

## TERMS AND CONDITIONS of Cherokee Nation Entertainment ("Buyer")

1. **Acceptance.** This order is subject to immediate acceptance. Unless so accepted, Buyer reserves the right to cancel without penalty. Acceptance of this order by Vendor will be by either (a) a signed written acceptance, or (b) any performance by the Vendor.

2. **Entire Agreement.** This order as executed by Buyer constitutes the entire agreement between the parties. This agreement can be changed only by a written instrument duly executed by an authorized representative of Buyer. Each shipment received by Buyer from Vendor shall be deemed to be subject to these terms and conditions. Buyer hereby objects to and rejects any inconsistent terms contained in any acknowledgement, invoice or other communication from Vendor, and Buyer's acceptance, payment or any similar act shall not be deemed as agreement to Vendor's inconsistent terms. However, if the parties have entered into a written contract which is currently in effect covering the items described in this order, or are otherwise subject to separate terms and conditions as a result of a subcontracting relationship, then the written contract or terms and conditions of the subcontract relationship shall control and supersede any terms or conditions hereof that are in conflict with it, but all other terms and conditions of this order shall remain in effect.

3. **Changes in Descriptions.** Buyer reserves the right to make changes in writing to descriptions as to any goods covered by this order. Any difference in price or time for performance resulting from such changes shall be equitably adjusted at the time of such change, and this order shall be modified in writing accordingly.

4. **Packing, Marking and Shipping.** All goods shall be suitably packed, marked and shipped in a manner to adequately protect the goods in shipment and to secure lowest transportation costs unless otherwise specified by Buyer. Packing slips shall be placed in each shipment and Buyer's Purchase Order number shall be referenced on the packing slip. No packing or related charges shall be allowed except where specifically agreed upon.

5. **Inspection.** Goods shall be subject to Buyer's reasonable inspection and approval before and after delivery. Goods rejected at delivery may be immediately returned to Vendor. Goods rejected after delivery will be held for Vendor's instructions and Buyer's reasonable expenses incurred in connection therewith shall be borne by Vendor. Unauthorized shipments will be returned freight collect after 7 days with or without Vendor's return authorization.

6. **Invoicing Instructions.** Itemized invoices shall be mailed in duplicate to Cherokee Nation Entertainment, LLC, Attn: Accounts Payable, PO Box 179, Tahlequah, OK. All invoices must reference Buyer's applicable Purchase Order number. Vendors may be directed to ship small parcels and to include freight as a separate item on the invoice. A copy of the small parcel shipping papers and freight bill will be included with the invoice or the parcel.

7. **Material Furnished by Buyer.** Any material furnished by Buyer in connection with this order shall remain the property of Buyer. All such material not used in the manufacture or fabrication of the goods covered by this order shall be returned as directed by Buyer at Buyer's expense. Vendor shall reimburse Buyer for any materials not returned promptly when requested by Buyer.

8. **Proprietary Information.** If Buyer furnishes any items of information, such as drawings, with or as a result of this order, Vendor will treat the information as proprietary if it is labeled as such, or if Vendor has reasonable notice that Buyer considers the information to be proprietary. In such instances, Vendor will take care to protect the information, not to disclose the information to third parties, and to return the information to Buyer or destroy the information at the completion of this order, as directed by Buyer.

9. **Warranties.** Vendor expressly warrants that the goods (a) conform to the Vendor's affirmations and promises relating to the goods; (b) conform to the descriptions, samples and models furnished by Vendor or specified by Buyer; (c) are new and of merchantable quality; (d) are of good material and workmanship and free from defects; and (e) are fit for any ordinary or known particular purpose. Vendor further warrants to Buyer that Vendor has merchantable title to such goods free and clear of any liens or other encumbrances.

10. **Failure of Vendor to Perform.** If Vendor fails in any respect to comply herewith or with any other contracts then existing with Buyer, Buyer at its option may terminate this order and any other contracts with Vendor. Further, Buyer at its option may defer further receipt of deliveries to be made pursuant to this order or any such other contract pending compliance by Vendor with this or such other contract. Buyer's rights pursuant to this provision shall be in addition to any and all other legal remedies available to it.

11. **Compliance with Laws.** Vendor shall strictly observe, comply with, and give all notices required by, all local, municipal, state, tribal and federal laws, ordinances, rules, directives, orders, and regulations related to the goods and/or services covered by this order, including, without limitation: a) the Cherokee Nation Employment Rights Act, including all subcontracting and subcontractor payment requirements and Indian preference requirements contained therein, as CNE Terms and Conditions

such Act is administered by the Tribal Employment Rights Office ("TERO") of the Cherokee Nation, and b) the Cherokee Nation Gaming Commission Rules and Regulations and Minimum Internal Control Standards.

