

# KIRTLEY-COLE ASSOCIATES LLC

2820 Oakes Avenue, Suite B, Everett, WA 98201, Telephone (425) 609-0400 / FAX (425) 609-0410

## PURCHASE AGREEMENT

To Seller:       **«FirmName»**  
                      **«FirmAddress»**  
                      **«FirmCity», «FirmState» «FirmZip»**  
                      **Phone: «FirmPhone»     Fax: «FirmFax»     Email: «ResponsibleEMail»**  
                      **Contact: «ContactFName» «ContactLName»**

**DATE:**           **«StartDate»**

**DATE ON WHICH SELLER MUST DELIVER MATERIALS TO PROJECT:** **«DeliveryDate»**

F.O.B.           **«FOB»**

SHIP TO:       **«ProjectDescription»**  
                      **«JobAddress»**  
                      **«JobCity», «JobState» «JobZip»**

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Ship the following items and do the work in strict accordance with the plans and specifications

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### SCOPE OF WORK

Furnish all **«SLDescription»**, complete as described in or reasonably inferred from the Plans and Specifications, and Addenda, including but not limited to the following sections of the specifications; **Section «Phases»**. This includes but is not limited to providing the following:

#### **«Inclusions»**

It is agreed that the seller will not make any request for additional compensation regarding the execution of the purchase agreement work unless there is a change in the scope of work. The schedule is extremely critical, any non-performance will cause severe financial impacts that are very difficult to quantify. Therefore as liquidated damages for seller's non-performance, the seller will pay the Purchaser the sum of \$**«LiquidatedDamages»** per calendar day of delay. This fixed sum is agreed by the parties to be a fair, reasonable, and appropriate estimate of actual damages, and is not in any sense a penalty.

#### **EXCLUSIONS:**

**«Exclusions»**

Discount Terms: **«DiscountTerms»**

Purchase #: **«SL»** JOB # **«Project»**

**TOTAL AMOUNT OF PURCHASE AGREEMENT:**       **«TotalOrigSL»**

<b>Item</b>	<b>Phase</b>	<b>Description</b>	<b>Extended Price</b>
<b>«Item»</b>	<b>«Phase»</b>	<b>«Description»</b>	<b>«ExtendedPrice»</b>

By signing below, Seller agrees to all terms and conditions of this Agreement. Seller acknowledges that the waiver of indemnity contained in Paragraph 5 was mutually negotiated.

**APPROVED AND ACCEPTED:**

**«FirmName»**

By: \_\_\_\_\_



**NOTE: A FIELD PURCHASE ORDER WILL BE REQUIRED FOR EACH MATERIAL DELIVERY.**

1. All material and equipment furnished under this order shall be guaranteed by the Seller to the Purchaser and Owner to be fit and sufficient for the purpose intended, and that they are merchantable, of good material and workmanship and free from defects. Seller agrees to replace without charge to Purchaser or Owner said material and equipment, or remedy any defects latent or patent not due to ordinary wear and tear or not due to improper use or maintenance, which may develop within (1) year from date of Final Acceptance by the Purchaser or Owner, or within the guarantee period set forth in the Main Contract, whichever is longer. The warranties herein are in addition to those implied by law.

Seller warrants that all materials provided under this Purchase Agreement shall be free of mold. Mold is defined as any permanent or transient fungus, mold, mildew or mycotoxin, or any of the spores, scents or byproducts resulting therefrom regardless of whether they are proved to cause disease, injury or damage.

Upon providing the materials under this Purchase Agreement, Seller agrees to provide a certification that the materials provided hereunder comply with the requirements of this Agreement. The certification shall be in the form attached hereto as the Mold Certification Addendum.

2. The Seller and all material and equipment furnished under this order shall be subject to the approval of the Owners, architect, engineer, or the Purchaser, and Seller shall furnish the required number of submittal data or samples for said approval. In the event approval is not obtained the order may be canceled by Purchaser with no liability on the part of Purchaser.
3. All material and equipment furnished hereunder shall be in strict compliance with the Main Contract between Purchaser and Owner, including all plans, specifications, and general conditions, and Seller shall be bound thereby in the performance of this contract. The Main Contract, including the plans and specifications, are incorporated into this purchase order as though fully set forth. Seller acknowledges that it has had the opportunity to request and review such Main Contract plans and specifications.
4. The materials and equipment covered by this order whether in a deliverable state or otherwise, shall remain the property of the Seller until delivered to a designated site and actually received by the Purchaser, and any damage to the material and equipment or loss of any kind that occur during transit shall be borne by the Seller, notwithstanding the manner in which the goods are shipped or who pays the freight or other transportation costs.
5. Seller shall defend, indemnify and hold the Purchaser, its officers, employees and agents harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from injury to or death of any and all persons, or arising out of property damage of any kind, whether tangible or intangible, or loss of use resulting therefrom, or in any manner connected with the goods to be furnished under this Agreement, except for injuries and damages caused by the sole negligence of the Purchaser.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Seller and the Purchaser, its officers, employees, and agents, the Seller's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Seller's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Seller's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

Defense cost recovery shall include all fees of attorneys and experts, and costs and expenses incurred in good faith. In addition, Purchaser shall be entitled to recover compensation for all of its in-house expenses, including materials and labor, consumed in its defense.

