

**WESCO DISTRIBUTION INTERNATIONAL, LTD.  
TERMS AND CONDITIONS OF SALE (EUROPE) – 05.08.2020**

**1. WESCO'S Terms and Conditions Control the Agreement.**

A. These terms and conditions are incorporated into and made a part of the agreement or proposal ("Agreement") by WESCO Distribution International, Ltd. and any of its subsidiaries, unincorporated divisions or affiliates ("WESCO") to sell to the named Buyer the goods referenced on the face of this document ("Goods") and services (including, without limitation, any material management, assembly and kitting services, and engineering and design services (whether performed by WESCO or a subcontractor)) referenced on the face of this document ("Services"). Unless otherwise expressly agreed in writing by WESCO, the Agreement shall become contractually binding on both parties upon and from the date of WESCO's acceptance of Buyer's order or the date on which Goods are dispatched or the performance of Services is commenced (as applicable), whichever is the earlier.

B. The Agreement shall constitute the entire agreement between WESCO and Buyer in respect of the provision of Goods and Services hereunder and supersedes and replaces all prior and contemporaneous agreements, understandings, negotiations, inducements, representations or conditions (whether written or oral) and arrangements in relation to the same. If Buyer does not accept the terms and conditions of the Agreement, then Buyer should not place an order for Goods and/or Services with WESCO. The Agreement does not constitute an acceptance by WESCO of any offer or counteroffer of Buyer, and WESCO hereby rejects any additional, different, or inconsistent terms, conditions or limitations contained in or incorporated by reference in any forms, purchase orders or other documents of Buyer that already have been or hereafter may be presented to WESCO with respect to the Agreement.

C. If Buyer has submitted or will submit additional and/or different terms and conditions to WESCO, or submits a counteroffer to WESCO, WESCO's subsequent performance will not be construed as either acceptance of Buyer's additional and/or different terms and conditions or Buyer's counteroffer. In taking delivery of the Goods and/or Services, Buyer acknowledges the exclusive applicability of these terms and conditions to the provision of such Goods and/or Services by WESCO.

**2. Prices.**

A. Unless otherwise agreed in writing, WESCO's prices for the Goods and Services will be the prices stated on the face of this document or WESCO's standard prices for such Goods and Services as of the date hereof, provided that, where standard prices for Goods in the quantities ordered as calculated by WESCO extend beyond two decimal places, WESCO shall round to the nearest two decimal places. WESCO may change the price for the Goods and Services (a) in accordance with any change to its standard pricing for such Goods and Services and (b) by the amount of any tariff, excise, levy or charge of any kind imposed, assessed or collected by a governmental body, prior to the date of delivery of Goods or performance of Services, as the case may be.

B. The prices of all Goods and Services are confidential, and Buyer shall not disclose such prices to any unrelated third party. WESCO and Buyer acknowledge and agree that money damages for any breach of Buyer's obligation not to disclose the price of any Goods or Services is both incalculable and insufficient and that any such breach may irreparably harm WESCO. Therefore, in the event of an actual or prospective breach of the obligation of Buyer in this Section 2(b), WESCO shall be entitled to preliminary and permanent injunctions to prevent or remedy such breach, and specific enforcement of this Agreement, in addition to any other remedies to which WESCO may be entitled at law or in equity.

C. WESCO reserves the rights to (i) correct pricing errors in its catalogues and websites without notice, and (ii) cancel any order resulting from a pricing error, even if WESCO has sent Buyer an order confirmation.

**3. Specifications.** Unless WESCO has expressly agreed otherwise in writing, it is Buyer's responsibility to ensure that the Goods and Services are the ones that it has requested and that all specifications and quantities are correct. WESCO HEREBY EXPRESSLY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES THAT GOODS AND SERVICES CONFORM TO ANY SPECIFICATIONS, DRAWINGS, DESIGNS, OR SAMPLES.

**4. Shipment of Goods; Performance of Services.**

A. Shipment of all Goods shall be made Ex Works point of shipment per INCOTERMS 2020 for domestic shipments (FCA port of export for international shipments, with Buyer serving as exporter of record). Buyer shall bear the risk of loss and damage to Goods after delivery to the point of shipment. Title transfers to Buyer at the date of shipment, or, with respect to Goods from WESCO's inventory that WESCO stores for Buyer, as of the effective date of this Agreement.

B. Any shipping dates for Goods or performance dates for Services given in advance of actual shipment of Goods or performance of Services are WESCO's best estimates for informational purposes only, and deliveries of Goods and performance of Services will be made subject to prior orders on file with WESCO. Unless WESCO otherwise agrees in writing, WESCO may, in its sole discretion, use any commercial carriers for shipment of the Goods. WESCO will use reasonable efforts to comply with Buyer's requests as to method and route of transportation, but WESCO reserves the right to use an alternate method or route of transportation, whether or not at a higher rate.

