



Industrial Computers Inc. (ICI) Terms and Conditions of Sale

PLEASE READ THIS DOCUMENT CAREFULLY! IT CONTAINS VERY IMPORTANT INFORMATION ABOUT YOUR RIGHTS AND OBLIGATIONS, AS WELL AS LIMITATIONS AND EXCLUSIONS THAT MAY APPLY TO YOU.

These terms and conditions ("Agreement") apply to your purchase of computer systems and/or related ICI products and/or services and support sold in the United States ("Product"). By accepting delivery of the Product, you accept and are bound to the terms and conditions of this Agreement. If you do not wish to be bound by this Agreement, you must notify ICI and return your purchase pursuant to ICI's Return Policy. THIS AGREEMENT SHALL APPLY UNLESS (I) YOU HAVE A SEPARATE PURCHASE AGREEMENT WITH ICI, IN WHICH CASE THE SEPARATE AGREEMENT SHALL GOVERN; OR (II) OTHER ICI TERMS AND CONDITIONS APPLY TO THE TRANSACTION.

- 1. Other Documents.** This Agreement may NOT be altered, supplemented or amended by the use of any other document(s) unless otherwise agreed to in a separate written agreement signed by both you and ICI. If you do not receive an invoice or acknowledgement in the mail or with your Product, information about your purchase may be obtained by contacting your sales representative.
- 2. Trademarks; Copyrights.** You may use the "ICI" name and ICI's product names solely for the purpose of accurately identifying the ICI-branded Products. You agree to change or correct, at your own expense, any material or activity that ICI decides is inaccurate, objectionable or misleading or a misuse of ICI's name, trademarks, service marks, or ICI's logos or copyrighted works. You may not use the ICI name and ICI's product names for any other purpose. You may not use other ICI trademarks or service marks, or ICI's logos or copyrighted works, at any time. You are prohibited from referring to yourself as an authorized reseller of ICI, implying that you and ICI are partners, creating the impression that ICI is affiliated with you or has sponsored, authorized, approved or endorsed your business, or any offer or any marketing, advertising or promotion thereof. You may not register or use any domain name or business name containing or confusingly similar to any name or mark of ICI's.
- 3. Quotes; Orders; Payment Terms; Interest.** Payment terms are within ICI's sole discretion. You agree not to violate the terms of any offer or concession made available by ICI. ICI may invoice and/or ship parts of an order separately. ICI reserves the right to cancel an order or transaction, in whole or in part. If you breach the provisions of this Agreement or the terms of any offer, ICI may charge or re-debit your account or credit card the full list price for your purchase (in lieu of a discounted or special price). You agree to pay interest on all past-due sums at the highest rate allowed by law. You hereby grant ICI, and ICI hereby retains, a purchase money security interest and lien on any and all of your rights, title and interest in Products, wherever located, and all replacements or proceeds of the Products, until the invoice for the applicable Products is paid in full, including any late charges and costs of collection. You consent to ICI's use of this Agreement, as well as Product invoices, as financing statements for protecting this security interest and appoint ICI as your agent for service of process.
- 4. Shipping Charges; Taxes.** Shipping dates provided by ICI are estimates only. Shipping and handling are additional and will be shown on the invoice(s) or other documentation. Loss or damage that occurs during shipping by a carrier selected by ICI is ICI's responsibility. Loss or damage that occurs during shipping by a carrier selected by you is your responsibility. Unless you provide ICI with a valid and correct tax exemption certificate applicable to the Product ship-to location at the time of purchase, you will be responsible for sales and all other taxes associated with the order, however designated, except for ICI's franchise taxes and taxes on ICI's net income.
- 5. Warranties.** THE LIMITED WARRANTIES APPLICABLE TO ICI-BRANDED HARDWARE PRODUCT CAN BE FOUND IN ICI'S LIMITED WARRANTY STATEMENT OR IN THE DOCUMENTATION ICI PROVIDES WITH ICI-BRANDED PRODUCT. ICI MAKES NO EXPRESS WARRANTIES EXCEPT THOSE STATED IN THIS SECTION AND IN ICI'S APPLICABLE LIMITED WARRANTY STATEMENT IN EFFECT ON THE DATE OF THE INVOICE, PACKING SLIP OR ACKNOWLEDGEMENT OR THE DOCUMENTATION PROVIDED WITH THE PRODUCT(S). ICI DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES BY ICI FOR NON-ICI BRANDED PRODUCTS, SERVICE OR SOFTWARE PRODUCTS. ALL SUCH PRODUCTS ARE PROVIDED BY ICI "AS IS". NO REVISION IN LIMITED WARRANTIES WILL AFFECT PRODUCTS ALREADY ORDERED BY YOU.
- 6. Additional Remedies & Responsibilities.** ICI RESERVES THE RIGHT TO DISCONTINUE OR OTHERWISE VOID ANY WARRANTY, SERVICE, MAINTENANCE OR SUPPORT IT OFFERS IN WHOLE OR IN PART. ICI MAY REQUEST CANCELLATION OF THIRD PARTY-BRANDED SOFTWARE LICENSES, SERVICES, MAINTENANCE OR SUPPORT IF ICI DOES NOT RECEIVE PAYMENT. IF YOU PURCHASE THIRD PARTY-BRANDED PRODUCT, SERVICES, MAINTENANCE, OR SUPPORT ADDITIONAL THIRD PARTY TERMS AND



