

THESE TERMS OF USE EFFECTIVE FROM 12 February 2003

**E-Tendering Website
TERMS OF USE**

PLEASE READ THE FOLLOWING TERMS OF USE CAREFULLY AS THEY APPLY TO YOUR USE OF THIS E-TENDERING WEBSITE. ONCE YOU ARE IN THIS E-TENDERING WEBSITE, YOU WILL BE LEGALLY BOUND BY THESE TERMS OF USE AND IN CONSIDERATION OF OUR PERMITTING YOU TO THEN ACCESS AND USE THIS E-TENDERING WEBSITE THESE TERMS OF USE SHALL CONSTITUTE A CONTRACT ENTERED INTO BY WAY OF ELECTRONIC RECORDS IN ACCORDANCE WITH SECTION 16 OF THE ELECTRONIC TRANSACTIONS ORDINANCE.

1. DEFINITIONS

The following words have the following meanings in these Terms of Use:

“affiliates”

in respect of any company, any holding company of such company, all subsidiaries of such holding company and all companies or bodies corporate in respect of which any such holding company or the company holds an interest equal to or greater than 20% of the voting or capital rights in that company or other body corporate;

“Content”

all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials displayed on or made available through the E-tenderingWebsite;

“E-Tendering”

means the submission and acceptance of tender documents through electronic means;

“E-Tendering Website”

means the E-Tendering website as described in the “Introduction to the “E-tendering Website” set out in Clause 2 includes the group of files, pages or locations operated by us on the World Wide Web with information or data in graphical format which includes text, pictures, sounds etc. and which is created in Hypertext Markup Language (HTML) format to provide the E-tendering services, information and contents and also includes the System;

“e-Cert”

means a digital certificate issued by the Hong Kong Post Office;

“iCert”

means a digital certificate issued by Global e-Business;

“Invitation To Tender”

means a notice of tender issued by us to certain suppliers, contractors, Registered Suppliers or certain Registered Users only;

“Invited Parties”

means those Registered Suppliers or Registered Users who have received an Invitation to Tender;

“Non-Registered User” means any user who has not registered or does not have a valid registration to use the services of the E-Tendering Website which are set out in Clause 4;

“Feedback”

has the meaning ascribed to it in paragraph 12;

“Hong Kong”

the Hong Kong Special Administrative Region of the People’s Republic of China;

“Ordinance”

the Electronic Transactions Ordinance (Cap 553);

“Public Tender”

means a Tender issued by us for which any Registered User may submit a Tender Offer;

“Registered Supplier”

means a supplier or contractor who has successfully registered with us and is qualified to tender for relevant goods and services with us;

“Registered User”

Means a person who has subscribed to the E-Tendering Website and accepts these terms of use;

“Restricted Tenders”

means tenders which are only made to certain Registered Suppliers or certain suppliers or certain Registered Users only;

“System”

means the totality of the hardware, software and all associated intellectual property owned, developed and maintained by us or licensed to us which makes use of the internet and related technology in order to make the E-tendering Website functional;

“Tenders”

means any tender issued by us including Public Tenders and Restricted Tenders;

“Terms of Use”

these terms of use as amended from time to time and posted on the Website;

“Tender Offer”

means any offer for supply of goods or provision of services in response to an Invitation to Tender;

“User”

means the user of the E-Tendering Website which includes Non-Registered User, Registered User and Registered Suppliers (as the case may be).

“we, our, us”

MTR Corporation Limited a corporation established pursuant to the Companies Ordinance Cap. 32 having its principal office at MTR Headquarters Building, Telford Plaza, Kowloon Bay, Kowloon, Hong Kong;

“Website”

the Website established at www.hkextender.com; and

“you, your”

Users of the Website.

2. INTRODUCTION TO THE E-TENDERING

The E-Tendering is a combination of the System and the E-Tendering Website and which E-Tendering Website facilitates Tenders to be presented in an electronic format for downloading and viewing and Tender Offers in an electronic format can be uploaded and submitted for processing.

