

## Terms and Conditions of Sale Agreement – Industrial PC, Inc.

By receiving and accepting product from Industrial PC, Inc., 15335 Endeavor Drive, Suite 103, Noblesville, IN 46060 (the "Seller"), the Buyer agrees to the following terms and conditions governing the sale.

1. **Methods of Ordering, Business Hours and Credit Terms.**
  - Order by Phone: 888-255-5508
  - Order by Facsimile: 317-915-1004
  - Order by Mail: 15335 Endeavor Drive, Suite 103, Noblesville, IN 46060
  - Business hours are from 8:00am- 5:00pm Monday through Friday EST. Orders can be placed after hours via facsimile.
  - Credit Approval Procedure
  - If you need shipment immediately IPC can honor Visa or Credit Card Purchases.
  - To establish credit terms please fax us Credit and Trade References (minimum of three each) with the following:
    - Bank Name, Bank Phone Number, Number of Years in Business and your Company Information.
2. **Description.** Buyer shall purchase computers and related peripherals (the "Goods") from the Seller.
3. **Specifications.** Seller shall manufacture the goods based on plans and specifications supplied by Buyer.
4. **Price and Payments.** All amounts due to Seller shall be invoiced upon delivery and shall be payable in U.S. dollars. The Seller agrees to pay the invoiced charges by the due date. Any invoice not paid within ten (10) days of its due date shall be subject to a late charge of 1.5% percent per month until paid together with reasonable attorney fees and costs of collection.
5. **Delivery and Risk of Loss.** All deliveries shall be made F.O.B. Noblesville, Indiana, with bills of lading addressed to Buyer. Normal shipment is made via UPS Ground prepaid and added to the invoice unless otherwise specified at the time of order. Normal delivery is generally 2-4 weeks after receipt of order. Buyer may also choose expedited shipment by UPS Blue (Second Day) and UPS Red (Next Day). If Buyer selects an expedited method of transportation, Seller shall be reimbursed for any additional costs it may incur by reason thereof.

Risk of loss shall pass to Buyer when the goods are placed in the hands of the carrier. Buyer shall pay all costs of insurance from the time that risk of loss passes to it.
6. **Title.** Title to the Goods delivered hereunder shall pass to Buyer at time of delivery, subject to Seller's purchase money security interest. Buyer hereby grants Seller a purchase money security interest in the Goods to secure the purchase price of the Goods until the purchase price is paid in full. Buyer agrees to execute and deliver all documents reasonably requested by Seller to protect and maintain Seller's security interest.
7. **Cancellation of Order.** If Buyer terminates any purchase at least 30 days prior to shipment, Buyer's liability to Seller for such termination shall be (1) any unpaid balance for product ordered by and delivered to Buyer and services performed prior to Seller's receipt of the termination notice; and (2) A restocking charge of (25%) of the purchase price of the affected order; and (3) Any direct costs incurred by Seller in the course of fulfilling Buyer's requirements for a specific purchase order (including but not limited to the ordering of third-party products and services), which costs shall be supported by reasonable documentation.
8. **Delay.** Seller shall not be responsible for any losses resulting if the fulfillment of any of the terms and conditions is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, or by any other cause not within the control of the Seller, and which, by the exercise of reasonable diligence, Seller is unable to prevent.
9. **Taxes.** Buyer is responsible for all foreign, federal, state or local sales, excise, use, or other taxes, duties or assessments that are levied or imposed upon the sale of the goods.
10. **Warranties.** Seller warrants that it will manufacture the goods in conformity with the plans and specifications supplied by Buyer, and that the Goods will be free from defects in material and workmanship.

All Chassis and CPU Cards carry a 1-year warranty. Peripheral and I/O Cards carry 1-year warranty. Mass Storage Items, CPUs and Memory carry 1-year warranty after which a separate Manufacturer's Warranty applies.

THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS.
11. **Remedy limitations.** Buyer's exclusive remedy in the event that the Goods do not conform to the plans and specifications supplied by the Seller shall be either (a) to repair or to replace, at Seller's option, the defective Goods in accordance with Section 12 below, or (b) if after repeated efforts Seller is unable to resolve the defect by repair or replacement, to refund the purchase price upon return of the defective item.
12. **Goods Repair and Return Merchandise Authorization (RMA).** Should problems arise that cannot be handled by Technical Support please call 888-255-5508. No Goods shall be returned without prior Seller authorization. Buyer shall provide Seller's service representatives with all information necessary for Seller to process the return and to issue an RMA Number. Buyer shall have Invoice Number, Part Number, Serial Number, Company Information and a Description of the problem ready when calling.

Damaged, inoperative or malfunctioning Goods must be returned by Buyer in static protective material, securely packaged to prevent damage in transit with the RMA number written on the outside of the package, and shipped prepaid to 15335 Endeavor Drive, Suite 103, Noblesville, IN 46060. Stocked items will be shipped upon receipt of Goods. Under certain circumstances, approval may be given, at Seller's discretion, for cross shipment of Goods via UPS Ground Service.

Seller's acceptance of any Goods so shipped shall not be deemed an admission that the Goods are nonconforming, and, if Seller finds that any Goods returned are not defective, such Goods will be reshipped to Buyer at its expense and Buyer will be charged for the shipping charges incurred by Seller. If any of the Goods are found to be nonconforming, Buyer expressly waives its rights to consequential or incidental damages. It is acknowledged that the items sold are not so unique or the circumstances such that either party shall be entitled to the remedy of specific performance.

