

Terms and Conditions of Sale and Service Agreement

This Terms and Conditions of Sale and Service Agreement (the "Agreement") applies to all quotations and offers made by, and purchase orders accepted by, IMSWorkX, Inc. (hereinafter "IMSWorkX") and, to the extent of any conflict with other written or oral terms or conditions relating to the subject matter hereof, this Agreement takes precedence over those other terms and conditions, whether made by any customer or prospective customer (hereinafter "Buyer") or IMSWorkX. When applied to products which IMSWorkX licenses rather than sells, the term "Buyer" should be understood to mean "Licensee" and references to "purchase" should be understood to mean "license". Buyers are cautioned not to rely on precedence language attached to purchase orders or other documents and to bring any concerns related to terms and conditions to the attention of IMSWorkX prior to placing orders.

1 Quotations

Unless otherwise stated on the quotation, quotations are valid for 30 (thirty) days from the date issued. Quotations may not be transferred or assigned to third parties.

2 Taxes

Prices do not include any taxes which apply or may apply to the products sold or to a transaction. Buyer is solely responsible for all taxes now or hereafter applicable to the products sold or to a transaction. Taxes will be added by IMSWorkX to the sales price where IMSWorkX is required by law to collect them, and will be paid by Buyer unless Buyer provides IMSWorkX with proper tax exemption documentation in form and substance satisfactory to IMSWorkX.

3 Payment Terms

For Software and Licenses:

Payment terms for Buyer with IMSWorkX pre-approved credit, are net 30 (thirty) days from the date of invoice.

For Annual Support Services and Annual Support Services Renewal:

Payment shall be made by Buyer 15 (fifteen) days before the start of the support period.

For Training Services:

Payment shall be made by Buyer at time of training date assignment. Expenses incurred by IMSWorkX for travel and lodging in support of training shall be reported within 14 (fourteen) days of training completion. Payment for expenses shall be made by buyer within 14 (fourteen) days after receiving the expense report.

For Professional Services (including NRE):

Payment terms for Buyer with IMSWorkX pre-approved credit, are
50% due on order, before work commences
25% due on delivery
25% due 15 (fifteen) days after delivery

Buyer shall pay interest on any invoice balance due and unpaid after 37 (thirty-seven) days from invoice date thereof at a rate of 1.5% per month (an APR of 18%), or if such interest rate is higher than that permitted by law, the Buyer shall pay interest at the highest rate permitted by law.

IMSWorkX reserves the right to change credit terms if Buyer's financial condition changes or Buyer fails to make any payment when due.

4 Security Interest

Buyer hereby grants IMSWorkX a security interest in the products sold and the proceeds there from as security for payment of purchase price. If requested by IMSWorkX, Buyer agrees to execute financing statements to protect this security interest.

5 Title

Title to software products remains with IMSWorkX at all times.

6 Delivery

Shipping terms are FOB IMSWorkX shipping point. All IMSWorkX goods, documentation and official communications (purchase orders and receipts) will be delivered to Buyer electronically only. Claims for shortages must be made within 10 (ten) days after arrival.

7 Installation and Acceptance

Products that do not include installation services in the purchase/license price are deemed accepted by the Buyer upon delivery by IMSWorkX. Products that include installation services in the purchase/license price are deemed accepted by the Buyer upon successful completion of IMSWorkX installation and test procedure. If IMSWorkX installation is scheduled or delayed by Buyer more than 30 (thirty) days after delivery, acceptance of the product will be deemed to have taken place on the 31st (thirty-first) day after delivery.

8 Buyer Initiated Cancellation/Rescheduling

Purchase order items that do not include Professional Services that are cancelled or rescheduled by Buyer 30 (thirty) days or less before the scheduled ship date will be subject to a cancellation/reschedule charge no greater than 20% of the price of the cancelled/rescheduled items. Reschedule notices must specify a new requested delivery date no more than 60 (sixty) days after the originally scheduled ship date. Cancellations may affect quantity discounts.

Purchase order items that include any Professional Services (including Training) may not be cancelled, rescheduled, or modified except by express written consent of IMSWorkX.

Buyer's refusal to accept delivery of all or any portion or instalment of such Professional Service items shall entitle IMSWorkX to recover the price of any instalments of the Professional Service item as to which delivery has been refused, the value of any work in process and the cost of any material purchased by IMSWorkX or IMSWorkX suppliers in

order to manufacture the custom products, together with IMSWorkX incidental damages and reasonable attorney's fees in enforcing IMSWorkX rights.

