



IMS Systems, Inc. Terms and Conditions of Purchase

1. Definitions. As used in this Order, the following terms have these associated meanings: (a) "Affiliate" of Buyer means an entity which directly or indirectly is controlled by, is under common control with or controls Buyer, where "control" means the power to direct or cause the direction of management and policies, whether through ownership of voting securities, by contract or otherwise; (b) "Buyer" means **IMS Systems, Inc.** or such other entity that may be noted in the purchase order as the purchaser or buyer; (c) "goods" means those raw materials, articles, materials, supplies, drawings, data, or other property or services described in the purchase order; (d) "Order" means these Terms and Conditions of Purchase and the purchase order to which they relate; and (e) "Vendor" means the entity noted in the purchase order as the seller, vendor, contractor, supplier, servicer, or other provider.

2. Acceptance. Vendor's acceptance of this Order is hereby expressly limited to the terms of this Order and shipment of any part of the goods covered hereunder shall be deemed to constitute such acceptance and a contract shall be formed. If this Order constitutes an acceptance of an offer, such acceptance is expressly made conditional on Vendor's assent to the terms of this Order and shipment of any part of the goods covered hereunder shall be deemed to constitute such assent. Buyer reserves the right to change or modify these terms and conditions from time to time. In continuing to provide goods to Buyer or any Affiliate of Buyer, Vendor agrees to any such changes and/or modifications to these terms and conditions. Except as expressly set forth in the purchase order associated with this Order that is signed by an authorized representative of Buyer, Buyer shall not be obligated to purchase any minimum quantities of goods or be required to purchase any goods exclusively from Vendor.

3. Quality; Warranties. In addition to all warranties expressed or implied at law, Vendor warrants that all goods delivered pursuant hereto will: (a) be merchantable; (b) free from defects, including latent defects, in workmanship or material; (c) conform strictly to the specifications, drawings, sample or other description specified herein or furnished herewith; (d) be fit for the uses and purposes intended; (e) be manufactured and packed for shipment in accordance with, and marked with all information required by, applicable law, regulation or other governing authority; and (f) have been stored under proper conditions to preserve the quality of the goods. Vendor further warrants that the delivery of goods hereunder shall not violate or breach any agreement that Vendor may have with any other person or entity. Vendor further warrants that it will have title to all of the goods furnished hereunder and the right to sell such goods at the time of delivery to Buyer free of any liens or encumbrances and that all such goods shall be new and unused (unless otherwise specified in the Order) at the time of delivery to the Buyer. All warranties shall survive any intermediate or final inspections, testing, delivery, acceptance or payment by Buyer. Repairs or replacements shall be made promptly by Vendor when the goods are defective, without cost to Buyer, if Buyer notifies Vendor of the defect under Section 5 hereof. In the event of failure of Vendor to correct defects in or replace nonconforming goods promptly, Buyer, after reasonable notice to Vendor, may make such corrections or replace such goods and charge Vendor for the cost incurred in doing so. Vendor recognizes that Buyer's production requirements may require immediate repairs or reworking of defective goods, without notice to Vendor. In such event, Vendor shall reimburse Buyer for the cost, delays, or other damages which Buyer has incurred. Vendor will assign to Buyer all assignable rights against suppliers, manufacturers or other providers of goods supplied to Buyer by Vendor under any warranties and indemnities Vendor receives from such suppliers, manufacturers or other providers, and Vendor agrees to cooperate with Buyer in the enforcement of any such warranties or indemnities.

4. Delays; Title and Risk of Loss; Force Majeure. Time is of the essence hereof. If any goods are not delivered within the time specified in this Order, Buyer in addition to other remedies provided by law, may either (a) refuse to accept such goods and cancel this Order without liability, (b) cause Vendor to ship the goods by the most expeditious means of transportation with Vendor responsible for any additional transportation charges, or (c) purchase such goods elsewhere and hold Vendor liable for any additional loss, cost, damage or expense incurred thereby. Title to all goods shall pass to Buyer upon the earlier of payment for the goods or delivery to Buyer at its location specified in the purchase order. Unless otherwise stated in the purchase order, Vendor shall bear all risk of loss, damage or destruction until title passes to Buyer. Neither Buyer nor Vendor shall be liable for delays in delivery or failure to manufacture, deliver or accept goods due to acts of God, acts of civil or military authorities, Governmental priorities, fires, strikes, floods, epidemics, war, terrorist acts or threats of terrorist acts or riot, which such party could not have reasonably foreseen and provided against and provided that the cause for the delay is reported in writing to the other party within seven (7) days from the commencement of such delay, and provided that the foregoing shall not limit Buyer's rights as set forth herein upon failure of goods to be timely delivered.

