the Contractor's obligations hereunder or their respective associates or associated persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's duties or obligations under the Contract.

21.2 The Contractor shall ensure that each of its associate and associated person, each of its sub-contractors and each of their respective employees, officers and agents deployed in the performance of the Contractor's obligations hereunder and their respective associates and associated persons shall keep themselves informed and inform the Contractor and keep it informed regularly of all facts which may reasonably be considered to give rise to a situation in which the financial, professional, commercial, personal or other interests of such persons, conflict or compete, or may be seen to conflict or compete, with the Contractor's obligations under this Contract.

21.3 In the Contract:

- (a) "**associate**" in relation to any person means:
 - (i) a relative or partner of that person; or
 - (ii) a company one or more of whose directors is in common with one or more of the directors of that person;
- (b) "**associated person**" in relation to another person means:
 - (i) any person who has control, directly or indirectly, over the other;
 - (ii) any person who is controlled, directly or indirectly, by the other; or
 - (iii) any person who is controlled by, or has control over, a person at (i) or (ii) above;
- (c) "**control**" in relation to another person means the power of a person to secure:
 - (i) by means of the holding of shares or interests or the possession of voting power in or in relation to that or any other person;
 - (ii) by virtue of powers conferred by any constitution, articles of association, partnership, agreement or arrangement (whether legally enforceable or not) affecting that or any other person; or
 - (iii) by virtue of holding office as a director in that or any other person;

that the affairs of the first-mentioned person are conducted in accordance with the wishes of that other person;
- (d) "**director**" means any person occupying the position of a director by whatever name called and includes a de facto or shadow director; and
- (e) "**relative**" means the spouse, parent, child, brother or sister of the relevant person, and, in deducing such a relationship, an adopted child shall be deemed to be a child both of the natural parents and the adopting parent and a step child to be a child of both the natural parents and the step parent.

22. Confidentiality

22.1 The Contractor shall treat as proprietary and confidential all information, documents, materials and data (including any personal particulars records and personal data (as defined in the Personal Data (Privacy) Ordinance (Chapter 486 of the Laws of Hong Kong)), in whatever form

or media, which the University has for the purposes of or in the course of performing the Contract, supplied, made available or communicated to the Contractor (“**Confidential Information**”). The Contractor’s obligations under this Clause 22 shall not extend to any information which was rightfully in the possession of the Contractor prior to the commencement of the negotiations leading to the Contract or which is already in the public knowledge or becomes so at a future date (otherwise than as a result of a breach of this Clause).

- 22.2 Without prejudice to any other provision of the Contract, the Contractor shall indemnify and keep the University, its authorised users, assigns and successors-in-title fully and effectively indemnified against any and all action, damages, costs, claims, demands, expenses (including the fees and disbursements of lawyers, agents and expert witnesses) and any awards and costs which may be agreed to be paid in settlement of any proceedings and liabilities of any nature arising from or incurred by reason of:
- (a) a breach of confidence (whether under the Contract or general law) by the Contractor or any of its employees, agents or sub-contractors;
 - (b) any actions or claims made in respect of information subject to the Personal Data (Privacy) Ordinance, which action and/or claim would not have arisen but for the act, negligence or omission of the Contractor or any of its employees, agents or sub-contractors in connection with the performance of the Contract; and
 - (c) any act done or omission in the performance of the Contract that contravenes the Unsolicited Electronic Messages Ordinance (Chapter 593 of the Laws of Hong Kong).
- 22.3 The Contractor shall use the Confidential Information solely for the purposes of the Contract. The Contractor shall not, at any time whether during the Contract Period or after the expiry or termination (howsoever occasioned) of the Contract, use (or allow to be used) the Confidential Information for any other purposes without the University’s prior written consent.
- 22.4 The Contractor shall not disclose the Confidential Information to any third parties except in confidence to such of the Contractor’s employees, agents or sub-contractors who need to know the same for the purposes of the Contract.
- 22.5 The Contractor undertakes to take all necessary measures for the protection of the Confidential Information and to prevent any unauthorised disclosure or leakage of the Confidential Information.
- 22.6 The Contractor undertakes, if so requested by the University, to deliver to the University on such date as specified by the University, separate non-disclosure and/or confidentiality agreements duly executed by the Contractor and/or each person to whom any Confidential Information is to be disclosed by the Contractor in accordance with the Contract. The Contractor shall not be regarded to have complied with this Clause unless each confidentiality agreement is executed on terms prescribed by the University.
- 22.7 The Contractor further agrees that it will not at any time whether by itself or through any subsidiary or agent use, sell, license, sub-license, create, develop or deal with any Confidential Information otherwise than in accordance with the Contract.
- 22.8 If the Contractor becomes aware of any breach of confidence by any of its employees, agents or sub-contractors, it shall promptly notify the University and give the University all reasonable assistance in connection with any action or proceedings which the University may take or institute against any such persons.
- 22.9 The provisions of this Clause 22 shall survive the expiry or termination of the Contract and shall continue in full force and effect notwithstanding such expiry or termination.