No cancellation by Buyer for delivery default by IMSWorkX shall be effective unless IMSWorkX shall have failed to correct such alleged default within 45 (forty-five) days after receipt by IMSWorkX of a written notice of default.

9 IMSWorkX Initiated Cancellation

IMSWorkX may decline to make further shipments and/or cancel Buyer's order if Buyer is in default on payment or any obligation to IMSWorkX or in the event that Buyer becomes insolvent or bankrupt, makes a general assignment for the benefit of, or enters into any arrangement with creditors, files a voluntary petition under any bankruptcy, insolvency, or similar law, or has proceedings under any such laws instituted against it. IMSWorkX may take such action without affecting IMSWorkX rights and remedies under this Agreement including, but not limited to, any right to cancellation charges and quantity discount adjustments.

If IMSWorkX continues to make shipments after Buyer's default, such action shall not constitute a waiver nor affect IMSWorkX legal remedies.

In the event IMSWorkX is unable to fulfil an order, wholly or in part, because of any cause beyond its control, IMSWorkX may cancel such order without any obligation to the Buyer.

10 Warranty – Software Products

IMSWorkX warrant that the software, as delivered, will operate substantially in conformity with its then current documentation for a period of 90 (ninety) days from delivery if used in accordance with that documentation and the terms of this Agreement. IMSWorkX do not warrant that the software will operate uninterrupted or that it will be error-free. Since the software has not been developed to meet Buyer's individual requirements, IMSWorkX also do not warrant that it is fit for Buyer's particular purposes.

If Buyer wants to make a warranty claim, Buyer must notify IMSWorkX of that fact within the 90 (ninety) day period. In the first instance, IMSWorkX sole obligation shall be to remedy the defect. The remedy will take the form of eliminating the defect, providing a new release or demonstrating how to avoid the effects of the defect in a reasonable manner. Buyer must support IMSWorkX in locating any defect and its cause by: ensuring the cooperation of Buyer's staff; providing remote access to the software and the platform on which it functions; and, providing as detailed a description of the defect as possible. If IMSWorkX should fail to remedy a defect within a reasonable period of time, IMSWorkX shall agree with Buyer in writing a reasonable course of action, including a date by which the defect should be remedied.

Where IMSWorkX have carried out work in response to a warranty claim but, upon investigation, it turns out that the subject matter of the claim was neither a breach of warranty nor covered by Buyer's customer services entitlement under this Agreement, Buyer agrees to pay IMSWorkX at its then standard professional services rates for that work and reimburse at cost any travel and subsistence expenses incurred by IMSWorkX.

11 Warranty – General

IMSWorX SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE, AT IMSWorkX OPTION, TO REFUND THE PURCHASE PRICE, REPAIR, OR REPLACE THE PRODUCT. IN NO EVENT SHALL IMSWorkX LIABILITY TO BUYER OR TO ANY OTHER PARTY FOR BREACH OF THIS WARRANTY EXCEED THE PURCHASE PRICE PAID TO IMSWorkX FOR THE NONCONFORMING PRODUCT.

This warranty extends to Buyer only and may not be invoked directly by Buyer's customers.

IMSWorX does not warrant that products, alone or when integrated with other components not supplied by IMSWorkX, will meet the Buyer's requirements, or that the operation of the product will be uninterrupted or error free, or that the product will inter-operate with other components not supplied by IMSWorkX.

Products are warranted to meet IMSWorkX applicable published specifications or Buyer's specifications as accepted in writing by IMSWorkX, as they exist at the time of shipment. IMSWorkX does not warrant that the product will continue to conform to IMSWorkX, Buyer's, or third party referenced specifications if those specifications are modified subsequent to the time of shipment. This warranty excludes all costs of shipping, customs clearance and related charges.

THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

12 Services: Software Maintenance and Support

The service offering is twofold:

- a) IMSWorkX will supply all new general availability releases of the software products that Buyer has ordered under this Agreement;
- b) IMSWorkX will provide troubleshooting support for the software to a single nominated member of Buyer's staff (or an alternate nominated in that person's absence) on the terms set out in clauses below.
 - i) Support for Development/Lab: Troubleshooting support will be available during the hours of 9am to 5.30pm Monday to Friday Eastern US Time (excluding bank or public holidays).
 - ii) 24/7 Support: Troubleshooting support will be available 24 hours each day, 7 days each week, for each day of the year.

