

GENERAL TERMS AND CONDITIONS OF THE CONTRACT

SINGAPORE CRUISE CENTRE PRIVATE LIMITED
TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND GENERAL SERVICES

1 DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:

"Company" means the Singapore Cruise Centre Pte Ltd, and shall include any officer authorised by the Company to act on its behalf.

"Contract" includes the Contractor's Tender Offer, Instructions to Tenderers, Conditions of Contract, the Specifications, samples, Letter of Acceptance, and any Purchase Orders issued by the Company to the Contractor for the supply of the Goods, the formal agreement and any other terms specifically accepted by the Company as forming part of the Contract.

"Deliverables" means the reports, documents, materials and/or other items that the Contractor has to prepare and/or provide under this Contract.

"Services" means the work which the Contractor is required to perform under the Contract.

"Goods" means all goods, including parts or units thereof, which the Contractor is required to supply under the Contract.

"Contractor" means the successful Tenderer who has been awarded the Contract by the Company.

"Parties" refer to the Company and the Contractor.

"Person" includes a corporation or an incorporated association.

1.2 Words importing the singular include the plural and vice versa. The word "days" denotes calendar days unless otherwise specified.

1.3 The headings are for convenience only and not for the purpose of interpretation.

2 SCOPE OF CONTRACT

2.1 The Contractor shall carry out and complete the supply of all items of Goods and perform the Services in accordance with the Contract. Unless otherwise stated in the Contract, all Goods/Services shall be new and unused.

3 DELIVERY AND PERFORMANCE

3.1 The Contractor shall deliver the Goods at the place(s) and perform the Services, by the date and in the manner specified in the Contract. The Contractor shall thereafter obtain a receipt from the Company. The issue of such receipt shall in no way relieve the

Contractor from his responsibility for re-performing deficient services and for replacing defective or damaged Goods under Clause 4.

4 REMOVAL AND REPLACEMENT

- 4.1 The Contractor shall at his own cost and when notified in writing by the Company, remove and replace the Goods that are found on delivery to be damaged, defective or in any way inferior to approved samples, or not in accordance with the Contract, failing which the Company shall have the right to purchase replacements elsewhere or to make good any damage in any manner necessary and all costs thereby incurred shall be recoverable from the Contractor by deduction from any monies due to the Contractor under the Contract.

5 PAYMENT

- 5.1 Within thirty (30) days of any Goods/Services delivered in accordance with Clause 3.1 of the Contract and upon presentation by the Contractor of his bills and the Company's receipt aforesaid, the Company will make payment to the Contractor of the full value of all Goods/Services so delivered provided that no payment shall be considered as evidence of the quality of any Goods/Services to which such payments relates nor shall it relieve the Contractor from his responsibilities under Clause 4 thereof.
- 5.2 Where delivery is by consignments, payment will be made within 30 days after delivery of each consignment and the receipt of the above documents.
- 5.3 Without limiting the Company's right under the Contract, the amount of any payment or debt owed by the Contractor to the Company under the Contract may be deducted by the Company from any monies payable by the Company to the Contractor pursuant to this Contract.

6 RIGHTS OF THIRD PARTIES

- 6.1 A person who is not a party to this Contract shall have no right under the *Contracts (Rights of Third Parties) Act* to enforce any of its terms.

7 GIFTS, INDUCEMENTS OR REWARDS

- 7.1 The Company may terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Contract with the Company or for showing or forbearing to show favour to any person in relation to any contract with the Company, or if the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor) or if in relation to any Contract with the Company the Contractor or any person employed by him or acting on his behalf shall have committed any offence under

Chapter IX of the Penal Code or Prevention of Corruption Act or shall have abetted or attempted to commit such an offence or shall have given any fee or reward the receipt of which is an offence under *Chapter IX of the Penal Code or the Prevention of Corruption Act*.

8 DELAY IN SUPPLY AND DELIVERY

- 8.1 Without prejudice to Clause 11, if there is a delay in the delivery of any item of Goods under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotions, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to deliver any such Goods thereby affected but the provisions of the Contract shall remain in full force in regard to any Goods not affected by such circumstances aforesaid .
- 8.2 Subject to Clause 8.1, if the Contractor fails to deliver any item of Goods by the date specified in the Contract, the Company shall have the right:-
- (a) to cancel all or any such items of Goods from the Contract with being liable therefor in damages or compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any monies due or to become due to the Contractor or shall be recoverable as damages. Provided that the recovery of such increased costs aforesaid shall be limited to the quantity of such Goods as is purchased or obtained, not exceeding the quantity stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry or termination of the Contract; or
 - (b) Deduct from the agreement price a sum calculated at the rate of one per cent (1%) of the Contract prices for every one (1) week or part thereof for failure or delay to deliver subject to a maximum of ten percents (10%) of the Contract price as liquidated damages for the period during which the works remain unperformed or unsatisfactorily performed or incomplete.

