

General Conditions of Contract

1. Total Quantities:

For the avoidance of doubt, it is hereby stated that, unless prior written agreement has been reached between The Education University of Hong Kong (“EdUHK”) and the Contractor, no orders will be placed by the EdUHK and no deliveries may be made by the Contractor for the supply of Scheduled Goods which would exceed the quantities specified for such goods in the Schedule.

2. Sub-contracts:

The Contractor shall not, without the written consent of the EdUHK, assign or otherwise transfer this Contract or any part, share or interest therein to another party and the performance of this Contract by the Contractor shall be deemed to be personally by him or it.

3. Scheduled goods, Specifications and Proof Notes:

- Scheduled Goods delivered or provided shall be of the qualities and sorts described and in all respects in accordance with specifications or drawings mentioned in the Schedule hereto unless the Contractor has supplied to EdUHK any alternative specifications, drawings or samples and EdUHK has, by written consent, approved these alternatives before acceptance of the Tender or Quotation.
- Any drawings and specifications provided by EdUHK to the contractor for the Contractor’s guidance in the execution of this contract shall be returned forthwith on completion of the Contract.
- If required by EdUHK, the Contractor shall furnish the EdUHK with a proof note or certificate showing that the Scheduled Goods have been subjected to the normal tests for such goods or such tests as the EdUHK may require.
- All representations, statements or warranties made or given by the Contractor, its servants or agents (whether orally in writing or in any of the Contractor’s brochures catalogues and advertisements) regarding the quality and fitness for purpose of the Scheduled Goods or any of the Scheduled Goods shall be deemed to be express conditions of the Terms and Conditions.

4. Delivery:

The Contractor shall, on receipt of a written order (the “Order”) signed for the EdUHK, by any person duly authorized, supply and deliver in accordance with the delivery conditions and destination(s) specified in the Offer to be Bound (as amended in the Order), the Scheduled Goods within the time specified in such Order but if no such time is specified, then within 14 days of the despatch of such Order by the EdUHK and, in this connection, time shall be of the essence. Each delivery shall be accompanied by a copy of the Order and the Contractor shall ensure that a receipt is obtained therefrom by the Receiving Officer but such receipts shall not constitute an acknowledgement that the goods therein mentioned are acceptable or satisfactory and the EdUHK specifically reserves all its rights therein.

5. Conveyance:

The Contractor shall at his own expense deliver the Scheduled Goods to the destination specified in the Order and shall be responsible for delivery thereof in good condition.

6. Inspection and Acceptances:

All deliveries of Scheduled Goods will be subject to inspection and accordingly shall not be regarded as accepted unless and until the EdUHK furnishes the Contractor with an Acceptance Note

7. Rejections:

- Without prejudice to any statutory rights the EdUHK may have the Receiving Officer of the EdUHK may reject any Scheduled Goods which in the opinion of the Receiving Officer do not comply with the Terms and Conditions, in particular, the conditions of Clause 3 thereof or which are in the opinion of the Receiving Officer damaged, spoiled or soiled or which do not conform with the quantities ordered.
- Within 24 hours of being notified in writing of the rejection of any goods delivered the Contractor shall remove them from the EdUHK premises following which EdUHK may dispose of these goods as EdUHK thinks fit and without any responsibility to the Contractor for either the prices achieved at such disposal or the proceeds thereof.
- By supplying Scheduled Goods which are rejected under sub-clause (a) above, the Contractor will have defaulted under the terms of this Contract and subject to the provisions of Clause 10 (“Default”) below. However, unless, at the time of notification of rejection, the EdUHK notifies the Contractor that it does not require the replacement of such goods, the Contractor shall, within 7 days of notification of rejection, replace such goods with satisfactory goods specified in the Order or in the case where replacement goods have to be obtained from sources outside Hong Kong, the Contractor must advise the EdUHK the delivery date when such replacement goods will be delivered. Unless otherwise agreed by the EdUHK or otherwise provided for in the Special Conditions of Contract (if any) hereafter listed, the EdUHK further reserves the right to apply Clause 10 of these General Conditions of Contract in the event that replacement delivery of goods of satisfactory standard, the decision as to whether such goods are satisfactory being in the absolute discretion of the EdUHK, cannot be made with seven days of notification of rejection, whether or not replacement goods have to be obtained from sources outside Hong Kong or otherwise.
- The decision of the EdUHK on whether or not to reject any goods delivered shall be final.

