



# **General Terms and Conditions for Purchase Orders**

**Kenton County Airport Board**

**Cincinnati / Northern  
Kentucky International  
Airport**

## **GENERAL TERMS AND CONDITIONS FOR PURCHASE ORDERS**

**APPLICABILITY:** The following terms and conditions apply to and are part of the Purchase Order which is issued by the Kenton County Airport Board (“Buyer”) and accepted by the vendor, contractor, consultant, or other service provider (“Seller”) unless specifically provided otherwise on the first page of the Purchase Order or on a separate contract signed by the Buyer’s authorized agent. These terms and conditions control over any terms within Seller’s quote, proposal, invoice, acknowledgment form, click-through agreement, or other similar documentation that are inconsistent with these terms and conditions and any additional terms outside of these terms and conditions are of no force or effect. If the Purchase Order is issued as a result of an Invitation to Bid, Request for Proposal, or other solicitation (“Solicitation”), the terms of the Solicitation and Seller’s response are incorporated in their entirety. When there is a conflict in the terms of the P.O. and a Solicitation or Seller’s response, the terms of this Solicitation prevail over the P.O. and the Seller’s response, and the terms of the P.O. prevail over Seller’s response.

**GOODS AND SERVICES:** Seller agrees to provide the goods and/or services set forth on the first page of this Purchaser Order (“P.O.”) pursuant to all the terms and conditions of this P.O. Seller's delivery of goods or performance of services hereunder constitutes assent to these terms and conditions. Seller expressly warrants that all goods and services will conform in all respects to the applicable specifications, samples, or other descriptions given and that the goods delivered and services performed hereunder will be of good quality, material, workmanship, merchantable, free from defects, and are suitable for the purpose Buyer intended and warrants the same to Buyer’s complete satisfaction. Seller shall perform or supervise the performance of all services required hereunder, and all personnel engaged in the work must be fully licensed, certified, qualified and authorized under state, federal and local law to perform the services. Seller warrants that it will perform the services in a professional manner consistent with the level of care and skill other sellers ordinarily exercise in their industry under similar circumstances at the time the services are performed. Seller is an independent contractor and Seller's personnel are not employees of the Buyer. Seller must be an Equal Opportunity Employer.

**QUANTITY:** Shipments must equal exact amounts ordered unless Buyer agrees otherwise. Goods shipped in excess of quantity designated in this P.O. may be returned at Seller's expense and risk. Buyer may replace, at Seller’s expense, goods shipped less than the quantity designated in this P.O.

**PRICE:** Seller's price may not be higher than identified on the P.O., or if not stated, not higher than the price last quoted or last price charged to the Buyer unless Buyer and Seller agree otherwise in writing.

**DELIVERY:** Time is of the essence regarding delivery of goods and performance of services hereunder. Delivery is F.O.B. Cincinnati/Northern Kentucky International Airport (“CVG”). Seller must plainly mark each delivery and show the applicable P.O. number.

**INVOICES AND PAYMENT:** Unless Buyer requests otherwise, Seller shall render separate invoices for each delivery, and cover not more than one P.O. For services performed hereunder, the invoice must contain a detailed description of the work performed, materials used, and goods delivered by Seller, including an itemized cost of such materials. Buyer will pay Seller in accord with Payment Terms on the first page of this P.O.

**TAXES:** Buyer is a governmental entity exempt from excise, sales and use tax. Buyer is not responsible for any such taxes.

**CHANGES:** Buyer has the right to make, from time to time, changes to packing, testing, destinations, specifications, designs, and delivery schedules. Seller shall immediately notify the Buyer of any increases or decreases in costs such changes cause and Buyer and Seller shall agree upon a written amendment to this P.O. to equitably adjust prices or other terms. Claims for additional compensation which may arise from changes proposed to be made by Seller must be presented in writing to Buyer before work commences under any changed condition. In any case, where Seller deems any extra compensation is due it for any work not covered, Seller shall notify Buyer in writing of its intention to make claim for extra work before Seller begins the work on which the claim is based. If such notification is not given and Buyer is not afforded a strict accounting of actual cost, then Seller hereby agrees to waive any claim for its extra compensation. Notice by Seller to Buyer and the fact that Buyer has kept account of the costs both as provided herein may not in any way be construed as proving the validity of any claim for additional compensation. Seller is not required to undertake work under changed conditions without prior written authorization by Buyer for extra compensation attributable to the changed conditions.

