

Vendor Terms & Conditions

These Vendor Terms and Conditions (“Terms”) apply to all purchases of goods and services (“Deliverables”) by Key Code Media, Inc. (“Company”) from the undersigned vendor or supplier (“Vendor”).

1. Orders and Acceptance of Purchase Orders

Purchase orders issued by Company and delivered to Vendor, orally or in writing, constitute offers to purchase. Vendor shall be deemed to have accepted these Terms if Vendor (i) confirms in writing the purchase order; (ii) commences performance; (iii) ships the Deliverables; or (iv) accepts full or partial payment of the purchase order.

All additional, conflicting, or modified terms proposed by Vendor in any given invoice, acknowledgment, or communication are expressly rejected and shall not be binding unless agreed to in writing by Company.

2. Delivery and Risk of Loss

Vendor agrees to deliver Deliverables in strict accordance with the schedule stated in Company’s purchase order. *Time is of the essence.* Vendor shall provide all tracking and packing slips, and all necessary and relevant shipping documents within each shipment.

Title and risk of loss shall transfer to Company only upon delivery and acceptance of the Deliverables to the destination designated by Company in its purchase order. Vendor shall bear all risk of loss and damage to the Deliverables until after Company has accepted the same.

3. Inspection & Acceptance of Tangible Deliverables

All Deliverables are subject to Company’s inspection and testing after delivery. Company shall have a minimum of thirty (30) days from the date of delivery to conduct said inspection. If Company has not given written confirmation by the last day of the thirty-day inspection time frame, Vendor can constitute Company’s silence as acceptance. Deliverables that fail to meet the requested specifications indicated in Company’s purchase order may be refused and rejected by Company. Upon Company’s rejection of non-conforming Deliverables and at Company’s option, Vendor shall promptly replace, repair, apply full credit towards Company’s account, or issue a refund for the non-conforming Deliverables at Vendor’s expense.

Upon the expiration of the thirty (30) day inspection period, absent any refusal or rejection of any Deliverables by Company, the Deliverables shall be deemed accepted by Company. Acceptance of Deliverables shall not relieve Vendor of any warranty obligations or preclude Company from making subsequent claims for non-conformance.

4. Breaches & Remedies

Vendor shall be deemed to be in breach of these Terms, if Deliverables are not timely delivered or if they fail to conform to the purchase order; or if Vendor fails to abide by, or perform in accordance with, these Terms, becomes insolvent, files for bankruptcy, ceases operations, or engages in misconduct potentially harmful to Company's business or reputation.

Upon Vendor's breach, Company may (1) withhold payments due; (2) cancel all or part of the purchase order without incurring liability; (3) refuse delivery; (4) return the Deliverables; and/or (5) secure substitute Deliverables from a third party.

Vendor shall be fully and solely responsible for all additional costs and expenses incurred by Company arising from or related to the enforcement of its rights under this section. Reimbursement or payment of any such costs and expenses shall be made by Vendor within 10 days of Company's request for payment.

5. Pricing and Payment

Total prices, including all applicable federal, state, and local taxes, duties, tariffs, and other governmental charges, shall be as set forth in Company's purchase order and shall not be subject to any increase, unless otherwise agreed to in writing by Company. Vendor shall not apply any surcharge, handling, or additional fee unless Company previously agrees to these in writing.

All prepayments or deposits must be detailed in writing and agreed to by both parties prior to Vendor's acceptance of the purchase order.

At Vendor's option, Company shall pay by paper check under its Positive Pay fraud protection program, or by credit card. Unless otherwise agreed to in writing, Vendor agrees and understands that Company will not issue payments via ACH, wire, or any other electronic transfer methods.

Vendor may request that Company make payments with an alternative payment method by sending such request via electronic mail to accountspayable@keycodemedia.com. Vendor shall be fully and solely responsible for any loss to either party arising from or related to fraudulent and/or unauthorized payment instruction changes or payments originating from Vendor's system.

Unless stated otherwise in the subject purchase order, Company shall pay undisputed invoices on a Net 30 term measured from the later of (i) Company's receipt of a proper invoice from Vendor or (ii) Company's acceptance of the Deliverables.

6. RMA Return Policy

To support Company's commitments to its clients, Vendor hereby agrees to accept and honor all Company-issued Return Merchandise Authorization ("RMA") requests subject to the following terms and conditions.

