

系統整合服務

條款及細則 (此條款及細則只提供英文版本)

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise states:

- **“Acceptance Certificate”** means the certificate issued to the Customer by the Company to be signed by the Customer evidencing the acceptance of the Equipment and/or the Goods by the Customer after its installation by the Company or by the Company’s appointed contractors.
- **“Agreement”** means these terms and conditions set forth herein and the Order.
- **“Company”** means HKBN Enterprise Solutions Limited.
- **“Customer”** means any bona fide person including without limitation any individual, government agency, organization, incorporated or unincorporated company.
- **“Customer’s premises”** means the place more fully described in the Order and is designated by the Customer to be a place where the Equipment will be delivered and installed in accordance with this Agreement.
- **“Delivery Note”** means the note that is delivered to the Customer by the carrier upon the actual delivery of the Equipment to the Customer’s premises.
- **“Equipment”** means the equipment as described in the quotation or Order to be supplied, delivered installed by the Company at the Customer’s premises, including any other documentation or materials delivered by the Company to the Customer at the Customer’s premises as part of the equipment ordered.
- **“Service”** means system integration service or any other service supplied by the Company to the Customer.
- **“Order”** means the contract for the sale and purchase of the Equipment and/or Service between the Customer and the Company which comprises the written quotation of the Company or written order of the Customer whichever first occurs, and which has been accepted by the Company.
- **“Purchase Price”** means the price for Equipment and/or Service provided in the Order which shall include any payable taxes and/or charges levied by the government but shall not include any delivery or transportation charge(s) applicable under Clause 5.

1.2 Headings are for convenience only and do not affect the interpretation of this Agreement.

2. Acceptance of Order

The confirmation to HKBNES's quotation by the Customer shall constitute the acceptance by the Customer of the Order subject to the Agreement. No Order will be binding upon HKBNES unless and until accepted in writing by HKBNES. HKBNES may accept or reject any Order at HKBNES's sole discretion. Upon HKBNES's acceptance of the Order, HKBNES shall sell and the Customer shall purchase the Equipment offered for sale in compliance with the Agreement.

3. Cancellation of Order

3.1 The Customer shall not cancel the Order unless such cancellation is expressly agreed in writing by the Company. In such event, the Customer shall be liable to pay the Company a liquidated damage in the sum equal to (i) 50% of the Purchase Price if the Order has been accepted by the Company and the Equipment has not been dispatched by the Company; or (ii) 100% of the Purchase Price if the Equipment has already been dispatched and/or the Service has been rendered by the Company, either in whole or in part. The Customer also shall be liable to pay all charges including without limitation, carriage, packing and insurance charges imposed on the Company by its suppliers, and any other cost resulting from cancellation of the Order by the Customer.

3.2 All obligations of the Company under this Agreement shall be discharged upon cancellation and the Agreement shall be forthwith terminated. Termination hereunder shall be without prejudice to any then existing rights and/or claims that the Company may have against the Customer and shall not relieve the Customer from fulfilling its obligations including payment of all outstanding charges accrued prior to date of termination.

4. Changes

The Order may be changed or amended only by written agreement signed by authorised representatives of the Customer and the Company, setting forth the particular of changes to be made and the effect, if any, of such changes on the Purchase Price (and/or any applicable charges) and the time of delivery.

5. Delivery

5.1 The Company shall arrange for carriage of the Equipment to the Customer's premises. The Company may deliver the Equipment by installments. The risk in the Equipment shall pass to the Customer upon delivery of the Equipment to the carrier.

5.2 Unless otherwise specified, the costs of carriage and any insurance shall be borne by the Customer solely without any set-off or other withholding whatever and shall be due on the date for payment of the Purchase Price. The carrier shall be deemed to be the Customer's agent.

- 5.3** The delivery dates and times quoted are for guidance only and are subject to further confirmation by the Company. Delivery dates and times shall not be of the essence of the Agreement.
- 5.4** The Company shall not be liable for any loss or damage whatever due to failure by the Company to deliver the Equipment. Notwithstanding that the Company may have delayed or failed to deliver the Equipment promptly the Customer shall be bound to accept delivery and to pay for the Equipment in full provided that delivery shall be tendered at any time.
- 5.5** The failure or refusal of the Customer to take delivery (or any part of it) or to pay for the Equipment on the due dates shall entitle the Company, at its sole option:
- (a) to store or arrange storage for the Equipment until actual delivery, and all costs and expenses of the storage shall be borne by the Customer (including insurance charges); or
 - (b) to treat the Agreement as repudiated by the Customer; and
 - (c) to sell the Equipment at the best price obtainable, and after deducting any cost and expenses liable to the Company by the Customer, the Company shall account to Customer for the remaining balance of the sale price or shall charge the Customer for any shortfall.
- 5.6** Immediately upon the Customer's receipt of the Equipment, the Customer shall inspect the same and shall (i) sign and return to the Company the Delivery Note confirming Customer's acceptance of the Equipment; or (ii) within three (3) days of delivery notify the Company in writing any claims for shortage in quantity, defect or damage. The Customer shall afford the Company an opportunity to inspect the Equipment within a reasonable time following delivery and before any use made of them. If the Customer shall fail to comply with these provisions the Equipment shall be conclusively presumed to be in accordance with the Agreement and free from any defect or damage which would be apparent on a reasonable examination of the Equipment and the Customer shall be deemed to have irrevocably accepted the Equipment.

