

1. Definitions and Interpretation.

- a. Where used in these terms and conditions:
- i. **“Agreement”** means these terms and conditions as updated from time to time and made available at WG’s website located at the following link:
<https://www.westconcomstor.com/content/dam/wcgcom/Global/CorpSite/Legal/Westcon-Australia-terms-and-conditions.pdf>.
 - ii. **“Authorised Representative”** means any person who is duly authorised to sign on behalf of the Buyer.
 - iii. **“Buyer”** means the entity, company, firm, partnership or organization that purchases Products from WG.
 - iv. **“Contract”** means a Purchase Order submitted to WG by Buyer and accepted by WG in accordance with this Agreement.
 - v. **“Contract Date”** means the date upon which a Purchase Order is accepted by WG in accordance with Clause 2(e).
 - vi. **“Confidential Information”** means, in relation to a party, all information relating to that party and its affiliates, including all information concerning the business, products, services, systems, procedures and records (in whatever form, including in electronic format) of that party and its affiliates, and their relationships with their customers and suppliers. Confidential Information of WG includes the terms and conditions of this Agreement, any Contracts, and all Product related information including pricing and descriptions which are provided by WG to Buyer.
 - vii. **“E-System”** means the Product ordering website operated by WG currently located at the following URL:
<https://online.westcongroup.com/>.
 - viii. **“Force Majeure”** includes any acts of God, government, war, terrorism, riot, fire, floods, earthquakes, explosions, strikes, lockouts, cessation of labour, trade disputes, breakdowns, accidents of any kind or any other causes which are beyond the reasonable control of a party (including delay by Suppliers).
 - ix. **“Goods”** means any Supplier’s goods, maintenance contracts and/or software, or any instalment or parts thereof, which are supplied by WG to Buyer pursuant to a Contract, including any Supplier documentation related thereto.
 - x. **“Products”** means any combination of Goods and Services which are supplied by WG to Buyer pursuant to a Contract.
 - xi. **“Purchase Order”** means Buyer’s written or electronic order for Products and includes any order that Buyer places online through the E-System or transmits via email or facsimile.
 - xii. **“Quote”** means a quote for Products given formally in writing by WG to Buyer.
 - xiii. **“Services”** means any Supplier’s services

including maintenance contracts which are supplied by WG to Buyer pursuant to a Contract.

- xiv. **“Supplier”** means the supplier, licensor, publisher, manufacturer or other third-party provider of Products.
 - xv. **“WG”** means Westcon Group Pty Limited, registered in Australia under company number 050 539 672, with a registered place of business at Unit 4, 39 Herbert Street, St Leonards NSW 2064, Australia or, as appropriate, any branch offices or subsidiaries within the meaning of s228 of the *Corporation Act 2001* (Cth).
 - xvi. **“WG Services”** means the order and delivery of the Products as described in a Contract.
- b. In this Agreement unless the context otherwise requires:
- i. words importing any gender include every gender;
 - ii. words importing the singular number include the plural number and vice versa;
 - iii. words importing persons include firms, companies and corporations and vice versa;
 - iv. references to numbered clauses, paragraphs and schedules are references to the relevant clause or paragraph in or schedule to this Agreement;
 - v. reference in any schedule to this Agreement to numbered paragraphs relate to the numbered paragraphs of that schedule;
 - vi. any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
 - vii. the headings to the clauses and schedules of this Agreement are not to affect the interpretation;
 - viii. any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or bylaw made under that enactment; and
 - ix. the word "including" (and related forms including "includes") will be understood as meaning "including without limitation".

2. General Terms of Order & Sale

- a. In consideration for the fee agreed in each Contract, WG will perform the WG Services on the terms and condition set out in this Agreement.
- b. Every Contract between WG and Buyer will be subject to the terms and conditions of this Agreement. No additional or alternative agreement or any alteration to this Agreement proposed by the Buyer contained or referred to in a Purchase Order or other form submitted by Buyer to WG will be deemed to apply unless expressly agreed in writing by an Authorised Representative of WG with respect to that Purchase Order. Similarly, any Purchase Orders submitted through the E-System

which contain Buyer's terms and conditions will be deemed a rejection of such Buyer's terms and conditions and will be deemed to be an offer by Buyer to purchase Products subject to the terms and conditions of this Agreement.

