



2179 Hillshire Circle, Memphis, TN 38133-6074

To: XXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXX, XX XXXXXX

Attention: XXXXXX XXXXXXXXXXXXXXXX
Telephone # XXX-XXX-XXXX

Project: XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXX, XX XXXXXX

Purchase Order Date January 29, 2018
Purchase Order No. XXXXX-XXX
Project No. XXXXXX
Terms _____
Delivery XXXXXX
F.O.B. _____

Ship To: Flintco Project Manager
c/o XXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXX, XX XXXXXX

THE SELLER AGREES TO FURNISH AND DELIVER THE MATERIALS AND/OR EQUIPMENT DESCRIBED IN THE ATTACHED RIDER #1 WHICH FORMS A PART OF THIS PURCHASE ORDER.

TOTAL AMOUNT OF PURCHASE ORDER - INCLUDES SALES TAX **\$0**

The foregoing work and materials shall conform to the General and Special Conditions of the General Contract, including the technical requirements or specifications and drawings, which are incorporated by reference herein.

- 1) Seller must notify Buyer immediately after receipt of this order if unable to meet delivery specified.
- 2) All invoices, shipping lists, delivery tickets & containers **must** be properly marked with the **Flintco Purchase Order Number**.
- 3) Buyer reserves the right to refuse delivery after 2:00 p.m., unless 48-hour advance notice of late delivery is given to Buyer's home office or Buyer's project site office.
- 4) Mail the original of your invoice to Buyer's billing department at its home office.
- 5) This Purchase Order is subject to the terms and conditions on the next (2) pages, which are hereby incorporated herein. Execute the Electronic Copy and return to the Buyer by e-mail to subcontracts@flintco.com. Upon receipt Buyer will execute and return by e-mail one (1) Electronic Copy for your files. Seller's acceptance is limited to the terms and conditions of this Purchase Order.

Flintco, LLC
Buyer
By: _____
Title: Authorized Representative
Date: _____

Accepted subject to terms and conditions on next (2) pages:
XXXXXXXXXXXXXX
Seller
By: _____
(Authorized Signature)
Title: _____
Date: _____

