

## FORM OF PURCHASE ORDER AGREEMENT

1. **ACCEPTANCE.** All purchase orders constitute an offer by Buyer and become a binding contract when acknowledged by Seller. If Buyer does not receive a signed acknowledgment copy of a purchase order within fifteen (15) days of the date set forth on any purchase order, Buyer may, at its option, cancel the purchase order without any liability to Seller whatsoever. Acceptance of any order is expressly limited to the terms stated on the purchase order and attached descriptions and Seller shall be bound thereby upon execution of the acknowledgment copy of the purchase order or commencement of performance thereunder. Buyer objects in advance to the inclusion of additional or different terms proposed by Seller unless such terms are accepted in writing by an authorized officer of Buyer and acceptance of the goods shall not be deemed an acceptance of such terms. No change in, modification of, or revision to any purchase order shall be valid and no conditions imposed by Seller in acknowledging the purchase order shall be binding on Buyer unless accepted in writing and signed by an authorized officer of Buyer.

2. **PACKAGING.** All packaging shall be in conformance with good commercial practice. All containers shall have attached identification, including the purchase order number and material descriptions. No charge shall be made for cartons, wrapping, packing, boxing, crating, delivery drayage or other costs, unless such charge is expressly approved by Buyer.

3. **SHIPMENTS.** Unless otherwise specifically addressed in the purchase order the goods shall be shipped by Seller FOB destination. The original bill of lading (referencing this purchase order number) and a packing list shall be delivered by Seller to Buyer at the "ship to" address on the purchase order as far in advance of the arrival of goods as possible. Buyer is relying on manufacture, shipment, delivery, installation, and acceptance of the goods based on the schedule on the purchase order. Time is of the essence of any purchase order. Seller shall not manufacture, ship or deliver goods in advance of any scheduled date without Buyer's written consent. Buyer, at Buyer's option, may refuse or return at Seller's expense all or any part of (a) shipments which do not conform to the shipping or delivery dates specified by Buyer (whether early or late); (b) shipments in excess of the quantities ordered or in lesser quantities than ordered; (c) shipments which contain defective goods or which fail to conform to the purchase order, or (d) good which are not as represented or warranted. Any storage or warehouse charges or other costs incurred by Buyer due to Seller's failure to comply with the terms specified in this purchase order will be at Seller's expense.

4. **INSPECTION & REJECTION.** At Buyer's option, Buyer may (a) Approve any plans and specifications for the goods prepared by Seller prior to Seller commencing manufacture, assembly and/or production of the goods and (b) inspect the goods during manufacture, assembly and/or production. All goods are subject to final inspection and approval by Buyer as to quality of material and workmanship; conformance to specifications, drawings, notes, instructions, engineering notes, technical data and/or samples supplied by Buyer ("data"); and general acceptability of goods. Final inspection shall be at the specified delivery site unless otherwise agreed in writing. Without limiting any other rights it may have Buyer, at Buyer's option, may (a) hold, at Seller's expense subject to Seller's disposal all rejected goods, (b) return all rejected goods to Seller at Seller's expense, including transportation and handling costs, (c) require Seller to repair or replace at Seller's expense any rejected goods, (d) require Seller to refund the price of any rejected goods, or (e) repair defects and deduct the cost of replacement or rejection that would otherwise result in cancellation of the order. Acceptance of any portion of the goods ordered shall not obligate Buyer to accept future shipments nor be deemed a waiver of Buyer's rights hereunder or under law. Neither acceptance of any shipment nor payment of any contract price by Buyer shall constitute a waiver of damages or other remedies for any defects in any goods ordered hereby, failure to conform to data, failure to meet any scheduled date, or other breach of the purchase order.

5. **INVOICES/INSTRUCTIONS.** Seller shall invoice Buyer for the goods at the time of final shipment unless otherwise provided in the purchase order. Invoices shall be rendered in duplicate and shall show the purchase order number for each separate purchase order and the code number for each item purchased. Buyer may return for revision any invoice that is not in proper form and the discount period and payment term will be extended until the revised invoice is received. Seller shall comply with Buyer's billing and routing instructions contained herein or otherwise communicated to Seller by Buyer, or pay any extra expense incurred by Buyer because of Seller's failure to do so.

