

KITSAP COUNTY – PURCHASE ORDER TERMS AND CONDITIONS

1. Acceptance. This purchase order, which incorporates the contents on the front and all terms and conditions on the back and those associated with any county contract number appearing on the front (“PO”) is Kitsap County's offer to purchase the goods and/or services and/or other deliverables (collectively “Goods”) described in this offer. Acceptance is strictly limited to the terms and conditions in this PO. Kitsap County (“County”) objects to and is not bound by any term or condition that differs from or adds to this PO. Contractor’s commencement of performance or acceptance of this PO in any manner shall conclusively evidence acceptance of this PO as written herein. Any terms or conditions contained in any acknowledgment, invoice, or other communication from Contractor and which are inconsistent with or conflicts with this PO, are rejected.
2. Price/FOB destination. Contractor shall charge County the lowest and best price. No prices shall be higher than the price identified on the face of the PO, or if no price is identified, then no higher than the price last quoted by Contractor to County for the same or substantially similar Goods in similar quantities. All prices and delivery shall be FOB final destination and include all freight, packing and handling charges, prepaid by Contractor.
3. Invoice. A separate invoice shall be issued for each shipment. Each invoice shall specifically identify the Goods provided, dates provided, and any other information requested by County.
4. Payment. County will make reasonable efforts to pay the Contractor 30-days from the date County receives the Goods and a complete correct invoice. Payment is by Direct Deposit via Automated Clearing House, unless otherwise agreed.
5. Disallowance. If Contractor receives payment for Goods under this PO which are not accepted by County, Contractor shall promptly refund the amount paid to County upon request, or at its option, County may offset the amount disallowed from any payment due to Contractor under any contract with County.
6. Termination. County may terminate this PO, in whole or part, without penalty for any reason or no reason, with 10-days prior notice to Contractor, or immediately should funds not be available, withdrawn, reduced, or limited. The parties agree that this PO is a commitment of County’s revenue for the current fiscal year only.
7. Licenses, Permits and Taxes. Contractor shall, at its own expense, have and maintain all insurance, licenses, registrations, permits, and approvals necessary for the performance of this PO and pay all applicable taxes.
8. Liens, Claims, and Encumbrances. Contractor warrants and represents that all software, documentation, materials, equipment, and Goods delivered under this PO are free and clear of all liens, claims, or encumbrances of any kind whatsoever, and upon request, will deliver a formal release of the same to County.
9. Audit and Record Retention. Contractor shall retain all records relating to performance of the PO for six years after completion or longer if requested by County. Upon request, Contractor shall promptly make available to the County a legible copy of all books, documents, and records at no cost to County for inspection and audit.
10. Nondiscrimination. Contractor and its employees and agents shall not discriminate against any person on the basis of race, color, creed, religion, national origin, age, sex, marital status, sexual orientation, veteran status, disability, or other circumstance prohibited by Law, and shall comply with Title VI of the Civil Rights Act of 1964, P.L. 88-354 and Americans with Disabilities Act of 1990 in the performance of this PO.
11. Public Records. The parties acknowledge that this PO and all records associated with this PO are public records under the Public Records Act, Chapter 42.56 RCW. If County determines that records in the custody of Contractor are needed to respond to a public records request, Contractor shall promptly make such records available to County at no cost to County. County will release all responsive records unredacted absent receipt of a court order from Contractor enjoining such disclosure. County will not be liable for such release.
12. Independent Contractor. Contractor and its employees and agents who are engaged in providing the Goods under this PO and shall not for any purpose whatsoever be considered the employees or agents of County. Neither party shall have the right to control the employees, agents, or contractors of the other. All rights, duties and obligations of a party shall remain with that party.
13. Insurance. Prior to commencing work Contractor shall procure and maintain for term of this PO at Contractor’s own cost and expense sufficient commercial general liability, comprehensive automobile liability, workers compensation insurance, and professional liability, to meet Contractor’s indemnification obligations under this PO. Contractor shall submit certificates of insurance and endorsements for such policies to County prior to providing Goods under this PO. County shall be provided notice prior to any non-renewal, cancellation or material change in the coverage of the policies. Notice shall be sent to Kitsap County Risk Management, (MS-13), Port Orchard, Washington 98366. All policies shall name and endorse Kitsap County, its officers, officials, employees, and agents as an additional insured and shall be primary over County’s insurance.

