

# SALES TERMS AND CONDITIONS



All sales made by IM to Purchaser are subject to these Terms. Purchaser's acceptance of these Terms shall be deemed by (i) Purchaser signing these terms and conditions or (ii) Purchaser providing a purchase order to IM, or (iii) Purchaser's acceptance of any Product or Service from IM, whichever occurs first.

These Terms and any document(s) referred to herein shall apply to sales of all the Products to Purchaser and supersede all prior understandings, arrangements and agreements. ANY DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS IN ANY PURCHASE ORDER, INVOICE OR OTHER SUCH DOCUMENT SUBMITTED BY PURCHASER ARE HEREBY EXPRESSLY REJECTED AND SHALL HAVE NO FORCE OR EFFECT.

## 1. DEFINITIONS

- 1.1. "Confidential Information" means confidential information and documentation of IM relating to the Products, their marketing, use, maintenance and software, including technical specifications
- 1.2. "IM" means Aptec Distribution FZ-LLC.
- 1.3. "Intellectual Property" means all trademarks, copyright and other intellectual property rights.
- 1.4. "Non-Conforming Product" shall mean a Product that does not conform to the Supplier's Warranties.
- 1.5. "Purchaser" means the person, business or company named below that is purchasing the Products from IM.
- 1.6. "Products" means any products (including software) or services, where applicable, supplied to Purchaser by IM and described in IM's invoice.
- 1.7. "Supplier" means the manufacturer or publisher of a particular Product.
- 1.8. "Supplier's Warranties" means the warranties, if any, provided by the applicable Supplier of a particular Product.

## 2. ORDERING

- 2.1. All orders for Products placed by Purchaser:
  - (a) must be made in accordance with IM's order policy as amended by IM from time to time, a copy of which is available on request; and
  - (b) are subject to acceptance by IM, and no order will be deemed to have been accepted by IM unless Products are supplied or a back-order or delivery delay is confirmed in writing by an authorised representative of IM to Purchaser.
- 2.2. IM may at its own discretion reject any order placed by Purchaser if there is an insufficient supply of Products which prevents IM from being able to fulfill such order.
- 2.3. ALL PRODUCTS SOLD TO PURCHASER ARE STRICTLY FOR RESALE TO END USERS (WHO PURCHASE FOR INTERNAL USE) IN THE COUNTRY(S) AS AUTHORIZED BY THE SUPPLIER OF THE PRODUCTS.
- 2.4. Unless otherwise agreed in writing by an authorised representative of IM, Purchaser may not cancel an order which has been accepted by IM.

## 3. PRICE

- 3.1. A quotation by IM does not constitute an offer and IM reserves the right to withdraw or revise any quotation at any time prior to IM's acceptance of Purchaser's order.
- 3.2. The price of the Products will be IM's quoted price. All prices are subject to change without notice and will be established at time of order acceptance by IM. Prices for backordered Products are not guaranteed.

## 4. CREDIT AND PAYMENT TERMS

- 4.1. Unless agreed otherwise in writing by an authorised representative of IM, payment is required prior to delivery of the Products to Purchaser. No cash payments will be accepted, IM reserve the right to cancel the purchase order and refrain from delivering the Products if the Purchaser fails to pay the price prior to delivery.
- 4.2. All payments shall be in USD or AED (1 USD = 3.6 AED).

- 4.3. Purchaser must pay to IM any amount Purchaser owed to IM in full, despite any right of set-off that Purchaser may have. Time shall be of the essence.
- 4.4. If Purchaser wishes to apply for a credit limit or payment term, Purchaser shall furnish to IM all financial information reasonably requested by IM from time to time for the purpose of establishing or continuing Purchaser's credit limit.
- 4.5. IM shall have the right from time to time, without notice, to change or revoke Purchaser's credit limit on the basis of changes in IM's credit policies or Purchaser's financial condition and/or payment record.
- 4.6. Purchaser shall pay all costs of collection including reasonable attorneys' fees.

