Standard Terms of Quotation

The terms set out below shall be deemed incorporated in each Brief to be issued by Government B/Ds inviting Proposals under the GITP scheme.

1. Request for Information

1.1 In the event that the Government determines that:

(a) clarification in relation to any part of the Proposal is necessary; or

(b) a document or a piece of information, other than the items set out in Clause 1.2(a), is missing from any Proposal.

it may, via the e-Procurement System or otherwise, but is not obliged to, request the Bidder concerned to make the necessary clarification, or submit the required document or information. The Bidder concerned shall within five (5) working days from the date of the request or such other period as specified in the request submit such clarification, information or document in the form required by the Government. A Proposal will **not** be considered further if complete information or document required is not provided as required by the deadline as specified in the request, or in the case of clarification, such clarification is not provided by such deadline or is not acceptable to the Government. Without prejudice to the foregoing, any proposal or information supplied by a Bidder which goes beyond what has been requested by the Government will be ignored for the purposes of the Proposal evaluation or will entitle (but not oblige) the Government to disqualify the Bidder concerned. As an alternative to seeking clarification or further information or document, the Government may not consider the Proposal further or may proceed to evaluate the Proposal on an "as is" basis.

1.2 The items not covered by Clause 1.1(b) are:

(a) any document or information in respect of which it is specified in the Invitation Documents that a failure to provide to the Government in a Proposal at the time of submission of the Proposal or before the Proposal Closing Time will result in the Proposal not being considered.

2. Authenticity of Documents Submitted

2.1 By submitting a Proposal to this Invitation to Proposal, the Bidder gives consent to the Government to obtain from

(a) any person including the manufacturer, whose particulars are required in the Proposal to be set out by the Bidder in its Proposal or documentation attached to the Proposal ("Proposal Documentation"); and

(b) any issuing body of any of the test reports/ certificates or documentary evidence required in the Proposal Documentation.

All information which the Government considers appropriate and relevant to the evaluation of the Proposal including information to verify the legitimacy, completeness, authenticity and accuracy of any Proposal Documentation submitted by the Bidder. If any consent from any other person is required for the Government to obtain any of the aforesaid information or document, the Bidder (and, where applicable, the Contractor) represents that such consent has been duly obtained or that it can obtain such consent when required by the Government. Further, upon request by the Government, the Bidder shall provide a written authorisation to the Government if such written authorisation is needed for the Government to obtain information and/or document(s) from the person or issuing body referred to in Sub-paragraphs (a) and (b) above. The Government has the sole discretion to disqualify the Bidder if the Bidder fails to provide such written authorisation upon request by the Government.

2A. Site Visits

2A.1 For the purposes of evaluating whether the Bidder will be capable of performing the Contract, the Government may, at its own costs, conduct site visit(s) to any premises including the premises of the Bidder (including its registered office and warehouse), the premises of the proposed sub-contractor (if any) and/or the manufacturing plant, with or without prior notice, whether by the Government B/D Representative or any person appointed by the Government. The Bidder shall make all necessary arrangements to facilitate

such site visit(s). During such site visit, the Government may make requests for any document or information pursuant to Clause 2.1 to be provided on the spot during such site visit or make copies thereof itself during such site visit.

2A.2 The making of any such site visit does not imply that the Bidder will be awarded the Contract.

3. Intellectual Property Rights in respect of the Proposal

3.1 The Government and its authorised users shall have the right to do any of the acts restricted by copyright under sections 22 to 29 of the Copyright Ordinance (Chapter 528 of the Laws of Hong Kong) in respect of the Proposals and all related documents or materials submitted by the Bidders, for purposes including but not limited to quotation evaluation, contract management, record keeping, the disclosure made pursuant to paragraph 7 of the GITP Participation Terms and Conditions and all other purposes incidental thereto.

4. Offer of Products

4.1 The Government does not accept any used or refurbished or parallel import goods, products or equipment. If a Bidder fails to comply with this requirement, its Proposal will not be further considered. By submitting a Proposal, the Bidder undertakes and declares that all products and equipment it offers in response to this Invitation to Proposal will be fresh from stock and/or a factory.

5. Communication with the Government

5.1 Only those communications which are in writing from the Government shall be considered as duly authorised to have been made on behalf of the Government. Equally speaking, only communications from the Bidder which are in writing and are stated to be made by or for and on behalf of the Bidder will be recognised by the Government as duly authorised to have been made by or on behalf of the Bidder.

