

## **GENERAL CONDITIONS OF CONTRACT**

### **1. TOTAL QUANTITIES**

- (a) Lions Clubs International Ho Tak Sum Primary School is not obliged to order more than 80% (eighty per cent) of the estimated quantity specified in respect of each item of Goods in the Schedule hereto but may require the Contractor to supply up to 20% (twenty percent) more than the quantity of any item specified in the Schedule. Within such limits, the Contractor shall supply the quantity of Goods requested by Lions Clubs International Ho Tak Sum Primary School Representative in accordance with clause 4 of this Part at the rates specified in the Schedule.
- (b) Where Lions Clubs International Ho Tak Sum Primary School Representative requests the Contractor, in accordance with clause 4 of this Part, to supply quantities of Goods in excess of those specified in the Schedule and within the limits referred to in sub-clause (a) above, the quantities specified in the Schedule shall be deemed to be amended to the extent of such excess and the rates specified shall apply to the amended quantities of Goods.

### **2. ASSIGNMENT**

The Contractor shall not, without the written consent of Lions Clubs International Ho Tak Sum Primary School Representative, assign or otherwise transfer this Contract or any part share or interest therein, and the performance of this Contract by the Contractor shall be deemed to be personal to him.

### **3. GOODS, SPECIFICATIONS AND PROOF NOTES**

- (a) 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. 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 5, Lions Clubs International Ho Tak Sum Primary School Representative may by notice in writing at any time and from time to time (i) reject all or part of the Goods delivered hereunder, or (ii) require the Contractor to repair or replace all or part of the Goods delivered hereunder or (iii) terminate the Contract forthwith.
- (b) Any drawings and information reasonably required for the Contractor'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.
- (c) The Contractor, if required, shall furnish Lions Clubs International Ho Tak Sum Primary School Representative with a proof note or a certificate showing that the Goods have been subjected to the normal tests for such goods or such tests as Lions Clubs International Ho Tak Sum Primary School Representative may reasonably require.

### **4. DELIVERY**

- (a) The Contractor shall, on receipt of a written order signed by Lions Clubs International Ho Tak Sum Primary School Representative or any person duly authorized by him, supply and deliver the Goods in accordance with the delivery conditions specified in the Contract and to the destination named in such order, the quantities of Goods therein specified within the time or times specified in such order, or if no time is specified, then within 14 clear working days from the date of such order and for this purpose, time shall be deemed to be the essence of the Contract. Each delivery shall be accompanied by a copy of the order, and the Contractor shall ensure that he obtains a receipt from the Receiving Officer, but such receipts shall not constitute an acknowledgement that the Goods therein mentioned

are acceptable or satisfactory.

(b) The Contractor shall at his own expense deliver the Goods to the destination specified in the order.

#### 5. INSPECTION AND ACCEPTANCE

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

- (a) Lions Clubs International Ho Tak Sum Primary School Representative, or the Receiving Officer furnishes the Contractor with the acceptance note: or
- (b) a period of 30 clear working days has expired from the date of delivery and Goods have not been rejected; whichever date is the earlier.

#### 6. REJECTIONS

- (a) If Lions Clubs International Ho Tak Sum Primary School rejects any Goods in accordance with clause 3(a), the Contractor shall remove the same at his own expenses and within 48 hours of being notified in writing by Lions Clubs International Ho Tak Sum Primary School Representative of the rejection. If the Contractor fails to remove the Goods within such period, Lions Clubs International Ho Tak Sum Primary School Representative may dispose of the Goods as he sees fit. No liability shall attach to Lions Clubs International Ho Tak Sum Primary School in respect of such disposal.
- (b) If required by Lions Clubs International Ho Tak Sum Primary School Representative under clause 3(a)(ii), the Contractor 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 Contractor must advise Lions Clubs International Ho Tak Sum Primary School of the delivery date of such replacement goods and such date must be to the satisfaction of Lions Clubs International Ho Tak Sum Primary School Representative.
- (c) In the event that the Contractor offers for delivery any goods which have previously been rejected by the Receiving Officer or Lions Clubs International Ho Tak Sum Primary School Representative the latter shall immediately thereupon be at liberty to terminate this Contract in the manner provided in clause 9.

