

PURCHASE ORDER

3415 Independence Drive • Birmingham, AL 35209 • (205) 803-5226 • FAX (205) 803-5230

VENDOR:

Contact:
Telephone:
Fax:
Fed. I.D. #:
State License #:

DATE:

SHIP:

TERMS: per Purchase Order Agreement

CBC PROJECT NO.:

CBC PO NUMBER:

SHIP TO: CAPSTONE BUILDING CORP.

COST CODE NO.:

CORPORATE COPY

The Vendor and Purchaser agree that this Purchase Order is subject to the following terms and conditions, along with those terms and conditions on the reverse side hereof and on subsequent pages hereof:

- A. Services/Items/Materials Supplied Pursuant to Purchase Order shall be provided in strict accordance with the drawings and specifications of _____ dated _____.

SCOPE OF WORK

SPECIFICATION SECTION

- 1. Contract Forms, Conditions of the Contract
- 2. General Requirements

Division
Division

- B. Purchase Price/Breakdown:

Subtotal	
Sales Tax	included
Total This Contract	_____

- C. Date Invoices Due from Vendor ("Invoice Submittal Date"): the _____ of the month
- D. Delivery Schedule: as required to maintain the project schedule
- E. No. of Reproducible Drawings Required:
- F. No. of Copies of Drawings Required:
- G. Date Shop Drawings and/or Product Submittal Data Required:
- H. OTHER TERMS:

SPECIFICALLY INCLUDES:

SPECIFICALLY EXCLUDES:

- I. Vendor agrees that Purchaser may apply a discount of _____ to any invoices paid within ___ days of the Invoice Submittal Date.

THIS PURCHASE ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. (a) The terms **Purchase Price, Invoice Submittal Date, and Delivery Schedule** shall have the meanings set forth on the front of this Purchase Order. The term "materials" as used herein shall include without limitation, all equipment, supplies, consumables, and other items being purchased hereunder.

(b) The Vendor acknowledges its receipt of a copy of the contract documents (the "Contract") between the Purchaser and the Owner (as defined in said contract documents). Said Contract is hereby incorporated by reference. This agreement is subject to and shall be interpreted in accordance with the terms and conditions of the Contract to the extent such Contract addresses the materials to be supplied and the labor to be performed in supplying materials hereunder including without limitation all material specifications, delivery, storage, and scheduling requirements, sales and use tax payment or abatement requirements and damages for delay, negligence or non-performance.

(c) The Vendor hereby assumes and agrees to perform for the Purchaser all Purchaser's obligations as contained in the Contract to the extent such Contract addresses the materials to be supplied and the labor to be performed in supplying materials hereunder. The Vendor agrees that it shall be bound by all rulings, determinations and directives of the Owner and/or Architect (if applicable pursuant to the Contract) with respect to materials supplied and labor performed in supplying materials hereunder, to the same extent the Purchaser is bound under the Contract.
2. All necessary **shop drawings, tests, samples**, etc., shall be furnished by the Vendor at its own expense.
3. **COMPLIANCE WITH LAWS:** Vendor agrees to comply with and warrants that all materials will comply with all federal, state, and local laws, regulations and ordinances, and Vendor hereby covenants and agrees to perform and abide by all building codes, licensing requirements and all other regulations, orders and directives of Federal, State, and Municipal governments and agencies and subdivisions thereof in performing its obligations under this Purchase Order, including, if applicable, all Federal Construction Contractor EEO and affirmative action obligations, including but not limited to, 41 C.F.R. §§ 60-1 and 60-2 and Executive Order 11246. Vendor agrees to indemnify Purchaser for any liability imposed on Purchaser resulting from Vendor's failure to comply with such laws and regulations as set forth in this paragraph.
4. **TIME OF ESSENCE:** **Shipment and delivery** of the materials to be furnished hereunder shall be made as hereinbefore provided or as otherwise required by

the progress of the work in which the materials are to be used, upon notice from the Purchaser, and it is expressly provided that, as to performance and delivery on the part of the Vendor, time is and shall be considered of the essence of this Purchase Order. The quantity of materials as indicated on the face of this Purchase Order must not be exceeded without prior written authorization by Purchaser. Excess quantities may be returned to Vendor at Vendor's expense.

