

## Terms and Conditions of Sale

### 1. Definitions & Interpretation.

a. Where used in these Terms and Conditions of sale:

i. **“Authorised Representative”** means any person who holds the job title and office of General Manager, Finance Director or Vice-President.

ii. **“Buyer”** means any individual, person, entity, company, firm, partnership or organization that purchases Products from WESTCON GERMANY for use in its business or the business of a third party end-user or other customer.

iii. **“Consumer”** means any natural person who enters into a legal transaction for a purpose that is outside his trade, business or profession (§ 13 BGB).

iv. **“Conditions”** means these Terms and Conditions of Sale or any such successor terms and conditions that the Buyer is notified are in full force and effect as of the date of a Contract and are concurrently available at the following URL:

<https://www.westconcomstor.com/global/en/legal/Legal/terms-and-conditions.html>.

Buyer may also request a copy of the most current Terms and Conditions of Sale via email to the following address: sales@comstor.de or sales@de.westcon.com or insidesales@westconsecurity.de.

v. **“Contract”** means any agreement for the purchase and sale of Products from WESTCON GERMANY to Buyer which result from a Purchase Order submitted to and accepted by WESTCON GERMANY.

vi. **“Contract Date”** means the date upon which a Purchase Order is accepted by WESTCON GERMANY.

vii. **“E-System”** means the Product ordering website operated by WESTCON GERMANY currently located at the following URL: <https://online.westcongroup.com/>

viii. **“Force Majeure”** means, without limitation, 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 WESTCON GERMANY (including delay by its Suppliers).

ix. **“Goods”** means any Supplier’s goods and/or software, or any instalment or parts thereof, which are supplied by WESTCON GERMANY to Buyer pursuant to a Contract, including any Supplier documentation related thereto.

x. **“Products”** means any combination of Goods, Special Order Goods and Services which are supplied by WESTCON GERMANY to Buyer pursuant to a Contract.

xi. **“Purchase Order”** means Buyer’s oral, written or electronic order for Products and shall include any order that Buyer places online through the Website or transmits via email or facsimile.

xii. **“Services”** means any Supplier’s services which are supplied by WESTCON GERMANY to Buyer pursuant to a Contract.

xiii. **“Special Order Goods”** shall mean any Goods that are custom ordered or configured to Buyer’s specifications, or otherwise designated as special order Goods by WESTCON GERMANY.

xiv. **“Supplier”** means the supplier, licensor, publisher, manufacturer or other third party provider of Products.

xv. **“WESTCON GERMANY”** means Westcon Group Germany GmbH, Schicklerstrasse 5-7, 10179 Berlin, Germany.

b. As used in these Conditions, (i) any reference to a statute shall be construed as a reference to that statute as amended, re-enacted or otherwise modified from time to time, (ii) the term “including” will always be deemed to mean “including, without limitation”, (iii) a definition is equally applicable to the singular and plural forms of the feminine, masculine and neuter forms of the term defined, and (iv) any headings in the Conditions are for convenience only and shall not affect the interpretation of any terms.

c. The attached **General Terms of Services** shall additionally apply **for the provision of services** by WESTCON GERMANY.

## **2. General Terms of Order & Sale.**

a. These General Terms of Sale shall apply for the entire business relationship, between WESTCON GERMANY and Buyer. No additional or alternative terms or conditions or any alteration to these Conditions proposed by the Buyer contained or referred to in a Purchase Order or other form submitted to WESTCON GERMANY shall be deemed to apply unless they are expressly accepted in writing by an Authorised Representative of WESTCON GERMANY with respect to that Purchase Order. Similarly, any Purchase Orders submitted and automatically accepted through the E-System which contain Buyer’s terms or conditions shall be deemed a rejection of such Buyer’s terms or conditions and an offer by Buyer to purchase Products subject to the Conditions.

b. WESTCON GERMANY will use reasonable efforts to notify Buyer of any material changes to the Conditions before they become applicable, but it is the sole and exclusive responsibility of the Buyer to ensure that it is familiar with the most current set of Conditions which apply to any Contract between WESTCON GERMANY and Buyer.

c. Buyer shall be deemed to have accepted these Conditions by the earlier of: (i) signing a WESTCON GERMANY credit application, (ii) submitting a Purchase Order to WESTCON GERMANY, or (iii) accepting Products from WESTCON GERMANY.

d. Notwithstanding the foregoing, Buyer agrees that WESTCON GERMANY’s provision of a price quotation, price list or any other information shall not be considered an offer by WESTCON GERMANY to sell Products at those prices or subject to any other terms and conditions. Only a Purchase Order submitted by Buyer shall constitute an offer to contract subject to these Conditions, however, a Purchase Order shall not be deemed a Contract unless and until the earlier date upon which: (i) written confirmation is provided by WESTCON GERMANY, (ii) a Purchase Order placed through the E-System is confirmed by WESTCON GERMANY via email, or (iii) WESTCON GERMANY proceeds with the fulfilment of the Purchase Order.

e. Notwithstanding the foregoing, WESTCON GERMANY and its Suppliers reserve the right to make any changes in the specifications of the Products, without 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.

f. Where Services relate to the provision of training, WESTCON GERMANY reserves the right to provide such Services at a venue or venues other than WESTCON GERMANY's premises and to provide personnel of its own selection. WESTCON GERMANY further reserves the right to refuse or curtail any training Services if a delegate or substitute delegate attending on behalf of Buyer fails to satisfy any training requirements for which Buyer was notified prior to the commencement of such training.

g. Any Products which are subject to guidelines, restrictions or provisions imposed by a Supplier are sold, supplied and delivered to Buyer subject to any such guidelines, restrictions or provisions.

