

# Kyndryl standard purchase order terms and conditions

**AGREEMENT DOCUMENTS:** Unless this Purchase Order ("PO"), also referred to as a Work Authorization ("WA"), is issued under a written procurement agreement between Supplier and the buying company issuing this PO ("Buyer"), this PO and any attachments are the sole agreement between Buyer and Supplier with respect to the products or services specified in this PO. This Kyndryl Standard Purchase Order Terms and Conditions verbiage is subject to change without notice. No other document, including the Supplier's proposal, quotation, or acknowledgment form, will be part of this PO, unless specifically agreed to in writing by Buyer. Upon Buyer request, Supplier will invoice Buyer electronically. No right that Buyer has regarding this PO may be waived or modified except by Buyer in writing.

**PRICE/TAXES:** If price is not stated in this PO or a procurement agreement, the price will be Supplier's lowest prevailing market price. Supplier is responsible for and will pay all sales, use, and similar taxes. If Buyer provides a direct pay certificate, certification of an exemption from Tax, or reduced rate of Tax imposed by an applicable taxing authority, then Supplier agrees not to invoice, nor pay, any such Tax unless and until the applicable taxing authority assesses such Tax, at which time Supplier shall invoice and Buyer agrees to pay any such Tax that is legally owned.

**TERMS OF PAYMENT AND ACCEPTANCE:** Unless this PO states otherwise, the terms of payment are net 60 days, either after receipt of Supplier's valid invoice or after receipt of the products or services, whichever is later. In the event Supplier has not received payment as agreed, Supplier will notify Buyer and Buyer will make prompt payment. Payment of invoices will not be deemed acceptance of products or services, but rather such products or services will be subject to inspection, test, acceptance or rejection in accordance with the acceptance or completion criteria as specified in the relevant Statement of Work ("SOW") and/or WA. Buyer or Buyer's customer may, at its option, either reject products or services that do not comply with the acceptance or completion criteria for a refund, or require Supplier, upon Buyer's written instruction, to repair or replace such products or re-perform such services without charge and in a timely manner.

**TERMINATION:** This PO may be terminated by Buyer with or without cause. In the event Buyer terminates without cause, Buyer will compensate Supplier for the actual and reasonable expenses incurred by Supplier for work in process up to and including the date of termination, provided such expenses do not exceed the agreed upon prices.

**IMPORTS:** If any of the products are imported into any other country, Supplier will be responsible for all legal, regulatory and administrative requirements associated with any importation and the payment of all associated duties, taxes and fees.

**PACKAGES/TRANSPORTATION:** Supplier will: (i) comply with all country of origin marking instructions and all instructions for exports to Buyer; (ii) comply with all packaging and labeling requirements set out in this PO (default minimum requirements for (i) and (ii) are found in the documents section under [Instructions for exports to Kyndryl](#); (iii) comply with the transportation routing guidelines in this PO and pursuant to the [Shipping transportation guidelines](#); (iv) not use premium transportation unless specifically authorized by Buyer; (v) not include more than one daily shipment for one destination on one bill of lading; and (vi) not declare a value or purchase additional insurance on all F.O.B. Origin shipments to Buyer.

**LATE SHIPMENTS:** In this PO and in any contract arising therefrom, time shall be of the essence. If Supplier fails to deliver on time, Buyer may purchase replacements elsewhere and Supplier will be liable for actual and reasonable costs and damages Buyer incurs. Supplier will promptly notify Buyer if it is unable to comply with the delivery date specified in this PO.

**WARRANTIES:** Supplier warrants that: (i) it has the right to enter into this PO, and it will comply at its own expense: (A) with the terms of any contract, obligation, law, regulation, or ordinance to which it is or becomes subject (including, without limitation, anti-corruption laws and environmental laws), and (B) with any law, regulation or ordinance (such as those that implement European Union Directive 2002/95/EC) that govern Buyer's distribution of Supplier's products as, or as part of, a Buyer product; (ii) no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO; (iii) products and services specified in this PO do not infringe any privacy, publicity, reputation or intellectual property right of a third party; (iv) it has disclosed to Buyer in writing the existence of any third party code, including without limitation open source code, that is included in or is provided in connection with the product(s) and that Supplier and the product(s) are in compliance with all licensing agreements applicable to such third party code; (v) all authors have agreed not to assert their moral rights (personal rights associated with

