



## **General Terms and Conditions of PolyU Purchase Orders**

### **1. Interpretation**

'Hong Kong' means the Hong Kong Special Administrative Region of the People's Republic of China.

'PolyU' means The Hong Kong Polytechnic University of Hung Hom, Kowloon, Hong Kong.

'Receiving Officer' means the officer in charge of a department in PolyU to which any goods are to be sent and services are to be provided or such other officer as he may authorize to accept delivery thereof.

'Supplier' means the supplier to whom this purchase order is issued.

### **2. Order Acceptance**

- (a) Upon delivery of this purchase order to Supplier, Supplier is bound by the terms set out in the purchase order, these General Terms and Conditions and the Data Privacy Terms and Conditions.
- (b) If an "Order Acknowledgement" form is provided in this purchase order, Supplier must duly sign, stamp and return the form by fax, email or mail within 7 days from the date of this purchase order to PolyU to confirm Supplier's acceptance of all of the terms and conditions stipulated in the purchase order, these General Terms and Conditions and the Data Privacy Terms and Conditions, failing which, the offer in the purchase order will lapse automatically.

### **3. Assignment**

Supplier shall not, without the written consent of PolyU, assign or otherwise transfer this purchase order or any part, share or interest therein and the performance of this purchase order by Supplier shall be deemed to be personal to it.

### **4. Quality, Specifications and Proof Notes**

- (a) Goods and/or services delivered by Supplier shall be of the qualities and sorts described and equal in all respects to any specifications and drawings mentioned in this purchase order or to any specifications, drawings or samples supplied by Supplier and approved by PolyU.
- (b) Any drawings and specifications reasonably required for Supplier's guidance in the execution of this purchase order shall be furnished to it free of charge but shall be returned to PolyU on completion of this purchase order.
- (c) If required Supplier shall furnish PolyU with a proof note or certificate showing that ordered goods have been subjected to normal tests for such goods or such tests as PolyU may reasonably require.

## **5. Delivery**

- (a) Supplier shall supply and deliver goods and/or services to the ship-to-location on or before the delivery date(s) specified in this purchase order unless otherwise instructed or agreed by PolyU. Time shall be deemed to be the essence of this purchase order. Delivery shall be completed within 14 days in case no delivery date is specified in this purchase order.
- (b) Each delivery shall be marked with PolyU's purchase order number and made with two (2) copies of delivery note and packing list. Supplier shall ensure that a receipt thereof is received from the Receiving Officer of PolyU but such receipt shall not constitute an acknowledgement that goods therein mentioned are acceptable or satisfactory.

## **6. Packaging and Conveyance**

Supplier is responsible for adequate packaging and suitable transportation of goods to ensure those goods will arrive at PolyU site or any specified ship-to-location in good condition and without defects.

## **7. Inspection and Acceptance**

All goods and services will be subject to inspection and/or testing for acceptance by PolyU after delivery.

## **8. Rejection**

- (a) Without prejudice to any statutory rights, PolyU may reject any delivered goods (including services) which are found to be defective, damaged, spoilt, soiled or not complying with order specifications.
- (b) Within 24 hours of being notified in writing of the rejection of any goods delivered, Supplier shall remove the same at its own risk and expense.
- (c) Within 7 days of being notified in writing that the delivered goods are unacceptable, Supplier shall replace all rejected goods with satisfactory goods complying with order specifications. If replacement goods have to be obtained from sources outside Hong Kong, Supplier must advise PolyU the earliest date when replacement goods will arrive at PolyU site. PolyU reserves the right to apply to Clause 12 stipulated below in the event that replacement goods cannot be delivered within the seven (7) days period referred to above and the goods are urgently required for operations of PolyU.

## **9. Empties**

No return of empties to Supplier will be made unless it is expressly stated in this purchase order or otherwise agreed by PolyU and all costs incurred for the return will be paid by Supplier. PolyU shall not be responsible for the loss or damages of such empties whilst under its control.

## **10. Payment for Goods/Services**

Supplier shall send certified invoices to the Finance Office of PolyU stating PolyU's purchase order number, particulars and quantities of goods and/or services delivered, unit prices, applicable discounts and net payment due. Payment will normally be made to suppliers within 30 days from receipt of invoices and acceptable goods and/or services.

