



## **STANDARD TERMS AND CONDITIONS**

### **CERTAIN DEFINITIONS:**

**(a) Agreement:** means the written documentation forming the agreement of Buyer (as hereafter defined) and Seller (as hereafter defined). These Terms and Conditions are incorporated by reference in any "Agreement" or other transaction by which Buyer purchases goods and/or services from Seller, unless Buyer and Seller have agreed to modify these Terms and Conditions in a writing executed by both parties. If Buyer and Seller have negotiated a written purchase or service agreement, the "Agreement" shall be comprised of such agreement, any attachments thereto, these Terms and Conditions, and purchase order(s) issued thereunder. In the absence of such purchase or service agreement, the "Agreement" shall be comprised of the Purchase Order(s), together with these Terms and Conditions.

**(b)** If Buyer and Seller have negotiated a written purchase or service agreement, the "Agreement" shall be comprised of such agreement, any attachments thereto, these Terms and Conditions, and purchase order(s) issued thereunder. In the absence of such purchase or service agreement, the "Agreement" shall be comprised of the Purchase Order(s), together with these Terms and Conditions.

**(c) Buyer:** means Seneca Gaming Corporation or its applicable affiliate (Seneca Erie Gaming Corporation, Seneca Niagara Falls Gaming Corporation, Seneca Territory Gaming Corporation, or Lewiston Golf Course Corporation) acquiring goods or services from Seller.

**(d) Confidential Information:** means any and all confidential or proprietary information, in whatever form, which is disclosed or made available by Buyer to Seller including, without limitation, organizational and personnel information, financial information, patron data, marketing information, business operations information, plans or strategies, intellectual property, or similar information, and including further, forms, written documents, statements and oral disclosures pertaining to, based on, or containing, directly or indirectly, in whole or in part, any such Confidential Information, or incorporating or reflecting the review by Seller of any such Confidential Information. "Confidential Information" shall not include information (i) generally known to the public prior to the date of disclosure by Buyer; (ii) which becomes generally known to the public through no act or omission of the Recipient; (iii) required to be disclosed by law or pursuant to a final order of a court or arbitrator having jurisdiction thereof, after expiration of any applicable appeal period; or (iv) independently developed

by Seller without relying upon or utilizing Buyer's Confidential Information.

**(e) Seller:** The person or entity from whom Buyer is acquiring the applicable goods or services in the transaction.

## **TERMS AND CONDITIONS:**

**1. Assignment and Subcontracting:** Seller may not assign, delegate or subcontract to another person or entity its duties, rights or obligations under the Agreement without the express prior written consent of Buyer.

**2. Audit Rights:** Buyer reserves the right to conduct, at its expense, an independent accounting of goods and/or services delivered and amounts payable/paid thereunder with a view to ensuring compliance with the pricing and other provisions of any contract between Buyer and Seller and these Terms & Conditions. In this regard, Seller shall establish a reasonable accounting system which enables ready identification of Seller's cost of goods and use of funds and shall reasonably cooperate with Buyer in the performance of any such accounting or audit. The audit rights herein provided shall extend to all subcontractors to whom Seller subcontracts any part of the services, and Seller shall ensure Buyer has these rights with all subcontractors. Seller shall reimburse Buyer for the reasonable cost(s) of any audit in the event that such audit uncovers overcharges or similar errors of greater than 3% for the time period audited and/or such audit uncovers a breach or violation of the contract or these Terms & Conditions.

**3. Buyer's Property:** Any and all items provided or paid for by Buyer, such as samples, documents, drawings, specifications, tools, etc., shall remain the property of Buyer. Seller is responsible and liable for any and all damage to, or loss of, all such items and shall return them to the Buyer upon fulfillment of Seller's obligations under the Agreement.

**4. Cash Discount:** In the event the parties have agreed upon a cash discount for prompt payment (e.g., 2% 15 Days, Net 45), date of payment shall be calculated from the later of the date of Buyer's receipt of a correct invoice, acceptance of the applicable goods and/or receipt of services.