8. Empties:

If the Contractor in his tender has requested the return of empties to him he shall be entitled unless otherwise provided for under Special Conditions of Contract (if any), to collect the same at any time after the expiration of 28 days from the date of delivery (or such earlier date as may be arranged with the Receiving Officer) at his own costs and neither the Receiving Officer nor the EdUHK shall be liable in any way in respect of any loss or damage to such empties prior to such collection.

9. Payment for Supplies:

30 days from acceptance of the goods pursuant to Clause 6 above and receipt of Contractor’s invoice by EdUHK.

10. Default:

If the Contractor shall fail to deliver all or any Scheduled Goods ordered within the time specified in such Order or as otherwise provided in Clause 4 above or if the Contractor shall be otherwise in default of the performance of his obligations under this Contract, the EdUHK shall immediately thereupon be at liberty to terminate this Contract by notice in writing addressed to the Contractor but without prejudice to any claims against him for breach of Contract and, in particular, the right of the EdUHK to procure forthwith the balance of the Scheduled Goods then outstanding from any other source and the Contractor shall be liable for any sum or sums in excess (hereinafter called “any excess”) of the prices agreed by the Contractor.

11. Tendering of Rejected Goods:

If the Contractor offers for delivery any goods which have previously been rejected by the Receiving Officer of the EdUHK, this will constitute a default under Clause 10 and EdUHK shall thereupon be at liberty to terminate the Contract as provided for under Clause 10.

12. Deposits:

- Any sums deposited by the Contractor may be applied by the EdUHK towards satisfying the claims, loss and damage suffered by the EdUHK owing to any default on the part of the Contractor in respect of any of his obligations and liabilities in relation to this Contract.
- The provision of Sub-Clause (a) of this clause shall apply equally in the case of repudiation or attempted repudiation, without just or lawful excuse, of this Contract by the Contractor.
- The application of any deposit as aforesaid shall be without prejudice to any other rights of the EdUHK, including (for the avoidance of doubt) the right to recover from the Contractor any damages suffered or claims made in excess of the said deposit.

13. Contractual Period:

Where a Contractual Period is specified in the Schedule for the provision of a particular service or services, EdUHK may, at any time prior to 14 days before the expiration of such Contractual Period, exercise its option to extend the Contractual Period by giving notice to the Contractor of such an extension of the Contractual Period for a period up to length of the original Contractual Period. Upon such notification to the contractor, the Contract will thereby be extended for the Period notified and all Terms and Conditions will remain in force and, save that the Contractual Period in the Contract will be deemed to have been so amended as to reflect the extension of the contractual period, all other Terms and Conditions will remain unchanged and in force.

14. Recovery of Sums Due:

Whenever any sum of money shall be recoverable from the Contractor or payable by the Contractor to EdUHK, whether under this Contract or otherwise, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor from EdUHK under this or any other contract between the Contractor and EdUHK but without prejudice to all other rights that EdUHK may have against the Contractor.

15. Liability for Damages or Compensation:

- The EdUHK shall not be liable for or in respect of any damages or compensation under the Fatal Accidents Ordinance (Chapter 11), the Employees’ Compensation Ordinance, 1953, or the common law by or in consequence of any accident or injury to any workman or other person in the employment of the Contractor, or any sub-contractor appointed by the Contractor and the Contractor shall indemnify and keep indemnified the EdUHK against any claims, demands, proceedings, costs, charges and expenses whatsoever arising from such damages or claims for compensation. For the avoidance of doubt, the EdUHK is not the employer and therefore not vicariously liable to any person engaged by the Contractor (or any of its sub-contractors).
- The Contractor shall effect a policy of insurance against all liability to pay damages or compensation as aforesaid in respect of all workmen and other persons who may be employed on any work done in pursuance of this Contract with an insurance company approved by the EdUHK and shall continue such insurance during the whole of the time that any persons are employed by him or any work done in pursuance of this Contract and shall deposit with the EdUHK for safe keeping during the currency of the Contract such policy of insurance together with receipts of payment of the current premium. Provided always that in respect of any persons employed by a sub-contractor the Contractor’s obligation to effect a policy of insurance as aforesaid under this clause shall be satisfied if the sub-contractor shall have effected such policy of insurance in respect of such persons and in accordance with the above provisions but the Contractor shall require the sub-contractor to deposit with the EdUHK, such policy of insurance and the receipt for payment of the current premium.
- If the Contractor shall fail to effect and keep in force the insurance cover referred to above or any other insurance which he may be required to effect under the terms of the Contract or if the Contractor fails to show to the satisfaction of the EdUHK that such insurance has been effected and is current then the EdUHK may forthwith effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and may deduct the amount or amounts so paid by the EdUHK from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor
- In the event of any workman or other person employed on any work done in pursuance of this Contract, whether in the employment of the Contractor or a sub-contractor, suffering any personal injury and whether there be a claim for compensation or not, the Contractor shall forthwith give notice in writing of such personal injury to the EdUHK.

