

# HONG KONG EXPRESS AIRWAYS LIMITED (“HKE”) GENERAL TERMS AND CONDITIONS FOR PROCUREMENT OF PRODUCTS (“General Terms”)

## Supplier's Acceptance of the General Terms

Supplier shall comply with all terms set forth herein and in the Agreement (as defined hereinbelow) to which these General Terms are attached or are incorporated by reference (each as amended or supplemented, and together with any specifications and other documents referred to herein or in the Agreement, collectively, this “Offer”).

This Offer is an offer to purchase the Product (as defined hereinbelow). This Offer shall not constitute an acceptance of any offer to sell, quotation or other proposal from Supplier, even if referred to in this Offer.

ACCEPTANCE OF THIS OFFER IS EXPRESSLY LIMITED TO THE TERMS OF THESE GENERAL TERMS. HKE OBJECTS TO ANY TERMS AND CONDITIONS INCLUDED WITH SUPPLIER'S QUOTATION, INVOICE OR OTHER DOCUMENT WHICH ARE ADDITIONAL TO OR DIFFERENT THAN THE TERMS OF THE OFFER AND NONE OF SUCH ADDITIONAL OR DIFFERENT TERMS SHALL BE PART OF THE CONTRACT BETWEEN SUPPLIER AND HKE, UNLESS BOTH PARTIES EXPRESSLY AGREED IN A SEPARATE AGREEMENT THAT SUCH TERMS SHOULD OVERRIDE THESE GENERAL TERMS IN THE EVENT OF A CONFLICT.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, CLAUSES REGARDING WARRANTIES (CLAUSE 5), INDEMNITIES AND LIABILITY (CLAUSE 6), RECORDS & AUDIT (CLAUSE 8), CONFIDENTIALITY & PRIVACY (CLAUSE 9), PUBLICITY AND BRANDING (CLAUSE 11) ANTI-BRIBERY AND CORRUPTION (CLAUSE 12) AND SANCTIONS (CLAUSE 13) IN THESE GENERAL TERMS ALWAYS TAKE PRECEDENCE OVER ANY ALTERNATIVE OR CONFLICTING TERMS IN ANY OTHER DOCUMENT CONNECTED WITH THE OFFER.

## 1 Definitions and Interpretation

### 1.1 Definitions

In these General Terms:

**Accept** means HKE's acceptance of a Product in accordance with the process described in clause 3.1.

**Affiliate** means any entity controlling, controlled by, or under common control of a party to the Agreement.

**Agreement** means a legally binding document formed between HKE and the Supplier for provision of the Products, includes all amendments or supplements thereto, or replacements or novations thereof.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Hong Kong, when banks in Hong Kong are open for business.

**Cathay Group** means Cathay Pacific Airways Limited (Company Registration Number 2672) (**Cathay**) and all collective entities which control, are controlled by, or are under common control of Cathay.

**Cathay Group Entity** means an entity in the Cathay Group, other than Cathay.

**Claim** means, in relation to a party, a demand, claim, suit, action or proceeding made or brought against that party, however arising and whether present, unascertained, future or contingent.

**Confidential Information** means all information, material or data in disclosed, whether directly or indirectly, by the **Disclosing Party** to the **Recipient Party**, but excludes any information which:

- (a) is or becomes generally known to the public other than through a breach of the Agreement;
- (b) the Recipient Party can prove was already known to the Recipient Party at the time of disclosure;

- (c) the Recipient Party develops independently of any disclosure in connection with the Agreement; or
- (d) the Recipient Party obtains from a source other than the Disclosing Party.

**Data Protection Addendum** means the terms and conditions issued by HKE from time to time at <https://www.hkexpress.com/en-hk/general-terms-and-conditions/data-protection-addendum-controller-to-processor-a/>.

**Defect** means any fault, failure, degradation, non-compliance with a specification, or partial supply or non-supply of, a Product.

