

**VIEJAS ENTERPRISES**  
**PURCHASE ORDER GENERAL TERMS AND CONDITIONS**

1. **ACCEPTANCE:** Viejas Enterprises, a wholly owned business enterprise of the Viejas Band of Kumeyaay Indians, a federally recognized Indian tribe that retains its full sovereign immunity (“Viejas”) and Seller shall be bound by these Purchase Order General Terms and Conditions and the terms set forth in Viejas’ applicable Purchase Order (together referred to as “Purchase Order” or “Agreement”) upon Seller’s acceptance, which acceptance shall be made either by the return of acknowledgement copy of the applicable Purchase Order or by Seller commencing performance. The conditions of this Purchase Order shall be the exclusive agreement between Viejas and Seller with respect to the material or service ordered hereunder. No additional terms or modifications proposed by Seller shall be binding on Viejas unless agreed to in writing and signed by Viejas prior to fulfillment. In no event shall any modifications be effective or different terms be imposed by the terms and conditions of any acknowledgment order or other form submitted by Seller, whether or not acknowledged or accepted by Viejas. This Purchase Order shall prevail and in the event there are any inconsistencies between this Purchase Order and the terms and conditions of any acknowledgment letter or other forms submitted by Seller. Goods received which are accompanied or preceded by documents which attempt or purport to change or modify these terms and conditions or the conditions of purchase incorporated by reference into each and every Purchase Order shall, at Viejas’ option, be treated as unsolicited goods.
2. **PRICES:** By accepting this offer to buy, Seller agrees to provide the materials or services detailed on the Purchase Order at the specified prices. Viejas will not be obligated to pay a higher invoice price, without written agreement that amends the Purchase Order or contract price. Unless otherwise specified, the price indicates the costs of boxing, crating, handling, damage claims, carting, drayage, storage, or other packing requirements.
3. **INVOICES:** Invoices shall contain purchase order number and an itemized listing of the purchased goods or service. The itemized listing must include detail of any service performed, and/or item numbers, item descriptions, sizes, quantities, unit prices, and extended totals in addition to any other information specified elsewhere herein. Invoices shall be forwarded to Viejas’ accounting department, 5000 Willows Road, Alpine California, 91901. Payment of any invoice shall not constitute acceptance of the material or goods and shall be subject to adjustment for errors, shortages, defects in the material or goods, or other failure of Seller to meet the requirements of this Purchase Order.
4. **CASH DISCOUNTS:** Time in connection with any discount offered will be computed from the date (i) of actual delivery and acceptance at Viejas’ specified location, or (ii) the invoice conforming to Paragraph 3 is received, whichever is later. Payment is deemed to have been made for the purpose of earning the discount on the date Viejas’ check is deposited postage paid in the U.S. Mail.
5. **TAXES:** Viejas is a tax exempt entity; therefore, taxes shall not be applied to any purchases made by Viejas and delivered to the Viejas reservation.
6. **PACKING AND SHIPMENT:** Unless otherwise specified, all goods and material shall be packed, packaged, marked and otherwise prepared for shipment in a manner which is (i) in accordance with good commercial practice, (ii) acceptable to common carriers for shipment at the lowest rate for the particular material and in accordance with I.C.C. regulations, and (iii) adequate to ensure safe arrival of the material at the named destination. Seller shall mark all containers with necessary lifting, handling, hazardous material identification, and shipping information and also purchase order numbers, date of shipment and the names of the consignee and consignor. An itemized packing sheet must accompany each shipment unless otherwise specified. The packing sheet shall contain the purchase order number; description of any service performed, and/or item number, description of items, sizes, number of cartons/boxes and quantities. No partial or complete delivery shall be made hereunder prior to the date or dates shown on the purchase order, or after cancellation without prior written consent of Viejas.
7. **MSDS’s:** For all services performed or shipments made that include Hazardous Substances, an appropriate Material Safety Data Sheet (“MSDS”) and labeling must precede or accompany each shipment, as required to satisfy Cal/OSHA, and all other applicable local, state, and federal laws. Further, Seller shall send to Viejas updated MSDS’s and labeling as required by applicable law.
8. **F.O.B. POINT:** F.O.B. point in all cases is Viejas’ designated plant or plants, unless otherwise specified. Freight, drayage, or similar charges will be prepaid in accordance with negotiated agreements between Viejas and Seller.
9. **WARRANTIES:**
  - a. Seller warrants that all goods, materials, and/or services delivered hereunder shall be free from defects and errors in workmanship, material manufacturing and design and shall comply fully with the requirements of this Purchase