**5. Clerical Errors:** Clerical errors, whether in mathematical computations or otherwise, made by Buyer on a Purchase Order or any other forms delivered to Seller shall be subject to correction.

**6. Compliance with Laws and Regulatory Requirements:** Buyer and Seller will comply with all laws and other legal or regulatory requirements, including gaming regulatory requirements, applicable to the Agreement and the transactions contemplated thereby, including any applicable tribal, federal, state, or local laws, rules or regulations, export and import laws, the Nation-State Compact between New York State and the Seneca Nation of Indians, rules and regulations of the Seneca Gaming Authority, and laws, rules and regulations affecting the production, 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, Seller represents and covenants that no products delivered to Buyer are or will be adulterated or misbranded within the meaning of applicable law, including the Pure Food and Drug Act.

**7. Confidentiality:** Seller shall: (a) take reasonable steps as may be necessary or appropriate to protect the confidentiality and proprietary nature of all Confidential Information, which shall be at least a commercially reasonable level of care; (b) not, without the express prior written consent of Buyer, publish or disclose Confidential Information in any way or form, except as otherwise expressly stated herein or agreed to by Buyer, to any other person or entity; (c) not, without the express prior written consent of Buyer, use the Confidential Information, except as otherwise contemplated by the Agreement or agreed to in writing by Buyer; (d) ensure that access to the Confidential Information is available only to the officers, directors, employees, representatives and agents of Seller who are involved with the assigned tasks contemplated by the parties, and then only to the extent necessary for the purpose of enabling them to perform their assigned tasks; (e) minimize the reproduction of the Confidential Information and secure all copies made thereof in the same manner as the original materials are secured; and (f) return to Buyer or destroy all Confidential Information upon request.

**8. Conflicts of Interest:** Undisclosed conflicts of interest are strictly prohibited. If Seller, or any director, officer, employee or owner of Seller has a business or personal relationship with a director, officer or employee of Buyer (or its affiliates) that creates an actual or potential conflict of interest for such director, officer or employee, or otherwise creates or is likely to create an appearance of impropriety relating to the entry into, or ongoing performance of, the Agreement, Seller is under an obligation to disclose the applicable conflict/facts to Buyer to the extent Seller has knowledge thereof. Failure to abide by this requirement shall be sufficient cause for immediate termination or rescission of the Agreement, and any other agreement currently in effect between the parties.

**9. Covenants Against Kickbacks:** A "Kickback" includes any cash, fee, commission, credit, gift, gratuity, remuneration, item of value or compensation of any kind in exchange for favorable treatment regarding obtaining or retaining any Agreement with Buyer. Seller represents, warrants and agrees that neither it, nor its officers or employees have, or will, provide or attempt to provide, either directly or indirectly, any Kickback to any director, officer or employee(s) 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 or rescission of such Agreement, and any other agreement currently effective between the parties.

**10. Defective, Tainted and Non-conforming Goods :**

All manufactured goods covered under an Agreement shall be free from defects in material and workmanship, shall be merchantable, and shall conform to all applicable plans, specifications, and requirements, and shall be suitable for their intended use. Seller further acknowledges and agrees that it shall provide prompt notice to Buyer of any manufacturer recalls, notices or similar advisories of which it becomes aware which relate to any goods being provided by Seller to Buyer, including, in particular, food recalls.

**11. 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.

**12. F.O.B. Destination:** Title to goods passes to Buyer only upon receipt at the correct delivery location. Buyer does not accept any shipments Freight Collect. Notwithstanding any provision hereof to the contrary, title to, and risk of loss or damage of, goods shall remain with Seller until the goods are delivered at the F.O.B. point specified by Buyer, or if no such point is specified, then, when the goods are delivered to Buyer.