6. Payment

- 6.1** The Customer shall punctually make payments to the Company without any deductions by the due dates set out in accordance with the terms of the Order. Unless otherwise expressly stated, payment of the Purchase Price shall be due within thirty (30) days of the date of invoice. Time for payment shall be of the essence.
- 6.2** In the event of default by the Customer in payment of any part of the Purchase Price or otherwise, of this or any other agreement, by its due dates and seven (7) days have passed since written notice has been given to the Customer regarding the default, the Company, without prejudice to any other remedies at law, may unilaterally choose to withhold delivery or immediately terminate this Agreement and be released from its obligations to the Customer under this Agreement. Upon such termination, (i) the Company reserves the right to enter into Customer's premises to recover the Equipment and forfeit any payment made by the

Customer to the Company pursuant to the Agreement as liquidated damages; and (ii) the Customer shall be liable and accountable to the Company for any lost directly related to the termination of the Agreement, including, but not limited to, reasonable legal and accounting fees and other expenses of collection and reselling of Equipment. Such rights are without prejudice to any other rights of the Company hereunder.

- 6.3** The Company shall be entitled to charge interest on all outstanding amounts under the Agreement at the rate of 2% above the prime lending rate of The Hongkong and Shanghai Banking Corporation Limited as current from time to time calculated from the date on which the same is payable until the date of actual payment.
- 6.4** If the financial condition of the Customer indicates to the Company that any part of the Purchase Price may not be recoverable from the Customer, the Company may, without notice to the Customer, either withhold or postpone the delivery of the Equipment and/or, notwithstanding the payment schedule in Clause 6.1, request full payment of the Purchase Price by the Customer in advance of their respective due dates.
- 6.5** The Company may set off against the Purchase Price or any amounts due to it from the Customer whether under this Agreement or otherwise.
- 6.6** The Company may employ any person to collect any or all sums owed by the Customer to the Company under this Agreement in which case the Company shall not be liable to any act, omission, negligence or default of any such person. The Customer shall indemnify the Company for all cost and expenses incurred by the Company in employing debt collecting agencies or institutions.
- 6.7** The Customer hereby agrees that the Company may collect, store and disclose details of and information relating to the Customer (including any transactions and dealings between the Customer and the Company) to any person appointed by it in accordance with Clause 6.6 and the Customer agrees that any such person or entity may utilise such information in the course of any business carried on by such person or entity.

7. Taxes and other Charges

The Purchase Price shall be exclusive of any value added or other taxes levied, which shall be chargeable by the Company if entitled or required to do so by operation of law.

8. Equipment

- 8.1** The Company reserves the right to substitute or change materials, parts, Equipment specifications, or functional attributes at any time without notice.
- 8.2** The Customer agrees that it shall:

- (a) be responsible for the safe custody of the Equipment and shall be liable to the Company for any loss or damage caused to the Equipment after the Equipment has been delivered to the selected carrier by the Company and before full payment of the Purchase Price is made to the Company;
- (b) prior to the Customer's full payment of the Purchase Price, the Customer must notify the Company immediately of any repairs needed, damage, fault, theft or loss of the Equipment or any part thereof; and
- (c) prior to the Customer's full payment of the Purchase Price, cause the Equipment to be maintained, stored, used and operated in a proper manner, and shall not alter, tamper with or attempt to repair the Equipment in any way except with the Company's consent and by the Company's authorised, representatives or agents.

9. Ownership

The Equipment or any part thereof shall automatically become the property of the Customer and title to the Equipment shall pass when full payment of the sums due in Clause 8.1 is received by the Company.

10. Installation

10.1 After the Equipment has been delivered to the Customer's premises and the Company has received the Delivery Note, the Company shall arrange for an authorized personnel to install the Equipment at the Customer's premises at an agreed pre-arranged time. Installation shall be performed at industry standards.

10.2 Upon installation, the Customer shall either (i) sign the Acceptance Certificate and return it to the Company; or (ii) within three (3) days of installation notify the Company in writing any problems regarding the installation. If the Customer shall fail to comply with these provisions the installation shall be conclusively presumed to be in accordance with this Agreement and free from any problem which would be apparent on a reasonable examination of the installation and the Customer shall be deemed to have irrevocably accepted the installation.

11. Access

The Customer shall permit the Company, its representatives or agents access to the Customer's premises upon request and at reasonable agreed times to install, inspect, repair or remove when necessary the Equipment from the Customer's premises.

12. Maintenance and Technical Assistance

12.1 Unless otherwise specified, maintenance service shall not be included in the Purchase Price. The Customer may subscribe to the Company's maintenance service separately.

12.2 From time to time after the delivery of the Equipment to Customer's premises, at the Customer's request, the Company may at its sole discretion, furnish technical assistance and information with respect to Equipment. The Company makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, with respect to technical assistance or information provided by the Company or its personnel. Any provision of such assistance or information shall not be construed as an express warranty unless specifically designated as such in writing and signed by an officer or authorized representative of the Company.