5.2 Unless the Government wishes to contact any other person, all communications connected with or arising out of the Invitation Documents shall be conducted directly between the Government and the Bidder irrespective of the number of manufacturers or sub-contractors involved.

5.3 Unless otherwise expressly stated by the Government in writing, a statement made whether oral or written in response to any enquiry made by a prospective Bidder shall be for information only. No such statement shall constitute a representation or warranty of whatsoever nature, express or implied, and no invitation is made by the Government to any Bidder or prospective Bidder to rely on the accuracy or completeness of such statement. Unless in the context of an issued addendum to the Invitation Documents, the statement will not be deemed to form part of these Invitation Documents and it shall not alter, negate or waive any of the provisions set out in these Invitation Documents.

6. Government Discretion

6.1 Notwithstanding anything to the contrary in these Invitation Documents, the Government reserves the right to disqualify a Bidder on grounds including any one of the following:

(a) a petition is presented or a proceeding is commenced which has not been withdrawn any time prior to the award of the Contract or an order is made or a resolution is passed for the winding up or bankruptcy of the Bidder or its related person;

(b) the Bidder has made or submitted a false, inaccurate or incomplete statement or representation or a forged document in the Proposal or in any subsequent submission by the Bidder or communication between the Government and the Bidder since submission of that Proposal, or in the sole judgment of the Government, the Bidder is not considered fit and proper to perform the Contract;

(c) in the event of (i) a claim or allegation by any person, or a ruling or judgment by a court, or decision by a competent tribunal or arbitration body that any thing(s), service(s) or material(s) supplied or previously supplied or to be supplied or recommended by the Bidder or its related person in the Bidder's Proposal infringes or will infringe any Intellectual Property Rights or any other rights of any person ("IPR

infringement") (and in the case of any claim or allegation, it was made any time during a period of five (5) years preceding the Proposal Closing Date and up to the time of award of the Contract); or (ii) the Government having grounds to believe there is or will be such IPR infringement; or (iii) an agreement has been entered into whether by the Bidder or any other person to settle or compromise any claim or allegation about IPR Infringement (regardless of whether on an admission basis or non-admission basis) which agreement is still valid and subsisting at any time during a period of five (5) years preceding the Proposal Closing Date and up to the time of the award of the Contract;

(d) any time during the twenty-four (24) months prior to the Proposal Closing Date or between the Proposal Closing Date and the award of the Contract, the Bidder or a related person of the Bidder was in significant or persistent default(s) or deficienc(ies) in the performance of any substantive requirement or obligation under any Government contract awarded by the DPO or the Government Logistics Department or the Government B/D (which is inviting party of the relevant Brief) regardless of whether the default(s) or deficienc(ies) led to the actual termination of the relevant Government contract and regardless of whether such default(s) or deficienc(ies) occurs before or after the termination or expiry of the relevant Government contract, and in the case of the latter, provided that the default(s) and deficienc(ies) relates to any provisions which survive such termination or expiry, and regardless of whether such default(s) or deficienc(ies) has been remedied (a "Contract Default"); and the Government B/D Representative in its sole judgment is satisfied that such Contract Default(s) casts a reasonable doubt on the capability of the Bidder to perform the Contract to be awarded in this Invitation to Proposal;

(e) the Bidder or a related person or a director or management staff of the Bidder has been convicted by the final judgment (i.e. judgment not subject to any appeal to a higher court prior to the award of the Contract) in respect of one or more serious offences including conviction of offences involving bribery, false accounting, corruption, dishonesty or employment handed down any time during a period of five (5) years preceding the Proposal Closing Date and thereafter up to the time of the

award of the Contract;

(f) in the event of any professional misconduct or any act or omission having been committed during a period of five (5) years preceding the Proposal Closing Date and thereafter up to the time of the award of the Contract that adversely reflects on or casts doubt on the commercial integrity of the Bidder or a related person or a director or management staff of the Bidder;

(g) any failure of the Bidder or its related person to pay taxes to the Government during a period of five (5) years preceding the Proposal Closing Date and thereafter up to the time of the award of the Contract; or

(h) the Government considers that the Bidder will not be capable of fulfilling the terms of the Contract.