**13. Travel time and expenses:** In the absence of specific agreement to the contrary, travel time and travel expenses are not compensable. Where travel expenses are compensable, the following limitations apply: Buyer will reimburse Seller for Seller's reasonable travel expenses which are directly related to performance of the services. Travel expenses are reimbursed at cost, and no overhead or administrative charges are allowed. All travel must be approved in advance by Buyer and all air travel must be economy class. Mileage charges for Seller-owned vehicles and other travel-related expenses will be reimbursed in accordance with the CONUS rate applicable to Niagara Falls, New York. Buyer may instruct Seller personnel to stay in Buyer's hotels or in another hotel in close proximity to Buyer's property and to eat in Buyer's employee dining room. Buyer must provide receipts for expenses other than mileage together with the invoice to which such expenses relate.

**14. 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 other causes beyond our control, Buyer shall have the option of canceling undelivered orders for goods or services in whole or in part.

**15. Foreign Suppliers:** Foreign suppliers of goods are

responsible for fulfilling all conditions of export/import, including payment of any applicable duties or customs tariffs, and shall, upon request, provide evidence of such compliance as Buyer may request. Foreign suppliers of services are responsible for fulfilling all visa, work permit and other requirements to enable them to legally perform work in the United States. There will be no gross-up of fees or other compensation in the event of any withholding as required by U.S. tax authorities.

**16. Gaming Registration and Business Licensing:**

Seller is required to comply with all applicable vendor certification and/or licensing procedures required by the Seneca Nation of Indians (including its Business Code), the Seneca Gaming Authority or otherwise pursuant to the Compact with the State of New York.

**17. Governing Law:** The Agreement shall be governed by the laws of the Seneca Nation of Indians and in the absence of applicable Seneca law, by the laws of New York State.

**18. 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 all applicable tribal, federal, state and local laws and regulations.

**19. Indemnification and Remedies:** Seller assumes the entire responsibility and liability for, and agrees to indemnify, defend and hold harmless Buyer, its directors, officers, employees, successors and assigns 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 (including Seller's employees), 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 or good of Seller which was sold to Buyer under the Agreement; and/or (c) any breach of representation or warranty, any term or condition of the Agreement, or any obligation of Seller set forth in these Terms and Conditions.

**20. Independent Contractor:** Seller shall at all times be acting and performing as an independent contractor. No employee or agent of Seller will be acting as an employee, agent, partner, servant or representative of Buyer, and Seller will not have any authority to bind Buyer in any manner. It is understood that Buyer will not withhold any amounts for payment of taxes from the

compensation of Seller hereunder.

**21. Infringement.** The goods furnished or services provided under the Agreement shall not infringe on any third party's patent, trademark, trade name, copyright or other intellectual property rights of a third party.

**22. Insurance and Workers' Compensation:**

a. General. At all times during Seller's performance of the Agreement, unless otherwise waived by Buyer, Seller shall obtain and keep in force insurance coverage of the types, and with the minimum coverage limits, as determined by Buyer's Risk Management Department. All 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. Seller shall provide Buyer with a certificate of insurance before commencing work under any Agreement and Buyer shall be named as an additional insured on Seller's General Liability and Automobile Liability policies, if applicable. Buyer's insurance requirements vary according to the nature of the contract and degree of risk, but normally include general liability, automobile liability, and workers' compensation coverage. In addition, in appropriate cases, Buyer may require professional liability/errors & omissions coverage and/or network security/privacy coverage. Seller shall not insure the goods on Buyer's account unless the terms of the Agreement so require. Certificates of such coverage shall be submitted to Buyer prior to work being started.

b. Workers' Compensation & Other Insurance. When work is to be performed on Buyer's premises, Seller acknowledges and agrees that it is the employer of its employees for worker's compensation purposes, and for all other purposes and Seller agrees that it shall comply with all applicable provisions of the New York State Worker's Compensation Laws.

**23. Liens and other Encumbrances:** The goods furnished or services provided under the Agreement are and shall be free and clear of all mortgages, liens, charges, pledges, security interests, encumbrances or other claims whatsoever.

**24. Limitation of Liability:** In no event shall Buyer, its affiliates, or their respective officers, directors, employees or contractors be liable to Seller under the Agreement or any theory or cause of action for any indirect, incidental, consequential, special, punitive or exemplary damages including without limitation economic loss or lost profits, even if Buyer or its affiliates has been advised of the possibility of such damages or if such damages are foreseeable. The foregoing limitations on liability shall not apply to claims caused solely by Buyer's gross negligence or willful misconduct to either Seller or a third party.

