



## Advantech Standard Terms and Conditions - 120109

### 1. PRICE QUOTATIONS

- a. Unless otherwise stated on the face of the quotation, or otherwise agreed to in writing by Advantech, all quotations expire thirty (30) days after the date of the quotation. All prices quoted are valid for the period stated only if buyers requested delivery date (including any change orders) on any resultant purchase order or commitment is within six (6) months of the expiration date on the original quotation.
- b. Unless otherwise agreed to in writing by Advantech, all prices quoted are exclusive of transportation and insurance costs, and any and all taxes including, but not limited to, state and local use, sales, property (ad valorem) and similar taxes. Buyer agrees to pay such taxes unless buyer has provided Advantech with an exemption resale certificate in the appropriate form for the jurisdiction of buyer's place of business and any jurisdiction to which equipment is to be directly shipped hereunder, or unless such sale is otherwise exempt from such taxes. When applicable, such transportation and taxes shall appear as separate items on Advantech's invoice.

### 2. PAYMENT AND SECURITY TERMS

Payment terms are set by Advantech based on a Customer's creditworthiness. Advantech reserves the right to change its standard credit terms at any time when, in Advantech's opinion, buyer's financial condition or previous payment record so warrants.

Should buyer become delinquent in the payment of any sum due Advantech, after ten (10) days from the date of written notice to buyer Advantech shall not be obligated to continue performance under any agreement with buyer. In addition, Advantech shall have the right to seek recovery through any legal channel, and buyer agrees to pay all costs associated with said recovery, plus interest at the rate of 1.5% per month on any outstanding invoice amount.

### 3. DELIVERY DATES

Shipments of any products purchased are subject to Advantech's availability schedule. Advantech shall make every reasonable effort to meet any delivery date(s) quoted or acknowledged. However, Advantech will not be liable for its failure to meet such dates.

### 4. DELAYS IN PERFORMANCE

Advantech shall not be liable for any delay in performance or any other consequential damages hereunder due to unforeseen circumstances or due to causes beyond its control including, but not limited to, acts of nature, acts of government, labor disputes, delays in transportation, and delays in delivery or inability to deliver by Advantech's suppliers.

### 5. SHIPMENT, RISK OF LOSS AND PACKING

- a. All prices are F.O.B. shipping point unless otherwise agreed to in writing by Advantech. Buyer shall pay, all rigging, draying, insurance, and transportation charges that, unless prepaid, shall be added, on a dollar for dollar basis, to the invoice for the products being shipped.
- b. Advantech shall make every effort to ship in accordance with buyer's shipping instructions. In the absence of specific instructions, or if buyer's instructions are deemed unsuitable, Advantech reserves the right to ship by the method it deems most appropriate.
- c. Unless otherwise agreed to in writing by Advantech, all products shall be packed for shipment in accordance with standard commercial practices. All packing will conform to requirements of carrier's tariffs.
- d. Any discrepancies in shipment must be reported within 5 days of receipt of product at the first point of delivery and as specified on the Advantech packing list, for Advantech to take any action. However, Advantech does not acknowledge any responsibility for discrepancies unless our internal investigation reveals Advantech is at fault. See the Advantech Policy for Shipping Damage and Shortages.
- e. A \$15 handling fee plus freight will be charged for all refused shipments.

### 6. ORDER OF PRECEDENCE

- a. These Terms and Conditions of Sale and any attachments take precedence over buyer's additional or different terms and conditions, to which notice of objection is hereby given. Acceptance by buyer is limited to these terms and conditions. Neither Advantech's commencement of performance or delivery shall be deemed or construed as acceptance of buyer's additional or different terms and conditions.
- b. Buyer's purchase of Advantech products hereunder represents acceptance of these Terms and Conditions of Sale and any attachments, which together constitute the entire understanding between the parties and supersede any previous communications, representations, or agreements by either party, whether verbal or written. No change or modification of any of the terms or conditions herein shall be valid or binding on either party unless in writing and signed by an authorized representative of each party.

### 7. CHANGES AND CANCELLATIONS

- a. For standard cataloged or inventoried items or parts, an order can be cancelled without penalty provided the material has not been processed for shipment. For system orders, an order can be cancelled only if the order has not been put into production. Orders cancelled, which are already in production, shall be treated as customer discretionary returns and restocking charges may apply. Scheduled system orders already in production to meet a scheduled customer required date, cannot be changed to a date beyond the end of the month in which it was originally scheduled.
- b. For non-catalog or custom products, if, less than sixty (60) days prior to scheduled shipment, a buyer cancels an order, or issues a change order causing a delivery delay, buyer shall be subject to a charge of up to five percent (5%) of the list or quoted price of the affected products.
- c. In addition, if buyer cancels an order for special equipment or services any time after Advantech receives the order, buyer may be subject to an additional charge equal to the time and unique materials expended on buyer's behalf plus twenty-five percent (25%)

### 8. PATENT INDEMNITY

Advantech shall, except as otherwise provided herein, defend or settle any claim made, or any suit or proceeding brought against buyer, so far as it is based on an allegation that a product furnished hereunder infringes a patent of the country in which buyer takes delivery of said product. Advantech must be notified promptly in writing and given information, assistance, and the sole authority to defend or settle same at Advantech's expense, and Advantech shall pay all damages and costs finally awarded therein against buyer. In case said product is in such suit held to infringe and the use of said product is enjoined, Advantech shall have the option, at its own expense, to procure for buyer the right to continue using said product; or replace same with a non-infringing product; or modify same so it becomes non-infringing; or refund the depreciated value of said product and accept return of same. Advantech shall have no liability for any infringement of patents or trademarks resulting from compliance with buyer's designs, specifications, or instructions, modification of said product, use of said product other than as specified in relevant Advantech publications, or use of said product with products not supplied by Advantech.