5. DELIVERY: Should the Vendor for any reason **fail to make deliveries** of the quality, quantity and within the time specified by this Purchase Order, or if the materials are not as required by the Contract between Purchaser and Owner, the Purchaser, may at its option, cancel this Purchase Order as to all or any portion of materials not so delivered and purchase the materials elsewhere, and any excess in cost of same over the price herein provided shall be chargeable to and paid by the Vendor on demand. Should any delay on the part of the Vendor occasion any loss, damage or expense to the Owner or to the Purchaser, the Vendor, at its cost and expense, shall indemnify the Owner and the Purchaser against such loss, damage, or expense. Any failure by the Purchaser to exercise its option with respect to any shipment of materials shall not be deemed to constitute a waiver with respect to subsequent shipments. This provision as well as all other remedies specified in this Purchase Order shall be in addition to any remedy otherwise available to Purchaser by law or for such failure or performance by Vendor.
6. PATENTS: Vendor guarantees that Purchaser's purchase, use or sale of the materials furnished pursuant to this Purchase Order, in the form in which furnished to Purchaser, will not infringe any valid United States or foreign patent or copyright, and Vendor agrees to defend any claim, action or suit that may be brought against Purchaser for patent or copyright infringement by reason of Purchaser's purchase, use or sale of such materials, and Vendor agrees at its cost and expense to **indemnify and save harmless** the Purchaser against any and all judgments, decrees, damages, costs and expenses arising from claims or suits for infringement of patents or patent rights claimed to cover the Vendor's processes, products, materials, equipment, apparatus or appliances, such indemnity to include all costs and expenses, including attorney's fees, which the Purchaser may incur in defending any such actions that may result from the furnishing of any materials hereunder.
7. ASSIGNMENT: Vendor shall not assign, sublet or otherwise dispose of the whole or any part of this order nor shall the Vendor assign any moneys due or to become due hereunder without the previous written consent of the Purchaser. Any attempt by the Vendor to so assign or dispose of any interest herein shall be void and of no effect and shall operate as an instant forfeiture and repudiation hereof by the Vendor and the rights of the parties shall be determined in the same manner as though the Vendor had at the time of such attempted assignment or disposal failed in and refused performance hereunder.
8. PAYMENT: The Purchaser agrees to pay to the Vendor in current funds, and the Vendor agrees to accept as full compensation for the materials, labor supplied and labor performed in supplying materials hereunder, the sum set forth in this Purchase Order. Subject to satisfaction of the condition to payment below, such sum shall be paid in accordance with periodic pay requests submitted to

Purchaser by Vendor (which periodic pay requests must be in a form and substance reasonably acceptable to Purchaser, including without limitation a lien waiver from Vendor and its subcontractors, laborers or materialmen or a performance and payment bond in lieu thereof). No payment shall be made by Purchaser to Vendor until Purchaser's receipt of payment from Owner for the Purchaser's periodic pay request in which the Vendor's periodic pay request is incorporated, it being understood that payment by the Owner to the Purchaser for the labor and/or materials provided hereunder shall be a condition precedent to payment by the Purchaser to the Vendor. Periodic estimates submitted by Vendor shall be for a calendar month and shall indicate the percentage completion of Vendor's work or the percentage of materials delivered (as applicable). The following provisions shall apply to this Purchase Order:

- (a) Vendor shall notify Purchaser's job superintendent **24 hours in advance of any delivery.**
 - (b) All required shop drawings, samples, laboratory reports, brochures, color selections, guarantees, affidavits, test reports, certificates and other required submittal data shall be submitted to Purchaser for approval in the number of reproducible copies and original copies reflected on the front of this Purchase Order.
 - (c) Unless notified by the Purchaser, Vendor shall deliver the materials required under this Purchase Order in accordance with the Delivery Schedule.
 - (d) Concurrent with the final payment, the Vendor shall furnish the Purchaser three (3) notarized Final Release of Waiver or Lien Affidavits in form and substance reasonably acceptable to Purchaser for the material supplied and labor performed in supplying material pursuant to this Purchase Order.
 - (e) All pay requests must be submitted to Purchaser at its main office (as indicated on the front of this Purchase Order) no later than the Invoice Submittal Date each month to be included in the Purchaser's current pay request to Owner. Pay requests received after the Invoice Submittal Date will be processed for payment with the following month's pay request resulting in a delay of payment to Vendor.
9. SET OFF: It is understood and agreed that any money due from the Purchaser to the Vendor hereunder may, at the option of the Purchaser, be applied by it to the payment of any indebtedness which may be owing by the Vendor, or by any subsidiary, affiliated or associated company of the Vendor to the Purchaser or to any subsidiary, affiliated or associated company of the Purchaser.
10. ACCEPTANCE: Notwithstanding any different or additional terms or conditions that may be embodied in any sales acknowledgment or other document submitted by Vendor either before or after the delivery of the materials, which terms and conditions are hereby objected to, Purchaser places this Purchase Order on the express condition that Vendor, by acceptance hereto assents to the

terms and conditions set forth in this Purchase Order and Vendor's acknowledgment, initial shipment of materials or other commencement or any services hereunder shall constitute assent and acceptance to all such terms and conditions, regardless of whether Vendor has countersigned the Purchase Order and/or initialed these terms. It is agreed that no certificate given or payment made on account of this Purchase Order shall not be conclusive evidence of delivery and acceptance of materials hereunder, either wholly or in part. Nor shall any certificate given or payment made be construed as acceptance of defective or improper materials.

11. **PURCHASER OPTIONS:** Purchaser reserves the right to change specifications, quantity, manner and location of delivery and delivery dates. Should any alteration, addition or omission be ordered in the materials supplied hereunder, a fair and reasonable valuation of the materials altered, added or omitted shall be made and the amount of this Purchase Order modified accordingly, but any such change shall not abrogate, vary, void or affect the terms of this Purchase Order, including price or extend the time of completion fixed hereby, unless agreed in writing signed by the Purchaser, and when such change is a change in the Contract, any increase shall not exceed the amount allowed by the Owner less a reasonable overhead and profit to Purchaser, and deductions shall be in the amount taken by the Owner. Where the parties cannot agree as to valuation by reason of any modification as herein provided, the performance of same shall not be delayed, but Vendor shall nevertheless proceed with the supply of materials upon the written order of Purchaser. Failure of the Vendor to proceed as herein provided shall constitute a material breach hereof regardless of whether or not the Vendor is correct in its contentions, it being understood the progress of the work may not be delayed by any controversy between the parties.
12. **PERFORMANCE BOND:** The Vendor further agrees that it shall within ten (10) days from date of notice to furnish same, at the Option of the Purchaser, provide the Purchaser with a bond, in the full amount of this order, conditioned on the faithful performance hereof in all its particulars, duly executed with a Surety Company acceptable by the Purchaser, as surety, and in form and contents acceptable to the Purchaser, the cost of said bond to be borne by the Purchaser.
13. **QUALITY:** Where specifications are referred to on the face of this Purchase Order, such specifications shall be deemed to be an integral part hereof as if fully set out herein. All deliveries furnished on this Purchase Order must be of the quality specified, or if no quality is specified, must be of the highest quality and all deliveries will be subject to the inspection, approval and acceptance of the Purchaser. Acknowledging receipt of such deliveries shall not constitute approval or acceptance. If materials are rejected, the Purchaser shall reasonably notify the Vendor in writing, and the Purchaser may, at its option, and at the expense and risk of the Vendor, return such rejected materials to Vendor or retain them for such disposition as the Vendor shall direct. In addition, Purchaser may replace such rejected materials with acceptable materials in which case Purchaser may offset any payment owed to Vendor by the cost of the acceptable materials or charge Vendor for the cost of such acceptable materials. Purchaser shall have the right at all reasonable times to inspect and or test the materials for conformance with this Purchase Order but such inspection and/or test shall not relieve Vendor of the responsibility to provide materials which conform to the

requirements of this Purchase Order. In the event that such inspection or test indicates that the materials do not conform to the requirements of this Purchase Order, upon request by Purchaser, Vendor shall provide Purchaser with acceptable substitutes or replacements, as determined by Purchaser in its sole discretion, at Vendor's own expense in the most expedited manner possible.