13. Indemnity and Insurance

13.1 The Customer undertakes to hold the Company and its insurance company harmless and shall indemnify the Company and its insurance company for any liability, loss, damage, cost or expense which the Company, its employees, agents, successors, officers, and assigns may incur in connection with this Agreement. In particular, the Customer agrees to indemnify for any liability, loss, damage, cost or expense which may arise out of the act, default or negligence by the Company, any of its employees, agents, successors, officers, and assigns against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

13.2 The Customer shall insure with a reputable insurance company against all loss of and damage to the Equipment for the value equal to its replacement, and injury to persons (including death) arising out of or in consequence of its obligations under the Agreement and against all actions, claims, demands, costs and expenses in respect thereof from the date of actual delivery of the Equipment until and including the date of full payment by Customer of all sums due under Clause 8.1 is received by the Company. The Customer shall supply to the Company upon request with written evidence that such cover is in force for the required period.

14. Warranty

14.1 The Company makes no warranty for the Equipment unless otherwise specified. The Equipment is provided to the Customer on an "as is" basis. Warranty, if any, carried with the Equipment is provided by the original manufacturer. The Company shall have no obligation and responsibility in connection with the warranty.

14.2 Subject as expressly provided in this Agreement, all terms, conditions, warranties, representations (whether implied by statutory or otherwise) whether by the Company its employees or agents or otherwise relating to the quality and/or fitness for the purpose of the Equipment are hereby excluded to the fullest extent permitted by law.

15. Limitation of Liability

15.1 Save and except for any liability of the Company which cannot be excluded at law, the Company shall not be liable to the Customer or any other person whatsoever in contract tort or otherwise at law for any cost, expenses, losses, damages or other actual, direct, indirect or consequential losses or liabilities whatsoever, suffered or incurred by the Customer or by any other person arising directly or indirectly from or out of or relating to (i) the provision of the Equipment/Service and/or in any way arising out of or in connection with this Agreement under which the Equipment/Service is provided; (ii) the Equipment or any other goods contemplated herein not being available for use; (iii) any accident or any willful negligent or wrongful act or omission on the part of the Company, its respective agents, employees or contractors, sub-contractors or suppliers in relation to this Agreement; and/or (iv) the Customer's use of the Equipment, or any part thereof.

15.2 The Customer acknowledges and agrees that the Company's liability and Customer's sole and exclusive remedy hereunder shall not in any event exceed the amount paid by the Customer for the Equipment under this Agreement.

15.3 The above Clauses 15.1 and 15.2 shall survive the termination of this Agreement.

16. Waiver of Remedies

Failure or delay of the Company at any time to take action against the Customer or any other person as provided in the Agreement shall not affect the Company's right to require full performance of the Agreement at any time thereafter. Waiver by the Company of a breach of any provision of the Agreement shall not constitute a waiver of any subsequent breach nor in any way affect any right, power or remedy of the Company under the Agreement.

17. Assignment

17.1 Notwithstanding any of the above, the Company may transfer, assign, delegate or sub-contract any right, obligation, title or interest in this Agreement to any surviving entities or transferee upon any merger or consolidation involving the Company or upon the sale of substantially all of the assets of the Company.

17.2 The Customer shall not assign, transfer, convey, license or otherwise dispose of its rights and obligations under the Agreement to any other party without the prior written consent of the Company.

18. Force Majeure

The Company shall not be liable for any failure, loss, damage or delay consequent upon strikes, lookouts, shortage of labour or materials, disputes, delays in delivery of goods or services of any subcontractor, fire, theft, storm, explosion, war, civil commotion, Act of God or any other circumstances beyond its reasonable control howsoever arising or howsoever caused.

19. Miscellaneous

19.1 The Company may revise the terms and conditions herein and/or introduce additional terms and conditions from time to time and such revision and/or addition shall become effective when displayed, advertised or brought to the attention of the Customer by such means as the Company thinks fit and shall be binding on the Customer.

19.2 If at any time any provision of the Agreement is or becomes illegal, invalid or unenforceable in any respect, the illegal, invalid or unenforceable provision shall be deemed to have been deleted from the Agreement but other provisions of the Agreement shall remain in full force and effect and shall not be affected or impaired thereby.

19.3 This Agreement shall supercede all previous negotiations, proposals, commitments, writing, advertisements, publications and any understandings of any nature whatsoever between the parties.

19.4 No agent, employee or representative of the Company has any authority to bind the Company to any affirmation, representation, guarantee or warranty concerning the Equipment unless the same is specifically included in this Agreement.

19.5 This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto, and their respective heirs, personal representatives, successors and assigns.

19.6 Should there be any inconsistency or discrepancy between the Order and these terms and conditions set forth herein, the Order shall prevail to such extent of inconsistency.

19.7 Governing Law and Jurisdiction This Agreement shall be governed by and construed in accordance with the laws of Hong Kong and the parties shall irrevocably submit to the exclusive jurisdiction of the courts of Hong Kong.