authorship of a work under applicable law) in the Products, to the extent permitted by law; vi) products specified in this PO are free from defects in design except based solely upon written designs provided by Buyer unless such designs are based entirely on Supplier's specifications); vii) (A) products and services will conform to the warranties, specifications and requirements in this PO, and (B) from the date of shipment, products and services will be free from defects in material and workmanship for the longer of the time period specified in this PO and Supplier's standard warranty term; viii) products specified in this PO are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO; ix) it will not engage in electronic self-help; x) products specified in this PO do not contain harmful code; xi) products and services which interact in any capacity with monetary data are euro ready such that when used in accordance with their associated documentation they are capable of correctly processing monetary data in the euro denomination and respecting the euro currency formatting conventions (including the euro sign); xii) none of the products contain nor are any of the products manufactured using ozone depleting substances known as halons, chlorofluorocarbons, hydrochlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as also specified by Buyer in writing; xiii) products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing; xiv) all products will process date data correctly (including, without limitation, correctly processing, providing, receiving, and displaying date data within and between the twentieth and twenty-first centuries), and are designed to exchange date data accurately and correctly with other products (including, without limitation, hardware, code, other software, and firmware) when used with products which are designed to exchange date data accurately and correctly; xv) it will not use, disclose, or transfer across borders any information that is processed for Buyer that may identify an individual (Personal Data), except to the extent necessary to perform under this PO; xvi) it will comply with all applicable data privacy laws and regulations, will implement and maintain appropriate technical and other protections for the Personal Data, and will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession; xvii) it is knowledgeable with, and is and will remain in full compliance with all applicable export and import laws, regulations, orders, and policies (including, but not limited to, securing all necessary clearance requirements, export and import licenses and exemptions from, and making all proper filings with appropriate governmental bodies and/or disclosures relating to the release or transfer to non U.S. nationals of technology and software in the U.S., or outside the U.S., release or transfer of technology and software having U.S. content or derived from U.S.-origin software or technology); it is knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and will make best efforts to comply with such recommendations; and xviii) it will not export, directly or indirectly, any technology, software or commodities of U.S. origin or having U.S. content provided by Buyer or their direct product to any of the countries or to nationals of those countries, wherever located, listed in U.S. Export Administration Regulations, as modified from time to time, unless authorized by appropriate government license or regulations.

**INTELLECTUAL PROPERTY AND OTHER INDEMNIFICATIONS:** Supplier grants Buyer all rights and

licenses necessary for Buyer (including Buyer's parent, subsidiaries, or other related legal entities), to use, transfer, pass-through, and sell the products or services specified in the PO and to exercise the rights granted under this PO. Supplier agrees to defend, hold harmless, and indemnify Buyer from any claim that Supplier's product or service infringes any intellectual property rights or any claim arising from the failure of Supplier to comply with its warranties and obligations under this PO. If a claim of infringement is made, Supplier will, at its own expense, exercise the first of the following remedies that is practicable: (i) obtain for Buyer the rights granted under this PO; (ii) modify the products or services so they are non-infringing and in compliance with this PO; (iii) replace the products or services with non-infringing ones that comply with this PO; or (iv) accept the return of infringing products and the cancellation of infringing services and refund any amount paid. Buyer may return non-conforming goods to Supplier at Supplier's expense. Payment will not constitute an acceptance of the products or services nor impair Kyndryl's right to inspect the products or services or invoke any of its remedies. All authors have waived all their rights to the products and services integrity and to be associated with them as authors.

**LIMITATION OF LIABILITY:** To the extent permitted by local law in no event will Buyer (including Buyer's parent, subsidiaries or other related legal entities) be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages.

**ASSIGNMENT:** Supplier will not assign its rights nor subcontract its duties without Kyndryl's written consent. Any unauthorized assignment is void.

**EXCHANGE OF INFORMATION:** All exchanges of information between the parties pursuant to this PO

will be considered non confidential, unless the parties have entered into a separate written confidentiality agreement. For any business personal information relating to Supplier s employees or other legal entities that Supplier provides to Buyer, Supplier will obtain the informed agreement of such employees and other legal entities to release the information to Buyer and to allow Buyer to use such information in connection with this PO.

