

LONG FORM PURCHASE ORDER

Order No. _____

Contractor's Project No. _____

Owner's Contract No. _____

Name of Project _____

THIS AGREEMENT is made and entered into this _____ day of _____, 20 _____

by and between: _____ ("Buyer") and
 _____ ("Seller").

Buyer has entered or is about to enter into Contract No. _____ with
 _____ ("Owner") for the construction of

located at _____

which contract, together with all addenda, supplements, amendments, changes or additions thereto is called the "Prime Contract."

Buyer and Seller agree as follows:

1. MATERIAL TO BE PROVIDED: Seller shall furnish the material described below at the price or prices set forth opposite each item within the times stated below in accordance with the terms and provisions of the Prime Contract.

Description/ Item No.	Estimated Quantity	Unit Price	Extension*	Delivery Date

*Approximate Amount of Material Contract (Based on Estimated Quantity)

Ship to _____ Via _____ Mark _____

Deliver F.O.B. _____

With Freight Allowed to _____

Mail Invoices in Triplicate to _____

Terms _____

2. COMPLETE AGREEMENT. This purchase order consists of this Agreement, and the applicable terms, conditions, plans and specifications of the Prime Contract. Seller's acceptance is limited to the terms and conditions contained in this purchase order. Commencing performance or making deliveries or any acknowledgement of this Agreement by Seller shall constitute an acceptance of the terms of this Agreement by Seller. Buyer is to be bound only by the terms and conditions of this purchase order notwithstanding any proposals, terms or conditions additional to or different from those accompanying Seller's performance or acknowledgement.

3. CHANGES AND RIGHT TO TERMINATE. Changes will be binding on Buyer only if in writing and signed by the Buyer.

(a) Buyer, for its convenience, may by written change order make any change, including, without limitation, additions or deductions in quantities ordered, changes in the specifications or drawings, changes in the time of delivery, or termination. Buyer may terminate or suspend at its convenience all or any portion of this order not shipped as of the date of termination or suspension of the order. In the event of any change or termination, there shall be an equitable price adjustment by Buyer. If Seller maintains that Buyer's adjustment is not equitable, the price change shall be negotiated. In the event the parties cannot agree, the final determination shall be made in accordance with the dispute resolution provision of this Agreement. However, if unit prices have been designated as to materials maintained in the normal course of Seller's business as standard stock, such unit prices shall control all price adjustments for quantity changes. No change or termination shall relieve Buyer or Seller of any of their obligations as to any material shipped prior to Seller's receipt of the change, termination or suspension order. Any claim for adjustment by Seller hereunder must be asserted in writing within ten (10) days from the date the change or termination is ordered.

(b) If the Owner shall order the Buyer to change, adjust, substitute, add to, delete from, suspend, or terminate the work included in this order, Seller shall comply with Owner's order and the price or time of performance hereunder shall only be adjusted as allowed by Owner. If requested by Owner, Seller agrees to be bound to and by the dispute resolution procedure of the Prime Contract.

(c) In the event of a termination for default, Buyer may, in addition to all other rights and remedies, purchase substitute items or services elsewhere and hold Seller liable for any and all excess costs incurred, including attorneys' fees and experts' and consultants' fees actually incurred.

4. PAYMENT. The price herein specified shall, unless otherwise expressly stated within the terms of this Agreement, include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authorities, which either party is required to pay with respect to the production, sale, use or shipment of the materials covered by this agreement, and all charges for packing, loading, unloading and shipping. If transportation costs are designated as part of the cost to Buyer, only actual transportation costs shall be included. Damage to goods not

packed to insure proper protection shall be charged to Seller. Seller's invoice shall set forth the items delivered to the project site, the date of delivery, the unit cost and total costs of the items invoiced. Seller's right to payment is subject to the same payment provisions enforced upon Buyer by the terms of the Prime Contract.

If Owner or other responsible party delays in making any payment to Buyer from which payment to Seller is to be made, Buyer and its sureties shall have a reasonable time to make payment to Seller. "Reasonable time" shall be determined according to the relevant circumstances, but in no event shall be less than the time Buyer, its sureties and Seller require to pursue to conclusion their legal remedies against Owner or other responsible party to obtain payment, including (but not limited to) mechanics' lien remedies.

