

# **Standard Purchase Order Terms and Conditions**

**May 29, 2009**

The standard terms and conditions of purchase below are included with every purchase order issued by Kitware, Inc. ("Buyer"). All Purchase Orders by Buyer become binding contracts, subject to the terms and conditions hereof, upon confirmation of the Purchase Order or upon the commencement of performance by the Seller (the party accepting the Purchase Order). **ANY CHANGE, ADDITION OR MODIFICATION TO THE PURCHASE ORDER MUST BE AGREED TO IN WRITING BY THE BUYER.** In some circumstances, due to the nature of the goods/services, supplemental terms and conditions of purchase have to be developed. The buyer will assist you in assessing the need for supplemental terms and conditions of purchase.

## **1. Goods and services**

The goods and services described in this Purchase Order (the "PO") are provided by Seller subject to the following terms and conditions. Seller agrees to be bound by and to comply with all such conditions. Other terms and conditions are not binding upon Buyer, unless accepted in writing.

## **2. Purchase price and terms of payment**

Seller agrees to submit an invoice with each shipment showing the Purchase Order number. All invoices should be issued to Kitware Inc., c/o Accounts Payable. All prices shown in the PO are firm and are not subject to adjustment.

## **3. Method of shipment or packing**

Goods are packaged in a manner which assures that they are protected against deterioration and contamination. All goods are delivered to the F.O.B. point specified in the PO. Title to the goods purchased by the Purchase Order remains with the Seller until they are off-loaded at Buyer's facility, or site otherwise specified on the face of this Purchase Order. However, in all cases Seller must bear all risks of loss or damage in transit.

## **4. Overshipment**

Quantities in excess of that shown in this Purchase Order, if rejected, will be returned at Seller's risk and expense. Any excess quantities that the Buyer accepts shall be at the Purchase Order price.

## **5. Inspection and rejection**

The goods and services furnished are exactly as specified in the PO. They are free from all defects in design, workmanship and materials. The goods and services are subject to inspection

and test by Buyer at any time and place. If the goods and services furnished are found to be defective, Buyer may reject them, or require Seller to correct or replace them without charge, or require a reduction in price which is equitable under the circumstances. If Seller is unable or refuses to correct or replace such items within a time deemed reasonable by Buyer, Buyer may terminate this PO in whole or in part. Seller bears all risks as to rejected goods and services. Seller reimburses Buyer for all transportation costs, other related costs incurred, and overpayments in respect of the neglected goods and services.

## **6. Changes**

Buyer may make changes to this PO including to drawings and specifications for specially manufactured goods, place of delivery, by giving notice to Seller. If such changes affect the cost of or the time required for performance of this PO, an equitable adjustment in the price or date of delivery or both will be made. No change by Seller is allowed without written approval of Buyer. Any claim of Seller for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt by Seller of notification of such change. Nothing in this Article excuses Seller from delivering the goods and services described in this PO.

## **7. Maintenance and Operation**

The Seller supplies to Buyer instructions for installation, operation, maintenance and repair of the goods.

## **8. Warranty**

Seller warrants to Buyer that goods supplied under this PO are free from defects in material, workmanship and design, suitable for the purposes intended, in compliance with all applicable specifications, and drawings, and shall be fit for its intended use and service. All goods supplied under this PO shall be free from liens or encumbrance on title. All services are performed in accordance with current, sound and generally accepted industry practices by qualified personnel trained and experienced in the appropriate fields.

## **9. Compliance with laws**

Seller warrants that all goods and services sold hereunder shall have been produced, sold, delivered and furnished in strict compliance with all applicable laws and regulations to which they are subject. Seller shall execute and deliver such documents as may be required to effect or to evidence compliance. All laws and regulations required in agreements of this character are hereby incorporated by this reference.