**ETHICAL DEALINGS:** Supplier will be familiar and will strictly comply with all laws and regulations on bribery,

corruption, and prohibited business practices. Supplier and its affiliates have not and will not, for the purpose of

influencing or inducing anyone to influence decisions in favor of Buyer or any of its affiliates, offer, promise or make

or agree to make, directly or indirectly, (a) any political contributions of any kind or any payment to or for the benefit

of any public official, whether elected or appointed, (b) any payments for gifts, meals, travel or other value for a

government employee or his/her family members or (c) any payments or gifts (of money or anything of value) to

anyone. Buyer shall not reimburse Supplier for any such political contributions, payments or gifts.

**AUDIT RIGHTS:** Upon Buyer's notice to Supplier and at no additional charge to Buyer, Supplier shall provide

Buyer (including its auditors and any regulators) access at reasonable times (or in the case of regulators, at any

time designated by such regulators), to any facility at which Supplier is providing services under this PO and to all

systems, data and records relating to such services for purposes of auditing Supplier's performance of its

obligations under this PO, including to verify compliance with applicable laws and the protection and integrity of

Buyer and Buyer's customer data. Supplier shall also identify a focal point to support the audit and promptly

respond to all reasonable requests for information from Buyer regarding the foregoing, including completing

periodic compliance-related questionnaires and providing supporting documentation and other data.

**RECORD KEEPING:** Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant

business, technical and accounting records to support Supplier's invoices and to demonstrate compliance with

Supplier's performance of its regulatory compliance and security-related obligations under this PO, and proof of

required permits and professional licenses, for a period of time as required by applicable local law, but not for less

than six (6) years following completion or termination of this PO. All accounting records will be maintained in

accordance with generally accepted accounting principles.

**SUPPLIER'S SUBCONTRACTOR OBLIGATIONS:** Supplier shall enter into a written contract with each

subcontractor it is authorized to retain under this PO, if any, with such contract committing each such subcontractor

to comply with all of Supplier's obligations and responsibilities under this PO. By way of example but not limitation,

those obligations and responsibilities include those contained in the Ethical Dealings and Record Keeping and

Audit Rights provisions of this PO. In addition, in such written contract, Supplier shall identify Buyer as a direct and

intended third-party beneficiary of the Record Keeping and Audit Rights provision, with the effect that Buyer shall

have all of the same rights under that provision as Supplier has with subcontractor. Notwithstanding the foregoing,

Supplier's use of a subcontractor will not relieve Supplier of its obligations under this PO or its responsibilities for the subcontractor's performance.

**APPLICABLE LAWS:** For interpretation, compliance and execution purposes of this Agreement, the Parties agree to submit themselves to jurisdiction, and competence of the courts of Mexico City, D.F., and expressly waive their right to invoke any other applicable jurisdiction that due to its present or future address or for any other cause may become applicable.

**GENERAL:** Any reproduction of this PO by reliable means will be considered an original of this PO. The United Nations Convention on Contracts for the International Sale of Goods does not apply. The parties expressly waive any right to a jury trial regarding disputes related to this PO. Unless otherwise provided by local law without the possibility of contractual waiver or limitation, any legal or other action related to this PO must be commenced no later than two (2) years from the date on which the cause of action arose.

**SUPPLIER AND SUPPLIER PERSONNEL:**

Supplier is as an independent contractor, and this PO does not create an agency, partnership, or joint venture relationship between Buyer and Supplier or Supplier Personnel. Buyer assumes no liability or responsibility for Supplier Personnel.

