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## KCDC's Purchase Order Terms & Conditions

The following terms, conditions and instructions apply to all KCDC purchase orders. Fulfillment of a purchase order means the supplier agrees with KCDC's "Purchase Order Terms & Conditions." Any variance is to be discussed and decided with KCDC prior to fulfillment of a purchase order.

### TERMS AND CONDITIONS, OBLIGATIONS, RIGHTS AND REMEDIES

**ACCEPTANCE:** This purchase order is KCDC's offer to purchase the goods and/or services described on the purchase order from the supplier. Supplier's written acceptance or commencement of work or shipment or delivery of an item or service call shall constitute acceptance by the supplier of the purchase order, its terms and conditions and applicable law.

**ALTERATIONS OR AMENDMENTS:** Alterations, amendments, changes, modifications or additions to the Purchase Order shall not be binding without the prior written approval of KCDC.

**APPROPRIATION:** In the event funds are not appropriated by KCDC for the goods or services in any fiscal year or services in any fiscal year or insufficient funds exist to purchase the goods or services, then the Purchase Contract shall expire upon the expenditure of previously appropriated funds or the end of the current fiscal year, whichever occurs first, with no further obligations owed to or by either party.

**ASSIGNMENTS:** Supplier shall not assign the agreement its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of KCDC.

**BOOKS AND RECORDS:** Supplier shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under the Purchase Contract and make such materials available at its offices at all reasonable times during the contract period and for three years from the date of the final payment under the agreement for inspection by KCDC or by any other governmental entity or agency participating in the funding of the agreement, or any authorized agents thereof; copies of said records to be furnished if requested. Such records shall not include those books, documents and accounting records that represent the supplier's costs of manufacturing, acquiring or delivering the products and services governed by the agreement.

**CHILD LABOR:** Supplier agrees that no products will be provided under the Purchase Contract which have been manufactured or assembled by child labor.

**COMPLIANCE WITH ALL LAWS:** Supplier is assumed to be familiar with and agrees to observe and comply with all federal, state, and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary permits.

**CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS, AND COPYRIGHT PROHIBITION:** The supplier agrees that all information, data, findings, recommendations, bids, et cetera by whatever name described and in whatever form secured, developed, written or produced by the supplier in furtherance of this contract shall be the property of KCDC. The supplier shall take such action as is necessary under law to preserve such property rights of KCDC while such property is within the control and/or custody of the supplier. By this contract, the supplier specifically waives and/or releases to KCDC any cognizable property right of the supplier to copyright, license, patent or otherwise uses such information, data, findings, recommendations, responses, et cetera.

The supplier understands and agrees that data, materials, and information disclosed to supplier may contain confidential and protected data. Therefore, the supplier promises and assures that data, material, and information gathered, based upon or disclosed to the supplier for the purpose of this contract, will not be disclosed to others or discussed with other parties without the prior written consent of the KCDC.

**DEFAULT:** If Supplier fails to perform or comply with any provision of the Purchase Order or the terms or conditions of any documents referenced and made a part hereof, KCDC may terminate the contract, in whole or in part, and may consider such failure or noncompliance a breach of contract. KCDC expressly retains all its rights and remedies provided by law in case of such breach, and no action by KCDC shall constitute a waiver of any such rights or remedies. In the event of termination for default, KCDC reserves the right to purchase its requirements elsewhere, with or without competitive bidding, and supplier agrees to pay any difference in costs above those conditions in the order.

**DEFINITION OF PURCHASE ORDER:** KCDC issues purchase orders as permission for the supplier to ship goods or perform services as indicated on the purchase order and according to the terms and conditions of the Invitation to Bid, Bid Response and attachments thereto (if applicable) Award and the KCDC Procurement Policy. The terms and conditions of the Invitation to Bid, Bid Response, Award the KCDC Procurement Code are incorporated herein and made a part hereof by reference. Supplier shall not supply the goods or services if in disagreement with these terms. Supplier's provision of goods and services pursuant to this Purchase Order is evidence of its agreement with these terms and conditions and shall conform to same.

**DELIVERY:** Delivery of all goods shall be FOB to final destination, paid by the shipper, unless otherwise set forth on the purchase order. If complete deliveries are not made at the time agreed, KCDC reserves the right to cancel the purchase order and/or hold the supplier accountable. If the delivery dates cannot be met, the supplier agrees to notify the Purchasing Division, in writing, of the earliest suggested delivery date. KCDC will then decide whether the proposed delivery date is acceptable.

## **FEDERALLY REQUIRED ORDERS/DIRECTIVES**

Both parties agree that they will comply with the following laws and directives that KCDC has received from HUD and all other branches of the federal government. Not all of these clauses are applicable. Read each paragraph to ascertain its applicability.

