

## Definitions &amp; Interpretation.

- a. Where used in these Terms and Conditions of sale:
- i. **“Buyer”** means any natural person, legal person or an entity not being natural nor legal person but having legal capacity, that purchases Products from WESTCON for use in its business or the business of a third party end-user or other customer and not for use as a Consumer.
  - ii. **“Consumer”** means a natural person defined in art 22(1) of Civil code i.e., who is acting for purposes not directly related to his or her trade, business or profession
  - iii. **“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 WESTCON’s websites located at the following URLs: <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 by submitting a written request via post to WESTCON to company’s address.
  - iv. **“Contract”** means any agreement for the purchase and sale of Products from WESTCON to Buyer which result from a Purchase Order submitted to and accepted by WESTCON.
  - v. **“Contract Date”** means the date upon which a Purchase Order is accepted by WESTCON.
  - vi. **“E-System”** means the Product ordering website operated by WESTCON currently located at the following URL: <https://online.westcongroup.com/>.
  - vii. **“Force Majeure”** means, without limitation, any external event or any acts of government, war, terrorism, riot, fire, floods, earthquakes, explosions, strikes, lockouts, cessation of labour, trade disputes, breakdowns, delays by Suppliers, accidents of any kind or any other causes which are not normal consequences of WESTCON’s actions or omissions
  - viii. **“Goods”** means any Supplier’s goods and/or software, or any instalment or parts thereof, which are supplied by WESTCON to Buyer pursuant to a Contract, including any Supplier documentation related thereto.
  - ix. **“Products”** means any combination of Goods, Special Order Goods and Services freely configured which are supplied by WESTCON to Buyer pursuant to a Contract.
  - x. **“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.
  - xi. **“Services”** means any Supplier’s services which are supplied by WESTCON to Buyer pursuant to a Contract.
  - xii. **“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.
  - xiii. **“Supplier”** means the supplier, licensor, publisher, manufacturer or other third party provider of Products.
  - xiv. **“WESTCON”** means Westcon Group Poland Spółka z ograniczoną odpowiedzialnością (Ltd) with seat in Warsaw, at Ilżecka Street 26, 02-135 Warsaw, registered in the entrepreneurs register in Sąd Rejonowy dla m. st. Warszawy w Warszawie XIII Wydział Gospodarczy Krajowego Rejestru Sądowego (register court) under the entry number KRS 0000635846, NIP 5223070796, REGON 365369811.
- 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 WESTCON 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, other form submitted to WESTCON or included in the Purchase Order placed in E-System shall be deemed to apply unless they are expressly accepted in writing or expressly confirmed through means of remote communication by WESTCON with respect to that Purchase Order.
- b. WESTCON will use reasonable efforts to ensure that Buyer is familiar with any significant 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 and Buyer.

- c. Buyer shall be deemed to have accepted these Conditions if they were made available to him in a form referred to in Clause 1a. iv) so that he had a possibility to become familiar with them before the conclusion of the Contract or if these Conditions were delivered to the Buyer in a form referred to in Clause 1a.iv).
- d. Notwithstanding the foregoing, Buyer agrees that WESTCON's provision of a price quotation, price list or any other information shall not be considered an offer by WESTCON 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, 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, (ii) a Purchase Order placed through the E-System is confirmed by WESTCON via email, or (iii) WESTCON ships product pursuant to a Purchase Order.
- e. Notwithstanding the foregoing, WESTCON and his Suppliers reserve the right to make any changes in the specifications of the Products, without prior 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 reserves the right to provide such Services at a venue or venues other than WESTCON's premises and to provide personnel of its own selection. WESTCON 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 WESTCON harmless for any damage that may occur on the basis or in connection with the Contract regarding Special Order Goods.
- b. Buyer shall be solely responsible for the compliance of any Purchase Order on Special Order Goods with a goal in which such Special Ordered Goods are purchased by the Buyer and for such compliance with a requirements of the Buyers' customers, 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 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'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, WESTCON shall have no liability for any inaccuracies on a Purchase Order.

