

## **Terms and Conditions of Purchase Order**

### **1 Definition:**

“Company” means The Hong Kong and China Gas Company Limited.

“Supplier” means the person, firm, company, vendor, dealer, supplier or contractor to whom the Purchase Order is issued.

“Goods” means the goods, products and systems ordered by the Company from the Supplier as described in the Purchase Order.

“Services” means the services ordered by the Company from the Supplier as described in the Purchase Order.

“Purchase Order” means the Company's order for the supply of Goods and/or Services, as set out in the Company's purchase order form, or the Company's written acceptance of the Supplier's quotation, or attached to these terms and conditions, as the case may be.

“Agreement” means the terms of the Prior Contract (if any), the Purchase Order and these terms and conditions.

“Prior Contract” means a separate agreement in writing and signed by the authorized representatives of the Company and the Supplier entered into prior to issue of the Purchase Order and concerning the subject matter of the Purchase Order.

### **2 Acceptance :**

The Purchase Order is an offer by the Company to the Supplier and the delivery of Goods and/or the supply of the Services by the Supplier to the Company shall be deemed an effective acceptance of the Purchase Order and these terms and conditions (if no earlier acceptance is made by the Supplier). Any acceptance of the Purchase Order is limited to acceptance of the express terms contained in the Purchase Order and these terms and conditions, save where the parties have entered into a Prior Contract (in which case the terms of the Prior Contract shall also apply). In the event of a conflict or inconsistency between any terms and conditions, the following order of precedence shall apply: (i) Prior Contract (if any); (ii) Purchase Order; and (iii) these terms and conditions. Any proposal to insert additional or different terms or any attempt to vary any of the terms contained in the Purchase Order or these terms and conditions by the Supplier's acceptance (including, without limitation, any counter-offer made by the Supplier by way of its acknowledgement of a Purchase Order, its invoice or a delivery note) is hereby rejected. No revision of the Purchase Order or any of these terms and conditions shall be valid unless made in writing and signed by an authorized representative of the Company.

**3 Payment :**

The price stated on the face of the Purchase Order shall be payable by the Company to the Supplier according to the payment terms stated in the Purchase Order, subject to the delivery of Goods and/or completion of the Services by the Supplier to the satisfaction of the Company.

**4 Delivery of Goods**

Time is of the essence of this Agreement, and if delivery of the Goods is not completed by the time promised, the Company reserves the right, without liability on the Company's part and without prejudice to the Company's other rights and remedies, to refuse delivery of any Goods and/or terminate this Agreement by giving 3 days notice in writing and/or, as to any Goods not yet delivered, to purchase substitute items elsewhere and charge the Supplier for the additional cost of such substitute items.

**5 Title to and risk of the Goods :**

The Supplier warrants that it has full clear and unencumbered title to all Goods, and that at the date of delivery of the Goods to the Company, it will have full and unrestricted rights to sell and transfer all such Goods to the Company. The Supplier shall be responsible for and shall bear any and all risk of loss or damage to the Goods until actual delivery to and acceptance of the Goods by the Company. Upon such delivery and acceptance, title to the Goods and risk of loss or damage to the Goods shall pass to the Company, provided, however, that the Supplier shall bear any loss or damage, whenever occurring, which results, directly or indirectly, from inadequate packaging or inferior quality of the Goods.

**6 Inspection/Testing :**

Payment for the Goods delivered under this Agreement shall not constitute acceptance thereof. The Company shall have the right to inspect such Goods and to reject any or all of said Goods which are in the Company's judgement defective or nonconforming. Goods rejected and Goods supplied in excess of quantity called for in the Purchase Order may be returned to the Supplier at the Supplier's expense and, without prejudice to the Company's other rights and remedies, the Company may charge the Supplier all expenses of unpacking, examining, repacking and transporting such Goods. In the event that the Company receives Goods whose defects or nonconformity are not apparent on initial examination, the Company reserves the right to require replacement of such Goods, as well as payment of damages. Nothing contained in the Purchase Order shall relieve in any way the Supplier from the obligations of testing, inspecting and quality control.

**7 Supply of Services :**

In respect of the supply of the Services under the Purchase Order, the Supplier warrants and undertakes to the Company that :

- (a) the Supplier shall have the necessary skill and expertise to provide the Services on the terms set out in this Agreement;
- (b) the Services shall be provided in a timely and professional manner and in accordance with the time schedules stipulated by the Company, shall conform to the standards generally observed in the industry for similar services and shall be provided with all reasonable skill and care.

**8 Insurance :**

In the event that the Supplier's performance under this Agreement requires or contemplates performance of services by the Supplier's employees, agents or sub-contractors, to be done on the Company's property or the property of the Company's customers, the Supplier agrees that all such work shall be done for the Company as an independent contractor and that the persons doing such work shall not be considered employees of the Company. The Supplier shall maintain all necessary (and adequate) liability insurance coverages, including (without limitation) public liability and employees' compensation insurance. The Supplier shall indemnify, hold harmless and defend the Company at all times from any and all losses, damages, costs, actions, demands, claims or liabilities and expenses (including legal fees) incurred or suffered by the Company, arising out of a breach by the Supplier of its obligations covered by this paragraph.

**9 Warranties:**

- 9.1 The Supplier expressly warrants that all Goods furnished under this Agreement shall conform to all specifications and appropriate standards, shall be new, and shall be free from defects in material or workmanship. The Supplier warrants that all such Goods shall comply in all respects with the specifications set out in the Purchase Order and also conform to any statements made on the containers or labels or advertisement for such Goods, and that such Goods shall be adequately contained, packaged, marked and labelled. The Supplier warrants that all Goods furnished under this Agreement shall be in merchantable condition, and shall be safe and appropriate for the purpose for which Goods of that kind are normally used.
- 9.2 If the Supplier knows or has reason to know the particular purpose for which the Company intends to use the Goods, the Supplier warrants that such Goods shall be fit for such particular purpose. The Supplier warrants that Goods furnished under this Agreement shall conform in all respects to samples.

- 9.3 Inspection, test, acceptance or use of the Goods furnished under this Agreement shall not affect the Supplier's warranties under this Agreement, and such warranties shall survive inspection, test, acceptance and use.
- 9.4 The Supplier's warranties shall run to the Company, its successors, assigns and customers.
- 9.5 The Supplier agrees to replace or correct defects of any Goods or Services not conforming to any of the warranties contained in this Agreement promptly, without expense to the Company, when notified of such nonconformity by the Company.
- 9.6 In the event of failure by the Supplier to replace or correct defects in nonconforming Goods or Services promptly, the Company may, after giving reasonable notice to the Supplier, make such corrections or replacements as the Company sees fit and charge the Supplier for the costs incurred by the Company in doing so.
- 9.7 The Supplier warrants to the Company that the Supplier and its employees, agents, subcontractors, representatives and advisers who provide any of the Services are lawfully able to provide such services, whether on-site or not, to the Company and/or its affiliates in Hong Kong. The Supplier shall obtain and maintain (and shall procure that such employees, agents, subcontractors, representatives and advisers obtain and maintain) all necessary permit(s) and relevant regulatory approval(s) to provide the Services. In no event shall the Company assume any duty or responsibility for obtaining any permit(s) or approval(s) for facilitating the provision of the Services by Supplier or the Supplier's employees, agents, subcontractors, representatives or advisers.
- 9.8 Should the Supplier need to employ or engage non-local staff or persons to work in Hong Kong in order to provide the Services, this Agreement is conditional upon the Supplier and such staff or persons having the necessary permit(s) and relevant regulatory approval(s) to work and provide the Services in Hong Kong.

## **10 Termination:**

- 10.1 The Company reserves the right to terminate on the giving of 3 days' written notice this Agreement (whether in whole or part) at any time in its sole discretion. In the event of such termination, the Supplier shall immediately stop all work in relation to the performance of its obligations under this Agreement and the Supplier shall have no claim against the Company for costs, damages, compensation or otherwise under this Agreement.
- 10.2 The Company may also terminate the Purchase Order and/or any part of this Agreement for cause in the event of any default by the Supplier or if the Supplier fails to comply with any of the terms and conditions of this Agreement. Late deliveries, deliveries of Goods or the supply of Services which are defective or which do not conform to the Purchase Order shall be causes allowing the Company to terminate this Agreement for cause. In the event of termination for cause, the Company shall not be liable to the Supplier for any amount, and the Supplier shall be liable to the Company for any and all damages sustained by reason of the default which gave rise to the

termination.

**11 Indemnities:**

- 11.1 The Supplier shall defend, indemnify and hold harmless the Company against any and all losses, damages, costs, actions, demands, claims or liabilities and expenses (including legal fees) on a full indemnity basis incurred or suffered by the Company arising out of or resulting in any way from any defect in the Goods or Services supplied under this Agreement, from any act or omission of the Supplier, its agents, employees or subcontractors. This indemnity shall be in addition to the warranty obligations of the Supplier under this Agreement.
- 11.2 The Supplier agrees that upon receipt of notification and at its expense, the Supplier shall defend or settle any claim, suit or proceeding against the Company, its agents or customers on the issue of infringement of any patent, copyright, trademark, trade secret or other proprietary right of any third party arising out of or resulting in any way from the supply of Goods and/or Services under this Agreement. The Supplier shall indemnify and hold the Company, its agents and customers harmless against any and all losses, costs, damages, actions, demands, claims, liabilities, expenses (including legal fees and costs), royalties and license fees on a full indemnity basis and allocated cost of the Company's in-house counsel attributable to such claim, suit or proceeding, including any settlement. The Company shall give the Supplier prompt notice of, and the parties shall cooperate in, the defence of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that the Company shall approve the terms of any settlement or compromise.