Buyer must notify IMSWorkX in writing of the identity of Buyers nominated representative from time to time and of the identity of any alternate appointed to cover his absence at any time.

When Buyer is experiencing problems with the software or needs advice on its use, Buyer's nominated representative should log a service request using IMSWorkX customer portal web interface.

All service requests will be assigned a priority level as agreed between IMSWorkX customer care team and Buyer's nominated representative. The priority level may be amended by mutual agreement after initial investigatory work. The priority levels are defined as follows.

Priority 1: Critical –

A critical problem severely affects service, traffic, and maintenance capabilities, and requires immediate corrective action. In a Critical situation the system is inoperative and the Buyer's inability to use the product has a critical effect on operations. Any condition that may impact safety is considered a Critical situation.

Priority 2: Major –

A significant incident which causes conditions that seriously affect system operation, maintenance, and administration, and requires immediate attention. The urgency of a Major incident is less than in critical situations because of a lesser immediate or impending effect on system performance. A Major problem can include: reduction in process capacity or accuracy, loss of diagnostic capability, and loss of a feature/functionality.

Priority 3: Minor –

An incident which does not significantly impair the functioning of the system and is tolerable during system use.

Enhancement Request –

Identification of a feature or improvement that will make the product more useful in the future.

IMSWorkX will respond to Buyer's service request in accordance with the table below but IMSWorkX does not guarantee a resolution within these timeframes. It is Buyer's responsibility to implement any software remedy or workaround that IMSWorkX provide unless Buyer has engaged IMSWorkX to do so by agreeing a Statement of Work under a Professional Services contract.

Problem Severity	Initial Response Time	Restoration Time	Resolution Time	Status Update
Critical	15 minutes	4 hours	24 hrs	Every 30 minutes
Major	30 minutes	8 hours	30 days	Daily
Minor	1 bus day	N/A	180 days	N/A
Enhancement	1 bus day	N/A	N/A	N/A

Wherever possible, IMSWorkX will deal with service requests on a remote basis. Where this is not possible, IMSWorkX may be able to provide on-site support but this may be at

an additional charge; the charging structure will be agreed with Buyer prior to proceeding. IMSWorkX staff will comply with Buyer's security procedures and health and safety regulations while on Buyer's site so long as these are brought to their attention but IMSWorkX will not be responsible for any delays caused as a result of any need to comply with these procedures and regulations.

IMSWorkX will have no obligation to provide support where problems arise from:

- a) any modifications to the software carried out by anyone other than IMSWorkX;
- b) use of the software in combination with products which are not supported by IMSWorkX and which IMSWorkX have not approved in advance for use in combination with the software;
- c) relocation of the software by anyone other than IMSWorkX;
- d) any failure by Buyer to implement in a timely fashion any software remedy or workaround IMSWorkX have provided
- e) any breach of Buyer's obligations under this Agreement

Buyer's service entitlement under this Agreement does not include electrical or other environmental work external to the software or the recovery or reconstruction of any lost or spoiled data or software.

IMSWorkX will only provide troubleshooting support if Buyer is using the latest release of software or previous two revisions supplied immediately prior to that.

Buyer must actively co-operate with IMSWorkX in the provision of troubleshooting support; in particular, Buyer must provide such information as IMSWorkX may from time to time reasonably require in order for IMSWorkX to be able to reproduce any reported problem. Failure to provide the required information will result in the service request being closed.

Buyer must provide IMSWorkX with remote access to the platform on which the software is installed while troubleshooting or provide IMSWorkX contact with a person with access.

Where IMSWorkX have carried out work in response to a service request but, upon investigation, it turns out that the query or problem logged was not covered by this Agreement, Buyer agrees to pay IMSWorkX at IMSWorkX then standard professional services rates for that work and reimburse at cost any travel and subsistence expenses IMSWorkX have incurred.

13 Hosted Environment

IMSWorkX will install the software on the hosted environment and configure it for Buyer's use using IMSWorkX reasonable endeavours to provide the live environment on the date agreed.

IMSWorkX will be responsible for keeping regular backups of all material and data contained in the environment.

