



HP TERMS AND CONDITIONS OF SALE AND SERVICE

Contract #SVC00183-CS

HP's sale of Products and Support and HP's license of Software are governed by these HP Terms and Conditions of Sale and Service.

1. DEFINITIONS

- a) "Delivery" means standard HP shipping to and arrival at the receiving area at the "Ship To" address specified in Customer's order.
- b) "Exhibits" means attachments that describe or otherwise apply to the sale or license of Products or Support.
- c) "License Fee" means the fee or fees designated by HP for Use of Software. Different License Fees may apply to particular Software if more than one Software License is available for that Software.
- d) "Products" means hardware, Software, documentation, accessories, supplies, parts and upgrades that are determined by HP to be available from HP upon receipt of Customer's order. "Custom Products" means Products modified, designed or manufactured to meet Customer requirements.
- e) "Software" means one or more programs capable of operating on a controller, processor or other hardware Product ("Device") and related documentation. Software is either a separate Product, included with another Product ("Bundled Software"), or fixed in a Device and not removable in normal operation ("Firmware").
- f) "Software License" means the Software license grant and general license terms set forth herein. Each Software License has a corresponding License Fee.
- g) "Specifications" means specific technical information about HP Products which is published in HP Product manuals and technical data sheets in effect on the date HP ships Customer's order.
- h) "Support" means hardware maintenance and repair; Software updates and maintenance; training; and other standard support services provided by HP. "Custom Support" means any agreed non-standard Support, including consulting and custom project services.
- i) "Use" means storing, loading, installing, executing or displaying Software on a Device.

2. PRICES

- a) Prices are valid for the period quoted by HP or for the applicable purchase agreement ordering period, whichever expires first. Product prices for an order remain valid for ninety (90) days from the original order date unless otherwise quoted by HP. Change orders that extend Delivery beyond those validity periods become new orders at prices in effect when HP receives the change orders. Support prices, except for Custom and prepaid Support, may be changed by HP upon sixty (60) days written notice.
- b) Prices are exclusive of, and Customer will pay, applicable sales, use, consumption, goods and service, value added or like taxes, unless Customer has provided HP with an appropriate exemption certificate for the Delivery jurisdiction.

3. ORDERS

- a) All orders are subject to acceptance by HP. Product orders must specify Delivery within ninety (90) days from order date, unless otherwise agreed or quoted by HP.
- b) Customer will specify Ship To addresses within the country where the order is placed, unless otherwise agreed.
- c) Customer may cancel orders for Products (except Custom Products) prior to shipment at no charge.

4. DELIVERY

HP will make reasonable efforts to meet Customer's Delivery requirements. If HP is unable to meet Customer's Delivery requirements, alternative arrangements may be agreed. In the absence of such agreement, Customer's sole remedy is to cancel the order.

5. SHIPMENT, RISK OF LOSS OR DAMAGE, AND TITLE

HP will ship according to HP's standard commercial practice, and risk of loss or damage and title will pass from HP to Customer at the Ship To address. Shipping and handling charges will be listed



HP TERMS AND CONDITIONS OF SALE AND SERVICE

Contract #SVC00183-CS

separately on HP's invoice when not included in the Product's purchase price. If Customer requested special packing or shipping instructions are agreed to by HP, charges will be billed separately to Customer, and risk of loss or damage and title will pass to Customer on delivery to Customer's carrier or designate.

6. INSTALLATION AND ACCEPTANCE

- a) Product installation information is available with Products, on quotations or upon request. Installation by HP, when included in the purchase price, is complete when the Product passes HP's standard installation and test procedures.
- b) For Products without installation included in the purchase price, acceptance by Customer occurs upon Delivery. For Products with installation included in the purchase price, acceptance by Customer occurs upon completion of installation by HP. If Customer schedules or delays installation by HP more than thirty (30) days after Delivery, Customer acceptance of the Product(s) will occur on the 31st day after Delivery.