## 4A. DEFAULT OF PAYMENT

- 4A.1. A service charge of the lesser of one and one-half percent (1 ½%) per month or the maximum amount allowed by law will be charged on all over due amounts commencing on the date payment is due up to date of full payment.
- 4A.2. Without prejudice to any rights or remedies IM may have at law or equity, if Purchaser fails to make timely payment to IM:
  - (a) all amounts owing by Purchaser to IM on any account will immediately become due and payable together with legal costs of enforcement; and/or
  - (b) IM may immediately suspend the provision of credit to Purchaser until all amounts owing are paid for in full; and/or
  - (c) IM may delay or cancel future deliveries and/or to reduce or cancel any or all quantity discounts extended to Purchaser

## 5. TAXES

- 5.1. Unless stated otherwise in these Terms (or in writing by IM's authorised representative), all prices quoted for Products are exclusive of all applicable taxes, handling, delivery, agents' charges and any other charge, duty or impost.
- 5.2. Purchaser must pay IM, on demand, any tax (other than income tax) payable under these Terms, any matter or thing done under these Terms or any payment, receipt or other transaction contemplated by these Terms, including any goods and services tax, customs duty, excise duty, stamp duty, other duty, governmental charge, fee, levy or impost, together with any fine, penalty or interest payable because of a default by Purchaser.
- 5.3. Purchaser shall pay the full amount due to IM under this clause and shall not deduct from that amount any tax in relation to purchase of the Products. If Purchaser is required to pay any withholding tax, charge or levy in respect of any payments due to IM hereunder, Purchaser shall gross up payments actually made such that IM shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy.

## 6. SHIPMENT AND DELIVERY

- 6.1. Delivery to a local address will be via IM's ground transportation and subject to freight and handling charges. Delivery to an international address will be subject to additional terms and charges.
- 6.2. Delivery times advised to Purchaser are estimates only and IM will not be liable for any loss, damage or delay suffered or incurred by Purchaser or its Purchasers arising from late or non-delivery of the Products.
- 6.3. IM may make part deliveries of any order, and each part delivery will constitute a separate supply of the Products upon these Terms.
- 6.4. Upon receiving the Products the Purchaser must sign the delivery note if so required by IM's representative.

## 6A. SOFTWARE

- 6A.1. To the extent that a Product supplied under these Terms is software then, in addition to these Terms, that software Product will be supplied subject to the terms and conditions of the relevant licence agreement applicable.

- 6A.2. Software licence agreements may be packaged with the software, may be separately provided to Purchaser for execution or may require on-screen acceptance by Purchaser. Purchaser agrees to use the software Product in accordance with the terms and conditions of the relevant licence agreement.
- 6A.3. Where the term "supply" is used in these Terms to refer to a software Product, such term means the sale and purchase of the licence to use that software Product.
- 6A.4. To the extent that a Product supplied under these Terms is software then the Purchaser acknowledges that the delivery of the software license by any mean of delivery (including but not limited to e-mail delivery) is considered as delivery of the Products.

**6B. INSPECTION AND ACCEPTANCE**

- 6B.1. In the case of all Products ordered, Purchaser must:
- (a) (For non-software Products) inspect such Products upon delivery to Purchaser's premises.
  - (b) (For software Product) test or inspect such software Products upon those software Products being authorised by IM for downloading by Purchaser.
- 6B.2. If Purchaser alleges any matter or thing by which the Products do not accord with Purchaser's order, Purchaser must give written notice to IM within 3 working days of delivery or downloading (as the case may be). Such notice shall be reasonably detailed and explain the discrepancy or why the purchased Product was refused.
- 6B.3. Failing such notice and to the extent permitted by law, the Products will be deemed to be conforming to the purchase order, free from defects and irrevocably accepted by Purchaser.

**6C. TITLE AND RISK**

- 6C.1. Risk in the Products shall pass to Purchaser immediately upon delivery of the Products to the Purchaser, Purchaser's agent or into the Purchaser's custody or control; or collection of the Products by the Purchaser's nominated carrier or agent.
- 6C.2. Title in the Products supplied by IM to Purchaser will not pass to Purchaser and will remain the absolute property of IM until such time as IM has been paid by Purchaser all monies due and owing to it by the Purchaser in relation to any account. Title to those Products which are software remains with IM and/or the applicable third party licensor(s) at all times.
- 6C.3. Until the Product price is fully paid IM, the Purchaser:
- (a) must properly segregate and store the Products in such manner as to clearly indicate that they are the property of IM.
  - (b) Purchaser may sell the Products and shall keep records of the Products in the ordinary course of its business as fiduciary agent for IM and Purchaser agrees to deposit all proceeds of any such sale (including any proceeds received from any insurance claims) in a separate bank account and agrees not to mix the proceeds with any other monies and hold the monies on trust for IM and shall immediately account for such proceeds to IM.
- 6C.4. If Purchaser has breached these Terms, Purchaser authorises IM, at any time, to enter onto any premises upon which IM's Products are stored to enable IM to inspect the Products and/or reclaim the Products.
- 6C.5. If Purchaser sells, disposes of or otherwise deals with Products or any part thereof before full payment has been received by IM, Purchaser must advise IM in writing, at such times as IM may request, specifying full details of the Products sold, disposed of, utilised or otherwise dealt with.
- 6C.6. Purchaser acknowledges that in the case of software Products, any refusal or failure to pay may result in cancellation of the licence to use the software Product.
- 6C.7. Purchaser agrees that the provisions of this clause apply despite any arrangement under which IM grants credit to Purchaser.

**7. WARRANTY**

- 7.1. To the extent permitted by law,
- (a) Products are covered by the Supplier's Warranties.

- (b) IM's entire responsibility with respect to warranties for the Products is to pass on to Purchaser the benefit of any such Supplier's Warranties.
  - (c) The Supplier's Warranties are in substitution for all other terms, guarantees, conditions and warranties, whether implied by statute or otherwise (including implied warranties with respect to merchantability and fitness for purpose) and IM expressly excludes all such other terms, guarantees, conditions and warranties.
  - (d) IM does not warrant that repair facilities or parts will be available in respect of any of the Products.
- 7.2. Software Products are not warranted by IM under these Terms. Such software Products are warranted in accordance with the relevant licence agreements governing their use.

**8. PRODUCT RETURNS**

- 8.1. Returns will be subject to IM's returns policy ("**Returns Policy**") as amended by IM from time to time, a copy of which is available on request.
- 8.2. Purchaser must notify IM in writing of any Products it wishes to return within 30 days from the date of the invoice relating to those Products.
- 8.3. Each claim for the return of Products by Purchaser will be dealt with in accordance with the Returns Policy.
- 8.4. Any substitute Products to be shipped to Purchaser in accordance with the Returns Policy will be sent by IM to Purchaser by ordinary freight pre-paid.
- 8.5. IM will not be liable for any damage or defects in the Products that have been caused by the improper storage, warehousing or transport, or by any neglect, abuse or improper use, installation, maintenance or unauthorised repair of IM's Products.
- 8.6. The provisions of this clause do not extend to any Products which have been added to, varied, or otherwise modified by, any person other than IM.

**9. INTELLECTUAL PROPERTY**

- 9.1. Purchaser acknowledges that:
- (a) Intellectual Property embodied in or in connection with the Products and any related documentation, parts or software are the sole property of IM or its suppliers; and
  - (b) all Intellectual Property of IM or its suppliers may only be used by Purchaser with the express written consent of IM or its suppliers and such consent extends only to use essential for the purposes stated in it.
- 9.2. Purchaser must not register or use any trade marks, trade name, domain name, trading style or commercial designation or design used by IM or its suppliers in connection with the Products.
- 9.3. IM SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, OR HOLD HARMLESS PURCHASER FROM AND AGAINST ANY OR ALL DAMAGES AND COST INCURRED BY PURCHASER ARISING FROM THE INFRINGEMENT OF PATENTS OR TRADEMARKS OR THE VIOLATION OF COPYRIGHTS BY PRODUCTS. IM WILL BEAR NO LIABILITY TO PURCHASER OR ANY THIRD PARTY RELATED THERETO.
- 9.4. Purchaser will indemnify IM against all liabilities, damages, costs and expenses which IM may suffer or incur as a result of any work performed by IM in accordance with Purchaser's specifications or as a result of the combination or use of the Products with other equipment, parts or software not supplied by IM, and which results in the infringement of any Intellectual Property of any person.