The grounds specified in Clauses 6.1(a) to 6.1(h) above are separate and independent, and shall not be limited by reference to or inference from the other of them.

6.2 Notwithstanding anything to the contrary in the Invitation Documents, the Government B/D Representative reserves the right to disqualify a Bidder on the grounds that (i) the Bidder (including any contractors / sub-contractors / suppliers / service providers that may be further engaged by the Bidder) has engaged, is engaging, or is reasonably believed to have engaged or be engaging in acts or activities that are likely to cause or constitute the occurrence of offences endangering national security; or (ii) the exclusion is necessary in the interest of national security, or to protect the public interest of Hong Kong, public morals, public order or public safety; or (iii) the Government considers that the Bidder will not be capable of fulfilling the terms of the Contract.

7. Warranty against Collusion

7.1 The Bidder must ensure that the Proposal is prepared without any agreement, arrangement, communication, understanding, promise or undertaking with

any other person (except as provided in paragraph 3 of Annex A (Non-collusive Certificate) referred to in Clause 7.2), regarding, amongst other things, price, Proposal submission procedure or any terms of the Proposal. Bid-rigging is inherently anti-competitive and is considered serious anti-competitive conduct under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong). Bidders who engage in bid-rigging conduct may be liable for the imposition of pecuniary penalties and other sanctions under the Competition Ordinance.

7.2 The Bidder shall complete and submit to the Government in the Non-collusive Certificate as part of its Proposal.

7.3 In the event that a Bidder is in breach of any of the representations, warranties and/or undertakings in Clause 7.1 or in the Non-collusive Certificate submitted by it under Clause 7.2, the Government shall be entitled to, without compensation to any person or liability on the part of the Government:

(a) reject the Bidder's Proposal;

(b) if the Government has accepted the Proposal, withdraw its acceptance of the Bidder's Proposal; and

(c) if the Government has awarded a Contract to the Bidder, terminate the Contract under Clause 27 of the Conditions of Contract.

7.4 By submitting a Proposal, a Bidder is regarded to have undertaken to indemnify and keep the Government fully and effectively indemnified against all losses, damages, costs or expenses arising out of or in relation to any breach of any of the representations, warranties and/or undertakings in Clause 7.1 or in the Non-collusive Certificate submitted by it under Clause 7.2.

7.5 A breach by a Bidder of any of the representations, warranties and/or undertakings in Clause 7.1 above or in the Non-collusive Certificate submitted by it under Clause 7.2 may prejudice its future standing as a Government contractor or service provider.

7.6 The rights of the Government under Clauses 7.3 to 7.5 are in addition to and without prejudice to any other rights or remedies available to it against the Bidder.

8. Warning against Bribery

8.1 The offer of an advantage to any Government officer with a view to influencing the award of the Contract, or as a reward for or otherwise on account of such award, is an offence under the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong). Any such act committed by a Bidder or any of its officers, directors, employees or agents will render its Proposal null and void.

8.2 The successful Bidder awarded with the Contract shall inform its officers, directors, employees (whether permanent or temporary), agents and sub-contractors who are connected with the performance of the Contract that the offering, soliciting or accepting of advantages, within the meaning of the Prevention of Bribery Ordinance (Chapter 201 of the Laws of Hong Kong) is not permitted. The successful Bidder shall also caution its officers, directors, employees and agents and sub-contractors against soliciting or accepting any advantage or entertainment which may impair their impartiality in relation to the performance of the Contract.

9. United Nations Convention on Contracts for the International Sale of Goods not applicable

9.1 The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to Invitation Documents or the Proposal submitted by a Bidder in response to the Invitation Documents.

10. Payment

10.1 Payment to the successful Bidder under the Contract will be made either by bank transfer into the designated bank account or through the FPS proxy. The details of the designated bank account or FPS proxy (depending on the election by the successful Bidder) shall be provided by the successful Bidder to the Government after the Contract award in accordance with Clause 19.10

of the Conditions of Contract. No other mode of payment will be entertained unless otherwise agreed by the Government.

10.2 Payment through the FPS proxy will not be available to an overseas Bidder which does not have a bank account or FPS proxy in Hong Kong. By default, all amounts payable under the Contract to such successful Bidder will be made by telegraphic transfer into the Bidder's overseas designated bank account.

