

**WARD CONSTRUCTION CO.
PURCHASE AGREEMENT**

THIS AGREEMENT, made and entered into this **0 day of Month, 202#**, by and between **XXXXXXXX**, hereinafter "Seller", with its principal office located at **XXXXXXXX**, and Ward Construction Co., hereinafter "Buyer."

Witnesseth: In consideration of the mutual covenants herein contained, the parties hereto agree as follows:

1. The Seller agrees to furnish to the Buyer the materials set out in Paragraph No. 2 hereof necessary in the construction of the following Project which is known as the **XXXXXX** (hereafter referred to as the Project). The Project site is located at **XXXXXX**. The Seller warrants that they will deliver the materials covered by this Purchase Agreement to the Project site. These materials will be for the Buyer whose address is 2750 S. Shoshone Street, Suite 315, Englewood, Colorado, 80110, in accordance with the prices and under the terms and conditions hereinafter set forth.
2. It is agreed that the materials to be furnished by the Seller and the price to be paid by the Buyer shall be as follows:
 - 2.1 The Seller shall supply all the **XXXXXXXX** as called for in specification section(s) **XXXXXXXX** and the contract documents as prepared by **XXXXXX** whose address **XXXXXX**

The contract documents include:

Contract Documents:

Drawings:

Specification

Addenda:

Alternates:

Additional items as required.

The Seller specifically includes (but is not limited to):

XXXX

The substantial completion date for the project as a whole is Month 00th, 202#. Start date is Month 00th, 202#, with liquidated damages of \$#,### per calendar day for failure to complete on time.

- **PRIME CONTRACTOR RESERVES THE RIGHT TO CANCEL THIS CONTRACT IF IT IS NOT RETURNED BY 8/31/20 WITH NO COMPENSATION, REGARDLESS OF ANY WORK COMPLETED.**

The Seller specifically excludes:

XXXX

Seller warrants that the materials above described conform to the requirements of the Buyer's Contract with the Owner, which is incorporated herein by reference.

2.2 PURCHASE ORDER SUM. The Buyer shall pay the Seller for the contracted materials, excluding all applicable sales tax, subject to additions and deductions by Change Orders as provided herein, in current funds, the contract sum of **XXXX Dollars (\$)**.

3. If the Seller's lack of performance or delivery of materials in accordance with the construction schedule or direction of the Buyer causes the Buyer to suffer damages, liquidated or otherwise, the Seller is responsible to the Buyer for those damages (the amount of which is to be determined by the Buyer) and may be deducted from any amount owing to the Seller.
4. Seller will not be entitled to interest on any payment, either progress or final, regardless of whether payment is made by Prime Contractor in a timely manner or not, unless Prime Contractor is paid interest with respect to such payment by the Owner.
5. Barring delays contemplated by this Purchase Agreement (due to acts of God) and approved by the Buyer, the Seller warrants that they will deliver the materials covered by this Purchase Agreement to the Project site stated above in paragraph number 1, in accordance with the construction schedule maintained by the Buyer as the same may be amended from time to time. In addition, the Seller without additional compensation, shall deliver the materials covered by this Purchase Agreement at such time and in such manner as the Buyer may direct.

The Seller is solely responsible for making sure all of his materials are delivered within the construction schedule. The Seller is solely responsible for finding out from the Prime Contractor when the work and all his materials are needed.

The Seller must respond in writing within ten working days of receipt of this Agreement as to any material delivery problems on Prime Contractor's form. The Seller must submit to the Prime Contractor a schedule detailing when materials must be ordered to be delivered per the construction schedule. If a specified material cannot be delivered on schedule, the Seller is responsible for finding a product substitute acceptable to the Buyer, Owner and Architect that does meet the schedule. No substitution of material from that which has been specified will be allowed without the approval of the Buyer, Owner and Architect. Material delivery failures will not relieve the Seller from responsibility for liquidated or other damages caused by the resultant failure of the Seller to meet the schedule.
6. All materials furnished under this agreement shall be delivered F.O.B. job site. Seller will supply 48 hours (not including weekends) written notice to Buyer of delivery date and time.
7. Payment for the materials furnished by the Seller under this Agreement shall be made by the Buyer within 30 days after funds are received from the Owner. The Buyer will not make such payment to the Seller until such payment is received from the Owner. Seller acknowledges that payment to the Buyer by the Owner shall be a condition precedent to payments to the Seller under this Agreement. Payment by the Buyer under this agreement shall not be construed to be an acceptance of improper, defective or unsuitable materials, nor shall it be construed as evidence of the performance of any obligation of the Seller specified in this Agreement. Furnishing certificates of compliance, warranties, operating instructions or other data required by the specifications or terms and conditions of the General Contract shall be a condition precedent to payment. Seller shall furnish all necessary lien waivers, affidavits or other necessary documents required to assure the prevention of liens, as a condition of payment hereunder. Subcontractor shall submit monthly requests for payment based upon actual progress to the Prime Contractor not later than the 20th day of the month for the period for which payment is being requested.

In order to be paid for materials, the materials must be on the job site by the referenced day of the month and the invoice must be accompanied by a delivery ticket signed by the Buyer's Superintendent. As the delivered materials may not be readily or easily inspected, the Seller acknowledges that the Buyer's signature represents only that a shipment was received and is not a verification of damage status, quality or quantity.

If the contract documents allow for payment of materials stored offsite, the following criteria must be met at the time of billing:

 - a) An insurance certificate must be provided showing the material is covered for damage or theft at the storage facility.
 - b) An original invoice from the Seller's supplier will be provided.
 - c) A bond (of a quality acceptable to the Buyer) will be provided (at the Seller's cost) guaranteeing delivery of the material to the jobsite.
 - d) Material will be set aside and marked as designated for the Project.
8. This Agreement and the Contract Documents incorporated by reference above, constitute the entire and integrated agreement between Buyer and Seller, and supersedes all prior negotiations, representations, understandings and agreements, either written or oral between the Buyer and Seller. This Agreement may be amended only by written instrument signed by both Buyer and Seller.
9. The Seller agrees to abide and be bound by all applicable terms and conditions of the Buyer's Contract with the Owner or Prime Contractor of the above described Project.

10. Seller warrants that all materials furnished pursuant to this Agreement shall be of the quality specified herein, and if the quality of said materials is not specified herein, the Seller warrants that all materials provided are of high quality, are new, are suitable for the construction purposes of the Buyer and would be acceptable without objection to persons knowledgeable in the trade. Seller is responsible for field measurements prior to ordering material. Seller further warrants that all materials provided shall conform strictly with the drawings and specification and all change orders thereof on file in the Buyer's office and which are incorporated herein by reference. In the case of materials ordered by sample, the materials furnished shall also conform in every way to the sample submitted. If the materials or equipment furnished do not comply with the requirement specified in this Contract at the time of delivery or upon incorporation of the materials in the construction of the Project, or the Buyer determines that such materials are unsuitable for use in the construction of said Work for any other reason, or are otherwise defective, the Seller shall immediately upon notice from the Buyer provide all labor and material necessary to remove said materials and replace the same with proper materials that are satisfactory to the Buyer, including all necessary labor and materials to remove and replace all work that is consequently damaged by the originally installed unsuitable material and consequential damage due to the removal and replacement of the Seller's unsuitable work. If labor is required, the Seller shall provide Workmen's Compensation and General Liability insurance that is acceptable to the Buyer.
11. The Seller shall, when requested, within three workdays, submit to the Prime Contractor written evidence that specific material orders have been placed and/or shipped. All shop drawing/submittals shall be delivered to the Prime Contractor in accordance with the contract documents within two weeks of receipt of this proposed contract. The Seller shall send a shipping list and a bill of lading with each shipment. Each delivery must be supported by separate invoice issued with shipping or delivery release. If electronic submittals are requested or required by the architect or owner the subcontractor must provide them. After the electronic submittals are approved, the subcontractor must provide 2 hard copies for the Prime Contractor and deliver them to the Prime Contractor's office within 1 week of the submittals being emailed to the