7. PAYMENT

- a) Payment terms are subject to HP credit approval. Payment is due thirty (30) days from HP's invoice date. Invoices for contractual support services and maintenance will be issued in advance of the Support period. HP may change credit or payment terms at any time, upon thirty (30) days written notice to Customer, when, in HP's opinion, Customer's financial condition, previous payment record, or the nature of Customer's relationship with HP so warrants.
- b) HP may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other HP agreement if, after ten (10) days written notice, the failure has not been cured.

8. WARRANTY

- a) Product warranty period and additional information is available with Products, on quotations, or upon request.
- b) Products purchased from HP will receive the standard warranty in the country of purchase. If Customer moves such Products to another country where HP has Support presence, then Customer will receive the destination country standard warranty.
- c) Customer may receive a different warranty when the Product is purchased as part of a system. HP reserves the right to change the warranty. Such changes will affect only new orders.
- d) The warranty period begins on the date of Delivery, or the date of installation if installed by HP. If Customer schedules or delays installation by HP more than thirty (30) days after Delivery, the warranty period begins on the 31st day after Delivery.
- e) If Customer transfers a Product to another user, warranty service is available to that user for the remainder of the warranty period.
- f) HP warrants HP hardware Products against defects in materials and workmanship. HP further warrants that HP hardware Products conform to Specifications.
- g) HP warrants that Software will not fail to execute its programming instructions due to defects in materials and workmanship when properly installed and used on the Device designated by HP. HP further warrants that HP owned standard Software will substantially conform to Specifications. HP does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- h) HP does not warrant that the operation of Products will be uninterrupted or error free.
- i) If HP receives notice of defects or non-conformance to hardware Specifications, or substantial non-conformance to HP owned standard Software Specifications during the warranty period, HP will, at its option, repair or replace the affected Products. If HP is unable, within a reasonable time, to repair, replace or correct a defect or non-conformance in a Product to a condition as warranted, Customer will be entitled to a refund of the purchase price upon prompt return of the Product to HP. Customer will pay expenses for return of such Products to HP. HP will pay expenses for shipment of repaired or replacement Products.
- j) HP warrants that HP Support will be provided in a professional and workmanlike manner.
- k) Some newly manufactured HP Products may contain and HP Support may use remanufactured parts which are equivalent to new in performance.



HP TERMS AND CONDITIONS OF SALE AND SERVICE
Contract #SVC00183-CS

- l) The warranties provided herein will apply only to those Products and Support which are branded by HP with an HP trademark ("HP Branded"). HP does not warrant any third party Products or Support even if included with other HP Branded Products or Support. Furthermore, HP provides all such third party Products and Support AS IS. However, the original manufacturers of suppliers may provide their own warranties as specified in the documentation accompanying such third party Products and Support.
- m) The above warranties do not apply to defects resulting from:
 - 1) improper or inadequate maintenance by Customer;
 - 2) Customer or third party supplied software, interfacing or supplies;
 - 3) unauthorized modification;
 - 4) improper use or operation outside of the Specifications for the Product;
 - 5) abuse, negligence, accident, loss or damage in transit;
 - 6) improper site preparation; or
 - 7) unauthorized maintenance or repair.
- n) THE ABOVE WARRANTIES ARE EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, HP SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