**Expectations of Business Partners Policy** means the anti-bribery policy for business partners of HKE available at <https://www.hkexpress.com/en-hk/legal-and-privacy/anti-bribery-policy/>.

**Export Controls** means restrictions or prohibitions on the export, reexport, transfer, or provision of goods, technology, software, or services to a designated party, country or territory, or for a designated end use, including any applicable licensing requirements administered by a governmental authority having jurisdiction over such items.

**Fees** means the fees for the Products in the Agreement.

**Force Majeure** means, in relation to a party, any event outside the reasonable control of that party which prevents the performance of any obligation and which event:

- (a) was not caused or contributed to by that party;
- (b) could not have been prevented by reasonable precautions or remedied by reasonable expenditure by that party; and
- (c) could not reasonably be circumvented through alternate sources.

**General Terms** means clauses 1 to 16 of this document and the Data Protection Addendum forming part of the Agreement.

**HKE Policies** means HKE's written policies, guidelines, procedures and standards notified by HKE to the Supplier from time to time.

**Hong Kong** means Hong Kong Special Administrative Region of China.

**Import Controls** means laws and regulations that are applicable to the importation into a country or territory of goods, technology, software, or services, including any applicable licensing requirements administered by a governmental authority, including, but not limited to, the Government of Hong Kong.

**Infringement Claim** means any Claim:

- (a) affecting the Supplier's ownership of the Intellectual Property Rights in the Products; or
- (b) that the supply or other use of the Products, Supplier Materials or Developed Materials infringes, or may infringe, the Intellectual Property Rights of a third party.

**Insolvency Event** means the happening of any one or more of the following events:

- (a) anything that reasonably indicates that there is a significant risk that the Supplier is or will become unable to pay debts as they fall due;
- (b) a step being taken to have a receiver, receiver and manager, liquidator or provisional liquidator appointed to the Supplier or any of its assets; or
- (c) the Supplier ceasing, or indicating that it is about to cease, carrying on business.

**Intellectual Property Rights** means all industrial and / or intellectual property rights, and includes any patents, registered designs,

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copyright trade or service marks (whether registered or unregistered), trade secrets, moral rights, know-how, rights in relation to circuit layouts, or other proprietary right, and applications for, and rights to apply for, registration of any of these things.

**Liability** means all liability, loss, damage, cost, expense, charge, outgoing or payment, including reasonable legal fees, professional costs and expenses and disbursements, for which a party is liable.

**Personnel**, in relation to a party, means that party's officers, directors, employees, contractors or agents.

**Personal Data** means any information relating to an identified or identifiable natural person, being a person who can be identified, directly or indirectly.

**Privacy Laws** means the privacy laws of the place of HKE's incorporation or applicable to HKE's business operations, the privacy policy issued by HKE from time to time (available at the Legal and Privacy section at <https://www.hkexpress.com/>), and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Data.

**Product** means a product or deliverable supplied by the Supplier to HKE under the Agreement.

**Sanctions** means trade and financial sanctions laws and regulations including, but not limited to, those administered by the United Nations, the Government of Hong Kong (including, but not limited to, sanctions implemented under the United Nations Sanctions Ordinance (Cap. 537) and all subsidiary regulations), the People's Republic of China, the United States, the European Union, and the United Kingdom.

**Warranty Period** means, in relation to a Product, the warranty period specified in the Agreement, or if not stated, **three (3) years** commencing on the date HKE Accepts that Product (or if HKE has not Accepted a Product, the date that HKE receives the Products).

### 1.2 Interpretation

In these General Terms, headings are only for convenience and do not affect interpretation and, unless the context requires otherwise:

- (a) words in the singular include the plural and the plural include the singular;
- (b) words of one gender include any gender;
- (c) an expression indicating a person includes an individual, a company, partnership, joint venture, association, corporation or other body corporate;
- (d) a reference to a party to these General Terms includes that party's successors and permitted assigns;
- (e) a reference to a clause, party or schedule, is a reference to a clause of, and a party to and schedule to, these General Terms;
- (f) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of these General Terms;
- (i) any obligation on a party includes an obligation to procure compliance by that party's Personnel; and
- (j) a reference to “\$” means the lawful currency of Hong Kong, unless otherwise specified in these General Terms.

