

# KCI USA, INC.

## Terms & Conditions of Purchase

1. **PARTIES AND GOODS.** "Seller" means the party indicated on page 1 of 2 of this Purchase Order (the "Order Form") and its subcontractors. The term Seller, depending on the services to be rendered, may be used interchangeably with service provider. "KCI" means KCI USA, Inc., its affiliates and subsidiaries. "Goods" means any article, material, equipment, or other item to be delivered and/or any work or service to be performed under this Purchase Order. Seller will not perform or deliver, and KCI will not pay for, any different or additional Goods.

2. **TERMS AND ACCEPTANCE.** This Purchase Order is the only contract between KCI and Seller and consists of (i) these terms and conditions of purchase ("Terms & Conditions"), and (ii) the Order Form, including any exhibits or attachments used to specify the Goods. By accepting this Purchase Order, Seller agrees to comply with these Terms and Conditions and to perform/deliver the Goods as described for the Contract Price. Any additional or different terms in Seller's forms are hereby rejected. This Purchase Order will be accepted by Seller in any manner permitted by law or will occur at the earliest of (i) Seller's signing this Purchase Order, (ii) Seller's marking or signing any other form or letter of acknowledgement (except that no additional or different terms and conditions will apply), (iii) any performance by Seller, or KCI (iv) 10 days after Seller's receipt of this Purchase Order.

3. **CONTRACT PRICE.** KCI will pay Seller for the performance/delivery of all Goods in accordance with the Order Form (the "Contract Price"), which will be the maximum price paid by KCI for any Goods. Seller warrants that the prices for the Goods do not exceed those offered to other customers purchasing similar Goods in the same or lesser quantities. Seller will promptly refund any sums paid by KCI in excess of such prices. Unless otherwise agreed to in writing by KCI, the Contract Price will be deemed to include (i) packing, crating, drayage, storage and/or extras or expenses not specifically identified, (ii) the cost of all labor, equipment, materials, tools, supplies, permits, assessments and licenses necessary for or incidental to the completion of the Goods. Seller agrees to ship only those quantities specified on the Order Form, and KCI may return Goods in excess of specified quantities to Seller at Seller's risk and expense. Seller acknowledges that the Contract Price is based on Seller's inspection of the site specified in Order Form where the work is to be performed (the "Work Site"). Increases to the Contract Price for any reason must be approved by KCI via purchase order. All materials incorporated in the Work will become the property of KCI upon payment for the Work.

4. **PACKING AND SHIPPING.** Depending on the services to be rendered by Seller (and if applicable), Goods will be shipped as requested by KCI. Seller will pay any increased or expedited transportation costs due to Seller's failure to follow KCI's routing directions or meet scheduled delivery dates. All Goods will be inspected for quality by Seller before shipment and will be suitably packaged or otherwise prepared for shipment to ensure the lowest transportation rate and risk of damage. Bills of lading will describe the Goods using the National Motor Freight Classification, Tariff NMF 100-14 and its supplements, or the applicable governing tariff for the carrier and mode of transportation requested which results in the lowest transportation cost. Risk of loss will remain with Seller until Goods are delivered to KCI. Delivery will be deemed to occur when the Goods are placed in the possession of KCI at the "Ship To" location or when placed on a truck operated by KCI, if earlier. If applicable, KCI will only pay the lower of transportation costs measured from actual shipping point or from point of purchase to the "Ship To" address. Each shipping container or package will be marked with the Purchase Order number and any other designation requested by KCI and will contain a packing slip showing the Purchase Order number.

5. **INSPECTION AND ACCEPTANCE.** KCI's acceptance of Goods is conditioned on incoming inspection and/or testing and neither receipt of nor payment for Goods will constitute acceptance. KCI may reject or revoke its acceptance of any or all Goods which, in KCI's reasonable judgment, do not conform to Seller's warranties and/or the specifications approved by KCI. At KCI's option, inspection may be performed on a statistical sampling basis. Goods not meeting KCI's approval may, at KCI's option, be returned to Seller for prompt replacement or full credit or may be re-worked by KCI at Seller's expense. For tangible Goods, no return authorization or detailed defect data will be required from KCI as a condition for returning Goods unless specifically agreed to by KCI in writing before shipment. All returns will be at Seller's risks and expense including cost of inspection and round trip transportation. KCI may reject Goods and cancel outstanding orders without charge if Seller has been removed for good reason from KCI's "approved vendor list" prior to receipt of Goods by KCI.

6. **WARRANTY.** Seller warrants that all Goods supplied under this Purchase Order will (a) strictly conform to all specifications, drawings, samples, or other descriptions approved by KCI, (b) at least equal the nationally recognized standard of code to quality, if any (c) be free from defects in materials and workmanship and Seller's design, (d) be new and not refurbished, reconditioned or federal "government surplus," (e) when obtainable, be certified by and bear appropriate markings of UL and CSA and shipped with appropriate UL and or CSA documentation (f) not infringe any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, and (g) comply in all respects with this Purchase Order. In addition, Seller warrants that KCI will have good and marketable title to all Goods free of all liens and encumbrances and that no licenses are required for KCI to use such Goods. Seller warrants that all services will be provided in a professional and workmanlike manner consistent with current, good and sound professional procedures. Seller's obligations under this warranty will survive acceptance, payment and inspection. If a breach of warranty occurs, KCI may, in its sole discretion and without waiving any other rights, (a) return Goods for credit, (b) require prompt correction or replacement of the nonconforming Goods or (c) cancel the remainder of the order. Replacement Goods will be warranted as if supplied anew. This warranty is in addition to any warranties supplied by law or by Seller.

7. **CONFIDENTIAL INFORMATION.** KCI's "Confidential Information" includes, without limitation, all information or data (written or oral and whether or not marked as proprietary) concerning or related to KCI's products (including discovery, invention, research, improvement, development, manufacture or sale of the products), services or general business operations (including sales costs, profits, purchasing, pricing methods, organization, employee or vendor lists and processes) which Seller may obtain from KCI or otherwise discover in the performance of this Purchase Order. KCI grants to Seller the right to use Confidential Information solely for the purpose of providing Goods to KCI. Seller will not disclose the Confidential Information to any third party or use it for any other purpose. Seller will use reasonable care to protect the Proprietary Information, but in no event less than the care Seller uses to protect its own like information. Seller agrees that KCI would suffer irreparable harm, for which monetary damages are an inadequate remedy, and that equitable relief is appropriate if Seller were to breach or threaten to breach any obligation regarding Confidential Information. Seller agrees to fully indemnify KCI in the event of any breach of this section.

8. **INDEMNIFICATION.** Seller will indemnify and hold harmless KCI and its affiliates, shareholders, directors, officers, agents, independent contractors and employees from and against all liabilities, claims, demands, losses, damages, costs, expenses, negligent services resulting from Seller's negligent act and/or omission, as well as attorneys' fees imposed on KCI therefrom. Seller will also promptly report to KCI and indemnify, defend and hold KCI, its officers, agents, employees and customers harmless from and against all claims, liabilities, losses, damages, costs and expenses (including legal fees) resulting from or arising in connection with any actual or claimed infringement of any patent, copyright, mask work, trademark, trade secret or other intellectual property, proprietary or contractual right of any third party, with respect to the purchase, use or sale of Goods. In the event of such a claim, Seller will either procure for KCI the right to continue to use the Goods, replace the Goods with non-infringing equivalent Goods, modify the Goods to be non-infringing, or, at KCI's option, refund to KCI the cost of the Goods plus transportation and de-installation costs.

