



## Purchase Order Terms and Conditions

### Table Of Contents

|   |       |   |
|---|-------|---|
| Definitions   | ----- | 2 |
| 1) Audit  | ----- | 2 |
| 2) Buyer's Property                                     | ----- | 2 |
| 3) Canada – U.S. Free Trade Agreement                   | ----- | 2 |
| 4) Cash Discount  | ----- | 2 |
| 5) Confidentiality                                      | ----- | 2 |
| 6) Covenants Against Kickbacks                          | ----- | 3 |
| 7) Delivery   | ----- | 3 |
| 8) Force Majeure  | ----- | 3 |
| 9) Foreign Supplies                                     | ----- | 3 |
| 10) Gaming Procedures                                   | ----- | 3 |
| 11) Hazardous Materials                                 | ----- | 3 |
| 12) Indemnification and Remedies                        | ----- | 3 |
| 13) Independent Contractor                              | ----- | 4 |
| 14) Insurance   | ----- | 4 |
| 15) Miscellaneous                                       | ----- | 4 |
| 16) Payment   | ----- | 5 |
| 17) P.O. Acceptance – Buyer                             | ----- | 5 |
| 18) P.O. Acceptance – Seller                            | ----- | 5 |
| 19) Precedence  | ----- | 5 |
| 20) Price   | ----- | 6 |
| 21) Representations and Warranties                      | ----- | 6 |
| 22) Risk of Loss  | ----- | 6 |
| 23) Shipment and Inspection                             | ----- | 6 |
| 24) Standards   | ----- | 7 |
| 25) TERO Requirement                                    | ----- | 7 |
| 26) Taxes   | ----- | 8 |
| 27) Termination   | ----- | 8 |
| 28) Use of Buyer's Name                                 | ----- | 8 |
| 29) Warranty  | ----- | 8 |
| 30) Worker's Compensation & Other Insurance Requirement | ----- | 9 |
| 31) Contact Locations                                   | ----- | 9 |



## **Purchase Order Terms and Conditions**

All goods and services delivered/supplied must comply with Terms and Conditions as listed.

### **Definitions:**

- a. **Terms:** The agreed upon methods and remedies by which two or more parties determine how goods and/or services are to be exchanged including delivery, price, hourly rates, payments, etc.
  - b. **Conditions:** Any stipulations or special circumstances regarding the goods and/or services and how they're to be completed before they are received and payment is approved.
  - c. **Buyer:** Specifically names Seneca Gaming Corporation (Seneca Erie Gaming Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Territory Gaming Corporation) as the Buyer in the transaction.
  - d. **Seller:** Specifically names the person, firm, company, limited liability company or corporation as the Seller in the transaction.
- 1. Audit:** The Buyer reserves the right to, or have, an independent accounting or auditing firm, perform a financial and/or inventory audit of the Seller during or after the term – based on the specifics of the Purchase Order.
  - 2. Buyer's Property:** All items including samples, documents, drawings, specifications, tools, etc., provided or paid for by the Buyer shall remain the property of the Buyer and fall under the protection of the Confidentiality section of these Terms & Conditions. The Seller is responsible and liable for damage to, or loss of, all items and shall return them to the Buyer upon completing the Purchase Order or provide compensation determined by Buyer.
  - 3. Canada – U.S. Free Trade Agreement:** It is the Shipper's (Exporter's) responsibility to provide the Consignee (Importer) with a Certificate of Origin attesting that duty rate reductions apply only when satisfying one of the Free Trade Agreements Rules of Origin.
  - 4. Cash Discount:** The Buyer will have a certain number of days to make payment and take advantage of cash discounts offered (such as 2% 15 Days, Net 30) once the goods and/or services have been received - as well as a properly executed invoice – whichever is received later. The number of payment days starts with receipt of the invoice after goods and/or services are received.
  - 5. Confidentiality:** Seller will receive or have access to confidential information from Buyer, including, but not limited to; organization, financial, patron data, marketing information, business operations, intellectual property, plans, etc. – collectively the "Confidential Information". Seller is authorized to use the Confidential Information solely in connection with the Purchase Order and will

not directly or indirectly use the Confidential Information beyond the scope of the authority granted by Buyer or disseminate, disclose or in any way reveal the Confidential Information or any part thereof, except upon the express written approval of Buyer. The Sellers obligations, including its current and future officers, under this Purchase Order shall survive the termination or expiration of the Purchase Order.

