

Terms and Conditions of Sale

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 GERMANY 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 § 433 BGB (German Civil Code).

iii. **"Consumer"** means any natural person who concludes a legal transaction for a purpose that cannot be attributed to their commercial or independent professional activity (§ 13 BGB).

iv. **"Trader"** is 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 (§ 14 (1) BGB).

v. **"Merchant"** means any natural or legal person who operates a commercial business. A commercial business is any commercial enterprise, unless the nature or scope of the business does not require a commercially organised business operation, § 1 HGB (German Commercial Code).

vi. **"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 GERMANY at the Internet address: <https://www.westconcomstor.com/global/en/legal/terms-and-conditions.html> available at.

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

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

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

x. **"Force majeure"** shall mean any risk of acts of God, government, war, 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 GERMANY's reasonable control. This also includes a delay on the part of WESTCON GERMANY's suppliers.

xi. **"Goods"** means all goods and/or software as well as any discounts or parts thereof supplied by WESTCON GERMANY to the Buyer under a Contract. This also includes all related documentation of the Supplier.

- xii. **"Products"** means any combination of goods, special order goods and services supplied or performed by WESTCON GERMANY to the Buyer under a Contract.
- xiii. **"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.
- xiv. **"Services"** means any Supplier's services which are supplied by WESTCON GERMANY to Buyer pursuant to a Contract..
- xv. **"Special Order Goods"** shall mean any Goods that are custom ordered or configured to Buyer's specifications, or otherwise designated as special order Goods by WESTCON GERMANY.
- xvi. **"Supplier"** means the supplier, licensor, publisher, manufacturer or other third party from whom WESTCON GERMANY purchases goods.
- xvii. **"WESTCON GERMANY"** means Westcon Group Germany GmbH, Franklinstraße 28/29, 10587 Berlin, Germany.

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 GERMANY, **the attached General Terms and Conditions for Services** shall apply **in addition**.

2. General Terms of Order & Sale

a. These Conditions apply to the entire business relationship between WESTCON GERMANY 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 GERMANY 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 GERMANY shall endeavour to notify the Buyer of any material changes to the Terms and Conditions of Sale before such changes enter into force. These amendments shall not affect con-

tracts 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 GERMANY and the Buyer.

c. These Terms and Conditions shall be deemed accepted by the Buyer by (i) signing a WESTCON GERMANY credit application (ii) submitting a Purchase Order to WESTCON GERMANY or (iii) accepting Products from WESTCON GERMANY, whichever is earliest.

d. Notwithstanding the foregoing, the Buyer agrees that any price information, price lists or any other information provided by WESTCON GERMANY shall not constitute an offer by WESTCON GERMANY 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 GERMANY has received the contract offer is confirmed in text form, (ii) an order placed via the E-System is confirmed by WESTCON GERMANY by e-mail or (iii) WESTCON GERMANY fulfils the order, whereby the earliest point in time shall be decisive.

e. Notwithstanding the foregoing, WESTCON GERMANY 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 GERMANY shall inform the Buyer of such change.

f. If the Service consists of training courses, WESTCON GERMANY shall be entitled to hold such services at venues outside the premises of WESTCON GERMANY and to provide personnel selected by WESTCON GERMANY if this deviation is reasonable for the Buyer, taking into account WESTCON GERMANY's interests. WESTCON GERMANY 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 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 goods from special orders, 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 goods from special orders for the buyer's customers. WESTCON GERMANY warrants for a period of fourteen (14) days from delivery that the goods from special orders will be delivered in accordance with the configuration set out in the order. The provisions of Section 11 of these Conditions remain unaffected.

4. Cancellation and modification of Purchase Orders

a. Once an Purchase Order has been accepted by WESTCON GERMANY, it may only be cancelled, modified or otherwise changed by written agreement with WESTCON GERMANY. After WESTCON GERMANY has received or submitted a request for modification, WESTCON GERMANY 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 GERMANY 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. The Buyer undertakes to indemnify WESTCON GERMANY in full against any losses (including loss of profit), costs (including labour and materials) and other damages and expenses suffered by WESTCON GERMANY as a result of the termination 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 GERMANY's total loss is less than 5 % of the total order value; likewise, WESTCON GERMANY 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 GERMANY'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 thirty (30) 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 GERMANY published at the time of conclusion of the contract.

The prices of the Products that are not in the warehouse of WESTCON GERMANY at the Contract Date ("Backorder") shall be: (i) The price indicated, which is expressly stated in text form and shall be valid for thirty (30) days from the date of indication, or (ii) the list price in WESTCON GERMANY's price list published at the time of the scheduled delivery of the Products ordered in arrears.

b. Notwithstanding the foregoing, of WESTCON GERMANY 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, if it can prove that it can obtain the service elsewhere at a lower price and otherwise under the same conditions and WESTCON GERMANY is not prepared to fulfil the order at a different price despite corresponding proof. The cancellation must be declared no later than two weeks after receipt of the written notification of the price adjustment. Cancellation shall not affect services that have been performed up to the time of the declaration of cancellation. WESTCON GERMANY 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 GERMANY with sufficient information or instructions. WESTCON GERMANY may not increase the price further than necessary to cover the said increases. WESTCON GERMANY shall explain the price increase to the Buyer in each individual case.
- d. Unless otherwise stated in a price quotation or in WESTCON GERMANY's current price list and unless otherwise agreed between the Buyer and WESTCON GERMANY, 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 EUR 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 GERMANY. This shall not apply if the Buyer provides WESTCON GERMANY 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 GERMANY and such Supplier pricing is made available to Buyer ("Pass-Through Discounts"), the Buyer agrees to adhere to the terms and conditions of such Pass-Through Discounts ("Pass-Through Discount Terms"), and agrees to indemnify WESTCON GERMANY for any Supplier claims against WESTCON GERMANY for Buyer's failure to comply with such Pass-Through Discount Terms. Buyer agrees that payment and receipt of benefits under Pass-Through Discount Terms are contingent upon Buyer's compliance with such terms, and further agrees to pay any costs or fees, if any, charged to WESTCON GERMANY by the Supplier for participation in Pass-Through Discounts.

6. Payment

- a. 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 GERMANY 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.
- b. All express deliveries are subject to additional shipping charges regardless of the invoice value
- c. During the period of default, interest shall be charged on the purchase price at the applicable statutory default interest rate. If the Buyer is a Merchant, the commercial maturity interest rate shall apply (§ 353 HGB). WESTCON GERMANY reserves the right to assert further claims for damages caused by default.
- d. If it becomes apparent after conclusion of the contract that WESTCON GERMANY's claims are jeopardised by the Buyer's inability to pay (e.g. by an application to open insolvency proceedings),

WESTCON GERMANY shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 BGB). In the case of Special Order Goods, WESTCON GERMANY may declare its cancellation immediately; the statutory provisions on the dispensability of setting a deadline shall remain unaffected.

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

f. The Buyer undertakes to notify WESTCON GERMANY 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 GERMANY. The same shall apply to the conclusion of any kind of agreement on invoice discounting with a third party.

g. The Buyer shall only be entitled to set off claims against WESTCON GERMANY if the Buyer's counterclaims are undisputed or have been established by a final judgement. If the Buyer is a Trader, 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. Unless otherwise agreed, WESTCON GERMANY may deliver the Products at any time prior to the specified delivery date upon timely notice to the Buyer.

b. Unless otherwise agreed, the handover of the Products shall take place at the registered office of WESTCON GERMANY Ex Works (Incoterms 2020). WESTCON GERMANY 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 GERMANY. WESTCON GERMANY 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 GERMANY. If WESTCON GERMANY 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. The statutory rights of the buyer with regard to timely and proper delivery are not restricted by this.

e. If the Buyer fails to accept the Goods from WESTCON GERMANY, WESTCON GERMANY 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

- a. Unless otherwise agreed below, the risk of accidental loss and accidental deterioration of the goods shall pass to the Buyer at the latest upon handover.
- b. If WESTCON GERMANY has assumed responsibility for the shipment of the products (sale to destination), the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall pass upon delivery of the goods to the forwarding agent, carrier or other person or organisation designated to carry out the shipment. If acceptance has been agreed, this shall be decisive for the transfer of risk. In all other respects, the statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed acceptance. If the Buyer is in default of acceptance, this shall be deemed equivalent to handover or acceptance.

9. Retention of title

- a. The delivered goods / special order goods / products (hereinafter: reserved goods) shall remain the property of WESTCON GERMANY until the purchase price has been paid in full. If the Buyer is a Trader, this shall apply until all claims of WESTCON GERMANY arising from the business relationship with the Buyer that exist on the Contract Date of the respective contract have been satisfied. In this case, WESTCON GERMANY's retention of title shall ultimately also cover its claims against the Buyer arising until the purchase price has been paid in full.
- b. The Buyer shall comprehensively insure the goods subject to retention of title in the amount of the replacement value (new value) including all transport risks. All claims of the Buyer under the insurance contract are hereby assigned to WESTCON GERMANY. WESTCON GERMANY hereby accepts the assignment. Insurance benefits shall be used in full to restore the goods subject to retention of title. In the event of total loss, the insurance benefits shall be used to satisfy the remaining claims of WESTCON GERMANY. The Buyer shall be entitled to any remaining surpluses.
- c. The Buyer shall store the goods subject to retention of title free of charge for WESTCON GERMANY.
- d. The Buyer is entitled to process and sell the reserved goods in the ordinary course of business until the realisation event occurs. Pledges and transfers by way of security are not permitted.
- e. If the goods subject to retention of title are processed by the Buyer, it is agreed that the processing shall be carried out in the name and for the account of WESTCON GERMANY as manufacturer and that WESTCON GERMANY shall directly acquire ownership or - if the processing is carried out using materials from several owners or the value of the processed item is higher than the value of the goods subject to retention of title - co-ownership (fractional ownership) of the newly created item in the ratio of the value of the goods subject to retention of title to the value of the newly created item. In the event that no such acquisition of ownership should occur at WESTCON GERMANY, the Buyer hereby transfers its future ownership or - in the above-mentioned ratio - co-ownership of the newly created item to WESTCON GERMANY as security. If the goods subject to retention of title are combined or inseparably mixed with other items to form a single item and if one of the items is to be regarded as the main item, so that WESTCON GERMANY or the Buyer acquires sole ownership, the party to which

the main item belongs shall transfer co-ownership of the single item to the other party on a pro rata basis in the proportion specified in sentence 1 of this clause 9 e.

f. If the goods subject to retention of title are resold, the Buyer hereby assigns to WESTCON GERMANY by way of security the resulting claim against the Buyer - in the case of co-ownership by WESTCON GERMANY of the goods subject to retention of title in proportion to the co-ownership share. The same shall apply to other claims that take the place of the goods subject to retention of title or otherwise arise with regard to the goods subject to retention of title, such as insurance claims or claims in tort in the event of loss or destruction. WESTCON GERMANY revocably authorises the Buyer to collect the claims assigned to WESTCON GERMANY in its own name. WESTCON GERMANY may only revoke this direct debit authorisation in the event of liquidation.

g. If third parties seize the goods subject to retention of title, in particular by way of attachment, the Buyer shall notify them immediately of WESTCON GERMANY's ownership and inform WESTCON GERMANY thereof in order to enable it to enforce its ownership rights. If the third party is not in a position to reimburse WESTCON GERMANY for the court or out-of-court costs incurred in this connection, the Buyer shall be liable to WESTCON GERMANY for such costs.

h. WESTCON GERMANY shall release the goods subject to retention of title and the items or claims taking their place if their value exceeds the amount of the secured claims by more than 50%. WESTCON GERMANY shall be entitled to select the items to be released.

i. If WESTCON GERMANY withdraws from the contract in the event of the Buyer's behaviour in breach of contract - in particular default in payment - (enforcement event), WESTCON GERMANY shall be entitled to demand the return of the goods subject to retention of title.

10. Publications & Specifications

Any and all specifications, descriptions, photographs, measurements, capacities or illustrations contained in any catalogues, price lists, brochures, leaflets, proposals, advertising matter, publications of WESTCON GERMANY or a Supplier are intended to be illustrative and approximate. If the quality has not been agreed, it shall be assessed in accordance with the statutory provisions whether a defect exists or not (§ 434 (3) BGB). 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. The statutory provisions shall apply to the Buyer's rights in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise specified below. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. BGB) and the rights of the Buyer arising from separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.

b. The Buyer is aware that WESTCON GERMANY is not the manufacturer of the Products, but only acquires them from suppliers/manufacturers for the purpose of resale. Accordingly, all Products are sold subject to the express warranty terms, if any, set forth by the original supplier of the Products.

Buyer shall ensure that all express warranty terms provided with the Products, including all associated benefits, are passed on by the Buyer to its customers.

c. The Buyer is not authorised to grant warranties in respect of any Product on behalf of WESTCON GERMANY or WESTCON GERMANY's supplier. The Buyer shall ensure that its agents or employees do not grant or assign such warranties to the Buyer's customers.

d. If the Buyer is a Merchant/Trader, WESTCON GERMANY hereby assigns to the Buyer its claims against its supplier insofar as they relate to defects. The Buyer accepts this assignment. The Buyer must first take action against the Supplier on the basis of the assigned claims. If the claims against the supplier are not enforceable, the Buyer must prove this to WESTCON GERMANY and assign the claims back to WESTCON GERMANY. WESTCON GERMANY shall then proceed in accordance with its liability for defects. The Buyer must inform WESTCON GERMANY and its suppliers of any claims of its customers and give WESTCON GERMANY the opportunity to settle claims of the Buyer's customers directly with them.

e. Claims of the Buyer for reimbursement of expenses pursuant to § 445a (1) BGB are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 474, 478 BGB) or a consumer contract for the provision of digital products (§ 445c sentence 2, 327 (5), 327u BGB). The Buyer's claims for damages or reimbursement of futile expenses (§ 284 BGB) shall only exist in accordance with this clause and clause 12, even in the event of defects in the goods.

f. If the Buyer is a Merchant, its claims for defects shall require that it has fulfilled its statutory duties of inspection and notification (§§ 377, 381 HGB). If a defect becomes apparent upon delivery, inspection or at any later point in time, WESTCON GERMANY must be notified thereof in writing without delay. In any case, obvious defects must be reported in writing within five working days of delivery and defects not recognisable during the inspection must be reported in writing within the same period from discovery. If the Buyer fails to properly inspect the goods and/or notify WESTCON GERMANY of defects, the warranty for the defect not notified or not notified in time or not notified properly shall be excluded in accordance with the statutory provisions.

g. Damage caused by external influences, improper handling, faulty operation, normal wear and tear or corrosion is excluded from the liability for defects. WESTCON GERMANY shall not be liable for faulty or improper maintenance of the purchased products by persons who are not authorised by WESTCON GERMANY.

h. If the delivered item is defective, WESTCON GERMANY may initially choose whether to provide subsequent fulfilment by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). If the type of subsequent fulfilment chosen by WESTCON GERMANY is unreasonable for the Buyer in an individual case, the Buyer may reject it. WESTCON GERMANY's right to refuse subsequent fulfilment under the statutory conditions shall remain unaffected.

i. WESTCON GERMANY shall be entitled to make the subsequent fulfilment owed dependent on the Buyer paying the purchase price due. However, the Buyer shall be entitled to retain a reasonable portion of the purchase price in proportion to the defect.

j. The Buyer shall give WESTCON GERMANY the time and opportunity required for the subsequent fulfilment owed, in particular to hand over the defective goods for inspection purposes. In the event of a replacement delivery, the Buyer shall return the defective item to WESTCON GERMANY upon request in accordance with the statutory provisions; however, the Buyer shall not be entitled to return the item. Subsequent performance shall not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if WESTCON GERMANY was not originally obliged to perform these services; the Buyer's claims for reimbursement of the corresponding costs ("dismantling and assembly costs") shall remain unaffected.

k. WESTCON GERMANY shall bear or reimburse the expenses necessary for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these Conditions, if a defect actually exists. Otherwise, WESTCON GERMANY may demand compensation from the Buyer for the costs incurred as a result of the unjustified request to remedy the defect if the Buyer knew or could have recognised that there was in fact no defect.

l. If the product is subsequently moved to a place other than the destination agreed in the order and if this increases the expenses required for the purpose of subsequent performance (rectification of defects/replacement delivery), in particular transport, travel, material or labour costs, these shall not be borne by WESTCON GERMANY/the supplier of WESTCON GERMANY. This restriction shall not apply if the transport of the product to the location corresponds to its intended use.

m. If a reasonable deadline to be set by the buyer for subsequent fulfilment has expired without success or is dispensable in accordance with the statutory provisions, the buyer may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of cancellation.

n. If it is necessary to return the Products to WESTCON GERMANY, WESTCON GERMANY shall issue a return material authorisation ("RMA") to the Buyer to return the Products to WESTCON GERMANY and the Buyer undertakes to return such Products in accordance with these Conditions and the RMA provisions in force at the time (which shall be provided to the Buyer upon request). Returns may only be made with a valid RMA number on the product packaging. Products without a valid RMA on the product packaging will be rejected or returned. WESTCON GERMANY is not obliged to send replacement products to the Buyer before it has itself received the original products that are being returned.

o. Claims for defects shall become time-barred one year after delivery. This shall not apply if the law prescribes longer periods in accordance with § 438 para. 1 no. 2 (buildings and items for buildings), § 445 b para. 1 (right of recourse) and § 634 a para. 1 no. 2 (building defects) BGB or in accordance with the Produkthaftungsgesetz (German Product Liability Act), in the event of an intentional or grossly negligent breach of duty by WESTCON GERMANY, in the event of fraudulent concealment of a defect and in cases of injury to life, limb or health. The statutory provisions on suspension of expiry, suspension and recommencement of the limitation period shall remain unaffected. If the order confirmation provides for a longer warranty period, these claims shall become time-barred upon expiry of the warranty period stated in the order confirmation. So-called "guarantee periods" are warranty periods. Claims for material defects for defect rectification or replacement deliveries shall expire three months

after completion of the defect rectification or replacement delivery, but not before expiry of the original period. Measures to rectify defects do not constitute acknowledgement of a defect. They are always carried out as a gesture of goodwill and without prejudice to the factual and legal situation.

p. The above limitation periods shall also apply to contractual and non-contractual claims for damages of the Buyer based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 BGB) would lead to a shorter limitation period in individual cases. The Buyer's claims for damages within the meaning of Section 12 b sentence 1 and sentence 2 i as well as under the Produkthaftungsgesetz (German Product Liability Act) shall become time-barred exclusively in accordance with the statutory limitation periods.

12. Limitation of Liability

a. Unless otherwise provided for in these Conditions, including the following provisions, WESTCON GERMANY shall be liable for any breach of contractual and non-contractual obligations in accordance with the statutory provisions.

b. WESTCON GERMANY shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability in cases of intent and gross negligence. In the event of slight negligence, WESTCON GERMANY shall only be liable, subject to statutory limitations of liability (e.g. care in one's own affairs; insignificant breach of duty), for

i. damages resulting from injury to life, limb or health,

ii. damages arising from the breach of a material contractual obligation (an obligation whose fulfilment is essential for the proper performance of the contract and on whose fulfilment the contractual partner regularly relies and may rely); in this case, however, WESTCON GERMANY's liability shall be limited to compensation for foreseeable, typically occurring damages.

c. The limitations of liability resulting from clause 12 b. shall also apply to third parties and in the event of breaches of duty by persons (including in their favour) whose fault WESTCON GERMANY is responsible for under statutory provisions. They shall not apply if a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Buyer under the Produkthaftungsgesetz (German Product Liability Act).

d. The Buyer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if WESTCON GERMANY is responsible for the breach of duty. A free right of cancellation on the part of the Buyer (in particular pursuant to §§ 650, 648 BGB) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.

e. The limitation period for claims for damages shall be governed by the provisions in Section 11 o and p of these Conditions.

13. Intellectual Property Rights

- a. WESTCON GERMANY's liability for defects of title (§ 435 BGB) shall be governed by the provisions in Sections 11 and 12 of these Conditions.
- b. As far as WESTCON GERMANY is owner of exclusive rights of use with regard to copy rights for Goods and other Products of WESTCON GERMANY Buyer acquires a simple right of use with regard to the Goods/Products only upon complete payment of all claims of WESTCON GERMANY regarding the Goods/Products. The Buyer is not entitled without prior written consent by WESTCON GERMANY to grant sublicenses. WESTCON GERMANY will refuse its consent only for important reason. The simple right of use refers only to the Product which is mentioned in the order of Buyer/the delivery note.
- c. In the case of Goods with digital elements or other digital content, WESTCON GERMANY shall only be obliged to provide and, where applicable, update the digital content if this is expressly stated in a quality agreement. WESTCON GERMANY 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 GERMANY's supplier to such products are afforded the highest possible protection. These measures shall be appropriately documented.
- f. WESTCON GERMANY 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.
- g. Nothing in these Conditions of Sale shall be construed as granting Buyer any right to use any logo, trade mark or brand name WESTCON GERMANY or any supplier. Such a right requires an express contractual agreement.
- h. All software supplied to the Buyer under a Contract shall be supplied in accordance with the Supplier's licence terms.

14. 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 GERMANY 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 GERMANY 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 GERMANY cannot guarantee the security or integrity of data or information exchanged via the E-System; WESTCON GERMANY shall only be liable for intent and gross negligence in this respect.

15. Force Majeure

a. In the event of force majeure, the provisions of this clause shall apply.

b. WESTCON GERMANY 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 GERMANY or its suppliers.

c. WESTCON GERMANY shall inform the Buyer of the force majeure event as soon as commercially practicable, whereby WESTCON GERMANY shall not be liable for failure to provide such information.

d. WESTCON GERMANY'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 GERMANY 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 GERMANY and the hindrance is not only of a temporary nature, WESTCON GERMANY 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 GERMANY.

16. 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 GERMANY 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 GERMANY to be liable for corrupt practices under applicable law, such as 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 GERMANY.

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 Germany, the regulations of the Elektrogesetz (German Electrical and Electronic Equipment Act) must be observed. 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 GERMANY if it exports products outside Germany.

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

17. Non-Solicitation

The Buyer agrees that for a period of twelve (12) months from the Contract Date under these Conditions, it shall not solicit or induce any executive employee of WESTCON GERMANY 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 GERMANY. The Buyer undertakes nothing to recruit, employ, contract or otherwise allow such an executive employee to work for it in Germany. 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 GERMANY 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.

18. Confidential Information

The Buyer agrees that the agreements entered into between the Buyer and WESTCON GERMANY and all information relating to the Products, including pricing and descriptions, which WESTCON GERMANY provides to the Buyer, regardless of the form in which it is provided, shall be deemed to be confidential information of WESTCON GERMANY 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 GERMANY shall not be liable for the accuracy or completeness of the Confidential Information, except as otherwise provided in these Conditions. WESTCON GERMANY 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 GERMANY.

19. Miscellaneous

- a. Assignment. The Buyer may not transfer its claims against WESTCON GERMANY to a third party or assign such claims by law or otherwise without the prior written consent of WESTCON GERMANY.
- b. Waiver. The failure of WESTCON GERMANY 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 maintain accurate and complete records relating to compliance with these Conditions or any contract pursuant to these Conditions and to keep such records for a period of at least two years
- e. Data protection. WESTCON GERMANY 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 GERMANY 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 GERMANY and the Buyer shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods.

g. Place of jurisdiction. If the Buyer is a Merchant, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of WESTCON GERMANY in Berlin. The same shall apply if the Buyer is a Trader. However, WESTCON GERMANY 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 GERMANY for the Provision of Services

1. Scope

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

2. Provision of Services

- a. Unless otherwise agreed, all services to be provided by WESTCON GERMANY to the Customer shall be service contracts pursuant to §§ 611 et seq. BGB. In these cases, WESTCON GERMANY owes an action and not success.
- b. The employees involved in the performance of the Services shall be selected by WESTCON GERMANY. 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 GERMANY in accordance with the subject matter of the contract. WESTCON GERMANY 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 GERMANY is responsible for this, WESTCON GERMANY shall, in addition to the provisions of clause 11 of WESTCON GERMANY'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 GERMANY'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 GERMANY, WESTCON GERMANY shall be authorised to provide Services at any time prior to the execution date.

f. WESTCON GERMANY'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 GERMANY 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 GERMANY 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 GERMANY 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 GERMANY 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 GERMANY shall be entitled to increase the prices accordingly. To this extent, the above clauses 5. c. and d. of WESTCON GERMANY's Terms and Conditions of Sale shall apply accordingly.

4. Creation of a work

a. If the parties have agreed that WESTCON GERMANY is to bring about a work success within the meaning of § 631 BGB, the following provisions shall apply in addition to the previous provisions.

b. When issuing a cost estimate, WESTCON GERMANY 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 GERMANY in default.

d. WESTCON GERMANY 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 GERMANY, the delivery item shall be deemed to have been accepted seven (7) days after notification of

readiness for acceptance. WESTCON GERMANY shall inform the Customer at the beginning of the period of the intended significance of its acceptance. Unless otherwise agreed, acceptance shall take place at WESTCON GERMANY. With the exception of the personnel costs of WESTCON GERMANY, 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