

Standard Terms & Conditions



1. Term of Contract

The term of the Contract shall commence on the Effective Date (as defined below) and shall end on the Expiration Date identified in the Contract, subject to the other provisions of the Contract.

The Effective date shall be: a) the date the Contract has been fully executed by the Contractor and by the Akwesasne Mohawk Casino herein referred to as MGE and all approvals required by MGE contracting procedures have been obtained or b) the date referenced in the Special Contract Terms and Conditions whichever is later. The Contract shall not be a legally binding contract until after the fully-executed Contract has been sent to the Contractor.

The Contractor shall not start performance until all of the following have occurred: a) the Effective Date has arrived; b) the Contractor has received a copy of the fully-executed Contract; and c) the Contractor has received a purchase order from the MGE Purchasing Department. The MGE shall not be liable to pay the Contractor for any supply furnished or work performed or an expense incurred before the Effective Date or before the Contractor receives a copy of the fully-executed Contract or before the Contractor has received a purchase order. Except as otherwise provided in Paragraph 3 no MGE employee has the authority to verbally direct the commencement of any work or delivery of any supply under this Contract prior to the Effective Date.

2. Estimated Quantities

It shall be understood and agreed that any quantities listed in the Contract are estimated only and may be increased or decreased in accordance with the actual requirements of the MGE and that the MGE is accepting any bid or portion thereof, contracts only and agrees to purchase only in such quantities as represent the actual requirements of the MGE. The MGE reserves the right to purchase items covered under the Contract through a separate procurement procedure, whenever the Purchasing Department deems it to be in the best interest of the MGE.

3. Purchase Orders

The MGE Purchasing Department may issue purchase orders against the Contract. These orders constitute the Contractor's authority to make delivery. All purchase orders received by the Contractor up to and including the expiration date of the Contract are acceptable and must be performed in accordance with the Contract. Contractors are not permitted to accept purchase orders which require performance extended beyond those performance time periods specified in the Contract but in no event longer than ninety (90) days after the expiration date of the Contract period. Each purchase order will be deemed to incorporate the terms and conditions set forth in the Contract.

Purchase orders may or may not include an "ink" signature by the MGE. The electronically-printed name of the purchaser represents the signature of that individual who has the authority, on behalf of the MGE, to authorize the Contractor to proceed.

Purchase orders may be issued electronically or through facsimile equipment. The electronic transmission of a purchase order shall require acknowledgement of receipt of the transmission by the Contractor.

Receipt of the electronic or facsimile transmission of the purchase order shall constitute receipt of an order. Orders received by the Contractor after 3:00 p.m. will be considered received the following business day.

The MGE and the Contractor specifically agree as follows:

Upon receipt of an order, the Contractor shall promptly and properly transmit an acknowledgement in return. Any order which is issued electronically shall not give rise to any obligation to deliver on the part of the Contractor, or any obligation to receive and pay for delivered products on the part of the MGE, unless and

until the Purchasing Department transmitting the order has properly received an acknowledgement.

4. Independent Contractor

In performing the obligations required by the Contract, the Contractor will act as an independent contractor and not as an employee or agent of the MGE.

5. Compliance with Law

The Contractor shall comply with all applicable federal, NY State, Tribal laws, regulations and local ordinances in the performance of the Contract.

6. Gaming Procedures

Gaming Related Vendors are required to submit the appropriate GSR application to the tribal gaming commission. Once application is approved by the commission MGE is notified by the gaming commission that the vendor is approved and can be utilized in procuring gaming related products.

Non-Gaming Vendors may be required to submit a GSR application if total annual purchases exceed \$50,000 but only when deemed necessary by the tribal gaming commission.

Licensor (or Contractor) shall adhere to Tribal internal control standards (TICS) of the St. Regis Mohawk Tribal Gaming Commission that are applicable to the goods and services the Licensor (or Contractor) is providing.

