

## General Terms and Conditions for Purchase Orders

These general terms and conditions (“**Terms**”) shall be supplemental to and form part of the Purchase Order.

### **1. Interpretation**

The following definitions and rules of interpretation shall apply in these Terms.

“Business Day”	:	means a day (other than a Saturday, Sunday, public holiday or any day on which typhoon signal No. 8 or above or black rainstorm warning signal is hoisted or announcement on extreme conditions is issued in Hong Kong at any time from 9:00 a.m. to 5:30 p.m.) on which licensed banks are open for normal business in Hong Kong.
“Clause”	:	means a clause of these Terms.
“Contract”	:	means the legally binding contract formed between HSITPL and the Supplier for the supply of Goods/Services which consists of these Terms and any relevant provisions relating to the supply of the Goods/Services that are contained in the Tender Invitation and the Tender Submission and, if issued by HSITPL, the Purchase Order.
“Delivery Date”	:	means the date or dates for the delivery of any of the Goods/Services as specified in the Purchase Order, the Tender Invitation and/or the Tender Submission, as the case may be.
“Deliverables”	:	means all documents, products, reviews, reports, findings, and materials compiled, developed, prepared, authored by the Supplier or its agents, sub-contractors and/or employees as part of or in relation to any of the Goods/Services in any form or media, including but not limited to drafts or finalized versions of any drawings, maps, plans, diagrams, designs, pictures, computer programmes, data, specifications and reports.
“Delivery Schedule”	:	means the schedule of delivery of the key Deliverables as set out in the Requirement Specifications.
“Force Majeure Event”	:	means any acts of God, war, insurrection, riot, civil or social unrest, sabotage, boycott, embargo, explosion, fire, earthquake, flood, unavoidable accident, the outbreak of any disease, virus, epidemic, riot, public disorder, violent demonstrations, blockade, government regulations, legal proceedings.
“Goods”	:	means the goods that are to be acquired by HSITPL from the Supplier, details of which are set out in the Tender Invitation, the Tender Submission and/or the Purchase Order, as applicable.
“Hong Kong”	:	means the Hong Kong Special Administrative Region of the People’s Republic of China.
“HSITPL”	:	means Hong Kong-Shenzhen Innovation and Technology Park Limited.
“HSITPL Project Manager”	:	means the person appointed from time to time by HSITPL and notified in writing to the Supplier to carry out the duties of the Supplier Project Manager.
“Intellectual Property Rights”	:	means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in designs, rights in computer software, database rights, rights to use and protect the confidentiality of confidential information (including but not limited to know-how and trade secrets), source code, Application Programming Interface (API) data (API to Universal Scene Description (USD) open sources - open domain format), scripts audio and video, etc.) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted,

		renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
“Payment Schedule”	:	means the schedule of payment of the Service Fee.
“Project Plan”	:	means the project plan as specified in the Requirement Specifications or otherwise agreed by HSITPL and the Supplier in writing.
“Purchase Order”	:	means the purchase order for the Goods/Services which is issued by HSITPL and which these Terms shall form an integral part of it or if, for whatever reason is not issued by HSITPL, these Terms shall on their own govern the purchase of the Goods/Services.
“Requirement Specifications”	:	means the document so titled and appended to the Tender Invitation.
“Service Fee”	:	has the meaning ascribed to it in Clause 5.1.
“Services”	:	means the services that the Supplier has been engaged by HSITPL to provide including, without limitation, the provision of the Deliverables and any other obligations, advice, analyses, researches, tasks, objectives and duties, as more particularly described in the Tender Invitation, the Tender Submission and/or the Purchase Order, as applicable.
“Supplier”	:	means the company or entity who is engaged by HSITPL to provide the Goods/Services.
“Supplier Project Manager”	:	means the person of appropriate rank, qualification and experience appointed from time to time by the Supplier and notified in writing to HSITPL to carry out the duties of the project manager.
“Supplier Team”	:	means the team of persons providing the services whose names are set out in the Requirement Specifications.
“Tender Invitation”	:	means the request for quotation or the request for proposal, as the case may be, that has been issued by HSITPL to invite Tender Submission from third parties (including the Supplier) for the provision of the Goods/Services.
“Tender Submission”	:	means the quotation or proposal, as the case may be, that is submitted by the Supplier to HSITPL in response to the Tender Invitation.