Provided that the recovery of such increased costs aforesaid shall be limited to such Goods as are purchased or obtained, not exceeding the scope stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry or termination of the Contract.

9 DELAY IN PERFORMANCE (FOR SERVICES/MAINTENANCE)

- 9.1 If there is a delay in the provision of any of the Services under the Contract due to any of the following circumstances, namely, acts of God, force majeure, riots and civil commotion, strikes, lock-outs or other causes or perils beyond the Contractor's control, then in any such case the Contractor shall for the duration of any such circumstance aforesaid, be relieved of his obligation to perform such Services thereby affected but the provisions of the Contract shall remain in full force in regard to any Services not affected by such circumstances aforesaid.

9.2 Subject to Clause 9.1, if the Contractor fails to complete the performance of Services by the date(s) specified in the Contract, the Company shall have the right -

- (a) to cancel all or any such items of Services from the Contract without being liable therefor in damages or compensation and obtain them from other source(s) all increased costs thereby incurred shall be deducted from any monies due or to become due to the Contractor or shall be recoverable as damages; or
- (b) to deduct from any monies due or to become due to the Contractor or require the Contractor to pay, a sum calculated at the rate of Singapore Dollars One Hundred (S\$100.00) per incident/occurrence/day (including Sundays and Public Holidays), as liquidated damages for every day of delay until the Services are performed,

Provided that the recovery of such increased costs aforesaid shall be limited to such Services as are purchased or obtained, not exceeding the scope stated in the Contract, from other sources after the Contractor's failure as aforesaid but within three months of the expiry or termination of the Contract.

10 SUB-CONTRACTING AND ASSIGNING

10.1 The Contractor shall not sub-contract or assign the Contract without the written consent of the Company.

11 APPLICABLE LAW

11.1 The Contract and all its subsequent variations shall be subjected to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose.

12 SUSPENSION OR TERMINATION

12.1 The Company shall, after giving seven (7) days prior written notice to the Contractor have the right to suspend or terminate the Contract if the Company is affected by any state of war, acts of God or other circumstances seriously disrupting public safety, peace or good order of the Republic of Singapore. Neither party shall be liable to the other by reason of such suspension or termination save that the Company shall pay the Contractor the price of the Goods/Services delivered and accepted by the Company. The Company shall have title to such Goods/Services delivered and accepted. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the Company to the Contractor by reason of this Clause.

12.2 Without prejudice to the Company's rights under general law, the Company shall be entitled to terminate the Contract or any part thereof made with the Contractor in respect of the supply of the Services:

- (a) at any time by giving the Contractor 30 days' notice without assigning any reason whatsoever; or

- (b) if the Contractor becomes bankrupt or (if a company or a corporation) enter into liquidation whether compulsory or voluntary, becomes insolvent, ceases to carry on a business or compounds with or enter into any compromise, arrangement or composition for the benefit of its creditors or a receiver is validly appointed over the whole or a part of its undertaking or proceedings are taken against Contractor for the appointment of an administrator over or the winding up of its assets or in the event of the levying of any distress or execution against Contractor; or
- c) if Contractor assigns or sub-contracts any Contract or any part thereof without the Company's prior consent.

13 WARRANTY

13.1 The Warranty Period shall commence on the date of receipt of the Goods/Services in Singapore. The length of the Warranty Period shall be twelve (12) months or such period as agreed in writing.

13.2 Where during the Warranty Period, any Goods/Services is found to be:

- (a) Defective in design, materials or workmanship; or
- (b) Not in accordance with the Contract or any specifications incorporated therein by reference or otherwise; or
- (c) Having been installed, operated, stored and maintained in accordance with the written instructions of the Contractor, fails to function properly or fails to meet any performance guarantees set forth in the Contract or specifications published by the Contractor as applicable to the Goods/Services;

then unless it is shown that the foregoing is caused solely by improper use or mishandling by the Company, the Contractor shall, at its own expense (including transportation costs), at the written notification of the Company, replace, rectify or completely repair the damaged or defective Goods/Services. The Contractor may, in lieu thereof, elect to replace the damaged or defective Goods/Services.

