



PURCHASE AGREEMENT

JOB NUMBER: @@@@

DATE: @@@@

PROJECT NAME: @@@@

PURCHASE AGREEMENT NO. @@@@ This number must appear on all packages, mail and papers relative to this order.

ISSUE TO: @@@@
@@@@
@@@@
@@@@

Contact: @@@@
Phone: @@@@
Email: @@@@

JOBSITE MAILING ADDRESS:

W. M. Lyles Co.

@@@@
@@@@

Contact: @@@@
Phone: @@@@
E-mail: @@@@

JOBSITE SHIPPING ADDRESS:

W. M. Lyles Co.

Jobsite Address
@@@@

INVOICE ADDRESS: W. M. Lyles Co.
P. O. Box 4377
Fresno, CA 93744

Please enter our order for the following, subject to conditions and instructions, named herein. **Important - This order is not valid until this Purchase Agreement has been signed and returned.** This order will require submittal data to be submitted and approved prior to any procurement or fabrication. This order expressly limits acceptance to the terms stated herein, and any additional or different terms proposed by Seller are rejected unless expressly assented to, in writing by, W. M. Lyles Co. ("Buyer"). **Please sign and return this Purchase Agreement within five (5) business days.**

ENTIRE AGREEMENT: The phrase “Contract Documents” is defined to mean the plans, specifications and other contract documents attached to, or incorporated into the prime contract, and also include but not limited to:

- A. This Purchase Agreement and all attachments hereto;
- B. Standard Terms and Conditions dated June 2014 attached hereto;
- C. The Prime Contract and Notice to Proceed between Owner and Contractor;
- D. The Project Plans, Schedule, Specifications and any issued Addenda;
- E. All applicable permits and licenses;
- F. All documents incorporated by reference in any of the documents listed above.

Furnish the following per the Contract Documents, as specifically described in Specification Section # - Description.

WML Phase No. @@@@ (Optional)

Qty	Unit	Description - Taxable Items	Unit Cost	Total Cost
1	LS			\$ -
		Sales Tax at 8.25%		\$ -
		Subtotal Taxable Items Including CA State Sales Taxes		\$ -
Qty	Unit	Description - Non-Taxable Items	Unit Cost	Total Cost
1	LS	Optional Checkout, Adjust for Service, and Training		\$ -
1	LS	Shipping FOB Jobsite		\$ -
		Subtotal Non-Taxable Items		\$ -
		Subtotal Taxable Items Including CA State Sales Taxes	\$	-
		Subtotal Non-Taxable Items	\$	-
		Total Amount of Purchase Agreement	\$	-

Specific Inclusions:

@@@@

Specific Exclusions:

@@@@

PROJECT PLANS AND SPECIFICATIONS: Particular attention should be given to Specification Section(s) #@@@. Seller expressly warrants that all items and work covered by this Agreement will be in strict compliance with the Contract Documents. Contract Documents may be purchased from our company for the cost of printing and shipping.

SUBMITTAL DATA: @@@ (#) copies of submittal data are required within @@@ (#) weeks after receipt of this order in accordance with the Contract Documents and the Specification Sections @@@ (#). Seller shall submit complete, responsive submittal packages to W. M. Lyles Co. in the following format:

1. Seller to include a copy of the relevant specification section(s), including any updates by addendum;
2. Seller to indicate **compliance** with a check mark in the LEFT margin next to each pertinent paragraph in the relevant specification section(s);
3. Seller to indicate any **deviation** with a consecutive number (1, 2, 3) in the LEFT margin.
4. Seller to submit a cover letter to the submittal package and provide a list of all numbered deviations noted in the relevant specification section(s) with a **clear** explanation and reasoning for any deviation.
5. If Seller does not have any deviation(s) to the relevant specification section(s), Seller shall submit a cover letter to the submittal package expressly stating the submittal complies with the specification and that there are no deviations.