### **3. Special Order Goods.**

a. Notwithstanding anything to the contrary contained herein, if Buyer has elected to purchase Special Order Goods, Buyer understands and agrees that any Contracts for Special Order Goods may not be cancelled, withdrawn, rescheduled or otherwise modified by Buyer, and Buyer further understands and agrees that such Special Order Goods may not be returned, refused or rejected for any reason whatsoever. Further, Buyer shall not be entitled to a credit or refund for such Special Order Goods for any reason whatsoever. Buyer shall indemnify and hold WESTCON GERMANY harmless for any and all delays, claims, losses, liabilities, costs or expenses related to Special Order Goods for which Buyer is responsible.

b. Buyer shall be solely responsible for the accuracy of any Purchase Order submitted for Special Order Goods, including the specification, configuration or other details of such Special Order Goods and their functionality, compatibility and interoperability with other products, as well as their fitness for particular use as required by Buyer's customer.

c. WESTCON GERMANY warrants, for a period of fourteen (14) days from delivery, that any Special Order Goods will be delivered subject to the configuration set forth on the Purchase Order. WESTCON GERMANY's sole and exclusive liability, and Buyer's sole remedy, for a breach of the foregoing warranty shall be to repair or replace, at WESTCON GERMANY's sole and absolute discretion, the Special Order Goods, provided, WESTCON GERMANY shall have no liability for any inaccuracies on a Purchase Order. In addition the provisions in Clause 11 shall apply.

### **4. Cancelling & Rescheduling Purchase Orders.**

No Purchase Order which has been accepted by WESTCON GERMANY may be cancelled or rescheduled by Buyer except with written agreement by WESTCON GERMANY and on the condition that Buyer shall indemnify WESTCON GERMANY, in full, against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages and expenses incurred by WESTCON GERMANY as a result of a cancellation, subject to a minimum of 5% of the total value of a cancelled

Purchase Order excluding VAT (which amount Buyer agrees represents a genuine pre-estimate of WESTCON GERMANY's loss), together with WESTCON GERMANY's costs and expenses of recovering Products delivered or in transit. Notwithstanding both parties are free to prove that the actual damage incurred is higher or lower than 5% of the total value of a cancelled Purchase Order.

## **5. Prices.**

a. The price of Products in WESTCON GERMANY's stock on the Contract Date shall be: (i) the quoted price (which shall be given formally in writing and be valid for seven (7) days following the date of quotation), or (ii) the list price in WESTCON GERMANY's then current published price list on the date of Contract, where no price has been quoted or a quoted price has expired.

b. The price of Products which are not in stock on the Contract Date ("Backordered") shall be: (i) the quoted price (which shall be given formally in writing and be valid for seven (7) days following the date of quotation), or (ii) the list price in WESTCON GERMANY's then current published price list on the date the Backordered Products are scheduled for delivery to Buyer.

c. Notwithstanding the foregoing, WESTCON GERMANY reserves the right, by giving notice to Buyer any time before delivery, to increase the price of Products after the Contract Date to reflect any increase in the cost of such Products that is due to any factor beyond the control of WESTCON GERMANY, including any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Products which are requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give WESTCON GERMANY adequate information or instruction, but WESTCON GERMANY shall only increase its price by the amount necessary to reflect such an increase. If a price is increased by more than 10% after the Contract Date, Buyer is entitled to rescind from the respective contract. Further, in the event WESTCON GERMANY or its agent makes a material error or omission when quoting a price, WESTCON GERMANY shall be entitled, for a period of thirty (30) days following the Contract Date, to increase the price of the related Products sold to Buyer by either (i) invoicing Buyer for the Buyer's proper list price on the date of the Contract Date, or (ii) allowing Buyer to return such Products to WESTCON GERMANY and crediting Buyer for the fees paid by Buyer for such Products.

d. Except as otherwise stated on a price quotation or in WESTCON GERMANY's then current price list, and unless otherwise agreed in writing between the Buyer and WESTCON GERMANY, all prices are quoted on an Ex Works basis (as per Incoterms 2010).

e. All prices and charges are exclusive of the cost of packaging and delivery, insurance, configuration, fulfilment and other services, as well as applicable value added tax (VAT), sales, use, consumption, gross sales tax (GST) and other taxes (other than taxes based upon WESTCON GERMANY's net income) for which the Buyer shall be additionally liable for paying to WESTCON GERMANY. Buyer shall make all payments to WESTCON GERMANY without reduction for any withholding taxes, which shall be Buyer's sole responsibility. All taxes shall be paid by Buyer to WESTCON GERMANY unless Buyer provides WESTCON GERMANY with a valid certificate of exemption acceptable to the appropriate taxing authority.