- subcontractor. Failure to make the initial electronic submittals or print and deliver hard copies to the Prime Contractor as defined above, will allow the Prime Contractor to charge the Subcontractor \$75.00/hr. plus the cost to print, if applicable, to complete the tasks not done by the Subcontractor.
12. It is agreed by the parties that in the case of materials to be furnished in bulk or by an unit of measurement, the quantities hereinbefore intended to cover the actual requirements, unless otherwise specified herein, of the Buyer for the work to be constructed by it, and the Buyer shall be under no obligation to purchase or accept any of such materials not actually required by it in the construction of such work, either in the present plans and specifications or as the same may be altered and modified, but the Seller shall furnish all of such materials as are required by the Buyer for such construction work, whether the amount required is more or less than the amounts herein set out. Materials of like nature to those herein included, which may be used by any subcontractor on said work, shall not be included in or covered by this Agreement, unless Buyer has agreed to furnish such materials to the subcontractor as a part of its subcontract.
 13. Seller agrees that the promised delivery time is of the essence, and if the Seller shall fail to furnish any of the materials set out herein within the time specified by the Buyer or in accordance with the requirements of this Agreement and to the satisfaction of the Buyer as set forth in Paragraph No. 10 above, then the Buyer at his election, may purchase said materials elsewhere and the Seller shall pay, upon demand, any excess in the cost of such materials so purchased over and above the price herein specified, together with any additional expense incurred by the Buyer thereby. The Seller shall pay, upon demand, all of such loss or damage; provided, however, that the Seller shall not be liable under this paragraph if such default is caused by acts of God beyond the Seller's control, but in such event the Seller shall immediately give notice to the Buyer of the occurrence of such act of God in order that he may be relieved of responsibility under this paragraph. Further, in case of such default as outlined above, Seller agrees to indemnify Buyer for any liquidated or consequential damages. The Seller agrees to reimburse the Buyer for any liquidated or consequential damages. The Seller agrees to reimburse the Buyer for all attorney's fees and expenses which the Buyer may incur in enforcing any of the provisions hereof.
 14. If the Seller shall default in the performance of any of his obligations hereunder or shall be delayed in the furnishing of the materials herein set forth for any reason whatsoever, the Buyer may, at its option, terminate this Agreement and, in such case, all further liability or obligation of the Buyer to the Seller shall cease, except liability for the reasonable value of the materials theretofore furnished by the Seller and accepted by the Buyer, which shall not in any event exceed the contract price for the materials so furnished, but any such termination of this Agreement shall not relieve the Seller of any obligation under Paragraph No. 16 hereof.
 15. The performance of each and all of the conditions herein by the Seller shall be a condition precedent to the payment of any monies hereunder.
 16. The Seller warrants and guarantees the materials covered by this Agreement and agrees to make good at his own expense any defect in such materials which may occur or develop prior to the Buyer's release from responsibility therefore by the Owner.
 17. The Seller agrees to indemnify and save the Buyer, its agents and employees, harmless (a) from any and all claims, suits and liability for infringement or violation of any patent or patent rights arising in connection with this agreement or from the use by the Buyer of any of the materials furnished to it by the Seller; (b) from any and all claims, suits and liability for injuries to property or persons, including death on account of any act or omission of the Seller or its officer, agents, employees and servants; (c) from any claim, damages and liability which shall or could be asserted by any and all claims, suits and liens for the materials furnished hereunder by persons other than the Seller. The Seller shall indemnify the Buyer for any and all claims for which the Buyer may be liable which are a result of the Seller's breach of the terms of this Agreement, including all attorney's fees and costs which the Buyer may incur.
 18. The Seller shall not assign or sublet this Agreement or any part thereof, including any payments due or to become due thereon, without the written consent of the Buyer.
 19. The term "materials" as used herein shall be deemed to include "equipment" when appropriate.
