

## **SIGA PURCHASE ORDER - TERMS AND CONDITIONS**

### **1. Incorporation of Terms and Conditions in Purchase Order**

The term and conditions in this document are incorporated in every requisition for goods (“Goods”) or services (“Services”), or both, that Saskatchewan Indian Gaming Authority Inc. (“SIGA”) issues by purchase order (“Purchase Order”). The promises, warranties and representations in this document are deemed to have been made by every recipient of a Purchase Order from SIGA that has been accepted by the recipient (the “Seller”).

### **2. Acceptance of Purchase Order**

The Purchase Order is SIGA's offer to purchase from the Seller, the Goods or Services or both described in the Purchase Order.

Beginning to provide the Services, shipment of any of the Goods, or delivery of any of the Goods, whichever occurs first, constitutes acceptance by the Seller of SIGA's offer to purchase.

### **3. Entire Contract**

The Purchase Order, together with these terms and conditions, forms the entire contract between SIGA and the Seller (the “Contract”).

### **4. Modifying the Terms and Conditions**

No modifications (whether they are deletions, additions or variations and whether they are proposed by SIGA or the Seller) to the terms and conditions of the Contract are effective or binding on SIGA unless they are specifically agreed to in writing by SIGA. No additional or different terms or conditions in any printed form of the Seller become part of the Contract unless SIGA has specifically agreed to them in writing.

### **5. No Substitutions**

The Seller must not substitute a different brand or model if a particular brand or model has been specified in the Purchase Order, unless the different brand or model has been specifically agreed to in writing by SIGA.

### **6. Representation - Supplier Status under *The Alcohol and Gaming Regulation Act (Saskatchewan)***

SIGA is prohibited by law from purchasing or receiving gaming supplies or gaming Services from vendors unless they are registered as suppliers under *The Alcohol and Gaming Regulation Act (Saskatchewan)*. Accordingly, if the Goods or Services being requisitioned in the Purchase Order are gaming supplies or gaming Services, the Seller makes the following representation and promise to SIGA:

As of the date of acceptance of the Purchase Order, the Seller will be registered as a supplier under *The Alcohol and Gaming Regulation Act (Saskatchewan)*, and the Seller promises that it will continue to be registered as long as any part of the Purchase Order remains unfulfilled, unperformed or undelivered.

### **7. Shipping Instructions**

The Seller must comply with best commercial practices to ensure that the Goods arrive safely at the destination, and all Goods must be shipped freight prepaid, F.O.B. destination, unless otherwise stated. Where SIGA has so authorized in writing, Goods may be shipped F.O.B. shipping point, but the Seller must prepay all shipping charges, route the Goods by the most economical common carrier or by the carrier specified by SIGA (if one is specified), and list the shipping charges as a separate item on the Seller's invoice. All invoices that include shipping charges must be accompanied by a written receipt from the carrier, indicating that such shipping charges have been paid. SIGA reserves the right to reject

C.O.D. shipments. The Seller must not bill SIGA for the cost of insuring the Goods during shipment unless SIGA has agreed in writing to pay for the Goods to be insured or where the Goods are shipped via parcel post.

#### **8. Handling and Related Charges**

The Seller must pay all charges for handling, packaging, wrapping, bags, containers, crating, storage, commissions and related matters unless otherwise indicated by SIGA in the Purchase Order.

#### **9. Delivery**

Time is of the essence, and the Contract may be terminated by SIGA if the Goods are not delivered or if the Services are not fully performed by the date or dates specified in the Purchase Order. In such instance, SIGA may purchase Goods or Services elsewhere and charge the Seller with any loss incurred by SIGA. No change in the scheduled delivery or performance dates will be permitted without SIGA's written consent. No acceptance of Goods or Services after the scheduled delivery or performance date affects SIGA's right to terminate for such late delivery or performance nor does it constitute a waiver of any term or condition that requires the Seller to deliver or perform at a future date.

#### **10. Risk of Loss**

Regardless of F.O.B. point, the Seller agrees to bear all risks of loss, injury or destruction of Goods ordered which occur prior to receipt of the Goods by SIGA. No such loss, injury or destruction releases the Seller from any of its obligations under the Contract.

#### **11. Payment**

SIGA will remit payment to the Seller by mail, unless otherwise mutually agreed upon. Standard terms of "net 30 days" apply unless otherwise noted by SIGA in the Purchase Order. Payment for Goods or Services will only be made once payment has been authorized in accordance with section 16.

