

VOCATIONAL TRAINING COUNCIL

PROCUREMENT OF GOODS

PART I

TERMS OF TENDER

1. Invitation to Tender

Tenders are invited for the supply of scheduled goods to be delivered subject to and in accordance with these Terms of Tender, the General Conditions set out in Part II and the Special Conditions (if any) set out in the invitation to tender.

2. Tender

- (a) The tender relates to the supply of all (or any part) of the Goods specified in the Schedule.
- (b) The invitation to tender shall not be altered by the Tenderer. Any modification considered necessary by the Tenderer should be the subject of a separate letter accompanying the tender. Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (c) Tenders are to be submitted in duplicate and are to be completed in ink or typescript.
- (d) Tenders may not be considered if complete information including but not limited to descriptive literature, catalogues and documentary evidence is not given with the tender or if any particulars and data asked for in the invitation to tender are not furnished in full.

3. Tenders to Remain Open

- (a) Tenders shall remain open for not less than ___ days after the Tender Closing Date. If Tenderers are unable to comply with this requirement, they must clearly state the period for which their tender is valid for acceptance. If before the expiry of the agreed validity period their offer is withdrawn, they are advised that due notice will be taken of their action and this may well prejudice their future standing as a Council supplier.
-

(b) Tender Closing Date and Time

All tenders must be deposited in the tender box as specified in the tender before the Tender Closing Date and time (Hong Kong time). Late tenders will not be considered.

(c) Tender Closing Date and Time Extension in case of Rainstorm/Typhoon

In case a rainstorm black warning or typhoon signal No. 8 or above is valid for any duration between 7:00 a.m. (Hong Kong time) and 10:00 a.m. (Hong Kong time), the tender closing time will be extended to 10:00 a.m. (Hong Kong time) on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

4. Prices

(a) The prices to be quoted by the Tenderer, which must only be shown on the Schedule provided in the invitation to tender, are to be in Hong Kong dollars. Such prices shall be net prices allowing for all trade and cash discounts and shall include the cost of containers, packing, packing materials and delivery.

(b) Prices quoted

It will be assumed, unless Tenderers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. Therefore no request for price variation will be considered. If, however, a Tenderer wishes to submit a conditional offer which contains a price variation clause, he may do so, with the clear understanding that such an offer may prejudice the award of the Contract. In any such case the basis of the price variation formula should be clearly stipulated and accepted by the Council in writing.

(c) Accuracy of Tender Prices

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

5. Acceptance

(a) The successful Tenderer will receive as an indication of acceptance an order or a letter of acceptance prior to the receipt of the duplicate copy of the contract document with the “Memorandum of Acceptance” part duly completed. The order 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.

(b) Statement of Compliance

Tenderers are requested to confirm that offers submitted comply with the required specification in every respect. If an offer does not conform to the tender specification, Tenderers should provide full details of their alternative offer, but the Council reserves the right to accept or reject any such offer. Should no such or incomplete information be given, Tenderers’ offers will be bound by the requirements specified in the Tender Schedule.

6. Alternative Standards

Alternative standards equivalent to the standards that are specified in the invitation to tender may be considered for the supply of the Goods. The Tenderer shall state clearly with which standard his offer will comply and a full comparison with the relevant standards specified in the invitation to tender shall be submitted together with the tender for consideration.

7. Alternative Proposals and Negotiation

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

8. Counter-proposal

Tenderers may offer counter-proposal(s) to the item(s) specified in the Tender Schedule, which are considered capable of performing the essential functions / features of the item(s), for consideration by the Council. In offering counter-proposals, tenderers are requested to provide technical details / specifications of the item(s) and highlight those aspect(s) that deviate(s) from the tender specifications as far as practicable. Tenderers are also requested to note that the Council has the discretionary power to accept or reject such counter-proposal(s).

9. Additional Tender Information

Suppliers / Companies are requested to note that those which did not respond to this tender invitation will not be further notified of any subsequent change(s) to the tender requirement(s) or provided with any further information arising out of or in connection with this tender exercise.

10. Consideration of Offers

The Council is not bound to consider an offer in the event of a claim being received by the Council alleging or the Council having grounds to believe that the Goods to be supplied by the Tenderer under the tender are infringing copyrights or have otherwise infringed the intellectual property rights in the goods or product of a third party.

11. Saving

The Council Representative 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.

12. Documents of Unsuccessful Tenderers

Documents of unsuccessful Tenderers may be destroyed not less than three months after the date the Contract has been awarded and the agreement signed.