23. Probity

- 23.1 The Contractor acknowledges it has been reminded that:
- (a) dishonesty, theft and corruption on its part or that of its employees, agents or sub-contractors are criminal offences and may lead to prosecution under section 9 of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong), sections 17, 18D and 19 of the Theft Ordinance (Chapter 210 of the Laws of Hong Kong) and section 161 of the Crimes Ordinance (Chapter 200 of the Laws of Hong Kong); and
 - (b) the soliciting or accepting of advantages, as defined in the Prevention of Bribery Ordinance is not permitted.
- 23.2 The Contractor shall inform its officers, employees (whether permanent or temporary), agents and sub-contractors that the soliciting or accepting of advantages (as defined in the Prevention of Bribery Ordinance) is not permitted. The Contractor shall also caution its officers, employees and agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducement which may impair their impartiality in relation to the selection of its sub-contractors, if any, or the supervision of the work of the sub-contractors.
- 23.3 The University may terminate the Contract immediately if the Contractor or any of its employees, agents and sub-contractors is convicted of an offence under the Prevention of Bribery Ordinance, the Theft Ordinance or the Crimes Ordinance.

24. Insurance

- 24.1 The Contractor shall effect and maintain with an insurance company a policy of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor in connection with the performance or attempted performance of its obligations under the Contract, including death, personal injury, loss of or damage to property or any other loss. Such policy shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained throughout the Contract Period and for a minimum period of 6 years after the expiry or sooner termination of the Contract.
- 24.2 Without prejudice to Clause 24.1, the Contractor shall effect and maintain employer’s liability insurance in respect of all its employees and other staff in accordance with all applicable legal requirements.
- 24.3 If required by the University, the Contractor shall deliver to the University copies of all insurance policies referred to in the Contract together with receipts or other evidence of payment of the latest premium due under the policies.
- 24.4 If the Contractor fails to give effect to or maintain any insurance required under the Contract, the University may make such alternative arrangements as it considers appropriate to protect its interests and may recover from the Contractor the costs of putting such in place and maintaining such arrangements.

24.5 No provision in any insurance and no amount of insurance covered shall relieve the Contractor of any liability under the Contract. It is the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability under the Contract.

25. Process Agent

If the Contractor is not a Hong Kong resident, the Contractor irrevocably appoints the person whose name and address are set out in Appendix 1 of Part 8 of the Tender Form as its process agent to receive on its behalf service of process of any legal action or proceedings arising out of or in connection with the Contract in Hong Kong. Service upon the process agent shall be good service upon the Contractor whether or not it is forwarded to and received by the Contractor. If, for any reason, the process agent ceases to be or ceases to be able to act as process agent, or no longer has an address in Hong Kong, the Contractor hereby agrees to appoint a substitute process agent with an address in Hong Kong acceptable to the University and to deliver to the University a copy of the substitute process agent's acceptance of that appointment within 30 days. In the event that the Contractor fails to appoint a substitute process agent, or fails to notify the University of the name and address for service of that substitute process agent, it shall be effective service for the University to serve the process upon the last known address in Hong Kong of the last known process agent for the Contractor notified to the University notwithstanding that such process agent is no longer found at such address or has ceased to act or has ceased to be able to act.

26. Relationship of the Parties

The Contractor enters into the Contract with the University as an independent contractor only and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership, or a joint venture between the University and the Contractor. Unless otherwise expressly provided for in the Contract, neither party is authorised to act in the name of, or on behalf of, or otherwise bind the other party.

27. Assignment and Sub-contracting

27.1 Unless otherwise provided for in the Contract, the Contractor shall not, without the prior written consent of the University, 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.

27.2 A sub-contracting of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract, and the Contractor shall remain fully liable to the University and be responsible for the acts and omissions of its sub-contractors as though they were its own.

28. Non-exclusive Contract

Nothing in the Contract shall preclude the University from procuring any Goods (whether within and outside the coverage of the Contract) from any other person.

