



Kyndryl standard purchase order terms and conditions

August 2024

Agreement documents: This Purchase Order (PO), any attachments made as part of this PO, and any documents or clauses incorporated by reference into this PO are the sole and exclusive agreement of Buyer and Supplier for the products and services in this PO, and 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. Terms contained in the Supplier's response to, or acknowledgment or acceptance of, this PO, if any, that are additional to, or different from, the terms set forth herein (which terms would constitute a counter-offer by Supplier) are specifically rejected by Buyer. Buyer's offer to purchase as provided in this PO may not be modified by Supplier counter-offers. Notwithstanding the foregoing, if this PO is deemed an acceptance by Buyer of a Supplier offer or counter-offer, then such acceptance is expressly made conditional on Supplier's assent to all of the terms of this PO, including those that are additional to, or different from, the terms of Supplier's offer or counter-offer. The terms and conditions of this PO are subject to change without notice.

Prices: If the PO does not include pricing, the price for the products or services provided hereunder will be Supplier's lowest prevailing market price for such products or services. Supplier is not entitled to reimbursement of expenses incurred in connection with fulfilling this PO, except as otherwise agreed in writing by Buyer.

Taxes: Supplier is responsible for and will pay all applicable taxes, charges, fees, levies, or other assessments imposed or collected by any governmental entity (or political subdivision thereof) worldwide on sales of products or services, or sales, use, transfer, goods, and services or value added tax or any other duties or fees related to any payment by Buyer to Supplier for products and/or services provided to Buyer under or pursuant to this PO. 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 owed. Buyer shall withhold taxes as required under applicable law on payments made to Supplier hereunder and shall be required to remit to Supplier only the net proceeds thereof.

Terms of payment and acceptance: Unless otherwise mandated by local law, the terms of payment are net 90 days after receipt of Supplier's valid invoice or after receipt of the products or services, whichever is later. Payment will not be deemed acceptance of products or services, and such products or services will be subject to inspection, test, acceptance or rejection. At Buyer's option, Buyer may reject products or services that do not comply with Buyer's acceptance criteria for a refund, or require Supplier to repair or replace such products or re-perform such services without charge and in a timely manner. Buyer may return non-conforming products to Supplier at Supplier's expense.



Termination: This PO may be terminated by Buyer with or without cause. If Buyer terminates without cause, Buyer will pay Supplier for Supplier's actual and reasonable expenses for work that has been satisfactorily completed as of the date of termination, but in no event will such payment exceed the agreed upon prices.

Imports and exports: Supplier is the importer and exporter of record, unless Buyer expressly agrees to serve as the importer or exporter. Supplier will comply with all applicable import and export laws, regulations and administrative requirements, including but not limited to the payment of all associated duties, taxes and maintenance and all applicable laws, regulations, certifications and registrations associated with the import or export of Supplier's products including but not limited to product safety, electromagnetic compatibility, telecommunications, product take-back/recycling and environmental requirements. Upon Buyer request, Supplier will promptly provide all information necessary to export and import products, including, as applicable, the Export Control Classification Numbers (ECCN) and subheadings or munitions list category number, certification and test results relating to the products or services and any other and will notify Buyer in writing of any changes to the information provided by Supplier to export and import products. Supplier's billing invoice must be consistent with the invoice used by Supplier to clear goods for importation. When Buyer agrees to serve as the importer or exporter, Supplier will provide promptly to Buyer any information, documentation, certification and test results required for Buyer to comply with applicable import and export laws, regulations and administrative requirements. In all instances, Supplier may not undertake any routed export transactions, as defined in the United States Export Administration Regulations {15 CFR, Part 758.3(b)}, for any US export shipment, or undertake a similar arrangement for any export shipments originating outside of the United States, that name Buyer as a party to such shipments. Shipment terms in all cases are Delivered Duty Paid ("DDP"). Supplier shall retain and discharge all import, export, customs, and insurance obligations.

Packages/transportation: Supplier will comply with: (i) all applicable country of origin marking instructions and all Buyer instructions for exports to Buyer; (ii) all packaging and labeling requirements set out in this PO; and (iii) the transportation routing guidelines in this PO and pursuant to the [Shipping transportation guidelines](#). Default minimum requirements for (i) and (ii) are found under [Instructions for cross-border shipments to Kyndryl](#)

Social and environmental management system: Supplier will comply with the [Social and environmental management system supplier requirements](#).

