

# GENERAL CONDITIONS OF CONTRACT FOR GOODS

## DEFINITIONS

In this Contract, unless the contrary intention appears, the following words and expressions shall have the following meanings when construing the Contract:

- “Appointed Supplier”** shall mean the Tenderer whose Tender is accepted as by HKSIL as hereinafter provided.
- “Conditions”** shall mean the Special and General Conditions of the Contract.
- “Contract”** shall mean this Contract including the Schedule of Requirements and Schedule of Rates, Conditions annexed hereto, the Tender Form, all documents submitted as the same may be amended, modified or supplemented from time to time in accordance with the provisions contained.
- “Goods”** shall mean all the Goods provided by the Appointed Supplier pursuant to this Contract and all other obligations of the Appointed Supplier hereunder.
- “Technical Specifications”** shall mean the technical description of Goods contained in this Invitation to Tender or, as the context requires, in the detailed technical proposal relative to any order
- “HKSAR”** shall mean the Hong Kong Special Administrative Region of the People’s Republic of China.
- “HKSI”** shall mean the Hong Kong Sports Institute
- “HKSIL”** shall mean the Hong Kong Sports Institute Limited.
- “Invitation to Tender”** shall mean this Invitation to Tender for the goods as specified in the **Technical Specifications** of HKSIL.
- “Tender”** shall mean a Tender submitted by the Tenderer in response to this Invitation to Tender attached hereto.
- “Tenderer”** shall mean, as the context requires, a party:  
(a) to whom this invitation to Tender is addressed, or  
(b) who is submitting a Tender, or  
(c) whose Tender is accepted by HKSIL (herein after referred to as Appointed Supplier).

# **GENERAL CONDITIONS OF CONTRACT FOR GOODS**

## **1. Authorised Representative**

- 1.1 HKSIL shall appoint an authorised representative to liaise with the Appointed Supplier and supervise the performance of the Appointed Supplier in relation to the terms and conditions of this Contract.
- 1.2 Acceptance of Goods shall be subject to the satisfaction of HKSIL's Authorised Representative. The Appointed Supplier is expected to be available for such inspections and to make available report or data for the area(s) under inspection. Any faults detected at these inspections shall be rectified as soon as possible.
- 1.3 The Appointed Supplier shall appoint an Authorised Representative to liaise with HKSIL's Authorised Representative on all necessary co-ordination/co-operation works to ensure the smooth commencement, progress and completion of the Contract and the supply of the Goods.

## **2. Goods, Specifications and Proof Notes**

- 2.1 The Goods supplied under this 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 and any technical literature supplied by the Appointed Supplier with his Tender. 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 4 of the General Condition of Contract, HKSIL 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 Appointed Supplier to repair or replace all or part of the Goods delivered hereunder or (iii) terminate the Contract forthwith.
- 2.2 Any drawings and information reasonably required for the Appointed Supplier's guidance in the execution of this Contract shall be furnished to him free of charge. Drawings, which are furnished, shall be returned on completion of the Contract, if required.
- 2.3 The Appointed Supplier, if required, shall furnish HKSIL with a proof note or a certificate showing that the Goods have been subject to the normal tests for such Goods or such tests as HKSIL may reasonably require.

## **3. Delivery**

The Appointed Supplier shall, on receipt of a written order signed by the Authorized Representative of HKSIL or any person duly authorized by him, supply and delivery at his own expenses the Goods in accordance with the delivery conditions specified in the order and to the destination named in such order, the quantities of Goods therein specified within the time specified in such order, or if no time specified, then within 14 calendar days from the date of such order and for this purpose, time shall be deemed to be essence of the Contract. Each delivery shall be accompanied by a copy of the order, and the Appointed Supplier shall ensure that he obtains a receipt from the Authorized Representative of HKSIL, but such receipts shall not constitute an acknowledgement that the Goods therein mentioned are acceptable or satisfactory.

## **4. Inspection and Acceptance**

# GENERAL CONDITIONS OF CONTRACT FOR GOODS

All Goods delivered shall be subject to inspection and / or testing by HKSIL and shall be deemed to have been accepted only when:

- 4.1 the Authorized Representative of HKSIL or any person duly authorized by HKSIL furnishes the Appointed Supplier with an acceptance note and/or conduct of equipment operation training (if applicable); or a period of **60 calendar days** has expired from the date of delivery and Goods have not been rejected;
- 4.2 whichever date is later.