f. Prices exclude any copyright levies, waste and environment fees and similar charge that WESTCON GERMANY by law or statute may charge or collect upon in accordance with such laws or statutes. For the sale of software see Clause 13.

g. In the event a Supplier should grant a special pricing consideration or discount to WESTCON GERMANY and such Supplier pricing is made available to Buyer ("Pass-Through Discounts"), the Buyer agrees to adhere to the terms and conditions of such Pass-Through Discounts ("Pass-Through Discount Terms"), and agrees to indemnify WESTCON GERMANY for any Supplier claims against WESTCON GERMANY for Buyer's failure to comply with such Pass-Through Discount Terms. Buyer agrees that payment and receipt of benefits under Pass-Through Discount Terms are contingent upon Buyer's compliance with such terms, and further agrees to pay any costs or fees, if any, charged to WESTCON GERMANY by the Supplier for participation in Pass-Through Discounts.

## **6. Payment.**

a. If Buyer has not been granted credit facilities by WESTCON GERMANY then Buyer's payment shall be due on the date of the invoice and in advance of delivery. If Buyer has been granted credit facilities by WESTCON GERMANY then Buyer shall pay the purchase price, without any deduction or set-off, within fourteen (14) 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 WESTCON GERMANY in handling such transactions, including fees charged by the credit or debit card company.

b. All express deliveries are subject to additional shipping charges regardless of invoice value.

c. In case the Buyer is in default of payment or a presentation of a petition for a bankruptcy regarding the Buyer has been filed with the competent court or Buyer exceeds its credit limit, without prejudice to any other right or remedy available to WESTCON GERMANY, the full price of all Products delivered to Buyer under any Contract, but not paid, shall become immediately due (notwithstanding any previously agreed credit terms) and WESTCON GERMANY shall be entitled to take any or all of the following courses of action:

i. by notice, suspend or determine any Contract or any part thereof, without liability, stop any Products in transit and, at its discretion, subject to Clause 8, enter Buyer's premises to recover Products for which payment has not been made in full;

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. For clarity, a part of a month shall be treated as a full month for the purpose of calculating interest;

iii. set-off any amounts due against any credit note, balance or other liability issued by WESTCON GERMANY to Buyer;

iv. appropriate any payment made by Buyer to such Products (including Products supplied under any other contract between Buyer and WESTCON GERMANY or any WESTCON GERMANY branch or subsidiary) as WESTCON GERMANY may deem fit (notwithstanding any purported appropriation by Buyer); and/or

v. alter Buyer's payment terms, which may include withdrawing or altering any credit limit previously granted, requiring prepayment, and demanding adequate assurance of due performance by Buyer through the provision of a bank guarantee. Further claims of WESTCON GERMANY remain unaffected.

d. Buyer shall provide WESTCON GERMANY with copies of its annual and/or quarterly financial statements upon WESTCON GERMANY's request. Buyer shall notify WESTCON GERMANY in writing prior to entering into any contract whereby Buyer would sell, assign, factor or otherwise transfer any book debt owed to Buyer, or before entering into any form of invoice discounting arrangement with a third party.

e. Any credit note, balance or other liability issued by WESTCON GERMANY to Buyer (including values of Product trade-ins or promotions) shall expire, without notice, within twelve (12) months of the date of issuance by WESTCON GERMANY. Buyer shall be deemed to have forfeited any right to such credit amounts and shall not be entitled to a replacement or repayment of any amounts related thereto.

f. Buyer will be entitled to set off counterclaims against claims of WESTCON GERMANY only if the counterclaims are recognized by a final and binding court judgement or undisputed. The same shall apply with regard to any right of retention of Buyer.

## **7. Delivery.**

a. Any dates quoted for delivery of the Products are approximate only and WESTCON GERMANY shall not be liable for any delay in delivery of the Products however caused. Time for delivery shall not be of the essence of any Contract unless previously agreed in writing by WESTCON GERMANY. Any Products may be delivered by WESTCON GERMANY in advance of the quoted delivery date upon giving reasonable notice to Buyer.

b. Unless otherwise agreed in writing, delivery of the Products shall be made Ex Works (Incoterms 2010) at WESTCON GERMANY's premises upon notification to Buyer that such Products are ready for collection. Buyer shall be entitled to collect the Products any time thereafter on reasonable notice during WESTCON GERMANY's normal business hours. WESTCON GERMANY shall have 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. Claims for non-delivery of Products must be made in writing to WESTCON GERMANY within five (5) working days from the date of invoice. In the event WESTCON GERMANY should agree to deliver Products directly to Buyer's customer any such delivery shall be deemed to be made to Buyer and any refusal by Buyer's 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 or unless partial delivery is not reasonable for the Buyer. Where the Products are delivered in instalments, each delivery shall constitute a separate Contract. Failure by WESTCON GERMANY to deliver any one or more of the instalments in accordance with these Conditions or any claim by Buyer in respect of any one or more instalments shall 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 WESTCON GERMANY adequate delivery instructions in its Purchase Order then, without prejudice to any other right or remedy available, WESTCON GERMANY may: (i) store the Products until actual delivery and charge Buyer for the reasonable costs thereof, including insurance costs; or (ii) terminate the Contract forthwith and sell the Products. Further claims of WESTCON GERMANY remain unaffected.

