

KONTRON AMERICA, INCORPORATED

TERMS AND CONDITIONS OF SALES

1. **Scope.** The following terms and conditions ("Agreement") apply to the sale of all products and/or services (the "Products") delivered or provided by Kontron America, Incorporated, a Delaware corporation, including its affiliates ("Kontron"), pursuant to (a) any quotation, purchase order acceptance or other writing attaching or incorporating by reference this Agreement or (b) any other purchase order accepted by Kontron.

2. **Purchase Orders.** Buyer shall issue to Kontron firm purchase orders for each purchase required. All purchase orders are subject to credit approval and confirmation of delivery schedule by Kontron prior to acceptance by Kontron and may require credit enhancement, such as advanced payment, letter of credit or other guarantee, prior to acceptance. Kontron's acceptance of a purchase order shall only occur upon delivery to Buyer of a written acceptance executed by Kontron's duly authorized representative. In the event of any conflict between this Agreement and any purchase order or other document, the terms of this Agreement shall prevail.

3. **Prices.** The prices for Products are set forth in Kontron's quotation which can be changed at any time upon prior written notice to Buyer. The quoted prices are exclusive of all taxes, freight, duties, and other applicable charges which shall be paid by Buyer. Any taxes, duties, fees, charges or assessments of any nature levied by any governmental authority in connection with any transaction under this Agreement, whether levied against Buyer, against Kontron or its employees, or against any of Kontron's subcontractors or their employees, shall be the responsibility of Buyer and shall be paid directly by Buyer to the governmental authority concerned. If Kontron or its subcontractors, or the employees of either, are required to pay any such levies, fines, penalties, or assessments, then Buyer shall reimburse such payor promptly upon submission of the applicable document.

4. **Changes.** Within thirty (30) days of receipt from Buyer of a request for changes within the general scope of work under an accepted purchase order, Kontron shall respond in writing stating the consequences of such requested change. If such requested change causes an increase or decrease in the cost of the Products and/or the time required for performance, an equitable adjustment reasonably determined by Kontron shall be made in the price and/or the time required for performance. Such price adjustment may include but not be limited to any rework charges associated with the requested change. Kontron shall have the right in its sole discretion to accept or reject any such requested changes and shall not be required to proceed with the change unless the parties have mutually agreed in writing. All approved change orders shall be considered amendments to the applicable purchase order. If a requested change is not accepted by Kontron, the original purchase order shall remain in effect.

5. **Payments.**

(a) **Domestic.** Upon Kontron's approval of Buyer's credit, if no credit enhancement is required; all payments shall be made in United States Dollars, net thirty (30) days from date of invoice. All payments received after thirty (30) days shall accrue interest at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum legally permissible rate.

(b) **International.** Open account terms will be considered by Kontron, in Kontron's sole discretion, if Buyer possesses a first-class standing in the operating country and can demonstrate favorable trade arrangements with other U.S. suppliers. Buyer agrees, upon request, to provide Kontron with financial information acceptable to Kontron to assist Kontron in determining from time to time the credit terms, if any, that Kontron may extend to Buyer. Kontron reserves the right to revoke open account terms at any time based on unsatisfactory payment performance or credit risk in Kontron's sole discretion, in which event Buyer agrees to provide a Letter of Credit or such other credit enhancement, at Buyer's sole expense, as may be required by Kontron. All payments shall be made in United States Dollars, net thirty (30) days from date of invoice. All payments received after thirty (30) days shall accrue interest at the rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum legally permissible rate.

6. **Transportation.** All sales and deliveries of Products shall be "FCA Kontron's authorized shipping point" as defined in Incoterms 2000, as amended. Buyer is responsible for all transportation, insurance, duties, taxes and other applicable expenses. These expenses shall be paid by Buyer and shall be added to Kontron's invoice to Buyer if prepaid by Kontron.

7. **Title and Risk of Loss.** Title to the Products shall pass to Buyer upon Kontron's delivery of the Products to a common carrier or to the Buyer's designated location. Buyer hereby grants Kontron a security interest in the Products until the invoice covering the Products has been paid in full. Buyer also irrevocably appoints Kontron as its lawful attorney-in-fact coupled with an interest with full authority to execute and file UCC-1's and any other necessary documents to perfect and enforce its security interest. Kontron shall bear the risk of loss or damage until the Products are delivered to a

common carrier or to Buyer's designated location. Upon Kontron's delivery to a common carrier or to Buyer's designated location, Buyer shall bear the entire risk of loss and shall be liable for all loss or damage to the Products.