3. REGISTRATION OBLIGATIONS

If you register with the E-Tendering Website, you agree to: (a) provide true, accurate, current and complete information about your organization (or yourself in the case of an individual subscriber) and (b) maintain and promptly update the subscriber information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, we have the right to suspend or terminate your registration and/or refuse any and all current or future use of the service (or any portion of it). If you have registered with us on behalf of a company or other entity, then you represent and warrant that you have the authority to bind such company or other entity to these Terms of use.

4. REGISTERED USER

After successfully subscribing to the E-Tendering Website, a Registered User shall have free access to the following services:

- (a) submission of Public Tender enquiries;
- (b) unlimited downloading of Public Tenders or clarification thereto;
- (c) unlimited submission of Tender Offers against Public Tenders;

- (d) unlimited downloading Restricted Tenders and clarifications thereto to which such Registered User has been invited and allowed to participate when applicable; and
- (e) e-mail notification via e-mail for notices of new Public Tenders or new Restricted Tenders where the Registered User is a Registered Supplier, and their clarifications and award notices. The services described above and which apply to the Registered User may be changed by us from time to time at our sole discretion and as notified to the Registered User in accordance with these Terms of Use.

5. DATA PRIVACY

For information about our privacy policies and practices, please refer to our Privacy Policy Statement.

6. COMPLETE TERMS OF USE

These Terms of Use and our Privacy Policy Statement which is hereby incorporated as if set forth fully herein, represent the complete agreement between you and us concerning your use of the E-Tendering Website.

7. COVENANTS

You agree to use this E-Tendering Website solely for the purpose of correspondence in connection with our Tenders and you are responsible for all Content whether publicly posted or privately transmitted by you on or through this E-Tendering Website.

- 7.1 As a condition of your use of the E-Tendering Website, you agree that you will not use the Website for any purpose that is unlawful or prohibited by any applicable laws or the terms, conditions, and notices contained herein. Without limiting the generality of the foregoing, you further agree not to:
- (a) trespass, break into, access, use or attempt to trespass, break into, access or use any other parts of our servers, and/or any data areas for which you have not been authorised by us;
 - (b) post or transmit any unlawful, fraudulent, libellous, defamatory, obscene, pornographic, profane, threatening, abusive, hateful, offensive, or otherwise objectionable or unreasonable Content of any kind, including without limitation any transmissions constituting or encouraging conduct that would constitute a criminal offence, give rise to civil liability, or otherwise violate any local, state, national or foreign law, infringe any intellectual property rights, proprietary rights or confidentiality obligations of others;
 - (c) post or transmit any advertisements, solicitations, chain letters, pyramid schemes, investment opportunities or schemes or other unsolicited commercial communication, or engage in spamming or flooding;

- (d) post, publish, transmit, reproduce, distribute or in any way exploit any Content obtained through the E-Tendering Website for commercial purposes;
- (e) upload, post, publish, transmit, reproduce, or distribute in any way, any component of the E-Tendering Website itself or any Content obtained through the E-Tendering Website which is protected by copyright, or other proprietary right, or create derivative works with respect thereto, without our prior written permission;
- (f) transmit, post or upload any Content that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunication equipment through this E-Tendering Website;
- (g) transmit, post or upload any Content protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless you own or control the rights thereto or have received all necessary consents;
- (h) interfere with or disrupt networks connected to the E-Tendering Website or violate the regulations, policies or procedures of such networks;
- (i) attempt to gain unauthorised access to the E-Tendering Website, computer systems or networks connected to the E-Tendering Website, through password mining or any other means;
- (j) interfere with another individual's or entity's use and enjoyment of the E-Tendering Website or similar services;
- (k) disrupt the normal flow of dialogue, cause a screen to "scroll" faster than other users of the E-Tendering Website are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges;
- (l) "stalk" or otherwise harass another; or
- (m) collect or store personal data about other Users.