## 2 Key Obligations of the Supplier

The Supplier must at all times:

- (a) comply with the terms and conditions of the Agreement and these General Terms, including but not limited to supply the Products free from Defect and in conformity with any specifications, drawings, descriptions or samples provided to HKE and deliver the Products on the delivery date to the place at the time specified in the Agreement;
- (b) notify HKE promptly in writing if the Supplier becomes aware of any actual or possible delay in delivery of the Products;
- (c) comply with Cathay's Supplier Code of Conduct and maintain a sustainable business partnership with Cathay Group. An official copy of the Supplier Code of Conduct can be found in HKE's website at <https://www.hkexpress.com/en-hk/general-terms-and-conditions/>;
- (d) it has no Conflict of Interest in supplying the Products or enter into the Agreement and must do its best to avoid situations that may lead to a Conflict of Interest arising;
- (e) comply with all applicable laws, requirements, international standards relevant to the supply of the Products and must not perform its obligations in a manner that causes HKE to breach any applicable laws;
- (f) comply with HKE Policies and all reasonable directions given by HKE; and
- (g) obtain, keep current and provide to HKE, on request, evidence of any consents, licences, approvals, permits, registrations, authorisations, insurances and exemptions required for it to fully carry out its obligations under the Agreement or at law to supply the Products.

## 3 Acceptance by HKE

**3.1** HKE will not be taken to have Accepted any applicable Products until HKE issues a written notice to the Supplier certifying that HKE has Accepted the Products, without prejudice to its rights to reject, claim damages and/or any other remedies available to HKE after such express acceptance.

**3.2** Title of the Products and risk of loss or damage to the Products do not pass unless and until HKE has Accepted those Products.

**3.3** If HKE does not Accept any Product or if any Product has a Defect, HKE is entitled to:

- (a) require the Supplier to rectify any Defect, or replace the Product (at the Supplier's cost);
- (b) Accept that Product subject to the Supplier rectifying any Defect, or replacing the Product, within a period specified by HKE (at the Supplier's cost); or
- (c) Accept that Product, subject to a reduction in Fees; or
- (d) if the Product has included a Defect or failed to be Accepted by HKE after multiple attempts, reject the Products and terminate the Agreement (in part or in whole).

## 4 Maintenance and Warranty Period

**4.1** The Supplier must ensure that HKE is passed the benefit of any warranty or maintenance obligation (including a warranty from a manufacturer or any other person) that applies in relation to the Products.

**4.2** If a Defect in a Product becomes apparent during the Warranty Period, the Supplier must rectify that Defect at its own cost within a reasonable time. If the Supplier fails to rectify a Defect or replace the Product, the Supplier must without delay, without any offset or deductions (including without limitation for

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any administrative fees and/ or expenses), refund to HKE the Fees paid by HKE for that Product.

### 5 Warranties

#### 5.1 Mutual warranties

Each party represents and warrants to the other party, as at the date of the Agreement and at all times during the Term, that:

- (a) it has full corporate power and authority to enter into, perform and observe its obligations under the Agreement and these General Terms, and that execution, delivery and performance of the Agreement has been duly and validly authorised by all necessary corporate action; and
- (b) its obligations under the Agreement are valid, binding and enforceable.