8. **Inspection.** Unless Buyer notifies Kontron in writing within thirty (30) days from date of shipment of any Products that said Products are rejected, they will be deemed to have been accepted by Buyer. In order for the notice of rejection to be effective, Buyer must also specify in detail the reason(s) why the Products are being rejected. Buyer shall only have the right to reject Product for "defects," as defined in Section 10 below.

9. **Force Majeure.** Kontron shall not be liable for any failure to perform or other loss due to unforeseen circumstances or causes beyond its control, including without limitation acts of God, strikes, material and/or transportation shortages, natural casualties, governmental regulations, war, fire, flood, disasters and civil unrest.

10. **Warranty.** Kontron agrees to repair or replace Products that fail due to a defect during the established Warranty Period of each Product unit to Buyer for (a) **Standard Products** - within twenty-four (24) months after the shipment date and, (b) **Custom and Non-standard Products** will be negotiated on a case by case basis. For purposes of this Agreement the term "defect" shall mean the Product fails to operate or fails to conform to its specifications agreed to in writing by Kontron. Any claim made pursuant to this Agreement shall be asserted or made in writing only by Buyer, not any of Buyer's customers or end users. Buyer shall comply with Kontron's Standard Return Materials Authorization ("RMA") procedure for all warranty claims as set forth in Kontron's operation manual. This limited warranty only covers repairs at Kontron's facilities, it does not include labor, transportation or other expenses to repair or reinstall warranted Products on site or at Buyer's premises.

Kontron reserves the right to investigate any warranty claims to quickly resolve the problem or to determine whether such claims are proper. In the event that after repeated efforts Kontron is unable to repair or replace a defective Product, then Buyer's exclusive remedy and Kontron's entire liability in contract, tort or otherwise shall be the payment by Kontron of Buyer's actual damages after mitigation, but shall not exceed the purchase price, tax, freight and insurance actually paid by Buyer for the defective Product.

This limited warranty shall not apply to any Product, or parts thereof, that (a) has had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible; (b) has been damaged by or subject to improper installation or operation, misuse, accident, neglect and/or has been used in any way other than in strict compliance with Kontron's operation and installation manual; (c) has become defective or inoperative due to its integration or assembly with any equipment or products not supplied by Kontron; (d) has been repaired, modified or otherwise altered by anyone other than Kontron, and/or has been subject to the opening of any sealed cabinet boxes or covers without Kontron's prior written consent. If any warranty claim by Buyer falls within any of the foregoing exceptions, Buyer shall pay Kontron its then current rates and charges for such services.

THE ABOVE WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. PLEASE REFER TO THE WARRANTY POLICY AND PROCEDURES CONTAINED IN KONTRON'S OPERATION AND INSTALLATION MANUAL.

11. **Confidentiality.** Many aspects of the design, production and operation of the Products, in any form, are proprietary information and trade secrets of Kontron ("Proprietary Rights"), and such Proprietary Rights shall not be disclosed or otherwise transferred by Buyer or Buyer's employees to any other person or entity at any time. Buyer shall not modify, reverse engineer, improve or otherwise change any Product or parts thereof, or any of Kontron's Proprietary Rights related thereto, and shall not use, appropriate or copy any of Kontron's Proprietary Rights, either for itself or for others. Buyer also agrees not to incorporate or in any way use any of Kontron's Proprietary Rights or confidential information (disclosed separately or embodied in any of the Products) in its or any other party's products or businesses.

12. **Property Rights.** Kontron shall solely own and have exclusive worldwide right, title and interest in and to all United States and foreign patents, trademarks, service marks, copyrights, mask works, trade secrets, and all other intellectual and industrial property rights in any way related to the Products, to Kontron's Proprietary Rights, and to all modifications, improvements and derivative works related thereto. Title to all of Kontron's Proprietary Rights embodied in the Products shall always remain with Kontron, and Buyer's use thereof shall be restricted under a non-exclusive license granted by Kontron. Subject to Buyer's performance of all obligations hereunder, Kontron hereby grants to Buyer a personal, non-exclusive, non-transferable and indivisible license to use Kontron's Proprietary Rights only as they are embodied in the Products and for no other purpose. Buyer shall not

remove Kontron trademark notices, copyright notices, patent markings or mask work notices on or in the Products or on any other materials supplied by Kontron. Paragraphs 11 and 12 shall survive the termination of this Agreement, and shall be specifically enforceable by injunctive and other relief against Buyer in the event of Buyer's breach since both parties agree that Kontron will be irreparably harmed and money damages would be inadequate compensation to Kontron for Buyer's breach. In the event of such breach, Kontron shall be entitled to injunctive relief against Buyer in addition to any other remedies to which it is entitled.

13. Limitation of Liability. KONTRON SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES SUFFERED BY BUYER AND/OR ANY END USER RELATED TO OR ARISING OUT OF THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE USE OR INABILITY TO USE THE PRODUCTS, INTEGRATION OF THE PRODUCTS WITH EQUIPMENT NOT PROVIDED BY KONTRON, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY OTHER CAUSE WHATSOEVER, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL KONTRON'S LIABILITY FOR ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT EXCEED AMOUNTS RECEIVED BY KONTRON FROM BUYER FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT OF SUCH CLAIM OR DISPUTE. KONTRON AND BUYER FURTHER AGREE THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS EXPRESSLY INTENDED TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION SINCE THOSE PROVISIONS REPRESENT SEPARATE ELEMENTS OF RISK ALLOCATION BETWEEN THE PARTIES, AND SHALL BE SEPARATELY ENFORCED. BOTH PARTIES ALSO AGREE THAT THE PRICE OF THE PRODUCTS REFLECTS THE ALLOCATION OF RISK, WARRANTY AND LIMITATION OF LIABILITY PROVISIONS HEREIN.

UNLESS OTHERWISE AGREED IN WRITING BY KONTRON, THE KONTRON PRODUCTS SOLD HEREUNDER ARE NOT DESIGNED NOR INTENDED FOR ANY USE IN MEDICAL, LIFE SAVING OR LIFE SUSTAINING APPLICATIONS WHICH THE FAILURE OF THE KONTRON PRODUCT COULD CREATE A SITUATION WHERE PERSONAL INJURY OR DEATH MAY OCCUR. Should Buyer purchase or use Kontron's Products for any such unintended use, Buyer shall indemnify and hold Kontron and its directors, officers, subsidiaries, subcontractors and affiliates harmless against all claims, costs, damages, and expenses, and reasonable attorney fees arising out of, directly or indirectly, any claim of product liability, personal injury or death associated with such unintended use, even if such claim alleges that Kontron or its sub-contractor was negligent regarding the design or manufacture of the Kontron Product or any of its parts.

14. Waiver. Kontron shall not be deemed to waive any default of any provision of this Agreement unless Kontron signs a written waiver.

15. Indemnity. Buyer shall indemnify, defend and hold Kontron harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney's fees and costs incurred that in any way arise out of or relate to (a) the manner in which Buyer and/or any of its customers or end users use or operate the Products; (b) any personal injuries, property damages or other losses resulting or occurring from the willful or negligent acts or omissions of Buyer, its customers or end users; (c) defects or other problems with other component parts, equipment or materials produced or supplied by anyone other than Kontron and that may be used with the Products; and/or (d) Buyer's transactions with its customers, end users or other parties regarding the Products.

16. Termination. Buyer shall not terminate or cancel any order, or portion thereof, after it is given to Kontron without Kontron's prior written consent in its sole discretion and subject to the condition that Buyer pays to Kontron the sum of (1) the price of all Products previously delivered to Buyer, (2) Kontron's actual costs incurred as a result of such termination (e.g., purchase of raw materials and other obligations), which Kontron will attempt to keep as low as possible, and (3) a cancellation fee of twenty percent (20%) of such actual costs.

17. Attorney's Fees. In the event a dispute arises regarding this Agreement or the Products, the prevailing party shall be entitled to recover from the unsuccessful party actual attorney's fees and costs incurred.