Return, Modification, & Cancellation Window: Company shall submit to Vendor all RMAs, order modifications and order cancellations within thirty (30) days from the date of Company's vendor invoice.

Condition of Deliverables: Returned Deliverables may be opened, tested, or installed for Company's customer's evaluation or integration purposes, provided that the Deliverables remain in substantially the same condition as received by Company or Company's customer and are not damaged beyond ordinary handling.

Approval Time by Vendor: Vendor shall approve or deny all RMA authorizations and order modifications or cancellations within five (5) business days of receiving Company's request. Vendor shall not unreasonably deny or delay acceptance of RMAs and Deliverables.

Restocking and Handling Fees: All restocking or handling fees shall be preapproved by Company in writing.

Shipping Fees: Vendor shall coordinate and bear responsibility for return shipping arrangements unless otherwise agreed by the parties.

Replacement, Credit, or Refund: Within thirty (30) days of receipt of returned Deliverables, Vendor shall issue a credit memo applying full credit toward Company's account, ship a replacement, or issue a full refund unless otherwise agreed in writing.

7. Warranties

Vendor expressly represents and warrants that all Deliverables: (i) are free from defects in design, material, and workmanship; (ii) conform strictly to all specifications, drawings, and requirements provided by Company; (iii) are fit and safe for their intended purpose; (iv) are new, not refurbished or reconditioned (unless expressly agreed to by Company); and (v) do not infringe upon or misappropriate any third-party intellectual property rights.

Vendor represents and warrants that all goods and services comply with: (i) all applicable laws, regulations, and safety standards (including environmental and labor laws); (ii) U.S. export/import regulations; and (iii) conflict mineral, RoHS, and environmental compliance where applicable.

Vendor warrants and represents that services, if any, will be performed in a professional and workmanlike manner.

These warranties are in addition to, and not in lieu of, any warranties implied by law, provided by Vendor, or otherwise applicable. Warranties shall survive inspection, acceptance, and payment, and shall extend to Company, its affiliates, and their respective customers.

8. Compliance with Laws

Vendor shall comply with all applicable laws, regulations, and ordinances, including but not limited to those relating to labor and employment, workplace safety, environmental protection, data privacy, and U.S. export control and trade compliance. Vendor represents and warrants that Deliverables will not be produced or supplied using child or forced labor, or by implementing any other unlawful or unethical business practices.

9. Insurance and Indemnification

Vendor shall maintain insurance coverage consistent with industry standards, including but not limited to workers' compensation, commercial general liability, automobile liability, and product liability insurance, with limits in conformity with Exhibit A attached hereto and incorporated herein by reference. Certificates of insurance shall be provided to Company upon request.

Vendor shall maintain Cyber Liability or Crime coverage with minimum limits of \$250,000 per event, including social engineering and funds-transfer fraud. Such policies shall be endorsed to waive subrogation in favor of Company. Certificates of insurance shall be provided upon request.

Vendor shall indemnify, defend, and hold harmless Company, its affiliates, officers, directors, employees, and agents from and against all claims, losses, damages, liabilities, costs, and expenses (including but not limited to attorneys' fees) arising from or relating to: (i) Vendor's breach of these Terms; (ii) defective or non-conforming Deliverables; (iii) Vendor's negligence, willful misconduct, or failure to comply with applicable laws; (iv) unauthorized, compromised or fraudulent payment instructions or breaches to any of Vendor's systems; or (v) infringement or misappropriation of any third-party intellectual property rights. Vendor's duty to defend shall be immediate upon receipt of notice by Company of any such claim.

10. Early Termination

Subject to a 30-day written notice, and without cause, Company may terminate any purchase order, in whole or in part. Upon enforcing its early termination right, Company's sole liability shall be to pay Vendor only for Deliverables accepted by Company prior to the date of the Company's early termination notice.

11. Limitation of Liability

Company shall not be liable to Vendor for any indirect, incidental, special, or consequential damages, including but not limited to loss of profits or business opportunities arising from or related to any purchase order subject to these Terms.