**6. Covenants Against Kickbacks:** A “Kickback” shall be defined as any cash, fee, commission, credit, gift, gratuity, thing of value or compensation of any kind in exchange for favorable treatment regarding obtaining or retaining any Purchase Order servicing Buyer. Seller 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 Buyer, or its subsidiaries or affiliates. Seller’s failure to abide by this specific section of the Terms & Conditions shall be sufficient reason for the immediate termination, without further notice, of this and any other Purchase Order they currently have with Buyer. Seller will also be liable for any civil or criminal penalties provided by the law (tribal, federal, state or local) for violating this specific section. In addition, any attempt or completion of forcing a Kickback (per the definition defined within these Terms & Conditions) from a subcontractor or in connection with this Purchase Order shall be sufficient reason for the immediate termination, without further notice, of this and any other Purchase Order Seller currently has with Buyer. Seller will also be liable for any civil or criminal penalties provided by law (tribal, federal, state or local) for violating this Kickback provision.

**7. Delivery:** The Purchase Order number must appear on all packing slips and invoices. Delivery of goods without a Purchase Order number being referenced on the packing/delivery slips will be deemed invalid and delivery will not be accepted. F.O.B. Destination – title to goods passes to Buyer only upon receipt at delivery location. Buyer does not accept any shipments Freight Collect.

**8. Force Majeure:** In the event of interruption of our business in whole or in part by reason of fire, flood, windstorm, earthquake, war, strike, embargo, acts of God, governmental action, or any causes beyond our control, Buyer shall have the option of cancelling undelivered orders in whole or in part.

**9. Foreign Supplies:** A copy of your commercial invoice or the fair market value must accompany all your shipments. Absence of an invoice at the border may require return of the shipment at your expense.

**10. Gaming Procedures:** Seller is required to submit the appropriate Vendor Registration Form and/or license application to the Buyer’s Gaming Commission and cooperate in any investigation. Failure to comply will result in Sellers default of the Purchase Order and its immediate termination by the Buyer. Seller shall notify Buyer’s Gaming Commission in writing of any changes.

**11. Hazardous Materials:** All Sellers that supply hazardous materials must provide the appropriate Material Safety Data Sheets before or at the time of delivery of the hazardous products. The packaging, handling and transportation of hazardous materials must comply with the applicable tribal, federal, state and local laws and regulations.

**12. Indemnification and Remedies:** Notwithstanding any breach whether fundamental or otherwise, Seller assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless Buyer, its officers, employees, successors assigns, customers, nation members

and council, and users of the goods or services purchased hereunder, from and against any and all losses, expenses (including, without limitation, legal and professional fees), costs, damages (including direct, indirect, consequential and incidental damages), demands, liabilities, suits and claims (including in connection with or arising out of any actual or alleged personal injury, including death) or damage or destruction to property (including loss of use) by whomever suffered, sustained or alleged to have been sustained by reason of (a) any act, error, or omission, whether negligent or not, of Seller and its agents, employees, suppliers, subcontractors and consultants, (b) any defect, whether latent or apparent, in any product of Seller which was sold to Buyer hereunder; (c) any breach of warranty, any term or condition of this Purchase Order, or any obligation of Seller in this Purchase Order; or (d) any injury, loss or damage of any nature or kind whatsoever, to or sustained by Seller's employees. Any dispute or claim related to this Purchase Order shall be subject to mediation before any legal proceedings by either party. Both parties shall try to resolve the dispute in good faith through mediation. Any goods and/or services, not in dispute, shall continue and any payment, not in dispute, shall be made according to the terms of this Purchase Order. If the Buyer or Seller does not continue with the non-disputed portion of this Purchase Order, they will be considered in default and the non-defaulting party may waive the mediation requirement. The parties agree to pay equal shares of the mediator's fee and the mediator shall not be called to testify or provide evidence in any further legal action. The rights and remedies provided to Buyer herein shall be cumulative, and in addition to any other rights and remedies provided by law or equity.

**13. Independent Contractor:** Seller is a natural person, business or corporation that provides goods and/or services for the purposes of this Purchase Order and has no employment or implied employment status through the Buyer.

**14. Insurance:** At all times during the fulfillment of this Purchase Order, Seller shall obtain and keep in force the following coverages with minimum limits determined by the SGC Risk Management department:

- 1) Workers' Compensation Insurance
- 2) Commercial General Liability Insurance
- 3) Contractual Liability Insurance
- 4) Vendors Broad Form Liability Insurance
- 5) Vehicle Liability Insurance
- 6) Combined Single Limit Insurance
- 7) Excess Liability Insurance

Insurance must be provided by a licensed company in the state of New York and with a minimum AM Best rating designated by Buyer's Risk Management department. Buyer reserves the right to require additional coverages or higher limits when determined to be prudent. Seller shall provide Buyer with a certificate of insurance before commencing work with the applicable Purchase Order number and name the Seneca Nation Of Indians and its Council, their officers, employees and agents as additionally insured on the General Liability Policy.