- c. The parties acknowledge and agree that the terms and conditions of this Agreement which are attached to, or incorporated by reference into, a Quote provided by WG to Buyer will apply as at the date the Buyer has accepted this Agreement in accordance with Clause 2(d), and that any subsequent changes to the terms and conditions of this Agreement will not apply to a Contract, unless otherwise agreed by the parties in writing.
- d. Buyer will be deemed to have accepted this Agreement on the earlier of: (i) submitting a Purchase Order to WG, or (ii) accepting Products from WG.
- e. Notwithstanding the foregoing, Buyer agrees that WG's provision of a Quote, price list or any other information will not be considered an offer by WG to sell Products to Buyer at the prices listed in the Quote, price list or any other information (as applicable). Only a Purchase Order submitted by Buyer will constitute an offer to contract subject to the terms and conditions of this Agreement, however, a Purchase Order will not be deemed a Contract unless and until the earlier date upon which: (i) written confirmation is provided by WG to Buyer, (ii) a Purchase Order placed through the E-System is confirmed by WG via email to Buyer, or (iii) WG proceeds with the fulfilment of the Purchase Order.
- f. Buyer acknowledges and agrees that a Supplier may amend any specifications applicable to its Products, without prior written notice to Buyer, which are required in order to conform to any statutory or other legal requirements or which do not materially affect the performance of the relevant Products.
- g. Any Products which are subject to additional terms and conditions, guidelines, restrictions or provisions imposed by a Supplier ("**Supplier Terms**") are sold, supplied and delivered to Buyer subject to any such Supplier Terms. Such Supplier Terms are typically available on the relevant Supplier's website and WG will provide such Supplier Terms to Buyer following receipt of a written request from Buyer.

- 3. Cancelling & Rescheduling Purchase Orders.** Subject to Clause 4(a), no Purchase Order which has been accepted by WG may be cancelled or rescheduled by Buyer except with written agreement by WG.

4. Prices.

- a. The price of Products on the Contract Date will

be the price specified in the Quote, which will be valid for seven (7) days following the date of the Quote ("**Quote Validity Period**"). If: (i) the Quote Validity Period expires prior to the Buyer submitting a Purchase Order to WG in respect of the relevant Quote; and (ii) there is a change to the price specified in the original Quote, WG will provide Buyer with an updated Quote reflecting such price change.

- b. Except as otherwise stated in a Quote, and unless otherwise agreed in writing between the Buyer and WG, all prices are quoted on an Ex Works basis (as per Incoterms 2000).
- c. All prices and charges for Products are exclusive of the cost of packaging and delivery, insurance, configuration, fulfilment and other services, as well as applicable goods and services tax (GST), sales, use, consumption and other taxes for which the Buyer shall be additionally liable for paying to WG, provided that all such prices, charges and taxes will be as set out in the relevant Quote. Buyer shall make all payments to WG without reduction for any withholding taxes, which shall be Buyer's sole responsibility. All taxes shall be paid by Buyer to WG unless Buyer provides WG with a valid certificate of exemption acceptable to the appropriate taxing authority.
- d. Prices for Products exclude any copyright levies, waste and environment fees and similar charge that WG by applicable law may charge or collect upon in accordance with such applicable laws, provided all such levies and fees will be set out in the relevant Quote.

5. Payment.

- a. If Buyer has not been granted credit facilities by WG then Buyer's payment will be due on the date specified in the invoice and in advance of delivery. If Buyer has been granted credit facilities by WG then Buyer must pay the purchase price, without any deduction or set-off, within thirty (30) days from the date of the invoice which shall be issued to Buyer on the date that Products are shipped. If payment is made by credit or debit card then Buyer agrees to pay all fees and service charges incurred by WG in handling such transactions, including fees charged by the credit or debit card company.
- b. All express deliveries are subject to additional shipping charges, provided that such shipping prices will be set out in the relevant Quote.
- c. WG is entitled to recover any invoiced amounts which have not been paid in accordance with this Agreement notwithstanding that delivery may not have taken place nor whether title has passed to Buyer. If Buyer fails to make payment under any Contract when due or otherwise exceeds its credit limit under any credit terms with WG, WG may provide notice to Buyer demanding payment ("**Overdue Notice**") and Buyer must make such payment within 30 days of receipt of the Overdue Notice. If Buyer (i) fails to make any payment

within 30 days of receipt of the Overdue Notice; or (ii) suffers an insolvency event, then, without prejudice to any other right or remedy available to WG, the full price of all Products delivered or ordered but undelivered to Buyer under any Contract, but not paid by Buyer in accordance with this Agreement, shall become immediately due (notwithstanding any previously agreed credit terms) and WG shall be entitled to take any or all of the following courses of action:

- i. by notice in writing, suspend any Contract or any part thereof, without liability, stop any Products in transit and, at its discretion, enter Buyer's premises or vehicles to repossess Products for which payment has not been made in full (and Buyer grants WG and its authorized representatives an irrevocable licence to lawfully enter on or in any premises or vehicles of Buyer where the Products are loaded or stored solely for the purpose of repossessing such Products). WG (or its authorized representative) will provide Buyer with reasonable notice and only enter the premises or vehicle at which the relevant Product is stored during ordinary business hours;
 - ii. charge Buyer interest, both pre- and post-judgment, on any unpaid amount past due, at the rate of 2.5% per month until full payment is made in full;
 - iii. set-off any amounts due against any credit note, balance or other liability issued by WG to Buyer; or
 - iv. appropriate any payment made by Buyer to such Products (including Products supplied under any other contract between Buyer and WG or any WG branch or subsidiary) as WG may deem fit (notwithstanding any purported appropriation by Buyer).
- d. Buyer must provide WG with copies of its annual and/or quarterly financial statements promptly following WG's written request.
- 6. Delivery.**
- a. Any dates quoted for delivery of the Products are approximate only and WG shall not be liable for any delay in delivery of the Products outside of WG's direct control. Time for delivery is not of the essence in any Contract. Any Products may be delivered by WG in advance of the quoted delivery date upon WG giving reasonable written notice to Buyer.
 - b. Unless otherwise agreed in writing, delivery of the Products shall be made at WG's premises upon notification in writing to Buyer that such Products are ready for collection. Buyer will be entitled to collect the Products any time thereafter on reasonable notice during WG's normal business hours. WG has the right to assume that any person who both reasonably appears and claims to have the authority to accept and sign for delivery of the Products on behalf of Buyer does, in fact, have requisite authority from Buyer.
 - c. If WG agrees to deliver Products directly to Buyer's end customer any such delivery shall be deemed to be made when delivered to Buyer's end customer and any refusal by Buyer's end customer to accept such delivery shall be deemed to be a refusal by Buyer.
 - d. Buyer agrees to accept partial delivery of Products ordered unless otherwise mutually agreed by the parties in writing. Where the Products are delivered in instalments, each delivery shall constitute a separate Contract. Failure by WG to deliver any one or more of the instalments in accordance with a Contract or any claim by Buyer in respect of any one or more instalments does not entitle Buyer to treat a Contract as repudiated or to cancel any other instalment.
 - e. If Buyer fails to take delivery of the Products or fails to give WG adequate delivery instructions in its Purchase Order then WG will provide Buyer with notice in writing, and Buyer must promptly accept delivery or provide WG with correct delivery instructions (as applicable). Without prejudice to any other right or remedy available, WG may store the Products until actual delivery and charge Buyer for the reasonable costs thereof, including reasonable insurance costs. Without prejudice to any other right or remedy available, if Buyer has not accepted delivery or provided WG with correct delivery instructions within 30 days of the date of WG's notice, WG may terminate the Contract by providing notice to Buyer in writing and sell the Products. If WG exercises its right to terminate the Contract and sell the Products in accordance with this Clause, WG will reimburse Buyer for a pro-rata portion of any pre-paid fees for such Products.
 - f. Buyer shall bear any and all reasonable costs (including original and return carriage costs) which are directly incurred by WG as a result of any refusal of delivery of Products ordered pursuant to a Contract.
 - g. If there is a shortage of Products available to WG then WG may allocate any available Products between its buyers on such a basis as it deems appropriate. In case of the foregoing, then Buyer agrees to accept any Products delivered to it and shall pay the appropriate pro-rated portion of the invoiced price for such Products.
- 7. Title & Risk.**
- a. Risk of loss or damage to the Products shall pass to Buyer: (i) upon collection of the Products by the Buyer from WG's premises or delivery of the Products to the Buyer (as applicable), or (ii) if Buyer unjustifiably fails to accept delivery of the Products to the Buyer, at such time as delivery is tendered by WG. Buyer shall insure the Products for their invoice value from the date delivery is made or tendered until such time as title in the Products passes to Buyer. Notwithstanding delivery and the passing of risk in the Products, Buyer agrees that title to the Products

shall not pass to Buyer until WG has cleared funds received as payment for the price of the Products, and all other sums which are then currently outstanding to WG by Buyer.

- b. Until such time as title in the Products passes to Buyer, Buyer shall: (i) hold the Products as WG's fiduciary agent and bailee, (ii) store all of the Products in such a way as to be clearly separate and identifiable from Buyer's inventory, (iii) keep the Products in their original packaging, properly stored, protected, insured and identified as WG's property.
- c. Buyer acknowledges and agrees that: (i) it has, pursuant to these terms, granted to WG a Security Interest (as defined in section 12 of the *Personal Property Securities Act 2009* (Cth) "PPSA") in the Products, including where applicable, a Purchase Money Security Interest, which interest(s) secures all of the Buyer's present and future obligations owed to WG, and (ii) Buyer shall render all assistance necessary to enable WG to register, maintain and enforce WG's perfected Security Interest.
- d. Buyer hereby waives: (i) its right to receive any notice in relation to the registration or enforcement of WG's Security Interest in the Products under the PPSA, or any other applicable law, (ii) any time period that is required to elapse under any law before WG, as a secured party, may exercise a right, power or remedy it has in relation to the Products.
- e. Notwithstanding the foregoing, Buyer may resell the Products in the ordinary course of business, provided, (i) that any such resale shall be subject to a retention of title clause, including a right of entry for WG to repossess Products covered by this Clause, and (ii) Buyer does not offer the Products as collateral or otherwise pledge or grant a charge or allow a lien to exist in respect of the Products (a "**Third Party Security Interest**") until title has passed to Buyer in accordance with this Agreement. If Buyer does permit, allow or otherwise create a Third Party Security Interest in the Products before title has passed to Buyer, then all monies owed to WG shall immediately become due and payable. Upon WG's request, Buyer shall provide WG with all details and information necessary to collect the Products in the event of non-payment by Buyer.
- f. If the Buyer sells any Products before title has passed to Buyer in accordance with this Agreement in such a manner as to pass valid title to the Products to a third party, the Buyer shall hold the proceeds of such sale and/or the right to claim or receive such proceeds of sale in trust for WG, provided the foregoing shall not constitute Buyer as an agent of WG for the purposes of any such resale.
- g. WG reserves the right to require Buyer to return to WG any Products that have not been fully paid for by Buyer in accordance

with this Agreement (such that Buyer is in breach of this Agreement or a Contract) and for which title has not passed to Buyer. If Buyer has not returned to WG any such Products within 30 days of receipt of a written notice from WG requiring it to do so, to the extent permitted by law, WG reserves the right to repossess such Products. and Buyer grants to WG and its authorised representatives an irrevocable licence to lawfully enter on or in any premises or vehicles of Buyer where the Products are loaded or stored solely for the purpose of repossessing such Products. WG (or its authorised representative) will provide Buyer with reasonable notice and only enter the premises or vehicle at which the relevant Product is stored during ordinary business hours.

- h. Until such time as title in the Products passes to Buyer, Buyer shall not be permitted to sell any Products in its inventory. Further, where title in the Products has not passed to the Buyer, Buyer's right to possess the Products shall immediately cease when and if Buyer suffers an insolvency event.

