

**TERMS AND CONDITIONS OF SALE**

In these Conditions:

Authorised Officer :	a person whose position with Westcoast is that of Chairman, Director, Customer Services Manager or Credit Manager of Westcoast
Backorder :	an Order accepted by Westcoast for which the Goods are not available at time of Order placement and which are still to be received by Westcoast from its main supplier
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Buyer :	is the person (including a natural person, corporate or unincorporated body, whether or not having a separate legal personality) who places an Order with Westcoast for the purchase of the Goods or the provision of the Services and whose Order is accepted by Westcoast in accordance with these Conditions
Buyer-Owned Goods :	are any hardware or software, whether packaged, licensed or as a service, and instalments of such goods or any parts of them owned by the Buyer
Charges :	the amounts payable for the Goods or the Services, as set out in the relevant Order accepted by Westcoast
Conditions :	the terms and conditions set out in this document (as amended from time to time), and any special terms and conditions on the face of Westcoast's tender or Westcoast's written acceptance of the Order, the conditions and terms of use governing the use by the Buyer of Westcoast's website and the terms and conditions of any supplier of Westcoast, copies of which shall be made available on request (as the case may be)
Contract :	is each individual Order between Westcoast and the Buyer for the purchase and sale of the Goods and/or Services accepted by Westcoast in accordance with, and incorporating, these Conditions
Data Controller	has the meaning set out in the Data Protection Legislation
Data Protection Legislation :	means the General Data Protection Regulation ((EU) 2016/679)
Data Subject :	an identifiable natural person who can be identified, directly or indirectly by the Personal Data
Delivery :	the delivery of the Goods to the address stated in the Order either (i) by Westcoast's carrier, completion of which being Westcoast's carrier's notification to the Buyer that the Goods are ready to be off-loaded at the address supplied by the Buyer or (ii) by Buyer's carrier, completion of which being Westcoast's notification to Buyer that the Goods are ready for collection
Electronic Means :	any electronic means including without limit on the Web, by EDI or XML, or other platform utilised for the placing of Orders
End User:	any third party to whom the Buyer resells the Goods or Services (for the avoidance of doubt, such third party can be another reseller)
Goods :	are any hardware or software, whether packaged, licensed or as a service, and instalments of the Goods or any parts of them sold by Westcoast to the Buyer in accordance with the Conditions
Insolvency Event :	any one or more of the events listed at clauses 2.2.2 – 2.2.8 (inclusive)

Order :	is the Buyer's order for the supply of Goods and/or Services placed with Westcoast (including Backorders), as set out in the Buyer's purchase order form, the Buyer's written acceptance of Westcoast's quotation or statement of work, the Buyer's order placed on any website of Westcoast, or any automatic renewal by Westcoast of an existing order, as the case may be
Personal Data :	has the meaning given to it in the applicable Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Buyer is the Data Controller and in relation to which Westcoast is providing <input type="text"/> services under the Contract
Processing and process :	have the meanings set out in the applicable Data Protection Legislation
Services :	any services (including, but not limited to, asset-tagging, collections, configuration, customisation, disposal, etching, fulfilment, implementation, installation, pre-delivery inspection or software enrolment) relating to the Goods or Buyer-Owned Goods (as applicable) provided by Westcoast (or any third party on its behalf) to the Buyer or End User (as appropriate) from time to time under these Conditions;
Westcoast:	is Clarity Computer (Distribution) Limited of Clarity House, Belgard Road, Tallaght, Dublin 24.

The headings in these Conditions are included for convenience only and shall not affect the interpretation or construction of these Conditions.

**THE BUYER'S ATTENTION IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSES 8 AND 9.**

## 1. BASIS OF SALE

1.1 All Contracts shall be governed by these Conditions (and where applicable any other terms agreed in writing by an Authorised Officer of Westcoast) to the exclusion of any other terms and conditions, including without limit any terms on or referred to in any Buyer purchase order or other Buyer documentation. In the case of Orders placed by Electronic Means which refer to any terms and conditions of the Buyer, Westcoast's automatic taking on to its system of such order shall amount to a rejection of the Buyer's terms and conditions and an offer to supply the Goods ordered on the basis of these Conditions.

1.2 No variation to these Conditions shall be binding unless agreed in writing by an Authorised Officer of Westcoast.

1.3 Subject to clause 1.5, Westcoast's employees or agents have no authority to make any representations concerning the Goods or Services. In entering into the Contract the Buyer acknowledges that it does not rely on, and irrevocably waives any claim it may have for damages for or right to rescind the Contract for any such representations (unless made fraudulently).

1.4 Any samples, drawings, descriptive matter or advertising produced and/or provided by Westcoast are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

1.5 Any advice or recommendation for the Goods given by Westcoast or its employees or agents to the Buyer or its employees or agents not confirmed in writing by an Authorised Officer is followed or acted upon entirely at the Buyer's own risk and Westcoast shall not be liable for any such advice or recommendation.

1.6 All references in these Conditions to Westcoast agreeing, approving, waiving or specifying a matter apply only if such is confirmed in writing by an Authorised Officer.



