

# KONTRON AMERICA INC.

## TERMS AND CONDITIONS FOR KONTRON PRODUCT PROTECTION PLAN

(Any changes must be mutually agreed to by both Parties in writing)

**1. Scope.** The following terms and conditions (“**Agreement**”) shall apply to the Kontron America Inc. (“**Kontron**”) product protection plans which Kontron’s customer (“**Customer**”) purchased together with the respective Kontron product for which the protection plan is available (the “**Protection Plan**”). The terms and conditions of sales of Kontron America Inc. shall apply where these terms and conditions are silent.

**2. Scope of the Protection Plan.** The warranty extension contained in the Protection Plan is only valid in case of a correct purchase of the Protection Plan and a respective written purchase confirmation from Kontron. The warranty extension only applies to the products for which the Protection Plan was purchased and is not transferrable to other products.

**3. Prices.** The prices for the Protection Plan depend on the product and the duration of the warranty extension and are set forth in connection with Kontron’s respective price information for the product. The prices are exclusive of all taxes, freight, duties, and other applicable charges which shall be paid by the Customer. Payments have to be made together with the payment of the product and in the way as agreed for the product.

**4. Scope of Coverage.** During the term of the extended warranty contained in the Protection Plan and upon submission of a valid claim by Customer Kontron in its sole discretion either repairs or replaces at no cost the respective products covered by the Protection Plan that fail due to a defect in materials or workmanship. For purposes of this Agreement the term “defect” shall mean the product fails to operate or fails to conform to its specifications agreed to in writing by Kontron.

In case Kontron decides to replace the defective product, the replacement product is new or equivalent to new in performance and reliability and is at least functional equivalent to the original product (“**Replacement Product**”). The original product becomes Kontron’s property and the Replacement Product becomes the property of the Customer with coverage for the remaining extended warranty period contained in the Protection Plan.

**5. Warranty Procedure.** Any claim made pursuant to this Agreement shall be asserted or made in writing only by Customer, not any of Customer’s customers or end users. Customer shall comply with Kontron’s Standard Return Materials Authorization (“**RMA**”) procedure for all extended warranty claims as set forth in Kontron’s operation manual.

Kontron reserves the right to investigate any extended warranty claims to quickly resolve the problem or to determine whether such claims are proper. In the event that after repeated efforts Kontron is unable to repair or replace a defective product covered by the extended warranty, then Customer’s exclusive remedy and Kontron’s entire liability in contract, tort or otherwise shall be the payment by Kontron of Customer’s actual damages after mitigation, but shall not exceed the purchase price, tax, freight and insurance actually paid by Customer for the defective product. In case Kontron’s investigation shows that no valid extended warranty claim exists, Kontron invoices Customer the cost for the repair/replacement and other services in accordance with Kontron’s then current rates for labor and materials.

**6. Term and Assignment of the Protection Plan.** The Protection Plan and the extended warranty coverage contained therein start directly after the end of the original warranty period and remain in full force and effect for the time the Protection Plan was purchased (i.e. one, two or three years following the end of the original warranty period) (“**Term**”). A valid warranty claim during the extended warranty period does not influence the Term, i.e. does neither lead to a new term nor to a prolongation of the Term.

In case the product covered by the Protection Plan is sold by the Customer before the end of the Term to a third party, the Protection Plan remains valid. Any extended warranty claims have to be made by the Customer, not by the new owner of the product.

**7. Exclusions from and loss of Coverage.** The Protection Plan and the extended warranty shall not apply to products or parts thereof that (a) have had the Serial Number, Model Number, or other identification markings altered, removed or rendered illegible; (b) have been damaged by or subject to improper installation or operation, misuse, abuse, liquid contact, accident, neglect and/or have been used in any way other than in strict compliance with Kontron’s operation and installation manual; (c) have become defective or inoperative due to its integration or assembly with any equipment or products not supplied by Kontron; (d) have been repaired, modified or otherwise altered by anyone other than Kontron, and/or have been subject to the opening of any sealed cabinet boxes or covers without Kontron’s prior written consent.

The extended warranty does further not apply to (a) software, including without limitation, the operating system and software added to products through Kontron’s factory-integration system, third-party software or the reloading of software, (b) consumable parts such as batteries, (c) cosmetic damages to the product including but not limited to scratches and dents, (d) defects caused by normal wear and tear or otherwise due to normal aging of the product.

