

MERCHANDISING TERMS AND CONDITIONS

ZOOLOGICAL SOCIETY OF SAN DIEGO DBA SAN DIEGO ZOO WILDLIFE ALLIANCE (“SDZWA”)

1. ENTIRE AGREEMENT: This purchase order (“PO”) is a binding contract and constitutes the entire agreement between SDZWA and the applicable vendor as referenced in the PO (hereinafter “SUPPLIER”). Any additional or different provisions proposed by SUPPLIER are rejected unless agreed to in writing by SDZWA.

2. CONFLICTING TERMS: All transactions for goods and/or services involving SDZWA are subject to the terms and conditions of this PO and are expressly conditioned upon SUPPLIER’s assent thereto. SUPPLIER will be deemed to have accepted these terms and conditions upon receipt of this PO or by any other act, including, without limitation, failure to object in writing to these terms and conditions upon receipt of this PO or by issuance of goods or services and/or receipt of payment for same. Additional purchase orders or similar order instruments by SDZWA will be governed only by the terms and conditions of this PO, and any additional and/or inconsistent terms or conditions set forth in any acknowledgment, purchase order, or acceptance documents requested from and/or provided by SUPPLIER are expressly rejected. Neither SDZWA’s receipt of the goods or services, nor provision of the services or any other action, conduct, or performance shall constitute acceptance of terms or conditions different from the terms and conditions of this PO. Fulfillment of orders for SDZWA is agreement to these terms, which shall govern in the event of conflict with any other applicable terms pertaining to all transactions for good and/or services.

3. ACCEPTANCE: SDZWA reserves the right to inspect and either accept or reject goods or services that (i) contain any defect in materials, workmanship or design; (ii) fail to conform to SDZWA’s written specifications (the “Specifications”) provided to SUPPLIER for the goods or services; or (iii) if the materials are subject to and do not comply with applicable federal or state consumer product safety laws or regulations (collectively referred to as “Defective Products”). SDZWA may, at its option, (i) return Defective Products at SUPPLIER’s expense for a full refund of purchase price; (ii) at SUPPLIER’s cost, return Defective Products to SUPPLIER for repair or replacement within five (5) days of SUPPLIER’s receipt of the returned Defective Products; or (iii) exercise any other rights SDZWA may have at law or in equity. Defective Products that are returned to SDZWA after repair or replacement are subject to the same inspection and acceptance provisions. All goods or materials shall be new, unless otherwise specified in this PO. Neither SDZWA’s inspection nor failure to inspect shall relieve SUPPLIER of any obligations hereunder.

4. PACKING AND SHIPPING: All materials shall be suitably prepared for shipment so as to effect safe delivery without damage or loss. No charge will be allowed for packing, crating or cartage unless otherwise stated in the PO. Each container must be marked outside with the PO number. **A packing list showing PO number, part number and quantity must be included.** Allowed freight must be prepaid and added to invoice. Title or risk of loss or damage passes to SDZWA upon receipt by SDZWA. In addition, all material shipments to any SDZWA location are to be labeled in accordance with the provisions of the Globally Harmonized System (GHS) of classification and labeling chemicals and include the safety data sheet (SDS) for each item being shipped.

For any SUPPLIER who request that SDZWA print and send stickers, a flat fee of \$15 per purchase order will be charged. With this change, SDZWA Buying team will add “Include \$15 sticker fee” to the purchase order notes. SUPPLIER’s accounting department should add a line on the invoice that details a \$15 credit.

If credit is missed, SDZWA will send an invoice end of month.

Pricing Sticker Requests	Charge
Printing and Shipping stickers to SUPPLIER warehouse	\$15

5. PAYMENT AND INVOICES: At the time the Merchandise Manager/Buyer submits a purchase order, the SUPPLIER representative should confirm cost, ship date, and cancel date within two (2) business days.

ARRIVAL If a purchase order does not arrive within the ship/cancel window, SDZWA risks sales liability, unfinished feature table displays and windows, and/or diminishes event support. Purchase orders that arrive after two (2) days of cancel date will be subject to a chargeback of 2% of total cost of order. Conversely, if the order arrives earlier than ship/cancel window, the Buyer will request a call tag for pick up or charge 2% of total cost of order. Some exceptions may apply.

