

**TERMS & CONDITIONS OF
SUB-CONTRACT**

TERMS & CONDITIONS OF SUB - CONTRACT

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CONDITIONS

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This SUB-CONTRACT is made the day of 20
between.....
..... of (or, whose registered office is situated at)
.....
.....
..... (hereinafter referred to as "the Main
Contractor") of the one part
and.....
..... of (or, whose registered office is situated at)
.....
.....
..... (hereinafter referred to as "the Sub-
contractor") of the other part;

Sub-contract supplemental to Main Contract

WHEREAS the Main Contractor has entered into a Contract for People-carrying Autonomous Vehicles and Associated Transportation System for Airportcity Link (hereinafter referred to as "the Main Contract") numbered C23W14 and dated and made between the Airport Authority (hereinafter referred to as "the Employer") of the one part and the Main Contractor of the other part;

AND WHEREAS the Main Contractor desires to have executed the design, supply, installation of Automatic Fare Collection System (AFCS) and which form part of the works (hereinafter referred to as "the Sub-contract Works") comprised in and to be executed in accordance with the Main Contract;

AND WHEREAS the Sub-contractor has had reasonable opportunity of inspecting the Main Contract or a copy thereof except the detailed prices of the Main Contractor included in schedules of rates, and has agreed to execute the Sub-contract Works upon the terms hereinafter appearing:

NOW IT IS HEREBY AGREED AS FOLLOWS:-

1. Sub-contractor's Liability Under Incorporated Provisions of The Main Contract

1.1 The Sub-contractor shall observe, perform and comply with all the provisions of the Main Contract on the part of the Main Contractor to be observed, performed and complied with in so far as they relate and apply to the Sub-contract Works and are not inconsistent with the express provisions of the Sub-contract as if all the same were severally set out herein and shall indemnify and save harmless the Main Contractor against and from:

- (a) any breach, non-observance or non-performance by the Sub-contractor, his agents, employees, or Sub-contractors of the said provisions of the Main Contract; and
- (b) any act or omission of the Sub-contractor, his agents, employees, or Sub-contractors which involves the Main Contractor in any liability to the Employer under the Main Contract (**Contract - C23W14**); and
- (c) any claim, damage, loss or expense due to or resulting from any negligence or breach of duty on the part of the Sub-contractor, his agents, employees, or Sub-contractors, and
- (d) any loss, damages or compensation payable at law under any statute in force for the time being in respect or in consequence of any accident or injury to any worker or other person in the employ of the Sub-contractor arising out of or in the course of his employment.

- 1.2** The Sub-contractor's liability to indemnity or recompense the Main Contractor in accordance with **1.1** sub-clause of this Clause shall, subject to **1.3** sub-clause of this Clause, be reduced proportionally to the extent that the act or neglect of the Main Contractor, his other Sub-contractors or their respective agents or employees may have contributed to the damage, loss or injury. Nothing contained in the Sub-contract shall impose any liability on the Sub-contractor in respect of any negligence or breach of duty on the part of the Employer, the Main Contractor, his other Sub-contractors or their respective agents or employees nor create any privity of contract between the Sub-contractor and the Employer or any other Sub-contractor,
- 1.3** The indemnities given herein by the Sub-contractor shall not be rendered ineffective or reduced by reason of any negligence or omission of the Employer or the Product Coordinator or the Product Coordinator's Representative in watching and inspecting the Sub-contractor Works, or in testing and examining any material to be used and workmanship employed by the Sub-contractor in connection with the Sub-contract Works, or in supervising or controlling the Sub-contractor's site operations or methods of working or Temporary Works, or in detecting or preventing or remedying defective work or services, or in ensuring proper performance of any other obligation of the Sub-contractor.
- 1.4** The Product Coordinator shall carry out such duties as are specified in the Contract with due expedition, the Main Contractor shall take instructions only from the Product Coordinator.

2. Sub-contractor's Obligation

- 2.1 The Sub-contractor shall, subject to the provisions of the Sub-contract, execute and complete the Sub-contract Works and provide all labor, materials, constructional plant, temporary works, transport and everything whether of a temporary or permanent nature required in and for such execution so far as the necessity for providing the same is specified in or reasonably to be inferred from the Sub-contract.
- 2.2 The Sub-contractor shall be responsible for the care of the Sub-contract Works and shall bear the cost of the restoration of any damage or loss to the Sub-contract Works and of any Constructional Plant, temporary buildings and materials and things whatsoever on the Site or delivered to or placed on the Site on connection with or for the purpose of the Sub-contract Works (hereinafter referred to as "the Restoration") except to the extent there the damage or loss is due to :-
- (a) Any of the Expected Risk prescribed in the Main Contract conditions;
 - (b) A breach of contract or other default by the Main Contractor or the Employer or any person for whom the Main Contractor or the Employer is responsible.
- 2.3 In the event any damage or loss referred to in Clause 2.2 is caused by any event covered by the insurance of the Main Contract taken out in compliance with the Main Contract conditions (hereinafter referred to as "Main Contract Insurance"), the Main Contractor shall, upon receipt of a reasonable request from the Sub-contractor, submit a claim in respect of the Restoration to the insurer. The Sub-contractor shall assist the Main Contractor to satisfy all the requirements in the policy of the Main Contract Insurance in preparing the insurance claim.

2.4 Notwithstanding Clause 2.2, and provided that any damage or loss referred in Clause 2.2 is covered by the Main Contract Insurance, the Main Contractor shall bear a sum equivalent to the excess or deductible to be borne by the insured of the Main Contract Insurance (hereinafter referred to as the "Excess Borne By The Main Contractor"). The Main Contractor shall pay to Sub-contractor:-

- (c) the Sub-contractor's share of the proceeds from the Main Contract Insurance for the Restoration; plus
- (d) the Excess Borne By The Main Contractor

The Sub-contractor shall not be entitled to any payment in respect of the Restoration other than the sum payable under the Clause.

3. Commencement, Completion, Extensions of Time and Damages

- 3.1 The Sub-contractor shall commence the Sub-contract Works on the date notified in writing by the Main Contractor and shall proceed with the same with due diligence and without delay except as may be expressly sanctioned or ordered by the Product Coordinator or be wholly beyond the control of the Sub-contractor.
- 3.2 The Sub-contract Works and any Section thereof shall be completed within the time or times stated in the Schedule of Key Dates and the Schedule of Significant Dates including the date of commencement notified by the Main Contractor in accordance with sub-clause 3.1 of this Clause or such extended time as may be determined in accordance with 3.3 sub-clause of this Clause.
- 3.3 If the completion of the Sub-contract Works or any Section thereof be delayed and such delay shall be caused by or be due to :-
- (a) any act or omission of the Main Contractor, his Sub-contractors, his or their respective agents or employees; or
 - (b) any cause for which the Main Contractor could obtain an extension of the time for completion under the Main Contract;

then the Main Contractor shall grant a fair and reasonable extension of the said period or periods for completion of the Sub-contract Works or any Section thereof as the case may require. The Sub-contractor shall give notice in writing to the Main Contractor as soon as practicable but in any event within 7 days after the cause of any delay to the progress of the Sub-contract Works has arisen. No extension of time for completion shall be granted where the delay is caused by the failure of the Sub-contractor to commence or carry out the Sub-contract Works in due time.

3.4 If the Sub-contractor fails to complete the Sub-contract Works or any Section thereof within the period or respective periods specified or any extended period or periods as hereinbefore provided the Sub-contractor shall pay to the Main Contractor any loss or damage suffered or incurred by the Main Contractor and caused by the failure of the Sub-contractor as aforesaid, of which loss or damage the Main Contractor shall at the earliest opportunity give reasonable notice in writing to the Sub-contractor that the same is being or has been suffered or incurred.

4. Variations

4.1 The Product Coordinator may instruct any variation to the Sub-contract Works that is in his opinion desirable in connection with the Sub-contract Works with which the Main Contractor shall comply. The variations may include but shall not be limited to:-

- (a) additions, omissions, substitutions, alterations, changes in quality, form, character or kind specified in the Sub-contract; and
- (b) changes to any sequence, method or timing of construction specified in the Sub-contract.

