

PURCHASE CONTRACT

This PURCHASE CONTRACT (the "CONTRACT") is entered into and executed by and between:

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), a government owned and controlled corporation created and existing by virtue of Presidential Decree 1869, as amended, with office address at the **PAGCOR Executive Office, New Coast Hotel Manila, M.H Del Pilar cor. Pedro Gil Sts. Malate, Manila**, represented in this act by its Officer-In-Charge for Casino Filipino-Cebu, **MA. CONSOLACION A. PASION** hereinafter referred to as "**PAGCOR**";

-and-

COMFAC CORPORATION a corporation duly organized and existing under the laws of the Republic of the Philippines with office address at No. 30, F Cabahug Street, Cebu City represented in this act by its Service Supervisor, **LLOYD L. LATO** authorized for this purpose by a Secretary's Certificate dated December 4, 2020, hereto attached as Annex "A", hereinafter referred to as the "**SUPPLIER**".

ANTECEDENTS:

WHEREAS, PAGCOR has a requirement for Supply, Delivery & Installation of UPS battery for the 2x120 KVA UPS of CF-Cebu under ITB No. PB20-10-008CEB.

WHEREAS, PAGCOR conducted a public bidding in accordance with the Republic Act No. 9184 (Government Procurement Reform Act) and its 2016 Revised Implementing Rules and Regulations on **October 14, 2020** for the procurement of the Project;

WHEREAS, the SUPPLIER has submitted the single calculated responsive bid for the Project;

WHEREAS, PAGCOR has accepted the bid of the **SUPPLIER**, subject to the terms and conditions hereunder stipulated;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements hereunder specified, **PAGCOR** and the **SUPPLIER** hereby enter into this Purchase Contract under the following terms, conditions and specifications:

TERMS AND CONDITIONS

The rights and obligations of the **PARTIES** are set forth as follows:

- The **SUPPLIER** shall undertake the Supply, Delivery & Installation of UPS battery for the 2x120 KVA UPS of CF-Cebu under ITB No. PB20-10-008CEB with the following technical specifications:

Supply, Delivery & Installation of UPS Battery for the 2x120 KVA UPS of CF-Cebu under ITB No. PB20-10-008CEB			
Item No.	QTY	UOM	ITEM DESCRIPTION
	80	units	UPS Battery Brand new , sealed, Valved Regulated Lead Acid (VRLA), Maintenance Free Battery "12v-80AH" for the 2 units x120 KVA UPS
Additional Terms and Conditions:			
Product description of existing UPS:			
<ul style="list-style-type: none"> • Eaton-Powerware 9390 • 2 units x120 KVA • 400 volts • 3-phase • 60Hz 			
Other incidentals or materials needed shall be borne by the supplier			
Prepare the 2x120 KVA UPS for Shutdown. Check and service the units			
Pull-out of existing batteries and clean the battery cabinets.			
Install and test new batteries, start-up/commissioning and make the UPS operational to its normal parameters.			
One (1) Year Warranty of Battery from the date of Installation including support and services.			
Supplier should be an authorized distributor and service provider of the unit			

- The total contract price shall be in the amount of **One Million Two Hundred Sixty-Eight Thousand and 00/100 Pesos (Php 1,268,000.00) VAT-Exclusive, Zero-Rated Transaction** with lots broken down as follows:




No.	Qty	UOM	Description	Unit Cost	Total Cost
Supply, Delivery & Installation of UPS Battery for the 2x120 KVA UPS of CF-Cebu under ITB No. PB20-10-008CEB				One Million Two Hundred Sixty-Eight Thousand and 00/100 Pesos (Php 1,268,000.00) VAT-Exclusive, Zero-Rated Transaction	
1	80	units	UPS Battery	PHP 15,850.00	PHP 1,268,000.00

PAGCOR and the SUPPLIER agree that the contract price already includes all applicable taxes, fees and charges required by the government. The SUPPLIER holds PAGCOR free from liability for any or all taxes arising out of this transaction.

The prices herein agreed shall be considered as fixed prices, and therefore not subject to price adjustment and escalation during contract implementation, except under extraordinary circumstances and upon prior approval of the Government Procurement Policy Board (GPPB) pursuant to Section 61 of Republic Act (R.A.) No. 9184 and its revised Implementing Rules and Regulations (IRR) and the Revised Guidelines for Contract Price Escalation.

