

WestconGroup™

Westcon Group North America, Inc.

Attention: Credit and Finance

14840 Conference Center Drive, Suite 200, Chantilly, VA 20151

Phone #: 800-527-9516

Fax #: 877-937-5552

- Prepay
- Flooring (GE, IBM, Wells Fargo)
- Credit Card _____ Amount
- Net 30 days open account _____ Amount

Requested Terms (check one)

CREDIT APPLICATION

General Information			
Company or Corporate Name (Exact Legal Name):		Doing Business As:	
Billing Address		City	State
Shipping Address (if more than one, attach separate list)		City	Zip Code
Telephone #:	Company Web/URL Address	Account #:	Sales Rep. Name:
Type of Business: (check one) <input type="checkbox"/> C Corp <input type="checkbox"/> S Corp <input type="checkbox"/> Partnership <input type="checkbox"/> Proprietor		Accts Payable Contact _____ Phone # _____	
FEIN # _____ / _____ State _____		Fax # _____ E-Mail _____	
Date of Incorporation _____ State _____		Name of Controller _____ Phone # _____	
Are you a <input type="checkbox"/> subsidiary or <input type="checkbox"/> division (if yes, check which)		Westcon Group North America, Inc. utilizes secure email for electronic delivery of invoices. Please enter an email address (preferably a group alias) for invoice delivery:	
Parent Company Name:		Email: _____	
Address:		Has company ever filed for bankruptcy? _____ (Y/N) If yes, please provide date, docket # and resolution, if any.	
City: _____ State: _____ Zip: _____		DUNs # _____	
Will the Parent Company guarantee debts? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Officers/Principals/Proprietor Information			
(check one) <input type="checkbox"/> Principal <input type="checkbox"/> Partner <input type="checkbox"/> Proprietor			
Name:		Social Security # _____	
Home address:		Home phone: _____	
City: _____ State: _____		Zip: _____	
Attachments			
1. Bank Reference: One (1) reference including Bank name, Officer name, Address, Phone #, Fax #, Account # (s), Type of Account(s), and Date Opened.			
2. Credit References: Four (4) references from major suppliers. Please provide Supplier Name, Contact name, Phone #, Address, and Account #.			
3. Financial Statements for the past two years.			
4. Resale Certificate: Current, signed resale certificate for all states to which you will be shipping or universal all state certificate.			
5. Personal Statement of assets and liabilities for person(s) signing as guarantor.			
Please indicate your company's primary line of business:			
_____ System Integrator _____ Service Provider _____ VAR _____ Direct Marketer			
Financial Authorization to Release Confidential Information			
To Financial Institution:		From Buyer:	
_____		_____	
_____		_____	
_____		_____	
ATTENTION: BOOKKEEPING DEPARTMENT/LOAN DEPARTMENT			
Please accept this as authorization to release the following information to Westcon Group North America, Inc. for purpose of extending credit.			
Checking Account # _____ Savings Account # _____ Loan(s) # _____			
Authorized Signature _____ Date _____			

By checking this box, Buyer acknowledges acceptance of the following Terms & Conditions and Conditions of Sale.

Freight & Insurance

All shipments are FCA point of shipment. Please acknowledge your understanding of this policy in the designated area. You may elect to insure the product or you can contact your own insurance company to obtain an umbrella policy to cover you in the event product is damaged in shipment. Failure to clearly mark a selection will result in the shipments being insured with the cost of the insurance the responsibility of the customer:

- I understand that we will bear the responsibility and costs associated with all damages and losses and elect to waive the insurance.
- I wish to insure this product and understand that I will be responsible for the associated costs of the insurance coverage.

Authorized Signature & Title: _____

Date: _____

GUARANTY OF PAYMENT

In order to induce WGNA to enter into the attached credit application and Terms and Conditions of Sale with the customer identified therein ("Buyer"), the undersigned (individually and collectively referred to as "Guarantor"), jointly and severally, guarantees to WGNA, its subsidiaries and affiliates ("WGNA") the prompt and unconditional performance and payment by Buyer of any and all debts, obligations, liabilities and contracts for which the Buyer is obligated, previously, now or hereafter, to WGNA. Guarantor's liability to WGNA is direct, unconditional and continuing and shall not be affected in any way by, and Guarantor consents to, extensions or modifications granted by WGNA to Buyer and the release or compromise of any obligations of Buyer or any other obligors or guarantors. This Guaranty is irrevocable and may not be terminated by Guarantor. WGNA may proceed against Guarantor without first proceeding against Buyer or any other obligor or guarantor. Guarantor waives presentment, demand and protests, notices of non-performance, contribution, amount of indebtedness and all other demands and notices required by law. Guarantor waives all right to assert all defenses, set-offs, cross claims and counterclaims. This Guaranty may not be assigned by Guarantor without WGNA's prior written consent. This Guaranty shall survive death, dissolution and insolvency and be binding upon Guarantor's successors and assigns. Any delay or failure of WGNA in exercising its rights under this Guaranty will not constitute a waiver. This Guaranty contains the entire agreement regarding the subject matter herein and may be amended only in writing signed by all parties. This Guaranty will be governed by and construed in accordance with the laws of the State of New York, other than conflicts of law. The GUARANTOR CONSENTS TO THE NON-EXCLUSIVE JURISDICTION OF ANY STATE AND FEDERAL COURT IN WESTCHESTER COUNTY, NEW YORK REGARDING ANY DISPUTES ARISING OUT OF THIS GUARANTY.

GUARANTOR:

GUARANTOR:

GUARANTOR:

Signature: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Name: _____

Address: _____

Address: _____

Address: _____

Zip Code: _____

Zip Code: _____

Zip Code: _____

SSN: _____

SSN: _____

SSN: _____

Driver's License #: _____

Driver's License #: _____

Driver's License #: _____

On this ____ day of _____, 20____, the above individual(s) personally appeared before me and who, being duly sworn each stated that the foregoing Guaranty was executed in each of their respective capacities as set forth above.