**25. Monetary Threshold Requiring Approval:**

Absent prior approval of Buyer's Board of Directors and the Nation's Council, at no time will Seller's aggregate fees, billings, requests for reimbursement and/or invoices to Buyer exceed two million nine hundred ninety-nine thousand nine hundred ninety-nine dollars (\$2,999,999) (the "monetary threshold"). Buyer will not be liable to Seller for invoices which exceed the monetary threshold unless the requisite approval of the Council of the Seneca Nation of Indians has been obtained.

**26. Payment Terms:** The time period allowed for payment, as indicated on the Agreement, shall commence upon the later of (i) receipt of a correct invoice from Seller; or (ii) acceptance of the goods ordered or completion of the services, whichever is applicable. Our standard payment terms are Net 45 Days after acceptance of goods and/or receipt of services, or receipt of a correct invoice - whichever is later.

**27. Permits and Licensure:** Seller shall maintain all permits and licensure required by any applicable governmental entity required for the performance of all obligations contemplated by the Agreement and related contractual documentation.

**28. P.O. Acceptance - Buyer:** Once the goods have been received or services completed against the Agreement, they are subject to the Buyer's inspection and approval within a reasonable period of time (usually within 3 days after delivery of food and beverage goods and within 60 days for manufactured components).

**29. P.O. Acceptance - Seller:** Absent a separate written agreement entered into prior to shipment of goods and/or commencement of services, Seller's shipment of goods and/or commencement of services consistent with a valid purchase order issued by Buyer shall constitute Seller's agreement to the terms of the applicable purchase order and these Terms & Conditions. The Seller is then bound by the Terms & Conditions.

**30. Precedence:** In the event of a conflict or inconsistency between the terms of any written documents entered into between Buyer and Seller, the following order of priority will apply:

- a. Any separate written purchase, service or related agreement entered into between the parties.
- b. All other attachments or exhibits incorporated into the foregoing written purchase, service or related agreement.
- c. The terms set forth on the face of any applicable Purchase Order.
- d. To the extent not included in item b. above, the Request for Proposals (RFP) issued by Buyer.

e. These Terms & Conditions.

**31. Price:** No Purchase Order shall be filled at prices higher than those specified in the Agreement. Invoices must bear the exact same prices and terms as specified in the Agreement. Seller's acceptance of a Purchase Order, or shipment of any part of it will constitute Seller's agreement to all of the Purchase Order's specifications as to terms, conditions, delivery and price. Any changes thereto must be authorized by Buyer in writing prior to shipping.

**32. Right to Offset:** Buyer shall have the right to offset any monies otherwise payable to Seller against debts or charges due Buyer from Seller.

**Shipment and Inspection:** All goods must be delivered to (as applicable): Seneca Allegany Resort & Casino Warehouse Receiving at 777 Seneca Allegany Blvd., Salamanca, New York; Seneca Buffalo Creek Casino Warehouse Receiving at 1 Fulton Street, Buffalo, New York; Seneca Niagara Resort & Casino Warehouse Receiving at 6000 Packard Road, Niagara Falls, NY 14304, or Seneca Hickory Stick Golf Course, 4560 Creek Road Lewiston, New York, to be accepted by Receiving Department personnel (or in the case of the golf course, clubhouse personnel), unless otherwise specified by the Procurement Department. If goods are not shipped to and received in accordance with the foregoing, Buyer accepts no responsibility for them, and Seller accepts that the goods may be returned and the order cancelled. Approval from Buyer's 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.

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 nonconformance. Packing slips must accompany all shipments.

**33. Standard of Conduct.** In providing goods or rendering services under the Agreement, Seller shall

conform to high professional standards of work and business ethics. Seller shall further comply with all applicable policies and procedures of Buyer while on-site. Seller shall not use time, materials, or equipment of Buyer without the prior written consent of Buyer. In no event shall Seller take any action or accept any assistance or engage in any activity that would result in any other person, entity or organization acquiring any rights of any nature in the results of work performed under the Agreement.