13. New Information Relevant to Qualified Status

Tenderers should inform the Council in writing immediately of any factor which might affect their qualified status as an enlisted supplier with the Council, or as a qualified supplier for a particular product. The Council reserves the right to review their qualified status in the light of any new information relevant to their qualification.

14. Personal Data Provided

- (a) 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.
 - (b) Tenderer acknowledges and consents that tenderer's personal data provided in the tender may be disclosed to other government departments and non-government organizations.
-

15. Consent to Disclosure

The Council may disclose the information on the awarded contract upon being requested by any participating tenderers. Tenderers which do not wish to disclose their price information may put their request(s) in writing for consideration by the Council. The Council has the discretionary power to make disclosure of the tender results.

16. Contractors' Performance Monitoring

Tenderers are advised that should they be awarded the contract their subsequent performance will be monitored and may be taken into account when their future tenders are evaluated. A tender will be rejected if by the tender closing date, the tenderer is under suspension from tendering for Council tenders.

17. Cancellation of Tender

Without prejudice to the Council's right to cancel the tender, where there are changes of requirement after tender closing date for operational or whatever reasons, the Council is not bound to accept any conforming tender and reserves the right to cancel the tender.

VOCATIONAL TRAINING COUNCIL

PROCUREMENT OF GOODS

PART II

GENERAL CONDITIONS OF CONTRACT

1. Total Quantities

- (a) Except with the consent of the Council Representative no orders may be placed and no deliveries may be made for the supply of Goods in excess of the quantities specified against such goods in the Schedule.
- (b) Where the Council Representative requests the Contractor to supply quantities of Goods in excess of those specified in the Schedule, the quantities specified in the Schedule shall be deemed to be amended to the extent to such excess and the rates specified shall apply to the amended quantities of Goods.

2. Assignment

The Contractor shall not, without the written consent of the Council Representative, 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

- (a) The Goods supplied under the Contract shall be of merchantable quality, fit for the purpose for which goods of that kind are commonly bought, and comply with the specification as described in the Schedule. If the Goods are not fit for the purpose or of merchantable quality or fail to comply with the specification and notwithstanding the provisions of clause 5, the Council Representative may by 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.
 - (b) Any drawings and information reasonably required for the Contractor's guidance in the execution of the Contract shall be furnished to him free of charge. Drawings which are furnished shall be returned on completion of the Contract, if required.
-

- (c) The Contractor, if required, shall furnish the Council Representative with a proof note or certificate showing that the Goods have been subjected to the normal tests for such goods or such tests as the Council Representative may reasonably require.

4. Delivery

- (a) The Contractor shall, on receipt of a written order signed by the Council Representative or any person duly authorized by him, supply and deliver the Goods in accordance with the delivery conditions 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 days from the date of such order and for this purpose, time shall be of the essence for such deliveries respectively specified in such order under the Contract. Each delivery shall be accompanied by a copy of the order, and the Contractor shall ensure that he obtains a receipt from the Receiving Officer, but such receipts shall not constitute an acknowledgement that the Goods therein mentioned are acceptable or satisfactory.
- (b) The Contractor shall at his 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/or testing and shall be deemed to have been accepted when:

- (a) the Council Representative, or the Receiving Officer furnishes the Contractor with the acceptance note; or
- (b) a period of 30 days has expired from the date of receipt and Goods have not been rejected;

whichever date is the earlier.

6. Rejections

- (a) If the Council rejects any Goods in accordance with clause 3(a), the Contractor shall remove the same at his own expenses and within the period specified in the notice in writing by the Council Representative of the rejection. If the Contractor fails to remove the Goods within such period, the Council Representative may dispose of the Goods as he sees fit. No liability shall attach to the Council in respect of such disposal.
- (b) If required by the Council Representative under clause 3(a)(ii), the Contractor shall within a reasonable period of time agreed by the Council Representative following the rejection replace the Goods rejected. In the case where replacement Goods have to be obtained from sources outside Hong Kong, the Contractor must advise the Council of the delivery date of such replacement Goods and such date must be to the satisfaction of the Council representative.
- (c) In the event that the Contractor offers for delivery any goods which have previously been rejected by the Receiving Officer, the Council Representative 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 the Council Representative. Unless otherwise agreed by the Council Representative, 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 clear working 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), the Council 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 the Council 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 should be recoverable by Council from or payable to Council 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 Council contracts.

