



## PURCHASE ORDER MATERIAL AGREEMENT

Contractor's Project No. \_\_\_\_\_  
Owner's Contract No. \_\_\_\_\_  
Name of Project \_\_\_\_\_

This agreement is made and entered into this day of 2004 by and between: Condon-Johnson & Associates, Inc. ("Buyer") and \_\_\_\_\_ ("Seller"). Buyer has entered or is about to enter into a contract with \_\_\_\_\_ ("General Contractor") and \_\_\_\_\_ ("Owner") for the construction of \_\_\_\_\_ located in \_\_\_\_\_ 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.

### SEE ATTACHED EXHIBIT A

Ship to pile location \_\_\_\_\_ Via \_\_\_\_\_  
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.

3. **CHANGES AND RIGHT TO TERMINATE.** (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. In the event of any change or termination, there shall be an equitable price adjustment by Buyer. (b) In the event of a terminated 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.

4. **DELIVERY.** Time is of the essence of this Agreement. Delivery will be mutually agreed upon. 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. In no event shall the seller be entitled to an extension beyond that allowed to Buyer under the terms of the Prime Contract.

5. **DEFAULTS.** If Seller fails to perform any of these obligations hereunder, Buyer shall be entitled to all remedies provided by law if Seller becomes involved in labor difficulties.

6. **WARRANTIES.** Seller warrants to Buyer that it has fully and carefully reviewed the provisions, specifications, drawings in this Agreement and in the Prime Contract. Seller warrants to Buyer of the materials that shall conform to the provisions, specifications, performance standards, drawings contained in the Prime Contract. Seller guarantees Buyer that the materials rendered shall be free of any and all defects in the workmanship and materials.

7. **INDEMNITY.** Seller assumes all risk in furnishing the materials and services ordered hereunder, and will indemnify, hold harmless and defend Buyer against any and all losses, damages, liabilities and claims including actual attorneys' fees and experts' or consultants' fees, which arise directly or indirectly out of the performance or non performance of this purchase order. Seller, however, shall not be obligated under this Agreement to indemnify Buyer for the sole negligence or willful misconduct of Buyer.

8. **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 1,000,000.00 per occurrence, and (ii) automobile liability insurance covering bodily injuries (including death) in the amount of 1,000,000.00 per person, and 1,000,000.00 per occurrence, property damage in the amount of 1,000,000.00 per occurrence, and products liability in the amount of 2,000,000.00. 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 1,000,000.00 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.

An endorsement on Form CG20101185 or equivalent providing that such insurance as is afforded under the Seller's policy is primary insurance as respects the Buyer and that any other insurance maintained by Buyer is excess and non-contributing with the insurance required hereunder. The limits will apply separately to each. The additional insured to be listed are as follows: Condon-Johnson & Associates, Inc.\* and

\*Including their respective officers, directors, agents, employees, affiliates, parents subsidiaries, and/or entity that Contractor is required by contract to name as additional insured (or Indemnify).

9. **DISPUTES.** Buyer may, at its sole option, elect to arbitrate any dispute, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

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

This order is hereby approved:

SELLER \_\_\_\_\_  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Address \_\_\_\_\_  
Contractor's License Number \_\_\_\_\_

BUYER Condon-Johnson & Associates, Inc.  
By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Address 1840 Embarcadero  
Oakland, CA 94606  
Contractor's License Number \_\_\_\_\_