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

No Purchase Order which has been accepted by WESTCON pursuant to Clause 2d. of these Conditions may be cancelled or rescheduled by Buyer except with written agreement by WESTCON and on the condition that Buyer shall incur all costs and losses of WESTCON related to the cancellation or rescheduling of Purchase Order, including (i) loss of profit other than direct profit from selling Products to which refers the cancellation or rescheduling to Buyer, (ii) costs of all labour and materials used, (iii) expenses incurred by WESTCON as a result of a cancellation, subject to a minimum of 5% of the net value of a cancelled Purchase Order (which amount Buyer agrees represents a genuine pre-estimate of WESTCON's loss), together with WESTCON's costs and expenses of recovering Products delivered or in transit.

### **5. Prices.**

- a. The price of Products in WESTCON'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's then current price list published on his internet site on the date of Contract, where no price has

been quoted or a quoted price has expired. Both the quoted price and the price list are not an offer and will be sent only to give a information to the Buyer.

- 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's then current published price list on the date the Backordered Products are scheduled for delivery to Buyer, where no price has been quoted or a quoted price has expired.
- c. Notwithstanding the foregoing, WESTCON 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, 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 adequate information or instruction, but WESTCON shall only increase his price by the amount necessary to reflect such an increase. Further, in the event WESTCON or his agent makes a material error or omission when quoting a price, WESTCON 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) issuing a corrective invoice containing prices from proper list price on the date of the Contract Date, or (ii) allowing Buyer to return such Products to WESTCON and returning to Buyer the fees paid by Buyer for such Products, subject to clause 3a.
- d. Except as otherwise stated on a price quotation or in WESTCON's then current price list, and unless otherwise agreed in writing between the Buyer and WESTCON, 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) and any other arising taxes other than taxes based upon WESTCON's net income) for which the Buyer shall be additionally liable for paying to WESTCON. Buyer shall make all payments to WESTCON without reduction for any withholding taxes, which shall be Buyer's sole responsibility. All taxes shall be paid by Buyer to WESTCON unless Buyer provides WESTCON 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 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 WESTCON 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 for any Supplier claims against WESTCON 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 by the Supplier for participation in Pass-Through Discounts. The Buyer shall have a right to choose not to adhere to the Pass-Through Discount in which case, WESTCON reserve the right to refuse the Purchase Order placed by the Buyer..

## **6. Payment.**

- a. If WESTCON does not postponed a deadline for payment of purchase price and other receivables connected with the Products ("Credit Limit") then Buyer's payment shall be due on the date indicated in the invoice and in advance of delivery. If Buyer has been granted Credit Limit by WESTCON 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 WESTCON in handling such transactions, including fees charged by the credit or debit card company.
- b. If the Credit Limit has not been granted WESTCON can refuse to perform delivery of Products until the Buyer pay in full the purchase prices for the Products and other receivables to which he is obliged on the basis of this Condition or the Contract. WESTCON 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 legal person and any resolution on

liquidation of Buyer's business is passed; (v) a petition for bankruptcy has been filed or an order regarding this matter has been issued, (vi) any grounds arise for the presentation of a petition for a bankruptcy order made under Bankruptcy and Rehabilitation Act or (vii) Buyer exceeds its Credit Limit then, without prejudice to any other right or remedy available to WESTCON, 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 shall be entitled to take any or all of the following courses of action:

- i. by notice, suspend the performance of the Contract or withdraw from the Contract or any part thereof within 120 days from its conclusion, without liability, stop any Products in transit.
  - ii. charge Buyer interest for delay for every day of delay, on any unpaid amount past due, at the double rate of statutory interests rate for delay (Art. 481 § 2(1) of the Civil Code) until full payment is made.
  - iii. set-off any amounts due from the Buyer against any amount due from the WESTCON to the Buyer
  - iv. 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.
- c. Buyer shall provide WESTCON with copies of its annual and/or quarterly financial statements upon WESTCON's request. Buyer shall notify WESTCON in writing prior to entering into any contract whereby Buyer would sell, assign or otherwise transfer any book debt owed to Buyer, or before entering into any form arrangements on establishing the pledge on receivables due from the Buyer..

## **7. Delivery.**

- a. Any dates quoted for delivery of the Products are approximate only and WESTCON shall not be liable, for any delay in delivery of the Products however caused. The Buyer cannot refuse to pay the purchase price for the Products and other receivables connected with the Products due to delay of delivery unless previously agreed in writing by WESTCON. Any Products may be delivered by WESTCON in advance of the quoted delivery date upon giving reasonable notice to Buyer.
- b. Unless otherwise agreed in writing, the date of delivery of the Products is the date of notification of Buyer by WESTCON that such Products are ready for collection at WESTCON's premises. Buyer and WESTCON agree that WESTCON premises are the place of delivery. Buyer shall be entitled to collect the Products any time thereafter on reasonable notice during WESTCON's normal business hours. WESTCON may hand out the Products to any person which having Buyer's authorisation appears in WESTCON premises claiming that they are entitled to collect the Products and sign for delivery of the Products on behalf of Buyer
- c. Claims for non-delivery of Products must be made in writing to WESTCON within five (5) working days from the date of delivery of the invoice. In the event WESTCON 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. Failure by WESTCON 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 deem that WESTCON refused to perform the Contract in remaining part or withdrawn from the Contract in the scope of any other installment.
- e. If Buyer (i) fails to collect the Products from WESTCON premises; or if the parties agreed on a different mode of delivery (ii) fails to take delivery of the Products or (iii) fails to give WESTCON adequate delivery instructions in its Purchase Order then, without prejudice to any other right or remedy available, WESTCON may: (i) store the Products until actual collection or delivery and charge Buyer for the reasonable costs thereof, including insurance costs; or (ii) sell the Products in favour of the Buyer, upon prior setting the additional deadline for collection of the Products, unless setting such deadline is impossible or for other reasons WESTCON is at risk of the damage. WESTCON shall immediately notify the Buyer on sale described in the preceding sentence.
- 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 WESTCON then WESTCON 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 quantity 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 WESTCON. 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 WESTCON has cleared funds received as payment for the price of the Products, and all other sums which are then currently outstanding to WESTCON by Buyer.
- b. Until such time as title in the Products passes to Buyer, Buyer shall (i) hold the Products as the 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 WESTCON's property.
- c. If the Buyer sells any Products before title has passed to Buyer 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, shall not transfer to any third party the receivables for payment of purchase price by the third party, and is obliged to transfer to WESTCON the purchased price owed to WESTCON, provided the foregoing shall not constitute Buyer as an agent of WESTCON for the purposes of any such resale.
- d. Until such time as the title in the Products passes to Buyer, WESTCON shall be entitled to require Buyer to return the Products to WESTCON..

## **9. Damage, Loss and Destruction in Transit.**

- a. WESTCON shall not be liable in respect of improper performance of transit by the carrier, loss, damage or destruction to any Products during transportation of the Products to Buyer in accordance with paragraph 7b. different the premise or premises of WESTCON, unless: (i) Buyer shall concurrently notify WESTCON about occurrence of mentioned circumstances, (ii) WESTCON shall confirm in writing within five (5) working days the receipt of such notice, (iii) the Buyer shall undertake all actions necessary to determine the liability of the carrier, in particular he shall immediately notify the carrier in writing about his improper actions, loss, damage or destruction of the Products, in particular before the receipt of the Products from the carrier he shall prepare together with the carrier the protocol on the condition of the Products and the circumstances of the improper action of the carrier, loss, damage or destruction of the Products or he shall place a note of such content to the bill of lading or other delivery receipt. If by reason of Buyer's failure to comply with the obligations mentioned in the preceding sentence WESTCON is unable to make recovery of the compensation from the carrier in respect of the improper performance of a transit, damage, loss or destruction, the Buyer shall be liable to pay for Products as though no improper performance of transit, damage, loss or destruction occurred. No liability for Product shortages will be accepted by WESTCON unless such shortage is noted on the bill of lading or other delivery receipt.
- b. Any Products subject to the liability of WESTCON for improper actions connected with the transit, damage, loss or destruction of the Products during the transit, which shall be delivered erroneously, damaged, lost or destructed shall be: (i) delivered, replaced or repaired by the WESTCON in accordance with the initial order or (ii) if replacement or repair is not possible, the Buyer shall be entitled to purchase from WESTCON other Products for the price up to the amount reflecting the purchase price of damaged or lost Products. An order for other Products in replacement of the original ordered Products shall be deemed as the amendment of the Contract regarding the damaged or lost Products. WESTCON 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. Improper actions of the carrier, error, loss, damage or destruction of Products discovered by Buyer in delivery shall not entitle Buyer to rescind the remainder of a Contract.

## **10. Publications & Specifications.**

WESTCON does not grant any warranty for the defects of Products. Any and all specifications, descriptions, photographs, measurements, capacities or illustrations contained in any catalogues, price lists, brochures, leaflets, proposals, advertising matter, publications of WESTCON 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. No employee or agent of WESTCON 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 is not the Supplier of the Products and that WESTCON does not grant the warranty of quality of the Products. Accordingly, WESTCON shall hand over all the warranty documents issued by the Supplier or other third party with the Products if such documents are delivered to WESTCON with 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 licensing terms of such software.
- 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 WESTCON to its customers.
- c. Unless otherwise expressly indicated in the Conditions all of the liability of WESTCON in connection with the improper performance of the Contract and liability on the basis of warranty of quality or warranty for the Product defects is excluded.

## 12. Warranty Assistance.

- a. Buyer shall immediately notify WESTCON 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, WESTCON shall notify Buyer whether, as a matter of Supplier policy, the Claim must be handled directly with the Supplier or indirectly through WESTCON. In the event the Claim must be handled directly between Buyer and Supplier, WESTCON shall provide contact information to enable Buyer to contact Supplier. In the event the Claim will be handled by WESTCON, then WESTCON shall provide Buyer with a return material authorization ("RMA") for Buyer to return the Products to WESTCON, and Buyer shall return such Products to WESTCON in accordance with these Conditions and WESTCON's then current RMA policy (which shall be made available to Buyer upon request). No Products may be returned to WESTCON 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 shall not be obligated to ship replacement Products to Buyer until WESTCON is in receipt of the original Products being returned.
- b. Buyer agrees that WESTCON'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 WESTCON's ability to obtain a refund, credit or new replacement Products from the Supplier. WESTCON has no obligation to accept a return of Products that fail to comply with a Supplier's policy on Product returns.
- c. WESTCON 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. WESTCON reserves the right to determine whether any Products are defective.
- d. All transport charges incurred in returning or replacing Products are the responsibility of the Supplier or other third party that gave a warranty for the Products.

## 13. Returns.

- a. Buyer shall return Products to WESTCON in accordance with these Conditions and WESTCON's then current RMA policy (which shall be made available to Buyer upon request). Any Products returned pursuant to an RMA issued by WESTCON must be returned to WESTCON within five (5) working days of the date of such RMA.
- b. Buyer irrevocably authorizes WESTCON to carry out any necessary tasks related to the repair or replacement of Products on behalf of Buyer under these Conditions.
- c. Unless WESTCON collects Products using its own carrier, Buyer agrees that WESTCON shall not be liable for any loss or damage to Products returned to WESTCON.
- d. Except for Products returned pursuant to Clause 12 above, any returns are subject to WESTCON's sole and absolute discretion and may be subject to a fifteen percent (15%) restocking fee, at WESTCON's sole discretion.

## 14. Limitation of Liability.

- a. WESTCON'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). WESTCON shall have no liability under these Conditions or any Contract if WESTCON 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, WESTCON and hisSuppliers shall not be liable to Buyer for any damage caused to Buyer by reason of any representation, warranty (either express or implied), condition or other term regardless the reason of its occurrence (in particular regardless it occurred as a result of the negligence of WESTCON, his employees, agents, Suppliers or otherwise) which arise out of or in connection with these Conditions or a Contract hereunder, even if WESTCON or his Suppliers have been advised of the possibility of such loss, liability or damages.
- c. Nothing contained herein shall be construed as excluding or limiting WESTCON's liability for damage caused by WESTCON's intentionally or for breach of implied title to Products.

## **15. Intellectual Property Rights.**

- a. Buyer acknowledges that the Products are the objects of exclusive rights of the Suppliers (including industrial property rights). Nothing contained herein shall be deemed to grant such right or rights except for the rights arising from the licence of end user. Buyer further agrees not to translate, reverse compile, disassemble or amend any software and agrees to submit to its customers any end user 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 regardless the method of placing such information upon or within the Products.
- b. Buyer understands and agrees that WESTCON 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. 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 or any Supplier, any license of which shall be subject to separate agreement including any then current policies of WESTCON 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 WESTCON 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 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 Products.
- 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 WESTCON cannot guarantee the security or integrity of any data or information exchanged through the Internet or the E-System in a extent exceeding duties on personal data protection stipulated in Personal Data Protection Act and its executory regulations.

## **17. Force Majeure.**

- a. WESTCON 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) WESTCON shall, as soon as commercially practicable, notify Buyer of such Force Majeure event provided WESTCON shall incur no liability for its failure to give such notice; (ii) WESTCON shall restrain oneself with a performance of the obligations for the duration of the Force Majeure event; and (iii) the time of WESTCON'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 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 full in force 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 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 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 Poland. WESTCON 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 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 WESTCON in obtaining or retaining business and (a) will not violate or cause WESTCON to violate such Act in connection with the sale and distribution of the Products; and (b) will notify WESTCON 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 WESTCON in the event it should export any of the Products outside of Poland.
- f. Buyer shall indemnify, defend and hold WESTCON harmless from any violation or alleged violation by Buyer of the terms of this Clause. Upon WESTCON'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 WESTCON 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 as the case may be, and Buyer shall not appoint, engage, contract or employ such employee in Poland nor the United Kingdom to provide services to Buyer. In the event Buyer should breach this Clause, Buyer agrees to pay WESTCON, 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 WESTCON'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 WESTCON to Buyer, regardless of the form in which it is provided, are considered confidential information of WESTCON and his 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. WESTCON 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 any rights or obligations resulting from the contract to a third party by operation of law or otherwise without the prior written consent of WESTCON.
- b. **Waiver.** Failure of WESTCON to enforce any provision of these Conditions or a Contract shall not be interpreted as: (i) waiver of any claims on the basis of this Conditions or Contract, (ii) withdrawal from this Conditions or amendments to this Conditions, nor (iii) withdrawal from the Contract or amendments to the 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 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 and his 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 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 for these purposes. Notwithstanding the foregoing, WESTCON 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 in writing that it does not wish to receive such promotional information. In any moment Buyer can access its personal data stored by WESTCON, require its deletion or modification in accordance with the Personal Data Protection Act. The controller of personal data will be WESTCON Oddział w Polsce.
- f. **Choice of Law & Venue.** These Conditions shall governed by the laws of Poland, and Buyer hereby agrees to submit to the exclusive jurisdiction of the Polish courts. The United Nation's Convention on Contracts for the International Sale of Goods is specifically excluded from application to these Conditions.