C. Unless WESCO otherwise agrees in writing, Buyer is responsible for insuring the Goods during delivery and filing and pursuing claims with carriers for loss of or damage to Goods in transit.

D. Buyer is responsible for obtaining, at its sole cost, all necessary licenses and permits for the Goods and Services, including, without limitation, any licenses and permits for transportation.

E. If Buyer is unable to receive the Goods when they are tendered, Buyer will be liable to

F. WESCO for any losses, damages, or additional expenses incurred or suffered by WESCO as a result of Buyer's inability to receive the Goods.

G. Quantities are subject to normal manufacturer allowances, in the case of wire and cable, +10% and -5% and the delivery length tolerance is ± 10%. When non-standard manufacturer lengths are requested, cutting and reel charges will apply, and delivery lead-times may be adjusted. When WESCO ships returnable reels, the invoice may include a charge for the reel, payable in accordance with the terms of Section 5. Buyer should contact the servicing branch location to arrange for the return of reels for a credit. To be eligible for a credit, the reels must be returned in good condition.

H. Buyer will immediately inspect all Goods upon delivery and will be deemed to accept the Goods unless it notifies WESCO in writing within 5 days of delivery that it rejects them. Buyer waives all unless made in writing to WESCO within five days of delivery of the Goods.

I. WESCO may cancel in whole or in part any order for Goods or Services under the Agreement at any time.

J. Until Buyer has fully and finally paid all amounts owed to WESCO for any Goods, ownership of such Goods shall remain with WESCO and shall not pass to Buyer and Buyer shall store such Goods so as to enable them to be identified as the property of WESCO and shall keep them insured at its own expense. WESCO reserves the immediate right of repossession of any Goods which have not been paid for and such right shall be exercisable at any time after delivery of the Goods. Buyer hereby grants an irrevocable right and licence to WESCO's employees, agents and contractors to enter upon all or any premises where Goods are stored without prior notice for the purposes of repossession.

K. If Services are to be performed at a Buyer site, Buyer shall make the site safe and fit for the performance of the Services

**5. Payment.**

A. All payments must be made in the currency specified by WESCO. Buyer shall pay for Goods and Services by such means as WESCO may specify, such as by check or wire transfer, provided that WESCO may, in its sole discretion, prohibit or condition payment by any means, including, without limitation, credit cards. Account balances cannot be paid by credit card unless expressly agreed by WESCO in writing.

B. Payment for Goods and Services is due within 30 days from the date of WESCO's invoice; provided, however, that WESCO reserves the right, in its sole discretion, to require full payment in cash before order entry, shipment, or delivery. If Buyer fails to pay when due or if its creditworthiness changes, WESCO, in its sole discretion, may, among other actions, (a) reject any new purchase order; (b) require Buyer to immediately pay all outstanding invoices, and/or (c) withhold shipment or cease performance until payment has been received.

C. WESCO shall have the right to offset all amounts due and owing from WESCO to Buyer under the Agreement, including, without limitation, any chargebacks or rebates, against any amounts due and owing from Buyer to WESCO under this Agreement.

D. If Buyer defaults in payment, Buyer will be liable for all collection costs WESCO incurs, including, but not limited to, attorneys' and collection agency fees, and all related disbursements.

E. If Buyer does not pay when payment is due, overdue amounts are subject to interest of four percent (4%) per annum above the prevailing base lending rate of J.P Morgan Chase Bank, N.A. which interest shall accrue on a daily basis from the date payment becomes overdue until WESCO has received full payment of the overdue amount together with all accrued interest.

F. Buyer unconditionally guarantees payment, as primary obligor, of all purchases made by its subsidiaries and affiliates.

G. If WESCO agrees to stock Goods for Buyer, Buyer acknowledges and agrees that it is responsible for all excess and obsolete Goods.

**6. Taxes.** The purchase price of the Goods and Services does not include transportation taxes and sales, use, value added, excise, import or any similar tax or other governmental charge arising pursuant to or in connection with the sale, purchase, processing, delivery, storage, use, consumption, performance or transportation of the Goods and Services. Buyer is responsible for payment of any transportation taxes, and any present or future sales, use, value added, excise, import or any similar tax or other governmental charge applicable to the Agreement and to the sale and/or furnishing of the Goods and Services.

**7. Cancellation.** Buyer may cancel its order for Goods and/or Services, but only if WESCO agrees to such cancellation in writing and only after Buyer pays reasonable charges for expenses already incurred and commitments made by WESCO in connection with the placement of such order(s).

**8. Limited Warranties; Disclaimer of Warranties.**

A. WESCO warrants that upon delivery to the point of shipment, it will convey to Buyer good title to any Goods free and clear of any liens or encumbrances and that any Services will be performed in a competent manner in accordance with industry standards.

B. SAVE AS EXPRESSLY PROVIDED IN CLAUSE 8A, WESCO HEREBY EXPRESSLY DISCLAIMS AND EXCLUDES ANY AND ALL CONDITIONS, WARRANTIES, REPRESENTATIONS AND TERMS, WHETHER WRITTEN OR ORAL, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY CONTRACT, AT COMMON LAW, UNDER STATUTE OR OTHERWISE, WITH RESPECT TO THE GOODS AND SERVICES, INCLUDING, BUT NOT LIMITED TO, ANY CONDITION, WARRANTY, REPRESENTATION OR TERM OF OR RELATING TO: MERCHANTABILITY OR SATISFACTORY QUALITY; DEFECTS IN DESIGN, MATERIALS AND WORKMANSHIP; FITNESS FOR A PARTICULAR PURPOSE; OR INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY, (INCLUDING, WITHOUT LIMITATION, ANY PATENTS, TRADEMARKS OR COPYRIGHT), UNDER THE LAWS OF ANY NATION.

**9. Exclusive Remedies; Returns; Credits.**

A. WESCO will assist Buyer in obtaining the benefit of all warranties provided by the original manufacturer of the Goods including any remedies for defects and non-conformity of the Goods to the manufacturer warranties. Buyer's EXCLUSIVE remedy against WESCO for any claim for, or arising out of, any breach of warranty is either (i) the repair or replacement of the Good, or alternatively, at WESCO's sole election, (ii) a refund of the purchase price of the Goods. WESCO is not responsible for obtaining access to, or uninstalling, installed Goods, delivering replacement Goods to the installation site, or installing replacement Goods.

B. Buyer's EXCLUSIVE remedy against WESCO arising out of any defect in, or in connection with, any Service provided hereunder is the re- performance of that Service or, at WESCO's sole election, a refund of the price paid for the Services.

C. The remedies set out in this Clause 9 are available to Buyer for one (1) year after the Goods is tendered or the Service is performed, and WESCO's obligations under this Clause 9 will be void unless Buyer provides WESCO with notice of the defect in the Goods or Service within 30 days of the date the Buyer discovered or should have discovered the defect. If Buyer returns any Good to WESCO for repair, replacement or refund, it shall utilize WESCO's return material authorisation procedures then in effect. Returns are subject to manufacturer

policies and may be subject to restocking fees. Returns will not be accepted for (a) custom orders or (b) Goods that have been modified, damaged, or not in their original packaging. Buyer must use any credit WESCO issues within two (2) years from the date of issuance. Any unused credit or portion thereof not used after two (2) years could be subject to states' unclaimed property laws.

#### **10. Liability**

A. In no event will WESCO be liable to Buyer under or in connection with the Agreement, for any: consequential, indirect, or special losses or damages; loss of actual or anticipated profits, sales or revenues; loss of business or business interruption; loss of contracts; loss of goodwill or reputation; loss of anticipated savings; loss of, damage to or corruption of, data; in each case, however arising, whether such loss or damage was foreseeable or in the contemplation of the parties, and whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

B. WESCO'S maximum aggregate liability arising under or in connection with the Agreement, whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise, will in no circumstances exceed the price paid by Buyer for or in respect of the Goods and/or Services in question.

C. Nothing in the Agreement shall exclude or in any way limit WESCO's liability to Buyer for: (i) fraud; (ii) death or personal injury caused by its own negligence; (iii) breach of terms regarding title implied by s.12 Sale of Goods Act 1979 and/or s.2 Supply of Goods and Services Act 1982; or (iv) any liability to the extent the same may not be excluded or limited as a matter of law.

#### **11. Indemnification.**

A. Subject to Clause 10 hereof, WESCO and Buyer hereby agree to indemnify, defend, and hold harmless each other and their respective officers, directors and employees from and against all damages, liabilities, losses, costs, expenses and fees, (including reasonable legal fees and court costs incurred in connection therewith) ("Losses"), incurred directly as a result of any claims, demands, counterclaims, judgments and actions ("Claims") of third parties for bodily injury (including death) and damage to tangible personal property arising solely due to or caused solely by the negligent, reckless or deliberately unlawful acts or omissions of the indemnifying party in the performance, delayed performance or non-performance of any of its obligations under or in connection with the Agreement.

B. Upon prompt notice by Buyer of any Claim of any UK/European patent, copyright, or trade mark ("IP") infringement or misappropriation with respect to any Goods or Services, WESCO will use its reasonable efforts to secure for Buyer such indemnity rights as the manufacturer may customarily give with respect to such Goods or Services. This Section 11 is Buyer's sole and exclusive remedy against WESCO for infringement or misappropriation of third party IP rights by any Goods or Services. Buyer shall indemnify defend and hold harmless WESCO and its officers, directors and employees from Losses arising from actual or alleged infringements or misappropriations of a third party's IP rights caused by (i) WESCO having followed Buyer's specifications, instructions or designs relating to the Goods or Services, (ii) Buyer's continued use of the Goods or Services after WESCO has informed Buyer of modifications required to avoid infringement or misappropriation, or (iii) modifications of the Goods or Services other than by WESCO, in each instance regardless of whether such Losses are suffered directly by WESCO, Buyer, or arise pursuant to or in connection with a third-party Claim.

#### **12. Product Suitability.**

A. Unless otherwise agreed in writing, although WESCO may provide Buyer with advice regarding Goods or installation/use recommendations, such advice shall not be deemed to be a recommendation, endorsement or guarantee. Buyer acknowledges that if it follows such advice, it does so at its own risk.

B. Goods sold by WESCO are designed to meet the safety standards and regulations specified by the manufacturer of the Goods. Buyer assumes responsibility for compliance with all safety standards and regulations in the localities in which the Goods will be shipped, sold and used. Unless WESCO has agreed to install a Good, WESCO is not responsible for the installation and/or use of a Good. Before purchase and use of any Goods, Buyer should review the Goods' application, and all applicable regulations, codes, and standards, and verify that the installation and use of the Goods will comply with them.

**13. Ownership.** WESCO has and shall retain all right, title, and interest in and to any and all trade secrets, technical data, sales service and product plans, methodologies, techniques, designs, moulds, tools, samples, systems, know-how, expertise and other proprietary information that it may use pursuant to or in connection with any Services, and Buyer shall not obtain a licence to, or any other right, title and/or interest in or to, any such WESCO property pursuant to or in connection with the Agreement.

#### **14. Export Controls; Availability; Laws.**

A. Buyer represents and warrants that it is not designated on, or associated with, any party designated on any U.S., United Nations, or European Union government restricted parties or sanctions list, including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defence Trade Controls ("DDTC") Debarred Parties List.

B. Goods may be subject to export controls under applicable laws, regulations and/or directives of various countries, in which case, these Goods are only authorized for use (e.g., via a government-approved and issued export license, which Buyer must obtain) by the ultimate end-user in the destination identified in the transaction documents between Buyer and WESCO. Buyer shall comply with such laws and regulations, failing which, Buyer shall indemnify, defend, and hold harmless WESCO for Buyer's compliance lapses in this regard. Buyer will not export, re-export or transfer, or cause a deemed export or re-export of, these Goods (in their original form or after being incorporated into other items) to any country or person to which/whom export, re-export, or transfer (actual or deemed) is prohibited or without first obtaining all required authorizations or licenses. Buyer's obligations under this clause shall survive the expiration or termination of the Agreement.

C. Due to government regulations and product availability, not all Goods sold by WESCO may be available in every area or for every destination, end user or end use.

D. Buyer warrants and represents that it will comply with all Laws with respect to the purchase, use, and operation of any and all Goods and Services. For purposes hereof, "Laws" means any international, multinational, national, foreign, federal, state, municipal, local (or other political subdivision) or administrative laws, constitutions, statutes, codes, ordinances, rules, regulations, requirements, standards, policies or guidance having the force of law, treaties, judgments or orders of any kind or nature whatsoever, including, without limitation, any judgment or principle of common law.

E. Buyer shall refrain from taking any action that may cause a WESCO employee to violate a law or WESCO's Code of Business Ethics and Conduct, available at <https://www.wesco.com/POL.CodeofConduct.pdf>.

#### **15. Interpretation of the Agreement; Integration; No Waiver**

A. The terms and conditions of the Agreement may be modified, altered, or added to only in accordance with any express provision included on the face of this document or by a subsequent written instrument signed by an authorized representative of each of WESCO and Buyer. Regardless of how many times Buyer purchases, or has purchased, goods and services from WESCO by whatever means, each time Buyer accepts the Agreement, Buyer and WESCO enter into a separate agreement that will be interpreted without reference to any other agreement between Buyer and WESCO, or what Buyer may claim to be a course of dealing or course of performance that has arisen between Buyer and WESCO. 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 and conditions of the Agreement. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to the Agreement except as expressly stated in the Agreement. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into the Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other party's ability to perform its obligations under the Agreement) and that party's only remedies shall be for breach of contract as provided in the Agreement. Misrepresentations as to fundamental matters shall be subject to the terms of Clause 10.

B. WESCO's failure to enforce any of the terms, conditions or limitations of this Agreement will not constitute a waiver of those terms and conditions or a waiver of any other terms or conditions of this Agreement, WESCO's failure to exercise any right (whether provided by the Agreement, law, equity, or otherwise) arising from Buyer's default under the Agreement will not constitute a waiver of that right or any other rights.

**16. Force Majeure; Limited Availability.** WESCO is not liable for any delay in performance or any failure to perform under the Agreement (including, without limitation, any delay in delivery or failure to deliver any Goods or perform any Services) due to circumstances or events beyond its reasonable control, including, without limitation, fire, flood, earthquake, pestilence, epidemic, pandemic, public health crisis or other catastrophe; war, act of terrorism, or strike; lack or failure of transportation facilities, shortage of suitable parts, materials or labour; any existing or future law, rule, regulation, decree, treaty, proclamation, or order of any governmental agency; inability to secure fuel, materials, supplies, equipment or power at reasonable prices or in sufficient amounts; act of God or the public enemy; or any other event or cause, whether similar or dissimilar, beyond WESCO's reasonable control, including, without limitation, any delay caused by Buyer, regardless of whether the circumstance arose before or after the effective date of the Agreement (each, a "Force Majeure Event"). If any Force Majeure Event prevents WESCO's performance of any of its obligations under the Agreement, including, but not limited to, delivery and cost savings obligations, WESCO has the right to (a) change (in whole or in part) or terminate the Agreement, or (b) omit or suspend during the period of the Force Majeure Event plus any additional amount of time required to resume performance all or any portion of the quantity of the Goods deliverable during that period, whereupon the total quantity deliverable under the Agreement will be reduced by the quantity omitted. If WESCO is unable to supply the total demands for any Goods to be delivered under the Agreement due to circumstances beyond its control, including a Force Majeure Event, WESCO will have the right to allocate its available supply among its customers in whatever manner WESCO deems to be fair and equitable. In no event will WESCO be obligated to purchase materials from other than its regular sources of supply in order to enable it to supply Goods to Buyer under the Agreement. No change, cancellation or proration by WESCO will be deemed to be a breach of the Agreement.

**17. Choice of Law and Jurisdiction.** The negotiation, execution, performance, termination, interpretation and construction of the Agreement and any noncontractual obligations arising from or connected with the Agreement is governed by English law and the parties hereby submit irrevocably to the exclusive jurisdiction of the English courts to resolve any dispute between them, provided that WESCO shall have the right, as claimant, to initiate proceedings against Buyer in any other court of competent jurisdiction. IN THE EVENT OF LITIGATION PERTAINING TO ANY MATTER COVERED BY THE AGREEMENT, WESCO AND BUYER, EACH HEREBY AGREE TO WAIVE ANY RIGHT THAT IT MAY HAVE TO A JURY TRIAL OF ANY OR ALL ISSUES. Nothing contained in the Agreement will be construed to limit or waive any of WESCO's rights under applicable Laws.

**18. Hazardous Business.** Unless otherwise agreed in writing by an authorised representative of WESCO, Goods sold hereunder are commercial grade products, and are not intended for use in connection with any nuclear facility, safety application (unless the Good is specifically designed and marketed as a safety product), healthcare application where the Goods have potential for patient contact or any other hazardous activity, or any critical application where failure of a single component could cause substantial harm to persons or property. If Goods are so used without WESCO's consent, WESCO disclaims all liability for any nuclear damage, contamination, or other damage or injury, and Buyer shall indemnify and hold WESCO harmless from such liability whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise.

#### **19. General.**

A. 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 of the Agreement.

B. Provisions of the Agreement which are either expressed to survive its expiry or termination or from their nature or context it is contemplated that they are to survive such termination shall remain in full force and effect notwithstanding such expiry or termination.

C. The Contract (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

D. Buyer may not assign, transfer, license, novate, sub-contract or otherwise dispose of all or any of its rights and/or obligations under this Agreement without the prior written consent of WESCO. WESCO may assign, sub-contract, delegate, transfer, license or novate all or any of its rights and/or obligations under the Agreement without recourse to Buyer.

**20. Binding Authority.** Any individual signing or otherwise entering into this Agreement on behalf of Buyer hereby represents and warrants that he or she is duly authorised to execute and enter into this Agreement on behalf of Buyer.

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