

Terms & Conditions Sales - Australia

1. Applicability.

This Westcon Reseller Agreement (**Agreement**) contains the terms and conditions that govern the sale of products and services (**Products**) between Westcon Group Inc, its affiliates and/or its subsidiaries (as the case may be) across Asia Pacific including all Westcon Solutions entities (**Westcon**) to you or the entity you represent (**Customer**).

Westcon and Customer are each a **Party** and together the **Parties** to the Agreement, The Customer agrees to this Agreement, without addition or modification, when:

1. Customer sends a purchase order (**PO**) to Westcon; or
2. Customer accepts delivery of Products, whichever occurs first, (**Effective Date**)

Westcon accepts Customer's PO on the condition that Customer agrees to Agreement, without addition or modification. In the event that Customer's PO is deemed to be an offer, Westcon's acknowledgement and/or performance of the PO is conditioned on Customer's acceptance of Agreement, without addition or modification. Any terms on a Customer's PO will always be null and void.

2. Order and Delivery.

Customer will order Products by sending Westcon a complete PO. Westcon may accept or reject the PO for any reason. Once a PO has been sent to Westcon, Customer cannot cancel that PO.

Unless otherwise agreed by the Parties in writing, delivery of Products will be Ex-Works (EXW) (Inco terms 2010). The method of delivery will be at Westcon's discretion. Customer is responsible for insurance, transportation costs and all related expenses applicable to delivery of the Products to Customer's nominated delivery site.

Customer must submit a claim, in writing, to Westcon for any alleged shortages or rejections, within forty-eight (48) hours of the arrival of the Products at Customer's identified delivery place (**Short Shipment Claim**). Failure to make such a claim will be deemed an acceptance, in full, of the delivery. Westcon at its sole discretion can approve or reject any Short Shipment Claim. In the event that Westcon accepts the Short Shipment Claim, Westcon will, in its sole discretion, replace the lost or damaged Product or issue a credit adjustment. In the event that Westcon does not approve the Short Shipment Claim, Customer will pay the total invoice.

3. Customer's Obligation required by the Manufacturer.

Customer warrants it has obtained and complies with any terms and conditions required by the manufacturer or service provider to:

1. purchase the Products from Westcon;
2. carry out marketing support;
3. resell the Products to end users; and/or
4. use the Products for internal purposes.

The Customer will keep accurate records, of all matters arising from this agreement, for seven (7) years.

Customer has no authority to create any obligations on behalf of the manufacturer or Westcon. Customer will indemnify Westcon from any liability for any such obligations created with a third party.

4. Personal Property Securities Act 2009 (Cth) or equivalent legislation in country in which Customer is incorporated (PPSA).

If Westcon already has a registered security interest in Products it supplies to Customer, that security interest continues under this Agreement. Otherwise, Customer grants Westcon a

security interest in all Products that Westcon supplies to Customer together with all proceeds, whether or not those Products have become accessions to other goods, sold, processed or commingled into or mixed with other Products, and/or owed by Customer now and in the future. Customer consents to Westcon registering a security interest under the PPSA in Products Westcon supplies to Customer. Customer will do everything possible to enable Westcon to register a security interest under the PPSA, including providing any information necessary to enable registration of a priority security interest such as a purchase money security interest or equivalent (**PMSI**), and will advise Westcon immediately, in writing, of any changes to that information. Customer will grant a PMSI, in priority to all other creditors, in favour of Westcon, and in all goods that are supplied from time to time by Westcon to Customer as security for Customer's obligations to Westcon. Where Products supplied to Customer have become mixed with similar goods supplied by a third party, Customer grants Westcon a security interest in the mixed goods to the value of the goods in the mixture that Westcon has supplied to Customer, but for which payment remains outstanding.

Customer waives any rights under any section of the PPSA to receive any notification or verification statement(s) relating to the security interests in the Products. Customer waives or excludes such sections of the PPSA, as Westcon may require, subject to those sections being capable of exclusion.

