



## WILDLIFE CONSERVATION SOCIETY TERMS AND CONDITIONS FOR PURCHASE ORDERS

(Vendor is not supplying WCS NYC zoos & aquarium nor located in OECD Member Country)

As of May 10, 2022

Wildlife Conservation Society ("WCS") agrees to purchase from the vendor ("Vendor") identified in the WCS Purchase Order (the "WCS Purchase Order") the goods and/or services described therein.

**A. Unless otherwise provided in the WCS Purchase Order, the following terms and conditions apply to all Vendors providing goods and/or services to WCS:**

1. **Acceptance.** Delivery of the WCS Purchase Order to Vendor constitutes an acceptance by WCS of Vendor's offer upon the terms and conditions stated in the WCS Purchase Order, any attachments thereto and the terms and conditions herein, which collectively constitutes an agreement ("Agreement") binding on both parties. In the event that the terms of any attachments to this Agreement conflict with the terms herein, the terms herein shall supplement and supersede the terms of such attachments.
2. **Payment, Taxes and Other Charges.** Absent contrary terms agreed upon in writing between WCS and Vendor (including, without limitation, WCS's expedited payment upon Vendor's price discount), payment will be due forty-five (45) days from, as applicable, (i) WCS's acceptance of the goods as described in Section B.4 below, and/or (ii) WCS's satisfaction with Vendor's services and invoice as described in Section C.1 below. Vendor shall not charge a tax on goods delivered to any state or country where WCS is exempt from such tax, including, without limitation, exempt from U.S. sales tax presently in California, Connecticut, District of Columbia, New Jersey and New York, and in any other states or in any country in which WCS has or may secure any other exemptions in the future. WCS is not responsible for any taxes, tariffs, custom duties, charges or other costs not stated in the WCS Purchase Order.
3. **Relationship.** Vendor is an independent contractor for all purposes. Neither party will be deemed to be the legal representative of the other. Vendor agrees to assume complete responsibility for its own employees, contractors, subcontractors and agents with regard to specific Country and United States federal, state or local employers' liability, worker's compensation, Social Security, unemployment insurance and Occupational Safety and Health Administration requirements, and agrees to comply with all other applicable federal, state or local laws, ordinances, regulations and licensing obligations.
4. **Risk of Loss; Liability.** Vendor shall hold title to and risk of loss of goods under this Agreement, until delivery and acceptance by WCS. Risk of loss of, or damage or destruction to, the goods shall pass from Vendor to WCS only upon written confirmation by WCS of acceptance of the goods. IN NO EVENT SHALL WCS BE LIABLE TO VENDOR FOR ANY DAMAGES ARISING OUT OF VENDOR'S PERFORMANCE OF THIS AGREEMENT. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOST SAVINGS), EVEN IF A PARTY IS INFORMED OF THEIR POSSIBILITY.
5. **Indemnification.** To the fullest extent permitted by law, and notwithstanding any limitation of liability contained in any attachment to the WCS Purchase Order, Vendor agrees to defend, indemnify and hold harmless WCS, its affiliates and their respective trustees, officers, employees, guests, independent contractors, agents, successors and assigns (collectively, "Indemnitees") from and against, and to reimburse Indemnitees for, any and all claims, demands, liabilities, losses, damages, liens, encumbrances, penalties, fines, suits, proceedings, judgments, costs and fees, including attorneys' fees, of whatsoever kind or nature ("claim(s)"), including claims for damages because of bodily injury, illness, disease, or death or damage to, loss of use of, or destruction of tangible property, actually or allegedly arising out of or occurring in connection with the work or operations of the Vendor or any of its subcontractors, sub-subcontractors, suppliers, or any of their agents, employees, officers, directors or partners, (collectively,



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“Vendor’s Agents”) in connection with the purchase identified in the WCS Purchase Order or breach of this Agreement by Vendor or Vendor’s Agents, excluding only liability caused by the Indemnitees’ sole and exclusive negligence. Vendor further agrees to defend, indemnify and hold harmless Indemnitees from and against any claims arising from (i) any breach of this Agreement by Vendor, (ii) any infringement by Vendor of copyright, trademark, patent, trade secret or other intellectual property rights, or (iii) both. Vendor’s agreement set forth in this paragraph shall not be deemed excess coverage to any insurance or self-insurance Indemnitees may have covering a claim. If any portion of the purchase identified in the WCS Purchase Order is delivered to or is performed at WCS’s zoos or aquarium in New York City, New York, U.S.A. (collectively, the “WCS NYC Facilities”) the term “Indemnitees” as used above shall also include the City of New York (the “City”).

