

San Diego Convention Center Corporation
STANDARD TERMS & CONDITIONS
 (Goods and Services)

- 1. Definitions.** The term "Buyer" shall refer to the San Diego Convention Center Corporation, Inc. The term "Seller" shall refer to the vendor designated on the face hereof, including its subcontractors and any other third party performing under this Term Purchase Order "Order". The terms good(s)" and "services" shall refer to the materials, supplies, items, equipment, work and/or services covered by this Order.
- 2. Acceptance.** This Order must be accepted in writing by Seller. If for any reason Seller should fail to accept in writing, any conduct by Seller which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute an acceptance by Seller of this Order and all of its terms and conditions. Any terms, proposed in Seller's acceptance of Buyer's offer which add to, vary from, or conflict with the terms in this Order are hereby objected to. If this Order has been issued by Buyer in response to Seller's offer and if any of the terms herein are additional to or different from any terms of such offer, then the issuance of this Order by Buyer shall constitute an acceptance of such offer subject to the express condition that Seller agree to such additional and different terms herein. Seller shall be deemed to have so agreed unless Seller notifies Buyer to the contrary, in writing, prior to shipping the goods or beginning performance of the services or within 10 days of receipt of this Order, whichever first occurs.
- 3. Delivery. TIME IS OF THE ESSENCE** and deliveries must be made as set forth on the face hereof. If delivery is not completed within the time(s) specified herein, Buyer reserves the right, without liability, in addition to its other rights and remedies, to cancel the entire Order or that part of the Order not delivered, or to extend the time of delivery or payment, correspondingly. If timely delivery is endangered by Seller, Buyer shall have the right to direct Seller to make shipment by the most expeditious means and the total cost of such expedited shipment and handling shall be borne by Seller. Seller shall not ship excess quantities without Buyer's prior written approval. All goods shall be prepared and packed in a commercially reasonable manner suitable for the goods shipped and so as to secure the lowest transportation rates. Seller shall mark all containers with necessary lifting, handling, and shipping information and also purchase order numbers and date of shipment. An itemized packaging sheet must accompany each shipment.
- 4. Price and Payment; Invoices.**
- (a) Seller agrees that the not-to-exceed price set forth in this Order is firm, and is not subject to increase. Unless otherwise provided on the face of this Order, the price as herein stated shall include all costs for packing, insuring, and transporting the goods ordered to Buyer's facility, and all taxes. Buyer shall not be liable for any taxes with respect to this Order other than municipal, state or federal sales taxes levied on the Buyer which Seller is required by law to collect from Buyer. All such taxes and other charges shall be stated separately on Seller's invoice.
- (b) Seller warrants that the prices charged for the goods and services covered by this Order are the lowest prices charged and on terms no less favorable than accorded by Seller to any other customer for the same or like goods and services in equal or less quantities under similar circumstances. Buyer shall have the right to inspect and audit Seller's books, records, and catalogs pertaining to the performance of this Order, at all reasonable times, with five (5) days' written notice, for the purpose of determining the correctness and propriety of amounts billed by Seller.
- (c) Unless otherwise agreed, payment due dates, including discount periods, will be computed from the date of receipt of all goods and services or date of receipt of correct invoice, whichever is later.
- (d) Invoices shall be submitted in duplicate and shall contain the following information: Order number, item number, description of goods and services, sizes, quantities, unit prices, and extended totals, in addition to any other information specified in this Order. Payment of an invoice shall not constitute acceptance of goods or services and shall be subject to adjustment for errors, shortages, defects in the goods or services, or other failure of Seller to meet the requirements of the Order.
- 5. Inspection and Acceptance.** Buyer shall have a reasonable time (but not less than 90 days) after receipt to inspect the goods and services tendered by Seller. If any goods or services delivered do not meet the requirements of this Order, Buyer shall have the right to reject any such goods or services. Buyer may elect to reject the entire goods and services tendered even if only a portion thereof is nonconforming. If Buyer elects to accept nonconforming goods or services, Buyer, in addition to its other remedies, shall be entitled to deduct a reasonable amount from the price thereof to compensate Buyer for the nonconformity. Payment for any good or service shall not be deemed an acceptance thereof. Acceptance of any goods or service after inspection shall not constitute a waiver of any warranty made by Seller hereunder or implied by law, nor shall it preclude Buyer from revoking its acceptance thereafter for any latent defects or fraud.
- 6. Risk of Loss.** Seller assumes (i) all risk of loss or damage to the goods until Buyer's acceptance as provided in Section 5, above; and (ii) all risk of loss or damage to any goods rejected by Buyer or as to which Buyer has revoked its acceptance, from the time of such rejection or revocation. If used in this Order, the term "FOB" refers to transportation charges only and it does not vary the foregoing provisions of this section.
- 7. Warranty.** Seller warrants title to the goods and that all goods and services furnished hereunder: (i) will be in full conformance with the specifications, blueprints, drawings, samples and data or other description furnished by Buyer or by Seller and approved by Buyer; (ii) will perform as specified herein or otherwise represented by Seller (even if such representations do not appear on the face hereof, notwithstanding the provisions of Section 27 hereof); (iii) will be merchantable and fit and sufficient for the use intended by Buyer; (iv) will be free from defects in material, workmanship, manufacture and design (where design is Seller's responsibility). Seller's warranty shall be effective for a period of time as set forth on the face of this Order. If no such period is stated, the warranty shall be effective for a period of one (1) year from the date of acceptance. This warranty will run to Buyer and to Buyer's customers and users of its products. In addition to other remedies which may be available at law or in equity, Buyer may, at its option, return to Seller for full credit any goods which do not meet the warranties specified herein or require correction or replacement of such goods, all at Seller's risk and expense. Packing and shipping shall be at Seller's cost, including the cost of premium transportation when any goods are critical to Buyer's delivery schedule.
- 8. Changes.** Buyer may, by written notice, make changes to all or any part of this Order. If any such change causes an increase or decrease in the cost of or the time required for the performance hereunder, an equitable adjustment shall be made in the price or delivery schedule, or both. Any claim for adjustment by Seller shall be deemed waived unless asserted in writing within ten (10) days from the receipt by Seller of the change. Changes shall not be binding on Buyer unless evidenced by a writing signed by an authorized representative of Buyer.
- 9. Confidential Information.** All information furnished or disclosed to Seller by Buyer in connection with this Order which is identified as confidential is received in confidence, shall remain the property of Buyer and shall not be disclosed to any third-party without Buyer's written consent. Seller shall not use any such information for any purpose other than to perform this Order. If requested, Seller shall execute Buyer's Non-Disclosure Agreement before receipt of any such confidential information. Seller will return all such confidential information to Buyer upon completion by Seller of its obligations hereunder, or upon demand. The obligations of this section shall survive expiration or termination of this Order.
- 10. Termination for Convenience.** Buyer may terminate this Order in whole or in part at any time and for any reason effective upon written notice to Seller. Upon receipt of such notice, Seller shall stop work immediately and terminate all orders and subcontracts to the extent that they relate to the terminated work. There shall be no charges for terminating the Order with respect to standard goods for which there are alternate customers. Any claim for termination charges for non-standard goods must be submitted to Buyer in writing within ten (10) days after receipt of the termination notice. Seller's claim may include (i) the cost of unique work in process, and (ii) the cost of paying claims to Seller's vendors for work directly allocable to goods terminated. Buyer shall not be responsible for any commitments made by Seller in advance of those necessary to comply with the schedules set forth in this Order. In no event shall such claim exceed the total line item Order price for the goods or services terminated. Upon payment of