14 TITLE AND RISK

14.1 Title to the Goods/Services shall pass from the Contractor to the Company upon successful completion of the Acceptance Test (or upon delivery if there is no Acceptance Test).

14.2 The risk of loss or damage to the Goods/Services shall pass from the Contractor to the Company after receipt of the Goods/Services by the Company in Singapore. Risk of loss or damage to the Goods/Services shall be borne by the Contractor from the time the Goods/Services are received by the Contractor for the purpose of modification, replacement, repair or rectification until the completed Goods/Services are delivered to the Company.

15 RIGHTS OF THE COMPANY IN THE EVENT OF DEFAULT BY THE CONTRACTOR

- 15.1 If the Contractor defaults in his performance of this Contract, the Company may issue a notice of default to the Contractor informing the Contractor of its default. The Contractor shall, within thirty (30) days of the date of the notice of default, remedy the default. If the Contractor fails to do so, the Contractor shall be taken to have repudiated the Contract and the Company shall have the right to terminate the Contract or cancel any part thereof by way of a notice of termination without the Company being liable therefor in damages or compensation. The said termination shall take effect from the date of the notice of termination.
- 15.2 In the event of termination under Sub-Clause 15.1 above, the Company shall have the right to purchase from other sources all the Goods/Services which remains undelivered or similar Goods/Services and all increased costs reasonably incurred by the Company shall be recoverable from the Contractor.
- 15.3 Notwithstanding anything contained herein, the Contractor shall not be entitled to claim for any reimbursement but not limited to loss of anticipation profit for the value of any of the Goods/Services not delivered prior to the termination of this Contract.

16 VARIATION OF CONTRACT

- 16.1 No variation whether oral or otherwise in the terms of this Contract shall apply thereto unless such variation shall have first been expressly accepted in writing by the Contractor and the authorised contract signatory of the Company.

17 TAXES, FEES AND DUTIES

- 17.1 The Contractor shall be responsible for all corporate and personal income taxes, customs fees, duties, fines, levies, assessments and other taxes payable under the laws of Singapore, by the Contractor or its employees, including the Contractor's resident engineers and inspectors (if applicable), in carrying out its obligation under the Contract.
- 17.2 If the Company receives a request from the tax authorities to pay on behalf of the Contractor and/or the Contractor's employees, or to withhold payments from the Contractor in order that the Company may subsequently so pay, any of the abovementioned taxes, fees, duties, fines, levies and assessments, the Contractor hereby authorises the Company to comply with the terms of the said request.
- 17.3 The Company shall pay to the Contractor a sum equal to the Singapore Goods and Services Tax chargeable on the supply to the Company of any services by the Contractor in accordance with the Contract. For clarification, "Goods and Services Tax" shall refer to tax under the (Singapore) *Goods and Services Tax Act*, Cap. 117A (2000 ed.).
- 17.4 Any invoice or other request for payment of monies due to the Contractor under the Contract shall, if he is a taxable person for the purpose of the Singapore Goods and Services Tax, be in the same form and contain the same information as if it were a tax

invoice for the purposes of the Regulations made under the *Goods and Services Tax Act*, Cap. 117A (2000 ed.).

18 INTELLECTUAL PROPERTY RIGHTS

- 18.1 The Contractor warrants that the Goods do not infringe any copyrights, and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered and unregistered designs, circuit layouts, knowhow and any other rights resulting from intellectual activity in the industrial, scientific, literary and artistic fields (hereinafter referred to as "Intellectual Property"). Notwithstanding the above, the Contractor shall indemnify the Company and its officers or departments against all Intellectual Property infringement claims including any costs, charges and expenses in respect thereof.
- 18.2 The Company shall have sole ownership of the copyright to all the Deliverables and any related materials, documents, reports and presentations generated or created under this Contract.
- 18.3 The Contractor warrants that it has obtained or will in due time obtain all rights, relating to the use of any intellectual property which may be required for the purpose of this Contract without requiring any assistance from the Company. The Company shall not be obliged to enter into any further agreement with the Contractor or any third party in respect of the use of such Intellectual Property. In this connection, the Contractor shall indemnify the Company against all loss, damage or expense arising in respect of any action or claim for actual or alleged infringement of any intellectual property rights by the possession, use or reproduction of any intellectual property, including but not limited to the Deliverables, provided by the Contractor.