14. Indemnification. To the fullest extent permitted by law, Contractor will defend, indemnify, and hold harmless Kitsap County, its officers, officials, employees and agents (and their marital communities), from and against any and all claims, suits, damages, liabilities, losses, or judgments of any nature whatsoever, including reasonable costs and attorneys' fees, for injury, sickness, disability or death to persons or damage to property or business, or an alleged infringement of any patent, trademark, or copyright, arising out of or relating to this PO, and/or arising out of or related to any acts, errors or omissions of Contractor or person providing Goods under this PO, unless caused by the sole negligence of Kitsap County. If it is determined that this PO is subject to RCW 4.24.115, then in the event of liability for damages caused by or arising out of the concurrent negligence of the Contractor and the County, the Contractor's liability shall be only to the extent of the Contractor's negligence. It is specifically and expressly understood that this indemnification is a waiver by Contractor and the person providing the Goods of immunity under Industrial Insurance, Title 51 RCW, solely for the purpose of this indemnification. This waiver is mutually negotiated by the parties to this PO.
15. Third-Party Rights. This PO is intended to be solely between the parties with no part of this PO intended to supplement, or amend rights, benefits, or privileges of any third party.
16. Waiver, Time of Essence. No waiver by County of a breach of any provision of this PO shall constitute a waiver of any other breach of such provision or of other provisions. Time is of the essence.
17. Amendment, Modification. Any amendment, change, or modification of this PO shall not bind County unless in writing and executed by the authorized representatives of the parties. The terms of this PO shall control over conflicting Contractor's terms unless specifically accepted in writing by an authorized represented of County. No oral agreement or other understanding shall in any way modify this order or the terms or conditions hereon.
18. Assignment. This PO shall be not assigned, in whole or part, without the prior written consent of County.
19. Subcontracting. Neither Contractor nor any Subcontractor shall enter into subcontracts for any of the Goods contemplated under this PO without the prior written consent of the County.
20. Severability. If any term of this PO is to any extent illegal, otherwise invalid, or incapable of being enforced, such term shall be excluded to the extent of such invalidity or unenforceability; all other terms hereof shall remain in full force and effect; and, to the extent permitted by law, the invalid or unenforceable term shall be deemed replaced by a term that is valid and enforceable and that comes closest to expressing the intention of such invalid or unenforceable term.
21. Headings. The headings in this PO are for convenience only and shall affect its interpretation.
22. Entire Agreement. This PO and any associated contract or request for proposal contains the entire agreement between the parties with respect to its subject matter and supersedes all prior negotiations, and agreements, whether written or oral, concerning the same. No other terms and conditions shall be binding unless accepted in writing by an authorized representative of County. If Contractor's proposal is incorporated in this PO by reference, the proposal shall be effective only to the extent that the terms are consistent with the PO terms.
23. Governing Law, Venue. This PO shall be construed, interpreted, enforced in accordance with, and governed by Washington state law, without regard to conflicts provisions. Any action related to this PO may be instituted and maintained only in a court in Kitsap County, WA or as provided by RCW 36.01.050.
24. Compliance with laws. Contractor warrants that in the performance of this PO, Contractor has complied with or will comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules, regulations, and standards applicable during the PO term.
25. Prevailing Wages. If applicable, pursuant to Chapter 39.12 RCW and WAC 296-127, Contractor shall pay the prevailing rate of per diem wages to its employees and provide documentation to County of its compliance with prevailing wage laws and regulations. A copy of prevailing rates of per diem wages shall be posted by Contractor at the work site. Contractor must submit a Statement of Intent to Pay Prevailing Wages to the Washington State Dept of Labor and Industries (DOL) for approval and provide copies of an approved Statement of Intent to County prior to payment being made to Contractor. An Affidavit of Wages Paid must be submitted to and approved by DOL, with a copy provided to County, prior to release of any retained percentage. Certified payroll reports must be filed at least once per month for all prevailing wage jobs and submitted and approved by DOL. The fee for these documents is paid by Contractor.
26. Packing, Shipping. No extra charges shall be made for packing, packing material, crating, or cartage unless authorized in the PO. Contractor shall package Goods in accordance with good commercial practice conforming to applicable requirements of carriers' tariffs and Interstate Commerce Commission regulations. Each shipping container shall be clearly and permanently marked with County's name, address, PO number, container number and total containers (e.g. box 1 of 4), and the number of the container bearing the packing slip. A copy of the packing list must accompany each shipment.