## **11. National Security**

Notwithstanding anything to the contrary in the preceding procurement process and this purchase order, PolyU has the right to immediately terminate this purchase order, by written notice to Supplier, upon the occurrence of any of the following events:-

- (a) Supplier 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;
- (b) the continued appointment of Supplier or the continued performance of this purchase order is contrary to the interest of PolyU, the interest of national security or the public interest of Hong Kong, public morals, public order or public safety; or
- (c) PolyU reasonably believes that any of the events mentioned above is likely or about to occur.

Supplier represents and warrants that Supplier, its directors, employees, agents, other personnel and (in the event permitted to appoint any sub-contractor) your sub-contractors as well as their directors, employees, agents and other personnel, have not engaged, are not engaging and will not engage in acts or activities that are likely to constitute or cause the occurrence of offences endangering national security or which would otherwise be contrary to the interest of national security.

Supplier shall indemnify and keep PolyU indemnified against all damages, costs or expenses arising out of or in relation to any breach of any of the representations and warranties above, including but not limited to damages for delay, costs and expenses of retendering and other costs incurred.

## **12. Default and Termination of Order**

If Supplier fails to deliver all or any ordered goods and/or services on or before the specified delivery date or as otherwise provided in Clause 5 above, or in accordance with Clause 4(a) above, PolyU may at its absolute discretion cancel the whole or any part of this purchase order by notice in writing to Supplier but without prejudice to any claims to Supplier for breach of Contract including but not limited to the right of PolyU to procure any ordered goods and/or services then outstanding from any other source and Supplier shall be liable for any sums so incurred in excess (hereinafter called "Any Excess") of the order prices.

## **13. Deposits**

- (a) Any sum deposited by Supplier may be applied by PolyU against Any Excess arising by virtue of termination under Clause 11 and 12 above and accordingly the balance (if any) thereof shall not be returnable to Supplier until the date when but for such termination the contract would have expired.
- (b) The provision of sub-clause (a) of this Clause shall apply equally in the case of termination, without lawful excuse, of this purchase order by Supplier.
- (c) The application of any deposit as aforesaid shall be without prejudice to the right of PolyU to recover from Supplier Any Excess not wholly absorbed by the said deposit.

#### **14. Offence of Bribery**

If Supplier is found to have offered or given any gratuity, bonus, commission, advantage, discount, bribe, loan or any other gift or consideration as an inducement or reward to any employee of PolyU in relation to this or any other purchase order, agreement or contract of PolyU, Supplier shall be guilty of an offence under the Prevention of Bribery Ordinance and PolyU shall be at liberty to forthwith cancel the purchase order, agreement or contract, as the case may be, and shall hold Supplier liable for any loss and damages which PolyU may thereby sustain.

Supplier shall not, and shall procure that its directors, employees, agents and subcontractors who are involved in this purchase order shall not, except with permission of PolyU, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to the business of PolyU (e.g. prohibiting acceptance of commission or free service from suppliers and service providers serving PolyU). Supplier shall also caution its directors, employees, agents and sub-contractors against soliciting or accepting any excessive hospitality, entertainment or inducements, which would impair their impartiality in relation to the business of PolyU. Supplier shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that its directors, employees, agents and sub-contractors are aware of the aforesaid prohibition and will not solicit or accept any advantage, excessive hospitality, etc. in relation to the business of PolyU.

#### **15. Declaration of Interest**

Supplier shall declare to PolyU in writing and require its directors and employees to declare in writing to Supplier any conflict or potential conflict between their personal / financial interests and their duties in connection with this purchase order, including any personal relationship with the suppliers and service providers serving PolyU. In the event that such conflict or potential conflict is disclosed in a declaration, Supplier shall forthwith take such reasonable measures as are necessary to mitigate as far as possible or remove the conflict or potential conflict so disclosed. Supplier shall require its agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

Supplier shall prohibit its directors and employees who are involved in this purchase order from engaging in any work or employment other than in the performance of this purchase order, with or without remuneration, which could create or potentially give rise to a conflict between their personal / financial interests and their duties in connection with this purchase order. Supplier shall require its agents and sub-contractors to impose similar restriction on their directors and employees by way of a contractual provision.

Supplier shall take all necessary measures (including by way of internal guidelines or contractual provisions where appropriate) to ensure that its directors, employees, agents and sub-contractors who are involved in this purchase order are aware of the provisions under the aforesaid Clauses 14 and 15.