12. Confidentiality

Vendor shall treat as strictly confidential all non-public information of Company, including without limitation business plans, technical data, pricing, and customer information, that Vendor receives, accesses, learns, or otherwise becomes aware of in connection with the parties' relationship, these Terms, or any purchase orders (collectively, "Confidential Information"). Vendor may use Confidential Information solely as reasonably necessary to perform its obligations under these Terms and shall not disclose such Confidential Information to any third party without Company's prior written consent, except to Vendor's employees or contractors who have a need to know and are bound by confidentiality obligations no less protective than those herein.

Vendor may disclose Confidential Information if required by law or court order, provided Vendor gives prompt notice to Company and cooperates in seeking confidential treatment prior to disclosing the Confidential Information.

Vendor's confidentiality obligations shall survive termination or expiration of these Terms for so long as the Confidential Information remains confidential. Vendor acknowledges that unauthorized disclosure may cause irreparable harm and agrees that Company shall be entitled to injunctive relief in addition to any other remedies.

13. Intellectual Property

All designs, drawings, software, specifications, and other materials furnished by Company shall remain the exclusive property of Company. Except as expressly provided herein, Vendor retains all right, title, and interest in its pre-existing and independently developed intellectual property. To the extent any Vendor-owned or third-party intellectual property is incorporated in or necessary to use the Deliverables provided subject to these Terms, Vendor hereby grants Company a royalty-free, perpetual, irrevocable, non-exclusive, worldwide license, with the right to use, reproduce, modify, and authorize third parties to use, such intellectual property solely as necessary to use, maintain, support, and receive the benefit of the Deliverables. This license shall survive expiration or termination of these Terms and all purchase orders subject to it.

14. Governing Law and Disputes

These Terms shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law principles. Any dispute arising out of or relating to these Terms shall be brought exclusively in the state courts located in Los Angeles County, California, or the federal courts for the Central District of California, and the parties hereby consent to the personal jurisdiction and venue of such courts. Each party will adhere to mutually agreeable mediation.

15. Entirety of Agreement

These Terms, together with the applicable purchase order(s), constitute the entire agreement between Company and Vendor and supersede all prior or contemporaneous negotiations, understandings, agreements, and representations whether written or oral relating to the subject matter.

These Terms may only be amended by a written instrument signed by both parties.

16. Non-Waiver

Neither party's failure, on one or more occasions, to enforce any of the provisions herein or to exercise any right or privilege hereunder shall constitute a waiver of any such provision, right, or privilege hereunder or of any subsequent breach or default of a similar nature.

17. Assignments

Vendor shall not assign or subcontract its obligations under these Terms without Company's prior written consent. Any assignment made in violation of this requirement shall be void and invalid. At its sole discretion, Company may assign its rights and benefits under these Terms in whole or in part without Vendor's consent.

18. Force Majeure

Neither party shall be liable for any delay or failure to fulfill any obligation under this Terms or any subject purchase order as a result of any event and/or circumstance beyond a party's reasonable control, including, but not limited to: acts of God, such as flood, extreme weather, fire, and/or a natural calamity, terrorism, any moratorium, law, order, regulation, action or inaction of any governmental entity or civil or military authority, power or utility failures, fiber or cable cuts caused by third parties, unavailability of rights-of-way, national emergencies, insurrection, vandalism, riots, wars, strikes, lock-outs, work stoppages or other labor difficulties, pole hits, or material shortages ("Force Majeure Event").

19. Severability

If any part of these Terms or purchase orders subject to this instrument are determined to be invalid or unenforceable by a court of competent jurisdiction, said part shall be ineffective only as to the extent of such invalidity or unenforceability, without in any way affecting the remaining terms and conditions of this document or the purchase order(s) subject hereto. The remainder of these Terms shall continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the parties. The parties shall replace the severed provision with a provision that reflects the initial intention of the parties.

20. Notices

Unless elsewhere stated, all notices, requests, or communications may be transmitted via email.

EXHIBIT A

VENDOR'S INSURANCE REQUIREMENTS

A. Vendor must secure and maintain throughout the entire duration of this Agreement, at its sole cost and expense, the following types of insurance with limits of coverage at no less than those set forth below.