7. Covenants Against Kickbacks: MGE will not tolerate Kickbacks in any form.

- MGE defines a "Kickback" as any cash, fee, commission, gift, an item of value or compensation of any kind in exchange for favorable treatment in obtaining or retaining any purchase order or securing a contract with MGE.
- Vendor agrees that its officers or employees have not and will not provide or attempt to provide, either directly or indirectly, any Kickback to any employees of the SRMT, its enterprises, agents, government or any member of the Tribe in an attempt to influence a decision.
- Failure to abide by this specific section shall be sufficient reason for the immediate termination, without further notice, of this and any other purchase order or contract the Vendor currently has with MGE.

8. Environmental Provisions

In the performance of the Contract, the Contractor shall minimize pollution and shall strictly comply with all applicable environmental laws and regulations.

9. Hazardous Materials

All vendors that supply hazardous materials must provide the appropriate Material Safety Data Sheets before or at the time of delivery. The vendor must comply with all NY State, federal, tribal and local laws and regulations pertaining to the packaging, handling and transportation of hazardous materials.

10. Compensation/Invoices

The Contractor shall be required to furnish the awarded item(s) at the price(s) quoted in the Contract. All item(s) shall be delivered within the time period(s) specified in the Contract. The Contractor shall be compensated only for item(s) which are delivered and accepted by the MGE.

The Contractor shall send an invoice itemized by purchase order line item to the address reference on the purchase order promptly after the item(s) are delivered. The invoice should include only amounts due under the purchase order. The purchase order number must be included on all invoices.

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11. Payment Terms

Payment terms are Net no later than 30 days after receipt of correct invoice or acceptance of goods, whichever is later. Payment should not be construed by the Contractor as acceptance of the item(s) furnished by the Contractor. The MGE reserves the right to conduct further inspection after payment, but within a reasonable time after delivery, and reject the item(s) if such post payment inspection discloses a defect or a failure to meet specifications.

12. Warranty

The Contractor warrants that all item(s) furnished by the Contractor, its agents and subcontractors shall be free and clear of any defects in workmanship or materials. The Contractor shall pass through to the MGE the manufacturer's warranty for all parts or supplies provided under the Contract. The Contractor shall correct any problem with the service and/or replace any defective part with a part of equivalent or superior quality without any additional cost to the MGE.

13. Delivery

All item(s) shall be delivered F.O.B Destination. The Contractor agrees to bear the risk of loss, injury, or destruction of the item(s) ordered prior to receipt of the items by the MGE. Such loss, injury, or destruction shall not release the Contractor from any contractual obligations. Except as otherwise provided in Paragraph 20 (Force Majeure), all item(s) must be delivered within the time period specified on the contract purchase order. Time is of the essence and, in addition to any other remedies; the contract purchase order is subject to termination for failure to deliver as specified. Unless otherwise stated by the Contractor in its Bid or indicated in the Special Contract Terms and Conditions, delivery must be made within thirty (30) days after award of the Contract Purchase Order.

14. Hold Harmless Provision

The Contractor shall hold the MGE harmless from and indemnify the MGE against any and all claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract and shall, at the request of the MGE, defend any and all actions brought against the MGE based upon any such claims or demands.

15. General Indemnity

The Contractor shall indemnify, defend, and hold harmless MGE, its directors, officers, employees, and agents from and against all liabilities, damages, claims, or suits, including any and all costs and expenses related thereto, including the defense thereof, reasonable attorneys' fees and court costs arising out of or resulting from death, bodily injury, or property damage resulting from the act or omission of the Contractor, its directors, officers, employees and agents, and/or in connection with the performance of this Agreement except to the extent caused by the negligence or willful misconduct of MGE. For the purpose of this Article, the term "Contractor" is deemed to include the Contractor and its affiliated companies, the subcontractors, and suppliers of the goods and/or Services furnished hereunder.

16. Insurance Coverage

During the term of the contract, the contractor at its sole cost and expense shall provide proof of commercial insurance of such type and with such terms and limits as may be reasonably associated with the contract. As a minimum, the contractor shall provide and maintain the following coverage and limits and naming MGE as additional insured:

- a. **Worker's Compensation** - The Contractor shall provide and maintain Worker's Compensation Insurance, as required by the laws of New York, as well as employer's liability coverage with minimum limits of \$1,000,000.00, covering all of contractor's employees who are engaged in any work under the contract. If any work is sublet, the contractor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the contract.

- b. **Commercial General Liability** – General Liability Coverage on a comprehensive broad form on an occurrence basis in the minimum amounts of \$1,000,000.00 combined single limit naming MGE as additional insured.
- c. **Automobile** – Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles used in connection with the contract. The minimum combined single limit shall be \$1,000,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist.
Requirements – Providing and maintaining adequate insurance coverage is a material obligation of the contractor and is of the essence of this contract. All such insurance shall meet all laws of the State of New York. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in New York. The Contractor shall at all times comply with the terms of such insurance policies and all requirements of the insurer under any such insurance policies, except as they may conflict with New York laws or this contract. The limits of coverage under each insurance policy maintained by the contractor shall not be interpreted as limiting the contractor's liability and obligations under the contract.

17. Audit Provisions

The MGE shall have the right at reasonable times and at a site designated by the MGE, to audit the books, documents and records of the Contractor to the extent that the books, documents and records relate to costs or pricing data for the Contract. The Contractor agrees to maintain records which will support the prices charged and costs incurred for the Contract.

The Contractor shall preserve books, documents, and records that relate to costs or pricing data for the Contract for a period of one (1) year from date of final payment. The Contractor shall give full and free access to all records to the MGE and/or their authorized representatives.

18. Inspection and Rejection

No item(s) received by the MGE shall be deemed accepted until the MGE has had a reasonable opportunity to inspect the item(s). Any item(s) which is discovered to be defective or fails to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the item(s) or the noncompliance with the specifications were not reasonably ascertainable upon the initial inspection. It shall thereupon become the duty of the Contractor to remove rejected item(s) from the premises without expense to the MGE within fifteen (15) days after notification. Rejected item(s) left longer than fifteen (15) days will be regarded as abandoned, and the MGE shall have the right to dispose of them as its own property and shall retain that portion of the proceeds of any sale which represents the MGE's costs and expenses in regard to the storage and sale of the item(s). Upon notice of rejection, the Contractor shall immediately replace all such rejected item(s) with others conforming to the specifications and which are not defective. If the Contractor fails neglects or refuses to do so, the MGE shall then have the right to procure a corresponding quantity of such item(s), and deduct from any monies due or that may thereafter become due to the Contractor, the difference between the price stated in the Contract and the actual cost thereof to the MGE.

19. Default

- a. The MGE may, subject to the provisions of Paragraph 20, Force Majeure, and in addition to its other rights under the Contract, declare the Contractor in default by written notice thereof to the Contractor, and terminate (as provided in Paragraph 21, Termination Provisions) the whole or any part of this Contract including a purchase order, for any of the following reasons:
 - 1) Failure to deliver the awarded item(s) within the time specified in the Contract or contract purchase order or as otherwise specified;
 - 2) Improper delivery;

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- 3) Failure to provide an item(s) which is in conformance with the specifications referenced in the Invitation for Bids;
 - 4) Delivery of a defective item;
 - 5) Failure or refusal to remove and replace any item(s) rejected as defective or nonconforming within fifteen (15) days after notification;
 - 6) Insolvency or bankruptcy;
 - 7) Failure to protect, to repair, or to make good any damage or injury to property; or
 - 8) Breach of any provision of this Contract.
- b. In the event that the MGE terminate this Contract in whole or in part as provided in Subparagraph a. above, the MGE may procure, upon such terms and in such manner as it determines, on item(s) similar or identical to those so terminated, and the Contractor shall be liable to the MGE for any reasonable excess costs for such similar or identical item(s) included within the terminated part of the Contract.
- c. If the Contract is terminated in whole or in part as provided in Subparagraph a. above, the MGE, in addition to any other rights provided in this paragraph, may require the Contractor to transfer title and deliver immediately to the MGE in the manner and to the extent directed by the Purchasing Department, such partially manufactured or delivered item(s) as the Contractor has specifically produced or specifically acquired for the performance of such part of the Contract as it has been terminated. Except as provided below. Payment for any partially manufactured or delivered item(s). Such sum as the MGE determines to be necessary to protect the MGE against loss.
- d. The rights and remedies of the MGE provided in this paragraph shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- e. The MGE's failure to exercise any rights or remedies provided in this paragraph shall not be construed to be a waiver by the MGE of its rights and remedies in regard to the event of default or any succeeding event of default.

