

TERMS AND CONDITIONS

1. Definitions - For the purpose of this Purchase Order (Order), the following definition shall apply.

a. "MATA" shall mean Memphis Area Transit Authority.

b. The term "General Manager" means the General Manager of MATA and the term his duly authorized representative or designee shall mean any person(s) specifically authorized to act for the General Manager. These representatives are authorized to obligate MATA by executing this Order, and any materials, goods and work defined in this Order.

c. Contractor shall mean the Individual, partnership, corporation, organization, or association contracting with MATA to furnish all materials, goods and work defined in this Order.

2. Acceptance of Order - This Order constitutes a binding contract subject to the terms and conditions set forth herein, either upon receipt by MATA of an acknowledgement executed by the Contractor or by performance hereunder.

3. Work Hours - Unless otherwise indicated on the face of this Order, all material and goods furnished, and Work performed on MATA property shall be between the hours of 8:30 a.m. and 4:00 p.m. prevailing local time.

4. Pricing - Unless otherwise specified on the face hereof all prices are firm FOB destination, and are not subject to revision unless otherwise modified in writing.

a. Deliveries made prior to the scheduled delivery date as stated on the face hereof may be accepted by MATA; however, in no instance shall payment be due before the date such would have been due if delivery had been made as scheduled,

b. Quantities in excess of the quantities specified on the face hereof may be returned to the Contractor at the discretion of MATA. All risk and expense for said return shall be borne by the Contractor.

5. Payments and Discounts - The Contractor shall submit the original invoice containing the following information: Order Number, Item Number; description of materials, goods, services, unit prices, and extended amount. Payment will be due to the Contractor within thirty (30) calendar days after receipt of the invoice or acceptance of all materials and goods furnished and work performed whichever is later. In connection with any discount offered, time will be computed as described above for payments. Payment is deemed to be made for the purpose of earning the discount on the date the MATA check is mailed.

6. Inspection - All materials and goods furnished, and work performed pursuant to this order are subject to inspection by MATA prior to acceptance and/or payment by MATA. At MATA's request, the Contractor shall permit a representative of MATA to make inspection of said materials, goods, and work during the manufacturing process. However, such an inspection shall in no way serve as a waiver of or an estoppel to MATA's right to also inspect said materials, goods, and work after completion of the manufacturing process by the Contractor.

All materials, goods or work which, in the opinion of MATA fail to conform to the required specifications of MATA or are

otherwise determined by MATA to be defective may, at the discretion of MATA, be rejected and promptly replaced by the Contractor at the Contractor's risk and expense or be refurbished or completed by MATA, the cost of said refurbishing or completion being deductible from any payments made, due or owing to the Contractor.

7. Title and Risk of Loss - Title to all deliverables covered by the Order shall pass to MATA upon acceptance. Risk of Loss of or damage to all deliverables covered by this Order shall remain with the Contractor until and shall pass to MATA upon acceptance. Notwithstanding the above, the Contractor shall not be liable for loss or damage to deliverables caused by the negligence of officers, agents, or employees of MATA acting within the scope of their employment.

8. Warranties - The Contractor warrants that all materials, goods, or work purchased under this order will be free from defects, will conform to all applicable specifications, and will be suitable for the intended purposes of said materials, goods or work. Neither acceptance of, nor payment for said materials, goods or work shall constitute a waiver or modification of any of the warranties of the contractor or the rights of MATA thereunder. Certification of all testing procedures of the Contractor shall be furnished to MATA at MATA's request.

9. Changes - The General Manager may at any time, by a written order make changes, within the general scope of this Order, in any one or more of the following: In the description of material and goods to be furnished and/or work to be performed; the time (i.e. hours of the day, days of the week, etc.): and place performance thereof if any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this Order and equitable adjustment shall be made in the Order price or delivery schedule, or both, and the Order shall be modified in writing accordingly.

10. Cancellation - MATA shall have the right (in addition to any other remedy granted by law of this Order), with or without cause at any time, to cancel all or any part of the unperformed portion of this Order by written notice and without cost to MATA.

11. Default - MATA by written notice may terminate this Order in whole or in part for failure of the Contractor to perform any part hereof. In the event of termination pursuant to Contractor's default MATA may obtain similar items/services elsewhere and the Contractor shall be liable to MATA for any damages including excess cost resulting from such default.

12. Assignment - The rights and obligations of the Contractor under this Order may not be transferred, assigned subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way without MATA's prior written consent.

13. Indemnification - The Contractor shall indemnify and hold harmless MATA from and against all claims of liability to third parties (including employees of MATA, the Contractor and subcontractors and their employees, associates and other persons not engaged in the work) for injury to or death of such persons, or loss or damage to property arising out of or in connection with the performance of the Work under this Order and use of the premises incident thereto. The Contractor shall

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indemnify and hold harmless MATA from all liabilities, costs, expenses, attorney fees, fines, penalties or damages for any actual or claimed infringements of any patents, Trademarks, copyright or other corresponding right which is related to any part of the work performed under this Order, unless said Infringement originates with a design drawing or specification supplied by MATA. The Contractor's obligation hereunder shall survive any acceptance of the service or payment therefore by MATA.

14. Prohibited Interest - No member, officer, or employee of MATA, or of any other local public body having jurisdiction over MATA, shall during his tenure or for one year thereafter, have any interest direct or indirect in this Order or the proceeds thereof.

15. Interpretation, Jurisdiction and Venue - This Order and the other Order Documents shall be construed and interpreted solely in accordance with the laws of the State of Tennessee. Venue of any suit, right or cause of action arising under or in connection with the Order Documents shall lie exclusively in Shelby County, Tennessee.

16. Entire Agreement - This Order constitutes the entire agreement between the parties and shall supersede all prior offers, negotiations, exceptions, and understandings, whether oral or written, between the parties hereto. No modification of this Order (including any change in the work) shall be binding upon MATA or the Contractor unless evidenced by a written modification issued pursuant to the "Changes" Provision or by other written Order modification hereof as appropriate.