

## **INSTRUCTIONS TO TENDERERS**

1. The paper-based Tender Form, Schedule & Offer and accompanying documents completed as directed, must be enclosed in a plain sealed envelope. Tender documents must be clearly marked with the tender reference number, tender subject and the closing date on each of the envelopes. The Hong Kong Industry Artificial Intelligence and Robotics Centre ("Flair") reserves the right to reject any submission of tender documents without clear indication of tender reference number and tender subject.
2. Tender proposals must be submitted to the FLAIR no later than the closing date and time as indicated in the Tender Notice on FLAIR website. Time of tender closing shall be based upon the time showed by the clock located at the HKPC's Reception area. FLAIR shall have full discretion to decline any late submission.
3. Tender proposals shall be lodged in the FLAIR Tender Box, located at the Reception area at G/F, HKPC Building.
4. No receipt / stamp for tender submission shall be issued by FLAIR.
5. The Tender Form, Schedule & Offer and Confirmation Letter for Compliance with Anti-Collusion Clauses must be properly filled in and signed and all requisite samples or illustrations submitted otherwise it may not be considered.
6. Any alteration or erasure made to the Schedule must be initialed by the person who signs the Tender Form.
7. In case Tropical Cyclone Warning Signal No. 8 or above is hoisted, or Black Rainstorm Warning Signal announced by the Government is/are in force, for any duration between 0830 and 1500 hours (Hong Kong time), the latest date and time before which Tenders are to be submitted to our tender box will be extended to one working day.
8. FLAIR reserves the right to accept the whole or part of the tender and is not bound to accept the lowest or any tender.
9. If estimated quantities are set forth in the Schedule annexed to the Tender they shall be regarded only as a guide to Tenderers and shall not be binding.
10. The prices quoted by the Tenderer shall include and shall be deemed to include:
  - Delivery at the Tenderer's own risk and expense at such place or places as may be required.
  - All royalties and charges for patent rights (if any) and the Tenderer shall indemnify FLAIR, its board of directors, Officers, Servants or Agents and save them harmless against all claims for the infringement of such rights.
11. Where materials are quoted by weight such quotations shall refer to the "net" and not "gross" weight.
12. All defective or damaged items to be replaced free of charge by the Tenderer.

## **GENERAL TERMS AND CONDITIONS FOR CONTRACT**

### **1. Definitions:**

“FLAIR” means Hong Kong Industrial Artificial Intelligence and Robotics Centre Limited.

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

“Goods” means the goods, products and/or systems ordered by FLAIR from the Contractor as described in the Purchase Order.

“Services” means the services ordered by FLAIR from the Contractor as described in the Purchase Order.

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

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

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

### **2. Acceptance:**

- 2.1 The Purchase Order is an offer by FLAIR to the Contractor and the delivery of Goods and/or the supply of the Services by the Contractor to FLAIR shall be deemed an effective acceptance of the Purchase Order and these General Terms and Conditions (if no earlier acceptance is made by the Contractor).
- 2.2 Any acceptance of the Purchase Order is limited to acceptance of the express terms contained in the Purchase Order and these General Terms and Conditions, save where the parties have entered into a Contract (in which case the terms of the Contract shall also apply). In the event of any conflict or inconsistency between any terms and conditions, the following order of precedence shall apply: (i) Principal Contract (if any); (ii) Purchase Order; and (iii) these General 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 General Terms and Conditions by the Contractor's acceptance (including, without limitation, any counter-offer made by the Contractor by way of its acknowledgement of a Purchase Order, its invoice or a delivery note) is hereby rejected.
- 2.3 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 FLAIR.

### **3. Quality and Specification**

Goods and/or Services delivered by the Contractor shall be of the qualities and sorts described and equal in all respects to any specifications and drawings mentioned in the Purchase Order, or to any specifications, drawings or samples provided by the Contractor and approved by FLAIR.

### **4. Variation**

- 4.1 FLAIR reserves the right to alter, amend, omit, add to, or otherwise vary any of the Goods or Services under the Purchase Order.
- 4.2 Where a variation has been made to the Purchase Order, the amount to be added to or deducted from the contract price in accordance with that variation shall be determined in accordance with the rates specified in the Purchase Order so far as the same may be applicable and where rates are not applicable, such amount shall be such sum as is reasonable in the circumstances and subject to the mutual agreement of FLAIR and the Contractor in writing.