**10. LIMITATION OF LIABILITY**

- 10.1. PURCHASER AGREES THAT THE LIABILITY OF IM FOR DIRECT DAMAGES RELATED TO ANY PRODUCT ARISING UNDER THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO IM BY PURCHASER FOR THAT PRODUCT WHICH IS THE SUBJECT OF THE CLAIM.

10.2. IN NO EVENT WILL IM BE LIABLE TO PURCHASER OR ANY OTHER PARTY FOR INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF GOOD WILL, LOSS OF ANTICIPATED PROFITS, OR OTHER ECONOMIC LOSS ARISING OUT OF OR IN CONNECTION WITH IM'S BREACH OF, OR FAILURE TO PERFORM IN ACCORDANCE WITH ANY OF THESE TERMS, OR THE FURNISHING, INSTALLATION, SERVICING, USE OR PERFORMANCE OF ANY PRODUCTS OR INFORMATION IM MAY PROVIDE, EVEN IF NOTIFICATION HAS BEEN GIVEN AS TO THE POSSIBILITY OF THOSE DAMAGES AND PURCHASER EXPRESSLY WAIVES ANY AND ALL CLAIMS FOR THOSE DAMAGES.

#### 11. COMPLIANCE WITH U.S. EXPORT LAWS

- 11.1. Purchaser acknowledges and shall advise its customer that the Products are controlled for export by the U.S. Department of Commerce and that the Products may require authorization prior to export from the UAE or re-export.
- 11.2. Purchaser agrees that it will not export, re-export, or otherwise distribute Products, or direct products thereof, in violation of any export control laws or regulations of the United States or the UAE.
- 11.3. Purchaser warrants that it will not export or re-export any Products with knowledge that they will be used in the design, development, production, or use of chemical, biological, nuclear, or ballistic weapons, or in a facility engaged in such activities, unless Purchaser has obtained prior approval from the US Department of Commerce.
- 11.4. Purchaser further warrants that it will not export or re-export, directly or indirectly, any Products to embargoed countries or sell Products to companies or individuals listed on the Denied Persons List published by the US Department of Commerce.

#### 12. LEGAL COMPLIANCE AND ANTI – CORRUPTION

- 12.1. IM and Purchaser agree to abide by all laws and regulations applicable to the performance of their respective obligations under these terms and conditions. Purchaser has not made, and will not make, any direct or indirect payment, offer to pay, or authorization to pay, any money, gift, promise to give, or authorization of the giving, of anything of value to any government official, or the immediate family of any such official, for the purpose of influencing an act or decision of the government or such individual in order to assist, directly or indirectly, Purchaser in obtaining or retaining business, or securing an improper advantage.

#### 13. RELATIONSHIP OF THE PARTIES

- 13.1. Purchaser's relationship with IM will be that of an independent contractor. Purchaser will not have, and will not represent that it has, any power, right or authority to bind IM, or to assume or create any obligation or responsibility, express, implied or by appearances, on behalf of IM or in IM's name, except as herein expressly provided. Nothing stated in these terms and conditions will be construed as constituting Purchaser and IM as partners or as creating the relationships of employer/employee, franchisor/franchisee, or principal/agent between the parties. Purchaser will make no warranty, guarantee or representation, whether written or oral, on IM's behalf.

#### 14. RESTRICTIONS

- 14.1. All Products delivered to Purchaser hereunder may have additional restrictions on their use, including those specified by the Supplier.
- 14.2. Purchaser is solely responsible for ensuring its adherence to any and all such restrictions and requirements and agrees to hold IM harmless from all costs, fees, expenses, and liability arising from Purchaser's direct or indirect violation of same.

#### 15. CHOICE OF LAW/CHOICE OF FORUM

- 15.1. These Terms shall be governed by and construed in accordance with the laws of Dubai, UAE excluding its conflicts or choice of law rule or principles which might refer to the law of another jurisdiction. The

United Nations Convention on Contracts for the International Sale of Goods shall not apply to these Terms. Purchaser submits to the jurisdiction of the municipal court of the Emirate of Dubai.