## 5. Rejections

- 5.1 If HKSIL rejects any Goods in accordance with **Sub-clause 2.1**, the Appointed Supplier shall remove the same at his own expense within 48 hours of being notified in writing by the Authorized Representative of the rejection. If the Appointed Supplier fails to remove the Goods within such period, the Authorized Representative may dispose of the Goods as he sees fit. No liability shall attach to HKSIL in respect of such disposal.
- 5.2 If required by the Authorized Representative of HKSIL under **Sub-clause 2.1(ii)**, the Appointed Supplier shall within a reasonable period of time following the rejection replace the Goods rejected. In the case where replacement goods have to be obtained from sources outside Hong Kong, the Appointed Supplier must advise HKSIL of the delivery date of such replacement Goods and such date must be to the satisfaction of the Authorized Representative of HKSIL. Time shall be of the essence for delivery of such replacement Goods.
- 5.3 In the event that the Appointed Supplier offers for delivery any Goods which have previously been rejected by the Authorized Representative of HKSIL, HKSIL shall immediately thereupon be at liberty to terminate this Contract in the manner provided in **Clause 7**.

## 6. Payment for Goods

- 6.1 When Goods are delivered under this Contract, an invoice stating the Tender reference number, the particulars of Goods delivered and the quantity, rate and value of each item shall be sent by the Appointed Supplier to the place of delivery or as otherwise directed by the Authorized Representative of HKSIL. Unless otherwise agreed by the Authorized Representative of HKSIL, no payment for Goods delivered will be made until the same have been accepted within the meaning of **Clause 4** of this Part. Once accepted, payment will be made within **30 calendar days**.

## 7. Default

- 7.1 If the Appointed Supplier fails to deliver all or any of the Goods ordered within the time specified in the order or as otherwise provided in **Clause 3** of this Part, or the Goods are rejected in accordance with **Sub-clause 2.1**, or the replacement Goods are not delivered within the period mentioned in **Sub-clause 5.2**, the Authorized Representative of HKSIL shall immediately thereupon be at liberty to terminate this Contract by written notice addressed to the Appointed Supplier, but without prejudice to any claims by the Authorized Representative of HKSIL for breach of Contract and, in particular, his right to

## GENERAL CONDITIONS OF CONTRACT FOR GOODS

procure any Goods then outstanding from any other source, and the Appointed Supplier shall be liable for any sums so incurred in excess of the Contract price.

### 8. Safety

8.1 The Appointed Supplier shall observe all legal requirements of the HKSAR, and relevant international agreements in relation to health, safety and environment, and in particular to the marking of hazardous Goods, the provision of data sheets for hazardous materials, and all provisions relating to food.

### 9. Survey Expenses

9.1 Without prejudice to the other rights or remedies of HKSIL herein or at law, if there is any defects in the Goods, the Appointed Supplier shall be responsible for any expenses incurred in employing a surveyor or any expert to establish the nature of the defects.

### 10. Country of Origin

10.1 HKSIL reserves the right to reject any delivery in the event that the Goods are manufactured in the country other the one originally quoted.

### 11. Recovery of Sums Due

11.1 Whenever under this Contract or otherwise any sum of money shall be recoverable by HKSIL from or payable to HKSIL by the Appointed Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to the Appointed Supplier under this or any other HKSIL contract.

### 12. Liability and Indemnities

12.1 HKSIL or its employees or agents, and HKSAR Government and The Secretary for Home and Youth Affairs Incorporated shall not be under any liability whatsoever in respect of:

12.1.1 Any loss of or damages to any of the Appointed Supplier's property or that of its employees or agents however caused (whether by any negligence of HKSIL or any of its employees or agents or otherwise).

12.1.2 Any injury to or death of any of the Appointed Supplier's employees or agents save and except any such injury or death was caused by the negligence of HKSIL or any of its employees or agents.