### **5. Sub-contracting**

The Contractor shall not, without the written consent of FLAIR, assign, sub-contract, outsource or otherwise transfer the Purchase Order or any part, share or interest therein. The written consent, if given, does not relieve the Contractor in any way from its obligations owing to FLAIR under the Purchase Order.

### **6. Warranties**

- 6.1 In respect of the delivery of the Goods under the Purchase Order, the Contractor warrants, represents and undertakes to FLAIR that:
  - (a) 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;
  - (b) 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;
  - (c) all Goods furnished under the Purchase Order shall be in merchantable condition, and shall be safe and appropriate for the purpose for which Goods of that kind are normally used;
- 6.2 If the Contractor knows or has reason to know the particular purpose for which FLAIR intends to use the Goods, the Contractor warrants that such Goods shall be fit for such particular purpose. The Contractor warrants that Goods furnished under this Agreement shall conform in all respects to samples.

- 6.3 In respect of the supply of the Services under the Purchase Order, the Contractor warrants and undertakes to FLAIR that:
- (a) the Contractor shall have the necessary skill and expertise to provide the Services on the terms set out in this Agreement; and
  - (b) the Services shall be provided in a timely and professional manner and in accordance with the time schedules stipulated by FLAIR, shall conform to the standards generally observed in the industry for similar services and shall be provided with all reasonable skill and care.
- 6.4 The Contractor further warrants that all Goods or Services delivered under the Purchase Order shall not infringe upon the patent, copyright or any other intellectual property rights of any third party.
- 6.5 The Contractor 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 FLAIR, when notified of such nonconformity by FLAIR.
- 6.6 In the event of failure by the Contractor to replace or correct defects in nonconforming Goods or Services promptly, FLAIR may, after giving reasonable notice to the Contractor, make such corrections or replacements as FLAIR sees fit and charge the Contractor for the costs incurred by FLAIR in doing so.

**7. Delivery of Goods:**

Time is of the essence of this Agreement, and if delivery of the Goods is not completed by the time promised, FLAIR reserves the right, without liability on FLAIR's part and without prejudice to FLAIR'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 Contractor for the additional cost of such substitute items.

**8. Title to and risk of the Goods:**

- 8.1 The Contractor warrants that it has full clear and unencumbered title to all Goods, and that at the date of delivery of the Goods to FLAIR, it will have full and unrestricted rights to sell and transfer all such Goods to FLAIR.
- 8.2 The Contractor 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 FLAIR. Upon such delivery and acceptance, title to the Goods and risk of loss or damage to the Goods shall pass to FLAIR, provided, however, that the Contractor shall bear any loss or damage, whenever occurring, which results, directly or indirectly, from inadequate packaging or inferior quality of the Goods.

**9. Inspection/Testing:**

- 9.1 Payment for the Goods delivered under this Agreement shall not constitute acceptance thereof. FLAIR shall have the right to inspect such Goods and to reject any or all of said Goods which are in FLAIR's judgement defective or nonconforming.
- 9.2 Goods rejected and Goods supplied in excess of quantity called for in the Purchase Order may be returned to the Contractor at the Contractor's expense and, without prejudice to FLAIR's other rights and remedies, FLAIR may charge the Contractor all expenses of unpacking, examining, repacking and transporting such Goods.
- 9.3 In the event that FLAIR receives Goods whose defects or nonconformity are not apparent on initial examination, FLAIR 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 Contractor from the obligations of testing, inspecting and quality control.

