

ONEIDA TRIBE OF INDIANS OF WISCONSIN PURCHASE ORDER GENERAL TERMS AND CONDITIONS

- 1. Definitions** – “Buyer” means the Oneida Tribe of Indians of Wisconsin or any instrumentality thereof, including, but not limited to, the Oneida Tribe of Indians of Wisconsin. “Seller” means the person, firm, company, limited liability company or corporation supplying the goods or services under Buyer’s purchase order/contract, including these Terms and Conditions (the “Order”), and includes all sales or other agents, subcontractors, employees and distributors thereof.
- 2. Price** – The order must not be filled at higher prices than the last quoted without authority of Buyer, and it is agreed that your price will be the lowest prevailing market price.
- 3. Delivery** – Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise stated. Failure of the Seller to adhere to delivery schedules as specified or to promptly replace rejected materials with same materials shall render the Seller liable for all costs in excess of the contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.
- 4. Payment Terms** – The Tribe normally will pay properly submitted vendor invoices within thirty (30) days from receipt of invoice. Invoices presented for payment must be submitted with reference to purchase order number and submittal to the correct address for processing.
- 5. Quantity** – Delivery of any material over and above the actual quantity specified on the order will be at the risk of the Seller and payment will not be made for such overruns unless agreed to in writing by the tribe.
- 6. Quality** - Unless otherwise indicated all material shall be first quality and must be as specified and will be subject to inspection and approval of Buyer after delivery. Items which are used, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval. The Buyer reserves the right to reject and return at the risk and expense of the Seller such portion of any shipment which may be defective or fails to comply with specifications without invalidating the remainder of the order. If rejected, it will be held for disposition at expense and risk of the Seller. The Seller shall correct or replace rejected materials without expense to Buyer. No substitutions may be made without prior written approval.
- 7. Warranty** – Seller warrants the following: (i) all goods delivered will be free from defects in material and workmanship and conform to applicable specifications; (ii) Seller has good title to the goods provided to Buyer and passes such title to Buyer free from any liens, security interests or other encumbrances; (iii) the goods are merchantable and fit for the purpose intended; (iv) all services shall be completed in a professional, workmanlike manner and in accordance with applicable specifications, and; (v) the goods and services provided under the Order will not infringe or violate any patents, trade secrets, trademarks, copyrights or other rights of any third party. To the extent applicable, Seller shall assign all express warranties of any manufacturer of the goods for the benefit of Buyer.
- 8. Packing Slips** – A packing slip shall be enclosed with all shipments, showing purchase order number, part number and quantity. Buyer will not receive materials unless it is tagged or marked with Buyer’s purchase order number.
- 9. Hazardous Materials** – All packaging, transportation and handling of hazardous materials shall be in accordance with applicable laws and regulations; Seller shall be responsible for any non-compliance. All Sellers who supply hazardous materials shall provide Material Safety Data Sheets with the order.
- 10. Indemnification** - Seller shall indemnify and hold harmless Tribe, its officers, employees, agents and representatives, from and against any and all claims, of whatever nature, for injuries or losses, or damages arising out of Seller’s negligence, gross negligence, or intentional misconduct, or the negligence, gross negligence or intentional misconduct of Seller’s employee’s, agents and representatives.
- 11. Assignment** – Seller may not assign or delegate its rights or duties in whole or in part under this agreement without the prior express written consent of the Tribe.
- 12. Gratuities** – Seller shall not offer nor give gratuities, in any form, to any employee or relative of an employee of the Tribe.
- 13. Force Majeure** – Any delay in or failure of performance by either party shall not constitute default hereunder if and to the extent such delay or failure of performance is caused by occurrences beyond the control of the party,

which are not within reasonable control of the party.

14.Licensing – Sellers are required to have a vendor license issued by the Oneida Compliance Department. Some Sellers may be required to maintain a license as required by the Oneida Gaming Commission. Failure of Seller to maintain required licenses or termination of required licenses and permits may result in removal of Seller's name from the vendor list and immediate cancellation of the Order.

15.Order Acceptance – Any acceptance of the Order by the Seller, whether in writing or by performance, is limited to and shall be subject to these Terms and Conditions, or in any written amendment signed by Buyer and binding upon Seller. Any proposal for additional or different terms in any document provided by Seller to change the terms of the Order is rejected and shall not be effective.

16.Acceptance by Buyer – Goods and/or services purchased under the Order are subject to Buyer's inspection and approval within a reasonable time, but not less than 60 days after delivery. Buyer, at its option, may reject all or any portion of such goods or services which do not conform in every respect with the terms of the Order, or require Seller to provide replacement goods or re-perform services in conformity with the terms of the Order at Seller's cost. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the contract price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer shall not be deemed a waiver or settlement of any defect in such goods and/or services.

