

San Manuel Band of Mission Indians

Standard Purchase Order Terms and Conditions

1. Applicability. This purchase order is an offer by the buyer named on the face of this purchase order (the "**Buyer**") for the purchase of the goods (the "**Goods**") and/or services (including any resulting deliverables) (the "**Services**") specified on the face of this purchase order from the party to whom the purchase order is addressed (the "**Seller**") in accordance with, and subject to, these terms and conditions (the "**Terms**," together with the purchase order, the "**Order**"). This Order, together with any documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to this Order, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of this Order. This Order expressly limits Seller's acceptance to the Terms. These Terms prevail over any terms or conditions contained in any other documentation and expressly exclude any of Seller's general terms and conditions of sale or any other document issued by Seller in connection with this Order. These Terms apply to any repaired or replacement Goods provided by Seller hereunder. Unless the context otherwise requires, references in this Order to the word "including" or "include" are to be construed without limitation

2. Acceptance. This Order is not binding on Buyer until Seller accepts this Order. Buyer may withdraw this Order at any time before it is accepted by Seller. Unless Seller notifies Buyer immediately of the rejection of this Order, upon Seller's receipt of this Order, Seller shall promptly comply with this Order, and shall evidence acceptance of this Order by promptly executing an acceptance copy of this Order and returning the acceptance copy to Buyer. Despite Seller's failure to execute or return an acceptance copy, Seller's acceptance of the terms of this Order will be deemed to have occurred when: (a) Seller provides any Goods or performs any Services (in whole or in part) that are the subject matter of this Order, (b) Buyer receives an invoice for any Goods or Services (in whole or in part) that are the subject matter of this Order, or (c) Seller accepts payment for any Goods or Services (in whole or in part) that are the subject matter of this Order.

3. Buyer Policies and Procedures. Seller will comply with Buyer's policies, procedures, requirements and guidelines described in this Order or otherwise provided to Seller by Buyer (collectively, "**Policies**"), including:

(a) The most current Supplier Guidelines and Supplier Code of Conduct available at <https://www.sanmanuel.com/procurement-page>;

(b) Subject to Section 25 below, Buyer's trademark usage requirements set forth in this Order or otherwise provided to Seller by Buyer, including, as applicable, execution of a separate license agreement with additional terms and conditions;

(c) The most current Privacy and Data Security Appendix ("**PDSA**") available at <https://www.sanmanuel.com/procurement-page>;

(d) Buyer's physical and information security Policies set out in this Order or otherwise provided to Seller by Buyer; and

(e) Buyer's travel policy as it relates to any travel included in this Order. All travel shall be coordinated through Buyer's travel program and Buyer will notify Seller of applicable travel and related reimbursement restrictions at that time.

4. Impact of Policies on Seller. Buyer may change the Policies. All changes will be effective 30 days after Buyer makes such changes available to Seller, unless otherwise agreed in writing. If Seller determines that new or changes to Policies will cause a material impact to the delivery schedule, fees or other costs for the Goods or Services, Seller will promptly notify Buyer. Upon Buyer's receipt of Seller's notice, the parties will discuss how to mitigate the impact to enable Seller to comply.

5. Clerical Errors. Clerical errors, whether in mathematical computations or otherwise, made by Buyer on this Order or any other forms delivered to Seller shall be subject to correction without any liability to Buyer.

6. Quality of Goods. All Goods in this Order shall be new, not previously used or returned, and in its original packaging.