5. Inspection. After receipt of the goods Buyer shall have a reasonable time, but not less than seven [(7) days], in which to inspect, test and accept or reject the goods, and payment shall not constitute acceptance. Any goods that are not accepted by Buyer shall be returned to Vendor at Vendor's sole cost and expense. If Vendor fails to accept goods returned by Buyer, then Buyer shall have the right to dispose of such goods by any means. Buyer's failure to inspect, accept, reject or detect defects by inspection shall neither relieve Vendor from responsibility for such goods that are not in accordance with the terms of this Order nor impose liabilities on Buyer. Vendor agrees to ensure that billings reflect all shortages, damaged and rejected goods such that Buyer receives proper credit therefore.

6. Infringement. Vendor warrants that the use or resale of the goods furnished hereunder will not infringe any patent, trademark, copyright or other intellectual property rights or constitute the unlawful appropriation of a trade secret. Vendor shall protect and indemnify Buyer, its Affiliates and its and their customers from and against claims, damages, judgments, expenses and loss arising from infringement or alleged infringement of any intellectual property rights in connection with the goods delivered hereunder and Vendor shall defend or settle at its own expense any suit or proceeding brought against such indemnitees for such infringement. Furthermore, in the event that Buyer or any other indemnitee should be enjoined in such suit or proceeding from using any of the goods delivered hereunder, Vendor, at its option shall promptly either (a) secure termination of the injunction and procure for such indemnitee the right to use such goods without any obligation or liability, (b) replace said goods with non-infringing goods or modify same to become non-infringing, all at Vendor's expense and to such indemnitee's satisfaction, or (c) remove said goods at Vendor's expense and refund to such indemnitee the amount paid to Vendor therefore, and reimburse such indemnitee for all of its associated expenses. The provisions of this Section shall survive the expiration or termination of this Order.

7. Indemnity. Vendor shall defend, indemnify and save harmless Buyer, its Affiliates and its and their customers from and against any loss, cost, damage or expense (including reasonable attorney's fees) arising from (a) any and all claims which may be made against an indemnitee by reason of injury or death to person, or damage to property, suffered or claimed to have been suffered by any person, firm, corporation or other entity caused by defective goods furnished



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hereunder or by any act of omission, negligent or otherwise of Vendor or any subcontractor of Vendor or any of their employees, workmen, servants or agents; (b) any and all damage to an indemnitee's property, including property occupied or used by, or in the care, custody or control of Vendor, caused or alleged to have been caused by defective goods furnished hereunder or by any act or omission, negligent or otherwise, of Vendor or any subcontractor of Vendor or of any of their employees, workmen, servants or agents; (c) to the extent permitted under applicable law, any and all claims which may be made against an indemnitee by reason of injury or death to person or damage to property, howsoever caused or alleged to have been caused by, and suffered or claimed to have been suffered by Vendor or any subcontractor of Vendor or by any of their employees, workmen, servant or agents; and (d) any breach by Vendor of its representations, warranties or obligations hereunder. The provisions of this Section shall survive the expiration or termination of this Order.

8. Insurance. Vendor shall maintain insurance of the types and in the amounts that are commercially reasonable for the industry in which Vendor operates and that are satisfactory to Buyer. Vendor will provide certificates of insurance evidencing such policies upon Buyer's request.

9. Nonwaiver. The failure of Buyer to insist upon strict performance of any terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein or by law or to properly notify Vendor in the event of breach, or the acceptance of or payment for any goods hereunder, or approval of design, shall not release Vendor of any of the warranties or obligations of this Order and shall not be deemed a waiver of any right of Buyer to insist upon strict performance hereof or any of its rights or remedies as to any such goods, regardless when shipped, received or accepted, or as to any prior or subsequent default hereunder, not shall any purported oral modification or rescission of the Order by Buyer operate as a waiver of any of the terms hereof.