## **8. Confidentiality**

In the performance of the services, the Seller and its subcontractors, if any, may have access to confidential information (hereinafter referred to as the "Confidential Information") which Buyer must protect from disclosure. The Seller undertakes to hold all of the Confidential Information it receives in strict confidence and neither to disclose or release in any manner such Confidential

Information to any third party nor to use such Confidential Information for any other purpose than the one for which Buyer has disclosed same. The Seller warrants that such employees or subcontractors are obligated to and will hold Confidential Information in strict confidence and to take all reasonable measures to ensure that confidentiality is respected. The Seller shall indemnify and hold harmless Buyer, its officers, directors and employees from and against any and all liabilities, claims, suits, demands, disputes, recourses, damages and expenses including, including reasonable legal fees arising from any and all claims in respect of, or resulting from, the use or the disclosure of Confidential Information by the Seller, its employees or subcontractors.

## **9. Intellectual Property Indemnification**

Seller warrants that there has been no violation or infringement of any copyright, trade name, trademark, patent or related property right, as a result of manufacturing, producing or selling the goods. Seller further agrees to defend, indemnify and hold harmless the Buyer, its officers, agents and employees from all claims, expenses and liabilities arising from any actual or alleged violation or infringement.

## **10. Indemnification**

Seller agrees to indemnify and hold harmless the Buyer from and against all demands, claims, suits, costs of defense, liabilities and other expenses for damage or damage to property or for injury or injuries to or death of any person or persons in any way arising from the furnishing of any goods and services provided under this Purchase Order except liability or damage arising from the sole negligence or willful misconduct of the Buyer, its agents or employees. This indemnification shall be in addition to the warranty obligations of Seller.

## **11. Assignment**

This PO is assignable by Buyer. This PO may not be assigned by Seller without written approval of Buyer. In case such consent is given, Seller remains liable as if no such transfer has been made.

## **12. Time**

Time is of the essence on this Purchase Order, and the Buyer reserves the right to cancel this Purchase Order, or any portion thereof, without penalty in the event that deliveries are not made within the specified time, without liability for deliveries previously made and accepted by the Buyer.

## **13. Default**

A party is in default of its obligations under this PO if any of the following events occur, namely:

- a. such party is adjudged bankrupt or insolvent by a court of competent jurisdiction, or otherwise becomes insolvent, as evidenced by its inability to pay its debts generally as and when they become due; or
- b. such party is in default of its obligations hereunder and fails to cure such default within thirty days of written notice from the other party.

Upon the occurrence of any of the above events, the party not in default may, by written notice to the defaulting party, terminate this PO without prejudice to any other right or remedy available to it at law and without liability for such termination. Neither the Seller nor Buyer shall be liable to the other for indirect damages, for loss of profit or for damages arising from loss of use or production.

### **13. Termination**

The Buyer reserves the right to cancel this Purchase Order or any part thereof without penalty if Seller breaches any of the terms hereof.

This PO may be terminated or suspended by Buyer in whole or in part. Buyer then delivers to the Seller a written notice specifying the extent to which performance and/or the deliveries of goods and services under this PO is terminated and/or suspended and the date upon which such action shall become effective. In the event of such action, Buyer shall pay Seller for the goods and services satisfactorily provided to the effective date of termination or suspension. In this case, Seller may submit a proposal to Buyer for equitable increase in the prices to account for costs of demobilization and direct termination expenses. The termination of this PO shall discharge any further obligations of either party.

### **14. Force Majeure**

Seller shall not be liable for default or delay due to causes beyond Seller's control and without fault or negligence on the part of Seller, provided the Seller gives Buyer prompt notice in writing when any such cause appears likely to delay deliveries and/or performances of services and takes appropriate action to avoid or minimize such delay. If any such default or delay threatens to impair Seller's ability to meet delivery requirements for its material, supplies and services, Buyer shall have the right, without any liability to Seller, to cancel the portion or portions of this PO so affected. Buyer shall not be liable for default or delay in the performance of its obligations due to cause beyond its control.

### **15. Jurisdiction and Governing Law**

For any suit or proceeding to enforce the provisions of this Agreement, Seller irrevocably consents to the jurisdiction of the Courts of the State of New York. Furthermore Seller agrees that this Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of New York, without giving effect to its principles of conflict of law.