- The SUPPLIER shall complete the supply and delivery of said items within **Ninety (90) calendar days** from the date of receipt of the Notice to Proceed. The SUPPLIER shall deliver at the Casino Filipino Cebu.
- PAGCOR shall pay the total amount of **One Million Two Hundred Sixty-Eight Thousand and 00/100 Pesos (Php 1,268,000.00) VAT-Exclusive, Zero-Rated Transaction**, based on the following schedule:

99% of the costs of the items delivered (<i>per lot</i>) subject to PAGCOR's acceptance [Issuance of the Inspection and Acceptance Report (IAR)] in writing of the items described in the PO.	99% equivalent of the costs of the items delivered
1% Retention of the items delivered to be paid after three(3) months from the formal acceptance (issuance of the IAR), if and when no patent and latent defects are noted (issuance of a Certificate of No Patent and Latent Defects).	1% equivalent of the costs of the items delivered

OR

 

100% of the costs of the items delivered provided that the goods supplied are free from patent and latent defects and all conditions imposed under the contract have been fully met; subject to PAGCOR's acceptance (issuance of the IAR) in writing of the items described in this Contract and upon submission of a Special Bank Guarantee equivalent to at least one percent (1%) of the total contract price valid for **three (3) months** from issuance of the IAR.

One Million Two Hundred Sixty-Eight Thousand and 00/100 Pesos (Php 1,268,000.00) VAT-Exclusive, Zero-Rated Transaction

5. The **SUPPLIER** shall complete the supply and delivery of goods within the time agreed by both **PARTIES**. Should the **SUPPLIER** incur delay in its performance, it shall pay a penalty of one-tenth of one percent (1/10 of 1%) of the total cost of the unperformed portion for each day of delay. The maximum deduction shall be ten percent (10%) of the amount of the contract. Once the cumulative amount of liquidated damages reaches ten percent (10%) of the amount of the contract, **PAGCOR** shall have the option to rescind the contract, without prejudice to other courses of action and remedies open to it.

In case the **SUPPLIER** still fails to deliver the item after the lapse of **thirty (30) calendar days** from the supposed date of delivery, in addition to the forfeiture of the Performance Security and the penalties agreed upon, **PAGCOR** shall have the option to terminate the Contract.

6. In the event that the **SUPPLIER** fails to comply with its undertakings under this Contract, **PAGCOR** shall be released from its obligations without prejudice to its rights of restitution, recovery and damages.
7. In the event that the facts and circumstances arise or are discovered which render this Contract disadvantageous to the Government, the **PARTIES** hereto agree immediately to re-negotiate its terms and conditions, or at the option of **PAGCOR** terminate the same.
8. No terms or conditions of this Contract shall be deemed waived and no breach or default excused unless such waiver shall be in writing and signed by the party affected.
9. The rights and obligations under this Contract are of a personal nature and compliance thereof may not be assigned or subcontracted to another without the written consent of the other party. This Contract or any interest in it may not be assigned without the prior written consent of the other party.
10. This Contract contains all the covenants and stipulations agreed upon by the **PARTIES** and shall be modified, revised or amended only upon written agreement of both **PARTIES**.



11. This Contract constitutes the entire contract between the **PARTIES** pertaining to the subject matter contained in it, and supersedes all prior and contemporaneous agreements, representations, warranties and understandings of the **PARTIES**. No supplement, variation or amendment of this Contract shall be binding UNLESS executed in writing by the **PARTIES**. No waiver of any of the provisions of this Contract shall be deemed, or shall constitute, a waiver of any other provision, whether similar or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding UNLESS in writing and signed by the party making the waiver.
12. The relationship between the **PARTIES** shall be limited to the performance of the terms and conditions of this Contract. Nothing herein shall be construed to create a general partnership/agency/employer-employee or any other relationship between the **PARTIES**, or to authorize any party to bind the other except as set forth herein, or to borrow money on behalf of another party, or to use the credit of any party for any purpose other than what has been set forth herein.
13. All claims and disputes relating to or arising out of this Contract, shall as much as possible, be settled amicably by the **PARTIES** before resorting to any judicial action.

The **PARTIES**, waiving for this purpose any other venue, hereby agree that the courts of the City of Manila shall be the exclusive venue of any and all actions or suits between the **PARTIES** relative to this Contract, to the exclusion of all other courts and venues. This exclusive venue provision shall apply even in cases for declaration of nullity of this Contract in its entirety or in part and in cases arising after or by reason of the declaration of nullity of this Contract in its entirety or in part.

