

PURCHASE ORDER TERMS AND CONDITIONS

Blue Tarp reDevelopment, LLC MASSACHUSETTS

- ACCEPTANCE:** This Purchase Order or any release or revision related hereto (collectively, the "Order") shall be deemed accepted by Seller when (a) Seller sends Buyer notices of its acceptance in writing, (b) when Seller begins commencement of work on the goods, materials and/or services to be purchased hereunder ("G&S"), or (c) shipment of the goods covered hereunder whichever occurs first. UNLESS THERE IS ALSO A FORMAL WRITTEN AGREEMENT RELATED TO THIS ORDER AND SIGNED BY BOTH PARTIES, SELLER'S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS OF THIS ORDER AND DOES NOT INCLUDE ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY SELLER OR ANY ATTEMPT BY SELLER TO VARY THE TERMS HEREOF.
 - SHIPMENT/RISK OF LOSS/RECORDS:** Seller shall prepare and pack for shipment all goods in accordance with good commercial practices. Buyer will not pay charges for packing, crating, shipping or delivery, unless otherwise stated herein. If Seller must ship in a more expensive manner than specified herein to comply with Buyer's required delivery date, Seller shall pay all increased costs, unless Buyer solely causes the necessity for and agrees in writing to pay the increased costs. Seller shall be responsible and bear the risk of loss or damage for the goods covered by this Order until they are delivered at the designated delivery point and accepted by Buyer, regardless of the point of inspection or transfer of title, unless Buyer is picking up the freight. Buyer and Seller shall provide reasonable assistance to each other in the prosecution of any claims against carriers. Seller shall maintain manufacturing and shipment records for at least three (3) years from the date of Seller's shipment and Buyer shall have access to such records upon reasonable prior notice.
 - TIMELY DELIVERY:** Timely deliveries and/or completions of service are of the essence for this Order. Buyer may, at Buyer's option and at Seller's expense, refuse to accept or return any merchandise delivered, or services performed, after the date (s) specified in this Order. Buyer shall not be liable for the purchase of merchandise, or the payment of services, refused, returned or rejected, as applicable, based upon late delivery or performance. If the job site for which any merchandise is intended is not ready for deliveries, Seller, upon notice from Buyer, shall hold such merchandise for a reasonable period and at no cost.
 - INSPECTION:** All merchandise and/or services specified in this Order are subject to Buyer's inspection within a reasonable time after final delivery or completion. If, upon inspection, any merchandise or service is, in Buyer's sole judgment, found to be unsatisfactory, defective or of inferior quality or workmanship, or fails to meet the specifications or any other requirements of this Order, Buyer may reject such merchandise and/or services and, in the case of merchandise, return such rejected merchandise at Seller's expense. Payment for merchandise and/or services prior to inspection shall not be construed as an acceptance of unsatisfactory or defective merchandise and/or services. Upon the refusal or return of unsatisfactory or defective merchandise or the rejection of unsatisfactory or defective services, Seller shall reimburse Buyer for any amounts paid by Buyer on account of such merchandise or services (including the cost to return any such merchandise to Seller).
 - PRICE/INVOICES:** The price set forth in this Order is firm and is the total amount due from Buyer for the G&S, including without limitation duties, taxes or any other charges agreed upon by Buyer, subject to adjustment for any rebates or credits described herein. Any applicable state sales tax and/or use tax shall be paid by Seller. Excise tax, where applicable, shall be billed as a separate item on the same invoice as the G&S to which it is related. Buyer shall not be responsible for any amount above the total amount expressly stated in this Order. Without Buyer's prior written consent, Seller shall not add any charges. To the extent no price or prices are set forth herein, Seller's price shall be the lowest market price prevailing at time of either the quotation or shipment, whichever price is lower, and in no event may this Order be filled at prices higher than those last previously quoted or charged to Buyer without Buyer's written consent. Invoices must be submitted electronically with reference to the applicable Purchase Order to Buyer's Accounts Payable immediately upon shipment of the goods or performance of the services. As it relates to the interpretation and application of this Section, invoice receipt shall never occur prior to Buyer's receipt of the applicable G&S. In the event an invoice arrives prior to Buyer's receipt of the applicable G&S, Buyer's payment period shall not begin until Buyer's receipt of the applicable G&S.
