

# HONG KONG METROPOLITAN UNIVERSITY

## PART I TERMS OF TENDER

### 1. Interpretation

In this document and the invitation to tender, the following definition shall apply:

Contract	-	the contract hereunder and reference to the terms thereof shall include the terms of tender in PART I hereof unless inconsistent with the context of such reference.
Contractor	-	the Tenderer whose tender is accepted by HKMU.
Goods	-	the articles and/or materials referred to in the Schedule.
HKMU	-	Hong Kong Metropolitan University.
Tenderer	-	the person or persons and/or the firm or the company referred to in PART IV.

### 2. Tender

- The tender relates to the supply of all (or any part) of the Goods during the Contract period as specified in the Schedule.
- The Schedule issued with this tender must not be altered by the Tenderer. Any modification of the Schedule considered necessary by the Tenderer should be the subject of an alternative offer accompanying the base tender.
- Tenders may not be considered if complete information is not given with the tender or if any particulars and data asked for in the Schedule are not furnished in full.

### 3. Validity Period

Tender shall remain open for 90 days after the tender closing date. In case a rainstorm black warning or typhoon signal No. 8 or above is hoisted between 9:00 a.m. and 11:00 a.m., the tender closing time will be extended to 11:00 a.m. on the next working day.

### 4. Prices

The prices to be quoted by Tenderers are to be shown in Hong Kong dollars and must only be made in the Schedule. Such prices shall be net prices allowing for all trade and cash discounts and shall include the cost of packaging and delivery.

### 5. Accuracy of Tender Prices

Tenderers should make certain the prices quoted are accurate before submitting their quotations. Under no circumstances will HKMU accept any request for price adjustment on grounds that a mistake has been made in the tender prices.

### 6. Alternative Proposals and Negotiation

Alternative proposals which improve the value of the offer may be submitted. HKMU reserves the right to negotiate with any Tenderer about the terms of the offer.

### 7. Acceptance

The successful Tenderer will receive a fax or a letter of acceptance. This fax or letter of acceptance shall constitute a binding contract. Tenderers who do not receive any notification within the validity period of their offer shall assume that their tenders have not been accepted.

### 8. Samples

All samples submitted for consideration must be collected by unsuccessful Tenderers within 14 days of the expiration of the period referred to in Clause 3 hereof. If, at the expiration of such 14 days period, no arrangement has been made with the HKMU for the collection of such samples the Tenderer shall be deemed to have given up all titles hereto and HKMU may dispose of the same as it thinks fit without being responsible to the Tenderer in respect thereof.

### 9. Saving

HKMU is not bound to accept the lowest or any tender and reserves the right to accept all or any part of any tender at any time within the period mentioned in Clause 3 hereof.

### 10. Documents of Unsuccessful Tenderers

Documents of unsuccessful tenderers will be destroyed three (3) months after the date the Contract has been awarded.

### 11. Personal Data Provided

- Tenderer's personal data provided in the tender will be used for tender evaluation and contract award purposes. If insufficient and inaccurate information is provided, the tender may not be considered.
- Tenderer's personal data provided in the tender may be disclosed to other government departments/appropriate authority to which HKMU is required to provide such data by law.
- Tenderers have the right of access and correction with respect to personal data as provided for in Section 18 and 22 Principle 6 of Schedule 1 of the Personal Data (Privacy) Ordinance. The right of access includes the right to obtain a copy of the Tenderer's personal data provided in the tender.
- Enquiries concerning the personal data collected by means of the tender, including the making of access and corrections, should be addressed to Data Protection Officer of HKMU.

## PART II GENERAL CONDITIONS OF CONTRACT

### 1. Total Quantities

The quantity shown against each item in the tender is an estimate of probable requirements and such estimate must be regarded as being given for the assistance of the Tenderer on the best evidence available at the time of quote and not as being a figure to which HKMU binds itself to adhere.

### 2. Assignment

The Contractor shall not, without the written consent of HKMU, assign or otherwise transfer the Contract, or any part share or interest therein, and the performance of the Contract by the Contractor shall be deemed to be personal to him.

### 3. Goods, Specifications and Proof Notes

- The Goods supplied under the Contract shall be of merchantable quality, fit for the purpose and comply with the specification as described in the Schedule. If the Goods are not of merchantable quality, fit for the purpose and comply with the specification and not withstanding the provisions of Clause 5, HKMU may be notice in writing at any time and from time to time (i) reject all or part of the Goods delivered hereunder, or (ii) require the Contractor to repair or replace all or part of the Goods delivered hereunder or (iii) terminate the whole or any part of the Contract forthwith.
- Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by HKMU free of charge but shall be returned on completion of the Contract.
- The Contractor, if required, shall furnish HKMU with a proof note or a certificate showing that the Goods have been subjected to the normal tests for such goods or such tests as HKMU may reasonably require.