If the Seller asserts a claim which involves, in whole or in part, acts or omissions which are the responsibility of the Owner or another party, including but not limited to claims for failure to pay, an extension of time, delay damages, or extra work, Buyer will present the Seller's claim to the Owner or the responsible party. The Seller shall cooperate fully with the Buyer in all steps taken in connection with prosecuting such a claim and shall hold harmless and reimburse the Buyers for all expense, including legal expense, incurred by Buyer which arise out of Buyer's submission of Seller's claim to Owner or other responsible party. Seller shall be bound by any adjudication or award in any action or proceeding resolving such a claim.

5. RISK OF LOSS. Notwithstanding the terms of shipment, the risk of loss shall pass to Buyer only after delivery to the job site or other place designated in writing by Buyer.

6. DELIVERY. Time is of the essence of this Agreement. If no delivery date is specified on the face of this order, all deliveries of materials shall conform to the date or dates specified in writing from time to time by Buyer's representative. Should delivery for any reason fail to be timely, Seller shall be liable for all damages suffered by Buyer as a result of such failure, including, without limitation, any liquidated damages under Buyer's Prime Contract. In no event shall Seller be entitled to an extension beyond that allowed to Buyer under the terms of the Prime Contract.

7. DEFAULTS. If Seller fails to perform any of its obligations hereunder, Buyer shall be entitled to all remedies provided by law. If Seller becomes insolvent or makes an assignment for the benefit of creditors, or files or becomes subject to receivership or reorganization or bankruptcy proceedings, or becomes involved in labor difficulties, which in Buyer's opinion threaten Seller's ability to perform in a timely manner, Buyer may, in addition to any other rights or remedies it may have hereunder or at law, terminate the purchase order upon written notice to Seller; such termination shall be deemed a termination for default. Buyer's failure to notify Seller of a rejection of nonconforming materials or to specify with particularity any defect in nonconforming materials after rejection or acceptance thereof will not bar Buyer from pursuing any remedies for breach which it may otherwise have.

8. INSPECTION. Buyer shall have the right to inspect and test the materials at Seller's plant anytime prior to shipment and to conduct additional inspections at any time after arrival at the job site. The making or failure to make any inspection of, or payment for or acceptance of, the materials shall not impair Buyer's right to later reject nonconforming materials, or to avail itself of any other remedy to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality, or the ease of its discovery. Seller shall be liable for all inspection, reshipment and return costs on nonconforming materials. Seller shall not replace returned materials unless so directed by Buyer in writing.

9. WARRANTIES. Seller warrants to Buyer that it has fully and carefully reviewed the provisions, specifications, drawings, samples or other descriptions contained in this Agreement and in the Prime Contract. Seller warrants to Buyer of the materials that the same shall be free from all defects, shall be of the quality specified, shall be fit and appropriate for the purpose intended and shall conform to the provisions, specifications, performance standards, drawings, samples or other descriptions contained herein or in the Prime Contract. Seller further warrants

that the materials will be complete in all respects necessary to make the materials fully functional if installed in accordance with the contract documents. All warranties implied by law or usage of trade are incorporated into this Agreement and shall apply to services and materials ordered. Seller guarantees Buyer that the materials rendered shall be free of any and all defects in workmanship and materials which may develop for the period set forth in the Prime Contract. Seller's warranty shall in all respects meet the terms of the warranty requirements of the Prime Contract for the materials and services ordered. The materials are ordered by Buyer in reliance on each and all of the warranties and guarantees specified herein and implied by law or usage of trade. Buyer's remedies pursuant to this paragraph are in addition to, and not a limitation on, all other remedies allowed by law.

10. INFRINGEMENT. Seller shall pay all royalties and licensing fees arising in connection with the sale or use of materials hereunder. Seller further undertakes and agrees to defend, at Seller's expense, all suits, actions or proceedings in which Buyer, its successors, assigns, customers or users of its customer's products are made defendants for actual or alleged infringement of any U.S. or foreign letters patent, copyrights or trademarks resulting from the use or purchase of any materials furnished under this Agreement, and Seller agrees to pay or discharge any and all judgments or decrees which may be rendered in any such suit, action or proceeding against such defendants therein.

11. COMPLIANCE. Seller's performance shall in all ways strictly conform with all applicable laws, regulations, safety orders, labor agreements and working conditions to which it is subject, including, but not limited to, all State, Federal and local non-discrimination in employment provisions, and all applicable provisions required by the Prime Contract and by Buyer's own internal safety program, and all local regulations and building codes. Seller shall execute and deliver all documents as may be required to effect or evidence compliance.