We reserve the rights from time to time, without notice, to observe and record your access to and use of the E-Tendering Website to determine if you are complying with these Terms of Use.

7.2 For matters concerning Tender Offers :

- (a) It is the User's responsibility to and the User must ensure that its Tender Offers are fully compliant with our terms and conditions contained in a relevant Tender and any amendments thereto.

- (b) All Users are warned that any late Tender Offer will be rejected by the E-tendering Website. All messages appearing in the E-Tendering Website displaying the tender warning time zone (i.e. time remaining) or submission time of Tender Offer are for reference only. Users are responsible to ensure that their data and Tender Offer submission are successfully uploaded and submitted to us in full within the Tender closing time prescribed by us.
- (c) Users agree and are aware that the E-Tendering Website may, during transmission and submission of a Tender Offer and material, fail, breakdown, contain viruses, or be slow to process. Although we strive to avoid any of the above situations, no guarantee or warranty is given by us to avoid, prevent or rectify these situations. In the event of a malfunction, slow processing or error, the Users agree to find alternate methods to submit their Tender Offers or other material and shall in no way hold or make us liable for any losses or damages as a result thereof.
- (d) Users must provide and access their own appropriate equipment and software, which conform with the E-Tendering Website in order to perform the functions and services of E-Tendering Website.
- (e) Any material and data in the Users' Tender Offer and other submissions shall be encrypted for security. Users accept that any and all material, information and data so encrypted are still those of the User after decryption and any error or misstatement or omission of such encrypted data, material and information shall be accepted as those of the User in any event. The end results of the encrypted and decrypted materials, data and information as initially submitted by the User shall be used by us on an “as is” basis and the User agrees to be bound by such contents of the decrypted materials, data and information.
- (f) Users in response to a relevant Tender and attempting to upload data, materials and information for submission to us through the E-Tendering Website must ensure that the data, materials and information are in a standardized electronic form that allows the E-Tendering Website to capture, record, store and process such data, materials and information. Other data information and materials must be submitted as an attachment of the form. Further, the form of text and drawings of Tender Offer must be sent and received in a standard format as advised by us to Users.
- (g) Users may submit more than one Tender Offer for the same relevant Tender . Each Tender Offer submitted will be processed and the times of submission logged. Users should allow sufficient time for submission / transmission of their Tender Offers. A Tender Offer that is not completely and successfully transmitted before the closing time specified in the Tender will be rejected.

- (h) No User shall be permitted to upload any Tender Offer through the E-tendering Website unless:
 - i) such Tender Offer belongs to the User; and
 - ii) the User is a Registered User; and
 - iii) the User has logged into the E-Tendering Website using an account (i.e. password, user name, etc.) which they have personally subscribed for.

7.3 For matters concerning the download of Tender documents:

- (a) Users are required to use sufficient hardware to minimize the risk of complications when using the E-Tendering Website. Users agree that we shall not be responsible or held liable for any delayed, untimely, slow or non-transmission of any download or upload of any documents or materials concerning the E-Tendering Website.
- (b) Public Tenders are accessible by and can be downloaded by any Registered User. Restricted Tenders are only accessible by those Registered Suppliers whom we invite.
- (c) A Tender document cannot be downloaded after the closing date and time of such Tender.
- (d) Successfully uploaded Registered User's data, submissions or Tender Offers, material, information and documents will be encrypted and sent to an electronic tender box. The electronic tender box will be automatically closed by the E-Tendering Website and opened by a party whom we authorize for processing.
- (e) We are responsible to decrypt all Tender Offers or other submissions which have been submitted through the E-Tendering Website and subsequently encrypted. Decrypted data, information, materials of submitted and encrypted Tender Offers will be used by us to evaluate the Tenders.

8. MONITORING

We do not actively monitor the Content submitted, posted, transmitted or sent by Users to, on or through the E-Tendering Website or guarantee the accuracy, integrity or quality of such Content. However, we will consider complaints concerning inappropriate Content on this E-Tendering Website, but we do not guarantee that we will take any action in respect of the same. Furthermore, we reserve the right to remove or withhold, without warning, any Content from this E-Tendering Website in our sole discretion. Under no circumstances will we be held liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content submitted, posted, e-mailed or otherwise transmitted via the E-Tendering Website.

9. REGISTERED SUPPLIERS AND TENDERS

- (a) Forms for application as Registered Suppliers and the supporting documents submitted through the E-Tendering Website will be processed by us. Successful applicants will be informed by us as to their approval. We do not bear any responsibility in processing the said forms and documents and the relevant Registered User shall not hold us liable for any acts, damages or losses as a result of the registration process.
- (b) Registered Suppliers must ensure that their data is complete, accurate and up-to-date. We shall assume no responsibility or liability for any error, misstatement, inaccurate, incomplete or outdated data concerning the Registered Supplier. Registered Suppliers should update their data via the E-tendering Website.

10. DIGITAL CERTIFICATE AND ENCRYPTION

- 10.1 As part of the registration and start up procedures the User must obtain a digital certificate called an "e-Cert". However, for those Users who do not have a local presence in Hong Kong, an "iCert" can be accepted as an alternative. Upon submission of any Tender Offers or any documents which require authentication via the E-Tendering Website, the User must submit a valid e-Cert or iCert as appropriate. iCerts are single purpose digital certificates and must not be used for any purposes other than those for which the iCerts were issued. All disclaimers under clause 11 explicitly apply to the registration and usage of iCerts.
- 10.2 iCert is not classified as high trust certificates and as such is not a recognized certificate under the Ordinance. Use by a User of an iCert assigned to a User in relation to a Tender submission shall indicate that such User intends to be legally bound by the submission and all applicable terms and conditions thereto.

11. ISCLAIMERS & LIMITATION OF LIABILITY

THIS E-TENDERING WEBSITE IS PROVIDED BY US ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER WE NOR OUR AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THIS E-TENDERING WEBSITE OR THE ACCURACY, ADEQUACY OR COMPLETENESS OF THE CONTENT INCLUDED ON THIS E-TENDERING WEBSITE. TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, WE AND OUR AFFILIATES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY REPRESENTATIONS OR WARRANTIES AS TO:

- (a) THE AVAILABILITY OF THE E-TENDERING WEBSITE OR THAT IT WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED;
- (b) THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY CONTENT ON THE E-TENDERING WEBSITE;

- (c) THE USE OR EXERCISE OF REASONABLE CARE AND SKILL IN PROVIDING OR DELIVERING ANY SERVICES ON OR THROUGH THE E-TENDERING WEBSITE OR THE TIMELINESS OF SERVICES OFFERED OR PROVIDED ON THE E-TENDERING WEBSITE;
- (d) NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; OR
- (e) THE E-TENDERING WEBSITE BEING FREE OF COMPUTER VIRUSES OR OTHER HARMFUL ELEMENTS.

OUR ENTIRE LIABILITY AND YOUR EXCLUSIVE REMEDY WITH RESPECT TO THE E-TENDERING WEBSITE OR OTHERWISE, IS REPERFORMANCE OF DEFECTIVE SERVICES IN JURISDICTIONS WHICH DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF LIABILITY. OUR LIABILITY IS LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Without limiting any exclusion specifically provided for in these Terms of Use we shall in no event be liable for any costs, damages or liability for any unauthorized use of the E-Tendering Website or breach of security relating to the E-Tendering Website.

You will exercise and rely solely on your own judgment in using the E-Tendering Website. In no event shall we be held liable to you or any other person for any direct, indirect, incidental, special, punitive or consequential damages, including any loss of business or profit, arising out of any use, or inability to use, the E-Tendering Website, even if we have been advised of the possibility of such damages. You specifically agree that neither we nor our affiliates shall be held responsible or liable for any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another's rights, including intellectual property rights. You specifically agree that neither our affiliates nor we shall be responsible for the Content sent out using and/or included in the E-Tendering Website by any third party.

