

Tender for Period Contract of General Laboratory Equipment for period 1st Sep 2018 to 31st Mar 2019
[Tender Reference No. NP/LSCT/24T/18]

PART 2: CONDITIONS OF CONTRACT

Please read these instructions carefully before you proceed with the tender. These standard conditions and instructions apply unless specified otherwise in the tender notice or invitation to tender.

1. DEFINITIONS

1.1 In these Conditions unless the context otherwise requires:

- (a) "Authority" includes any officer authorised by Ngee Ann Polytechnic to act on its behalf.
- (b) "Contract" includes the Instructions to Tenderers, the Contractor's tender, Conditions of Contract, the specifications and samples, Letter of Acceptance, and any Purchase Orders issued by Ngee Ann Polytechnic to the Contractor for the supply of the Goods.
- (c) "Goods" means all goods, including parts or units thereof, which the Contractor is required to supply under the Contract.
- (d) "Tenderer" means a person or his permitted assigns offering to supply the Goods.
- (e) "Contractor" means the successful Tenderer who has been awarded the Contract by Ngee Ann Polytechnic.
- (f) "Parties" refer to Ngee Ann Polytechnic and the Contractor.
- (g) "Person" includes a corporation or an unincorporated association.

1.2 Words importing the singular include the plural and vice versa.

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 in accordance with the Contract. Unless otherwise stated in the Contract, all Goods shall be new and unused.

3. DELIVERY

3.1 The Contractor shall deliver the Goods at the place(s) and in the manner specified in the Contract. The Contractor shall obtain a receipt therefore from the Authority. The issue of such receipt shall in no way relieve the Contractor from his responsibility for replacing defective or damaged Goods under Clause 4 hereof.

4. REMOVAL AND REPLACEMENT

4.1 The Contractor shall at his own cost and when notified in writing by the Authority, 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 Authority shall have the right to purchase replacements elsewhere or to make good any damage in any manner it deems necessary and all costs thereby incurred shall be recoverable from the Contractor by deduction from any money due to the Contractor under the Contract.

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5. PAYMENT

5.1 Within thirty (30) days of any Goods delivered in accordance with Clause 3.1 of the Contract and upon presentation by the Contractor of his bills in accordance with such means and in such format as may be specified by the Authority and the Authority's receipt as referred to in Clause 3.1 of the Contract, the Authority will make payment to the Contractor of the full value of all Goods so delivered provided that no payment shall be considered as evidence of the quality of any Goods to which such payments relates nor shall it relieve the Contractor from his responsibilities under Clause 4 hereof.

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 Authority's right under the Contract, the amount of any payment or debt owed by the Contractor to the Authority under the Contract may be deducted by the Authority from any monies payable by the Authority 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 AND REWARDS

7.1 The Authority may terminate the Contract and 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 Authority or for showing or forbearing to show favour to any person in relation to any contract with the Authority, 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 Authority 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 If there is 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 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 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 Authority shall have the right -

- (a) to cancel all or any such items of Goods from the Contract without compensation and obtain them from other sources and all increased costs thereby incurred shall be deducted from any moneys due or to become due to the Contractor or shall be recoverable as damages; or

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(b) to deduct from any moneys due or to become due to the Contractor or require the Contractor to pay, a sum calculated at the rate of Singapore Dollars **0.1% of the Contract Price** per day (including Sundays and Public Holidays), **subject to a maximum of 10% of the Order**, as liquidated damages for every day of delay until the Goods are delivered and/or the Services are performed.

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 of the Contract.

9. SUB-CONTRACTING AND ASSIGNING

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

10. APPLICABLE LAW

10.1 The Contract shall be subject to, governed by and interpreted in accordance with the Laws of the Republic of Singapore for every purpose.

11. SUSPENSION OR TERMINATION

11.1 The Authority shall, after giving seven (7) days prior written notice to the Contractor, have the right to suspend or terminate the Contract if the Authority is affected by any state of war, Act 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 Authority shall pay the Contractor the price of the Goods delivered and accepted by the Authority. The Authority shall have title to such Goods delivered and accepted. The Contractor shall refund the balance of any payments or deposits made after deducting any outstanding sums owing by the Authority to the Contractor by reason of this Clause.

12. MEDIATION CLAUSE

12.1 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.

12.2 A Party who receives a notice for mediation from the other Party shall consent and participate in the mediation process in accordance with Clause 12.1.

12.3 Failure to comply with Clause 12.1 or 12.2 shall be deemed to be a breach of contract.

13 CONSORTIUM

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

Joint and Several Responsibility

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13.2 Each member of the Consortium shall be jointly and severally responsible to the Authority for the due performance of the Contract.

Addition of members to Consortium

13.3 Any introduction of, or changes to, Consortium membership must be approved in writing by the Authority.

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

Withdrawal from Consortium

13.5 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.

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COMPENDIUM OF ADDITIONAL CLAUSES

A1. SAMPLES TESTING

A1.1 The Authority shall have the right to call for samples of the Goods to be supplied under the Contract for approval and for such further samples as are required until the samples submitted are in accordance with the requirements of the Contract. Upon the approval of the Authority the approved samples shall form the standards to be maintained for the duration of the Contract. If any Goods supplied under the Contract are not in accordance with the Contract or with any approved sample, then, the Authority shall have the right to submit any such Goods to expert examination and/or test and all costs in connection therewith shall be borne by the Contractor unless such examination and/or test shows that the said Goods are in accordance with the Contract or with the approved samples.

A2. OPTION TO PURCHASE

A2.1 The Contractor grants the Authority the option to purchase the item(s) specified in the Contract ("the Option to Purchase"). The Option to Purchase shall be exercisable by written notice given by the Authority to the Contractor before the date specified in this Contract (Option Validity Date). If the Authority exercises the Option to Purchase, the item(s) purchased shall form part of the Goods defined in this Contract and subject to the same terms and conditions (inclusive of any amendments).

A3. WARRANTY

A3.1 The Warranty Period shall commence on the date of receipt of the Goods in Singapore. The length of the Warranty Period shall be twelve (12) months or such period as agreed in writing.

A3.2 Where during the Warranty Period, any Goods 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;

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

A4. INCOTERMS

A4.1 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 Authority with the contact details of its inland freight forwarder in the country of destination.

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A5. ARBITRATION

A5.1 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.

A6. CONFIDENTIALITY AND SECURITY

A6.1 Except with the written consent of the Authority, 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 Authority in connection therewith to any person.

A6.2 In addition to the foregoing, the Contractor shall not make use of any information obtained directly or indirectly from the Authority 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 Authority.

A6.3 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 Authority.

A7. OPTION TO EXTEND (IF APPLICABLE)

A7.1 As indicated in tender specifications