**15. Miscellaneous:**

- (a) The waiver of any term, condition or provision hereof shall not be construed to be a waiver of any other such term, condition or provision, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision.

- (b) The Seller may not assign or delegate its duties, rights or obligations within this Purchase Order to another company without the express written consent of the Buyer.
- (c) Seller shall not insure the goods on Buyer's account unless the terms of this Purchase Order so require.
- (d) Stenographic and clerical errors, whether in mathematical computations or otherwise, made by Buyer on this Purchase Order or any other forms delivered to Seller shall be subject to corrections.
- (e) The entire understanding and agreement of the parties with respect to the transactions contemplated herein is contained in this document, and any prior understandings, agreements, and representations, oral or written, shall be deemed superseded and merged herein. Any modification hereof, to be valid, must be in writing and executed by both parties.
- (f) Buyer may, upon notice to Seller without cause and without liability to Buyer, cancel this Purchase Order at anytime in whole or in part and any outstanding deliveries hereunder, (1) as to standard products of Seller not then shipped hereunder, at any time prior to shipment, or, (2) if (a) a receiver or trustee is appointed to take possession of all or substantially all of Seller's assets, (b) Seller makes a general assignment for the benefit of creditors, (c) any action or proceeding is commenced by or against Seller under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors, or (d) Seller becomes insolvent or commits an act of bankruptcy. If an event described in (2) of this section occurs, Buyer may at Buyer's sole election, pay Seller its actual direct out-of-pocket costs to date of cancellation, as approved by Buyer, in which event the goods shall be the property of Buyer and Seller shall safely hold the same, subject to receipt of Buyer's shipping instructions.

**16. Payment:** The time period allowed for payment, as indicated on the Purchase Order, shall commence upon receipt of Seller's invoice or upon receipt of the goods, whichever is later. Our standard payment terms are Net 30 Days after delivery of goods and/or services or receipt of a correct invoice – whichever is later.

**17. P.O. Acceptance – Buyer:** Once the goods have been received or services completed against the Purchase Order, they are subject to the Buyers inspection and approval within a reasonable period of time (usually within a few days after delivery of F&B and within 60 days for manufactured components).

**18. P.O. Acceptance – Seller:** Upon acceptance of the Purchase Order, via written response, shipment of goods and/or commencement of services, the Seller is then bound by the Terms & Conditions of the Purchase Order unless stated otherwise in writing by the Seller and accepted by the Buyer in writing on the Purchase Order before shipment of goods and/or commencement of services.

**19. Precedence:** The following order of priority will apply:

- 1) Special Terms and Conditions on the face of the Purchase Order
- 2) These Terms and Conditions
- 3) Specifications
- 4) All other attachments incorporated in the Purchase Order by reference

**20. Price:** This Purchase Order shall not be filled at higher prices than specified herein. Invoices must bear exact same prices and terms herein. Acceptance of this Purchase Order, or shipment of any part of it will constitute an agreement to all of its specifications as to terms, conditions, delivery and price. Any changes thereto, must be authorized by Buyer in writing prior to shipping. No waiver by Buyer of a breach or default of any provision hereof shall constitute a waiver of any further or other breach of default.

**21. Representations and Warranties:** Seller represents and warrants to Buyer as follows and acknowledges that Buyer is relying upon these representations and warranties (which shall survive all inspections and acceptance) in connection with the goods and/or services included in the Purchase Order: (A) all materials covered by the Purchase Order comply with applicable tribal federal, state, and local regulations, by-laws, orders, directions and policies including those affecting the products, processing, packaging, labeling, contents, adulteration or shipment of food or drug products in the United States of America. Without restricting the generality of the foregoing, such materials are not adulterated or misbranded within the meaning of applicable law, including the Pure Food and Drug Act, not an article which may be introduced into international trade and not adulterated or misbranded within the meaning of the food or drug laws or the ordinances of any Federal Jurisdiction, state or city which are applicable to such shipment or delivery, to the extent of such laws are applicable to the goods sold or services provided pursuant to the Purchase Order; (b) the goods or service covered by the Purchase Order shall be free from defects in material and workmanship, shall be merchantable, shall conform to all applicable plans, specifications, requirements and samples and shall be suitable for the use intended. Seller shall provide a full and comprehensive labor and material warranty for the goods and services provided pursuant to this Purchase Order for the period of thirteen (13) months from the date of delivery; (c) the goods furnished or services provided under this Purchase Order do not infringe on patent, trademark, trade name, copyright or other intellectual property rights; (d) the goods furnished or services provided under this Purchase Order are free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever.

