

PBCI's Standard Terms and Conditions

1. **Definitions** – “**Buyer**” means the Poarch Band of Creek Indians, a federally recognized Indian tribe, or any instrumentality thereof. “**Seller**” means the person, firm, company, limited liability company or corporation supplying goods or services to Buyer and includes all sales or other agents, subcontractors, employees and distributors thereof. These Terms and Conditions shall govern the provision of goods and/or services by Seller to Buyer (an “**Order**”) and are hereby accepted by Seller except where an Order includes a written agreement stating otherwise. All Orders shall necessarily include these Terms and Conditions except to the extent these Terms and Conditions conflict with a written agreement signed by Buyer.
2. **Price** – An Order must not be filled at higher prices than the last quoted without authority of Buyer, and it is agreed that Seller's price will be the lowest prevailing market price.
3. **Delivery** – Deliveries shall be F.O.B. destination freight prepaid and included unless otherwise agreed in writing. Failure of the Seller to adhere to delivery schedules as specified or to promptly replace rejected materials with same materials shall render the Seller liable for all costs in excess of the Order price when alternate procurement is necessary. Excess costs shall include administrative costs.
4. **Payment Terms** – The Buyer normally will pay properly submitted vendor invoices within thirty (30) days from receipt of invoice. Invoices presented for payment must be submitted to the correct address for processing and must reference an Order number.
5. **Quantity** – Delivery of any material over and above the actual quantity specified in an Order will be at the risk of the Seller and payment will not be made for such overruns unless agreed to in writing by the Buyer.
6. **Quality** - Unless otherwise agreed in writing all material shall be first quality and must be as specified and will be subject to inspection and approval of Buyer after delivery. Items which are used, obsolete, seconds, or which have been discontinued are unacceptable without prior written approval. The Buyer reserves the right to reject and return at the risk and expense of the Seller such portion of any shipment which may be defective or fails to comply with specifications without invalidating the remainder of the order. If rejected, it will be held for disposition at expense and risk of the Seller. The Seller shall correct or replace rejected materials without expense to Buyer. No substitutions may be made without prior written approval.
7. **Warranty** – Seller warrants the following: (i) all goods delivered will be free from defects in material and workmanship and conform to applicable specifications; (ii) Seller has good title to the goods provided to Buyer and passes such title to Buyer 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 an Order will not infringe 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 Buyer.
8. **Packing Slips** – A packing slip shall be enclosed with all shipments, showing Order number, part number and quantity. Buyer will not receive materials unless it is tagged or marked with Buyer's Order number.
9. **Hazardous Materials** – All packaging, transportation and handling of hazardous

materials shall be in accordance with applicable laws and regulations; Seller shall be responsible for any non-compliance. All Sellers who supply hazardous materials shall provide Material Safety Data Sheets with the order.

10. Indemnification - Seller shall indemnify and hold harmless Buyer, its officers, employees, agents and representatives, from and against any and all claims, of whatever nature, for injuries or losses, or damages arising out of Seller's negligence, gross negligence, or intentional misconduct, or the negligence, gross negligence, or intentional misconduct of Seller's employees, agents, and representatives.
11. Assignment – Seller may not assign or delegate its rights or duties in whole or in part under an Order without the prior express written consent of the Buyer.
12. Force Majeure – Any delay in or failure of performance by either party shall not constitute default if and to the extent such delay or failure of performance is caused by occurrences which are not within the reasonable control of the party.
13. Order Acceptance – Any acceptance of an Order by the Seller, whether in writing or by performance, is limited to and shall be subject to these Terms and Conditions, or in any written amendment signed by Buyer and binding upon Seller. Any proposal for additional or different terms in any document provided by Seller to change the terms of an Order is rejected and shall not be effective unless signed by Buyer.
14. Acceptance by Buyer – Goods and/or services purchased are subject to Buyer's inspection and approval within a reasonable time, but not less than 60 days after delivery. Buyer, 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 applicable Order, or require Seller to provide replacement goods or re-perform services in conformity with the terms of the Order at Seller's cost. 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 Order price thereof to compensate Buyer for the nonconformity. Any acceptance by Buyer shall not be deemed a waiver or settlement of any defect in such goods and/or services.

