

GENERAL TERMS AND CONDITIONS

1. Interpretation : -

'Hong Kong' means the Hong Kong Special Administrative Region of the People's Republic of China.
'MRDI' means Hong Kong Microelectronics Research and Development Institute Company Limited whose registered office is situated at Flat 501-5, 5/F, Building 12W, Hong Kong Science Park, Shatin, Hong Kong.

'Receiving Officer' means the officer in charge of a department in MRDI 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 and these General 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 email or mail within 7 days from the date of this purchase order to MRDI to confirm Supplier's acceptance of all of the terms and conditions stipulated in the purchase order and these General Terms and Conditions, failing which, the offer in the purchase order will lapse automatically.

3. Assignment : -

Supplier shall not, without the written consent of MRDI, 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 MRDI.

(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 MRDI on completion of this purchase order.

(c) If required Supplier shall furnish MRDI with a proof note or certificate showing that ordered goods have been subjected to normal tests for such goods or such tests as MRDI may reasonably require.

5. Delivery : -

(a) Supplier shall supply and deliver goods and/or services to the delivery location on or before the delivery date(s) specified in this purchase order unless otherwise instructed or agreed by MRDI. 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 MRDI'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 MRDI 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 MRDI site or any specified delivery 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 MRDI after delivery.

8. Rejection : -

- (a) Without prejudice to any statutory rights, MRDI 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 MRDI the earliest date when replacement goods will arrive at MRDI site. MRDI 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 MRDI.

9. Empties : -

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

10. Payment for Schedule Goods : -

Supplier shall send certified invoices to the Finance Department of MRDI stating MRDI'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, MRDI 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 MRDI, the interest of national security or the public interest of Hong Kong, public morals, public order or public safety; or
- (c) MRDI 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 MRDI 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, MRDI 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 MRDI 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 (thereinafter called "Any Excess") of the order prices.

13. Deposits : -

- (a) Any sum deposited by Supplier may be applied by MRDI 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 MRDI 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 MRDI in relation to this or any other purchase order, agreement or contract of MRDI, Supplier shall be guilty of an offence under the Prevention of Bribery Ordinance and MRDI 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 MRDI 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 MRDI, solicit or accept any advantage as defined in the Prevention of Bribery Ordinance (Cap 201) in relation to the business of MRDI (e.g. prohibiting acceptance of commission or free service from suppliers and service providers serving MRDI). 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 MRDI. 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 MRDI.

15. Declaration of Interest

Supplier shall declare to MRDI 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 MRDI. 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 MRDI 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, MRDI 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 MRDI may direct.

17. Recovery of Sums Due : -

Whenever under this purchase order any sum of money shall be recoverable by MRDI 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 MRDI.

18. Liability for Damages or Compensation : -

- (a) MRDI 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 MRDI 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 MRDI (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 MRDI 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 MRDI 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 MRDI 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 MRDI.
- (e) Supplier, Supplier's agents or Supplier's contractors shall at all times be responsible and liable for damage to property of MRDI or of any of its employees or agents or any injury to or death of any employee or agent of MRDI arising out of their actions.

19. Bankruptcy : -

MRDI 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 MRDI.

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 MRDI, 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 MRDI, 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 : -

MRDI 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 MRDI immediately upon the termination of this purchase order or completion of the services rendered under this purchase order.

All materials supplied by MRDI (the "Materials") under this purchase order remain the property of MRDI. 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, MRDI 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 MRDI and the Deliverables supplied to MRDI confidential, and shall not divulge or communicate to any person the Materials or Deliverables including but not limited to the business or affairs of MRDI 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 MRDI 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 MRDI shall have the right to claim

Supplier for all benefits gained by Supplier, and/or the loss of benefits to MRDI 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 MRDI.

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 MRDI 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, MRDI 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 MRDI 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 MRDI 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, MRDI 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 MRDI unless expressly accepted in writing by MRDI.

26. Disputes and Applicable Law : -

- (a) If any dispute arises between MRDI and Supplier in reference to the performance of this purchase order, or any part thereof, MRDI 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.