

1. Definitions & Interpretation.

- a. Where used in these Terms and Conditions of sale:
- "Authorised Representative"** means any person who holds the job title and office of General Manager, Finance Director or Vice-President.
 - "Buyer"** means any individual, person, entity, company, firm, partnership or organization that purchases Products from WGEO for use in its business or the business of a third party end-user or other customer and not for use as a Consumer.
 - "Consumer"** means any individual, person, entity, company, firm, partnership or organization who is acting as a consumer (as defined by applicable law) and/or for purposes not related to his or her trade, business or profession.
 - "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 on WGEO's website located at the following URL: <https://www.westconcomstor.com/global/en/legal/Legal/terms-and-conditions.html>.
 - "Contract"** means any agreement for the purchase and sale of Products from WGEO to Buyer which result from a Purchase Order submitted to and accepted by WGEO.
 - "Contract Date"** means the date upon which a Purchase Order is accepted by WGEO.
 - "E-System"** means the Product ordering website operated by WGEO currently located at the following URL: <https://online.westcongroup.com/>
 - "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 WGEO (including delay by its Suppliers).
 - "Goods"** means any Supplier's goods and/or software, or any instalment or parts thereof, which are supplied by WGEO to Buyer pursuant to a Contract, including any Supplier documentation related thereto.
 - "Products"** means any combination of Goods, Special Order Goods and Services which are supplied by WGEO to Buyer pursuant to a Contract.
 - "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.
 - "Services"** means any Supplier's services which are supplied by WGEO to Buyer pursuant to a Contract.
 - "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 WGEO.
 - "Supplier"** means the supplier, licensor, publisher, manufacturer or other third party provider of Products.
 - "WGEO"** means Westcon Group European Operations Limited, registered in England and Wales under company number 04411285, with a registered place of business at Chandlers House, Wilkinson Road, Cirencester, Gloucestershire, GL7 1YT, U.K. or, as appropriate, any branch offices or subsidiaries within the meaning of s736 Companies Act 1985.
- 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.

2. General Terms of Order & Sale.

- a. Every Contract between WGEO and Buyer shall be subject to the Conditions. 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 WGEO shall be deemed to apply unless they are expressly accepted in writing by an Authorised Representative of WGEO 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. WGEO 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 WGEO and Buyer.
- c. Buyer shall be deemed to have accepted these Conditions by the earlier of: (i) signing a WGEO credit application, (ii) submitting a Purchase Order to WGEO, or (iii) accepting Products from WGEO.
- d. Notwithstanding the foregoing, Buyer agrees that WGEO's provision of a price quotation, price list or any other information shall not be considered an offer by WGEO 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 WGEO, (ii) a Purchase Order placed through the E-System is confirmed by WGEO via email, or (iii) WGEO proceeds with the fulfilment of the Purchase Order.
- e. Notwithstanding the foregoing, WGEO 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, WGEO reserves the right to provide such Services at a venue or venues other than WGEO's premises and to provide personnel of its own selection. WGEO 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, except as set forth under Clause 12, 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 WGEO harmless for any and all delays, claims, losses, liabilities, costs or expenses related to Special Order Goods.
- 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. WGEO 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. WGEO's sole and exclusive liability, and Buyer's sole remedy, for a breach of the foregoing warranty shall be to repair or replace, at its sole and absolute discretion, the Special Order Goods, provided, WGEO shall have no liability for any inaccuracies on a Purchase Order.

4. Cancelling & Rescheduling Purchase Orders.

No Purchase Order which has been accepted by WGEO may be cancelled or rescheduled by Buyer except with written agreement by WGEO and on the condition that Buyer shall indemnify WGEO, in full, against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages and expenses incurred by WGEO as a result of a cancellation, subject to a minimum of 5% of the total value of a cancelled Purchase Order (which amount Buyer agrees represents a genuine pre-estimate of WGEO's loss), together with WGEO's costs and expenses of recovering Products delivered or in transit.

