

# Bay Cities Paving & Grading, Inc.

P.O. Box 6227  
Concord, CA 94524-6227  
Contractor's License No. 238650  
Phone: (925) 687-6666  
Estimators Fax: (925) 688-0278 □ Office Fax: (925) 687-2122

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## PURCHASE ORDER

FOB:  
Delivery: Per instructions from Project Manager.

\_\_\_\_\_  
XXX XXX – Contract Admin. Date

\_\_\_\_\_  
Supplier Date

IMPORTANT: This purchase order is subject to the attached General Conditions which are hereby incorporated into this Purchase Order. Execute this Purchase Order and email it back to Buyer: Bay Cities Paving & Grading, Inc. Seller's acceptance is limited to the terms and conditions of this Purchase Order and beginning work or supplying materials constitutes acceptance of this Purchase Order.

Bay Cities Paving & Grading, Inc. is an Equal Opportunity Employer

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## GENERAL CONDITIONS

1. **COMPLETE AGREEMENT.** This purchase order consists of this Agreement, and the applicable terms, conditions, plans and specifications of Buyer's Prime Contract with Owner. Seller's acceptance is limited to the terms and conditions contained in this purchase order. Commencing performance or making deliveries or any acknowledgment 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 acknowledgment.

2. **PAYMENT.** The price specified shall include all taxes and duties of any kind levied by federal, state, municipal, or other governmental authority, which either party is required to pay with respect to the materials covered by this Agreement. The obligation of Buyer to make any payment hereunder is subject to the condition precedent of payment by Owner to Buyer therefor, except payments withheld by the culpable acts or omissions of Buyer.

3. **INDEMNITY.** Seller assumes all risk in furnishing the materials and services ordered hereunder, and will indemnify, hold harmless and defend Buyer and Owner and any Prime Contractor against 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 non-performance of this purchase order including, but not limited to, losses of any materials ordered hereunder and injuries to property and to persons, including death. This indemnity applies regardless of any active and/or passive negligent act or omission of Buyer or Owner or Prime Contractor or their agents or employees. 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. The indemnity set forth in this paragraph shall not be limited by any insurance requirements.

4. **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 to Buyer.

5. **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 all excess costs incurred, including attorneys' fees and experts' and consultants' fees actually incurred.

6. **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 Buyer's Prime Contract with Owner. Seller warrants to Buyer that the materials furnished 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 are implied by law or usage of trade. Buyer's remedies pursuant to this paragraph are in addition to all other remedies allowed by law.

7. **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.

8. **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.

9. **COMPLIANCE WITH LICENSE LAW. CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS STATE LICENSE BOARD. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR OF THE BOARD WHOSE ADDRESS IS:**

CONTRACTORS STATE LICENSE BOARD  
P.O. BOX 26000  
SACRAMENTO, CALIFORNIA 95826

10. **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.

11. **DISPUTES.** Buyer may, at its sole option, elect to arbitrate any dispute 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. If Buyer elects arbitration, then the arbitration will be a condition precedent of Supplier's right to pursue any other claim, action or suit against Buyer or Buyer's sureties. Each party will bear its own attorney's fees and costs incurred in arbitration and Supplier expressly waives any statutory right to attorney's fees or costs incurred in the arbitration from Buyer or Buyer's sureties. Disputes not arbitrated pursuant to this provision shall be litigated.