9. **CHANGES.** KCI may make changes to this Purchase Order, including applicable specifications or instructions, at any time and Seller hereby agrees to such change(s). If the change(s) increases or decreases Seller's costs of providing Goods or affects Seller's ability to perform in a timely fashion, then the parties will agree in writing to an equitable adjustment to the price and/or time of performance. Adjustments will not be made unless Seller (a) notifies KCI within 10 days of its receipt of a change request that an adjustment is required, and (b) gives KCI access to records supporting the adjustment. Price adjustments will not exceed the actual costs of the change. No change will excuse Seller from performing under this Purchase Order. Seller will notify KCI

immediately of any changes in Seller's specifications or substitutions for the Goods, and KCI may **refuse to accept such change(s)**. Seller agrees that all developed property which arise from or related to service or good contemplated herein shall be the sole and exclusive property of KCI.

10. **DELIVERY.** Time is of the essence on this order. If delivery is not made in the quantity or quantities and at the time or times specified, KCI may, at its option, cancel the entire order or that part of the order which is not delivered. Seller will notify KCI immediately of any actual or anticipated delay and its cause, but such notice will not excuse Seller's default except for force majeure reasons. If KCI accepts delayed delivery, the time of payment will be extended accordingly. KCI will have an unlimited right by written change order to reschedule delivery dates as set forth in this Purchase Order.

11. **CANCELLATION.** KCI may, by written notice to Seller, terminate this Purchase Order, in whole or in part, for any or no reason at all. Upon receipt of notice of termination, Seller will immediately stop all work and cause its contractors and subcontractors to stop all related work. If KCI terminates for convenience, KCI will pay Seller for Goods accepted as of the date of termination. KCI will have no responsibility for work performed after Seller's receipt of notice of cancellation or for standard Goods scheduled for delivery at least 30 days after the cancellation notice. Subject to Section 12, KCI may be liable to Seller for work in process for Goods or unique materials customized for KCI and scheduled for delivery less than 60 days after the cancellation notice. KCI's liability is contingent on access to records supporting the claim. KCI will not have any liability for cancelled delivery of Goods, which are fourteen (14) or more days overdue as of the date of the notice to cancel.

12. **TERMINATION FOR DEFAULT.** KCI may immediately terminate this Purchase Order, in whole or in part, if (i) Seller fails to make timely delivery of Goods, (ii) Goods fail to pass KCI's inspection or are otherwise non-conforming, (iii) Seller's financial condition is or becomes unsatisfactory, or (iv) Seller fails to perform any of its other obligations under this Purchase Order. In the event of any such default, Seller will promptly refund to KCI any sums paid in advance for Goods scheduled to be delivered after the effective date of termination. KCI may, at its option, procure similar goods and hold Seller liable to KCI for any excess costs and all expenses incurred by KCI. KCI may also terminate this Purchase Order if Seller fails to cure any breach within 30 days following receipt of notice from KCI. This section will not prevent KCI from exercising any other rights or remedies to which it may be entitled to under law or in equity.

13. **TAXES.** Unless otherwise indicated on the Order Form, KCI will have no liability or responsibility with respect to any income or other taxes or withholding in connection with payments made to Seller. KCI will be solely responsible for the payment of all taxes including, without limitation, income, franchise, withholding and excise taxes. The above notwithstanding, if required by law for the services to be performed by Seller for KCI and such tax is deemed by law to be KCI's obligation to pay, Seller will invoice KCI for the tax and remit the payment of the tax to the appropriate tax authority. At KCI's request, Seller shall provide KCI with documentation evidencing the remittance.

14. **PAYMENT.** Unless longer terms are shown on the Order Form, payment terms are net sixty (60) days calculated from the latest of (i) receipt by KCI of undisputed invoice, (ii) conditional acceptance of the Goods and/or services by KCI, or (iii) requested delivery date. KCI may set off against its payments to Seller any amount due from Seller to KCI. KCI reserves the right to withhold, reduce or recover payment of any portion of the Contract Price if Seller fails to pay when due any third parties for labor, materials or other costs incurred by Seller in the performance of any work. Seller's acceptance of that portion of the Contract Price invoiced will constitute a waiver of all claims by Seller with respect to the Goods covered by the invoice.