CONDITIONS MAY APPLY. YOU SHALL BE SOLELY RESPONSIBLE FOR ALL REPRESENTATIONS OR OMISSIONS YOU MAKE TO YOUR CUSTOMERS INCLUDING BUT NOT LIMITED TO ANY REPRESENTATION OR OMISSION YOU MAKE. YOU WILL INFORM YOUR CUSTOMERS OF ICI'S RIGHTS AND YOUR OBLIGATIONS UNDER THIS AGREEMENT.

7. **Software.** All software is provided subject to the license agreement that is provided with the Product. You agree that you and your customers will be bound by such license agreement.
8. **Return Policies; Exchanges.** ICI has a separate Return Policy Statement. You must contact us directly before you attempt to return Product to obtain a Return Material Authorization Number that must be included on the return address label. You must return Product to us in their original packaging. You are responsible for risk of loss, shipping and handling fees for returning or exchanging Product. Additional fees may apply. If you fail to follow the return or exchange instructions and policies provided by ICI, ICI is not responsible whatsoever for Product that is lost, damaged, modified or otherwise processed for disposal or resale. At ICI's discretion, credit for partial returns may be less than invoice or individual component prices due to restocking fees or promotional pricing
9. **Products.** ICI's policy is one of on-going Product update and revision. ICI may revise and discontinue Products at any time without notice to you. ICI will ship Products that have the functionality and performance of the Products ordered, but changes between what is shipped and what is described in a specification sheet or catalog are possible. The parts and assemblies used in building Products and spare parts are selected from new, equivalent-to-new or reconditioned parts and assemblies.
10. **Limitation of Liability.** ICI DOES NOT ACCEPT LIABILITY BEYOND THE REMEDIES SET FORTH HEREIN, INCLUDING BUT NOT LIMITED TO ANY LIABILITY FOR PRODUCTS NOT BEING AVAILABLE FOR USE OR FOR LOST OR CORRUPTED DATA OR SOFTWARE, LOST PROFITS, LOSS OF BUSINESS, YOUR BREACH OF THIS AGREEMENT OR THE PROVISION OF SERVICES AND SUPPORT. ICI WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY THIRD PARTY EXCEPT AS EXPRESSLY PROVIDED HEREIN. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT OR ON OUR WEB SITE TO THE CONTRARY, ICI IS NOT RESPONSIBLE FOR INFORMATION YOU PROVIDE TO US UNLESS YOU HAVE A SEPARATE WRITTEN AGREEMENT OTHERWISE. YOU AGREE THAT FOR ANY LIABILITY ARISING FROM OR RELATED TO THE PURCHASE OF ANY PRODUCTS, ICI IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT INVOICED BY ICI FOR THE RESPECTIVE PRODUCTS. ICI SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE UPON A CLAIM OR ACTION IN CONTRACT, TORT, INDEMNITY OR CONTRIBUTION, OR OTHER CLAIMS RELATING TO THE PRODUCTS IT SELLS WHICH EXCEEDS THIS LIABILITY LIMIT. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.
11. **Service and Support.** Service offerings may vary from product to product. ICI and/or your third-party service provider may at their discretion, revise their general and optional service and support programs and the terms and conditions that govern them without prior notice to you. ICI HAS NO OBLIGATION TO PROVIDE SERVICE OR SUPPORT TO YOU OR YOUR CUSTOMERS UNTIL ICI HAS RECEIVED FULL PAYMENT FOR THE PRODUCT OR SERVICES/SUPPORT CONTRACT THAT YOU PURCHASED. ICI is not obligated to provide third-party branded service or support, or service or support for any product or services that you purchased through a third-party and not ICI. It is your responsibility to backup all existing data, software, and programs before receiving service or support (including telephone support). ICI and/or your third-party service provider will have no liability for loss or recovery of data, programs or loss of use of system(s) arising out of the services or support or any act or omission, including negligence, by ICI or your-third-party service provider. Prior to ICI and/or your third-party service provider providing service or support, you represent that your system(s) does not contain illegal files or data. You also represent that you own the copyright or have a license to make copies to all files on your system and do not have any data that would cause ICI to be liable for copyright infringement if those files were copied by ICI and/or your third-party service provider.
12. **YOUR INDEMNITY TO ICI.** To the fullest extent permitted by law, you will indemnify, defend and hold ICI, including ICI's partners, officers, directors, agents, employees, subsidiaries, affiliates, parents, successors and assigns, harmless from any claim, demand, cause of action, debt or liability (including reasonable attorneys fees, expenses and court costs) arising from: (a) your modification(s) of and/or addition(s) to Product(s); (b) your breach of this Agreement, (c) your omissions, misrepresentations, or negligence, and (d) the Products sold by you damage a third party to the extent such claim is based on (i) your modification of and/or addition to the Products, misuse or abuse of the Products, negligence or breach of any provision in this Agreement; (ii) your failure to abide by all applicable laws, rules, regulations and orders that affect the Products; (iii) your omission, misrepresentation, or negligence, or (iv) you or your end-users cause intentional harm to any person or property. Indemnified claims, debts and liabilities include the amount of any discount in price or concession that is made available by ICI to you.