Order, including related specifications, drawings, proposals, samples, and/or other descriptions provided in support of Viejas' decision to purchase. Seller further warrants that all goods and material purchased hereunder shall be merchantable quality, new and unused (unless otherwise specified in this Purchase Order), and shall be fit and suitable for the purposes intended. The foregoing warranties shall constitute conditions and are in addition to all other warranties, whether expressed or implied, and shall survive any delivery, inspection, acceptance or payment by Viejas. Viejas' approval of Seller's goods, materials, services and/or design shall not relieve Seller of the Warranties set forth in this section. All warranties shall run to Viejas, Viejas' customers and Viejas' assignees.

- b. If any goods or material delivered hereunder does not meet the warranties specified herein or otherwise applicable, Viejas may elect any of the remedies provided at law or in equity or under this Purchase Order. Seller agrees to defend and indemnify Viejas against all damages occasioned by or arising from any breach of the warranties set forth herein, including, but not limited to, the cost of replacing or recalling Viejas' goods or material.

#### **10. INSPECTION AND REMEDY:**

- a. All goods and material purchased hereunder shall be subject to inspection by Viejas to the extent practicable, in any event, prior to final acceptance. Notwithstanding any prior inspections or payments made hereunder by Viejas, all goods and material shall be subject to final inspection and acceptance at Viejas' location within a reasonable time after delivery.
- b. In the event any goods or material are found defective or not in conformity with Viejas' specifications or the requirements of the Purchase Order, Viejas shall have the right either to (i) reject the material and require Seller to replace it within the delivery schedule, or (ii) require Seller to correct it within the delivery schedule, or (iii) accept it with an adjustment in price, or (iv) refuse the delivery and cancel the Purchase Order, all at the expense of Seller, including any transportation and handling costs. If Seller fails to replace or correct material which has been rejected or required to be corrected within the delivery schedule, or if Viejas rejects material as not conforming to the Purchase Order, Viejas may (i) replace or correct such material and charge Seller with the expense incurred thereby, or (ii) cancel this Purchase Order and cancel any outstanding deliveries hereunder, without prejudice to Viejas' rights to claim damages or to enforce any other remedy provided by law and equity. Non-conforming goods and material may be returned at Seller's expense, including any transportation and handling costs.
- c. (Agreements involving labor and/or services): All labor and/or services performed by Seller shall be subject to Viejas' inspection before acceptance, and payment for such labor and/or services shall be contingent upon Viejas acceptance. Such acceptance shall not constitute a waiver of any of the rights granted to Viejas under this section.

**11. DELIVERY:** Time is of the essence in this Purchase Order. If any shipment or delivery is made which is not in all respects in accord with the provisions of the Purchase Order (including time of shipment or delivery), Viejas reserves the right without liability to reject such delivery and, if Viejas so elects, Viejas may treat this Order as repudiated by Seller and may cancel any outstanding delivery hereunder, without prejudice to Viejas' rights to claim damages or to enforce any other remedy. All expenses of transportation and storage, if any, resulting from such cancellation shall be paid by Seller.

**12. TERMINATION:** Viejas may, at any time, terminate this Order in whole or in part by written, fax or telegraphic notice, or voice notice confirmed in writing. If Viejas terminates this Purchase Order prior to Viejas' receipt of the goods and materials purchased hereunder and if such termination is based solely on Viejas' convenience, then Seller shall be entitled only to any shipping and handling engendered by this Purchase Order prior to Viejas' termination thereof. If any cancellation by Viejas is caused by Seller's breach of any condition hereof, including breach of warranty, or by Seller's delay, except delay due to consideration beyond the Seller's control and without Seller's fault or negligence, Seller shall not be entitled to any claim of costs and Viejas shall have against Seller all remedies provided by law and equity. In no event and under no circumstances shall Seller have any rights to collect from Viejas any consequential or indirect damages (including lost profits) hereunder or otherwise.

