

City of Tybee Island STANDARD TERMS AND CONDITIONS

DEFINITIONS. As used herein, the following terms shall have the meanings set forth below, whether or not capitalized.

- (a) "Purchase Order" or "Order" means this purchase order.
- (b) "Buyer" means The City of Tybee Island.
- (c) "Seller" or "Vendor" means the party furnishing the supplies under this order.
- (d) "Supplies" means what the Seller furnishes the Buyer under this order and includes with limitation, the following; (1) the work; materials; articles; deliverable items, items, data and services, whether tangible or intangible or any combination thereof; and (2) what is leased or licensed, pursuant to the lease(s) or license(s) signed by both the Buyer and the lessor or licensor if attached to and made a part of this order.
- (e) "Loss" means any or all the following: claims, liabilities, damages, losses, costs, or expenses (including reasonable attorneys' fees and expenses and other legal costs).

ACCEPTANCE. This order constitutes an offer which shall become a binding contract upon the terms and conditions herein set forth upon acceptance by Seller either by acknowledgement of this order or commencement of performance. Buyer objects to any difference, conflicting or additional terms proposed by Seller in the acceptance of this order, and no such terms shall be effective unless expressly accepted by Buyer in writing. Each shipment received by Buyer from Seller shall be deemed to be only upon the terms and conditions contained in this order, except by such written instrument modifying the order, signed by Buyer, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice, or other form issued by Seller and notwithstanding Buyer's act of accepting or paying for any shipment, or similar act by Buyer.

PRICES. Seller represents that the prices, terms, warranties, and benefits contained in this order are comparable to or better than those offered to any other customer of Seller for items which are the same or substantially similar. Buyer shall receive the benefit prospectively or retrospectively if Seller offers any item or service included in this order to any other customer at a lower price, more favorable terms, more favorable warranties, or more favorable benefits up to one year after completion of this order.

PACKING AND SHIPPING. All items shall be suitable packed and prepared for shipment to insure their safe transportation, to secure the lowest transportation cost, and to comply with the requirements of carriers. Buyer's order number shall appear on all documents and correspondence relating to these items. Packing lists shall accompany the items and shall include the order number, Buyer's part number, Seller model number, description of items shipped and any other information called for in the order. Buyer's count or weight shall be final and conclusive on shipments not accompanied by a packing list. Seller shall be liable for all excess transportation or other charges resulting from Seller's failure to comply with Buyer's packing, shipping, routing and delivery instructions.

DELIVERY. Any delivery schedule made a part of this order is an important, material condition; time is of the essence of the order. Unless otherwise agreed to in writing. Seller shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet Buyer's delivery schedule. It is Seller's responsibility to comply with this schedule, but not to anticipate Buyer's requirements. In addition to any other rights or remedies, Buyer may cancel all or any part of this order for Seller's failure to deliver in strict accordance with the delivery terms set forth herein. Seller shall promptly notify Buyer of any anticipated delay in the delivery date and Buyer may

require Seller to ship by alternate means in order to expedite delivery. Any additional costs shall be paid by Seller and Seller shall be liable for all resulting damages to Buyer occasioned by the delay. Delivery shall not be deemed to be complete until the items have been received and accepted by Buyer. Advance and excess shipments may at Buyer's option be rejected and returned to Seller at Seller's expense.

TRANSPORTATION. Except as otherwise provided on the face of this order, transportation charges on Supplies shall be f.o.b. destination, at Seller's sole cost and expense. Risk of loss from any casualty to supplies ordered hereunder, regardless of cause, shall be Seller's responsibility until goods have been delivered to Buyer's designated delivery post. No insurance or premium transportation costs beyond the price listed in this order will be allowed unless authorized by Buyer in writing. If Seller does not comply with Buyer's delivery schedule, Buyer may, in addition to any other rights that Buyer may have under this order, require delivery by fastest way, and charges resulting from the premium transportation must be fully prepaid and absorbed by Seller.

WARRANTY. Seller warrants that all supplies delivered pursuant to this order shall strictly conform to the applicable specifications (including without limitation information or functional performance, material content, size, appearance, response time, etc.), shall be free from all defects and workmanship in materials including latent defects, shall be free from defects in design and suitable for their intended purpose, and shall be free from all claims, encumbrances, and liens. This warranty shall survive inspection, delivery and payments shall run to Buyer, its successors, assigns and the users of the items and shall not be deemed to be exclusive. Seller agrees to indemnify, defend and hold Buyer, Buyer's employees, and those for whom Buyer may act as agent, harmless from all damages, including consequential and incidental damages, incurred or sustained by Buyer by reason of any breach of any warranty with respect to the supplies purchased. Buyer shall be promptly reimbursed for all expenses incurred in the handling, inspection and return of defective items, and Seller shall bear the risk of loss on all such items. If any of the supplies are found at any time prior to acceptance to be defective in material or workmanship, or otherwise not in conformity with the requirements of this order, Buyer (in addition to any other rights which it may have under warranties or otherwise) may at its option (1) correct or have corrected the nonconformity at Seller's expense, or (2) reject and return such supplies or other deliverable items at Seller's expense, such supplies or other deliverable items not to be replaced without suitable written authorization from Buyer.