13. **Dispute Resolution.** The parties will attempt to resolve any claim, or dispute or controversy (whether in contract, tort or otherwise) against ICI, its agents, employees, successors, assigns or affiliates (collectively for purposes of this paragraph, "ICI") arising out of or relating to this Agreement, ICI's advertising, or any related purchase (a "Dispute") through face to face negotiation with persons fully authorized to resolve the Dispute or through mediation utilizing a mutually agreeable mediator, rather than through litigation. If the parties are unable to resolve the Dispute through negotiation or mediation within a reasonable time after written notice from one party to the other that a Dispute exists, the Dispute will be settled by binding arbitration in accordance with the then current CPR Rules for Non-Administered Arbitration. The Arbitration will be conducted before three (3) independent and impartial arbitrators. ICI will appoint one (1) arbitrator and the other party or parties will appoint one (1) arbitrator. The two (2) appointed arbitrators will then select a third arbitrator, who shall be the presiding arbitrator. The arbitration hearing shall take place in Ann Arbor, Michigan and will be governed by the United States Federal Arbitration Act to the exclusion of any inconsistent state laws. The arbitrators shall base their award on the terms of this Agreement, and will follow the law and judicial precedents that a United States District Judge sitting in the Eastern District of Michigan would apply to the Dispute. The arbitrators shall render their award in writing and will include the findings of fact and conclusion of law upon which their award is based. Judgment upon the arbitration award may be entered by any court of competent jurisdiction. The existence or results of any negotiation, mediation or arbitration will be treated as confidential. Notwithstanding the foregoing, either party will have the right to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo or prevent irreparable harm, although the merits of the underlying Dispute will be resolved in accordance with this paragraph.
14. **Independent Contractors.** No provision of this Agreement will or shall be deemed to create a partnership, joint venture or other combination between ICI and you. You and ICI are independent contractors. Neither party will make any warranties or representations or assume any obligations on the other party's behalf. Neither party is nor will claim to be a legal representative, partner, franchisee, agent or employee of the other party. Each party is responsible for the amounts it incurs arising from this Agreement and for the direction and compensation, and is liable for the actions of, its employees and subcontractors.
15. **Governing Law.** **THE PARTIES AGREE THAT THIS AGREEMENT, ANY SALES THERE UNDER, OR ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT, OR OTHERWISE, WHETHER PREEXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, COMMON LAW, AND EQUITABLE CLAIMS) BETWEEN CUSTOMER AND ICI arising from or relating to this agreement, its interpretation, or the breach, termination or validity thereof, the relationships which result from this agreement, ICI's advertising, or any related purchase SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MICHIGAN, WITHOUT REGARD TO CONFLICTS OF LAWS RULES.**
16. **Export.** You acknowledge that the purchased goods licensed or sold under this Agreement, and the transaction contemplated by this Agreement, which may include technology and software, are subject to the customs and export control laws and regulations of the United States ("U.S.") and may also be subject to the customs and export laws and regulations of the country in which the products are manufactured and/or received. You acknowledge that it is your sole responsibility to comply with and abide by those laws and regulations. Further, under U.S. law, the goods shipped pursuant to this Agreement may not be sold, leased or otherwise transferred to restricted countries or utilized by restricted end-users or an end-user engaged in activities related to weapons of mass destruction, including without limitation, activities related to the design, development, production or use of nuclear weapons, materials, or facilities, missiles or the support of missile projects, and chemical or biological weapons. You agree not to provide any written regulatory certifications or notifications on behalf of ICI. ICI has not tested Products for use in high-risk activities including but not limited to any life sustaining, chemical, or mission critical use. ICI WILL NOT HAVE ANY LIABILITY FOR ANY DAMAGES ARISING FROM THE USE OF THE PRODUCTS IN ANY HIGH RISK ACTIVITY, INCLUDING, BUT NOT LIMITED TO, THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, MEDICAL SYSTEMS, LIFE SUPPORT, OR WEAPONS SYSTEMS.
17. **Headings.** The section headings used herein are for convenience of reference only and do not form a part of these terms and conditions, and no construction or inference shall be derived there from. If any provision of this Agreement is void or unenforceable, the remainder of this Agreement will remain in full force and will not be terminated. Neither party will be liable for any delays resulting from circumstances or causes beyond the party's reasonable control.