The Terms of Use herein set out among other things our role, function and service in relation to the E-Tendering Website to which the User agrees and acknowledges. User agrees that we shall have no responsibility or liability for any information, transaction, transmission, submission, correspondence, storage, identification, screening, compliance issues, issues of iCerts/digital identification, fraudulent/unlawful transactions by other persons/parties or anything at all in relation to any Tender and information relating to the E-Tendering Website and the System.

The limitation of liability contained in these Terms of Use will apply to the fullest extent permitted by Applicable Laws.

We make no representation that materials on this E-Tendering Website are appropriate or available for use in any other jurisdictions, and accessing the E-Tendering Website from locations where its operation are illegal is prohibited. Those who access this E-tendering Website from other locations do so at their own discretion and are solely responsible for compliance with their laws and rules. You confirm that you have all the requisite approvals for using the Internet and online conduct.

12. INTELLECTUAL PROPERTY

The E-Tendering Website together with all Content made available as part of the E-tendering Website is our property or is licensed to us and is protected by copyright, trademarks, service marks, patents or other proprietary rights and laws. Our licensors and we own copyright in the selection, co-ordination, arrangement and enhancement of such Content, as well as in the content original to it. You may not modify, publish, transmit, redistribute, participate in the transfer or sale of, create derivative works of, or in any way exploit, any of the Content, in whole or in part. You may only download such part of the Content as is expressly permitted to be downloaded from this Website for the use purposes of considering Tenders issued by us to Users and any other use (including but not limited to commercial sale or resale thereof) is strictly prohibited. You have no rights in or to the Content and you will not use the Content, except as permitted under these Terms of Use.

Software used on the E-Tendering website is our property (or our software providers or suppliers which we are authorized and licensed to use) and protected under the laws of Hong Kong and/or relevant international laws protecting intellectual property rights. All Contents and software in this E-Tendering Website may be used as a venue for the sale and purchase of goods and services between the suppliers and us for research and data collection on goods and services either by us or suppliers, provision of information relating to goods, services, connected and/or related to the procurement of goods and services by us.

Except as otherwise expressly permitted by us and the copyright owner by written permission and/or under applicable copyright law, no modification, copying, redistribution, uploading, retransmission, publication or commercial exploitation of downloaded material will be permitted. In the event of any permitted copying, redistribution or publication of copyrighted material, you agree not to make any change to or deletion of author attribution, trademark, legend or copyright notice. You acknowledge that you do not acquire any ownership rights by downloading copyrighted material.

You agree that we are free to use, disclose, adopt and modify all and any ideas, concepts, know-how, proposals, suggestions, comments and other communications and information provided by you to us (“Feedback”) in connection with the E-tendering Website without any payment to you. You hereby waive and agree to waive all and any rights and claims for any consideration, fees, royalties, charges and/or other payments in relation to our use, disclosure, adoption and/or modification of any or all of your Feedback.

13. INDEMNITY

You agree to indemnify and hold us and our affiliates, officers, directors, agents, and employees, harmless from and against any losses, claims, liabilities, damages, demands, costs and expenses (including all legal fees), incurred or suffered by us in connection with or arising from your breach of these Terms of Use and/or your use of the E-Tendering Website or the services. we may, if necessary, participate in the defence of any claim or action and any negotiations for settlement. No settlement that may adversely affect our rights or obligations shall be made without our prior written approval. We reserve the right to assume exclusive defence and control of any such claim or action.

14. LEGAL COMPLIANCE

You shall comply with all Applicable Laws regarding your use of the E-Tendering Website. You recognise the global nature of the Internet and you understand that the Applicable Laws may be of a jurisdiction other than your own and you agree that compliance with Applicable Laws is your sole responsibility. We recommend that you seek legal advice on your own account if you are not sure what Applicable Laws comprise.

15. TERMINATION

We may terminate your use of and access to any part or all of this E-Tendering Website or any related service(s) at any time with immediate effect without any notice and in our sole discretion for any reason, including without limitation:

- (a) if you breach these Terms of Use;
- (b) if we are unable to verify or authenticate any information you provide to us;
- (c) if we believe that your actions may give rise to liability of any nature; or
- (d) if we believe or have reasons to believe that your action is unsuitable or inappropriate.

Upon termination, you must destroy all material obtained from this E-Tendering Website and any copies thereof. If you wish to terminate your use of part or all of the E-Tendering Website your only recourse is to discontinue the use of the E-Tendering Website.

16. MODIFICATIONS TO TERMS OF USE

We reserve the right to change these Terms of Use or any policies regarding the use of the E-Tendering Website at any time and to notify you by posting an updated version thereof on this E-Tendering Website. You are responsible for regularly reviewing the Terms of Use and the applicable policies. Continued use of this E-Tendering Website after any such posting amounts to your conclusive acceptance of such revised Terms of Use or policies. If any such revision is unacceptable to you, you must terminate use of this E-Tendering Website immediately. We reserve the right to interpret these Terms of Use and decide on any questions or disputes arising under these Terms of Use. You agree that all such interpretations and decisions shall be final and conclusive, and binding on you as an User of the E-Tendering Website.

17. MODIFICATIONS TO SERVICE

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the E-Tendering Website (or any part thereof) with or without notice. You agree that we shall not be liable to you or to any third party for any modification, suspension or discontinuance of the E-Tendering Website or any part thereof.

18. GOVERNING LAW & JURISDICTION

This E-Tendering Website is hosted by us from our office in Hong Kong. By accessing this Website, you agree that any claim relating to this E-Tendering Website shall be governed by the laws of Hong Kong without giving effect to any principles of conflicts of laws, provided that we reserve the right to pursue civil or criminal proceedings in any jurisdiction having control over you or your assets. You also agree to submit to the non-exclusive jurisdiction of the Hong Kong courts.

19. No Agency

You and we are independent, and no agency, partnership, joint venture, trustee, beneficiary, employee-employer or franchiser-franchisee relationship is intended or created by your use of the E-Tendering Website.

20. System Availability

We do not guarantee uninterrupted, continuous or secure access to the E-Tendering Website. Part or the entire E-Tendering Website may be unexpectedly unavailable for whatever duration and for various reasons that may include System malfunctions and disruptions, Internet access downtime and other technical problems beyond our control for which we cannot and shall not be held responsible. You agree that your use of the E-Tendering Website is at your own risk and that you will not hold us responsible for any damage or loss caused by your inability to use the E-Tendering Website for any reason whatsoever. We reserve the right to take any part or all of the E-Tendering Website offline for various reasons including urgent System maintenance or upgrading, in which case we will try to give you notice in advance if possible.

21. Partial Invalidity

The illegality, invalidity or unenforceability of any provision of these Terms of Use under the law of any jurisdiction shall not affect its legality, validity or enforceability under the laws of any other jurisdiction nor the legality, validity or enforceability of any other provision.

22. WAIVER

No waiver of any breach under these Terms of Use will amount to a waiver of any other breach.

23. GENERAL PROVISIONS

To assist you in understanding these Terms of Use, unless the context otherwise requires, these Terms of Use should be interpreted using the following rules:

- (a) words importing one gender include the other genders;
- (b) words importing the singular shall include the plural and vice versa;

- (c) references to paragraphs, are references to paragraphs in these Terms of Use;
- (d) expressions defined in the main body of this Terms of Use bear the defined meaning in the whole of this Terms of Use;
- (e) a right granted or reserved may be exercised from time to time;
- (f) headings are for ease of reference only and shall not affect the interpretation of these Terms of Use;
- (g) any reference to a person shall include that person's successors, representatives and permitted assigns; and
- (h) in the event that there is any inconsistency between the English and Chinese version of these Terms of Use, the English version shall prevail.