**CANCELLATION:** Buyer reserves the right at any time and from time to time without cause, to cancel all or any part of the goods or services under this P.O. by notice to the Seller. Buyer's cancellation is immediately effective upon communication. In the event of such cancellation, Buyer is not liable to Seller for damages and is not liable for loss of anticipatory profits, save Buyer's obligation to pay for goods or services delivered prior to notice of cancellation. The provisions of this paragraph do not limit or affect Buyer's right to cancel this P.O. for Seller's default.

**ASSIGNMENTS:** Seller may not delegate any duties, or assign any rights or claims under this P.O., without Buyer's prior written consent, and any such attempted delegation or assignment is void.

**SETOFFS AND COUNTERCLAIMS:** In addition to any other rights and remedies available to Buyer, in the event the Seller has incurred any liability to Buyer, whether Seller's liability is liquidated or unliquidated, present or future, accrued or contingent, whether arising from or under this P.O. or otherwise, and whether such liability is based in contract, tort or otherwise, Buyer may without notice to Seller set off any amount of such liability against any liability of Buyer to Seller arising from or under this P.O.

**AUDITS:** Buyer has the right, at reasonable times, to examine, copy, and audit all Seller books and records related to this P.O. The Seller shall make its books and records available at reasonable times for audit by Buyer or Buyer's authorized agent or representative, and Seller shall cooperate with any Buyer audit of these records. If requested by Buyer, Seller shall transport the necessary books or records to a location at CVG for inspection, copying, or audit. At its discretion Buyer may perform the audit at the location where the Seller's books or records are located. Seller agrees to retain all books and records of business conducted under this P.O. for three (3) years after the end of the P.O. year to which the books and records pertain.

**USE OF LOGO/MARKS:** Seller may not use the name, logo or design, of the Cincinnati/Northern Kentucky International Airport, the Kenton County Airport Board, CVG, or any trademark or service mark utilized by Buyer; or use any photograph or video of the Cincinnati/Northern Kentucky International Airport, its property, or its facilities without the express written consent of Buyer. This paragraph survives the expiration or earlier termination of this P.O.

**CONFIDENTIAL INFORMATION:** Any documents provided to the Seller by Buyer pursuant to this P.O., including but not limited to personal information, reports, surveys, calculations, plans, maps, estimates, and other work product including any exhibits, and any information, reports or data which may be given to or assembled by Buyer pursuant to the scope of this P.O., must be kept strictly confidential, and not made available or disclosed to any individual or organization by Seller without the prior written approval of Buyer.

**INDEMNIFICATION:** Seller shall protect, defend, indemnify and hold Buyer and its directors, officers, employees, agents, servants, and representatives harmless from and against any and all liabilities, demands, suits, claims, losses, fines, causes of action, costs, damages, expenses, or judgments arising by reason of the injury or death of any person or damage to any property, or other damages, including all reasonable costs of investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) arising out of the acts or omissions of Seller, Seller's officers, employees, agents, contractors, subcontractors, suppliers, licensees or invitees regardless of where the injury, death or damage may occur; unless such injury, death or damage is caused by the sole negligence of Buyer, its directors, officers or employees. Upon the filing of any claim with Buyer for damages arising out of incidents for which Seller is required to hold Buyer harmless, then and in that event, Buyer or its agents or representatives shall give Seller written notice of such claim. Upon receipt of such notice, Seller is responsible for settling, compromising, or defending against ("handle") such claim. Seller must acknowledge receipt of the claim in writing notifying KCAB and the agent or representative giving the notice in writing of Seller's intent to handle the claim within 10 days of delivery of the notice. If Seller does not respond within the 10 day period, then the Seller is responsible for, and must promptly pay all costs and fees, including reasonable attorney's fees and expert's fees incurred by KCAB as a result of Seller's failure to respond and handle the claim in accordance with the terms herein. Buyer has the right to defend against any such claim and if Buyer elects to do so, Seller is responsible for Buyer's legal fees, costs, and expenses in addition to any resulting liability. Any final judgment rendered against Buyer for any cause for which Seller is liable hereunder is conclusive against Seller as to liability and amount, where the time for appeal therefrom has expired. The provisions of this paragraph survive the expiration or termination of this P.O.

