



JABATAN KERJA RAYA
SARAWAK

FORM OF CONTRACT
(SUPPLY)

May 2006

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FORM OF CONTRACT (SUPPLY)

1. DEFINITION OF TERMS

1.1 Definition

In the Contract Documents (as hereinafter defined) the following words and expressions shall have the meanings hereby assigned to them, except where the context otherwise requires:

"Contractor"	means the person or persons, partnership, firm or company whose tender has been accepted and who has or have signed this Contract and shall include the Contractor's duly appointed representatives, administrators, successors, receiver, liquidator or permitted assigns;
"Contract Documents"	means the several documents specified in the Form of Agreement agreed by the parties to form an integral part of the Contract;
"Contract Period"	means the period during which the Contract remains valid and within which the Contractor must perform his obligations hereunder and is as specified in the Special Specification;
"Contract Sum"	means the Tender Sum accepted by the Government;
"Day"	means a calendar day according to the Gregorian calendar and includes Public Holiday;
"Delivery Period"	means the delivery period in number of days as stated in the Schedule of Stores for the delivery of the Items in the same;
"Government"	means the Government of Sarawak;
"In writing"	means in any written form signed by the authorized person;
"Items"	means the goods or services or articles described in the Schedule of Stores;
"Specification"	means all specifications contained in the Contract Documents including modifications or additions to the same as may from time to time be issued or approved in writing by the Superintending Officer;
"Superintending Officer" (or the initials S.O.)	means the person named in the letter accepting the tender indicated by name or by office and his successors in office or any other person from time to time appointed in writing by the Government and notified in writing to the Contractor as Superintending Officer for the purpose of this Contract;
"Tender Item No"	means the number assigned to an Item as listed in the Schedule of Stores;
"Tender Sum"	means the sum of total price of all the items as listed in the Schedule of Stores;
"Year"	means a calendar year.

1.2 Singular and Plural Terms

Words imparting persons include firms and corporations, words imparting the singular only also include the plural and vice versa where the context requires.

1.3 Headings or Notes

The headings in this Form of Contract shall not be deemed to be part thereof or be taken into consideration in the interpretation or construction of any term or condition of this Contract.

1.4 Reference to Clauses

All reference to clauses unless otherwise stated, means the clauses in this Form of Contract.

2. SCOPE OF CONTRACTUAL OBLIGATION

2.1 Scope

The Contractor shall exercise all reasonable care, skill and diligence in carrying out and complete the supply and delivery of every item specified in the Schedule of Stores according to the quality, description and quantity stipulated in the said Schedule, in accordance with this Contract in every respect in accordance with the directions and to the satisfaction of the Superintending Officer and shall provide everything necessary for the completion of the supply and delivery thereof whether or not shown in the Contract Documents and/or the Superintending Officer's Instructions, provided that it can reasonably be inferred therefrom.

2.2 Adequacy of Contract Sum

The Contractor shall be deemed to have satisfied himself that the Contract Sum covers all his obligations under the Contract and all matters and things necessary for the proper execution and completion of the supply and delivery of the Items. No additional payment shall be due to the Contractor on the grounds of lack of knowledge of any or all matters whatsoever at the time of tendering.

2.3 Recovery of Sums Due

Without prejudice to any other rights and remedies available to the Government, the Government shall be entitled at all times to set-off all monies which may become due or is payable to the Contractor under this Contract, any monies owing by or due from the Contractor to the Government under this or any other contract wherein the Government and the Contractor are also parties.

3. CONTRACT DOCUMENTS

3.1 Contract Documents to be Mutually Explanatory

The several documents forming this Contract are to be taken as mutually explanatory of one another but in the event of any conflict or inconsistency between any of the documents forming the Contract, such conflict or inconsistency shall be resolved by reference to the documents in the following order of preference:

- (a) Form of Agreement;
- (b) Letter of Acceptance;
- (c) Correspondence and/or Minutes of Meetings referred to in that Letter of Acceptance;
- (d) Form of Tender;

- (e) Tendering Conditions;
- (f) Notice to Tenderers;
- (g) Form of Contract;
- (h) Special Specification; and
- (i) Schedule of Stores.