IMSWorkX reserve the right to:

a) at any time and from time to time to amend, improve or correct the environment including the software and/or hardware (or any part thereof) provided that such modification does not adversely affect the hosted service. This includes the right to substitute the hardware with hardware of similar specification, where necessary. IMSWorkX shall endeavour to give Buyer reasonable notice of such modifications but this may not always be possible and IMSWorkX shall not be liable to Buyer or to any third party for any such modification or any failure to give such notice.

b) at IMSWorkX sole discretion to suspend the environment (temporarily or permanently) on the occurrence of any unscheduled maintenance or any of the following: (i) notified maintenance; (ii) issue by any competent authority of an order which is binding on us and which affects the environment; (iii) if Buyer fails to pay any amounts due under the Contract when they are due and do not remedy such failure within 15 (fifteen) days of receipt of notice. Such suspension shall last only until the cause of the suspension is resolved. In the event that the suspension continues for a period of 30 (thirty) days IMSWorkX shall be entitled to terminate this Agreement by the giving of 14 (fourteen) days notice in writing.

Buyer will:

a) notify IMSWorkX immediately if Buyer becomes aware of any unauthorized use of all or any of the environments, software, and/or hardware;

b) ensure that all usernames and passwords are at all times kept confidential, used properly and not disclosed to unauthorized people and if Buyer has any reason to believe that this information has become known to someone not authorized to use it or if this information is being or is likely to be used in an unauthorized way or of any other breach of security then Buyer shall inform IMSWorkX immediately.

c) be entirely liable for all activities conducted and charges incurred under Buyer's usernames and passwords whether authorized by Buyer or not and Buyer acknowledges that IMSWorkX shall not be liable for any loss of confidentiality or for any damages arising from Buyer's failure to comply with these terms.

14 Hosting Fees

Buyer shall pay the agreed set-up fee (if any) 15 (fifteen) days prior to the environment going live as set out in the IMSWorkX quotation. Buyer shall then pay the agreed hosting fee 15 (fifteen) days prior to the next service period.

The price covers permitted data transfer or bandwidth (agreed connection rate) as stated in the quotation. If Buyer exceeds this limit then IMSWorkX reserves the right to make additional charges for usage above the limit at the prevailing rate. IMSWorkX will inform Buyer if Buyer's bandwidth use exceeds the agreed level.

15 Hosted Environment Service Level and Disruptions

IMSWorkX shall provide the environment such that actual level of performance is equal to or higher than the associated agreed service level. Further IMSWorkX shall manage the environment with reasonable skill and care. All other conditions, warranties or other terms whether express or implied, statutory or otherwise are hereby expressly excluded to the fullest extent permitted by law and without limit to the foregoing.

IMSWorkX does not represent or warrant that:

- a) the environment will meet the Buyer's requirements;
- b) the environment will be uninterrupted, timely, secure, or error-free;
- c) any results obtained from using the environment will be accurate, complete or current

Buyer will promptly, following discovery of service disruption, notify IMSWorkX and IMSWorkX will then use reasonable endeavours to rectify such service disruption as soon as reasonably practicable.

Upon the occurrence of any service disruption IMSWorkX shall, subject to Buyer continuing to perform Buyer's obligations under the Contract, credit Buyer's account under and in accordance with the applicable schedule.

In the event that Buyer has reason to make a complaint about the quality or performance of the environment, Buyer should forward the complaint in writing promptly and in any event no later than 14 (fourteen) days after discovery of the incident, marked for the attention of IMSWorkX service manager including the reasons for Buyer's complaint. IMSWorkX will acknowledge Buyer's complaint within 5 (five) working days and respond within 10 (ten) working days.

IMSWorkX will not be liable if IMSWorkX is prevented or delayed in or from performing any of IMSWorkX obligations under this Agreement due to circumstances beyond IMSWorkX control such as but not limited to governmental acts, war, riots, strikes or trade disputes (including by and with IMSWorkX own employees), technical failure, general availability of the Internet, power failure, communications failure, weather, flood, fire or explosion, national or local emergency.

16 Indemnity

Buyer agrees to fully indemnify and keep IMSWorkX fully indemnified from and against all actions, demands, costs (on a full indemnity basis), losses, penalties, damages, liability, claims and expenses (including but not limited to legal fees) whatsoever incurred by IMSWorkX arising from any of the following:

- a) Buyer's material breach of the Contract or Buyer negligence;
- b) Buyer's misuse of the environment;

In order for IMSWorkX to qualify for this indemnity, IMSWorkX agree to:

- a) promptly notify Buyer after IMSWorkX learn of the suit or claim, and that no delay by IMSWorkX in providing that notice materially prejudices Buyer's rights;
- b) give Buyer authority to defend or settle the suit or claim; and
- c) give Buyer all information and cooperation that Buyer may reasonably request concerning the suit or claim

17 Intellectual Rights Indemnification

IMSWorkX will indemnify, hold Buyer harmless, and assist with defending or settle any claim made by a third party against Buyer that products, as delivered by IMSWorkX and not in combination with any other hardware or software (except hardware or software provided by IMSWorkX) infringes any U.S. patent, utility model, industrial design, copyright, trade secret, or trademark, providing that Buyer promptly notifies IMSWorkX in writing of the claim and cooperates with IMSWorkX in the defence of the claim.