**Professional Liability:** To the fullest extent permitted by law, Seller agrees to indemnify and hold Buyer, its Board of Directors, officers and employees harmless from and against any and all liabilities, demands, suits, claims, losses, fines or judgments, including all reasonable costs of investigation and defense thereof (including, but not limited to, attorney's fees, court costs and expert fees) arising by reason of or resulting from the negligent acts, errors or omissions of Seller, its directors, officers, agents or employees in the performance and furnishing of Seller's professional services under this P.O. Buyer shall give Seller reasonable notice of any such claim or action. Seller in carrying out its obligations under this paragraph shall use counsel reasonably acceptable to Buyer. The provisions of this paragraph shall survive the expiration or earlier termination of this P.O.

Claims for Infringement: Seller warrants that the goods and services furnished shall be delivered free of any claim of any third party for infringement of any patent, copyright, trademark, trade dress, or similar matter. Seller shall indemnify, defend and hold harmless Buyer for any such infringement claims, demands, suits, or actions (which shall include all reasonable costs of investigation, defense, attorney's fees, court costs and expert fees).

## **INSURANCE:**

1. Seller shall maintain commercial general liability insurance (CGL) and, if necessary, commercial umbrella insurance with a \$2,000,000 limit per occurrence and, if services are performed on the aircraft ramps, taxiways, or runways of CVG (the "AOA"), a \$10,000,000 limit per occurrence to cover any anticipated liability arising out of the goods or services provided hereunder. If such CGL insurance contains a general aggregate limit, it applies separately to operations hereunder. Seller shall maintain automobile liability insurance and, if necessary, commercial umbrella insurance with a \$2,000,000 limit per occurrence and, if services are performed on the AOA, a \$10,000,000 limit per occurrence to cover any anticipated automobile liability arising out of the goods or services provided hereunder. Seller shall add the Buyer as an additional insured on the CGL insurance policy and automobile liability insurance policy, and provide the Buyer with certificates evidencing the existence of the insurance required hereunder.
2. Professional Liability (Errors and Omissions) Insurance: If Seller performs professional services to any degree under this P.O., then Seller shall obtain and maintain continuously in effect at all times during the term hereof, at its sole cost and expense, professional liability insurance (errors and omissions) protecting Seller from and against liability which may occur by reason of any errors, omissions, or negligent acts of its directors, officers, employees and agents in the performance of professional services under this P.O. Seller shall ensure that said coverage shall be in a minimum amount of at least \$1,000,000 at all times. Coverage shall be maintained for a period of five (5) years after all services and work required under this P.O. is completed by Seller, or after the Seller has left the job site, whichever shall last occur.
3. Workers' Compensation and Employer's Liability Coverage: Seller shall, at its own expense, procure its own Kentucky workers' compensation and employer's liability insurance as provided under the laws of the Commonwealth of Kentucky.
4. Cross Liability Coverage: Seller agrees that all insurance policies contain cross liability coverage as provided under standard ISO forms' separation of insured clause.
5. Subcontractors: Seller shall cause each subcontractor to purchase and maintain insurance of the type specified under this P.O. and cause each subcontractor to include the Kenton County Airport Board as an additional insured. When requested by Buyer, Seller shall furnish copies of certificates of insurance coverage for each subcontractor.
6. Right to Amend Insurance: Buyer has the right to change the insurance coverage and the insurance limits required of the Seller when it is determined to be necessary by Buyer; provided that Buyer shall provide Seller with thirty (30) days advance notice. Buyer is not responsible for any increased costs associated therewith.

