

# KT-Grant General Purchase Order Terms and Conditions

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## 1. Acceptance

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This purchase order (the "Order") is an offer by the company identified on the face of this purchase order (the "Buyer") for the purchase of the goods (the "Goods") or services (the "**Services**") specified, from the party to whom the purchase order is addressed (the "Seller") in accordance with and subject to these terms and conditions (together with the terms and conditions on the face of the purchase order, the "Terms"). This Order may be withdrawn at any time prior to acceptance. This Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller signing and delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance; (b) any performance by Seller under this Order; or (c) the passage of ten (10) days after Seller's receipt of this Order without written notice to Buyer that Seller does not accept. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to this Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this Order, unless a separate overriding written contract has been entered into and signed by the parties. This Order expressly limits Seller's acceptance to the terms of this Order. Buyer objects to, and specifically rejects, any terms and conditions proposed by Seller which are inconsistent with or in addition to the Terms contained in this Order. Neither Buyer's lack of objection to any such terms and conditions, nor the acceptance of Goods or Services, will constitute agreement by Buyer to any terms or conditions proposed by Seller.

## 2. Delivery

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Seller shall deliver the Goods to, and/or perform the Services at, the delivery point (the "**Delivery Location**"), and on the date(s) specified in this Order (the "Delivery Date"). If no delivery date is specified, Seller shall deliver in full within a reasonable time of receipt of this Order. Timely delivery is of the essence. If Seller fails to deliver the Goods or Services in full, on the Delivery Date, Buyer may terminate this Order immediately and Seller shall indemnify Buyer against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver on the Delivery Date.

## 3. Inspection

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Buyer reserves the right to inspect the Goods on or after the Delivery Date. Buyer, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or do not conform to the Terms of this Order including warranties. Buyer has the option to require repair of, or replacement of, defective or nonconforming Goods. If Buyer requires replacement of the Goods, Seller must pay for the cost of shipping the replacement Goods to Buyer and the defective or nonconforming Goods to Seller. Seller shall promptly repair or replace the defective or nonconforming Goods. If Seller fails to timely repair or deliver replacement Goods, Buyer may replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 8. Any inspection or other action by Buyer under this Section shall not affect Seller's obligations under this Order, or Buyer's right to reject defective or nonconforming Goods, and Buyer shall have the right to further inspection after Seller takes remedial action.

## 4. Cumulative Remedies

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If the Services are defective or do not conform to the Terms of this Order including warranties, Seller will, at its sole cost, re-perform Services to Buyer's satisfaction. If Seller fails to timely re-perform the Services, Buyer may purchase them from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 8. Any other action by Buyer under this Section shall not affect Seller's obligations under this Order. The rights and remedies under this Order are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise.

## 5. Price and Payment

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The price of the Goods or Services is stated on the face of this Order (the "**Price**"). Seller shall invoice Buyer for this Order within thirty (30) days of delivery. Unless otherwise stated in this Order, Buyer shall pay all properly invoiced amounts due to Seller within 30 days after receipt of such invoice, except for any amounts disputed by Buyer. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Order notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to it by Seller against any amount payable by Buyer to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of this Order.

## 6. Hazardous Wastes

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If at any time Seller generates any Hazardous Waste on Buyer's property or site, Seller will immediately notify Buyer and Seller will comply with Buyer's policies and practices, and any applicable law, regarding management of Hazardous Wastes. For purposes of this Order, Hazardous Waste means any waste that is regulated by a governmental body or that is defined as a hazardous waste in 40 C.F.R. §261.3.

## 7. Change Order

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Buyer may, from time to time, initiate changes by issuing to Seller written notices (each, a "**Change Order**") that alter, add to, or deduct from the Goods or Services, or that modify the Terms of this Order, but that are otherwise subject to the Terms of this Order. Seller will promptly comply with the terms of any Change Order.

