



## IMS QUOTATION/ SALE TERMS AND CONDITIONS

These Quotation/Sale Terms and Conditions (“**Terms and Conditions**”) shall apply to any quotation issued by UTI - Inventory Management Solutions Ltd. (“IMS”) address - Rowan Tree Road, Naas Enterprise Park, Naas, Co. Kildare, W91 VE82, Ireland .

All orders and sales of IMS products and services (“Goods”) are subject to final approval by IMS and shall be subject to these Terms and Conditions, which shall take precedence and supersede over any additional or different terms and conditions from the buyer (“Buyer”).

### Prices

Unless otherwise stated in a quotation, prices quoted are valid for a period of thirty (30) days after which IMS shall have the right to adjust quoted prices upon written notice to Buyer. Quoted prices do not include any applicable local, VAT, GST, state, federal or foreign taxes and any such taxes, including sales and excise taxes, levied on the Goods shall be added to the specified prices for Goods paid by Buyer and shall remain the sole responsibility of Buyer.

### Quotation

IMS’s acceptance of any order for Goods delivered by Buyer is conditioned upon Buyer’s acceptance of these Terms and Conditions. All quotations issued by, and all sales of Goods made by, IMS shall be subject to these Terms and Conditions, which shall prevail and be effective notwithstanding any inconsistent or additional terms contained in any purchase order or other document submitted by Buyer unless otherwise agreed in writing. Under no circumstances shall any such inconsistent or additional terms be considered a part of these Terms and Conditions and such inconsistent or additional terms are hereby rejected unless expressly accepted in writing by an authorized officer of IMS. These Terms and Conditions shall not be modified other than in writing signed by IMS and Buyer and shall become a part of any further or additional order or agreement between the parties regarding the sale of the Goods. Verbal agreements shall not be binding upon IMS unless they have been agreed to in writing.

### Limitation of Liability

In no event shall IMS be liable to Buyer or to any third party for any consequential, incidental or special damages, or for loss of profits, resulting from or in any manner related to the Goods, any performance or non-performance by IMS, or the design, use or any inability to use the Goods, whether such damages are claimed under contract, tort or any other legal theory. Buyer understands and agrees that Buyer’s sole and exclusive remedy, and IMS’s limit of liability, for any and all loss or damage resulting from defective Goods or the breach by IMS of any provision or term set forth herein or otherwise, in each case, shall be limited either to the replacement or to the purchase price of the particular Goods with respect to which such loss or damage is claimed, plus any transportation costs actually paid by Buyer at the discretion of IMS. This limitation of liability shall survive the termination, expiration or cancellation of any agreement or order with respect to the sale of Goods. Except as otherwise described herein or expressly provided by IMS, there are no other warranties or guaranties, either express or implied, written, oral or arising under custom or trade, including, without limitation, the warranty of title, against liens, infringement, the warranty of merchantability and the warranty of fitness for a particular purpose. No warranties or representations at any time made by any representative of IMS shall be effective to vary or expand the above referenced express warranty or any terms set forth in these Terms and Conditions.

Buyer undertakes to include all requirements and specifications relating to the Goods ordered in a quotation. Under no circumstance shall IMS be held liable for any product defects or specifications which have not been requested by Buyer in a quotation.



### **Delay in Performance**

IMS shall not be responsible or liable for any delays or failures in performance with respect to any quotation or order for Goods due to any cause or condition beyond the control of IMS, including, without limitation, strikes or labor difficulties, fires, floods and other actions of the elements, inability to secure transportation, shortage of materials or equipment, riots or other civil commotions and acts of God and war. IMS's liability for actual and proven damages shall, regardless the gravity of the failure, be limited to the purchase price of the Goods directly related to the claim. All other liability of IMS, such as that for consequential loss, other indirect loss and loss as a result of third party liability, is expressly excluded.

### **Inspection**

Buyer shall inspect all supplied Goods and verify conformity with the quotation promptly upon delivery and before use of such Goods. Goods may not be returned without IMS's prior written authorization. Goods shall be deemed to have been accepted in the event no written notice specifying in detail any shortages, damages or other claims has been received by IMS within five (5) days following delivery of the Goods. IMS shall not be liable for any damage, warranty or remedy, and any back charges will not be accepted, without the following -prior notification to IMS, an opportunity to IMS to view and repair, replace or otherwise cure, and the approval by IMS. A restocking charge in the amount of minimum 30% of the purchase price of the Goods will be charged on Goods approved by IMS for refund. In the event that Buyer omits to exercise control of the Goods or elects to use nonconforming Goods, Buyer thereby releases and dismisses IMS from any and all liability for the possible consequences of the usage of such Goods.