1.7 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 Westcoast shall be subject to correction without any liability on the part of Westcoast.

1.8 Westcoast reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirement, and Westcoast shall notify the Buyer in any such event.

1.9 It shall be a condition of any quotation and subsequent Contract (if applicable) that the information provided by the Buyer is correct, accurate, not misleading and a complete response to Westcoast's request(s) when provided and remains so until the later of the date when (i) the quotation lapses or (ii) the relevant Goods and/or Services are delivered.

1.10 The Buyer shall indemnify Westcoast in full against all losses, costs, damages, claims, charges and/or expenses incurred by Westcoast as a result of information provided by the Buyer in accordance with clause 1.8 being or subsequently becoming incorrect, inaccurate, misleading and/or incomplete.

1.11 Any quotation for the Goods given by Westcoast shall (i) not constitute an offer and (ii) only be valid for a period of 5 Business Days from its date of issue.

1.12 Any Order constitutes an offer by the Buyer to purchase the Goods and/or Services incorporating these Conditions. Orders accepted by Westcoast are accepted solely subject to these Conditions. Any element of an Order shall only be deemed to be accepted at the earliest of despatch of those particular Goods or performance of those particular Services or when acceptance is communicated in writing by Westcoast at which point, and on which date, the Contract shall come into existence.

## **2. CANCELLATION OF ORDERS**

2.1 No Contract may be cancelled by the Buyer unless agreed in writing by Westcoast and if so agreed, the Buyer shall indemnify Westcoast in full against all loss (including loss of profit), costs, damages, charges and expenses incurred by Westcoast as a result of cancellation.

2.2 Westcoast shall have the right immediately to (i) cancel or (ii) suspend any Contract without any liability to the Buyer if:

2.2.1 the Buyer does not accept a price increase in accordance with clause 5 below; or

2.2.2 the Buyer fails to make any payment when due; or

2.2.3 the Buyer breaches any provision of the Contract and fails to remedy such breach within 7 days after receipt of notice in writing from Westcoast requiring the Buyer to do so; or

2.2.4 the Buyer suspends or threatens to suspend payment of its debts, or is unable to pay its debts as they fall due within the meaning of section 570 of the Companies Act 2014; or

2.2.5 where the Buyer is a sole trader or partnership, they become the subject of a bankruptcy petition or order; or

2.2.6 the Buyer (a) negotiates with its creditors for rescheduling of its debts, (b) makes a proposal to or compounds with its creditors in respect of its debts other than solely by way of solvent amalgamation or reconstruction or (c) makes an application to court for protection from its creditors generally; or

2.2.7 in relation to the winding up of the Buyer, other than solely for the purpose of a solvent amalgamation or reconstruction, there is (a) petition filed, (ii) notice given, (iii) resolution passed or (iv) order made by the Buyer or a third party; or



2.2.8 an administrator, receiver or administrative receiver is or is likely to be appointed in relation to the Buyer or any of its assets; or

2.2.9 any creditor of the Buyer attaches, takes possession of, or any distress, execution or similar process is levied or enforced against, all or any part of the Buyer's assets, and such attachment or process is not discharged within ten Business Days; or

2.2.10 the Buyer ceases, or threatens to cease, to carry on business; or

2.2.11 Westcoast reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly; or

2.2.12 the Buyer commits or is a party to dishonest or fraudulent conduct in relation to the Contract; or

2.2.13 any event or proceeding equivalent to those stated in 2.2.3 – 2.2.12 occurs in relation to the Buyer in any jurisdiction; or

2.2.14 where the Buyer is a sole trader, the Buyer dies or, by reason of illness or incapacity, is incapable of managing their own affairs.

2.3 If clause 2.2 applies then, without prejudice to any other right or remedy available to Westcoast, Westcoast shall be entitled to do any one or more of the following:

2.3.1 cancel each and every Contract yet to be performed (in whole or in part);

2.3.2 suspend any further deliveries under each and every Contract without liability to the Buyer;

2.3.3 immediately revoke any and all credit extended to the Buyer on such terms as Westcoast shall in its sole and absolute discretion determine;

2.3.4 reduce or cancel all quantity and other discounts offered to the Buyer; and

2.3.5 if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **3. DELIVERY**

3.1 Unless agreed otherwise between the parties, Westcoast shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Buyer and Westcoast reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.2 Unless otherwise agreed in writing with an Authorised Officer the costs of packing and Delivery shall be for the Buyer's account. If Westcoast pays for or incurs all or part of such costs, it shall invoice its costs so incurred to the Buyer at the date of dispatch.

3.3 The Buyer warrants the details of any address for Delivery stipulated by the Buyer (including those of End Users) and indemnifies Westcoast for any losses incurred by Westcoast for failed or re-routed deliveries as a result of inaccurate information provided by the Buyer (including where recipient is not available/unwilling to accept the Goods).

3.4 Any Delivery dates given are estimated dates only and time is not of the essence for Delivery. Changed specifications or instructions may result in revised estimated Delivery times.