Risk of loss; delivery: Title and risk of loss remain with Supplier until products purchased under this PO have been delivered to Buyer at the location specified in the PO and accepted by Buyer. For Supplier's delivery of products, time is 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;
- ii. it is knowledgeable with, and is and will remain in full compliance with (at its own expense) all laws, rules and regulations that are, or may become, applicable in the provision of products and services hereunder including, without limitation,
 - a. labor and employment laws,
 - b. applicable export and import laws, regulations, orders, and policies, including, but not limited to:



- i. 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);
- ii. being knowledgeable with applicable supply chain security recommendations issued by applicable governments and industry standards organizations and making best efforts to comply with such recommendations;
- iii. agreeing not to transfer to Buyer any hardware, software, technical data or services controlled under the U.S. International Traffic in Arms Regulations ("ITAR");
- c. environmental laws, regulations or ordinances governing product environmental and energy characteristics, product content prohibitions, product end-of-life management/product take-back, and/or product safety related to Buyer's transport, import, export, distribution, sale and/or use of Supplier's products as, or as part of, a Buyer product;
- d. anti-corruption laws; and
- e. laws and regulations regarding data privacy and data protection;
- iii. Any information it discloses to Buyer does not violate any law, regulation or ordinance of any applicable Federal, Provincial governmental authority regarding the integrity of the procurement process and as not been obtained from any Government classified documents or other classified information sources
- iv. its performance under this PO will not result in a breach of any other agreements or contracts to which it is a party;
- iii. it is not now employed by the Federal or any other Government , and further, it is not consulting with any agency or other representative of the Federal Government, or with any other third party, on matters which conflict or appear to conflict with the subject matter of this PO;
- iv. it will require that each individual working for Supplier hereunder obtains a copy of Buyer's Business Conduct Guidelines ("Guidelines"), and Supplier and Supplier's employees working hereunder will review the Guidelines and assist Buyer in complying with the Guidelines;
- v. (A) neither Supplier, nor any of Supplier's employees or others whom Supplier will employ (as authorized by Buyer), will make any communication with any employee of a Federal Agency, a Member of Parliament or Senate or any other government employee with the intent to influence or attempt to influence the award of contracts to Buyer; (B) it will not engage in lobbying for Buyer within the meaning of the Lobbying Act (R.S.C., 1985, c.44 (4th Supp)); (C) it, and all of its employees or others engaged by Supplier are authorized by Buyer to perform services under this PO, are familiar with, and agree to comply with and assist Buyer in complying with any reporting obligations of Buyer;
- vi. no claim, lien, or action exists or is threatened against Supplier that would interfere with Buyer's rights under this PO;
- vii. products and services do not infringe any privacy, publicity, reputation or intellectual property right of a third party;
- viii. (A) 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) or services and (B) it and the products and services comply fully with all licensing agreements applicable to such third party or open source code;
- ix. all authors have waived all their rights to the products and services' integrity and to be associated with them as authors or, where applicable, 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;
- x. products are free from defects in design and free from defects in material and workmanship;
- xi. products are safe for use consistent with and will comply with the warranties, specifications and requirements of this PO;



- xii. products do not contain harmful code and Supplier will not engage in electronic self-help;
- xiii. products do not contain (and products are not manufactured using) ozone depleting substances known as halons, chlorofluorocarbons, hydro chlorofluorocarbons, methyl chloroform and carbon tetrachloride as defined by the Montreal Protocol and as specified by Buyer in writing;
- xiv. products are new and do not contain used or reconditioned parts unless Buyer agrees otherwise in writing;
- xv. it will not use, disclose, or transfer across borders any information that may identify an individual ("Personal Data") that is processed for or on behalf of Buyer, except when handled in accordance with applicable Canadian data protection legislation and only when used for the purposes for which it was made available;
- xvi. it will not offer, promise or make, directly or indirectly any payment for the purpose of improperly influencing (or inducing anyone to influence) decisions or actions of any official of a government controlled entity or public international organization.
- xvii. (A) it will implement and maintain appropriate technical and organizational measures and other protections for Personal Data (including, without limitation, not loading any Personal Data provided to Supplier on (a) any laptop computers or (b) any portable storage media that can be removed from Supplier's premises unless each case (i) such data has been encrypted and (ii) such data is loaded onto portable storage media solely for the purpose of moving such data to off-site storage), (B) it will report to Buyer any breaches of security of Personal Data immediately after discovery ("Security Incident"), (C) it will cooperate fully with Buyer in investigating any Security Incidents, (D) it will cooperate fully with Buyer's requests for access to, correction of, and destruction of Personal Data in Supplier's possession, and (E) it will comply with all instructions or other requirements provided or issued by Buyer from time to time relating to Personal Data;
- 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;
- xix. it will not, nor will it authorize or permit Supplier personnel to, disclose, export or re-export any of Buyer's information, or any process, or product that is produced under this PO, without prior notification and compliance with all applicable Federal, State, Provincial and local laws, regulations and ordinances, including U.S. export control regulations.