Customer will provide Westcon, within two (2) business days of a written request, copies of all security interests over Products Westcon supplies to Customer and authorises Westcon, as its agent, to request information from any secured party relating to any security interest which is held by such secured party. Westcon, at its option, may require Customer to pay all reasonable costs, including legal costs on a solicitor-client basis, associated with the registration, maintenance, enforcement, discharge or amendment of any registered security interest by Westcon, whether or not such change was initiated by Customer.

If Westcon repossess any Products pursuant to this Agreement, Westcon may retain those Products or dispose of them without notice to Customer and, after deducting reasonable costs of sale, credit any surplus, by way of setoff against any sums owing to it. Westcon is not obliged to furnish Customer with a statement of account or to pay to any other person any sum in excess of the total amount owed by Customer at the time its account is credited. Westcon is not obliged to reinstate this Agreement or resupply any repossessed Products to Customer.

5. Property and Risk.

Risk associated with the Product will pass to Customer upon delivery pursuant to section 2(b) above. Customer will insure the Product until title transfers from Westcon pursuant to this section.

Property in and ownership (**Title**) of the Product (excluding software) will not pass from Westcon to Customer until Customer has paid for the Product in full and has discharged any and all indebtedness to Westcon on any account whatsoever, including all applicable GST and other taxes, levies and duties. Title to software is not transferred at any time.

Until Title passes to Customer:

1. Customer will hold the Product as fiduciary and bailee for Westcon;
2. The Product must be stored separately and in a manner to enable it to be identified and cross-referenced to particular invoices;
3. Westcon, its employees or agents, are entitled to enter Customer's premises between 9.00am and 5.00pm on any business day to inspect the Product;
4. Unless notified otherwise in writing by Westcon and subject to clause (g), Customer is not authorised to sell the Product in the ordinary course of Customer's business; and
5. The proceeds of Products sold by Customer must be held in trust for Westcon until the invoice relating to those Products has been paid in full.

If payment is not made by Customer to Westcon on the due date, Customer must deliver the Product to Westcon on demand. If the Customer does not comply with such demand, Westcon, its employees or agents are entitled:

1. to enter Customer's premises at any time to do all things necessary in order to take possession of the Product, and Customer:
 - a. must procure the consent of all persons having an interest in the premises where the Product is situated, to entry into the premises by Westcon, its employees or agents; and
 - b. indemnifies Westcon against any claim, loss, liability, cost and expense that may be incurred or sustained by Westcon, its employees or agents as a result of entry into those premises where the Products are situated; and
2. with or without taking possession of the Product, to sell it as Westcon sees fit; and
3. to be paid by Customer for the costs and expenses incurred by Westcon of any legal advisers on a solicitor-client basis, mercantile agents and other agents acting on Westcon's behalf in respect of the recovery or attempted recovery of either the money owing by Customer to Westcon or possession of the Product.

Until Title passes to Customer, the Product is not to be affixed to any of its premises and Customer must ensure that the Product may be removed from those premises without causing damage of any kind to the premises.

Customer's right to hold and sell the Product will immediately cease if:

1. an administrator or controller within the meaning of Section 9 of the Corporations Act 2001 (Cth) (or equivalent provision and/or legislation in non-Australian jurisdictions), or similar officer is appointed to all or any assets or undertaking of Customer; or
2. an order is made or resolution passed for the winding up of Customer; or
3. Customer is deregistered; or
4. if Westcon believes in its sole discretion, and without having to provide any reasons, that its interests are or are likely to be in any way imperilled by an act or omission on the part of Customer or any of its servants or agents or any one or more of its creditors.

In any such case, and without the need for notice or demand by Westcon, Customer acknowledges any subsequent sale or purported sale of the Product will not be in the ordinary course of Customer's business and the proceeds of any Product sold in such circumstances will be held in trust for Westcon by the administrator, controller, receiver, liquidator or similar officer as the case may be, or if there is no such officer, by the Customer.

Product invoiced to Customer and held by Westcon at Westcon's premises for any reason shall be held at Customer's risk and expense. Westcon will be entitled to invoice Customer for the cost of storage. Such invoice must be paid in accordance with the payment terms in section 6.