### **Term of Delivery**

All dates and schedules specified by IMS for the performance or delivery of Goods by IMS have been stated only approximately as an estimate from the date of such quotation, and are contingent upon, among other things, the timely receipt of complete specifications, designs, samples and other information reasonably requested by IMS to be provided by Buyer. IMS shall not incur any liability, either direct or indirect, nor shall any quotation or purchase order be cancelled as a result of any delays in meeting such dates or schedules. IMS shall not be responsible for any delays caused by third parties utilized by IMS for the transit of the Goods or the inability of such third parties to provide or deliver their goods or services to IMS. Buyer hereby agrees and acknowledges that IMS's quote may be based on a quote from a third party and IMS shall not be bound by its own quote if any third party fails to provide its goods or services as promised or agreed.

Unless otherwise expressly agreed to in writing, shipment of Goods will be F.O.B. IMS's or sub supplier facility according to IMS's sole decision, at which time title and risk of loss shall pass to Buyer. Payment of all shipping and freight charges, along with all customs, duties, costs, taxes, insurance premiums, and other expenses related to the transportation of Goods, shall be the sole responsibility of Buyer.

### **Cancellation, Assignment or Change Orders; Default**

No orders may be withdrawn or canceled by Buyer, nor may they be deferred when ready, unless IMS shall have previously approved such withdrawal, cancellation or deferral in writing, and IMS shall have been paid a withdrawal, cancellation or deferral charge of a reasonable amount acceptable to IMS not to exceed its cost plus anticipated profit. In the event that Buyer shall request changes in any order that has been submitted to IMS, Buyer shall be responsible for all charges and expenses reasonably incurred by IMS with respect to such changes. Buyer shall not have the right by change orders to specify any products or services that are not generally made available by IMS to its customers. In the event of Buyer's default hereunder, IMS shall have the right to immediately cancel any order, stop work, refuse to ship or stop delivery of any Goods, and IMS shall be entitled to recover any losses or damages incurred by IMS as a result of such default without derogating from any other remedy provided by law. Buyer's default means (i) Buyer's insolvency or the filing or institution of a proceeding under any bankruptcy, reorganization or similar law, by or against Buyer, (ii) an assignment for the benefit of creditors by Buyer, (iii) the appointment of a receiver, trustee or custodian for any of the property or assets of Buyer, and (iv) Buyer otherwise being in default of any obligation to IMS hereunder or otherwise. By submitting an order to IMS, Buyer warrants, represents



and covenants that it is solvent now and will be solvent at shipment and agrees to notify IMS immediately in writing upon the occurrence of any of the events set forth in this paragraph.

Buyer cannot assign any or all of the order without IMS prior written approval.

#### **Conditions of payment**

Unless otherwise provided in a quotation, all invoices are due thirty (30) days after the date of invoice (net 30 days). IMS reserves the right to supply certain high value products cash on delivery only, without any deduction. Any possible protest must be communicated within 10 days after the date of invoice. Late payment will cause, ipso jure and without notice, a late payment charge of 200 USD processing fee plus 2% for each elapsed and/or started month. Offsetting against any kind of non-approved counter-claims as well as execution of right of retention of Goods shall be excluded unless established in court or agreed to by IMS. IMS shall remain the sole owner of delivered Goods, and title to Goods shall not pass to Buyer, until such time as IMS receives payment in full of the entire purchase price for such Goods, including transport costs and taxes and IMS reserves the right to invoice separate parts of a quote separately. IMS reserves the right to refrain from execution of further components of a quote or order, or of any subsequent quote or order, or to terminate a delivery, until such time as any outstanding issued invoices shall have been paid in full.

In case the Buyer notifies IMS to purchase goods from a certain supplier or sub-supplier, Buyer acknowledges that any loss or risk to IMS will be reimbursed by Buyer including any pre-payments made where the goods were not received, Buyer also waives any claims against IMS related to the supplier or sub-supplier goods delivered or provided

IMS will have liens and pledges on goods and/or deeds and/or instruments and/or rights of any nature or type whatsoever, belonging to the Buyer and which are in the possession of or being handled by IMS, in connection with any debt owing to IMS by the Buyer, irrespective of whether or not the debt arises from the handling of such goods, or from the handling of other goods, whether such handling has been terminated or otherwise. It is further clarified that all the Services to be provided in accordance with this Agreement to the Buyer will be deemed to be a single transaction for the purpose of IMS's lien.