20. Force Majeure

Neither party will incur any liability to the other of its performance of any obligation under this Contract is prevented or delayed by causes beyond its control and without fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade, and freight embargoes.

The Contractor shall notify the MGE orally within five (5) days and in writing within ten (10) days of the date on which the Contractor becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its effect on performance, (ii) state whether performance under the contract is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. The Contractor shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the MGE may reasonably request. After receipt of such notification, the MGE may effect to cancel the Contract or to extend the time for performance as reasonably necessary to compensate for the Contractor's delay.

21. Termination Provisions

The MGE has the right to terminate this Contract for any of the following reasons. Termination shall be effective upon written notice to the Contractor.

- a. **Termination for Convenience:** The MGE shall have the right to terminate the Contract or a purchase order for its convenience if the MGE determines termination to be in its best interest. The Contractor shall be paid for work satisfactorily completed prior to the effective date of the termination, but in no event shall the Contractor be entitled to recover loss of profits.

- b. **Termination for Cause:** The MGE shall have the right to terminate the Contract for Contractor default under paragraph 19, Default, upon written notice to the Contractor. The MGE shall also have the right, upon written notice to the Contractor, to terminate the Contract or a purchase order for other cause as specified in this Contract or by law. If it is later determined that the MGE erred in terminating the Contract or a contract purchase order for cause, then at the MGE's discretion, the Contract shall be deemed to have been terminated for convenience under the Subparagraph 21.a.

Subject to the terms and conditions of this Paragraph 22, the Contract shall be binding upon the parties and their respective successors and assigns.

22. Integration

The RFP, Bid form, Proposal acceptance agreement and execution form, and proof of insurance documents, as well as the purchase orders constitute the entire agreement between the parties. No agent, representative, employee or officer of either the MGE or the Contractor has authority to make or has made, any statement, agreement or representation, oral or written, in connection with the Contract, which in any way can be deemed to modify add to or detract from, or otherwise change or alter its terms and conditions. No negotiations between the parties, nor any custom or usage, shall be permitted to modify or contradict the terms and conditions of the Contract. No modifications, alterations, changes, or waiver to the Contract or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both parties or by a change order signed by the MGE.

23. Changes

The MGE reserves the right to make changes at any time during the term of the Contract or any renewals or extensions thereof: 1) to increase or decrease the quantities resulting from variations between any estimated quantities in the Contract and actual quantities; 2) to make changes to the supply within the scope of the contract; 3) to exercise an option to purchase or early payment option; 4) to notify the Contractor that the MGE is exercising any Contract renewal or extension option; or 5) to modify the time of performance that does not alter the scope of the Contract to extend the completion date beyond the Expiration Date of the Contract or any renewals or extensions thereof. **Any such change shall be made by:** a. the contracting officer for changes to purchase orders, **by notifying the Contractor in writing.** The **change** shall be effective as of the date **of the notification of change**, unless the **change** specifies a later effective date. Such increases, decreases, changes, modifications or exercises of purchase options will not invalidate the Contract, nor, if performance security is being furnished in conjunction with the Contract, release the security obligation. The Contractor agrees to provide the supply in accordance with the **change**.

24. Confidentiality

Confidential Information means any information, in any form, including, without limitation, written documents, oral communications, recordings, videos, software, databases, business plans, and electronic/magnetic media, provided to or observed by the Contractor hereto pursuant to this Agreement, and owned or provided by MGE and/or third parties through MGE, excepting information that is generally available to the public. The Contractor agrees that it will maintain all Confidential Information in confidence and use it solely for purposes of performance under this Agreement. Such Confidential Information may be distributed within the Contractor's organization only to personnel with a need to know such information for purposes relating to this Agreement or in compliance with a court order or statutory requirement. In no event will the Contractor disclose any Confidential Information to any third parties except subcontractors and independent consultants and then only where approved by MGE in advance and subject to the execution of a confidentiality agreement acceptable to MGE.