3.2 Custody of Contract Documents

The original Contract Document shall remain in the custody of the Government and shall be produced as and when required by the Contractor. The Superintending Officer shall furnish to the Contractor one copy of the signed Contract Document free of charge.

4. SERVING OF NOTICES ETC.

4.1 Method and Time of Serving

- (a) Any document shall be deemed to be sufficiently issued or given to or served upon the Contractor, or the Government or the Superintending Officer, as the case requires, if:
 - (i) it is handed to the Contractor or his representative, or the Government's designated representative or the Superintending Officer and an acknowledgement of receipt obtained; or
 - (ii) is sent by post in which case it shall be deemed to have been served seven (7) days after posting by registered mail or courier; or
 - (iii) is left at the latest notified address of the Contractor, or the address of the Government's designated representative, or of the Superintending Officer, as stated in the Contract Documents or otherwise advised.
- (b) Either party may change the address set out in the Form of Agreement by giving fourteen (14) days notice to the other parties and in the case of the Superintending Officer by giving fourteen (14) days notice to both parties.

5. PERFORMANCE SECURITY

5.1 Due Performance

The Contractor shall at his own expense provide a Performance Security for the due performance of this Contract. The Performance Security shall be for such amount as stipulated in Clause 5.4 and shall be in either of the following forms:

- (a) a Bond with a licensed Bank or such other institution(s) acceptable to the Government and shall be in such form and terms approved by the Government; or
- (b) a cash deposit.

5.2 Application

If the Contractor shall fail within thirty (30) days of signing this Contract to provide the Performance Security, the Government may deduct the amount thereof from any sum otherwise payable to the Contractor and shall retain that amount as a cash deposit in accordance with Clause 5.1 above, until the required surety is provided or until such deposit is due to be refunded.

5.3 Validity and Adequacy

The validity and adequacy of the Performance Security shall be maintained by the Contractor at all times during the currency of the Contract and shall operate from the date of signing of the Contract Documents until a date twelve (12) months from the date of final completion of the last order or twelve (12) months after the expiry of the Contract Period, whichever is later. If at any time the Performance Security should expire before the above mentioned, the Government may withhold payment due to the Contractor, deduct from any sum due or terminate this Contract.

5.4 Amount of Performance Security

The amount of Performance Security shall be equal to:

- (a) 2.5% of the Contract Sum if the Contract Sum is more than RM50,000.00 but not exceeding RM500,000.00; or
- (b) 5% of the Contract Sum if the Contract Sum is more than RM500,000.00.
- (c) For a contract longer than one (1) year, the percentage of Contract Sum to be used for calculating the amount of Performance Security shall be 50% of the Contract Sum.

5.5 Release of Performance Security

The Performance Security shall be released and returned to the Contractor only upon satisfactory fulfillment of the Contract obligations and only upon full and final settlement of all claims having been made by the Government thereunder.

6. CONDITION OF ITEMS, SAMPLES, PACKING, NON-CONFORMITY, REJECTION AND REPLACEMENT

6.1 Condition of Items

All the Items supplied shall be new, unused and of recent origin, unless specified otherwise.

6.2 Samples

- (a) At any time after the signing of this Contract, the Superintending Officer shall be at liberty to call for samples of any Item to be supplied under this Contract for approval and for such further samples as are required until the samples submitted are in his opinion in accordance with the Contract Documents. Sample after approval shall indicate the standards to be maintained for the duration of this Contract. If in the opinion of the Superintending Officer any Item supplied under this Contract is not in accordance with the Contract Documents or with any approved sample, the Superintending Officer reserves the right to submit such Item 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 Item is in accordance with the Schedule or with the approved sample.
- (b) In the absence of such sample, every Item delivered must conform with the specification and description in the Contract Document and this Contract shall be deemed to be a supply or sale of the Item by description or specification.