7. No Minimum Purchase. Buyer is not obligated to any minimum purchase or future purchase obligations under this Order.

8. Performance of Services.

(a) Seller Personnel and Subcontracting. Seller will recruit, select, and train its personnel according to this Order. At Buyer's request, Seller will promptly remove or replace any individual performing Services. Seller is responsible for all wages, fringe benefits, payroll taxes, insurance, work schedules, and work conditions regarding its employees, contractors or other resources performing Services under this Order. Seller's obligation for work conditions under this Section does not include responsibility for work conditions for any Buyer provided and Buyer controlled workplace. Seller will not subcontract any Services to any third party without Buyer's prior written consent. If Buyer approves the use of a subcontractor, or if Seller uses a subcontractor without the prior written permission of Buyer, Seller will: (i) remain obligated under this Agreement for performing the Services, (ii) remain liable for the acts or omissions of any subcontractor personnel; (iii) require each subcontractor to agree in writing to the terms of this Order for the work performed by the subcontractor; (iii) require each subcontractor to agree in writing that Buyer is an intended third-party beneficiary of its agreement with Seller; (iv) pay all amounts due to subcontractor. Buyer may pay the subcontractor and offset those amounts against amounts owed to Seller if Seller fails to pay a subcontractor any amounts due and owing; and (v) require each subcontractor to verify that its employee will comply with immigration rules and laws in the jurisdiction in which the employee will provide Services.

(b) Seller Equipment and Technology. Unless otherwise agreed in this Order, Seller will provide the equipment, software, and other items required to perform the Services at its own expense. Seller will ensure that its equipment, software, and systems are compatible with Buyer's equipment, software, and systems as necessary to perform the Services. For Services provided on a fixed price basis, if any services, functions or responsibilities not specifically described in this Order are required for the proper performance of the Services, such services, functions or responsibilities shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if expressly described in this Order.

(c) Workplace Safety and Health. Seller will comply with all applicable laws and regulations related to workplace safety and health, including, the Occupational Safety and Health Act of 1970 (OSHA) and parallel state laws approved under Section 18 of OSHA, and all applicable Tribal laws regarding the same provided by Buyer during the term of this Order. Seller will include in all subcontracts a provision that the subcontractor will comply with all such laws and regulations. If Seller encounters unsafe conditions or workplace hazards in a Buyer owned or leased facility or a Buyer provided and controlled workplace, Seller will notify Buyer promptly in writing of the existence and location of such condition or hazard. Seller will also promptly notify the San Manuel Safety and Loss Team at (909) 863-5899 ext. 102600, and safety@sanmanuel.com, if Seller encounters the conditions or hazards described.

9. Delivery Date. Seller shall deliver the Goods in the quality described in Section 6 and in the quantities and on the date(s) specified in this Order or as otherwise agreed in writing by the parties (the "**Delivery Date**"). Timely delivery of the Goods and Services is of the essence (including all performance dates, timetables, project milestones and other requirements in this Order). If Seller fails to deliver the Goods in full on the Delivery Date, or the Services in accordance with their applicable delivery requirements Buyer may terminate this Order immediately by providing written notice to Seller.

10. Delivery Location. All Goods shall be delivered to the location specified on the face of this Order (the "**Delivery Location**") during Buyer's normal business hours or as otherwise instructed by Buyer. Title passes to Buyer upon delivery of the Goods to the Delivery Location. Seller bears all risk of loss or damage to the Goods until delivery of the Goods to the Delivery Location, including any shipments of Goods requiring any government import clearance. Buyer may terminate this Order if any government authority imposes antidumping duties, countervailing duties or any retaliatory duties on the Goods.

11. Shipping Terms. The purchase order number must appear on all shipping documents, shipping labels, invoices, correspondence and any other documents pertaining to this Order. Delivery of goods without a purchase order number referenced on the packing/delivery slips will be deemed invalid and delivery will not be accepted.

12. Taxes. Buyer is not liable for any taxes that Seller is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Seller acknowledges Buyer is a federally recognized Indian tribe ("Tribe"). Buyer represents that the transaction is not, therefore, subject to state or local sales or use tax so long as appropriate steps are taken, including: any tangible personal property is delivered to Tribe's reservation, title to any tangible personal property transfers to Tribe on Tribe's reservation and not before or at some other location, and any tangible personal property is used solely on Tribe's reservation. If the Delivery Location is Tribe's reservation, Seller shall ship the Goods F.O.B. to Tribe's reservation and complete the transaction contemplated hereunder on Tribe's reservation and take such steps as may be reasonably necessary to preserve said exemptions. If the law requires Buyer to withhold taxes from payments to Seller, Buyer may withhold those taxes and pay them to the appropriate taxing authority. Buyer will deliver to Seller an official receipt for such taxes. Buyer will use reasonable efforts to minimize any taxes withheld to the extent allowed by law. Despite any other provision in these Terms, this Section will govern the treatment of all taxes relating to this Order.

