

## **CLOUD-LED Standard Terms and Conditions for Quotations**

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### **1. Introduction**

1.1 Unless otherwise stated in the Quotation, these Terms and Conditions shall govern the Agreement between CLOUD-LED and Customer (collectively or individually hereinafter referred to as "Parties" or "Party"). Any terms or conditions of Customer's order which are in any way inconsistent with or in addition to these Terms and Conditions shall not be binding on CLOUD-LED, and shall not be applicable.

### **2. Definitions**

2.1 Agreement means the Quotation including, but not limited to any attachment of proposal or assumption, issued by CLOUD-LED and accepted by Customer, under which CLOUD-LED shall provide and Customer shall pay for the Works described therein, comprising these Terms and Conditions.

2.2 Day means a business day.

2.3 Deliverables means the deliverables arising out of the Works or otherwise supplied to Customer, including the Product, under or in connection with the Agreement.

2.4 Force Majeure Event means any circumstances beyond either Party's reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.

2.5 CLOUD-LED means Cloud-LED Lighting Technology Limited. CLOUD-LED's principal place of business is situated at Room A-7, 11/F, Wah Sing Industrial Building, 12-14 Wah Sing Street, Kowloon, Hong Kong.

2.6 UAT means User Acceptance Test or series of tests, which shall be conducted by CLOUD-LED and/or Customer with respect to the Works.

2.7 UAT Period means a period of five (5) days upon installation of the concerned Works, or a period mutually agreed between the Parties, for carrying out the

respective UAT.

2.8 Utilities means any technologies, program, system, information, data, documentation or other materials brought by CLOUD-LED into any engagement for the provision of the Works or which are created or prepared by CLOUD-LED in the course of or as a result of providing any of the Works.

2.9 Works means works including, but not limited to, design, development, supply, delivery, installation, commissioning, implementation, testing, maintenance, training or other related services of Hardware, Software, System or other Equipment (the "Product").

### **3. Payment**

3.1 Customer shall pay CLOUD-LED the prices as set out in the Quotation in accordance with the Payment Schedule as set out in the Quotation or within five (5) days from the date of the relevant invoice issued by CLOUD-LED.

3.2 Unless otherwise specified, all prices shall be calculated in the currency of Hong Kong dollars.

3.3 All payment must be made payable to "Cloud-LED Lighting Technology Limited" as specified in the Quotation.

3.4 All payment to CLOUD-LED is non-refundable.

3.5 All applicable tariffs and taxes in relation to the Works shall be solely borne by Customer.

3.6 If Customer fails to settle any overdue payment within the payment schedule:

3.6.1 Customer shall be liable for payment of interest to CLOUD-LED calculated at the rate of two percent (2.0%) per month until the date such overdue payment in full is made;

3.6.2 CLOUD-LED reserves the right to remove or uninstall the concerned Works and shall not be obliged to redeliver or reinstall until such overdue payment is settled in full;

3.6.3 any cost of removal or uninstallation, redelivery and/or reinstallation of such removed or uninstalled Works shall be solely borne by Customer and CLOUD-

LED reserves the right to claim all costs or expenses incurred; and

3.6.4 CLOUD-LED reserves the right to suspend, cancel or terminate the Agreement or any section thereof in accordance with Clause 22 (Termination).

#### **4. Additional Requirements**

4.1 Any additional requirement raised by Customer that is not set out in the Quotation shall be subject to further discussion, additional charge and amendment of the Quotation mutually agreed in writing.

#### **5. Delivery**

5.1 CLOUD-LED shall deliver the Deliverables to:

5.1.1 the designated location as specified in the Quotation; or

5.1.2 if no such location is specified in the Quotation, a location that CLOUD-LED may reasonably deliver to.

5.2 Any cost of relocation shall solely be borne by Customer.

5.3 Any delivery location outside Hong Kong shall be subject to additional charge.

5.4 CLOUD-LED shall use its reasonable endeavor to provide Customer the Works in a timely manner. Delay, however caused, will not entitle the Customer to claim damages from CLOUD-LED.