#### **12. Prices**

SIGA will pay the prices stated in the Purchase Order for the Goods or Services. The prices indicated are in Canadian funds unless otherwise specified in the Purchase Order or agreed to in writing by SIGA. If a price is not stated in the Purchase Order, SIGA will pay the lowest of the following prices:

- (a) the price last quoted to SIGA by the Seller;
- (b) the price last paid by another customer of the Seller; or
- (c) the prevailing market price for such Goods or Services.

#### **13. Changes**

SIGA may make changes to the Goods or Services requisitioned in a Purchase Order, including (without limitation) changes to drawings and specifications for specially manufactured Goods and place of delivery, and will notify the Seller of such changes in writing. If the changes affect the cost of the Goods or Services, or the time required for the Goods or Services to be delivered or performed, the Seller must request an adjustment in writing before the Seller ships or delivers the Goods or begins to provide the Services. If no adjustment has been requested by the Seller within 30 days after having received SIGA's notice, SIGA will deem the Seller to have agreed to make the changes without any adjustment to the price or delivery dates or Work schedule. The Seller is not permitted to make any changes unless they have been requested by SIGA or unless SIGA has first approved the changes in writing.

#### **14. Owner's Manual**

If applicable, the Seller must supply an owner's manual or other instructions to SIGA for the installation, operation, maintenance and repair of the Goods.

## **15. Warranties**

The Seller expressly warrants that all Goods and Services purchased under the Contract conform with the Purchase Order and all applicable specifications and Canadian standards, are free from defects in material, workmanship and design, and are of a quality satisfactory to SIGA, taking into account how they are described in the Purchase Order. If the Seller knows, either expressly or by implication, the particular purpose for which SIGA intends to use the Goods or Services, the Seller warrants that such Goods or Services are fit for such purpose. The Seller further warrants that the Goods are wholly new in that they contain only new components and parts throughout, that the Seller has good and warrantable title to the Goods and that the Goods will, upon delivery to SIGA, be free and clear of all liens, claims and encumbrances of every kind.

The Seller warrants that SIGA's purchase, installation and use of Goods or Services provided by the Seller under the Contract will not result in any claim of infringement, or actual infringement, of any patent, trademark, copyright, franchise, moral or other intellectual property right.

The Seller warrants that the Goods and Services supplied under the Contract have been produced and supplied in compliance with all applicable federal, provincial (or state) and local or municipal laws, orders, rules and regulations.

If the Goods have a manufacturer's warranty, SIGA will be entitled to the benefit of the warranty. The Seller will provide SIGA with a copy of such warranty when it delivers the Goods. The Seller will assign and extend all warranties that it receives from its vendors to SIGA and to SIGA's customers.

Breach of the warranties in this section entitles SIGA to all remedies available to SIGA at law or in equity.

SIGA's approval of the Seller's design, materials or Goods does not relieve the Seller of the warranties set out herein. Without limiting any rights that SIGA may have at law because of any breach of warranty, Goods that are not as warranted (whether or not apparent on initial inspection) may at any time within the warranty period specified in the Purchase Order or any applicable manufacturer's warranty, whichever period is longer, be returned at the Seller's expense. SIGA, at its option, may require the Seller either to replace such Goods without charge, in which case the Seller must pay all re-packing, transportation and handling charges both ways, or to refund the purchase price and any charges incurred by SIGA in connection with the purchase. In addition, SIGA may claim payment of damages for any loss that it may suffer as a result of the Goods not being as warranted. The Seller agrees to promptly pay all such amounts to SIGA.

## **16. Inspection and Testing, and Authorizing Payment for Goods or Services**

### *Facilities and Equipment*

SIGA may need to inspect the Seller's facilities or equipment, or both. The Seller consents to such an inspection and agrees to give SIGA and its representatives reasonable access to its facilities and equipment for this purpose.

### *Goods*

SIGA will count and inspect Goods delivered under a Contract. SIGA may wish to test Goods requisitioned in a Purchase Order. If the count, inspection or tests show that the Goods do not comply with SIGA's specifications or other requirements, the Goods will, at the option of SIGA, be rejected and returned (if they have then been delivered) to the Seller.

Payment for Goods will not be authorized until SIGA has counted, inspected and tested (if applicable) the Goods and has found them acceptable. Only written authorization for payment is binding on SIGA

and may be relied upon by the Seller.

#### *Services*

SIGA will inspect or review Services delivered or performed under a Contract. If the inspection or review shows that the Services do not comply with SIGA's specifications or other requirements, the Services will, at the option of SIGA, be rejected.

