



PURCHASE CONTRACT

Seller:

Project #:

Project Name:

Contact:
Phone:
Fax:
Email:

Address:

Ship to:

(the "Buyer")

has entered or is about to enter into a contract with

(the "Owner")

for the construction of
located at

That contract, together with all addenda, supplements, amendments, changes or additions, is called the
"Main Contract"

(the "Seller")

UNDERSTANDS, ACKNOWLEDGES, AND AGREES:

To furnish all material, supplies and/or equipment in strict accordance with the Main Contract.

To be bound by: (a) all laws, government regulations, and orders; (b) all terms and conditions of the Main Contract, to the extent of the work subcontracted by this Purchase Contract, which provisions are incorporated by reference; (c) all of the terms and conditions of this Purchase Contract and (d) by those additional terms and conditions, and/or work as described or contained in Attachment "A", and Exhibits, "A," "B," "C," "D," attached hereto.

The Seller agrees to provide the following Surety Bonds and/or Performance Collateral in a form acceptable to the Buyer, naming the Buyer as obligee:

That by acceptance of this Purchase Contract, the Seller establishes they are qualified to supply the material, supplies and/or equipment required to meet the Buyer's schedule, and Seller is familiar with the scope of the project and the specific logistical implications related to the completion of this work.

Seller Initial _____



PURCHASE CONTRACT

Seller:

Project #:

Project Name:

Inclusions are not limited to:

Exclusions are limited to:

Purchase Contract amount breakdown:

Total Work: _____

TOTAL PURCHASE CONTRACT AMOUNT _____

Final payment for unit price items will be based on the above unit prices and approved quantities. The above quantities are estimated and are for subtrade proposal comparison only.

Acceptance

This Purchase Contract is accepted by Seller, including all terms and conditions on the following pages.

Seller acknowledges that the Waiver of Indemnity contained in Article 13 of Attachment A was mutually negotiated.

By _____
BUYER (Company Name)

By _____
SELLER (Company Name)

By _____
BUYER (Authorized Signature)

By _____
SELLER (Authorized Signature)

(Name and Title)

(Name and Title)

Date

Date

Seller Initial _____

THE FOLLOWING TERMS AND CONDITIONS ARE A PART OF THE PURCHASE CONTRACT.**1. NO ALTERATION.**

The contract formed based upon this Purchase Contract is expressly limited to the terms and conditions contained in this document. No alteration of any of the terms, conditions, delivery arrangements, price, quality, quantities or specifications of this Purchase Contract will be effective without the express written consent of Buyer.

2. INCORPORATION BY REFERENCE.

Seller assumes toward Buyer all obligations and responsibilities which Buyer has assumed toward the Owner of the project for which the goods are purchased, and toward any contractor with whom Buyer has contracted whose contract with Buyer requires Buyer to provide the goods being purchased from Seller. In case of conflict between the terms of the obligation and the responsibilities of the parties of this Purchase Contract and the Main Contract, this Purchase Contract shall control. In addition, all specifications, drawings, and other performance data submitted to Seller are incorporated in this Purchase Contract.

3. PAYMENT.

Seller shall submit to the Buyer "Application for Payment," at the Buyer's business office, and properly executed, by the twenty-fourth (24th) of the month to enable the Buyer to timely apply for and obtain payment from the Owner. Seller acknowledges receipt and utilization of Buyer's form titled (Exhibit C-1/6) "Seller's Application for Payment." Payments will be made monthly on approved progress estimates for materials delivered by the Seller to the end of the previous progress period, such payments to be made ten (10) days after payment has been received by Buyer. Progress payments shall be deemed advances and are subject to adjustment at any time prior to final payment for errors, overpayment or Buyer's good faith determination that the remaining balance of payments may be insufficient to insure completion of the Purchase Contract in accordance with its terms or to pay lien or bond claims. Notwithstanding the above, it is expressly agreed that payment by Owner to Buyer shall be a condition precedent to Buyer's payment to Seller or any progress or final payments.

