

VOCATIONAL TRAINING COUNCIL

PROCUREMENT OF SERVICES

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, Vehicles and Vessels

- (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. 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 8 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 8 and it is determined that such failure is prejudicial to the interests of the VTC, the VTC Representative may thereupon terminate or variate/reduce the scope of the Contract forthwith pursuant to the contract terms, conditions and schedules.

9. 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.

10. 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.

11. 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, the Council Representative 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 the right of the 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.

12. 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 Council contracts.

13. 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.

14. 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 Council (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 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.

15. 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 15(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 15(d) and (e) shall be without prejudice to the provisions of Clauses 15(a) to (c) above.

16. 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.

17. 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.

18. Consent to Disclosure

The Council shall have the right to disclose whenever it considers appropriate or upon written request by any third party in formation 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.

19. 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.

20. 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.

21. 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.

22. 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