3.5 The Goods may be delivered in instalments. Each delivery shall constitute a separate Contract and failure by Westcoast to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

3.6 If the Buyer (i) arranges collection of the Goods from Westcoast and the Buyer's carrier fails to take receipt of the Goods after Westcoast has notified the Goods are ready for collection or (ii) fails to give Westcoast adequate Delivery instructions or (iii) has requested a delay in Delivery or (iv) is unable to give access to its premises for the purposes of Delivery or installation then Westcoast may at the risk and expense of the Buyer:

3.6.1 store the Goods until actual Delivery and invoice the Buyer for all such costs of storage and re-Delivery; or

3.6.2 sell the Goods at the best price readily obtainable and (after deducting all storage, selling and other expenses) account to the Buyer (if available) or charge the Buyer for any shortfall (as applicable).

3.7 Where Goods are to be exported out of Ireland by either (i) Westcoast to the Buyer or (ii) by the Buyer itself (subject to any special terms agreed in writing between the Buyer and Westcoast and notwithstanding any other provision of these Conditions):

(i) The terms of purchase of the Goods will be subject only to warranty provided by the original equipment manufacturer ("OEM") and the Buyer shall be solely responsible for ensuring that it fully understands and is aware of such warranty terms;

(ii) The Buyer shall ensure that it complies with any export controls as notified by Westcoast, the OEM or a third party or as contained within any supporting documentation provided with the Goods;

(iii) The relevant tax legislation will be applied in accordance with and under the United Kingdom legislation at the time of the contract;

(iv) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any import taxes or duties thereon;

(v) Unless otherwise agreed in writing between the Buyer and Westcoast, delivery terms of the Goods shall be 'Delivered at Place' (as per Incoterms 2010) to the Irish port of export and Westcoast shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1893;

(vi) the Buyer shall be responsible for arranging for testing and inspection of the Goods at Westcoast's premises before shipment. Westcoast shall have no liability for any claim in respect of any defect in the Goods, which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit;

(vii) The Buyer shall not be entitled to withhold payment of the price for the Goods due to the Buyer's failure to comply with the provisions of this clause; and

(viii) The Goods will be packaged in accordance with Westcoast's standard practice, and the packaging shall meet any reasonable requirements stipulated in advance by any independent contractors or shippers.

3.8 The Buyer's failure to make due payment in respect of any deliveries or instalments under any Contract shall entitle Westcoast to delay, suspend or cancel further deliveries in whole or in part at its option.



3.9 Where the Buyer fails to take Delivery of the whole quantity of the Contract at the due time, any discount or other allowance in respect of the Goods, which the Buyer is or would be entitled to shall be forfeited.

3.10 Where Westcoast has agreed to ship Goods or perform Services direct to End User on behalf of Buyer any such shipment or performance shall be deemed to be Delivery to Buyer and any refusal by the End User to accept Delivery or performance shall be deemed to be a refusal by Buyer. It shall be Buyer's obligation to report any delivery discrepancies in accordance with this clause 3 when Goods are shipped direct to End User or when Goods are sent onto End User by Buyer.

#### **4. LIMITED WARRANTY**

4.1 Buyer acknowledges that Westcoast does not manufacture the Goods (or where Goods comprise computer software does not publish or license the software) and, except for Westcoast's limited warranty hereunder, Westcoast only sells the Goods with the benefit of the OEM's warranty to the extent legally and contractually permitted to do so. The OEM's warranty is offered from the OEM on a pass-through basis to End User or directly by OEM to End User. The Buyer shall be responsible for making itself aware of the terms of the OEM's warranty prior to the Contract being formed and always complying in all respects with the same.

4.2 Westcoast warrants that for a period of 28 days from Delivery, the Goods will conform to the specifications stated by the OEM in its published data sheet for the Goods as covered by the OEM's warranty (the "Limited Warranty").

4.3 For Goods outside of the Limited Warranty, the Buyer shall be responsible for contacting the OEM directly for instructions on how to claim under the OEM's warranty process.

4.4 The Limited Warranty is in lieu of all terms whatsoever (whether expressed or implied and whether arising at common law or by statute) by Westcoast in respect of the quality of the Goods (including, but not limited to, terms implied by section 10 of the Sale of Goods and Supply of Services Act 1980 (as amended)) all of which are hereby excluded to the full extent permitted by law.

#### **5. ACCEPTANCE AND RETURNS PROCEDURE**

5.1 Westcoast shall not be liable in respect of any damage to the Goods, discrepancy in the Contract, shortage in the Goods Delivered, loss of the Goods in transit or any claim that the Goods delivered or collected do not otherwise comply with the Contract other than in accordance with this Condition and warranty clause 5 as stated below.

5.2 Damage, discrepancies, shortages and invoice queries:

(i) The Buyer shall be responsible for inspecting the boxed / parcel contents containing the Goods immediately on Delivery to check the Goods for damages, discrepancies and shortages. On Delivery, the Buyer must confirm in writing on the proof of delivery note prior to signing the same any damages, discrepancies and shortages in the Goods. Westcoast shall have no liability in respect of claims for shortages or damages to the Goods Delivered if the Buyer or its representative has signed for the Goods as being received either unchecked or in good condition.