6.3 Packing

All Items shall be supplied in such packing or containers or otherwise as may be indicated in the Contract Documents and such packing or containers shall in every way be adequate for their

purpose and to the satisfaction of the Superintending Officer who shall at liberty to call for additional or alternative packing or containers for any particular Item.

6.4 Non-conformity

In the event that any Items are found to be not conforming to the Specifications specified in the Contract Documents or of inferior quality or not within normal limits of industrial quality in the absence of specification, description or sample, the Government reserves the right to reject and return them to the Contractor at his own expenses for free replacement.

6.5 Rejection and Replacement

- (a) The Contractor shall remove the rejected Items within fourteen (14) days from the date of receipt of notification of rejection. In the event of the Contractor failing to remove any rejected Items within the said period the Government shall be at liberty to return the rejected Items and any cost thereby incurred shall be deducted from any money due or become due to the Contractor under this Contract or shall be recoverable as a liquidated demand in money.
- (b) All the rejected Items in each batch or lot shall be replaced within the Delivery Period for that batch or lot otherwise they shall be considered as undelivered and the normal conditions for liquidated damages shall apply.

7. PRODUCT GUARANTEE

All Items to be supplied by the Contractor under this Contract shall be guaranteed against defects in manufacture or design (where applicable) for twelve (12) months after the date of the Superintending Officer's Completion Certificate for each order.

8. PATENT RIGHTS

The Contractor shall indemnify the Government against any claim of infringement of Letters Patent or Registered Design (Published at the date of this Contract) by the use or sale of any Item supplied by the Contractor under this Contract and against all costs and damages which the Government may incur in any action for such infringement or for which the Government may become liable in any such action. Provided always that such indemnity shall not apply to any infringement which is due to the Contractor having followed a design or instruction furnished or given by the Superintending Officer.

9. DELIVERY PERIOD

- (a) The supply of all Items under this Contract shall be completed on or before the expiry of the Delivery Period stated in the Schedule of Stores, subject nevertheless to the provisions for extension of time hereinafter mentioned.
- (b) In the event of the Contractor failing to complete the supply or delivery of any order under this Contract on or before the expiry of the Delivery Period, or on or before any extended date as hereinafter provided, the Superintending Officer shall have the right to cancel the order from this Contract without compensation and obtain such Items from other sources. Should the cost of any such Items obtained from other sources be greater than that allowed for in the Contract Documents the difference in cost shall be a debt owing to the Government by the Contractor and shall be deducted from any money due or to become due to the Contractor under this Contract or shall be recoverable by the Government as a liquidated demand in money.

10. DAMAGE TO ITEMS DELIVERED

The Contractor shall be entirely responsible for and shall make good any damage to any Item caused through faulty or inadequate packing or for whatsoever reasons during delivery. All damaged Items shall not be accepted.

11. SUB-LETTING

- (a) The Contractor shall not without the prior written consent of the Superintending Officer assign this Contract or sub-let all or any portion of the Contract; provided that such consent shall not be unreasonably withheld.
- (b) In the event of any portion of the Contract being sub-contracted with the prior written consent of the Superintending Officer, the Contractor shall be solely and personally responsible for the due observance by such authorised sub-contractors of all the terms, stipulations and conditions herein expressed.