Payments to be effected by the Buyer to IMS will not be offsettable unless otherwise expressly concluded

#### **Indemnification**

Buyer shall indemnify and hold harmless IMS and its officers, employees and agents against all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable attorney's fees) on account of any damaged property or injury or death of persons (including, without limitation, Buyer's employees) arising out of Buyer's storage, handling, use, implementation or disposal of Goods purchased from IMS. This indemnity obligation shall survive the expiration, termination or cancellation of any agreement or order with respect to the sale of Goods.

#### **Credit Report**

Buyer hereby authorizes IMS from time to time to obtain Business and Consumer Credit Reports on Buyer or any principals of Buyer or to obtain credit and funding information from any other source. IMS shall have no obligation to commence or continue performance until adequate credit and funding information has been provided, at any time upon the request of IMS. IMS may stop the supply of any Goods when it, in its sole discretion, determines that Buyer is in breach of this Agreement or any other contract with IMS, or IMS reasonably believes that Buyer may be unable to make timely payments with respect to any ordered Goods, until such time as payment has been made and any such payment insecurity has been resolved.



### **Governing Law and Jurisdiction; Attorney's Fees**

This Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with the laws of Ireland, without regard to any choice of law principles. Buyer and IMS hereby agree to submit to the jurisdiction of the Ireland court and such courts shall have exclusive jurisdiction and venue to adjudicate the rights and obligations of the parties relating in any manner hereto. The parties hereby waive any argument relating to the convenience of forum. In the event of litigation relating to the subject matter hereto, the substantially prevailing party shall be entitled to recover from the non-prevailing party all reasonable attorney's fees and costs relating to such litigation.

### **General**

These Terms and Conditions shall govern the entire relationship between IMS and Buyer. The parties agree that there are no other understandings between the parties concerning the subject matter hereof, whether verbal or written. By acceptance of the quotation, Buyer agrees that any additional terms and conditions of a purchase order or change order shall not be applicable unless expressly agreed to by IMS in writing. IMS specifically objects to the inclusion of any different or additional terms or conditions by Buyer in confirming or accepting any quotation. Delivery of a purchase order by Buyer pursuant to this quotation shall be deemed to be an acceptance by Buyer of these Terms and Conditions. In the event Buyer includes different or additional terms and conditions in its purchase order, acceptance, confirmation or other written form sent in response to any quotation, neither IMS's delivery of all or part of the Goods, nor any other action except a written notice from IMS, shall constitute acceptance of such additional or different terms, but instead these Terms and Conditions shall apply.

### **Severability**

If any provision of these Terms and Conditions is held by any court to be invalid or unenforceable, such provision shall be deemed to be modified or deleted, but only to the extent necessary to enable that and the remaining provisions of this Agreement to be valid and enforceable.

### **Confidentiality**

The Parties undertake to maintain in strict confidence any business and/or commercial and/or other information disclosed to them and/or to their employees and/or to their agents in the course of and/or in connection with and/or in relation to the performance of the Services under this Agreement in respect of the other Party and not to disclose directly or indirectly any such information to any other person and/or entity. The Parties undertake not to use directly and/or indirectly any information and/or documents and/or any material prepared by either of them and/or provided by either of the Parties to the other within the framework of this Agreement, other than in accordance with the instructions of the other Party.

### **Pricing**

The price quotation currency rate is valid for the day of the quotation. Please note, when a PO is issued that the calculation of the pricing should be according to the currency rate for the day the PO is issued.



**BY ACCEPTING THE QUOTATION AND/OR PROVIDING A PURCHASE ORDER TO IMS, BUYER ACKNOWLEDGES RECEIPT AND ACCEPTANCE OF THESE TERMS AND CONDITIONS.**

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This Agreement shall be deemed to have been made under, and shall be construed and interpreted in accordance with the laws of Ireland, without regard to any choice of law principles. Buyer and IMS hereby agree to submit to the jurisdiction of the English courts and such courts shall have exclusive jurisdiction and venue to adjudicate the rights and obligations of the parties relating in any manner hereto.

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All orders and sales of IMS products and services (“Goods”) are subject to the IMS standard Terms and Conditions published on the IMS Site

[http://www.utiims.com/sites/ims/files/articles\\_files/IMS%20QUOTATION%20SALE%20TERMS%20AND%20CONDITIONS%20ireland\\_0.pdf](http://www.utiims.com/sites/ims/files/articles_files/IMS%20QUOTATION%20SALE%20TERMS%20AND%20CONDITIONS%20ireland_0.pdf)

relevant and applicable at the time of purchase . We recommend that you review these Terms and Conditions prior to your order.

Notwithstanding- IMS reserves the right to revise, edit, amend and/or alter in any way the conditions of these Terms at any time by simply updating and re-posting revised Terms to the Site .