4. WAIVER OF LIEN AND CLAIMS.

Seller agrees that all payments paid to Seller by Buyer via any financial instrument whatsoever shall become effective as, "an unconditional lien claim waiver," and once the financial instrument has been properly endorsed and paid by the bank upon which it was drawn, shall become effective to release pro tanto any and all claims and rights of lien which the Seller has or may have on the property identified in the, "Main Contract," for services, equipment supplied, materials furnished and any/all claims unconditionally for the dollar amount specified by the amount of the payment. It is furthermore agreed that Buyer reserves the right to require Seller to furnish additional lien claim waivers to Buyer with each month's pay request covering all materials and equipment on the project for that month. The lien claim waivers that Seller is required to submit to Buyer have been identified in the body of this Purchase Contract as Exhibits "C-1/6", "C-2/6", "C-5/6", "C-6/6." Receipt of fully executed lien releases consistent with this paragraph is a condition of payment.

5. SUBMITTALS.

Seller shall be responsible for submitting all submittals in the quantities required by the Main Contract to allow proper approval and/or review duration and return so as to not hinder the delivery and installation schedule sequence.

6. **CHANGES.**

Buyer reserves the right at any time to make changes in any one or more of the following: (a) specifications, drawings, and data incorporated in this Purchase Contract where the items to be furnished are to be specifically manufactured for Buyer; (b) methods of shipment and packing; (c) place of delivery; and (d) time of delivery. If any such change causes an increase or decrease in the cost or the time required for performance of this contract, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim by Seller for adjustment under this provision shall be deemed waived unless asserted in writing within ten (10) days from receipt by Seller of the change. Price increases or extensions of time for delivery shall not be binding upon Buyer unless evidenced by purchase contract change notice issued and signed by Buyer. In case of any disputes over the adjustment of the cost, Seller shall proceed with the change, and the dispute shall be resolved in accordance with the procedures set forth in paragraph 18. Seller acknowledges that, unless expressly stated otherwise within a written change order, any change in the Purchase Contract price and time effected through a written change order shall constitute full payment and accord and satisfaction for all cost incurred, labor performed, material and equipment furnished, and any delay, acceleration, or loss of efficiency associated with the change in the work.

7. **DELIVERY.**

Time is of the essence in this Purchase Contract, and if delivery of goods is not completed by the time promised, Buyer reserves the right, without liability, in addition to its other rights and remedies, to terminate this Purchase Contract by notice effective when received by Seller as to goods not yet shipped, and to purchase substitute goods elsewhere. Any provision for delivery of goods in installments shall not be construed as making the obligations of Sellers severable. Shipments sent C.O.D. without Buyer's written consent will not be accepted, and will be at Seller's risk. Buyer will hold Seller responsible and liable for any and all losses, cost and expenses caused by any delayed receipt by Buyer of goods, including any liquidated damages imposed on Buyer. Seller shall deliver material according to Buyer's project schedule. The Seller shall coordinate all material deliveries with Buyer's Project Superintendent.

8. **SHIPPING INSTRUCTIONS.**

Unless otherwise specified, goods are to be shipped prepaid F.O.B. destination.

9. **INSPECTION.**

Goods are subject to the inspection and approval at Buyer's destination by Buyer, the owner of the project for which the goods are purchased, and any contractor with whom the Buyer has contracted, even though payment may have been made for the goods prior to their arrival. Buyer reserves the right to reject and refuse to accept goods which are not in accordance with the requirements of this Purchase Contract. Seller is responsible for Buyer's cost of inspecting goods rejected. Payment for goods shall not be deemed acceptance of such goods. Materials condemned by the Buyer, Architect/Engineer or Owner as failing to conform to the Main Contract shall upon notice from the Buyer, be immediately removed by the Seller. Failure of the Buyer to immediately condemn any materials as installed shall not in any way waive the Buyer's right to object at any subsequent time.

10. **WARRANTY.**

Seller warrants that the goods furnished will be in full conformity with any specifications, drawings, and performance data provided by Buyer, Seller's samples, and all other requirements specified by the terms and conditions of this Purchase Contract, including such terms and conditions as are incorporated by reference in this Purchase Contract, and that the goods furnished will be of merchantable quality and fit for the uses intended by Buyer. Seller further grants to Buyer the identical guarantees and warranties which Buyer is required to provide to the owner of the project for which the goods are purchased, and if Buyer's contract is not directly with the Owner, also grants to Buyer the identical guarantees and warranties which Buyer is required to provide to the contractor with whom Buyer contracts and the owner of the project. Seller's warranties and guarantees hereunder shall be in addition to any additional warranties and guarantees provided to Buyer by Seller.