Packages shall consist of, but are not limited to, @@@ (#), shop drawings, design calculations, samples, material data, spare parts lists, performance data, and other appurtenant literature for Owner's review and approval per @@@ (#). If re-submittals are required, Seller must resubmit all required information to W. M. Lyles Co. within @@@ (#) weeks after Seller's receipt of resubmittal requirements. Seller has @@@ (#) weeks after receipt of this order to achieve acceptance from Owner. No extension of time for delivery shall be granted to Seller for any avoidable delays in receipt of submittals or resubmittals. Seller shall be liable for any damages or losses incurred by W. M. Lyles Co. including, but not limited to, any liquidated damages or other damages assessed against W. M. Lyles Co., as a result of Seller's failure to provide the submittals or resubmittals within the time specified. The only exception shall be excusable delays as set forth in the Contract Documents. Failure of Buyer to enforce any of the provisions of this Section shall not act as a waiver to enforcement of any of these provisions at a later date in the performance of this Agreement.

CALIFORNIA PUBLIC RECORDS ACT: Any information provided by Seller will become property of the public entity that is the Owner of the project and therefore subject to the California Public Records Act (Government Code 6250 et. seq.). It is Seller's sole responsibility to mark any information it deems as trade secret, confidential, or proprietary. In the event of litigation resulting from the disclosure or non-disclosure of Seller's trade secret, confidential, or proprietary data, Seller shall indemnify, defend, and hold harmless Contractor and Owner, and shall be responsible for all fees for prosecuting or defending such actions.

OPERATIONS AND MAINTENANCE MANUALS: Seller shall furnish Operation and Maintenance Manuals with as-built drawings in accordance with the Contract Documents. These manuals must be submitted prior to shipment of all items. Submit @@@ (#) copies of Preliminary O&M manuals for Engineer's approval within @@@ (#) days after Seller's receipt of approved submittals, and prior to shipment of all items. O&M's shall comply with the Contract Documents, including Specification Section #@@@.

SPARE PARTS AND SPECIAL TOOLS: Seller is to provide spare parts and/or special tools as specified by Owner or recommended by Seller at no additional cost to W. M. Lyles Co. prior to installation of items covered by this Order. Spare parts and special tools must be packaged in a separate box clearly marked with contents. Seller is to provide a spare parts list as detailed in Specification section @@@ (#).

MATERIAL SAFETY DATA SHEETS: California State Laws require manufacturers and Sellers of materials, which contain one or more hazardous substances, as determined by CAL/OSHA, to furnish W. M. Lyles Co. a material safety data sheet (MSDS). The MSDS must give information regarding the health risks in the use of the substance, proper precautions for handling the substance, necessary personal protection equipment and other safety precautions in the use or exposure to the hazardous substance, as well as emergency procedures for spills, fire, disposal and first aid. If your product contains a hazardous substance, please send W. M. Lyles Co. an MSDS immediately. Failure to do so could result in payments being withheld.

PAYMENT: Seller's invoice shall set forth the acceptable items delivered to the jobsite, the date of delivery and the itemized cost of the items delivered. Seller's invoice must separate machinery, equipment, and material items subject to taxes from non-taxable items. The "Total Amount of Purchase Agreement" as stated herein includes the full compensation to the Seller for all taxes from the date of this Purchase Agreement through final acceptance of the Project by Owner. No additional compensation will be provided Seller for any increase in applicable taxes. Seller shall be responsible to ascertain and pay the taxes when due. Payment schedule for acceptable delivered items shall be as follows: 90% within thirty (30) days of jobsite delivery date, 10% within thirty (30) days of check-out, adjust for service, training, and Owner's acceptance. However, no more than 75% of the order amount will be paid by W. M. Lyles Co. until the required Operation and Maintenance Manuals, spare parts, spare parts lists and special tools are received.