29. Disclosure of Information

The Contractor hereby irrevocably authorises, consents and agrees that the University may, whenever it considers appropriate or upon request by any person (written or otherwise) and without any further reference to the Contractor, disclose to any person in such form and manner as the University considers fit:

- (a) the Goods supplied or to be supplied by the Contractor;
- (b) the Estimated Contract Price and any other fees, cost and expense payable to the Contractor pursuant to the Contract;
- (c) the price proposal submitted prior to the date of the Contract by the Contractor to the University in relation to the Goods; and
- (d) the engagement by the University of the Contractor under the Contract and the names of the Contractor and persons appointed or engaged by the Contractor to assist in the performance of the Contract.

30. Publicity

30.1 Whether before, during or after the expiry or termination of the Contract Period, the Contractor shall not use the University's name in any document, publication, advertisement or publicity material without the prior written consent of the University.

30.2 Subject to Clause 30.1, the Contractor shall submit to the University Representative for approval all the proposed advertising or other publicity material relating to the Contract, the Goods or other products supplied or other work done in connection with the Contract wherein the University's name is mentioned or language used from which a connection with the University can reasonably be inferred or implied.

30.3 Notwithstanding any consent or approval given under Clause 30.1 or 30.2, whenever required by the University, the Contractor shall remove all advertisement and publicity material relating to the Contract wherein the University is mentioned or language used from which a connection with the University can reasonably be inferred or implied and the Contractor must comply with such request.

31. Force Majeure

31.1 If the Contractor becomes aware of any matter likely to constitute a Force Majeure Event, the Contractor shall forthwith notify the University in writing of that matter and all relevant particulars.

31.2 Within 3 days after the occurrence of a Force Majeure Event, the Contractor shall notify the University in writing of the full particulars of the Force Majeure Event including its nature, extent and likely duration of its effect on the Contractor's ability to perform its obligation under the Contract. In the event of an occurrence of a Force Majeure Event, the University may on its own issue a notice to the Contractor noting the occurrence of the Force Majeure Event and requiring the Contractor to suspend all or any of the obligations under the Contract. A notice issued by the Contractor or the University pursuant to this Clause is hereinafter referred to as the "Suspension Notice".

31.3 Following the issue of a Suspension Notice by the Contractor or the University, the Contractor shall keep the University informed at reasonable intervals, and upon the request of the University, of:

- (a) the likely duration of the relevant Force Majeure Event and of its effect on the Contractor's ability to perform its obligations under the Contract;
 - (b) the actions taken or proposed to be taken by the Contractor to mitigate or minimise the effects of that Force Majeure Event; and
 - (c) any other matters relevant to that Force Majeure Event or the Contractor's performance affected by that Force Majeure Event.
- 31.4 To the extent that the performance of obligations by the Contractor under the Contract is prevented by a Force Majeure Event, the Contractor's performance of such obligations will, subject to Clause 31.5, be suspended to that extent from the date the Contractor or the University gives a Suspension Notice in respect of that Force Majeure Event until the Contractor ceases to be so prevented ("Cessation Date"). Notwithstanding anything in the Contract to the contrary, as soon as the University issues a Suspension Notice to the Contractor, the Contractor shall forthwith suspend the performance of the obligations to the extent specified in the Suspension Notice.
- 31.5 During the suspension of any obligations under Clause 31.4:
- (a) the Contractor shall use its best endeavours (including incurring any reasonable expenses and re-deploying its manpower and resources) to remove or mitigate the effect of each Force Majeure Event on the Contractor's performance of the obligations under the Contract;
 - (b) the University may make alternative arrangements for the performance of any suspended obligations, whether by another person or otherwise; and
 - (c) the Contractor shall not be entitled to any cost, fee or charge or such pro rata portion thereof in respect of the suspended obligations for the suspended period.
- 31.6 As soon as the relevant Force Majeure Event has terminated, the Contractor shall forthwith notify the University of the Cessation Date, or the University may on its own, after consultation with the Contractor, by notice in writing to the Contractor, determine the appropriate Cessation Date. The Contractor shall immediately after the Cessation Date resume performance of the suspended obligations in accordance with the terms and conditions of the Contract. In the event of any disagreement between the University and the Contractor on the appropriate Cessation Date, the University's decision shall be final in the absence of manifest error.
- 31.7 Should suspension of the performance by the Contractor of its obligations under the Contract persist or be likely to persist as a result of a Force Majeure Event, the University shall be entitled to terminate the Contract pursuant to Clause 19.2.
- 31.8 The Contractor shall ensure that provisions similar to this Clause 31 are incorporated in all its contracts with sub-contractors made pursuant to this Contract.