1. Workers' Compensation Insurance Policy (or its equivalent in the country in which it operates), including Employers' Liability Insurance, in compliance with the statutes or provincial laws where the project is set to take place. The policy must cover employees, volunteers, temporary workers, leased workers, and independent contractors when there is a legal requirement to provide coverage. The minimum coverage limits for this policy shall be:

\$1,000,000 Per Accident
\$1,000,000 Per Employee - Disease
\$1,000,000 Policy Limit - Disease

2. Commercial General Liability Insurance Policy providing coverage for bodily injury, property damage, and personal and advertising injury including contractual liability and products/completed operations liability coverage with minimum limits of:

\$1,000,000 Per Occurrence - Bodily Injury/Property Damage
\$1,000,000 Per Occurrence - Personal & Advertising Injury
\$2,000,000 General Aggregate
\$4,000,000 Products/Completed Operations Aggregate.

The policy must be written so that the cost of defense is outside (in addition to) the limits of liability. Coverage must be primary and non-contributory and apply on a per-location aggregate basis where applicable.

3. All-Risk Property Insurance (Including Deliverables and Installation). Vendor shall maintain All-Risk Property Insurance on a full replacement cost basis covering: All Deliverables listed in the SOW; any tools, equipment, or materials (whether owned, leased, rented, or borrowed) used or stored off-site for the Project; Deliverables during transit and installation (including inland marine or equivalent coverage); such insurance shall include a waiver of subrogation in favor of Company and all Additional Insureds. Proof of such insurance must be provided to Company upon request.

The policy language must define or utilize similar language to allow an interpretation of the term "Occurrence" in conformity with the following: any circumstance where a defect or deficiency in "Your Work" results in property, bodily, personal and/or advertising damage so long as the damage was not intended by you, when "Your Work" was performed pursuant to this Agreement.

Products completed/operations insurance shall be maintained for a minimum period of six (6) years after final payment or for the period of time dictated by the applicable statute of repose, whichever is longer. Vendor hereby agrees and promises to provide annual evidence of coverage to Company during the aforementioned period.

4. Commercial Automobile Liability Insurance Policy covering owned, non-owned, leased or hired autos with a minimum combined single limit of:
\$1,000,000 Per Accident
5. Umbrella Liability Insurance Policy with a minimum limit of:
\$3,000,000 Per Occurrence

All umbrella or excess liability insurance policies must be issued on a “follow form” coverage. These must also provide that the coverage afforded to the Additional Insureds defined below is primary and non-contributory to any other insurance, regardless of kind, afforded to or maintained by the Additional Insureds and shall be subject to use to meet the requirements. These policies shall have the following or similar language necessary to convey or allow for an interpretation of the policies in conformity with the language below:

Endorsement - Excess Liability Policy, Priority of Coverage – THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY. Any entity qualifying as an additional insured on the insurance stated in the schedule of the underlying insurance shall be an additional insured on this policy. As respects the coverage afforded to any additional insured this insurance shall apply immediately upon exhaustion of the insurance stated in the schedule of the underlying insurance. This insurance shall apply before any other insurance available to the additional insured, on which the additional insured is a named insured, whether such other insurance is primary, excess, contingent, or on any other basis, and the policy holder (herein Vendor) shall not under any circumstance seek contribution from such other insurance(s) of the additional insured. Vendor shall, by specific endorsement to its umbrella/excess liability policy, ensure that vertical exhaustion is enforced as it is the specific intent of the Parties that Vendor procures the umbrella/excess carrier’s policy to waive and forego any viable “horizontal exhaustion” right it may claim in regard to any insurance any Additional Insured might carry for its own benefit or on the behalf of other Indemnitees.

If the inclusion of this language or a similar one is not possible in the subject policy, Vendor hereby agrees to be bound by this endorsement as it pertains to these policies.

All insurance policies must be issued by an admitted insurance carrier with an A.M. Best rating of A-, VIII, or better, unless prior written consent is provided by Company.

Company and all Additional Insureds as identified herein must be named as additional insureds in Vendor’s Commercial General Liability, Commercial Automobile Liability and Umbrella Liability policies. The additional insured endorsements shall be made on a form at least as broad as ISO Form CG 20 10 07 04 (for ongoing operations work) together with ISO Form CG 20 37 07

04 (for completed operations work), or the equivalent ISO Forms. The coverage provided to the Additional Insureds shall be at least as broad as the coverage provided to the first named insured. The additional insured status must be provided regardless of the nature of the relationship between the parties.

