

# Purchase Order General Terms and Conditions

## 1. Acceptance

This purchase order is an offer by Metropolitan Atlanta Rapid Transit Authority ("MARTA") to purchase of the goods ("Goods") or services ("Services") specified, from the party to whom the purchase order is addressed ("Seller") in accordance with and subject to these terms and conditions ("Terms"; together with the terms and conditions on the face of the purchase order, ("Order"). This Order will be deemed accepted by the Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to MARTA any letter, form or other writing or instrument acknowledging acceptance or (b) any performance by Seller under the Order. This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the Order and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Order, unless a separate overriding written contract has been entered into and signed by the parties. The Order expressly limits Seller's acceptance to the terms of the Order. These Terms expressly exclude any of Seller's terms and conditions of sale or any other document issued by Seller in connection with this Order.

## 2. Delivery

Seller shall deliver the Goods and/or perform the Services at the delivery point ("Delivery Location"), and on the date(s) specified in this Order ("Delivery Date). If Seller fails to deliver the Goods or Services in full, on the Delivery Date, MARTA may terminate the

Order immediately and Seller shall indemnify MARTA against any losses, damages, and reasonable costs and expenses attributable to Seller's failure to deliver.

## 3. Inspection

MARTA reserves the right to inspect the Goods before, on or after the Delivery Date. MARTA, at its sole option, may reject all or any portion of the Goods if it determines the Goods are defective or nonconforming. If MARTA requires replacement of the Goods, Seller shall replace the nonconforming Goods at Seller's sole expense within 15 days of being informed of defective or non-conforming goods. If Seller fails to timely deliver replacement Goods, MARTA may, among other remedies set forth herein, replace them with goods from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 7. Any inspection or other action by MARTA under this Section shall not affect Seller's obligations under the Order, and MARTA shall have the right to further inspection after Seller takes remedial action.

## 4. Price, Payment and Invoices

The price of the Goods or Services is the price(s) stated on the face of this Order ("Price(s)"). Seller warrants that prices shown on this Order shall be complete, and no additional charges of any type shall be added without MARTA's express written consent.

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Seller shall invoice MARTA for the Order within thirty (30) days of delivery. Unless otherwise stated in the Order, MARTA shall pay all properly invoiced amounts due to Seller within thirty (30) days after receipt of such invoice, except for any amounts disputed by MARTA. The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under the Order notwithstanding any such dispute. Without prejudice to any other right or remedy, MARTA reserves the right and Seller agrees that MARTA has such right, to set off any amount owing to it by Seller against any amount payable by MARTA to Seller. Payment of an invoice is not evidence or admission that the Goods or Services meet the requirements of the Order.

All prices must be Freight On Board Destination ("FOB"), unloaded as directed by MARTA and assembled unless otherwise specifically indicated. Seller bears the expense and risk of transporting the goods to the specified location and is responsible for ensuring that the delivered goods have not been damaged during transport.

Unless otherwise specified, payment terms are Net thirty (30) from receipt of accurate and complete invoice and upon acceptance issued by the appropriate MARTA receiving department.

Invoices:

- All invoices should be sent to:

Metropolitan Atlanta Rapid Transit Authority  
(MARTA)

**accountspayable@itsmarta.com**

- A separate invoice is required for each purchase order. Multiple purchase orders issued to the same Seller may not

be invoiced using identical invoice numbers.

- The purchase order number must be on all invoices, correspondence, packages, packing slips, and delivery tickets (shipper's bill of lading). All invoices must state the Seller's name and remittance address, and name of requesting department to whom delivery of Goods and/or Services are to be made.
- Invoices must not include sales tax. Seller acknowledges that MARTA will not pay for any sales tax.
- Discount terms must be specified on the invoice.
- Exact description of Good(s) and/or Service(s) must be shown exactly as stated on the Purchase Order. Invoices are not paid until orders are complete with all items on purchase order received, evaluated, tested, inspected approved and accepted by MARTA.

## 5. Conflict of Interest/Prohibited Interests

The Seller undertakes, represents, and warrants that none of the following, during his/her/its tenure or for six months thereafter, has or will have any interest, direct or indirect, in the Purchase Order or in any part of the proceeds hereof: members of MARTA's Board of Directors; officers, employees, or of any representative of MARTA in the administration of the Order, pursuant to MARTA's Code of Ethics. This section also applies to members of or delegates to the United States Congress or the Georgia legislature; and members of the governing body, and all other officers and employees, of the City

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of Atlanta, Counties of Clayton, Fulton and DeKalb, Georgia.

