

# VOCATIONAL TRAINING COUNCIL

## PROCUREMENT OF GOODS

### GENERAL CONDITIONS OF CONTRACT

#### 1. Total Quantities

- (a) Except with the consent of the Council 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 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 supplies 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 6, 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. Admission of Contractor Personnel to VTC Premises

- (a) Upon request from time to time by the VTC, the Contractor shall provide to the VTC a list of the names, posts, staff identity card numbers, addresses and telephone numbers of all Contractor's employees, agents, sub-contractors and those employees and agents of the aforementioned sub-contractors (collectively "Relevant Personnel") who may at any time require admission on behalf of the Contractor to any premises occupied by the VTC for the purposes of the Contract if so required by the VTC Representative, and in that event such list shall specify the capacities in which those persons are employed by or connected with the Contractor and shall contain such other particulars as the VTC Representative may reasonably require.
- (b) The Contractor shall ensure that while any of the Relevant Personnel is on the VTC's premises they will conform to the VTC's normal codes of staff and security practice.
- (c) The Contractor shall ensure that the Relevant Personnel will have given consent to the Contractor to pass the personal data to authorised persons of the VTC for the purposes of the provisions of this Clause 5 and other provisions of the Contract.
- (d) The VTC Representative reserves the right to refuse to admit to the VTC premises any person, whose admission would be, in the reasonable opinion of the VTC Representative, undesirable.
- (e) In the event that the Contractor fails to comply with this Clause 5 and it is determined that such failure is prejudicial to the interests of the VTC, the VTC Representative may thereupon terminate or vary/reduce the scope of the Contract forthwith pursuant to the contract terms, conditions and schedules.

#### 6. 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.

#### 7. 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 7 days or 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 Council, the Council shall immediately thereupon be at liberty to terminate the Contract in the manner provided in Clause 8.

**8. 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 6 of this Part. Once accepted, payment will be made within 30 days after acceptance of the Goods.

**9. 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 7(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.

**10. Recovery of Sums Due**

Whenever under the Contract any sum of money should be recoverable by the 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.

**11. 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 purpose 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.

**12. 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.

**13. 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 a result of such termination of (the) Contract.

**14. 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 (6) 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.

**15. 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.

**16. C.I.F. Hong Kong Price Award**

In the event of an award of a contract on the C.I.F. basis, the Contractor must ensure that all delivery and Shipping Document and Airway Bill are received by the Vocational Training Council, 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.

**17. 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 expense 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 17(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 17(d) and (e) shall be without prejudice to the provisions of Clauses 17(a) to (c) above.

**18. 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.

**19. Safeguarding National Security**

- (a) Notwithstanding anything to the contrary in the quotation/ tender documents, the Council reserves the right to disqualify a Tenderer on the grounds that the Tenderer has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or otherwise the exclusion is necessary in the interest of national security, or is necessary to protect the public interest of Hong Kong, public morals, public order or public safety.
- (b) The Council may immediately terminate the Contract upon the occurrence of any of the following events:
  - (i) the Contractor has engaged or is engaging in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security; or
  - (ii) the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security; or
  - (iii) the Council reasonably believes that any of the events mentioned above is about to occur.

**20. 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.

**21. 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) Contract Schedules