10. Liability and Indemnities

- (a) The Council and its employees or agents shall not be under any liability whatsoever for or in respect of:
 - (i) 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 Council or any of its employees or agents or otherwise).
 - (ii) 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 the Council or any of its employees or agents.
 - (b) The Contractor shall indemnify the Council and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Council or any of its employees or agents in respect of:
 - (i) 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 Council or any of its employees or agents).
 - (ii) 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.
 - (c) In the event of any of the Contractor's employees or agents 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 within 7 working days give notice in writing of such injury or death to the Council Representative.
 - (d) 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.
-

11. Bankruptcy

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

- (a) If the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or order for administration of his estate made against him, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) 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 the Council.

12. Corrupt Gifts

- (a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance for the time being in force or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Contract or any other Council contracts, the Council Representative may, terminate the Contract, without entitling the Contractor to any compensation therefor.
- (b) The Contractor shall be liable for all losses and expenses necessarily incurred by the Council as the result of such termination of the Contract.

13. Guarantee

- (a) 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.
 - (b) 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.
-

- (c) In the event of any defect in the Goods being discovered, the Council Representative shall inform the Contractor in writing of the nature of the defect, and if the Council Representative does not reject the Goods, the Contractor will repair the defective Goods to the satisfaction of the Council Representative, free of all costs to the Council.
- (d) 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 the Council and the Council may dispose of them after a reasonable time in whatever manner as it sees fit.
- (e) If any defects are not made good within a reasonable time, the Council 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 the Council may have against the Contractor.
- (f) The Contractor shall remain liable to the Council 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 the Council pursuant to this Clause.

14. Publicity

The Contractor shall submit to the Council Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Council's name is mentioned or language used from which a connection with the Council can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Council Representative.

15. F.O.B./C.I.F. Hong Kong Price Award

In the event of an award of a contract on the F.O.B./C.I.F. basis, the Contractor must ensure that all delivery and Shipping Document and Airway Bill are received by the Council Representative, Supplies Section, 17/F. VTC Tower, 27 Wood Road, Wanchai, Hong Kong seven (7) clear working days prior to the arrival of the vessel on which the Goods are carried unless other arrangements have been agreed upon in writing. Failure to present the necessary documents within the stipulated agreed upon time shall render the Contractor liable for any landing and demurrage charges incurred due to late arrival of such documents. In case of Goods not conforming to

the tender specification (including short supply), the Contractor shall be liable for the payment of all additional delivery and handling charges incurred by the Council in connection therewith.

16. Intellectual Property Rights

- (a) The Contractor hereby warrants that the Goods supplied under this Contract and the process for their manufacture do not infringe the Intellectual Property Rights of any third party.
 - (b) The Contractor hereby undertakes to inform the Council immediately if any claim for infringement or alleged infringement of Intellectual Property Rights is lodged against them during the currency of this Contract in respect of the Goods supplied under this Contract.
 - (c) The Contractor shall indemnify the Council and keep the Council fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or incurred by reason of infringement or alleged infringement of any Intellectual Property Rights in connection with the use or possession of the Goods or any part thereof by the Council.
 - (d) In the event of a claim being received by the Council alleging or the Council 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 Council Representative may, at its election, either
 - (i) forthwith terminate this Contract in respect of the Goods not yet received by the Council; or
 - (ii) suspend the performance of this Contract until the claim in question is resolved to the satisfaction of the Council provided that election to suspend performance under this Clause shall not preclude the Council from terminating this Contract any time after such election.
 - (e) The Council shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 16(d) above irrespective of whether the Goods are later found by a court of law to have infringed any person's Intellectual Property Rights or not.
 - (f) The rights of the Council under Clauses 16(d) and (e) shall be without prejudice to the provisions of Clauses 16(a) to (c) above.
-

17. Government Regulations

- (a) The Contractor shall be responsible for complying with the enactments, orders, regulations or other instruments issued by the government or other competent authority in the country of manufacture.
- (b) The Contractor shall indemnify the Council against any penalty, loss or cost arising as a result of the Contractor's failure to comply with any of the said enactments, orders, regulations, or other instruments and in addition, the Council reserves the right to claim full compensation in the event of the whole or any part of the Contract not being completed as a result of such failure to comply.