**22. Risk of Loss:** Notwithstanding any provision hereof to the contrary, title to, and risk of loss or damage of, the goods shall remain with Seller until the goods are delivered at the F.O.B. point specified in the Purchase Order, or if no such point is specified, then, when the goods are delivered to Buyer.

**23. Shipment and Inspection:** All goods must be delivered to Seneca Allegany Casino & Hotel Warehouse Receiving at 725 Broad Street, Salamanca, New York; Seneca Buffalo Creek Casino Warehouse Receiving at 1 Fulton Street, Buffalo, New York; Seneca Niagara Casino & Hotel Warehouse Receiving to be accepted by Receiving Department personnel, unless otherwise specified by the Procurement Department. If goods are not shipped to and received by our Receiving Department, SENECA GAMING CORPORATION accepts no responsibility for them, and, the vendor accepts that the goods may be returned and the order cancelled. Approval from the Procurement Department (only) to bypass the Receiving Department and have goods delivered elsewhere (as an exception) must be received prior to delivery and all goods must still be officially received by a designated receiver.

The terms and routing of shipments shall be as provided on the Purchase Order. Buyer shall have the right to inspect any or all of the goods upon Buyer's receipt, which right shall be exercisable notwithstanding Buyer's having paid for the goods prior to inspection. Goods not in accordance with specifications will be rejected and held at Seller's risk awaiting disposal. Defective goods may

be returned to the Seller for full credit and replacement at the Seller's risk and expense, including transportation charges both ways, but no defective good shall be replaced without a formal replacement Purchase Order approved by Buyer. Buyer, by reason of its failure to inspect the goods, shall not be deemed to have accepted any defective goods or goods which do not conform to the specifications thereof, or to have waived any of Buyer's rights or remedies arising by virtue of such defects or non-conformance. Packing slips must accompany all shipments.

**24. Standards:** Seller shall perform services or provide goods in compliance with (collectively, the "Standards"): (a) the Seneca Gaming Authority, Seneca Gaming Corporation, The New York State Racing and Gaming Commission and the regulations thereto, as amended; (b) all applicable laws; (c) such other standards or specification as Buyer may advise Seller from time to time; and (d) all implied conditions and warranties as to fitness for purpose on merchantability which exist or may exist at law.

**25. TERO Requirement:** The Seneca Gaming Corporation and its subsidiaries comply with the Seneca Nation of Indians Tribal Employment Rights Office (TERO) Ordinance. As such, the SGC and its subsidiaries are required to provide preference in contracting to "Indian-Owned" Firms.

The intent of the TERO Ordinance is to increase employment of, and opportunities for, Indian workers and businesses.

According to the Ordinance, in order to be certified by the TERO Commission as "Indian Owned", an entity must be:

- 1.A.I** Fifty-one percent or more Indian-Owned, such that the Indians provide real value for their ownership interests, obtain majority voting rights regarding decisions of the entity, are entitled to and receive at least fifty-one percent of all profits and are entitled to at least fifty-one percent of the assets on the dissolution of the entity.
- 1.A.II** Under significant Indian management, such that at least one Indian is substantially involved in the day-to-day management of the firm as his or her primary employment.
- 1.A.III** Not created solely or primarily to take advantage of Indian preference, e.g. "brokers".
- 1.A.IV** Employs Indians in all or most positions for which qualified Indians are available.
- 1.A.V** Have proper insurance coverage.

The preference is applied in the following order:

- 1.A.VI** Indian –Owned Firms that are certified by the Commission as "100% Seneca".
- 1.A.VII** Qualified Indian-Owned Firms that are certified by the Commission as "100% Indian-Majority Seneca", with preference within this subcategory given to those entities that have the higher percentage of ownership by Seneca Members.
- 1.A.VIII** Indian-Owned Firms that are certified by the Commission as "Majority Seneca".
- 1.A.IX** Commission-certified Indian-Owned Firms with greater preference within this subcategory given to those entities that have the higher percentage of ownership by Seneca Members.
- 1.A.X** In the event that no qualified Indian-Owned Firm bids on the project, to other qualified firms.

