

HARGREAVES INDUSTRIAL SERVICES (HK) LIMITED/ACCESS SERVICES (HK) LIMITED CONDITIONS OF CONTRACT FOR CONTRACTORS

1.1 In these Conditions, the following expressions shall have the following meanings:

"**Conditions**" means these terms and conditions of contract for the supply of works and services by the Contractor;

"**Confidential Information**" means any and all information provided by either party under the Contract that is either: (a) marked as being confidential; and/or (b) any and all information or data disclosed (whether in writing, orally or in any other form, digital or otherwise) and whether directly or indirectly disclosed by one party to the other party, that is of a type that may reasonably be considered confidential, including without limitation, the terms and conditions of the Contract, any Specification, drawings, samples or other documents provided by one party in respect of the Works and the existence of the relationship between HIS and the Contractor;

"**Contract**" means the contract between HIS and the Contractor for the execution of the Works, comprising:

- (i) these Conditions, together with any documents referred to herein; and
- (ii) the Contractor Works Order and any special conditions, Specification or other documents referred to therein.

"**Contractor**" means the person, firm or company supplying the Works;

"**Contract Price**" means the sum stated in the Contractor Works Order as being payable by HIS to the Contractor as the consideration of the execution of the Works in accordance with the Conditions;

"**Contractor Works Order**" means the order for the Works, to be provided by HIS to the Contractor;

"**Customer**" means the person, firm or company for whom HIS has entered into a contract with for the supply of the Works;

"**HIS**" means either Hargreaves Industrial Services (HK) Limited (CR No: 1611135) which has its registered office at 36/F., Tower Two, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong or Access Services (HK) Limited (CR No: 2579141) which has its registered office at Room 1117, 11th Floor, Tuen Mun Central Square, No. 22 Ho Wing Road, Tuen Mun, New Territories, Hong Kong, as is more particularly detailed in the Contractor Works Order;

"**Hong Kong**" or "**HK**" means the Hong Kong Special Administrative Region of the People's Republic of China;

"**Intellectual Property Rights**" means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future;

"**Loss**" means any and all loss, damage, costs and expenses (including legal expenses and disbursements) arising from any and all liabilities, obligations, awards, actions, claims, demands and/or proceedings whatsoever and howsoever caused or arising and whether or not such losses were reasonably foreseeable at the time the Contract was made;

"**Machinery**" means any plant and/or machinery belonging to the Contractor and/or any third party under the Contract;

"**Maintenance Period**" means the period (if any) specified in the Contractor Works Order during which the Contractor is to provide the Maintenance Services in respect of the Works Deliverables and/or any plant and/or equipment provided by the Contractor as part of the Works;

"**Maintenance Services**" means the support and maintenance services to be provided by the Contractor during the Maintenance Period in respect of the Works Deliverables and/or any plant and/or equipment provided by the Contractor as part of the Works, as specified in the Contractor Works Order;

"**Project Manager**" means the manager appointed by HIS to oversee the Works;

"**Site**" means the location where the Works are to be executed by the Contractor;

"**Specification**" means any specification set out in the Contractor Works Order;

"**Working Day**" means any day other than a Saturday, Sunday or public holiday in Hong Kong when licensed banks in Hong Kong are open for normal banking business;

"**Works**" means the engineering and/or construction works or services, and/ or general supply of labour and/or supply of Machinery to be performed and/ or provided by the Contractor (including without limitation, the delivery of the Works Deliverables and the provision of the Maintenance Services) in accordance with the terms of the Contract, as more particularly set out in the Contractor Works Order;

"**Works Deliverables**" means all the plant, equipment, materials, structures, buildings, erections and/or any other deliverables to be provided by the Contractor in the course of executing the Works, as more particularly set out in the Contractor Works Order; and

1.2 In these Conditions:

1.2.1 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment thereof;

1.2.2 the singular includes the plural and vice versa;

1.2.3 headings are for ease of reference only and shall not affect the interpretation or construction of these Conditions; and

1.2.4 any list of examples following the word including shall be interpreted without limitation to the generality of the preceding words.