If any extended warranty claim by Customer falls within any of the foregoing exceptions, Customer shall pay Kontron its then current rates and charges for such services.

**8. Force Majeure.** Kontron shall not be liable for any failure to perform or other loss due to unforeseen circumstances or causes beyond its control, including without limitation acts beyond human control, strikes, material and/or transportation shortages, natural casualties, governmental regulations, war, fire, flood, disasters and civil unrest.

**9. Limitation of Liability.** KONTRON SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES SUFFERED BY CUSTOMER AND/OR ANY END USER RELATED TO OR ARISING OUT OF THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY AND/OR THE USE OR INABILITY TO USE THE PRODUCTS, INTEGRATION OF THE PRODUCTS WITH EQUIPMENT NOT PROVIDED BY KONTRON, LOSS OF GOODWILL OR PROFITS AND/OR FROM ANY OTHER CAUSE WHATSOEVER, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL KONTRON’S LIABILITY FOR ANY CAUSE OF ACTION RELATING TO THIS AGREEMENT EXCEED AMOUNTS RECEIVED BY KONTRON FROM CUSTOMER FOR THE PRODUCT OR SERVICE THAT IS THE SUBJECT OF SUCH CLAIM OR DISPUTE. KONTRON AND CUSTOMER FURTHER AGREE THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS EXPRESSLY INTENDED TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION SINCE THOSE PROVISIONS REPRESENT SEPARATE ELEMENTS OF RISK ALLOCATION BETWEEN THE PARTIES, AND SHALL BE SEPARATELY ENFORCED. BOTH PARTIES ALSO AGREE THAT THE PRICE OF THE PRODUCTS REFLECTS THE ALLOCATION OF RISK, WARRANTY AND LIMITATION OF LIABILITY PROVISIONS HEREIN.

KONTRON SHALL NOT BE LIABLE FOR ANY PROBLEMS, DAMAGES OR COSTS ASSOCIATED WITH THE INTEGRATION, INSTALLATION OR INCORPORATION OF THE PRODUCTS WITH EQUIPMENT OR MATERIALS NOT PROVIDED BY KONTRON.

**10. Waiver.** Kontron shall not be deemed to waive any default of any provision of this Agreement unless Kontron signs a written waiver.

**11. Indemnity.** Customer shall indemnify, defend and hold Kontron harmless from all claims, damages, expenses, liabilities and losses, including without limitation attorney's fees and costs incurred that in any way arise out of or relate to (a) the manner in which Customer and/or any of its Customers or end users use or operate the products; (b) any personal injuries, property damages or other losses resulting or occurring from the willful or negligent acts or omissions of Customer, its customers or end users; (c) defects or other problems with other component parts, equipment or materials produced or supplied by anyone other than Kontron and that may be used with the products; and/or (d) Customer's transactions with its customers, end users or other parties regarding the products.

**12. Entire Agreement.** The accepted order of the Protection Plan and this Agreement are the sole and entire agreement between the parties with regard to the Protection Plan and shall supersede all prior or contemporaneous written or oral understandings, representations or communications and/or other terms in any purchase order or other document, now or hereafter delivered.

**13. Governing Law.** This Agreement shall be construed and enforced according to the laws of the State of California, excluding conflicts of law provisions and the United Nations Convention for the International Sale of Goods.

**14. Jurisdiction.** If in case of any disputes arising out of or in connection with this Agreement an amicable solution cannot be reached between the parties, the courts of San Diego, California shall have exclusive jurisdiction to settle any claim of Customer

against Kontron arising out of or in connection with this Agreement. For any claim of Kontron against Customer arising out of or in connection with this Agreement Kontron shall have the choice to file legal proceedings at the courts of San Diego, California or at the competent court at the legal seat of Customer.

**15. Authority.** The persons executing purchase order(s) on behalf of Kontron and Customer warrant and represent that they have been authorized by their respective board of directors or other governing bodies to bind their respective companies to all of the provisions of the purchase order(s) and this Agreement.

**16. Severability.** If any provision of this Agreement is held by an arbitrator or a court of competent jurisdiction to be void, invalid or unenforceable, the remaining provisions shall remain in full force and effect.