11. **RISK OF LOSS.**

Seller assumes the risk of loss of all goods until tendered to Buyer's possession at the destination specified in this Purchase Contract.

12. **PROPERTY FURNISHED TO SELLER BY BUYER.**

Unless otherwise agreed in writing, all special dies, molds, patterns, jigs, fixtures and any other property furnished to Seller by Buyer, or specifically paid for by Buyer for use in the performance of this Purchase Contract, shall be and remain the property of Buyer, shall be subject to removal upon Buyer's instruction, shall be used only in filling orders from Buyer, and shall be held at Seller's risk and shall be kept insured by Seller at Seller's expense while in its custody or control in an amount equal to the replacement cost, with loss payable to Buyer. Copies of policies and certificates of such insurance will be furnished to Buyer on demand.

13. **INDEMNITY.**

Seller agrees to defend, indemnify, and hold Buyer harmless from any and all claims, demands, losses, and liabilities to or by third parties arising from, resulting from, or connected with the goods to be furnished under this Purchase Contract, even though such claims may prove to be false, groundless, or fraudulent, to the fullest extent permitted by law and subject to the limitations provided below.

Seller's duty to indemnify Buyer shall not apply to liability for damages arising out of bodily injury to persons or damage to property cause by, or resulting from, the sole negligence of Buyer.

Seller's duty to indemnify Buyer for liability for damages arising out of bodily injury to persons or damage to property cause by, or resulting from, the concurrent negligence of (a) Buyer and (b) Seller, shall apply only to the extent of negligence of Seller.

The indemnification obligation under this Purchase Contract shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefits acts, or other employee benefits acts; provided, Seller's waiver of immunity by the provisions of this paragraph extends only to claims against Seller by Buyer, and does not include or extend to, any claims by Seller's employees directly against Seller. SELLER AND BUYER ACKNOWLEDGE THAT THE WAIVER OF IMMUNITY SPECIFIED BY THIS PARAGRAPH IS MUTUALLY NEGOTIATED. Defense costs recovery shall include all fees (of attorneys and experts), costs, and expenses. In addition, Buyer shall be entitled to recover compensation for all of its in-house expenses (including materials and labor) consumed in its defense.

For projects in Washington State seller specifically and expressly waives any immunity that may be granted it under the Washington State Industrial Insurance Act, Title Washington State Industrial Insurance Act. Title 51 RCW.

14. **INSURANCE.**

The Seller will obtain and keep in force during the term of the contract public liability and property damage insurance with coverage equal to, or greater than, the minimum specified in the Main Contract and Buyer requirements. The Seller shall furnish to the Buyer evidence of this insurance naming the Buyer the Owner and those identified in the Main Contract as additional insureds. Evidence of this insurance shall also be accompanied by a completed and signed "Insurance Coverage Checklist and Certification" (exhibit D) and Policy endorsements. Such insurance shall be primary and non-contributory of our insurance. Waiver of subrogation shall be provided on behalf of the Project Owner and the Buyer. The insurance shall indicate that it includes contractual liability coverage applicable to the indemnity provisions of this Purchase Contract. The Seller shall give Buyer forty- five (45) days notice of any cancellation. Failure to timely furnish the required insurance, or its cancellation prior to final acceptance by Owner, shall be deemed a material breach by Seller entitling Buyer to immediately terminate, after seven (7) calendar days' notice, this Purchase Contract for default. In the event of a default, Buyer shall be entitled to those remedies as set forth in Paragraph 21 herein.

BUYER MINIMUM INSURANCE REQUIREMENTS (if higher limits are not specified in the Main Contract):

TYPE OF INSURANCE	LIMITS	
COMMERCIAL GENERAL LIABILITY	General Aggregate	\$3,000,000
General Aggregate limit shall apply per project.	Each Occurrence	\$3,000,000
	Products – Comp/Op Agg	\$2,000,000
	Personal & Adv Injury	\$1,000,000

Seller Initial _____

TYPE OF INSURANCE

LIMITS

AUTO LIABILITY

(Note: Shall include coverage for any auto, including hired & non-owned.)

Damage to Rented Premises (ea occurrence) \$100,000
Medical Expense (any one person) \$10,000

Combined Single Limit \$1,000,000

EMPLOYERS' LIABILITY/STOP GAP COVERAGE

(Note: Stop Gap coverage is required in the monopolistic states of WA, ND, OH, WV && WY. Otherwise Employers' Liability is required.)