### 9. COPYRIGHTED MATERIALS

Unless otherwise agreed to in writing by Advantech, Advantech copyrighted materials (software and printed documentation) may not be copied except for archival purposes, to replace a defective copy, or for program error verification.

### 10. WARRANTY

Advantech hardware products are warranted against defects in materials and workmanship. If Advantech receives notice of such defects during the warranty period, Advantech shall, at its option, either repair or replace hardware products that prove to be defective.

- a. **DURATION AND COMMENCEMENT OF WARRANTY PERIOD:** The warranty period shall commence on the invoice date. For Advantech equipment the standard warranty period shall be Two years parts and labor. Peripheral components used in a system by Advantech or assembled by Advantech are included in the standard two year warranty. Peripherals ordered separately or independent of a system supplied or assembled by Advantech are warranted by Advantech for one year. Additional warranty time may be available from the Third Party Manufacturer but must be handled direct with them by the Customer. Extended warranty contracts are available at extra cost.
- b. For product warranties requiring return to Advantech, buyer shall prepay shipping charges (and shall pay all applicable duties, taxes, and other such charges) when returning products to Advantech for warranty service. Except for products returned to buyer from a country other than the United States or Canada, Advantech shall pay for return of products to buyer. Products shall be returned to the buyer with the same level of freight service as buyer used when returning the product to Advantech.
- c. **LIMITATION OF WARRANTY**  
The foregoing warranty shall not apply to defects resulting from:
  1. Improper or inadequate maintenance by buyer;
  2. Owner supplied software or interfacing;
  3. Unauthorized disassembly, modification or misuse;
  4. Operation outside of the environmental specifications for the product; or
  5. Improper site preparation and maintenance.
  6. Warranty will be voided once the warranty label is removed.
  7. Improper storage or handling by owner.

THE WARRANTY SET FORTH ABOVE IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. Advantech SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### 11. LIMITATION OF REMEDIES AND LIABILITY

THE REMEDIES PROVIDED HEREIN ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES. IN NO EVENT SHALL Advantech BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS), WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY. In the event that any Advantech product sold hereunder is determined by a court of competent jurisdiction to be defective and to have directly caused bodily injury, death, or property damage, Advantech liability for property damage shall not exceed the greater of \$30,000 or the purchase price of the specific product that caused such damage.

### 12. NUCLEAR AND AVIATION APPLICATIONS

Advantech products are not specifically designed, manufactured, or intended for sale as parts, components, or assemblies for the planning, construction, maintenance, operation, or use of any nuclear facility nor for the flight, navigation, or communication of aircraft or ground support equipment. Any buyer using Advantech products in these applications agrees that, except as otherwise provided herein, Advantech is not liable, in whole or in part, for any claims or damages arising from such use. If buyer uses Advantech products for these applications, buyer agrees to indemnify and hold Advantech harmless from any claims for loss, cost, damage, expense, or liability arising out of or in connection with the use and performance of Advantech products in such nuclear or aviation applications. Test equipment used in a static application, which is not a functional part, component or assembly of an aircraft and is not attached to or utilized in the flight of an aircraft is not subject to this paragraph.

### 13. CUSTOMER RETURNS

- a. All returns from customers must be authorized with an Advantech Return Material Authorization number or they will be refused at the Advantech dock and returned to the customer.
- b. Customer returns must be marked with the Advantech RMA number on the outside of the box or it may be delayed or returned to the Customer without notice.
- c. All returns from customers may be subject to a restocking charge as dictated by the Advantech Return Policy.

### 14. ELECTRONIC COMMERCE

Advantech offers several ways to conduct business through electronic commerce including but not limited to our MyAdvantech site and the eStore. The use of these methods requires a specific login and password set up for individual users. Customers must protect and safeguard their login and password information to avoid possible misuse if used by an unauthorized individual. Advantech takes no responsibility for any loss caused by the unauthorized use of a Login and Password. Advantech will consider as valid any Order placed on Advantech's e-commerce sites and containing a correct account number and a registered password. Such an Order will become effective upon Advantech's notifying Customer of acceptance by email confirmation. After such confirmation, Customer may not change or cancel an Order except with Advantech's consent in writing. Advantech reserves the right to impose a reasonable charge to defray its losses as a condition to changing an Order or to a cancellation.

### 15. MISCELLANEOUS

- a. The laws of the State of California shall govern any dispute regarding the interpretation or validity hereof. The parties hereby agree that any dispute relating to the products sold hereunder shall be subject to the jurisdiction of the courts within the State of California.
- b. Buyer certifies that the products purchased will not be exported without prior notice to, and written consent of, Advantech.
- c. Microsoft OEM products can only be sold with system orders. Some Microsoft Products cannot be sold separately.