### 4. Delivery

- The Contractor shall, on receipt of a written order signed by HKMU, supply and deliver the Goods in accordance with the delivery condition specified in the Contract and to the destination named in such order, the quantities of Goods therein specified within the time or times specified in such order, or if no time is specified, then within 14 clear working days from the date of such order and for this purpose, time shall be deemed to be the essence of the contract.
- The Contractor shall at its own expense deliver the Goods to the destination specified in the order.

### 5. Inspection and Acceptance

All Goods delivered shall be subject to inspection and shall be deemed to have been accepted when:

- the HKMU Representative furnishes the Contractor with the acceptance note; or
- a period of 30 clear working days has expired from the date of receipt and Goods have not been rejected; whichever date is the earlier.

### 6. Rejections

- If HKMU rejects any Goods in accordance with Clause 3(a), the Contractor shall remove the same at its own expenses and within 48 hours of being notified in writing by HKMU of the rejection. If the Contractor fails to remove the Goods within such period, HKMU may dispose of the Goods as it sees fit. No liability shall attach to HKMU in respect of such disposal.
- If required by HKMU under Clause 3(a)(ii), the Contractor shall within a reasonable period of time following the rejection replace the Goods rejected. In the case where replacement Goods have to be obtained from source outside the Hong Kong Special Administrative Region, the Contractor must advise HKMU of the delivery date of such replacement Goods and such date must be to the satisfaction of HKMU.
- In the event that the Contractor offers for delivery any goods which have previously been rejected by HKMU the latter shall immediately thereupon be at liberty to terminate the contract in the manner provided in Clause 8.

### 7. Payment for Goods

When Goods are delivered under the Contract, an invoice stating the order number, the particulars of Goods delivered and the quantity, rate and value of each item shall be sent by the Contractor to the place of delivery or as otherwise directed by HKMU. Unless otherwise agreed by HKMU, no payment for Goods delivered will be made until the same have been accepted within the meaning of Clause 5 of this Part. Once accepted, payment will be made within 30 calendar days.

### 8. Default

If the Contractor fails to deliver all or any of the Goods ordered within the time specified in the order or as otherwise provided in Clause 4 of this Part, or the Goods are rejected in accordance with Clause 3(a), or the replacement Goods are not delivered within the period mentioned in Clause 6(b), HKMU may at its absolute discretion terminate the whole or any part of the Contract by notice in writing to the Contractor, but without prejudice to any claims by HKMU for breach of Contract including but not limited to its right to procure any Goods then outstanding from any other source, and the Contractor shall be liable for any sums so incurred in excess of the Contract price.

### 9. Recovery of Sums Due

Whenever under the Contract any sum of money shall be recoverable from or payable by the Contractor, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under the Contract or any other HKMU contracts.

### 10. Intellectual Property Rights

The Contractor warrants to HKMU that all the materials provided will not infringe any patent rights, copyrights or registered design, or other intellectual property rights of any person. The Contractor shall also be liable for any cost to HKMU that may arise from any claims for royalties arising from the use of the materials.

### 11. Confidentiality and Personal Data (Privacy)

- The Contractor shall treat as confidential all information, including, but not limited to, all personal data as defined in the Personal Data (Privacy) Ordinance ("the PDO"), obtained from HKMU pursuant to the Contract. The Contractor shall only use such information for the purpose of supplying Goods to HKMU. Save that the Contractor may disclose the relevant information to any other person without the prior written consent of the authorised officer of HKMU. Provided that this clause shall not extend to information which is already public knowledge (otherwise than as a result of a breach of this clause). The foregoing obligations as to confidentiality shall survive any termination of the Contract.
- The Contractor shall indemnify HKMU, its officers, employees, servants or agents in respect of all or any loss, including legal costs and compensation arising out of the Contractor's breach of the PDO.
- The Contractor shall also indemnify HKMU, its officers, employees, servants or agents in respect of all or any loss, including legal costs and compensation arising out of the Contractor's breach of confidentiality.

### 12. Ownership and Copyright of Materials

The materials produced by the Contractor pursuant to the Contract are and shall remain at all times the property of HKMU, and HKMU has no obligation whatsoever to make use of these materials. The copyright in the materials, both print and non-print, is vested in HKMU.

### 13. Liability for Damages or Compensation

- HKMU and its employees or agents shall not be under any liability whatsoever for or in respect of:
  - 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 HKMU or any of its employees or agents or otherwise).
  - any injury to or death of any of the Contractor's employees or agents save and except any such injury or death caused by the Negligence of HKMU or any of its employees or agents.
- The Contractor shall indemnify HKMU and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by HKMU or any of its employees or agents in respect of:
  - any loss, damage, injury or death referred to in sub-clause (a) of this clause (save and except injury or death caused by the Negligence of HKMU or any of its employees or agents).
  - any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- The Contractor shall indemnify HKMU against any loss of or damage to any property of HKMU or of any of its employees or agents or any injury to any employee or agent of HKMU arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- 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.