 - ELECTRONIC COMMERCE AND COMMUNICATION:** Seller will support Buyer's electronic commerce and communication programs such as: E-Sourcing/Procurement, Advance Shipping Notices, PO transmission and confirmations, Supplier Hosted Catalogs, Cloud Supplier Network, and other web-based or Business to Business (B2B) Systems as requested by us (collectively referred to as "Electronic Commerce"). In addition, Seller shall follow all supplier onboarding procedures and associated instructions provided by Buyer and as amended from time to time. If Buyer elects to purchase by Electronic Commerce such purchases will continue to be governed by the provisions of this Order and as may be provided in a separate Electronic Commerce agreement between the parties hereto.
 - INTELLECTUAL PROPERTY:** Any works created by Seller pursuant to this Order shall be considered works made for hire and the Buyer shall be considered the author of such works under the Copyright Act of 1976. If such works do not qualify as works made for hire, Seller hereby assigns to Buyer all copyrights in works created by Seller pursuant to this Order. Seller shall not copy, distribute, publicly display, publicly perform or create any derivative works based on such works for any purpose without the express prior written permission of Buyer.
 - CHANGES:** Buyer may, at any time prior to delivery, change the specifications for the G&S and delivery thereof. Seller will accept any changes, provided that if a change increases or decreases the cost or time required for performance, the parties will equitably adjust and modify the terms hereof in writing accordingly. Seller shall inform Buyer in advance of the shipment of goods or rendering of services of any material change, intentional or otherwise, to the G&S, including without limitation, changes in composition, quality specifications, labeling, functionality, safety, manufacturing locations, and any suppliers. Upon notice of any change, Buyer may cancel this Order. Any revisions to this Order, price or otherwise, must be in writing and approved by Buyer.
 - WARRANTY:** Without limiting any express warranties, Seller hereby warrants to Buyer that the material, merchandise and/or services to be furnished under this Order shall, as applicable, fully conform to the specifications, drawings, samples or other descriptions furnished to Buyer by Seller or furnished or adopted by Buyer, shall be fit and sufficient for the purpose intended, merchantable, of first grade quality and workmanship and free from defects. This warranty shall survive acceptance and payment. At Buyer's option, Seller shall replace or redo, at Seller's sole cost and expense, any material, merchandise or services, or portion thereof, found by Buyer within twelve (12) months after acceptance to be defective. Additionally, Seller warrants that all goods or services ordered under this Purchase Order shall comply with and obey all Federal, State, and local laws and ordinances, including without limitation compliance with OSHA regulations, Massachusetts General Laws c. 23K, and the regulations of the Massachusetts Gaming Commission ("MGC") (20SCMR). Seller warrants and represents that, if required, it will register as a vendor in good standing or that it has applied for and received permission from the MGC to do business with Purchaser. This Purchase Order shall not obligate Buyer to Seller unless Seller has obtained all licenses, registrations or other approvals required by the MGC and shall terminate without liability on the part of Buyer if the MGC shall disapprove of Seller or any person associated therewith for any reason. This Purchase Order shall, if required, be presented to the MGC for review, and shall terminate without liability on the part of Buyer if disapproved. If any certificates, permits or licenses are required, Seller shall, at Seller's cost furnish Buyer with such certificates, permits or licenses from such governmental departments (including zoning authorities having jurisdiction) before final payment is required to be made by Buyer.
 - CANCELLATION:** Buyer may for any reason, at Buyer's option, cancel any unshipped merchandise or unperformed services. To the extent this Order covers services or stock merchandise, Buyer's only obligation is to pay for and accept merchandise shipped, and services performed, prior to such cancellation. To the extent this Order covers merchandise manufactured or fabricated to Buyer's (as opposed to Seller's) specifications, Seller shall immediately stop all performance hereunder upon receipt of notice of cancellation and, if Seller is not in default, Buyer shall reimburse Seller for the actual, direct cost to Seller of such merchandise which has, at the time of such cancellation, been wholly or partially manufactured. Upon payment, title to all such merchandise shall pass to Buyer. Seller agrees that it will not manufacture items in reserve in an amount greater than the number of manufactured items that Seller has shipped to Buyer at any one time.
 - BREACH:** If Seller fails to make delivery of all or any of the merchandise or perform all or any of the services specified in this Order within the time (s) specified or otherwise fails to perform all or any of the terms of this Order, Buyer may, at the Buyer's option and without prejudice of any other rights, cancel this Order in whole or in part.
 - INDEMNITY:** To the fullest extent permitted by law Seller, at its sole cost and expense, agrees to indemnify, defend and hold harmless Buyer, its Third Party Beneficiaries (as defined in Section 20 below), Owner Parties (as defined herein) and their respective subcontractors and consultants, their respective subsidiaries, affiliates, parent companies and their respective members, officers, directors, managers, employees, agents, shareholders, successors and assigns, heirs, administrators, and personal representatives (collectively, "Buyer's Indemnitees") from and against any and all losses, damages, costs, expenses, claims, judgments or liabilities (including reasonable costs and attorney's fees which shall be reimbursed as incurred) which in any way arise out of or relate to any actual or alleged injury, death or damage to any person or property resulting from any act or omission of Seller, its employees, contractors or affiliates or the goods supplied or services covered by this Order. Seller also agrees, at its sole cost and expense, to indemnify, defend and hold harmless Buyer's Indemnitees, their parents, subsidiaries and affiliates, and their respective
- officers, directors, shareholders, successors and assigns, employees from and against any and all claims, demands, losses, liabilities, damages, causes of action or expenses (including reasonable costs and attorney's fees, which shall be reimbursed as incurred), caused by, resulting from, or in any way connected with (a) an infringement of or claimed infringement of any patent, trademark, or copyright arising out of the sale, use or possession of the merchandise furnished by, or the services performed by Seller (b) the acts or omissions of Seller or Seller's agents, employees, subcontractors or contractors in conjunction with this Order, or (c) any breach of the warranties of Seller contained in this Order. For purposes of this Section 12, "Owner Parties" means MGM Springfield reDevelopment, LLC, MGM MA Sub, LLC, MGM Food Properties LLC and as applicable, DF Main Street, LLC, HOLYOKE-CHICOPEE-SPRINGFIELD HEAD START, INC., Davenport Companies, and the Massachusetts Convention Center Authority.
- INSURANCE:** At all times while Seller and/or any of its subcontractor(s) are providing services, products, or performing work under this Order, Seller and its subcontractor(s) shall, at their expense, maintain insurance with an insurance company or companies with a current A.M. Best Company rating of at least A-:VII (a) Workers' Compensation Insurance at Massachusetts statutory limits and Employers' Liability Insurance with a limit of One Million Dollars (US \$1,000,000) each accident and each employee for disease, (b) Commercial General and Umbrella/Excess Liability Insurance with limits of Three Million Dollars (US \$3,000,000) each occurrence and aggregate for bodily injury, property damage, personal and advertising injury and products and completed operations, and (c) Business Automobile Liability Insurance with a limit of One Million Dollars (US \$1,000,000) combined single limit each accident and shall include coverage for loss due to bodily injury or death of any person, or property damage arising out of the ownership, maintenance, operation or use of any motor vehicle whether owned, non-owned, hired or leased. All insurance maintained by Seller and its subcontractor(s) shall name the Buyer's Indemnitees as additional insureds for both ongoing and completed operations (except the Workers' Compensation policy). The additional insured status shall apply to the full limits of liability purchased by Seller and its subcontractor(s) even if those limits of liability are in excess of those required by this Purchase Order. The Commercial General Liability Insurance policy shall include contractual liability coverage for the indemnity provisions contained herein. The Commercial General Liability and Umbrella/Excess liability insurance policy(s) shall include no exclusions or limitations in coverage for punitive damages, abuse/molestation and assault & battery. Seller and its subcontractor(s) policies of insurance shall be primary to any insurance coverage maintained by the Buyer's Indemnitees which shall be excess and non-contributory. All policies of insurance maintained by Seller and its subcontractor(s) shall include waivers of subrogation by the insurers in favor of the Buyer's Indemnitees. Upon receipt of this Order and prior to the delivery of any goods, commencement of any work, or performance of any services pursuant to this Purchase Order and at least ten (10) days prior to the expiration of each insurance policy, Seller and its subcontractor(s) shall furnish Buyer with certificate(s) of insurance evidencing the required insurance coverage and referencing this Purchase Order. Each certificate shall include a provision requiring the insurance carrier and/or Seller and its subcontractor(s) to provide directly to MGM Resorts International Global Procurement Department, at 950 Grier Dr., Las Vegas, NV 89119, E-mail: purchasingcustomerservice@mgmresorts.com, thirty (30) days advance written notice before any termination, cancellation, or other material change to the policies shown on the certificate takes effect, regardless of whether such action was initiated by Seller, its subcontractor(s), other insured or the insurance carrier. For avoidance of doubt, a "material change" in the policy shall mean a change that would result in Seller or its subcontractor(s) non-compliance with a material provision of these insurance requirements.