This Section 5 is not intended to create a charge and shall be read down to the extent necessary to avoid creating a charge.

6. Price, Payment and Title.

Prices for Products will be set forth in Westcon's price list (as amended). Prices do not include any taxes.

Payment Terms are at Westcon's absolute discretion and subject to Westcon's prior credit approval except that cash on delivery accounts are due prior to delivery. Title to the Product does not pass to Customer until full payment has been received by Westcon. Payments may be made by bank cheque, by funds transfer to Westcon's bank account or as nominated by Westcon. Westcon reserves the right to withhold delivery of any part of an order or to require pre-payment for any given order if Customer does not make timely payment.

Customer will pay all applicable taxes, duties, licenses, excises and tariffs levied upon the sale, purchase or delivery of Products. Westcon reserves the right to require prepayment for the whole or part of the price of the Products before accepting any order or part order.

If payment has not been made in full by the due date, Westcon may charge Customer interest compounding monthly on the unpaid overdue balance at the rate of fifteen percent (15%) per annum. Customer will pay Westcon's associated costs (including collection costs and legal costs

on a solicitor-client basis). Additionally, Westcon will be entitled to suspend delivery of further goods or performance of further services.

7. Returns and Warranty Assistance Service.

Westcon makes no warranties or representations of any kind regarding the Product. At Westcon's sole discretion, and to the extent that a manufacturer permits, Westcon may approve a Customer return claim and/or provide assistance with a warranty claim. Westcon's approval will be subject, but not limited, to:

1. The Product for return being logged on Westcon's website;
2. The Product being returned to Westcon within ten (10) days of the invoice date;
3. the Product being cancellable and returnable to the manufacturer;
4. The current price of the Product being the same as the Customer's purchase price;
5. The Product being new, unopened and unused;
6. The Product being in its original packaging, undamaged and unaltered;
7. Customer's account with Westcon being current and paid;
8. Customer paying Westcon a restocking fee for the returned Product.

All transportation costs related to a pick-up and delivery of a Product under this clause will be borne by Customer unless covered by the manufacturer in accordance with its warranty terms.

All Products are subject to their manufacturers' warranties only. Customer agrees that the terms and conditions of such a warranty accompanies the Product and, if breached, will void the warranty.

Customer will not be entitled to the benefit of any warranty if any Westcon invoices are overdue.

8. Disclaimer and Limitation of Liability.

Westcon disclaims all representations and warranties, express or implied, as to the Products, including, without limitation, any implied warranty of merchantability, intellectual property or fitness for a particular purpose. In no event will Westcon be liable for any loss, damage or cost for breach of warranty. Westcon will not, in any event, be liable for any loss of revenue, profit, use of data, interruption of business or for special, indirect, consequential, incidental, exemplary or punitive damages, however caused and regardless of the theory of liability, arising out of the use of or inability to use the Product, or in any way connected to this agreement, even if Westcon has been advised of such damages. The foregoing limitation of liability applies whether any claim is based upon principles of contract, warranty, negligence or other tort, breach of any statutory duty, principles of indemnity or contribution, or otherwise. In no event will Westcon's liability to Customer exceed the purchase price paid for the Product that is the basis for the claim.

9. Intellectual Property.

Westcon is not the licensor of the Products nor does it grant any intellectual property rights in respect of the Product. Customer acquires a licence, if any, directly from the manufacturer or the manufacturer's authorised licensor. Customer acknowledges that intellectual property in the Products, including software, and any other intellectual property rights, are subject to terms and to any rights of third parties, such as patents, copyrights and/or user licences.

10. Credit Adjustments and Refunds.

Credit adjustments may be available to Customer at Westcon's sole discretion and in accordance with Westcon's policies in respect of Product returns, co-operative advertising, rebates and allowances (**Credit Adjustments**). Credit Adjustments can be applied to a Customer's balance. In the event of an overpayment, and upon receipt of a request from Customer, a refund will be issued as a credit on Customer's account.

11. Compliance with Laws.

Customer will comply with any and all applicable laws related to its activities, pursuant to the Terms and Conditions, in the relevant territory. Customer must obtain and maintain all applicable licenses, permits and approvals necessary to perform its obligations under the Terms and Conditions.

12. Foreign Corrupt Practices Act (FCPA).

Customer will comply with all applicable bribery, corruption and fraud laws, as well as the United States of America's FCPA and UK Anti-Bribery Act. Customer must not,, among other things, make an offer, payment, promise to pay, or authorisation of the payment of any money, offer, gift, promise to give, or authorisation of the giving of anything of value, directly or indirectly:

1. to or for the use or benefit of any official or employee of the government in the country/ies in which Customer conducts activities pursuant to these Terms and Conditions, or of any department, agency or instrumentality of such a government;
2. to any political party, official of a political party, or candidate for political office;
3. to any other person if Customer or any partner, officer, director, employee, agent, representative, or shareholder of Customer knows or has reason to suspect or know that any part of such money or thing of value will be offered, given, or promised, directly or indirectly, to any such governmental official or employee or political party or official thereof, candidate for political office, or official or employee of a public international organisation; or
4. to any other person or entity, the payment of which would violate either the laws or policies of the United States or the laws or policies of the country/ies in which Customer conducts activities pursuant to these Terms and Conditions, including obtaining or retaining business or securing any improper advantage.

Customer warrants that none of its officers, directors, employees, agents or representatives is:

1. an official or employee of the government of the country/ies in which Customer conducts activities pursuant to these Terms and Conditions or of any department or instrumentality of such government; or
2. an officer of a political party or candidate for political office who will share directly or indirectly any part of the sums due under these Terms and Conditions.

13. Export Restrictions.

Customer is not permitted to remove, ship or export any Product outside the territory in which the Westcon entity fulfilling an order for that Product is incorporated and must ensure that Products procured by it from Westcon do not leave the territory. Customer will obtain all licenses, permits and approvals required by any government and will comply with all applicable laws, rules, policies and procedures relevant to the Product and/or the territory in which the Customer is operating. Customer must also ensure compliance with any US re-export laws. . Customer will indemnify and hold Westcon harmless for any violation or alleged violation of export laws, rules, policies and procedures.

14. Confidential and Proprietary Information.

Customer acknowledges that all non-public information, disclosed by Westcon as a result of performance of these Terms and Conditions shall be deemed confidential and proprietary information of Westcon. Customer agrees not to disclose or use such information except

- i. in connection with these Terms and Conditions, or
- ii. as required by law to do so. Customer agrees to promptly notify Westcon of any subpoena or court order compelling disclosure.

15. Data Protection and Privacy.

In relation to any personal information (**Personal Information**) (that is, any information or opinion about a natural person, including as that term is defined in the Privacy Act 1988 (Cth) or equivalent legislation in non-Australian jurisdictions (**Privacy Act**) provided to or accessed by Westcon, or any third parties who contract with Westcon or with Westcon's contractors, in connection with the supply of the Product (together, **Westcon and Third Parties**), Customer warrants:

1. that it has taken all steps necessary, and has ensured that its agents, contractors and end users have taken all steps necessary (including providing privacy statements to and obtaining privacy consents from relevant individuals) to ensure that Westcon and Third Parties are able to access and process (both within and outside Australia) the Personal Information in compliance with all applicable legislation, principles, industry codes and policies by which Westcon and Third Parties are bound (including, without limitation, the Privacy Act); and
2. that all Personal Information and any other information that Westcon and Third Parties cannot legally access have been excluded from any data provided to Westcon and Third Parties.

Customer will provide Westcon with evidence of such steps taken (including copies of privacy statements and consents) upon request.

Customer agrees to take all steps requested by Westcon to assist Westcon to comply with all applicable legislation, principles, industry codes and policies (including, without limitation, the Privacy Act). Customer will take no action that would cause Westcon and Third Parties to breach their obligations under any privacy laws.

Customer indemnifies and holds Westcon and all third-party contractors harmless for any and all losses or damages resulting from any breach by Customer of this Data Protection and Privacy section.

Westcon may use and/or disclose any information Customer provides for purposes including, but not limited to, credit, administration, sales and marketing. This information may be transmitted worldwide. Customer authorises any person or company to provide Westcon or Westcon's agent(s) such information as necessary in relation to Customer's credit or other information. Customer authorises Westcon to supply any details relating to the Customer to a third party where Westcon deems necessary.

Customer may, at any time, request that Westcon ceases sending Customer promotional communications (**Opt Out**). Opt Out requests must be made in writing to Westcon in accordance with Westcon's Privacy Policy available at the following URL: <http://au.westcon.com/privacy>.

Customer consents to Westcon's use and disclosure of information as outlined in Westcon's Privacy Policy.

16. Errors and Omissions.

All errors or omissions, whether in computation or otherwise, in any quotation, acknowledgement or invoice, shall be, without penalty, subject to correction by Westcon.

17. Use of Products.

Products must only be used for authorised purposes, as set out by Westcon or the manufacturer. Products are not authorised for use in nuclear, critical safety or other applications where a failure may reasonably be expected to result in personal injury, loss of life, or catastrophic property damage. If Customer uses or sells the Products in any of the above applications, it does so at its own risk and indemnifies Westcon against any liabilities or costs resulting from such use.

18. Statement of Debt.

A certificate (Statement of Debt) signed by a director, secretary, financial controller or credit manager (Authorised Person) shall be evidence of the amount of indebtedness of Customer to Westcon at that time. The Authorised Person gives a personal guarantee as to the accuracy of the Statement of Debt.

19. Audit.

Westcon will be entitled, with prior notice, to audit Customer's compliance with the Terms and Conditions. If Customer does not comply with the Terms and Conditions or if breaches are identified during the audit process, Customer must refund or reimburse Westcon any monies owed as a result of such non-compliance including the cost of such audit or, if appropriate, Westcon may offset any amounts due to Customer.

20. General.

The Terms and Conditions shall be governed by and construed in accordance with the laws of the State of New South Wales, Australia, without regard to its conflicts of law principles. The United Nation's Convention on Contracts for the International Sale of Goods is specifically excluded from application to the Terms and Conditions. The parties agree that the state and federal courts located in New South Wales, Australia, shall have sole and exclusive jurisdiction and venue over any matter arising out of the Terms and Conditions and each party hereby submits itself and its property to the venue and jurisdiction of such courts. Each party irrevocably waives any objection that it may now or hereafter have to the laying of venue of any such proceeding in such court, including any claim that such proceeding has been brought in an inappropriate or inconvenient forum.

Westcon's failure to insist upon strict performance of any of the provisions of the Terms and Conditions will not be deemed a waiver of any breach or default.

Each of the Parties represent it has the authority to enter into and agree to these Terms and Conditions.

Any notice given to either Party will be in writing and effective by transmission via facsimile or regular mail to the address indicated in a credit application or agreement, or as advised in writing by the Party receiving notice.

Customer will reimburse Westcon all collection costs, including solicitors fees and costs, incurred as a result of the enforcement or an attempted enforcement of any provision hereof or collection of any sum due from Customer.

If any provision of these Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions will remain in full force and effect, and shall be construed in the manner that most closely reflects the intention of the Parties in executing the provision.

Westcon will not be liable for any delay or failure in performance whatsoever due to any cause or circumstance outside its reasonable control including, but not limited to, acts of God, earthquakes, shortage of supplies, transportation difficulties, labour disputes, riots, war, fire, epidemics, manufacturer delays and similar occurrences.

The Terms and Conditions may be amended or modified by Westcon from time to time.

These Terms and Conditions constitute the entire agreement between the parties as to the sale of Products and supersede all prior or current written or oral statements, representations, negotiations, agreements and understandings to the extent that prior or current agreements modify or are inconsistent with the Terms and Conditions. Prior or current agreements that do not modify and are consistent with these Terms and Conditions are made a part hereof.