6. **PRICES.** Buyer shall make net payment to Seller in accordance with the terms stated on the purchase order including all charges for freight, insurance and taxes, if applicable. The price shall not be changed without Buyer's prior written agreement. Seller represents that the price charged for the goods and services covered by this purchase order is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in any purchase order.

7. **COMPLIANCE WITH LAWS.** Seller warrants that (a) it has obtained all licenses, permits and similar approvals required to manufacture, sell, deliver and, if applicable, install the goods and perform the services required hereunder and (b) the purchase by Buyer hereunder and the services performed by Seller hereunder shall be in compliance with applicable local, state and federal laws, rules, regulations, ordinances and directives. If Seller does not have legal authority to sell to Buyer and/or loses legal authority to do business with Buyer during execution of the terms of any purchase order or does not meet all requirements by regulatory agencies to conduct business with Buyer, then Seller will bear all expense and damages to Buyer resulting from fraudulent representation of said legal status.

8. **REGULATORY COMPLIANCE.** Each Party shall obtain and at all times maintain in good standing and effect all necessary and proper business licenses and other licenses and permits, including approvals by gaming authorities, relating to its business operations in connection with this purchase order and so long as Buyer is using any products or services described in this Agreement, and shall comply with the applicable laws and regulations of the governing state. A breach of this obligation shall be a material breach hereunder. Seller acknowledges that Buyer and its affiliated companies conduct a business that is subject to and exists because of privileged licenses issued by governmental authorities. Seller therefore, agrees that in the event that Buyer shall in good faith determine, in its reasonable judgment, that Seller is or may be, engaged in, or about to be engaged in, any activity or activities that may adversely impact or affect directly or indirectly Buyer's suitability or gaming license or the gaming license (or business or operations related in any manner to gaming) of any subsidiary or affiliated company, or Buyer's relationship with Seller or any other person does or could have this effect, Buyer shall have the right to terminate the Agreement immediately upon written notice Seller with no further liability to Seller except for payment for unpaid goods or services which have been provided prior to such termination.

9. **TAXES.** Except as may otherwise be specifically agreed to by Buyer, Seller shall pay any sales, use, excise, income, property, unemployment, social security, or other governmental tax, surcharge, or tariff now or hereafter made or levied by any local, state, or federal government on the goods and/or services, including installation, covered by the purchase order or the consignment or sale contemplated by it, and the price of the goods stated in the purchase order shall not be increased by such taxes.

10. **GENERAL WARRANTIES.** Seller warrants that all goods furnished hereunder, whether supplied by Seller or by someone else, will (a) be new and of first quality, (b) be free from defects in materials and workmanship, (c) conform to applicable data, (d) be free from design and specification defects whether or not manufactured to Seller's specifications, (e) be fit for the purpose for which intended, (f) be of merchantable quality and fit and safe for consumer use, and (g) be free and clear of all liens and encumbrances at the time of shipment. All warranties hereunder shall run to Buyer its successors, assigns customers and the ultimate users or consumers of such goods. The express warranties contained herein shall not be deemed to limit, diminish, reduce, or waive any duties, warranties, or guarantees given separately by Seller or in law (expressed or implied). All warranties contained in this purchase order shall be construed as consistent and cumulative with one another and with all warranties in law or given separately by Seller. In the event of a breach of any warranty in the purchase order, Buyer shall have all rights and remedies available at law or inequity.

11. **CHANGES.** Buyer may at any time, by written notice to Seller, make changes in the purchase order, including without limitation, changes in the specification of the goods, quantities, method of shipping or packing, place of inspection, acceptance point of delivery schedule, or other terms of the purchase order. If any such change increases or decreases the cost of goods or the time required to perform such order, Seller shall notify Buyer within five (5) days after receipt by Seller of the request for change and, if such change is acceptable to Buyer, then Buyer and Seller shall execute a change order approving the same. No such change shall be effective without an executed change order.