 - NO WAIVER, NO OTHER TERMS:** No waiver or modification of the terms or conditions of this Order shall be binding on Buyer unless approved in a documented Change Order. No waiver of a breach of any provision of this Order shall constitute a waiver of any other breach of this Order. This Order is expressly limited to the terms and conditions contained herein, and any other terms conditions contained on Seller's document (s) which purport to limit Seller's obligation or liability or Buyer's right to remedies shall be of no force and effect.
 - PRIVILEGED LICENSES:** Seller acknowledges that Buyer, its parent, subsidiaries and affiliates, are businesses that are, or may be, subject to and exist of privileged licenses issued by governmental authorities or other sovereigns. If requested to do so by Buyer, Seller, and its agents, employees, or representatives, shall obtain any license, qualification, clearance or the like which shall be requested or required of any of them by Buyer or any regulatory authority having jurisdiction over Buyer or any parent company, subsidiary or affiliate of Buyer. In the event Seller is either denied a registration, license or certification or its registration, license or certification is revoked or threatened to be revoked, Seller must immediately inform notify Buyer of such denial, revocation or threatened revocation. Failure to provide such notification shall be deemed a material breach of this Order and MGM Ops and Buyer may terminate the Order in its entirety and Seller shall refund, pro rata, any pre-paid fees, deposits, escrowed amounts, or any other upfront payments made Buyer. If Seller, or Seller's agents, employees, or representatives, fails to satisfy such requirement or if Buyer or any parent company, subsidiary or affiliate of Buyer is directed to cease business with Seller or its agents, employees or representatives by any such authority, or if Buyer shall in good faith determine, in Buyer's sole and exclusive judgment, that Seller, or any of Seller's agents, employees, or representatives, (a) is or might be engaged in, or is about to be engaged in, any activity or activities or (b) was or is involved in any relationship; either of which could or does jeopardize Buyer's business or such licenses, or those of a parent company, subsidiary or affiliate, or if any such license is threatened to be, or is, denied, curtailed, suspended or revoked, this Order may be terminated immediately by Buyer. Further, Seller (a) acknowledges its understanding that it is illegal for a denied license applicant or a revoked licensee, or a business organization under such a person's control, to enter into, or attempt to enter into, a contract with *Blue Tarp reDevelopment, LLC* its parent company, subsidiaries, or any affiliate, without the prior approval of the Massachusetts Gaming Commission; (b) affirms that Seller is not such a person and is not under the control of such a person; and (c) agrees that this Contract/Purchase Order is subject to immediate termination, without further liability to Seller, if Seller is or becomes such a person or is under the control of such person.
 - CONDUCT:** Seller acknowledges that Buyer, its parent, subsidiaries and affiliates have a reputation for offering high quality entertainment and/or services to the public, and that it and its parent, subsidiaries and affiliates are subject to regulation and licensing, and desire to maintain their reputation and receive positive publicity. Seller therefore agrees that throughout the term of this Agreement, it and its agents, employees and representatives will not conduct themselves in a manner which is contrary to the best interest of, nor in any manner that adversely affects or is detrimental to, Buyer, its parent, subsidiaries and affiliates, and will not directly or indirectly make any oral, written, or recorded private or public statements or comments that is disparaging, critical, defamatory or otherwise not in the best interests of Buyer, its parent, subsidiaries, or affiliates. Buyer shall use its good faith business judgment in determining whether Seller's conduct or that of its agents, employees, or representatives adversely affects Buyer, its parent, subsidiaries or affiliates and upon such determination, Buyer shall have the right to immediately terminate this Agreement. In that event, Buyer shall pay Seller for the merchandise which has been manufactured and/or the services which have been completed at such termination date, but Buyer shall have no further liability to Seller.
 - ATTORNEY'S FEES:** Should Buyer utilize the services of an attorney to enforce or defend any term or condition herein, Buyer shall be entitled to an award of reasonable attorney's fees and costs expended throughout the pendency of the demand, claim and/or litigation.
 - CONFIDENTIALITY/ PUBLICITY:** Seller, its employees, agents and representatives, shall consider as Buyer's "Confidential Information," all non-public information provided by Buyer, all specifications or other documents and works prepared by Seller in connection herewith, the fact that Buyer has contracted to purchase G&S from Seller, and all other non-public information relating to this Order. Without Buyer's prior written consent, Seller shall not (a) disclose or use Confidential Information for any purpose other than performing this Order, (b) announce, publicize or discuss with third parties the subject matter of this Order or any works prepared by Seller in connection with this Order, (c) include Buyer's name or trademarks in any marketing materials or (d) disclose that Buyer is Seller's customer. The foregoing provisions shall be subject to the terms of any other written agreement executed by the parties relating specifically to confidentiality, non-disclosure and/or publicity.
