

Intelligentz Terms and Conditions of Sale and Service

Intelligentz's Sale of Products and Support and Intelligentz's License of Software are Governed by these Intelligentz Terms and Conditions of Sale and Service.

1. DEFINITIONS

- a) "Delivery" means standard Intelligentz 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 Intelligentz 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 Intelligentz to be available from Intelligentz 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 Intelligentz Products which is published in Intelligentz Product manuals and technical data sheets in effect on the date Intelligentz ships Customer's order.
- h) "Support" means hardware maintenance and repair; Software updates and maintenance; training; and other standard support services provided by Intelligentz. "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 Intelligentz 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 Intelligentz. Change orders that extend Delivery beyond those validity periods become new orders at prices in effect when

Intelligentz receives the change orders. Support prices, except for Custom and prepaid Support, may be changed by Intelligentz 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 Intelligentz with an appropriate exemption certificate for the Delivery jurisdiction.

3. ORDERS

- a) All orders are subject to acceptance by Intelligentz. Product orders must specify Delivery within ninety (90) days from order date, unless otherwise agreed or quoted by Intelligentz.
- 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 a minimum charge of 25% of purchase price, up to the full deposit amount. If Intelligentz used an outside vendor customer may be liable for full amount of purchase price.

4. DELIVERY

Intelligentz will make reasonable efforts to meet Customer's Delivery requirements. If Intelligentz 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

Intelligentz will ship according to Intelligentz's standard commercial practice, and risk of loss or damage and title will pass from Intelligentz to Customer at the Ship To address. Shipping and handling charges will be listed separately on Intelligentz's invoice when not included in the Product's purchase price. If Customer requested special packing or shipping instructions are agreed to by Intelligentz, 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 Intelligentz, when included in the purchase price, is complete when the Product passes Intelligentz'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 Intelligentz. If Customer schedules or delays installation by Intelligentz 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 Intelligentz credit approval. Payment is due thirty (30) days from Intelligentz's invoice date. Invoices for contractual support services and maintenance will be issued in advance of the Support period. Intelligentz may change credit or payment terms at any time when, in Intelligentz's opinion, Customer's financial condition, previous payment record, or the nature of Customer's relationship with Intelligentz so warrants.
- b) Intelligentz may discontinue performance if Customer fails to pay any sum due, or fails to perform under this or any other Intelligentz 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 Intelligentz will receive the standard warranty in the country of purchase. If Customer moves such Products to another country where Intelligentz 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. Intelligentz 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 Intelligentz. If Customer schedules or delays installation by Intelligentz 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) OEM hardware supplier warrants hardware Products against defects in materials and workmanship. See OEM hardware terms and conditions for specific warranty information as Intelligentz does not warrant third party hardware.
- g) Intelligentz 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 Intelligentz. Intelligentz further warrants that Intelligentz owned standard Software will substantially conform to Specifications. Intelligentz does not warrant that Software will operate in hardware and software combinations selected by Customer, or meet requirements specified by Customer.
- h) Intelligentz does not warrant that the operation of Products will be uninterrupted or error free.
- i) If Intelligentz receives notice of defects or non-conformance to OEM hardware Specifications, or substantial non-conformance to Intelligentz owned standard Software Specifications during the warranty period, Intelligentz and OEM hardware supplier will, at option, repair or replace the affected Products. If Intelligentz 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 Intelligentz. Customer will pay expenses for return of such Products to Intelligentz. Intelligentz will pay expenses for shipment of repaired or replacement Products.

- j) Intelligentz warrants that Intelligentz Support will be provided in a professional and workmanlike manner.
- k) Some newly manufactured Intelligentz Products may contain and Intelligentz Support may use remanufactured parts which are equivalent to new in performance.
- l) The warranties provided herein will apply only to those Products and Support which are branded by Intelligentz. Intelligentz does not warrant any third party Products or Support even if included with other Intelligentz Branded Products or Support. Furthermore, Intelligentz 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, Intelligentz SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

9. SUPPORT

- a) Customer may order Support from Intelligentz'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 Intelligentz's reasonable opinion, in good operating condition.
- c) Intelligentz 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) Intelligentz will provide Support for products that are not Intelligentz Branded when approved by Intelligentz in writing. Intelligentz will provide Support for Intelligentz Products when Customer allows Intelligentz to perform modifications if requested by Intelligentz under Section 9c above. Customer is responsible for removing any products not eligible for Support to allow Intelligentz to perform Support services. If Support services are made more difficult because of such product(s), Intelligentz will charge Customer for the extra work at Intelligentz's standard rates.