12. DELIVERIES AND PAYMENTS

- (a) The Contractor shall be responsible for the supply and delivery of each order to the point of delivery elsewhere stated herein. He shall notify the Superintending Officer in writing of such delivery and shall obtain the acknowledgement of the Superintending Officer of receipt on the Contractor's delivery order or invoice. The acknowledgement of such receipt shall in no way relieve the Contractor from his responsibilities for replacing defective or damaged Items under Clauses 6 and 7 hereof.
- (b) When the Contractor has made delivery of any order, the Superintending Officer shall inspect and certify via a Completion Certificate after which the Government who shall make payment to the Contractor within thirty (30) days after the date of the Completion Certificate.
- (c) Ownership of the Item supplied or delivered hereunder shall pass absolutely to the Government upon the acknowledgement of the delivery order or invoice by the Superintending Officer under paragraph (a) above. The Contractor shall not be entitled to an unpaid Seller's lien over any Item supplied and delivered pursuant to this Contract.
- (d) Delivery of Items under any order shall be deemed to be completed, for the purposes of this Contract, upon issuance of the Completion Certificate issued under paragraph (b) above.

13. DELAY AND EXTENSION OF TIME

Upon the happening of any of the following causes i.e. force majeure, riots and civil commotions, strikes, lock-outs or other labour disturbances, fires and war, the Contractor shall immediately give notice in writing to the Superintending Officer, but shall nevertheless use constantly his best endeavours to prevent delay and shall do all that may be reasonably expected to expedite completion of the order. If in the opinion of the Superintending Officer the completion of the supply and delivery of any order is due to any of the said causes, the Superintending Officer shall make a fair and reasonable extension of time for the completion of supply and delivery of the order.

14. LIQUIDATED DAMAGES

14.1 Deduction of Liquidated Damages

In the event of the Contractor failing to complete the supply and delivery of any order within the Delivery Period, the Contractor shall be liable to pay to the Government at the rate of two percent (2%) of the value of order per week or part thereof as liquidated damages until the date of completion.

15. DETERMINATION OF CONTRACTOR'S EMPLOYMENT

15.1 Defaults for Determination

Without prejudice to any other rights or remedies which the Government may possess, if the Contractor shall make default in any one or more of the following respects:

- (a) he without reasonable cause suspends the carrying out of the whole or any part of the order before completion; or
- (b) he fails to proceed regularly and diligently with the order; or
- (c) he fails to execute the order in accordance with the Contract or persistently neglects to carry out his obligations under this Contract; or
- (d) he refuses or persistently neglects to comply with a written notice from the Superintending Officer to remove and replace any defective Item; or
- (e) he fails to comply with the provisions of Clause 5.3, 6, 7, 8, 9, 10, 11, 12, 13 or 15.2; or
- (f) he persistently refuses or fails to comply with an instruction from the Superintending Officer, which the Superintending Officer is empowered to give under the Contract;

the Superintending Officer may give to him a notice by registered post or by courier service specifying the default, and if the Contractor shall continue such default for fourteen (14) days after such notice has been sent, or shall at any time thereafter repeat such default (whether previously repeated or not), then the Government may thereupon, by a notice sent by registered mail or by courier service determine the employment of the Contractor under this Contract.

15.2 Other Defaults for Determination

If the Contractor:

- (a) commits an act of bankruptcy; or
- (b) becomes insolvent or enters into composition with or makes arrangement with his creditors; or
- (c) being a company, is having a winding-up order made against it by a court of competent jurisdiction; or
- (d) is having a provisional liquidator, receiver or manager of his business or undertaking duly appointed, or possession taken by or on behalf of creditors or debenture holders secured by a floating charge of any property comprised in or subject of the said floating charge;

then and in any such event, without prejudice to any other rights it may possess, the Government may by a notice sent by registered post or by courier service determine the employment of the Contractor under this Contract.

16. TERMINATION BY THE GOVERNMENT

16.1 War and Earthquake

If during the performance of this Contract a state of war in which the Government is involved or any earthquake or other natural calamity arises, occurs or exists which, in the opinion of the Government, has rendered the fulfillment of this Contract impossible or impracticable, the Government shall be entitled to terminate the contract by giving fourteen (14) days notice to the Contractor.

16.2 Without Default

The Government shall also be entitled to terminate the Contract without default by giving fourteen (14) days notice to the Contractor.