**10. Workers/Labour/Overseas Speaker:**

- 10.1 The Contractor warrants to FLAIR that the Contractor 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 FLAIR and/or its affiliates in Hong Kong. The Contractor 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 FLAIR assume any duty or responsibility for obtaining any permit(s) or approval(s) for facilitating the provision of the Services by Contractor or the Contractor's employees, agents, subcontractors, representatives or advisers.
- 10.2 Should the Contractor need to employ or engage non-local staff or persons to work in Hong Kong in order to provide the Services, Purchase Order is conditional upon the Contractor and such staff or persons having the necessary permit(s) and relevant regulatory approval(s) to work and provide the Services in Hong Kong.
- 10.3 Where applicable, the Contractor shall ensure that he/she (being an overseas speaker or trainer) or its engaged overseas speaker or trainer has, at his/her own costs, applied for and obtained the valid working visa or entry permit to work issued by Hong Kong Immigration Department before delivery of training service in Hong Kong. Otherwise, the Contractor, or such overseas speaker or trainer may take and assume the risk of being refused admission on arrival or arrested for violation of Hong Kong Immigration Ordinance. In the event that the Contractor, or such overseas speaker or trainer is unable to deliver the training service as scheduled under the Purchase Order due to the working visa problem, FLAIR shall have the right to terminate the Purchase Order immediately without any compensation to the Contractor. FLAIR shall also reserve the right to claim against the Contractor for any loss or damage suffered thereof.

## **11. Confidentiality**

- 11.1 FLAIR shall have the right to disclose whenever it considers appropriate or upon request by any third party (written or otherwise) information on the Purchase Order, without any further reference to the name of the Contractor, product description, brand name, model number, country of origin, service description and the contract sum.
- 11.2 Subject to Clause 11.1, the Purchase Order and the subject matter hereof and these General Terms and Conditions shall be treated as confidential between the Contractor and the FLAIR and shall not be disclosed by either party without the prior written consent of the other party.
- 11.3 The Contractor shall at all times keep confidential (and to procure that its employees, sub-contractors and/or agents shall keep confidential) any proprietary information which it may acquire in relation to the business and affairs of FLAIR and shall not disclose such information to any third party except with the consent of the FLAIR or in accordance with the order of a court of competent jurisdiction. The Contractor shall use such information solely for the performance of its obligations under the Purchase Order.

## **12. Intellectual Property Rights**

- 12.1 The Contractor shall not use FLAIR's name, trade marks or service marks or refer to FLAIR directly or indirectly in any advertising, sales presentation, news release, release to any professional or trade publication or for any other purposes without FLAIR's prior written approval.
- 12.2 All 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) in any Goods or Services delivered by the Contractor arising out of or in connection with the performance of the Purchase Order shall vest in FLAIR.
- 12.3 FLAIR 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, prototypes, data, marketing plans or techniques, software programs, tapes, technical, financial or business information, artworks, photos and films (the "Deliverables") produced under the Purchase Order by the Contractor. All Deliverables shall be returned to FLAIR immediately upon termination of the Purchase Order or completion of the Services rendered under the Purchase Order.

### **13. Payment**

- 13.1 The price stated on the face of the Purchase Order shall be payable by FLAIR to the Contractor according to the payment terms stated in the Purchase Order, subject to the delivery of Goods and/or completion of the Services by the Contractor to the satisfaction of FLAIR.
- 13.2 The Contractor shall send invoices to FLAIR stating the number of Purchase Order, particulars and quantities of Goods and/or Services delivered, unit price. Payment will normally be made to the Contractor within 30 days from receipt of invoices.

### **14. Liquidated Damages**

If the Contractor is unable or fails to satisfactorily complete the work and/or perform the Services in accordance with the specification and within the specified completion time under the Purchase Order, the Contractor may be subject to pay FLAIR an amount of liquidated damages (as specified in the Purchase Order if applicable) per day for each day the completion time is extended.

### **15. Insurance:**

- 15.1 The Contractor shall effect and maintain all necessary and adequate liability insurance coverages (including but not limited to public liability and employees' compensation insurance policy of insurance) against all claim, demand or liability to pay damages or compensation in respect of all workmen and other persons who may be engaged in any work done or Services in pursuance of the Purchase Order.
- 15.2 If the Contractor fails to effect and keep in force the insurance referred to or any other insurance which it may be required to effect under the terms hereof, then and in any such cases FLAIR 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 FLAIR as aforesaid from any moneys due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 15.3 In the event of any workmen or other person employed on any work done in pursuance hereof suffering any personal injury or death and whether there be a claim for compensation or not, the Contractor shall without delay give notice in writing of such personal injury or death to FLAIR.

### **16. Indemnity:**

The Contractor shall defend, indemnify and hold harmless FLAIR against any and all losses, damages, costs, actions, demands, claims or liabilities and expenses (including legal fees) incurred or suffered by FLAIR arising out of or resulting in any way from any defect in the Goods or Services supplied under the Purchase Order, or from any act or omission of the Contractor, its agents, employees or subcontractors.