6. **Termination.** WCS retains the right to terminate this Agreement, in whole or in part, for default by written notice to Vendor if Vendor (a) fails to deliver the goods and/or services within the time and manner specified in the WCS Purchase Order, or if unspecified, within a reasonable time and in a reasonable manner; (b) becomes insolvent or makes assignment for the benefit of creditors, files or is forced to file bankruptcy or enters reorganization proceedings; (c) provides unsatisfactory goods and/or services; or (d) fails, or Vendor’s Agents fail, to abide by any applicable rules and regulations, including without limitation, those of WCS or any government authority. In such an event, WCS reserves all of its rights and remedies, including without limitation, taking all reasonably necessary actions to cover its interest and obtain commercially equivalent goods and/or services.
7. **Insurance.** Vendor agrees to obtain and maintain, for the term of this Agreement and at any time Vendor is providing goods and/or services to WCS, reasonably adequate insurance to cover the liabilities that may arise under or in connection with this Agreement.
8. **Compliance.** (a) Vendor warrants and represents to WCS that it is and shall remain during the term of this Agreement in compliance with, and shall ensure that its employees, agents, contractors and subcontractors will comply with, the U.S. Foreign Corrupt Practices Act and applicable U.S. economic and trade sanctions, including (without limitation) those administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of Treasury, as well as export restrictions administered by the U.S. Government, as applicable. Without limiting the generality of the foregoing, Vendor certifies and agrees that the sale and delivery of the goods to the place of delivery does not violate U.S. law or regulations, including, without limitation, federal import regulations and the Export Administration Regulations administered by the Bureau of Industry and Security of the U.S. Department of Commerce. (b) Vendor has and shall maintain in effect all the necessary licenses, permissions, authorizations, consents and permits required by law to carry out its obligations under this Agreement. Vendor shall comply with all laws applicable to the performance of this Agreement, including, without limitation, all laws applicable to Vendor’s operations, and all export and import laws of all countries involved in the sale of goods under this Agreement. Vendor assumes all responsibility for shipments of goods requiring any government import clearance. If Vendor fails to comply with any laws, orders, rules, ordinances, and regulations and as a result thereof WCS is fined or penalized, Vendor agrees to pay the fine and any costs incident thereto or reimburse WCS for payment. WCS shall have the right to deduct any such fines or costs related to noncompliance from, and set-off such fines or costs against, any amounts otherwise owed by WCS to Vendor under this or any other agreement.



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9. **Force Majeure.** Neither party shall be in breach of this Agreement if its performance is materially and adversely affected by acts of government, civil unrest, terrorism, riots, military actions, border closures, labor disputes, major infrastructure disruptions, environmental disasters, extreme natural phenomena, public health crises or other causes beyond the reasonable control and without the negligence or fault of the non-performing party (each, an “Event of Force Majeure”). The non-performing party shall give prompt written notice thereof to the other party, including a description of the Event of Force Majeure. For the duration of the Event of Force Majeure, the affected requirements of this Agreement shall be suspended; provided, however, that the non-performing party shall use reasonable efforts to mitigate the effect of the Event of Force Majeure on its performance under this Agreement. After the Event of Force Majeure, the parties shall resume performance as soon as reasonably practicable, unless they agree otherwise in writing. If an Event of Force Majeure lasts over thirty (30) consecutive days or severely undermines the primary purpose for entering into this Agreement, either party may terminate this Agreement without penalty by written notice to the other. In the event of such a termination, payment will be made for goods delivered and accepted and/or services satisfactorily performed. To the extent any deposit has been paid in advance in respect of goods that have not yet been delivered and accepted and/or services that have not yet been satisfactorily performed, such deposit shall, upon written agreement of the parties, be retained as a credit toward future goods and/or services or, failing such agreement of the parties, be refunded in full within thirty (30) days of such a termination.
10. **Confidentiality.** Each party warrants that it will maintain in strict confidence the other party’s Confidential Information (as defined below) to which it has access during the term of this Agreement. Each party will treat the other party’s Confidential Information with the same standard of care that it uses in maintaining its own Confidential Information, provided that that standard is not negligent. Each party will use the other party’s Confidential Information only as is required by this Agreement, and will not reveal it to a third party without the prior written consent of the other party. “Confidential Information” means information concerning each party’s affairs, activities, research, expertise, knowledge, proposals, projects, finances, property or method(s) of operation, trade secrets, know-how and similar information. Confidential Information does not include information which (a) is already known through lawful means to the receiving party before the other party’s disclosure, (b) after disclosure, becomes generally known to the public through no breach or fault of the receiving party, (c) a party receives from a third party who is free to make such disclosure without breaching any legal obligation to the disclosing party under this Agreement, (d) the receiving party develops independently as evidenced by its own written records, or (e) is required to be disclosed by judicial or administrative process, in which case the party required to make that disclosure will notify the other of the obligation and cooperate reasonably with that party’s effort to bar or seek a modification of the process. Each party will advise its employees, independent contractors and agents that Confidential Information may be treated only as provided herein and cause its employees, independent contractors and agents to comply with these requirements.
11. **Intellectual Property.** With respect to any materials subject to intellectual property protection, including without limitation designs, drawings, art work, specifications, software and other intellectual property or proprietary information (collectively, the “Materials”):



