



## Terms and Conditions of Sale

**1. TERMS AND CONDITIONS OF SALE.** The following terms and conditions (these “Terms and Conditions”) shall govern all sales of products (“Products”) by the entity named in the Order, as hereinafter defined (“Wesco”) and shall be applicable to, and deemed incorporated into, any quotation, sales order, customer purchase order, product release, product purchase and sale agreement, or similar document (each, an “Order”), whether or not expressly incorporated into such document, between Wesco and a buyer of such products (a “Buyer”), each a “Party”, and together, “Parties”. These Terms and Conditions shall govern the Order and prevail over any Buyer terms and conditions, whether included in Buyer’s Purchase Order or not, and any other similar document; furthermore, any such Buyer’s terms and conditions shall be without legal effect and hereby expressly rejected. Fulfillment of Buyer’s Order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms and Conditions. No Order submitted by the Buyer shall be deemed to be accepted by Wesco unless and until confirmed in writing by Wesco’s authorized representative. Wesco’s engagement in this Order is expressly limited to, and expressly made conditional on, Buyer’s acceptance of these Terms and Conditions. Buyer’s acceptance of the Order shall be deemed an acceptance of these Terms and Conditions and shall supersede, nullify and void any other terms, conditions, representations, understandings, in oral or written form. Wesco objects to any different or additional terms.

**2. BASIS OF THE SALE.** Any advice or recommendation given by Wesco or its employees or agents to Buyer or its employees or agents as to the storage, application or use of the Products which is not confirmed in writing by Wesco is followed or acted upon entirely at Buyer’s own risk, and accordingly Wesco shall not be liable for any

such advice or recommendation which is not so confirmed. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by Wesco shall be subject to correction without any liability on the part of Wesco. Quotations shall be valid for a period of thirty (30) days unless otherwise stated. Wesco may withdraw the quotation by written notice at any time until the quotation lapses. The quotation is only valid for current Wesco stock which cannot be reserved until an Order is issued by Buyer and confirmed in writing by Wesco’s authorized representative.

### **3. ORDERS AND SPECIFICATIONS.**

(a) If any process is to be applied to the Products by Wesco in accordance with a specification submitted by Buyer, the Buyer shall indemnify Wesco against all loss, damages, costs and expenses awarded against or incurred by Wesco in connection with or paid or agreed to be paid by Wesco in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property rights of any other person which results from Wesco’s use of Buyer’s specification.

(b) Wesco reserves the right to re-quote if Buyer’s Order stipulates any special conditions, specifications, approvals, certificates, test reports, or other significant changes that were not requested at the time of the original or most recent quotation.

(c) The quantity, quality and description of and any specification for the Products shall be those set out in Wesco’s quotation (if accepted by Buyer) and the Buyer’s order (if accepted by Wesco).

(d) Minimum Order Quantities (“MOQs”), in addition to MOQs agreed in any Long Term Agreement (“LTA”) between the Parties, may be

notified to the Buyer and shall become a part of the Terms and Conditions.

(e) In the event Wesco is supplying chemical and/or consumable Products (“Chemical Products”), Wesco guarantees to supply shelf life product with at least thirty percent (30%) life remaining for such Chemical Products. Buyers requiring higher percentages must do so by agreement with Wesco’s relevant Sales Manager. Wesco will not guarantee shelf life over seventy percent (70%) for Chemical Products with a total life of one (1) year or less.

#### **4. SHIPMENT AND DELIVERY.**

(a) Products shall be delivered FCA Wesco’s Premises (Incoterms 2010) (“Delivery Term”), unless other shipping terms are mutually agreed between the Parties.

(b) Wesco may, at its option, deliver in installments to meet Buyer’s requirements.

(c) Premium freight charges and/or expedite fees, if any, shall be paid by Buyer. However, Wesco shall be responsible for such fees if they are not incurred at Buyer’s request or caused by Excusable Delays or Force Majeure as defined below.

(d) Where Wesco accepts responsibility for the delivery of Chemical Products, Wesco will price delivery charges primarily based on weight and/or chemical hazard category. Specific rates are applicable to items supplied in drums or consolidated on pallets. Wesco reserves the right to charge for such drums and pallet supplies retrospectively.

(e) Title to and all risk of loss or damage to the Products shall transfer to Buyer in accordance with the applicable Delivery Term detailed in Section **2(a)** above.

(f) A variance in the quantity of Products which is based on a weight count is deemed to be conforming and accepted if the count does not exceed +/- five percent (5%) of the ordered quantity. The sole remedy for any variance in the Product quantity shall be a credit applied to the Buyer’s account for the amount of such variance.

(g) Wesco may deliver up to fourteen (14) days in advance of the scheduled delivery date (“Delivery Window”). Buyer agrees that Buyer will not reject any deliveries made within the Delivery Window for the reason that the delivery was made prior to the scheduled delivery date.

(h) In no event shall Wesco be responsible for any excess procurement costs.

**5. ACCEPTANCE.** Products with shelf life limitations must be accepted by Buyer forty-eight (48) hours after the date of delivery to Buyer pursuant to Section **4(a)** above, unless a written notice of non-conformance or defect is received by Wesco and such written evidence or other documentation as required by Wesco prior to the expiration of such forty-eight (48) hour period. All other Products ordered from Wesco shall be promptly inspected by Buyer and shall be deemed accepted by Buyer thirty (30) days after the date of delivery to Buyer pursuant to Section **4(a)** above, unless a written notice of non-conformance or defect is received by Wesco and such written evidence or other documentation as required by Wesco prior to the expiration of such thirty (30) day period. The Parties agree that damage to a container shall not be cause to reject a Product, provided that such damage has no significant impact on the Product.

**6. INVOICING AND PAYMENT.** In the event the Parties have not entered into an LTA, Wesco reserves the right to require payment in advance at any time, and to limit, change or revoke credit facilities at any time. Unless otherwise specified by Wesco, and if credit has been extended, Buyer shall pay all invoiced amounts due to Wesco within net thirty (30) days after the date of invoice. All prices shall be expressed in, and payments hereunder shall be made with, United States dollars. In the event that a payment by Buyer to Wesco is delinquent, Wesco reserves the right to impose late charges, change delivery terms, reduce credit limits, suspend future shipments or immediately terminate the Order upon written notice to Buyer. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Wesco, whether relating to Wesco’s breach, bankruptcy or otherwise. In the event where a dispute exists between a

conforming certification, meeting Buyer's required standards from an approved supplier, and secondary compliance testing results performed by Buyer or their agents, Buyer shall be required to accept the Product on a conditional basis until the disputed conditions are resolved between Buyer and Wesco's supplier. Wesco shall act on behalf of Buyer to facilitate the resolution but shall not be liable for the disputed value of the Product. Buyer's obligation to pay Wesco in full shall not be waived with respect to the disputed value of the Product.

**7. TAXES.** Taxes, which are applicable to the sale of Products (sales, use or excise tax, value added tax, duties and similar Product-based charges), imposed by any governmental authority are the responsibility of Buyer. If an exemption is available, Buyer shall provide the required exemption document(s) to Wesco.

## **8. PRODUCT WARRANTY.**

(a) Warranty applicable for hardware Products ("Hardware Products") and tooling Products ("Tooling").

(i) Wesco warrants that it is capable of supplying the Hardware Products and Tooling in accordance with the provisions of the Order. Wesco further warrants, for a period of two (2) years after the date of delivery of Hardware Products to Buyer and one and one half (1.5) years after the date of delivery of Tooling to Buyer pursuant to Section 4(a) above (the "Warranty Period"), that such Products conform to drawings and specifications agreed to at the time of the applicable Order and are free from defects in material and workmanship.

(ii) Wesco shall not be responsible for any non-conformance to the foregoing warranty that is caused by: (i) handling, abuse, neglect or use of the Product following delivery pursuant to Section 2(a) above, (ii) any modification, repair or maintenance of the Product not authorized by Wesco in writing, (iii) improper packaging or installation of the Product by Buyer or its customers; (iv) failure to comply with Wesco's standard return procedures, (v) normal wear and tear of the

Product, or (vi) Excusable Delays or Force Majeure.

(iii) During the Warranty Period for Hardware Products and Tooling as specified in Section 8(a)(i), provided that Buyer complies with Wesco's standard return procedures, Wesco shall, at its own cost, repair or replace in its sole discretion, any Product that does not comply with the warranty set forth in this Section 8(a). If Wesco determines in its reasonable discretion that the returned Product does not comply with such warranty, Wesco shall pay the cost of all shipping and insurance of the non-complying Product. All replacement Hardware Products shall be warranted for the remainder of the Warranty Period. Any Tooling that has been replaced or repaired shall have no further warranty. If Wesco promptly repairs or replaces a non-complying Product, then Buyer shall have no further claim against Wesco based on breach of this warranty with respect to that particular non-complying Product.

(iv) FOR THE AVOIDANCE OF DOUBT, BUYER'S SOLE AND EXCLUSIVE REMEDY PURSUANT TO THIS SECTION 8(a) SHALL BE TO EITHER (I) RETURN FOR CREDIT OR REFUND, OR (II) REQUIRE PROMPT CORRECTION OR REPLACEMENT OF ANY NON-COMPLYING PRODUCTS. EXCEPT AS SET FORTH IN THIS SECTION 8(a), WESCO MAKES NO OTHER WARRANTIES, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. BUYER ACKNOWLEDGES AND AGREES THAT WESCO IS SELLING THE PRODUCTS ON AN AS IS WHERE IS BASIS, WITH NO WARRANTIES WHATSOEVER INCLUDING ANY WARRANTIES SET FORTH IN ANY OTHER DOCUMENT OTHER THAN THE

EXPLICIT WARRANTIES SET FORTH IN THIS SECTION **8(a)**.

(b) Warranty applicable for Chemical Products and electronic Products. Wesco will, if so required by the Buyer, use commercially reasonable efforts to require its vendors of Chemical Products and electronic Products to warrant that the Chemical Products and electronic Products purchased will conform with those certain specifications requested by Buyer. To the extent reasonably possible, Wesco will pass such warranties on to Buyer. Wesco does not provide any express or implied Wesco warranty with respect to Chemical Products and electronic Products. Wesco will perform in accordance with reasonable and customary industry practices prevailing at the time and at the place where performed. If, during performance, it is determined that there is a substantial and material error in Wesco's performance as a result of reasonable and customary industry practices not having been met, Wesco shall take such corrective action as may reasonably be necessary within the applicable Order, to substantially remedy the error. Buyer's failure to allow Wesco to perform such remedial tasks as Wesco may deem appropriate shall relieve Wesco of its responsibility with respect to such error. WESCO MAKES NO WARRANTIES FOR CHEMICAL PRODUCTS OR ELECTRONIC PRODUCTS, WHETHER ORAL, WRITTEN, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

**9. CANCELLATION, CHANGE OR TERMINATION.**

Any cancellation, change or termination of an Order, in whole or in part, is subject to Wesco's prior written consent, and may be subject to restocking and/or cancellation charges and/or equitable adjustment.

**10. EXCUSABLE DELAYS AND FORCE MAJEURE.**

Each Party shall not be liable or responsible to the other Party, and shall not be deemed to have defaulted or breached this Agreement, for any failure or delay in performing any obligations of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of the Party, including without

limitation: strikes, boycotts, lockouts, labor disputes, embargoes, acts of God or nature, inability or delay in obtaining labor, products or reasonable substitutes thereof, governmental restrictions, governmental regulations, governmental controls including inability to obtain an export license, judicial orders, enemy or hostile governmental action, war or threat of war, civil commotion, terrorism, telecommunication breakdown or power outage, explosion, fire, flood, earthquake, hurricane, tornado or other casualty (each, an "Excusable Delay" or "Force Majeure"), then that Party's performance shall be excused. Any delay by a supplier of Wesco shall not be deemed a delay or failure to perform by Wesco. Buyer acknowledges that the aerospace industry, and, in particular, manufacturers or certain products critical to Buyer's programs, are subject to significant capacity limitations which are beyond the reasonable control of Wesco, which may impact the supply of Products. In the event that a Buyer Force Majeure continues for a continuous period in excess of thirty (30) days, Wesco shall be entitled to give notice in writing to Buyer to terminate the Order.

**11. LIMITATION OF LIABILITY; INDEMNIFICATION.**

IN NO EVENT WILL WESCO'S AGGREGATE, CUMULATIVE LIABILITY TO BUYER ARISING OUT OF OR RELATED TO THE ORDER EXCEED THE AGGREGATE PURCHASE PRICE OF PRODUCTS PURCHASED PURSUANT TO THE ORDER. WESCO SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, PUNITIVE, CONSEQUENTIAL DAMAGES, LOST PROFITS, LOSS OF REVENUES, USE, POWER OR BUSINESS GOODWILL, INCREASED EXPENSES OR BUSINESS INTERRUPTION ARISING OUT OF OR RELATED TO THE ORDER, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN, AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION APPLIES REGARDLESS OF WHETHER LIABILITY ARISES FROM BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER FORM OF ACTION, INCLUDING AS A RESULT OF THE TERMINATION OF THE ORDER. As may be limited by certain provisions of the Order, Buyer hereby indemnifies and agrees to

defend and hold harmless Wesco and its affiliates, and its and their respective officers, directors, employees, customers and agents from and against any and all losses, damages, deficiencies, awards, assessments, judgments, fines, penalties, costs, injuries, settlements, liabilities and expenses arising out of the Order which result from Buyer's negligence or willful misconduct. Each Party shall carry commercial liability, property and workers' compensation insurance, and maintain such insurance in force to cover potential liabilities in types and limits as would be commercially reasonable in similar circumstances.

**12. PATENT INFRINGEMENT.** Upon written request of Buyer, Wesco shall use commercially reasonable efforts to assign and transfer its Product patent indemnification rights flowed down from its supplier and/or manufacturer to the Buyer. Wesco does not and will not indemnify Buyer against third party claims that Product infringes any patent, trademark, trade secret, or copyright. THE REMEDIES OF BUYER PROVIDED IN THIS SECTION 12 ARE THE EXCLUSIVE REMEDIES AND IN LIEU OF, AND BUYER HEREBY WAIVES, ALL OTHER WARRANTIES (EXPRESS OR IMPLIED), INDEMNITIES, OBLIGATIONS AND LIABILITIES OF WESCO, AND RIGHTS AND REMEDIES OF BUYER AGAINST WESCO RELATING TO ANY INFRINGEMENT.

**13. ASSIGNMENT.** Buyer shall not assign or transfer the Order or any of its rights or delegate any of its obligations under the Order, whether by contract, operation of law, or otherwise, without the express prior written consent of Wesco. Any purported assignment, delegation, or transfer in violation of this Section 13 will be null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement. Subject to the foregoing, the Order in its entirety will bind each Party and its permitted successors and assigns.

**14. DISPUTE RESOLUTION.** The Parties shall attempt to resolve any dispute arising out of or relating to the Order promptly and in good faith. A Party shall provide written notice of the dispute to the other Party. Any dispute shall be referred to ascending levels of higher management. If the dispute is not resolved by the Parties within thirty

(30) days from the date of the written notice, either Party may commence litigation in accordance with the relevant provisions set out in the Order. In no event shall Buyer commence any litigation arising out of or related to the Order more than one (1) year after the cause of action has accrued.

**15. APPLICABLE LAW; JURISDICTION.** In the event Wesco is located in the European Union, the Order shall be governed by and construed according to the laws of England and Wales without reference to principles of conflicts of laws, and the Parties hereby submit to the exclusive jurisdiction of the courts of England. In the event Wesco is not located in the European Union, the Order shall be governed by and construed according to the laws of the State of California without reference to principles of conflicts of laws, and the Parties hereby submit to the exclusive jurisdiction in the state and federal courts in Los Angeles County, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Order.

**16. JURY TRIAL.** Each Party hereby irrevocably waives trial by jury in any suit, action or proceeding with respect to, or directly or indirectly arising out of, under or in connection with the Order or the transactions contemplated therein or related thereto (whether founded in contract, tort or any other theory). Each Party (i) certifies that no other Party or any other person has represented, expressly or otherwise, that such other Party or person would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other Party hereto have been induced to enter into the Order by the mutual waivers and certifications in this paragraph.

**17. ENTIRE AGREEMENT.** Except as otherwise expressly agreed in a written and executed agreement, the Order constitutes the entire agreement between Buyer and Wesco with respect to the subject matter hereof, and supersedes all prior or contemporaneous representations, understandings, agreements, or communications between Buyer and Wesco, whether written or oral, relating to the subject matter hereof. No amendment or modification of the Order shall be

binding upon Wesco unless set forth in a written instrument signed by Wesco's duly authorized representative.

**18. CUMULATIVE REMEDIES.** The rights and remedies afforded to Wesco pursuant to any provision of the Order are in addition to any other rights or remedies afforded by any other provision of the Order, by law, or otherwise.

**19. CONFIDENTIALITY.** All information disclosed by a Party to the other Party that is labeled as "confidential" or "proprietary" or, in the case of any oral or visual disclosures, confirmed as "confidential" or "proprietary" in writing within one month after the disclosure ("Confidential Information"), shall be maintained in confidence by the receiving Party using the same care and diligence that the receiving Party uses to protect its own Confidential Information, but in no case less than reasonable care. The receiving Party shall not disclose such information to any third person (other than any directors, officers, owners, shareholders, employees, agents, consultants, advisors, partners, affiliates or other representatives with a need to know such information in connection with the Order; provided that the receiving Party shall ensure that any such person is made aware of the provisions of this Section 19 and complies with the provisions hereof or otherwise agrees to confidentiality undertakings at least as burdensome as the provisions hereof) without the disclosing Party's prior written consent, and shall not use such information for any purpose other than the performance of its obligations or enforcing its rights under the Order. The receiving Party shall promptly return or destroy any such information upon disclosing Party's request. The obligations contained in this Section 19 do not apply with respect to information (a) that is either in the public domain at the time of disclosure or becomes part of the public domain after disclosure other than through a breach of this Section 19; (b) that is lawfully obtained from a third party who did not supply such information in breach of any duty of confidentiality owed to the disclosing Party; (c) which is developed independently by the receiving Party without reference to any information covered

by this Section 19, as supported by the receiving Party's written documentation; or (d) which is required to be disclosed by law or at the direction of any court or governmental authority. In the event that a receiving Party is required by law or the direction of any court or governmental authority to disclose any such information of the other Party, if permitted by applicable law, such Party shall promptly notify the other Party and use reasonable efforts to assist the other Party (at the other Party's expense) in preserving the confidentiality of such information consistent with applicable law.

## **20. GENERAL.**

(a) Any reference in these Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

(b) The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

(c) Any notice or communication permitted or required hereunder will be in writing. If any provision of the Order (including these Terms and Conditions) is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way.

(d) A Party's failure to insist upon strict performance of any provision of the Order, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect a Party's right to enforce any other provision or right herein.

(e) When used in the Order, the term "including" means "including without limitation," unless expressly stated to the contrary. The language used in the document is deemed to be the language chosen by the Parties to express their mutual intent and no rule of strict construction shall be applied against a Party.

(f) In the event of a conflict between these Terms and Conditions and any other document, the order of

precedence shall be as follows: (i) these Terms and Conditions, (ii) any written purchase and sale agreement between the Parties, (iii) drawings and specifications, and (iv) other mutually agreed to reference documents.

**21. COMPLIANCE WITH LAW.** Each Party shall comply with all applicable international, supranational (including European Union), national, Federal, state, and local laws, statutes, rules, regulations, and ordinances. Buyer shall provide Wesco any documents and support reasonably required by Wesco to enable Wesco to fulfill its obligations under this Section **21**. Buyer shall comply with the following regulatory requirements:

The Parties understand that any Products, technical data, and software (if any) (collectively, "Items") and services delivered or provided by Wesco to Buyer under the Order may be subject to the provisions of (a) the Export Administration Act of 1979 (50 U.S.C. §§ 2401-2420) and the Export Administration Regulations (15 C.F.R. Parts 730-774) promulgated thereunder; (b) the Arms Export Control Act of 1976 (22 U.S.C. §§ 2751-2779) and the International Traffic in Arms Regulation (22 C.F.R. Parts 120-130) promulgated thereunder; (c) EU Council Regulation (EC) 428/2009 (as amended); (d) the UK Export Control Act 2002 the UK Export Control Order 2008 and any other orders issued pursuant to the Export Control Act 2002 and (e) other international, supranational (including European Union), or national laws and regulations, including embargoes, sanctions and other restrictive measures, which regulate the export, re-export, transfer or provision of goods and services to third countries (hereinafter, "Export Control Laws and Regulations"). The Parties acknowledge that these laws and regulations impose restrictions on the export, re-export, transfer and provision to third countries of certain Items and services, including the transfer of certain Items to foreign nationals in the United States or other applicable jurisdiction, and that licenses from the U.S. Department of State, the U.S. Department of Commerce, the Export Control Organization of the UK Department of Business, Innovation and Skills or other competent governmental authorities may be required before such Items or services can be

exported, re-exported, transferred, or provided, and that such licenses may impose further restrictions on use of such Items or services. Buyer agrees to comply with the Export Control Laws and Regulations concerning the export, re-export, transfer, or provision of Items and services (if applicable) delivered by Wesco under the Order.

To the extent any Items or services procured by Buyer under the Order are subject to the Export Control Laws and Regulations, Wesco shall inform Buyer as to whether: (a) the Items or services are subject to any Export Control Laws and Regulations, including but not limited to the U.S. State Department's International Traffic in Arms Regulations, (22 C.F.R. Parts 120-130), and EU Council Regulation (EC) 428/2009 (as amended) and (b) if so subject, inform Buyer as to the applicable U.S. Munitions List (USML) category; or, if they are not so subject, inform Buyer as to whether items are subject to the U.S. Commerce Department's Export Administration Regulations, 15 C.F.R. Parts 730-774, and if so subject, inform Buyer as to the applicable Export Control Classification Number (ECCN) or applicable classification number in respect of the EU Dual-Use List, or other applicable export control list for each Item or service.