10. Compliance with Laws. In the performance of work hereunder, Vendor shall comply with all applicable federal, state and local laws and rules and regulations of any governmental authority which have the effect of law, including without limitation all export and reexport requirements, laws and regulations of the United States of America and any other applicable export and reexport laws and regulations. Without limiting the foregoing, Vendor and its personnel, agents and representatives are aware of, and agree to abide by, (a) the United States Foreign Corrupt Practices Act and other similar laws, regulations, orders, judicial decisions, conventions and international financial institutional rules in applicable jurisdictions with respect to domestic or international corruption, bribery, ethical business conduct, money laundering, political contributions, gifts and gratuities or lawful expenses to public officials and private persons, commissions, lobbying, books and records and financial controls ("Anti-Corruption Laws"), (b) the Buyer's current Foreign Corrupt Practices Act Policy, if any, which is incorporated herein by reference and (c) applicable requirements with respect to equal employment opportunity, occupational safety and health, and environmental and pollution standards. Vendor agrees that no portion of monies paid or payable to Vendor in connection with this Order, nor any other item of value, will, directly or indirectly, be paid, received, transferred, loaned, offered, promised or furnished to or for the use of any officer or employee of any government department, agency, instrumentality or corporation thereof, or any political party or any official of such party or candidate for office, or any person acting for or on behalf of any of the foregoing, for the purpose of obtaining or retaining business for or with, or directing business to, any person. Any provision required to be included in this Order by any such applicable law, rule or regulation shall be deemed incorporated herein without limiting the

generality of the foregoing. Vendor certifies to Buyer that the goods purchased by Buyer hereunder were produced in compliance with all applicable requirements of the Fair Labor Standards Act of 1938, as amended.

11. Withholding of Payments. Buyer shall have the right (but no duty) to withhold any moneys payable by it hereunder and apply same to the payment of any obligations of Vendor to Buyer or any other parties arising in any manner out of this Order or its performance.

12. Termination by Buyer for Cause. By written notice to Vendor, Buyer may terminate this Order in whole or in part if (a) Vendor fails to perform strictly in accordance with the required delivery schedule, (b) Vendor, in Buyer's judgment, fails to make progress thereby endangering performance of this Order, (c) Vendor fails to strictly comply with any of the other provisions of this Order, or (d) Vendor becomes insolvent or develops such financial condition so as to endanger performance, including commencement of voluntary or involuntary proceedings in bankruptcy or reorganization, or an assignment for the benefit of creditors. Upon Vendor's receipt of such notice from Buyer, all obligations of Buyer with respect to all or any portion of the Order terminated shall cease. Vendor shall be liable to Buyer for all costs, expenses and damages incurred by Buyer on account of termination. If it should be determined that Buyer has improperly terminated this Order for cause, then such termination shall be deemed a termination at Buyer's option.

13. Termination at Buyer's Option. Should Buyer's need for the goods to be supplied hereunder be reduced or eliminated, Buyer shall have the right to terminate the Order in whole or in part, in which event Vendor shall immediately cease work under this Order (including work of any of its suppliers or contractors) and Buyer shall pay to Vendor the reasonable value of the work performed by Vendor in respect of such goods up to the time of notification of termination by Buyer. In no event shall Buyer be liable for costs which Vendor could reasonably have avoided. Without limiting the foregoing, Buyer shall not be liable for actual or prospective profits, or for any consequential, incidental, special, indirect or other damages suffered as a result of any claim by Vendor arising under any section hereof. The rights and remedies provided to Buyer herein shall be cumulative and in addition to any other rights or remedies provided by law or equity. In the event Vendor is unable to make other favorable disposition of the goods in no event shall Buyer's liability under this clause exceed the aggregate price specified in this Order, less payments previously made hereunder. This clause shall not apply to any cancellation by Buyer for cause as set forth in Section 12 by Vendor or for any other cause allowed by law.