17.Risk of Loss – Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss results from the negligence of Buyer.

18.Change, Cancellation and Termination – The Order can be changed, terminated or canceled by Buyer for any reason, including convenience upon prior written notification to Seller. In the event of a change, Buyer and Seller will make a fair and equitable modification to their rights and obligations under the Order, if such change results in an increase or decrease in costs to be incurred or time needed to complete performance of the Order. Termination or cancellation for convenience by Buyer will entitle Seller to payment for only those goods or services delivered, received and accepted and not subsequently rejected by Buyer. Buyer may immediately terminate the Order without prejudice to any right or remedy, after giving

Seller notice of any breach by Seller of its obligations hereunder.

19.Taxes – Except as otherwise expressly provided in the Order, the contract price shall include all applicable Federal, State and local taxes of any kind. Goods and services purchased by Buyer for its use on the Oneida Tribe of Indians of Wisconsin Reservation are not subject to state or local sales, use or excise taxes. Buyer will identify all goods and services which are not subject to Wisconsin Sales Tax.

20.Use of Buyer's Name - Seller agrees not to use the name of Buyer or disclose the existence of the Order in any advertising, promotion or other written or oral disclosure without the prior written consent of Buyer.

21.Confidentiality – Confidential Information means any and all information and documents whether marked or unmarked as "Confidential", and without limitation, that the Tribe treats and regards as confidential and/or proprietary, and that is disclosed to the Recipient in writing, or if disclosed orally, is reduced to writing and delivered to the Recipient, within thirty (30) days after such oral disclosure. All information and documents belonging to the Tribe, and all copies of such information, shall be returned to the Tribe promptly upon completion of the project or services provided. All Confidential Information is provided "as is" and no representation or warranty as to accuracy or completeness is provided by the Tribe. Seller shall not directly or indirectly use, disseminate, disclose or in any way reveal or use beyond the scope of authority granted by Buyer all or any part of the confidential information which it will be exposed to and shall use such confidential information only to the extent specifically authorized by Buyer. Upon cancellation or termination of the Order for any reason whatsoever, Seller shall turn over to Buyer any and all copies it may have of confidential information. Seller acknowledges that this provision shall survive the termination of the Order. The confidentiality provisions of this Paragraph shall apply to and be binding upon Seller's officers, employees and representatives.

22.Compliance with Laws – Seller shall comply with all laws and governmental rules, regulations and orders applicable to the goods delivered and/or services rendered under the Order including, but not limited to, obtaining all necessary licenses and permits including those which may be required by Oneida Tribe of Indians of Wisconsin for work performed within the reservation boundaries of the Oneida Tribe of Indians of Wisconsin.

23. Buyer's Property – Unless provided otherwise, all materials, including documents, drawings, specifications and tools, furnished or paid for by Buyer shall remain the exclusive property of Buyer unless otherwise specified in contract, agreement, etc. All documents, drawings, and specifications shall be considered confidential and not disclosed to any third party. All materials shall be returned to Buyer upon Seller's completion of its obligations under the Order. Seller assumes all liability for loss or damage of such materials caused by Seller's negligence, excluding normal wear and tear.

24. Insurance – At all times during its performance hereunder, Seller shall obtain and keep in force worker's compensation insurance for all of its employees within statutory limits and commercial general liability insurance, including coverage for product liability and completed operations, contractual liability and automobile liability for all owned, non-owned and hired vehicles used in carrying out the Order with limits of not less than \$1,000,000 per occurrence. Buyer reserves the right to require additional coverage or higher limits where warranted. Seller shall provide Buyer with certificate of insurance evidencing Seller's compliance with the foregoing insurance provisions upon request. Buyer's obligations under the Order are conditioned upon Seller's meeting the insurance requirements above.

25. Independent Contractor – Seller is an independent contractor for all purposes of the Order and its employees shall not be deemed to be employees or agents of the Buyer. Seller has not express or implied authority to bind the Buyer by contract or otherwise.

26. Waiver – Waiver of a breach of any provision of the Order shall not constitute waiver of future compliance with such provision nor shall it be construed as a waiver of any other breach.

27. Severability – If any provision of the Order, including these Terms and Conditions, shall be declared illegal, void or otherwise unenforceable, the remaining provisions shall not be affected and will remain in full force and effect.

28. Rights and Remedies – The rights and remedies of Buyer and Seller set forth in the Order are cumulative in addition to any other rights or remedies that they may have at law or in equity.

29. Entire Agreement – This Order, together with any attachments or written amendments signed by Buyer, constitutes the entire agreement between the parties.

30. Sovereign Immunity – Nothing in this Order shall be construed to constitute a waiver, express or implied, of the sovereign immunity of the Buyer.