16.3 Corrupt Acts

The Government shall be entitled to terminate this 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 this Contract with the Government, 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 this Contract or any other contract with the Government the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Anti-Corruption Act, 1977 (Act 575) or any modification, amendment or re-enactment thereof.

16.4 Entitlement to Payment

Upon termination by the Government, the Contractor shall be entitled to payment, if any, of any Items already supplied and delivered to the satisfaction of the Superintending Officer up to the date of such termination.

16.5 Dispute from Termination

Any dispute by the Contractor arising from this Clause shall be settled through arbitration as provided in Clause 17.

17. ARBITRATION

Provided always that in case any dispute shall arise between the Government or the Superintending Officer on its behalf and the Contractor:

- (a) whether during the progress or after completion of or after the determination or breach of the Contract; or
- (b) as to any matter or thing arising thereunder; or
- (c) as to the withholding by the Superintending Officer of any certificate to which the Contractor may claim to be entitled to,

then the Superintending Officer shall determine such dispute or difference by a written decision given to the Contractor. The said decision shall be final and binding on the parties unless the Contractor within 14 days of the receipt thereof by written notice to the Superintending Officer dispute the same in which case or in case the Superintending Officer for 14 days after a written request to him by the Contractor fails to give a decision as aforesaid, such dispute or difference shall be referred to the arbitration and final decision of a person to be nominated and appointed by agreement between the Superintending Officer and the Contractor, or in the event of his death or unwillingness or inability to act, or if the Superintending Officer and the Contractor fail to agree, of an arbitrator nominated by the Director of the Regional Center for Arbitration, Kuala Lumpur and the award of such Arbitrator shall be final and binding on the parties. Such reference, except on the question of payments shall not be commenced until after the completion or alleged completion of the Contract, unless with the written consent of the Superintending Officer and the Contractor. The Arbitrator shall have power to review and revise any certificate, opinion, decision, requisition or notice and to determine all matters in dispute which shall be submitted to him, and of which notice shall have been given as aforesaid, in the same manner as if no such certificate, opinion, decision, requisition or notice had been given. Upon every or any such reference the costs of and incidental to the reference and award shall be at the discretion of the Arbitrator, who may determine the amount thereof, or direct the same to be taxed as between solicitor and client or as between party and party, and shall direct by whom and to whom and in what manner the same shall be borne and paid. This submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2005.

18. CUSTOMS AND IMPORT DUTIES

18.1 No Exemption

The Contractor shall pay all customs duties and levies payable in respect of any Items imported into Sarawak by him for the purposes of this Contract and shall make all entries and pay all other fees and stamp duties in connection therein. No exemption from duties and levies is granted by virtue of this being a Government contract.

18.2 Subsequent Changes in Duties Payable

The Contract Sum shall be deemed to have included import duties (if chargeable) based upon the current rates of Customs import duties and levies on the closing date of the Tender. If during the Contract Period there is any variation in such rates or in the classes of goods subject to duty and levy then the net increase or decrease in the amount of duty and levy payable by the Contractor and attributed thereto shall be paid to or deducted from the Contract Sum, as the case may be, and shall be paid to or allowed by the Contractor accordingly by adjustment of the amounts due under Clause 12.

19. STAMP DUTY

Stamp Duty, if any, on this Contract will be borne by the Contractor.

20. DISCREPANCY

If the Contractor shall find any discrepancy in or divergence between the Contract Documents he shall immediately refer the same in writing to the Superintending Officer and specifically apply in writing for any necessary instructions from the Superintending Officer in relation thereto. The Superintending Officer may in his absolute discretion and from time to time issue written instructions, written directions and written explanation in regard to any discrepancy in or divergence between the Contract Documents.

21. GOVERNING LAW

The law governing the Contract shall be the law of Malaysia and the parties hereby submit to the jurisdiction of the Malaysian courts for the purpose of any action or proceeding arising out of the Contract.