32. Audit

The Contractor shall keep and maintain until 7 years after the expiry of the Contract, or such longer period as may be agreed by the parties, full and accurate records of the Contract including the Goods supplied under it, all expenditure reimbursed by the University, and all payments made by the University. If requested by the University, the Contractor shall afford the University or its representative access to the records as may be requested by the University.

33. Notices

- 33.1 Each notice, demand, invoice, correspondence or other communication given or made under the Contract by a party shall be in writing and delivered or sent to the other party at its postal address, facsimile number or email address set out in Appendix 1 of Part 8 of the Tender Form (or such other postal address, facsimile number or email address as the addressee has by not less than 7 working days' prior written notice specified to the other party).
- 33.2 Such notices, demands or other communications shall be addressed as provided in Clause 33.1 and, if so addressed, shall be deemed to have been duly given or made as follows:
- (a) if sent by personal delivery during normal business hours on a working day, upon delivery at the address of the relevant party;
 - (b) if sent by post, 2 days (for any place in Hong Kong) and 7 days (for any place outside Hong Kong) after the date of posting;
 - (c) if sent by facsimile during normal business hours on a working day, when despatched with confirmed receipt as evidenced by the transmission report generated at the end of the transmission of such facsimile by the facsimile machine used for such transmission; or
 - (d) if sent by email, when actually received in a form readable by an individual.

34. Entire Agreement

- 34.1 The Contract constitutes the whole agreement between the parties thereto and supersedes any previous agreements or arrangements between them relating to the subject matter hereof. The Contractor acknowledges that in entering into the Contract, it has not relied on any statements, warranties or representations given or made by the University.
- 34.2 All of the provisions of the Contract shall remain in full force and effect notwithstanding the delivery of the Goods and the issuance of any Acceptance Note (except insofar as those obligations which have been fully performed).

35. Governing Law

The Contract shall be governed by and construed in accordance with the laws of Hong Kong and the parties hereby agree to submit to the exclusive jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

36. Severability

If any provision of the Contract is found by any authority or court of competent jurisdiction to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect the other provisions of the Contract, all of which shall remain in full force and effect.

37. Waiver

37.1 No failure, delay, forbearance or indulgence by any party to the Contract to exercise any right, power or remedy available to it under the Contract or at law or in equity shall operate as a waiver thereof; nor shall any single or partial exercise of the same preclude any other or further exercise thereof or the exercise of any other right, power or remedy. A right or a remedy of each party under the Contract shall be cumulative and not exclusive of any other rights, power or remedies provided by the Contract, at law or in equity. Without limiting the foregoing, no waiver by any party of any breach by the other party of any provision hereof shall be deemed to be a waiver of any subsequent breach of that or any other provision hereof.

37.2 Without prejudice to the generality of Clause 37.1, any right of termination of the Contract or any other right, power or remedy of whatsoever nature conferred upon the University under the Contract shall be exercisable by it in addition to and without prejudice to any other rights and remedies available to it under the Contract or at law (and, without prejudice to the generality of the foregoing, shall not extinguish any right to damages to which the University may be entitled in respect of the breach of the Contract) and no exercise or failure to exercise a right of termination shall constitute a waiver by the University of any other right, power or remedy.

38. Assistance in Legal Proceedings

38.1 If and whenever requested to do so by the University Representative, the Contractor shall provide to the University all relevant information, documents (including documentation and statements from staff) and other assistance in connection with any inquiry, investigation, arbitration, tribunal hearings or court proceedings in which the University may become involved or any internal disciplinary hearing of the University that arises out of or in connection with the Contract or the Contractor's presence at the University's premises. If requested by the University, the Contractor shall arrange for relevant staff to give evidence at such inquiries, investigations, arbitrations, hearings or proceedings.

38.2 Where the Contractor or any employees, agents or contractors of the Contractor become aware of an incident, accident or other matter which may give rise to a claim or legal proceedings by a third party against the University or the Contractor or in respect of the Contract, it shall notify the University Representative immediately in writing giving full details of such incident, accident or matter as the University Representative may require.

39. Order of Precedence

In the event of, and only to the extent of, any conflict or inconsistency between the Clauses of the Contract, any document referred to in those Clauses and the Schedules, the following order of precedence shall be applied, but only in so far as is necessary to resolve that conflict or inconsistency:

- (a) Special Conditions of Contract;
- (b) Technical Specifications;
- (c) Schedules;
- (d) General Conditions of Contract; and
- (e) Any other materials which were submitted by the Contractor as part of its Tender and attached to the Contract.