1.3 The Conditions shall apply to all Contractor Works Orders made by HIS for the Works and are the only Conditions upon which HIS is prepared to deal with the Contractor. No terms or conditions endorsed upon, delivered with or contained in any documents submitted by the Contractor to HIS shall form part of the Contract and the Contractor waives any right which it otherwise might have to rely on such terms and conditions.

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1.4 If there is any conflict between the provisions of, or documents forming, the Contract, the following order of prevalence shall apply (unless expressly stated otherwise in the Contractor Works Order):

- 1.4.1 firstly, the Contractor Works Order;
- 1.4.2 secondly, these Conditions; and
- 1.4.3 finally, any other documents referred to in the Contractor Works Order.

2 EXECUTION OF THE WORKS

- 2.1 The Contractor shall carry out and complete the execution of the Works in accordance with the Contract.
- 2.2 The Contractor shall undertake the Works with proper skill and care and in accordance with any agreed standards of performance and requirements set out in the Contractor Works Order and shall comply with all applicable laws.
- 2.3 The Contractor shall meet the performance dates specified in the Contractor Works Order and the time for performance by the Contractor shall be of the essence of this Contract.
- 2.4 The Contractor warrants to HIS in respect of the Works Deliverables provided by the Contractor that such deliverables shall be free of defects and shall comply with any agreed Specification for a period of twelve (12) months from the date of completion of the Works unless otherwise specified in the Contractor Works Order.
- 2.5 In respect of Works Deliverables provided by the Contractor or other third parties, the Contractor shall use reasonable endeavours to procure that HIS and the Customer shall obtain the benefit of any third party warranty given to the Contractor.
- 2.6 The Contractor warrants and represents to HIS that:
 - 2.6.1 it shall comply with all health and safety and security requirements that apply at the Site;
 - 2.6.2 it has, or will obtain prior to the commencement of the Works, all necessary licences, consents and permissions required for the execution of the Works;
 - 2.6.3 its employees have, or will comply prior to the commencement of the Works, with all laws and regulations, including but not limited to health and safety rules and regulations and employment laws;
 - 2.6.4 it has purchased, or will obtain prior to the commencement of the Works, purchase comprehensive general liability insurance for a minimum coverage as set out within the Contractor Works Order and, if no such amount is stated, then a minimum amount equivalent to five times the Contract Price;
 - 2.6.5 it shall co-operate in good faith with HIS in all matters relating to the Works and shall comply with the reasonable and lawful instructions of HIS;
 - 2.6.6 it shall notify HIS of any relevant laws, regulations, consents and licences applicable to HIS in relation to:
 - (a) its carrying out the Works at the Site; and/ or

(b) the type of Works contemplated under the Contract, HIS shall not be liable for any Loss suffered by the Contractor in the event that the Contractor fails to comply with this Condition 2.6.

3 CONTRACT PRICE

- 3.1 In consideration of the execution of the Works by the Contractor, HIS shall pay to the Contractor the Contract Price.
- 3.2 The Contractor shall invoice HIS on completion of the Works, unless agreed otherwise.
- 3.3 Unless otherwise specified in the Contractor Works Order, all sums payable to the Contractor under the Contract shall be paid in 60 days.
- 3.4 Whenever under the Contractor Works Order any sum of money shall be recoverable from or payable by the Contractor to HIS, the same may be deducted from any sum then due or which at any time thereafter may become due from HIS under this or any other contract. Due exercise of rights under this clause shall be without prejudice to any other rights or remedies available to the HIS under the Contractor Works Order or which otherwise may be available at law or in equity.

4 (A) TERMINATION FOR CAUSE

- 4(A)1 Without prejudice to any other rights or remedies to which it may be entitled, HIS shall have the right at any time by giving notice in writing to the Contractor to terminate the Contractor Works Order or the Contract immediately if:
 - 4(A)1.1 HIS fails to receive payment of any amount due by the Customer to HIS for the Works on the due date for such payment; or
 - 4(A)1.2 the contract between the Customer and HIS is terminated; or
 - 4(A)1.3 the Contractor commits a material and/or persistent breach of any of the Conditions and (if the breach is capable of remedy) the Contractor fails to remedy it within seven (7) days of receipt of notice in writing requiring remedy of the breach.