Seller's claim, Buyer shall be entitled to all goods, materials and work in process paid for. ***In no event shall Seller be entitled to nor shall Buyer be liable for incidental or consequential damages, costs of preparing claims, costs of tooling or equipment, or any other expenses or damages arising out of this Order or with respect to the terminated goods or services.***

11. Termination for Default. Buyer may, at its sole option, cancel this Order in whole or in part, without any further liability or responsibility hereunder in the event Seller: (i) becomes insolvent, (ii) fails to make timely delivery, or (iii) breaches any other term and condition of this Order. Seller shall continue to supply any portion of this Order not canceled. In the event of such cancellation, at Buyer's request, Seller will transfer title to, and deliver to Buyer: (i) any completed goods and (ii) any partially completed items and all unique materials and tooling. Prices for partially completed goods and unique materials and tooling accepted shall be negotiated; however, such prices shall not exceed the Order price per type of goods and/or services.

12. Patents and Copyrights. Seller agrees to defend, indemnify and hold Buyer, its officers, agents, employees and customers harmless from any and all liabilities, obligations, costs and expenses (including attorneys' fees and costs), claims or demands either at law or in equity for actual or alleged infringement of any patent, trademark, copyright, trade secret or other proprietary right arising from the purchase, use or sale of goods or services under this Order, except to the extent that infringement or alleged infringement arises by reason of designs for such goods originally furnished to Seller by Buyer.

13. Insurance. Unless more specific insurance provisions are attached, the following shall apply. At all times during its performance hereunder, Seller shall obtain and keep in force general liability insurance including coverage for death, bodily injury, property damage, including products liability and automobile coverages, with limits of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall be primary insurance, and any liability or insurance of Buyer shall be excess only. Such insurance shall waive any right of subrogation against Buyer and shall specifically cover Seller's obligations to defend, indemnify and hold Buyer harmless as provided herein.