- a. **Executive Order 11246:** For all construction contracts awarded in excess of \$10,000, both parties hereby agree to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor Regulations (41 CFR Chapter 60).
- b. **Copeland “Anti-Kickback” Act:** For all construction or repair contracts awarded, both parties hereby agree to comply with the Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).
- c. **Davis-Bacon-Act:** For all construction contracts awarded in excess of \$2,000 when required by Federal Grant Program legislation, both parties hereby agree to comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- d. **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act:** For all construction contracts awarded in excess of \$2,000 and for other contracts, which involve the employment of mechanics or laborers awarded in excess of \$2,500, both parties hereby agree to comply with the Sections 103 and 107 of the Contract Work Hours and Safety Act (40 U.S.C. 327-330) as supplemented in Department of Labor Regulations (29 CFR Part 5).
- e. **Clean Air Act:** For all contracts in excess of \$100,000, both parties hereby agree to comply with all applicable standards, orders or requirements issued under section 306 of the Clean Air Act 42 U.S.C. 1857(h), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).
- f. **Energy Policy and Conservation Act:** Both parties hereby agree to comply with all mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).
- g. **Executive Order 11061,** as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- h. **Public Law 88-352,** Title VI of the Civil Rights Act of 1964, which provides that no person in the United States shall, on the basis of race, color, national origin or sex, be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity which receives federal financial assistance. KCDC hereby extends this requirement to the Contractor and its private contractors. Specific prohibited discriminatory actions and corrective action are described in Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 19901 et. seq.).
- i. **Public Law 90-284,** Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing

Act, which provides for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing or the provision of brokerage services, including in any way making unavailable or denying a dwelling to any person because of race, color, religion, sex or national origin. Pursuant to this statute, the KCDC requires that the Contractor administer all programs and activities, which are related to housing and community development in such a manner as affirmatively to further fair housing.

- j. **The Age Discrimination Act of 1975**, which prohibits discrimination on the basis of age.
- k. **Anti-Drug Abuse Act of 1988** (42 U.S.C. 11901 et. seq.).
- l. **HUD Information Bulletin 909-23** which is the following:
  - a. Notice of Assistance Regarding Patent and Copyright Infringement;
  - b. Clean Air and Water Certification; and
  - c. Energy Policy and Conversation Act.

The mentioned herein of any statute or Executive Order is not intended as an indication that such statute or Executive Order is necessarily applicable nor is the failure to mention any statute or Executive Order intended as an indication that such statute or Executive Order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in this agreement, shall be deemed to have been inserted herein, and this agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

**FORCE MAJEURE:** If either party is prevented from performing its obligations hereunder as a result of government regulations, fires, strikes, or other causes beyond the control of such party, the obligation to so perform shall be suspended for a reasonable time during which such condition continues to exist. If an actual or potential labor dispute delays or threatens to delay supplier's timely performance, supplier shall immediately notify KCDC in writing.

**GOVERNING LAW:** The Purchase Contract shall be governed by the laws of the State of Tennessee and all applicable federal laws and regulations. All obligations of the parties are performable in Knox County, Tennessee. The Chancery Court and/or the Circuit Court of Knox County, Tennessee, shall have exclusive and concurrent jurisdiction of any disputes which arise hereunder.

**INCORPORATION:** All specifications, drawings, technical information, invitation to bid, bid, award and similar items referred to or attached or which are the basis for the purchase order are deemed incorporated by reference as if set out fully herein.

**INDEMNIFICATION/HOLD HARMLESS:** Supplier shall indemnify, defend, save and hold harmless KCDC, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because

of, arising out of, or due to breach of the agreement by supplier, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of supplier, its subcontractors, suppliers, agents or employees.

**INDEPENDENT CONTRACTOR:** Supplier shall acknowledge that it and its employees serve as independent contractors and that KCDC shall not be responsible for any payment, insurance or incurred liability.

**INSPECTION AND ACCEPTANCE:** Final inspection of any goods or services delivered or performed hereunder shall be made at final destination, the receiving department. KCDC reserves the right to reject any or all items not in conformance with applicable specifications, and supplier assumes the costs associated with such nonconformance. Acceptance of goods does not constitute a waiver of latent or hidden defects or defects not readily detectable by a reasonable person under the circumstances. KCDC reserves the right to inspect the goods at a reasonable time subsequent to deliver.

**INVOICING:** Suppliers are required to submit invoices within 90 days of the date the goods or services were delivered to KCDC. KCDC reserves the right to not pay invoices submitted after the 90 day threshold.

**MATERIAL SAFETY DATA SHEETS:** The supplier must supply proper Material Safety Data Sheets in compliance with OSHA's Hazard Communications Standard to KCDC at the time of purchase.

