

## **Foxwoods Resort Casino Standard Purchase Order Terms and Conditions**

**1. Definitions:** "Buyer" means the Mashantucket Pequot Tribal Nation or any instrumentality thereof, including, but not limited to, the Mashantucket Pequot Gaming Enterprise d/b/a Foxwoods Resort Casino. "Seller" means the person, firm, or company or corporation supplying the goods or services under Buyer's purchase contract/order, including these Terms and Conditions (the "Order"), and includes all sales or other agents, subcontractors, employees and distributors thereof.

**2. Order Acceptance:** The Order contains all of the terms and conditions applicable to the goods and/or services to be delivered to Buyer pursuant to the Order. Upon acceptance of the Order, shipment of goods or commencement of services, Seller shall be bound by the provisions in the Order, including the special provisions on the face of the Order, unless Seller objects to such terms in writing prior to shipping goods or commencing services. In the event of any objection, the Order may only be modified pursuant to a writing executed by a duly authorized representative of Buyer, and shall control over any contrary term or condition contained in any shape or form or pre-printed document, acknowledgement or delivery receipt provided by Seller to Buyer.

**3. Delivery:** Unless otherwise specified in the Order, all shipments shall be F.O.B. Mashantucket to the "ship to" location specified on the Order. Delivery shall be in accordance with the schedule set forth in the Order, unless otherwise agreed to by Buyer. Delays in shipment shall be reported immediately by Seller to Buyer. Buyer reserves the right to cancel the Order, in whole or in part, if Seller should fail to make deliveries in accordance with the terms of the Order, or require seller to ship goods, at Seller's expense, by expedited routing.

**4. Acceptance by Buyer:** Goods and/or services purchased in 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 opinion, 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. 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 the 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.

**5. Cash Discount Period:** The cash discount period available to Buyer shall commence on the later to occur of Buyer's receipt of all goods and services or the date of its receipt of a properly executed invoice.

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

**7. Warranty:** Seller warrants that (i) all goods delivered under the Order will be free from all defects in material and workmanship, and conform to applicable specifications, (ii) Seller has good title to the good provided to Buyer free of 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 and 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 the Buyer.

**8. Assignment of Rights:** Seller may not assign or delegate its rights or duties hereunder without the express written consent of Buyer.

**9. 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 the goods or services delivered, received or 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.

**10. 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 Mashantucket Pequot Tribal Reservation are not subject to Connecticut Sales Tax. Buyer will identify all goods and services, which are not subject to Connecticut Sales Tax.

**11. 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.

**12. Gratuities:** Seller shall not offer nor give gratuities, in any form, to any employee or relative of any employee of Buyer.

**13. Equal Employment Opportunity:** Seller agrees not to discriminate in any manner against the employees or applicants for employment on the basis of race, color, religion, creed, age, sex, handicap, or national origin, and will take affirmative action to prevent such discrimination.

**14. Excuse:** Seller shall be excused for any nonperformance due principally to circumstances, which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods or services necessary for Seller's performance, nor for any labor dispute involving employees of Seller, Buyer, any subcontractor of either, any carrier or any other person.

**15. Indemnification:** Seller agrees to indemnify and hold harmless Buyer from and against any and all claims, actions, damages, or other losses arising from or by reason of Seller's performance hereunder, except to the extent that such claims, actions, damages or other losses result from the Buyer's gross negligence or willful misconduct. As used in this indemnification provision and for purposes of Seller's insurance, "Buyer" shall be deemed to include Buyer's Council, officers, employees, agents, guests and invitees.

**16. Insurance:** At all times during its performance hereunder Seller shall obtain and keep in work force workers' compensation insurance for all of its employees within statutory limits, and commercial general liability insurance, including coverage's for product liability and completed operations, contractual liability, and automobile liability of all owned, non-owned and hired vehicles used in carrying out the Order, with limits of not less than \$1,000,000 per occurrence. Insurance must be provided by an insurance company licensed to do business in the State of Connecticut with a minimum AM Best rating of A VII or Weiss rating B or better. Buyer reserves the right to require additional coverage's or higher limits where warranted. Seller shall provide Buyer with a certificate of insurance evidencing Seller's compliance with the foregoing insurance provisions upon request. **Buyer's obligations under the Order are dependent upon Seller's meeting the insurance requirements above.**

**17. 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 Mashantucket Pequot Tribal Nation's Land Use Commission for work performed on the Mashantucket Pequot Reservation.

**18. Hazardous Materials:** All packaging, transportation and handling of hazardous materials shall be in accordance with applicable laws and regulations. All Sellers who supply hazardous materials shall provide Material Safety Data Sheets with the Order.

**19. Buyer's Property:** All materials, including documents, drawings, specifications and tools, furnished or paid for by Buyer shall remain the exclusive property of Buyer. 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, excluding normal wear and tear.

**20. Insolvency:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, Buyer shall be entitled to cancel Order, in whole or in part, without and liability whatsoever.

**21. Independent Contractor:** Seller is an independent contractor for all purposes of the Order, and has no express or implied authority to bind Buyer by contract or otherwise.

**22. Confidentiality:** Seller acknowledges that it may be exposed to confidential information of Buyer. Confidential information includes, but is not limited to, data relating to Buyer's operation, customer data, financial records, and other information of the business affairs of Buyer. 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 the Seller's officers, employees, and representatives.

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

**24. 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.

**25. Governing Law:** The Order and the performance hereunder shall be interpreted, construed and enforced in accordance with the laws of the Mashantucket Pequot Tribal Nation.

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

**27. Audit:** Buyer reserves the right to perform a financial or inventory audit as deemed necessary during or after the performance by Seller of its obligations under the Order. Buyer will be permitted to conduct such audit with any or all of its Procurement, Financial or Internal Audit resources. Buyer further reserves the right to conduct such audits with the assistance of a third party accounting / auditing firm.

**28. Gaming Procedures:** The Order and Seller's rights hereunder are subject to the Mashantucket Pequot Gaming Procedures, 56 Fed. Reg. 24996, including the regulations promulgated there under. Failure of Seller to file for and maintain vendor licensure as required with the Mashantucket Pequot Gaming Commission (the "Commission"), or to file all documents and provide all information necessary for compliance with all regulatory requirements or should Seller be removed from the Commission's Master Vendor List may subject the Order to immediate cancellation by Buyer. Should the Commission issue an order prohibiting Buyer from transacting business with Seller, then in that event, the Order shall immediately terminate.

**29. Precedence:** In the event that the various parts of the Order are inconsistent, the following order of precedence will apply: (i) special terms and conditions of the face of the Order, (ii) these Terms and Conditions, (iii) specifications, and (iv) all other attachments incorporated in the Order by reference.