Supplier will:

1. ensure it and Supplier personnel are in compliance with all laws, regulations, ordinances, and licensing requirements;
  2. be responsible for the supervision, control, compensation, withholdings, health and safety of Supplier personnel;
  3. inform Buyer if a former employee of Buyer will be assigned work under this PO, such assignment subject to Buyer approval;
  4. upon request, provide Buyer, for export evaluation purposes, to the extent permitted by law, the country of citizenship and permanent residence and immigration status of those persons. Buyer retains the right to refuse to accept persons made available by Supplier for export control reasons;
  5. not discriminate against any employees, applicants for employment, or any entity engaged in its procurement practices because of race, color, religion, sex, age, national origin, or any other legally protected status;
  6. (a) be solely responsible for, and fully and properly complete and submit to the relevant government immigration authority, all required immigration forms and documents for all Supplier personnel performing services hereunder, maintain such forms and documents as required by law and, subject to applicable laws (in particular laws regarding data privacy), make such forms and documents available to Buyer upon request, and  
(b) ensure that Supplier personnel who do not meet all immigration requirements do not perform services under this PO;
  7. not assign to work under this PO any Supplier personnel that are subject to any restrictive covenants that could limit such Supplier personnel from performing services for Buyer or customer;
  8. before assignment of Supplier Personnel to perform Services for which Buyer has provided specific education requirements and to the extent permitted by law, Supplier shall review proof of education supplied by Supplier Personnel to confirm the Buyer's specific education requirements are satisfied, shall retain such proof of education and, subject to applicable law, shall make such proof of education available to Buyer upon request;
  9. remove from any assignment under this PO, at Buyer's request in its sole discretion, any Supplier personnel;
  10. comply, at its own expense, with all laws (including Executive Orders), regulations and ordinances relating to verification of employment eligibility for personnel to which it is or becomes subject to, such as participation in the United States Department of Homeland Security's E-Verify program ("E-Verify") in the United States -This program will not apply for personnel assigned to Buyer for services executed in Mexico- or similar state or other government sponsored programs, and verify employment eligibility of all Supplier personnel performing services for, or providing Deliverables to, Buyer and/or its customers through such programs, as applicable; and
  11. upon Buyer's request, provide documentation to verify compliance with this Section titled "Supplier and Supplier personnel".
  12. Assure that Supplier Personnel within Buyer's installations will not own, reproduce, print or distribute subversive publications, pornographic or political propaganda.
- In case that any or part of the PO must be executed within Buyer's installations, Supplier agrees to

provide to Buyer in written notice the names of assigned workers to perform the service, In the event of Supplier's failure to the provisions of this PO, Buyer might terminate this Agreement immediately and without judicial declaration contract.

#### GENERAL BUSINESS ACTIVITY RESTRICTIONS

(a) Supplier will ensure that Supplier personnel assigned to work on Buyer's or customer's premises will not:

1. conduct any non-Buyer related business activities (such as interviews, hirings, dismissals or personal solicitations) on Buyer's or customer's premises;
2. conduct Supplier's personnel training on Buyer's or customer's premises, except for on-the-job training;
3. attempt to participate in Buyer or customer benefit plans or activities;
4. send or receive non-Buyer related mail through Buyer's or customer's mail systems; and
5. sell, advertise or market any products or distribute printed, written or graphic materials on Buyer's or customer's premises without Buyer's written permission.

(b) Supplier will, for Supplier personnel assigned to work on Buyer's or customer's premises:

1. obtain for each person a valid identification badge from Buyer and return identification badges upon completion or termination of Supplier personnel assignments;
2. ensure that each person with regular access to Buyer's and customer's premises complies with all parking restrictions and with vehicle registration requirements if any; and
3. ensure that each person remains in authorized areas only (limited to the work locations, cafeterias, rest rooms, and, in the event of a medical emergency, Buyer's or customer's medical facilities).

#### BUYER'S SAFETY AND SECURITY GUIDELINES:

Supplier will ensure that Supplier personnel assigned to work on Buyer's or customer's premises:

1. do not bring weapons of any kind onto Buyer's or customer's premises;
2. do not manufacture, sell, distribute, possess, use or be under the influence of controlled substances (for nonmedical reasons) or alcoholic beverages while on Buyer's or customer's premises;
3. do not have in their possession hazardous materials of any kind on Buyer's or customer's premises without Buyer's authorization.

Supplier will promptly notify Buyer of any accident or security incidents (such as those involving loss or misuse of, or damage to, Buyer's Assets (as defined below), physical altercations, assaults or harassment) and provide Buyer with a copy of any accident or incident report involving the above.