#### 5.2 Supplier's warranties to HKE

The Supplier represents and warrants to HKE as at the date of the Agreement and at all times that:

- (a) full ownership of the Products shall pass to HKE;
- (b) all Products supplied by the Supplier to HKE will be:
  - i. free from Defects;
  - ii. in conformity with any specifications, drawings, descriptions or samples provided to HKE;
  - iii. of merchantable quality and fit for their intended purpose made known to the Supplier by HKE, whether expressly or by implication, and/or as set out in the Agreement, and which the Supplier acknowledges and accepts that HKE relies solely on the Supplier's expertise, experience and judgment to ensure that the Products achieve are of merchantable quality and fit for their intended purposes;
  - iv. supply and use of the Products, will not infringe any rights of any person; and
  - v. in compliance with all applicable statutory and regulatory requirements;
- (c) it shall ensure that the Products are properly packed and secured during shipment and delivery so as to ensure that the Products are not damaged when they reach the delivery location as specified in the Agreement;
- (d) it shall ensure that quantity of each shipment of Products that are delivered to HKE correspond to the quantity in accordance with the Agreement and as stated in the relevant packing list, billing of lading, airway bill and/or any other documentations, as applicable, that have been issued by the Supplier to HKE for the customs clearance; and
- (e) it has no conflict of interest in supplying the Product or entering into the Agreement and must do its vest to avoid situations that may lead to a conflict of interest arising.

### 6 Indemnities and Liability

The Supplier indemnifies HKE and its Personnel against any Liability incurred or suffered by any of them arising out of or in connection with:

- (a) any wilful, unlawful or wrongful act or omission of the Supplier or its Personnel;
- (b) any failure to deliver any Deliverables or fulfill the obligations set out in the Agreement, including the costs of engaging alternative supplier in deliver the outstanding Deliverables or fulfill the outstanding obligations;
- (c) any injury to, or death of a natural person and any loss of, or damage to, HKE's or a third party's tangible property, real or personal, to the extent caused or contributed by the Supplier or its Personnel;

- (d) any breach of the confidentiality and privacy obligations under clause 9;
- (e) any Infringement Claim;
- (f) any breach by the Supplier of its anti-bribery and corruption obligations under clause 12;
- (g) any breach by the Supplier of its obligations under clause 13; and
- (h) any Claim by a third party against HKE or its Personnel to the extent caused by breach of the Agreement and these General Terms, or any wilful, negligent, unlawful or wrongful act or omission of the Supplier or its Personnel.

It is not necessary for HKE to incur any expense or make any payment before enforcing the indemnity conferred by this clause.

### 7 Insurance

The Supplier must, at its cost, take out and maintain policies of insurance required by HKE with reputable insurers, in respect of Liability that may be incurred or suffered arising out of or in connection with the Agreement.

### 8 Records and audit

#### 8.1 Document maintenance and retention

The Supplier must retain full and proper records required to demonstrate the Supplier's compliance with the Agreement.

#### 8.2 Audit

HKE may conduct, and the Supplier must provide reasonable assistance with, audits or inspections to enable HKE to monitor the supply of Products (or comply with its obligations at law (including in relation to Sanctions, Import Controls and Export Controls) or any request by a regulator), and compliance with the Agreement.

### 9 Confidentiality and Privacy

**9.1** If a party (**Disclosing Party**) provides Confidential Information to the other party (**Recipient Party**), the Recipient Party must:

- (a) not disclose the Disclosing Party's Confidential Information to any person except where required to do so by law, the rules of a stock exchange, in connection with legal proceedings relating to the Agreement, or otherwise with the Disclosing Party's prior written consent;
- (b) use, copy or reproduce the Disclosing Party's Confidential Information only for the purposes of the Agreement.

#### **9.2 The Supplier must:**

- (a) comply with, and provide reasonable assistance required by HKE to comply with, all applicable Privacy Laws;
- (b) to the extent that the Products involve use, transfer or export of Personal Data, the Supplier must, and must ensure that its Personnel, comply with the terms and conditions in the Data Protection Addendum in relation to any Personal Data that is processed by the Supplier under the Agreement.

### 10 Termination

#### **10.1 Termination by HKE without cause**

HKE may terminate the Agreement, in whole or in part, by giving the Supplier at least 7 days' notice.