HSITPL and the Supplier shall, where the context permits, individually be referred to as a “Party” and collectively as the “Parties”.

## 2. Legally Binding Contract

- 2.1 The Supplier hereby acknowledges and accepts that, notwithstanding whether a Purchase Order is issued by HSITPL, it is legally bound by these Terms once it has been selected by HSITPL as the Supplier pursuant to the selection procedure of the Tender Invitation.
- 2.2 The Supplier hereby agrees that HSITPL shall not be bound by any other terms and conditions stipulated in any of the Supplier’s forms and documents and such terms and conditions shall not form part of the Purchase Order.

## 3. Warranties

3.1 The Supplier warrants that, for a period of 18 months from the date of the Purchase Order or as otherwise agreed between the Supplier and HSITPL, the Goods/Services to be rendered to HSITPL shall, where applicable:

- (a) correspond with the applicable scope of work, specification(s), drawing(s), description(s) or sample(s) provided to, or designated by, HSITPL, including but not limited to the Requirement Specifications;
- (b) be new;
- (c) be free from defects in design, material and workmanship;
- (d) be of merchantable quality and fit for their intended purpose made known to the Supplier by HSITPL, whether expressly or by implication, and/or as set out in the Tender Invitation, and which the Supplier acknowledges and accepts that HSITPL relies solely on the Supplier's expertise, experience and judgment to ensure that the Goods/Services are of merchantable quality and fit for their intended purpose; and
- (e) be performed, provided and carried out in a timely, diligent, competent and professional manner and all Goods/Services shall be completed by the relevant Delivery Date with due skill, care as may be expected of a qualified and competent supplier experienced in the provision of like goods/services of a similar size, scope and complexity to the Goods/Services and by the Supplier's employees, officers, agents and sub-contractors who have the necessary qualifications, ability, experience, skills, expertise and capacity.

3.2 If the Supplier is in breach of any of the warranties given under Clause 3, then, without limiting or affecting its other rights or remedies, HSITPL shall have one or more of the following rights:

- (a) terminate the Purchase Order with immediate effect by giving written notice to the Supplier;
- (b) require the Supplier to rectify any part of the Goods/Services to which the breach(es) relate;
- (c) demand a full refund from the Supplier of any portion of the total purchase price of the Purchase Order that has been paid to the Supplier;
- (d) refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Supplier attempts to make;
- (e) recover from the Supplier any expenditure incurred by HSITPL in obtaining substitute services or goods from any other third party(ies); and/or
- (f) demand that the Supplier indemnifies HSITPL for any cost, loss and/or expenses incurred by HSITPL as a consequence of the Supplier's failure to comply with any of the warranties given under Clause 3.

#### **4. Delivery**

4.1 The Supplier shall ensure the Goods/Services are adequately packed and secured such that the Goods/Services are delivered to the HSITPL site or any ship-to-location as specified by HSITPL in good condition and without defects.

4.2 If the Supplier fails to deliver and/or perform any or all of the Goods/Services ordered by the Delivery Date and in accordance with these Terms and/or the terms of the Purchase Order, any relevant provisions in the Tender Invitation and/or the Tender Submission (including, without limitation, any relevant deadlines or timetable), HSITPL shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:

- (a) cancel the Purchase Order in whole or in part without any liability;
- (b) reject the Goods (in whole or in part) by giving notice in writing to the Supplier before or after delivery and return the rejected Goods to the Supplier at the Supplier's own risk and expenses;
- (c) recover from the Supplier any expenditure reasonably incurred by HSITPL in obtaining the Goods/Services in substitution from a third party;

- (d) refuse to accept any subsequent delivery of Goods and/or performance of Services which the Supplier attempts to make;
- (e) request a refund from the Supplier of sums paid in advance for the Goods/Services that the Supplier has not provided; and
- (f) claim damages for any cost, loss or expenses incurred by HSITPL which are in any way attributable to the Supplier's failure to deliver and/or perform the Goods/Services in accordance with these Terms, the relevant provisions in the Tender Invitation and/or the Tender Submission.