18. 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 jurisdiction of the courts of Hong Kong 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 in order to resolve any such conflict, contradiction or ambiguity:

- (a) Special Conditions of Contract
 - (b) Specification
 - (c) General Conditions of Contract
 - (d) Tender / Contract Schedules
-

VOCATIONAL TRAINING COUNCIL

PROCUREMENT OF SERVICES

PART I

TERMS OF TENDER

1. Invitation to Tender

Tenders are invited for the execution of the whole (or any part) of the Services more particularly set out in the Schedule subject to and in accordance with these Terms of Tender, the General Conditions set out in Part II hereof and the Special Conditions if any, set out in the invitation to tender.

2. Tender

- (a) The tender relates to the execution of all (or any part) of the Services during the Contract period as specified in the Schedule.
- (b) 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 a separate letter accompanying the tender. Figures should not be altered or erased; any alteration should be effected by striking through the incorrect figures and inserting the correct figures in ink above the original figures. All such amendments should be initialled by the Tenderer in ink.
- (c) Tenders are to be submitted in duplicate and are to be completed in ink or typescript.
- (d) 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. Tenders to Remain Open

- (a) Tenders shall, unless otherwise indicated by the Tenderer, remain open for not less than ____ days after the Tender Closing Date. If Tenderers are unable to comply with this requirement, they must clearly state the period for which their tender is valid for acceptance in the space provided in the invitation to tender. If before the expiry of the agreed validity period their offer is withdrawn, they are advised that due notice will be taken of their action and this may well prejudice their future standing as a Council supplier.

(b) Tender Closing Date and Time

All tenders must be deposited in the tender box as specified in the tender before the Tender Closing Date and time (Hong Kong time). Late tenders will not be considered.

(c) Tender Closing Date and Time Extension in case of Rainstorm/Typhoon

In case a rainstorm black warning or typhoon signal No. 8 or above is valid for any duration between 7:00 a.m. (Hong Kong time) and 10:00 a.m. (Hong Kong time), the tender closing time will be extended to 10:00 a.m. (Hong Kong time) on the next weekday (i.e. except Saturday and Sunday) other than public holiday.

4. Charges

(a) The charges to be quoted by the Tenderers are to be shown in Hong Kong dollars. 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.

(b) If, at the request of the Contractor, assistance of any Council staff is provided after normal working hours (i.e. Mondays to Fridays, inclusive, 8:30 a.m. to 5:00 p.m.; Saturdays, 9:00 a.m. to 12:00 noon; Sundays and public holidays excluded) the Contractor will be responsible for the overtime remuneration, subsistence allowances and travelling expenses of such Council staff directly engaged in such assistance.

(c) Prices quoted

It will be assumed, unless Tenderers clearly stipulate otherwise, that their offers will remain valid for the duration of the Contract. Therefore no request for price variation will be considered. If, however, a Tenderer wishes to submit a conditional offer which contains a price variation clause, he may do so, with the clear understanding that such an offer may prejudice the award of the Contract. In any such case the basis of the price variation formula should be clearly stipulated and accepted by the Council in writing.

(d) Accuracy of Tender Prices

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

5. Acceptance

(a) The successful Tenderer will receive as an indication of acceptance an order or a letter of acceptance prior to the receipt of the duplicate copy of the contract document with the “Memorandum of Acceptance” part duly completed. This order 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.

(b) Statement of Compliance

Tenderers are requested to confirm that offers submitted comply with the required specification in every respect. If an offer does not conform to the tender specification, Tenderers should provide full details of their alternative offer, but the Council reserves the right to accept or reject any such offer. Should no such or incomplete information be given, Tenderers’ offers will be bound by the requirements specified in the Tender Schedule.

6. Alternative Proposals and Negotiation

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

7. Consideration of Offers

The Council is not bound to consider an offer in the event of a claim being received by the Council alleging or the Council having grounds to believe that the Goods to be supplied by the Tenderer under the tender are infringing copyrights or have otherwise infringed the intellectual property rights in the goods or product of a third party.

8. Additional Tender Information

Suppliers / Companies are requested to note that those which did not respond to this tender invitation will not be further notified of any subsequent change(s) to the tender requirement(s) or provided with any further information arising out of or in connection with this tender exercise.

9. Saving

The Council Representative 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 may be destroyed not less than three months after the date the Contract has been awarded and the agreement signed.

11. New Information Relevant to Qualified Status

Tenderers should inform the Council in writing immediately of any factor which might affect their qualified status as an enlisted supplier with the Council, or as a qualified supplier for a particular service. The Council reserves the right to review their qualified status in the light of any new information relevant to their qualification.