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### **10.2 Termination by HKE for cause**

Under the following circumstances, HKE, may terminate the Agreement immediately in whole or in part for cause by notice to the Supplier:-

- (a) the Supplier is in material breach of the Agreement, and if the breach is capable of remedy, the Supplier has failed to remedy that breach within 14 days after receipt of written notice from HKE;
- (b) the Supplier is in material breach of the Agreement and the breach is not capable of remedy;
- (c) an Insolvency Event occurs in respect of the Supplier;
- (d) the Supplier commits multiple or recurring breaches, whether or not remedied;
- (e) an event of Force Majeure continues for more than 10 days;
- (f) the Supplier fails to comply with its anti-bribery and corruption obligations under clause 12;
- (g) the Supplier fails to comply with its obligations under clause 13.

### **10.3 Termination by the Supplier for HKE’s late payment**

- (a) The Supplier may issue HKE a written notice that payment is overdue if:
  - (i) HKE fails to pay one or more undisputed amounts due and payable under the Agreement;
  - (ii) the amounts due and payable are more than 45 days overdue; and
  - (iii) such failure or failures amount(s) to a material breach by HKE, and
- (b) If HKE fails to pay the Supplier within 60 days after the date of the notice under this clause 10.3(a) and the undisputed amount that remains overdue is more than 50% of the total invoiced amount, the Supplier may, by a further written notice to HKE, terminate the Agreement.

### **10.4 Obligations of the Supplier after termination**

On expiry or termination of the Agreement, the Supplier must immediately deliver to HKE all relevant documentation which are owned by HKE and any of HKE’s Confidential Information in a format reasonably requested by HKE.

### **10.5 Survival**

The termination or expiry of the Agreement does not affect those provisions and those obligations of a party which by their nature survive termination.

## **11 Publicity and Branding**

The Supplier must not make any public notification in relation to the Agreement or use any HKE trademark or branding without the prior written consent of HKE.

## **12 Anti-Bribery and Corruption**

### **12.1 Supplier represents, warrants and undertakes that:**

- (a) neither it nor any of its Affiliates, Personnel, and sub-contractors or sub-agents, has engaged in any activity or conduct which would violate any applicable anti-corruption laws or regulations in any applicable jurisdiction (“**Anti-bribery Laws**”) and each member of its group has instituted and maintains policies and procedures designed to prevent violation of such laws and regulations;
- (b) it is in compliance with the Expectations of Business Partners Policy of HKE;

- (c) it is in compliance with all applicable Anti-bribery Laws in connection with the performance of the Agreement;
- (d) in the event it subcontracts any of its rights or obligations under the Agreement to a sub-contractor or sub-agent pursuant to the terms of the Agreement, Supplier shall ensure that every sub-contractor or sub-agent contains anti-bribery terms at least equivalent to those imposed on the Supplier, whether contained in the Agreement or agreed separately; and
- (e) it shall promptly report to HKE any breach or potential breach of this provision in connection with the performance of the Agreement and/or these General Terms.

**12.2** HKE may terminate the Agreement with immediate effect if it believes that Supplier or any of its Personnel has breached this provision and/or otherwise has committed a violation of the Anti-bribery Laws and shall hold the Supplier liable for any loss or damages HKE may sustain arising from such termination.

## **13 Sanctions, Import Controls and Export Controls**

### **13.1 The Supplier represents and warrants to HKE that:**

- (a) neither the Supplier, nor any of its Personnel is:
  - (i) currently subject to any Sanctions; or
  - (ii) aware of, or has taken any action that could result in, a breach of any Sanctions; and
- (b) the Supplier will comply with all applicable Sanctions, Import Controls and Export Controls.