- 4.3 Time shall be of the essence for the Supplier to deliver and/or perform the Goods/Services in accordance with the relevant deadlines as specified under the Purchase Order, the Project Plan and/or the Delivery Schedule. In the event that the Goods/Services are not duly delivered or performed by such relevant deadlines, HSITPL may, at its sole discretion, claim or deduct liquidated damages equal to one percent (1%) of the total purchase value for the Goods/Services for each day of delay up to a maximum of the total purchase value for such Goods/Services.
- 4.4 The Supplier shall, at its own costs, give such assistance as may reasonably be required by HSITPL regarding the Deliverables (including explanation of methodology, results of analysis and conclusions contained in the Deliverables) and give full and proper consideration to all queries, comments and suggestions made by HSITPL on the Deliverables.
- 4.5 The Supplier shall ensure that, throughout the term as set out in the Purchase Order, it has and maintains all relevant licenses, permissions, authorizations, consents and permits that it requires in order to comply with its obligations under the Purchase Order and these Terms.
- 4.6 The Supplier shall not be regarded as having completed the delivery and/or performance of the Goods/Services until all the tasks under the Purchase Order have been completed to the reasonable satisfaction of HSITPL based on the specifications and requirements as more particularly described in the Tender Invitation, the Tender Submission and/or the Purchase Order, as applicable, including without limitation the submission of all the Deliverables, attendance of meetings and giving of presentation required under the Tender Invitation, the Tender Submission and/or the Purchase Order, as applicable.

## **5. Price and Payment**

- 5.1 Subject to the Supplier delivering and/or performing the Goods/Services to the reasonable satisfaction of HSITPL based on the specifications and requirements designated by HSITPL, HSITPL shall pay the Supplier the Service Fee in accordance with the Payment Schedule attached to or as set out in the Purchase Order.
- 5.2 Unless otherwise specified in the Purchase Order, the price(s) submitted by the Supplier for the Goods/Services includes all fees, costs, charges, expenses and disbursements directly and indirectly incurred by the Supplier in respect of the performance of the Purchase Order including, without limitation, any taxes, levies, import fees and/or duties, the cost of packaging, shipping, delivery, insurance or other charges or withholdings of a similar nature in any jurisdiction arising from the fees or other sums paid to the Supplier in relation to the Goods/Services.
- 5.3 No extra charges by the Supplier or its agents shall be effective unless agreed in writing with HSITPL.
- 5.4 The Supplier shall send certified invoices to the Finance Department of HSITPL stating the Purchase Order number, particulars of the Goods/Services delivered, the quantity, rate, applicable discounts and net payment due. For the avoidance of doubt, the Supplier shall not issue any certified invoice in respect of any Goods/Services unless and until HSITPL has confirmed acceptance of the relevant Goods/Services. Unless otherwise specified in the Tender Invitation and/or Tender Submission, payment will normally be made to the Supplier within 30 calendar days of receipt of such certified invoices.

- 5.5 Without prejudice to any other rights which HSITPL may have, HSITPL is entitled to suspend or withhold payment if the Goods/Services rendered by the Supplier are unsatisfactory to HSITPL.
- 5.6 HSITPL reserves the right to obtain documents and/or records of the delivery and/or performance of the Goods/Services from the Supplier for verification of the invoice(s) and request adjustment and/or amendment thereof. The Supplier hereby undertakes to provide to HSITPL such documents and/or records forthwith at its own costs.

## 6. Acceptance, Title and Risk

- 6.1 Risk of loss or damage to the Goods/Services shall remain with the Supplier until HSITPL has expressly given its acceptance of the Goods/Services in writing.
- 6.2 All Goods/Services are subject to inspection and/or testing for acceptance by HSITPL after delivery.
- 6.3 Title in the Goods/Services shall pass from the Supplier to HSITPL upon express written acceptance of the Goods/Services by HSITPL in accordance with Clause 6.1, without prejudice to any rights to reject, claim damages and/or any other remedies available to HSITPL after such express acceptance.