 20. Buyer will provide current workmen's compensation, general liability and automobile insurance certificates naming the Buyer as additional insured. Coverage limits and scope must be per the contract documents. Any Subcontractor doing design work (sometimes identified by an engineer's stamp) needs to provide evidence of \$1,000,000 of Architect's and Engineer's Professional Liability. If the Subcontractor sub-subcontracts the design work, then the evidence needs to be provided for the Sub-Subcontractor.
 21. When change order pricing requests are made of the Seller, the Seller has, at most, seven calendar days from the time of receipt of the pricing request to deliver a written response to the Prime Contractor. Response shall be a written quote on the form provided by the Prime Contractor, including a complete breakdown of material (list and price) and mark-up. Failure to respond with a detailed breakdown within the time limits set forth above will be interpreted as a no cost change quote. If directed to proceed by the Prime Contractor, the change order work will be done by the Seller with no additional compensation. On credit change order pricing, if the Seller fails to respond within the required time, the Prime Contractor will negotiate pricing with the owner/architect, and the amount will be deducted from the Seller's contract. Unless otherwise specified, the overhead and profit mark-up on any extra work will be no more than 10%. Any office costs and/or project management time is included in the mark-up. When the mark-up on changes is a percentage to be shared between the Prime and the Subcontractor, the Prime's portion shall be 2/3 and the Subcontractor's shall be 1/3 of the total percentage mark-up. If the Seller does any work he believes is outside of the purchase agreement scope, he must receive written direction from the Prime Contractor before proceeding, or he gives up any claim to additional compensation or time extensions.
 22. Ten percent of the purchase price to be withheld as retention until acceptance by owner or his representative.
 23. All work and materials furnished hereunder shall comply, in every respect, within all federal and state laws and municipal codes.
 24. Seller warrants that he has title to all goods sold herein and that they are free from any charge or encumbrance in favor of any third person.
 25. Seller represents that he knows the particular purpose for which the goods are required and warrants that the goods shall be reasonably fit for such purposes and shall be of merchantable quality.
 26. Should Buyer be terminated, for any reason from the Project, Buyer may terminate this and any other related Agreement without penalty or other charges and for convenience, entitling Seller only to the reasonable value of the materials theretofore furnished by the Seller and accepted by the Buyer, which shall not in any event exceed the contract price for the materials so furnished, but any such terminations of this Agreement shall not relieve the Seller of any obligation under Paragraph No. 16 hereof.
 27. Notwithstanding the terms of shipment, the risk of loss shall pass to Buyer only after Buyer takes actual delivery of the goods. Delivery to carrier, agent, or other intermediate party shall not be actual delivery to Buyer.
 28. Seller agrees that: (a) all materials furnished on this order shall be subject to Buyer's inspection at the destination as soon as is practical after arrival; (b) that any goods that do not conform to the standards referred to above, together with such additional portion of the shipment as Buyer may designate, may, at Buyer's option and on notice to Seller, be either held by Buyer subject to Seller's disposition or returned to Seller at Seller's expense; and (c) that unless Buyer cancels that portion of the order, all materials so held or returned will be replaced by Seller at no additional cost to the Buyer. For materials and equipment shipped in sealed or enclosed packages, a grace period of 30 days will be allowed to determine defects and quantity count.
 29. Any action arising out of this Agreement shall take place in Arapahoe County, Colorado, and shall be governed by the Laws of the State of Colorado.
 30. Neither party shall, for any purpose, be deemed to be an agent of the other party and the relationship between the parties shall only be that of independent contractors. Neither party shall have the right or authority to assume or create obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever.
 31. Legal Fees, Costs and Expenses shall be included in any judgment resulting in legal action necessary to enforce this Purchase Order.
 32. No agreement or other understanding in any way modifying the conditions of this contract will be binding upon Buyer unless made in writing and signed by its authorized representative.
 33. Buyer's count will be accepted as final and conclusive on all shipments not accompanied by packing ticket.
 34. Waiver by Buyer of any breach hereof by Seller shall not constitute a waiver of any subsequent breach of the same or any other provisions hereof.

Ward Construction Co.
Prime Contractor

Paul Sommer, Vice President
Print Name/Title of Officer

Signature

Date Executed

Seller

Print Name/Title of Officer

Signature

Date Executed