#### 7. EMPTIES

If the Contractor in his quotation has requested the return of empties to him, he shall be obliged to collect the same at his own expenses upon the expiration of 28 clear working days from the date of delivery of the Goods herein or any later date which may be determined by Lions Clubs International Ho Tak Sum Primary School and Lions Clubs International Ho Tak Sum Primary School shall not incur any liability in respect of any loss of or damage to such empties whilst under their control.

#### 8. DEFAULT

If the Contractor fails to deliver all or any of the Goods ordered within the time specified in the order or as otherwise provided in clause 4 of this Part, or the Goods are rejected in accordance with clause 3(a), or the replacement Goods are not delivered within the period mentioned in clause 6(b), Lions Clubs International Ho Tak Sum Primary School Representative shall immediately thereupon be at liberty to terminate this Contract by notice in writing under his hand addressed to the Contractor, but without prejudice to any claims by Lions Clubs International Ho Tak Sum Primary School Representative for breach of Contract and, in particular, his right to procure any Goods then outstanding from any other source, and the Contractor shall be liable for any sums so incurred in excess of the contract price.

## 9. RECOVERY OF SUMS DUE

Whenever under this Contract any sum of money shall be recoverable by Lions Clubs International Ho Tak Sum Primary School from or payable to Lions Clubs International Ho Tak Sum Primary School 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 this or any other Lions Clubs International Ho Tak Sum Primary School contract.

## 10. LIABILITY AND INDEMNITIES

- (a) Lions Clubs International Ho Tak Sum Primary School 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 Lions Clubs International Ho Tak Sum Primary School 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 Lions Clubs International Ho Tak Sum Primary School or any of its employees or agents.
- (b) The Contractor shall indemnify Lions Clubs International Ho Tak Sum Primary School and its employees or agents against any claim or demand made against or liability incurred (including all costs, charges or expenses whatsoever) by Lions Clubs International Ho Tak Sum Primary School 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 Lions Clubs International Ho Tak Sum Primary School or any of its employees or agents).
  - (ii) any loss or damage sustained by or any injury to or death of any third party in consequence of any Negligence of the Contractor or any of its employees or agents.
- (c) In the event of any of the Contractor's employees or agents suffering any injury or death in the course of or arising out of this 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 Lions Clubs International Ho Tak Sum Primary School Representative.
- (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.

## 11. BANKRUPTCY

Lions Clubs International Ho Tak Sum Primary School Representative may at any time by notice in writing terminate this Contract without entitling the Contractor to any compensation in any of the following events;

- (a) If the Contractor shall at any time be adjudged bankrupt, or shall have a receiving order or order for administration of this estate made against him, or make any conveyance or assignment of his effects or composition or arrangement for the benefit of his creditors or purports so to do; or
- (b) If the Contractor, being a company shall pass a resolution or the Court shall make an order for the liquidation of its assets or a receiver or manager shall be appointed on behalf of the debenture holders, or circumstances shall have arisen which entitle the Court or debenture holders to appoint a receiver or manager. Provided always that such determination shall not prejudice or affect any right or action

or remedy which shall have accrued or shall accrue thereafter to Lions Clubs International Ho Tak Sum Primary School.

## 12. CORRUPT GIFTS

- (a) If the Contractor or any employee or agent of the Contractor shall be found to have committed an offence under the Prevention of Bribery Ordinance for the time being in force or any subsidiary legislation made there under or under any law of a similar nature in relation to this Contract or any other Lions Clubs International Ho Tak Sum Primary School contract, Lions Clubs International Ho Tak Sum Primary School Representative may, on behalf of Lions Clubs International Ho Tak Sum Primary School, terminate this Contract, without entitling the Contractor to any compensation there for.
- (b) The Contractor shall be liable for all losses and expenses necessarily incurred by the Government as a result of such termination of this Contract.