(ii) The invoiced Charges shall, in the absence of a manifest error, be deemed accepted by the Buyer unless the Buyer notifies Westcoast customer services otherwise in writing within 14 days of the date of the invoice.

(iii) The Buyer shall notify Westcoast customer services in writing within 48 hours of:

- a. Delivery of any short Deliveries, damaged Goods Delivered or picking errors of Goods as detailed on the proof of delivery note in accordance with 5.2(i) above;



- b. the date when Goods would have been Delivered had an event of non-delivery not occurred.

Subject to clause 9.5, Westcoast's total liability for any such damages, discrepancies and shortages shall be limited to, at Westcoast's sole discretion, either (i) replacing the affected Goods or (ii) issuing a credit to the Buyer for the Price of the Goods. Westcoast shall have no liability whatsoever to Buyer for any matters noted in this clause 4.2 where the Buyer fails to comply with (i) the terms of this clause 4.2 and (ii) any claim process procedures that Westcoast notifies to the Buyer upon notification.

5.3 Returns of Goods that fail (i) on installation ("DOAs") or (ii) within the Limited Warranty ("Faulty Goods"):

(i) Westcoast operates a returns procedure solely for DOAs and Faulty Goods and other than those circumstances is under no obligation to accept the return of any other Goods. This returns procedure may vary depending on the Limited Warranty of the Goods and will be notified to the Buyer upon Westcoast receiving the Buyer's written request to return the Goods. In no circumstances may Goods be returned to Westcoast without Westcoast's prior written consent, obtained through Westcoast providing the Buyer with a returns authorisation number ("**RMA**")

(ii) When requesting to return DOAs and Faulty Goods, the Buyer must do so in accordance with Westcoast's returns authorisation procedures and within the Limited Warranty time limit.

(iii) The Buyer warrants that it shall (a) provide Westcoast with sufficient information as to the nature and extent of the defects in the Goods and (b) allow Westcoast to have a reasonable opportunity to examine the defective Goods should Westcoast, in its sole discretion, elect to do so.

(iv) The Buyer accepts that any credit issued by Westcoast for returned DOAs or Faulty Goods is at Westcoast's sole discretion and subject to successful verification that the Goods comply with the necessary requirements to be covered under the relevant Limited Warranty.

(v) Where Goods are returned without the Buyer obtaining an RMA, should Westcoast in its sole discretion accept the return Westcoast may levy a handling charge which shall at Westcoast's sole discretion be either deducted from any credit allowed by Westcoast or be payable to Westcoast by the Buyer.

5.4 General provisions relating to DOAs and Faulty Goods:

(i) The Buyer shall pay all Westcoast's reasonable costs and expenses if the returned DOA or Faulty Goods are at Westcoast's sole discretion deemed to not fall within the Limited Warranty.

(ii) DOA and Faulty Goods shall be dealt with in accordance with the applicable OEM's warranty procedures. The Buyer shall comply with the same procedures and any instructions issued by Westcoast in relation to the fault.

(iii) The Buyer shall be responsible for all transportation and insurance costs relating to returned Goods.

(iv) The Buyer shall have no right to return any Goods outside of those deemed by Westcoast to fall within the Limited Warranty.

5.5 Where an RMA is provided, the Goods (or part thereof) to be returned must be delivered to Westcoast's premises (i) within 14 days of the RMA being issued, (ii) in its original packaging and (iii) together with supporting documentation confirming the alleged fault and quoting the RMA. In the event the Buyer fails to comply with this clause 5.5, Westcoast will be entitled at its sole discretion to (i) levy a handling fee as applicable in the circumstances and/or (ii) reject the returned Goods.

## 6. PRICE

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6.1 All Westcoast prices for Goods and/or Services ("Price(s)") are quoted subject to acceptance within any period specified and Westcoast reserves the right to amend its quoted price at any time prior to despatch.

6.2 Upon providing notice to the Buyer, Westcoast may increase the quoted Price to implement any increase resulting from factors outside the control of Westcoast, including, but not limited to where:

(a) the Buyer has requested (whether before or after a Contract has been made) any variation whatsoever to the quantity, capacity, form, content, style or description of the Order or Goods and/or Services, or has requested an earlier or a later Delivery date to that originally requested; or

(b) steps are taken by Westcoast to comply with any statutory provisions from time to time in force, and any increases in the price charged to Westcoast of any equipment or goods bought in from Westcoast's suppliers in order for Westcoast to fulfil the Contract; or

(c) the supply of the Goods or the provision of Services is suspended, varied or otherwise delayed by any acts or omissions of the Buyer; or

(d) Westcoast has incurred any additional or unforeseen import duties after the Contract has been made; or

(e) an OEM has increased the cost price of any Goods between the date Westcoast received the Buyer's Purchase Order and the date the Goods are ready for despatch; or

(f) the Buyer has caused a delay through failure to provide Westcoast with adequate and/or accurate information or instructions.

6.3 Unless otherwise expressly agreed in writing, the Price does not include the costs of Delivery and VAT and any other applicable customs or excise duties or taxes (where applicable) and these will be added to all invoices at the rate ruling at the date of despatch.

6.4 Should a Buyer's purchase order not include the Price, the Price for that Order shall be as set out in Westcoast's published price list in force as at the date of Westcoast accepting the Order.

## **7. PAYMENT**

7.1 Payment of the Charges or any part thereof and any other charges due under the Contract must be made by the Buyer within 30 days month end following the date of Westcoast's invoice (unless otherwise specified in writing by an Authorised Officer).

7.2 Should the Buyer fail to make payment by the due date, the Buyer shall pay interest on the overdue amount at the rate of 4% above Barclays Banks' base rate from time to time. Such interest shall accrue on a daily basis from the due date until the actual date of payment (whether before or after judgment). The Customer shall pay the interest together with the overdue amount and an administration charge of 5% of the total amount due.

7.3 The Buyer shall make all payments in pounds sterling immediately when due without set off, deferment, deduction or withholding whatsoever (whether on account of any claim or counterclaim or otherwise). Where payments in an alternative currency are authorised in writing by the Authorised Officer prior to the Contract being concluded, such payments shall be made by telegraphic transfer to the account to be designated by the Authorised Officer from time to time.

7.4 Westcoast shall be entitled at any time to set-off any sums owed to the Buyer (including but not limited to vendor rebates or vendor pass through funds) against sums owed by the Buyer to Westcoast.

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7.5 The time of payment shall be of the essence of the Contract.

7.6 The Buyer shall indemnify Westcoast against the total costs incurred (without limitation) by Westcoast arising out of the Buyer's breach(es) of these Conditions.

7.7 On the happening of a "Relevant Event" Westcoast shall be entitled in its sole and absolute discretion to alter its terms of payment or to alter any credit terms which may have been granted. For the purposes of this clause 7.7, a "Relevant Event" shall be defined as being:

(i) where Westcoast is notified or otherwise reasonably believes that the Buyer's credit record has worsened to a level unacceptable to Westcoast; or

(ii) where Westcoast in its sole discretion deems the Buyer's financial position to be unacceptable; or

(iii) where Westcoast's trade indemnity insurers require such alteration.

7.8 Notwithstanding clause 7.7, Westcoast reserves the right to withdraw any credit facilities afforded to the Buyer at any time, without notice.

7.9 In the event that the trading relationship between the Buyer and Westcoast is terminated for whatsoever reason then all sums due by the Buyer shall immediately become due and payable.

## **8. RETENTION OF TITLE AND RISK**

8.1 Risk in the Goods will pass to the Buyer on completion of Delivery.

8.2 Title to the Goods (including full legal and beneficial ownership but excluding software, title of which shall never pass to the Buyer) shall not pass to the Buyer until:

(i) Westcoast receives payment in full for the Goods as supplied to the Buyer; and

(ii) Westcoast receives payment in full for all and any other debts owed by the Buyer to Westcoast at any given time; or

(iii) The Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at such time as specified in clause 8.4.

8.3 Until title to the Goods has passed to the Buyer, the Buyer will:

(i) hold the Goods as bailee for Westcoast;

(ii) store the Goods separately from all other material in the Buyer's possession;

(iii) take all reasonable care of the Goods and keep them in reasonable condition;

(iv) insure the Goods: (i) with a reputable insurer (ii) from the date of delivery (iii) against all risks (iv) for an amount at least equal to the Price (v) noting Westcoast's interest on the policy;

(v) ensure that the Goods are clearly identifiable as belonging to Westcoast;

(vi) not remove or alter any mark on or packaging of the Goods;

(vii) inform Westcoast as soon as possible if it becomes subject to an Insolvency Event; and

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(viii) provide Westcoast such information concerning the Goods as Westcoast may request from time to time.

8.4 Notwithstanding clause 8.3, and subject to clause 8.5, the Buyer may use or resell the Goods in the ordinary course of its business (but not otherwise) before Westcoast receives payment for the Goods. However, if the Buyer resells the Goods before that time:

8.4.1 It does so as principal and not as Westcoast's agent; and

8.4.2 Title to the Goods shall pass from Westcoast to the Buyer immediately before the time at which resale by the Buyer occurs.

8.5 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs Westcoast, or Westcoast reasonably believes, that the Buyer has or is likely to become subject to an Insolvency Event and the Goods remain in the possession or control of the Buyer, then, without limiting any of Westcoast's other rights and remedies:

8.5.1 The Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

8.5.2 Westcoast may at any time:

8.5.2.1 at its sole discretion elect to transfer title to Buyer; or

8.5.2.2 require the Buyer at the Buyer's expense to redeliver the Goods to Westcoast and if Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

8.6 Where the Buyer uses banking facilities or factoring or an invoice discounting company which involves the selling of debtors or using debtors as security, the Buyer shall notify the third party concerned of Westcoast's interest in the Goods and specifically that title in the Goods has not passed until Westcoast's invoice has been paid in full and otherwise as set out in these Conditions.

## **9. LIMITATION OF WESTCOAST'S LIABILITY**

9.1 Westcoast has obtained insurance cover in respect of its own legal liability for individual claims not exceeding the cost of the Contract relating to the claim. Westcoast has been unable to obtain insurance in respect of certain types of loss at a commercially viable price, including but not limited to insurance for Goods whilst in transit. The limits and exclusions in this clause reflect the insurance cover Westcoast has been able to arrange and the Buyer is responsible for making its own arrangements for the insurance of any excess loss.

9.2 The restrictions on liability in this clause 9 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9.3 Nothing in the Contract limits any liability which cannot legally be limited or excluded, including liability for: (a) death or personal injury caused by the negligence of Westcoast; (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 10 of the Sale of Goods and Services Act 1980; or (d) defective products under the Liability for Defective Products Act 1991.

9.4 Subject to clause 9.3 and 9.5, Westcoast's total liability to the Buyer shall not exceed the greater of (a) the price of the Contract which the claim relates to and (b) £500.

9.5 Subject to clause 9.3, Westcoast's total liability to the Buyer for any loss of, theft of or physical damage to the Goods or the Buyer-Owned Goods (as applicable) by Westcoast, its employees or any third party acting on its behalf while in transit with Westcoast's nominated carrier (acting on its behalf)

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shall be subject to Westcoast's nominated carrier's insurance terms, conditions and limits (such information being available at any time upon written request (email shall suffice)).

9.6 Subject to clause 9.3, the following types of loss are wholly excluded by Westcoast: (a) loss of profits; (b) loss of sales or business; (c) wasted expenditure; (d) loss of agreements or contracts; (e) loss of anticipated savings; (f) loss of use or corruption of software, data or information; (g) loss of or damage to goodwill; (h) loss of discount or rebate; (i) losses (including any liability for fines, penalty payments, liquidated damages or service credits) due to any delays or failures in the delivery of the Goods or Services; (j) losses or costs in connection with product recall; and (k) indirect, special or consequential loss.

9.7 This clause 9 shall survive termination of the Contract.

## **10. CONFIDENTIALITY**

11.1 Each party undertakes that it shall not at any time during this agreement and for a period of three (3) years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as provided by clause 11.2.

11.2 Each party may disclose the other party's confidential information:

(i) to those of its employees, officers, representatives or advisers who need to know such information for the purpose of carrying out the party's obligations under this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 21; and

(ii) as may be required by law, court order or any governmental or regulatory authority.

11.3 Westcoast may disclose details of (i) the Contract and/or (ii) the Buyer's confidential information to the extent requested by such of its advisers as is required to facilitate Westcoast's financing arrangements in place from time to time.

11.4 No party shall use the other party's confidential information for any purpose other than to perform its obligations under this agreement.

## **11. FORCE MAJEURE**

Westcoast shall not be liable for any loss or damage and be entitled to cancel or rescind any Contract if the performance of its obligations under the Contract is in any way adversely affected by any cause whatsoever beyond Westcoast's control including (but not limited to) the delays or default of supplies or the defaults of any sub-contractor, act of God, explosion, fire or accident, war, threat of war, sabotage, insurrection, civil disturbance, requisition, Acts, restrictions, regulations, bye-laws, prohibitions or measures of any Government or Parliamentary or Local Authority, strike, lock-out, trade disputes, flood, accident to plant or machinery, shortage of materials or labour, import or export regulations or embargoes. If due to any such event Westcoast has insufficient stocks to satisfy an Order Westcoast may apportion available stocks between its customers at its sole discretion.

## **12. SERVICES**

12.1 The Buyer may raise an Order for Services that it wishes Westcoast to provide in connection with the Goods or Buyer-Owned Goods. Westcoast shall, following its acceptance of any such Order, use its reasonable endeavours to provide the Services to the Buyer or End User (as applicable) in accordance with the Conditions.



12.2 To the extent any Services are to be performed at the Buyer's or End User's site(s), the Buyer shall:

(a) at its cost, prepare the Buyer's or procure the preparation of the End User's site(s) (as applicable) and co-operate with Westcoast in accordance with Westcoast's instructions and timescales; and

(b) provide an adequate environment and space for Westcoast, its nominated subcontractors or agents for the safe operation of the Services.

12.3 The Buyer hereby permits Westcoast, its nominated subcontractors and agents to have access to the Buyer site(s) or shall procure permission for Westcoast, its nominated subcontractors and agents to have access to the End User site(s) (as applicable) for the purpose of carrying out the Services at such times as may be agreed between Westcoast and the Buyer, such access not to be unreasonably withheld or delayed.

12.4 Westcoast shall be entitled to charge the Buyer for any costs incurred by Westcoast as a result of any failure by the Buyer to satisfy any requirements of clauses 12.2 and 12.3.

12.5 In supplying the Services, Westcoast warrants that it shall:

(a) perform the Services with reasonable care and skill; and

(b) use reasonable endeavours to perform the Services in accordance with the service description (if any) set out in the Order in all material respects.

12.6 Notwithstanding any other provision of these Conditions, Westcoast shall use reasonable endeavours to meet any performance or delivery dates specified in an Order but any such dates shall be estimates only and time for performance by Westcoast shall not be of the essence of the Contract.

12.7 The Buyer must report any breach of the warranties set out in clause 12.5 to Westcoast in writing within ten (10) days following the delivery of the Services to the Buyer or End User (as applicable).

12.8 For any breach of the warranties set out in clause 12.5, where the Buyer notifies Westcoast within such ten (10) day period, Westcoast will, at its option and at no additional cost to the Buyer:

(a) provide remedial services necessary to enable the Services to conform to the warranty;

(b) replace the Goods or Buyer-Owned Goods (as applicable) on which the non-conforming Services have been performed with identical or materially similar goods; or

(c) refund amounts paid by the Buyer to Westcoast for the defective Services.

The Buyer will provide Westcoast with a reasonable opportunity to remedy any breach of the warranties set out under clause 12.5 and reasonable assistance in remedying any associated defects. The remedies set out in this clause are the Buyer's sole remedies for breach of the warranties under clause 12.5.

12.9 Except as expressly set out in clause 12.5 and to the fullest extent permitted by law, Westcoast makes no other warranties or representations with respect to the Services. All warranties, representations or other terms implied by law or statute or otherwise are expressly excluded from the Contract to the fullest extent permitted by law.

12.10 Notwithstanding any other provision of these Conditions, Westcoast shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Westcoast shall notify the Buyer in any such event.

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12.11 Westcoast shall not be responsible in the event the Goods or Buyer-Owned Goods in respect of which Westcoast has performed any Services are or become faulty or otherwise defective unless caused solely by the acts of omissions of Westcoast, and in such situation the Buyer shall be required to re-order the Services (if required) and liable to pay for the same.

12.12 If the Services include configuration services, the Buyer shall be solely responsible for the accuracy of its Order which includes any such configuration services, the specification of the components and their configuration and for ensuring that the configured Goods or Buyer-Owned Goods specified (as applicable) are satisfactory for the purpose for which they are required, including that they have sufficient overall functionality and will support and be compatible and inter-operable with any hardware, software and middleware with which they are intended to operate. Westcoast shall provide such configuration services entirely under Buyer's instruction without warranting that the configured Goods or Buyer-Owned Goods (as applicable) are satisfactory for the purpose for which it is required.

12.13 The Buyer's property (including any Buyer-Owned Goods) supplied to Westcoast by the Buyer shall, while it is in possession of Westcoast or in transit to or from the Buyer or the End User (as applicable), be deemed to be at the Buyer's risk and the Buyer shall insure accordingly.

12.14 Westcoast shall be entitled to make a reasonable charge (determined in its sole discretion) for the storage of any of the Buyer's property (including any Buyer-Owned Goods) left with the Buyer before receipt of the Order or after notification to the Buyer of completion of the Services.

### **13. DATA PROTECTION**

13.1 The parties acknowledge and agree that some or all of the services to be provided by Westcoast pursuant to an Order entered into pursuant to these Conditions may involve Westcoast processing Personal Data of which Buyer is the Data Controller. The parties acknowledge and agree that, in respect of such processing, for the purposes of the Data Protection Legislation, Buyer is the Data Controller and Westcoast is the Data Processor.

13.2 Buyer warrants that:

(i) it has all necessary and appropriate consents and notices in place to enable the lawful transfer of any Personal Data to Westcoast for the duration and purposes of any Contract;

(ii) all instructions given by it to Westcoast in respect of Personal Data shall at all times be in accordance with Data Protection Laws; and

(iii) it has undertaken due diligence in relation to Westcoast's processing operations, and it is satisfied that Westcoast's processing operations are suitable for the purposes for which the Buyer proposes to use the services and engage Westcoast to process the Protected Data.

13.3 Westcoast shall process the Personal Data only in accordance with Buyer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by Buyer.

13.4 Westcoast shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.

13.5 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.

13.6 Westcoast warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:



(i) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:

(a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and

(b) the nature of the data to be protected; and

(ii) take reasonable steps to ensure compliance with those measures.

13.7 On the basis Westcoast warrants to adhere to the remainder of this clause 13.7, Buyer consents to Westcoast engaging sub-processors for carrying out any processing activities in respect of the Protected Data. Prior to appointing any such sub-processor, Westcoast warrants that:

(i) prior to the relevant sub-processor carrying out any processing activities in respect of the Protected Data, Westcoast appoints each sub-processor under a written contract containing materially the same obligations as under this clause 13;

(ii) Westcoast ensures each such sub-processor complies with all such obligations; and

(iii) Westcoast to remain fully liable for all the acts and omissions of each sub-processor as if they were its own.

13.8 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, penalties, fines, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 13.

13.9 Buyer acknowledges that Westcoast is reliant on Buyer for direction as to the extent to which Westcoast is entitled to use and process the Personal Data. Consequently, Westcoast will not be liable for any claim brought by a Data Subject arising from any action or omission by Westcoast, to the extent that such action or omission resulted directly from Buyer's instructions.

13.10 The Buyer agrees that Westcoast may transfer Protected Data that is processed pursuant to Westcoast providing the goods and/or services in accordance with an Order to countries outside the European Economic Area (EEA) or to any International Organisation(s) (an **International Recipient**), provided all transfers by Westcoast of Protected Data to an International Recipient (and any onward transfer) shall (to the extent required under Data Protection Laws) be effected by way of appropriate safeguards and in accordance with Data Protection Laws.

13.11 Westcoast shall promptly (i) refer all data subject requests it receives to the Buyer and (ii) notify the Buyer of the Personal Data Breach and provide any necessary details of the same.

## 14. GENERAL

14.1 Where applicable, Buyer is responsible for all obligations and liabilities under the European Union's (i) Waste Electrical and Electronic Equipment Directive (2012/19/EU), (ii) Packaging Waste Directive (94/62/EC) and (iii) Batteries Directive (2006/66/EC), all as amended and all related national implementing measures in force from time to time. Westcoast shall have no liability or obligations under the preceding directives.

14.2 Buyer agrees to comply with:

(i) the Criminal Justice (Corruption Offences) Act 2018 and corresponding legislation applicable in the jurisdictions Buyer conducts business in. Buyer shall not make any direct or indirect payment, offer to



pay, or authorise to pay, any gift, money, promise to give or authorise the giving of anything of value to any government official or politician or the immediate family of the same for the purpose of influencing acts or decisions of such individual in order to assist directly or indirectly Buyer or Westcoast in obtaining or retaining business or securing an improper advantage. Buyer's commitment to comply with the Criminal Justice (Corruption Offences) Act 2018 and other such legislation shall also extend to its dealings with Westcoast, its suppliers, the End Users and any other commercial parties; and

(ii) the Criminal Law (Human Trafficking) Act 2008 ("CL(HT)A 2008") and corresponding legislation applicable in the jurisdictions Buyer conducts business in. The Buyer warrants that neither the Buyer nor any of its officers, employees, agents or subcontractors have (a) committed an offence under the CL(HT)A 2008; (b) been notified that it is subject to an investigation relating to an alleged CL(HT)A 2008 offence or prosecution under the CL(HT)A 2008; or (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged CL(HT)A 2008 offence or prosecution under the CL(HT)A 2008; and

(iii) Westcoast's Third Party Code of Conduct which can be viewed [here](#).

14.3 Westcoast may assign any of its rights and/or obligations under a Contract. The Buyer may not without the prior written consent of Westcoast assign any of its rights and/or obligations under any Contract.

14.4 No delay or failure by Westcoast in enforcing any provision shall constitute a waiver of that provision or any other provision. No waiver by Westcoast of any breach of a Contract shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

14.6 Westcoast's rights are cumulative and in addition to any rights available to it at common law.

14.7 These Conditions are Westcoast's current Conditions. Westcoast maintains the right to add to or amend these Conditions at any time and in its sole discretion. The Buyer will be responsible for satisfying themselves as to the Conditions on an ongoing basis and those applicable to the transaction(s) in hand, by either viewing the Westcoast website or requesting a hard copy direct from Westcoast.

14.8 Nothing in these Conditions shall confer on any third party (that is, any party other than Westcoast or the Buyer) any benefit or the right to enforce any term of these Conditions.

14.9 The Buyer and Westcoast agree that each Contract (incorporating these Conditions) shall be governed by and construed in accordance with Irish law and each of the Buyer and Westcoast irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including but not limited to non-contractual disputes and claims).

14.10 Westcoast may monitor, record, store and use any telephone, email or other communication with the Buyer in order to (i) check any instructions given to Westcoast, (ii) for training purposes, (iii) for crime prevention and (iv) to improve the quality of Westcoast's customer service.

14.11 Except as specifically permitted in writing by (a) Westcoast or (b) the relevant manufacturer(s) of relevant Goods, the Buyer hereby agrees that it will not (and will inform third parties they are not permitted to): (i) copy or manufacture any Goods; or (ii) translate, modify, adapt, enhance, extend, decompile, disassemble or reverse engineer any of the Goods.

14.12 The Buyer acknowledges and agrees that the Goods and Services may be subject to the export control laws and regulations of the UK, United States, EU and national legislation. The Buyer warrants



that it shall comply with all these laws and regulations including the Export Administration Regulations ("EAR"), and sanctions regimes of the U.S. Department of Treasury, Office of Foreign Asset Controls.

14.13 The Buyer shall not, without prior appropriate government authorisation, export, re-export, or transfer any Goods or Services, either directly or indirectly, to any country subject to a U.S. trade embargo or to any resident or national of any such country, or to any person or entity listed on the "Entity List" or "Denied Persons List" maintained by the U.S. Department of Commerce or the list of "Specifically Designated Nationals and Blocked Persons" maintained by the U.S. Department of Treasury or any other comparable European or local regulation.

14.14 In addition, any Goods or Services may not be exported, re-exported, or transferred to an End User engaged in activities related to weapons of mass destruction. Such activities include but are not limited to the following activities: (1) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons; (2) the design, development, production, or use of missiles or support of missiles projects; and (3) the design, development, production, or use of chemical or biological weapons.