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- a) All WCS Materials utilized in the performance of this Agreement are the sole property of WCS. This Agreement grants Vendor no express or implied rights or licenses with respect to such property, except to the extent of its use in filling the WCS Purchase Order.
  - b) If the goods and/or services delivered by Vendor include the delivery to WCS of: (i) any of Vendor's Materials, Vendor agrees that WCS shall have the right to use, and allow others to use, Vendor's Materials in connection with WCS's charitable mission and businesses; and (ii) any Materials created at the insistence of WCS, such Materials shall be deemed a "work made for hire" under the U.S. copyright law (the "Work" or "Works"); provided any background information or intellectual property created by or belonging to Vendor prior to this Agreement shall remain the exclusive property of Vendor and Vendor hereby licenses such background information or intellectual property to WCS for use in connection with this Agreement. Vendor agrees that all original Work it submits as part of the Work or as part of the process of creating the Work, including but not limited to programs, listings, printouts, diagrams, documentation, notes, flow charts, programming aids, and deliverables shall be the property of WCS whether or not WCS uses such material. No rights are reserved. Vendor hereby grants, assigns, and conveys to WCS all right, title, and interest in and to the Works, all inventions, works of authorship, all other proprietary data, and all other materials (as well as any U.S. and foreign copyrights, patents, trade secrets, or other intellectual property rights attendant thereto) conceived, reduced to practice, authored, developed, or delivered by Vendor or its employees, agents, consultants, contractors, and representatives either solely or jointly with others, during and in connection with the performance of services under this Agreement with WCS. Vendor agrees neither it nor its employees, agents, consultants, contractors, and representatives will seek patent, copyright, trademark, registered design, or other protection for any rights in any such inventions, works or authorship, proprietary data, or other materials. Vendor agrees and will require its employees, agents, consultants, contractors, and representatives to do, at WCS's expense, all things and execute all documents as WCS may reasonably require to vest in WCS or its nominees the rights referred to herein and to secure for WCS or its nominees all patents, trademarks, or copyrights. Except if or as expressly permitted hereunder, Vendor may not use the Work (or reference any work performed for WCS) for any purpose without the prior written consent of WCS.
  - c) Vendor represents and warrants to WCS that (i) each of the Works is original and Vendor is the sole author of each of the Works and the owner of all rights assigned in this Agreement to WCS, (ii) no part of the Materials or the Works will infringe or violate any copyright, trade secret, trademark, patent, invention, or other proprietary or personal right of any third party, and (iii) Vendor has the right to furnish the Material(s) to WCS.
12. **General.** (a) The rights and remedies arising under this Agreement are cumulative and do not exclude any rights or remedies provided at law or in equity. (b) The rights and remedies of WCS may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by WCS shall not constitute a waiver of that or any other right or remedy. (c) A person who is not party to this Agreement shall not have rights to enforce any term of this Agreement. (d) Nothing in this Agreement is intended to create a partnership or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party, or to authorize either party to act as agent for the other. (e) The invalidity, unenforceability or illegality of any provision (or part of a provision) of this



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Agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions (or partial provisions). (f) Any modification made to this Agreement shall be mutually agreed upon in writing by the parties. (g) Upon termination or expiration of this Agreement, the provisions of this Agreement that by their context are intended to survive the expiration or termination of this Agreement shall survive.