Goods found to be operable after testing (i.e. no trouble found), may be subject to Seller's then-current handling charge. Repairable out-of-warranty Goods will be repaired at Seller's then-current repair charges upon receipt of the Goods and Buyer's applicable purchase order or other written authorization to repair.
13. **Disclaimers.** THE GOODS ARE MANUFACTURED IN ACCORDANCE WITH PLANS AND SPECIFICATIONS SUPPLIED BY THE BUYER. THE SELLER MAKES NO WARRANTY THAT THE GOODS ARE MERCHANTABILITY OR FIT FOR ANY PARTICULAR PURPOSE. THE SOLE RESPONSIBILITY OF THE SELLER SHALL BE THAT IT WILL MANUFACTURE THE GOODS IN ACCORDANCE WITH THE PLANS AND SPECIFICATIONS OF THE BUYER, AND THAT THE GOODS WILL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL WARRANTIES.

SELLER SHALL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS OR REVENUE, LOSS OF BUYER GOODWILL, ATTORNEYS' FEES, DAMAGE TO BUSINESS OR BUSINESS RELATIONS, LOSS OF USE OF EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTED FACILITIES OR SERVICES, DOWN-TIME COSTS, CLAIMS BY CLIENTS OR BUYERS OF BUYER, OR DAMAGES FOR ECONOMIC LOSSES OR PROPERTY DAMAGE ARISING FROM, CONNECTED WITH OR RELATING TO SELLER'S ACTS OR OMISSIONS, WHETHER UNDER NEGLIGENCE, STRICT LIABILITY, ENTERPRISE LIABILITY OR OTHER PRODUCT LIABILITY THEORIES. THE SOLE LIABILITY OF THE SELLER SHALL BE TO REPLACE ANY MACHINE NOT IN CONFORMITY WITH THE PLANS AND SPECIFICATIONS. ANY ACTION ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PRODUCTS OR SERVICES FURNISHED BY SELLER MUST BE BROUGHT BY BUYER WITHIN TWO (2) YEARS FROM THE DATE THE CAUSE OF ACTION ACCRUES, OR THE APPLICABLE STATUTORY PERIOD, WHICHEVER IS SHORTER.
14. **EXPORT AND/OR RE-EXPORT LIMITATION.** The delivery of the Goods covered by these terms and conditions to locations outside the U.S. or Canada or to Buyers who contemplate or anticipate the export of the Goods outside of the U.S. or Canada is expressly conditioned upon Buyer obtaining the required export license or authorization from the United States Department of Commerce as required by U.S. Export Administration Regulations. Regardless of any disclosure made by Buyer to Seller of an ultimate destination for any Product or technical data, Buyer will not export or re-export, directly or indirectly, any Goods acquired from Seller without first obtaining the written consent to do so from the U.S. Department of Commerce or other applicable agency of the U.S. government. Seller will, at Buyer's request, assist Buyer in applying for any approval required from the appropriate U.S. government agencies.
15. **Infringement Indemnity.** Buyer warrants that the plans and specifications supplied to Seller do not infringe on any patent rights and shall save Seller harmless from and indemnify it against any loss by way of infringement claims.
16. **Assignment and delegation.** This agreement is not assignable nor is the performance of the duties delegable without Seller's express written consent.
17. **Seller's agents.** Buyer acknowledges that it has been advised that no agent, employee, or representative of Seller has any authority to bind Seller to any affirmation, promise, representation, or warranty concerning any of the goods, and, unless such affirmation, promise, representation, or warranty is specifically set forth in the Sale Agreement, it does not form a basis of this bargain and shall not be enforceable against Seller.
18. **Entire agreement.** This Sale Agreement constitutes the entire agreement between the parties hereto with regard to the subject matter hereof. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms set forth herein. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement shall not be relevant or admissible to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to make objection. No representation, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein. This Agreement can only be modified in a writing signed by the parties or their duly authorized agents.
19. **Applicable law.** This Agreement shall be construed, interpreted and enforced according to the statutes, rules of law and court decisions of the State of Indiana without regard to conflict of law provisions. Seller and Buyer hereby submit to the jurisdiction of, and waive any venue objections against, the State of Indiana and the federal courts of the United States located in Indiana in respect of all actions arising out of or in connection with the interpretation or enforcement of the underlying Sale Agreement.
20. **Confidentiality.**
  - A. Each party acknowledges that in the course of dealing, it may be exposed to certain confidential and/or proprietary information held or disclosed by the other party regarding the other party's business or products, including but not limited to the Goods and related documentation delivered to Buyer hereunder (collectively "Confidential Information"). Any party who receives Confidential Information shall exercise a reasonable standard of care to maintain and protect the confidentiality of Confidential Information and, unless otherwise agreed to in writing, shall not reproduce nor disclose, license, publish or otherwise make available such information to any third party, including affiliates and subsidiaries, other than the receiving party's employees who require such access consistent with use approved by the disclosing party under this Sales Agreement.
  - B. These restrictions shall not apply to information or material that (a) was in the receiving party's possession before disclosure by the disclosing party, (b) is or becomes a matter of public knowledge through no fault of the receiving party, (c) is independently developed without reliance on the Confidential Information, (d) is rightfully received by the receiving party from a third party not under an obligation to the disclosing party, or (e) is required by action of law to be disclosed. In the event the receiving party is compelled by action of law to provide or disclose Confidential Information, whether by an order of court, administrative agency or otherwise, the receiving party shall make every reasonable effort to maintain the maximum degree of protection for the information legally possible, and to notify the disclosing party immediately so that the disclosing party may take appropriate action in its own behalf.