

# KONTRON MODULAR COMPUTERS SAS

## GENERAL TERMS AND CONDITIONS OF SALE

### 01. PURPOSE

These General Terms and Conditions of Sale ("GTCS") contained herein shall apply, unless otherwise stated in a written agreement, to all sales of systems made of hardware and software (the "Equipment"), including the supply of related services, made by Kontron Modular Computers SAS ("Kontron Modular Computers SAS") and shall prevail notwithstanding anything contained to the contrary. Any amendment or supplement to these GTCS shall have to be expressly agreed upon in writing between Kontron Modular Computers SAS and the client ("the Client").

By sending an order to Kontron Modular Computers SAS, Client is deemed to have accepted the entirety of these GTCS.

#### Minimal order amount

Any order cannot be lower than 500€ exclusive of tax. For order lower than 15 000€, an additional administrative fee of 300€ will be charged.

Kontron Modular Computers SAS is only bound by the terms expressly written in its quotation and in the acknowledge-ment of order. If Kontron Modular Computers SAS has given a period of time for acceptance of its quotation, it is bound until the expiration of such period of time; if there is no such period of time, it may withdraw its quotation at any time by notice thereof to the Client.

The two parties shall be bound by a contract only after written acceptance of the Client's order by Kontron Modular Computers SAS in the form of an acknowledgement of order (the "Contract").

The Contract, must inter alia indicate the following:

- ▶ designation (identification, quantities) and characteristics of the Equipment,
- ▶ price of the Equipment net of taxes,
- ▶ payments terms, if other than those provided below,
- ▶ place (s) and time (s) of delivery,
- ▶ any other particular terms and conditions agreed between Kontron Modular Computers SAS and the Client.

In case of contradiction between these GTCS and the Contract referring to them, the provisions of the Contract prevail. The general terms and conditions of purchase of the Client are excluded, as well as any non agreed provisions which might be mentioned in the order or any document issued by the Client.

### 02. DELIVERY - TRANSPORTATION

**All sales and deliveries of Products shall be** "EX-WORKS KONTRON'S AUTHORIZED SHIPPING POINT" as defined in INCOTERMS, ICC 2000, as amended. Client is responsible for all transportation, insurance, duties, taxes and other applicable expenses. These expenses shall be paid by Client and shall be added to Kontron's invoice to Client if prepaid by Kontron Modular Computers SAS.

### 03. ACCEPTANCE OF THE EQUIPMENT

Unless otherwise stipulated in the Contract, the Client has eight (8) days from delivery to check the conformity of the Equipment in accordance with the acceptance procedure defined in the Contract, if any, and, as the case may be, to notify in writing its reservations or reasons for non acceptance.

Failing such written notification within the time-limit as has just been defined, the Client shall be deemed to have definitively accepted the Equipment being the subject of the delivery in question, without prejudice, however, to Kontron Modular Computers SAS' warranty obligations for the Equipment.

Subject to Client proving to Kontron Modular Computers SAS' satisfaction the non-conformity of the Equipment, such Equipment shall be returned to Kontron Modular Computers SAS at Kontron Modular Computers SAS cost, and Kontron Modular Computers SAS shall be then obliged to deliver conforming Equipment.

### 04. CHANGES

Within thirty (30) days of receipt from Client of a request for changes within the general scope of work under an accepted purchase order, Kontron Modular Computers SAS 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 Modular Computers SAS shall be made in the price and/or in the time required for performance. Such price adjustment may include but not be limited to any rework charges associated with the requested change. Kontron Modular Computers SAS 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 Modular Computers SAS, the original purchase order shall remain in effect.

### 05. TRANSFER OF TITLE AND RISKS - RESERVATION OF TITLE

The Equipment shall remain the property of Kontron Modular Computers SAS until it has received full payment, notwithstanding their delivery to the Client. Upon Client's failure to make payment by any due date, Kontron Modular Computers SAS may retake possession of the Equipment delivered.

Nevertheless, the Client hereby agrees that it shall be responsible for all damages and losses arising to or from the Equipment after delivery.

Transfer of risks shall occur upon delivery as per article 2 above.

### 06. PRICE - PAYMENT TERMS

Kontron Modular Computers SAS shall remit or address to the Client, upon delivery of Equipment, the corresponding invoice. The Client must pay any invoice within thirty (30) days from the respective issuance thereof, by way of promissory note.

Failure to pay an invoice shall permit Kontron Modular Computers SAS, without prejudice to any other right and action it may have, to suspend any delivery whatever the conditions of the relevant order may be, until full payment and to cancel any discount which may have been granted to the Client on said invoice as well as to interests for late payment.

The rate of such interests shall be equivalent to the interest rate applied by the European Central Bank to its most recent main refinancing operations, plus ten percentage points. Such interests shall be calculated on the basis of the invoiced amounts unpaid and shall be due without any prior written notice from Kontron Modular Computers SAS.

The above is without prejudice to any damages to which Kontron Modular Computers SAS might be entitled at law.

### Collecting charges

In case of payment overdue, a lump charge of 40€ is applicable according to the law in° 2012-1115 of the 10/2/2012

## 07. EXCUSEABLE DELAY

Kontron Modular Computers SAS shall not be responsible for nor deemed to be in default on account of failure or delays in the performance of the Contract for reasons due to Client or to causes beyond its reasonable control, foreseeable or not, and not occasioned by its fault or negligence, including but not limited to: war and warlike operations, insurrection, riot, fire, flood, explosions, lockouts, strikes, labour disputes, serious accidents, epidemics, acts of any public enemy, acts of God, any law, regulation, restriction, acts or omissions of the Government(s) of France and/or Client's country or any authority having jurisdiction over the Parties or the Contract, any modification or change to the Contract requested by the Client, failure by Client to deliver any equipment, Equipment, item, information or data necessary to Kontron Modular Computers SAS and requested by the latter to perform its obligations under the Contract and any other event beyond Kontron Modular Computers SAS' reasonable control.

This provision shall not, however, excuse or release the Client from the payment of sums of money expressly due hereunder and Kontron Modular Computers SAS shall resume and/or continue performance hereunder with the utmost dispatch when such causes are removed. Kontron Modular Computers SAS claiming any such excuse for non-performance or delay shall give prompt notice thereof to the Client.

Should the event causing an excusable delay not be terminated within six (6) months from the date of its occurrence, the Parties shall meet in order to define their attitude with regard to the performance of the Contract.

## 08. WARRANTY

08.01. The Equipment is warranted by Kontron Modular Computers SAS against failure to function caused by defaults in materials or workmanship.

08.02. If no warranty duration is fixed in the Contract, the applicable warranty duration shall be two (2) years for the hardware. For the software, the warranty shall be limited to the magnetic medium and for a period of three (3) months; however, as regards software incorporated in the Equipment and the intellectual property of which belongs to third parties, the applicable warranty duration shall be the one respectively granted by the third parties in question.

08.03. The warranty shall only apply if the Equipment is used for the applications for which it is normally intended and in conformity with the specifications and instructions stipulated by Kontron Modular Computers SAS and within the limits which must not be exceeded, even occasionally.

Are expressly excluded from the warranty:

- ▶ defects corresponding to a normal wear and tear of the Equipment;
- ▶ defects abnormal use of the Equipment or to inappropriate storage thereof;

- ▶ defects in connection with a repair or modification of the Equipment made by the Client or a third party without prior written consent of Kontron Modular Computers SAS;
- ▶ defects as a result of the adding or connecting to the Equipment of any other hardware or component not mentioned in the Contract;
- ▶ Consumable items.

08.04. In order to benefit from this warranty, the defect must be notified to Kontron Modular Computers SAS in writing and without delay, with full details on the nature and circumstances of the failure.

Kontron Modular Computers SAS will inform the Client if the claim can be considered; if this is the case, the Client shall return the faulty Equipment to Kontron Modular Computers SAS, carriage and insurance paid by Client, in its original packing for investigation of the default by Kontron Modular Computers SAS.

The warranty granted by Kontron Modular Computers SAS shall consist of replacing or repairing (at Kontron Modular Computers SAS' option) the defective part (s) of the concerned Equipment.

08.05. This warranty shall also apply to any part of the Equipment or spares thereof repaired or replaced under warranty for the remaining portion of the original warranty period.

The Equipment shall be used and operated by Client or any other users or operators under their sole risks and responsibility. Kontron Modular Computers SAS does not warranty industrial or economic results.

The warranty does not cover any consequences, direct or indirect, resulting from the failure of the Equipment supplied by Kontron Modular Computers SAS.

08.06. THE PRECEDING PARAGRAPHS CONSTITUTE THE WHOLE AND ONLY WARRANTY AND REMEDY GIVEN BY KONTRON MODULAR COMPUTERS SAS AND TAKES PRECEDENCE OVER ANY OTHER WARRANTY.

## 09. INTELLECTUAL PROPERTY

Unless otherwise stipulated in the Contract, no intellectual property right is transferred or granted under the Contract, except the right for the Client to use the incorporated software in connection with the use of the Equipment.

## 10. GUARANTEE RELATING TO INTELLECTUAL AND INDUSTRIAL PROPERTY

10.01. For the portions of Equipment (hardware and software) acquired by Kontron Modular Computers SAS from third-party suppliers, Kontron Modular Computers SAS shall in no way be liable if the sale or use of the Equipment infringes third parties industrial or intellectual property rights, unless Kontron Modular Computers SAS has not complied with the conditions on which it has acquired such hardware and software and this non-compliance is the direct cause of third parties claims relating to industrial or intellectual property.

10.02. For the portions of Equipment (hardware and software) in respect of which Kontron Modular Computers SAS holds intellectual or industrial property rights and because of the complexity of manufacturing techniques of the Equipment and of the industrial property rights appertaining thereto, Kontron Modular Computers SAS is not able to declare that its Equipment do not infringe all industrial property rights of any third party.

In case a third party would make a claim alleging that the Equipment delivered to the Client infringe its industrial property right, and an unfavourable final judgement is given against Kontron Modular Computers SAS, Kontron Modular Computers SAS will, at its own expense and sole option, either (i) procure a licence from the above mentioned third party to protect the

Client, (ii) or modify the infringing Equipment in such a way as to avoid the infringement, (iii) or substitute equivalent Equipment for the infringing Equipment, (iv) or, if such solution shall prove impossible for economic and/or technical reasons, accept the return of the Equipment supplied and proceed with the reimbursement at the buying price.

The above undertaking shall only apply provided that Kontron Modular Computers SAS shall be given immediate written notice of all claims of any such infringement or any suits brought against the Client, and authority to assume the sole defence thereof, and to compromise or settle any suits.

Kontron Modular Computers SAS shall not be liable and the Client shall hold Kontron Modular Computers SAS harmless from, any claims, liabilities, expenses, costs and damages resulting from claimed infringement of patents, trademarks, copyrights or any other intellectual property rights, any Client expenses of defense and any claims settled by the Client without Kontron Modular Computers SAS' prior written consent. Kontron Modular Computers SAS shall further not be liable and the Client shall hold Kontron Modular Computers SAS harmless from (i) any claims shown to arise from a use or combination of the Equipment with any other equipment, processes, programming applications, apparatus or materials not furnished Kontron Modular Computers SAS or from a modification made to the Equipment by others than Kontron Modular Computers SAS, or (ii) any claims shown to arise out of compliance by Kontron Modular Computers SAS with the Clients designs, specifications or instructions.

The above provisions constitute Kontron Modular Computers SAS' entire liability and undertaking for any claim based upon or related to any alleged infringement of any patent or other industrial property rights, and are subject to the provisions of Article 11 herein.

## 11. LIABILITY

11.01. Kontron Modular Computers SAS shall not be liable under any circumstances to the Client, its officers, agents, employees, successors and assigns for any indirect, special or consequential damages such as but not limited to loss of profit, loss of contract, loss of use, loss resulting from business disruption, lack or loss of use of the Equipment or part thereof, even if Kontron Modular Computers SAS has been advised of the possibility of occurrence of such damages.

11.02. Kontron Modular Computers SAS and its suppliers shall be liable to the Client liable only for those damages which have been foreseen or might have reasonably been foreseen on the date of execution of this Contract and which are solely an immediate and direct result of any act or omission of the Party in performing the work or any portion thereof under this Contract. In any event, Kontron Modular Computers SAS total liability arising out of this Contract shall not in the aggregate for one or more events and for the duration of the Contract, exceed a total and maximum amount of 20% of the payments received under the Contract.

11.03. It is expressly agreed that the Equipment are not intended to be used, or to be incorporated into Equipment or systems, in high risk fields, i.e. fields where a failure of performance might cause bodily damages or serious environmental damages.

## 12. CONFIDENTIALITY

Any information concerning Kontron Modular Computers SAS which is disclosed under the Contract to the Client is disclosed in confidence, and the Client shall not publish or disclose it to any third party without the prior written approval of Kontron Modular Computers SAS; provided, however, that nothing herein shall

limit Client's right to disclose any data provided by Kontron Modular Computers SAS hereunder which

- ▶ is already known to the Client, as evidenced by written documentation in the files of the Client;
- ▶ becomes knowledge available within the public domain or
- ▶ is received by the Client from a third party without restriction and without breach of the Contract.

## 13. TERMINATION

13.01. In the event the Client fails to perform or breaches any of its obligations under the Contract, or fails to pay any sums due to Kontron Modular Computers SAS in accordance with the terms of payment, Kontron Modular Computers SAS shall have the right to terminate the Contract by giving written notice thereof to the Client without prejudice to any claim for any damages suffered by Kontron Modular Computers SAS due to termination.

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

## 14. APPLICABLE LAW and LITIGATION

14.01. These GTCS and the Contract shall be governed by and shall be interpreted in accordance with the laws of France.

14.02. In case of dispute between the parties in connection with or arising out of these GTCS or the Contract and in the absence of an amicable settlement, the following shall apply :

- ▶ If the Client is a French national, the only competent jurisdiction shall be the Tribunal de Commerce of Paris, whatever the conditions of sale and method of payment accepted, even on the question of warranty or in the case of multiple defendants.
- ▶ If the Client is not a French national, the dispute shall be finally settled in Paris by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce by three (3) arbitrators appointed in accordance with the said Rules. The award of the arbitrators shall be final and binding, subject to neither appeal nor confirmation.

## 15. ASSIGNMENT

The Client undertakes not to assign or otherwise transfer whole or part of its rights and/or obligations under the Contract to any third party without Kontron Modular Computers SAS' prior written consent.

## 16. EXPORT

16.01. The export of certain Equipment may be subject to specific rules enacted by the French authorities or U.S. authorities ; any export in breach of these rules is prohibited. The Client is responsible for complying with all applicable rules in this respect.

16.02. Client is also solely responsible for carrying out all customs formalities necessary and for paying all associated costs, taxes and duties in connection with the Equipment. The Client shall hold Kontron Modular Computers SAS harmless from any claim in this respect.