## 7. Change Request

- 7.1 The HSITPL Project Manager may give written instruction(s) ("**Change Request**") to the Supplier for addition to, or omission from, or other changes in the Goods/Services or the order or period in which the Goods/Services are to be delivered and/or carried out. Subject to the prior written consent of the HSITPL Project Manager, any price variation as a result of any Change Request, which may include any direct loss and/or expense incurred by the Supplier in complying with the Change Request as may be determined by the HSITPL Project Manager, shall be valued by the HSITPL Project Manager on a fair and reasonable basis and by reference to the relevant price(s) in the Purchase Order. The HSITPL Project Manager's valuation shall be final and binding on the Supplier.

## 8. Supplier Team

- 8.1 The deployment of Supplier Team members (as specified in the Requirement Specifications or mutually agreed between the Parties) and any substitute or replacement thereof shall be subject to the prior written approval of HSITPL.
- 8.2 HSITPL may request the removal or replacement of any member of the Supplier Team by giving at least 4 weeks' notice to the Supplier without specifying any reason for such removal or replacement. The Supplier shall within three (3) Business Days, unless extended by HSITPL in writing, nominate another person acceptable to HSITPL to replace that member. HSITPL shall in no circumstances be liable to the Supplier, its employees, sub-contractors or agents in respect of any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional fees and expenses) occasioned by such removal and / or replacement ("**Potential Claim**") and the Supplier hereby agrees to fully indemnify HSITPL against any Potential Claim.

## 9. Indemnity

- 9.1 The Supplier shall indemnify and keep HSITPL indemnified from and against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs and all other professional fees and expenses on a full indemnity basis) suffered or incurred by HSITPL arising directly or indirectly out of, as a result of or in connection with:
  - (a) the performance or breach of these Terms and/or any terms of the Purchase Order by the Supplier, including but not limited to the situation where the Goods/Services are defective or do not conform to the requirements of the Purchase Order and/or the Requirement Specifications;
  - (b) any default, unauthorised act or omission of the Supplier, its employees, officers, agents or sub-contractors;

- (c) any breach or inaccuracy of any representation, warranty, obligation, term, provision, covenant or undertaking given by, binding on or applicable to the Supplier and/or any of its employees, officers, agents or sub-contractors under the Purchase Order;
- (d) any violation of laws, regulations and rules and non-compliance by the Supplier, its employees, officers, agents or sub-contractors with any applicable law, regulation, order or requirement of any government agency or authority in the provision of the Goods/Services; and
- (e) any third person's claim arising out of, or in connection with the provision, receipt, use and/or supply of the Goods/Services (save and except for any claims arising as a result of or caused by the wrongful or negligent act or omission of HSITPL), including but not limited to claims brought against HSITPL for actual infringement of a third party's Intellectual Property Rights and only to an extent whereby such damages and legal cost and other professional fees and expenses are finally awarded against HSITPL by any applicable court or arbitral tribunal in a competent jurisdiction.

9.2 This Clause 9 shall survive the termination and expiry of the Purchase Order.

## **10. Termination**

10.1 Without prejudice to any of its other rights and remedies under the Purchase Order or these Terms or in law, HSITPL shall be entitled to terminate the Purchase Order at any time and without compensation by giving a notice in writing to the Supplier in any of the following events:

- (a) there is a change of control of the Supplier; or
- (b) the Supplier's financial position deteriorates to such an extent that in HSITPL's opinion the Supplier's capability to adequately fulfil its obligations under the Purchase Order has been placed in jeopardy; or
- (c) the Supplier commits a material breach or non-observance of any of these Terms or any conditions of the Purchase Order; or
- (d) the Supplier neglects, fails or refuses to deliver and/or perform the Goods/Services in accordance with the requirements specified in the Tender Invitation, the Tender Submission and/or the Purchase Order, as applicable; or
- (e) a petition is presented or a proceeding is commenced which has not been withdrawn or an order is made or a resolution is passed for the winding up or bankruptcy of the Supplier; or
- (f) occurrence of any serious misconduct, in the opinion of HSITPL, that adversely reflect on the commercial integrity of the Supplier.