4(B) TERMINATION FOR CONVENIENCE

- 4(B).1 Upon receipt of written notice from either party of termination of the Contract for convenience, the other party shall :-
 - 4(B).1.1 cease operations as directed in the notice;
 - 4(B).1.2 take all actions necessary, as directed in the notice, for the protection and preservation of the Works; and
 - 4(B).1.3 except for Works directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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4(B).2 In case of such termination, the relevant party shall however be entitled to receive payment for Works executed, and costs to that date then incurred.

5 CONSEQUENCES OF TERMINATION

5.1 Upon termination or expiry of the Contract, howsoever caused or occasioned:

5.1.1 all existing Contractor Works Orders shall terminate automatically;

5.1.2 the Contractor may enter the Site and take possession of the Machinery.

5.2 The termination of the Contract however arising will be without prejudice to the rights and duties of either party accrued prior to termination or expiry. The Conditions which impliedly or expressly have effect or continue after termination or expiry will continue to be enforceable notwithstanding termination or expiry of the Contract.

6 LIMITATION OF LIABILITY

6.1 Subject to the provisions of Condition 6.3, HIS shall not be liable to the Contractor for any of the following:

6.1.1 loss of profits;

6.1.2 loss of business;

6.1.3 loss of anticipated savings;

6.1.4 loss of revenue;

6.1.5 loss of opportunity;

6.1.6 loss of contracts;

6.1.7 loss of data;

6.1.8 loss of goodwill or reputation;

6.1.9 special, indirect or consequential loss; or

6.1.10 delay in performing or any failure to perform its obligations under this Contract to the extent that such delay or failure was caused or contributed to by the act or omission of the Contractor, and in each case whether arising under or in connection with this Contract, whether in contract, tort (including negligence) or otherwise, and irrespective of whether any of the above are direct or indirect loss or damage.

6.2 The limitations in Condition 6.1 shall not apply to any liability: for death or personal injury caused by negligence; for fraud or fraudulent misrepresentation; or that cannot be excluded by law.

6.3 HIS shall not be liable under this Contract in respect of any individual claim (or a series of claims arising from substantially identical facts or circumstances) where the liability agreed or finally judicially determined in respect of such claim or series of claims does not exceed HK\$100,000.

6.4 The aggregate liability of HIS, whether in contract, tort (including for negligence) or for breach of statutory duty (howsoever arising), misrepresentation or otherwise in connection with this Contract, shall be limited to an amount equal to the Contract Price to be paid by HIS to the Contractor in respect of Works

executed.

6.5 Any claim, from one party to the other, that the other party is liable for breach of any terms of the Contract shall be given by the claiming party, in writing to the breaching party, within 6 months after the relevant breach has been discovered by the party claiming such breach.

6.6 The Contractor agrees to indemnify HIS against any damage, loss, debt, or payment actually or directly borne or made by HIS to the Customer or any third party as a result of a breach of the Contract by the Contractor, or any representations and warranties in these Conditions being untrue, inaccurate or misleading in a material respect.

7 CONFIDENTIALITY

7.1 Each party shall keep, and shall procure that their employees, agents, representatives and sub-contractors shall keep, in strict confidence, all Confidential Information received from the other party or which otherwise comes into its possession. Each party shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging its obligations under the Contract.

7.2 This Condition 7 shall apply during the continuance of the Contract and after its termination or expiry howsoever arising without limitation in time.

7.3 The Contractor shall not, without the prior written consent of HIS, publicly announce or advertise in any form that it is providing services to HIS and/or its relationship with HIS pursuant to the terms of the Contract.

8 INTELLECTUAL PROPERTY

8.1 All Intellectual Property Rights of either party in existence prior to the date of the commencement of the Works under the Contract (**Background IPR**), will be owned by and shall remain vested in the party in whom the Background IPR was owned and vested in prior to the date of the commencement of the Works under the Contract.