13. Packaging. All goods shall be packed for shipment according to Buyer's instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller's expense.

14. Inspection and Rejection of Nonconforming Goods and Services. Buyer will inspect the Goods and Services within 15 business days after the Delivery Date; otherwise the Goods or Services will be deemed accepted. Buyer, at its sole option, may reject all or any portion of the Goods or Services if it determines the Goods or Services are defective, or do not meet the quality requirements in Sections 6 and 8. If Buyer rejects any portion of the Goods and Services, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Order in its entirety; (b) accept the Goods and/or Services at a reasonably reduced price; or (c) reject the Goods and/or Services and require replacement of the rejected Goods or repair or re-performance of the rejected Services. If Buyer requires replacement of the Goods, Seller shall, at its expense, within three (3) days for food and beverage and within sixty (60) days for manufactured components, replace the nonconforming Goods and pay for all related expenses, including transportation charges for the return of the defective goods and the delivery of replacement Goods. If Buyer requires re-performance of the Services, Seller shall, at its expense, within ten (10) business days, re-perform the nonconforming Services and pay for all related expenses. If Seller fails to timely deliver replacement Goods or Services, Buyer may replace them with goods or services from a third party and charge Seller the cost thereof and terminate this Order for cause pursuant to Section 28. Buyer's failure to specify any defect or nonconformance in the acceptance or rejection of any or all of the Goods or Services shall not prevent Buyer from relying on such defect or non-conformance to establish a failure of the Goods or Services to conform to the applicable specifications and warranties or to otherwise justify rejection hereunder.

15. Price. The price of the Goods and Services is the price stated in this Order (the "**Price**"). Invoices must bear the exact same prices and terms as specified in this Order. Seller's acceptance of this Order or shipment of any part of it will constitute Seller's agreement to all of this Order's specifications as to terms, conditions, delivery, and price. If no price is included in this Order, the Price shall be the lowest price charged by Seller to any of its external customers as of the date of this Order. Unless otherwise specified in this Order, the Price includes all packaging, transportation costs to the Delivery Location, insurance, customs

duties and fees and applicable taxes. No increase in the Price is effective, whether due to increased material, labor or transportation costs or otherwise, without the prior written consent of Buyer.

16. Quantity. If Seller delivers more or less than the quantity of Goods ordered, Buyer may reject all or any excess Goods. Any such rejected Goods shall be returned to Seller at Seller's risk and expense. If Buyer does not reject the Goods and instead accepts the delivery of Goods at the increased or reduced quantity, the Price for the Goods shall be adjusted on a pro-rata basis.

17. Most Favored Customer. Seller represents and warrants that the Price for the Goods and Services is the lowest price charged by Seller to any of its external buyers for similar volumes of similar Goods and similar Services. If Seller charges any other buyer a lower price, Seller must apply that price to all Goods and Services under this Order. If Seller fails to meet the lower price, Buyer, at its option, may terminate this Order without liability pursuant to Section 28.

18. Payment Terms/Invoices. Seller shall issue an invoice to Buyer: (a) monthly in arrears if the Services are provided on a time and materials basis, or (b) as a single invoice upon Buyer's acceptance of the Goods or Services if provided on a fixed price basis; and only in accordance with the Terms. Buyer shall pay all properly invoiced amounts due to Seller within forty-five (45) days after Buyer's receipt of such invoice, except for any amounts disputed by Buyer in good faith. Buyer may dispute any invoice amount (each, a "Disputed Amount") by providing oral or written notice. Partial payment is notice from Buyer of a Disputed Amount. Buyer will make commercially reasonable efforts to notify Seller in writing of any Disputed Amount within 60 days of receiving the applicable invoice. Neither failing to provide notice nor payment of an invoice is a waiver of any claim or right. . The parties shall seek to resolve all such disputes expeditiously and in good faith. Seller shall continue performing its obligations under this Order notwithstanding any such dispute unless Buyer has terminated this Order pursuant to Section 28. Buyer will have 60 days from the date a dispute is resolved to pay Seller. Buyer has no obligation to pay any invoice received 120 days or more after the date Seller was required to invoice Buyer under this Order; provided, however, that this does not apply to: (i) Disputed Amounts; (ii) rejected invoices subject to correction; (iii) invoices delayed due to the actions or inactions of Buyer; or (iv) delays agreed upon by the parties in writing.

19. Setoff. Without prejudice to any other right or remedy it may have, Buyer reserves the right to set off at any time any amount owing to it by Seller against any amount payable by Buyer to Seller.

20. Change Orders and Amendments. Buyer may at any time, by written instructions and/or drawings issued to Seller (each a "Change Order"), order changes to the Goods or Services. Seller shall within seven (7) days of receipt of a Change Order submit to Buyer a firm cost proposal for the Change Order. If Buyer accepts such cost proposal, Seller shall proceed with the changed Goods or Services subject to the cost proposal and the terms and conditions of this Order. Seller acknowledges that a Change Order may or may not entitle Seller to an adjustment in the Seller's compensation or the performance deadlines under this Order. No change to this Order is binding upon Buyer unless it is in writing, specifically states that it amends this Order and is signed by an authorized representative of Buyer.

21. Representations and Warranties. Seller represents and warrants that: (i) it has full rights and authority to enter into and perform according to this Order, (ii) its performance will not violate any agreement or obligation between Seller and any third party; (iii) it will obtain and maintain all approvals, licenses, filings or registrations necessary to provide the Goods and Services; and (iv) it will comply with all applicable laws (including export laws and regulations).

Seller further represents and warrants that the Goods and Services will: (a) be free from any defects in workmanship, material and design; (b) conform to applicable specifications, drawings, designs, samples and other requirements specified by Buyer, including the quality requirements of Section 6; (c) be performed and provided professionally using adequate resources and personnel of required skill, experience and qualifications, and be of high grade, nature and quality, both in accordance with prevailing industry standards and applicable law; (d) be free and clear of all liens, security interests or other encumbrances; and (e) not infringe or misappropriate any third party's intellectual property or other proprietary rights. These warranties survive any delivery, inspection, acceptance or payment of or for the Goods or Services by Buyer. If Buyer

gives Seller notice of breach of warranty under this paragraph, Seller shall, at its own cost and expense, promptly replace or repair the defective or nonconforming Goods or Services and pay for all related expenses, including transportation charges for the return of the defective or nonconforming Goods to Seller and the delivery of repaired or replacement Goods to Buyer.

22. General Indemnification. Seller shall, at its expense, defend, indemnify and hold Buyer, its affiliates, and their respective successors, directors, officers, employees and agents (collectively, "**Indemnitees**") harmless from and against all third-party claims, actions, demands, proceedings, damages, costs and liabilities of any kind (collectively, "**Claims**") to the extent that such Claims arise out of or relate to the Goods and Services purchased from Seller or Seller's negligence, willful misconduct or breach of this Order. Seller shall not enter into any settlement without Buyer's or Indemnitee's prior written consent.

23. Intellectual Property Indemnification. In the event of a Claim of infringement or misappropriation of any third party's intellectual property or other proprietary rights, Seller shall, in addition to its indemnity obligations in Section 22 above, and at its sole expense: (i) promptly secure the right to continue using the affected Goods or Services; or (ii) if this cannot be accomplished with commercially reasonable efforts, then, replace or modify the Goods or Services to make them non-infringing, provided that the replacement or modification will not degrade the performance or quality of the Goods or Services; or (iii) if neither (i) nor (ii) can be accomplished by Seller with commercially reasonable efforts, then refund to Buyer the amount Buyer has paid for the Goods or Services.