#### **6. Title and Risk**

6.1 Risk in the Deliverables shall pass to Customer upon delivery of the Deliverables to Customer or its designated receiver.

6.2 Title to the Deliverables shall remain with CLOUD-LED until the date of payment in full by Customer to CLOUD-LED.

#### **7. Software**

7.1 All Software provided shall be subject to the provisions of the License Agreement relating to that Software. CLOUD-LED shall have no liability for any representations made in respect of such Software.

#### **8. Maintenance**

8.1 Any Annual Maintenance Support shall be subject to the provisions of the Maintenance Agreement issued by

CLOUD-LED.

#### **9. Version or Standard Variation**

9.1 In case of version or standard variation subject to availability, CLOUD-LED reserves the right to upgrade the Works without prior consent from Customer. Shall the version or standard involve any downgrade of the Works, CLOUD-LED shall give prior notification to Customer. In any case, CLOUD-LED reserves the right to decide on the version or standard.

#### **10. Acceptance**

10.1 In the event that the price includes UAT and UAT occurs within UAT Period, the concerned Works shall be deemed as being accepted by Customer upon Customer's signature and/or chop on the certificate of UAT or relevance. In the event that the price includes UAT, but no such UAT occurs within UAT Period, the concerned Works shall be deemed as being accepted by Customer upon expiration of UAT Period.

10.2 If the price does not include UAT, the concerned Works shall be deemed as being accepted upon delivery, unless

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#### **11. Intellectual Property Rights**

11.1 The Agreement does not transfer from CLOUD-LED to Customer any intellectual or industrial property rights and all such rights in all Utilities shall belong to and remain with CLOUD-LED. Upon payment in full by Customer for the applicable Works, CLOUD-LED shall grant a license to Customer for the use of the Utilities belonging to CLOUD-LED or which CLOUD-LED is authorized to license that are incorporated as part of the Product developed for Customer pursuant to this Agreement. The use of the Utilities shall be subject to the provisions of the license provided to Customer by CLOUD-LED in the course of providing the Works. In the

absence of such license, CLOUD-LED shall be deemed to have granted Customer a non-exclusive, perpetual, non-transferable, irrevocable right and license to use those Utilities incorporated into the Works, to the extent the Utilities belong to CLOUD-LED or which CLOUD-LED is authorized to license, and Customer may include the Utilities as part of any integrated Works that CLOUD-LED develops for the purpose stipulated in the Agreement.

## **12. CLOUD-LED Warranty**

### **12.1 Standard Warranty**

12.1.1 In the event that the price includes warranty, CLOUD-LED warrants that the Works, will be free from defects in materials, workmanship and installation affecting normal use for a period of one (1) year, or a period mutually agreed between the Parties, from the date of acceptance pursuant to Clause 10 - Acceptance. During this period, if the Works do not meet this Standard Warranty, CLOUD-LED shall, as CLOUD-LED's sole liability and obligation and Customer's sole remedy, be responsible for the repair, replacement or rectification of such Works that have been returned from Customer to CLOUD-LED.

12.1.2 The Standard Warranty does not cover damage, fault, failure or malfunction due to external causes, including accident, abuse, misuse, problems with electrical power, usage and/or storage and/or installation not in accordance with product instructions, failure to perform required preventive maintenance, normal wear and tear, act of God, fire, flood, war, act of violence or any similar occurrence; any attempt by any person other than CLOUD-LED's personnel or any person authorised by CLOUD-LED, to adjust, repair or support the Works; and problems caused by use of parts and components not supplied by CLOUD-LED.

12.1.3 The Standard Warranty does not cover third party goods and services.

12.1.4 In relation to third party goods and services provided to Customer by CLOUD-LED, where items are

covered by the originating manufacturer's warranty, then such originating manufacturer's warranty shall be the sole warranty in respect of such items and the Standard Warranty shall not extend to such items. Customer shall utilize that originating manufacturer's warranty for such items.