DELIVERY: Delivery of materials to the jobsite shall be advised and coordinated with W. M. Lyles Co.'s project manager. Delivery of materials to the jobsite shall occur on @@@ (#). In the event Seller fails to obtain Owner submittal approval within the time specified herein under "Submittal Data" due to any avoidable delays by Seller, the time of delay shall be deducted from the delivery time set forth herein. The only exception shall be excusable delays as set forth in the Contract Documents. **Equipment delivery date(s) must be approved by the W. M. Lyles Co.'s Project Manager.** Unauthorized shipments are subject to rejection and return at Seller's expense. **All deliveries to be F.O.B. Jobsite.**

CHECKOUT, ADJUST FOR SERVICE, AND TRAINING: Should Buyer, in its sole discretion, elect to utilize Seller’s optional Checkout, Adjust for Service, and Training services, Seller agrees to perform such services pursuant to the requirements stipulated in Specification Sections @@@ (#). Seller shall be liable for any and all damages and losses incurred by W. M. Lyles Co. due to Seller’s failure to perform checkout, adjust for service, and training within the time specified by W. M. Lyles Co. However, Seller shall not be responsible for excusable delays as set forth in the Contract Documents.

WARRANTY AND GUARANTEE: Seller agrees to all equipment warranties and guaranties as stipulated in the Contract Documents and specifically Specification Sections @@@ (#).

TIME IS OF THE ESSENCE: As more particularly set forth herein, including, but not limited to, the Delivery, Checkout, Adjust for Service, and Training provisions of this Purchase Agreement, as well as the Standard Terms and Conditions and Contract Documents, **time is of the essence.**

DELAYS AND FAILURE TO PERFORM: Both Seller and W. M. Lyles Co. agree that failure from the Seller in production, delivery, checkout, adjust for service, training and/or abiding by the times specified in the project schedule may cause W. M. Lyles Co. damages or loss. In the event that W. M. Lyles Co. suffers damages or loss and/or is assessed liquidated or other damages by the Owner, Seller shall be liable for such damages or losses suffered or incurred by W. M. Lyles Co. as a direct result of Seller’s delays and/or failures to perform. In addition to recovery of the damages or losses described herein, W. M. Lyles Co. also has the right to terminate this Purchase Agreement upon 48 hours written notice to Seller.

Seller hereby acknowledges receipt of and accepts Buyer’s order subject to the terms, conditions and instructions of this Purchase Agreement. No other form of acceptance is binding on Buyer. The fully executed acknowledgement will be returned for your files. All changes must be agreed to, in writing, by Buyer.

BUYER:

SELLER:

W. M. LYLES CO.

@@@@

By: _____

By: _____

(Name, Title)

Date: _____

Date: _____

CC: @@@@@

INSTRUCTIONS:

1. Execute original and acknowledgment copy and return both to Buyer:

W. M. Lyles Co.

@@@@@

@@@@@

2. **Send all Submittals, O&M Manuals, and Project Correspondence to:**

W. M. Lyles Co.

@@@@@@@@@

Attention: @@@@@

W. M. LYLES CO.

This Order is subject to the following Standard Terms and Conditions. Any reference herein to "Agreement" shall include the Purchase Agreement together with any Contract Documents as described therein:

COMPLIANCE: The term "Seller" shall be used interchangeably with Vendor, Supplier, or a Company that is providing material, equipment or direct services under an Order or Purchase from Buyer. Seller is an independent company and shall, at its sole expense, comply with all laws, rules, ordinances and regulations of the governing bodies having jurisdiction over the work. The Seller shall comply fully with orders, citations, rules, regulations, standards and statutes affecting or relating to this Agreement or its respective performance, including but not limited to Cal OSHA and Federal OSHA Safety requirements, the handling and storage of hazardous materials, accident prevention, safety equipment and practices including the safety program(s) on site while providing Buyer with all applicable MSDS documents; Affirmative Action, Equal Employment Opportunity, Proposition 65 requirements, Nondiscrimination and the California Labor Code. The Seller agrees to indemnify and hold harmless Buyer for any violations, which were caused by the Seller's failure to comply with any legal requirement stated herein or otherwise.

