

## HKBN ENTERPRISE SOLUTIONS HK LIMITED TERMS AND CONDITIONS FOR SALE AND INSTALLATION OF EQUIPMENT

### 1. Introduction

The following terms and conditions apply to the sale and installation of Equipment by HKBN Enterprise Solutions HK Limited ("HKBNES").

### 2. Definitions

**"Agreement"** means the Order Form and these terms and conditions.

**"Charges"** means fees and charges payable by the Customer to HKBNES as set out in the Order Form.

**"Customer"** means the entity referred to as such as set out in the Order Form.

**"Equipment"** means the equipment to be provided by HKBNES in accordance with the Order Form.

**"Force Majeure"** means an event beyond the reasonable control of HKBNES, including accident, fire, flood, lightning, equipment failure, computer software malfunction or design defect, power failure, war, acts of God, civil commotion, strikes, labour disputes, freight embargoes, acts of any government, quasi-government or public or military authority, terrorism, epidemic or pandemic, telecommunication line or submarine cable failure.

**"Intellectual Property Rights"** means rights in patents (including utility models), designs, chip topographies, copyright, trade marks or trade names, trade secret, know-how and other technical information, whether registered or not.

**"Order Form"** means HKBNES's order confirmation form signed by the Customer and accepted by HKBNES.

### 3. Delivery and Installation

3.1 HKBNES will provide to the Customer relevant specifications for the installation site prior to the delivery date. HKBNES may change such site specifications from time to time as necessary. The Customer, at its own expense, shall prepare and maintain such site in accordance with the said specifications prior to the installation date, and thereafter for so long as HKBNES shall have responsibility for the operation of the Equipment, either through warranties or maintenance services.

3.2 HKBNES will deliver and install the Equipment and make it ready for use by the Customer. HKBNES may deliver and/or install part of the Equipment if HKBNES determines that any part of the operating requirement of the Customer can be met by partial installation.

3.3 HKBNES will perform such cabling works as stated in the Order Form subject to any approval as may be required including approval from the building management office or building owner. The Customer will render such assistance as necessary to HKBNES to obtain the necessary approval for the cabling works. Any cabling works will be carried out according to generally accepted industry standard.

3.4 Any delivery or installation dates which HKBNES may furnish are for reference only and shall not be construed as a commitment.

### 4. Charges and Payment Terms

4.1 Unless otherwise stated in the Order Form, the Customer shall pay HKBNES the Charges (one-off and/or recurring) within 30 days of the date of invoice from HKBNES. Payment shall be in Hong Kong dollars unless otherwise agreed in writing.

4.2 In the event of partial delivery of the Equipment in accordance with clause 3.2 of the Agreement, HKBNES shall be entitled to partial payment within 7 days of the Customer's receipt of partial delivery, such amount to be at the discretion of HKBNES.

4.3 In the event of default in any payments herein, the Customer shall pay to HKBNES interest on the amount in arrears at the rate of 2% per month from the date when the same became due for payment until paid, provided always that nothing in this clause shall affect any other rights of HKBNES under the law or the Agreement.

4.4 Charges for Equipment are ex-factory. Accordingly the Customer shall bear the costs of export, packaging, handling, preparation and procurement of documents, transportation, rigging, drayage, stevedoring, lighter age, insurance from manufacturer's possession to the Customer's possession, and any other charges upon the Equipment and packing cases incurred in transporting the same from the manufacturer's factories to HKBNES place of storage in Hong Kong and the like costs of transferring such Equipment, or any part thereof, from such place of storage to the installation site.

4.5 All Charges and any other amounts payable by the Customer under the Agreement are exclusive of any applicable taxes, withholdings of any kind, surcharges, duties or other similar charges assessed or imposed by any competent governmental authority on, or in relation to, the provision of the Equipment ("Taxes"). The Customer shall pay and be solely responsible for any and all Taxes. The Customer shall not deduct any Taxes from any Charges.

### 5. Title and Risk

5.1 Title to the Equipment shall remain with HKBNES until the total Charges and applicable taxes are paid in full.

5.2 The Equipment shall be at the Customer's risk with effect from the time it, or any part of it, is delivered to the installation site. The Customer shall indemnify HKBNES against any loss or damage to the Equipment or any damage or losses arising out of the use or possession of the Equipment by the Customer.

5.3 Notwithstanding any other provisions of the Agreement, if the Customer defaults in the payment of the Charges when due or fails to comply with the Agreement HKBNES shall have the right to enter the site where Equipment is installed or any premises in which the Equipment is stored to remove and/or repossess the Equipment with or without notice and to take such other action as it may deem necessary to protect its interest, it being understood that the remedies contained in this clause are cumulative and in addition to all other rights and remedies of HKBNES under the Agreement, by law or otherwise. This clause applies to the Customer's successors and assigns who may gain possession of the Equipment in any manner whatsoever.

### 6. Training

Where indicated in the Order Form, HKBNES will make available to the Customer such training that HKBNES deems necessary to operate the Equipment, the charge for such training will be at HKBNES's prevailing rates.

## 7. Warranties

7.1 Unless otherwise stated in the Order Form or provided by the manufacturer of the Equipment, HKBNES warrants that in respect of Equipment sold and installed and any cabling works performed at the date of such installation, they will be free from defects in material and/or workmanship under normal use. HKBNES's sole obligation under this warranty shall be to repair or at its option, replace free of charge any such articles or parts thereof which, within 30 days from the date of original installation, shall have been promptly reported by the Customer to HKBNES as defective in material or workmanship, and, upon investigation by HKBNES, shall be determined to have been so defective. This warranty does not extend to any article that has been subjected to misuse, neglect, or accident or which have been altered or repaired, other than by HKBNES, or if the defect is due to the failure of the Customer to prepare and maintain the installation site in accordance with the site specifications provided by HKBNES. Repair and replacement under this warranty will be provided during HKBNES's normal working hours which are Monday to Friday between the hours of 9 a.m. and 5 p.m., excluding in each case, public holidays.