Payment for Services will not be authorized until SIGA has inspected or reviewed the Services and has found them acceptable. Only written authorization for payment is binding on SIGA and may be relied upon by the Seller.

#### *Costs Related to Rejected Goods or Services*

All costs of SIGA to unpack, inspect, test, re-pack, store and re-ship rejected Goods or Goods that do not comply with SIGA's specifications or other requirements, are the responsibility of the Seller. All costs of SIGA to inspect and to review rejected Services are the responsibility of the Seller. The Seller agrees to promptly pay all such costs.

### **17. Default and Termination**

In addition to SIGA's other rights under the Contract and without restricting any other remedies available, SIGA may, by written notice to the Seller, immediately cancel the whole or any part of the Contract in any one or more of the following circumstances, which is deemed to be termination for cause:

- (a) subject to section 18, if the Goods are not delivered or if the Services are not fully performed by the date or dates specified in the Purchase Order, or such later date as SIGA may have, in writing, agreed upon;
- (b) if, in SIGA's opinion, any of the Goods are defective;
- (c) if, in SIGA's opinion, any of the Goods do not conform to the Purchase Order;
- (d) if, in SIGA's opinion, the Seller fails to perform any of the other provisions of the Contract;
- (e) if, in SIGA's opinion, any Services provided by the Seller are unsatisfactory, inadequate or improperly performed;
- (f) if SIGA becomes aware of information which would reasonably lead SIGA to believe that the Goods will not be delivered or the Services will not be performed by the date or dates specified in the Purchase Order, or such later date as SIGA may have, in writing, agreed upon;
- (g) if the Seller is in breach of any of the terms and conditions of the Contract;
- (h) if the Seller becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any law pertaining to bankrupt or insolvent debtors (it being understood that the appointment of a receiver, receiver/manager or trustee of property and assets of the Seller is conclusive evidence of insolvency); or
- (i) where the Seller is a corporation, a certificate or order is made or granted, or a resolution is passed, for the dissolution or winding-up of the Seller, voluntarily or otherwise, or the Seller is otherwise likely to lose its corporate status.

### **18. Force Majeure**

The Seller is not liable for default or delay due to causes beyond the Seller's reasonable control and without fault or negligence on the part of the Seller. The Seller must give SIGA prompt notice in writing when any such cause appears likely to delay delivery of Goods or the performance of Services and must take appropriate action to avoid or minimize such delay. If any such default or delay threatens to impair the Seller's ability to meet delivery requirements for its Goods or Services, SIGA is entitled to cancel the portion or portions of the Purchase Order so affected, without any liability to SIGA or the Seller. SIGA is not liable for default or delay in performing its obligations due to causes beyond its reasonable control.

## **19. Indemnifications and Liability of Seller**

The Seller indemnifies and holds SIGA, its officers, employees and agents, harmless from and against all claims, losses, expenses, damages, causes of actions and liabilities of every kind and nature, including (without limitation) legal fees on a solicitor and own client basis, arising from or out of

- (a) any breach of any of the Seller's obligations or warranties;
- (b) any misrepresentation by the Seller;
- (c) any other act or omission of the Seller, its officers, employees, agents or subcontractors, howsoever caused, including claims or actions which may be made or instituted by persons who make purchases from SIGA or use products supplied by the Seller;
- (d) the presence or activity of the Seller's officers, employees, agents, contractors and subcontractors on SIGA's premises where the Contract includes Services or Work to be done on SIGA's premises;
- (e) any builder's lien or claim in any way relating to Work or Services performed under the Contract;
- or
- (f) a determination that the Contract creates the relationship of employer and employee between SIGA and the Seller, to the extent that such an indemnity is not prohibited by law.

The Seller is solely responsible for any personal injury, or loss of life, of its officers, employees, agents, contractors or subcontractors experienced by such persons in the course of performing the Work or Services or in any other way related to the requirements of the Contract except to the extent it was caused by the wrongful or negligent act of an employee of SIGA while acting within the scope of his or her employment. The Seller is solely responsible for its officers, employees, agents, contractors and subcontractors while they are on SIGA's premises. The Seller is solely responsible for any damage to, or loss of, its own property or property owned by SIGA or others caused in the course of the Work or Services being performed or in any other way related to the requirements of the Contract except to the extent it was caused by the wrongful or negligent act of an employee of SIGA while acting within the scope of his or her employment.

## **20. Assignment**

No part of the Contract, nor any interest in the Contract or any claim arising from the Contract, may be transferred, assigned or subcontracted by the Seller without the prior written consent of SIGA, which consent may be withheld for any or no reason or consent given with or without conditions.

