

1. Definitions & Interpretation

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

i. **"Authorised representative"** means the persons with the position of managing director, head of the finance department or deputy managing director.

ii. **"Buyer"** means any natural or legal person, company, partnership or organisation that purchases products from WESTCON SWITZERLAND for use in its own business operations or for the business operations of third parties as the end customer or as other customers. This also applies if the contract is not a purchase contract within the meaning of art. 184 CO (Swiss Code of Obligations). Buyers shall never qualify as a user/consumer, but always a company.

iii. **"Consumer"** (or also "user") means any natural person who concludes a legal transaction for a purpose that cannot be attributed to their commercial or independent professional activity.

iv. **"Trader"** means any natural or legal person or a partnership with legal capacity which, when entering into a legal transaction, acts in the exercise of its commercial or independent professional activity.

v. **"Conditions"** means these General Terms and Conditions of Sale, including the future terms and conditions of sale applicable at the time of conclusion of the contract with the Buyer, which are simultaneously published on the website of WESTCON SWITZERLAND at the Internet address: [Terms and conditions \(westconcomstor.com\)](https://www.westconcomstor.com/terms-and-conditions). The Buyer may also request a written version of the currently applicable Terms and Conditions of Sale by e-mail from WESTCON SWITZERLAND.

vi. **"Contract"** means any agreement for the purchase of products from WESTCON SWITZERLAND to the Buyer, which is concluded by an order addressed to WESTCON SWITZERLAND and accepted by WESTCON SWITZERLAND.

vii. **"Contract Date"** means the date on which an order placed by the Buyer is accepted by WESTCON SWITZERLAND.

viii. **"E-System"** means the website for product orders operated by WESTCON SWITZERLAND, currently available at: <https://online.westcongroup.com/> is currently available.

ix. **"Force majeure"** shall mean any risk of acts of God, government, war, epidemics/pandemics, terrorism, riots, fire, floods, earthquakes, explosions as well as work stoppages (strikes), lockouts, work stoppages, collective labour disputes, trade disruptions, accidents of any kind and other reasons beyond WESTCON SWITZERLAND's reasonable control. This also includes force majeure on the part of WESTCON SWITZERLAND's suppliers.

- x. **"Goods"** means all goods and/or software as well as any discounts or parts thereof supplied by WESTCON SWITZERLAND to the Buyer under a Contract. This also includes all related documentation of the Supplier.
 - xi. **"Products"** means any combination of goods, special order goods and services supplied or performed by WESTCON SWITZERLAND to the Buyer under a Contract.
 - xii. **"Purchase Order"** means any verbal, written or electronically transmitted order for goods placed by the Buyer. This includes all orders that the buyer places online at via the website or sends by email or fax.
 - xiii. **"Services"** means any Supplier's services which are supplied by WESTCON SWITZERLAND to Buyer pursuant to a Contract.
 - xiv. **"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 SWITZERLAND.
 - xv. **"Supplier"** means the supplier, licensor, publisher, manufacturer or other third party from whom WESTCON SWITZERLAND purchases goods.
 - xvi. **"WESTCON SWITZERLAND"** means WGEO Switzerland GmbH, Balz-Zimmermannstrasse 7, 8302 Kloten, SWITZERLAND.
- b. The following provisions apply in these terms and conditions:
- i. The citation of legal norms always refers to the respective applicable version of these norms;
 - ii. "including" means "including, without limitation" throughout;
 - iii. a definition always refers to the singular as the plural of the respective terms in the feminine, masculine and neutral form of the defined term and
 - iv. all headings in the Conditions are for convenience only and shall not affect the interpretation of any terms.
- c. For the **provision of services and work** by WESTCON SWITZERLAND, **the attached General Terms and Conditions for the Provision of Services shall apply in addition.**

2. General Terms of Order & Sale

- a. These Conditions apply to the entire business relationship between WESTCON SWITZERLAND and the Buyer. If an order or other form contains proposals of the Buyer regarding further or other terms and conditions (e.g. Buyer's terms and conditions of purchase) or provisions or proposed amendments to these Terms and Conditions of Sale or if an order or other form of the Buyer refers to such proposals, they are hereby rejected. They shall not be deemed to have been agreed unless they are expressly recognised in writing by an authorised representative of WESTCON SWITZERLAND with reference to the order. If orders placed and automatically accepted via the electronic ordering platform contain terms and conditions of purchase of the Buyer, such terms and conditions shall also be deemed not accepted and shall not apply.

b. WESTCON SWITZERLAND shall notify the Buyer of any material changes to the Terms and Conditions of Sale before such changes enter into force. These amendments shall be deemed as agreed upon if the Buyer does not object within 14 days of notification (the Buyer shall be informed of this legal consequence of failure to object in the notification). These amendments shall not affect contracts concluded prior to the amendment. Notwithstanding the foregoing, the Buyer shall remain responsible for ensuring that it is familiar with the then current Terms and Conditions of Sale applicable to any contract between WESTCON SWITZERLAND and the Buyer.

c. These Terms and Conditions shall be deemed accepted by the Buyer by (i) signing a WESTCON SWITZERLAND credit application (ii) submitting a Purchase Order to WESTCON SWITZERLAND or (iii) accepting Products from WESTCON SWITZERLAND, whereby the earliest point in time shall be decisive.

d. Notwithstanding the foregoing, the Buyer agrees that any price information, price lists or any other information provided by WESTCON SWITZERLAND shall not constitute an offer by WESTCON SWITZERLAND to sell Products at such prices or on any other terms. Only a Purchase Order placed by the Buyer shall constitute an offer to enter into a contract in accordance with these Conditions. A contract shall only be concluded when (i) WESTCON SWITZERLAND has confirmed the contract offer in writing, (ii) an order placed via the E-System is confirmed by WESTCON SWITZERLAND by e-mail or (iii) WESTCON SWITZERLAND fulfils the order, whereby the earliest point in time shall be decisive.

e. Notwithstanding the foregoing, WESTCON SWITZERLAND and its suppliers shall be entitled at any time to make changes to the specifications of the Product which are required by law or which do not materially affect the performance of the relevant Product. If such a change is required after a Buyer has placed an order, WESTCON SWITZERLAND shall inform the Buyer of such change.

f. If the Service consists of training courses, WESTCON SWITZERLAND shall be entitled to hold such services at venues outside the premises of WESTCON SWITZERLAND and to provide personnel selected by WESTCON SWITZERLAND if this deviation is reasonable for the Buyer, taking into account WESTCON SWITZERLAND's interests. WESTCON SWITZERLAND may also refuse or shorten a training course at any time if the Buyer or a representative participating on behalf of the Buyer does not fulfil the training requirements that were communicated to the Buyer in advance of a training course. This shall not apply if the Buyer is not responsible for this.

g. If products are subject to guidelines, restrictions or other specifications of a supplier, they are sold, procured and delivered in accordance with the specifications.

3. Special Order Goods

a. Subject to contrary provisions in these Conditions, in particular in clauses 4, 11 and 12,, the Buyer agrees that in the case of Special Order Goods, the corresponding contracts cannot be cancelled, modified or otherwise changed by the Buyer.

b. Subject to contractual agreement, the correctness of any order of Special Order Goods, including the specification, equipment and further details of such goods and their functionality, compatibility and interoperability with other products is the sole responsibility of the Buyer. This also applies to the specific usability of the Special Order Goods for the Buyer's customers.

c. Special Order Goods shall be delivered in accordance with the configuration contained in the order, whereby any claims of the buyer for special order goods shall be limited solely and exclusively to the repair or replacement of such goods, whereby WESTCON SWITZERLAND shall have the right to choose. This shall only apply as long as and to the extent that WESTCON SWITZERLAND is not responsible for inaccuracies in an order. In addition, the provisions in Clause 10 shall apply.

4. Cancellation/revocation and modification of Purchase Orders

a. Once an Purchase Order has been accepted by WESTCON SWITZERLAND, it may only be cancelled, modified or otherwise changed by written agreement with WESTCON SWITZERLAND. After WESTCON SWITZERLAND has received or submitted a request for modification, WESTCON SWITZERLAND shall notify the Buyer in writing for the purpose of reaching a supplementary agreement as to whether and, if so, how the modifications can be implemented and what changes will result with regard to the price, the completion period and other contractual provisions. WESTCON SWITZERLAND shall not be obliged to carry out the changes requested by the Buyer until the parties have reached an agreement, unless this is necessary for compliance with statutory regulations and technical standards. If changes affect the contract price, the parties shall expressly agree on the specific amount of the new contract price. Any payments already made by the Buyer shall be offset against this newly agreed contract price.

b. If the contractual relationship established is a target obligation, the Buyer has the right to revoke the contract exclusively in the event that WESTCON SWITZERLAND is in default with the delivery of goods for at least thirty (30) working days due to gross negligence or unlawful intent, by setting a grace period of at least 50% of the originally agreed delivery period, but in any case no less than 4 weeks.

c. The Buyer undertakes to indemnify WESTCON SWITZERLAND in full against any losses (including loss of profit), costs (including labour and materials) and other damages and expenses suffered by WESTCON SWITZERLAND as a result of a wrongful termination or an impermissible revocation and for which the Buyer is responsible in the event of termination of the order by the Buyer. The compensation shall amount to 5 % of the total order value affected by the cancellation (excluding VAT), provided that this lump sum does not exceed the damage to be expected in the normal course of events or the usual reduction in value. Notwithstanding the foregoing, the Buyer shall be free to prove that WESTCON SWITZERLAND's total loss is less than 5 % of the total order value; likewise, WESTCON SWITZERLAND shall be free to prove that its total loss exceeds 5 % of the total order value.

5. Prices

a. The prices of the Products in WESTCON SWITZERLAND's warehouse at the time of the conclusion of the contract shall be: (i) the price expressly indicated in text form and shall be valid for seven (7) days from the date of indication, or (ii) in the event that no price has been expressly indicated or its period of validity has expired, the list price in the price list of WESTCON SWITZERLAND published at the time of conclusion of the contract.

The prices of the Products that are not in the warehouse of WESTCON SWITZERLAND at the Contract Date ("Backorder") shall be: (i) The price indicated, which is expressly stated in text form and shall be valid for seven (7) days from the date of indication, or (ii) the list price in WESTCON SWITZERLAND's price list published at the time of the scheduled delivery of the Products ordered in arrears.

b. Notwithstanding the foregoing, of WESTCON SWITZERLAND shall be entitled to reasonably adjust already agreed prices prior to delivery at its reasonable discretion if cost-determining factors beyond the Buyer's control lead to price increases after conclusion of the contract but prior to delivery. In the event that a price is increased by more than 10 % after conclusion of the contract, the Buyer shall be entitled to withdraw from the respective contract. The withdrawal must be declared no later than two weeks after receipt of the written notification of the price adjustment. Withdrawal shall not affect services that have been performed up to the time of the declaration of withdrawal. WESTCON SWITZERLAND may demand full payment for the services provided up to the date of cancellation.

c. The factors underlying the price adjustment include exchange rate fluctuations, currency reforms, changes in customs tariffs, significant increase of the price of the Goods by reason of any increase in the cost of labour, the price of raw materials or other costs of manufacture, changes in the date of delivery requested by the Buyer or in the quantities or specifications requested by the Buyer, or any delay caused by the Buyer's instruction or failure to provide WESTCON SWITZERLAND with sufficient information or instructions. WESTCON SWITZERLAND may not increase the price further than necessary to cover the said increases. WESTCON SWITZERLAND shall explain the price increase to the Buyer in each individual case. In addition, in the event that WESTCON SWITZERLAND or its authorized representative makes a material error or omission in a price quotation, WESTCON SWITZERLAND shall be entitled to increase the price of the Product concerned within thirty (30) days of the date of conclusion of the contract, by either (i) charging the Buyer the list price applicable at the time of the conclusion of the contract, or (ii) granting the Buyer the right to return the products concerned to WESTCON SWITZERLAND, taking into account the payments already made by the Buyer for these products.

d. Unless otherwise stated in a price quotation or in WESTCON SWITZERLAND's current price list and unless otherwise agreed between the Buyer and WESTCON SWITZERLAND, prices are generally Ex Works (Incoterms 2020).

e. The prices apply to the scope of services and deliveries listed in the order confirmations. Additional or special services shall be invoiced separately. Prices are quoted in CHF plus packaging, statutory VAT, customs duties for export deliveries, fees and other public charges. If the parties have agreed to dispatch the goods, the Buyer shall bear the transport costs ex warehouse and the costs of any transport insurance requested by the Buyer. All taxes to be borne by the Buyer shall be paid to

WESTCON SWITZERLAND. This shall not apply if the Buyer provides WESTCON SWITZERLAND with a valid exemption certificate that is recognised by the competent tax authority.

f. In the event a Supplier should grant a special pricing consideration or discount to WESTCON SWITZERLAND 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 SWITZERLAND for any Supplier claims against WESTCON SWITZERLAND 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 to a reasonable and necessary extent, if any, charged to WESTCON SWITZERLAND by the Supplier for participation in Pass-Through Discounts.

6. Payment

a. Unless otherwise agreed, payment by the Buyer shall be due on the day of invoicing and in advance. If and to the extent that WESTCON SWITZERLAND has granted the Buyer a payment term, the Buyer shall pay the full amount due on the invoice date. Purchase price without deduction within thirty (30) days from the date of invoicing. The invoice shall be issued to the buyer on the day of dispatch of the products. In the case of payment by credit or debit card (EC card), the buyer shall bear the fees and other services incurred by WESTCON SWITZERLAND in processing these transactions, including the fees charged by the credit card company or the bank.

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

c. In the event of the Buyer's default in payment or if bankruptcy proceedings have been instituted against the Buyer by the competent court or if the Buyer has applied to its creditors for debt relief or has filed an application for debt restructuring proceedings, or if the Buyer exceeds its credit limits, the entire price of all products delivered to the Buyer under a contract and not yet paid shall become due immediately, without prejudice to any further claims and remedies of WESTCON SWITZERLAND. This shall apply irrespective of any credit terms granted in advance. In such cases, WESTCON SWITZERLAND shall be entitled to take the following steps, individually or cumulatively:

- i. WESTCON SWITZERLAND may suspend or terminate all contracts or parts of contracts free of any liability after prior notice. It may also stop all Products in transit and, at its discretion, enter the Buyer's premises to recover any Products not fully paid for.
- ii. WESTCON SWITZERLAND may charge interest at the rate of 10% for the year on any unpaid amount until full payment is made. Interest shall be calculated on the basis of the full calendar month.
- iii. WESTCON SWITZERLAND may set off any amounts due against any credit balances of the Purchaser and any claims recognized by WESTCON SWITZERLAND.
- iv. WESTCON SWITZERLAND may, notwithstanding any allocation requested by the Buyer, allocate payments from the Buyer to such Products (including Products delivered pursuant to

any other contract between the Buyer and WESTCON SWITZERLAND or any of its affiliates or subsidiaries) as WESTCON SWITZERLAND deems appropriate, and/or

- v. WESTCON SWITZERLAND may change the terms of payment for the Purchaser, in particular by requesting payment in advance and requiring adequate security for the performance due from the Purchaser by providing a bank guarantee.

Further claims of WESTCON SWITZERLAND against the Purchaser shall remain unaffected.

d. The Buyer undertakes to provide WESTCON SWITZERLAND, upon request, with copies of the annual and/or quarterly annual reports.

e. The Buyer undertakes to notify WESTCON SWITZERLAND in writing before entering into any agreement under which the Buyer would sell, assign (including factoring) or otherwise transfer any claim owed to the Buyer by WESTCON SWITZERLAND. The same shall apply to the conclusion of any kind of agreement on invoice discounting with a third party.

f. Any credit note, balance or other liability issued by WESTCON SWITZERLAND to the Buyer (including trade-in products or advertising) shall expire without further notice within twelve (12) months of the date of issue. Buyer shall thereby forfeit all rights to such credit amounts and shall not be entitled to any exchange or refund or any other amounts in respect thereof.

g. The Buyer shall only be entitled to set off claims against WESTCON SWITZERLAND if the Buyer's counterclaims are undisputed or have been established by a final judgement. The same shall apply to the Buyer's rights of retention.

7. Delivery

a. Delivery dates are non-binding unless the parties expressly agree that they are binding. WESTCON SWITZERLAND will use commercially reasonable efforts to deliver within a reasonable period of time. Unless otherwise agreed, WESTCON SWITZERLAND may deliver the Products at any time prior to the specified delivery date upon timely notice to the Buyer, unless this is unreasonable for the Buyer for compelling reasons that cannot be foreseen or controlled by the Buyer.

b. Unless otherwise agreed, the handover of the Products shall take place at the registered office of WESTCON SWITZERLAND Ex Works (Incoterms 2020). WESTCON SWITZERLAND shall inform the Buyer when the Products are ready for collection. The Buyer shall then be entitled to collect the Products at any time during normal business hours after timely notification to WESTCON SWITZERLAND. WESTCON SWITZERLAND shall be entitled to assume that any person reasonably acting as someone authorised to receive and sign for the delivery of the Products on behalf of the Buyer, and at the same time claiming this for himself, has the necessary authority from the Buyer.

c. Claims for non-delivery must be made within fourteen (14) working days from the date of delivery. The Buyer shall be entitled to invoice WESTCON SWITZERLAND. If WESTCON SWITZERLAND agrees to deliver the Products directly to the Buyer's customer, such delivery shall be deemed to have

been made to the Buyer. Any rejection of the Products by the Buyer's customer shall be deemed a rejection by the Buyer.

d. Partial deliveries are permissible if the parties have not agreed otherwise or if partial deliveries are reasonable for the buyer. Partial deliveries are reasonable for the buyer if the partial delivery can be used by the buyer within the scope of the contractual purpose, the delivery of the remaining ordered goods is ensured and the buyer does not incur any significant additional work or additional costs as a result. Any statutory rights of the buyer with regard to a timely and proper delivery are not restricted by this.

e. If the Buyer fails to accept the Goods from WESTCON SWITZERLAND or if the Buyer fails to provide WESTCON SWITZERLAND with adequate delivery instructions in its order, WESTCON SWITZERLAND shall be entitled, without prejudice to any other rights, to store the Products at the Buyer's expense until actual delivery and to charge the Buyer all reasonable costs, including insurance costs.

8. Devolution of risk and Retention of title

a. The risk of loss of or damage to the Products shall pass to the Buyer: (i) upon handover/delivery, or (ii) upon default of acceptance by the Buyer. The Buyer shall be obliged to insure the Products from the date of delivery or conclusion of the delivery contract for the value stated on the invoice.

b. WESTCON SWITZERLAND expressly retains title to the products delivered to the Buyer until the purchase price has been paid in full.

c. The Buyer is obliged to take the necessary steps to ensure that a retention of title can be entered in the relevant retention of title register at the Buyer's registered office/domicile, if this is requested by WESTCON SWITZERLAND.

d. Until WESTCON SWITZERLAND has received full payment for the Products, the Purchaser shall, in trust for WESTCON SWITZERLAND, (i) store the Products in a clearly separate and identifiable manner from the Purchaser's inventory, and (ii) keep the Products in their original packaging, properly stored, protected, insured and marked as WESTCON SWITZERLAND's property.

e. Insofar as WESTCON SWITZERLAND is the owner of exclusive copyrighted rights of use for goods and other products, the Purchaser shall only acquire a non-exclusive right of use for these goods/products at the time of full satisfaction of all claims of WESTCON SWITZERLAND for the goods/products concerned. A transfer of the right of use and the granting of sublicenses require the prior written consent of WESTCON SWITZERLAND. WESTCON SWITZERLAND will only refuse its consent in important cases. The non-exclusive right of use relates exclusively to the product specified in the order and/or delivery bill.

f. As long as WESTCON SWITZERLAND has not received full payment for the Products, WESTCON SWITZERLAND shall not be entitled to pledge or secure the Products or to assign or pledge expectant rights to these Products.

g. If the Buyer is in default of payment, the Products to which WESTCON SWITZERLAND retains title shall be returned to WESTCON SWITZERLAND immediately without WESTCON SWITZERLAND having to withdraw from the corresponding contract. The request to return the Products and their actual return do not constitute a withdrawal from the contract.

9. Damage and loss during transportation

a. If WESTCON SWITZERLAND - notwithstanding Clause 7b - has accepted delivery of the Products, WESTCON SWITZERLAND shall not be liable either for errors in delivery or for loss, damage or destruction of Products during transportation of the Products to the Buyer, unless a corresponding notification is made to WESTCON SWITZERLAND by telephone immediately upon receipt of the Products and this notification is not subsequently confirmed in writing by the Buyer within five (5) working days. The Buyer shall at the same time notify the carrier in writing of any defect, damage or loss and, if possible, make a note thereof on the consignment note or other shipping documents. If the Buyer fails to make such notification and WESTCON SWITZERLAND is therefore unable to take recourse against the carriers/carriers in respect of the claimed defect, loss or damage, the Buyer shall pay for the Products as if such defect, loss or damage had not occurred. WESTCON SWITZERLAND shall not be liable for shortages if these have not been noted on the consignment note or other freight documents.

b. In accordance with the above, all Products for which WESTCON SWITZERLAND has agreed to deliver to the Buyer - in deviation from Clause 7b - and which are lost, damaged or destroyed during transportation will be replaced or restored by WESTCON SWITZERLAND. The basis for calculation is the condition according to the original order. If restoration or replacement is not possible, WESTCON SWITZERLAND will issue a credit note to the Buyer in an amount corresponding to the payments received by WESTCON SWITZERLAND from the Buyer for the products concerned. However, WESTCON SWITZERLAND's liability for loss of and damage to Products and related costs shall be limited to unlawful intent and gross negligence.

c. Any error and any damage or destruction of Products discovered by the Purchaser upon delivery shall not entitle the Purchaser to terminate the contract, unless the error, damage or destruction is due to unlawful intent or gross negligence on the part of WESTCON SWITZERLAND.

10. Publications & Specifications

Any and all specifications, descriptions, photographs, measurements, capacities or illustrations contained in any catalogues, price lists, brochures, leaflets, proposals, advertising matter, publications of WESTCON SWITZERLAND or a Supplier are intended to be illustrative and approximate. If the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (art. 197 et seqq. CO and art. 367 et seqq. CO). Public statements made by the manufacturer or on its behalf, in advertising or on the labelling of the goods shall take precedence over statements made by other third parties.

11. Warranty

a.

a. The Purchaser is aware that WESTCON SWITZERLAND is not the original supplier/manufacturer of the Products, but only acquires them from suppliers/manufacturers for the purpose of resale.

Consequently, all Products are subject to the express terms and conditions of any warranties of the original suppliers/manufacturers of the Products. Buyer shall ensure that all warranty terms related to the Products, including all related benefits and credits, are passed on by the original supplier/manufacturer to Buyer's customers.

- b. For warranty regarding intellectual property rights, please refer to clause 14.
- c. Any warranty of WESTCON SWITZERLAND in connection with the Products is expressly excluded within the limits of Art. 199 CO (Swiss Code of Obligations).
- d. The Buyer shall not be entitled to grant warranties in the name of WESTCON SWITZERLAND or WESTCON SWITZERLAND's supplier in respect of a Product or to transfer or assign warranty claims against WESTCON SWITZERLAND or WESTCON SWITZERLAND's supplier. Buyer shall ensure that its agents or employees do not grant or assign/transfer any such warranties to Buyer's customers.

12. Support for warranties / modalities / returns

- a. The Buyer shall carefully inspect the delivered products immediately after delivery at its own expense. The Purchaser is obliged to inform WESTCON SWITZERLAND immediately and within the warranty periods of the supplier/manufacturer of any defect and any incorrect or incomplete delivery (= notice of defects). Upon receipt of the notice of defects, WESTCON SWITZERLAND will inform the Purchaser whether the notice of defects is to be handled directly with the Supplier/manufacturer or indirectly via WESTCON SWITZERLAND in accordance with the requirements of the Supplier/manufacturer.
- b. If the complaint is to be handled directly between the Buyer and the Supplier, WESTCON SWITZERLAND will provide the Buyer with the necessary contact information. If the complaint is to be handled via WESTCON SWITZERLAND, WESTCON SWITZERLAND will issue a return material authorization ("RMA") to the Buyer to return the Products to WESTCON SWITZERLAND; the Buyer is obliged to return the Products concerned in accordance with these Conditions of Sale and in accordance with the RMA conditions valid at the time (which must be presented to the Buyer upon request). Returns can only be made with a valid RMA number on the product packaging. Products without such a valid RMA number will be rejected or returned. WESTCON SWITZERLAND is not obliged to send replacement products to the Buyer before it has itself received the original products to be returned.
- c. Any Product for which WESTCON SWITZERLAND has issued an RMA must be returned to WESTCON SWITZERLAND within five (5) business days from the date of issuance of the RMA. The Purchaser authorizes WESTCON SWITZERLAND to carry out the necessary measures for the repair or replacement of the Product in accordance with these Conditions of Sale on behalf of the Purchaser.
- d. The Purchaser agrees that WESTCON SWITZERLAND's sole obligation shall be limited to the procedural handling of such complaints with the Supplier. Furthermore, this obligation is subject to WESTCON SWITZERLAND being able to obtain a refund, a credit note or a new replacement product from the Supplier. WESTCON SWITZERLAND is not obliged to accept a return shipment that does not meet the Supplier's requirements for product returns.

e. WESTCON SWITZERLAND shall not be obliged to cooperate with any notice of defects or claims resulting from normal wear and tear, improper use, carelessness, accident, misuse, use not in accordance with the Supplier's/manufacturer's product documentation, modification or alteration not authorized by the Supplier/manufacturer, or use in connection with third party products.

f. The transportation costs in connection with the return or replacement of products shall be borne by the Purchaser. Unless WESTCON SWITZERLAND collects the Products through its own carrier, the Buyer agrees that WESTCON SWITZERLAND shall not be liable for any loss of or damage to the Products returned to WESTCON SWITZERLAND.

g. Except for Products returned in accordance with Sections 12b-12f, returns will be made at WESTCON SWITZERLAND's sole discretion and may be subject to a restocking fee of fifteen (15) percent.

13. Limitation of Liability

a. WESTCON SWITZERLAND's liability is expressly excluded, except for liability for unlawful intent or gross negligence. WESTCON SWITZERLAND's liability for auxiliary persons is expressly excluded (Art. 100 Swiss Code of Obligations). These terms and conditions do not apply if WESTCON SWITZERLAND is liable under the Swiss Product Liability Act (PrHG).

b. The buyer is responsible for ensuring that he is sufficiently informed about the products and their functionality before delivery. WESTCON SWITZERLAND is generally not liable if the customer does not comply with this obligation. WESTCON SWITZERLAND is not responsible for the recovery of lost data. In particular, WESTCON SWITZERLAND is not liable for the proper functioning of delivered hardware and software.

14. Intellectual Property Rights

a. WESTCON SWITZERLAND's liability for defects of title (§ 435 BGB) shall be governed by the provisions in Sections 10 and 11 of these Conditions.

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

c. In the case of Goods with digital elements or other digital content, WESTCON SWITZERLAND shall only be obliged to provide and, where applicable, update the digital content if this is expressly

stated in a quality agreement. WESTCON SWITZERLAND accepts no liability in this respect for public statements made by the manufacturer or other third parties.

d. The Buyer recognises that the goods and products may be subject to copyrights, trademark rights, patents and other intellectual property rights of the suppliers. Nothing in these Conditions shall grant the Buyer any right in or to such intellectual property. The buyer undertakes not to translate, reverse engineer or disassemble software and agrees to provide its customers with copies of all licence agreements and any other documents accompanying the products. The buyer is not authorised to remove any copyright, trademark or patent markings, serial numbers or confidential information texts on the products or enclosed with the products.

e. The Buyer shall ensure that the property rights of WESTCON SWITZERLAND's supplier to such products are afforded the highest possible protection. These measures shall be appropriately documented.

f. WESTCON SWITZERLAND confirms that it is not aware of any patent that would be infringed by the products to be supplied, nor of any patent that would be infringed by the use of the products. It is the Buyer's responsibility to check whether patents may be relevant and to ensure that patents of third parties are not infringed. The Buyer shall indemnify WESTCON SWITZERLAND against all patent infringement claims that may arise from the import or use of a product. WESTCON SWITZERLAND hereby expressly excludes any liability for possible patent infringements by the products or their use, unless and insofar as the buyer can prove prior knowledge to WESTCON SWITZERLAND. Claims against WESTCON SWITZERLAND arising from liability in respect of third party patents shall lapse one (1) year after delivery of the products. If a supplier of WESTCON SWITZERLAND expressly agrees to indemnify and protect the Buyer, the Buyer agrees that WESTCON SWITZERLAND shall not be obliged to indemnify, defend or compensate the Buyer or any third party in respect of any damages, losses, liabilities, obligations, costs and expenses, judgments or settlements arising in connection with the actual or alleged infringement of third party intellectual property rights.

g. In making offers to and entering into agreements with foreign governments concerning any product referred to herein, Buyer shall take all necessary steps to ensure that the proprietary rights of WESTCON SWITZERLAND's suppliers in such products are afforded the highest possible protection by such foreign governments for commercial computer software and related documentation developed purely by private means.

h. Nothing in these Terms of Sale shall be construed as authorizing or granting to Buyer any right or license with respect to the use of any logo or trademark of WESTCON SWITZERLAND or its suppliers. Any right or license to use any such logo or trademark shall be subject to a separate agreement, which shall incorporate the then current policies of WESTCON SWITZERLAND or its suppliers, as applicable.

i. All software supplied to the Buyer under a Contract shall be supplied in accordance with the Supplier's licence terms.

15. E-System Specific Terms

- a. The Buyer is solely and exclusively responsible for the use and confidentiality of user IDs, passwords and other forms of identification (collectively "**Buyer-ID**") with which it gains access to the E-System. The Buyer undertakes to inform WESTCON SWITZERLAND immediately if it loses or misplaces the Buyer-ID or if it suspects actual or attempted misuse of the Buyer-ID. The Buyer shall maintain and comply with reasonable security methods and procedures to ensure the proper use of the Buyer-ID. In the absence of an absentee notice from the Buyer, WESTCON SWITZERLAND shall be entitled to rely without limitation on orders transmitted via the E-System and to treat each such order as a valid and binding offer to purchase.
- b. The Buyer agrees that WESTCON SWITZERLAND cannot guarantee the security or integrity of data or information exchanged via the E-System; WESTCON SWITZERLAND shall only be liable for intent and gross negligence in this respect.

16. Force Majeure

- a. In the event of force majeure, the provisions of this clause shall apply.
- b. WESTCON SWITZERLAND shall not be liable to the Buyer and shall not be in breach of these Conditions or any Contract for delay or non-performance if caused by force majeure on the part of WESTCON SWITZERLAND or its suppliers.
- c. WESTCON SWITZERLAND shall inform the Buyer of the force majeure event as soon as commercially practicable, whereby WESTCON SWITZERLAND shall not be liable for failure to provide such information.
- d. WESTCON SWITZERLAND's obligation to perform shall be suspended for the period of hindrance due to force majeure. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period.
- e. WESTCON SWITZERLAND shall not be liable for impossibility of delivery or for delays in delivery if these are caused by force majeure. If such events make delivery or performance significantly more difficult or impossible for WESTCON SWITZERLAND and the hindrance is not only of a temporary nature, WESTCON SWITZERLAND shall be entitled to withdraw from the contract. If the Buyer cannot reasonably be expected to accept the delivery or service as a result of the delay, it may withdraw from the contract by giving immediate written notice to WESTCON SWITZERLAND.
- f. If the period of force majeure during which WESTCON SWITZERLAND is unable to fulfill its performance obligation lasts longer than ninety (90) days (calculated from the occurrence of the force majeure), the parties shall be free to terminate the contract if and insofar as the performance under such contract has not yet taken place. After such termination, WESTCON SWITZERLAND shall no longer be obliged to deliver and the Buyer shall have no obligation to accept deliveries or to pay for undelivered Products. The contract shall remain in full force and effect with regard to the products already delivered until the contract is terminated.

17. Compliance with Laws & Export

a. Buyer acknowledges that the licensing and sale of the Products and all related technical data are subject to the regulation and control of the export laws of the United States of America (USA), including its Export Administration Regulations, the European Union (EU) and the European Union (EU). Union ("EU") and the countries organised in the European Free Trade Area ("EFTA") (together the "Export Control Regulations "). The Buyer undertakes not to export, re-export or otherwise distribute the Products or direct products thereof in violation of the Export Control Regulations . Buyer agrees to inform its customers that the Products are subject to Export Controls and that licensing or other authorisation may be required under the laws of the United States, the United Kingdom or EU/EFTA member states prior to export.

b. The 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 competent authority.

c. The Buyer shall be solely and exclusively responsible for obtaining all necessary authorisations prior to exporting the Products or any related technical data. WESTCON SWITZERLAND shall not be responsible for any costs, liabilities or damages resulting from the Buyer's failure to obtain the necessary authorisations. Buyer acknowledges that export control laws are subject to change and Buyer shall be solely and exclusively responsible for ensuring compliance with such laws through legal assistance or otherwise.

d. Buyer warrants that it will not take any action and will not permit or authorise any action that would cause WESTCON SWITZERLAND to be liable for corrupt practices under applicable law, such as the Swiss criminal law on corruption and, sofar applicable, the US Foreign Corrupt Practices Act. Such practices include, without limitation, the attempted or actual bribery of, or directly or indirectly influencing, any official of a government or political party with money or anything else of value, or participating in any such act to obtain or retain business for that official or WESTCON SWITZERLAND.

e. The Buyer undertakes to comply with EU Directives 2011/65/EU and 2012/19/EU , both in principle and in detail with regard to the implementation of these directives in the individual countries to which the products are imported or exported or otherwise sold by the Buyer. In Switzerland, the regulations of the Ordinance on the Return, Taking Back and Disposal of Electrical and Electronic Equipment (ORDEE) must be abided by. The also includes that the Buyer registers as a "manufacturer" within the meaning of Directive 2012/19/EU or a corresponding regulation, insofar as he is legally obliged to do so. The Buyer shall inform WESTCON SWITZERLAND if it exports products outside Switzerland.

f. The Buyer undertakes to indemnify WESTCON SWITZERLAND against any liability for breach of a regulation arising from the EU Directives 2011/65/EU and 2012/19/EU or any subsequent regulations or additional local applicable laws. This does not apply if WESTCOIN SWITZERLAND is responsible for the breach of such a legal obligation.

18. Non-Solicitation

The Buyer agrees that for a period of twelve (12) months from the Contract Date date under these Conditions, it shall not solicit or induce any executive employee of WESTCON SWITZERLAND in the marketing, advertising, sales or distribution of the Products for the Buyer to resign their employment or terminate their service/employment contract with WESTCON SWITZERLAND. The Buyer undertakes nothing to recruit, employ, contract or otherwise allow such an executive employee to work for it in Switzerland. In the event of a culpable breach of this provision by the Buyer, the Buyer undertakes to pay a contractual penalty in the amount of forty (40) per cent of the annual gross income of the respective employee. Bonus payments are excluded from the calculation of the annual income. Further claims of WESTCON SWITZERLAND shall remain unaffected. The Buyer shall only be entitled to offset its own claims against contractual penalties if such counterclaims of the Buyer have been established by a final judgement or are undisputed.

19. Confidential Information

The Buyer agrees that the agreements entered into between the Buyer and WESTCON SWITZERLAND and all information relating to the Products, including pricing and descriptions, which WESTCON SWITZERLAND provides to the Buyer, regardless of the form in which it is provided, shall be deemed to be confidential information of WESTCON SWITZERLAND and its suppliers ("**Confidential Information**"). The Buyer undertakes to maintain strict confidentiality about this Confidential Information and not to disclose it to third parties. This shall not apply if disclosure is required by law or if Confidential Information is or becomes available to anyone without breach of this confidentiality provision. The Buyer further agrees to limit access to Confidential Information to those of its employees who have a need to know and who are subject to written confidentiality obligations at least as protective of the Confidential Information as these Conditions. WESTCON SWITZERLAND shall not be liable for the accuracy or completeness of the Confidential Information, except as otherwise provided in these Conditions. WESTCON SWITZERLAND agrees to treat as strictly confidential and not to disclose to any third party any sensitive information that the Buyer designates as "confidential", "secret" or similar terms. Exceptions to this clause shall apply accordingly to WESTCON SWITZERLAND.

20. Miscellaneous

- a. Assignment. The Buyer may not transfer its claims against WESTCON SWITZERLAND to a third party or assign such claims by law or otherwise without the prior written consent of WESTCON SWITZERLAND.
- b. Waiver. The failure of WESTCON SWITZERLAND to enforce any provision of these Conditions or any Contract shall not constitute a waiver of that or any corresponding or any other right under these Conditions or any Contract.
- c. Severability. Insofar as the contract or these Terms and Conditions of Sale contain gaps, those legally effective provisions shall be deemed to have been agreed to fill these gaps which the contracting parties would have agreed in accordance with the economic objectives of the contract and the purpose of these Conditions if they had been aware of the gaps.

d. **Audit Rights.** The Buyer undertakes to keep and maintain accurate and complete records relating to its compliance with these Conditions of Sale or any agreement concluded under these Conditions of Sale. This shall be done in such a detailed manner that WESTCON SWITZERLAND can adequately determine on the basis of the records whether the Buyer has fully complied with these Terms and Conditions of Sale. The buyer shall make these records available for inspection and copying by WESTCON SWITZERLAND and its authorized representatives during normal business hours after reasonable request. The Buyer shall retain such records for a period of at least two (2) years from the end of the calendar year to which they relate.

e. **Data protection and direct advertising.** WESTCON SWITZERLAND is authorised to process data of the Buyer including personal data to the extent necessary for the performance of the contract or the implementation of pre-contractual measures initiated by the Buyer. WESTCON SWITZERLAND warrants that it will not disclose such personal data to third parties without the Buyer's prior consent. **The Buyer further agrees that this data may be used for the purpose of sending product and advertising information to the Buyer by e-mail or other electronic means of transmission. The buyer may revoke consent to data processing for advertising purposes at any time.**

f. **Choice of Law.** These Conditions and the contractual relationship between WESTCON SWITZERLAND and the Buyer shall be governed by the laws of Switzerland to the exclusion of international private law and the UN Convention on Contracts for the International Sale of Goods.

g. **Place of jurisdiction.** The exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship – for the Buyer – even if the Buyer is a company or e.g. a legal entity under public law or a special fund under public law, shall be the registered office of WESTCON SWITZERLAND in Kloten (district of Bülach). The same shall apply if the Buyer is a Trader. However, WESTCON SWITZERLAND shall also be entitled in all cases to bring an action at the place of fulfilment of the delivery obligation in accordance with these Terms and Conditions of Sale or an overriding individual agreement or at the Buyer's general place of jurisdiction. Overriding statutory provisions, in particular regarding exclusive jurisdiction, shall remain unaffected.

General Terms and Conditions of WESTCON SWITZERLAND for the Provision of Services

1. Scope

- a. The above **Terms and Conditions WESTCON SWITZERLAND** for the sale of goods and products shall also apply accordingly to the provision of services by WESTCON SWITZERLAND, unless otherwise stipulated below.
- b. In the event of any conflict between the above Terms and Conditions of Sale WESTCON SWITZERLAND for the sale of goods and products and this **Terms and Conditions of WESTCON SWITZERLAND for the Provision of Services**, these Terms and Conditions for the Provision of Services shall prevail.
- c. For the purposes of these General Terms and Conditions of WESTCON SWITZERLAND for the provision of services, the **Customer** is the contracting party that concludes a contract with WESTCON SWITZERLAND.

2. Provision of Services

- a. Unless otherwise agreed, all services to be provided by WESTCON SWITZERLAND to the Customer shall be service contracts pursuant to art. 394 et seqq. CO. In these cases, WESTCON SWITZERLAND owes an action and not success.
- b. The employees involved in the performance of the Services shall be selected by WESTCON SWITZERLAND. The Customer has no right to the provision of the Services by specific employees. However, the interests of the Customer shall be given due consideration in the selection of employees. The Services shall be performed by suitable personnel who are sufficiently qualified to perform the respective Services.
- c. The manner in which the services are provided shall be left to WESTCON SWITZERLAND in accordance with the subject matter of the contract. WESTCON SWITZERLAND is authorised to have services provided by subcontractors in whole or in part.
- d. If the Service is not provided in accordance with the contract and WESTCON SWITZERLAND is responsible for this, WESTCON SWITZERLAND shall, in addition to the provisions of clause 11 of WESTCON SWITZERLAND's General Terms and Conditions of Sale , provide the Service in whole or in part in accordance with the contract within a reasonable period of time at no additional cost to the Customer, unless this is only possible with disproportionate effort. Unless otherwise agreed, this obligation shall only apply if the Customer gives notice of the service disruption in writing and without undue delay, but at the latest within two (2) weeks of becoming aware that the service is not being provided in accordance with the contract. The Customer must reasonably observe the provision of the service and inspect it after completion.

e. The provisions on delivery dates set out in Section 7 of WESTCON SWITZERLAND's General Terms and Conditions of Sale shall apply accordingly for the agreed performance dates. In addition to the General Terms and Conditions of Sale of WESTCON SWITZERLAND, WESTCON SWITZERLAND shall be authorised to provide Services at any time prior to the execution date.

f. WESTCON SWITZERLAND's compliance with deadlines and performance dates is always subject to the Customer and his end customers fulfilling their contractual obligations and other duties to co-operate, which are necessary for WESTCON SWITZERLAND to be able to provide the agreed services, in good time and in full. In particular, compliance with deadlines and dates requires that all necessary preparatory work has been completed in full. If the Customer or the end customer fails to fulfil these obligations and if compliance with deadlines and dates depends directly or indirectly on compliance with such an obligation or the performance of preparatory work, the agreed deadlines shall be extended accordingly. In this case, WESTCON SWITZERLAND shall be entitled to agree a new deadline. When agreeing a new deadline, in particular for services, the corresponding delay period plus a reasonable restart time shall be taken into account. Furthermore, WESTCON SWITZERLAND shall be entitled to charge the Customer for any additional expenses incurred as a result of the delay, in particular for travelling expenses in the event of a new journey.

3. Provision of Services outside normal business hours

For the provision of services by WESTCON SWITZERLAND outside normal business hours (Monday to Friday, 08:00 to 18:00), a surcharge of 50% will be charged. Services at weekends and on public holidays are subject to a 100% surcharge. Invoicing shall be based on actual expenditure. If, for reasons for which the Customer is responsible, Services are performed later than on the originally scheduled date and the labour and/or material costs and/or the prices of suppliers increase from this point in time, WESTCON SWITZERLAND shall be entitled to increase the prices accordingly. To this extent, the above clauses 5. c. and d. of WESTCON SWITZERLAND's Terms and Conditions of Sale shall apply accordingly.

4. Creation of a work

a. If the parties have agreed that WESTCON SWITZERLAND is to bring about a work success within the meaning of art. 363 CO, the following provisions shall apply in addition to the previous provisions.

b. When issuing a cost estimate, WESTCON SWITZERLAND shall be bound by it for a period of three (3) weeks after its submission.

c. If non-binding performance and completion deadlines are exceeded, the Customer shall be required to set a reasonable grace period in order to put WESTCON SWITZERLAND in default.

d. WESTCON SWITZERLAND is authorised to commission third parties to carry out work services, provided they have the necessary qualifications for the task assigned to them.

e. The work performed requires acceptance by the customer or the end customer authorised by the customer (§ 640 BGB). If the preparation of a test plan has been agreed, acceptance shall take

place as soon as the conditions listed on the test plan have been fulfilled to the satisfaction of the customer. The customer is obliged to accept the delivery item immediately after notification of readiness for acceptance. If acceptance does not take place on time through no fault of WESTCON SWITZERLAND, the delivery item shall be deemed to have been accepted seven (7) days after notification of readiness for acceptance. WESTCON SWITZERLAND shall inform the Customer at the beginning of the period of the intended significance of its acceptance. behaviour. Unless otherwise agreed, acceptance shall take place at WESTCON SWITZERLAND. With the exception of the personnel costs of WESTCON SWITZERLAND, the Customer shall bear all costs of acceptance , in particular any operating and material costs. Acceptance may not be refused due to insignificant defects or failure to achieve the specified performance quantities. This shall not apply if acceptance is unreasonable under the given circumstances or if the performance parameters were expressly warranted.

Agreed for and on behalf of Buyer:

Buyer

Signature

Name

Title

Date