**NONDISCRIMINATION AND NON-CONFLICT STATEMENT:** Supplier agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin, shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of the agreement, or in the employment practices of supplier. Supplier shall upon request show proof of such non-discrimination, and shall post in conspicuous places available to all employees and applicants notices of non-discrimination. Supplier covenants that it complies with the Fair Wage and Hour Laws, the National labor Relations Act, and other federal and state employment laws as applicable. Supplier covenants that it does not engage in any illegal employment practices. Supplier covenants that it has no public or private interest, and shall not acquire directly or indirectly any interest that would conflict in any manner with the provision of its goods or performance of its services.

**NON-WAIVER OF RIGHTS:** No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this agreement shall constitute a waiver of either party's right to demand exact compliance with the terms thereof.

**OFFICIALS NOT TO BENEFIT:** Employees or officials of KCDC shall not be permitted to any share or part of the Purchase Order or any benefit that may arise therefrom. Supplier agrees not to provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of KCDC, with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of any contract.

**ORDER OF PRECEDENCE:** In the event of inconsistent or conflicting provision of the Purchase Contract and referenced documents, the following descending order of precedence shall prevail: (1) Item

Description, (2) Invitation to Bid, (3) Bid, (4) Award, (5) Special Terms and Conditions, (6) General Terms and Conditions, (7) Specifications, (8) Drawings.

**PACKING LISTS:** An itemized packing list, bearing the Purchase Order number shall be attached to the outside of every shipping container.

**PATENTS AND COPYRIGHTS:** If an article sold and delivered to KCDC hereunder shall be protected by any applicable patent or copyright, the supplier agrees to indemnify and save harmless KCDC, from and against any all suits, claims, judgments and costs instituted or recovered against it by any person whomever on account of the use or sale of such articles by KCDC in violation or right under such patent or copyright.

**PAYMENTS:** KCDC pays suppliers electronically via direct deposit (ACH). KCDC has a Vendor Portal from which suppliers monitor payments made. Suppliers, when setting up their portal, can choose to receive automatic email notification each time KCDC makes a payment. Without this option, the supplier must log on periodically to ascertain payment status. KCDC strongly urges suppliers to set-up the Vendor Portal with a generic email address as it is self-service, and you must know the email address and password. By accepting this purchase order, the supplier agrees to use KCDC's portal to ascertain payments made.

**REMEDIES:** KCDC shall have all rights and remedies afforded under the U.C.C. and Tennessee law in contract and in tort, including but not limited to rejection of goods, rescission, right of act-off, refund, incidental, consequential and compensatory damages and reasonable attorney's fees.

**RIGHT TO INSPECT:** KCDC reserves the right to make periodic inspection of the manner and means the service is performed or the goods are supplied.

**SEVERABILITY:** If any provision of the Purchase Order is declared illegal, void or unenforceable, the remaining provisions shall not be affected but shall remain in force and in effect.

**SUB-CONTRACTING:** Supplier shall not sub-contract the purchase order to any other supplier without the expressed written consent of KCDC.

**TAXES:** All prices included in the Purchase Order are exclusive of any Federal, State or local taxes. KCDC is exempt from sales tax and federal excise taxes.

**TERMINATION:**

KCDC may terminate this agreement, in part or in whole, for its convenience or the failure of the supplier to fulfill contractual obligations. KCDC shall terminate by delivering to the supplier a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the supplier shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise).
2. Deliver to KCDC all information, papers, reports and other materials accumulated or generated in performing the contract, whether completed or in progress.

If the termination is for the convenience of KCDC, KCDC shall only be liable for payment for services rendered before the effective date of the termination.

If the termination is due to the failure of the supplier to fulfill its obligations under the contract, KCDC may:

1. Require the supplier to deliver any work described in the Notice of Termination.
2. Take over and prosecute the same to completion by contract of otherwise and the supplier shall be liable for any additional cost incurred by KCDC.
3. Withhold any payments to the supplier for purpose of set-off or partial payment, as the case may be, of amounts owed by KCDC to the supplier.

In the event of termination for cause, KCDC shall be liable to the supplier for reasonable costs incurred by the supplier before the effective date of the termination. Any dispute shall be decided by KCDC's Chief Contracting Officer.

**VARIATION IN QUANTITY:** Variation in the quantity of any item called for by the purchase order shall not be allowed, unless such variation is caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, set forth herein.

**WARRANTY:** Supplier warrants to KCDC that all items delivered, and all services rendered shall conform to the specifications, drawings, bid and/or other descriptions furnished and/or incorporated by reference, and will be fit for the particular purpose purchased, of merchandisable quality, good workmanship, and free from defects. Supplier extends to KCDC all warranties allowed under the U.C.C. Supplier shall provide copies of warranties to KCDC with invoice. Return of merchandise not meeting warranties shall be at supplier's expense.