

WESCO DISTRIBUTION, INC. PURCHASE ORDER TERMS AND CONDITIONS 030117

- 1. Exclusive Terms and Conditions of Sale.** These terms and conditions are incorporated into and made a part of the purchase order, agreement or proposal ("Agreement") by WESCO Distribution, Inc. and any of its subsidiaries, affiliates and unincorporated divisions ("WESCO") to buy from the named manufacturer, distributor, supplier or other seller (the "Seller") the goods ("Goods") and services (the "Services") referenced in the Agreement. The Agreement expressly limits Seller's acceptance to the terms of the Agreement, together with such plans, specifications, or other documents as are incorporated by reference in the Agreement. Contrary provisions in Seller's quotations, acknowledgements, or any other document that Seller sends in response to the Agreement, or has sent to WESCO to solicit the Agreement by whatever, are hereby rejected and are not binding on WESCO, unless WESCO accepts them in writing. If Seller submits additional and/or different terms and conditions to WESCO, or submits a counteroffer to the Agreement, WESCO's subsequent performance will not be construed as either acceptance of Seller's additional and/or different terms and conditions or Seller's counteroffer.
- 2. Acceptance of the Agreement.** Seller will be deemed to have accepted the Agreement if Seller (a) transmits to WESCO Seller's written or oral acknowledgement; (b) begins shipment of the Goods; (c) begins manufacture of the Goods, if they are to be specially manufactured for WESCO; or (d) begins performing Services.
- 3. Shipment.** Shipment of all Goods will be F.O.B. point of the destination referenced in the Agreement (DDP named place of destination per INCOTERMS 2010 for all international shipments). Seller will bear the risk of loss until delivery of the Goods to the point of destination. Title to the Goods will transfer to WESCO upon delivery. Any shipping dates given in advance of actual shipment are warranted by Seller to be firm, and time is of the essence with respect to Seller's performance. If delivery is not completed within the time stated on the reverse side hereof, or if no time is stated, within a reasonable time, Seller will bear all costs, expenses and damages arising out of any delay in performance of the Services or shipment of the Goods, including but not limited to, all costs incurred by WESCO in procuring substitute Goods or Services that are in excess of the cost for which WESCO would have purchased the relevant Goods or Services from Seller.

Except as otherwise agreed to in writing, (a) where transportation charges for Goods are separately charged to WESCO, those charges will in no event exceed the lowest legal freight charges provided by the carrier for the routing specified in effect on the date of shipment, and (b) where transportation charges are allowed to WESCO, that allowance will not be less than the actual freight charges paid by WESCO or, where WESCO performs the transportation, that allowance will be in an amount equal to the freight charges which would have been assessed for a like shipment via common carrier. The Goods must be properly packaged for shipment. Each package must be numbered and labeled with WESCO's order number, stock number, contents and weight and will contain an itemized packing slip. No charges must be allowed for packing, crating, freight express or cartage unless specified in the Agreement.

4. Price, Payment and Taxes. The price for Goods or Services is as set forth in the Agreement. All prices must be firm. Seller must not fill the Agreement at any other price. Except as otherwise set forth in a separate commercial agreement agreed to by WESCO, WESCO shall make payment for Products or Services 2%/90, Net 91 days from the latter of: (i) receipt of Products conforming to the purchase order or the satisfactory performance of Services, or both; or (ii) receipt of a correct Seller invoice. Seller shall be responsible for the payment of all taxes associated with the sale of Goods and Services to WESCO, except for taxes measured by WESCO's income. Seller shall provide WESCO, in the form and within time limits specified by written notice, the information necessary to enable WESCO to comply with any lawful request for such information from any governmental authority having responsibility for assessment or collection of taxes.

5. Warranties and Representations. In addition to any warranty or representation that Seller expressly has extended to WESCO regarding the Goods or Services, Seller warrants and represents that: (i) the Goods will be free from defects in workmanship, design and/or materials; (ii) the Goods will be newly manufactured (meaning that they must not have been previously used for any purpose) and that they will comply with any and all samples, drawings, blueprints, designs, and specifications; (iii) the Goods will not infringe any third party intellectual property rights; (iv) Seller has and will have good and marketable title to all Goods delivered to WESCO in accordance with the Agreements, free and clear of any and all liens and encumbrances, and that Seller has full and complete legal rights to manufacture and sell the Goods to WESCO without the consent of any third party; and (v) all Services will be performed in a timely, professional and workmanlike manner in accordance with the highest industry standards. The term of the warranties set forth in this Section will be the longer of (a) the maximum term allowed by applicable law; or (b) thirty-six (36) months from shipment of the Goods or twenty-four (24) months from the date of acceptance of the Good to which the warranties apply, unless otherwise specified by WESCO. During the applicable warranty term and upon WESCO's request, Seller, at its sole expense, must repair, replace or reimburse WESCO for all or any part of any Good that fails to comply with any of the warranties and representations set forth in this Section. Furthermore, WESCO must have the right to return to Seller at Seller's sole expense Goods shipped to WESCO that are in excess of or less than the quantity designated by the Agreement.

6. Indemnification. Seller will indemnify, defend and hold harmless WESCO and its officers, directors, employees, agents and representatives from and against any and all losses, damages, liabilities and assessments, including, but not limited to, property damage, personal or bodily injury, or death ("Losses"), that may arise pursuant to or in connection with the Agreement or the Goods or the Services, regardless of whether such Losses are suffered by WESCO or arise pursuant to or in connection with a third-party suit, claim, counterclaim, demand, judgment or other action (each a "Claim"). Seller's indemnification obligation applies whether Seller alone was negligent; whether WESCO alone was negligent; whether any third party alone was negligent; whether Seller, WESCO or a third-party were negligent in any combination, whether jointly or concurrently; or whether neither WESCO, nor Seller, nor any third party was negligent. For the avoidance of doubt, this indemnification obligation requires Seller to pay any judgments against WESCO resulting from any Claim, any court costs of WESCO in connection with any Claim, and any reasonable attorneys' fees and disbursements incurred by WESCO in WESCO's defense of any Claim. WESCO will have the sole and exclusive right to conduct the defense of any Claim at Seller's sole expense. Seller's indemnification obligation does not depend on the truth of any allegations made against WESCO, Seller or any third party.

7. Inspection and Testing. WESCO reserves the right to review Seller's quality assurance and quality control manuals, procedures, production operations, any associated documentation, and to inspect and witness Seller's testing. To this end, WESCO must be granted access to all parts of Seller's plant(s) or Seller's subcontractor's plant(s) engaged in the manufacturing or processing of any part of the Goods. The inspection and witnessing of testing by WESCO's representatives, the lack thereof, or lack of comment or other response from WESCO's representative will in no way release Seller from any of Seller's obligations under the Agreement. Seller must ensure that this term becomes a part of Seller's purchase orders to subcontractor's manufacturing or processing any part of the Goods. Seller and Seller's subcontractors must notify WESCO at least five calendar days in advance of the date when any inspection or test can be made. If, for any reason, the date is set back, Seller must notify WESCO immediately. Unless otherwise stated, Seller must furnish the status of any engineering, material procurement, production and shipping information every 14 days. Seller and its subcontractors must furnish at their own expense all tools, instruments, apparatus, equipment, utilities, facilities, services and materials necessary for carrying out safe and convenient inspections and tests. Notwithstanding any of the foregoing, the making or failure to make any inspection of the Goods must in no way impair WESCO's right to reject defective Goods or Goods that breach any applicable warranty or representation, nor be deemed to constitute acceptance by WESCO of the Goods, nor in any way affect Seller's obligations under the Agreement. Additionally, Seller must at Seller's expense furnish to WESCO a reasonable number of samples of any Goods.

8. Changes. WESCO will have the right to make changes in any drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, and other items for Goods or Services. If Seller believes that any such change affects the price or delivery date for such Goods, Seller must so notify WESCO in writing, with adequate supporting documentation, within five (5) calendar days after receipt of WESCO's change. Seller must suspend performance of the change unless thereafter released, in writing, by WESCO to perform the change, and WESCO and Seller will agree, in writing, upon an equitable adjustment in the price and/or delivery date to reflect the effect of such change. Seller's request for any adjustments will be deemed waived unless submitted in writing within such five (5) calendar days after Seller receives direction from WESCO to make such changes. Seller must not suspend performance of the unaffected portion of the Agreement while WESCO and Seller are in the process of making such changes and any related adjustments or at any time thereafter unless so instructed in writing by WESCO. If released in writing by WESCO, Seller must comply with and perform such change in accordance with the terms of the Agreement. The failure of Seller and WESCO to agree on an equitable adjustment for the change will in no way affect Seller's responsibility to comply with and perform such change in accordance with the terms of the Agreement.

9. Suspension. WESCO may, at any time, by written notice to Seller, suspend further performance of all or any portion of the Agreement by Seller. Such suspensions will neither exceed one hundred eighty (180) consecutive calendar days each nor more than two hundred seventy (270) total calendar days in the aggregate. Upon receiving any such notice of suspension, Seller must promptly suspend further performance of the Agreement to the extent specified and, during the period of such suspension, must properly care for and protect all work in progress and materials, supplies and equipment Seller has on hand for performance of the Agreement. Seller must use its best efforts to utilize Seller's material, labor and equipment in such a manner as to mitigate costs associated with suspension. WESCO, may, at any time, withdraw the suspension as to all or part of the suspended performance by written notice specifying the effective date and scope of withdrawal, and Seller must, on the specified date of withdrawal, resume diligent performance of the work for which the suspension is withdrawn. If Seller believes that any such suspension or withdrawal of suspension justifies modification of the purchase order price or time for performance, Seller must comply with Section 8 hereof entitled "Changes". In no event will Seller be entitled to any loss of prospective profits, contributions to overhead, or any direct, incidental, consequential, contingent, indirect, exemplary, punitive, circumstantial or other damages because of such suspension or withdrawals of suspension.

10. Termination/Default - Cancellation. WESCO will have the right to terminate this Agreement. WESCO will pay Seller all reasonable direct costs actually incurred by Seller in connection with the Agreement as of the termination date, provided that Seller must use its best efforts to mitigate costs associated with termination. WESCO reserves the right, by written notice of default, to cancel the Agreement without liability, in the event of any one of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a Receiver or Trustee for Seller, or the execution by Seller of an assignment for the benefit of creditors. If Seller fails to perform as specified herein, or if Seller breaches any of the terms, WESCO reserves the right without any liability, upon giving Seller written notice, to (i) cancel this

Agreement in whole or in part, or (ii) obtain the Goods or Services from another source with any excess cost resulting therefrom, chargeable to Seller, if such deficiencies are not remedied. The remedies provided shall be cumulative in addition to any other remedies provided at law or in equity.

11. Subcontractors. Except in respect of goods and services bought or procured in the normal course of Seller's business, Seller will not subcontract any part of the manufacture and supply of Goods or performance of Services without WESCO's prior written consent. Subcontracting will not relieve Seller of any of its duties, obligations, responsibilities and/or liabilities under the Agreement. Seller will ensure that all material terms of the Agreement pertaining to the subcontracting of the manufacture and supply of any Goods or performance of Services are incorporated into any subcontract.

12. Drawings and Other Items. Unless otherwise expressly provided in the Agreement, any and all drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, and other items used in connection with the manufacture of the Goods under the Agreement that are expressly prepared or constructed by Seller pursuant to the terms of the Agreement will be the property of WESCO and, upon completion of deliveries of the Goods or Services under the Agreement or upon termination of the Agreement, promptly must be delivered to WESCO. No deviation from or any modification to any drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, or other items will be made by Seller without the prior written consent of WESCO.

13. Insurance. Seller must, at its expense, procure and maintain Workmen's Compensation Insurance to the extent required by applicable law and Contractor's Bodily Injury Liability and Property Damage Liability Insurance (including Contractual Liability Insurance covering its indemnification obligation in the Agreement) in the amounts that are approved by WESCO. Upon request, Seller must furnish to WESCO written certificates establishing that the above insurance has been procured and is being maintained. Insurance required to be provided by this Section shall be primary and without right of contribution or subrogation from insurance carried by WESCO, and must name WESCO as an additional insured (except for worker's compensation and professional liability). WESCO must be given at least fifteen (15) days prior written notice of cancellation of any such coverage.

14. No Liens. Seller's obligations under the Agreement will include keeping WESCO's premises free from all claims, liens and encumbrances. Seller and all of Seller's subcontractors and suppliers of any tier waive all rights of lien against the property and premises of WESCO for labor performed or for Goods. Seller agrees to indemnify, defend and hold WESCO harmless from any and all such claims.

15. Servicing of Goods. During the term Goods are supplied hereunder and for a period of six (6) years after WESCO has completed the last purchase of Goods, Seller will supply all of WESCO's service and replacement requirements for the Goods at the most recent valid prices.

16. Confidentiality. The Agreement, any documents incorporated herein by reference, any drawings, specifications, designs, blueprints, dies, patterns, tools, printing plates, and other items that WESCO may furnish to Seller in connection with the Goods or Services, and all information designated by WESCO as confidential or proprietary will be deemed "Confidential Information." Seller agrees to maintain and keep all Confidential Information in confidence and not to disclose it to any third party or use such information for any purpose, except as authorized by WESCO for the performance of the Agreement. Seller must not use Confidential Information for any purpose not expressly permitted. Seller must take all precautions to prevent the disclosure Confidential Information that it takes with respect to its own Confidential Information, but in no event less than reasonable care. Seller must require these same undertakings regarding confidentiality to be made by any subcontractor to whom Confidential Information is disclosed. Seller must return or destroy any and all Confidential Information upon demand of WESCO, delivery of the Goods or performance of the Services.

17. Independent Contractor. The relationship of WESCO and Seller pursuant to the terms and conditions of the Agreement is and will at all times be that of independent contractors, and no agency, partnership, joint venture or other similar relationship is intended or created hereby. If any of the Goods require, in connection with their installation or maintenance, the services of Seller's employees, representatives or agents, Seller agrees to furnish the same at no additional cost to WESCO. The employees, representatives or agents performing those services will not be deemed to be the agents or employees of WESCO, and Seller assumes full responsibility for their acts and omissions and exclusive liability for any payroll taxes, contributions imposed by any federal or state law, or any employee benefit plans.

18. Interpretation. The terms, conditions, and limitations set forth in the Agreement can be modified, altered, or added to only by a contemporaneous or subsequent written instrument signed by an authorized representative of WESCO. Regardless of how many times WESCO purchases or has purchased goods from Seller by whatever means, each time Seller accepts the Agreement, WESCO and Seller enter into a separate agreement that will be interpreted without reference to any other agreement between WESCO and Seller, or what Seller may claim to be a course of dealing or course of performance that has arisen between WESCO and Seller. No inconsistent usage of trade or industry custom, if any, prior to, contemporaneous with or subsequent to the making of the Agreement will waive, vary, serve to explain or serve to interpret any of the terms, conditions and limitations of the Agreement. The Agreement, including any documents referenced in the Agreement or incorporated by reference, is the sole and exclusive agreement with respect to the matters discussed herein and supercedes all prior and contemporaneous agreements and understandings, negotiations, inducements, representations or conditions, whether oral or written, whether express or implied, with respect to such matters. Failure by WESCO to enforce any of the terms, conditions and limitations of the Agreement will not constitute a waiver of those terms, conditions and limitations or a waiver of any other terms, conditions or limitations of the Agreement, and the failure of WESCO to exercise any right (whether provided by any agreements governed by the terms and conditions of the Agreement, law, equity, or otherwise) arising from WESCO's default under the Agreement will not constitute a waiver of that right or any other rights. All communications in connection with the Agreement will be in English.

19. Setoff. WESCO shall be entitled to set off any amounts Seller owes WESCO against any payment due to Seller, regardless of whether the need for setoff arises under this Agreement, any other agreement, Seller's indemnity obligations, third party claims, or any other claim(s) WESCO may have against Seller.

20. Security. If WESCO makes any advance or progress payment to Seller under this Agreement, upon WESCO's request, Seller will execute a security agreement and financing statement, in a form satisfactory to WESCO, granting a security interest, effective in all states of fabrication or manufacture in the proceeds, raw materials and goods which are sought to be, purchased, manufactured or otherwise obtained pursuant to this Agreement.

21. Additional Terms. Seller is on notice that WESCO may utilize the goods specified in this order in the transaction of business with the U.S. Government. Seller is therefore deemed to have assumed the obligation of compliance with Executive Order 11246. This order is subject to the requirements of the Equal Employment Opportunity clause as set forth in 41 CFR 60-1.4(a), 41 CFR 60-250.5, and 41 CFR 60-741.5, said clause being herewith incorporated into this order by reference. **The Seller and WESCO shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.** Additional government clauses are incorporated into this Agreement and can be found at <http://www.wesco.com/governance/FAR-DFARS.pdf>.

22. Conflict Minerals. Supplier agrees to provide WESCO information on the content of products purchased by WESCO pursuant to this Agreement that utilize or contain the conflict minerals of tantalum, tin, tungsten or gold as defined by Section 1502 of the Dodd-Frank Act, including information as to whether the conflict minerals originated from the Democratic Republic of Congo, Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda or Zambia. Supplier agrees to cooperate and assist WESCO in a timely manner with such requests, as well as keep WESCO up to date on any changing information. Further, Supplier shall provide WESCO reasonable notice before providing any products to WESCO that include conflict minerals originating from the covered countries stated herein. Supplier shall indemnify and hold WESCO harmless for all fines, penalties, expenses or other losses sustained by WESCO as a result of Supplier's breach of this section.

23. Country of Origin. Seller agrees to provide the country of origin for each Good. In the event that the country of origin changes, Seller will immediately notify WESCO with the updated information.

24. Code of Conduct. Seller affirms that it will meet the standards and requirements of WESCO's Supplier Code of Conduct, located at http://www.wesco.com/Supplier_Code_of_Conduct.pdf, which is incorporated herein by reference.

25. Miscellaneous. Neither the Agreement, nor any right to receive payment or other right hereunder, will be assignable or transferable by Seller without WESCO's prior written consent. Any assignment without such consent is voidable at WESCO's option. The Agreement will be governed by the law of Pennsylvania, without regard to its choice of law principles. Seller expressly submits to the exclusive jurisdiction of the state or federal courts located in Pittsburgh, Pennsylvania, and Seller consents to extra-territorial service of process on Seller. In the event of litigation pertaining to any matter covered by the Agreement, Seller agrees to waive any right that it may have to a jury trial of any or all issues that may be raised in such litigation. Nothing contained in the Agreement will be construed to limit or waive any rights of WESCO under applicable United States federal, state, or local laws. Any provision of the Agreement held to be invalid, illegal or unenforceable will be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof. Seller represents and warrants that it has both the authority and the capacity to enter into the Agreement.