Each Accident \$3,000,000
Disease - Each Employee \$3,000,000
Disease - Policy Limit \$3,000,000

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15. **PRICE.**

Buyer shall not be billed at prices higher than stated on this Purchase Contract unless authorized by a purchase contract change notice issued and signed by Buyer. Seller represents that the price charged for the goods covered by this Purchase Contract is the lowest price charged by Seller to Buyers of a class similar to Buyer under conditions similar to those specified in this Purchase Contract, and that prices comply with applicable government regulations in effect at time of quotation, sale, and delivery. Seller agrees that any price reduction made in goods covered by this Purchase Contract subsequent to the placement of this order, but prior to delivery, will be applicable to this Purchase Contract.

16. **COMPLIANCE WITH LAWS.**

Seller represents that it has complied, and will continue to comply during the performance under this Purchase Contract, with all federal, state, and local laws and regulations from which liability may accrue to Buyer.

17. **TITLE.**

Seller warrants that the goods subject to this Purchase Contract are free and clear of all liens and encumbrances whatsoever, and that Seller shall have good and marketable title to same, and agrees to defend and hold Buyer free and harmless against any and all claimants to the goods which are the subject of this Purchase Contract.

18. **DISPUTES.**

This Purchase Contract shall be governed by the laws in which Buyer is incorporated. Buyer shall have the exclusive and unilateral right, at its option, to require that the venue for any legal action will be in the Superior Court of Buyer's choosing or in the County that the Project is located, and Seller expressly agrees to Buyer's exercise of such option. In addition, Buyer shall have the exclusive and unilateral right, at its option, to require that any dispute arising under this Purchase Contract be resolved in the alternative dispute resolution forum of its choosing, or that Seller be made a party to any other litigation or arbitration which relate to the Project, provided that said forum is an independent forum and impartial to the parties. Buyer may also require that a mediation occur as a prerequisite to the commencement or maintenance of any litigation or arbitration. This provision is for the unilateral exercise of Buyer only and cannot be invoked by Seller without Buyer's consent.

In the event of any dispute or claim between Buyer and Owner which directly or indirectly involves the goods provided or to be provided by Seller, or in the event of any dispute or claim between Buyer and Seller caused by or arising out of conduct for which Owner may be responsible, Seller agrees to be bound to Buyer to the same extent that Buyer is bound to Owner by the terms of the Main Contract and by any and all procedures and resulting decisions, findings, determinations, or awards made by the person so authorized in the Main Contract, or by an administrative agency, board, court of competent jurisdiction or arbitration. If any dispute or claim of Seller is prosecuted or defended by Buyer, Seller agrees to cooperate fully with Buyer and to furnish all documents, statements, witnesses, and other information required by Buyer for such purpose and shall pay or reimburse Buyer for all expenses and costs, including reasonable attorney's fees incurred in connection therewith, to the extent of Seller's interest in such claim or dispute.

Seller agrees to be bound by the procedure and final determination as specified in the Main Contract and agree that it will not take, or will suspend, and other action or actions with respect to any such claims and will pursue no independent litigation, pending final determination of any dispute resolution procedure between Owner and Buyer. The timely presentation, cooperation, and participation by Seller in any determination of a dispute under the contract with the person with whom Buyer has contracted, including any and all appeals under the disputes provisions of such contract, shall be conditions precedent to pursuit of any action by Seller against Buyer with respect to any such claim or dispute. It is expressly understood and agreed that, as to any and all claims asserted by Seller in connection with this project arising from the actions or fault of Owner, Buyer shall not be liable to Seller for any greater amount than Owner is liable to Buyer, less any markups or costs incurred by Buyer. As to any claims asserted by Seller for or on account of acts or omissions of Owner or its agents or design professional, at the sole option of Buyer, Seller agrees to prosecute such claims in Buyer's name. For any amount recovered or collected (whether through proceedings or settlement) by Seller, Buyer shall be entitled to ten percent (10%) of such amount received or collected as its mark-up for such claims. Seller shall have full responsibility for preparation and presentation of such claims and shall bear all expenses including attorneys' fees.

Seller Initial _____

In any litigation between the Buyer and Seller, should the Buyer prevail in such litigation, Seller shall pay to Buyer, Buyer's reasonable costs, expenses and attorneys fees included.