9. SUPPORT

- a) Customer may order Support from HP's then current Support offering. Some Support (and related Products) may not be available in all countries. Orders for Support are subject to the terms of the Support Exhibit or quotation in effect on the date of order.
- b) To be eligible for Support, Products must be at current specified revision levels and, in HP's reasonable opinion, in good operating condition.
- c) HP may, at no additional charge, modify Products to improve operation, supportability and reliability, or to meet legal requirements.
- d) Relocation of Products is Customer's responsibility. Relocation may result in additional Support charges and modified service response times. Support of Products moved to another country is subject to availability.
- e) HP will provide Support for products that are not HP Branded when approved by HP in writing. HP will provide Support for HP Products when Customer allows HP to perform modifications if requested by HP under Section 9. c) above. Customer is responsible for removing any products not eligible for Support to allow HP to perform Support services. If Support services are made more difficult because of such product(s), HP will charge Customer for the extra work at HP's standard rates.
- f) Support does not cover any damage or failure caused by:
 - 1) use of non-HP media, supplies and other products; or
 - 2) site conditions that do not conform to HP's site specifications; or
 - 3) neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer, work or modification by people other than HP employees or subcontractors, or other causes beyond HP's control; or
 - 4) inability of any non-HP products in Customer's environment to correctly process, provide or receive date data (i.e., representations for month, day, and year), and to properly exchange date data with the Products supplied by HP.
- g) Customer is responsible for maintaining a procedure external to the Products to reconstruct lost or altered Customer files, data or programs. Customer will have a representative present when HP provides Support services at Customer's site. Customer will notify HP if Products are being used in an environment which poses a potential health or safety hazard to HP employees or subcontractors; HP may require Customer to maintain such Products under HP supervision and may postpone service until such hazard is remedied.
- h) Customer may delete Products under Support or cancel Support orders upon thirty (30) days written notice unless otherwise agreed in a Support agreement. HP may cancel Support orders or delete Products no longer included in HP's Support offering upon sixty (60) days written notice unless otherwise agreed in a Support agreement.



HP TERMS AND CONDITIONS OF SALE AND SERVICE
Contract #SVC00183-CS

10. LICENSES

- a) In return for the License Fee, HP grants Customer a non-exclusive license to Use the object code version of the Software listed in Customer's order in conformance with:
 - 1. the terms set forth herein; and
 - 2. Use restrictions and authorizations for the Software specified by HP in its quotation, invoice or terms that accompany the Software; and
 - 3. HP's third party suppliers' terms that accompany the Software.

In the event of a conflict, the third party suppliers' terms that accompany the Software will take precedence over the Use restrictions and authorizations specified by HP and the terms set forth herein, and the Use restrictions and authorizations specified by HP will take precedence over the terms set forth herein.

- b) Unless otherwise specified, in return for the applicable License Fee, HP grants Customer a license to Use one copy of the Software on one Device at any one time.
- c) Unless otherwise specified, all Software Licenses will be perpetual unless terminated or transferred in accordance with Section 10. k).
- d) If Customer is an HP authorized reseller, Customer may sublicense the Software to an end-user for its Use or (if applicable) sublicense the Software to an HP authorized reseller for subsequent distribution to an end-user for its Use. These sublicenses must incorporate the terms of this Software License in a written sublicense agreement, which will be made available to HP upon request. If Customer is not an HP authorized reseller, Customer may not sublicense the Software unless otherwise agreed to by HP in writing.
- e) Software is owned and copyrighted by HP or by third party suppliers. Customer's Software License confers no title or ownership and is not a sale of any rights in the Software. Third party suppliers may protect their rights in the Software in the event of any infringement.
- f) Unless otherwise permitted by HP, Customer may only make copies or adaptations of the Software for archival purposes or when copying or adaptation is an essential step in the authorized Use of the Software on a backup Device, provided that copies and adaptations are used in no other manner and provided further that the Use on the backup Device is discontinued when the original or replacement Device becomes operable.
- g) Customer must reproduce all copyright notices in or on the original Software on all permitted copies or adaptations. Customer may not copy the Software onto any public or distributed network.
- h) Bundled Software or Firmware provided to Customer may only be used when operating the associated Device in configurations as sold or subsequently upgraded by HP. Customer may transfer Firmware only upon transfer of the associated Device.
- i) Updates, upgrades or other enhancements are available under HP Support agreements. HP reserves the right to require additional licenses and fees for Use of the Software on upgraded Devices.
- j) Customer will not modify, disassemble or decompile the Software without HP's prior written consent. Where Customer has other rights under statute, Customer will provide HP with reasonably detailed information regarding any intended disassembly or decompilation. Customer will not decrypt the Software unless necessary for legitimate use of the Software.
- k) Customer's Software License is transferable subject to HP's prior written authorization and payment to HP of any applicable fee(s). Upon transfer of the Software License, Customer will immediately deliver all copies of the Software to the transferee. The transferee must agree in writing to the terms of Customer's Software License. All Software License terms will be binding on involuntary transferees, notice of which is hereby given. Customer's Software License will automatically terminate upon transfer.
- l) HP may terminate Customer's or any transferee's or sublicensee's Software License upon notice for failure to comply with any applicable Software License terms. Immediately upon termination, the Software and all copies of the Software will be destroyed or returned to HP. Copies of the Software that are merged into adaptations, except for individual pieces of data in Customer's or transferee's or sublicensee's database, will be removed and destroyed or returned to HP. With HP's written consent, one copy of the Software may be retained subsequent to termination for archival purposes.
- m) If the Software is licensed for use in the performance of a U.S. government prime contract or subcontract, Customer agrees that, consistent with FAR 12.211 and 12.212, commercial computer



HP TERMS AND CONDITIONS OF SALE AND SERVICE Contract #SVC00183-CS

software, computer software documentation and technical data for commercial items are licensed under vendor's standard commercial license.

11. INTELLECTUAL PROPERTY RIGHTS

- a) HP will defend or settle any claim against Customer, (or third parties to whom Customer is authorized by HP to resell or sublicense), that HP Branded Products or Support (excluding Custom Products and Custom Support), delivered under these HP Terms and Conditions of Sale and Service infringe a patent, utility model, industrial design, copyright, trade secret, mask work or trademark in the country where Products are used, sold or receive Support, provided Customer:
 - 1) promptly notifies HP in writing; and
 - 2) cooperates with HP in, and grants HP sole control of the defense or settlement.
- b) HP will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, HP may modify the Product, procure any necessary license, or replace it. If HP determines that none of these alternatives is reasonably available, HP will refund Customer's purchase price upon return of the Product if within one year of Delivery, or the Product's net book value thereafter.
- c) HP has no obligation for any claim of infringement arising from:
 - 1) HP's compliance with Customer's designs, specifications or instructions;
 - 2) HP's use of technical information or technology provided by Customer;
 - 3) Product modifications by Customer or a third party;
 - 4) Product use prohibited by Specifications or related application notes; or
 - 5) Product use with products that are not HP Branded.
- d) These terms state HP's entire liability for claims of intellectual property infringement.

12. LIMITATION OF LIABILITY AND REMEDIES

- a) Products are not specifically designed, manufactured or intended for sale as parts, components or assemblies for the planning, construction, maintenance, or direct operation of a nuclear facility. Customer is solely liable if Products or Support purchased by Customer are used for these applications. Customer will indemnify and hold HP harmless from all loss, damage, expense or liability in connection with such use.
- b) To the extent HP is held legally liable to Customer, HP's total liability is limited to: payments described in Sections 8. i) and 11. b) above; claims for damages arising from bodily injury and death caused by HP or its agents in performance of the Agreement; other direct damages to tangible property up to a limit of U.S. \$2,500,000; other direct damages for any claim based on a material breach of Support services, up to a maximum of twelve (12) months of the related Support charges paid by Customer during the period of material breach; and other direct damages for any claim based on a material breach of any other term of these HP Terms and Conditions of Sale and Service, up to a limit of U.S.\$1,000,000.
- c) Upon Customer's prompt notice of applicable claims and the reasonable cooperation of the Customer concerning the defense of such claims, HP agrees to defend and indemnify the Customer and its elected and appointed boards, officers, and employees from any and all direct damages for injury to or death of any person, and for injury to any tangible property arising from the negligence or willful misconduct of HP or HP's subcontractors and employees, up to the limits of liability set forth in this Section 12."
- d) Except for such damages arising from the Customer's loss of system availability attributable solely to the negligence of HP and its agents and for damages arising from HP's above indemnity for claims of personal injury and death, in no event will HP or its affiliates, subcontractors or suppliers be liable for any of the following: incidental, special or consequential damages (including downtime costs or lost profits, but excluding payments described in Section 11 above and damages for bodily injury); damages relating to Customer's procurement of substitute products or services (i.e., "cost of cover"); or damages for loss of data, or software restoration.
- e) THE REMEDIES IN THESE HP TERMS AND CONDITIONS OF SALE AND SERVICE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

13. GENERAL



HP TERMS AND CONDITIONS OF SALE AND SERVICE
Contract #SVC00183-CS

a) The parties hereby agree that they may do business electronically, including contract formation, order placement and acceptance. Any orders placed by Customer and accepted by HP on any HP.com website or HP/Customer extranet site will create fully enforceable obligations that will be subject to the terms hereof. Such orders and acceptances will be deemed for all purposes to be:

- 1) business records originated and maintained in documentary form;
- 2) a "writing" or "in writing";
- 3) "signed"; and
- 4) an "original" when printed from electronic files or records established and maintained in the normal course of business.

The parties further agree not to contest the validity or enforceability of such transactions under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the parties to be bound thereby and will be admissible if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceeding to the same extent and under the same conditions as other business records originated and maintained in documentary form. In addition, the parties agree that transactions may be conducted through electronic data interchange or other electronic methods, as agreed by the parties. The parties will adopt commercially reasonable security measures to limit access to passwords and to limit access to the sites to authorized persons. Each party will be responsible for any unauthorized use of the sites or issuance of messages caused by the failure of its security measures.

- b) HP will not be liable for performance delays or for non-performance, due to causes beyond its reasonable control.
- c) If either party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned, the other party may cancel any unfulfilled obligations.
- d) Customer may not assign any rights or obligations hereunder without prior written consent from HP.
- e) Customer who exports, re-exports or imports Products, technology or technical data purchased hereunder, assumes responsibility for complying with applicable laws and regulations, and for obtaining required export and import authorizations. HP may suspend performance if Customer is in violation of applicable regulations.
- f) This Agreement shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Agreement, the parties hereto agree that the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California.
- g) Provisions herein which by their nature extend beyond the termination of any sale or license of Products or Support will remain in effect until fulfilled.
- h) If any term or provision herein is determined to be illegal or unenforceable, the validity or enforceability of the remainder of the terms or provisions herein will remain in full force and effect.
- i) Customer will not register or use any internet domain name which contains HP's trademarks (e.g. "HP", "hp" or "Hewlett-Packard") in whole or in part or any other name which is confusingly similar thereto.
- j) These HP Terms and Conditions of Sale and Service and any Exhibits constitute the entire agreement between HP and Customer, and supersede any previous communications, representations or agreements between the parties, whether oral or written, regarding transactions hereunder. Customer's additional or different terms and conditions will not apply. Customer's purchase or license of Products and Support will constitute Customer's acceptance of these HP Terms and Conditions of Sale and Service, which may not be changed except by an amendment signed by an authorized representative of each party.

14. INSURANCE

- a) HP shall obtain and maintain during the life of this Agreement all of the following insurance coverages:
- (1) Comprehensive general liability, including premises-operations, products/completed operations, broad form property damage, and blanket contractual liability, and independent contractors, personal injury and
 - (2) Automobile liability for owned, hired and non-owned vehicles.



**HP TERMS AND CONDITIONS OF SALE AND SERVICE
Contract #SVC00183-CS**

- (3) In the event of cancellation of the above described policy, the issuing company shall endeavor to give thirty (30) days prior written notice to the certificate holder.
- b) Any other insurance maintained by the CITY OF COSTA MESA shall be excess and not contributing with the insurance provided by this policy.
- c) The policy limits on all the above shall be not less than \$2,500,000, combined single limits, per occurrence and aggregate.
- d) In addition to the insurance coverage set forth above, HP shall obtain and maintain, during the life of this Agreement, Workers' Compensation Insurance in statutory amounts.
- e) HP shall provide to the City of Costa Mesa certificates of insurance showing the insurance coverages described above, in a form and content approved by the City of Costa Mesa, prior to beginning work under this Agreement.

Exhibits

The Exhibit (s) attached and listed below are part of this Agreement.

HP Support Services, Exhibit SS5

EFFECTIVE DATE _____

Sign Date: _____ AGREED TO: _____ Customer: _____ _____ Authorized Representative Signature Name: _____ Title: _____ Address: _____ _____ _____	AGREED TO: _____ HP: _____ _____ Authorized Representative Signature Name: _____ Title: _____ Address: _____ _____ _____
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