## **8. Title and Risk.**

a. Risk of loss or damage to the Products shall pass to Buyer: (i) upon delivery, or (ii) if Buyer unjustifiably fails to take delivery of the Products, at such time as delivery is tendered by WESTCON GERMANY. Buyer shall insure the Products for their invoice value from the date delivery is made or tendered.

b. As far as WESTCON GERMANY is owner of exclusive rights of use with regard to copy rights for Goods and other Products of WESTCON GERMANY Buyer acquires a simple right of use with regard to the Goods/Products only upon complete payment of all claims of WESTCON GERMANY regarding the Goods/Products. Buyer is not entitled without prior written consent by WESTCON GERMANY to grant sublicenses. WESTCON GERMANY will refuse its consent only for important reason. The simple right of use refers only to the Product which is mentioned in the order of Buyer/the delivery note.

c. The delivered Goods/Special Order Goods shall remain the property of WESTCON GERMANY until the purchase price has been paid in full. The Goods/ Special Order Goods shall also remain the property of WESTCON GERMANY until such time as all the WESTCON GERMANY's claims from the business relationship with Buyer at the date on which the respective contract was concluded are paid. If Buyer is merchant/entrepreneur WESTCON GERMANY's reservation of title finally will also cover its claims arising against Buyer in the future, including claims for balances. If Buyer is merchant/entrepreneur the reserved Goods/ Special Order Goods also serve to secure all the of WESTCON GERMANY's claims against businesses in which Buyer holds a direct or indirect interest in.

d. If Buyer is merchant/entrepreneur the following shall apply for the duration of the reservation of title: Buyer shall bear the risk of loss, wear and damage of and to the purchased Goods/ Special Order Goods during the period in which title is retained. During the period in which title is retained, the purchased Goods/ Special Order Goods shall be insured at reinstatement value, including all transport risks, on a fully comprehensive basis and to cover third-party liability, subject to the condition that WESTCON GERMANY shall be entitled to the rights under the insurance policy. All claims of Buyer under the insurance contract are thus hereby assigned to WESTCON GERMANY. WESTCON GERMANY hereby accepts this assignment. Insurance benefits shall be used in full to restore the purchased Goods/ Special Order Goods. In the case of total loss, the insurance benefits shall be used to pay WESTCON GERMANY's remaining claims. Buyer shall be entitled to any surplus amount.

e. Any processing of the reserved Goods/ Special Order Goods shall be effected at no cost to WESTCON GERMANY, i.e. legally WESTCON GERMANY is the maker of the new item within the meaning of Sec. 950 of the German Civil Code (BGB). Buyer shall keep the item created by the processing in safe custody at no cost.

f. Buyer may not pledge or assign by way of security the reserved Goods/ Special Order Goods or assign or pledge expectant rights in the reserved Goods.

g. If Buyer is merchant/entrepreneur he/it is entitled to resell the delivered Goods/Special Order Goods or the item that arises from the processing subject to revocation in the ordinary course of his/its business. Buyer hereby assigns to WESTCON GERMANY all claims to which he/it is entitled from the resale and the business relationship with its buyers in connection with the resale, including any current account balance claims and all ancillary rights. WESTCON GERMANY hereby accepts this assignment. Buyer is entitled and obliged to collect the receivables assigned to WESTCON GERMANY unless and until WESTCON GERMANY revokes such authorization. The authorization to collect the receivables shall lapse without any express revocation if Buyer stops his payments. If the collection authorization lapses, Buyer shall, at the request of WESTCON GERMANY, state in writing without delay to whom he/it sold the purchased item and what claims he/it is entitled to from the sale. The moneys received by Buyer after the lapse of the collection authorization in respect of the claims assigned to WESTCON GERMANY shall be held on a fiduciary basis up to the amount of all secured claims and shall be paid to WESTCON GERMANY immediately.

h. Buyer shall inform WESTCON GERMANY without delay of any impairment to the rights in the purchased Goods/Special Order Goods in which WESTCON GERMANY has title. Buyer shall bear the costs of all measures to release the item assigned to WESTCON GERMANY by way of security from third party rights.

i. If the value of the claims assigned to WESTCON GERMANY exceeds WESTCON GERMANY's claims against Buyer by more than 10%, WESTCON GERMANY shall, at the request of Buyer, reassign the claims to such an extent.

j. If Buyer is in default in payment, the reserved Goods/Special Order Goods shall be returned to WESTCON GERMANY without delay without any need for WESTCON GERMANY to rescind the contract. The same shall apply correspondingly to a significant deterioration in Buyer's financial situation. The demand that the reserved Goods/Special Order Goods be returned and their return do not constitute withdrawal from the contract.