12. INDEMNITY. Seller assumes all risk in furnishing the materials and services ordered hereunder, and will, to the fullest extent permitted under the statutes and public policy of the State of California, indemnify, hold harmless and defend Buyer and Owner against any and all losses, damages, liabilities and claims of any kind whatsoever, including actual attorneys' fees and experts' or consultants' fees, which arise directly or indirectly out of the performance or nonperformance of this purchase order including, but not limited to, losses of any materials ordered hereunder and injuries to property and to persons, including death. Seller, however, shall not be obligated under this Agreement to indemnify Buyer or Owner for the sole negligence or willful misconduct of Buyer or Owner or their agents or employees, for the active negligence of Owner or its agents or employees, or for defects in design furnished by Buyer or Owner or their agents or employees. The indemnity set forth in this paragraph shall not be limited by the insurance requirements set forth in Paragraph 15.

13. ASSIGNMENTS, SETOFF. Any delegation, subletting or assignment by operation of law or otherwise, of all or any portion of the obligations to be performed by Seller without the prior written consent of Buyer shall be void. In the event of any transfer, hypothecation or assignment by Seller, without Buyer's consent, of the right to receive all or any part of any payments due or to become due hereunder, Buyer may, at any time thereafter withhold any or all monies or payments due or to become due hereunder until final payment is due and all conditions precedent to such payment are satisfied. Buyer may, at its option, setoff any amounts otherwise due from Buyer to Seller under this purchase order against any delinquent amounts or liabilities which are due to Buyer or its commonly controlled affiliates from Seller.

14. APPLICABLE LAW - DEFINITIONS. The definitions of terms used, interpretation of this Agreement and the rights of all parties hereunder, shall be construed under and governed by the laws of the State of California. Whenever Buyer is not the ultimate consumer of the materials, all rights, benefits and remedies conferred upon

Buyer hereunder shall accrue and be available to and are for the express benefit of any successors in interest to the materials, including the ultimate consumer of the materials. The materials means the supplies, drawings, data and other property and all services, including design, delivery, installation, inspection and testing specified or required

to furnish the materials or services ordered.

15. INSURANCE AND CLAIMS. If Seller or its employees or agents come onto Buyer's premises or project in connection with this purchase order, Seller agrees to carry (i) Comprehensive General Liability Insurance covering personal injuries (including death) in the amount of _____ per occurrence, and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of _____ per person, and _____ per occurrence, property damage in the amount of _____ per occurrence, and products liability in the amount of _____. Seller further agrees to provide and maintain Workers' Compensation Insurance in conformity with the laws of the state in which such premises or project is located and Employer's Liability Insurance in the amount of _____ per occurrence. If requested by Buyer, Seller shall submit written proof of such insurance to Buyer prior to entrance on Buyer's premises or project. Seller shall supply such bonds as are required by Buyer.

16. COMPLIANCE WITH LICENSE LAW. Contractors are required by law to be licensed and regulated by the Contractors State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding a latent act or omission pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California, 95826.

17. DISPUTES. Buyer may, at its sole option, elect to arbitrate any dispute, the value of which is less than \$50,000.00, arising out of or related to this purchase order or the breach thereof, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The existence of a dispute between Buyer and Seller, not involving a material default by Buyer in performance of a condition precedent to Seller's performance, shall not relieve Seller of its obligation to perform under this Agreement. In the event either party becomes involved in litigation or arbitration arising out of this Agreement, the prevailing party shall be fully compensated for the cost of its participation in such proceedings, including the cost incurred for attorneys' fees and experts' fees. Unless judgment goes by default, the attorneys' fee awarded shall not be computed in accordance with any court schedule, but shall be such as to fully reimburse all attorneys' fees actually incurred in good faith, regardless of the size of a judgment, it being the intention of the parties to fully compensate for all attorneys' fees and experts' fees paid or incurred in good faith. Disputes not arbitrated pursuant to this provision shall be litigated.

SAMPLE

We acknowledge receipt of, and accept,
Purchaser's order:

This order is hereby approved:

SELLER _____ BUYER _____

By _____ By _____

Title _____ Title _____

Date _____ Date _____

Address _____ Address _____

Contractor's License Number: _____ Contractor's License Number: _____

(If Required)

(If Required)

NOTE: Before execution, users should insure that this form meets their specific needs. Some construction material procurement agreements may require the use of specialized provisions not included in this form. This document has important legal consequences; users are encouraged to consult with an attorney with respect to its use or modification.