THIS PURCHASE ORDER CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES

PURCHASE ORDER TERMS AND CONDITIONS

- 1. SAFETY** Seller shall perform its obligations under this Purchase Order in a safe and reasonable manner, and make every reasonable effort to avoid injury, loss or damage to persons or property. If required to be on the Project Site, Seller shall comply with all current safety requirements of Buyer as well as all federal, state and local laws and regulations.
- 2. COMPLETE AGREEMENT** This Purchase Order, including these terms and conditions, and all referenced documents, drawings and specifications from the Prime Contract (the Contract between the Owner and Buyer) are incorporated as part of this Purchase Order and constitute the entire agreement between the parties. No other terms or conditions, including but not limited to Seller's terms and conditions of sale or acceptance, shall be binding upon Buyer, unless accepted by Buyer in writing.
- 3. DELIVERY** Seller, at Seller's sole cost and expense, shall be responsible for delivering the goods purchased hereby to the point of destination indicated by the delivery terms of this Purchase Order. Should loss or damage to goods occur after delivery to the point of destination, Seller shall replace items at the same price as in this Purchase Contract. Notwithstanding the terms of shipment, the risk of loss shall pass to the Buyer only upon the latest of (a) delivery as required by the terms of this Purchase Order; (b) Buyer's inspection and final acceptance of the items contemplated hereby; and (c) the effectiveness of Buyer's or Owner's insurance coverage as to the delivered items. Seller shall make no charge to Buyer for the packing, loading or marking of the goods ordered hereunder unless specifically detailed in this Purchase Order.
- 4. INSPECTION** Buyer shall have the right to inspect and test the goods at any time during manufacture and prior to shipment, and to inspect and test the goods within a reasonable time after arrival at the job site at which the goods are to be installed. The making or failure to make any inspection of, or payment for or acceptance of, the goods shall in no way impair Buyer's right to reject nonconforming goods, or to avail itself of any other remedies to which Buyer may be entitled, notwithstanding Buyer's knowledge of the nonconformity, its substantiality or the ease of its discovery. Rejected goods shall be removed at the expense of Seller including transportation both ways, promptly after notification or rejection and Seller shall bear all risk on rejected goods. Where required, Seller shall supply Buyer with certified copies of text reports, mill certificates and the like.
- 5. WARRANTY** Notwithstanding Buyer's inspection and acceptance of goods delivered, Seller represents and warrants that all goods furnished hereunder are free from any defects in design, materials, workmanship and title and fully conform to the descriptions and specifications of this Purchase Order, including any samples and drawings furnished or approved by Buyer, and that the goods are merchantable and fit and suitable for the purpose and use intended and conform to recognized commercial standards of quality and function. Seller's warranty shall extend to one year from the date of delivery, or such period as expressly stated in Seller's warranty document, if any, or such period as shall be permitted by law, or such specific period stated on the face of this Purchase Order, which ever period shall be longer. Buyer's approval of Seller's samples or drawings shall not release Seller from the aforesaid warranty obligations. In addition to any other rights and remedies Buyer may be entitled to, upon receiving written notification from Buyer that any goods ordered hereunder are non-conforming or defective (1) Seller shall replace such goods at no cost to Buyer, and should Seller request the return of the non-conforming defective goods, all costs of handling and freight charges incurred for such return will be paid by Seller, and (2) if the nonconformity of defect is discovered after installation, Seller shall pay the cost of removal and replacement with proper goods plus the cost of making good all work damaged or destroyed by or as a result of the non-conforming or defective goods or the removal or replacement of same.
- 6. SCHEDULE** Time is of the essence in the Purchase Order. Any samples or drawings required to be submitted by Seller for Buyer's approval and any goods to be delivered by Seller must be submitted or delivered by Seller in strict accordance with the time stated herein. In addition to any other rights or remedies Buyer may be entitled to if delivery has not been timely made, Buyer upon written notification to Seller, may require the manufacturer to work on an overtime or premium schedule and further may require the goods to be shipped expeditiously either by special overland transportation and/or air freight from point of manufacture to the project site. In such event, Seller shall be responsible for all additional overtime or premium costs or additional transportation expenses resultant from different method of shipment.
- 7. DEFAULT** Material and/or equipment furnished under this Purchase Order (a) shall be in strict compliance with the plans and specifications applicable to Buyer's contract with the Owner, (b) shall be subject to the approval of the Owner's agent(s) and Seller shall submit the required number of designated submittal data and/or samples within the time designated and (c) shall be delivered within the time provided under this Purchase Order. Should Seller fail to meet the requirements of (a), (b) or (c) of this paragraph, Buyer may elect (1) to cancel this Purchase Order without liability on the part of Buyer, and if Buyer so chooses, proceed to purchase material and/or equipment in substitution for that due under this Purchase Order from the Seller in which event Seller shall be liable to Buyer for the difference between the cost of such substitution and this Purchase Order price together with all incidental and consequential loss or damages incurred by Buyer; or (2) to notify Seller of the deficiencies with and require Seller to correct the same in which case the Seller shall remedy the same without expense or liability on the part of Buyer and further shall pay Buyer all consequential loss or damages resulting therefrom; or (3) Buyer may proceed upon seven (7) days' notice to Seller to cure and correct the deficiencies without liability on the part of Buyer in which event Seller shall reimburse Buyer for the cost of curing and correcting said deficiencies and all incidental and consequential loss or damages incurred by Buyer resulting therefrom.
- 8. TERMINATION FOR CONVENIENCE** Buyer shall have the right at any time by written notice to Seller to cancel this Purchase Order and require Seller to cease work hereunder, in which case, provided Seller is not in default, Buyer shall be responsible only for the cost of Seller's finished goods or work-in-progress and Buyer shall not be responsible for any anticipated profits.
- 9. INSURANCE** With respect to any work arising from or any activities associated with the delivery, unloading or installation of the purchased goods, Seller shall procure, pay for and maintain in full force and effect during the course of its performance of such work Worker's Compensation, General or Public Liability, Property Damage and Vehicle insurance policies covering personal injury and property damage, and such other insurance coverage as may be requested by Buyer and/or as required by any applicable state or federal law or regulation, all in amounts and with insurance carriers acceptable to Buyer. Seller shall provide Buyer with valid certificates evidencing that such insurance coverage is in full force and effect and is noncancelable without Buyer being given at least 30 days prior written notice. Seller shall name Buyer and Owner as an additional insured on its General or Public Liability Policy. All insurance policies procured, paid for and maintained by the Seller that may cover the work performed for this Project must contain a Waiver of Subrogation rights against the Owner, Buyer, their agents and employees, and any parent, subsidiary or affiliated company.
- 10. INDEMNITY** Notwithstanding any insurance that may be provided for herein, and to the fullest extent permitted by law, Seller shall indemnify and hold harmless the Owner and Buyer, together with their agents and employees, of and from all suits, actions, legal proceedings, claims, demands, damages, costs and expenses of every kind and character, including but not limited to attorney's fees, arising out of or resulting in whole or in part from any act, omission, fault or negligence on Seller's part while performing or acting under this contract, provided that such claims are attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom.