#### **16. Warranties**

Supplier shall warrant for a period of 12 months from the date of acceptance or any other specified periods agreed by PolyU that all goods and/or services furnished pursuant to this purchase order are:

- (a) free from defects in design, material and workmanship;
- (b) suitable and fit for the purposes intended whether express or reasonably implied;

- (c) in conformity with the drawings, specifications, samples or other descriptions applicable thereto; and
- (d) in conformity with all other requirements of this purchase order. If any goods and/or services are found not to conform to the warranty requirement, PolyU may, in addition to any other remedies at law or in this purchase order, return such goods to Supplier, and/or reject such services, at Supplier's expense, for correction, replacement or credit, as PolyU may direct.

#### **17. Recovery of Sums Due**

Whenever under this purchase order any sum of money shall be recoverable by PolyU from or payable by Supplier, the same may be deducted from any sum then due or which at any time thereafter may become due to Supplier under this or any purchase order, agreement or contract with PolyU.

#### **18. Liability for Damages or Compensation**

- (a) PolyU shall not be liable for or in respect of any damages or compensation under the Fatal Accidents Ordinance, the Employees' Compensation Ordinance, or at Common Law by or in consequence to any accident or injury to any workman or other person whether in the employment of Supplier or any subcontractor and Supplier shall indemnify and hold PolyU harmless against and from any and all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.
- (b) Supplier shall effect a policy of insurance against all claims, demands or liability in pursuance of this purchase order with a company approved by PolyU (which approval shall not be unreasonably withheld) and shall continue such insurance for the duration of this purchase order and shall when required, deposit with PolyU for safe keeping during the currency of this purchase order such policy of insurance together with the receipt of payment of the current premium.
- (c) If Supplier shall fail to effect and keep in force the insurance referred to or any other insurance which it may be required to effect under the terms of this purchase order then and in any such case PolyU may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by PolyU as aforesaid from any moneys due or which may become due to Supplier or recover the same as a debt due from Supplier.
- (d) In the event of any workmen or other persons employed on any work done in pursuance of this purchase order whether in the employment of Supplier or its subcontractor suffering any personal injury or death and whether there be a claim for compensation or not, Supplier shall without delay give notice in writing of such personal injury or death to PolyU.
- (e) Supplier, Supplier's agents or Supplier's contractors shall at all times be responsible and liable for damage to property of PolyU or of any of its employees or agents or any injury to or death of any employee or agent of PolyU arising out of their actions.

#### **19. Bankruptcy**

PolyU may at any time by notice in writing summarily terminate this purchase order without entitling Supplier to compensation in any of the following events:

- (a) If Supplier shall at any time be adjudged bankrupt, or shall have a receiving order or orders for administration of Supplier's estate made against Supplier or shall take any proceedings

for liquidation or compensation under the Bankruptcy Ordinance for the time being in force, or make any conveyance or assignment of Supplier's effects or composition or arrangement for the benefit of Supplier's creditors, or purports so to do; or

- (b) If Supplier, being a company, shall pass a resolution or the court shall make an order for the liquidation of Supplier's 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 PolyU.

## **20. Patents and Copyrights**

Supplier shall warrant that goods and/or services supplied under this purchase order do not infringe upon the patent or copyright of any third party. In the case of any claim or action brought against PolyU, its employees or agents alleging infringement of any patent or copyright in respect of the goods and/or services supplied pursuant to this purchase order, Supplier shall indemnify and hold PolyU, its employees and agents harmless against all costs and damages arising out of such alleged infringement and undertake to defend or settle such claim or action at the expense of Supplier.

## **21. Intellectual Property Rights**

PolyU shall be the sole proprietary owner of and has control or the right to use all materials including but not limited to files, discoveries, development, designs, drawings, specifications, tracings, diagrams, flow-charts, samples, data, marketing plans or techniques, software programs, tapes, technical, financial or business information, artworks, photos and films (the "Deliverables") produced under this purchase order by Supplier. All Deliverables should be returned to PolyU immediately upon the termination of this purchase order or completion of the services rendered under this purchase order.

All materials supplied by PolyU (the "Materials") under this purchase order remain the property of PolyU. Supplier shall be responsible for the due return of the Materials upon termination of this purchase order or completion of the services rendered under this purchase order. Should any Materials be lost or damaged from any cause whatsoever while in the possession or control of Supplier or its employees, officers, representatives, sub-contractors or agents, PolyU shall have right to claim Supplier for the original cost of the Materials and all costs and damages incurred as a result of the loss of the Materials.