19. **NONDISCRIMINATION COMPLIANCE.**

Seller agrees to comply fully with all Federal, State and Local nondiscrimination laws, regulations, directives, and programs including those called for in Main Contract and Executive Order 11246, if applicable, relating to Equal Employment Opportunity and non-segregated facilities, including timely submittal of all documents required by Owner or any government agency. This Purchase Contract incorporates by reference, as though fully set forth herein, 41 C.F.R. S. 60-1.4, 48 C.F.R. 52.222.-26, and Executive Order 11246 to the extent that they are applicable.

20. **SELLER EMPLOYER.**

Seller has the status of an employer as defined by the Industrial Insurance, Workmen's Compensation Act, Social Security, and other similar acts of the federal, state and local Government. Seller will withhold from its payroll the applicable Social Security taxes, Workmen's Compensation, Unemployment Compensation contributions and withholding taxes and pay the same. The Buyer shall in no way be liable as an employer to or on account of any of the employees of the Seller. Before final payment is made upon this Purchase contract, Seller shall furnish satisfactory evidence to the Buyer that Seller has confirmed to all laws, rules and regulations, and the Seller agrees to indemnify the Buyer for any and all liability arising from the work performed under this Purchase Contract.

21. **TAKEOVER.**

If in the opinion of the Buyer, Seller shall at any time (1) refuse or fail to employ a sufficient number of properly skilled workers to provide a sufficient quantity of suitable goods, (2) fail to diligently provide the goods in the order and sequence directed and /or according to then current Buyer's schedule, (3) cause, by any act or omission, the stoppage or delay of or interference with the work of Buyer or of any other builder or Seller including, but not limited to, acts or omissions arising out of or relating to any picketing, strikes or other labor conditions, (4) fail to correct or replace any damaged or defective materials, (5) fail to comply with all provisions of the Purchase Contract or the Main Contract Documents, (6) be adjudged bankrupt, or make a general assignment for the benefit of its creditors, (7) have a receiver appointed, or (8) become insolvent or a debtor in reorganization proceedings, then, Buyer may take the following actions. Buyer, at its option and in addition to and without prejudice to any other rights afforded by this Purchase Contract or by law, and without notice to the sureties, may (i) take such steps as are necessary to overcome the condition, in which case the Seller shall be liable to Buyer for the cost of doing so; (ii) terminate the Purchase Contract for default, or (iii) seek specific performance of Seller's obligations under this Purchase Contract, it being agreed by Seller that specific performance may be necessary to avoid irreparable harm to Buyer and /or Owner.

Before taking any of the above actions, the Buyer must first give Seller forty-eight (48) hours written notice transmitted by facsimile or otherwise, and the condition specified in such notice shall not have been eliminated within the forty-eight (48) hours.

In the event of termination for default, Buyer may, at its option, do any or all of the following: (a) require Seller to assign to Buyer any or all subcontracts and purchase contracts involving the Project, or (b) either itself, or through others, provide the goods by whatever method Buyer may deem expedient. In case of termination for default, Seller shall not be entitled to receive any further payment until the goods shall be fully delivered and accepted by Owner. At that time, if the unpaid balance of the price to be paid shall exceed the expense incurred by Buyer, the excess shall be paid by Buyer to Seller. If the amount due Buyer shall exceed the unpaid balance, the Seller shall pay Buyer the difference.

Buyer shall have the right to terminate this Purchase Contract for convenience and without cause, by providing Seller with a written notice of termination to be effective upon receipt by Seller. If Seller is terminated for convenience, it shall be paid the amount representing costs which are due from Owner for Seller's work; provided, however, that payment by Owner to Buyer shall be a condition precedent to Buyer's payment to Seller.

22. **ENTIRE AGREEMENT.**

This Purchase Contract, together with any documents attached or incorporated, constitutes the entire agreement between the parties, and supersedes all previous communications between them, either oral or written. No modification of this Purchase Contract and no waiver of rights under this Purchase Contract shall be valid or binding on the parties unless the same be in writing. Failure of the Buyer to insist upon strict performance of any term or condition of the Purchase Contract, or to exercise any option in any one or more instances, shall not be construed to be a waiver of any such, or any other covenants or agreements, but the same shall be and remain in full force and effect. The partial or complete invalidity of any one or more conditions or sentences of the Purchase Contract shall not affect the validity or continuing force and effect of any other condition.

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