24. Indemnification Procedures. The Indemnities will: (a) provide Seller with reasonably prompt notice of Claims; (b) permit Seller through mutually acceptable counsel to answer and defend Claims; and (c) provide Seller with reasonable information and assistance to help Seller defend Claims at its expense. Any Indemnitee may employ separate counsel and participate in the defense of any Claim at its own expense. Seller will not stipulate, admit, or acknowledge any fault or liability by any Indemnitee without such party's prior written consent. Seller will not settle any Claim or publicize any settlement without Buyer's prior written consent.

25. Use of Buyer's Name or Trademarks. Seller agrees not to use any name, likeness, representation, trademark, service mark or other intellectual property of Buyer (including that of its properties or employees) in any advertising, promotion or other written or oral disclosure without the prior written consent of Buyer. Seller agrees that this Order does not constitute an endorsement of Seller's products or services.

26. Insurance. Seller will maintain sufficient insurance coverage to meet obligations created by this Order and by applicable law. Supplier's insurance must include the following to the extent the Agreement creates risks generally covered by these insurance policies:

- (a) Commercial General Liability (occurrence form) including contractual and product liability with limits of at least \$1,000,000 US per occurrence;
- (b) Automobile liability with limits of at least \$1,000,000 US per occurrence;
- (c) Workers' compensation that satisfies all statutory limits;
- (d) Employer's liability with limits of at least \$1,000,000 US per occurrence; and
- (e) Professional liability/errors and omissions with limits of not less than one million dollars (\$1,000,000) per claim. Such coverage will cover infringement of third party intellectual property rights (including, for example, copyright, and trademark) if such coverage is reasonably commercially available.

Each liability insurance policy obtained by Seller shall: (i) name Buyer as an additional insured; (ii) state that with respect to the operations and services of Seller, such policy is primary and any insurance carried by Buyer is excess and noncontributing with such primary insurance; and (iii) waive all rights of subrogation.

Upon request, Seller will provide Buyer with proof of insurance coverage required by this Section. If Buyer reasonably determines that Seller's coverage is less than that required to meet its obligations, Seller will promptly buy additional coverage and notify Buyer in writing. The insurance in this Section shall be separate from and shall not limit the indemnities in this Order.

27. Tribal Gaming Clause. Seller and its subcontractors and affiliates acknowledge that a determination of suitability and/or a license ("Gaming License") issued by the San Manuel Gaming Commission (the "Commission") or the entities of the State of California authorized to investigate, approve, and regulate gaming licenses pursuant to the California Gambling Control Act and/or the gaming compact between the Tribe and the State of California ("State Gaming Agency") may be required prior to doing any business regulated or overseen by the Commission and that the Gaming License may also be required to be renewed and kept in effect for so long as products and/or services are provided hereunder in Buyer's gaming locations. A finding of unsuitability (including, but not limited to, revocation, denial or non-renewal of a Gaming License) by the Commission or State Gaming Agency shall immediately terminate this Agreement without any further liability on the part of Buyer to make any further payments hereunder, except that Buyer shall make payment to Seller of all outstanding sums (exclusive of interest) owed as of, or payment for services or materials received up to, the date of termination. Any employees, subcontractors, or other agents of Seller who will be working on site at Buyer's location must be age twenty-one (21) or over. Seller is solely responsible for 1) contacting the Commission or State Gaming Agency office to obtain information regarding the suitability and licensing requirements, 2) completing the suitability and licensing processes, and 3) informing any companies with a potential interest in acquiring any or all of Seller's interest in Seller that it may also be required to maintain and renew a Gaming License with the Commission or State Gaming Agency. Seller will assume any costs and expenses of the suitability and licensing process for itself and for each Seller employee, contractor, subcontractor, consultant, or other agent who will be working on site at Buyer's gaming locations or who will access Buyer's networks remotely. Seller shall notify Buyer immediately in the event Seller is notified of a finding of unsuitability by the Commission or State Gaming Agency, as the case may be..