For the purpose of this Clause 10, the term "control" (including the correlative terms "controlling", "controlled by", and "under common control with") shall mean possession directly or indirectly, through one or more intermediaries, of the power to direct or cause the direction of management and policies of a person, whether through ownership of voting securities or other equity interests, or by shareholders' agreement or otherwise.

10.2 Termination or expiry of the Purchase Order shall not affect any of the rights, remedies, obligations or liabilities of both the Supplier and HSITPL that have accrued up to the date of termination or expiry.

10.3 If the Purchase Order is terminated pursuant to Clause 10.1, the Supplier shall indemnify HSITPL for and against all loss (including loss of bargain), damage, cost and expenses suffered by HSITPL as a result of the termination (including any additional costs in engaging another contractor to deliver the Goods and/or

perform the Services or the undelivered part of the Goods/Services) and/or any demands or legal proceedings that may be brought against HSITPL by relevant government authorities or other third parties. The Supplier shall pay any such sum as requested by HSITPL forthwith upon HSITPL issuing written notice(s) to that effect.

- 10.4 Any provision of the Purchase Order that expressly or by implication is intended to come into or continue to be in force on or after termination or expiry of the Purchase Order shall continue to remain in full force and effect.

## **11. Insurance**

During the term of the Purchase Order, the Supplier shall maintain, at its own cost and with a reputable insurance company, valid professional indemnity insurance and public liability insurance coverage for an insured sum that is adequate to cover liabilities that may arise under or in connection with the Purchase Order and shall, on HSITPL's request, produce a certificate of insurance showing the insured sum.

## **12. Intellectual Property Rights**

- 12.1 All Intellectual Property Rights (in whatever form) in the Deliverables as well as any modifications made subsequently to such Deliverables shall, upon creation, immediately vest in and remain the sole and exclusive property of HSITPL. HSITPL shall have the sole and exclusive right to publish and use any such Deliverables. To the extent any rights in or to the Intellectual Property Rights are deemed to accrue to the Supplier, the Supplier hereby agrees to assign, transfer or convey, without charging HSITPL any costs, any and all of such rights, at any time as they may be deemed to accrue, to HSITPL. The Supplier shall, without charging HSITPL any costs, execute all documents and instruments, forthwith upon request by HSITPL, which HSITPL may deem necessary, proper or appropriate to accomplish the foregoing. Any such assignment, transfer or conveyance shall be without consideration other than the mutual agreement of the Parties contained herein.
- 12.2 The Supplier guarantees that the Goods/Services provided hereunder will not infringe upon any Intellectual Property Rights of any third party(ies).
- 12.3 To the extent that any of the Goods/Services incorporate and/or utilize any Intellectual Property Rights that are owned by the Supplier, the Supplier grants to HSITPL a fully paid-up, worldwide, exclusive, royalty-free perpetual and irrevocable license to use such Intellectual Property Rights in the Goods/Services. Where the Goods/Services incorporate and/or utilize any third-party Intellectual Property Rights (other than those owned by the Supplier), the Supplier shall, at the Supplier's own cost, procure that all such consent, licenses, authorizations and/or permissions have been obtained from such third parties so as to enable HSITPL to enjoy the full and unfettered use of the Goods/Services.
- 12.4 All materials or information provided by HSITPL to the Supplier are the exclusive property of HSITPL.

## **13. Failure to meet Performance Requirements and Standards**

- 13.1 The Supplier shall notify the HSITPL Project Manager in writing of any event (including but not limited to Force Majeure Events) or matter, which the Supplier is or ought reasonably to be aware of, which delays or prevents or may delay or prevent the completion of the delivery and/or performance of the Goods/Services or any part thereof in accordance with the Project Plan and/or the Delivery Schedule, within 2 Business Days of the occurrence of such event or matter and indicate what steps are being or will be taken by the Supplier to mitigate the effect thereof upon its performance of the Purchase Order and to fulfil its obligations under the Purchase Order.



- 13.2 If such event or matter has arisen by reasons of any act of prevention or breach by HSITPL or a Force Majeure Event preventing the performance of the duties and obligations by the Supplier, the HSITPL Project Manager may, in his/her sole discretion, extend any completion obligation date of any of the key Deliverables by giving notice in writing to the Supplier. Notwithstanding that an extension of time may be granted by the HSITPL Project Manager, the Supplier shall not be entitled to claim any payment in addition to the Service Fee.

#### **14. Force Majeure**

- 14.1 Subject to Clause 13 above, neither Party shall be in breach of the Purchase Order nor be liable for delay in performing, or failure to perform, any of its obligations under the Purchase Order if such delay or failure is attributable to a Force Majeure Event.
- 14.2 HSITPL shall have the right to suspend or cancel the provision of the Goods/Services or any part thereof in case of a Force Majeure Event and the Supplier shall make the corresponding adjustments to the total purchase value for such Goods/Services.
- 14.3 If the performance of the Purchase Order is substantially prevented, hindered or delayed for a single period of more than 30 calendar days or an aggregate period of more than 60 calendar days on account of one or more Force Majeure Event(s), the Parties shall negotiate in good faith to attempt to develop a mutually satisfactory solution, failing which either Party may terminate the Purchase Order by giving written notice to the other, but without prejudice to either Party's rights.

#### **15. Confidentiality**

- 15.1 Except as provided in Clause 15.3 below, the Supplier shall not, without the prior written consent of HSITPL, at any time during or after the term of the Purchase Order, use for its own purposes (other than solely for the performance and/or delivery of the Goods/Services) or disclose or allow to be disclosed to any person or to the public any information disclosed or provided to the Supplier by or on behalf of HSITPL in relation to the Purchase Order (including without limitation any information concerning the business, affairs, customers, clients of HSITPL), any information disclosed or provided to the Supplier in confidence by any other persons in respect of the Goods/Services, and any information, documents or materials in whatsoever form created in connection with the performance and/or delivery of the Goods/Services (the "**Confidential Information**").
- 15.2 The Supplier undertakes to ensure that its employees, workers, agents and any person engaged by it for the performance and/or delivery of the Goods/Services or to whom the Supplier provides Confidential Information will comply with the confidentiality obligations set out herein.
- 15.3 The Supplier may only disclose Confidential Information:
- (a) to its employees, officers, representatives, subcontractors, or advisers on a need-to-know basis and for the purposes of performing its obligations under the Purchase Order. It shall ensure that its employees, officers, representatives, subcontractors, or advisers to whom it discloses such Confidential Information comply with this Clause 15; or
  - (b) as may be required by law, the court or any governmental or regulatory authority; or
  - (c) HSITPL has given prior written consent to the disclosure of Confidential Information.
- 15.4 This Clause 15 shall survive the termination or expiry of the Purchase Order.

## 16. Limitation of Liability

The Supplier's aggregate liability for loss or damage caused by the Supplier's negligence or breach of these Terms or the terms of the Purchase Order or where the Supplier is otherwise legally liable, except in relation to the Supplier's liability under personal injury or death, wilful misconduct, indemnity for claims against HSITPL for infringement of a third party's Intellectual Property Rights as referred to in Clause 9, shall be limited to two (2) times the total purchase value under the Purchase Order.

## 17. Governing Law and Jurisdiction

These Terms and the Purchase Order shall be governed by and construed in accordance with the laws of Hong Kong.

## 18. Dispute Resolution

18.1 Any dispute, controversy, difference or claim arising out of or relating to these Terms and/or the Purchase Order, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to these Terms and the Purchase Order ("**Dispute**") shall be settled in accordance with the provisions of this Clause 18.

18.2 A Dispute shall be deemed to arise when either Party serves a notice on the other Party stating the nature of the Dispute (the "**Notice of Dispute**"). In the event the Parties are unable to resolve the Dispute within 30 days of the service of a Notice of Dispute, such a Dispute shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("**HKIAC**") under the HKIAC Administered Arbitration Rules in force when the notice of arbitration is submitted. The law of this arbitration clause shall be Hong Kong law. The seat of arbitration shall be Hong Kong. The number of arbitrators shall be one (1). The arbitration proceedings shall be conducted in English.

## 19. Notices

19.1 Any notice required to be given under these Terms and/or the Purchase Order by either Party shall be served in writing addressed to the other Party at its registered office or principal place of business or such other address, fax number or e-mail address as may at the relevant time have been notified to the other Party pursuant to this Clause.

19.2 Clause 19.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

## 20. Anti-Bribery and Non-Collusion

20.1 The Supplier shall not, and shall procure that any and all of its employees, officers, agents and sub-contractors who are involved in the Purchase Order shall not offer, give, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap. 201 of the laws of Hong Kong) to any director or employee of HSITPL, or engage in any activity, practice or conduct which would be in violation of any anti-bribery laws or regulations in respect of or in connection with the Purchase Order.

20.2 The Supplier is warned that offering or giving any gratuity, bonus, discount, bribe, loan or any other gift or consideration as an inducement or reward to any employee or agent of HSITPL in relation to the Purchase Order may constitute an offence contrary to the Prevention of Bribery Ordinance (Cap. 201), and that if the Supplier is found to have made such an offer, HSITPL shall be at liberty to terminate the Purchase Order and shall hold the Supplier liable for any losses or damages which HSITPL may suffer as a result of the termination of the Purchase Order.

- 20.3 If the Supplier shall be found to have colluded with any other person in any manner whatsoever during the tendering process for the Purchase Order, HSITPL shall be entitled to exercise its rights of termination under Clause 10 and the Supplier shall be liable for any loss or damages which HSITPL may suffer as a result of the termination of the Purchase Order.

## **21. Precedence of Documents, Entire Agreement and Supersession**

- 21.1 The Purchase Order shall constitute the entire agreement between the Supplier and HSITPL and shall supersede any previous written or oral agreement, undertaking, representation, warranty, promise, assurance, arrangement and understanding whatsoever made between the Parties in relation to the subject matter of the Purchase Order.
- 21.2 Except to the extent that any other provision of these Terms and/or the Purchase Order provides to the contrary by express reference to the order of precedence of documents, these Terms and the terms and conditions of the Purchase Order shall prevail over those of the Requirement Specifications, any other Appendices and any other documents referred to in the Appendices, and the terms and conditions of the Requirement Specifications shall prevail over those of any other Appendices and the documents referred to in those other Appendices. Subject as aforesaid, the documents forming the Purchase Order are to be taken as mutually explanatory.
- 21.3 In the event that the Parties enter into a separate legally binding agreement (the “**New Contract**”) to govern the terms and conditions upon which the Supplier is to provide the Goods/Services referred to in the Purchase Order, the Parties acknowledge and accept that once the New Contract has been duly executed by the Parties, these Terms shall be superseded in their entirety by the New Contract and the provision of the Goods/Services by the Supplier to HSITPL shall be deemed as being governed by the New Contract from the date upon the Supplier was selected by HSITPL under the Tender Invitation.

## **22. Statutory Obligations**

- 22.1 The Supplier shall comply with all notices and/or requirements of any statute, any statutory instrument, rule or order or any regulations or by-law (“**Statutory and Regulatory Requirements**”) applicable to the Goods/Services and/or the Supplier’s business.
- 22.2 In the event that the Supplier considers there is any conflict between any of the Statutory and Regulatory Requirements and these Terms and/or the Purchase Order (and, as the case may be, any instruction of the HSITPL Project Manager), the Supplier shall immediately notify HSITPL in writing specifying such conflict.

## **23. Publicity**

- 23.1 The Supplier shall have no right (save where expressly permitted under these Terms and/or the Purchase Order or with the prior written consent from HSITPL) to use any trademark, trade name, logo or other Intellectual Property Rights of HSITPL.
- 23.2 No public announcement or communication concerning these Terms and/or the Purchase Order shall be made by the Supplier without the prior written consent of HSITPL.
- 23.3 The Supplier’s obligations on publicity under these Terms and/or the Purchase Order shall survive the expiry or termination of the Purchase Order.

## **24. Environmental Protection**

- 24.1 The Supplier shall observe and comply with all applicable environmental protection and pollution control ordinances and regulations in force in Hong Kong.

24.2 The Supplier shall undertake environmental protection measures to reduce the environmental impacts associated with the delivery and/or performance of the Goods/Services.

24.3 The Supplier is encouraged to adopt green specifications in providing the Goods/Services to HSITPL.

**25. Severability**

If any term in or provision of the Purchase Order and/or any of these Terms is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision shall to that extent be deemed not to form part of the Purchase Order and/or these Terms, as the case may be, and the enforceability of the remainder of the Purchase Order and/or these Terms shall not be affected and shall be enforced to the full extent permitted by law.

**26. Rights Cumulative**

The rights and remedies provided in the Purchase Order and/or these Terms are cumulative and not exclusive of any rights or remedies provided by law.

**27. Survival**

Termination shall not affect any rights and/or obligations accrued before the date of termination or any rights and/or obligations or provisions of the Purchase Order and/or these Terms expressed or intended to survive any termination of the Purchase Order.

**28. Further Assurances**

Each Party shall execute such further documents and perform and procure such acts and things as may be necessary to give full effect to each Party's obligations under the Purchase Order.

**29. No Partnership**

Nothing in the Purchase Order shall be construed as creating a partnership, association, trust or joint venture between the Parties. Neither Party nor any of its employees, agents, representatives or sub-contractors is deemed an employee, agent, sub-contractor or representative of the other Party. Neither Party has the authority to bind nor to incur any liability on behalf of the other and neither is such authority implied.

**30. Exclusion of Third Parties**

Notwithstanding any other provisions of the Purchase Order and/or these Terms and save for expressly provided for in the Purchase Order and/or these Terms, any person who is not a party thereto shall not have any right under the Contracts (Rights of Third Parties) Ordinance (Cap.623) to enforce any provisions of the Purchase Order and/or these Terms.

**31. Miscellaneous**

31.1 The Purchase Order does not grant an exclusive right to the Supplier to provide the Goods/Services to HSITPL. HSITPL reserves the right to award other agreements or orders for the provision of goods/services identical or similar to the Goods/Services to other suppliers.

31.2 The Supplier shall notify HSITPL in writing immediately upon becoming aware of any actual, perceived, or potential conflict of interest with HSITPL and shall do whatever is necessary to manage such conflict to the satisfaction of HSITPL.

- 31.3 The Supplier shall not assign, transfer or sub-contract all or any part of its interests, rights, benefits or obligations under these Terms and/or the Purchase Order without the prior written consent of HSITPL.
- 31.4 HSITPL may, in its sole discretion and at any time, set off any liability of HSITPL to the Supplier against any liability of the Supplier to HSITPL (in either case howsoever arising and whether such liability is present or future, actual or contingent, liquidated or unliquidated, and whether or not such liability arises from the provision of Goods/Services under the Purchase Order). Any exercise by HSITPL of its rights under this Clause 31.4 shall not limit or affect any other rights or remedies available to it under the Purchase Order or otherwise.
- 31.5 Subject to these Terms and/or any other provisions in the Purchase Order, no waiver, cancellation, alteration or amendment of or to these Terms and/or the provisions of the Purchase Order shall be valid unless made in writing and duly signed by both Parties. For the avoidance of doubt, acceptance of, or payment for, all or part of the Goods/Services supplied according to these Terms and/or the Purchase Order shall not be deemed to be a waiver by HSITPL of its right to any remedies, including but not limited to, claim for any losses, costs incurred or damages, and to cancel all or any part thereof, due to any delay or failure to abide by these Terms and/or the Purchase Order.