11. CHANGES Buyer has the option at any time to make changes in quantities or in specifications and drawings. If such changes cause an increase or decrease in the amount due or in the time required for performance an equitable adjustment shall be made. Increase or decrease will be based on unit rate shown on the Purchase Order. Any claim for adjustment under this provision must be asserted within ten (10) days from the date when the change is ordered. Changes to this Purchase Contract will be binding only if in writing and signed by an authorized representative of Buyer.

12. PATENTS Seller warrants that the goods described herein and the sale or use of them will not infringe any patent and Seller covenants that it will defend, indemnify and hold harmless Buyer at its own cost and expense, every action which may be brought against Buyer or those selling or using Buyer's product for any alleged infringement of any patent by reason of the sale or use of such goods and Seller agrees to pay all costs, damages, fines and profits recoverable in any such action. In case said goods, or any part thereof, are in such suit held to constitute infringement and the use of such goods or part are enjoined, Seller shall, at its own expense, and at Buyer's option, either procure for Buyer the right to continue using said goods or part, or replace same with substantially equal but noninfringing goods, or modify if so it becomes noninfringing, or remove said goods and refund the purchase price and the transportation and installation costs thereof.

13. COMPLIANCE WITH LAWS Seller agrees to comply with any and all laws and regulations affecting this Purchase Order or manufacture, sale or delivery of the goods furnished hereunder, and agrees to execute any further stipulations and documents which may be necessary to effect such compliance. All laws and regulations required to be incorporated in contracts of this character are hereby incorporated by inference including but not limited to Federal Executive Orders number 11246 as amended; Vietnam Era Veteran Readjustment Assistance Act, as amended (VEVRAA); Section 503 of the Rehabilitation Act of 1973, as amended, FAR 52.219-8 - Utilization of Small Business Concerns and FAR 52.219-9 - Small Business Subcontracting Plan. The Seller assures that it will include the clause Utilization of Small Business concerns in all contracts (except to Small Business) in excess of \$500,000.00 (\$1,000,000.00 for construction of any public facility) to adopt a contracting plan that complies with the requirements of clauses FAR 52.219-8 and FAR 52.219-9. Seller shall not discriminate against any applicant for employment because of race, color, religion, gender, age, sexual preference, national origin, disability, veteran status or any other protected classification, and shall ensure that employees are treated during employment without regard to their race, color, religion, gender, age, sexual preference, national origin, disability, veteran status or any other protected classification. Seller further agrees to fully comply with any and all laws, statutes, regulations, orders and directives, presently or hereafter imposed by local, state or federal governments, or any agencies thereof, with respect to nondiscrimination in employment, civil rights laws and fair employment practices, and mandated reporting requirements thereof.