12.2 The Appointed Supplier shall indemnify HKSIL and its employees or agents, and HKSAR Government and the Secretary for Home and Youth Affairs Incorporated against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by HKSIL or any of its employees or agents in respect of:

12.2.1 Any lose, damages, injury or death referred to in **Sub-clause 12.1** of this clause (save and except injury or death caused by the negligence of HKSIL or any of its employees or agents).

## **GENERAL CONDITIONS OF CONTRACT FOR GOODS**

- 12.2.2 Any loss or damages sustained by or any injury to or death of any third party in consequence of any negligence of the Appointed Supplier or any of its employees or agents.
- 12.3 In the event of any of the Appointed Supplier's employees or agents suffering any injury or death in the course of or arising out of this Contract and whether there be a claim for compensation or not, the Appointed Supplier shall give immediate notice in writing of such injury or death to the Authorized Representative of HKSIL.
- 12.4 Where required by HKSIL, the Appointed Supplier shall take out and maintain insurance with a reputable insurer in such manner as it is agreed with HKSIL to cover its legal liabilities for loss or damage to property and injury or death or persons as a result of the performance of this Contract.

### **13. Bankruptcy**

- 13.1 HKSIL may at any time by notice in writing unilaterally and immediately terminate the Contract forthwith without entitling the Appointed Supplier to compensation in any of the following events:
- 13.1.1 If applicable, if the Appointed Supplier shall at any time be adjudged bankrupt, or shall have a bankruptcy order or orders for administration of its estate made against it or shall take any proceedings for liquidation or composition under any applicable laws or regulations or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors or purports so to do.
- 13.1.2 If the Appointed Supplier, being a limited company or corporation, shall pass a resolution for voluntary winding up or a petition for winding up shall be filed or other step has been taken by any person for the winding up or dissolution of the Appointed Supplier, 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 creditors and/or debenture holders of the Appointed Supplier, or possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge or circumstances shall have arisen which entitled the Court or creditors and/or debenture holders to appoint a receiver or manager.
- 13.2 If the Appointed Supplier, 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 over any assets of the Appointed Supplier, or circumstances shall have arisen which entitle the court or a creditor 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 HKSIL.

### **14. Corruption**

- 14.1 The Appointed Supplier, its sub-suppliers, employees and agents shall not offer, give, solicit any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services.

## GENERAL CONDITIONS OF CONTRACT FOR GOODS

- 14.2 The Appointed Supplier shall procure the good behaviour of its sub-suppliers, employees and agents in the performance of the Services. It shall not permit its sub-suppliers, employees and agents to solicit or accept any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services. The Appointed Supplier shall advise its sub-suppliers, employees and agents that they are not allowed to solicit or accept any money, gifts or advantages (as defined in the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR) or excessive entertainment to or from any HKSIL employees or their family members or any person in relation to the Services.
- 14.3 If the Supplier and/or its sub-suppliers, employees or agents are found to have committed an offence under the Prevention of Bribery Ordinance, Cap 201 of the Laws of HKSAR or any subsidiary legislation made thereunder or under any law of a similar nature in relation to the Appointed Supplier or any other Government contract, HKSIL may, summarily terminate the Appointed Supplier without entitling the Appointed Supplier to any compensation therefor. The Appointed Supplier shall be liable for all costs necessarily incurred by HKSIL as the result of the termination of the Contract.

### 15. Guarantee and Warranty

- 15.1 Without prejudice to the generality of **Sub-clause 2.1** hereof, the Appointed Supplier will provide a warranty of and guarantee the quality of the Goods, and any part or portion thereof, for a period of **12 months** from the date of acceptance thereof.
- 15.2 Notwithstanding **Clause 4** of this Part, the Appointed Supplier shall make good as soon as possible and without charge, 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 15.1** above.
- 15.3 In the event that the Appointed Supplier 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 HKSIL, and HKSIL may dispose of them after a reasonable time in whatever manner as it sees fit and retain any proceeds thereof.
- 15.4 If any defects are not made good within a reasonable time, HKSIL may, after serving notice of intent on the Appointed Supplier, proceed to rectify the defects by repair or replacement at the Appointed Supplier's risk and expense without prejudice to any other rights which HKSIL may have against the Appointed Supplier.
- 15.5 The Appointed Supplier shall remain liable to HKSIL under the terms of this clause whether or not the Goods, or any part thereof, were manufactured by him, and the Appointed Supplier shall ensure that the supply of any Goods not manufactured by him shall be under at least the same liability to the Appointed Supplier as the liability undertaken by the Appointed Supplier to HKSIL pursuant to this clause.

