

# 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.   |
| HKMU       | - | Hong Kong Metropolitan University.   |
| Services   | - | the work referred to in the Schedule.  |
| Tenderer   | - | the person or persons and/or the firm or the company referred to in PART IV.   |

### 2. Tender

- The Tender relates to the execution of all (or any part) of the Services during the Contract period as specified in the Schedule.
- The Schedule issued with the 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. Charges

The charges to be quoted by Tenderers are to be shown in Hong Kong dollars and must only be made in the Schedule. Such charges shall be net and where applicable, they shall include trade and cash discounts and all expenses incidental to the due and proper performance of the Contract by the Contractor.

### 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. 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.

### 9. Documents of Unsuccessful Tenderers

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

### 10. Illegal Workers

The Contractor undertakes not to employ illegal workers in the execution of any HKMU contracts. Should the Contractor be found to have employed illegal workers in breach of this undertaking, HKMU may, by notice in writing, terminate the Contract and the Contractor is not entitled to claim any compensation. The Contractor shall be liable for all expenses necessarily incurred by HKMU as a result of the termination of the Contract.

### 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 Services and Variation

- The Services to be performed under the Contract shall be as laid down in the Schedule and Special Conditions (if any) and shall be carried out, as and when required, to the satisfaction of HKMU. All orders placed under the Contract shall be issued in writing and HKMU will not be responsible for Services performed on oral instruction issued by any person whatsoever.
- The Contractor shall not extend the Services beyond the requirements specified in the Schedule except as directed in writing by HKMU; but HKMU may, subject to the proviso hereinafter contained, at any time during the Contract period by notice in writing direct the Contractor to alter, amend, omit, add to, or otherwise vary any of the Services and/or the Contract period, and the Contractor shall carry out such variations, and be bound by the same conditions, so far as are applicable, as though the said variations were stated in the Schedule.
- Where a variation has been made to the Contract the amount to be added to or deducted from the Contract price in accordance with that variation shall be determined in accordance with the rates specified in the Schedule so far as the same may be applicable and where rates are not contained in the said Schedule, or are not applicable, such amount shall be such sum as is reasonable in the circumstances.

### 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. Quality of Services

- The Services shall be as specified in the Schedule and shall fulfil all the conditions and terms of any drawings and specifications (if any) supplied to the Contractor.
- 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.

### 4. Inspection and Acceptance

- All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:
- The HKMU Representative so certify; or
  - The Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

### 5. Rejections

- Without prejudice to any statutory rights, HKMU may reject any Services (or part thereof) which do not strictly conform to the conditions of sub-clause (a) of Clause 3 hereof.
- Within 24 hours of being notified in writing of the rejection of any Services the Contractor shall be required to take the necessary action to rectify such rejected Services.

### 6. Payment for Services

When Services are performed, an invoice stating the order number, particular of Services performed, rate and value of each item shall be sent by the Contractor to the place of delivery or as otherwise directed by HKMU. No payment for Services will be made until the Services are deemed to have been accepted within the meaning of Clause 4 of this Part. Once accepted, payment will be made within 30 calendar days.

### 7. Default

If the Contractor shall fail to carry out all or any of the Services provided for in the Contract within the Contract period or such extended period as may be agreed in accordance with Clause 1(b) hereof, 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 of HKMU to assign the balance of the uncompleted Services to another contractor or contractors whereupon the Contractor shall be liable for any sums so incurred in excess (hereinafter called "any excess") of the Contract price.

### 8. 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.

### 9. 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.

### 10. 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 providing Services to HKMU. Save that the Contractor may disclose the relevant information to any employees of HKMU on a strict "need to know" basis, the Contractor shall not divulge such 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.

### 11. 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.

### 12. 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.

### 13. Policy of Insurance and Compensation

- The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by HKMU (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with HKMU for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.
- If the Contractor shall fail to effect and keep in force the insurance referred to or any other insurance which he may be required to effect under the terms of the Contract then and in any such cases HKMU may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by HKMU as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.

### 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. 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.

### 18. 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]

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## 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 carry out the whole or any part of the Services mentioned in the attached Schedule which may, during the Contract period or any extension thereto be required, by or on behalf of HKMU to be carried out, at the charges 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.