Notary Public

My commission expires: _____

1. Definitions

- a. Where used in these Terms and Conditions of Sale:
- i. "Authorized Representative" means any person who holds the job title and office of General Manager, Finance Director or Vice-President
 - ii. "Buyer" means [].
 - iii. "Conditions" means these Terms and Conditions of Sale
 - iv. "Contract" means any agreement for the purchase and sale of Products from WGNA to Buyer which result from a Purchase Order submitted to and accepted by WGNA.
 - v. "Contract Date" means the date upon which a Purchase Order is accepted by WGNA.
 - vi. "Force Majeure" means, without limitation, any acts of God, government, war, terrorism, riot, fire, floods, earthquakes, explosions, strikes, lockouts, cessation of labour, trade disputes, breakdowns, accidents of any kind or any other causes which are beyond the reasonable control of WGNA (including delay or shortages by its Suppliers).
 - vii. "Goods" means any Supplier's goods and/or software, or any instalment or parts thereof, which are supplied by WGNA to Buyer pursuant to a Contract, including any Supplier documentation related thereto.
 - viii. "Non-standard Products" means Goods that are: (a) custom ordered; (b) custom manufactured; (c) custom programmed; (d) built or configured to Buyer's specifications; (e) published as configured, non-standard or non-cancellable on the Supplier's price list; (f) included in any Supplier's policy as non-cancellable; (g) not maintained in WGNA's inventory; (h) discontinued, end of life or withdrawn; (i) Goods that the Supplier will not accept on return without imposing any restocking or freight charges; or (j) Services unless the Statement of Work includes a description of cancellation rights.
 - ix. "Products" means any combination of Goods, Non-standard Products and Services which are supplied by WGNA to Buyer pursuant to a Contract.
 - x. "Purchase Order" means Buyer's oral, written or electronic order for Products and shall include any order that Buyer places online through WGNA's eCommerce tool or transmits via email or facsimile.
 - xi. "Services" means any Supplier's services which are supplied by WGNA to Buyer pursuant to a Contract.
 - xii. "Supplier" means the supplier, licensor, publisher, manufacturer or other third party provider of Products.
 - xiii. "WGNA" means Westcon Group North America, Inc. with a registered office at 14840 Conference Center Drive, Suite 200, Chantilly, Virginia 20151 and any of its subsidiaries.
- b. As used in these Conditions, (i) any reference to a statute shall be construed as a reference to that statute as amended, reenacted or otherwise modified from time to time, (ii) the term "including" will always be deemed to mean "including, without limitation", (iii) a definition is equally applicable to the singular and plural forms of the feminine, masculine and neuter forms of the term defined, and (iv) any headings in the Conditions are for convenience only and shall not affect the interpretation of any terms.
- c. To the extent that Buyer is purchasing Cloud Services from WGNA, Buyer confirms that the Cloud Services shall be provided in accordance with the applicable terms and conditions posted on WGNA's website at <https://www.westconcomstor.com/global/en/capabilities/cloud/cloud-services-reseller-agreements.html> ("Terms"). Buyer agrees to be bound by the Terms (as amended by WGNA from time to time) applicable at the time of provision of Cloud Services. Buyer has been provided ample opportunity to review the Terms. Buyer takes particular notice that the Terms include specific clauses including, but not limited to: (A) LIMITATION OF LIABILITY; (B)

SUBSCRIPTION TERMS; (C) RESELLER AGREEMENT; (D) SUSPENSION OF ACCESS; (E) INDEMNIFICATION AND LIMITATION OF LIABILITY, and certifies that such clauses have been brought to Buyer's attention. By signing these Conditions, Buyer agrees to be bound by the Terms as applicable to Cloud Services.

2. General Ordering Terms.

Buyer may purchase Products under these Conditions by issuing a Purchase Order to WGNA. Only a Purchase Order submitted by Buyer shall constitute an offer to contract subject to these Conditions, however, a Purchase Order shall not be deemed a Contract unless and until the earlier date upon which: (i) written confirmation is provided by WGNA, or (ii) WGNA proceeds with the fulfillment of the Purchase Order ("Purchase Order Acceptance"). No additional or alternative terms or conditions or any alteration to these Conditions proposed by the Buyer contained or referred to in a Purchase Order or other form submitted to WGNA shall be deemed to apply unless they are expressly accepted in writing by an Authorized Representative of WGNA with respect to that Purchase Order.

3. Cancelling & Rescheduling Purchase Orders.

- a. Except as set forth below, no Purchase Order which has been accepted by WGNA may be cancelled or rescheduled by Buyer except with written agreement by WGNA.
- b. Buyer may cancel, reschedule or modify a Purchase Order for Goods any time prior to shipment.
- c. If Buyer has elected to purchase Non-standard Products, Buyer understands and agrees that any Contracts for Non-standard Products may not be cancelled, withdrawn, rescheduled or otherwise modified by Buyer, unless such cancellation, withdrawal, rescheduling or modification occurs prior to WGNA's placement of the order with the Supplier. Buyer further understands and agrees that such Non-standard Products, except as set forth under Section 11 ("Warranty Assistance"), may not be returned, refused or rejected for any reason whatsoever. Further, Buyer shall not be entitled to a credit or refund for such Non-standard Products for any reason whatsoever.
- d. Where an order is shipped in instalments, once the time to cancel the initial instalment has passed (as determined by the terms of this Agreement), subsequent instalments may not be cancelled unless otherwise agreed in writing by an authorized representative of WGNA.
- e. Any cancellation, rescheduling or modification of a Purchase Order is conditioned upon Buyer reimbursing WGNA for all reasonable, verifiable costs (including the cost of all labour and materials used), damages and expenses actually incurred by WGNA as a result of such action, which may include, but is not limited to, WGNA's costs and expenses of recovering Products delivered or in transit and, in WGNA's sole discretion, a fifteen percent (15%) restocking fee. WGNA will use commercially reasonable efforts to mitigate any such costs, damages and expenses.

4. Prices.

- a. The price of Products on the Contract Date shall be: (i) the quoted price (which shall be given formally in writing and be valid for seven (7) days following the date of quotation), or (ii) the list price in WGNA's then current published price list on the date of Contract, where no price has been quoted or a quoted price has expired. All prices and charges are exclusive of, and Buyer shall be responsible for, the cost of handling, packaging, interest, shipping, delivery, insurance (unless as otherwise agreed), configuration, fulfillment, cancellation, or rescheduling charges, and other services, as well as applicable duties, fees, sales, use, consumption, privilege, and other taxes (other than taxes based upon WGNA's net income), for which the Buyer shall be additionally liable for paying to WGNA. WGNA shall, upon request, quote the additional costs of such items to Buyer. Buyer shall make all payments of any such taxes to WGNA without reduction. All taxes shall be paid by Buyer to WGNA unless

Buyer provides WGNA with a valid certificate of exemption acceptable to the appropriate taxing authority.

- b. In the event a Supplier should grant a special pricing consideration, promotion or discount to WGNA 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, which may include the obligation to trade in certain products or provide for limited use credits ("Pass-Through Discount Terms"), and agrees to indemnify WGNA for any Supplier claims against WGNA 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 WGNA by the Supplier for participation in Pass-Through Discounts.

5. Payment.

- a. Buyer shall pay the undisputed purchase price, without any deduction or set-off, within thirty (30) days from the date of the invoice, which shall be issued to Buyer on the date that Products are shipped. WGNA may charge Buyer interest, both pre- and post-judgment, on any unpaid past due amount that is not in dispute, at the rate of 1.5% per month until full payment is made. For clarity, a part of a month shall be treated as a full month for the purpose of calculating interest. WGNA reserves the right to withhold shipment of all or any part of an order, or to require prepayment, in the event WGNA determines in its sole judgment that Buyer is unable to make timely payment.
- b. Buyer grants WGNA, and WGNA retains, a purchase money security interest in the Product. Buyer agrees to cooperate with WGNA to perfect WGNA's security interest. Buyer authorizes WGNA to file any such instrument, including without limitation, any UCC Financing Statements without Buyer's signature or on behalf of Buyer as Buyer's irrevocably appointed attorney-in-fact.
- c. All express deliveries are subject to additional shipping charges regardless of invoice value.
- d. If (i) Buyer fails to make any payment under any Contract when due; (ii) any distress or execution is levied upon Buyer's property or assets; (iii) Buyer makes or offers any arrangement or composition with its creditors; (iv) Buyer is a body corporate and any resolution or petition to wind up Buyer's business (other than for the purpose of amalgamation or reconstruction) is passed or presented; (v) a receiver, administrator, manager or analogous person is appointed in respect of the undertaking, property or assets of Buyer or any part thereof; (vi) Buyer is an individual or a partnership, and any grounds arise for the presentation of a petition for a bankruptcy order made under Part IX Chapter 1 Insolvency Act 1986 or any statutory re-enactment or modification thereof or on the presentation of such a petition (an "Act of Bankruptcy"); or (vii) Buyer exceeds its credit limit then, without prejudice to any other right or remedy available to WGNA, the full price of all Products delivered to Buyer under any Contract, but not paid, shall become immediately due (notwithstanding any previously agreed credit terms) and WGNA may take any or all of the following courses of action:
 - i. by notice, suspend or terminate any Contract or any part thereof, without liability, stop any Products in transit;
 - ii. set-off any amounts due against any credit note, balance or other liability issued by WGNA to Buyer; and/or,
 - iii. alter Buyer's payment terms, which may include withdrawing or altering any credit limit previously granted, requiring prepayment, and demanding adequate assurance of due performance by Buyer through the provision of a bank guarantee.

6. Delivery.

- a. Any dates quoted for delivery of the Products are approximate only and WGNA shall not be liable for any delay in delivery of the Products however caused. Any Products may be delivered by

WGNA in advance of the quoted delivery date upon giving reasonable notice to Buyer.

- b. Delivery of the Products shall be coordinated by WGNA to the location identified in the Purchase Order and shipped FCA (Incoterms 2010) point of shipment.
- c. Insurance coverage, transportation costs and all other expenses applicable to delivery from WGNA to Buyer's identified place of delivery will be at Buyer's sole expense. Buyer shall have the option to waive insurance coverage in writing.
- d. Claims for non-delivery of Products or damage must be made in writing to WGNA within five (5) working days from (i) the date of invoice, or (ii) receipt of the delivered Products. Buyer agrees to notify WGNA promptly in the event Buyer receives the invoice prior to receipt of the Products.
- e. Buyer agrees to accept partial delivery of Products ordered unless otherwise mutually agreed by the parties in writing. Where the parties agree in writing that a shipment must be sent complete, Buyer agrees to accept allocations of Product in the event of shortage by Supplier. Where the Products are delivered in instalments, each delivery shall constitute a separate Contract. Failure by WGNA to deliver any one or more of the instalments in accordance with these Conditions or any claim by Buyer in respect of any one or more instalments shall not entitle Buyer to treat a Contract as repudiated or to cancel any other instalment.
- f. If Buyer fails to take delivery of the Products or fails to give WGNA adequate delivery instructions in its Purchase Order then, without prejudice to any other right or remedy available, WGNA may: (i) store the Products until actual delivery and charge Buyer for the reasonable costs thereof, including insurance costs; or (ii) terminate the Contract forthwith and sell the Products.
- g. Buyer shall bear any and all costs (including original and return carriage costs) associated with any unjustified refusal of delivery of Products ordered pursuant to a Contract.

7. Title & Risk.

- a. Risk of loss or damage to the Products shall pass to Buyer in accordance with the FCA point of shipment (INCOTERM 2010). Notwithstanding delivery and the passing of risk in the Products, Buyer agrees that title to the Products shall not pass to Buyer until WGNA has cleared funds received as payment for the price of the Products, and all other sums which are then currently outstanding to WGNA by Buyer.
- b. Until such time as title in the Products passes to Buyer, Buyer shall (i) hold the Products as WGNA's fiduciary agent and bailee, (ii) store all of the Products in such a way as to be clearly separate and identifiable from Buyer's inventory, (iii) keep the Products in their original packaging, properly stored, protected, insured and identified as WGNA's property.
- c. Until such time as the title in the Products passes to Buyer, WGNA shall be entitled to require Buyer to return the Products to WGNA. If Buyer should fail to immediately comply with WGNA's request, WGNA shall have the right to enter on or in any premises or vehicles of Buyer where the Products are loaded or stored for the purpose of repossessing said Products if Buyer is in breach of any of these Conditions or a Contract.
- d. Buyer's right to possess any Products, for which payment has not been received by WGNA and cleared, shall immediately cease (i) after the appointment of a receiver to its property; (ii) after it has been placed in liquidation or administration; (iii) when and if Buyer makes an arrangement for the benefit of creditors generally, suffers or permits the appointment of an administrator, administrative receiver or receiver for its business or assets, or avails itself or becomes subject to any proceeding under any applicable bankruptcy laws; (iv) if Buyer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; (v) if Buyer, not being a company, has committed an Act of Bankruptcy; or (vi) if Buyer otherwise ceases to trade or threatens to cease to trade.

8. Damage & Loss in Transit.

- a. WGNA shall not be liable in respect of error in delivery, loss, damage or destruction to any Products during transportation of the Products to Buyer. In the event of damage or destruction during transportation by carrier, Buyer shall notify the carrier in writing of any such error, loss or damage and shall in all cases enter a note of the same upon the carrier's bill of lading or other delivery receipt. Buyer shall be solely responsible for risk of loss from carrier.

9. 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 WGNA or a Supplier are intended to be illustrative and approximate only and shall not form part of a Contract or constitute a representation, warranty or condition regarding any Products unless specifically agreed by written agreement between the Buyer and WGNA. No employee or agent of WGNA has any authority to make any representation regarding the Products. Buyer acknowledges that it has not been induced to accept these Conditions by any representations or statement, oral or written, not expressly contained herein.

10. Warranty.

- a. Buyer understands that WGNA is not the Supplier of the Products. Accordingly, all Products are sold subject to the express warranty terms, if any, specified by the original Supplier of the Products.
- b. WGNA warrants, for a period of fourteen (14) days from delivery, that any Non-standard Products will be delivered subject to the configuration set forth on the Purchase Order. WGNA's sole and exclusive liability, and Buyer's sole remedy, for a breach of the warranty in this Section 10(b) shall be to repair or replace the Non-standard Products, at its sole and absolute discretion in accordance with the warranty set forth in Section 10(a). WGNA does not make any warranty that the requested configuration is appropriate for Buyer's environment.
- c. Buyer may not make or pass on any warranty terms or representations in addition to those described in Section 9 (a) (e.g. the warranty provided by the Supplier), and shall take all measures necessary to ensure that neither it nor any of its agents or employees shall make or pass on, any such warranty or representation relating to a Product provided by WGNA or Supplier.
- d. Any warranties, conditions or other terms implied by common law or statute or otherwise in connection with these Conditions (except to title, in the case of Products) are hereby expressly excluded to the fullest extent permitted by law, save for fraudulent misrepresentation. WGNA does not make any representations or warranties regarding the Product, including, among other things, the Product's fitness for a particular purpose, functionality, interoperability or compatibility with third-party products.

11. Warranty Assistance.

- a. Buyer shall immediately notify WGNA if any Products supplied to Buyer prove to be defective in quality or condition within the Supplier's warranty period (the "Claim"). Upon receipt of notification of such Claim from Buyer, WGNA shall notify Buyer whether, as a matter of Supplier policy, the Claim must be handled directly with the Supplier or indirectly through WGNA. In the event the Claim must be handled directly between Buyer and Supplier, WGNA shall provide contact information to enable Buyer to contact Supplier. In the event the Claim will be handled by WGNA, then WGNA shall provide Buyer with a return material authorization ("RMA") for Buyer to return the Products to WGNA, and Buyer shall return such Products to WGNA in accordance with these Conditions and WGNA's then current RMA policy (which shall be made available to Buyer upon request). No Products may be returned to WGNA without a valid RMA number displayed on the Products packaging. Any Products returned without a valid RMA number displayed on the Products packaging will be refused or returned. WGNA shall not be obligated to ship replacement Products to Buyer until WGNA is in receipt of the original Products being returned.

- b. Buyer agrees that WGNA's sole liability to Buyer regarding any Product defect claims is limited to the administration of such claims with the Supplier and is expressly contingent upon WGNA's ability to obtain a refund, credit or new replacement Products from the Supplier. WGNA has no obligation to accept a return of Products where the Buyer fails to comply with Supplier's policy on Product returns.
- c. WGNA shall not be liable or responsible for administering any defect or other claim which arises from normal wear and tear, misuse, negligence, accident, abuse, use not in accordance with Supplier's Product documentation, modification or alteration not authorised by Supplier, or use in conjunction with a third party product. WGNA reserves the right to determine whether any Products are defective.
- d. All transport charges incurred in returning or replacing Products are the responsibility of Buyer.

12. Warranty Returns.

- a. Any Products returned pursuant to an RMA issued by WGNA must be returned to WGNA within five (5) working days of the date of such RMA.
- b. Buyer irrevocably authorizes WGNA to carry out any necessary tasks related to the repair or replacement of Products on behalf of Buyer under these Conditions.
- c. Unless WGNA collects Products using its own carrier, Buyer agrees that WGNA shall not be liable for any loss or damage to Products returned to WGNA.

13. Software License.

- a. Any software supplied to Buyer pursuant to a Contract is supplied subject to the provisions of the Supplier's licensing terms. Buyer shall not translate, reverse compile or disassemble any software.

14. Limitation of Liability.

- a. WGNA'S LIABILITY FOR ANY DIRECT LOSS OR DAMAGE ARISING OUT THESE CONDITIONS AND ANY CONTRACT SHALL BE LIMITED TO, AND SHALL UNDER NO CIRCUMSTANCES EXCEED THE PRICE PAID BY BUYER FOR THE PRODUCTS GIVING RISE TO THE CLAIM.
- b. EXCEPT AS EXPRESSLY PROVIDED IN THESE CONDITIONS, WGNA AND ITS SUPPLIERS SHALL NOT BE LIABLE TO BUYER FOR ANY FINANCIAL, CONSEQUENTIAL OR OTHER LOSS OR DAMAGE CAUSED TO BUYER BY REASON OF ANY REPRESENTATION, WARRANTY (EITHER EXPRESS OR IMPLIED), CONDITION OR OTHER TERM, OR ANY DUTY AT COMMON LAW; OR FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS, REVENUE, RECORDS OR DATA, COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS, DAMAGE TO REPUTATION OR GOODWILL, OR ANY MATTER BEYOND ITS REASONABLE CONTROL) OR FOR ANY OTHER CLAIMS FOR COMPENSATION HOWEVER CAUSED (WHETHER CAUSED BY THE NEGLIGENCE OF WGNA, ITS EMPLOYEES, AGENTS, SUPPLIERS OR OTHERWISE) WHICH ARISE OUT OF OR IN CONNECTION WITH THESE CONDITIONS OR A CONTRACT HEREUNDER, EVEN IF WGNA OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS, LIABILITY OR DAMAGES.
- c. Nothing contained herein shall be construed as excluding or limiting WGNA's liability for death or personal injury caused by WGNA's negligence, or for breach of implied title to Products.

15. Intellectual Property Rights.

- a. Buyer acknowledges that the Products are the intellectual property of the Suppliers. Except as may be provided for in the applicable Supplier's licensing terms, nothing contained herein shall be deemed to grant any right or title to such intellectual property to Buyer. Buyer will not remove, alter or destroy any form of copyright notice, proprietary markings, serial numbers, or confidential legends placed upon or contained within any Products.

- b. Buyer understands and agrees that WGNA will not and has no duty to indemnify, defend or hold Buyer or a third party harmless from or against any claims, losses, liabilities, damages, costs and expenses, judgments or settlement amounts arising out of or in connection with the actual or alleged infringement of a third party's intellectual property rights, except and only to the extent that a Supplier has expressly agreed to offer such indemnification and defence to Buyer on a pass through basis.
- c. Nothing contained herein shall be construed as authorizing or granting to Buyer any right or license to use any logo, trademark or trade name of WGNA or any Supplier, any license of which shall be subject to separate agreement including any then current policies of WGNA or its Suppliers, as appropriate.

16. Force Majeure.

- a. Neither party shall be liable to the other party or be deemed in breach of these Conditions or any Contract by reason of delay or failure to perform if such delay or failure to perform was caused by Force Majeure.
- b. In the event of a Force Majeure event (i) the party claiming Force Majeure shall, as soon as commercially practicable, notify the other party of such Force Majeure event provided the notifying party shall incur no liability for its failure to give such notice; (ii) the notifying party's duty to perform shall be suspended for the duration of the Force Majeure event; and (iii) the time of performance for the party impacted by the Force Majeure event shall be extended by a period equal to the duration of said Force Majeure event.
- c. In the event a Force Majeure event should continue for more than ninety (90) days either party may, by written notice to the other, cancel a Contract insofar as Products remain undelivered under said Contract. Upon such cancellation, WGNA shall have no obligation to deliver and Buyer will have no obligation to accept delivery of or pay for the undelivered Products, but the Contract shall remain in full force and effect regarding all Products delivered prior to the date of cancellation.

17. Compliance with Laws; Export.

- a. Buyer acknowledges that the Products and any technical data related thereto is licensed or sold subject to and controlled by the export laws of the United States ("US"), including its Export Administration Regulations, and any other government with jurisdiction (collectively the "Export Control Laws") and Buyer hereby agrees not to export, re-export or otherwise distribute Products, or direct products thereof, in violation of any Export Control Laws. Buyer acknowledges that such Export Control Laws and/or the applicable government authority may require licensing or other authorisation prior to export.
- b. Buyer warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Buyer has obtained prior written approval from the appropriate department of the US Government or any other government with jurisdiction. Buyer further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the US Department of Commerce.
- c. In the event Buyer elects to export or re-export the Product after receipt, Buyer must notify WGNA in advance and seek consent to expand the territory of these Conditions and/or Contract prior to any attempted export of the Product.
- d. Buyer and WGNA warrant they will not to take any action or permit or authorize any action which will render the other party liable for a violation of the US Foreign Corrupt Practices Act (the "Act") or similar legislation in any territory where Buyer operates, which prohibits the offering, giving or promising to offer or give, directly or indirectly, money or anything of value to any official of a government, political party or instrumentality thereof in order to assist in obtaining or retaining business and (a) will not violate or cause the other party

to violate such Act in connection with the sale and distribution of the Products; and (b) will notify the other party in writing if any of its owners, partners, principals, directors or officers are or become officials, officers or representatives of any government or political party or candidate for political office.

- e. Buyer shall indemnify, defend and hold WGNA harmless from any violation or alleged violation by Buyer of the terms of this Section 17.

18. Non-Solicitation.

During the term of this Agreement and for a period of twelve (12) months following the date of any Contract hereunder, Buyer hereby agrees not to solicit, induce or hire any employee of WGNA involved in the marketing, promotion, sale or distribution of Products to Buyer to leave their employment or terminate or breach their contract for services with WGNA as the case may be. Notwithstanding the foregoing, solicitation of either party's current employees or independent contractors who are not involved in the performance of this Agreement by means of a general media solicitation or trade publication or advertisement shall not constitute a breach of this provision.

19. Confidential Information.

- a. "Confidential Information" means any and all information, in any medium, which is provided by one party to this Agreement ("Discloser") to the other party ("Recipient"), that is either (i) related to these Conditions, including any Contracts, pricing, Product descriptions, business practices, financial statements, financial information, customers, methods, techniques, processes, apparatuses, and employee data; (ii) marked using a legend such as "confidential", "proprietary" or similar words, or if disclosed orally, confirmed as such by the Discloser; or (iii) any information which the Recipient should have reasonably considered to be confidential under the circumstances surrounding disclosure. All Confidential Information is provided "AS IS" without any representation or warranty, either express or implied, as to accuracy or completeness.
- b. Each party acknowledges that during the course of performing its obligations hereunder it may receive Confidential Information. Each party will employ the same degree of care to protect the secrecy and confidentiality of the Confidential Information of the other party as it uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care. Each party will restrict the release, access and use of Confidential Information to those of its employees, officers, directors, consultants and agents who must have access to the Confidential Information in order perform its obligations under this Agreement, provided such employees, officers, directors, consultants and agents are subject to written agreements which contain confidentiality obligations in substance, at least as strict as those set forth herein, in order to enable each party to comply with the provisions of this Agreement.
- c. Confidential Information herein shall not include information that (i) the Recipient can demonstrate by its written records to have had in its possession prior to disclosure to the Recipient by the Discloser; (ii) was part of the public knowledge or literature, not as a result of any action or inaction of the Recipient; (iii) was subsequently disclosed to the Recipient from a source other than the Discloser who was not bound by an obligation of confidentiality to the Discloser; (iv) the Recipient can demonstrate by its written records to have been independently developed by the Recipient without the use, directly or indirectly, of any Information; or (v) the Recipient is required to disclose pursuant to a court order or as otherwise required by law; provided, however, that Recipient notifies the Discloser within sufficient time to give the Discloser a reasonable period to contest such order.

20. Additional Terms of Sale.

- a. Notwithstanding anything to the contrary herein and solely with regard to Products that have not shipped, WGNA and its Suppliers reserve the right to make any changes in the specifications of the Products, without notice to Buyer, which are required in order to

conform to any statutory or other legal requirements or which do not materially affect the performance of the relevant Products.

- b. Where Services relate to the provision of training, WGNA reserves the right to provide such Services at a venue or venues other than WGNA's premises and to provide personnel of its own selection. WGNA further reserves the right to refuse or curtail any training Services if a delegate or substitute delegate attending on behalf of Buyer fails to satisfy any training requirements for which Buyer was notified prior to the commencement of such training.
- c. Any Products which are subject to guidelines, restrictions or provisions imposed by a Supplier are sold, supplied and delivered to Buyer subject to any such guidelines, restrictions or provisions, which will be provided to Buyer upon request.

21. Choice of Law & Venue.

These Conditions and any Purchase Order placed under them, shall be governed by the laws and jurisdiction of the State of New York without regard to its conflicts of law principles. The UN Convention on Contracts for the International Sale of Goods does not apply. Each Party waives any right it may have to claim that the chosen jurisdiction under this Agreement is not a convenient forum and expressly waives any right to a jury trial regarding disputes related to this Agreement.

22. Miscellaneous.

- a. **Assignment.** Buyer may not transfer or assign these Conditions to a third party by operation of law or otherwise without the prior written consent of WGNA. WGNA may assign any Purchase Order in whole or in part as it relates to a particular WGNA subsidiary outside the US without the consent of the Buyer. WGNA shall endeavor to provide prompt notice of any assignment to the Buyer.
- b. **Waiver.** Failure by either party to enforce any provision of these Conditions or a Contract shall not be deemed a waiver of the right to thereafter enforce that or any other provision of these Conditions or a Contract.
- c. **Severability.** In the event that any provision of these Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of these Conditions will remain in full force and effect.
- d. **Audit Rights.** Buyer shall keep and maintain true and complete records pertaining to its performance of these Conditions or any Contract hereunder in sufficient detail to permit WGNA to accurately determine whether Buyer has fully complied with their terms. Buyer shall make such records available upon reasonable notice, during regular business hours, for inspection and copying by WGNA and its representatives. Buyer shall maintain such records for at least two (2) years after the end of the calendar year to which they pertain.
- e. **Reporting.** Buyer agrees that WGNA may collect, store and use Buyer data for the purpose of facilitating the sale of the Products and fulfillment of Purchase Orders issued by Buyer, and Buyer hereby consents to such collection, storage and use of Buyer data by WGNA for these purposes. Notwithstanding the foregoing, WGNA agrees not to share personal data with third parties without Buyer's prior consent. Buyer further consents to the use of such data for communicating Product and promotional information to Buyer via email or other electronic means unless Buyer notifies WGNA in writing that it does not wish to receive such promotional information.
- f. **Notices.** All notices shall be in writing and shall be sufficiently given if delivered personally or by a reputable overnight carrier with proof of delivery or mailed by first class certified mail, return receipt requested, to (_____) and to Westcon Group North America, Inc., 14840 Conference Center Drive, Chantilly, VA 20151, Attention: Legal Department or to such other address or addressee as either party may from time to time specify by notice in accordance with this Clause. Notices shall be deemed given upon receipt by the addressee.

- g. **Counterparts and Electronic Copies.** This Agreement may be executed contemporaneously in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one instrument.

- 23. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties as to the subject matter hereof and supersedes and cancels any and all of Buyer's terms and conditions, or other written or oral agreements previously existing between the parties and/or their affiliates with respect to such subject matter. Notwithstanding the foregoing, and unless Buyer has also provided a personal guarantee herein, any personal guarantee(s) previously provided by Buyer in any Agreement with WGNA shall continue in full force and effect. Buyer acknowledges that it is not entering this Agreement on the basis of any representations not expressly contained herein. Every Contract between WGNA and the Buyer or any of its subsidiaries shall be subject to the Conditions.

- 24. **Electronic Signatures.** Original signature transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., .pdf or similar format) are true and valid signatures for all purposes hereunder and shall bind the Parties to the same extent as that of an original signature. This Amendment may be executed in multiple counterparts, each of which shall be deemed to constitute an original but all of which together shall constitute only one document.

Buyer acknowledges acceptance of these Terms & Conditions of Sale:

BUYER	
By:	
Signature	
Printed Name:	
Title	
MUST BE AUTHORIZED REPRESENTATIVE	
Date	

IMPORTANT TAX INFORMATION

In order to set up and maintain your account with Westcon Group, we require that you provide us with valid Resale Certificates for all states that you are located in as well as for any other states in which you are registered. To be considered valid, all sections of the certificate must be filled out completely and the certificate must include the company's legal business name, address and phone number. The certificate must be **SIGNED AND DATED**. The certificates must be updated periodically according to state law.

ORDERS THAT ARE DROP SHIPPED MAY BE SUBJECT TO SALES TAX IF YOU HAVE NOT PROVIDED WESTCON GROUP WITH A COMPLETELY FILLED OUT RESALE TAX EXEMPTION CERTIFICATE FOR THE SHIP TO LOCATION. You cannot automatically assume that each state in which you are claiming the resale exemption will accept your home state certificate. Instead as outlined below for each individual state you must complete either that particular state's form or the UNIFORM SALES & USE TAX CERTIFICATE—MULTIJURISDICTION form. All necessary forms can be found at our website.

Below is a list of states that Westcon Group is registered in. Sales tax will be charged for all shipments to these states unless we have a valid resale certificate on file. If you ask Westcon Group to drop ship product to the states listed below, along with your home state certificate you are required to provide the following forms:

- Alabama:** **Multijurisdiction form** with AL number on the AL line. If you are not registered nor required to be registered in AL then write your home state number on the AL line of the Multi-jurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. "No Nexus in AL or "Not required to register in AL").
- Arizona:** **Form 5000 or Uniform Sales & Use Tax Certificate – Multijurisdiction form** with AZ number on the AZ line of the form. If you are not registered nor required to be registered in AZ then write your home state number on the AZ line of the Multi-jurisdictional form. If you are using the AZ Form 5000 write your home state license number on the line provided for "Other Tax License Numbers" and provide a reason for using your home state license number (i.e. "No Nexus in AZ or "Not required to register in AZ").
- California:** **Form BOE-230 General Resale Certificate** filled out with CA Seller's permit number or Multijurisdiction form with CA number on CA line. Home state certificates are not accepted in CA. You must be registered in CA to claim exemption for resale.
- Colorado:** **Form DR 0563 Sales Tax Exemption Certificate Multijurisdiction** with CO resale certificate or customer's home state certificate number with the notation "No Nexus in CO". Please provide a copy of your home state license.
- Connecticut:** **Connecticut Sales & Use Tax Resale Certificate** with CT number or Home state number if not required to be registered in CT.
- Dist. of Columbia:** **Form OTR-368** with DC number or Multijurisdiction form with DC number on the DC line. Home state certificate numbers not accepted.
- Florida:** **Florida State Issued Annual Resale Certificate** – Business that register with the Florida Department of Revenue to collect sales and use tax in Florida are issued an Annual Resale Certificate. This certificate expires every year and a new one must be sent to us in December for the year to come.
- Georgia:** **Form ST-5** with GA sales tax number or **Multijurisdiction form** with GA number on the GA line of the form. If you are not registered nor required to be registered in GA then write your home state number on the GA line of the Multijurisdiction form with home state abbreviation and reason for using your home state number (i.e. "No Nexus in GA or "Not required to register in GA").
- Illinois:** **Form CRT- 61** – Follow the directions on the form or use the Multijurisdiction form and write your IL license number on the IL line. All numbers will be verified at the IL website and a new certificate is required every 4 years.
- Indiana:** **Indiana ST-105** – Follow the directions on page 2 of the form. If you are not registered in IN write your home state number where required in Section 1 of the form.

- Kentucky:** **Form 51A105** with KY sales tax number or **Multijurisdiction form** with KY number on the KY line of the form. If you are not registered nor required to be registered in KY then your home state number on the KY line of the Multi-jurisdiction form with the home state abbreviation and reason for using your home state number (i.e. "No Nexus in KY or "Not required to register in KY").
- Louisiana:** **State issued LA form** – Businesses registered in LA must apply for a resale certificate. The certificate must be renewed every three years.
- Maine:** **Multijurisdiction form** with ME number on the ME line. If you are not registered nor required to be registered in ME then write your home state number on the ME line of the Multi-jurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. "No Nexus in ME or "Not required to register in ME").
- Maryland:** **MD Suggested Blanket Resale Certificate** or Multijurisdiction form with MD number. In order to claim the resale exemption, MD requires that you be registered in MD and no home state certificate numbers are accepted.
- Massachusetts:** **MA Form ST-4** with MA number. In order to claim the resale exemption, MA requires that you be registered in in MA. No other form or number is accepted.
- Michigan:** **Form 3372** with MI number or **Multijurisdiction form** with MI number on the MI line of the form. If you are not registered nor required to be registered in MI, then write your home state number on the MI line of the Multijurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. "No Nexus in MI or "Not required to register in MI").
- Mississippi:** **MS State issued permit or MS resale certificate** with MS account number. In order to claim the resale exemption, MS requires that you be registered in MS. No other number is accepted in MS.
- Missouri:** **MO FORM 149** with MO tax ID number or home state number with home state abbreviation in the space provided on the MO form or **Multijurisdiction form** with MO number on the MO line of the form.
- Nebraska:** **Form 13** with NE number or home state number in Section A where it asks for "Foreign State Sales Tax Number" and "State" or **Multijurisdiction form** with NE number on the NE line of the form. If you are not registered or required to be registered in NE then write your home state number on the NE line of the Multijurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. "No Nexus in NE or "Not required to register in NE").
- Nevada:** **Nevada Resale Certificate** with NV sales tax number or **Multijurisdiction form** with NV number on the NV line of the form. If you are not registered or required to be registered in NV then put your home state number on the NV line of the Multi-jurisdictional form with home state abbreviation and reason for using your home state number (i.e. "No Nexus in NV or "Not required to register in NV").
- New Jersey:** **Form ST-3** with NJ number in the top right corner of the form or **Multijurisdiction form** with NJ number on the NJ line of the form. If you are not registered nor required to be registered in NJ, then write your home state number on the NJ line of the Multijurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. "No Nexus in NJ or "Not required to register in NJ").
- New Mexico:** **State Issued New Mexico Registration Certificate your NM number on the Multijurisdictional form is not acceptable** - Customers registered in New Mexico must submit the state issued form. If you are not registered or required to be registered in NM then we can accept your home state number on the NM line of the Multi-jurisdictional form with home state abbreviation and reason for using your home state number (i.e. "No Nexus in NM or "Not required to register in NM").
- New York:** **NY ST-120** NY resellers complete Part 1; Non NY resellers complete Part 2 with your home

state number. No other form is accepted.

- North Carolina:** **Form E-595E Streamlined Sales and Use Tax Agreement** – follow the directions provided on Page 3 and 4 of the NC form or complete the **Multijurisdiction form** with the NC number on the NC line. If you are not registered nor required to be registered in NC, write your home state number on the NC line of the Multijurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. “No Nexus in NC or “Not required to register in NC”).
- Oklahoma:** **A Copy of the purchaser’s OK Sales Tax Permit** or OK number on **Multijurisdictional form**. If you are not registered or required to be registered in OK then write your home state number on the OK line of the Multi-jurisdiction form with the home state abbreviation and the reason for using your home state number (i.e. “No Nexus in OK” or “Not required to register in OK”).
- Ohio:** **OH Form STEC B** completed with your OH number or **Multijurisdiction form** with your OH number on the OH line of the form. If you are not registered nor required to be registered in OH, then write your home state number on the OH line of the Multijurisdiction form with the home state abbreviation and reason for using your home state number (i.e. “No Nexus in OH” or “Not required to register in OH”).
- Pennsylvania:** **PA EXEMPTION CERTIFICATE or Multijurisdiction form** with your PA number on the PA line of the form. If you are neither registered in, nor required to be registered in PA you must fill out the PA Exemption Certificate – PA will NOT accept the Multijurisdiction form with your home state number on the PA line of the Multijurisdiction form. Instead, if you are not registered in PA, you would need to check box 3 of the PA form and enter your home state number where it asks for “license Number”. Explain on Line 7 why you do not have a PA License number (i.e. “No Nexus in PA or “Not required to register in PA”).
- Rhode Island:** **RI RESALE CERTIFICATE or Multijurisdiction form** with RI number on the RI line of the form. If you are not registered nor required to be registered in RI write your home state number on the RI line of the Multijurisdiction form with your home state abbreviation and the reason for using your home state number (i.e. “No Nexus in RI or “Not required to register in RI”).
- South Carolina:** **Form ST-8A** completed with your SC number or **Multijurisdiction form** with SC number on the SC line of the form. If you are not registered nor required to be registered in SC then write your home state number on the SC line of the Multijurisdiction form with the home state abbreviation and reason for using your home state number (i.e. “No Nexus in SC or “Not required to register in SC”).
- South Dakota:** **Streamlined Sales Tax Agreement – certificate of exemption** – This form can be used for just SD or as a Multistate certificate. For SD only enter the state abbreviation and complete page one using your SD resale number. If you are not registered nor required to be registered in SD, then check the box indicating you are attaching the Multistate Supplemental form. Write your home state number on the SD line of the Multistate Supplemental with the home state abbreviation and reason for using your home state number (i.e.. “No Nexus in SD” or “Not Required to Register in SD”).
- Tennessee:** **Form TN-130070 Blanket Resale Certificate** filled out with TN registration number or **Multijurisdiction form** with TN number on TN line. Home state certificates are not accepted in TN. You must be registered in TN to claim exemption for resale.
- Texas:** **Form TX-01339 Sales and Use Tax Resale Certificate** filled out with the 11 digit TX sales and use taxes permit number. If you are not registered nor required to be registered in TX you may enter your “Out-of-state retailer’s registration number” on the appropriate line of the TX form. TX will also accept your TX or home state number on the TX line of the **Multijurisdiction form**.
- Utah:** **Form TC-721** filled out with your Utah resale license or **Multijurisdiction form** with UT number on UT line. If you are not registered nor required to be registered in UT write your home state number on the UT line of the Multi-jurisdictional form with the home state abbreviation and the reason for using your home state number (i.e. “No Nexus in UT or “Not required to register in UT”).
- Virginia:** **Form ST10** with your VA account number or your home State’s account number with the

name of the state below the account number if you are not registered in VA.

West Virginia:

Form SSTGB Form F0003 Streamlined Sales and Use tax Agreement (this form replaces the former West Virginia form CST-280). This is not a resale certificate. It is an exemption certificate which includes "purchase for resale" as one of the reasons listed for exemption. On line 1 of the certificate indicate whether you are attaching (page 2) the Multi-state supplemental form or using this form only for WV. You can also provide your home state resale certificate with your home state number as long as it contains all the information required by the Form F0003 but you must indicate on the front of the certificate that you are using this for WV sales tax.

Wisconsin:

Form S-211 Wisconsin Sales and Use Tax Exemption Certificate completed with your WI number or **Multijurisdiction form** with WI number on the WI line of the form. If you are not registered or required to be registered in WI, Wisconsin will accept your home state number on the WI line of the Multi-jurisdictional form with home state abbreviation and reason for using your home state number ("No Nexus" or "Not Required to Register" etc. . .)

This document is provided for informational purpose only, and does not represent tax or legal guidance. Please confer with you tax or legal experts with any questions.

Please acknowledge receipt of this information by signing below:

BUYER	
By:	
Signature	
Printed Name:	
Title	
MUST BE AUTHORIZED REPRESENTATIVE	
Date	