### **13.2 The Supplier must:**

- (a) conduct its business (including with respect to the use of Fees or any other proceeds received in connection with the Agreement), supply the Services, and provide the Products in compliance with Sanctions, Import Controls and Export Controls;
- (b) not cause HKE, its Affiliates or any Cathay Group Entity to breach any applicable Sanctions, Import Controls or Export Controls;
- (c) implement procedures reasonably designed to ensure it and its Personnel comply with Sanctions, Import Controls and Export Controls in respect of activities under the Agreement, including by implementing procedures reasonably requested by HKE;
- (d) obtain all required government authorisations, including export licences or exemption authorisations applicable to the Agreement and, where requested by HKE, provide a copy of such authorisations;
- (e) promptly notify HKE if it believes that it is unable to perform its obligations under the Agreement as a result of Sanctions, Import Controls or Export Controls and, subject to HKE’s approval, adopt measures to permit continuity of the Agreement;
- (f) where the Supplier notifies HKE under clause 13.2(e), the Supplier must work with HKE to agree, within a reasonable period of time, a practical solution to permit continuity of the Agreement in a manner compliant with applicable Sanctions; and
- (g) ensure the compliance of its Affiliates and their Personnel with the obligations set out in clause 13.2(a).

### **13.3 If:**

- (a) any representation or warranty given in clause 13.1 is or becomes misleading or is no longer accurate; or
- (b) the Seller fails to comply with its obligations under clause 13.2;



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(a “**Clause 13 Breach**”) then without prejudice to any other remedy which HKE may have, HKE may terminate the Agreement immediately by notice to the Supplier and HKE shall not be liable for any loss or damage or other costs or expenses of any kind whatsoever that the Supplier may suffer as a result of such termination.

- (c) The Supplier indemnifies HKE and its Personnel against any liability incurred or suffered by any of them arising out of any Clause 13 Breach.

#### **14 Notices**

All notices and consents must be in writing and sent to the physical addresses, email addresses or fax numbers for notices specified in the Agreement, or such other address as may be updated by a party with prior notice to the other party.

#### **15 Dispute resolution**

If a party considers that a dispute has arisen, it may give a dispute notice to the other party, which must be in writing and set out the details of the dispute. If the parties have not been able to resolve the dispute within 20 Business Days after the issuance of that notice either party may commence legal proceedings in relation to the dispute.

#### **16 Miscellaneous**

##### **16.1 Force Majeure**

If a party fails to perform an obligation under the Agreement by reason of Force Majeure, that party will not be liable to the other for such failure. HKE shall have the right to suspend or cancel the supply of the Products in whole or in part in case of a Force Majeure event and the Supplier shall make the corresponding adjustments to the total Fees.

##### **16.2 Assignment**

The Supplier must not assign the Agreement, these General Terms or any right under them without HKE’s prior written approval.

##### **16.3 Severability**

If a provision of these General Terms is void, unenforceable or illegal, it is severed from the Agreement.

##### **16.4 Amendment**

The Agreement and these General Terms may only be varied by written agreement between the parties.

##### **16.5 Waiver**

None of the provisions of these General Terms may be waived, discharged or released, except in writing.

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##### **16.11 Waiver**

None of the provisions of these General Terms may be waived, discharged or released, except in writing.

##### **16.12 No exclusivity and no volume commitment**

The Agreement does not grant the Supplier an exclusive right to supply HKE any Product which HKE may require from Supplier, and HKE may contract with third parties for the procurement of comparable or similar products. Nothing in the Agreement shall be construed as creating a minimum commitment for business on the part of HKE.

##### **16.13 No Partnership or Agency**

Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture or agency between any of HKE or the Buyer, or otherwise authorises any Party to make or enter into any commitments for or on behalf of the other Party. The Buyer and HKE each confirms it is acting on its own behalf and not for the benefit of any other person.

##### **16.14 Third party rights**

The Agreement and the General Terms does not give a third party any rights to enforce any term of the Agreement.

##### **16.15 Entire agreement**

The Agreement and these General Terms supersedes all previous agreements, letters, offers, quotations and negotiations sent or received on the subject matter of the Agreement and contains the entire agreement between the parties.

##### **16.16 Governing law and submission to jurisdiction**

The Agreement and these General Terms is governed by the laws of Hong Kong. Each party submits to the non-exclusive jurisdiction of the courts of Hong Kong.