14. Designs, Tools, Dies, etc. In the event this Order includes design charges, said designs are to be considered confidential and for the specific and sole use of the Buyer and cannot be disclosed or used for any other purpose without the consent of Buyer. If the materials hereunder are to be produced by Vendor in accordance with designs, drawings, or blueprints furnished by Buyer, Vendor shall return such documents to Buyer at latter's request upon completion or cancellation of this Order, and such documents shall not be used by Vendor in the production of materials for any third party without Buyer's written consent. All such information (including without limitation designs, drawings and blueprints) furnished to Vendor is and shall remain the sole and exclusive property of Buyer and Vendor shall keep such information confidential. If Buyer furnishes Vendor with any tools, dies, jigs, molds, fixtures, gauges, patterns, software or manufacturing aids in connection with the performance of this Order, Vendor shall be responsible for the preservation and custody of, and for properly insuring, the same, shall not use same in the production of materials for any third party without Buyer's written consent, shall keep the same



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confidential and shall return same to Buyer at latter's request upon completion or cancellation of this Order.

15. Price; Delivery. This Order shall not be filled at higher prices than specified in the applicable purchase order or as otherwise agreed upon by the parties. If price is omitted the goods shall be billed at the price last quoted or paid, or at the prevailing market price, whichever is lower. If no other delivery terms are specified in the applicable purchase order, then goods will be delivered [F.O.B. destination] as designated by Buyer, and any and all costs associated with shipping or otherwise transporting goods shall be borne by Vendor. If a carrier is designated by Buyer on this Order and Vendor fails to use the designated carrier, then Vendor will be responsible for any freight charges in excess of those charged by Buyer's designated carrier.

16. Assignment and Subcontracting. Neither this Order nor any interest or claim hereunder shall be assigned or transferred by Vendor, nor any obligation delegated or subcontracted by Vendor hereunder, except as expressly agreed in writing by a duly authorized officer of Buyer. Any attempted assignment, subcontract or other transfer by Vendor, without such written consent, shall be void. Such consent shall not release Vendor from its obligations and liabilities hereunder.

17. Entire Agreement; Modifications; Binding Effect. This Order constitutes the entire agreement between the parties with respect to the purchase and sale of the goods described in this Order and shall supersede all previous proposals both oral and written, negotiations, representations, commitments, writings and all other communications between the parties with respect to such goods. No waiver, alteration, modification of or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by Buyer. If any of Vendor's forms (including without limitation quotations, acknowledgments, conformations and invoices) state terms additional to or different from those set forth herein, this writing shall be deemed an objection to and rejection of such additional and/or different terms and the terms of this Order shall apply. This Order is binding upon, and will inure to the benefit of, Buyer and Vendor and each of their respective successors and permitted assigns. Notwithstanding the foregoing, the Buyer and Vendor acknowledge and agree that no other person or entity has, or is entitled to enforce, any rights, benefits or obligations under this Order.

18. Governing Law; Jurisdiction. All questions arising in connection with this Order shall be construed, resolved and governed by the laws of the Commonwealth of Pennsylvania and its commercial code, if applicable, without regard to its conflict of laws principles and excluding the U.N. Convention for the International Sale of Goods. All disputes arising hereunder shall be resolved in a court of competent jurisdiction in Allegheny County, Pennsylvania, and Vendor hereby consents to the jurisdiction of the State and Federal Courts sitting in Allegheny County, Pennsylvania. Vendor hereby waives any defenses based upon venue, inconvenience of forum, lack of personal jurisdiction, improper service of process of the like in any such action or suit.

19. Errors. Any stenographic or clerical errors in this Order are subject to correction by Buyer.

20. Enforceability. Any provision of this Order which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

21. Release of Liens. Vendor agrees to furnish Buyer as a condition precedent to final payment, a complete release of all liens, together with a certificate by Vendor that the release contains the signatures of all those who performed services or furnished materials under this Order.

22. Limitations of Liability. NEITHER BUYER NOR ITS REPRESENTATIVES IS LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS AND CONDITIONS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY VENDOR OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. BUYER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO PURCHASE OF GOODS HEREUNDER, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO VENDOR BY BUYER IN THE 12-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.