12.2 EXCEPT AS EXPRESSLY STATED, CLOUD-LED MAKES NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE WORKS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTY RELATING TO THIRD PARTY GOODS AND SERVICES, ANY WARRANTY WITH RESPECT TO THE PERFORMANCE OF ANY GOODS AND SERVICES USED IN THE COURSE OF THE AGREEMENT, ANY WARRANTY CONCERNING THE RESULTS TO BE OBTAINED FROM THE WORKS OR THE RESULTS OF ANY RECOMMENDATION CLOUD-LED MAY MAKE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES CONCERNING THE PERFORMANCE, MERCHANTABILITY, SUITABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE WORKS THAT MAY RESULT FROM THE IMPLEMENTATION OF ANY RECOMMENDATION CLOUD-LED MAY PROVIDE.

## **13. Customer Responsibility**

13.1 Customer warrants that:

13.1.1 it has full power and capacity to enter into and to perform the Agreement;

13.1.2 its use of Works does not and shall not directly or indirectly infringe any third party's intellectual property rights nor breach any law or regulation in any jurisdiction.

13.1.3 the Product purchased from CLOUD-LED under this Agreement is not intended for use as weapons of war or homicide.

13.2 Customer shall promptly obtain and provide to CLOUD-LED any required consent, approval and/or permission with respect to Customer's personnel, facilities, equipment, hardware, software, network,

system, information or other resources reasonably required by CLOUD-LED or necessary for CLOUD-LED's performance of the Agreement. Failure to provide such in a timely manner may delay CLOUD-LED's performance of its duties and obligations under the Agreement.

13.3 Customer shall be responsible for backing up its data. CLOUD-LED will not be responsible for loss of or damage to data or loss of use of any computer or network systems.

#### **14. Limitation of Liability**

14.1 CLOUD-LED shall not be responsible for any risk, loss or damage caused by events beyond CLOUD-LED's control. To the maximum extent permitted by applicable law, CLOUD-LED shall not be liable to Customer for any loss of business, loss of profits, loss of data, damage including, but not limited to, incidental, special or consequential loss or damage, injury, death, directly or indirectly due to the purchase, use or performance of the Works (including in circumstances where data or software is lost, corrupted, deleted or altered, etc.). At CLOUD-LED's option, the liability of CLOUD-LED shall be limited to:

14.1.1 repair or replacement of property or the payment for such repair or replacement; or

14.1.2 re-supply of the concerned Works or the payment for such resupply.

14.2 The total payment by CLOUD-LED under clause 14.1 shall in no event exceed one hundred percent (100%) of the total of prices paid under the Agreement.

#### **15. Indemnification**

15.1 Customer shall indemnify and hold CLOUD-LED harmless from any and all liability, damages, claims or proceedings arising out of:

15.1.1 Customer's failure to obtain the appropriate license, intellectual property rights, or any other permissions required to support CLOUD-LED's performance of the Agreement, including, but not limited to, the right to make any copies or reproductions of any

Customer provided materials; or

15.1.2 any use or attempted use of the Works by Customer or any other third party in breach of the Agreement; or

15.1.3 any loss of or damage to any property or injury to or death of any persons caused by any negligent act or omission or willful misconduct of Customer or its personnel or by any breach of its contractual obligations arising out of the Agreement.

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#### **16. Notice**

16.1 All notices which are required to be given under the Agreement must be in writing and must be sent to the address of the recipient set out in the Agreement or such other address as the recipient may designate by notice given in accordance with this clause. Any such notice may be delivered by hand or by prepaid letter or facsimile and will be deemed to have been served by hand when delivered, if by post forty-eight (48) hours after posting, and if by facsimile when dispatched.

#### **17. Assignment/Subcontract**

17.1 Customer may not assign the Agreement or any section thereof without prior written consent of CLOUD-LED.

17.2 CLOUD-LED may at any time assign, transfer, novate or otherwise dispose of all or any of its benefits, rights, obligations and liabilities under the Agreement to any company and CLOUD-LED shall be released from all obligations and liabilities under the Agreement so assigned, transferred or novated upon such assignee, transferee, subcontractor or other party to the novation agreeing in writing to assume such obligations and liabilities in CLOUD-LED's place.