8. Damage & Loss in Transit.

- a. Where WG has agreed to deliver Products to Buyer or Buyer's end customer in accordance with Clause 7b or 7c (as applicable), WG shall not be liable in respect of error in delivery, loss, damage or destruction to any Products during transportation of the Products to Buyer unless notice thereof is advised to WG by telephone promptly on receipt of the Products and confirmed in writing to WG within five (5) working days of receipt of such Products. Where reasonably practicable in the circumstances, Buyer shall concurrently notify the carrier in writing of any such error, loss or damage and will, where possible, enter a note of the same upon the carrier's bill of lading or other delivery receipt. If by reason of Buyer's failure to give any such notice to WG as provided above WG is unable to make recovery from the carriers in respect of the error, loss or damage complained of, then Buyer shall be liable to pay for Products as though no such error, loss or damage occurred.
- b. Subject to Clause 8a, any Products which WG has agreed to deliver to Buyer or Buyer's end customer in accordance with Clause 7b or 7c (as applicable) that are delivered in error or lost, damaged or destroyed during transportation will be replaced or rectified by WG, as originally ordered or, if rectification or replacement is not practicable, WG will issue a credit to Buyer equal to any payments received by WG for such Products. WG shall not be liable for any loss, damage or expense whatsoever and howsoever arising from any error, loss, damage or defect except as set forth herein.
- c. Any error, loss, damage or destruction of Product discovered by Buyer in delivery shall not entitle Buyer to rescind the remainder of a Contract.

9. Publications & Specifications.

Any and all specifications, descriptions, photographs, measurements, capacities or illustrations contained in any catalogues, price lists, brochures, leaflets, proposals, advertising matter, publications of WG or a Supplier are intended to be illustrative and approximate only and shall not form part of a Contract or constitute a representation, warranty or agreement regarding any Products unless specifically agreed by written agreement between the Buyer and WG. No employee or agent of WG has any authority to make any representation regarding the Products. Buyer acknowledges that it has not been induced to accept this Agreement by any representations or statement, oral or written, not expressly contained herein.

10. Warranty.

- a. Buyer understands that WG is not the Supplier of the Products, and WG’s Suppliers prohibit WG from making any express warranties in respect of the Products. Accordingly, all Products are sold subject to the express warranty terms, if any, specified by the original Supplier of the Products. Buyer will ensure that any express warranty terms provided with the Products, including any benefits related thereto, are passed on to its end customers from the original Supplier of the Products. Any software, Services or maintenance agreements supplied to Buyer pursuant to a Contract are supplied subject to the provisions of the Supplier’s licensing terms, Supplier’s services agreement or maintenance agreement (as the case may be). Such Supplier licensing terms, services agreement or maintenance agreement are typically available on the relevant Supplier’s website and WG will provide such Supplier licensing terms, services agreement or maintenance agreement to Buyer following receipt of a written request from Buyer.
- b. Buyer may not make or pass on, and shall take all measures necessary to ensure that neither it nor any of its agents or employees shall make or pass on, any warranty or representation (other than any express warranty terms) relating to a Product on behalf of WG or Supplier to its end customers.
- c. Any warranties, agreements or other terms implied by common law or statute or otherwise in connection with this Agreement (except to title, in the case of Products) are hereby expressly excluded to the fullest extent permitted by law, save for fraudulent misrepresentation.

11. Warranty Assistance.

- a. Buyer must promptly notify WG if any Products supplied to Buyer are defective in quality or do not conform with the terms and conditions of the Contract within the Supplier’s warranty period (the “Claim”).

Upon receipt of notification of such Claim from Buyer, WG will notify Buyer whether, as a matter of Supplier policy, the Claim must be handled directly with the Supplier or indirectly through WG. In the event the Claim must be handled directly between Buyer and Supplier, WG will provide contact information on request by Buyer to enable Buyer to contact Supplier. In the event the Claim will be handled by WG, then WG will provide Buyer with a return material authorization (“RMA”) for Buyer to return the Products to WG, and Buyer must return such Products to WG in accordance with this Agreement and WG’s then current RMA policy found at the following link,

<https://www.westconcomstor.com/au/en/legal/returns-policy.html>

- b. No Products may be returned to WG without a valid RMA number displayed on the Products’ packaging. Any Products returned without a valid RMA number displayed on the Products packaging will be refused or returned to Buyer. WG shall not be obligated to ship replacement Products to Buyer until WG is in receipt of the original Products being returned.
- c. Buyer agrees that WG’s sole liability to Buyer regarding any Product defect claims is limited to the administration of such claims with the Supplier and is expressly contingent upon WG’s ability to obtain a refund, credit or new replacement Products from the Supplier. WG has no obligation to accept a return of Products that fail to comply with a Supplier’s policy on Product returns.
- d. WG shall not be liable or responsible for administering any defect or other claim in respect of Products: (i) which arises from normal wear and tear, misuse, negligence, accident, abuse, or use by Buyer or Buyer’s end customer not in accordance with Supplier’s Product documentation; (ii) where a modification or alteration is made to the Products by the Buyer or any other person (other than WG) who is not authorised by Supplier; or (iii) used in conjunction with a third party product.
- e. All transport charges incurred in returning or replacing Products are the responsibility of Buyer.

12. Returns.

- a. Buyer must return Products to WG in accordance with this Agreement and WG’s then current RMA policy found at the following link, <https://www.westconcomstor.com/au/en/legal/return-s-policy.html>. Any Products returned pursuant to an RMA issued by WG must be returned to WG within five (5) working days of the date of such RMA.
- b. Buyer irrevocably authorizes WG to carry out any necessary tasks related to the repair or replacement of Products on behalf of Buyer under this Agreement.
- c. Unless WG collects Products using its own carrier, Buyer agrees that WG shall not be liable for any loss or damage to Products returned to WG.
- d. Except for Products returned pursuant to Clause 11 above, any returns are subject to WG’s sole and absolute discretion and may be subject to a

restocking fee of up to twenty percent (20%) of the price of the relevant Products, at WG's sole discretion.

13. Limitation of Liability.

- a. WG's liability for any loss or damage arising out of this Agreement and any Contract shall be limited to and shall under no circumstances exceed the price paid by Buyer for the Products giving rise to the claim.
- b. Except as expressly provided in this Agreement, neither party (nor any Supplier) shall be liable to the other for any consequential loss or damage caused to Buyer by reason of any representation, warranty (either express or implied), agreement or other term, or any duty at common law; or for any special, indirect, incidental or consequential damages, loss of profits, revenue, records or data, costs of procurement of substitute products, damage to reputation or goodwill, or any matter beyond its reasonable control or for any other claims for compensation however caused (whether caused by the negligence of Buyer or WG, its employees, agents, Suppliers or otherwise) which arise out of or in connection with this Agreement or a Contract hereunder, even if the relevant party has been advised of the possibility of such loss, liability or damages.
- c. Nothing contained herein shall be construed as excluding or limiting Buyer's or WG's liability for death or personal injury caused by Buyer's or WG's negligence, or for breach of implied title to Products.

14. Intellectual Property Rights.

- a. Buyer acknowledges that the Products are the intellectual property of the Suppliers. Nothing contained herein shall be deemed to grant any right or title to such intellectual property to Buyer. Buyer further agrees not to translate, reverse compile or disassemble any software and agrees to transfer to its customers a copy of any license agreements or other documents included with the Products. Buyer will not remove, alter or destroy any form of copyright notice, proprietary markings, serial numbers, or confidential legends placed upon or contained within any Products.
- b. To the fullest extent permitted by any applicable law, Buyer understands and agrees that WG will not and has no duty to indemnify, defend or hold Buyer or any third party harmless from or against any claims, losses, liabilities, damages, costs and expenses, judgments or settlement amounts arising out of or in connection with any actual or alleged product liability, or alleged infringement of any trademark, copyright, patent or other intellectual property rights of a third party, except and only to the extent that a Supplier has

expressly agreed to offer such indemnification and defence

to Buyer on a pass through basis.

- c. When making proposals and agreements with foreign governments which involve any Products, Buyer will take all reasonable steps to ensure that Supplier's proprietary rights in such Products receive the maximum protection available from such foreign government for commercial computer software and related documentation developed solely at private expense.
- d. Nothing contained herein shall be construed as authorizing or granting to Buyer any right or license to use any logo, trademark or trade name of WG or any Supplier, any license of which shall be subject to separate agreement including any then current policies of WG or its Suppliers, as appropriate.

15. E-System Specific Terms.

- a. Buyer is solely responsible for the use of any User ID, password or other forms of identification (collectively "Buyer ID") for accessing the E-System, and in maintaining the confidentiality of the Buyer ID. Buyer shall immediately notify WG in the event it should lose or misplace or suspect any abuse (actual or attempted) of the Buyer ID. Buyer shall maintain appropriate security policies and procedures to ensure proper use of the Buyer ID. Absent notice from Buyer otherwise, WG shall have the right to rely absolutely on any Purchase Orders submitted through the E-System and treat any Purchase Order submitted through the E-System as a valid and binding offer to purchase.
- b. Buyer is solely responsible, at its sole cost and expense, for securing and maintaining its own Internet access, facilities, hardware and software requisite to access the E-System. Buyer agrees that WG cannot guarantee the security or integrity of any data or information exchanged through the Internet or the E-System.

16. Force Majeure.

- a. Neither party will be liable to the other party or be deemed in breach of this Agreement or any Contract (other than an obligation to pay fees) by reason of delay or failure to perform if such delay or failure to perform was caused by Force Majeure.
- b. In the event of a Force Majeure event: (i) the impacted party shall, as soon as commercially practicable, notify the other party of such Force Majeure event provided the impacted party shall incur no liability for its failure to give such notice; (ii) the impacted party's duty to perform shall be suspended for the duration of the Force Majeure event; and (iii) the time of the impacted party's performance shall be extended by a period equal to the duration of said Force Majeure event.
- c. In the event a Force Majeure event continues for more than ninety (90) days either party may, by written notice to the other, cancel a Contract insofar as Products remain undelivered under said Contract.

Upon such cancellation, WG shall have no obligation to deliver and Buyer will have no obligation to accept delivery of or pay for the undelivered Products, but the Contract shall remain in full force and effect regarding all Products delivered prior to the date of cancellation.

17. Compliance with Laws; Export.

- a. Buyer acknowledges that the Products and any technical data related thereto may be licensed or sold subject to and controlled by the export laws of the United State (“US”) including its Export Administration Regulations, the European Union (“EU”) and countries within the European Free Trade Area (“EFTA”) (collectively the “Export Control Laws”) and Buyer hereby agrees not to export, re-export or otherwise distribute Products, or direct products thereof, in violation of any Export Control Laws. Buyer agrees to advise its customers that the Products may be subject to and controlled by such Export Control Laws and that the US government and/or the member states of the EU and EFTA may require licensing or other authorisation prior to export.
- b. Buyer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Buyer has obtained prior written approval from the appropriate department of the US Government or any other government with jurisdiction. Buyer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the US Department of Commerce.
- c. It is Buyer’s sole and exclusive responsibility to obtain any and all appropriate approvals from the US government and/or member states of the EU and EFTA prior to exporting such Products, or any technical data related thereto, from Australia. WG shall not be responsible for any costs, liabilities or damages resulting from Buyer’s failure to obtain any such required authorisation. Buyer understands that the Export Control Laws may change from time to time. It is Buyer’s sole and exclusive responsibility to obtain guidance of counsel or other appropriate channels to ensure its compliance with these laws.
- d. Buyer warrants that it will not to take any action or permit or authorize any action which will render WG liable for a violation of the US Foreign Corrupt Practices Act (the “Act”),

which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist it or WG in obtaining or retaining business and (a) will not violate or cause WG to violate such Act in connection with the sale and distribution of the Products; and (b) will notify WG in writing if any of its owners, partners, principals, directors or officers are or become officials, officers or representatives of any government or political party or candidate for political office.

- e. Buyer shall comply with EU Directives 2002/95/EC (Restriction on Hazardous Substances) and 2002/96/EC dated January 27, 2003 (Waste Electrical and Electronic Equipment) (“WEEE”) generally and as instated within each country into which Products are imported, exported or otherwise distributed by Buyer, such obligation which shall include registering as a “producer” under applicable WEEE legislation. Buyer shall notify WG in the event it should export any of the Products outside of Australia.
- f. Buyer shall indemnify, defend and hold WG harmless from any violation or alleged violation by Buyer of the terms of this Clause, except to the extent that such violation or alleged violation is directly and solely caused by WG. Upon WG’s request, Buyer agrees to confirm, in writing, its compliance with applicable Export Control Laws and the Act.

18. Non-Solicitation.

For a period of twelve (12) months following the date of any Contract hereunder, Buyer hereby agrees not to solicit or induce any employee of WG involved in the marketing, promotion, sale or distribution of Products to Buyer to leave their employment or terminate or breach their contract for services with WG as the case may be, and Buyer shall not appoint, engage, contract or employ such employee in Australia to provide services to Buyer without WG’s consent.