**12. INDEMNIFICATION/INSURANCE.**

a. Seller agrees to indemnify and defend Buyer, its affiliates, officers, employees, agents, successors and assigns for and against any and all claims, actions, obligations liabilities, fines, penalties, damages, losses, costs, expenses and attorney's fees arising from or connected with the goods purchased and services rendered hereunder including, without limitation, any of the following: (i) breach of express or implied warranty, strict liability, or other liability arising from any defect in the goods purchased or the methods utilized in performing the order, (ii) the acts or omissions of Seller or any party under Seller's control, (iii) any claim of infringement of patent, trademark, trade name, copyright, trade secret, or other similar claim of right now or hereafter existing under the laws of any state or county relating to the manufacture, sale or use of the goods, (iv) any claim for royalties, unfair competition, or the like arising from any license or like agreement or arrangement between Seller and third parties regarding such goods, or (v) the delivery and/or installation of any goods by Seller or any party under Seller's control on property owned, leased, occupied, or controlled by Buyer.

b. Seller shall maintain and provide Buyer with proof that it maintains primary and non-contributing products liability insurance with minimum limits of \$1,000,000/2,000,000.00 for bodily injury and for property damage and blanket broad form vendor's coverage (or such other limits as may be specified by Buyer, designating prior written notice to Buyer in the event of cancellation or material reduction of coverage. Seller shall also maintain worker's compensation insurance in the form and amount required by applicable law covering any employees or agents of Seller performing services hereunder or employed by Seller.

**13. SUPPLEMENTARY INFORMATION/EQUIPMENT.**

a. Any data referred to in a purchase order or provided by Buyer to Seller shall be deemed to be incorporated herein by reference as if fully set forth. If any discrepancies exist in such data, Seller shall refer such matter to Buyer for instructions or interpretation.

b. Buyer shall retain title to all data and information supplied to any person or entity other than the Seller's employees, subcontractors, or government inspectors. Unless requested earlier, Seller shall promptly return all such data and information to Buyer upon completion of the purchase order.

c. Any equipment or tools purchased or manufactured specifically for the production, manufacture, or assembly of Buyer's goods shall be delivered to Buyer at the earlier of completion of work or cancellation of the purchase order and no additional purchase price shall be charged to Buyer for such equipment or tools.

**14. WORK AT SITE. ALL INSTALLATION WORK, WHETHER ON OR OFF SITE, SHALL BE SUBJECT TO A SEPARATE WRITTEN AGREEMENT BETWEEN THE PARTIES.**

**15. RESPONSIBILITY FOR GOODS & RISK OF LOSS.** Unless otherwise provided in the purchase order, goods shall be shipped "F.O.B. Delivery" and all risk of loss of goods covered hereby shall be borne by Seller until goods have been received and accepted by Buyer or received, installed, and accepted by Buyer, whichever is applicable. **19.**

**16. LICENSE.** If any software is necessary to operate the goods, Seller hereby grants to Buyer a perpetual, irrevocable and transferable license to use such software and any accompanying manuals. Seller shall provide Buyer with any updates, changes or modifications to such software and user manuals at no additional charge. Seller warrants that Seller has the right, title and authority to license any such software and that such software does not infringe on any other party copyright, patent, trade secret or other intellectual property rights.

**17. ARCHITECTURAL/ARTISTIC WORKS.** All of the results and proceeds of Seller's services hereunder ("Materials") including, without limitation, the goods shall be considered as a work made for hire under the United States Copyright Act of 1976, with Buyer being deemed the author of the Materials. The parties acknowledge that the terms of such arrangement, all such Materials, all elements thereof (including development of research materials) and all rights related thereto are the sole and exclusive property of Buyer, its successors and assigns, absolutely, for all copyright terms and renewal terms, throughout the world, and for all uses and purposes whatsoever. All subcontractors or material providers of Seller shall be hired under a work made for hire agreement suitable in form and content to Buyer. Seller and all subcontractors and material providers shall prepare all Materials subject to the approval and under the creative direction and control of Buyer. In the event any Material is deemed not to be a work made for hire, then Seller agrees to and does hereby assign and transfer all right, title and interest in and to the Materials throughout the world, including the copyrights and all works of authorship, to Seller for good and valuable consideration, receipt of which Seller hereby acknowledges, and Seller waives any