PAYMENT: The price(s) specified within this Agreement shall 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 materials, equipment or services including the cost of Seller's typical business insurance policies, markups and delivery of the order as specified.

DELIVERY: Time is of the essence in this Agreement and the Buyer is relying on the Seller to perform and deliver the materials, equipment or services ordered in a timely manner and on the date(s) specified. All deliveries are to be F.O.B. jobsite unless indicated in the project specific conditions. Should delivery for any reason except for verified and documented Force Majeure/Acts of God instances, fail to be timely as mutually agreed upon within this Agreement, Seller shall be liable for all damages or loss suffered by Buyer including, but not limited to, damages directly suffered by Buyer and/or damages assessed to Buyer by Owner pursuant to the Contract Documents. Failure to furnish materials, equipment or services within the scheduled time shall also give Buyer the right to cancel any balance of this order at its convenience and without additional charges.

LIENS: Seller shall immediately pay and satisfy any such lien, claim, stop notice or judgment that may be placed on the Project for services provided by Seller. It is understood and agreed that the full and faithful performance of this Agreement on the part of Seller is a condition precedent to Seller's right to receive payment for the material, equipment or services provided.

TERMINATION: If the Owner orders Buyer to modify, terminate or suspend any portion of the materials, equipment or services provided by the Seller, the Seller shall comply with that order with any potential price adjustment determined by Owner. Seller shall receive payment for work and/or services actually performed prior to the date of termination or suspension. Seller shall not be entitled to any recovery on account of profit or unabsorbed overhead with respect to work or services not actually performed. No termination or suspension order shall relieve Buyer or Seller of any of their obligations as to any material shipped prior to Seller's receipt of the order. If Seller fails to perform any obligation under this agreement, Buyer may terminate this order for default and in addition to all other rights allowed by law, recover any excess costs incurred as allowed under the Dispute Resolution procedures.

INSURANCE AND INDEMNIFICATION: This Agreement shall include costs for typical insurance policies such as General Liability, Automotive Liability and Worker's Compensation coverage including Professional Liability as applicable to the Sellers business. Seller is required to fax/send evidence of business insurance to the address/numbers listed in this Agreement. Before performing services, conducting any activities or delivering materials or equipment to the site, Seller shall list Buyer as additional insured on its Liability policies. Any acceptance of insurance certificates by Buyer shall in no way limit or relieve Seller of its duties and responsibilities under this Agreement including the duty to indemnify and hold harmless Buyer for the Sellers actions or third party claims. To the extent Seller and Buyer have otherwise agreed to any limitation of Seller's liability, said limitation of liability shall not apply to any insured claims. In no event shall this Agreement be construed to require indemnification by Seller to a greater extent than permitted by law. Seller shall indemnify, protect, defend and save harmless Buyer from any and all claims, demands, causes of action, damages, costs, expenses, actual attorney fees, losses or liabilities, in law or equity, of every kind and nature whatsoever ("Claims") arising out of or in connection with Seller's operations to be performed, Seller's actions or omissions and/or Seller's completed scope of services under this Agreement. Seller shall be responsible for its employee's conduct and actions while on site including operating any equipment as well as for the equipment itself.

