

Rakuten Kobo Inc.
Standard Terms and Conditions

The following terms and conditions of sale shall apply to any sale of goods and services to Rakuten Kobo Inc. or any of its affiliates ("Purchaser"). Vendor shall be deemed to have full knowledge of the terms and conditions herein and such terms and conditions shall be binding if either the goods or services referred to herein are delivered to Purchaser.

1. **Definitions:** The following terms shall have the following meanings in these Standard Terms and Conditions: "Contract" means, the ultimate agreement in writing governing the performance of the Work, comprised of the Document, the Purchase Order, the Standard Terms and Conditions, and the vendor document submission. "Document" means an initiating document (if any) (including all specifications) from Purchaser advising potential vendors that Purchaser was considering having certain work done or goods and services supplied to Purchaser, and was thus soliciting various submissions from potential vendors including the vendor document submission from Vendor. "Purchase Order" means the purchase order issued by the Purchaser in response to the Vendor Document Submission, authorizing the Work to be performed by the Vendor. "Work" means the work authorized by the Purchaser to be performed or provided pursuant to the Purchase Order.
2. **Prices and Extra Charges:** If the price of any item is not stated in this Contract, the price of such item shall be the lowest prevailing market price. No charges for packing or transportation will be paid unless so stated in this contract, and any such charges must be shown separately on the Vendor's invoice.
3. **Taxes:** Subject to instructions to the contrary which may be contained in the Purchase Order or the Document, the unit prices shall be inclusive of all government sales taxes, customs duties and excise taxes and similar taxes and duties, but shall not include Harmonized Sales Tax ("HST"). All applicable taxes, customs duties and excise taxes, which are included in the unit prices, shall be paid by the Vendor unless otherwise specified. The Purchaser will pay all required amounts of the HST with respect to the Contract, provided that invoices and progress billings issued to the Purchaser shall contain adequate information and supporting documentation as specified in HST legislation and regulations, for purposes of obtaining input tax credits and/or input tax rebates in respect of the HST paid or payable by the Purchaser. Specifically, the Vendor must provide its HST registration number and must separately disclose the amount of HST payable on each billing. The Vendor shall make available any other reasonable information which the Purchaser may require to support claims for HST input credits or rebates.
4. **Discounts:** Accounts are payable with cash discounts as shown dating from the date that the invoice or material is received, whichever should last occur.
5. **Charges:** When freight or express charges are prepaid for Purchaser's account, the invoice must be accompanied by receipted freight bill bearing Purchaser's order number.
6. **Invoice Requirements:** Payments may be deferred at the Purchaser's option, if the following information is not shown on invoices: HST content for each article on a mixed supply; total HST charged; Vendor's HST number; Vendor's name and address; date of invoice; terms of sale; complete product or service description; purchaser's name and ship to location; and purchase order number or contract reference number.
7. **Quantities:** Final quantities for payment of items supplied on a unit price basis shall be based on actual measurements as determined by the Purchaser.
8. **Payment Terms:** Net 45 days. Drafts will not be honoured.
9. **Quality and Inspection:** Without limiting any rights which the Purchaser may have by reason of breach or any implied warranty or condition, or otherwise, the Vendor expressly warrants that each item to be supplied pursuant to this Contract will conform to pertinent drawings, specifications and samples, if any, submitted to, and approved by, the Purchaser in writing, and will be free from defects in material and workmanship. Notwithstanding prior payment, the Purchaser shall have the right to reject and return for credit any item, which, on inspection, does not meet the foregoing warranty, and furthermore, the Purchaser in such event shall have the option to require the replacement or 100% refund of purchase price. Under no circumstances will the Purchaser be responsible for re-stocking charges. The Vendor shall pay incoming and outgoing transportation charges in respect of any items returned by the Purchaser.
10. **Equipment and Materials Furnished by Purchaser:** Title to any tools, dies, jigs, patterns, other equipment and materials, furnished or paid for by the Purchaser shall remain in the Purchaser, but any such equipment or materials, while in the Vendor's possession or control, shall be at the risk of the Vendor who shall maintain the same in good condition and insure the Purchaser's interest therein against loss or damage.
11. **Change Notices:** The Purchaser shall have the right, during the performance of this Contract, to give the Vendor notices of changes in drawings, specifications and samples; quantities; delivery schedules; and shipping and packing instructions. Any such notice given to the Purchaser shall be complied with by the Vendor, and provided a claim for adjustment is made either by the Purchaser in such notice by the Vendor within thirty (30) days of receipt of such notice, the contract price and/or the delivery schedule shall be reviewed by the parties with a view towards making adjustments or revisions.
12. **Technical Data:** The Vendor shall not disclose to third parties, nor use for any purpose other than the performance of this Contract, any technical data or information furnished to it by the Purchaser.