## 8. Termination

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Buyer may terminate this Order, in whole or in part, at any time by written notice to Seller and Seller must deliver to Buyer any work in process as of the termination. If Buyer terminates this Order for any reason, Seller will be entitled to payment for the Goods or Services received and accepted by Buyer prior to the termination. In addition, Buyer will be entitled to reimbursement of the out-of-pocket costs it has incurred prior to the notice of termination in fulfilling this Order to the extent they exceed the amount paid to it as provided for in the previous sentence, but not if the termination by Buyer was for "Cause" if it is due to a breach by Seller of the Terms of this Order, or because Seller is insolvent, or has commenced by it or against it bankruptcy, receivership, or reorganization proceedings, or because it is a subject of an assignment for the benefit of creditors.

## 9. Warranties

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Seller warrants to Buyer that all Goods will: (a) be new and free from any defects in workmanship, material, and design; (b) conform to applicable specifications, samples and descriptions specified by Buyer, furnished by Seller, and/or set forth in this Order; (c) be fit for their intended purpose and operate as intended; (d) be owned by Seller immediately prior to delivery to Buyer free and clear of all liens, security interests or other encumbrances; (e) not infringe or misappropriate any third party's intellectual property rights; and (f) be of good and merchantable quality. Seller also warrants to Buyer that all Services will: (a) be free from any defects or errors; (b) conform to applicable specifications and descriptions specified by Buyer, furnished by Seller, and/or set forth in this Order; (c) not infringe or misappropriate any third party's intellectual property rights; and (d) be performed in accordance with all applicable codes and sound industry practice. These warranties survive any delivery, inspection, or acceptance of the Goods or Services or payment therefor. These warranties are cumulative and in addition to any implied warranties. Any applicable statute of limitations runs from the date of Buyer's discovery of noncompliance.

## 10. Indemnification

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Seller shall defend, indemnify, and hold harmless Buyer and Buyer's subsidiaries, affiliates, successors or assigns and their respective directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with Seller's performance of its obligations or Seller's negligence, willful misconduct, breach of the Terms of this Order, or infringement or misappropriation of the patent, copyright, trade secret or other intellectual property right of any third party. Seller shall not enter into any settlement of a claim which is the subject of indemnification hereunder without Buyer's or Indemnitee's prior written consent.

## 11. Confidential Information

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All non-public, confidential or proprietary information of Buyer, including that constituting or related to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential," is confidential, may not be disclosed or copied unless authorized by Buyer in writing, and is to be used only for the fulfillment of the Order. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Seller acknowledges that monetary damages alone would not be an adequate remedy for a breach of this Section 11 and that Buyer shall be entitled to injunctive relief for any violation of this Section in addition to any such monetary damages. This Section shall not apply to information that is: (a) in the public domain; (b) rightfully and legally known to Seller at the time of disclosure; or (c) rightfully and legally obtained by Seller on a non-confidential basis from a third party.

## 12. Insurance

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Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product

liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation insurance in compliance with the applicable laws of each jurisdiction in which Seller's employees will be working in fulfilling this Order; and (c) if the Seller will use or provide for use of motor vehicles in fulfilling this Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon Buyer's request, Seller shall provide Buyer with a certificate of insurance evidencing the coverage specified in this Order, and shall cause the policies to be endorsed to name Buyer as an additional insured, and to provide Buyer with at least 30 days' notice prior to cancellation thereof.

### 13. Compliance with Law

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Seller warrants and represents to Buyer that it is in compliance with, and during fulfillment of this Order shall remain in compliance with, and ensure that its employees, agents, contractors and subcontractors (the "**Personnel**") comply with Buyer's Supplier Code of Ethics, available through the KT-Grant Corporate Purchasing Manager (Keith Tuccarello 724-468-4700), and all applicable laws, orders, rules, regulations and ordinances, including, the Mine Safety and Health Act, Occupational Safety and Health Act, Toxic Substances Control Act, and Foreign Corrupt Practices Act. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under this Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with any laws, orders, rules, ordinances and regulations and as a result Buyer is fined, Seller agrees to pay the fine and costs incident thereto or reimburse Buyer for payment thereof. To the extent that Seller's Personnel are required to enter onto Buyer's site or property, Seller shall ensure that its Personnel comply with Buyer's health, safety and environmental policies and standards. In fulfilling this Order, Seller will report immediately to Buyer any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of law or Buyer's policies referenced herein.