### 14. Bankruptcy

HKMU may at any time by notice in writing summarily terminate the Contract without entitling the Contractor to compensation in any of the following events:

- if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of its estate made against him, or shall take any proceedings for liquidation or composition under any Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do; or
  - if the Contractor, being a company shall pass a resolution or the court shall make an order for the liquidation of its assets, or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitle the court or debenture holders to appoint a receiver or manager.
- Provided always that such determination shall not prejudice or affect any right or action or remedy which shall have accrued or shall accrue thereafter to HKMU.

### 15. Offence of Bribery

- The Contractor shall not, and shall procure that its employees, agents and sub-contractors shall not, offer, solicit or accept an advantage as defined in the Prevention of Bribery Ordinance (Chapter 201) in connection with the execution of the Contract.
- If the Contractor or any employee or agent or sub-contractor of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance (Chapter 201) or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other HKMU contracts, HKMU may summarily terminate the Contract, without entitling the Contractor to any compensation therefor.
- The Contractor shall be liable for all expenses necessarily incurred by HKMU as the result of the termination of the Contract.

### 16. Conflict of Interest

- The Contractor shall prohibit its directors, employees, agents and sub-contractors who are involved in the Contract from engaging in any work or employment other than in the performance of the Contract, with or without remuneration, which could create or potentially give rise to a conflict between their financial, professional, commercial, personal or other interests and their duties in connection with the Contract.
- The Contractor shall declare to HKMU in writing of any conflict or potential conflict between the financial, professional, commercial, personal or other interests of the Contractor's directors, employees, agents and sub-contractors and their duties in connection with the Contract. In the event that such conflict or potential conflict is disclosed in a declaration, the Contractor shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed.

### 17. Guarantee

- Without prejudice to the generality of clause 3(a) hereof, the Contractor will guarantee the quality of the Goods, and any part or portion thereof, for a period of 12 months from the date of acceptance thereof.
- Notwithstanding clause 5 of this Part, the Contractor shall make good as soon as possible, all defects in the Goods arising from defective design, materials, workmanship or any other cause discovered within the said period referred to in sub-clause (a) above.
- In the event of any defect in the Goods being discovered, HKMU shall inform the Contractor in writing of the nature of the defect, and if HKMU does not reject the Goods, the Contractor will repair the defective Goods to the satisfaction of HKMU, free of all costs to HKMU.
- In the event that the Contractor is required to replace any defective Goods but he does not at the same time call for the return of the defective Goods, no responsibility for the defective Goods shall rest upon HKMU, and HKMU may dispose of them after a reasonable time in whatever manner as it sees fit.
- If any defects are not made good within a reasonable time, HKMU may, after serving notice of intent on the Contractor, proceed to rectify the defects by repair or replacement at the Contractor's risk and expense without prejudice to any other rights which HKMU may have against the Contractor.
- The Contractor shall remain liable to HKMU under the terms of this clause whether or not the Goods, or any part thereof, were manufactured by him, and the Contractor shall ensure that the supplier of any Goods not manufactured by him shall be under the same liability to the Contractor as the liability undertaken by the Contractor to HKMU pursuant to this clause.

### 18. Governing Law

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

### 19. Order of Precedence

In the event that there is any conflict, contradiction or ambiguity between any documents which form part of the Contract, the following order of precedence shall be applied:

- Special Conditions of Contract
- Specification
- General Conditions of Contract
- Contract Schedules

## PART III SPECIAL CONDITIONS OF CONTRACT

See attached sheet (if any)

Please see overleaf for PART IV - OFFER TO BE BOUND

Terms - Goods (09/2021)

# HONG KONG METROPOLITAN UNIVERSITY

## PART IV OFFER TO BE BOUND

1. Having read the Terms of Tender, the General Conditions of Contract and (if any) the Special Conditions of Contract set out in Parts I - III overleaf, I/we agree to be bound by the terms and conditions as stipulated therein.
2. I/We do hereby agree to execute orders for any or all of the Goods specified in the Schedule, which may during the period or periods specified in the Schedule hereto be placed by HKMU at the prices quoted by me/us in the said Schedule free of all other charges, subject to and in accordance with the Terms of Tender, the General Conditions of Contract and (if any) the Special Conditions of Contract.

3. I/We also certify that the particulars given by me/us below, are correct :

(a) Business Registration Certificate No. \_\_\_\_\_

expiring on \_\_\_\_\_

(b) Employee's Compensation Insurance Policy No. \_\_\_\_\_

expiring on \_\_\_\_\_

4. I am/We are duly authorised to bind the Company hereinafter mentioned by my/our signature(s).

- or -

I am a partner/We are partners in the firm hereinafter mentioned and duly authorised to bind the said firm and the partners therein for time being.

5. The name of the Company/Firm is \_\_\_\_\_

6. The registered office of the Company is situated at \_\_\_\_\_

\_\_\_\_\_

- or -

The name and residential addresses of the partners of the firm are as follows :-

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

7. Name(s) and address(es) of person(s) signing :

\_\_\_\_\_

\_\_\_\_\_

8. Signature(s) :

\_\_\_\_\_

9. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Note : (1) All the particulars required above must be provided.  
(2) Strike out clearly alternatives which are not applicable.