Intellectual property: Supplier grants Buyer all rights and licenses necessary for Buyer and its affiliates to use, transfer, pass-through, and sell the products and services and to exercise the rights granted under this PO. **Ownership of products:** Except for products consisting of software (which is licensed as provided under Intellectual Property above), all work product developed by Supplier and provided to Buyer under this PO are and shall remain the personal property of Buyer.

Indemnification: Supplier agrees to defend, hold harmless, and indemnify Buyer and its affiliates from any claim (including without limitation costs, expenses and attorneys fees) arising from (a) claims that any product infringes any intellectual property rights, (b) the failure of Supplier to comply with its warranties and obligations under this PO or (c) a Security Incident. 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 product so it is non-infringing and in compliance with this PO; (iii) replace the product with non-infringing ones that comply with this PO; or (iv) accept the return or cancellation of the infringing product and refund any amount paid.



Limitation of liability: To the extent permitted by local law, in no event will Buyer or its affiliates be liable for any lost revenues, lost profits, incidental, indirect, consequential, special or punitive damages. In no event shall Buyer's liability to Supplier exceed the total amount of fees actually paid by Buyer to Supplier hereunder.

Assignment: Supplier will not assign its rights or subcontract its duties without Buyer'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. If the parties intend to exchange confidential information, such exchanges shall be made under a separate written confidentiality agreement. For any Personal Data relating to Supplier's personnel that Supplier provides to Buyer, Supplier will obtain the informed consent of such personnel to release the information to Buyer and to allow Buyer to use, disclose, and transmit such information on a worldwide basis among Buyer and its affiliates 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.

Record Keeping and Audit Rights: Supplier will maintain (and subject to applicable law provide to Buyer upon request) relevant business, technical and accounting records i) to support Supplier's invoices ii) show proof of required permits and professional licenses and iii) to demonstrate compliance with Supplier's performance obligations under this PO, 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. Upon Buyer's notice, Buyer may, at no charge to Buyer, audit Supplier's compliance with its obligations under this PO, including verifying compliance with applicable laws and the protection and integrity of Buyer Materials. In connection with an audit, 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 or any subcontractor is providing or has provided services or deliverables under this PO and to all systems, data and business, technical and accounting records relating to Supplier's (and any subcontractor's) compliance with its obligations. Supplier shall provide its full cooperation in any such audit, including by designating a focal point to support an audit and, if required by Buyer, promptly securing the rights for Buyer to directly request from any subcontractor, and for the subcontractor to promptly provide to Buyer, access to such systems, data and records relating to the work performed by such subcontractor.

Insurance: Supplier shall obtain and maintain all applicable and appropriate insurance, (including, without limitation, business, workers' compensation, auto, errors and omissions, professional and commercial general and liability insurance) in an amount consistent with Supplier's industry practice. Each policy shall name Buyer as a loss payee or additional insured, as appropriate.



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, 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 provisions, 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: This PO is governed by the laws of the Province of Ontario and the laws of Canada applicable therein.

Supplier and supplier personnel: Any services performed by Supplier shall be performed as an independent contractor, and Supplier is solely liable for applicable payroll or income taxes of its 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 shall be subject to Buyer approval;
4. 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;
5. Supplier shall provide only personnel that are Canadian citizens or permanent residents. Any exception (i.e. work permit, personnel from outside Canada) must be approved by Buyer in writing before the engagement;
6. 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 its customer;
7. remove from any assignment under this PO, at Buyer's request in its sole discretion, any Supplier personnel;
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; and
9. upon Buyer's request, provide documentation to verify compliance with this Section titled "Supplier and Supplier personnel."