IMSWorkX will pay reasonable fees and expenses associated with such defence and settlement, as well as any reasonable costs and damages finally awarded against Buyer. If such claim is made or appears likely to be made, IMSWorkX may procure the right for Buyer to continue using the product, may modify the product, or may replace it. If use of the product is enjoined by a court and/or IMSWorkX determines that none of these alternatives is reasonably available, IMSWorkX will take back the product and refund its original value, depreciated on a straight-line basis over five 5(five) years.

IMSWorkX has no obligation for any claim of infringement arising from: IMSWorkX compliance with any design, specifications, or instructions from Buyer; modification of the product by Buyer or a third party; use of the product in a way not specified by IMSWorkX, or; use of the product with other products not supplied by IMSWorkX.

The foregoing states the entire liability of IMSWorkX for patent or copyright infringement. In no event will IMSWorkX be liable for incidental or consequential damages arising from infringement or alleged infringement of patents or copyrights.

18 Limitation of Liability

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOSS OF USE, PROFIT, REVENUE, GOODWILL OR OTHER INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SALE, PURCHASE OR USE OF IMSWORKX PRODUCTS, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF IMSWORKX AND ITS AGENTS FOR ALL CLAIMS (EXCLUDING CLAIMS FOR PHYSICAL INJURY OR PROPERTY DAMAGE RESULTING FROM NEGLIGENCE OR WILLFUL MISCONDUCT) SHALL NOT EXCEED THE SUM OF THE AMOUNT PAID BY BUYER TO IMSWORKX DURING THE PREVIOUS 12 MONTH PERIOD FOR THE PRODUCT THAT IS THE SUBJECT MATTER OF THE CLAIM.

19 Hazardous Applications

Buyer acknowledges that IMSWorkX products are intended for standard commercial uses. The products are not sold, licensed or distributed for use in any hazardous environments requiring fail safe performance, such as operation of nuclear facilities, direct life support machines, weapon systems, or any other application in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage.

20 General

The contract for software, supply & service under the terms of this Agreement are agreed and entered into by the signing of a purchase order. Once accepted by IMSWorkX, the purchase order, combined with this Agreement, together constitute the entire agreement between the parties specified on the purchase order.

Any changes in the terms and conditions contained herein must specifically be agreed to in writing by authorized representative of both parties before becoming binding on either party.

Buyer agrees that Buyer is responsible for ensuring the accuracy of the terms and detailed content of the order which becomes binding once signed. Should Buyer request a change or the correction of any error after signing the order and making that change incurs costs or losses on IMSWorkX part, Buyer will be liable to cover those costs in full. IMSWorkX will notify Buyer of any potential costs upon receipt of the instruction to change the order.

If any clause of this Agreement is or becomes invalid or unenforceable, that invalidity or unenforceability shall not affect the other clauses of this Agreement which shall remain in full force and effect.

IMSWorkX failure to exercise any of its rights under this Agreement shall not constitute a waiver or forfeiture of such rights.

Buyer may not transfer or hold in trust any of Buyer's rights or obligations under this Agreement.

This Agreement, along with any exhibits or schedules thereto, supersedes all prior agreements and understandings, oral or written, between IMSWorkX and Buyer and is intended as the complete and exclusive statement of this Agreement.

The prevailing party in any action or proceeding brought in connection with a breach of this Agreement will be entitled to reimbursement by the other party for reasonable costs and reasonable attorney's fees.

Any controversy or claim arising out of or relating to the Agreement or the breach thereof shall be settled in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The location of such arbitration proceedings shall be Rochester, New York, USA for actions brought by the Buyer or, for actions initiated by IMSWorkX, a U.S. city specified by the Buyer. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

This Agreement will be governed by and construed in accordance with the laws of the State of New York, USA, without regard to the conflict of laws principles thereof.