Vendor shall also ensure that all Commercial General Liability, Auto Liability, and Umbrella/Excess Liability policies include a waiver of subrogation in favor of Company and all Additional Insureds, matching the indemnity requirements of this Agreement.

All liability insurance policies must provide Cross Liability coverage (separation of insureds or severability of interest provisions). Additional insured coverage shall be extended to include products' completed operations coverage. Further, coverage for the Additional Insureds shall apply on a primary and non-contributory basis irrespective of any other insurance, whether collectible or not. The Commercial General Liability policy shall not include any exclusions or limitations for: (1) third party-over actions; (2) communicable disease, including but not limited to COVID-19, coronavirus or other related or similar illnesses or conditions; or (3) claims by employees of any of Vendor's contractors, subcontractors or independent contractors. No policy shall contain a self-insured retention. No policy shall contain a deductible of more than \$25,000. All deductibles shall be the sole responsibility of the Vendor and shall not apply to the Company.

All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, Company shall receive at least thirty (30) days written notice thereof from the insurer. Prior to commencing performance, Vendor shall submit to Company an endorsement to the policy confirming that such notice will be given and memorializing the insurers' agreement to provide said notice. Vendor shall also deliver to Company all certificates of insurance evidencing full compliance with this exhibit prior to the commencement of performance and annually at least ten (10) days prior to the expiration date of each such required policy.

Certificates of insurance shall be delivered electronically, when possible, and identifying the Certificate Holder as follows:

Key Code Media, Inc.
270 S. Flower Street
Burbank, CA 91502

Vendor shall promptly provide Company with copies of its insurance policies and endorsements upon request. If any of the required policies are written on a claim made basis, Vendor shall maintain such coverage for a period of six (6) years after final acceptance by Company of Vendor's performance and Vendor shall provide evidence of such coverage on an annual basis throughout the six (6) year period. The insurance requirements set forth herein shall in no way modify, reduce, or limit the indemnification hereby agreed to by Vendor. Any actions, errors or omissions that may invalidate coverage for Vendor shall not invalidate or prohibit coverage available to the Additional Insureds. Receipt by the Company of a certificate of insurance, endorsement or insurance policy which is more restrictive than the requirements herein stated shall not be construed as a waiver, modification, or implied or verbal agreement to modify the insurance requirements delineated above.

Company reserves the right to amend all requirements or policy limits stated herein and to require Vendor's procurement of additional policies at any given time throughout the duration of this Agreement.

- B. Vendor shall monitor each subcontractor's insurance and require them to secure and maintain commercially appropriate types and limits of insurance based on the scope and nature of the contracted work. Vendor shall also require its subcontractors to name the Additional Insureds herein as additional insureds on the subcontractors' Commercial General Liability, Commercial Automobile and Umbrella Liability policies. Moreover, Vendor shall require that its subcontractor's Umbrella Liability policies apply on a primary and non-contributory basis as to any insurance available to the Additional Insureds. Lastly Vendor shall require that the subcontractors' umbrella/excess policies include the endorsement required in section A of this Exhibit or an equivalent endorsement that requires the subcontractors' umbrella/excess carriers to waive and forego any viable "horizontal exhaustion" rights as against the Additional Insureds.

If at any time throughout this Agreement Vendor fails to maintain any required insurance, Company may, but is not obligated to, procure the missing insurance. Upon this occurrence, Vendor must immediately reimburse Company for such expense. In the alternative, Company may treat such failure as a material breach by Vendor and terminate the Agreement.

- C. Vendor hereby agrees and promises not to keep any articles or goods that are prohibited or that would void Company or Vendor's fire or extended coverage policy at the Work Site. If Vendor is in violation of this clause, Vendor will be given reasonable time to rectify the situation and cure the breach. If as a result of Vendor's failure to cure such a breach Company's insurance premium is increased, Vendor shall pay to Company the insurance premium increase amount.
- D. Vendor hereby agrees and promises to cooperate with Company in all respects necessary, including but not limited to executing and delivering to insurers proofs of loss and/or any other document as may be requested, to submit and process any claim and collect the insurance proceeds.
- E. Vendor shall give prompt notice to the Company in case of a fire, an accident or any other emergency occurring at the Work Site.