14. IMMIGRATION COMPLIANCE The Seller represents and warrants to the Buyer that the Seller is in compliance with, and shall remain in compliance with, the provisions of the Immigration Reform and Control Act of 1986 (The "Act") and all other Federal, State, and/or local immigration statutes/ordinances, as applicable, including, but not limited to the provisions of the Act prohibiting hiring and continued employment of unauthorized aliens, requiring verification and record keeping with respect to identity and eligibility for employment and prohibiting discrimination on the basis of national origin, United States citizenship, or intending citizen status. The Seller agrees to indemnify the Buyer and to hold the Buyer harmless from all liability, including liability for interest and penalties, the Buyer incurs with results from or is attributable to the Seller's failure to comply with any provisions of the Act, and or applicable Federal, State, and/or local immigration statute/ordinance, including reimbursing the Buyer any monies expended by the Buyer in participating in or responding to any investigation/suit/civil or criminal immigration matter involving the Seller. As it relates to immigration compliance, the Seller shall be responsible for completing any and all required documentation in accordance with requirements put forth by the Owner, Buyer or applicable law.

15. ASSIGNMENT Neither this Purchase Order nor any rights hereunder shall be assigned in part or whole by Seller without prior written consent of Buyer. Should Seller become insolvent, bankrupt, enter into liquidation proceedings, or make any assignment for the benefit of its creditor(s) Buyer may at its sole discretion cancel this Purchase Order without prejudice to any other right or remedy.

16. PAYMENT Payment shall be made by Buyer only after (a) receipt by Buyer of the executed and original and acknowledgement of this Purchase Order, (b) inspection and acceptance of the materials, equipment work or goods (c) receipt of Seller's invoice, (d) receipt, if and when requested by Buyer, of affidavits that all of Seller's suppliers have been paid, and or release of all liens either by Seller or Seller's supplier(s) and claims to Buyer in a form suitable to Buyer, and (e) receipt by Buyer of copies of warranties, applicable manuals and all other close-out documents required for the materials or equipment. Buyer will not be responsible for delay in receipt of Seller's Invoice. The time allowed by Seller for payment of invoices or for accepting a cash discount offered, shall commence on the date invoices are received by Buyer.

17. USE OF PROPERTY No ownership of patterns, designs, drawings, specifications, dies, tooling, samples, molds or other property shall pass to Seller, except with the prior written consent of Buyer, but shall be properly maintained and insured by Seller while in Seller's custody, shall not be incorporated in or used for or in connection with goods furnished to others and shall be returned to Buyer in good order and condition.

18. GOVERNING LAW This contract shall be governed by the law of the state in which the Project is located.

19. WAIVER Failure of Buyer to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to promptly notify Seller in the event of breach, or the acceptance of or payment for any goods hereunder or approval of design, shall not release Seller of any of the representations, warranties, or obligations of Buyer to insist upon strict Performance hereof or any of its rights or remedies as to any such goods, regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, nor shall any purported oral modification or rescission of this Purchase Order by Buyer operate as a waiver of any of the terms hereof.

20. INFORMATION REQUIRED Buyer may at its sole option require Seller to provide any and all supporting information to Buyer in respect of quality of goods, delays in the delivery of the goods and/or increased costs of this Purchase Contract. Buyer may use this information in pursuit or defense of claims, litigations or arbitrations with other parties and Seller, should it be required to do so, shall participate on behalf of Buyer in support of the quality of the goods, delays and/or extra costs to this Purchase Contract.