14. **WARRANTY:** Vendor expressly warrants that all materials will conform to the drawings, specifications, samples or other description furnished or adopted by the Purchaser, and will be new, fit and sufficient for the purpose intended, merchantable, of good material and workmanship, will be free from defects, will conform with all applicable laws and regulations and will be free of the lawful claims of third parties. These warranties shall run to the Purchaser, its successors, assigns, customers, and other users of its products. These warranties are in addition to any other warranties, express or implied, at law or in equity.
15. **CONDITIONS PRECEDENT:** This order is conditional upon: (a) the award of the Contract to the Purchaser and shall be null and void if such award is not made to Purchaser; and (b) approval of Vendor by the Owner and the Architect/Engineer where such approval is required by the Contract.
16. **OWNER DISPUTES:** In the event Purchaser is required by the terms of the Contract **to arbitrate** any controversy with the Owner or with any other prime or subcontractor or supplier, and such controversy involves, in whole or in part, the work or materials of Vendor, then Vendor agrees to participate in the prosecution or defense of said arbitration and to be bound by the result thereof. Vendor shall not commence or maintain any action or proceeding against Purchaser for any damages resulting from any default, breach or interference by the Owner or for extra work or by virtue of any deduction or refusal to pay by the Owner, except to the extent of the sum ultimately obtained from the Owner on account thereof by Purchaser.
17. **PRICES:** Prices shown on this Purchase Order are inclusive of any and all taxes whatsoever, including sales, use, excise or other, duties or other governmental imposition, and inclusive of shipping and delivery F.O.B. Purchaser's designated job site, unless herein specifically provided otherwise. Vendor represents and warrants that the prices charged for the materials are not in violation of any law or governmental decree, order, rule or regulation. Vendor shall pay all sales, consumer, use and other similar taxes required by law and shall secure all permits, fees and licenses necessary for the execution of the Purchase Order. Vendor shall give all notices and comply with all laws, ordinances, rules, regulations and orders of any public authority bearing on the performance of the Contract.
18. **MODIFICATIONS:** This Purchase Order along with any exhibits hereto shall constitute the entire agreement between the parties. No conditions, understanding, or agreement purporting to modify or vary the terms of this Purchase Order shall be binding unless hereafter made in writing and signed by both parties hereto, and no modification shall be effected by the acknowledgement or acceptance of invoices, shipping documents or other forms of documents containing terms or conditions at variance with or in addition to

those set forth herein. Any written modifications must refer to this Purchase Order number.

19. **MERGER OF TERMS:** All negotiations and agreements prior to the date of this Purchase Order are merged herein and superseded hereby, there being no agreements or understandings other than those written or specified herein. In the event of conflict between any proposal of Vendor specifically referred to herein and this Purchase Order and as to all matters or parts not expressly covered by such proposal, the terms and conditions of this Purchase Order shall govern. This Purchase Order can only be amended by a written change order signed by Purchaser after approval by the Owner or its representative.
20. **PAYMENT OF FINES:** Upon notice from Purchaser, Vendor shall immediately pay any fine, penalty or assessment assessed against Vendor, Owner or Purchaser related to the materials supplied by Vendor pursuant to this Purchase Order.
21. **INDEMNITY:** To the fullest extent permitted by law, the Vendor shall at its cost and expense, **defend, indemnify and hold harmless** the Purchaser, the Owner, their consultants and agents and employees of any of them, and customers and users of the materials, from and against all claims, damages, losses, fines and expenses, including without limitation reasonable attorneys' fees, arising out of or resulting from the materials supplied hereunder or the Vendor's failure to strictly comply with any term, condition, or requirement of this Purchase Order, regardless of whether such claims, damages, losses, lines and expenses were partially caused by a party indemnified hereunder.
22. **ARBITRATION:** The parties acknowledge and agree, at the election of Purchaser, any claim(s), dispute(s), or other matter(s) between the parties hereto arising out of or related to this Purchase Order, or the meaning and construction hereof, shall be referred to a single arbiter agreed upon by the parties, or if no single arbiter can be agreed upon, an arbiter or arbiters shall be selected in accordance with the rules of the American Arbitration Association and such dispute shall be submitted to arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association. Any such arbitration shall be held in Birmingham, Alabama, or another location if mutually agreeable to the parties. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. Vendor agrees that it shall not cease or delay delivery of materials hereunder during the pendency of the dispute. If Vendor does stop or delay performance because of a dispute, Vendor shall be responsible for damages to Purchaser for any losses Purchaser suffers as a result of such stoppage or delay. In the event that Purchaser is forced to mediate, arbitrate or litigate any aspect of this Purchase Order or any dispute related thereto because of Vendor's breach, Vendor shall pay all of Purchaser's expenses related thereto, including without limitation, attorney's fees.
23. **WAIVER OF JURY TRIAL:** EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY ON ANY CLAIM, COUNTERCLAIM, SETOFF, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING OUT OF OR IN ANY WAY RELATING TO THIS PURCHASE ORDER OR EXECUTED OR DELIVERED IN