*** End ***

Annex A

Non-collusive Certificate

To: the Government

Dear Sir/ Madam,

1. I/We, (name of the Bidder) _____ of

(address(es) of the Bidder(s)) _____

_____

_____

refer to the Government's invitation to quotation for the Contract ("Invitation to Proposal") and my/our Proposal in response to the Invitation to Proposal.

Non-collusion

2. I/We represent and warrant that in relation to the Invitation to Proposal:

(a) My/Our Proposal was prepared genuinely, independently and made with the intention to accept the Contract if awarded;

(b) My/Our Proposal was not prepared with any agreement, arrangement, communication, understanding, promise or undertaking with any person (including any other Bidder or competitor) regarding:

i) prices;

ii) methods, factors or formulas used to calculate prices;

iii) an intention or decision to submit, or not submit, any Proposal;

iv) an intention or decision to withdraw any Proposal;

v) the submission of any Proposal that does not conform with the requirements of the Invitation to Proposal;

vi) the quality, quantity, specifications or delivery particulars of the products or services to which the Invitation to Proposal relates; and

vii) the terms of my/our Proposal,

and I/we undertake that I/we will not, whether before or after the award of the Contract, enter into or engage in any of the foregoing.

3. Paragraph 2(b) of this certificate shall not apply to agreements, arrangements, communications, understandings, promises or undertakings with:

(a) the Government;

(b) a joint venture partner with which I/we have submitted my/our Proposal, and such joint venture arrangement has already been notified to the Government in my/our Proposal;

(c) my/our consultants or sub-contractors, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular consultancy arrangement or sub-contract;

(d) my/our professional advisers, provided that the communications are held in strict confidence and limited to the information required for the adviser to render their professional advice in relation to my/our Proposal;

(e) insurers or brokers for the purpose of obtaining an insurance quote, provided that the communications are held in strict confidence and limited to the information required to facilitate that particular insurance arrangement;

(f) banks for the purpose of obtaining financing for the Contract, provided that the communications are held in strict confidence and limited to the information required to facilitate that financing; and

(g) any person other than the Government, provided that the Government has given prior written consent.

Disclosure of subcontracting

4. Without prejudice to other requirements set out in the Proposal Documents concerning sub-contracting arrangement, in particular, the requirement to seek the Government's prior written approval before sub-contracting, I/We understand that I/we are required to disclose all proposed sub-contracting arrangements for the Contract to the Government in my/our Proposal, including those which will be entered into after the Contract is awarded. I/We warrant that I/we have duly disclosed and will continue to disclose such arrangements to the Government.

Consequences of breach or non-compliance

5. I/We understand that in the event of any breach or non-compliance with any representations, warranties and/or undertakings in this certificate or in Clause 7.1 of the Standard Terms of Quotation, the Government may exercise any of the rights under Clause 7.3 to 7.5 of the Standard Terms of Quotation in addition to and without prejudice to any other rights or remedies available to it against me/us.

6. Under the Competition Ordinance (Chapter 619 of the Laws of Hong Kong), bid-rigging is serious anti-competitive conduct. I/We understand that the Government may, at its discretion, report all suspected instances of bid-rigging to the Competition Commission (the "Commission") and provide the Commission with any relevant information, including but not limited to information on my/our Proposal and my/our personal information.

Signed by the Bidder / Signed by an authorised signatory for and on behalf of the Bidder	:	
Name of the authorised signatory (where applicable)	:	
Title of the authorised signatory (where applicable)	:	
Date	:	

Annex B

CONTACT DETAILS OF THE BIDDER / CONTRACTOR / SUB-CONTRACTOR / MANUFACTURER

All correspondence with the Bidder/Contractor shall be addressed at (1) below. For the purpose of conducting site visit(s), the contact details of the Bidder/Contractor shall be specified at (2) below if such contact details are different from those at (1).

For the purpose of conducting site visit(s) at the premises of the sub-contractor and the manufacturer, the contact details of the sub-contractor and the manufacturer shall be specified at (3) and (4) below.

(1) the Bidder/Contractor:

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(2) the Bidder/Contractor (for site visit):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(3) the sub-contractor (for site visit):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address:

(4) the manufacturer (for site visit):

Address:

Attn:

Telephone Number:

Facsimile Number:

Email Address: