

# Swire Properties Management Limited

## Standard Terms and Conditions of Supply Contract

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### 1.0 Definitions

- 1.1 In this Contract (as hereinafter defined) the following words and expressions shall have the meanings hereby respectively assigned to them except where the content otherwise requires:
- 1.1.1 Certificate of Acceptance : means the certificate issued by the Employer's Representative pursuant to clause 4.4 hereof.
- 1.1.2 Conditions : means these Standard Terms and Conditions of Supply Contract.
- 1.1.3 Consultant : means any person and/or company appointed by the Employer for the provision of professional or technical services in connection with but not forming part of the Supplies.
- 1.1.4 Contract : means these Conditions and such other documents as are specified in the Tender Documents including the completed Form of Tender and Schedules, together with the Employer's Representative's written acceptance thereof on behalf of the Employer, but excluding any standard printed conditions that might be included in such other documents where such standard printed conditions originate from the Supplier.
- 1.1.5 Dispute : means any dispute or difference between the Employer and the Contractor in regard to the construction of the Contract or any matter or thing of whatsoever nature arising out of the Contract or in connection therewith.
- 1.1.6 Employer : means Swire Properties Management Limited.
- 1.1.7 Employer's Representative : means the person authorised by the Employer to manage the Supplies and to issue instructions and certificates all as referred to in these Conditions.
- 1.1.8 Form of Tender : means the form of tender as included in Section 1 or other parts of the Tender Documents.
- 1.1.9 Management Company : means the company appointed by the Employer to manage the premises in which the Supplies have been or are being delivered.
- 1.1.10 Parties : means the Supplier and the Employer.

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| 1.1.11 | Policy of Insurance           | : | means the policy of insurance as provided by the Employer pursuant to clause 7.2 and 7.3 of the Conditions. Contents of the Policy of Insurance can be viewed at the Employer's Office.                                  |
| 1.1.12 | Provisional Sums              | : | means any such sum as shall be identified specifically as such in the Tender Documents.  |
| 1.1.13 | Schedules                     | : | means the Schedules as included in Section 4 or other parts of the Tender Documents.   |
| 1.1.14 | Site                          | : | means the subject premises as identified in the Tender.  |
| 1.1.15 | Specifications                | : | means the respective specifications as more particularly described in Section 3 or other parts of the Tender Documents.  |
| 1.1.16 | Supplier                      | : | means the company or persons engaged by the Employer to furnish the Supplies.  |
| 1.1.17 | Supplier's Representative     | : | means the person appointed by the Supplier to coordinate with Employer's Representative on behalf of the Supplier and to receive instructions all as referred to in clause 2.4 hereof.                                   |
| 1.1.18 | Supplies                      | : | means the goods, equipment, materials, parts or other things required to be delivered as described in the Contract.  |
| 1.1.19 | Time for Delivery             | : | means the date or period as shall be inserted in the Form of Tender or other parts of Tender Documents for the delivery of Supplies (or any extended time fixed in accordance with the provisions of clause 4.2 hereof). |
| 1.1.20 | Time for Release of Retention | : | means the date or period, counted from the date of Certificate of Acceptance, as stated in the Form of Tender or other parts of the Tender Documents.  |
| 1.1.21 | Warranty Period               | : | means the period as stated in the Form of Tender or other parts of Tender Documents pursuant to clause 4.5.  |

1.2 In the Contract, unless the context otherwise requires:-

- i) the singular includes the plural and vice versa;
- ii) a gender includes any other gender;

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- iii) a reference to a 'person' includes any individual, firm, partnership and company or any other body corporate; and
- iv) a reference to a statute, statutory instrument or other subordinate legislation is to such legislation as amended, and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, including corresponding legislation in any other relevant part of the Hong Kong Special Administrative Region.

### 2.0 Intentions of the Parties

#### 2.1 *Supplier's Obligations*

The Supplier shall, with due diligence and in a proper and workmanlike manner, deliver the Supplies in compliance with the Contract using materials and workmanship of the quality and standards therein specified and to the reasonable satisfaction of the Employer's Representative and in conformity with all reasonable directions and requirements of the Employer's Representative and as required by the Schedules as included in Section 4.0 hereto.

#### 2.2 *Assignment*

The Supplier shall not, without the prior written consent of the Employer, provided such consent shall not be unreasonably withheld, assign this Contract.

#### 2.3 *Subcontracting*

The Supplier is responsible for the acts, obligations and omissions of all subcontractors, their agents, servants and workmen as fully as if they were the acts, obligations and omissions of the Supplier, his agents, servants and workmen.

#### 2.4 *Supplier's Representative*

The Supplier shall, at all reasonable times, assign a competent person to coordinate with and receive instructions from the Employer on behalf of the Supplier. Any instructions given to the Supplier's Representative by the Employer's Representative shall be deemed to have been issued to the Supplier.

#### 2.5 *Removal of person(s) from the Site*

The Employer's Representative may (but not unreasonably or vexatiously) issue instructions requiring the removal from the Site of any person employed thereon. Any person so removed shall not be allowed to re-enter the Site.

#### 2.6 *Employer's Representative's Instructions*

2.6.1 The Employer's Representative may issue instructions **in writing**; with which the Supplier shall comply forthwith. If instructions are **given orally** they shall, within two (2) days, be confirmed in writing by the Supplier and (if not disputed by the

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Employer's Representative in writing within two (2) days) such oral instruction shall be deemed to be a written instruction from the Employer's Representative.

2.6.2 If within seven (7) days after receipt of a written notice from the Employer's Representative requiring compliance with an instruction the Supplier does not comply therewith, then the Employer may employ and pay other persons to deliver the Supplies and all resulting additional costs thereby incurred by the Employer may be deducted by the Employer from any monies due or to become due to the Supplier under this Contract or shall be recoverable from the Supplier by the Employer as a debt.

### 3.0 Variations

#### 3.1 *Instruction and valuation of variations*

The Employer's Representative may, without invalidating the Contract, issue instructions requiring an addition to or omission from or other changes to the Supplies or the order or period in which they are to be delivered and any such instructions shall be valued by the Employer's Representative on a fair and reasonable basis using where relevant, prices in the Schedules.

#### 3.2 *Measurement of variations*

Where the valuation of a variation requires measurement, such measurements shall be taken **jointly** by the Employer's Representative and the Supplier. If the Supplier declines to participate in such measurement, such measurement by the Employer's Representative shall be deemed agreed by the Supplier.

#### 3.3 *Provisional Sums*

The Employer's Representative **shall issue instructions in regard to the expenditure of any Provisional Sums** included in the Contract. Such instructions shall be valued or the price agreed in accordance with clauses 3.1 or 3.2 hereof as appropriate and the Contract Sum adjusted.

#### 3.4 *Invoices & Vouchers*

The Employer reserves the right to inspect all invoices and vouchers in respect of any fees, cost and expense borne by the Supplier for the Supplies.

#### 3.5 *Correction of Inconsistencies*

Any inconsistency in or between the Tender Drawings, the Specifications and the Schedules shall be corrected by the Employer's Representative and any such correction which results in an addition, omission or other change to the Supplies shall be treated as a variation. Nothing contained in the Tender Drawings, the Specifications or the Schedules shall override, modify or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

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### 4.0 Delivery

#### 4.1 Commencement

The Supplier shall commence and arrange for the manufacturing, fabrication or transporting of the Supplies after receiving Employer's Representative instructions to proceed and shall deliver the Supplies on or before the Time for Delivery as stated in the Form of Tender or other parts of the Tender Documents.

#### 4.2 Extension of Time for Delivery

4.2.1 If and whenever it becomes reasonably apparent that the progress of the Delivery is being or is likely to be delayed and that the whole of Supplies may not be completed by the Time for Delivery stated in the Form of Tender or other parts of the Tender Documents for reasons beyond the control of the Supplier, including compliance with any instructions of the Employer's Representative (for which such issue is not due to a default of the Supplier), then the Supplier shall forthwith give to the Employer's Representative written notice of the cause or causes of delay.

4.2.2 If in the opinion of the Employer's Representative he agrees that such cause or causes are outside the control of the Supplier, the Employer's Representative shall make, in writing, such extension of time for Delivery as may be reasonable.

4.2.3 Causes within the control of the Supplier include but are not limited to any default of the Supplier and of any supplier of goods or materials for the Supplies.

#### 4.3 Damages for Non-delivery

4.3.1 If the Supplier fails to deliver the Supplies with the Time for Delivery and the Employer's Representative certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Supplier shall pay or allow to the Employer as **Liquidated Damages** such sum or sums calculated using the rate or rates stated in the Form of Tender or other parts of the Tender Documents applied to each day or part of a day during which the Supplies shall so remain or have remained incomplete.

4.3.2 The Employer may deduct such Liquidated Damages as calculated in clause 4.3.1 hereof from any monies due to the Supplier or he may recover them from the Supplier as a debt.

#### 4.4 Acceptance

As soon as in the opinion of the Employer's Representative the Supplies shall have been delivered and shall have satisfactorily passed any tests that may be prescribed in the Contract, the Employer's Representative shall **certify the Date of Acceptance** of the Supplies and issue a **Certificate of Acceptance** to the Supplier for the whole of the Supplies or any part thereof, and delivery of the Supplies shall be deemed for all purposes of the Contract to have taken place on the date named in such certificate.

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#### 4.5 *Warranty Period*

- 4.5.1 The Supplier shall duly execute and/or deliver any direct warranty in favour of the Employer.
- 4.5.2 The Supplier shall indemnify and keep indemnified the Employer against any liability, claim, proceedings, damages, loss, expense or costs which the Employer may suffer or incur in respect of any breach of the aforesaid warranties.
- 4.5.3 Any defects or other faults to the Supplies which appear within the Warranty Period commencing from the Date of Acceptance named in the Certificate of Acceptance issued pursuant to clause 4.4 hereof, and are due to materials or workmanship not in accordance with the Contract, shall be made good by the Supplier entirely at his own cost and with all possible speed.
- 4.5.4 If the Supplier shall fail to proceed to remedy such Defects or faults within seven (7) days of the Employer's Representative giving written notice of such Defects appearing, the Employer may within seven (7) days of the expiry of the written notice give further written notice to the Supplier that the Employer will proceed to carry out the rectification of such Defects at the risk and expense of the Supplier and without prejudice to such other rights as the Employer may have under the Contract. All costs incurred thereby by the Employer may be deducted by the Employer from any monies due or to become due to the Supplier or shall be recoverable from the Supplier by the Employer as a debt.

## 5.0 **Payment**

#### 5.1 *Stage payment and retention*

The Employer's Representative shall, if requested by the Supplier, at intervals of not less than one (1) month or at other intervals separately agreed, certify and issue **Payment Certificates** to the Supplier in respect of the value of the Supplies delivered, including any amounts either ascertained or agreed under clause 3.0 hereof, less the percentage of retention (if any) as stated in the Form of Tender or other parts of the Tender Documents and less any previous payments made by the Employer. The Employer shall pay to the Supplier the amount so certified within thirty (30) days of the date of such certificate of payment.

#### 5.2 *Payment upon Delivery*

- 5.2.1 The Employer's Representative shall, if requested by the Supplier, after issue of the Certificate of Acceptance pursuant to clause 4.4 hereof, certify payment to the Supplier of the total value of the Supplies less the percentage of retention (if any) stated in the Form of Tender or other parts of the Tender Documents to be paid to the Supplier under this Contract so far as that value of the Supplies is ascertainable and provided the Supplies have been properly delivered.

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5.2.2 Such certified payment shall include such Supplies as has been either ascertained or agreed under clause 3.0 hereof, less the amount of any progress payments previously made by the Employer. The Employer shall pay to the Supplier the amount so certified within thirty (30) days of the date of receipt of such payment certificate from the Supplier.

#### 5.3 *Release of Retention*

The release of retention money shall not become due until the Time for Release of Retention or the end of the Warranty Period, **whichever is the earlier**, provided that any defects or faults to the Supplies are duly addressed and rectified to the satisfaction of the Employer's Representative.

## 6.0 Statutory obligations

### 6.1 *Statutory obligation, notices, fees and charges*

6.1.1 The Supplier shall comply with, and give all notices required by, any statute, any statutory instrument, any laws, ordinances, orders, regulations or bylaws applicable to the Supplies (hereinafter called 'the statutory requirements') and shall pay all fees and charges in respect of the Supplies legally recoverable from him. If the Supplier finds any divergence between the statutory requirements and the Supplies or between the statutory requirements and any instructions of the Employer's Representative, he shall immediately give to the Employer's Representative a written notice specifying the divergence.

6.1.2 Provided that the Supplier shall have complied with this clause 6.1.1 hereof, the Supplier shall not be liable to the Employer under this Contract if the Supplies do not comply with the statutory requirements where and to the extent that such non-compliance of the Supplies results from the Supplier having delivered in accordance with the Contract or any instructions of the Employer's Representative.

### 6.2 Contracts (Rights of Third Parties) Ordinance

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

## 7.0 Insurance

### 7.1 *Employees' Compensation Insurance*

7.1.1 Without prejudice to his liability to indemnify the Employer under this clause 7.1 and clause 7.2, the Supplier shall take out and maintain in the joint names of the Supplier and subcontractor of any tier insurance coverage to follow the standard Accident Insurance Association of Hong Kong Employees' Compensation Policy wording to indemnify all of the liabilities of the Supplier or, as the case may be, of each subcontractor of any tier and their respective employees and other persons

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who may be employed on the Supplies in respect of any damages or compensation payable under any Ordinance, Statute or at common law in respect, or in consequence of, any death, accident, illness or injury to any person in the employment of the Supplier or any subcontractor arising out of, or in the course of, or caused by the execution of the Contract.

7.1.2 The Supplier shall effect his own liability insurance policy and/or Personal Accident insurance policy as deemed necessary to cover any claims alleged by sole proprietors or self-employed persons in respect of any personal injuries, death or illness arising out of, or in the course of, or caused by the execution of the Contract.

### 7.2 *Injury to Persons and Property and Employer's Indemnity*

7.2.1 Without prejudice to his liability to provide Employees' Compensation Insurance pursuant to clause 7.1, the Supplier shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim, or proceedings whatsoever suffered or incurred as a result of the personal injury to or the death of any person whomsoever, arising out of or in the course of or caused by the execution of the Contract.

7.2.2 The Supplier shall be liable for, and shall indemnify and keep indemnified the Employer against any cost, expense, liability, loss, damage, claim or proceedings whatsoever, suffered or incurred as a result of any injury or damage whatsoever to any property real or personal arising out of or in the course of or caused by the execution of the Contract.

### 7.3 *Evidence of insurance*

The Supplier shall produce such evidence as the Employer or Employer's Representative may reasonably require not later than seven (7) days after the award of Contract that the insurance referred to in clause 7.1 hereof have been taken out and are in force at all material times.

### 7.4 *Custody of Supplies*

The Supplier shall be responsible for the loss and expense concerning the custody of Supplies prior to the acceptance of the Supplies by the Employer's Representative under clause 4.4.



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### 8.0 Determination

#### 8.1 *Determination by the Employer*

8.1.1 If the Supplier makes default in any one or more of the following respects, this is to say:

(i) if he without reasonable cause suspends the production or delivery of Supplies thereof.

(ii) if he refuses or persistently neglects to comply with a notice from the Employer's Representative requiring him to rectify defects or remove materials or goods,

then the Employer's Representative may by registered post or recorded delivery give the Supplier notice specifying the default and notifying the Supplier of the Employers intention to determine the employment of the Supplier forthwith if the Supplier shall continue such default for fourteen (14) days after receipt of such notice.

8.1.2 If the Supplier shall for fourteen (14) days after receipt of a notice served pursuant to clause 8.1.1 hereof continue such default the Employer may, but not unreasonably or vexatiously, within ten (10) days after such continuance by notice by registered post or recorded delivery to the Supplier determine forthwith the employment of the Supplier under this Contract.

8.1.3 If the Supplier or any of his employees, servants, or subcontractor of any tier shall have

(i) offered or given or agreed to give to any person having a relationship with the award or performance of this Contract any gift or consideration of any kind, or

(ii) committed any offence under the Prevention of Corruption Ordinance.

then Employer may, but not unreasonably or vexatiously, by notice by registered post or recorded delivery to the Supplier determine forthwith the employment of the Supplier under this Contract.

In the event of the Employer determining the employment of the Supplier as aforesaid the Employer shall not be bound to make any further payment to the Supplier.

8.1.4 Provided always that the right of determination pursuant to clause 8.1.2 or clause 8.1.3 hereof shall be without prejudice to any other rights or remedies which the Employer may possess.

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8.1.5 If the Supplier:

- (i) becomes bankrupt, or
- (ii) makes any composition or arrangement with his creditors, or
- (iii) has a winding up order made, or (except for the purposes of reconstruction) a resolution for voluntary winding up passed, or a receiver of his business appointed or the like;

then the employment of the Supplier under this Contract shall be forthwith automatically determined.

### 8.2 *Determination by the Supplier*

8.2.1 If the Employer shall make default in any one or more of the following respects that is to say:

- (i) the Employer persistently fails to make any progress payment due under the provisions of clause 5.0 hereof within thirty (30) days of such payment being due; or
- (ii) If the Employer or any person for whom he is responsible interferes with or obstructs or fails to make the premises available for the delivery of Supplies; or
- (iii) If the Employer suspends the production or delivery of Supplies for a continuous period of at least one (1) month.

the Supplier may give notice to the Employer by registered post or recorded delivery of the Supplier's intention to determine its employment under this Contract if the Employer shall continue such default for fourteen (14) days after receipt of such notice.

8.2.2 If the Employer:

- (i) for fourteen (14) days after receipt of a notice served pursuant to clause 8.2.1 hereof continues such default, or
- (iii) becomes bankrupt, or
- (iii) makes any composition or arrangement with his creditors or has a winding up order made or (except for the purposes of reconstruction) a resolution for voluntary winding up passed or a receiver of his business appointed or the like the Supplier may, but not unreasonably or vexatiously, within ten (10) days after such event by notice by registered post or recorded delivery to the Employer determine forthwith the Supplier's employment under this Contract.

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8.2.3 In the event of the Supplier determining its employment as aforesaid the Employer shall pay to the Supplier, after taking into account amounts previously paid, such sum as shall be fair and reasonable for the value of supplies delivered provided such supplies shall have been delivered in accordance with the standards specified in the Contract.

8.2.4 Provided always that the right of determination pursuant to clause 8.2.2 hereof shall be without prejudice to any other rights or remedies that the Supplier may possess.

### **9.0 Quality of Materials and Workmanship**

9.1 Without prejudice to any other warranty expressly given or implied by operation of law the Supplier warrants that:-

- a. all materials, goods and things provided by him in accordance with the Contract correspond as to description, quality and condition with the terms stated in the Contract, and
- b. all materials or goods provided by him in accordance with the Contract are of merchantable quality and of sound materials and good workmanship, and
- c. where selection of materials or goods is made by the Supplier that the same shall be the best of their respective kinds and fit for their purpose, and
- d. all materials or goods provided by the Supplier in accordance with the Contract shall conform with any sample, mock-up, pattern, drawing or design approved by the Employer's Representative or any Consultant, and
- e. all persons engaged or employed by the Supplier in the performance of the Contract are suitably skilled, experienced and qualified to perform the work allotted to them, and
- f. where matters of design, specification or selection of materials are carried out by the Supplier that specialist skill and care has been or shall be applied in carrying out the same and that the same shall be fit for their purpose, and
- g. the Supplies when delivered shall comply with all requirements of the laws then in force in the Hong Kong Special Administrative Region and shall be fit for their intended purposes.

9.2 The Employer's Representative may at any time require the removal from the Site and replacement forthwith of any materials, goods, or persons the subject of the warranties contained in clause 9.1 hereof which do not in his opinion comply with such warranties or are otherwise not in accordance with the Contract.

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- 9.3 The Employer's Representative may if he shall so require instruct the Supplier to open up for inspection and testing any supplies whether completed or not to ascertain whether the same complies with the terms of the Contract provided that if it shall be ascertained that such work does do so comply then the cost and expense of such opening up, inspection and testing (together with the cost of making good in consequence thereof) shall be valued in the manner prescribed in clause 3.1 hereof and added to the Contract Sum. The Employer's Representative shall have the right to order the rectification, removal, repair, making good or replacement of any supplies delivered which is not in accordance with the Contract at the Supplier's own cost.
- 9.4 All materials and goods to be provided by the Supplier in accordance with the Contract shall be subjected from time to time to such tests as the Employer's Representative may direct at the place of manufacture or fabrication or at such other place or places whether on or off the Site as the Employer's Representative may direct or at all or any of such places. The Supplier shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing the same and shall supply samples of materials, goods or things before incorporation in the Supplies for testing as may be required by the Employer's Representative. The cost of the same shall be payable to the Supplier to the extent that the same is expressly stated in the Contract.
- 9.5 The Supplier shall give and shall procure that his subcontractor of any tier give to the Employer's Representative or any of the Consultants, as the case may be, and their respective representatives, full access to the workshops or other places where the Supplies is being prepared or goods or materials are being manufactured for the Supplies so that they may test, inspect or examine the same. The Supplier shall assist the Employer's Representative or any of the Consultants and their respective representatives during the course of any such visits as aforesaid.

#### **10.0 Operation and Maintenance Manuals**

- 10.1 The Supplier shall prepare and submit the maintenance manuals in printed and electronic versions to the Employer's Representative.
- 10.2 The Supplier shall action any comment made by the Employer's Representative on the document and shall make re-submissions as necessary until the Employer's Representative is satisfied therewith and gives his endorsement.
- 10.3 Draft operation and maintenance manuals complete with provisional record drawings, software listing (if any) and setting out the operation and maintenance procedures in accordance with the requirements set out in the Contract are to be made available at least one month before the programmed date for site testing and commissioning to allow the Employer's representatives to become familiar with the installation.
- 10.4 These draft manuals shall be of the same format as the final manuals but with temporary insertion for items which cannot be finalised until the Supplies are delivered, tested and accepted.

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10.5 Finalised and endorsed manuals shall be provided not later than the seven (7) days after the issue of the Certificate of Acceptance.

10.6 The Supplier is to provide one (1) electronic copy and two (2) hard copies of the endorsed document, all such manuals and instruction shall be available in both English and Chinese.

10.7 The provision of these manuals shall be a condition precedent to the release of the retention under clause 5.3 of the Conditions.

#### **11.0 Patents**

11.1 The Supplier shall fully indemnify and save harmless the Employer's Representative against any action, claims, cost, charges or expenses arising out of or in connection with any infringement or alleged infringement or any letters patent, registered design, trade mark, trade name or copyright by reason of the Employer's Representative use or sale of the Supplies under the Contract.

#### **12.0 Sustainable Materials**

12.1 The Supplier shall ensure that all materials, manufacture, packing for the Supplies used shall comply with all relevant environmental legislation and Codes of Practice. In addition they must be environmentally acceptable and have a lesser or reduced effect on human health and the environment (unless otherwise specified) when compared with competing Supplies that serve the same purpose.

#### **13.0 Protection of the Public**

13.1 The Supplier shall provide sufficient warning notices and with temporary fencing, barriers, etc. as necessary to protect the public during the delivery of Supplies.

#### **14.0 Fire Escapes**

14.1 The Supplier is to ensure that all corridors, fire escape routes and the like are kept clear at all times and not blocked during the delivery of the Supplies.

#### **15.0 Removing construction waste, rubbish and cleaning down**

15.1 The Supplier shall dispose all construction waste, debris, packaging and rubbish as it accumulates on site. All related cost, charges and fees incurred shall be borne by the Supplier unless otherwise specified.

#### **16.0 Site Access**

16.1 The Supplier shall make all necessary arrangements with the statutory authorities and the Hong Kong Police for the occupation of the public highway and footpaths, if any, that may be used or crossed to deliver the Supplies.

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16.2 The Supplier shall submit a detailed method statement for the delivery of Supplies to the Employer's designated store.

#### **17.0 Notices**

17.1 Any notice or instruction to be given to the Supplier under this Contract may be served by delivering to the Supplier's registered office.

17.2 Any notice or communication to be given to the Employer under this Contract may be served by registered post, by recorded delivery or by leaving at the Employer's registered office.

#### **18.0 Governing Law**

18.1 The construction, validity and performance of this Contract and resolution of all disputes or differences arising hereunder shall in all respects be governed by the laws of the Hong Kong Special Administrative Region.