COST If cost is incorrect, SDZWA Inventory Control team spends time determining correct cost between Suppliers and Buyers. If cost is not confirmed by the SUPPLIER within two (2) business days that order is sent/received AND is invoiced with the incorrect cost, chargeback will be \$40. (Exception: Certain items include royalties paid out to a 3rd party. In these instances, the Buying team will add notes to the purchase order that the cost includes royalties. The SUPPLIER will only invoice the agreed upon cost of the item.)

SUPPLIER needs to email invoice to InvControl@sdzwa.org within two (2) days of Receipt stamp by Warehouse team. If not received by end of 2nd day after receipt, SDZWA will charge \$40.

Purchase Order/Invoice Status	Chargeback
PO arrives within ship cancel date range	N/A
PO arrives before confirmed ship/cancel date range	Buyer will request call tag for pickup OR charge 2% of total cost of order
PO arrives more than two (2) days after cancel date	2% of total cost of order
Cost not confirmed by SUPPLIER, and is invoice incorrectly	\$40
Invoice not received from SUPPLIER within two (2) days of receipt stamp by SDZWA warehouse team	\$40

Each invoice will be subject to verification by SDZWA and deductions will be made for disputed items, if any. Payment is subject to adjustment for any shortage or rejection. Separate invoices must be issued for each shipment. Freight, sales tax and other charges must be shown as separate line items. Terms are Net 30 upon final acceptance, unless otherwise agreed to in writing. Submit invoices to invcontrol@sdzwa.org. If unable to provide invoice electronically, submit to: San Diego Zoo Wildlife Alliance, Attn: Inventory Control, 10946 Willow Court, Suite #200, San Diego, CA 92127.

SDZWA through its authorized representatives shall have access to the accounting records and other documents maintained by the SUPPLIER which relate to materials or services being sold or delivered to the other party under this PO and shall have the right to audit such records at its own cost at any reasonable time or times, upon prior written notice, during the term or within five (5) years after the termination of this PO.

6. TERMINATION WITHOUT CAUSE: SDZWA, in its sole discretion and without cause, may terminate this PO, in whole or in part, at any time without incurring liability to SUPPLIER for lost

profits, or any other costs or damages, other than the (i) cost of goods purchased by SUPPLIER to fulfill SUPPLIER's order as evidenced by reasonable documentation; (ii) the proportionate value of the fee for services rendered and unpaid as provided in the PO, if any; and (iii) goods delivered and accepted by SDZWA.

7. SPECIFICATIONS AND CHANGES: All items must comply with current Specifications. Should Specifications be revised, SUPPLIER, with SDZWA's written consent, may substitute items in accordance with the revised Specifications. SDZWA may at any time, by written notice, and without notice to the sureties or assignees, make changes to this PO in one or more of the following: (i) drawings, designs, Specifications; (ii) method of shipping or packing; (iii) place of delivery; and/or (iv) delivery schedule.

Should any such change increase or decrease the cost or performance time, adjustment may be made. SUPPLIER must request adjustments within thirty (30) days of change. Adjustments, if any, shall be at SDZWA's sole discretion to accept or reject. Upon SDZWA's acceptance of such adjustments, SUPPLIER shall proceed without delay in the performance of this order.

8. WARRANTY: SUPPLIER warrants that all articles, materials, work and services provided hereunder (collectively, the "Work"), and the use of the Work as intended by SDZWA or the transfer thereof by SDZWA, will be (i) free from defects in material, design and workmanship; (ii) will conform to applicable Specifications, drawings, samples and descriptions; (iii) will vest in SDZWA good and valid title clear of any liens, encumbrances, security interests, burdens and/or other claims; (iv) comply with all applicable laws and regulations; and (v) will not infringe upon any third party's intellectual property rights. The warranty period is one (1) year from final acceptance by SDZWA, unless a longer warranty period is specified in a corresponding contract between SDZWA and SUPPLIER for the goods or services covered by this PO, during which SDZWA may exercise its options under Paragraph 3 ("Acceptance").