**B. Unless otherwise provided in the WCS Purchase Order, the following additional terms and conditions apply only to Vendors providing goods to WCS:**

1. **Shipping and Packing.** (a) All goods to be shipped to WCS must be insured for the full amount of the goods. (b) Vendor shall be responsible for assuring that the goods are shipped out timely and with a responsible delivery service. (c) Vendor shall provide such packing of the goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the WCS Purchase Order. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weights shall take into consideration, if appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit. (d) The goods shall be packaged appropriately and according to any WCS special instructions. WCS must be able to identify easily all items of the goods contained within each carton.
2. **Delivery.** Time is of the essence of this Agreement. Vendor agrees to make delivery on or before the delivery date specified herein. Vendor will promptly notify WCS of any anticipated or actual delay. Vendor shall take all reasonable steps to avoid and end delays within Vendor's control at no cost to WCS. Any unreasonable delay will be considered a material breach of this Agreement. WCS reserves the right to cancel the order and reject the goods upon default by Vendor in time of delivery or, in WCS's sole discretion, accept a revised delivery schedule.
3. **Inspection and Receipt of Goods.** WCS will have the right to inspect the goods in any reasonable manner at the place of delivery within ten (10) days after receipt. The expenses of inspection will be borne by WCS, but they may be recovered from Vendor if the goods do not conform or are rejected due to defect in material or workmanship, damage due to unsatisfactory packaging or other breach of this Agreement. WCS will not be deemed to have accepted the goods within such period before inspection. WCS, in its sole option, may reject all or any portion of the goods if it determines they are nonconforming, defective or damaged. At WCS's election, Vendor shall either promptly replace the nonconforming, defective or damaged goods at its own expense or refund any prior payment(s) therefor made to Vendor. Payment shall not be due within such period before inspection, nor will payment made before it is due constitute final payment or waive any rights of WCS.
4. **Warranty and Performance.** Vendor warrants that any goods sold under this Agreement will be in conformity with WCS's specifications and industry standards, merchantable, free from defects in design, materials and workmanship, and suitable for their ordinary and intended purposes and for WCS's particular purposes, and that the manufacture, sale and use of the goods will not infringe any copyright, trademark, patent, trade secret or other intellectual property right of any third party. Vendor agrees that these warranties shall survive acceptance and resale of the goods by WCS to third parties, and shall run



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to Vendor and its assignees or successors-in-interest. These warranties are in addition to all applicable warranties mandated by law.

**C. Unless otherwise provided in the WCS Purchase Order, the following additional terms and conditions apply only to Vendors providing services to WCS:**

1. **Payment for Services.** Payment will be due upon WCS's satisfaction with Vendor's services and receipt of Vendor's invoice in a form satisfactory to WCS.
2. **Requirements for Services.** In performing the Services, Vendor shall (and shall ensure that Vendor's Agents shall):
  - a) Comply with (i) all directives of WCS regarding conduct on WCS's property, such as safety rules and regulations, (ii) applicable laws relating to the services, including federal, state and local laws and requirements, rules, regulations, Executive Orders and ordinances, and (iii) generally accepted professional standards of performance and ethical standards of conduct. Vendor will reimburse WCS for any expenses incurred by WCS on account of any failure or alleged failure by Vendor or Vendor's Agents to comply with any of the foregoing, and WCS may deduct such expenses from any amount that may otherwise be due to Vendor.
  - b) Take all necessary precautions for the safety of, and provide the necessary protection to prevent damage, injury, or loss to, (i) all persons on or around the work site, including Vendor's staff, Vendor's Agents, employees of WCS, and the public; and (ii) other property at or adjacent to the work site.
  - c) As directed by WCS, coordinate its efforts with those of WCS employees or any other contractor of WCS performing work adjacent or connected to the work site. Unless otherwise agreed to by the parties, Vendor and Vendor's Agents shall observe the working hours, working rules and holiday schedules of WCS while working at WCS's property.
  - d) At the direction of WCS, remove or replace, as necessary, any of Vendor's staff and/or Vendor's Agents working on WCS's property and whose work does not meet WCS's standards or who is not cooperating in completing the Services in a professional and timely manner.
3. **Warranty and Performance.** Vendor warrants that any Services provided under this Agreement will be in conformity with WCS's specifications and/or scope of work, and will be performed in a good and workmanlike manner, in compliance with applicable law, and consistent with the skill and care ordinarily provided by vendors practicing in the same or similar locality under the same or similar circumstances. Vendor further warrants that the Services to be provided under this Agreement do not and will not infringe any copyright, patent, trademark, trade secret or other intellectual property right of any third party.

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