- f) Support does not cover any damage or failure caused by:
- 1) use of non-Intelligentz media, supplies and other products; or
 - 2) site conditions that do not conform to Intelligentz's site specifications;
or
 - 3) neglect, improper use, fire or water damage, electrical disturbances, transportation by Customer, work or modification by people other than Intelligentz employees or subcontractors, or other causes beyond Intelligentz's control; or
 - 4) inability of any non-Intelligentz 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 Intelligentz.
- 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 Intelligentz provides Support services at Customer's site. Customer will notify Intelligentz if Products are being used in an environment which poses a potential health or safety hazard to Intelligentz employees or subcontractors; Intelligentz may require Customer to maintain such Products under Intelligentz 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. Termination charges may apply for cancellation of support. Intelligentz may cancel Support orders or delete Products no longer included in Intelligentz's Support offering upon thirty (30) days written notice unless otherwise agreed in a Support agreement.

10. LICENSES

- a) In return for the License Fee, Intelligentz 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 Intelligentz in its quotation, invoice or terms that accompany the Software; and
 3. Intelligentz'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 Intelligentz and the terms set forth herein, and the Use restrictions and authorizations specified by Intelligentz will take precedence over the terms set forth herein.
- b) Unless otherwise specified, in return for the applicable License Fee, Intelligentz 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 Intelligentz authorized reseller, Customer may sublicense the Software to an end-user for its Use or (if applicable) sublicense the Software to an Intelligentz 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 Intelligentz upon request. If Customer is not an Intelligentz authorized reseller, Customer may not sublicense the Software unless otherwise agreed to by Intelligentz in writing.
- e) Software is owned and copyrighted by Intelligentz 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 Intelligentz, 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 Intelligentz. Customer may transfer Firmware only upon transfer of the associated Device.
- i) Updates, upgrades or other enhancements are available under Intelligentz Support agreements. Intelligentz 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 Intelligentz's prior written consent. Where Customer has other rights under statute, Customer will provide Intelligentz 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 Intelligentz's prior written authorization and payment to Intelligentz 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) Intelligentz 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 Intelligentz. 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 Intelligentz. With Intelligentz'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 software, computer software documentation and technical data for commercial items are licensed under vendor's standard commercial license.

11. INTELLECTUAL PROPERTY RIGHTS

- a) Intelligentz will defend or settle any claim against Customer, (or third parties to whom Customer is authorized by Intelligentz to resell or sublicense), that Intelligentz Branded Products or Support (excluding Custom Products and Custom Support), delivered under these Intelligentz 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 Intelligentz in writing; and
 - 2) cooperates with Intelligentz in, and grants Intelligentz sole control of the defense or settlement.
- b) Intelligentz will pay infringement claim defense costs, settlement amounts and court-awarded damages. If such a claim appears likely, Intelligentz may modify the Product, procure any necessary license, or replace it. If Intelligentz determines that none of these alternatives is reasonably available, Intelligentz 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) Intelligentz has no obligation for any claim of infringement arising from:
- 1) Intelligentz's compliance with Customer's designs, specifications or instructions;
 - 2) Intelligentz'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 Intelligentz Branded.
- d) These terms state Intelligentz'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 Intelligentz harmless from all loss, damage, expense or liability in connection with such use.
- b) To the extent Intelligentz is held legally liable to Customer, Intelligentz's total liability is limited to: payments described in Sections 8. i) and 11. b) above; damages for bodily injury; direct damages to tangible property up to a limit of U.S.\$1,000,000; 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 Intelligentz Terms and Conditions of Sale and Service, up to a limit of U.S.\$1,000,000 or the amount paid to Intelligentz for the associated Product, whichever is less.

- c) Notwithstanding Section 12. b) above, in no event will Intelligentz 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.
- d) THE REMEDIES IN THESE Intelligentz TERMS AND CONDITIONS OF SALE AND SERVICE ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES.

13. GENERAL

- 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 Intelligentz on any Intelligentz.com website or Intelligentz/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) Intelligentz 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 Intelligentz.

- 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. Intelligentz may suspend performance if Customer is in violation of applicable regulations.
- f) Disputes arising in connection with these Intelligentz Terms and Conditions of Sale and Service will be governed by the laws of the country and locality in which Intelligentz accepts the order.
- 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 Intelligentz's trademarks (e.g. "Intelligentz", "Intelligentz Corporation") in whole or in part or any other name which is confusingly similar thereto.
- j) These Intelligentz Terms and Conditions of Sale and Service and any Exhibits constitute the entire agreement between Intelligentz 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 Intelligentz Terms and Conditions of Sale and Service, which may not be changed except by an amendment signed by an authorized representative of each party.