

KIRTLEY-COLE ASSOCIATES LLC

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

PURCHASE AGREEMENT

TO SELLER: **SELLER
ADDRESS
CITY, ST**

CONTACT: **CONTACT NAME**
PHONE: () -
MOBILE: () -
FAX: () -

DATE:

DATE ON WHICH SELLER MUST DELIVER MATERIALS TO PROJECT:

F.O.B. **JOBSITE**

SHIP TO: **PROJECT NAME**

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

SCOPE OF WORK

Furnish all **Scope** 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** . This includes but is not limited to providing 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 \$ 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: Sales tax, .

Discount Terms:

TOTAL AMOUNT OF PURCHASE AGREEMENT:

JOB #KC Job # ID #KC Phase Code

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.

KCA INITIALS: _____

DATE: _____

**APPROVED AND ACCEPTED:
SELLER**

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 Agreement as though fully set forth. Seller acknowledges and confirms, by initialing below this paragraph, that it has in fact seen and reviewed the Main Contract and all of its terms along with the Plans and Specifications.

Purchaser

Seller

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. Indemnification

(a) Subject to Subsections (b) through (f) below, Seller shall defend, indemnify, and hold harmless Purchaser, Owner, and their respective officers, directors, partners, members, shareholders, affiliate, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") from and against any and all claims, demands, obligations, actions, causes of action, damages, costs, losses, liabilities, and expenses (including, without limitation, attorneys' fees and costs and other litigation, mediation, arbitration, or dispute resolution expenses), arising from or in any way connected with Seller's performance or non-performance of this Agreement or the intentional misconduct of Seller's employees (all of the foregoing being referred to as "Claims"). Any such defense of an Indemnitee shall be provided by Seller by legal counsel reasonably satisfactory to such Indemnitee. Subject to Subsections (b) through (f) below, Seller's obligations to defend and indemnify (i) include (without limitation) all Claims, whether occurring before, during or after the performance of this Agreement, which arise from or relate to the activities, products, actions or omissions of Seller, its Sub-Sellers, anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable (collectively, the "Seller Parties"); (ii) shall not be limited in any way by any limitation on the

amount or type of damages, compensation, or benefits payable by or for Seller or any Seller Party under workers' or workman's compensation acts, disability acts, other employee benefits acts, or any insurance required to be carried by Seller under the Main Contract; (iii) specifically and expressly include (without limitation) any Claims caused in part by the negligence (whether active or passive) or other misconduct of any Indemnitee; and (iv) shall be triggered by the assertion of a Claim against any Indemnitee without the requirement that it first be determined that Seller or any Seller Party was negligent or otherwise at fault or that the Claim has any merit. Seller's failure to procure specific contractual liability and other types of insurance for the benefit of any Indemnitee, as required under the Main Contract, shall not render the foregoing provisions unenforceable under any applicable law.

(b) Notwithstanding the provisions of Subsection (a) above, and pursuant to RCW 4.24.115, Seller is not obligated to indemnify an Indemnitee for a Claim which is ultimately determined, upon final adjudication, settlement, or other resolution of the Claim ("Finally Determined"), to have been caused solely by the active negligence or willful misconduct of that Indemnitee; provided, however, that this exception does not limit or relieve Seller's defense obligations prior to the Claim being so Finally Determined or Seller's obligations to indemnify all other Indemnitees which are not Finally Determined to have participated in such negligence or misconduct.

(c) Seller's duty to indemnify Indemnitees under this Section 5 as to a Claim resulting from the concurrent negligence of an Indemnitee and the Seller Parties shall apply only to the extent of negligence of Seller or Seller's agents or employees. Seller shall bear the financial responsibility for defense of Indemnitees until negligence is Finally Determined.

(d) Seller specifically and expressly waives any immunity that it may be granted under the Washington State Industrial Insurance Act, RCW Title 51. Provided, however, Seller's waiver of immunity extends only to claims against Seller by Purchaser and does not include, or extend to, any claims by Seller's employees directly against Seller. **The parties certify that this provision was mutually negotiated between Purchaser and Seller.**

(e) The provisions of this Section 5 shall survive termination of the Agreement for any purpose or reason.

(f) The parties intend that Seller's indemnity and defense obligations under this Agreement will be enforced to the fullest extent allowable under applicable laws, and agree that if any of the provisions of this Section are, to any extent, held to be invalid, illegal or unenforceable for any reason, any remaining portion thereof and all other provisions of this Section shall not be affected by such holding, but shall remain valid and in force to the fullest extent permitted by law.

(g) **By their signatures to the Agreement, Purchaser and Seller certify that this Section 5 was mutually negotiated and agreed upon.**

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 Agreement, 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. The last Five percent (5%) of the sum of this Purchase Agreement will not be due and owing until 30 days after Seller has submitted all closeout documents in a form 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 Agreement 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 non-prevailing 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 Agreement 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 including the sole right to require such dispute to be joined to other alternative dispute resolution proceedings of any kind when Purchaser deems the disputes are related in any way. This purchaser order shall be governed by the laws of the State of Washington.

MOLD CERTIFICATION ADDENDUM
To Purchase Agreement

RE: PROJECT NAMEPROJECT NAME

SELLER (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

SELLER

BY: _____

BY: _____

TITLE: _____

TO BE EXECUTED AT COMPLETION OF DELIVERY OF MATERIALS

SAMPLE