## 6. Change Order

MARTA may, from time to time, initiate changes by issuing to Seller written notices (each, a "Change Order") that alter, add to, or deduct from the Goods or Services, but that are otherwise subject to the Terms of this Order. Seller will promptly comply with the terms of any Change Order.

## 7. Termination

MARTA may terminate this Order, in whole or in part, for any reason or no reason upon thirty (30) days' prior written notice to Seller. In addition to any remedies provided herein, MARTA may terminate this Order with immediate effect, either before or after acceptance of Goods or Services, if Seller has breached any of the Terms herein. If the Seller becomes insolvent, commences (or has commenced by it or against it) a bankruptcy proceeding, receivership, reorganization or assignment for the benefit of creditors, then MARTA may terminate this Order. If MARTA terminates the order, Seller's sole and exclusive remedy, if any, shall be limited to the payment for the Goods or Services already received and accepted by MARTA prior to the termination.

## 8. Warranties

Seller warrants to MARTA that for a period of eighteen (18) months from the Delivery Date, all Goods, Services or Goods furnished in connection with Services will: (a) be new and free from any defects in workmanship, material and design; (b) conform to applicable specifications; (c) be fit for their intended purpose and operate as intended; (d) be free and clear of all liens, security interests or other  
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encumbrances; and (e) not infringe or misappropriate any third party's intellectual property rights. These warranties survive any delivery, inspection, acceptance or payment. These warranties are cumulative and in addition to any other warranty provided by law or in equity. Any applicable statute of limitations runs from the date of MARTA's discovery of the noncompliance. If MARTA gives Seller notice of noncompliance, Seller shall, at its own cost and expense, promptly replace or repair the nonconforming Goods or Services.

## 9. Indemnification

Seller shall defend, indemnify, and hold harmless MARTA and its subsidiaries, affiliates, successors and assigns and MARTA's directors, officers, shareholders, and employees (collectively, "Indemnitees") against any and all loss, injury, death, damage, liability, claim, action, judgment, interest, penalty, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder (collectively, "Losses") arising out of or occurring in connection with (a) Seller's performance of its obligations (b) Seller's negligence, willful misconduct (c) breach of the Terms of this Order (d) possession of Goods that infringe upon the rights of any third party or (e) misappropriates the patent, copyright, trade secret or other intellectual property right of any third party.

## 10. Insurance

Seller shall, at its own expense, maintain, and carry insurance in full force and effect with financially sound and reputable insurers, which includes: (a) commercial general liability (including product liability) in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate; (b) workers' compensation

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insurance in compliance with the applicable laws of each jurisdiction affected by the Order; (c) if the Seller will use or provide for use of motor vehicles in providing and/or performing the Order, automobile (motor vehicle) insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of no less than \$1,000,000. Upon MARTA's request, Seller shall provide MARTA with a Certificate of Insurance listing MARTA as the **certificate holder** and evidencing the coverage specified in this Order.

## 11. Compliance with Law

Seller warrants and represents to MARTA that it is in compliance with (and shall remain in compliance during performance of this Order) and ensure that its employees, agents, contractors and subcontractors (the "Personnel") comply with all applicable laws, regulations and ordinances. Seller has and shall maintain in effect all the licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under the Order. Seller shall comply with all export and import laws of all countries involved in the sale of Goods under this Order. Seller assumes all responsibility for shipments of Goods requiring any government import clearance. If Seller fails to comply with the laws, orders, rules, ordinances and regulations and as a result MARTA is fined, Seller agrees to pay the fine and costs incident thereto or reimburse MARTA immediately upon written request therefor. To the extent that Seller's personnel are required to enter onto MARTA's site or property, Seller shall ensure that its personnel comply with MARTA's health, safety and environmental policies and standards.

## 12. Shipping Terms

Delivery shall be made in accordance with the Terms of this Order. The Order number must appear on all documents pertaining to the Order, invoices, packing lists, correspondence, and all shipping documents. Seller shall not substitute material or ship more than the quantity ordered. Seller shall be solely responsible for and pay, all costs of delivering the Goods to the Delivery Location, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports/exports of the Goods ("Customs Duties").

## 13. Taxes

MARTA is exempt from the State of Georgia and local sales tax and an Exemption Certificate will be furnished upon written request.

## 14. Title and Risk of Loss

Unless otherwise specified in the Order, risk of loss of the Goods remains with Seller and title will not pass to MARTA until the Goods are delivered to and accepted by MARTA at the Delivery Location.