19. Confidential Information.

- a. Each party must: (i) treat as strictly confidential and only use the other party’s Confidential Information solely for the purposes contemplated by this Agreement; (ii) not, without the prior written consent of the party from whom the Confidential Information was obtained, use or otherwise disclose to any person the other party’s Confidential Information except for the purposes contemplated by and only as expressly permitted by the terms and conditions of this Agreement; (iii) maintain adequate security for the other party’s Confidential Information while in its possession or control, including protecting the same against any use, disclosure, access, damage or destruction which is inconsistent with the terms and conditions of this Agreement; and (iv) not make use of the other party’s Confidential Information to the commercial, financial or competitive disadvantage of the other party.
- b. Each party may disclose Confidential Information which it would otherwise be prevented from

disclosing pursuant to Clause 19(a) if, but only to the extent it can demonstrate that: (i) such disclosure is required by applicable law or by any securities exchange or regulatory or governmental body having jurisdiction over it, wherever situated; (ii) the Confidential Information was lawfully in its possession prior to disclosure by the other party (as evidenced by written records) and had not been obtained from the other party; or (iii) the Confidential Information has come into the public domain, other than as a result of a breach of this Agreement or other obligation of confidence, provided that any disclosure under sub-Clause 19(b)(i) must, to the extent permitted by applicable law, not be made without prior consultation with the party from whom the Confidential Information was obtained and must be made so as to minimise such disclosure.

- c. Each party may for the purposes contemplated by this Agreement and on a need to know basis disclose the other Party's Confidential Information to the following persons or any of them, provided that such persons have first been directed by the disclosing party to keep it confidential: (i) its officers and employees, its affiliates and the officers and employees of its affiliates; and (ii) its professional advisers, auditors, bankers, financiers and insurers, acting as such.
- d. If a party discloses the other Party's Confidential Information to any person, such disclosure does not excuse the disclosing Party from complying with its obligations under this Agreement and the disclosing Party is responsible for the acts and omissions of that person in respect of that Confidential Information as though they were the acts and omissions of the disclosing Party itself
- e. Each Party must promptly give notice in writing to the other Party if it becomes aware of any unauthorised or suspected unauthorised disclosure to any third party of any of the other Party's Confidential Information and provide the other Party with all information and assistance reasonably required by the other Party in respect of such unauthorised disclosure.
- f. All Confidential Information provided by a party to the other party is provided "AS IS" without any representation or warranty, either express or implied, as to accuracy or completeness.

20. Miscellaneous.

- a. **Assignment.** Neither party may transfer or assign this Agreement or any Contract to a third party by operation of law or otherwise without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- b. **Waiver.** Failure of a party to enforce any provision of this Agreement or a Contract shall not be deemed a waiver of the right to

thereafter enforce that or any other provision of this Agreement or a Contract.

- c. **Severability.** In the event that any provision of this Agreement or a Contract is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement and/or a Contract will remain in full force and effect.
- d. **Audit Rights.** Buyer shall keep and maintain true and complete records pertaining to its performance of this Agreement or any Contract hereunder in sufficient detail to permit WG to accurately determine whether Buyer has fully complied with their terms. Buyer shall make such records available upon reasonable notice, during regular business hours, for inspection and copying by WG and its representatives. Buyer shall maintain such records for at least two (2) years after the end of the calendar year to which they pertain.
- e. **Marketing.** Buyer agrees that WG may collect, store and use Buyer data, including personal information, for the purpose of facilitating its marketing and sale of the Products, and Buyer hereby consents to such collection, storage and use of Buyer data by WG for these purposes. Notwithstanding the foregoing, WG agrees not to share personal information with third parties without Buyer's prior consent. Buyer further consents to the use of such data for communicating Product and promotional information to Buyer via email or other electronic means unless Buyer notifies WG in writing that it does not wish to receive such promotional information.
- f. **Choice of Law & Venue.** This Agreement and each Contract shall be governed by the laws of New South Wales, and Buyer hereby agrees to submit to the exclusive jurisdiction of the Australian courts.