**13. TITLE:** Title in or to the property, and the risk of loss of goods or materials purchased under this Purchase Order, shall remain in Seller and not transfer to Viejas, until such materials are delivered and accepted at the F.O.B. point specified in the Purchase Order.

**14. WAIVER:** The failure of Viejas to enforce at any time any of the provisions of this Purchase Order, or to exercise any election or option provided herein, or to require at any time performance by Seller of any of the provisions hereof, shall in

no way be construed to be a waiver of such provisions and shall not affect the right of Viejas thereafter to enforce each and every provision.

15. **CHANGES:** Viejas shall have the right to make, from time to time and without notice to any sureties or assignees, changes to packing, testing, destinations, specifications, designs and delivery schedules, but no additional charges shall be allowed unless authorized in writing by Viejas. If such changes affect the amount to be paid by Viejas, Seller shall notify Viejas immediately and negotiate an adjustment.
16. **ASSIGNMENT, SUBCONTRACTING:** Seller shall not assign this Purchase Order or any part thereof, or subcontract or delegate any performance hereunder, without first obtaining Viejas' written consent.
17. **COMPLIANCE WITH LAWS:** Seller shall in the performance of this Purchase Order comply with all applicable federal, state or local laws, ordinances, rules and regulations. Seller certifies to Viejas that the goods and materials purchased by Viejas hereunder are in compliance with the Toxic Substances Control Act, 13 U.S.C. & 2601, et seq. and Occupational Safety and Health Act of 1970. Seller further warrants that no goods or material shipped or delivered and on the order of Viejas is, as of the date shipped or delivered, adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act as amended, or any substantially similar state law, or is an article which may not under such Act or law be introduced into intrastate or interstate commerce. Seller certifies to Viejas that the materials purchased by Viejas hereunder were produced in compliance with all applicable laws and regulations including, but not limited to (i) Fair Labor Standards Act of 1938 as amended, (ii) Sec. 303 of the Rehabilitation Act of 1973 (41 CCFR 60-741), (iii) Sec. 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 (CFR60-230-4) and (iv) Executive Order 11246, Equal Employment Opportunity as amended (30 CFR 60-40).
18. **COMPLIANCE WITH VIEJAS REGULATIONS:** Seller represents and warrants that it has all licenses and permits necessary to conduct its business and perform its obligations under this Agreement, and agrees to comply with all applicable federal, state and local statutes, regulations, codes, ordinances and policies in performing its obligations under this Agreement. Seller will also comply with all applicable regulations, standards, policies and procedures, and requirements of the Viejas Band of Kumeyaay Indians, a federally recognized Sovereign Indian tribe, its Enterprises, including but not limited to, safety requirements; security requirements; Tribal Government Gaming Commission licensing, Minimum Internal Control Standards and regulations; Tribal Gaming Compact requirements; and applicable insurance and bonding requirements.  
  