No assignment or transfer of the Contract relieves the Seller of any obligations under the Contract, except to the extent they are properly performed by the Seller's permitted assigns.

SIGA may transfer or assign the benefits of the Contract in whole or in part, including the Seller's warranties, without approval of the Seller.

The Contract is binding upon and enures to the benefit of the successors and assigns of SIGA and upon the successors and permitted assigns of the Seller.

## **21. Services or Work**

Where the Contract requires Services to be performed, including Goods to be installed (sometimes also referred to herein as "Work"), the following additional terms apply:

- (a) The Seller must take precautions to protect all property and persons from damage or injury arising out of the Seller's Work. The Seller must comply with all applicable laws and regulations prescribed by any relevant governmental authority, including (without limitation) all fire, safety, employment, labour, Workers' compensation and other applicable laws and regulations, and must obtain all necessary permits at its own cost unless the Purchase Order specifies that SIGA will obtain them.
- (b) All Services must be performed in accordance with current, sound and generally accepted industry

- practices by qualified personnel, trained and experienced in the appropriate fields.
- (c) All tools, equipment, dies, gauges, models, drawings or other materials paid for or furnished by SIGA for the purpose of performing the Work are and remain exclusively the property of SIGA. The Seller must safeguard all such property while it is in the Seller's custody or control and will be liable for any loss or damage to such property. SIGA may require the Seller to insure the property. The Seller must use the property only for the purposes of performing the Work, and return it to SIGA promptly upon request. Any such property described above may be removed by SIGA from the Seller's premises. The Seller agrees to waive and does hereby waive any lien it may have in regard to such property.
  - (d) The Seller must obtain and maintain the following insurance coverage until the Services have been completed to SIGA's satisfaction:
    - (i) Workers' Compensation insurance in accordance with the requirements of *The Workers' Compensation Act* (Saskatchewan);
    - (ii) professional liability insurance coverage for all professionals employed by the Seller who will be working in their designated professional capacity in providing the Services, such coverage to be provided through their membership in a professional association or by a separate professional liability insurance policy, in an amount of at least two million dollars (\$2,000,000.00) per occurrence or claim; and
    - (iii) commercial general liability insurance against claims for personal and bodily injury, death or damage to property of others arising out of any Work conducted under the Contract. Such insurance must provide for coverage of not less than two million dollars (\$2,000,000.00) per occurrence and name SIGA, its officers, employees and agents as additional insureds.

The above are minimum insurance requirements intended to provide basic coverage for the Seller. It is the responsibility of the Seller and its insurance advisors to determine whether these amounts are sufficient or whether additional or other insurance coverage should be obtained.

- (e) The Seller must ensure that the Work and the property on or in which the Work is performed, and all amounts payable under the Contract, are kept free and clear of all statutory liens including (without limitation) builders' liens, and other liens and trust claims. If the Seller fails to do so, SIGA may, without waiving any of its rights or remedies against the Seller for or by reason of such failure:
  - (i) withhold any payment otherwise due to the Seller until SIGA has received such affidavits, waivers, discharges and releases with respect to the liens or claims as SIGA may require; and
  - (ii) pay such amounts as may be required to obtain discharges or releases of the liens or claims, and to deduct them from amounts otherwise due to the Seller.
- (f) The Work remains at the risk of the Seller until payment for the Work has been authorized in writing by SIGA in accordance with section 16. The Seller must replace, at its own expense, any and all Work damaged or destroyed by any cause whatsoever prior to SIGA having given written authorization to pay for the Work.
- (g) The Seller is an independent contractor and not an agent, employee or representative of SIGA. The Seller must not hold itself out to be an agent, employee or representative of SIGA.
- (h) The Seller must perform its Work in accordance with the schedules and Work programs established by SIGA and must fully cooperate with SIGA and others engaged in Work on the project so that the Work on the entire project may be performed most efficiently but always consistent with good practices. If conflicts arise between the Seller's Work schedule and those of others engaged to work on the project, SIGA may require the Seller and those other parties to work according to a schedule determined by SIGA.
- (i) The Seller must carry on its Work so that the premises are at all times clean, orderly and free from debris. Upon completion of the Work, the Seller must remove all equipment and unused materials from the project, clean up all refuse and debris, and leave the Work site clean, orderly and in good condition.