WARRANTY: Seller warrants to Buyer that it has fully and carefully reviewed the provisions contained in this Agreement including the specifications, drawings, samples, or other information provided. Seller shall be liable to Buyer and shall indemnify Buyer for any verified cost, loss, claims and expenses Buyer

may incur as a result of, arising out of, or incurred in connection with the performance or nonperformance of this Agreement, including those provided for under the Dispute Resolution procedures contained herein. Seller warrants to Buyer that all materials and equipment shall be new, and all materials, equipment or services furnished shall be free from all defects in workmanship and materials which may develop within one (1) year from the date of initial operation, unless a longer period is stated in the Prime Contract or this Agreement and shall be of the quality specified and shall conform to the provisions, specifications, performance standards, drawings, samples, and/or other descriptions contained in this Agreement. Seller warrants that the materials will be complete in all respects if installed in accordance with the Contract Documents and Seller's recommendations. During that guarantee period, Seller agrees to begin corrective action to remedy any defects by adjustment, repair or replacement within the earlier of, ten (10) days of notification or as specified in the Contract Documents ("Correction Period") at no cost to Buyer and such repairs shall be performed in a timely manner. Seller shall assume all responsibility and expense for removal, freight and reinstallation in connection with the foregoing remedies. Buyer will begin warranty repair work at Seller's expense if Seller has failed to take corrective action prior to the expiration of the Correction Period, or has failed to perform the repairs in a timely manner thereafter.

CHANGES IN SCOPE OF SUPPLY OR SERVICES: This Agreement may only be changed by signed, written amendment. Seller shall not make any changes in the scope of supply or services or in any way cause or allow that work to deviate from the Contract Documents without written direction from Buyer. If a dispute arises between Buyer and Seller about whether particular work is a change in the scope of supply or services described herein, Seller shall submit its written claim for additional compensation for that work within five (5) days after such work is performed, unless a more stringent requirement is provided for in the Prime Contract, with sufficient detail for Buyer to make an evaluation of the merits of the claim.

DISPUTE RESOLUTION: Any and all claims, controversies or disputes arising out of or relating to this agreement, or the breach thereof, which remain unresolved after good-faith and direct negotiations between the on-site Project Managers and after with the Corporate Officer(s) of the Companies involved (parties), shall then be submitted to confidential mediation with written notice in accordance with the rules and procedures for mediation then in effect and as solely determined by Buyer under either JAMS for Mediation or the Construction Industry Mediation Rules of the American Arbitration Association. Mediation shall be a condition precedent to arbitration or the institution of legal or equitable proceedings by either party. The condition precedent shall be satisfied if the parties have failed to conclude the mediation within forty-five (45) days from the date of the first mediation session. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit remaining issues to binding arbitration before a single neutral arbitrator in accordance with the rules and procedures then in effect and as solely determined by Buyer under either JAMS Arbitration Rules and Procedures or the Construction Industry Arbitration Rules of the American Arbitration Association. The parties further agree that the award of the arbitrator is binding upon the parties and that judgment upon the award rendered may be entered in any court of competent jurisdiction. The prevailing party in any dispute procedure or other legal proceeding related to this Agreement shall be entitled to recover its reasonable costs, expenses, expert consultant fees, mediator's or arbitrator's fees, mediation or arbitration costs and expenses, and attorney fees. Unless otherwise agreed by the parties, the dispute procedure and/or legal proceeding shall take place in Fresno, California.

PATENTS: Seller undertakes and agrees to defend at Seller's own expense all suits, actions or proceedings in which Buyer, its successors or assigns, are made defendants for actual or alleged infringement of any U.S. or foreign patents resulting from the use or sale of the items purchased hereunder and further agrees to pay and discharge any and all judgments or decrees which may be rendered in any such suit, action, or proceedings against such defendants therein.

COMPLETE AGREEMENT: Seller's acceptance is expressly limited to the exact terms of this Agreement per California Commercial Code Section 2207. Commencing performance or making deliveries or any acknowledgment of this Agreement by Seller shall constitute an acceptance of the order and the terms and conditions of this Agreement. This Agreement contains the entire provisions pertaining to this order and no conflicting terms and conditions on Seller's sales orders, bills of lading, shipping tags, or invoices will be applicable and no additional wording beyond a fully executed credit application, if applicable, shall apply unless negotiated and signed by an authorized representative of Buyer.

Initials: _____