7. Primary Insurance: Seller's insurance must be primary and non-contributory with respect to any other insurance available to or for the benefit of Buyer. Any Buyer insurance or self-insured retention is considered excess insurance only. Seller's insurance policies must contain a severability of interest clause.
8. Buyer Review of Insurance: All policies required hereunder must be satisfactory to Buyer including the quality of the insurer, deductible, or retentions. By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Seller, and such coverage limits are not a limitation on Seller's liability under the indemnities granted to Buyer under this P.O. Failure of Buyer to demand such certificates or other evidence of full compliance with these insurance requirements or failure of Buyer to identify a deficiency from evidence that is provided is not considered to be a waiver of Seller's or subcontractor's obligation to maintain such insurance.
9. Prohibiting Seller's Access: Buyer has the right, but not the obligation, of prohibiting Seller or Seller's subcontractor(s) from entering the project site until such certificates or other evidence of insurance has been placed in complete compliance with these requirements and approved by Buyer.

**COMPLIANCE WITH LAWS:** Seller warrants and represents that it has complied with all applicable laws and regulations in the rendering of services or the furnishing of goods under this P.O.

**GOVERNING LAW AND VENUE:** This P.O. is governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Seller shall comply with all present and future federal, state, local laws, and advisory circulars, applicable to the rendering of the services provided for herein. Further, Seller shall comply with all present and future rules and regulations of Buyer and any other governmental agency. Buyer and Seller agree that any legal or equitable action for claims, debts or obligations arising out of or related to this P.O. must be brought solely in the Circuit Court of Boone County, Kentucky or United States District Court for the Eastern District of Kentucky, Covington Division, and that either Court has personal jurisdiction over the parties and venue of the action is appropriate in each such Court.

### **GOVERNMENT PROVISIONS**

- A. General Civil Rights Provision. In all its activities within the scope of its airport program, the Seller agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin, creed, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision binds the Seller and subcontractors from the bid solicitation period through the completion of the contract.
- B. Civil Rights Act of 1964, Title VI-49 CFR Part 21.  
During the performance of this P.O., Seller for itself, its assignees and successors in interest (hereinafter referred to as the "Seller") agrees as follows:
  1. Compliance with regulations. Seller will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this P.O.

2. Non-discrimination. Seller, with regard to the work performed by it during the P.O., will not discriminate on the grounds of race, gender, color, national origin, creed, sex, age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Seller will not participate either directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the P.O. covers any activity, project, or program set forth in Appendix B of the 49 CFR part 21 including amendments thereto.

3. Solicitations for subcontractors, including procurements of materials and equipment. In all solicitations either by competitive bidding or negotiation made by Seller for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier will be notified by Seller of its obligations under this P.O. and the Nondiscrimination Acts and Authorities on the grounds of race, gender, color or national origin.

4. Information and reports. Seller will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by Buyer or the FAA to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of Seller is in the exclusive possession of another who fails or refuses to furnish this information, Seller will so certify to Buyer or the FAA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. Sanctions for non-compliance. In the event of Seller's non-compliance with the non-discrimination provisions of this P.O., Buyer will impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. withholding payments to Seller under the P.O. until Seller complies; and/or
- b. cancelling, terminating, or suspending the P.O. in whole or in part.

6. Incorporation of provisions. Seller will include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Seller will take action with respect to any subcontract or procurement as Buyer or the FAA may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, that if Seller becomes involved in, or is threatened with, litigation by a subcontractor or a supplier as a result of such direction, Seller may request Buyer to enter into any litigation to protect the interests of Buyer. In addition, Seller may request the United States to enter into the litigation to protect the interests of the United States.