## 15. Force Majeure

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Order to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of the applicable party, without such party's fault or negligence, and which, by its nature, could not have been foreseen by such party ("*Force Majeure* Event"). *Force Majeure* Events include, but are not limited to, acts of God, floods, fire, earthquakes, explosion, epidemic, war, invasion, terrorist acts, riots, strike, or embargoes. Seller's economic hardship, changes in market conditions

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or inability to pay a monetary amount are not considered *Force Majeure* Events. Seller shall use its best efforts to end the failure or delay of its performance, ensure that the effects of any *Force Majeure* Event are minimized and resume performance under the Order. If a *Force Majeure* Event prevents Seller from performing for a continuous period of more than fifteen (15) business days, MARTA may terminate this Order immediately by giving written notice to Seller.

## 16. Relationship of the Parties

The Seller is an independent contractor of MARTA. Nothing contained herein shall be construed as creating any agency, partnership, employment or fiduciary relationship. Neither party shall have authority to bind the other party in any manner whatsoever.

## 17. Governing Law and Venue

All matters arising out of or relating to this Order shall be governed by and construed in accordance with the laws of the State of Georgia, excluding its choice or conflict of law rules. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal court of the Northern District of Georgia and/or state courts of Fulton County, Georgia and the courts of appeal from them.

## 18. Notices

All notices, consents, claims, demands, waivers and communications required or permitted hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of this Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized

overnight courier (all fees pre-paid), or U.S. certified or registered mail (return receipt requested, with all postage prepaid). A Notice is effective upon receipt of the receiving party.

## 19. Inconsistent Terms

The terms found on the face of this Order shall govern over the terms and conditions herein. Any separate written overriding agreement signed by both parties shall govern over the terms of this Order.

## 20. Services

Any Seller that may perform Services represents itself as qualified and able to perform. Seller shall perform Services pursuant to the industry standard of care. MARTA will furnish materials, equipment and machinery only if and to the extent set forth in the Order. Seller will report immediately to MARTA any event or circumstance which Seller knows or reasonably suspects is, or results from, a violation of MARTA's policies or law set forth herein. Seller will, at its sole cost and expense, repair or replace any real or personal property belonging to MARTA that Seller, its employees or agents may damage, destroy or remove while performing or result from performing this Order.

## 21. Survival

Provisions of this Order which by their nature should apply beyond any termination of this Order will remain in effect for the period expressed within the Section but not longer than a period of two (2) years unless a longer period is specified.

## 22. Severability

If any term or provision of this Order is found invalid, illegal or unenforceable in any

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jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term of this Order or invalidate or render unenforceable such term in any other jurisdiction.

### **23. Miscellaneous**

Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Order without MARTA's prior written consent. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment shall relieve the Seller of any of its obligations hereunder. No modification, alteration or amendment of the Order shall be binding unless agreed to in writing and signed by MARTA. No waiver by any party of any of the provisions of the Order shall be effective unless explicitly set forth in writing and signed by the party so waiving. No failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Order by MARTA shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, or privilege hereunder preclude any other exercise of any additional right, remedy, or privilege.

Any purchase order awarded shall not be assignable by the Seller without the express written approval of MARTA, and shall not become an asset in any bankruptcy, receivership or guardianship proceedings.

Publicity. Seller shall not advertise or publicly announce the fact that Seller has contracted to supply any machinery, equipment, material or services for Purchaser without obtaining the prior written permission of Purchaser.

Equal Employment Opportunity. The Seller agrees to comply with Executive Order No.

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11246, as amended and as supplemented by U.S. Department of Labor regulations (41 CFR, Part 60-1, et seq.), which require that the Seller not discriminate on the basis of race, creed, color, religion, national origin, sex, or age in the performance of the work. The Seller further agrees to include the provisions of this paragraph in every contract, subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor.

Illegal Immigration Reform and Enforcement Act of 2011. Seller certifies its compliance with Illegal Immigration Reform and Enforcement Act of 2011 and specifically those provisions codified at O.C.G.A. §13-10-90 et. seq. Seller warrants that it has registered with and uses the federal work authorization program commonly known as "E-Verify." Seller further agrees that it will contract for the physical performance of services in satisfaction of this contract only with subcontractors who present an affidavit as required by O.C.G.A. §13-10-91. Seller warrants that it will include a similar provision in all contracts entered into with subcontractors for the physical performance of services in satisfaction of this contract."

### **24. Time is of the Essence**

Time is of the essence with regard to each of these Terms and Conditions.