Supplier shall keep the Materials supplied by PolyU and the Deliverables supplied to PolyU confidential, and shall not divulge or communicate to any person the Materials or Deliverables including but not limited to the business or affairs of PolyU and shall use its best endeavours to prevent any unauthorized disclosure of such information and undertake not to use or reproduce such Materials and Deliverables by itself, its employees, officers, representatives, sub-contractors, agents and clients without the prior written consent of PolyU save and except for the rendering of service under this purchase order. Any unauthorized use of such Materials and Deliverables shall be construed as a material breach of this purchase order, and PolyU shall have the right to claim Supplier for all benefits gained by Supplier, and/or the loss of benefits to PolyU resulting from such unauthorized use.

## **22. Risk of Loss**

Notwithstanding any other term of this purchase order or inference therefrom, the risk of loss to goods ordered shall be upon Supplier until the goods are received and accepted by PolyU.

### **23. Exclusion of Third Party Beneficiaries**

Nothing in this purchase order, express or implied, is intended to or shall confer upon any person other than the contracting parties hereto any right, benefit or remedy of any nature whatsoever under or by reason of this purchase order. The Contracts (Rights of Third Parties) Ordinance shall not apply to this purchase order.

### **24. Government Regulations**

- (a) For supply of services by Supplier.

Supplier shall be responsible for complying with the enactments, orders, regulations or other instruments issued by the Government of Hong Kong or other competent authority in Hong Kong. Supplier shall indemnify PolyU against any penalty, loss or cost arising as a result of Supplier's failure to comply with any of the said enactments, orders, regulations, or other instruments and in addition, PolyU reserves the right to cancel this purchase order and Supplier is not entitled to claim any compensation. Supplier shall be liable for all expenses necessarily incurred by PolyU as a result of the cancellation of this purchase order.

- (b) For supply of goods by Supplier.

Supplier shall be responsible for complying with the enactments, orders, regulations or other instruments issued by the Government of Hong Kong or other competent authority in Hong Kong, and the government or other competent authority in the country of manufacture. Supplier shall indemnify PolyU against any penalty, loss or cost arising as a result of Supplier's failure to comply with any of the said enactments, orders, regulations, or other instruments and in addition, PolyU reserves the right to claim full compensation in the event of the whole or any part of this purchase order not being completed as a result of such failure to comply.

### **25. Supplier's Conditions**

Any terms and conditions imposed by Supplier which are inconsistent with or additional to the terms and conditions stated herein shall not be binding upon PolyU unless expressly accepted in writing by PolyU.

### **26. Disputes and Applicable Law**

- (a) If any dispute arises between PolyU and Supplier in reference to the performance of this purchase order, or any part thereof, PolyU or Supplier may forthwith give to the other party written notice requiring the matter to be referred to a single arbitrator, in accordance with the procedures governed by the Arbitration Ordinance, whose decision shall be final, and binding on the parties.

The costs of such reference shall be in the discretion of the arbitrator.

- (b) This purchase order shall be governed by and construed in accordance with the laws of Hong Kong.

### **27. Special Conditions**

These General Terms and Conditions shall apply to the extent to which they are not inconsistent with the special conditions, if any, set out in this purchase order. Any licence and maintenance service agreements that are required by Supplier for order acceptance must not contradict any of the terms and conditions specified herein.

## Data Privacy Terms and Conditions

1. The Supplier will be entrusted with certain personal data collected by PolyU ("**Personal Data**") pursuant to the current engagement of its services.
2. PolyU pledges to meet the recognized standards of personal data privacy protection, in complying with the requirements of the Personal Data (Privacy) Ordinance (the "**Ordinance**"). In doing so, PolyU also pledges to take reasonably practicable steps to ensure its agents comply with the standards of security and confidentiality required by the law.
3. The following is the standard of security and confidentiality adopted by PolyU in its service contract with its agents, contractors and suppliers:
  - i) Security measures
    - The Supplier must at all times employ reasonable organisational, operational and technological processes and procedures to keep the Personal Data safe from any unauthorised, accidental or unlawful use, access, alteration, loss, destruction, erasure, theft or disclosure.
    - The organisational, operational and technological processes and procedures adopted by the Supplier must at all times comply with:
      - (a) the requirements under the Ordinance;
      - (b) the relevant guidelines and best practices recommended by the Office of the Privacy Commissioner from time to time.
    - PolyU reserves the right to require the Supplier to improve the security or protection of the Personal Data if it is of the opinion that the processes and procedures taken by the Supplier is insufficient in any regard.
  - ii) Restricting access by employees
    - The Supplier should ensure that:
      - (a) only those employees required to carry out the services under the Supplier's service agreement with PolyU may have access to the Personal Data; and
      - (b) such employees:
        - (i) are only provided with as much Personal Data as they need to perform the services under the service agreement with PolyU;
        - (ii) are informed of the confidential nature of the Personal Data;
        - (iii) have undergone adequate training with respect to data protection procedures and policies; and
        - (iv) agree to comply with the obligations set out in this document.



### iii) Restricting use of Personal Data

Use of the Personal Data must be limited to the purpose for which PolyU provides the Personal Data to the Supplier in the first place.

- The Supplier must:
  - (a) only use the Personal Data for the purpose(s) set out in the Supplier's service agreement with PolyU;
  - (b) process the Personal Data in accordance with the instructions of PolyU; and
  - (c) process the Personal Data only to the extent, and in such manner, as is necessary for the proper provision of the services set out in the Supplier's service agreement with PolyU.
- The Supplier must not perform its service agreement in such a way so as to cause PolyU to breach any of its applicable obligations under the Ordinance or any other applicable laws or regulations.

### iv) Transfer or disclosure of Personal Data

The Supplier must not disclose or transfer any of the Personal Data to a third party, except with the express consent of PolyU or where required by law.

- The Supplier must not publish, disclose, divulge or transfer any of the Personal Data to any third party (whether within or outside Hong Kong) without the prior written consent of PolyU.
- If the Supplier is required by law or legal process to disclose any of the Personal Data, the Supplier must promptly inform PolyU before any such disclosure, unless such notification is prohibited by law.

### v) No subcontracting

- The Supplier must not sub-contract any of its rights or obligations under its service agreement with PolyU without the prior written consent of PolyU.
- Where prior written consent is obtained from PolyU in accordance with the clause above, the Supplier may only sub-contract its rights or obligations by way of a written agreement with its sub-contractor which imposes the same obligations on the sub-contractor as are imposed on the Supplier.
- Where the sub-contractor fails to fulfil its obligations under any subcontracting agreement, the Supplier is to remain fully responsible to PolyU for the fulfilment of its obligations under its service agreement with PolyU.

### vi) Deletion or retention of data

- The Supplier must destroy all Personal Data promptly:

- (a) When it is no longer needed for it to perform the services for which it was retained; or
- (b) at the instruction of PolyU.

- In complying with the clause above, the Supplier must ensure that:
  - (a) all electronic copies of the Personal Data are removed from its systems by either destruction of the storage device (by drilling holes through the media or putting magnetic media through a degausser) or using appropriate electronic deletion software;
  - (b) any printed copies are securely destroyed by cross-cut shredding and are not recycled; and
  - (c) a record of such activities is maintained so to provide PolyU with evidence of what records have been deleted/ destroyed, when, by whom and by what method.

vii) Notification of data security breach

- Where there has been any unauthorised, accidental or unlawful use, access, alteration, loss, destruction, erasure, theft or disclosure of the Personal Data ("Security Breach"), the Supplier must report this to PolyU as soon as it becomes aware of the incident of:
  - (a) the Personal Data involved;
  - (b) how the incident occurred;
  - (c) those who were involved; and
  - (d) anticipated impact.
- The Supplier must provide any assistance as required by PolyU to rectify such Security Breach.

viii) Indemnity from the Data Processor

- The Supplier agrees to hold harmless and indemnify PolyU against all claims, demands, actions, proceedings and expenses (including legal fees and disbursements) which arise or is connected with its provision of the services under the service agreement, including but without limitation to those arising out of any third party demand, claim or action, or any breach of contract, negligence, fraud, wilful misconduct, breach of statutory duty or non-compliance with any part of the Ordinance by the Supplier or its employees, agents or sub- contractors.
  - Without prejudice to PolyU's rights to seek remedies against the Supplier, the Supplier agrees that any breach of any of the above clauses will amount to a repudiatory breach of contract entitling PolyU to terminate the service contract without notice.
4. To ensure these obligations are properly discharged, PolyU reserves the right to inspect the Supplier's system.