 - MISCELLANEOUS:** Responsibility for damage to merchandise or services to be furnished under this Order from any cause whatsoever shall rest with Seller until final receipt and acceptance thereof by Buyer and, in the case of merchandise to be installed or services to be performed, until final installation or final completion as applicable, and acceptance thereof by Buyer. Seller warrants to Buyer that it has not, and will not, pay any rebate, commission, kickback, salary, remuneration or reward, indirectly or in any form whatsoever, to any officer, employee, agent, or representative employed by or on behalf of Buyer. Seller may not assign any of its rights or obligations under this Order without Buyer's prior written consent. All merchandise or services furnished hereunder shall be free of any liens, claims, encumbrances and retained title contracts. All of Seller's services and work product shall comply with any and all applicable federal, state, and local laws, rules, regulations and ordinances and Buyer's safety policies and procedures. To the extent Seller will perform services hereunder at Buyer's property, Seller shall conduct such services only at such specific Buyer approved times and on such day's specific days, as approved in advance by Buyer. The laws of the State Massachusetts shall govern the validity, construction, performance and effect of this Agreement. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY TO

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THE FULLEST EXTENT PERMITTED BY LAW IN ALL ACTIONS AND OTHER LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS PURCHASE ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY. THIS WAIVER APPLIES TO ALL ACTIONS AND OTHER LEGAL PROCEEDINGS, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE.

20. **THIRD PARTY BENEFICIARIES:** MGM Resorts International, and its parents, subsidiaries, partnerships, joint ventures and other affiliates, all of whom are intended third party beneficiaries of all Seller's representations, warranties, covenants and obligations under this Order and shall have an independent right to enforce the terms of this Order. Subject to the foregoing sentence, the Parties agree: (a) this Order shall not be construed, in whole or in part, to give rise to any rights, claims or benefits to any person, firm or entity other than the signatories to this Order; and (b) there are no third-party beneficiaries (other than those expressly mentioned above) to this Order and no terms or provisions of this Order may be enforced by or for the benefit of any person or party not a signatory to this Order.
21. **FORCE MAJEURE:** Neither party will be liable for any delay nor failure in performing its obligations under the Order (including failure to take delivery of the G&S) to the extent that such delay or failure is caused, without such party's fault or negligence, by a Force Majeure Event. For purposes hereof, a "Force Majeure Event" refers to the occurrence of unforeseeable and/or unavoidable circumstances beyond a party's control that, by their nature, make such party's performance commercially impractical, including, but not limited to, acts of God or the public enemy, fire, flood, acts of war, government action, accident, earthquakes, explosion, epidemic, invasion, hostilities, terrorist acts, riots, strike, embargoes or industrial disturbances. A party's economic hardship or changes in market conditions are not considered Force Majeure Events excusing such party's performance. Seller will use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under the Order. If a Force Majeure Event prevents Seller from carrying out its obligations under this Order for a continuous period of more than thirty (30) days, Buyer may terminate the Order immediately by giving written notice to Seller.
22. **UTILIZATION OF DIVERSE BUSINESS CONCERNS:** In accordance with Buyer's procurement policies and FAR 52.219-8 Seller agrees to actively seek out and provide the maximum practicable opportunities for diverse businesses to participate in the subcontracts Seller awards to the fullest extent consistent with the efficient performance of this Contract. Buyer may request subcontracting plans and quarterly reports on diverse business utilization.
23. **EEO COMPLIANCE:** Provider warrants and represents that it will fully comply with all Department of Labor and EEOC rules, regulations, guidelines, and orders including, but not limited to, Executive Order 11246, 41 CFR Ch. 60 (in particular the record keeping requirements at 41 CFR Sec. 60-1.12), 29 CFR part 471 (appendix A to subpart A), which are incorporated herein by reference, and any other applicable state and local laws relating to equal employment opportunities and affirmative action.
24. **ENTIRE AGREEMENT:** Except as provided herein or as otherwise agreed upon by the parties in a separate written agreement relating to the subject matter hereof, this Order and any documents referenced herein constitute the entire agreement between the parties regarding this Order and replace any contemporaneous oral or written communications between the parties related hereto. This Order may not be modified by any document issued by Seller or by the parties' course of dealing, custom or usage but only by a mutually agreed upon writing signed by both parties. In the case of a conflict with this Order, the terms of such mutually agreed upon writing will prevail.