#### **18. Severability**

18.1 If any provision of the Agreement is void or unenforceable, the remainder of the Agreement will

remain in full force and will not be terminated.

#### **19. Independent Contractor**

19.1 The Parties are independent contractor. Neither Party will have any rights, power or authority to act or create an obligation, express or implied, on behalf of the other party except as specified in the Agreement.

#### **20. Non-Solicitation**

20.1 During the course of the Agreement, Customer shall not hire, recruit, solicit or otherwise employ any employee of CLOUD-LED involved in connection with the Agreement without CLOUD-LED's consent in writing (which consent may be withheld at CLOUD-LED's sole discretion).

#### **21. Force Majeure**

21.1 Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under the Agreement during any period in which such performance is delayed by a Force Majeure Event.

21.2 In case of a Force Majeure Event, the delayed party must give written notice to the other party as soon as practicable and the delayed party's time for performance will be excused for the duration of the Force Majeure Event.

21.3 If the Force Majeure Event lasts longer than thirty (30) days, the other party may immediately terminate the Agreement by giving written notice to the delayed party.

#### **22. Termination**

22.1 If Customer is in breach of any of these Terms and Conditions, CLOUD-LED may, without prejudice to any other claim or right CLOUD-LED may make or exercise, be entitled to immediately:

22.1.1 suspend, cancel or terminate the Agreement; and/or

22.1.2 remove any delivered and/or installed items.

22.2 Any other suspension, cancellation or termination of the Agreement by Customer must be in writing of no less than one (1) month to CLOUD-LED and shall be subject to acceptance by CLOUD-LED.

22.3 All outstanding payment to CLOUD-LED for any Works provided must be settled by Customer within five (5) days from the day of CLOUD-LED's acceptance of such termination of the Agreement. CLOUD-LED may, at its sole discretion, recover from Customer any administration fee incurred due to the termination.

22.4 Notwithstanding any provisions in the Agreement, CLOUD-LED may, at its sole discretion, terminate the Agreement in writing of no less than one (1) month to Customer without compensation to Customer.

#### **23. Rights of Third Party**

23.1 The parties hereby expressly acknowledge and agree that save where expressly provided by the Agreement, no person other than the Parties shall derive any rights with respect to the Agreement.

#### **24. Use of Information**

24.1 Customer consents to CLOUD-LED collecting, retaining and using Customer Information for any of the following purposes:

24.1.1 performing the Agreement;

24.1.2 preparing invoice and processing payment instructions;

24.1.3 marketing and promoting CLOUD-LED's businesses and its affiliated companies' businesses;

24.1.4 verifying Customer's creditworthiness.

24.2 CLOUD-LED retains all legal right for the word "CLOUD-LED". Customer shall not, without prior written consent of CLOUD-LED, make any public statement in relation to the Works or any relationship between Customer and CLOUD-LED.

24.3 All information and material, not limited to visual, verbal, softcopy and hardcopy, exchanged between CLOUD-LED and Customer during the Agreement shall be treated as confidential and shall remain the property of the disclosing party at all time and shall be used or disclosed for the execution of the Agreement only.

#### **25. Governing Law**

25.1 The Agreement shall be governed by and construed in accordance with the laws of Hong Kong and

each party hereby submits to the exclusive jurisdiction of the courts of Hong Kong in relation to any dispute arising under or in connection with the Agreement.

**26. Entire Agreement**

26.1 The Agreement contains the entire agreement and understanding of the Parties and (without prejudice to either Party's liability for any fraudulent misrepresentation) supersedes all prior understandings and agreements with respect to its subject matter. Unless otherwise mutually agreed by the Parties in writing, any alteration or amendment to or in connection with the Agreement shall be presented in writing and takes effect only after written confirmation by signature of an authorized representative of each Party.