**34. Survival.** Rights and remedies granted to Buyer hereunder shall not be extinguished and shall survive the termination or expiration of any Agreement between the parties for the longer of three years following such termination or expiration or the applicable statute of limitations period.

**35. Taxes:** The price charged to Buyer shall include all applicable federal, state and local taxes of any kind. Goods and/or services purchased by Buyer for use on Seneca Nation territory are not subject to state sales tax. Seller acknowledges that it has on file an appropriate sales tax exemption form from the Seneca Nation of Indians. If either Buyer or Seller is required to remit or pay taxes that are the other party's responsibility under the Agreement, the party responsible for such taxes shall promptly reimburse the other party for such taxes. Seller shall, at all times, cooperate with and permit Buyer to: (i) contest any taxes in connection with this transaction and, if applicable, and (ii) seek a refund of any such taxes paid to any governmental authority from such governmental authority for Buyer's account.

**36. Termination and Renewal:**

a. Termination upon Notice without Cause.

Buyer may terminate the Agreement or any Purchase Order for any reason, including convenience, upon thirty (30) days 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.

b. Termination upon Notice with Cause. Buyer may rescind or immediately terminate the Agreement or any Purchase Order for cause, without liability, and without limiting any of its other rights or remedies, upon written notice to Seller if: Any of the following events occurs: (a)

Seller fails to maintain requisite Seneca Nation of Indians or Seneca Gaming Authority licenses or requisite insurance; (b) A receiver or trustee is appointed to take possession of all or substantially all of Seller's assets; (c) Seller makes a general assignment for the benefit of creditors; (d) 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; (e) Seller becomes insolvent or commits an act of bankruptcy; (f) Seller breaches the provisions of Sections 6, 7, 8, 9, 10, 15, 20, or 21 of these Terms & Conditions or similar provisions contained in any contract between Buyer and Seller; or (g) Seller breaches any of its other contractual obligations to Buyer and fails to cure such breach within thirty (30) days following notice in writing from Buyer.

c. Renewal or Extension. If Seller desires to renew or extend its agreement with Buyer, Seller shall submit a proposal specifying the renewal terms to Buyer no less than 60 days prior to the anniversary of the Agreement. Buyer will notify Seller of its intent to renew the Agreement within 30 days from receipt of Seller's proposal.

**38. Tribal Employment Rights Ordinance:** Buyer is subject to the Seneca Nation of Indians' Tribal Employment Rights Ordinance, or TERO. As of February 14, 2009, the provisions of TERO concerning the Indian preference in contracting were repealed. However, Seller remains subject to all other aspects of TERO, which principally include meeting applicable Indian workforce participation goals. A copy of the TERO Ordinance may be obtained from the SGC Purchasing Department.

**39. 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 entering into an Agreement does not constitute an endorsement of Seller's products or services.

**40. Waiver:** The waiver of any term, condition or provision of the Agreement 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. No waiver by Buyer shall be valid unless set forth in a writing signed by an authorized officer of Buyer.

**Contacts:**

**Corporate**

SENECA GAMING CORPORATION  
310 Fourth Street  
Niagara Falls, NY 14303  
716.501.2397 (Procurement)  
716.278.3268 (Accounts Payable)

**Warehouse**

SENECA NIAGARA RESORT & CASINO  
6000 Packard Road  
Niagara Falls, NY 14304  
716.501.2553  
716.501.2554

**Warehouse**

SENECA ALLEGANY RESORT & CASINO  
777 Seneca Allegany Blvd.  
Salamanca, NY 14779  
716.244.5384

**Warehouse**

SENECA BUFFALO CREEK CASINO  
1 Fulton Street  
Buffalo, NY 14204

**Seneca Hickory Stick Golf Course**

SENECA HICKORY STICK GOLF COURSE  
4560 Creek Road  
Lewiston, NY 14092  
716.754.2424