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 non-medical reasons), alcoholic beverages or cannabis 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;
4. familiarize themselves and will comply with the Social and environmental management system supplier requirements.

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 identity and provide contact information (which shall be updated by Supplier as necessary) for all supervisor(s) for its personnel; and

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, time sheets for any Supplier personnel. If Buyer should review, sign, and/or submit time sheets 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 time sheets, nor create any other commitment or obligation on the part of Buyer to Supplier or Supplier personnel.

Criminal background checks: Supplier represents and warrants that Supplier personnel assigned to work under this PO are free of criminal convictions for which a pardon, record suspension or equivalent has not been granted. Exceptions (i.e. requests to provide personnel in spite of criminal conviction) must be approved by Buyer in writing before Supplier personnel being assigned to work under this PO. Any security investigations conducted by Supplier to meet the requirements of this Section shall be at its own expense. All criminal background checks shall be conducted by a reputable firm and in compliance with all applicable legislation including, but not limited to human rights and privacy legislation. Upon request, Supplier will provide Buyer with a document certifying its compliance with this Section.

AODA & Training (Ontario): In cases where required for the provision of services or deliverables, Supplier accesses or provides services to Buyer or its customer(s) located in the Province of Ontario, Canada, Supplier acknowledges and agrees to comply, at its own expense, with all laws and regulations relating to the Accessibility for Ontarians with Disabilities Act, 2005 (the "AODA"). Supplier acknowledges that compliance with Ontario Regulation 429/07, Accessibility Standards for Customer Service ("O. Reg.429/07") under the AODA requires, without limitation, ensuring providing training required under section 6 of O. Reg. 429/07 prior to assigning any Supplier personnel to Buyer. Copies of the Supplier documents required by O. Reg. 429/07 section 6(5) and the Supplier records required by O. Reg. 429/07 section 6(6) shall be made available to Buyer promptly on Buyer's written request.

Business Continuity: Supplier agrees to have and maintain a business continuity plan and business continuity testing procedures, which include but are not limited to the areas of disaster recovery planning and pandemic planning. Supplier agrees to review, update, and test the business continuity plan annually and, upon Buyer's request, Supplier will provide a summary of the business continuity plan and test results. Buyer may, from time to time, provide feedback regarding the plan and requests that Supplier take Buyer's comments into consideration when updating the plan. However, Supplier remains solely responsible for the performance of its responsibilities under the PO and the adequacy of the business continuity plan regardless of whether Buyer has reviewed or commented on the plan.



Conflicts of interest: In the performance of this PO, it is Supplier's responsibility to avoid: (1) any actual or apparent conflict between Supplier's duties or obligations to other parties, including the Federal Government, and such duties and obligations assumed under this PO and (2) disclosure of information which would, or would appear to, violate such duties and obligations to third parties. In the performance of this PO, Supplier shall not make or participate in any marketing calls or contacts with the Federal Government or others which might create the possibility or appearance of a conflict of interest or an actual conflict of interest. Supplier also agrees that, if subsequent to the issuance of this PO, Supplier finds that a conflict, or what may appear to be a conflict, develops because of a relationship created or intended to be created between Supplier or Supplier's agents, or employees and any third party or with an agency or other representative of the Federal Government or any other Government, Supplier shall immediately notify Buyer, and Buyer shall have the right, at its sole discretion, to terminate this PO on notice. Upon exercise of such right of termination, Buyer's only obligation to Supplier shall be to reimburse Supplier for proper services satisfactorily completed as of the date of termination.

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. In the Province of Québec, the parties have agreed to draft this PO in English; *les parties ont consenti à rédiger ce bon de commande en langue anglaise*. No modification, amendment, supplement to, or waiver of this PO by Buyer shall be binding upon the parties unless made in writing duly signed by both parties and specifically referencing this PO. Buyer's failure to exercise any right hereunder shall not operate as a waiver thereof. Both shrinkwrap and clickwrap licenses accompanying any product consisting of software and online Terms of Use or Terms of Service relating to services provided online are null and void, and the terms and conditions of this PO prevail. Supplier shall not use the name or trademarks of Buyer or its affiliates or refer to or identify Buyer or its affiliates in any marketing materials (including without limitation testimonials or customer listings) or press releases without the prior written consent of Buyer.