13. **Standard Packaging Requirements:** Commodities shall be securely and properly packaged for shipment according to accepted standard commercial practice, without extra charge for packing materials or containers. The containers remain the property of the Vendor and shall be removed at the Vendor's expense unless otherwise stated in the Document.
14. **Compliance with Laws:** The Vendor shall comply with all applicable laws including without limitation by-laws and federal and provincial laws related to environmental protection, as amended from time to time and shall not do or refrain from doing any action which would reasonably be expected to cause Purchaser to fail to be in compliance with such applicable laws.
15. **Conflicts and Omissions:** The Vendor shall not charge additional amounts based on any apparent error or omission in the Document. Any work not specified which is necessary for the proper performance and completion of any part of the Work contemplated, which may be implied as required by the Document shall, at the sole discretion of the Purchaser, be done by the Vendor as if such work had been specified, shall not be construed as a variation in the Work to be done, and shall not be subject to any claim by the Vendor for additional compensation.
16. **Force Majeure:** In the event that performance of the Contract is made impossible by an occurrence beyond the control of the party affected, then either party shall notify the other in writing and the Purchaser shall either: (i) terminate the Contract forthwith and without any further payments being made, or (ii) authorize the Vendor to continue the performance of the Contract with such adjustments as may be required by the occurrence in question and agreed upon by both parties. In the event that the parties cannot agree upon the aforementioned adjustments, it is agreed by the parties that the Contract shall be terminated. Delays in or failure of performance by either party under the Contract shall not constitute default hereunder or give rise to any claim for damages if caused by occurrences beyond the control of the party affected, including but not limited to, decrees of Governments, acts of God, fires, floods, riots, war, rebellion, sabotage, and atomic or nuclear incidents. Lack of finances, strikes, lockouts, or other concerted acts by workers, delay or failure arising out of the nature of the work being done, or from the normal action of the elements or from any normal difficulties which may be encountered in the performance of the Work, having regard to the nature thereof, shall in no event be deemed to be a cause beyond a party's control. Normal difficulties include, but are not limited to, those related to quality of equipment or delay of delivery of equipment.
17. **Ordering Materials and Equipment:** The Vendor shall furnish evidence satisfactory to the Purchaser of orders in progress for equipment and facilities when required to complete the Work.
18. **Supervision:** The Vendor shall keep the fulfillment of the Contract under its control and shall not assign, transfer or sublet any portion without first obtaining the approval of the Purchaser. The consent of the Purchaser to any such assignment, transfer, or subletting shall not relieve the Vendor of any responsibility for the proper commencement, execution and completion of the operation according to the terms of the Contract. The Vendor shall receive all notices, communication, orders, instructions, or legal service as if it were performing the work with its own equipment and personnel. The Vendor shall exercise competent supervision of Work at all times through a supervisor who has authority to receive on behalf of the Vendor any orders or communications relating to the Work. Any supervisor or worker who is not acceptable to the Purchaser, by reason of incompetence, improper conduct, etc., shall be replaced by the Vendor forthwith.
19. **Vendor Guarantee:** Vendor hereby covenants and warrants: (a) to perform the Contract in accordance with the Contract's terms and conditions; (b) to guarantee the products supplied as part of the Work against defective material or workmanship and to repair and/or replace any damage or marring occasioned in transit; (c) to furnish adequate protection from damage for all Work and to repair damage of any kind, for which its employees are responsible; and (d) to pay for all permits, licenses, approvals, and inspections, and to give all notices and comply with all by-laws and regulations of the Purchaser.
20. **Vendor Indemnity:** The Vendor shall indemnify and save harmless the Purchaser, its officers, employees, contractors and agents from and against any and all claims, all costs and expenses including legal fees and disbursements arising in any way out of the performance or non-performance of the Work except for claims arising solely from the negligence of the Purchaser. Without limiting the generality of the foregoing, this indemnity extends to: (i) all claims for personal injury or death; (ii) all claims in respect of damage to real or personal property, whether public or private; (iii) all claims relating to any infringement of any right or privilege; (iv) all claims relating to infringement of trade secrets, inventions, copyrights, trademarks, or patents and rights thereto used in doing the Work; and (v) all claims relating to liens pursuant to the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.
21. **Damage Claims:** The Vendor shall be liable for the costs of all damages caused by it, its employees, agents, workers, subcontractors or persons employed by it, or under its control, arising from the execution of the work, by reason of the existence, location, condition of Work, or any materials, plant or machinery used thereon or therein, or which may happen by reason of its failure or the failure for those for whom it is responsible, to do or perform any or all of the several acts or things required to be done by them under the Contract, and agrees to indemnify and hold the Purchaser safe and harmless from any such claims by third parties, including but not limited to any legal costs and costs of rectification by the Purchaser in connection therewith on a substantial indemnity basis.
22. **Liquidated Damages:** If the Vendor fails, neglects or refuses at any time to supply all materials or services to the Purchaser as specified within this Contract, then the Purchaser shall be and is hereby empowered forthwith to procure such material elsewhere and to charge all costs for goods and services thereby incurred by it to the Vendor as liquidated damages and to deduct the same from the monies due, or to become due to the Vendor on this or any other contract.
23. **Liens:** Payment for Work shall not become due until the Vendor has filed with the Purchaser, satisfactory proof that all accounts for labour and material furnished to the project by third parties have been paid. If any lien remains unsatisfied after all payments have been made by Purchaser, the Vendor shall refund to the Purchaser all monies that the latter may be compelled to pay in discharging such lien, including all costs incidental thereto. The Purchaser will retain all holdbacks provided for by the *Construction Lien Act*, R.S.O. 1990, c. C.30, as amended.
24. **Right to Retain Monies:** The Purchaser shall have the right to retain, out of monies payable to the Vendor under the Contract the total amount outstanding from time to time of all claims arising out of the default of the Vendor in any of its obligations to the Purchaser, whether pursuant to this or any other agreement between the Vendor and the Purchaser which has not been settled by the Vendor or its insurers. For the purposes of this paragraph, a claim has been settled if payment has been made to and accepted by the claimant and a complete release obtained from it, or the claim has been fully investigated and a complete denial of liability has been made to and accepted by the claimant.
25. **Insurance:** The Vendor and each and every subcontractor is required to maintain such insurance as Purchaser may require in accordance with its customary practices requiring insurance, which information and insurance policies Vendor shall obtain from Purchaser prior to delivery of goods or services hereunder.
26. **Time is of the Essence:** Time is of the essence for the delivery of provision of the goods or services requested herein.
27. **Non-compliance:** This Contract may be terminated immediately upon written or oral notice by the Purchaser upon non-performance of Contract terms. Where there is a question of non-performance, payment in whole or in part may be withheld at the discretion of the Purchaser. This action shall not prevent the Purchaser from taking early payment discounts otherwise applicable.
28. **Notice – Unsatisfactory Performance:** If the Purchaser shall at any time consider the number of workers, quantity of equipment or proper materials or things supplied by the Vendor, to be insufficient for the purpose of the said work, the Purchaser may, in writing, order the Vendor to employ or provide such additional workers, materials, or things as the Purchaser may think necessary. The Purchaser may provide and employ such additional workers, materials, equipment and things respectively and pay such prices as the Purchaser may think proper; and all such amounts paid shall be repaid to the Purchaser by the Vendor on demand by the Purchaser.
29. **Notice:** Any notice, direction, request or document required or permitted to be given by either party to the other in writing shall be deemed to have been sufficiently and effectually given if signed by or on behalf of the party giving the notice and delivered by commercial courier or otherwise, or mailed by prepaid registered post, or equivalent to its address or sent by electronic or facsimile transmission or to such other address or number of which either party hereto may from time to time notify the other in the manner set out in this paragraph. Any such notice, direction, request, document or payment given by mail as aforesaid shall be conclusively deemed to have been given and received after five (5) business days following the mailing thereof to the party to whom it is addressed, or within 2 business days if sent by commercial courier or delivered, or within 1 business day if sent by fax or electronically.
30. **Remedies:** The rights and remedies of the Purchaser as set forth in any provision of the Contract shall not be exclusive and are in addition to any other rights or remedies provided by law or in equity. The exercise of any remedy provided by the Contract does not relieve the Vendor or its sureties from any liability under the Contract. The Purchaser may take such steps as it considers necessary to remedy any breach of the Contract and any damages or expenditures thereby incurred by the Purchaser plus a reasonable allowance for overhead may be collected in the manner provided for in the Document. The failure of either the Purchaser or the Vendor to insist upon strict performance of any provisions of the Contract shall not be construed as a waiver or relinquishment of the right to insist upon strict performance of such provisions on any future occasion.
31. **Governing Law:** The validity and interpretation of this Document, and of each clause and part thereof, shall be governed by substantive law of the Province of Ontario and the laws of Canada applicable therein. The Purchaser and the Vendor specifically exclude the application of the Convention on the International Sale of Goods.
32. **Severability:** Each and every paragraph, section, clause, sub-clause or other component of the Contract is severable one from the other. If a court of competent jurisdiction finds that any one or more paragraphs or parts thereof are null and void, the validity of the remaining paragraphs or parts thereof shall not be affected.
33. **Words:** No change or modifications of the Contract shall be valid unless it is in writing and signed by the Vendor and a senior officer of the Purchaser.