16. Bankruptcy:

The EdUHK may at any time by notice in writing summarily terminate this Contract and the Contractor shall not be entitled to compensation in any of the following events:

- 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 shall take any proceedings or liquidation or compensation under any Bankruptcy Ordinance for the time being in force, or if distress or attachment or other process of execution shall be taken or issued against the Contractor or his assets or undertakings or if he shall make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or if he attempts or purports so to do; or
- If the Contractor, being a Company, shall pass a resolution for winding up or it petitions or proceedings shall be taken by any creditor of the Contractor for the winding up of the Contractor or if a Court shall make an order for the liquidation of its affairs, or a Receiver or Manager on behalf of the debenture holders shall be appointed or circumstances shall arise 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 EdUHK.

17. Disputes:

If any dispute arises between the Receiving Officer of EdUHK and the Contractor in reference to the performance of this Contract, or any part thereof, other than any matter or thing as to which the decision of EdUHK is under the Terms and Conditions to be final and conclusive the EdUHK on the one hand or the Contractor on the other may forthwith give to the other written notice requiring the matter to be referred to a single arbitrator, in accordance with and subject to the provision of the Arbitration Ordinance, whose decision shall be final and binding on the parties.

18. Termination:

EdUHK shall have the right to immediately terminate the Contract at any time, save to the except of sub-clause (e) with one month’s written notice, upon the occurrence of any of the following events:

- unsatisfactory performance or breach of Contract by the Contractor;
- the Contractor has engaged or is engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security;
- the continued engagement of the Contractor or the continued performance of the Contract is contrary to the interest of national security;
- EdUHK reasonably believes that any of the events mentioned in sub-clauses (b) and (c) is about to occur; or
- any other reasons by giving not less than one month’s written notice to the Contractor.

In this connection, EdUHK may appoint another service provider to complete the Contract and all reasonable costs so incurred shall be payable by the Contractor.

19. Special Conditions of Contract Have Precedence:

These General Conditions of Contract shall apply to the extent to which they are not inconsistent with the Special Conditions of Contract (if any). For the avoidance of doubt, Special Conditions of Contract will take precedence and be applied over any General Conditions of Contract which are not consistent with these Special Conditions of Contract.

20. No Assignment:

The Contractor shall not be at liberty to assign the benefit of this contract to any other party without the prior written consent of the EdUHK which shall be entitled at its absolute discretion to refuse consent or grant consent on such terms and conditions as it may impose.

21. Guarantee:

All products supplied are to be guaranteed against faulty workmanship and faulty materials for a period of twelve (12) months from the date of final acceptance of goods. All repairs and replacements within this period shall be carried out free of charge by the Contractor.

22. Indemnity Against Third Parties:

The products supplied should not infringe upon the patent or copyright of any third party. In the case of any claim or action brought against the EdUHK alleging infringement of any patent or copyright in respect of the products supplied, the Contractor shall undertake to defend or settle such claim or action at its own expense and indemnify EdUHK against all such claims against it.

23. Contract:

The offering or giving of any gratuity, bonus, discount, bribe, loan or any other gift or consideration by a Contractor or Tendered as an inducement or reward to any employee or related person of the EdUHK in relation to this or any other EdUHK Contract such as to constitute an offence under Hong Kong law, including the Prevention of Bribery Ordinance Chapter 201, and that if the tendered were found to have made such an offer the EdUHK shall be at liberty to cancel the contract and shall hold the contractor liable for any loss or damages which the EdUHK may thereby sustain.

24. General Indemnity:

The Contractor shall indemnify and keep indemnified EdUHK from any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by EdUHK resulting from a breach of the Contract by the Contractor including:

- any act neglect or default of the Contractor’s employees or agents; and
- breaches in respect of any matter arising from the provision of the goods/services listed in the Schedule resulting in any successful claim by any third party.

25. Warranty:

Each of the parties warrants its power to enter into this Contract and has obtained all necessary approvals to do so.

26. Severance:

If any provision of this Contract is declared by any judicial or other competent authority to be void voidable illegal or otherwise unenforceable the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or at the discretion of EdUHK it may be severed from this agreement or the remaining provisions of this agreement shall remain in full force and effect unless EdUHK in EdUHK’s discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event EdUHK shall be entitled to terminate this agreement by 30 day’s notice to the Contractor.

27. Whole agreement:

Subject to Clause 3(d) hereof, each party acknowledges that this Contract contain the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other or its employees or agents and has made its own independent investigations into all matters relevant to it.

28. Change of address:

Each of the parties shall give notice to the other of the change or acquisition of any address or telephone telex or similar number at the earliest possible opportunity but in any event within [48] hours of such change of acquisition.

29. Notices:

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post to the address of the relevant party or by facsimile transmission or by electronic mail or by telex and shall be deemed to have been received by the addressee within [72] hours of posting or [24] hours if sent by facsimile number or electronic mail number of the addressee (with correct answerback).

30. Headings:

Headings contained herein are for reference purposes only and should not be incorporated into the Terms and Conditions and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

31. Joint and several:

All agreements on the part of either of the parties which comprise more than one person or entity shall be joint and several and the neuter singular gender throughout this agreement shall include all genders and the plural and the successor in title to the parties.

32. Proper law and jurisdiction:

- This agreement shall be governed by Hong Kong law in every particular including formation and interpretation and shall be deemed to have been made in Hong Kong.
- Any proceedings arising out of or in connection with this agreement may be brought in any court of competent jurisdiction in Hong Kong.
- The submission by the parties to such jurisdiction shall not limit the right of EdUHK to commence any proceedings arising out of this agreement in any other jurisdiction it may consider appropriate.
- Any notice of proceedings or other notices in connection with or which would give effect to any such proceedings may without prejudice to any other method of service be served on any party in accordance with Clause 28.
- In the event that the Contractor is resident outside Hong Kong any time limits in any proceedings shall not be extended by virtue only of the foreign residence of the Contractor.

33. Waiver:

The failure by either party to enforce at any times or for any period any one or more of the Terms or Conditions of this Contract shall not be a waiver of them or of the right at any time subsequently to enforce all Terms and Conditions of this Contract.

34. Compliance with Anti-discrimination Ordinances

The Contractor must comply with, and use his/her best endeavours to procure and ensure his/her employees and agents comply with the Equal Opportunities Policy (the Policy) [www.eduhk.hk/fo]. The Contractor must adopt a zero-tolerance policy against the unlawful acts under the four anti-discrimination ordinances* in Hong Kong, take measures and provide training to prevent his/her employees and agents from doing any unlawful act, and promptly conduct investigations/inquiries upon receipt of any discrimination or harassment complaint. The EdUHK may conduct its own investigations and/or inquiries into any discrimination/harassment complaint made against the Contractor, his employees or agents, and the Contractor must provide assistance to the EdUHK if so requested. The Contractor shall indemnify the EdUHK for any loss suffered by EdUHK as a result of any claim arising from the conduct of the Contractor, his/her employees or agents which is in breach of the Policy. If the Contractor is in breach of his/her obligation under this paragraph, the EdUHK shall at liberty to immediately terminate the contract without notice notwithstanding the term in the contract.

* The four anti-discrimination ordinances are the Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487), the Family Status Discrimination Ordinance (Cap.527) and the Race Discrimination Ordinance (Cap.602).

35. Compliance with Personal Data (Privacy) Ordinance

The Contractor must comply with the requirements/guidelines of the Personal Data (Privacy) Ordinance (Cap. 486) and the University’s Information Security and Personal Data Policies for handling of personal data and confidential information from the University.