- (j) Whenever Work is performed on SIGA's premises or on premises under SIGA's control, the Seller must comply with all reasonable directions and requests of SIGA and with SIGA's work and safety rules, and must require its employees, agents, contractors and subcontractors to so comply. SIGA has the right to exclude personnel from SIGA's premises who do not comply with such directions, requests or rules and, at SIGA's option, to terminate the Contract if the Seller or its employees, agents, contractors or subcontractors fail to comply with this provision.

## **22. Delay or Suspension**

By advising the Seller in writing, SIGA may, at its sole option, from time to time, delay or suspend the delivery of Goods or the provision of Services under the Contract, in whole or in part, for such period of time as may, in the opinion of SIGA, be necessary. Where there is such a delay or suspension by SIGA, all terms and conditions of the Contract shall continue in full force and effect against the Seller, except for scheduled performance or delivery dates which shall be postponed accordingly.

## **23. Severance**

If a court or other lawful authority of competent jurisdiction declares any provision of the Contract to be invalid, illegal or unenforceable, the Contract continues in full force and effect with respect to all other provisions. All rights and remedies under such other provisions survive any such declaration.

Any invalid, illegal or unenforceable provision must, to the extent permitted by law, be severed and replaced by a valid, legal and enforceable provision that comes as close as possible to the intention underlying the severed provision as may be ordered by a court or other lawful authority of competent jurisdiction or as may be agreed to in writing by SIGA and the Seller.

## **24. Set-off or Deduction**

All claims for money due or to become due from SIGA under the Contract may be set off or reduced by SIGA for any counterclaim arising out of this transaction or for any other claim SIGA may have against the Seller.

## **25. Survival of Obligations, Representations, Warranties and Indemnities**

The obligations of the Seller contained in section 28, as well as all representations, warranties and indemnifications made or given by the Seller, survive the cancellation or termination of the Contract, and the performance or completion by the Seller of its obligations under the Contract.

## **26. Arbitration**

If a disagreement arises between SIGA and the Seller in relation to the Contract that cannot be resolved by them, either party may request that the other party agree to submit the matter to arbitration. If the other party agrees, the matter will be arbitrated and arbitrators will be selected in the manner provided below. If the other party does not agree to have the matter submitted to arbitration, the party who requested arbitration is not entitled to have the matter arbitrated.

The arbitrator may either be a single person chosen by and satisfactory to both parties, or an arbitration panel of three, one member to be selected by each party and a third selected by the two members selected by the parties. The decision of the arbitrator or arbitration panel must be accepted as final and binding. The cost of arbitration will be split equally between SIGA and the Seller. In all other respects, the provisions of *The Arbitration Act* (Saskatchewan) govern.

## **27. Advertising**

The Seller, and anyone on the Seller's behalf, must not advertise or publish anything that includes a claim by the Seller that it has supplied or provided Goods or Services to SIGA unless the Seller has first obtained the written consent of SIGA.

**28. Disclosure of Information**

All data and information furnished by SIGA to the Seller in connection with the Contract, including, without limitation, data and information in the form of specifications, drawings, reprints, technical information, equipment, prototypes, forecasts, schedules, or other technical or business information, are the exclusive property of SIGA. Such data and information must be held in strict confidence by the Seller, its employees, agents, contractors and subcontractors, and must be promptly returned to SIGA upon request by SIGA. The Seller must ensure that all such data and information is kept confidential and that it is not disclosed to any other person, nor used for any purpose other than to provide the Goods or Services requisitioned in the Purchase Order, unless and until it comes into the public domain (other than by or through the Seller) or SIGA consents in writing to its disclosure.

**29. Applicable Laws**

The Contract must be interpreted, performed and enforced in accordance with the laws of Saskatchewan and of Canada as are applicable in Saskatchewan.

**30. Notices**

Any notice given or other communication sent by a party with respect to the Contract must be in writing and must be delivered or sent by registered mail, postage prepaid, or by facsimile transmission, addressed to the other party at the address or facsimile number last provided by that party to the other. Any notice or communication that is:

- (a) delivered is deemed to have been received on the date of the delivery; or
- (b) sent by registered mail is deemed to have been received on the third business day of SIGA following the date of mailing; or
- (c) sent by facsimile transmission is deemed to have been received on the next business day of SIGA following the date of transmission.

If mail service is disrupted by labour controversy on the date of mailing or within three business days after the date of mailing, the notice or communication must also be delivered or sent by facsimile transmission. Either party may change its address or facsimile number by giving notice in writing to the other party in the manner set out above.

**31. Conflict**

If there is any conflict between the terms and conditions in this document and those set out in the Purchase Order, those in the Purchase Order prevail.