statutory, equitable, "moral", or other rights that may accrue to it as a result of the production of the Materials. To effectuate such assignment, Seller hereby grants Buyer an irrevocable power of attorney coupled with an interest. Buyer shall own all rights, title and interest (including copyrights and trademarks) in and to the Materials and shall have the right without any consent, notice or approval of any party, to add, alter, revise adapt or interpose other material in the Materials or to destroy, distort, mutilate or otherwise modify the Materials. Seller further agrees to promptly execute any further assignments as may be requested by Buyer to ensure Buyer's ownership of the Materials and any further specific waivers that may be necessary to waive all residual or "moral" artists' rights under the Visual Artist's Rights Act of 1990 and any relevant state statutes. Seller hereby represents, warrants and covenants that the Materials shall be delivered free and clear of any and all liens, claims, or rights of any type whatsoever, that the production or exploration of the Materials in the exercise of Buyer's rights hereunder will not violate or infringe upon any copyright, literary right, intellectual property right, trade mark, trade name, right of privacy or publicity, or any other right of any person or entity. Seller will obtain a written release from any person required to make this representation and warranty true, complete and correct to otherwise permit Seller to assign all rights to the Materials.

**18. CANCELLATION.**

a. In addition to all other rights and remedies provided for hereunder or under law (including without limitation, damages), Buyer may cancel all or any part of any purchase order: (i) if Seller breaches any of the terms, warranties or provisions hereof, (ii) upon the occurrence of any event entitling Buyer to reject the goods, or (iii) if any insolvency proceeding is instituted by or against Seller.

b. Buyer, in Buyer's sole discretion, may cancel any purchase order at any time as to the goods not then delivered.

c. Buyer shall not be deemed to have cancelled a purchase order unless it notifies Seller of its intent to do so in writing. Upon receipt of such notice, Seller will immediately stop work and notify any other parties performing any part of the work and will protect property in Seller's possession in which Buyer has or may acquire an interest.

d. Unless the Seller exercises its right to cancel because of the events described in paragraph a. above or because of other event or condition caused by or under the control of Seller, Seller may claim (i) reimbursement for actual out-of-pocket costs incurred by Seller as a result of such cancellation (exclusive of costs for materials that Seller can use on other orders) and (ii) a reasonable profit on the work performed by Seller prior to cancellation. Such claim must be made within twenty (20) days of the notice of cancellation and the total amount of such claim shall not exceed the purchase price for the completed goods.

**19. RIGHT OF OFFSET.** Notwithstanding any other provision of the contract, the Company may at any time reduce the amount of any payment or benefit otherwise payable to or on behalf of a Supplier by the amount of any obligation of the Supplier to or on behalf of the Company or an Affiliate that is or becomes due and payable.

**20. E-INVOICING.** In situations where the Penn National Gaming procurement system provides the tools to invoice electronically, suppliers will be required to utilize the e-invoice process.

**21. GENERAL.**

a. Any overtime or other additional extraordinary costs incurred by Seller to perform its obligations under or otherwise comply with the purchase order shall be borne by Seller.

b. Except as may be necessary to insure performance hereunder, Seller shall not disclose the terms or existence of any purchase order to any third party without Buyer's prior written consent which may be given or withheld in Buyer's sole discretion. Seller shall keep strictly confidential any information regarding Buyer's business or operations directly or indirectly furnished in connection with the purchase order.

c. Seller's sole remedy under this purchase order shall be the recovery of monetary damages as provided herein.

d. Seller shall provide adequate assurance of due performance of Seller's obligations hereunder within three (3) business days of Buyer's written demand for such assurance and failure to provide such assurance shall be deemed a default hereunder.

e. All representations and warranties shall survive the termination of any purchase order and/or the delivery and acceptance of the goods and

the payment of the purchase price.

f. Forbearance or indulgence by either party shall not constitute a waiver of the terms and conditions of any purchase order.

g. In the event of a dispute between the parties arising out of any purchase order, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs.

h. The purchase order constitutes the entire agreement between the parties and supersedes all prior contracts, representations, negotiations and terms pertaining to the goods, whether written or oral.

i. The Commonwealth of Pennsylvania shall have exclusive jurisdiction over matters relating to this purchase order.