21. DISPUTE RESOLUTION Unless otherwise agreed in writing, Seller shall continue to perform its obligations under this Purchase Order pending the resolution of any dispute that may arise under or relate to this Purchase Order. Any dispute resolution provisions set forth in the Prime Contract between Owner and Buyer shall also be binding upon Seller. If no Prime Contract's dispute resolution provision governs, the dispute shall be resolved by litigation at the location of the Project. The prevailing party in any such dispute arising out of or relating to this Purchase Order shall be entitled to recover from the other party those reasonable attorneys' fees, costs and expense incurred by the prevailing party in connection with such dispute.

FLINTCO, LLC

INSURANCE REQUIREMENTS

The insurance requirements set out in this Exhibit are independent from all other obligations of the Seller under this Purchase Order and apply whether or not required by any other provision of this Purchase Order.

Buyer utilizes myCOI Central, a software management system used to track certificates of insurance and to track and verify insurance coverage. Upon Seller's receipt of this Agreement, Seller will receive an email from RiskManagementFlintco@flintco.com. Seller must follow the instructions contained in the email and complete the online registration. Upon completion of registration, Buyer will request proof of insurance directly from Seller's insurance agent(s). In addition to the other terms and conditions contained herein, Seller may not commence Work and no payments will be made, until Seller is registered in myCOI Central and a compliant COI has been received.

Certificates of Insurance ("Certificates") are to show that the below required insurance coverages in companies with a minimum A.M. Best's Rating of A-, VIII or companies acceptable to Buyer are in force, and further provide that the insurance will not be canceled without at least thirty (30) days prior written notice.

If coverage limits specified by the Owner are required of Seller and if greater than the coverage limits reflected on the Certificates provided to Buyer, Seller shall immediately obtain the required higher coverage limits and furnish Buyer with replacement Certificates showing proper coverage limits and otherwise complying with this Exhibit B.

Seller agrees to notify Buyer in writing, at least 30 days in advance, of any reduction by the insurers in required coverages or coverage limits, and in case of non-renewal, at least 30 days prior to expiration of the current policies. Seller agrees to file new, complying Certificates showing proper renewal coverages and limits in force at least 30 days prior to expiration of the current policies.

a) **WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE:**

- 1) Worker's Compensation and Occupational Disease Coverage in accordance with the laws of the State within whose jurisdiction the work is performed. In the event that the work of this contract falls within the purview of the United States Longshoreman's and Harbor Worker's Compensation Act, the Jones Act (Maritime Employers Liability) or the Federal Employer's Liability Act, the Seller shall extend Worker's Compensation Insurance to provide and maintain in full force and effect during the period covered by this Purchase Order, insurance against the liability imposed under the above-mentioned Acts as applicable and shall include borrowed servants/alternate employer endorsement. No alternative or benefit plan in lieu of statutory Worker's Compensation coverage will be acceptable even in those jurisdictions where permitted.
- 2) Employer's Liability Coverage with a minimum limit of: \$1,000,000per accident.

Where permitted by law the Seller waives subrogation against Welty/Flintco Joint Venture, Kilgore Flares Company, LLC, Kilgore Company and its related subsidiaries, Flintco, LLC, Welty Building Company, Ltd.

(b) **COMMERCIAL GENERAL LIABILITY INSURANCE**, on a coverage form at least equal to that provided under ISO CG 00 01, latest available edition, on an occurrence basis, without restricting endorsements that reduce coverage. Alternatively, the Seller shall identify by certificate any Residential, Mold, EIFS, Silica or other major exclusions that impact the Seller's ability to insure its risk. If the Project includes any Residential components or the proposed design includes EIFS systems, then the Seller shall obtain appropriate endorsements acceptable to Flintco, LLC as a condition of this Purchase Order.

\$1,000,000.00	GENERAL AGGREGATE
\$1,000,000.00	PRODUCTS-COMPLETED OPERATIONS AGGREGATE
\$1,000,000.00	PERSONAL & ADV. INJURY
\$1,000,000.00	EACH OCCURRENCE

Continuation of Coverage Seller shall continue to carry Completed Operations Liability Insurance for the applicable Statute of Repose following Substantial Completion of the Work.