#### **9. Damage & Loss in Transit.**

a. WESTCON GERMANY 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 WESTCON GERMANY by telephone immediately on receipt of the Products and confirmed in writing within five (5) working days and WESTCON GERMANY has agreed to deliver the affected Products to Buyer in accordance with paragraph 7b. Buyer shall concurrently notify the carrier in writing of any such error, loss or damage and shall in all cases, 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 as provided above WESTCON GERMANY 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. No liability for Product shortages will be accepted by WESTCON GERMANY unless such shortage is noted on the bill of lading or other delivery receipt.

b. Subject to the foregoing, any Products which WESTCON GERMANY has agreed to deliver to Buyer in accordance with paragraph 7b that are delivered in error or lost, damaged or destroyed during



transportation will be replaced or rectified by WESTCON GERMANY, as originally ordered or, if rectification or replacement is not practicable, WESTCON GERMANY will issue a credit to Buyer equal to any payments received by WESTCON GERMANY for such Products. WESTCON GERMANY 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 and except for WESTCON GERMANY's liability for intent or gross negligence.

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 unless such error, loss, damage or destruction is due to WESTCON GERMANY's intent or gross negligence.

## **10. 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 WESTCON GERMANY 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 condition regarding any Products unless specifically agreed by written agreement between the Buyer and WESTCON GERMANY. No employee or agent of WESTCON GERMANY has any authority to make any representation regarding the Products. Buyer acknowledges that it has not been induced to accept these Conditions by any representations or statement, oral or written, not expressly contained herein.

## **11. Warranty.**

a. Buyer understands that WESTCON GERMANY is not the Supplier of the Products. WESTCON GERMANY buys such products from the Supplier/manufacturer only for intermediary trade.

b. For warranty regarding intellectual property rights see Clause 13. below.

c. Buyer shall, at its expense, properly examine the delivered Products without delay after receipt and shall notify WESTCON GERMANY in writing without delay of any defects or incorrect deliveries or missing quantities. Notification is deemed to be made without delay if it is received by WESTCON GERMANY within eight days after delivery of the Product in question. If Buyer is merchant/entrepreneur hidden defects shall be notified to WESTCON GERMANY in writing without delay after discovery. If Buyer is Consumer hidden defects shall be notified to WESTCON GERMANY in writing without delay after discovery, to the latest before the expiry of the statutory period of limitation for defects.

d. If Buyer is merchant/entrepreneur the following shall apply additionally: Upon receipt of notification of a claim pursuant to this Section 11 from Buyer, WESTCON GERMANY shall notify Buyer whether, as a matter of Supplier policy, the Claim must be handled directly with the Supplier or indirectly through WESTCON GERMANY. In the event the Claim must be handled directly between Buyer and Supplier, WESTCON GERMANY shall provide contact information to enable Buyer to contact Supplier. In this case Section 11. g to p. shall apply additionally. In the event the Claim will

be handled by WESTCON GERMANY, then paragraphs 11 e. to p. shall apply. Clause 3 c. concerning Special Order Goods remains unaffected. If Products have to be returned to WESTCON GERMANY WESTCON GERMANY shall provide Buyer with a return material authorization (“RMA”) for Buyer to return the Products to WESTCON GERMANY, and Buyer shall return such Products to WESTCON GERMANY in accordance with these Conditions and WESTCON GERMANY’s then current RMA policy (which shall be made available to Buyer upon request). No Products may be returned to WESTCON GERMANY 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. WESTCON GERMANY shall not be obligated to ship replacement Products to Buyer until WESTCON GERMANY is in receipt of the original Products being returned. WESTCON GERMANY has no obligation to accept a return of Products that fail to comply with a Supplier’s policy on Product returns. If WESTCON GERMANY does not collect Products by its own transport company the Buyer agrees that WESTCON GERMANY shall not be liable for loss of or damage of the returned Products. Any return is in the sole and exclusive interest of WESTCON GERMANY and can be charged with a redemption fee of up to 15%.

e. WESTCON GERMANY hereby assigns its claims in respect of defects against the Supplier to the Buyer. The Buyer hereby accepts such assignment. The Buyer shall initially proceed against the Supplier on the basis of the assigned claims. If the claims cannot be enforced against the Supplier, the Buyer shall prove this to the Seller. WESTCON GERMANY shall then act in accordance with its liability for defects.

f. If Buyer is a merchant/entrepreneur the following shall apply to his/its claims due to defects unless Buyer has a valid and enforceable claim against the supplier of WESTCON GERMANY pursuant to paragraph 11e.: Its claims in respect of defects are generally restricted to repair or replacement. WESTCON GERMANY may, at its discretion, repair or replace the Products in question. WESTCON GERMANY is entitled to make a reasonable number – at least three – of repair attempts or replacement deliveries. If repairs or replacement delivery are not successful, Buyer may, at its election, either rescind the contract or reduce the payment. This right is limited to the delivery in question provided that it is not unreasonable to expect Buyer to accept such a restriction on the basis of the nature of the Products. The provision set out in Clause 3. c. remains unaffected.

g. If the specified performance quantities are not achieved, Buyer may only claim a reasonable reduction in the price if it proves impossible to remedy the defects. This shall not apply if the performance parameters are expressly warranted or if Buyer cannot reasonably be expected to take the delivered item under the given circumstances.

h. 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 Buyers from the original Supplier of the Products.

i. There shall be no claims in respect of defects in the case of insignificant divergences from the agreed quality or usability.

j. If Buyer is merchant/entrepreneur the following shall apply on the period of limitation for his claims: Claims for defects in respect of delivered Products shall become time-barred one year after delivery. In case of delivery of incorporeal Products (e.g. an opinion or an individual software) claims

for defects become time-barred within one year after acquaintance by Buyer of the defect, to the latest two years after delivery of the incorporeal Products claims for defects of Buyer become time-barred.

k. The limitation period in paragraph j. shall not apply if the law prescribes compelling longer periods or in the case of wilful or grossly negligent breach of duty by WESTCON GERMANY or in case of fraudulent failure to disclose a defect or in cases in which life, body or health are injured. The statutory provisions on suspension/resumption of the expiration of the limitation period periods shall remain unaffected. If WESTCON GERMANY's order confirmation provides for a longer warranty period, claims for defects shall become time-barred at the end of the stipulated warranty period. So-called "guarantee periods" are warranty periods. Claims for defects in respect of repair work or replacement deliveries shall become time-barred three months after completion of the repair work or the replacement delivery, but not before the end of the original period.

l. If the delivered Product is later taken to a place other than the agreed place of delivery and if as a result costs – in particular relating to transportation, route, materials or work – increase, these shall not be borne by WESTCON GERMANY. This restriction shall not apply if the taking of the delivered Product is in accordance with its intended and contractually agreed use.

m. Damage resulting from external influence, improper treatment, incorrect operation, normal wear and tear or corrosion is excluded from liability for defects.

n. WESTCON GERMANY shall not be liable in the case of faulty or improper maintenance of the purchased Product by persons not authorized by WESTCON GERMANY.

o. If Buyer is merchant/entrepreneur the following shall apply: With regard to a recourse pursuant to § 478 German Civil Code Buyer will have to inform WESTCON GERMANY concerning claims of its clients and to give WESTCON GERMANY the opportunity to settle claims of Buyer's clients directly with them. If WESTCON GERMANY does not exercise this right it will be liable to Buyer only with regard to claims of Buyer's clients pursuant to the statutory regulations but not for claims of Buyer's clients due to a guarantee of the Buyer which exceeds the statutory warranty regulations.

p. Buyer may not make or pass on, and shall take all measures necessary to ensure that neither he/it nor any of its agents or employees shall make or pass on, any warranty or representation relating to a Product on behalf of WESTCON GERMANY or Supplier to its Buyers.

## **12. Limitation of Liability.**

a. WESTCON GERMANY shall not be liable for damage of any kind whatsoever. This exclusion shall not apply:

- to damage which WESTCON GERMANY brings about on the basis of intent or gross negligence;
- in cases of slight negligence to damage based on injury to life, body or health or for damage based on an infringement of fundamental contractual duties by WESTCON GERMANY. Fundamental contractual duties are all duties which must be fulfilled for a proper execution of a Contract.

b. In cases of negligent infringement of fundamental contractual duties, WESTCON GERMANY's liability – except in cases of injury to life, body or health – is limited to contract-typical damage which is foreseeable for WESTCON GERMANY on conclusion of the Contract or on the infringement of the duty.

c. Claims for damages of Buyer being a merchant/entrepreneur against WESTCON GERMANY due to slight negligence pursuant to paragraphs a. and b. will be excluded in any case if court proceedings are not commenced within three months after WESTCON GERMANY or its insurer have rejected the claims and thereby referred to the said three-month period.

d. The above liability exclusions and limitations in paragraphs a. to c. of Clause 12 shall also apply to WESTCON GERMANY's liability in respect of its officers, employees, and vicarious agents and to the personal liability of WESTCON GERMANY's officers, bodies, employees and vicarious agents.

e. The above liability exclusions and limitations in paragraphs a. to d. of Clause 12 shall not apply in the case of liability pursuant to mandatory provisions in the applicable product liability legislation for damage to persons and property or in case WESTCON GERMANY has given a guarantee (Garantie) regarding the quality or durability of the Products.

### **13. 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. WESTCON GERMANY confirms that it is not aware of any patents which might be infringed by the Products to be supplied or patents which might be infringed by the use of the Products together with software or other additions procured by Buyer. It is the obligation of Buyer to check the applicable patent situation and make sure that third party patents are not infringed. Buyer shall keep WESTCON GERMANY free and harmless from any claims based on patent infringement caused through the importation of a product or its use. WESTCON GERMANY hereby explicitly excludes any and all liability for possible patent infringement of the Products or the use thereof which Buyer cannot prove WESTCON GERMANY's prior positive knowledge. Claims against WESTCON GERMANY with regard to patents of third parties become time-barred one year after delivery of the Goods. If a Supplier has expressly agreed to offer indemnification and defence to Buyer on a pass through basis Buyer agrees that WESTCON GERMANY will not and has no duty to indemnify, defend or hold Buyer or a 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 the actual or alleged infringement of a third party's intellectual property rights.

