

NECHK Standard Terms and Conditions for Order**1. Introduction**

1.1 NECHK shall not be bound by the Order (the "Order") unless and until Contractor accepts the Order. Contractor accepts the Order and forms a contract by (a) commencing any work under the Order; (b) accepting the Order in writing; or (c) failing to provide written rejection of the Order within 48 hours of receipt; or (d) any other conduct that recognizes the existence of a contract with respect to the subject matter of the Order. Unless stated the otherwise, by accepting the Order, Contractor shall be deemed conclusively to have agreed to these terms and conditions. Any terms or conditions on the Contractor's sales contract or quotation that are inconsistent with or in addition to these terms and conditions shall not be binding on NECHK, and shall not be applicable. Any reference to Contractor's quotation, bid, or proposal does not imply acceptance of any term, condition, or instruction contained in that document.

2. Agreement

2.1 Contractor agrees to provide the Goods and/or Services described in the Order for the price set forth therein, and upon the terms and conditions set forth herein.

3. Prices

3.1 The prices specified in the Order are deemed to include all applicable taxes and tariffs and all necessary labor, transportation, loading, unloading, devanning, handling and packaging charges of the Goods and/or Services.

4. Delivery of Goods

4.1 Time is the essence of the Order. Contractor shall deliver the Goods in accordance with the delivery schedule specified in the Order, or if no such delivery schedule is specified, in accordance with the instructions provided by NECHK from time to time. Any delay in the delivery of Goods shall entitle NECHK to claim liquidated damages from Contractor for compensation of any loss or damages sustained by NECHK resulting from such delay.

4.2 All partial deliveries are considered as temporary receipts only, and all the related payments made to Contractor are considered as refundable advances.

4.3 NECHK shall have the option to treat the Order as a single order. Contractor's failure or delay to deliver any item shall entitle NECHK to cancel that item or the whole order and to claim the losses and damages from Contractor.

5. Performance of Services

5.1 Contractor shall perform the Services in the manner set out in the specifications or where the manner is not so set out, to the reasonable satisfaction of NECHK. It is a fundamental term of the Order that Contractor performs the Services in a prompt and professional manner at all times to the satisfaction of NECHK and in accordance with the delivery schedule specified in the Order or the instruction provided by NECHK from time to time. If the Services are not performed satisfactorily by the date or time as per agreed, NECHK is entitled to employ another contractor to carry out such Services.

5.2 NECHK may deduct the expenditure of another contractor employed pursuant to Clause 5.1, together with an extra twenty percent (20%) of such expenditure as administration fee, from any monies due to Contractor

under the Order or NECHK may recover them from Contractor as debt.

5.3 NECHK is entitled to claim liquidated damages from Contractor for compensation of any loss or damages sustained by NECHK resulting from Contractor's delay.

6. Delivery Notes and Invoices

6.1 Delivery Notes and Invoices quoting the Order Number in respect of completion of each delivery or job must be sent to "NEC Hong Kong Limited" directly.

7. Acceptance

7.1 All Goods and Services shall be subject to inspection and shall not be deemed to have been accepted unless and until NECHK furnished Contractor with a formal acceptance notice. The signing of any Delivery Note is not deemed to be acceptance.

8. Warranty

8.1 Contractor warrants that all Goods and Services provided shall be free from defects in materials and workmanship for the warranty period specified in the Order, or if no such warranty period is specified for a period of one (1) year, after acceptance by NECHK. Contractor shall replace, repair and rectify any defective Goods and Services and make good all defects in the Goods and Services swiftly and to bear all costs including labor and transport charges for such replacement, repair and rectification during the warranty period.

9. Intellectual Property Rights

9.1 Contractor warrants that all Goods and Services provided under this Order shall not infringe any Intellectual Property Rights of any party. "Intellectual Property Rights" means patents, trademarks, service marks, trade names, design rights, copyrights, designs or processes and other intellectual property rights whether now known or created in future and in each case whether registered or unregistered and including applications for the grant of any such rights.

9.2 In the event that any third party Intellectual Property Rights are used, Subcontractor warrants that it has obtained for itself and for NECHK all necessary consents, approvals and licenses for use, sale or other enjoyment of the same in the Goods and/or Services under this Order.

10. Contractor's Personnel

10.1 Contractor shall ensure that all personnel are qualified, skilled and well-equipped in order to provide the Goods and Services properly and efficiently at all times and that no illegal immigrants are employed to carry out any of the Services. NECHK reserves the right to request Contractor to replace any unqualified personnel with one considered competent for the performance of Services from time to time.

11. Rules, Regulations and Procedures

11.1 Contractor shall at all times during the performance of its obligations under the Order comply with any and all applicable laws, regulations, and orders of governmental authorities and agencies having competent jurisdiction. Contractor shall observe all rules, regulations and procedures issued by NECHK from time to time, including without limitation all safety and security procedures.

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- 11.2 Contractor shall obtain all requisite access passes or permits from NECHK and shall co-operate with NECHK in providing information required for the issuance of such passes or permits to Contractor's personnel. Any pass or permit so issued may be cancelled by NECHK at any time.
- 12. Independent Contractor**
- 12.1 For the avoidance of doubt, Contractor is only appointed by NECHK as an independent contractor, and under no circumstances may Contractor represent to others that it is acting as NECHK's employee or agent. Contractor shall have no right or authority to create or assume any obligation or responsibility of any kind, express or implied, in the name of or on behalf of NECHK or to bind NECHK in any way or for any purpose whatsoever.
- 13. Assignment, Transfer and Subcontract**
- 13.1 Contractor shall not assign, transfer, subcontract, or otherwise dispose of its rights, obligations or liabilities under the Order without the prior written consent of NECHK.
- 14. Termination of Order**
- 14.1 If Contractor shall make default in or commit any breach of its obligations hereunder or if Contractor shall go into liquidation, NECHK shall be entitled to terminate the Order or to suspend Contractor's delivery or performance forthwith without prejudice to any other claim or right NECHK may make or exercise.
- 15. Non-waiver of Default**
- 15.1 Each delivery or job made under any Order shall be treated as a separate transaction, but in the event of any default by Contractor, NECHK may decline to take delivery or further deliveries or jobs without in any way affecting its rights under such Order. If, despite any default by Contractor, NECHK elects to continue to take deliveries or jobs, NECHK's action shall not constitute a waiver of any default by Contractor in any way affect NECHK's legal remedies for any such default.
- 16. Liability**
- 16.1 Contractor shall be liable for and shall indemnify NECHK against all or any actions, loss, suits, claims, demands, proceedings, costs, charges or expenses whatsoever including any damage to any persons or property or the death of or injury to any individual, arising directly or indirectly from any negligence or failure to comply with its obligations under the Order on the part of Contractor or its personnel, or in any way attributed to the delivery of Goods or performance of Services by Contractor or its personnel aforesaid.
- 16.2 NECHK shall at all times be entitled to set-off any sums owing to NECHK by Contractor, including without limitation, any damages, costs, charges or expenses incurred by NECHK as a result of Contractor's act or omission, negligence or breach of any of its obligation hereunder against all or any monies owing to Contractor by NECHK in any capacity whatsoever.
- 16.3 NECHK shall further have the right to withhold payment of such sum of money payable to Contractor as NECHK in its absolute discretion thinks necessary if Contractor's act or omission, negligence or breach of any of its obligations hereunder gives rise or is likely to give rise to any claim against NECHK.
- 16.4 Unless stated the otherwise, NECHK shall not be responsible for any risk, loss or damage caused by events beyond NECHK's control, including but not limited to the Goods and Services which are in the course of provision to NECHK, whether by land, sea or air.
- 17. Insurance**
- 17.1 NECHK shall not be obliged to take out any insurance in respect of the Goods and Services to be provided by Contractor, nor is it responsible for taking out any insurance regarding Contractor's personnel. Contractor shall take out and maintain adequate insurance with a reputable insurance company or companies accepted to NECHK against all liabilities and to cover any compensation it may be liable to pay to its personnel in accordance with the Employees Compensation Ordinance for the personnel who are assigned to provide the Goods and Services at the designated site as a result of Contractor's provision of the Goods and Services under the Order. Contractor shall procure NECHK and NECHK's personnel be included as one of the insured under any such insurance cover and shall produce a copy of such insurance policy or policies to NECHK upon demand together with copies of the relevant insurance premium receipts.
- 18. Confidentiality**
- 18.1 Contractor shall not disclose or make available in any form to any third party or to use any confidential or propriety information or trade secrets and/or materials acquired by it in connection with or in the course of its performance of the Order. This clause shall survive and continue to bind Contractor notwithstanding completion or termination of the Order.
- 19. Governing Law**
- 19.1 The validity, performance and construction of these terms and conditions shall be governed by and construed in accordance with the Laws of Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong") and the parties hereby irrevocably submit to the exclusive jurisdiction of the Hong Kong courts. The parties agree the provisions of the United Nations Convention on Contracts International Sale of Goods (and any amendments or successors thereto), and any conflict of laws provisions that would require application of another choice of law, are expressly excluded.
- 20. Right of Third Parties**
- 20.1 Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement pursuant to the Contracts (Rights of Third Parties) Ordinance (Cap. 623).