### 16. Patent Rights

The Appointed Supplier shall indemnify HKSIL against all claims arising at any time that the sale, use or possession of the Goods infringes any patent rights, copyrights or registered design or other intellectual property rights of a third party, or on account of any claims for royalties

## **GENERAL CONDITIONS OF CONTRACT FOR GOODS**

arising from the sale, use or possession of the Goods, and the Appointed Supplier shall also be liable for any cost to HKSIL that may arise from any such claims.

### **17. Force Majeure**

17.1 Both parties shall be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulation, epidemics, fire, typhoon, flood, earthquake or of any other cause beyond the reasonable control of the parties or either of them renders the performance of this Contract impossible whereupon all money due under this Contract shall be paid immediately and in particular each party shall be liable to pay to the other damages for any breach of this Contract and all expenses and costs incurred by that party in enforcing its rights under this Contract.

17.2 Provided that this **Clause 17.1** shall have effect only at the discretion of HKSIL except when such event renders performance impossible for a continuous period of not less than two calendar months.

### **18. Statutory/General Obligations**

18.1 The Appointed Supplier shall at all times comply with all laws, ordinances, regulations, orders and by-laws having the force of the law applying within HKSAR and having a bearing on the performance of the Appointed Supplier's obligations and duties under the Contract.

18.2 The Appointed Supplier shall comply with the regulations of the public service or statutory undertaking relating to the Contract.

18.3 The General Conditions of Contract shall apply to the extent that they are not inconsistent with the Special Conditions of Contract. For the avoidance of doubt, in case of any conflict between these General Conditions of Contract and the Special Conditions of Contract, the Special Conditions of Contract shall prevail.

18.4 The Appointed Supplier undertakes to indemnify and keep HKSIL fully indemnified against any loss or damages suffered by HKSIL as a result of or relating to or as a consequence of HKSIL's failure to comply with any of the terms or conditions of the Contract.

### **19. Governing Law**

19.1 The Contract shall be governed by the laws of HKSAR and the parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the Court of HKSAR.

19.2 The submission by the parties to such jurisdiction shall not limit the right of HKSIL to commence any proceedings arising out of this Contract in any other jurisdiction it may consider appropriate.

19.3 Any notice or proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of services be served on any party in accordance with this Clause.

### **20. Change of Address**

# GENERAL CONDITIONS OF CONTRACT FOR GOODS

Each of the parties shall give notice to the other of the change or acquisition of any address, e-mail address or telephone fax or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

## 21. Conflict of Interest

The Tenderer shall declare any actual or perceived interest (financial or otherwise) it has with HKSIL or any of its members in Part A of the Tender Form.

## 22. Registration of Supplier

HKSIL will not consider the quotation unless the Tenderer, at the time of submitting the quotation, is a limited company registered under the Companies Ordinance, Chapter 32 or 622 if after 14 March 2014 of the Laws of Hong Kong Special Administrative Region ("HKSAR") or a business registered under the Business Registration Ordinance, Chapter 310 of the Laws of HKSAR.

## 23. Alteration of Tender

The schedule of requirements and terms and conditions as stated in the Contract issued with this Tender must not be altered by the Appointed Supplier.

## 24. Validity

Tender shall remain open for acceptance by HKSIL for 90 calendar days after the Tender closing date.

## 25. Acceptance of Tender

25.1 This Tender relates to the execution of all of the goods in accordance with the Contract and subject to the Notice of Acceptance issued by HKSIL.

25.2 All Tenderers will be notified in writing of HKSIL's acceptance or non-acceptance of the Tender.

25.3 HKSIL is not bound to accept the lowest price or any Tender and reserves the right to accept all or any part of any Tender.

25.4 HKSIL may disclose the Tender price of the successful Tender to such persons and for such purpose as HKSIL may in its absolute discretion deem fit.

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