5. Prices.

- a. The price of Products in WGEO'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 WGEO'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 WGEO's then current published price list on the date the Backordered Products are scheduled for delivery to Buyer.
- c. Notwithstanding the foregoing, WGEO 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 WGEO, 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

any instructions of the Buyer or failure of the Buyer to give WGEO adequate information or instruction, but WGEO shall only increase its price by the amount necessary to reflect such an increase. Further, in the event WGEO or its agent makes a material error or omission when quoting a price, WGEO 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 WGEO and crediting Buyer for the fees paid by Buyer for such Products.

- d. Except as otherwise stated on a price quotation or in WGEO's then current price list, and unless otherwise agreed in writing between the Buyer and WGEO, all prices are quoted on an Ex Works basis (as per Incoterms 2000).
- 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 WGEO's net income) for which the Buyer shall be additionally liable for paying to WGEO. Buyer shall make all payments to WGEO without reduction for any withholding taxes, which shall be Buyer's sole responsibility. All taxes shall be paid by Buyer to WGEO unless Buyer provides WGEO 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 WGEO by law or statute may charge or collect upon in accordance with such laws or statutes.
- g. In the event a Supplier should grant a special pricing consideration or discount to WGEO 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 WGEO for any Supplier claims against WGEO 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 WGEO by the Supplier for participation in Pass-Through Discounts.

6. Payment.

- a. If Buyer has not been granted credit facilities by WGEO 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 WGEO then Buyer shall 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 WGEO 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. Timely payment in full is of the essence of these Conditions. WGEO shall be entitled to recover any invoiced amounts notwithstanding that delivery may not have taken place whether or not title has passed to Buyer. If (i) Buyer fails to make any payment under any Contract when due, (ii) any distress or execution is levied upon Buyer's property or assets; (iii) Buyer makes or offers any arrangement or composition with its creditors; (iv) Buyer is a body corporate and any resolution or petition to wind up Buyer's business (other than for the purpose of amalgamation or reconstruction) is passed or presented; (v) a receiver, administrator, manager or analogous person is appointed in respect of the undertaking, property or assets of Buyer or any part thereof; (vi) Buyer is an individual or a partnership, and any grounds arise for the presentation of a petition for a bankruptcy order made under Part IX Chapter 1 Insolvency Act 1986 or any statutory re-enactment or modification thereof or on the presentation of such a petition (an "Act of Bankruptcy"); or (vii) Buyer exceeds its credit limit then, without prejudice to any other right or remedy available to WGEO, 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 WGEO shall be entitled to take any or all of the following courses of action:
- 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;
 - 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;
 - set-off any amounts due against any credit note, balance or other liability issued by WGEO to Buyer;
 - appropriate any payment made by Buyer to such Products (including Products supplied under any other contract between Buyer and WGEO or any WGEO branch or subsidiary) as WGEO may deem fit (notwithstanding any purported appropriation by Buyer); and/or
 - 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.
- d. Buyer shall provide WGEO with copies of its annual and/or quarterly financial statements upon WGEO's request. Buyer shall notify WGEO 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 WGEO to Buyer (including values of Product trade-ins or promotions) shall expire, without notice, within twelve (12) months of the date of issuance by WGEO. 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.

7. Delivery.

- a. Any dates quoted for delivery of the Products are approximate only and WGEO 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 WGEO. Any Products may be delivered by WGEO 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 at WGEO'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 WGEO's normal business hours. WGEO 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 WGEO within five (5) working days from the date of invoice. In the event WGEO 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. Where the Products are delivered in instalments, each delivery shall constitute a separate Contract. Failure by WGEO 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 WGEO adequate delivery instructions in its Purchase Order then, without prejudice to any other right or remedy available, WGEO 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.
- f. Buyer shall bear any and all costs (including original and return carriage costs) associated with any unjustified refusal of delivery of Products ordered pursuant to a Contract.
- g. If there is a shortage of Products available to WGEO then WGEO 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.

8. Title & 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 WGEO. Buyer shall insure the Products for their invoice value from the date delivery is made or tendered. Notwithstanding delivery and the passing of risk in the Products, Buyer agrees that title to the Products shall not pass to Buyer until WGEO has cleared funds received as payment for the price of the Products, and all other sums which are then currently outstanding to WGEO by Buyer.
- b. Until such time as title in the Products passes to Buyer, Buyer shall (i) hold the Products as WGEO'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 WGEO's property. 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 WGEO 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 these Conditions. 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 WGEO shall immediately become due and payable. Upon WGEO's request, Buyer shall provide WGEO with all details and information necessary to collect the Products in the event of non-payment by Buyer.