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 WESTCON GERMANY or any Supplier, any license of which shall be subject to separate agreement including any then current policies of WESTCON GERMANY or its Suppliers, as appropriate.

e. All software will be supplied pursuant to the licensing terms of the Supplier.

#### **14. 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 WESTCON GERMANY 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, WESTCON GERMANY 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 agrees that WESTCON GERMANY cannot guarantee the security or integrity of any data or information exchanged through the Internet or the E-System. But, WESTCON GERMANY will be liable for wrongful intent or gross negligence in this regard.

#### **15. Force Majeure.**

a. WESTCON GERMANY shall not be liable to Buyer or be deemed in breach of these Conditions or any Contract by reason of delay or failure to perform if such delay or failure to perform was caused by Force Majeure on the side of WESTCON GERMANY or its Suppliers.

b. In the event of a Force Majeure event: (i) WESTCON GERMANY shall, as soon as commercially practicable, notify Buyer of such Force Majeure event provided WESTCON GERMANY shall incur no liability for its failure to give such notice; (ii) WESTCON GERMANY's duty to perform shall be suspended for the duration of the Force Majeure event; and (iii) the time of WESTCON GERMANY'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 should continue 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, WESTCON GERMANY 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.

## **16. Compliance with Laws; Export.**

a. Buyer acknowledges that the Products and any technical data related thereto is 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 are 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 any government with jurisdiction.

c. It is Buyer’s sole and exclusive responsibility to obtain any and all appropriate approvals of 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 the United Kingdom. WESTCON GERMANY 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 WESTCON GERMANY liable pursuant to any applicable law such as but not limited to the US Foreign Corrupt Practices Act for corrupt practices, such as but not limited to 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 WESTCON GERMANY in obtaining or retaining business.

e. Buyer shall comply with EU Directives 2002/95/EC (Restriction on Hazardous Substances) (“RoHS”) 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. Applicable legislation in Germany shall include § 10 of the German Electrical and Electronic Equipment Act – ElektroG. Buyer shall notify WESTCON GERMANY in the event it should export any of the Products outside of Germany. Buyer agrees to indemnify and hold harmless WESTCON GERMANY from any liability pursuant to the applicable WEEE and RoHS regulations.

## **17. 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 WESTCON GERMANY 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 WESTCON GERMANY as the case may be, and Buyer shall not

appoint, engage, contract or employ such employee in Germany to provide services to Buyer. In the event Buyer should culpably breach this Clause, Buyer agrees to pay WESTCON GERMANY, by way of contractual penalty (Vertragsstrafe), a sum representing forty percent (40%) of the employee's annual salary (excluding benefits). Further claims of WESTCON GERMANY remain unaffected. Buyer will only be entitled to set off counterclaims against contractual penalties if such counterclaims are recognized by a binding and final court judgement or undisputed.

#### **18. Confidential Information.**

Buyer agrees that these Conditions, including any Contracts, and all Product related information including pricing and descriptions which are provided by WESTCON GERMANY to Buyer, regardless of the form in which it is provided, are considered confidential information of WESTCON GERMANY and its Suppliers ("Confidential Information"). Buyer shall hold such Confidential Information in strict confidence and not use or disclose such Confidential Information to any third party except as required by law or unless Confidential Information is or shall become part of the public domain without violation of this Confidentiality Clause. Buyer further agrees to limit access to such Confidential Information to those of its employees who have a need to know and are subject to written obligations of confidentiality at least as protective of the Confidential Information as these Conditions. All Confidential Information is provided "AS IS" without any representation or warranty, either express or implied, as to accuracy or completeness. WESTCON GERMANY agrees to hold, in strict confidence, and not disclose to a third party any sensitive information provided by Buyer which is marked as confidential, proprietary or using similar terms.

#### **19. Miscellaneous.**

a. Assignment. Buyer may not transfer or assign any of his claims against WESTCON GERMANY to a third party by operation of law or otherwise without the prior written consent of WESTCON GERMANY.

b. Waiver. Failure of WESTCON GERMANY to enforce any provision of these Conditions or a Contract shall not be deemed a waiver of the right to thereafter enforce that or any other provision of these Conditions or a Contract.

c. Severability. In the event that any provision of these Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of these Conditions will remain in full force and effect.

d. Audit Rights. Buyer shall keep and maintain true and complete records pertaining to its performance of these Conditions or any Contract hereunder in sufficient detail to permit WESTCON GERMANY 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 WESTCON GERMANY 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 WESTCON GERMANY may collect, store and use Buyer data, including personal data, 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 WESTCON GERMANY for these purposes. Notwithstanding the foregoing, WESTCON GERMANY agrees not to share personal data 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 WESTCON GERMANY in writing that it does not wish to receive such promotional information.

f. Choice of Law & Venue. These Conditions shall governed by the laws of Germany. The United Nation's Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions. If Buyer is merchant/entrepreneur the courts of Berlin shall have exclusive jurisdiction for the contracts concluded with WESTCON GERMANY.