12. **Regulatory Compliance.** In the performance of this order, Buyer and Vendor and its subcontractor(s) shall, to the greatest extent feasible, give preference to Indian organizations, Indian owned enterprises and individuals as certified by the Cherokee Nation Tribal Enforcement Rights Office ("TERO"). Additionally, as a result of Vendor's provision of goods and/or services under this order, Vendor may be required to apply for and obtain a gaming license from the Cherokee Nation Gaming Commission ("CNGC"). If Vendor fails to, or is otherwise unable to obtain or maintain its gaming license, upon written notification of such failure from CNGC and/or Buyer, Buyer may cancel this order without penalty, paying only for the goods and/or services provided to Buyer prior to such notification.

13. **Indemnity.** Vendor shall defend, indemnify, and hold Buyer harmless from and against any and all claims, losses, damages, suits, judgements, fines, penalties, or any other loss including costs, expenses and attorneys' fees arising out of or occurring in connection with this order. The foregoing indemnification obligations shall include without limitation claims, losses, damages, suits, judgements, fines, penalties, or any other loss including costs, expenses and attorneys' fees arising out of or occurring in connection with Vendor's breach of the terms and conditions of this order, Vendor's breach of any warranty made in this order, and Vendor's infringement or violation of the right of any person, such as under any patent, trademark or copyright laws. All indemnification obligations of Vendor shall extend to the officers, directors, employees, and agents of the Buyer and shall continue notwithstanding completion, acceptance or payment relating to this order.

14. **Assignability.** Neither this order nor any claim pursuant to this order shall be assignable in whole or in part by Vendor or by operation of law, without the prior written consent of the Buyer. Any such purported assignment without such consent shall be void.

15. **Force Majeure.** Strikes, fire, accidents or other causes beyond the reasonable control of Buyer, which shall affect Buyer's ability to receive and use the goods, work or service ordered, shall constitute valid ground for suspension of shipment or work or service pursuant to this order without penalty to Buyer. Buyer shall notify Vendor by facsimile or letter. Buyer will not exercise this cancellation right without reimbursement to Vendor for expenditures actually made for labor and materials specifically for this order.

16. **Insolvency.** Buyer reserves the right to cancel all or any part of this order in the event Vendor becomes insolvent or involved in insolvency proceedings, including without limitation, an assignment for the benefit of creditors, and in any of these events, Vendor agrees to immediately notify Buyer in writing.

17. **Waivers.** Waiver by either party of any default hereunder by the other party shall not be deemed waiver of any subsequent default.

18. **Conflict of Interest.** Vendor will not use any funds received under this order for illegal or otherwise "improper" purposes related to the purchase commitment. Vendor will not pay any commissions, fees or rebates to any employee of the Buyer, nor favor any employee of the Buyer with gifts or entertainment of significant cost or value. If the Buyer has reasonable cause to believe that one of the above provisions has been violated, the Buyer, or its representative, may audit the records of the Vendor for the sole purpose of establishing compliance with such provisions.

19. **Work on Buyer's Premises.** Vendor may not commence work (including on-site deliveries) on Buyer's premises until signed acknowledgement and certificates of Insurance are submitted to Buyer in a form acceptable to Buyer. By acknowledgement or commencement of work, Vendor accepts Buyer's standard terms and conditions relating to insurance, which shall be attached to this order as Attachment A and are specifically incorporated herein.

20. **Limitation of Liability.** In no event shall Buyer be liable for any consequential, incidental or indirect damages or loss of anticipated profits sustained by Vendor or its subcontractors regardless of the foreseeability of such damages.

21. **Attorney's Fees and Interpretation.** In any legal action initiated by Buyer relating to this order, Buyer, if it prevails in such action, shall be entitled to recovery of all its costs incurred in such legal proceeding, including reasonable legal fees, expenses, court costs, and witness, expert and consulting fees. The rights and obligations of the parties to this Agreement shall be governed by and construed in accordance with, the laws of the Cherokee Nation. Any disputes arising under this Agreement shall be adjudicated in the courts of the Cherokee Nation.

22. **Payment Terms.** Unless otherwise stated on the Purchase Order, payment terms are net thirty (30) days. Under these Terms and Conditions, "net thirty" means the check will be issued on the 30<sup>th</sup> day after the latter of the invoice or delivery date.