(c) **AUTOMOBILE LIABILITY INSURANCE** including the following coverages: Owned, Hired, and Non-Owned vehicles shall be written for not less than the following minimum limits: \$1,000,000.00 PER ACCIDENT

(d) **UMBRELLA (EXCESS) LIABILITY INSURANCE** with combined single limits for bodily injury and property damage of not less than \$5,000,000 EACH OCCURRENCE and \$5,000,000 AGGREGATE. Such coverage shall be in excess of all liability insurance required under the above Paragraphs a.2, b and c.

Welty/Flintco Joint Venture, Kilgore Flares Company, LLC, Kilgore Company and its related subsidiaries, Flintco, LLC, Welty Building Company, Ltd as well as any other parties listed as additional insureds in the Owner-Buyer Agreement shall be added as additional insureds

under the Commercial General Liability insurance listed in (b) above. The coverage afforded the additional insureds must provide coverage at least equal to that of ISO form CG 20 10 for ongoing operations and CG 20 37 for completed operations. It is agreed by the parties that such coverage will be primary and non-contributory and any coverage carried by the Buyer and/or Owner will be excess of the Seller's coverage. If required by the law of the state where the project is located, the Buyer shall also be furnished a copy of the policy and the endorsement issued by the insurer adding the Buyer and Owner and other required parties as additional insureds or other documents as necessary to lawfully effectuate such endorsement.

All insurance policies procured, paid for, and maintained by the Seller for the work performed according to this Purchase Order must contain a Waiver of Subrogation rights against that of the Owner, Flintco, LLC, its parent, owners, subsidiaries and affiliate companies, their agents, employees, directors, servants, and insurers. This Waiver of Subrogation is required not only with respect to property, liability, or other insurance required of Seller in this article, but also with respect to any other property, liability, or other insurance the Seller may have in force that may cover the work performed for this job.

Buyer shall have no duty to Seller or to any of its insurers or their insurance agents to review any Certificates or copies of insurance furnished to Buyer or to determine whether the terms of each Certificate or policy of insurance comply with the insurance-related provisions of the Purchase Order Documents. A failure of the Buyer to detect that the Seller has not submitted Certificates, or proper Certificates, or is otherwise not in compliance with the insurance-related provisions of the Purchase Order Documents shall not be considered a waiver or other impairment of any of the Buyer's rights under such insurance-related provisions.

Number of Policies Commercial General Liability Insurance and other liability insurance may be arranged under a single policy for the full limits required or by a combination of underlying policies with the balance provided by an Excess or Umbrella Liability Policy. If the full required limits are arranged under a combination of Primary and Excess or Umbrella policies, all policies will be primary and non-contributory and any coverage carried by the Buyer and/or Owner will be excess of Seller's coverage.

If the Seller fails to procure and maintain such insurance, in addition to the option of declaring the Seller in default for breach of a material provision of the Purchase Order, the Buyer shall have the right, but not the duty, to procure and maintain the same insurance, or other insurance that provides the Buyer with equivalent protection, and the Seller shall furnish all necessary information to make effective and maintain such insurance. At the option of the Buyer, the cost of said insurance purchased by the Buyer shall be charged against and deducted from any monies then due or to become due to the Seller or the Buyer shall notify the Seller of the cost thereof and the Seller shall promptly pay such cost.

(e) BUILDER'S RISK coverage including the interests of the Seller will be provided by Buyer as identified in the Purchase Order Documents. The Seller is responsible for the deductible of \$25,000.

FLINTCO, LLC

DRAWINGS, SPECIFICATIONS & ADDENDA

Specifications: XXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXX

Addenda: XXXXXXXXXXXXXXXX
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XXXXXXXXXXXXXXXXXX

Drawings: XXXXXXXXXXXXXXXX
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