**12 Limitation On Liability:**

To the extent permitted by law, (a) in no event shall the Company be liable for anticipated profits or for incidental or consequential damages, (b) the Company's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Agreement or from the performance or breach thereof shall in no case exceed the price allocable to the Goods or Services or unit thereof which gives rise to the claim and (c) the Company shall not be liable for penalties of any description. For the avoidance of doubt, the limitation of liability under this paragraph shall not apply in the event of death or personal injury caused by the Company's negligence.

**13 Confidentiality and Intellectual Property:**

- 13.1 The parties acknowledge that all information (including the terms and conditions of this Agreement) of a material nature disclosed by either party to the other for the purpose of work pursuant to the terms of this Agreement, or which comes to the attention of either party or its employees, officers, agents or advisors (the “Representatives”) during the course of such work, shall be “Confidential Information”. Confidential information constitutes a valuable asset of and is proprietary to the party disclosing or originally possessing it. The Supplier shall, and shall procure that its Representatives shall, take all reasonable steps to protect the Company's Confidential Information. This paragraph shall in no way limit either party's ability to make disclosure of its relationship with the other party if such disclosure is required by law. The Supplier shall not use the Company's name, trade marks or service marks or refer to the Company directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purposes without the Company's prior written approval.
- 13.2 To the extent that the supply of Services under this Agreement creates any intellectual property rights (including without limitation patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, goodwill and rights in designs), whether registered or unregistered, in any part of the world, such rights shall belong to the Company and insofar as they do not vest automatically by operation of law or under this Agreement, the Supplier holds legal title in these rights on trust for the Company and the Supplier undertakes to execute all documents, give all assistance and do all acts and things, as may be necessary to vest such rights to the Company.

**14 Governing Law and Jurisdiction:**

This Agreement shall be governed and interpreted by the laws of Hong Kong Special Administrative Region and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the courts of Hong Kong Special Administrative Region.

**15 Arbitration:**

Any dispute, controversy, difference or claim arising out of or relating to this Agreement, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre (HKIAC) under the UNCITRAL Arbitration Rules in force when the Notice of Arbitration is submitted, as modified by the HKIAC Procedures for the Administration of International Arbitration. The law of this arbitration clause shall be Hong Kong law. The place of arbitration shall be Hong Kong. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English.

**16 Miscellaneous:**

- 16.1 No failure or delay by the Company in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any right, power or remedy. If any provision of the Agreement is held invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall in no way be affected or impaired thereby. The remedies under the Agreement shall be cumulative and not exclusive, and the election of one remedy shall not preclude pursuit of other remedies
- 16.2 The Supplier shall comply with all laws, ordinances, rules and regulations (including without limitation those relating to employment, employee's compensation, immigration, mandatory provident fund, minimum wages, equal opportunities, personal data privacy protection, health and safety, environmental protection) and stipulations of governmental and other agencies having jurisdiction and bearing on the Goods or Services to be provided to the Company. The Supplier agrees to indemnify and to hold the Company harmless from any and all losses, damages, costs, actions, demands, claims or liabilities and expenses (including legal fees and costs) incurred or suffered by the Company arising out of or resulting from the Supplier's violation of or failure to comply with any such laws, ordinances, rules, regulations and stipulations. Any penalties or other liabilities arising from such violation or failure shall be solely for the Supplier's account.

**17 Probity Clause:**

- 17.1 The Supplier shall ensure that any person employed or engaged by the Supplier is aware of, and shall comply with, the provisions of the Prevention of Bribery Ordinance (Cap. 201) and that it is an offence under the Hong Kong Ordinance for any employee or agent of the Supplier to solicit or accept an advantage in connection with his duties or in connection with the provision of services on the Supplier's behalf.
- 17.2 If the Supplier or any of its agents or employees or subcontractors shall be found to have offered or given any advantage, gratuity, bonus, discount, bribe or loan of any sort to any agent or employee of the Company, the Company shall be at liberty to terminate this Agreement and to hold the Supplier liable for any loss or damage which the Company may sustain.

**18 Notice**

Any notice given under or in connection with clause 14 (Governing Law and Jurisdiction) and/or clause 15 (Arbitration) of this Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to, as may be relevant, the Company at its registered office or the Supplier at its registered office or place of business as last known by the Company.

**19 Language**

In the event of any inconsistency between the English version and Chinese version of these terms and conditions, the English version shall prevail.