6. Time is of the essence of this contract. Should the Seller for any reason fail to supply and deliver the materials and equipment to be furnished herein in strict accordance with the terms and conditions of this purchase order, including but not limited to the timely delivery of such items, the Purchaser shall have the right to purchase the materials elsewhere, and any excess in cost of same over the price herein provided shall be chargeable to and paid by the

Seller on demand. Should any delay on the part of the Seller or defects or nonconformance of the materials or equipment with the plans and specifications occasion loss, damage or expense including consequential damages to the Owner or to the Purchaser, the Seller shall indemnify the Owner and the Purchaser against such loss, damage or expense including attorneys' fees. If for any cause, all or any portion of the materials to be furnished are not delivered at the time or times herein specified, the Purchaser may, at his option, cancel this order as to all or any portion of materials not so delivered.

7. Seller shall submit to Purchaser requests for payment at such times and in a form to enable Purchaser to timely obtain payment from Owner. Seller shall receive payment from Purchaser in such amount(s) allowed and actually received by Purchaser from Owner for Seller's performance. It is expressly agreed that payment by Owner to Purchaser shall be a condition precedent to Purchaser's payment to Seller. Five percent (5%) of the sum of this Purchase Agreement shall be withheld until Seller has submitted all closeout documents satisfactory to Purchaser and Owner.
8. Seller shall furnish all necessary lien waivers, affidavits or other documents required to keep the Owner's premises free from liens or claims for liens, arising out of the furnishing of the material or equipment herein, as payments are made from time to time under this order. Seller agrees that Purchaser may, at its sole option and in its sole discretion, make any payments to the Seller otherwise due and owing under the terms of the Purchase Agreement by way of joint check or by direct payment to third parties or otherwise.
9. All prior representations, conversations or preliminary negotiations shall be deemed to be merged in this order, and no changes will be considered or approved unless this order is modified by an authorized representative of Purchaser in writing. The contract formed based upon this Purchase Agreement is expressly limited to the terms and conditions contained herein. No alteration of any of the terms, conditions, delivery arrangements, price, quality, quantities, or specifications of this Purchase Agreement will be effective without the written consent of the Purchaser.
10. In the event of any dispute of any kind between Purchaser and Seller arising directly or indirectly out of this purchase order which results in any litigation or court proceedings of any kind, the prevailing party in any such litigation or court proceedings shall recover from the nonprevailing party all of the prevailing party's actual attorney's fees and costs occasioned thereby.
11. Items not detailed or specified, but required to complete the contract work will be provided at no extra cost by the supplier. Changes to this purchase order for extra work must be signed by Kirtley-Cole before work is started. Seller agrees to give Purchaser written notice of any event giving rise to a claim for additional time or extra compensation within five (5) calendar days of the occurrence of the event. If this written notice is not provided, Seller's claim shall be deemed waived.
  - (a) Pass Through Claims: In the event Seller's claim directly or indirectly is caused by or arises out of conduct for which the Owner may be responsible, Seller agrees to be bound to Purchaser to the same extent that Purchaser 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 thereunder by the person so authorized in the Main Contract, or by any administrative board, court of competent jurisdiction, or arbitration. Seller agrees to be bound by the procedure and final determinations as specified in the Main Contract and agrees that it will not take, or will stay or suspend, any other action or actions, including but not limited to, any arbitration(s) or action(s) commenced pursuant to the Federal Miller Act, state lien statutes, Bond or Retainage Act(s) with respect to any such claims and will pursue no independent litigation with respect thereto, pending final determination of any dispute resolution procedure between Owner and Purchaser.
  - (b) Other Claims: For other all claims or disputes related to this Purchase Agreement, Purchaser shall have the exclusive right to require the venue for any legal action to be in the State of Washington, Snohomish County Superior Court. Purchaser shall have the unilateral right to require any dispute between Purchaser and Seller to be resolved in the alternative dispute resolution forum of its choosing. This purchaser order shall be governed by the laws of the State of Washington.

**MOLD CERTIFICATION ADDENDUM**  
**To Purchase Agreement**

**RE: «ProjectDescription»**

**«FirmName»** (hereinafter SELLER) certifies that the materials provided under this Purchase Agreement comply with the requirements of Paragraph 1 of the Purchase Agreement General Conditions. SELLER certifies that it has inspected the materials it has provided and that the materials provided meet the requirements of Paragraph 1 of the Purchase Agreement General Conditions. SELLER warrants that all materials provided under this Purchase Agreement are mold free.

**THE UNDERSIGNED HEREBY CERTIFY THAT THIS ADDENDUM WAS MUTUALLY NEGOTIATED.**

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**KIRTLEY-COLE ASSOCIATES LLC**

**«FirmName»**

BY: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DRAFT

**TO BE EXECUTED AT COMPLETION OF DELIVERY OF MATERIALS**