12. Latest Audited/Unaudited Accounts

The Tenderers shall upon request by the Council representatives whilst their tenders remain open submit the latest audited accounts or unaudited accounts as appropriate for checking within 14 days from the date of such request. Late submission will not be considered.

13. Personal Data Provided

- (a) 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.
- (b) Tenderer acknowledges and consents that tenderer's personal data provided in the tender may be disclosed to other government departments and non-government organizations.

14. Contractors' Performance Monitoring

Tenderers are advised that should they be awarded the contract their subsequent performance will be monitored and may be taken into account when their future tenders are evaluated. A tender will be rejected if by the tender closing date, the tenderer is under suspension from tendering for Council tenders.

15. Cancellation of Tender

Without prejudice to the Council's right to cancel the tender, where there are changes of requirement after tender closing date for operational or whatever reasons, the Council is not bound to accept any conforming tender and reserves the right to cancel the tender.

VOCATIONAL TRAINING COUNCIL

PROCUREMENT OF SERVICES

PART II

GENERAL CONDITIONS OF CONTRACT

1. Total Services and Variations

- (a) 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 the Inspecting Officer. All orders placed under the Contract shall be issued in writing and the Council will not be responsible for Services performed on oral instructions issued by any person whomsoever.
- (b) The Contractor shall not extend the Services beyond the requirements specified in the Schedule except as directed in writing by the Council Representative; but the Council Representative 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.
- (c) 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.

Due account shall be taken of any partial execution of the Services which are rendered useless by any such variation.

2. Assignment

The Contractor shall not, without the written consent of the Council Representative, 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

- (a) 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.
- (b) Any drawings and specifications reasonably required for the Contractor's guidance in the execution of the Contract shall be provided by Council free of charges but shall be returned on completion of the Contract.

4. Inspection and Acceptances

All Services performed in pursuance of the Contract shall be subject to inspection and shall not be deemed to have been accepted unless either:

- (a) The Council Representative shall so certify; or
- (b) The Services are not rejected as being unsatisfactory within 21 days of the date upon which they were executed.

5. Rejections

- (a) Without prejudice to any statutory rights, the Inspecting Officer or the Council Representative may reject any Services (or part thereof) which do not strictly conform to the conditions of Sub-clause (a) of Clause 3 hereof.
- (b) 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. Council Property

When Council property is issued to the Contractor under the Contract, the Contractor shall be responsible for the due return of all such property. Should any such property be lost or damaged from any cause whatsoever while in the possession or control of the Contractor or his servants, workmen or agents, the Contractor shall pay for the same at total original cost plus 20%. A count of the articles or material in the possession of the Contractor may be made at any time by the Council Representative and the Contractor shall render such assistance as is necessary for this purpose.

7. Council Premises/Contractor's Premises

- (a) The Contractor shall ensure that all persons engaged by him in carrying out the Contract keep to such parts of Council premises as are necessary for the due discharge of the Contractor's obligations under the Contract.
- (b) Where the Services are carried out on the Contractor's premises such premises shall be open to inspection by the Council Representative or Inspecting Officer at all reasonable times.
- (c) The safety of any craft, vessel and vehicle used by the Contractor and brought alongside or onto Council premises, piers or wharves, as the case may be, shall be the responsibility of the Contractor, who shall indemnify the Council in respect of any loss or damage to such Council premises, piers or wharves.
- (d) The safety of any equipment used by the Contractor brought onto the Council premises shall be the responsibility of the Contractor. The Contractor shall also take proper precautions against damage to Council's plant, machinery, equipment and tools and shall indemnify the Council of any damages thereto in the execution of the contract.

8. Payment for Services

The Contractor shall render to the Council Representative:

- (a) an itemised account on or before the 10th or the 25th day of each month of the charges which he considers due to him for Services completed under the Contract; or
- (b) on completion of any separate portion of the Services (in respect of which a charge is laid down in the Schedule) an account for such portion.

All such accounts shall be signed by the Council Representative or the Inspecting Officer. Unless otherwise agreed by the Council Representative such accounts shall be paid within 30 days of the date upon which:

- (i) where the said accounts are signed by the Council Representative or Inspecting Officer, or
- (ii) where the Services have been accepted pursuant to clause 4 of the General Conditions herein,

whichever date is the earlier.