19 GOVERNMENT REGULATIONS

- 19.1 The Contractor shall, at its own costs, obtain and maintain all licence and authorisations, including export licences and permits and other governmental authorisations or certification required without any restrictions or qualifications whatsoever so as to enable the Contractor to fulfil all its obligations under the Contract.

20 INDEMNITY

- 20.1 The Contractor shall keep the Company fully indemnified against all actions, claims, proceedings, costs and damages and all legal costs or other expenses and losses incurred or suffered by the Company arising directly or indirectly out of or in relation to:
- (a) his breach of any terms of his Contract (including but not limited to any claim or action by a third party alleging infringement of any intellectual property rights of such third party); or

any claim (including without limitation claims by any employee or agent of the Contractor or the general public) for any damage, injury, loss or accident sustained in relation to the Contractor's performance of the Contract, provided such damage, injury, loss or accident

is not caused by the gross negligence or wilful default of the Company, its officers or agents.

21 INSURANCE

- 21.1 The Contractor shall purchase the necessary insurances to insurance against any damage, loss or injury which may occur to any person or property whatsoever in carrying out the Contract and shall indemnify against the Company in respect of all claims, cost and any other expenses whatsoever which by reason of the Contractor's default or otherwise may become payable by the Company.

22 MEDIATION CLAUSE

- 22.1 Notwithstanding anything in this Contract, in the event of any dispute, controversy or claim arising out of or relating to this Contract, no Party shall proceed to any form of dispute resolution UNLESS the Parties have made reasonable efforts to resolve the same through mediation in accordance with the mediation rules of the Singapore Mediation Centre.
- 22.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 22.1.
- 22.3 Failure to comply with Clause 22.1 or 22.2 shall be deemed to be a breach of Contract.

23 CONSORTIUM

- 23.1 As used in this Contract, "Consortium" means an unincorporated joint venture through the medium of a consortium or a partnership.

Joint and Several Responsibility

- 23.2 Each member of the Consortium shall be jointly and severally responsible to the Company for the due performance of the Contract.

Addition of members to Consortium

- 23.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Company.

- 23.4 Should additional member(s) be added to the Consortium at any time with the approval of the Company, he or they shall be deemed to be included in the expression 'the Contractor'.

Withdrawal from Consortium

- 23.5 If any member of the Consortium withdraws from the Consortium, goes into liquidation, is wound up or cease to exist in accordance with the laws of the country of incorporation:

- (i) this Contract shall continue and not be dissolved, and
- (ii) the remaining member(s) of the Consortium shall be obliged to carry out and complete the Contract.

24 INCOTERMS

- 24.1 Subject to any provision to the contrary in the Contract, 'INCOTERMS 2000' (Publication No. 560 of the International Chamber of Commerce) shall be deemed to be incorporated to and shall form an integral part of the Contract. In the event that the INCOTERM chosen for this Contract is CPT or CIP to a destination other than an airport or a seaport, the Contractor shall provide the Company with the contact details of its inland freight forwarder in the country of destination.

25 OBSOLETE MODEL

- 25.1 In the event that the model of the product offered by the Contractor in the Tender Offer has become obsolete and cannot be supplied if a Purchase Order is issued for it, the Contractor shall make available an improved model to the Company at the same or lower price than that of the obsolete model, provided that the Contractor must obtain the written approval of the Company at least 14 days before supplying the improved model. If the written approval is granted, the obsolete model shall be replaced by the improved model thereafter. The Contractor shall not supply the obsolete model thereafter.

26 ARBITRATION

- 26.1 Subject to Clause 22, any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in the English language by a sole arbitrator in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC Rules") for the time being in force which rules are deemed to be incorporated by reference into this Clause.

27 OPTION TO PURCHASE

- 27.1 The Contractor grants the Company the option to purchase the item(s) specified in Part III of this Invitation to Tender ("the Option to Purchase"). The Option to Purchase shall be exercisable by written notice given by the Company to the Contractor before the date specified in Part III of this Invitation to Tender (Option Validity Date). If the Company exercises the Option to Purchase, the item(s) purchased shall form part of the Goods/Services defined in this Contract and subject to the same terms and conditions (inclusive of any amendments).
- 27.2 The Option to Purchase shall be exercisable in whole or part in Part III of this Invitation to Tender.