27. Shipment Under Reservation Prohibited. Contractor is not authorized to ship the Goods under reservation and no tender of a bill of lading will operate as a tender of Goods.
28. Deliveries, Inspection, Rejection. Deliveries shall be strictly in accordance with the schedules in the PO and in the exact quantities ordered. County reserves the right to cancel and/or reject Goods upon default by Contractor in time, rate, or manner of delivery.
29. No Replacement of Defective Tender. Every tender of Goods must fully comply with all provisions of the PO in the time of delivery, quantity, quality, and the like. No replacement or correction of defective Goods may be made by Contractor unless agreed to in writing by County. Goods failing to meet the requirements of the PO will be held at Contractor's risk with Contractor responsible for all costs of transportation, unpacking, inspection, repacking, reshipping, restocking, repairs, and other like expenses. All Goods are subject to final inspection and acceptance by County at destination notwithstanding any prior payment or inspection at source. The making of or failure to make any inspection or payment for or acceptance of the Goods, shall not impair County's right to reject nonconforming Goods or to avail itself of all remedies under law and equity.
30. Title, Risk of Loss. Title to all Goods and risk of loss shall not pass to County until County receives and accepts the Goods or makes payment of the applicable invoice, whichever occurs later.
31. Quantity. The quantity of Goods ordered must not be changed without the prior written consent of County.
32. Default. In the event of Contractor's default, for any reason whatsoever, County may procure the Goods from another source and hold Contractor responsible for excess cost and seek all other remedies under law or equity.
33. Force Majeure. Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or conditions of the PO are delayed or prevented by any cause not within the control of the party whose performance is interfered with, which by the exercise of reasonable diligence, that party is unable to prevent, anticipate, or minimize. Delays must be without fault or negligence of the party, or their subcontractor.
34. Work on County Property. If this PO involves operations on County property, Contractor shall take all required precautions to prevent the occurrence of any injury to any person or damage to property and warrants that all Goods shall comply with all applicable governmental codes, standards, regulations, and union conditions.
35. Warranties. Contractor warrants that all Goods delivered under this PO will conform to the requirements of this PO (including all applicable descriptions, specifications, drawings, and samples) and be free from any defects in material, workmanship, and design, and fit for the intended purposes. Any inspection or acceptance of the Goods by County shall not alter or affect the obligations of Contractor or the rights of County under the foregoing warranties. Contractor shall warrant the Goods for one year from acceptance by County to be free from defects in design, workmanship, installation, and materials. Contractor shall assign qualified and competent personnel to provide all Goods required by this PO, and Contractor and such personnel shall use their best efforts to perform all required services in the most expeditious and professional manner consistent with the nature of the services rendered. Contractor shall not limit or exclude any implied or expressed warranties. This section shall survive the termination or expiration of this PO.
36. Occupational Safety and Health Warranty. Contractor warrants that the Goods provided under this PO conform to all applicable U.S Dept of Labor OSHA standards and regulations. If a Good does not so conform, County may return the Good for correction or replacement at County's discretion and Contractor's expense, or if Contractor fails to correct the Good(s) in a reasonable time, County may do so at Contractor's sole expense.
37. Safety Data Sheets. At time of delivery, Contractor shall provide County with current Safety/Product/Material Safety Data Sheets relating to occupational safety/health for the uses of the Goods.
38. Product Recall. Contractor shall promptly notify County if a product recall is instituted on any Good(s) Contractor delivered or if Contractor becomes aware of any quality or other deficiency in delivered Good(s).
39. Survival. Those provisions of this PO which by its purpose, or nature should be deemed to survive the expiration or termination of this PO, whether expressly stated in that section or not, will so survive, including without limitation, insurance, indemnification, representations, deliveries, inspections, rejections, default, product recall, warranties, and remedies.
40. Non-Exclusive Contract. County may at its discretion enter into multiple agreements to obtain the same or similar Goods and/or services that are the subject of this PO or may have its own employees perform the same or similar services contemplated by this PO.
41. Advertising, Logo. Contractor shall not use, advertise, or promote for commercial benefit information concerning this PO or use any County tradename, trademark, or logo without the County's written consent.