## **17. Termination:**

- 17.1 FLAIR may cancel or terminate the Purchase Order at any time upon giving reasonable prior notice to the Contractor and thereupon the FLAIR shall be liable to pay to the Contractor a reasonable proportion of the Purchase Price in respect of that part of the Goods or Services which have been performed prior to the date of termination, but shall otherwise have no liability to the Contractor whatsoever.
- 17.2 Without prejudice to its other rights in law, FLAIR shall be entitled to terminate the Purchase Order immediately upon:-
- (a) any material breach or non-observance of any of the obligations of the Contractor under the Purchase Order;
  - (b) any neglect, failure or refusal to carry out the Services by the Contractor in accordance with the requirements specified in the Purchase Order or the reasonable directions and instructions of the FLAIR;
  - (c) the Contractor be adjudged bankrupt, or have a receiving order or order for administration of its assets made against it, or take any proceedings or liquidation or composition, or make any conveyance or assignment of its effects or composition or arrangement for the benefit of its creditors; or
  - (d) the Contractor, being a company pass a resolution or the court make an order for the liquidation of its assets, or a receiver or manager on behalf of the debenture holders shall be appointed.
- 17.3 Any termination by FLAIR in accordance with Clause 16.2 shall immediately discharge any obligation on the part of FLAIR to pay the price or any part thereof, and the Contractor shall forthwith on written demand made by FLAIR refund to FLAIR any part of the price which may have been paid to the Contractor prior to such termination provided that this Clause shall not prejudice, limit or affect any other remedies which may be available to FLAIR in respect of such termination.

## **18. Prohibitions:**

- 18.1 Where applicable, the Contractor shall prevent and prohibit its employees, agents or sub-contractors who are involved in the Purchase Order from committing any dishonesty behavior or conducting any fraudulence activities in the course of performing the Services, including but not limited to deliberately making or inputting inaccurate, error, false, untrue and/or fake data, information, feedback, responses or records in the results of any interview or survey handled by them (the "Prohibitions"). The Contractor shall take all necessary measures to ensure that its employees, agents or sub-contractors are aware of the Prohibitions in this Clause.
- 18.2 If the Contractor or any of its employees, agents or sub-contractors shall be found to have violated the Prohibitions, FLAIR shall be at liberty to terminate the Contract immediately, and to hold the Contractor liable for any direct or consequential loss or damage which FLAIR may thereby sustain.



**19. Probity:**

- 19.1 The Contractor shall ensure that any person employed or engaged by the Contractor 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 Contractor to solicit or accept an advantage in connection with his duties or in connection with the provision of services on the Contractor's behalf.
- 19.2 If the Contractor 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 FLAIR, FLAIR shall be at liberty to terminate this Agreement and to hold the Contractor liable for any loss or damage which FLAIR may sustain. FLAIR may refer any suspected case involving criminal elements to the law enforcement agency.

**20. Exclusion of Third Party Rights**

Nothing in the Purchase Order 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 the Purchase Order. The Contracts (Rights of Third Parties) Ordinance shall not apply to the Purchase Order.

**21. Governing Law:**

The Agreement shall be governed and interpreted by the laws of Hong Kong Special Administrative Region (the "Hong Kong Law").

**22. Dispute Resolution:**

Any dispute, controversy, difference or claim arising out of or relating to the Agreement or Purchase Order, including the interpretation, breach, termination or invalidity thereof, shall be referred to and resolved by arbitration in accordance with and subject to the provisions of Hong Kong Arbitration Ordinance (Cap. 609) when a written notice of arbitration is served by either party to the other party. The appointing authority shall be Hong Kong International Arbitration Centre. The law of this arbitration clause shall be Hong Kong Law. The place of arbitration shall be in Hong Kong. There shall be only one arbitrator. The decision of the arbitration shall be final and binding on the parties.

**23. Miscellaneous:**

- 23.1 No failure or delay by FLAIR 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.

23.2 The Contractor 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 FLAIR. The Contractor agrees to indemnify and to hold FLAIR harmless from any and all losses, damages, costs, actions, demands, claims or liabilities and expenses (including legal fees and costs) incurred or suffered by FLAIR arising out of or resulting from the Contractor'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 Contractor's account.