27.3 The Company may exercise the Option to Purchase in as many phases as it deems fit as long as the Company exercises any phase before the Open Validity Date and the cumulative quantity of the item(s) purchased do not exceed the maximum quantity specified in Part III of this Invitation to Tender.

28 ACCEPTANCE TESTS

28.1 The Contractor shall conduct all tests in accordance to the Acceptance Test Plan and Procedures as set out in this Tender Document and to verify and demonstrate that the Goods/Services meet the specifications as set out.

29 REPLACEMENT OF PERSONNEL

29.1 The Contractor shall replace its personnel within fourteen (14) days from the date of written notice from the Company that the said personnel is either:

- (a) technically incompetent in carrying out the Services and all efforts by the Contractor have failed to resolve the issue within the said period; or
- (c) the conduct of the said personnel is found to be detrimental to the national security.

30 CONFIDENTIALITY AND SECURITY

30.1 Except with the written consent of the Company, the Contractor shall not disclose the Contract or any purchases made in this Contract or any provisions thereof or any information issued or furnished by or on behalf of the Company in connection therewith to any person.

30.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the Company or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, other than use for the purposes of this Contract, without the prior written consent of the Company.

30.3 The Contractor shall not publish or release, nor shall it allow or suffer the publication or release of, any news item, article, publication, advertisement, prepared speech or any other information or material pertaining to any part of the obligations to be performed under the Contract in any media without the prior written consent of the Company.

30.4 The Contractor shall at the termination or completion of the Contract, upon demand by the Company, deliver to such person as may be appointed by the Company all information (whether original or copies; and in all manner of form including but not limited to print and electronic) obtained directly or indirectly from the Company or compiled or generated by the Contractor in the course of this Contract which pertains to or is derived from such information, including but not limited to information in the form of data, analyses, charts, reports or presentation material.

31 WAIVER

- 31.1 No forbearance, delay or indulgence by either party in enforcing the provisions of this Contract shall operate as a waiver or prejudice or restrict the rights of that party nor shall any single or partial exercise of any right or remedy preclude any further exercise of that right or remedy or exercise of any other right or remedy. The rights and remedies provided to parties under this Contract are cumulative and not exclusive of any rights or remedies provided at law.

32 MEETINGS

- 32.1 The Contractor shall attend such meetings as the Company may call by notice in writing in order for updates to be provided on progress of the Services.

33 PART AWARD OF CONTRACT

- 33.1 The Company reserves the right to award part or whole of the Contract to the successful Contractor(s).

34 GENERAL PROVISIONS RELATING TO SAFETY

- 34.1 All machinery, equipment and vehicle supplied by the Contractor for the provision of the Services shall be properly maintained in order to prevent any breakdown which is likely to cause death or bodily injury to any person.

35 RISK ASSESSMENT / SAFE WORK PROCEDURE

- 35.1 The Contractor shall conduct Risk Assessment for all work undertaken and submit the findings to the Company for endorsement and approval. Risk Management entails:
- (a) Risk assessment of any work activity or trade;
 - (b) Control and monitoring of such risks and
 - (c) Communicating these risks to all persons involved.
- 35.2 These requirements are enshrined in the Workplace Safety and Health (Risk Management) Regulation which is effective from 1 March 2006.
- 35.3 Under the WSHA, risk management duties are imposed on every employer, self employed person and principal (including contractor and sub-contractor). These parties must take all reasonable practicable measures to ensure that the workplace is safe and without risks to every person within its premises.
- 35.4 The Contractor must take all reasonable practicable measures to eliminate any risk that may be posed by their machinery, equipment or hazardous substances.

35.5 The Contractor must provide information of any machinery, equipment or hazardous substances to SCCPL for purpose of conducting Risk Assessment in the workplace.

36 SCC PASSES

36.1 The Contractor shall obtain passes for their workers, vehicles and contractor's permit for entry into the terminal and wharf areas. For application of the passes, the Contractor is required to submit a name list and photocopies of the Identity card / Work Permit of the workers which are required for work. After approval of the application, the Contractor is to collect the passes from Singapore Cruise Centre Pass Office. The Contractor shall pay all charges in connection therein, if any.

36.2 The Contractor shall include in this tender price for any cost in respect of access, working space, storage and other limitations imposed by site and its busy activities.

37 SURVIVAL CLAUSE

37.1 Clauses 11, 13, 18, 20, 22, 27 and 31 shall survive the termination or expiry of this Contract.