#### Title VI List of Pertinent Nondiscrimination Authorities

During the performance of this P.O., the Seller, for itself, its assignees, and successors in interest (hereinafter referred to as the "Seller") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964) including amendments thereto;
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
  - The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982, (49 USC §47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq).
- C. Federal Fair Labor Standards Act (Federal Minimum Wage). This Contract incorporates by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers. The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.
- D. Occupational Safety and Health Act of 1970. This Contract incorporates by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Contractor must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The Contractor retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Contractor must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

## **MISCELLANEOUS**

If this P.O. constitutes an offer, Seller's performance in whole or in part constitutes acceptance of this P.O. If this P.O. constitutes an acceptance of an offer, such acceptance is expressly made conditional on Seller's assent to the terms of this P.O. This P.O. constitutes the entire agreement between the parties



pertaining to the subject matter hereof, and there are no oral understandings affecting it. This P.O. may not be amended except in writing signed by the parties. No failure or delay on the part of the Buyer in enforcing any right hereunder constitutes a waiver of such right.

**Captions.** The headings of the several paragraphs of this P.O. are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this P.O. and may not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

**Severability.** In the event that any covenant, condition or provision herein contained is held to be invalid by any Court of competent jurisdiction, the invalidity of any such covenant, condition or provision herein contained will not affect the validity of any other covenant, condition or provision; provided that the validity of any such covenant, condition or provision does not materially prejudice either Buyer or Seller in its prospective rights and obligations contained in the valid covenants, conditions or provisions of this P.O.

**Agent for Service of Process.** It is expressly understood and agreed that if the Seller is not a resident of the Commonwealth of Kentucky, or is an association or partnership without a member who is a resident of said Commonwealth, or is a foreign corporation, the Seller must appoint an agent for service of process in the Commonwealth of Kentucky. In the event of any failure on the part of said agent, or the inability of said agent to perform or the Seller's failure to appoint an agent when required, the Seller does hereby designate the Secretary of State, Commonwealth of Kentucky, its agent for the purpose of service of process in any Court action between it and Buyer arising out of or based upon this P.O., and the service will be made as provided by the laws of the Commonwealth of Kentucky for service upon a non-resident.

**Incorporation of Attachments.** All Attachments referred to in this P.O. are intended to be and hereby are specifically made a part of this P.O.

**Incorporation of Required Provisions.** Seller agrees to incorporate into the P.O., any and all provisions, assurances, statutes, rules and regulations which may now or during the term of this P.O. be required by the FAA or other governmental agency as a prerequisite to or a condition of Buyer and/or Seller receiving any federal or state grant or loan or other governmental assistance. Seller further agrees to execute all certifications and/or documents required by the FAA, or other governmental agency, to assure compliance with the foregoing, or that may be a prerequisite to or a condition of Buyer and/or Seller receiving any federal or state grant or loan or other governmental assistance. In the event that the Federal Aviation Administration or its successors requires modifications or changes in this P.O. as a condition precedent to the granting of the funds for the improvement of CVG, or otherwise, Seller agrees to consent to such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions or requirements of this P.O. as may be reasonably required.

**Relationship of Parties.** Nothing contained herein may be deemed or construed by the parties, or by any third party, as creating a relationship of principal and agent, partners, joint venturers, or any other similar such relationship between the parties. The parties intend to create the relationship of independent contractor. Neither the method used to compute compensation due under the P.O. nor any other act of the parties creates any relationship between them other than that of independent contractor.

**Waiver of Rights by Buyer.** Failure or any delay on the part of Buyer in exercising any rights, power or

privilege hereunder, or under any document or instrument delivered or executed pursuant hereto, does not constitute a waiver thereof, and a single or partial exercise thereof does not preclude any right, power or privilege.

**Successors and Assigns Bound.** This P.O. is binding upon and inures to the benefit of the successors and assigns of the parties hereto, where permitted by this P.O.

**Joint Cooperation.** The closest collaboration and cooperation must be maintained by Seller with representatives of Buyer and Buyer will be at all times entitled to be advised, at its request, of the status of the work performed by Seller and of the details thereof.