4.2 No variation shall be made by the Sub-contractor without an order in writing by the Product Coordinator and confirmed to him by the Main Contractor. No variation shall in any way vitiate or invalidate the Sub-contract but the value of all such variations shall be taken into account in ascertaining the Final Sub-contract Sum.

5. Defects

- 5.1 All work of repair or rectification or making good any defect, imperfection, shrinkage, settlement or other fault in the Sub-contract Works which the Main Contractor, whether at his own cost or not, shall be liable to repair, rectify or make good under the Main Contract, shall be repaired, rectified or made good by the Sub-contractor after the receipt by him from the Main Contractor of the Product Coordinator's written notice relating to the same.
- 5.2 If the Sub-contractor shall execute any work, whether permanent or temporary, to the Main Works or to any part of the same required by the Product Coordinator or rendered necessary by reason of the said defect, imperfection, shrinkage, settlement or other fault in the Sub-contract Works due to the use of materials or workmanship not in accordance with the Sub-contract, then the Sub-contractor shall pay to the Main Contractor the cost of the execution of such work. Provided that if the Main Contractor shall pay to the Employer the value of or other agreed sum in respect of such work instead and in satisfaction of executing the same, then the Sub-contractor shall pay to the Main Contractor such value or other agreed sum as aforesaid. Provided further that the value or other agreed sum shall not exceed the cost of executing such work.
- 5.3 If the Sub-contractor shall execute any work to or in connection with the Sub-contract Works, whether permanent or temporary, required by the Product Coordinator or rendered necessary by reason of any defect, imperfection, shrinkage, settlement or other fault in the Main Works due to the use of materials or workmanship not in accordance with the Main Contract, then the Main Contractor shall pay to the Sub-contractor the cost of the execution of such work. Provided that if instead of the Sub-contractor executing such work and in satisfaction of the same the Main Contractor shall pay or allow to the Employer the value of or other agreed sum, not exceeding such cost as aforesaid, in respect of such work, then the Main Contractor shall indemnify the Sub-contractor against any claim, damage or loss in respect of failure to execute such work.

6. Contracts (Rights of Third Parties) Ordinance Cap. 623

- 6.1 The parties to this Sub-contract do not intend that any term of this Sub-contract should be enforceable, by virtue of the Contracts (Rights of Third Parties) Ordinance Cap. 623, by any person who is not a party to this Contract.

7. Payments

- 7.1 The Sub-contractor shall deliver to the Main Contractor on dates to be agreed with the Main Contractor statements in quadruplicate in a form approved by the Main Contractor showing:-
- (a) the estimated value of the Sub-contract Works executed in accordance with the Sub-contract up to the end of such periods with adjustments for Variations listed separately;
 - (b) a priced list of materials delivered to the Site for use in the permanent Sub-contract Works (if any); and
 - (c) all other estimated sums which the Sub-contractor considers to be due to him in accordance with the Sub-contract;
 - (d) so that the Main Contractor may submit such claims for consideration and certification by the Product Coordinator.

- 7.2 The Product Coordinator shall certify payment for the Sub-contract Works using the same principles as stated in the Main Contract Conditions for certification of the value of the Main Works.
- 7.3 Within 7 days of the payment by the Employer on each of the aforesaid Product Coordinator's certificates the Main Contractor shall notify and pay to the Sub-contractor the sum certified as due in respect of the Sub-contract Works.
- 7.4 Within 7 days of the payment by the Employer on the Product Coordinator's certificate releasing the Retention Money held in respect of the Sub-contractor, the Main Contractor shall notify and pay to the Sub-contractor such portion of the Retention Money as is certified to be due in respect of the Sub-contract Works.
- 7.5 In the event of failure by the Main Contractor to pay to the Sub-contractor in compliance with the provisions of this Clause, the Main Contractor shall pay to the Sub-contractor interest at one percent below the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) upon any overdue payment from but not including the date on which the same should have been paid.