15. Risk of Loss – Until accepted by Buyer as provided above, Seller shall bear all risk of loss and damage, unless such loss results from the negligence of Buyer.
16. Limitation of Liability. IN NO EVENT SHALL BUYER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR ENHANCED DAMAGES OF ANY KIND OR NATURE WHATSOEVER ARISING OUT OF OR RELATION TO THE GOODS AND SERVICES OR PERFORMANCE OR NONPERFORMANCE UNDER AN ORDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ADDITIONALLY, NOTWITHSTANDING ANY PROVISION IN AN ORDER, NOTHING SHALL OBLIGATE OR AUTHORIZE THE ENCUMBRANCE OF ANY ASSETS OF BUYER.
17. Change, Cancellation, and Termination – An Order can be changed, terminated or canceled by Buyer for any reason, including convenience, upon prior written notification to Seller. In the event of a change, Buyer and Seller will make a fair and equitable modification to their rights and obligations under the Order, if such change results in an increase or decrease in costs to be incurred or time needed to complete performance of the Order. If Buyer terminates or cancels for convenience, Seller will be entitled to payment for only those goods or services delivered, received, and accepted and not subsequently rejected by Buyer. Buyer may immediately terminate the Order without prejudice to any right or remedy, after giving Seller notice of any breach by Seller of its obligations hereunder.
18. Taxes – Except as otherwise expressly provided in the Order, the price shall include all applicable federal, state and

local taxes of any kind. Goods and services purchased by Buyer for its use on reservation property are not subject to state or local sales, use, or excise taxes.

19. Use of Buyer's Name - Seller agrees not to use the name of Buyer or disclose the existence of an Order in any advertising, promotion, or other written or oral disclosure without the prior written consent of Buyer.

20. Confidentiality – “**Confidential Information**” means any and all information and documents, whether marked or unmarked as “Confidential”, and, without limitation, that the Buyer treats and regards as confidential and/or proprietary, and that is disclosed to the recipient in writing, or if disclosed orally, is reduced to writing and delivered to the recipient, within thirty (30) days after such oral disclosure. All information and documents belonging to the Buyer, and all copies of such information, shall be returned to the Buyer promptly upon completion of the project or services provided. All Confidential Information is provided “as is” and no representation or warranty as to accuracy or completeness is provided by the Buyer. Seller shall not directly or indirectly use, disseminate, disclose or in any way reveal or use beyond the scope of authority granted by Buyer 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 Buyer. Upon cancellation or termination of an Order for any reason whatsoever, Seller shall turn over to Buyer any and all copies it may have of Confidential Information. The Seller acknowledges that this provision shall survive the termination of an Order. The confidentiality provisions of this Paragraph shall apply to and be binding upon Seller's officers, employees and representatives.

21. Compliance with Laws – Seller shall comply with all laws and governmental rules, regulations and orders applicable to the goods delivered and/or services rendered under an Order including, but not limited to, obtaining all necessary

licenses and permits including those which may be required by Buyer for work performed within the reservation boundaries of the Poarch Band of Creek Indians.

22. Buyer's Property – Unless provided otherwise, all materials, including documents, drawings, specifications and tools, furnished or paid for by Buyer shall remain the exclusive property of Buyer unless otherwise specified in writing. All documents, drawings, and specifications shall be considered confidential and not disclosed to any third party. All materials shall be returned to Buyer upon Seller's completion of Seller's obligations under the Order. Seller assumes all liability for loss or damage of such materials caused by Seller's negligence, excluding normal wear and tear.

23. Insurance – At all times during its performance hereunder, Seller shall obtain and keep in force worker's compensation insurance for all of its employees within statutory limits, commercial general liability insurance, including coverage for product liability and completed operations, contractual liability and automobile liability for all owned, non-owned and hired vehicles used in carrying out an Order with limits of not less than \$1,000,000 per occurrence. Buyer reserves the right to require additional coverage or higher limits where warranted. Seller shall provide Buyer with certificate(s) of insurance evidencing Seller's compliance with the foregoing insurance provisions upon request. Buyer's obligations under an Order are conditioned upon Seller's meeting the insurance requirements above.

24. Independent Contractor – Seller is an independent contractor for all purposes of an Order and its employees shall not be deemed to be employees or agents of the Buyer. Seller has neither express nor implied authority to bind the Buyer by contract or otherwise.

25. Waiver – Waiver of a breach of any provision of an Order shall not constitute waiver of future compliance with such

provision nor shall it be construed as a waiver of any other breach.

26. Severability – If any provision of an Order, 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.
27. Rights and Remedies – The rights and remedies of Buyer and Seller set forth in an Order are cumulative in addition to any other rights or remedies that they may have at law or in equity.
28. Governing Law and Dispute Resolution – An Order shall be governed by and construed in accordance with Tribal law, Federal law, and Alabama law, in that order, without regard to conflict of law principles. In the event of any dispute, controversy, claim, question, or difference arising out of or relating to an Order or any alleged breach hereof (collectively, “**Disputes**”), any legal suit, action, or proceeding arising out of or relating to any Dispute shall be brought exclusively in the Poarch Band of Creek Indians Tribal courts.
29. Entire Agreement – An Order, together with any attachments or written amendments signed by Buyer, constitutes the entire agreement between the parties.