#### 16. FORCE MAJEURE

- 16.1. IM will not be liable for any delay or for failure to perform any obligation under these terms and conditions resulting from any cause beyond IM's reasonable control, including but not limited to: Purchaser's or Purchaser's customers' failure to timely supply necessary data, information or specifications; any changes in data, information or specifications made by Purchaser or Purchaser's customer; third party equipment manufacturer design defects, flaws or errors; acts of God; Internet blackouts or brownouts; severe weather; fire; explosions; floods; strikes; work stoppages; slowdowns or other industrial disputes; accidents; riots or civil disturbances; acts of war, sabotage or terrorism; dangerous conditions which present a threat to the safety or health of IM's personnel; acts of government; inability to obtain any license or consent necessary in respect of any third party software; and delays by suppliers or material shortages. Scheduled performance dates shall be extended for these causes.

#### 17. GENERAL

- 17.1. The current version of these Terms as published at IM's website at the time of sale are the applicable terms and conditions of sale between IM and Purchaser. These terms may be amended from time to time without notice at IM's sole discretion. By continuing to place orders for Products, Purchaser will be deemed to have accepted the revised Terms.
- 17.2. No variation of these Terms by the Purchaser shall be effective unless made in writing and signed by a duly authorized officer of both parties.
- 17.3. Any provision of these Terms which is invalid or unenforceable will be read down to the extent necessary, and the remaining provisions will continue unaffected.
- 17.4. Purchaser agrees that failure or delay by IM to exercise a right or power under these Terms shall not operate as a waiver.
- 17.5. Purchaser may not assign or attempt to assign any of its rights and obligations under these Terms.

#### 18. MANAGED SERVICES AND CLOUD SERVICES

With respect to managed services and cloud services purchased from IM only, the following terms in this Clause 18 are supplemental to the terms and conditions above:

**18.1. Use of Subcontractors.** IM will use its own employees and/or subcontractors to provide services. Designation and management of employees and subcontractors will be at IM's sole discretion, and use of subcontractors will not require Purchaser's consent.

**18.2. Reporting.** Purchaser shall provide to IM timely and accurate Usage Reports and any other reports required by IM in the form and at times as shall be informed by IM from time to time. Purchaser shall maintain complete, clear, and accurate records of the actual amount of Products used by Purchaser and any other records necessary to demonstrate material compliance with the Agreement.

**18.2. Use of Services.** Purchaser agrees to indemnify and hold IM harmless from any liability, costs or damages arising out of claims or suits by third parties who have received the right to access the services.

**18.3. Security.** Solely to the extent Purchaser's or Purchaser's customer's data is lost directly due to the gross negligence or willful misconduct of IM or IM's subcontractors, IM will use commercially reasonable efforts, at its expense, to assist the affected Purchaser or Purchaser's customer to restore the affected data; provided, however, that IM's obligations pursuant to this section are subject to the affected Purchaser or Purchaser's customer maintaining practices and standards used in well-managed operations with regard to the backup of their respective data and the use of corporate enterprise quality anti-virus and virus protection tools with regard to Purchaser's and Purchaser's customers. This shall be IM's sole obligation, and Purchaser's exclusive remedy, with respect to such loss of data.

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**18.4. Warranty.** IM DOES NOT WARRANT THAT THE SERVICES, EXCEPT AS SET FORTH IN THE SERVICE DESCRIPTION, WILL MEET PURCHASER'S OR PURCHASER'S CUSTOMER'S REQUIREMENTS OR THAT USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. PURCHASER ASSUMES THE RESPONSIBILITY TO TAKE ADEQUATE PRECAUTIONS AGAINST DAMAGES TO ITS OPERATIONS OR ITS CUSTOMER'S OPERATIONS WHICH COULD BE CAUSED BY DEFECTS, INTERRUPTIONS, OR MALFUNCTIONS IN THE SERVICES.

**18.5. Limitation of Liability.** PURCHASER AGREES THAT THE LIABILITY OF IM FOR DIRECT DAMAGES RELATED TO ANY

MANAGED SERVICES OR CLOUD SERVICES ARISING UNDER THESE TERMS AND CONDITIONS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE NET AMOUNT PAID TO IM BY PURCHASER FOR THOSE SERVICES WHICH ARE THE SUBJECT OF THE CLAIM DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE UPON WHICH THE CLAIM AROSE.