9. INDEMNIFICATION: SUPPLIER agrees that it will indemnify, defend and hold harmless SDZWA, its officers, employees, agents, subcontractors and guests from any claim, action or suit, loss, cost, damage, expense or liability due to property damage, personal injury or death, intellectual property infringement or failure to comply with any applicable law, executive order or regulation of any kind or nature arising out of, as a result of, or in connection with the provision of the Work, use of the Work as intended by SDZWA, or transfer of the Work by SDZWA, SUPPLIER, its employees, agents, or subcontractors. SDZWA shall have the right to use legal representation of its own selection at its own expense. Further, in the event that an injunction should be granted in any way related to such Work, SUPPLIER shall additionally, at its expense, effect a substitution of satisfactory Work capable of avoiding such an injunction.

10. PRE-QUALIFICATION AND COMPLIANCE MAINTENANCE. If SUPPLIER requires entry into and/or will be working on SDZWA's facilities, SUPPLIER agrees to cooperate with, register for and submit all required documentation on a timely basis for SDZWA's then current and mandated pre-qualification program for all SUPPLIERS working at SDZWA's facilities (the "Pre-Qualification and Compliance Program" or the "Program"). SDZWA shall provide the requisite information regarding the Program upon issuance of this PO. SUPPLIER further agrees to maintain its compliance, as dictated by the terms of the Program, as long as SUPPLIER continues to do work at SDZWA facilities. Failure by SUPPLIER to achieve the pre-qualification requirements or subsequent compliance shall be grounds for termination of the PO by SDZWA. All costs associated with the program and compliance is to be borne by SUPPLIER unless otherwise agreed to in writing.

11. INSURANCE: Subject to higher limits as required by SDZWA in the PO, SUPPLIER, its subcontractors and lower-tier subcontractors shall each provide and maintain during the period of

performance insurance in the amounts and of the types specified on SDZWA's Insurance Requirements document which can be found at <https://sdzwa.org/legal>. At all times, SUPPLIER will carry a minimum of \$1,000,000 public liability/property damage insurance, \$1,000,000 automotive, and worker's compensation insurance at the statutorily prescribed limits. When applicable, SUPPLIER shall maintain \$1,000,000 minimum professional liability insurance. SDZWA shall be named as additionally insured to SUPPLIER's primary policies and SUPPLIER shall provide the certificate, and all required endorsements. If requested, SUPPLIER must present the certificate and all required endorsements when SUPPLIER drives onto the grounds of any SDZWA facility. SUPPLIER must e-mail the certificate and all required endorsements to insurance@sdzwa.org and upload to their Avetta profile prior to driving onto the grounds of any SDZWA facility. If unable to provide the certificate electronically, submit to: San Diego Zoo Wildlife Alliance, Attn: Risk Management, P.O. Box 120551, San Diego, CA 92112- 0551.

12. ACCESS TO SDZWA FACILITIES: If SUPPLIER requires entry onto and/or will be working at SDZWA's facilities, SUPPLIER specifically acknowledges the review of SDZWA's handbooks entitled "General Safety Rules and Regulations" and "Vehicle Code," both of which can be found at <https://sdzwa.org/legal> and both respectively incorporated herein by this reference. SUPPLIER agrees to be bound by all the provisions thereof, as amended from time to time. Furthermore, SUPPLIER acknowledges that it shall notify and cause all of SUPPLIER's employees and subcontractors to access and review such handbooks and to agree to the terms thereof, as amended from time to time, before making initial entry onto and/or working at SDZWA's facilities.

