

## KCDC's Purchase Order Terms & Conditions

Clarification: KCDC uses "suppliers" as inclusive of various words describing interested parties often called "bidders," "contractors," "firms," "proposers" and "vendors."

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

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 must be approved by KCDC prior to fulfillment of a purchase order.

1. **Acceptance:** This purchase order is KCDC's offer to purchase the described goods and/or services 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.
2. **Alterations or Amendments:** Alterations, amendments, changes, modifications or additions to the Purchase Order shall not be binding without KCDC's prior written approval.
3. **Amendments:** Modifications to this purchase order are not binding unless KCDC's Procurement Director agrees in writing. All specifications, drawings and data submitted to the supplier with this purchase order are hereby incorporated and made part thereof.
4. **Anti-Trust:** The supplier, in determining the price to charge, shall not collude with any other person, firm, corporation, or association in arriving at prices or in any way violate the terms, conditions, and/or spirit of the provisions of 15 U.S.C. 1 through 7 (Sherman Anti-Trust Act).
5. **Appropriation:** In the event that KCDC does not appropriate funds for the goods or services in any fiscal year or insufficient funds exist to purchase the goods or services, 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.
6. **Assignments:** Supplier shall not assign the agreement its obligations or rights to any party, company, partnership, incorporation or person without KCDC's prior written consent.

7. **Books and Records:** Supplier shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under the Purchase Order 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.
8. **Cancellation:** Should the supplier fail to fulfill in a timely and proper manner its obligations or if it should violate any of the terms of the purchase order, KCDC shall have the right to immediately cancel the purchase order. KCDC may cancel the purchase order at any time, with or without cause, upon 30 days written notice to the supplier.
9. **Child Labor:** Supplier agrees that no products will be provided which have been manufactured or assembled by child labor.
10. **Compliance with all Laws:** Supplier 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.
11. **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 KCDC's property. The supplier shall take such action as is necessary under law to preserve KCDC's property rights. 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 use 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 KCDC's prior written consent.
12. **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.

13. **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 KCDC's Procurement Policy. The terms and conditions of the Invitation to Bid, Bid Response, the Award and KCDC's Procurement Policy are incorporated herein and made a part hereof by reference. Supplier shall not supply the goods or services if in disagreement with these terms.
14. **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 Procurement Division, in writing, of the earliest suggested delivery date. KCDC will then decide whether the proposed delivery date is acceptable.
15. **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** "Equal Employment Opportunity"
  - b. **Copeland "Anti-Kickback" Act:**
  - c. **Sections 103 and 107 of the Contract Work Hours and Safety Standards Act**
  - d. **Clean Air Act and the Clean Water Act**
  - e. **Energy Policy and Conservation Act** to prevent discrimination by agencies that utilize federal funds.
  - g. **Public Law 88-352, Title VI of the Civil Rights Act of 1964.**
  - h. **Public Law 90-284**, Title VIII of the Civil Rights Act of 1968., popularly known as the Fair Housing Act.
  - i. **The Age Discrimination Act of 1975.**
  - j. **Anti-Drug Abuse Act of 1988** (42 U.S.C. 11901 et. seq.).
16. **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.
17. **Governing Law:** The Purchase Order 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.
18. **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.

19. **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.
20. **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.
21. **Iran Divestment Act:** Suppliers and each person signing on behalf of any supplier certifies, under penalty of perjury, that to the best of its knowledge and belief that the supplier is not on the list of persons engaging in investment activities in Iran in T.C.A. § 12-12-106.
22. **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.
23. **Israeli Non-Boycott Act:** Pursuant to Tennessee Public Chapter No. 775, by submission of a quote or bid, each supplier certifies that their company is not currently engaged in, and will not for the duration of services herein engage in, a boycott of Israel.
24. **Invoicing:** Suppliers are required to submit invoices within 90 days of the date the goods or services were delivered to KCDC. Submit invoices to [apadmin@kcdc.org](mailto:apadmin@kcdc.org) and copy the requesting KCDC employee. Do not send invoices through the USPS. KCDC reserves the right to not pay invoices submitted after the 90-day threshold. Invoices must show the purchase order number, be uniquely numbered, reflect bid/quote pricing and meet other standards set forth in KCDC's Invoicing Instructions to Suppliers (see KCDC's webpage).
25. **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.
26. **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.

27. **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 purchase order.
28. **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:
- The signed contract or purchase order
  - The solicitation document and any addenda thereto
  - Signed copy of the bid or proposal
  - General conditions/instructions/information
  - General Instructions to Suppliers
  - Supplemental conditions (if any)
  - Special conditions (if any)
  - Technical specifications
  - Drawings (if any)
29. **Packing Lists:** An itemized packing list, bearing the Purchase Order number shall be attached to the outside of every shipping container.
30. **Patents and Copyrights:** If an article sold and delivered to KCDC is 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.
31. **Payments:** KCDC pays suppliers electronically via direct deposit (ACH). KCDC has a Supplier Portal from which suppliers monitor payments made.
32. **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.
33. **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.
34. **Safety Data Sheets:** The supplier must supply proper Safety Data Sheets in compliance with OSHA's Hazard Communications Standard to KCDC at the time of purchase.
35. **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.

36. **Sub-Contracting:** Supplier shall not sub-contract the purchase order to any other supplier without KCDC's expressed written consent.
37. **Taxes:** Purchase Order are to be exclusive of any federal, state or local taxes unless the purchase order otherwise indicates.
38. **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. If the termination is for KCDC's convenience, 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 require the supplier to deliver any work described in the Notice of Termination. KCDC may take over and prosecute the same to completion by contract or otherwise and the supplier shall be liable for any additional cost incurred by KCDC. KCDC may 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.
39. **Uniform Commercial Code:** All applicable portions of Tennessee's Uniform Commercial Code shall govern purchase orders and contracts with KCDC.
40. **Variation in Price and Quantity:** Variation in the quantity or price 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.
41. **Vendor Code of Ethics:** All of KCDC's business partners are bound by KCDC's "Vendor Code of Ethics" which can be found at <https://www.kcdc.org/procurement/>.
42. **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 merchantable 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.