28. Termination. Buyer may terminate this Order, with immediate effect, in whole or in part, at any time with or without cause upon written notice to Seller. If Buyer terminates this Order for any reason, Seller's sole and exclusive remedy is payment for the Goods and Services received and accepted by Buyer prior to the termination.

29. Limitation of Liability. In no event shall Buyer, or Buyer's members, subsidiaries, affiliates, successors or assigns or their respective directors, officers, employees or contractors (collectively, "**Buyer's Affiliates**") be liable to Seller under this Order or any theory or cause of action for any indirect, incidental, consequential, special, punitive or exemplary damages including economic loss or lost profits, even if Buyer or Buyer's Affiliates have been advised of the possibility of such damages or if such damages are foreseeable.

30. Waiver. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.

31. Confidential Information. All non-public, confidential or proprietary information of Buyer, including specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Order is confidential, solely for the use of performing this Order and may not be disclosed or copied unless authorized by Buyer in writing. For the avoidance of doubt, confidential information includes this Order, the existence of this Order, and any discussions related to this Order. Upon Buyer's request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to Seller at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

32. Force Majeure. Neither party will be liable for failure to perform any obligation under this Order to the extent such failure is caused by a force majeure event (including acts of God, natural disasters, war, civil disturbance, action by governmental entity or order, strike and other causes beyond the party's reasonable control). The party affected by the force majeure event will provide notice to the other party within a commercially reasonable time and will use its best efforts to resume performance. Obligations not performed due to a force majeure event will be performed as soon as reasonably possible when the force majeure event concludes and any payment obligations shall be suspended until performance resumes. Notwithstanding the foregoing, if a Force Majeure Event prevents Seller from carrying out its obligations under this Order for a continuous period of more than twenty (20) days, Buyer may terminate this Order immediately by giving written notice to Seller.

33. Assignment. Seller will not sell, assign, transfer, pledge or encumber this Order or any right, or delegate any duty or obligation under this Order, by assignment or operation of law, without Buyer's prior written consent. Buyer will not unreasonably withhold such consent. Seller will be deemed to have assigned this Order if Seller engages in a change of control transaction. Buyer may assign this Order to any of its affiliates. This Order will inure to the benefit of and bind all permitted successors, assigns, receivers and trustees of each party.

34. Relationship of the Parties. The parties are independent contractors. This Order does not create an exclusive relationship between the parties. Seller's personnel and its subcontractor's personnel are not Buyer employees. Services will be performed using Seller's and its subcontractor's own manner and means of performance of the work. Buyer does not retain the right to direct the manner and means of the performance of the work, other than the removal or replacement of personnel. Seller will provide Buyer with satisfactory proof of independent contractor status upon request.

35. No Third-Party Beneficiaries. Except for Seller's indemnity obligations herein, this Order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

36. Governing Law. This Order shall be governed by and construed in accordance with Tribal laws, Federal law, and the laws of the State of California, in that order, without regard to conflict of law principles.

37. Choice of Forum. Any legal suit, action or proceeding arising out of or relating to this Order shall be brought exclusively in the San Manuel Tribal Court. Notwithstanding the above, nothing in this Order shall be construed as a waiver of Buyer's sovereign immunity.

38. Cumulative Remedies. The rights and remedies under this Order are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.

39. Notices. Notices may be provided either by electronic or physical mail. The person(s) identified on the face of this Order will receive notices on behalf of their respective party. Each party may change the persons to whom notices will be sent by giving notice to the other.

40. Severability. If any court of competent jurisdiction determines that any provision of this Order is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.

41. Survival. Provisions of this Order which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including Sections 19-27, 29, 31-33, and this Section.