**(Gaming Devices, Supplies, or Equipment):** If Seller is leasing, supplying or otherwise providing gaming devices, gaming supplies or gaming equipment, Seller shall obtain and maintain in good standing, a Viejas' Tribal Government Gaming Commission vendor gaming license from the Viejas' Tribal Government Gaming Commission. Such license shall be obtained prior to the culmination of any agreement for the sale, lease or loan of any gaming device, supplies or equipment. Such license shall be maintained in good standing throughout the duration of any business relationship with Viejas. Seller will be accountable for maintaining compliance with all applicable gaming regulations within the jurisdiction of Viejas and Viejas' Tribal Government Gaming Commission. Failure to comply with applicable laws and regulations within the jurisdiction of the Viejas Tribal Gaming Commission will subject the licensee to possible regulatory sanctions. Sanctions may include license suspension or revocation and/or the imposition of fines and may invalidate any existing contracts. Additionally any gaming devices, supplies or equipment sold, leased or otherwise supplied to Viejas shall first be examined or reviewed, approved, and authorized by Viejas Tribal Gaming Commission. In addition, where deemed necessary or appropriate by the Viejas Tribal Gaming Commission, gaming devices, gaming supplies or gaming equipment shall be tested and certified by an independent testing laboratory at the manufacturer's, vendor's or supplier's expense. All contracts or agreements for the sale, lease or loan of gaming devices, gaming supplies or gaming equipment shall require review and approval of the Viejas Tribal Gaming Commission prior to execution by either or both parties.
19. **CONFIDENTIALITY AND NAME OR LOGO USE:** Seller shall treat all information disclosed by Viejas pursuant to this Agreement as confidential, and Seller shall not disclose or use any such information except as required in connection with the performance of its obligations under this Purchase Order. Seller shall not use the name, logos trademarks or other intellectual property of Viejas without the prior written permission of Viejas. All of the work performed by Seller pursuant to this Purchase Order, including but not limited to drafts, drawings, sketches, concepts, ideas, designs and the like is the sole property of Viejas, and Seller shall not disclose or display such work to any third party without first obtaining written consent of Viejas.
20. **INDEMNITY/HOLD HARMLESS:** Seller shall indemnify, hold harmless, protect and defend Viejas, Viejas Band of Kumeyaay Indians and its Tribal Council, trustees, officers, employees and representatives (the "Indemnified Parties") for, from and against any and all demands, claims, suits, damages, losses, liabilities, costs and expenses, including, but not limited to, court costs and attorneys' fees (the "Indemnified Matters"), of any nature whatsoever (including, but not limited to, damage to or loss of property, bodily injury, tort, breach of contract, or death), directly or indirectly arising out of or in connection with the performance of Seller's obligations under this Agreement. Contractor's indemnification obligations

under this section shall apply whether the Indemnified Matters are due in part to the concurrent fault or negligence of the Indemnified Parties or others.

- 21. INDEMNITY FOR INTELLECTUAL PROPERTY INFRINGEMENT:** If applicable, Seller warrants that the transfer to Viejas and Viejas' licensed use of any item, in its original form, will not infringe any patents, copyrights or trade secrets of any other entity. Seller will indemnify, hold harmless, protect and defend Viejas Band of Kumeyaay Indians and its Tribal Council, trustees, officers, employees and representatives (the "Indemnified Parties") from any claim, liability and expense, including reasonable attorneys' fees, arising out of any breach of the foregoing warranty. If the use or resale of such item is finally enjoined, Seller shall, at Viejas' option: (i) procure for Viejas the right to use or resell the items, (ii) replace them with equivalent non-infringing items, or (iii) modify them so they become non-infringing but equivalent.
- 22. INSURANCE:** Contractor, at its own expense, shall procure and maintain policies of insurance to include the following coverage: (i) Workers' Compensation Insurance coverage for its own employees that meets or exceeds the applicable statutory limits, as well as Employer's Liability coverage with limits of at least \$500,000; (ii) Comprehensive General Liability Insurance of at least \$1,000,000 combined single limit and \$2,000,000 annual aggregate; and (iii) Comprehensive Automobile/Vehicle/Equipment Liability Insurance, including Automobile/Vehicle/Equipment Non-Ownership Liability, with a limit of not less than \$1,000,000 and Umbrella or Excess Liability Insurance in an amount not less than \$2,000,000. In addition, such policies shall provide that Viejas is named as an additional insured.
- 23. LIMITATION OF LIABILITY:** Except as may not be disclaimed by applicable law, Viejas' total liability, whether for breach of contract, warranty, negligence, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under applicable law, but not to exceed the purchase price of the products or services for which losses or damages are claimed. **VIEJAS WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT.** This limitation of liability will survive the expiration or termination of this Agreement.
- 24. ENTIRE AGREEMENT:** This Purchase Order represents the entire understanding as of the effective date hereof between the parties with respect to the subject matter hereof, and supersedes all prior agreements, negotiations, understandings, representations, statements and writings between the parties relating thereto. No modification, alteration, waiver or change in any of the terms of this Purchase Order shall be valid or binding upon the parties hereto unless made in writing and duly executed by each of the parties hereto.