#### ASSET CONTROL

For purposes of this Subsection, the term "Buyer Assets" means information, information assets, information systems, supplies or other property, including property owned by third parties (such as Buyer customers) that is accessed by Supplier personnel or provided to Supplier personnel by (or on behalf of) Buyer. Supplier personnel will:

1. not remove Buyer Assets from Buyer's or customer's premises without Buyer's authorization;
2. use Buyer Assets only for purposes of this PO and reimburse Buyer for any unauthorized use;
3. only connect with, interact with or use programs, tools or routines that Buyer agrees are needed to provide Services;
4. not share or disclose user identifiers, passwords, cipher keys or computer dial port telephone numbers;
5. not copy, disclose or leave such assets unsecured or unattended, in the event the Buyer Assets are confidential; and
6. immediately notify Buyer of any security incidents involving Buyer Assets and provide Buyer with a copy of any accident or incident report involving the above.

Buyer may periodically audit use of Buyer's Assets and Supplier's data residing on Buyer Assets.

#### Supervision of Supplier's Personnel

(a) Supplier will:

1. provide consistent and effective supervision of its personnel provided under this PO, at no additional cost to Buyer;
2. conduct orientation sessions with its personnel before placement on an assignment with Buyer and identify and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for its personnel;
3. instruct its personnel that employment related issues should be brought forward to Supplier (and not Buyer). Where such issues relate to actions which are alleged to have been taken by Buyer or Buyer personnel, Supplier will notify Buyer immediately in order that appropriate

investigative action be taken.

(b) Supplier's supervisor(s) shall:

1. exercise full supervisory authority over all day-to-day employment relationship decisions relating to Supplier's personnel, including those decisions relating to: wages, hours, terms and conditions of employment, hiring, discipline, performance evaluations, termination, counseling and scheduling; and
2. know each work location's planned holiday (and other closing) schedules and the impacts all such schedules have on Supplier personnel.

(c) Notwithstanding any other language or agreement to the contrary, Supplier agrees that Buyer has no responsibility to approve, and that Buyer will not approve, timesheets for any Supplier personnel. If Buyer should review, sign and/or submit timesheets for Supplier personnel, whether manually or electronically, as part of Buyer's billing verification processes, the parties acknowledge and agree that such review, signature and/or submission shall in no way constitute concurrence or approval of such timesheets, nor create any other commitment or obligation on the part of Buyer to Supplier or Supplier personnel.

#### CRIMINAL BACKGROUND CHECKS

(a) To the extent permitted by local law, Supplier will:

1. obtain from all Supplier personnel photographic proof of identity from an official government source (including but not limited to documentation such as a valid driver's license or government issued passport) and retain copies thereof;
2. to the extent permitted by local law, ensure that, prior to Supplier personnel being assigned to perform services under this PO on Buyer's or customer's premises and/or access Buyer's or customer's systems, Supplier personnel will participate in a criminal background check covering the jurisdictions (including but not limited to all counties or states (whichever is more comprehensive), countries (this would include a federal check in the United States) and provinces ) in which the person was employed or resided for the past seven years (or longer as required by applicable law); -This subsection will not apply for Mexico, criminal background check will be performed for the last year where the candidate was employed or resided -

3. not assign Supplier personnel whose background checks show any of the following:

- (a) felony or misdemeanor convictions involving dishonesty (e.g. bribery, fraud, embezzlement, theft, violations of securities laws), violence (including but not limited to sexual or child abuse crimes), or computer related crimes and/or convictions that are employment-related;
- (b) the existence of restrictions (such as court orders) that would prevent, or impose limitations on, a person's ability to provide the services contemplated by this PO; or
- (c) that a person presents a higher than normal security risk to Buyer or customer.

Upon Buyer request and subject to applicable law, Supplier will provide documentation to Buyer to verify its compliance with this Subsection.

(b) Once a criminal background check is conducted for a particular individual, such background check may be used by Supplier to satisfy the requirements of this Section titled "Criminal Background Checks" for three (3) years from the date of the background check. To the extent permitted by local law, Supplier shall conduct new background checks on individuals assigned to perform services under this PO every three (3) years.

(c) Nothing in this Subsection titled "Criminal Background Checks" limits Buyer's ability to remove Supplier personnel from an assignment at Buyer's discretion.