

**ELGIN RIVERBOAT RESORT d/b/a GRAND VICTORIA CASINO ("BUYER")  
GENERAL TERMS AND CONDITIONS**

**EXHIBIT E**

(ALL)

1. **ACCEPTANCE.** Any purchase order or other agreement constitutes an offer by Buyer and becomes a binding contract when acknowledged by the provider or seller ("Seller") or part of the goods or services covered by a purchase order or other agreement are provided. If Buyer does not receive from Seller a signed acknowledgment copy of a purchase order or other agreement within 15 days of the date elsewhere herein set forth on the reverse side, Buyer may, at its option, cancel a purchase order or other agreement without any liability to Seller whatsoever. Acceptance of this order is expressly limited to the terms stated in a purchase order or other agreement and Seller shall be bound thereby upon execution of the acknowledgment copy of a purchase order or other agreement or commencement of performance hereunder. Buyer objects in advance to the inclusion of additional or different terms proposed by Seller unless such terms are accepted in writing by an authorized agent of Buyer; Buyer's acceptance of the goods shall not be deemed an acceptance of such terms. No change in, modification of, or revision to a purchase order or other agreement shall be valid and no conditions imposed by Seller in acknowledging a purchase order or other agreement shall be binding on Buyer unless accepted in writing and signed by an authorized agent of Buyer.
2. **PACKAGING.** All packaging shall be in conformance with good commercial practice. All containers shall have attached identification, including the purchase order # and material descriptions. No charge shall be made for cartons, wrapping, packing, boxing, crating, delivery, drayage or other costs, unless such charge is expressly provided in a purchase order or other agreement.
3. **SHIPMENTS.** The goods shall be shipped by Seller in accordance with the shipment terms elsewhere herein specified. If not specified, goods will be shipped within 15 days after receipt of this order. The original bill of lading (referencing a purchase order or other agreement #) and a packing list shall be delivered by Seller to Buyer at the "ship to" address elsewhere herein set forth as far in advance of the arrival of the goods as possible. Buyer is relying on manufacture, shipment, delivery, installation, and acceptance of the goods based on the schedule elsewhere herein set forth. Time is of the essence of a purchase order or other agreement. Seller shall not manufacture, ship, or deliver goods in advance of any scheduled date without Buyer's written consent. Buyer, at Buyer's option, may refuse or return at Seller's expense all or any part of: (1) shipments which do not conform to the shipping or delivery dates specified by Buyer (whether early or late); (2) shipments in excess of the quantities ordered or in lesser quantities than ordered; (3) shipments which contain defective goods or which fail to conform to a purchase order or other agreement; or (4) goods which are not as represented or warranted. Any storage or warehouse charges incurred by Buyer due to delivery or shipment prior to the dates specified in a purchase order or other agreement will be at Seller's expense.
4. **INSPECTION AND REJECTION.** At Buyer's option, Buyer may (1) approve any plans and specifications for the goods prepared by Seller prior to Seller commencing manufacture, assembly and/or production of the goods and (2) inspect the goods during manufacture, assembly and/or production. All goods are subject to final inspection and acceptance by Buyer as to quality of materials and workmanship; conformance to specifications, drawings, notes, instructions, engineering notes, technical data and/or samples supplied by Buyer ("Data"); and general acceptability of goods. Final inspection shall be at the specified delivery site unless otherwise agreed in writing. Without limiting any other rights it may have, Buyer, at Buyer's option, may (1) hold, at Seller's expense subject to Seller's disposal, all rejected goods, (2) return all rejected goods to Seller, at Seller's risk and expense, including transportation and handling costs, (3) require Seller to repair or replace, at Seller's expense, any rejected goods, (4) require Seller to refund the price of any rejected goods, or (5) repair defects and deduct the cost of replacement or rejection would otherwise result in cancellation of the order. Buyer's acceptance of any portion of the goods ordered shall not obligate Buyer to accept future shipments nor be deemed a waiver of Buyer's rights hereunder or under law. Neither inspection of any goods, acceptance of any shipment nor payment of any contract price by Buyer shall constitute a waiver of damages or other remedies for any defects in any goods ordered hereby, failure to conform to Data, failure to meet any scheduled date, or other breach of a purchase order or other agreement.
5. **INVOICES/INSTRUCTIONS.** Seller shall invoice Buyer for the goods at the time of final shipment unless otherwise provided in a purchase order or other agreement. Invoices shall be rendered in duplicate and shall show the purchase order # for each separate purchase order and the code # for each item purchase. Buyer may return for revision any invoice that is not in the proper form and the discount period and payment term will be extended until the revised invoice is received. Seller shall comply with Buyer's billing and routing instructions contained herein or otherwise communicated to Seller by Buyer, or pay any extra expense incurred

by Buyer because of Seller's failure to do so. Unless otherwise provided in a purchase order or other agreement, Buyer may retain ten percent (10%) of the invoiced amount until 45 (forty-five) days after (1) Buyer's facility is open for business, or (2) Buyer's signed receipt of the goods, whichever is last to occur.

**6. PRICES.** All prices quoted are in U.S. dollars. Buyer shall make net payment to Seller in accordance with the terms elsewhere herein set forth. Unless otherwise provided in a purchase order or other agreement, the price includes all charges for freight and insurance. The price shall not be changed without Buyer's prior written agreement. Seller represents that the price charged for the goods and services covered by a purchase order or other agreement is commercially reasonable and is the lowest price charged by Seller to buyers of a class similar to Buyer under conditions similar to those specified in a purchase order or other agreement.

**7. COMPLIANCE WITH LAW.** Seller warrants that (1) it has obtained or will obtain all licenses, permits and similar approvals required to manufacture, sell, deliver and, if applicable, install the goods and perform the services required hereunder, including, without limitation of the foregoing, such licenses and approvals, if any, as may be required by the IGB (as defined below), and (2) the goods purchased by Buyer hereunder and the services performed by Seller hereunder shall be in compliance with applicable local, state and federal laws, rules, regulations, ordinances and directives, including, without limitation of the foregoing, the IGB Requirements (as defined below) and the requirements of any union having jurisdiction and, where applicable, UL requirements.

**8. TAXES.** Seller shall pay any sales, use, excise, income, property, unemployment, social security, or other governmental tax, surcharge, or tariff now or hereafter made or levied by any local, state, or federal government on the goods and/or services, including installation, covered by a purchase order or other agreement or the consignment or sale contemplated by it, and the price of the goods stated in a purchase order or other agreement shall not be increased by such taxes. Seller is an independent contractor and is solely responsible for all persons employed in connection therewith.

**9. GENERAL WARRANTIES.** Seller warrants that all goods and services furnished hereunder, whether supplied by Seller or by someone else, will (1) be new and of first quality, (2) be free from defects in materials and workmanship, (3) conform to applicable Data, (4) be free from design and specification defects, whether or not manufactured to Seller's specifications, (5) be fit for the purpose for which intended, (6) be of merchantable quality and fit and safe for consumer use, and (7) be free and clear of all liens and encumbrances at the time of shipment. All warranties hereunder shall run to Buyer, its successors, assigns, customers and the ultimate users or consumers of such goods and services. The express warranties contained herein shall not be deemed to limit, diminish, reduce, or waive any duties, warranties, or guaranties given separately by Seller or in law (expressed or implied). All warranties contained in a purchase order or other agreement shall be construed as consistent and cumulative with one another and with all warranties provided by law or given separately by Seller. In the event of a breach of any warranty in a purchase order or other agreement, Buyer shall have all rights and remedies available at law or in equity or otherwise.

**10. CHANGES.** Buyer may at any time, by written notice to Seller, make changes in a purchase order or other agreement, including, without limitation, changes in the specification of the goods or services, quantities, method of shipping or packing, place of inspection, acceptance, point of delivery, delivery schedule, or other terms of a purchase order or other agreement. If any such change increases or decreases the cost of goods or services or the time required for performance of such order, Seller shall notify Buyer within 5 days after Seller's receipt of the above-described notice from Buyer. If such change in cost and/or time is acceptable to Buyer, then Buyer and Seller shall execute a change order approving the same; no such change shall be effective without a change order executed by Buyer and Seller. Buyer reserves the right to correct clerical errors.

**11. INDEMNIFICATION/INSURANCE.**

a. Seller agrees to indemnify and defend Buyer, its affiliates and their respective officers, employees, agents, successors and assigns for, from, and against any and all claims, demands, actions, obligations, liabilities, fines, penalties, damages, injuries, losses, costs, expenses and attorneys' fees arising from or connected with the goods purchased and services rendered hereunder, including but without limitation, any of the following: (1) breach of express or implied warranty, strict liability, or other liability arising from any defect in the goods purchased or the methods utilized in performing the order, (2) the acts or omissions of Seller or any subcontractor or party under Seller's control, (3) any claim of infringement of patent, trademark, trade name, copyright, trade secret, or other similar claim of right now or hereafter existing under the laws of any state or country relating to the manufacture, sale, or use of the goods or services, (4) any claim for royalties, unfair competition, or the like arising from any license or like agreement or arrangement between Seller and third parties regarding such goods or services, or (5) the delivery and/or installation of any goods by Seller or any subcontractor or party under Seller's control on property owned, leased, occupied, or controlled by Buyer.

b. Seller shall maintain, and provide Buyer with proof that it maintains, primary and non-contributing products liability insurance with minimum limits of at least \$2,000,000 for bodily injury and property damage and blanket broad form vendor's coverage (or such other limits as may be specified by Buyer), designating prior written notice to Buyer in the event of cancellation or material reduction of coverage. Seller

shall also maintain, and provide Buyer with proof that it maintains, workers' compensation insurance in the form and amount required by applicable law covering any employees or agents of Seller performing services hereunder or employed by Seller, designating prior written notice to Buyer in the event of cancellation.

**12. SUPPLEMENTARY INFORMATION/EQUIPMENT**

a. Any Data referred to in a purchase order or other agreement or provided by Buyer to Seller shall be deemed to be incorporated herein by reference as if fully set forth. If any discrepancies exist in such Data, Seller shall refer such matter to Buyer for instructions or interpretation.

b. Buyer shall retain title to all Data and information supplied to any person or entity, including, without limitation of the foregoing, Seller and Seller's employees, subcontractors, or government inspectors. Unless otherwise specified in a purchase order or other agreement, Seller shall promptly return all such Data and information to Buyer upon completion of a purchase order or other agreement. Seller shall keep all such data and information strictly confidential.

c. Unless otherwise specified in a purchase order or other agreement, any equipment or tools purchased or manufactured specifically for the production, manufacture, or assembly of Buyer's goods shall be delivered to Buyer at the earlier of completion of work or cancellation of a purchase order or other agreement, and no additional purchase price shall be charged to Buyer for such equipment or tools.

**13. WORK AT SITE.** When a purchase order or other agreement requires installation, or work at the site: (a) all work shall be done in strict accordance with union regulations, (b) insurance satisfactory to the Buyer shall be obtained and certificates evidencing such insurance shall be furnished before work is started, (c) prior to payment of the purchase price, Seller shall furnish lien waivers, releases, affidavits, and other documents as Buyer requires to keep Buyer's premises lien free, and (d) Seller shall comply with all of Buyer's requirements relating to job procedures, formalities, payrolls, etc.

**14. RESPONSIBILITY FOR GOODS AND RISK OF LOSS.** Unless otherwise provided in a purchase order or other agreement, goods shall be shipped "F.O.B. [Buyer's delivery location]" and all risk of loss of goods covered hereby shall be borne by Seller until goods have been received and accepted by Buyer or received, installed, and accepted by Buyer, whichever is applicable.

**15. ASSIGNMENT.** A purchase order or other agreement may not be assigned, and no duty or right hereunder may be delegated, by Seller and Seller may not use any subcontractor to perform hereunder, without the prior written consent of Buyer, which consent may be given or withheld in Buyer's sole discretion.

**16. LICENSE.** If any software is necessary to operate the goods, Seller hereby grants to Buyer and its affiliates a perpetual, irrevocable, fully paid-up, royalty-free and transferable license to use such software and any accompanying manuals. Seller shall provide Buyer with any updates, changes or modifications to such software and user manuals at no additional charge. Seller warrants that Seller has the right, title and authority to so license any such software to Buyer and its affiliates and that such software does not infringe on any other party's copyright, patent, trade secret or other intellectual property rights.

**17. ARCHITECTURAL/ARTISTIC WORKS.** All of the results and proceeds of Seller's services hereunder ("Materials") including without limitation, the goods, shall be considered as a work made for hire under the United States Copyright Act of 1976, with Buyer being deemed the author of the Materials. The parties acknowledge that under the terms of such arrangement, all such Materials, all elements thereof (including development of research materials) and all rights related thereto are the sole and exclusive property of Buyer, its successors and assigns, absolutely, for all patent and copyright terms and renewal terms, throughout the world, and for all uses and purposes whatsoever. All subcontractors or materials providers of Seller shall be hired under a work made for hire agreement suitable in form and content to Buyer. Seller and all subcontractors and materials providers shall prepare all Materials subject to the approval, and under the creative direction and control, of Buyer. In the event any Material is deemed not to be a work made for hire, then Seller agrees to and does hereby assign and transfer all right, title and interest in and to the Materials throughout the world, including the patents and copyrights and all works of authorship, to Seller for good and valuable consideration, receipt of which Seller hereby acknowledges, and Seller waives any statutory, equitable, "moral", or other rights that may accrue to it as a result of the production of the Materials. To effectuate such assignment and transfer, Seller hereby grants Buyer an irrevocable power of attorney, coupled with an interest, to execute on behalf of Seller any documents necessary to effectuate such assignment and transfer. Buyer shall own all rights, title and interest (including patents, copyrights and trade marks) in and to the Materials and shall have the right without any consent, notice or approval of any party, to add, alter, revise, adapt or interpose other material in the Materials or to destroy, distort, mutilate or otherwise modify the Materials. Seller further agrees to promptly execute any further assignments as may be requested by Buyer to ensure Buyer's ownership of the Materials and any further specific waivers that may be necessary to waive all residual or "moral" artists' rights under the Visual Artist's Rights Act of 1990 and any relevant state statutes. Seller hereby represents, warrants and covenants that the Materials shall be delivered free and clear of any and all liens, claims, or rights of any type whatsoever, that the production or exploitation of the Materials in the exercise of Buyer's rights hereunder will not violate or infringe upon any patent, copyright, literary right, intellectual property right, trade mark, trade name, right of

privacy or publicity, or any other right of any person or entity. Seller will obtain a written release from any person required to make this representation and warranty true, complete and correct to otherwise permit Seller to assign all rights to the Materials.

**18. CANCELLATION.**

a. In addition to all other rights and remedies provided for hereunder or under law (including without limitation, damages) Buyer may cancel all or any part of a purchase order or other agreement: (1) if Seller breaches any of the terms, warranties or provisions hereof, (2) upon the occurrence of any event entitling Buyer to reject the goods, (3) if any insolvency proceeding is instituted by or against Seller, or (4) if Seller provides material false information to Buyer.

b. Buyer, in Buyer's sole discretion, may cancel a purchase order or other agreement at any time as to the goods not then delivered.

c. Buyer shall not be deemed to have canceled a purchase order or other agreement unless it notifies Seller of its intent to do so in writing. Upon receipt of such notice, Seller will immediately stop work and notify any other parties performing any part of the work to stop work and will protect property in Seller's possession in which Buyer has or may acquire an interest.

d. Unless Buyer exercises its right to cancel because of the events described in paragraph a. above or because of other event or condition caused by or under the control of Seller, Seller may claim (1) reimbursement for actual out-of-pocket costs incurred by Seller as a result of such cancellation (exclusive of costs for materials that Seller can use on other orders) and (2) a reasonable profit on the work performed by Seller prior to cancellation. Such claim must be made within twenty (20) days of the notice of cancellation and the total amount of such claim shall not exceed the purchase price for the completed goods.

**19. GENERAL.**

a. Any overtime or other additional extraordinary costs incurred by Seller to perform its obligations under or otherwise comply with a purchase order or other agreement shall be borne by Seller.

b. Except as may be necessary to insure performance hereunder, Seller shall not disclose the terms or existence of a purchase order or other agreement to any third party without Buyer's prior written consent, which may be given or withheld in Buyer's sole discretion. Seller shall keep strictly confidential any information regarding Buyer's business or operations directly or indirectly furnished in connection with a purchase order or other agreement.

c. Seller's sole remedy under a purchase order or other agreement shall be the recovery of monetary damages as provided in paragraph 18.d.

d. Seller shall provide adequate assurance of due performance of Seller's obligations hereunder within three (3) business days of Buyer's written demand for such assurance, and failure to provide such assurance shall be deemed a default hereunder.

e. All representations and warranties shall survive the termination of a purchase order or other agreement and/or the delivery and acceptance of the goods and the payment of the purchase price.

f. Forbearance or indulgence or course of dealing by either party shall not constitute a waiver of the terms and conditions of a purchase order or other agreement. Any such waiver must be in writing and signed by Buyer.

g. In the event of a dispute between the parties arising out of a purchase order or other agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs.

h. A purchase order or other agreement (inclusive of the Rider(s), if any, attached hereto) constitutes the entire agreement between the parties and supersedes all prior and contemporaneous contracts, representations, negotiations and letters pertaining to the goods, whether written or oral. A purchase order or other agreement shall be governed by and construed according to the laws of the State of Illinois, without giving effect to choice of law principles. The courts of Illinois shall have exclusive jurisdiction over matters relating to a purchase order or other agreement. If any provision of a purchase order or other agreement shall be deemed invalid, illegal or unenforceable, the validity, legality and enforceability of the other provisions of a purchase order or other agreement shall not be affected thereby.

**20. IGB REQUIREMENTS.** A purchase order or other agreement is subject to review by the Illinois Gaming Board ("Board") for compliance with the Illinois Riverboat Gambling Act, 230 ILCS 10, et. seq., as amended, supplemented, or construed (the "Act"), and the rules, regulations and orders promulgated pursuant thereto ("Rules"), plus other such requirements, if any, as are imposed by the Board or its agents (collectively, the "IGB Requirements"). Upon execution of a purchase order or other agreement and in accordance with the IGB Requirements, Seller shall cooperate with Buyer and its designees and provide information on an "as needed" basis, directly, or, if so directed by Buyer, through Buyer to representatives of the Board regarding a purchase order or other agreement and its implementation. In addition, Seller shall allow the Board or its representatives, on an "as needed" basis, to inspect Seller's books and records regarding a purchase order or other agreement. Seller and its subcontractors shall comply with the IGB Requirements, including, but not limited to, any licensing, notification, disclosure, or registration requirements imposed thereby. Seller further acknowledges that the Act and the Rules impose and will continue to impose requirements upon Seller and its subcontractors, and Buyer may call for the submission and approval of a purchase order or other agreement by the Board or its designees. Seller and its subcontractors shall assist Buyer in complying with any requirements imposed on Buyer by the Act, Rules or Board by reason of the project or work contemplated hereunder. Seller shall also comply with all applicable federal, state, county, city, local and other statutes, ordinances, rules and regulations and other laws. Seller shall supervise and oversee compliance with the IGB Requirements by Seller and each of its associates, employees, consultants, and all persons, contractors, subcontractors and any other consultants and engineers retained by Seller in connection with the Project (meaning Buyer's business). Seller shall prepare such reports as the Board requires. A purchase order or other agreement shall be subject to review by the Board for compliance with the IGB Requirements and is subject to termination if so ordered by the Board. If the Board should disapprove of or order termination of a purchase order or other agreement by reason of finding that Seller or any person associated with Seller, or any of their affiliated companies, is unsuitable or is otherwise prohibited from doing business with Buyer, neither Buyer nor any of its members, partners, shareholders, officers, directors, or employees shall be liable in any

way to Seller by reason of such disapproval or termination. Buyer is entitled without liability to Seller to terminate a purchase order or other agreement in the event of Seller's noncompliance with Buyer's requirements to complete its due diligence review of Seller, Seller's failure to cooperate with Buyer's due diligence review of Seller, or in the event of noncompliance with the IGB Requirements by a purchase order or other agreement or by Seller, or a determination that Seller, its key persons or any person who controls, directly or indirectly, the Seller, does not have acceptable character, reputation, financial integrity or experience, or that such individual's background, reputation, or associations, will result in adverse publicity or would discredit or tend to discredit the Illinois gaming industry or the State of Illinois or that Seller does not have sufficient competence to provide the products or services contracted for or that Buyer or its affiliates continued association with Seller may jeopardize its or its affiliates' standings with any regulatory agency. Seller shall comply with all licensing requirements established by the State of Illinois, including, without limitation, the licensing requirements of the Act and Rules. In furtherance thereof, Seller expressly acknowledges that, if licensure is required, Seller's ability to obtain licensure in Illinois is contingent upon such party's key persons (as those terms are defined under applicable Illinois law, rules and regulations) meeting applicable licensing standards and otherwise complying with all applicable laws, rules, regulations and restrictions. Seller shall do all things necessary (including complying with any licensing, notification, disclosure or registration requirements) and shall cooperate in all respects to allow compliance with the applicable laws, rules, regulations and restrictions.

20. **ADDITIONAL TERMS.** If a purchase order or other agreement contains additional terms and conditions, they are set forth on one or more Riders attached hereto and incorporated herein by this reference; any use of the term "purchase order" shall include the attached Rider(s). If any inconsistency exists between the terms of this form purchase order and the Rider(s), if any, the Rider(s) shall control.

**I HAVE READ APPROVED, AND ACCEPTED THE GENERAL TERMS AND CONDITIONS EXHIBIT E, 4 PAGES**

DATE \_\_\_\_\_ Authorized Representative (Print): \_\_\_\_\_

Company Name: \_\_\_\_\_ Authorized Representative (Sign): \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_