- c. If the Buyer sells any Products before title has passed to Buyer in accordance with the Conditions 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 WGEO, provided the foregoing shall not constitute Buyer as an agent of WGEO for the purposes of any such resale.
- d. Until such time as the title in the Products passes to Buyer, WGEO shall be entitled to require Buyer to return the Products to WGEO. If Buyer should fail to immediately comply with WGEO's request, WGEO shall have the right to enter on or in any premises or vehicles of Buyer where the Products are loaded or stored for the purpose of repossessing said Products if Buyer is in breach of any of these Conditions or a Contract.
- e. Buyer shall not be permitted to sell any Products in its inventory after the appointment of a receiver to its property or after it has been placed in liquidation or administration or, not being a company, has committed an Act of Bankruptcy. Further, Buyer's right to possess the Products shall immediately cease when and if Buyer makes an arrangement for the benefit of creditors generally, suffers or permits the appointment of an administrator, administrative receiver or receiver for its business or assets, or avails itself or becomes subject to any proceeding under any applicable bankruptcy laws, is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or otherwise ceases to trade or threatens to cease to trade.
- 9. Damage & Loss in Transit.**
- a. WGEO 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 WGEO by telephone immediately on receipt of the Products and confirmed in writing within five (5) working days and WGEO 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 WGEO 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 WGEO unless such shortage is noted on the bill of lading or other delivery receipt.
- b. Subject to the foregoing, any Products which WGEO 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 WGEO, as originally ordered or, if rectification or replacement is not practicable, WGEO will issue a credit to Buyer equal to any payments received by WGEO for such Products. WGEO 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.
- 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 WGEO 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 WGEO. No employee or agent of WGEO 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 WGEO is not the Supplier 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 customers from the original Supplier of the Products. Any software supplied to Buyer pursuant to a Contract is supplied subject to the provisions of the Supplier's licensing terms.
- 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 relating to a Product on behalf of WGEO or Supplier to its customers.
- c. Any warranties, conditions or other terms implied by common law or statute or otherwise in connection with these Conditions (except to title, in the case of Products) are hereby expressly excluded to the fullest extent permitted by law, save for fraudulent misrepresentation.
- 12. Warranty Assistance.**
- a. Buyer shall immediately notify WGEO if any Products supplied to Buyer prove to be defective in quality or condition within the Supplier's warranty period (the "Claim"). Upon receipt of notification of such Claim from Buyer, WGEO shall notify Buyer whether, as a matter of Supplier policy, the Claim must be handled directly with the Supplier or indirectly through WGEO. In the event the Claim must be handled directly between Buyer and Supplier, WGEO shall provide contact information to enable Buyer to contact Supplier. In the event the Claim will be handled by WGEO, then WGEO shall provide Buyer with a return material authorization ("RMA") for Buyer to return the Products to WGEO, and Buyer shall return such Products to WGEO in accordance with these Conditions and WGEO's then current RMA policy (which shall be made available to Buyer upon request). No Products may be returned to WGEO 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. WGEO shall not be obligated to ship replacement Products to Buyer until WGEO is in receipt of the original Products being returned.
- b. Buyer agrees that WGEO'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 WGEO's ability to obtain a refund, credit or new replacement Products from the Supplier. WGEO has no obligation to accept a return of Products that fail to comply with a Supplier's policy on Product returns.
- c. WGEO shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, use not in accordance with Supplier's Product documentation, modification or alteration not authorised by Supplier, or use in conjunction with a third party product. WGEO reserves the right to determine whether any Products are defective.
- d. All transport charges incurred in returning or replacing Products are the responsibility of Buyer.
- 13. Returns.**
- a. Buyer shall return Products to WGEO in accordance with these Conditions and WGEO's then current RMA policy (which shall be made available to Buyer upon request). Any Products returned pursuant to an RMA issued by WGEO must be returned to WGEO within five (5) working days of the date of such RMA.
- b. Buyer irrevocably authorizes WGEO to carry out any necessary tasks related to the repair or replacement of Products on behalf of Buyer under these Conditions.
- c. Unless WGEO collects Products using its own carrier, Buyer agrees that WGEO shall not be liable for any loss or damage to Products returned to WGEO.