8.2 Subject to Condition 8.3 and without prejudice to Condition 8.1, all Intellectual Property Rights produced and/or arising from the performance of the Contract shall vest and remain solely and exclusively vested in HIS (and to the extent the same are not already vested in HIS, the Contractor hereby assigns to HIS with full title guarantee and free from all third party rights, all such Intellectual Property Rights). For the avoidance of doubt, all Intellectual Property Rights in the Works Deliverables shall vest in and be the exclusive property of HIS.

8.3 The Contractor hereby grants to HIS a royalty-free and non-exclusive licence (and the right of sub-licence to the Customer) to use its Background IPR to the extent required to obtain the benefit of the Works.

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- 9 ASSIGNMENT AND SUB-CONTRACTING**
- 9.1 The Contractor shall not assign the whole or any part of the Contract or any interest in it without the prior written consent of HIS.
- 9.2 The Contractor shall not sub-contract the execution of the Works or part thereof without the prior written consent of HIS (such consent not to be unreasonably withheld or delayed).
- 10 HEALTH AND SAFETY**
- 10.1 The Contractor shall use reasonable endeavours to observe all health and safety rules and regulations that apply at the Site and/or in relation to the Works.
- 10.2 The Contractor shall notify HIS as soon as it becomes aware of any health and safety hazards and/or failures to observe the health and safety rules and regulations and any other security requirements that apply at the Site and/or in relation to the Works.
- 10.3 The Contractor shall provide all necessary supervision, having regard to the nature and extent of the Works, to secure the proper and safe execution of the Works in accordance with the Contract, including without limitation the provision of a competent and authorised agent or charge man skilled in the type of work being executed and approved by the Project Manager and who shall be on the Site at all times while the Works are in progress.
- 10.4 The Contractor shall also provide during the Maintenance Period (where applicable) such supervision as HIS may require.
- 11 GENERAL**
- 11.1 This Contract set out the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement relating to the subject matter of the Contract, whether written or oral. Each party acknowledges and agrees that in entering into the Contract it places no reliance on any representation or warranty in relation to the subject matter of this Contract, nor shall it have any remedy in relation to the subject matter of the same save as expressly set out in the Contract. The only remedy available to either party for breach of such warranties or representations shall be for breach of contract under the terms of this Contract. Nothing in this Condition or in this Contract shall operate so as to exclude or restrict any remedy or liability for fraud or fraudulent misrepresentation.
- Any notice to be given under the Contract shall be in writing and may be made or delivered by one party hereto to the other at the registered office of the party or to such other address as such party may have notified to the other party giving such notice for the purposes of this Condition and shall be deemed to have been made or delivered by letter, when left at the address or, if sent by prepaid first class recorded delivery, forty eight hours (48) after posting. If such notice arrives on a day which is not a Working Day, it shall be deemed to have been delivered on the next following Working Day.
- 11.2 The Contractor is appointed as an independent contractor and neither party shall have the authority to act in the name of or otherwise bind the other party in any way, whether contractually or otherwise.
- 11.3 If any provision of the Contract is held by any court or other competent authority to be void or unenforceable (in whole or part), the other provisions of the Contract and the remainder of the affected provisions shall continue to be valid.
- 11.4 The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies otherwise provided by law.
- 11.5 The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
- 11.6 A person who is not a party to this Contract has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any of its terms.
- 11.7 Save as expressly set out in this Contract, no variation of the Contract shall be binding upon the parties unless the same is in writing signed by a duly authorised representative of both HIS and the Contractor.
- 11.8 Any dispute or difference arising out of or in connection with operational matters between HIS and the Contractor shall be referred to and finally resolved by arbitration through the Hong Kong International Arbitration Centre (HKIAC) under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted. The number of arbitrators shall be one. The arbitration proceedings shall be conducted in English. The seat of arbitration shall be Hong Kong.
- 11.9 The Contract, and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in all respects in accordance with the laws of Hong Kong, and the Hong Kong courts shall have exclusive jurisdiction in all matters relating to the Contract (whether of a contractual or tortious nature or otherwise).