As of July, 2014



**Terms and Conditions  
of WESTCON GERMANY  
for the provision of Services**

**1. Scope**

- a. Above **Terms and Conditions of Sale of WESTCON GERMANY** shall apply to the provision of Services by WESTCON GERMANY, unless specified otherwise hereinafter.
- b. In the event of inconsistencies this **Terms and Conditions for the provision of Services** shall take precedence over the provisions of the general Terms and Conditions of Sale.

**2. Provision of Services**

- a. Unless otherwise agreed all Services of WESTCON GERMANY towards the customer are rendered as service contracts pursuant to §§ 611 ff. BGB.
- b. The employees involved with the performance of the Services are selected by WESTCON GERMANY. The customer is not entitled to demand the provision of Services by certain employees. However, the client's interests are adequately taken into account in the selection of the employees. The provision of the Services is performed by suitable personnel who are sufficiently qualified for the provision of the respective Services.
- c. In accordance with the contract matter WESTCON GERMANY has full discretion as to way and means of fulfilling its performance of Services. WESTCON GERMANY is entitled to provide Services by subcontractors in whole or in part.
- d. If the Services are not provided in accordance with the contract and WESTCON GERMANY is responsible for this, in addition to Clause 11 of the General Terms and Conditions of Sale, WESTCON GERMANY shall be obliged to provide the Services, fully or in parts, at no extra cost to the Buyer and within an appropriate period of time in accordance with the contract unless this would only be possible with an unreasonable amount of effort. This obligation shall only apply if the Buyer reports the default in writing without delay, but at the latest within two weeks after acknowledgment of the default, unless agreed otherwise. The Buyer shall observe the performance of the Services in an appropriate manner and examine after their completion.
- e. The provisions in Clause 7 of the general Terms and Conditions of Sale of WESTCON GERMANY regarding delivery dates shall apply accordingly for agreed performance dates. In addition to the general Terms and Conditions of Sale WESTCON GERMANY is entitled to provide services at any time before the performance date.
- f. Compliance with terms and performance dates by WESTCON GERMANY shall always be subject to the condition that the Buyer and end customer meet their contractual obligations as well as any other duties to cooperate duly and completely. In particular compliance with terms and dates assumes that all necessary preparations have been completely rendered. If these obligations are not

fulfilled by the Buyer or end customer and if compliance with terms and dates directly or indirectly depend on such duty or preparation, the terms agreed upon shall extend accordingly. In this case WESTCON GERMANY is entitled to agree upon a new date. With the agreement of a new date, especially for services, the term will be extended according to the delay period plus a reasonable restart period. WESTCON GERMANY is entitled to invoice the Buyer for additional costs caused by the delay, especially for travel expenses in case of an extra journey.

### **3. Provision of Services outside of normal business hours**

a. For the provision of Services by WESTCON GERMANY outside of normal business hours (Monday to Friday, 8 am to 6 pm) a surcharge of 50 % shall be imposed. Services performed on weekends and on public holidays shall be billed with a surcharge of 100 %. Billing is based on actual expenses. If Services are performed later than the originally scheduled date due to reasons for which the Buyer is responsible and from this time labour and / or material costs and / or prices of Suppliers increase WESTCON GERMANY is entitled to increase the prices accordingly. Insofar the above Clause 5 c. of the general Terms and Conditions of Sale of WESTCON GERMANY applies accordingly.

### **4. Creation of a work**

a. As far as WESTCON GERMANY performs Services for which the application of the German Contract Law for Work pursuant to §§ 631 of the German Civil Code is agreed upon by express agreement accepted in writing by both parties, in addition to the above the following provisions apply.

b. When issuing a cost estimate WESTCON GERMANY is bound thereto until the expiration of three (3) weeks after submission.

c. Where non-binding performance and completion dates are not met the setting of a reasonable grace period by the Buyer is required in order to put WESTCON GERMANY in default.

d. WESTCON GERMANY shall be entitled to hire third parties for the performance of works, provided they are qualified for the task entrusted to them.

e. Rendered works require the acceptance by the Buyer or an end customer authorised thereto by the Buyer. The actions of the end customer shall be attributed to the Buyer. Where a test plan has been agreed upon, acceptance shall be given once the conditions listed in the test plan have been met to the satisfaction of the Buyer. The Buyer is obliged to accept the object for delivery immediately upon notification of readiness for acceptance. If the acceptance does not take place in due time without fault on our part, the object for delivery shall be considered to be accepted (7) days after notification of the readiness for acceptance. WESTCON GERMANY will notify the Buyer at the beginning of the period of the relevance of his behaviour. Insofar as no other agreement has been made the acceptance has to be performed at WESTCON GERMANY's place of business. With the exclusion of our personnel costs the Buyer shall bear all costs related to the acceptance in particular any operating and material costs. The acceptance may not be refused on account of insignificant defects or where the specified activity quantities are not met. This does not apply where the

acceptance is unreasonable under the given circumstances or the activity quantities were expressly guaranteed.

f. In the event of justified complaints WESTCON GERMANY has the right to cure. Insofar Clause 11 of the general Terms and Conditions of Sale of WESTCON GERMANY applies

As of July, 2014