- d. Except for Products returned pursuant to Clause 12 above, any returns are subject to WGEO's sole and absolute discretion and may be subject to a fifteen percent (15%) restocking fee, at WGEO's sole discretion.
- 14. Limitation of Liability.**
- a. WGEO's liability for any direct loss or damage arising out these Conditions 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; (excluding VAT). WGEO shall have no liability under these Conditions or any Contract if WGEO has not received payment of the total invoice price of the Products giving rise to the claim.
- b. Except as expressly provided in these Conditions, WGEO and its Suppliers shall not be liable to Buyer for any financial, consequential or other loss or damage caused to Buyer by reason of any representation, warranty (either express or implied), condition or other term, or any duty at common law, or for any special, indirect, incidental or consequential damages (including 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 WGEO, its employees, agents, Suppliers or otherwise) which arise out of or in connection with these Conditions or a Contract hereunder, even if WGEO or its Suppliers have been advised of the possibility of such loss, liability or damages.
- c. Nothing contained herein shall be construed as excluding or limiting WGEO's liability for death or personal injury caused by WGEO's negligence, or for breach of implied title to Products.
- 15. 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. Buyer understands and agrees that WGEO 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, 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 WGEO or any Supplier, any license of which shall be subject to separate agreement including any then current policies of WGEO or its Suppliers, as appropriate.
- 16. 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 WGEO 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, WGEO 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 WGEO cannot guarantee the security or integrity of any data or information exchanged through the Internet or the E-System.
- 17. Force Majeure.**
- a. WGEO 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.
- b. In the event of a Force Majeure event: (i) WGEO shall, as soon as commercially practicable, notify Buyer of such Force Majeure event provided WGEO shall incur no liability for its failure to give such notice; (ii) WGEO's duty to perform shall be suspended for the duration of the Force Majeure event; and (iii) the time of WGEO'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, WGEO 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.
- 18. 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 States ("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 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 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. WGEO 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 take any action or permit or authorize any action which will render WGEO 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 WGEO in obtaining or retaining business and (a) will not violate or cause WGEO to violate such Act in connection with the sale and distribution of the Products; and (b) will notify WGEO 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 WGEO in the event it should export any of the Products outside of the United Kingdom.
- f. Buyer shall indemnify, defend and hold WGEO harmless from any violation or alleged violation by Buyer of the terms of this Clause. Upon WGEO's request, Buyer agrees to confirm, in writing, its compliance with applicable Export Control Laws and the Act.
- 19. 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 WGEO 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 WGEO as the case may be, and Buyer shall not appoint, engage, contract or employ such employee in the United Kingdom to provide services to Buyer. In the event Buyer should breach this Clause, Buyer agrees to pay WGEO, by way of liquidated damages, a lump sum representing forty percent (40%) of the employee's annual salary (excluding benefits) and Buyer hereby agrees that such sum is a genuine and reasonable pre-estimate of WGEO's loss.
- 20. Confidential Information.**
- Buyer agrees that these Conditions, including any Contracts, and all Product related information including pricing and descriptions which are provided by WGEO to Buyer, regardless of the form in which it is provided, are considered confidential information of WGEO 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. 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. WGEO 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.
- 21. Miscellaneous.**
- a. **Assignment.** Buyer may not transfer or assign these Conditions to a third party by operation of law or otherwise without the prior written consent of WGEO.
- b. **Waiver.** Failure of WGEO 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 WGEO 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 WGEO 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 WGEO 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 WGEO for these purposes. Notwithstanding the foregoing, WGEO 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 WGEO in writing that it does not wish to receive such promotional information.
- f. **Choice of Law & Venue.** These Conditions shall be governed by the laws of England and Wales, and Buyer hereby agrees to submit to the exclusive jurisdiction of the English courts. The United Nation's Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions.