

Terms and Conditions

1. **INTERPRETATION AND TERMS OF CONTRACT**

In this contract “buyer” means the person to whom a quotation has been given or with whom Westcon Africa has entered into a contract. The customer’s acceptance of these Terms and Conditions shall be indicated by signing this agreement.

Westcon Africa which is accepted by the Buyer, or any written order of the Buyer which is accepted by Westcon Africa, subject in either case to these conditions which shall govern the contract to the exclusion of any and all other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer over which these conditions shall prevail. In these conditions “in writing” includes electronic correspondence (including but not limited to correspondence by electronic mail)

All orders for the Buyer shall be treated as an offer to purchase and no contract shall come into existence until the Buyer’s order has been accepted in writing by Westcon Africa. No amendment of or addition to these conditions shall be binding unless accepted by Westcon Africa in writing and no amendment or addition to any order which has been accepted by Westcon Africa shall be effective unless accepted in writing by Westcon Africa.

The Buyer accepts that in entering into a contract with Westcon Africa it does not rely on any representations or statements which may have been made by Westcon Africa or its servants or agents and all such representations or statements are hereby excluded save as may be expressly incorporated in these conditions, in Westcon Africa’s written acceptance of any order or in Westcon Africa’s written acceptance of an amendment to an existing order.

Westcon Africa will not accept any cancellation of manufactured goods for Factory-Built Configured Units once the order has been confirmed. Westcon Africa shall have no liability whatsoever once the goods have been ordered from the vendor. The customer is therefore fully responsible for making full payment.

2. **PRICE AND PAYMENT**

The price of the Goods shall be Westcon Africa’s quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in Westcon Africa’s published price list current at the date of acceptance of the order. Unless otherwise specified in writing by Westcon Africa, all prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by Westcon Africa without giving notice to the Buyer.

Westcon Africa reserves the right to increase the price of the Goods to reflect an increase in cost to Westcon Africa which is due to any factor beyond Westcon Africa’s control, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure by the Buyer to give Westcon Africa adequate information or instruction.

All prices are exclusive of VAT and similar taxes, delivery and transport charges and all other costs.

3. **DELIVERY**

Delivery of the Goods shall be made by the Buyer collecting the Goods from Westcon Africa’s designated premises at any time after Westcon Africa has notified the Buyer that the goods are ready for dispatch or, if some other place for delivery is agreed by Westcon Africa, by Westcon Africa delivering the Goods to that place. Any dates quoted for delivery of the Goods are approximate only and Westcon Africa shall not be liable for any delay in the delivery of the Goods howsoever caused. The time of the delivery shall not be of the essence of the contract.

When the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by Westcon Africa to deliver any one or more of the instalments in accordance with these conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the contract as a whole as repudiated.

In the case of failure to deliver by the estimated time the Buyer shall not rescind the contract for this reason unless on or within 30 days after the delivery date the Buyer gives Westcon Africa notice in writing specifying a reasonable period within which the Goods in question are required to be delivered and Westcon Africa fails to deliver within that period and in any other case of failure to deliver the Buyer shall not rescind the contract for this reason unless it has given Westcon Africa notice in writing specifying a reasonable period within which the Goods are required to be delivered.

No claim for short delivery, incorrect delivery or in respect of damage in transit will be accepted by Westcon Africa unless the shortage, mistake or damage is recorded and notified to Westcon Africa in accordance with the provisions of condition 7 and in any such event the sole responsibility of Westcon Africa shall be within a reasonable period to make up the shortfall, correct the mistake or to replace the damaged Goods. Save as set out in this condition 3. Westcon Africa shall have no liability whatsoever in respect of non-delivery, short delivery or damage in transit.

The Buyer is considered to have given authority to accept delivery on his behalf to any person who actually accepts delivery at the delivery address. If the Buyer does not take delivery of the Goods when tendered by Westcon Africa, the Buyer shall be liable for any loss occasioned by Westcon Africa and also for such costs and expenses as Westcon Africa may incur in storing the Goods and, if applicable, re-delivering the same.

4. RISK AND PROPERTY

Risk of, damage to, or loss of the Goods shall pass to the Buyer:

- (a) In the case of Goods to be delivered at Westcon Africa's premises, at the time for collection, or
- (b) In the case of Goods to be delivered otherwise than at Westcon Africa's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when Westcon Africa has tendered delivery of the Goods.

Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, the title in the Goods shall not pass to the Buyer until payment in full of all monies owing by the Buyer to Westcon Africa in respect of such Goods has been received by Westcon Africa and all other Goods agreed to be sold by Westcon Africa to the Buyer for which payment is then due. Until such time, the Buyer shall hold the Goods as Westcon Africa's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured for no less than the invoiced value of such Goods and identified as Westcon Africa's property, and shall only be entitled to resell or use the Goods with Westcon Africa's consent and provided always that the proceeds of any such resale or, if less, such part of the proceeds as is equal to the amount of Westcon Africa's invoice and the proceeds of insurance on the Goods shall be held on trust by the Buyer for Westcon Africa until such time as Westcon Africa has received payment in full in respect of all amounts owing by the Buyer to Westcon Africa in respect of such Goods. Notwithstanding that title in any Goods has not passed to the Buyer, Westcon Africa shall be entitled to sue the Buyer for the price of such Goods if not paid by the due date. Westcon Africa shall be entitled at any time to repossess Goods which remain the property of Westcon Africa and the Buyer hereby grants Westcon Africa, its agents and servants an irrevocable licence to enter upon any premises where such Goods are stored for the time being for the purpose of repossessing the same and agrees to give Westcon Africa such assistance as Westcon Africa may require for such purpose.

The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Westcon Africa, but if the Buyer does so all monies owed by the Buyer to Westcon Africa shall (without prejudice to any other rights of remedy) forthwith become due and payable.

5. PAYMENT TERMS

Westcon Africa shall be entitled to invoice the Buyer for the price of the Goods from Date of Contract or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event Westcon Africa shall be entitled to invoice the Buyer for the price at any time after Westcon Africa has notified the Buyer that the Goods are ready for dispatch or Westcon Africa has tendered delivery of the Goods, as applicable. The Buyer shall pay the price of the Goods within thirty days of the date of Westcon Africa's invoice, unless previously agreed in writing, and Westcon Africa shall be entitled to recover the price, notwithstanding that delivery may have taken place and that property in the Goods has not passed to the Buyer. The time for payment of the price shall be of the essence of the contract. All amounts shall be paid without deduction or set-off.

If the Buyer fails to make any payment on the due date then, without prejudice to any other rights of remedy available to Westcon Africa, Westcon Africa shall be entitled to:

- (a) Cancel the contract or suspend any further deliveries, to the Buyer;

- (b) Appropriate any payments made by the Buyer to such of the Goods (or the Goods supplied under any other contract between the Buyer and Westcon Africa) as Westcon Africa may think fit (notwithstanding any purported appropriation by the Buyer);
- (c) Take immediate action to recover the whole of the amount that is due;
- (d) Charge the Buyer interest if we have to take legal action on the amount unpaid, at the rate of 1.5% per month compounded monthly on the outstanding balance until payment in full has been settled

6. WARRANTIES

Westcon Africa does not make or give and will not make or give any representation, warranty or condition whatsoever (express, implied, collateral, statutory or otherwise) in respect of the Goods and any such representations, warranties and conditions given by Westcon Africa are hereby excluded and extinguished. The Buyer shall rely solely upon the manufacturer's warranty for the Goods as to the description, quality and performance of the Goods and the Buyer shall not assert any claim, defence or set-off against Westcon Africa based upon any description or condition as to fitness for purpose or performance of the Goods or otherwise.

Notwithstanding the provisions contained in the above paragraph of this condition, where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to Westcon Africa in accordance with these conditions, Westcon Africa may, at its sole option and discretion, replace the Goods (or the part in question) free of charge, or refund the Buyer the price of the Goods (or a proportional part of the price), but Westcon Africa shall have no further liability to the Buyer. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to Westcon Africa in accordance with the provisions contained in condition 7. If delivery is not refused, and the Buyer does not notify Westcon Africa accordingly, the Buyer shall not be entitled to reject the Goods and Westcon Africa shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if Westcon Africa had acted in accordance with the contract.

7. RETURNS AND WARRANTY ASSISTANCE SERVICE

The following procedures shall apply:

- (a) Short Delivery / Incorrect Delivery / Damage in Transit. Where manifest, short delivery, incorrect delivery and damage incurred in transit shall be noted on the delivery note and/or in any other case shall be notified in writing to the carrier and to Westcon Africa's operations department within 5 working days of the date of delivery or clearance by relevant customs authorities. Damaged Goods and packing materials must be kept for inspection, until the claim is settled:

In the event that Westcon Africa agrees that any Goods shall be returned to it, Westcon Africa shall issue the Buyer with a return number. The issue by Westcon Africa of a returns number is not an agreement to credit and any returned products must be in its original package, which has not been damaged or altered.

Proof of Delivery ("POD") will only be provided against requests received within 20 days from the date of delivery. Westcon Africa reserves the right to charge the Buyer for any costs that are incurred by it or its sub-contractors in administering a POD.

8. INDEMNITY

The Buyer shall indemnify Westcon Africa against all claims, damages, costs and expenses for which Westcon Africa may become liable through executing any order in accordance with the specifications of the Buyer and which may involve the infringement of any patent, registered design right or other intellectual property right.

Save as specified above, Westcon Africa shall have no liability whatsoever to the Buyer arising out of or in connection with the sale or supply of the Goods by Westcon Africa to the Buyer whether direct, indirect, consequential or any other type of loss and whether the same shall have been caused by the negligence, misrepresentation or other tort of Westcon Africa or by any breach or non-performance by Westcon Africa of the contract with the Buyer and all conditions, warranties or other terms that are expressed or implied by law or otherwise inconsistent with this condition are hereby excluded, provided always that nothing in these conditions shall exclude the liability of Westcon Africa for death or personal injury caused by its negligence.

9. INSOLVENCY OF BUYER

If the Buyer makes any voluntary arrangement with its creditors or becomes bankrupt or becomes subject to an administration order or goes into liquidation or any encumbrance, takes possession, or a receiver is appointed, over any of the property or assets of the Buyer, or the Buyer ceases, or threatens to cease to carry on business or Westcon Africa reasonably understands that any of the aforementioned events is about to occur in relation to the Buyer and notifies the Buyer accordingly, then, without prejudice to any other rights or remedy available to Westcon Africa, Westcon Africa shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. FORCE MAJEURE

Westcon Africa shall have no liability to the Buyer for any delay or failure in performance to the extent that any such delay or failure arises from causes reasonably beyond the control of Westcon Africa, including, but not limited to fire, flood, acts of God, acts of any government or supra-national authority, war, riot, strike, lock-outs and industrial disputes.

11. GENERAL

No waiver by Westcon Africa or any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provisions.

12. SOFTWARE

Software and Licences sent by electronic means remain the property of Westcon Africa until fully paid.

13. GOVERNING LAW

The Contract between Westcon Africa and the Buyer shall be governed by and construed in accordance with English law and both parties shall submit to the non-exclusive jurisdiction of the English courts.

Certified that I have read and understood the Terms and Conditions

Signed.....

Name in Capitals.....

Position

Date