CONNECTION WITH THIS PURCHASE ORDER OR (B) IN ANY WAY CONNECTED WITH OR RELATED TO OR INCIDENTAL TO ANY DEALINGS OF THE PARTIES HERETO WITH RESPECT TO THIS PURCHASE ORDER, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. ALL PARTIES AGREE THAT ANY ONE OF THEM MAY FILE A COPY OF THIS PURCHASE ORDER WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED FOR AGREEMENT BETWEEN THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY, AND THAT ANY DISPUTE OR CONTROVERSY WHATSOEVER BETWEEN THEM SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

24. **APPLICABLE LAW:** The validity, interpretation, performance of and all disputes related to this Purchase Order shall in all respects be governed by, and construed in accordance with, the laws of the State of Alabama.
25. **PACKING AND CARTAGE:** No additional charge will be allowed for packing, boxing or cartage unless expressly stated on the face hereof. Bundles and packages or other means of containing materials shipped shall be clearly and accurately identified as to the job name, shop drawing number, if applicable, and name of Vendor. Vendor shall pack, mail, label and ship the materials in the manner specified by Purchaser, if any.
26. **TITLE-SECURITY INTEREST:** In the event that full or partial payment is made by Purchaser to Vendor prior to delivery of all materials subject to this Purchase Order, title to all materials identified to the Purchase Order at the time of such payment or thereafter shall pass to Purchaser, and Vendor shall be deemed a bailee of all items remaining in its possession. Additionally, Vendor grants to Purchaser a security interest in all goods and materials that are or may become identified to the Purchase Order at any time, which security interest shall be in addition to all other rights of the Purchaser under the agreement or applicable laws.
27. **INSURANCE:** The risk of loss or damage to the materials identified to the Purchase Order shall be and remain with Vendor until the time of delivery of conforming goods to Purchaser hereunder. Vendor shall maintain adequate and commercially reasonable insurance coverages for all items that are or become identified to the Purchase Order and Purchaser's security interest in such items shall extend to the proceeds of insurance thereon.
28. **CONFIDENTIAL DATA:** Vendor agrees to treat as strictly secret and confidential specifications, drawings, blueprints, samples, models and any other information supplied by Purchaser and further agrees not to disclose any information relating to this Purchase Order to any person who is not an employee of Vendor.
29. **LIABILITY LIMITATION:** To the extent permitted by applicable law, Purchaser shall in no way be responsible or held liable for consequential damages, including without limitation, liability for costs of preparing the proposal, loss of profits or loss of property, however the same may be caused, including the negligent acts or omissions of Purchaser, its employees or agents.

30. OCCURRENCE: In the event of any occurrence which is expected to result in the materials being delivered to Purchaser past the time specified in this Purchase Order or any occurrence which will result in the materials failing to conform to the terms of this Purchase Order, Vendor shall inform Purchaser of this occurrence in writing within forty-eight (48) hours of becoming aware of the occurrence and shall state the steps being taken to minimize the effect of the occurrence on Purchaser. In such event, Vendor shall take all steps necessary to expedite the delivery of the materials and/or cause the materials to conform with the terms of this Purchase Order.
31. TERMINATION BY BUYER FOR CONVENIENCE: Purchaser may terminate this Purchase Order and the engagement of Vendor hereunder on thirty (30) days written notice, at any time and for any reason. As soon as is reasonably possible after termination and subject to review and audit by Purchaser, Vendor shall be paid the portion of its fees for the aspects of manufacturing and providing the materials supplied up to the date of termination and all expenses incurred which are directly attributable to the termination as reasonably agreed to by Purchaser and Vendor. Vendor agrees and acknowledges that compensation in the event of a termination under this section shall be strictly limited to the payment described in this section and expressly waives and releases any additional claims including, but not limited to, additional anticipated profits or fees.
32. TERMINATION BY BUYER FOR CAUSE: Purchaser may terminate this Purchase Order and the engagement of Vendor hereunder immediately on written notice at any time, and Vendor shall not be entitled to any further payment, if Vendor is in breach of any provision of this Purchase Order and fails to remedy or to actively and in good faith commence remedying such breach and to provide Purchaser with a schedule acceptable to Purchaser for the remedying of such breach within five (5) days after written notice thereof from Purchaser (which notice shall specify the breach with particularity), or fails to diligently continue to remedy such default thereafter to completion in accordance with such schedule, in which event no further written notice shall be required.
33. SEVERABILITY: If one or more provisions hereof shall for any reason be held to be invalid and/or unenforceable, such invalidity and/or unenforceability shall not affect any other provision of this Purchase Order, and the parties shall replace such provision with equivalent provisions, the commercial effect of which shall be as similar as possible to the invalid/unenforceable provisions.
34. INDEPENDENT CONTRACTOR: Neither Vendor nor its subcontractors, or the employees or agents of them, shall be deemed to be Purchaser's employees or agents, it being understood that Vendor and its subcontractors are independent contractors for all purposes and at all times, and Vendor shall be wholly responsible for withholding or payment of all federal, state and local income and other payroll taxes with respect to its employees, including, contributions from them and as required by law.
35. ON-SITE WORK: In the event Vendor performs work for Purchaser on Purchaser' site or at the site of a customer of Purchaser's, Vendor shall abide by

all safety and insurance rules and requirements of Purchaser and as required by applicable law.

36. NOTICES: Notices required pursuant to this Purchase Order shall be sent to the addresses designated on the face of this Purchase Order unless amended in writing by the party to be notified.
37. HEADINGS: Headings in this Purchase Order are used for ease of reference only and shall not affect the rights and obligations of the parties or the construction or meaning of this Purchase Order.
38. WAIVER: Purchaser's failure at any time to enforce, or its delay in the enforcement of, any provision of this Purchase Order or any right with respect thereto, or its failure to exercise any option herein provided, shall in no way be construed as a waiver of such provision, right, or option or affect the validity of this Purchase Order.
39. SURVIVAL OF OBLIGATIONS: Notwithstanding termination of this Purchase Order or acceptance of the materials, any duty or obligation of Vendor which has not been fully discharged and any right which has been created for the benefit of Purchaser and which has not been fully enjoyed, enforced and/or satisfied shall survive such termination or acceptance until such duty or obligation has been fully discharged and such right has been fully enjoyed, including without limitation, the paragraphs entitled "Indemnity," and "Confidential Data."
40. DISCOUNT: Discount Date, or due date, will be calculated from the later of (i) the date Purchaser receives the invoice, or (ii) the date the materials are received by Purchaser and are acceptable in accordance with this Purchase Order.
41. SUPPLIER: Vendor acknowledges and agrees that for all purposes, including but not limited to lien laws, Vendor is a supplier or materialman and is not a subcontractor.

THIS PURCHASE ORDER IS SUBJECT TO THE TERMS AND CONDITIONS ON THE PRECEEDING PAGES.

PURCHASE ORDER NUMBER _____

CAPSTONE BUILDING CORP.

BY: _____

BY: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____