9. Illegal Workers

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

10. Default

If the Contractor fails 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 or is in breach of any of the terms and conditions of the Contract, the Council may at its absolute discretion terminate the whole or any part of the Contract forthwith by notice in writing to the Contractor, but without prejudice to any claims by the Council for breach of Contract including but not limited to its right of Council 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.

11. Recovery of Sums Due

Where the Contractor has incurred any liability to the Council, whether at law or in equity and whether such liability is liquidated or unliquidated, the Council may set off, whether at law or in equity, the amount of such liability against any sum then due or which at any time thereafter may become due from the Council to the Contractor under the Contract or any other contracts.

12. Liability for Damages or Compensation

- (a) The Council and its employees or agents shall not be under any liability whatsoever for or in respect of:
 - (i) 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 Council or any of its employees or agents or otherwise).
 - (ii) 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 the Council or any of its employees or agents.

- (b) The Contractor shall indemnify the Council and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by the Council or any of its employees or agents in respect of:
 - (i) 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 Council or any of its employees or agents).
 - (ii) 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.
- (c) The Contractor shall indemnify the Council against any loss of or damage to any property of the Council or of any of its employees or agents or any injury to any employee or agent of the Council arising out of the Negligence of the Contractor or any of its employees, sub-contractors or agents.
- (d) 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

- (a) The Contractor shall effect a policy of insurance against all claims, demands or liability under the Contract with an insurance company approved by Government (which approval shall not be unreasonably withheld) and shall continue such insurance during the continuance of the Contract and shall when required, deposit with the Council Representative for safe keeping during the Contract period such policy of insurance together with the receipt of payment of the current premium.
- (b) 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 Council 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 Council 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.
- (c) In the event of any of the Contractor's employees or agents 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

within 7 clear working days give notice in writing of such injury or death to the Council Representative.

14. Intellectual Property Rights

- (a) The Contractor hereby warrants that the Services provided under this Contract and the process of their preparation for the Services do not infringe the Intellectual Property Rights of any third party.
- (b) The Contractor hereby undertakes to inform the Council immediately if any claim for infringement or alleged infringement of Intellectual Property Rights is lodged against them during the currency of this Contract in respect of the Services provided under this Contract.
- (c) The Contractor shall indemnify the Council and keep the Council fully and effectively indemnified against all claims, actions, proceedings, liabilities, losses, damages, demands, charges, costs and expenses of whatsoever nature arising from or incurred by reason of infringement or alleged infringement of any Intellectual Property Rights in connection with the use or possession of the Services or any part thereof by the Council.
- (d) In the event of a claim being received by the Council alleging or the Council having grounds to believe that the Services provided hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, the Council Representative may, at its election, either
 - (i) forthwith terminate this Contract in respect of the Services not yet received by the Council; or
 - (ii) suspend the performance of this Contract until the claim in question is resolved to the satisfaction of the Council provided that election to suspend performance under this Clause shall not preclude the Council from terminating this Contract any time after such election.
- (e) The Council shall not be liable to pay any cost or compensation to the Contractor by reason of any termination under Clause 14(d) above irrespective of whether the Services are later found by a court of law to have infringed any person's Intellectual Property Rights or not.
- (f) The rights of the Council under Clauses 14(d) and (e) shall be without prejudice to the provisions of Clauses 14(a) to (c) above.

15. Bankruptcy

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

- (a) if the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of his 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 his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) 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 the Council.

16. Corrupt Gifts

- (a) If the Contractor or any employee or agent 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 Council contracts, the Council Representative may, on behalf of the Council, summarily terminate the Contract, without entitling the Contractor to any compensation therefor.
- (b) The Contractor shall be liable for all expenses necessarily incurred by the Council as the result of the termination of the Contract.

17. Consent to Disclosure

The Council shall have the right to disclose whenever it considers appropriate or upon request by any third party information on the awarded contract, without any further reference to the successful tenderer, the name of the successful tenderer, description of services and the contract amount.

18. Publicity

The Contractor shall submit to the Council Representative all advertising or other publicity material relating to the Contract or the products supplied or other work done in connection with the Contract wherein the Council's name is mentioned or language used from which a connection with the Council can reasonably be inferred or implied. The Contractor shall not publish or use any advertising or other publicity material without the prior written consent of the Council Representative.

19. 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 jurisdiction of the courts of Hong Kong in relation to any matters arising out of the Contract.

20. 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 in order to resolve any such conflict, contradiction or ambiguity:

- (a) Special Conditions of Contract
- (b) Specification
- (c) General Conditions of Contract
- (d) Tender / Contract Schedules