14. The **SUPPLIER** hereby further warrants and represents that:

- a. The goods and specifications shall be described in no. 1 of this Contract.
- b. It has good title to the goods described in the Bidding Documents, full authority to sell and transfer the same and that the items are sold free and clear of all liens, encumbrances, liabilities and adverse claims, of every nature and description.
- c. It will fully defend, protect, indemnify, and hold **PAGCOR** harmless from any and all adverse claims that may be made by any party for the possession and/or the use of the goods.
- d. The defective items shall be replaced within *Twenty-four (24) hours* from receipt of notice. Failure to replace the defective items within the same period shall make the **SUPPLIER** liable for a penalty of one-tenth of one percent (1/10 of 1%) of the total cost of the unperformed portion for each day of delay, including Sundays and Holidays.



- e. **PAGCOR** accepts no liability for the damage of the goods during transit. Title to the goods will be deemed to have passed to **PAGCOR** only upon receipt and final acceptance of the Goods.
- f. It shall pay taxes in full and on time, failure to do so will entitle **PAGCOR** to suspend payment.
- g. Without prejudice to Manufacturer's Warranty, in order to assure that manufacturing defects shall be corrected by the **SUPPLIER**, a warranty security shall be required from the **SUPPLIER** for a minimum period of three (3) months from the date of delivery or acceptance of goods.
- h. The obligation for the warranty security shall be covered by either retention money or a special bank guarantee equivalent to at least one percent (1%) of the total contract price.
- i. The said amount shall only be released after the lapse of the three (3) months warranty period provided the goods supplied are free from patent and latent defects and all conditions imposed under the contract have been fully met.
15. To guarantee the faithful performance of the **SUPPLIER** under this Contract, it shall post a Performance Security prior to the execution of the Contract, in accordance with any of the following schedule:

Form of Performance Security	Amount of Performance Security (Not less than the Percentage of the Total Contract Price)
(a) Cash or cashier's/manager's check issued by a Universal or Commercial Bank.	Five Percent (5%) Sixty-Three Thousand Four Hundred Pesos (Php 63,400.00)
(b) Bank draft/guarantee or irrevocable letter of credit issued by a Universal or Commercial Bank: Provided, however, that it shall be confirmed or authenticated by a Universal or Commercial Bank, if issued by a foreign bank.	
(c) Surety bond callable upon demand issued by a surety or insurance company duly certified by the Insurance Commission as authorized to issue such security specific to the contract awarded.	Thirty Percent (30%) Three Hundred Eighty Thousand Four Hundred Pesos (Php 380,400.00)





In case the **SUPPLIER** posted a Bid Security in the form of Cash, Cashier's or Manager's Check, the same may be utilized as additional payment to complete the amount of the Performance Security.

The Performance Security shall remain valid during the entire contract duration and shall be released only after the issuance of the Certificate of Final Acceptance (issuance of the IAR); Provided that **PAGCOR** has no claims filed against the contract awardee or the surety or insurance company, and it has no claims for labor and materials filed against the contractor.

IN WITNESS WHEREOF, the **PARTIES** have signed these presents on this _____ day of FEB 18 2020 at CEBU CITY.

**PHILIPPINE AMUSEMENT AND
GAMING CORPORATION**
TIN: 033-000-887-972

Represented by:


MA. CONSOLACION A. PASION

Officer-In-Charge

TIN: 102-017-029-0000

COMFAC CORPORATION
TIN: 000-052-623-000

Represented by:


LLOYD L. LATO

Service Supervisor

TIN: 259-612-851

Signed in the presence of:


Faith Marcelle T. Layate


Dominick Perez

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
CEBU CITY) S.S.

BEFORE ME, a Notary Public for and in City of CEBU CITY, Philippines, this
 day of FEB 18 2021, personally appeared:

Name	Identification Document Presented
MA. CONSOLACION A. PASION (In her Capacity as Officer-In-Charge of Casino Filipino-Cebu)	SSS ID No: 03-9772404-4
LLOYD L. LATO Service Supervisor	DRIVER'S LICENSE G05-05-017789

known to me and known to be the same persons who executed the foregoing instrument consisting of eight (8) pages, including the page whereon the acknowledgment is written and acknowledged before me that the same are their free and voluntary acts and deeds and that of the entities they represent.

WITNESS MY HAND AND NOTARIAL SEAL, at the place and on the date first above written.

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ATTY. MELANIO G. FERNANDEZ
 NOTARY PUBLIC
 Rm. 6 Grnd. Floor, Leyson Bldg. 26 D. Jakobalem St. C.C.
 NOTARIAL COMMISSION NO. 11-08
 UNTIL DECEMBER 2021
 PTR NO. 694193 - 12/18/20 CEBU PROVINCE
 IBP NO. AR42712529 - 12/18/20 CEBU PROVINCE
 ATTORNEY ROLL NO. 30412
 MCLE COMPLIANCE NO. VI-0016433, UNTIL April 24, 22

[Signature]
[Signature]