7.2 EXCEPT FOR WARRANTY OF TITLE, THE WARRANTIES SET FORTH IN PARAGRAPH 7.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN OR STATUTORY OR OTHERWISE ARISING BY OPERATION OF LAW INCLUDING BUT WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR OF MERCHANTABILITY. Accordingly, except for the obligations set forth in paragraph 7.1, HKBNES shall have no obligations or liabilities under the Agreement, or otherwise, connected with or resulting from, the sale, installation, repair or use of any Equipment or any cabling or other materials sold and or supplied under the Agreement.

## 8. Termination

8.1 HKBNES may terminate the Agreement if:

- (a) HKBNES ceases to provide that Equipment on a commercial basis by giving Customer 30 days written notice;
- (b) The Customer, upon 5 days written notice, fails to make the payments due or to perform any other obligations required to be performed by the Customer under the Agreement;
- (c) The Customer becomes bankrupt or insolvent or enters into a scheme of arrangement or composition with the creditors or, being a company, is placed in receivership or under official management or has a provisional liquidator appointed; or
- (d) The Customer is in material breach of the Agreement and fails to remedy such breach within 30 days from receipt of notice from HKBNES specifying the breach.

8.2 HKBNES may recover against the Customer in any court of competent jurisdiction any charges due and payable by the Customer, which remains unpaid following the due date for payment. Without limiting the foregoing the Customer will be liable for all legal costs (including solicitor and client costs) and all other reasonable expenses incurred in recovering any or all of the charges due and payable to HKBNES.

8.3 Termination of the Agreement is without prejudice to any rights, liabilities or obligations of HKBNES, which have

accrued up to the date of termination, including an obligation to pay any accrued Charges.

## 9. Exclusions and Limitation of Liability

9.1 To the extent allowed by law, the liability of HKBNES whether arising from a breach of contract or negligence on the part of HKBNES or its employees or agents or contractors or suppliers shall be limited to, at the sole discretion of HKBNES, the supply or re-supply of the Equipment and/or cabling works (as the case may be) or refund such amount as received by HKBNES from the Customer for the Equipment and/or cabling work (as the case may be).

9.2 Under no circumstances shall HKBNES, its employees, agents or contractors or suppliers be liable in any way whatsoever to the Customer or any other person for any special, indirect or consequential losses or damages, loss of profit, loss of business, loss of revenue, loss of goodwill, loss of use or damage of data or anticipated savings, whether such losses or damages were within the contemplation of the parties.

9.3 Notwithstanding anything else in the Agreement, the Customer shall indemnify, defend and hold HKBNES, its employees and agents harmless against any and all claims, liability incurred, losses, damages, costs and expenses arising from or in connection with:

- (a) Any fraud, illegality or unauthorized use of the Equipment by any person;
- (b) Any claims or proceedings brought by third parties against HKBNES in respect of, or arising from the use of the Equipment by the Customer;
- (c) A breach by the Customer of the Agreement including any acts or omissions (whether or not negligent) of the Customer;
- (d) HKBNES's access to the Customer's premises in connection with any works pursuant to the Agreement.

9.4 Except as expressly set forth in the Agreement, all warranties, representations or agreements whether oral or in writing and whether express or implied, either by operation of law, statutory or otherwise, are hereby expressly excluded to the maximum extent permitted by law. Each limitation or exclusion in this clause is to be construed as a separate limitation or exclusion applying and surviving even if for any reason any of the provisions is held inapplicable in any circumstances.

9.5 HKBNES shall not be liable to the Customer or any person claiming through the Customer for any defaults or delays caused by a Force Majeure event.

## 10. General Provisions

10.1 The Agreement represents the entire understanding between HKBNES and the Customer relating to the sale and installation of the Equipment and there are no promises, terms, conditions or obligation, oral or written, expressed or implied, other than those contained in the Agreement.

10.2 Each of the provisions of the Agreement is severable and distinct from the others and, if one or more of such provisions is or becomes illegal, invalid or unenforceable, the remaining provisions will not be affected in any way.

10.3 The Agreement is governed by the law in force in Hong Kong and each party submits to the exclusive

jurisdiction of the courts of Hong Kong for determining any disputes arising under the Agreement.

10.4 Any statements, notices or communication by HKBNES to the Customer shall be sufficiently given to the Customer if addressed to the Customer at the address notified to HKBNES by the Customer, by post or facsimile and shall be deemed to have been given and received on the day on which such communication ought to have been received in the ordinary course of such transmission or delivery.

10.5 The Customer shall not assign or transfer any or all of its rights and obligation under the Agreement to any third party. The Customer shall not procure or allow the imposition of any charge, encumbrance or other security interest in relation to the Equipment in which HKBNES retains title. HKBNES may at any time assign or transfer any or all of its rights and obligations under the Agreement to any person without the Customer's agreement.

10.6 No delay, neglect, relaxation or forbearance on the part of HKBNES in enforcing against the Customer any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of HKBNES under the Agreement.

#### **11. Third Party Rights**

The Contracts (Rights of Third Parties) Ordinance (Cap.623) shall not apply to the Agreement. For clarity, a person who is not a party to the Agreement shall have no right to enforce the Agreement.

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