

FOREST COUNTY POTAWATOMI COMMUNITY STANDARD PURCHASE ORDER TERMS AND CONDITIONS

1. **DEFINITIONS:** "Buyer" means Forest County Potawatomi Community (FCPC). "Seller" means the person, firm, company, limited liability company, corporation or other entity supplying the goods or services under FCPC's purchase contract/PO, including these Terms and Conditions (the "PO"), and includes all sales or other agents, subcontractors, employees and distributors thereof.
2. **PO ACCEPTANCE:** The PO contains all of the terms and conditions applicable to the goods and/or services to be delivered to FCPC pursuant to the PO. Upon acceptance of the PO, shipment of goods or commencement of services, Seller shall be bound by the provisions of the PO, including the special provisions on the face of the PO, unless Seller objects to such terms in writing prior to shipping goods or commencing services, or unless the parties have entered into a separate agreement, in such event the terms and conditions of the agreement shall control and these terms and conditions shall supplement such agreement. In the event of any objection, the PO may only be modified pursuant to a writing executed by a duly authorized representative of FCPC, and shall control over any contrary term or condition contained in any form or pre-printed document, acknowledgement or delivery receipt provided by Seller to FCPC. No terms and conditions other than those stated herein and no agreement or understanding, in any way purporting to modify these terms or conditions, shall be binding on FCPC without FCPC's written consent. Any additional or different terms in the Seller's form are hereby deemed to be material alterations and notice of objection to them and rejection of them is hereby given.
3. **DELIVERY:** Unless otherwise specified in the PO, all shipments shall be F.O.B. FCPC to the "ship to" location specified in the PO. Delivery shall be in accordance with the schedule set forth in the PO, unless otherwise agreed to by FCPC. Delays in shipment shall be reported immediately by Seller to FCPC. FCPC reserves right to cancel the PO, in whole or in part, if Seller should fail to make deliveries in accordance with the terms of the PO, or require Seller to ship goods, at Seller's expense, by expedited routing. Time is of the essence of this PO and it is mutually agreed between the parties hereto that the performance of all of the terms and conditions herein shall be an essential part of this PO.
4. **ACCEPTANCE BY FCPC:** Goods and/or services purchased under the PO are subject to FCPC's inspection and approval within a reasonable time, but not less than sixty (60) days after delivery. FCPC, at its option, may reject all or any portion of such goods or services which do not conform in every respect with the terms of the PO, or require Seller to provide replacement goods or re-perform services in conformity with the terms of the PO. If FCPC elects to accept nonconforming goods or services, FCPC, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the contract price thereof to compensate FCPC for the nonconformity. Any acceptance by FCPC shall not be deemed a waiver or settlement of any defect in such goods and/or services.
5. **RISK OF LOSS:** Until accepted by FCPC as provided above, Seller shall bear all risk of loss and damage, unless such loss or damage results from the negligence of the FCPC.
6. **WARRANTY:** Seller warrants that (i) all goods delivered under the PO will be free from defects in material and workmanship, and conform to applicable specifications, (ii) Seller has good title to the goods provided to FCPC and passes such title to FCPC free from any liens, security interests or other encumbrances, (iii) the goods are merchantable and fit for the purpose intended, (iv) all services shall be completed in a professional, workmanlike manner and in accordance with applicable specifications, and (v) the goods and services provided under the PO will not infringe on or violate any patents, trade secrets, trademarks, copyrights or other rights of any third party. To the extent applicable, Seller shall assign all express warranties of any manufacturer of the goods for the benefit of the FCPC.
7. **ASSIGNMENT OF RIGHTS:** Seller may not assign or delegate its rights or duties hereunder without the express written consent of FCPC.
8. **CHANGE, CANCELLATION AND TERMINATION:** The PO can be changed, terminated or canceled by FCPC for any reason, including convenience upon prior written notification to Seller. In the event of a change, FCPC and Seller will make a fair and equitable modification to their rights and obligations under the PO, if such change results in an increase or decrease in costs to be incurred or time needed to complete performance of the PO. Termination or cancellation for convenience by FCPC will entitle Seller to payment for only those goods or services delivered, received and accepted, and not subsequently rejected by FCPC. FCPC may immediately terminate the PO without prejudice to any right or remedy, after giving Seller notice of any breach by Seller of its obligations hereunder.
9. **TAXES:** FCPC, being a sovereign nation, is exempt from any State Sales and Use Tax for all materials delivered to Trust Lands. As such, the Seller will not charge the Tribe for any such taxes and will further work with the Tribe to assure that all purchases have the exemption applied to them where applicable. It is understood that the FCPC shall not be responsible for the payment or withholding of any taxes for payments made under the terms of this PO.
10. **USE OF FCPC'S NAME:** Seller agrees not to use the name of FCPC or disclose the existence of the PO in any advertising, promotion or other written or oral disclosure without the prior written consent of FCPC.
11. **EXCUSE:** Seller shall be excused for any nonperformance due principally to circumstances, which are both beyond its control and not foreseeable, but in no event shall Seller be excused for any inability to obtain goods or services necessary for Seller's performance, nor for any labor disputes involving employees of Seller, FCPC, any subcontractor of either, any carrier or any other person.
12. **INDEMNIFICATION:** Seller agrees to indemnify and hold harmless FCPC from and against any and all claims, actions, damages, or other losses arising from or by reason of Seller's performance hereunder, except to the extent that such claims, actions, damages or other losses result from FCPC's gross negligence or willful misconduct. As used in this indemnification provision and for purposes of Seller's insurance, "FCPC" shall be deemed to include FCPC's Council, officers, employees, agents, guests and invitees.
13. **INSURANCE:** At all times during its performance hereunder Seller shall obtain and keep in force workers' compensation insurance for all of its employees within statutory limits; general liability insurance, of not less than \$1,000,000 per occurrence, and \$2,000,000 in aggregate, and automobile liability for all owned, non-owned and hired vehicles used in carrying out the PO, with limits of not less than \$100,000. For PO's involving Gaming Contractors, public liability insurance with limits of not less than \$250,000 for any one person and \$4,000,000 for any one occurrence for personal injury, and \$2,000,000 for any one occurrence for property damage must be obtained. Seller must provide FCPC with a certificate of insurance evidencing Seller's compliance with the foregoing insurance provisions with the PO. FCPC's obligations under the PO are dependent upon Seller's meeting the insurance requirements set forth above.
14. **COMPLIANCE WITH LAWS:** Seller shall comply with all laws and governmental rules, regulations and POs applicable to the goods delivered and/or services rendered under the PO, including, but not limited to, obtaining all necessary licenses and permits.
15. **HAZARDOUS MATERIALS:** All packaging, transportation and handling of hazardous materials shall be in accordance with applicable laws and regulations. All Sellers who supply or use hazardous materials on site shall provide Material Safety Data Sheets with the PO.
16. **FCPC'S PROPERTY:** All materials, including documents, drawings, specifications and tools, furnished or paid for by FCPC shall remain the exclusive property of FCPC. All documents, drawings and specifications shall be considered confidential and not disclosed to any third party. All materials shall be returned to FCPC upon Seller's completion of its obligations under the PO. Seller assumes all liability for loss or damage of such materials, excluding normal wear and tear.
17. **INSOLVENCY:** In the event of any proceedings, voluntary or involuntary, in bankruptcy or insolvency by or against Seller, or in the event of the appointment of an assignee for the benefit of creditors or of a receiver, Seller must provide notice to FCPC and FCPC shall be entitled to cancel the PO, in whole or in part, without any liability whatsoever.
18. **INDEPENDENT CONTRACTOR:** Seller is an independent contractor, who provides similar services to others, for all purposes of the PO, and has no express or implied authority to bind FCPC by contract or otherwise.
19. **CONFIDENTIALITY:** Seller acknowledges that it may be exposed to confidential information of FCPC. Confidential information includes, but is not limited to, data relating to FCPC's operation, customer data, financial records, and other information of the business affairs of FCPC. Seller shall not, directly or indirectly, use, disseminate, disclose, or in any way reveal or use beyond the scope of authority granted by FCPC all or any part of the confidential information, which it will be exposed to, and shall use such confidential information only to the extent specifically authorized by FCPC. Upon cancellation or termination of the PO for any reason whatsoever, Seller shall turn over to FCPC any and all copies it may have of confidential information. Seller acknowledges that this provision shall survive the termination of the PO for five years. The confidentiality provisions of this Paragraph shall apply to and be binding upon Seller's officers, employees and representatives.
20. **WAIVER:** Waiver of a breach of any provision of the PO by FCPC shall not constitute waiver of future compliance with such provision nor shall it be construed as a waiver of any other breach. Any waiver must be in writing, signed by both FCPC and Seller.
21. **SEVERABILITY:** If any provision of the PO, including these Terms and Conditions, shall be declared illegal, void or otherwise unenforceable, the remaining provisions shall not be affected and will remain in full force and effect.
22. **CHOICE OF LAW:** This Agreement shall be construed under the statutory laws of the Forest County Potawatomi Community. To the extent that no relevant provision(s) exist within the statutory laws of the Forest County Potawatomi Community, the Tribal Court shall apply the law of the State of Wisconsin. Nothing in this Agreement shall be construed or interpreted to effect a waiver, either limited or otherwise, of the Tribe's sovereign immunity from suit, and no waiver of FCPC's immunity from suit may be implied from any related action or document executed.
23. **ACCESS:** Seller agrees that all persons providing services on FCPC's premises shall be 18 years of age and to comply with FCPC's reasonable business and security policies and any applicable regulatory restrictions governing such access.
24. **PRECEDENCE:** In the event that the various parts of the PO are inconsistent, the following order of preference will apply: (i) contract or agreement incorporated in the PO by reference, (ii) special terms and conditions of the face of the PO, (iii) these Terms and Conditions.