15. **GOVERNING LAW.** This Purchase Order will be deemed to be entered into in San Antonio, Texas. The validity, interpretation and performance of this Purchase Order will be governed by the laws of the State of Texas. All disputes under this Purchase Order not otherwise resolved between the parties will be resolved in a court of competent jurisdiction in San Antonio. Seller agrees to appear in any such action and hereby consents to the personal jurisdiction of the courts of San Antonio, Texas. No action by Seller against KCI may be brought more than one year after the cause of action arises.

16. **FORCE MAJEURE.** Seller will not be held responsible for failure or delay in shipping nor KCI for failure or delay in accepting Goods if such failure or delay is due to act of God, war, federal or state legislation or any regulations or orders, fire, accident, or other causes beyond their control. In the event of any such excused interference with shipments, Seller will immediately notify KCI and KCI will have the option either to modify the order accordingly or to exercise its right of cancellation under Section 12 above.

17. **ASSIGNMENT.** No part of this Purchase Order may be assigned by either party without the prior written consent of the other, and any purported assignment without consent is void. KCI may cancel this Purchase Order without charge if Seller attempts to make an unauthorized assignment.

18. **SEVERABILITY.** If any provision of this Purchase Order is found unenforceable, the remaining provisions will remain in full force and effect.

19. **WAIVER.** No action or inaction of KCI will waive any rights of KCI for a default or otherwise. No waiver will be effective upon KCI unless specifically made in writing and signed by a duly authorized corporate officer of KCI. In consideration of this Purchase Order, Seller waives and releases KCI from all past claims of Seller against KCI.

20. **RELATIONSHIP OF THE PARTIES.** The parties will be acting as independent contractors. Neither Seller, nor any of the persons furnishing materials or performing work for KCI, are employees of KCI within the meaning of or the application of any Federal or State Unemployment Insurance Laws, or Social Security Laws or any Worker's Compensation, Industrial Accident Laws, or other Industrial or Labor Laws. KCI may issue other contracts in connection with any Goods. Seller will cooperate with other contractors retained by KCI.

21. **COMPLIANCE WITH LAWS.** Seller represents and warrants that, in connection with the production and sale of Good, Seller will comply with all applicable federal, state, municipal, and local laws, orders and regulations affecting Seller's performance hereunder, including, without limitation, (a) all such laws and regulations pertaining to health, safety and environmental standards, (b) all such laws and regulations pertaining to design, manufacture, testing, labeling, and transportation of such goods, and (c) all such laws and regulations pertaining to affirmative action, nondiscrimination, and equal opportunity. Without in any way limiting the generality of the foregoing, Seller specifically agrees to comply with the Toxic Substances Control Act, 15 U.S.C. Sec. 2601 et seq. and the Hazardous Materials Regulations, 49 C.F.R. Parts 172 – 173. Seller further represents and warrants that the Goods to be furnished hereunder will have been or will be produced in compliance with the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. Sec. 201 et seq. Seller will insert a certificate on all invoices stating that the Goods covered by that invoice were produced in compliance with this Act. Seller further agrees to comply with the following regulations, except that Seller will assume the obligations of "Seller" under these regulations.

i. Equal Opportunity – 41 C.R.R. Sec 60-1.4 and Sec. 60-1.8

ii. Affirmative Action for Handicapped Workers – 41 C.F.R. Sec. 70741.4 (only applicable if a Purchase Order is for more than \$25,000)

iii. Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era – 41 C.F.R. Sec. 60-250.4 (only applicable if a Purchase Order is for more than \$10,000)

iv. Utilization of Small Business and Small Disadvantaged Business Concerns – 41 C.F.R. Sec 1-1.1310 (differing sections applicable if, and only if a Purchase Order is for more than \$1,000)