#### **19.0 Settlement of disputes**

19.1 Any Dispute, whether arising during the progress or after the completion or abandonment of the Contract or after the determination of the Contract howsoever, shall first be referred to mediation in accordance with the then current Mediation Rules of the Hong Kong International Arbitration Centre ("HKIAC"). If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved to the satisfaction of either party, then such dispute or difference shall be referred to and determined by arbitration as provided in clauses 19.2 to 19.6 hereof.

19.2 In the event that any Dispute is not resolved by reference to mediation as provided in 19.1 hereof, then either the Employer or the Supplier shall give written notice to the other to such effect and such Dispute shall be referred to the arbitration and final decision of a person to be agreed between the parties as the Arbitrator, or upon failure to so agree within fourteen (14) days after the date of the aforesaid written notice, of a person to be appointed as the Arbitrator on the request of either the Employer or the Supplier by the HKIAC.

19.3 For the purposes of this clause 19.0, 'Arbitration Ordinance' means the Arbitration Ordinance (Cap 609) or any statutory modification thereof for the time being in force. It is expressly agreed that all the provisions of Schedule 2 to the Arbitration Ordinance shall apply to any arbitration instituted in accordance with this clause 19.0. Such arbitration shall take place in Hong Kong and the Arbitrator shall have no power to decide otherwise.

19.4 The Arbitrator shall, without prejudice to the generality of his powers, have power to rectify the Contract so that it accurately reflects the true agreement made by the Employer and the Supplier, to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice

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and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given.

19.5 The award of such Arbitrator shall be final and binding on the parties provided that with the exception of the formalities of his appointment the Arbitrator may not pursue the reference until after the delivery of the whole of the Supplies.

19.6 If before making his final award the Arbitrator dies or otherwise ceases to act as the Arbitrator, the Employer and the Supplier shall forthwith appoint a replacement Arbitrator, or, upon failure so to appoint within fourteen (14) days of any such death or cessation, then either the Employer or the Supplier may request the HKIAC to appoint such replacement Arbitrator. Provided that no such replacement Arbitrator shall be entitled to disregard any direction of the previous Arbitrator or to vary or revise any award of the previous Arbitrator except to the extent that the previous Arbitrator had power so to do under the Arbitration Rules and/or with the agreement of the parties and/or by the operation of law.

#### 20.0 Supplier Code of Conduct

20.1 The Supplier shall comply fully and properly with the Employer's "Supplier Code of Conduct" (Code of Conduct) as provided in the link in Clause 20.3.

20.2 At all times when processing and providing the Supplies, the Supplier is to arrange for it and for each of its employees, agents and subcontractors to comply fully with the Employer's Code of Conduct.

20.3 The Code of Conduct is published on Swire Properties' website (currently at [www.swireproperties.com](http://www.swireproperties.com)) and may be amended from time to time. The Supplier agrees that he shall keep himself informed of any amendments to the Code of Conduct by regularly consulting the Employer or Employer's website for the latest edition and shall comply with such latest edition accordingly.

20.4 By accepting this Contract, the Supplier represents to the Employer:

- (a) that the Supplier has read the Code of Conduct; and
- (b) that the Supplier, its employees, agents and sub-contractors are complying, and will comply, with the Code of Conduct when processing or providing the Supplies;
- (c) that the Supplier shall allow the Employer upon reasonable request to inspect the processing and providing of the Supplies so that the Employer can monitor the Supplier's compliance with the Code of Conduct.

20.5 If the Supplier becomes aware that the processing and providing of the Supplies may breach the Code of Conduct, then it is to notify the Employer and/or the Employer's Representative as soon as reasonably practicable. Then, the Supplier shall:

- (a) promptly to provide the Employer with a corrective action plan to the satisfaction of the Employer; and
- (b) implement the plan within a period on which the Employer and the Supplier agree.

## **Swire Properties Management Limited**

### **Standard Terms and Conditions of Supply Contract**

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- 20.6 If the Supplier does not implement the agreed corrective action plan to the satisfaction of the Employer within the agreed time-frame, then the Employer and/or the Employer's Representative may give written notice immediately ending the order, contract, and any other agreements between the Employer and the Supplier, and without compensation. The Supplier has liability to protect the Employer from any damages / liabilities resulting from the Supplier's breach of the Code of Conduct.