CHANGES. Buyer may at any time request in writing changes to this order in the specifications, packing, shipment, quantities, delivery schedules, and other matters. If any such change causes an increase or decrease in the costs of or the time required for performance, Seller shall immediately notify Buyer. Any request for an equitable adjustment must be made in writing with 30 days from the date of the written request for the change. No additional charge or change in the specifications, packing, shipment, quantities, delivery schedules, and other matters will be allowed unless authorized by Buyer in writing.

TAXES. The Buyer, a municipality in the State of Georgia, is exempt from Georgia Sales Tax under the Sales and Use Tax ID # 302 526 178. All sales and use tax due on materials purchased by the city for installation by the seller under this contract are the responsibility of the contractor.

ASSIGNMENT. Neither this order nor any interest herein may be assigned, in whole or in part, by Seller without the prior written consent of Buyer. Notwithstanding the above, Seller may assign any monies due or to become due to him hereunder, provided that such

assignment shall not be binding upon Buyer until receipt of a copy of the assignment agreement is acknowledged and approved by Buyer in writing.

SUBCONTRACTING. Seller shall not enter into a subcontract for any part of this order, including completed or substantially completed items or major components thereof, with Buyer's written consent. Nothing in this order shall be seen as prohibiting Seller's purchase of standard commercial articles, raw materials, or other supplies specified in this order if these are typically purchased by Seller in the normal course of business.

TERMINATION. Buyer may terminate or suspend performance under this order in whole or in part from time to time by sending written notice to Seller. Upon receiving notice of such action by Buyer, Seller shall immediately comply with its terms and take all reasonable steps to avoid incurring any additional costs under this order. Buyer's sole liability to Seller shall be for items completed and delivered to Buyer in accordance with this order and for Seller's reasonable costs to the date of termination, such costs being solely attributable to this order and not being recoverable from other sources.

INDEMNIFICATION. Seller agrees to indemnify, defend and hold Buyer, Buyer's employees, and those for whom Buyer may act as agent harmless from (1) any and all claims and liabilities for injuries or death of persons or damages to or destruction of property; (2) any other Loss caused by or resulting from the acts or omissions of Seller, its agents, subcontractors, suppliers or employees in the performance of this order; (3) any Loss caused by or resulting from the supplies purchased under this order, (4) any intended use of products or materials provided by Seller; (5) any defective products or materials provided by Seller, including without limitation the use or disposal of hazardous and/or toxic materials, such materials to include at minimum all materials recognized by the Environmental Protection Agency as hazardous; or (6) any breach by Seller of any express or implied warranties. If Seller's work hereunder involves operations by Seller's agents, subcontractors, suppliers or employees on Buyer's premises or any place where Buyer conducts operations, Seller shall take all necessary precautions to prevent the occurrence of any injury or damage to persons or property during the progress of such work. Further, Seller shall indemnify, defend and hold Buyer, Buyer's employees, and those for whom Buyer may act as agent harmless for any injuries occurring to Seller's agents, subcontractors, suppliers or employees and Seller shall maintain public liability, property damage and employee's liability and compensation insurance sufficient to protect Buyer from any claims under any applicable law, statute, or regulation.

MODIFICATION; WAIVER. No waiver or modification of this order shall be effective unless in writing and signed by both of the parties hereto. Failure of either party to enforce its rights under this order shall not constitute a waiver of such rights or any other rights.

ENTIRE AGREEMENT. This order is intended by the parties as a final expression of their agreement and also as a complete and exclusive statement of the terms thereof, any prior or contemporaneous oral or written agreements as to the same subject matter notwithstanding.

INVALIDITY. In the event that any provision of this order is declared invalid, illegal, or otherwise unenforceable by any tribunal or law, the remainder of the provisions shall not be affected thereby, and each term and provision not declared invalid, illegal or unenforceable shall be valid and shall be enforced to the fullest extent permitted by law.

DRUG FREE WORKPLACE. By accepting this order, the Seller certifies that he shall provide a drug free workplace for his employees in accordance with the laws of the State of Georgia.

SPECIFICATIONS, PROPOSALS, BID DOCUMENTS. The documents which form the basis for this order shall include the plans and specifications and proposal documents as attached hereto, together with any other documents so listed and enumerated, if any, and it is expressly understood that any special conditions listed and attached hereto are specifically made a part of this contract.

APPLICABLE LAW. The provisions and performance of this purchase order shall be governed by the laws of the State of Georgia and applicable federal law. Seller agrees to bring any and all actions relating to this purchase order only in the state and federal courts located within Chatham County in the State of Georgia.

APPROPRIATION. Notwithstanding, any other provision hereof , this agreement shall terminate at the end of each calendar year without liability or obligation on the part of the city in any calendar year where the City has not appropriated funds for the obligations hereunder for the next calendar year.