Although the Seneca Gaming Corporation and its subsidiaries fully comply with the TERO laws, we do not require that bidders be Certified.

A copy of the TERO Ordinance may be obtained from the SGC Purchasing Department. The Seneca Gaming Corporation and its subsidiaries are subject to the TERO laws of the Seneca Nation of Indians and will provide preferences where required by the TERO. No claim whatsoever for additional fees or time shall be considered by SENECA GAMING CORPORATION for Vendors carrying out this obligation.

**26. Taxes:** Except as indicated on the Purchase Order, the price includes all applicable federal, state and local taxes of any kind. Good and/or services purchased by Buyer for use on the Buyer's Tribal lands are not subject to state sales tax. Sales Tax Exemption #: 152970.

**27. Termination:**

(a) Termination Upon Notice without Cause. Buyer has the right to change, cancel or terminate the Purchase Order for any reason, including convenience, upon prior written notification to Seller. Termination or cancellation for convenience by Buyer entitles Seller to payment only for those goods and/or services delivered, received and accepted and not subsequently rejected by Buyer as well as preparation work agreed upon by both Buyer and Seller. Buyer may immediately terminate the Purchase Order without prejudice to any right or remedy after giving Seller written notice of any default or breach of obligations.

(b) Termination Upon Notice with Cause. Agreement forthwith, without liability, and without limiting any of its other rights or remedies, upon written notice to The Seller if: (a) The Seller fails to register or is no longer registered, as appropriate, under the Alcohol Gaming Control Act or regulations thereto, as amended, or is in violation of any of its obligations under the Seneca Gaming Authority or regulations thereto, as amended, (b) The Seller is in breach of, or attempts to breach, any of its obligations under this Agreement, (c) The Seller is in breach of the Standards, (d) The Seller is in breach of any of its representation or warranties hereunder, (e) An action or claim against The Seller may, in SENECA GAMING Corporations reasonable opinion, harm the continued business operations of The Buyer, (f) The Seller is unable to pay its debts when due or is insolvent, is ordered or adjudged to be bankrupt, is placed in the hands of a receiver, enters into any scheme or compositions with its creditors, is dissolved, liquidated or wound up, or makes any assignment for the benefit of its creditors, (g) Either party is unable to carry out its obligations under this Agreement by reason of a Force Majeure, meaning any bono fide delay or state of affairs beyond the control of a party (other than as a result of financial incapacity) which shall cause any party to be unable to fulfill or to be delayed or restricted in the fulfillment of any obligation, (h) The Seller does not deliver to Buyer goods or services as provided in this Agreement by the specified delivery date.

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

**29. Warranty:** Seller warrants that they have title to all goods delivered and they will be free from defects in material and workmanship and conform to specifications as defined on the Purchase Order. Seller warrants that all services will be completed in a professional, workmanlike manner and conform to specifications as defined on the Purchase Order.

**30. Workers' Compensation & Other Insurance Requirement:** When work is to be performed hereunder on Buyer's premises by Seller's employees, Seller acknowledges and agrees that it is the employer of such employees for the purpose of the New York State Workers' Compensation Laws as amended, and for all other purposes and Seller agrees that it shall comply with the provisions of the New York State Workers' Compensation Laws, as the case may be, in relation thereto, Seller agrees to carry at Seller's own expense: General Liability Insurance and, for all vehicles employed by Seller for such work, Automobile Liability Insurance, each with a single limit of at least \$1,000,000 for injury to one or more persons, resulting from one accident and \$1,000,000 for property damage resulting from one accident, or such larger amounts and such additional coverage as may be required by Buyer. Certificates of such coverage with thirty (30) day cancellation or amendment notice shall be submitted to buyer prior to work being started.

**31. Contact Locations:**

Procurement  
SENECA GAMING CORPORATION  
310 Fourth Street  
Niagara Falls, NY 14303  
716.501.2397

Accounts Payable  
SENECA GAMING CORPORATION  
310 Fourth Street  
Niagara Falls, NY 14303  
716.278.3268

Warehouse  
SENECA ALLEGANY CASINO & HOTEL  
725 Broad Street  
Salamanca, NY 14779  
716.244.5384

Warehouse (Future Location)  
SENECA BUFFALO CREEK CASINO  
1 Fulton Street  
Buffalo, NY 14204

Warehouse  
SENECA NIAGARA CASINO & HOTEL  
3199 Buffalo Avenue  
Niagara Falls, NY 14303  
716.278.0960