### 14. Shipping Terms

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Delivery shall be made in accordance with the Terms of this Order. The Order number must appear on all documents pertaining to this Order, including invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered. Seller shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Location, including all shipping and freight costs and all duties, fees, tariffs or taxes on imports/exports of the Goods ("Customs Duties"). Seller will take all reasonable steps to minimize Customs Duties.

### 15. Taxes

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Unless specified otherwise on the face of this Order, the Price is inclusive of, and Seller shall be solely responsible for and pay, all federal, state, and local taxes, including, value added tax, goods and services tax, sales, use or consumption tax. No sales or use tax shall be added when a valid tax exemption is indicated on the face of this Order by Buyer.

### 16. Title and Risk of Loss

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Unless otherwise specified in this Order, risk of loss of the Goods remains with Seller and title will not pass to Buyer until the Goods are delivered to and accepted by Buyer at the Delivery Location.

## 17. Force Majeure

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Neither party shall be liable to the other for any delay or failure in performing its obligations under this Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party's fault or negligence, and which by its nature could not have been foreseen by such party ("**Force Majeure Event**"). *Force Majeure* Events include acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship or changes in market conditions are not considered *Force Majeure* Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under this Order. If a *Force Majeure* Event prevents Seller from performance for a continuous period of more than fifteen (15) business days, Buyer may terminate this Order immediately by giving written notice to Seller.

## 18. Waiver and Release of Liens

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Upon Seller's receipt of payment of the Price, Seller waives and releases on behalf of itself and its subcontractors all rights to any lien against any Buyer property related to the Goods or Services to be provided under this Order and at its sole cost it shall obtain prompt removal of any lien fixed against such property.

## 19. Relationship of the Parties

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The Seller is an independent contractor of Buyer. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

## 20. Governing Law and Venue

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All matters arising out of or relating to this Order shall be governed by and construed in accordance with the internal laws of the state, province or territory identified in the address for the Buyer on this Order, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and/or state, provincial or territorial courts in the state, province or territory identified in the address for the Buyer on this Order and the courts of appeal from them.

## 21. Notices

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All notices, consents, claims, demands, waivers and communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (return receipt requested, postage prepaid). A Notice is effective only upon receipt of the receiving party, and if the party giving the Notice has complied with the requirements of this Section 21.

## 22. Inconsistent Terms

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The Terms found on the face of this Order shall govern over the Terms herein. Any separate written overriding agreement signed by both parties shall govern over the Terms of this Order.

## 23. Order Fulfillment

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Seller represents it is as qualified and able to perform the Services. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to Buyer that Seller, its employees or agents may damage, destroy or remove while fulfilling this Order.

## 24. Survival

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Provisions of this Order which by their nature should survive any termination of this Order will remain in effect.

## 25. Severability

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If any term or provision of this Order is found invalid, illegal or unenforceable by any court with jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.

## 26. Goods

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Buyer will furnish equipment and machinery only if and to the extent set forth in this Order. Seller may not substitute or alter Goods unless Buyer gives its prior written consent. If Goods are based on specifications from Buyer, then Seller grants Buyer a non-exclusive, fully paid-up and irrevocable license to make, have made, use and sell any improvements in the Goods made or introduced by Seller in filling this Order.

## 27. Miscellaneous

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Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Order without Buyer's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. No modification, alteration or amendment of this Order shall be binding unless agreed to in writing and signed by Buyer. No waiver by any party of any of the provisions of this Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from this Order by Buyer shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege. The term "including" and all derivatives thereof is to be construed as being followed by the phrase "without limitation."

KT-GRANT

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Signature

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Printed Name

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Title

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Date

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