13. PROPRIETARY AND REPRODUCTION RIGHTS: SUPPLIER agrees that SDZWA retains any and all proprietary rights to the Work, including exclusive rights of reproduction or use of the subject matter of this PO, unless otherwise expressly agreed in writing by SDZWA, in any situation where qualifying for, filling, or completing this PO requires SUPPLIER to: (A) use any depiction or variation of an exhibit or its insignia, animal or animal habitat, landscape, layout, skyline, sign, conveyance or physical structure associated with the SDZWA, or any SDZWA trademark, trade name, logo, design, publication or copyrightable subject matter; (B) use existing SDZWA proprietary subject matter including biological, botanical, genetic or zoological research technique, procedure or information, zoo keeping apparatus, process, formula or procedure; or, (C) make a new invention, design, or work of authorship such as: a text or treatise, photographic work, two or three dimensional artwork, musical composition or lyrics, audio or visual type, cassette, disc, database, or computer software (collectively referred to as an "Innovation"), whether or not such Innovation is patentable or subject to other governmental protective grant. SUPPLIER also agrees (i) to promptly make SDZWA aware of any such Innovation, (ii) to limit disclosure of such Innovation solely to SDZWA and (iii) to sign all paperwork to enable timely protection of such propriety rights of SDZWA.

SDZWA's name, trademarks and/or logos may not be used by SUPPLIER without prior written approval from SDZWA's Licensing Department. Prior written approval is also required before referring to SDZWA or its facilities or programs in any promotional materials including advertising, press releases, client lists or other marketing materials, whether in print or electronic media. In order to receive written permission, a formal licensing agreement executed by both parties is required and SUPPLIER will be subject to applicable licensing fees.

14. ASSIGNMENT: Neither this PO nor any interest under it shall be assigned by SUPPLIER without the prior written consent of SDZWA, except that claims for monies due under this PO may be assigned to a bank, trust company, or other financing institution by SUPPLIER without such consent. SDZWA shall be furnished with two signed copies of any such assignment. SDZWA reserves the right to make direct settlement or adjustment in price with SUPPLIER under the terms of this PO, notwithstanding any assignment of claims for monies due or to become due

hereunder and without notice to assignee.

15. CONFIDENTIALITY: SUPPLIER agrees to maintain as confidential any information disclosed to it by SDZWA.

16. GOVERNING LAW / VENUE: This PO will be governed by the laws of the State of California, and exclusive venue for any actions brought under this PO will be San Diego County, California.

17. NOTICE: Any notice given under this PO shall be in writing and will be effective: (i) when delivered if delivered in person; (ii) three (3) days after deposit in US Mail to the address provided on the first page of this PO; or (iii) upon receipt of reply if by email.

18. INDEPENDENT CONTRACTOR: SUPPLIER agrees that all services or activities shall be performed as an independent contractor and that employees or subcontractors shall not be considered agents or employees of SDZWA.

19. LEGAL COMPLIANCE/GOVERNMENT REGULATIONS: SUPPLIER warrants that the goods sold and services rendered hereunder and every other activity connected therewith have been and will be produced, manufactured, delivered, supplied and performed in compliance with all applicable laws, ordinances, rules and regulations. **This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60–1.4(a), 60–300.5(a) and 60–741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status. EO 13496: The requirements at 29 CFR Part 471, Appendix A to Subpart A are also hereby incorporated by reference. SDZWA is an Equal Opportunity Employer.** In the statement above, the term "contractor" refers to SDZWA, and the term "subcontractor" refers to SUPPLIER.

20. HAZARDOUS WASTES: If the SUPPLIER generates any hazardous waste(s) on SDZWA's property or site, as defined in Chapter 11 Title 22 Division 4.5 CCR and 40 CFR §261.3, the SUPPLIER will immediately notify the SDZWA's Legal, Risk & Compliance Department. The SUPPLIER will comply with SDZWA's policies and practices, and any applicable laws, regarding management of hazardous wastes.

21. BIOMATERIALS SAMPLES: Materials received from SDZWA remain the property of SDZWA, and the use of such materials may be governed by international treaty and federal regulation, including the Convention on International Trade in Endangered Species (CITES) and the Endangered Species Act (ESA). The materials may also be subject to contractual restrictions. As such, no ownership or other rights are transferred or conveyed by virtue of the services to be provided by recipient. There shall be no use, retention or transfer of the materials or progeny, clones or derivatives of the materials other than as: (1) expressly agreed by SDZWA; (2) required by law; or (3) as necessary to perform the services contemplated herein, and in all cases such use shall be subject to the terms of this statement. As may be applicable, an approved laboratory is hereby authorized to and shall destroy any excess materials by lawful method unless otherwise agreed by SDZWA.