14. Indemnification. Seller agrees to defend, indemnify and hold Buyer, San Diego Theatre, Inc., City of San Diego, San Diego Unified Port District, and their respective members, officers, directors, agents and employees harmless from and against any and all liabilities, obligations, costs and expenses of any nature whatsoever (including reasonable attorneys' fees and costs) which Buyer may be obligated to pay as a result of any and all claims, demands, actions or judgments of every nature whatsoever in favor of any person on account of personal injury or death, or damages to property incident to or resulting directly or indirectly from the performance by Seller hereunder. Seller shall carry and maintain insurance coverage satisfactory to Buyer to cover the above, and upon Buyer's request, shall furnish Buyer with evidence of such insurance in a form satisfactory to Buyer.

15. Notice of Delays. Whenever Seller has knowledge of an actual or potential delay to the timely performance of this Order, Seller shall immediately notify Buyer in writing of all relevant information with respect to such delay. Such notice is for informational purposes only and shall not relieve Seller of Seller's obligations to comply with Seller's requirements under this Order. Buyer may delay delivery and/or acceptance occasioned by causes beyond its control.

16. No Right to Cure. Every tender of goods and services must fully comply with all provisions of this Order. Any tender that does not fully conform shall constitute a breach, and Seller shall have no right to cure the tender by substituting a conforming tender. Any rights Seller may otherwise have had under the provisions of the Uniform Commercial Code to cure a nonconforming tender are expressly negated.

17. Assignment. Seller shall not delegate or subcontract any duties, nor assign any rights or claims under this Order without the prior written consent of Buyer. No consent shall be deemed to relieve Seller of its obligations to comply fully with the requirements hereof.

18. Governing Law. This Order shall be construed and interpreted in accordance with and governed by the laws of the State of California, excluding its conflict of law rules.

19. Rights and Remedies. All rights and remedies of Buyer specifically set forth in this Order shall be cumulative and in addition to any other or further rights and remedies provided at law or in equity. Failure of Buyer to insist upon strict performance of any term or condition of this Order shall not be deemed to be a waiver of Buyer's rights and remedies.

20. Setoff. All claims for money due or to become due from Buyer shall be subject to deduction or setoff by Buyer by reason of any counterclaim arising out of this or any other transaction with Seller.

21. Buyer's Property. Unless otherwise agreed in writing, all tooling, equipment, and material furnished to Seller by Buyer or specifically paid for by Buyer shall remain the property of Buyer. Such property, while in Seller's custody or control, shall be held at Seller's sole risk, and shall be kept insured by Seller at Seller's expense in an amount equal to the replacement cost with loss payable to Buyer. Such property shall be delivered in good condition; normal wear and tear excepted, to Buyer, FOB Buyer's plant, immediately upon request by Buyer.

22. Compliance with Laws. Seller shall comply with all federal, state and local laws, ordinance, rules and regulations in the manufacture and sale of the goods and performance of the services subject to this Order. Seller will defend and hold Buyer harmless for any loss, damages, or costs arising from or caused in any way by any actual or alleged violation of any federal, state or local law, ordinance, rule or regulation.

23. Availability of Funding. Obligation by Buyer for payment on any contract or Order beyond the current fiscal year is contingent upon the availability of funding from which payment can be made. No legal liability on the part of Buyer shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

24. Attorneys' Fees. In the event Seller and Buyer are unable to resolve any dispute arising under this Order and any suit or other judicial proceeding is instituted, the successful party in any such suit or judicial proceeding shall be paid promptly by the other party an additional amount equal to the successful party's reasonable attorneys' fees and costs incurred.

25. Gratuities. Seller warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Buyer any gratuity with a view toward improperly securing any business from Buyer or influencing such person with respect to the terms, conditions or performance of this Order or any contracts with Buyer.

26. Independent Contractor Status. Seller is and shall remain an independent contractor. Neither Seller nor its agents or employees shall act as officers, agents, or employees of Buyer. Seller has no authority to assume or create any commitment or obligation on behalf of Buyer, or to bind Buyer in any manner.

27. Entire Agreement. This Order, together with any specifications, schedules, exhibits or amendments which may be referred to herein or attached hereto by Buyer, sets forth the complete and final agreement between the parties, and supersedes any and all prior or contemporaneous oral or written communications relating to its subject matter. No amendments to or modifications of this Order will be valid and binding upon Buyer unless in writing and signed by an authorized representative of Buyer.

Initial _____