18. Entire Agreement. Buyer agrees to all of the provisions of this Agreement by submitting its purchase order for the Products. This Agreement is the sole and entire agreement between the parties (except for the price or the shipment schedule for the Products contained in Kontron's quotation or Buyer's purchase order accepted by Kontron which shall be incorporated herein subject to the terms hereof) and shall supersede all prior or contemporaneous written or oral understandings, representations or communications and/or other terms in any purchase order or other document, now or hereafter delivered. The provisions of this Agreement shall apply to any and all purchase orders or requests for Products submitted by Buyer to Kontron at any time in the future, without the need for either party to execute this Agreement. No modification of this Agreement shall be valid unless in writing and signed by an authorized representative of Kontron.

19. Governing Law. This Agreement shall be construed and enforced according to the laws of the State of California.

20. Arbitration. Any dispute, controversy or claim ("Claim") arising out of or relating to this Agreement, any Kontron quotation or any purchase order incorporating this Agreement by reference or to which this Agreement is attached, and any other purchase order issued by Buyer and accepted by Kontron, or the breach, enforcement, interpretation, validity or termination thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be settled by binding arbitration by JAMS/Endispute ("JAMS") in accordance with JAMS Comprehensive Arbitration Rules and Procedures (the "Rules"). The arbitration shall be heard by the arbitrator selected in accordance with the Rules in San Diego County, California. Judgment upon any award rendered may be entered in any state or federal court in San Diego County having jurisdiction thereof. Within seven (7) calendar days after appointment the arbitrator shall set the hearing date, which shall be within ninety (90) days after the filing date of the demand for arbitration unless a later date is required for good cause shown, and shall order a mutual exchange of what he/she determines to be relevant documents and the dates thereafter for the taking of up to a maximum of five (5) depositions by each party to last no more than two (2) days in aggregate for each party. Both parties waive the right, if any, to obtain any award for exemplary or punitive damages or any other amount for the purpose of imposing a penalty from the other in any arbitration or judicial proceeding or other adjudication arising out of or with respect to this Agreement, or any breach hereof, including any claim that this Agreement, or any part hereof, is invalid, illegal or otherwise voidable or void. The arbitrator shall make his or her award no later than seven (7) calendar days after the close of evidence or the submission of final briefs, whichever occurs later.

21. Export. Buyer shall not directly or indirectly export, transfer or in any way distribute any of the Products, or parts thereof, or any of Kontron's Proprietary Rights or technical data to any country or territory that is prohibited from receiving such materials under any applicable law of the United States. Buyer shall comply with all applicable laws and regulations, including, without limitation, all of the laws and regulations of any applicable agency of the United States government responsible for the administration of the United States export control laws and regulations and the United States Foreign Corrupt Practices Act of 1977, as amended. Buyer shall also be responsible for obtaining all export licenses or other approvals required to export or re-export the Products outside the United States. Buyer further indemnifies, defends and holds Kontron harmless from all damages, claims, expenses, liabilities and losses including without limitation attorney's fees and costs that in any way arise out of or relate to Buyer's breach of this warranty and/or failure to comply with the provisions of this Section 21. Kontron shall not be liable in the event any authorization of any governmental authority is delayed, denied, revoked, restricted and not renewed, and Buyer shall not be relieved thereby of its obligations to pay Kontron for its Products or any other charges which are the obligations of Buyer under this Agreement.

22. Integration of Equipment. Kontron shall not be liable for any problems, damages or costs associated with the integration, installation or incorporation of the Products with equipment or materials not provided by Kontron.

23. Authority. The persons executing purchase order(s) on behalf of Kontron and Buyer warrant and represent that they have been authorized by their respective board of directors or other governing bodies to bind their respective companies to all of the provisions of the purchase order(s) and this Agreement.

24. Survival. All of the provisions of Section 11, 12, 13, 15, 20 and 21 of this Agreement shall survive the termination or expiration of this Agreement.

25. Assignment. Buyer shall not assign, transfer or otherwise encumber this Agreement or any part thereof without Kontron's prior written consent.

26. Severability. If any provision of this Agreement is held by an arbitrator or a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

Any changes or deviations to the above Terms & Conditions of Sale must be mutually agreed to by both Parties in written form