## 13. GUARANTEE

- (a) Without prejudice to the generality of clause 3(a) hereof, the Contractor will guarantee the quality of the Goods, and any part or portion thereof, for a period of 12 months from the date of acceptance thereof.
- (b) Notwithstanding clause 5 of this Part, the Contractor shall make good as soon as possible, all defects in the Goods arising from defective design, materials, workmanship or any other cause discovered within the said period referred to in sub-clause (a) above.
- (c) In the event of any defect in the Goods being discovered, Lions Clubs International Ho Tak Sum Primary School Representative shall inform the Contractor in writing of the nature of the defect, and if Lions Clubs International Ho Tak Sum Primary School Representative does not reject the Goods, the Contractor will repair the defective Goods to the satisfaction of Lions Clubs International Ho Tak Sum Primary School Representative, free of all costs to Lions Clubs International Ho Tak Sum Primary School.
- (d) In the event that the Contractor is required to replace any defective Goods but he does not at the same time call for the return of the defective Goods, no responsibility for the defective Goods shall rest upon Lions Clubs International Ho Tak Sum Primary School, and Lions Clubs International Ho Tak Sum Primary School may dispose of them after a reasonable time in whatever manner as it sees fit.
- (e) If any defects are not made good within a reasonable time, Lions Clubs International Ho Tak Sum Primary School may, after serving notice of intent on the Contractor, proceed to rectify the defects by repair or replacement at the Contractor's risk and expense without prejudice to any other rights which Lions Clubs International Ho Tak Sum Primary School may have against the Contractor.
- (f) The Contractor shall remain liable to Lions Clubs International Ho Tak Sum Primary School under the terms of this clause whether or not the Goods, or any part thereof, were manufactured by him, and the Contractor shall ensure that the supplier of any Goods not manufactured by him shall be under the same liability to the Contractor as the liability undertaken by the Contractor to Lions Clubs International Ho Tak Sum Primary School pursuant to this clause.

## 14. INTELLECTUAL PROPERTY RIGHTS

- (a) The Contractor hereby warrants that the Goods supplied under this Contract and the process for their

manufacture do not infringe the Intellectual Property Rights of any third party.

- (b) The Contractor hereby undertakes to inform Lions Clubs International Ho Tak Sum Primary School immediately if any claim for infringement or alleged infringement of Intellectual Property Rights is lodged against them during the currency of this Contract in respect of the Goods supplied under this Contract.
- (c) The Contractor shall indemnify Lions Clubs International Ho Tak Sum Primary School and keep Lions Clubs International Ho Tak Sum Primary School 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 Goods or any part thereof by Lions Clubs International Ho Tak Sum Primary School.
- (d) In the event of a claim being received by Lions Clubs International Ho Tak Sum Primary School alleging or Lions Clubs International Ho Tak Sum Primary School having grounds to believe that the Goods supplied hereunder are infringing copies or have otherwise infringed the Intellectual Property Rights of a third party, Lions Clubs International Ho Tak Sum Primary School Representative may, at its election, either
  - (i) forthwith terminate this Contract in respect of the Goods not yet received by Lions Clubs International Ho Tak Sum Primary School; or
  - (ii) suspend the performance of this Contract until the claim in question is resolved to the satisfaction of Lions Clubs International Ho Tak Sum Primary School provided that election to suspend performance under this clause shall not preclude Lions Clubs International Ho Tak Sum Primary School from terminating this Contract any time after such election.
- (e) Lions Clubs International Ho Tak Sum Primary School 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 Goods are later found by a court of law to have infringed any person's Intellectual Property Rights or not.
- (f) The rights of Lions Clubs International Ho Tak Sum Primary School under Clause 15 (d) and (e) shall be without prejudice to the provisions of clauses 15 (a) to (c) above.