



Agreement for Machines

Customer Name : _____ **Customer Address :** _____
Customer Number : _____ **Agreement Number:** _____

This IBM Agreement for Machines (called the "Agreement") governs transactions by which the Customer purchases Machines from IBM East Europe/Asia. ("IBM").

1. Definitions

Customer-set-up Machine is an IBM Machine that the Customer installs according to IBM's instructions.

Date of Installation is the following:

- 1) for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the Customer defers installation, makes it available to the Customer for subsequent installation by IBM; and
- 2) for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period.

Enterprise is any legal entity (such as a corporation) and the subsidiaries it owns by more than 50 percent. The term "Enterprise" applies only to the portion of the Enterprise located in Russia.

Licensed Internal Code (called "LIC") is Machine Code used by certain Machines IBM specifies (called "Specific Machines").

Machine is a machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any non-IBM Machine (including other equipment) that IBM may provide to the Customer.

Machine Code is microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.

Specifications is a document that provides information specific to a Machine. IBM provides an IBM Machine's Specification in a document entitled "Official Published Specifications."

2. Agreement Structure

IBM provides additional terms for Machines in documents called "Attachments" and "Transaction Documents" which are also part of this Agreement. All transactions have one or more associated Transaction Documents (such as an invoice, supplement, schedule, exhibit, or addendum).

If there is a conflict among the terms in the various documents, those of an Attachment prevail over those of this Agreement. The terms of a Transaction Document prevail over those of both of these documents.

The Customer accepts the terms in Attachments and Transaction Documents by 1) signing them, 2) using the Machine, or allowing others to do so, or 3) making any payment for the Machine.

A Machine becomes subject to this Agreement when IBM accepts Customer's order by sending the Customer a Transaction Document or by shipping the Machine to the Customer.

3. Charges and Payments

The amount payable for a Machine will be based on one-time charges. Additional charges may apply. IBM will inform the Customer in advance whenever additional charges apply.

Charges

IBM may increase charges without notice. However, an increase to charges does not apply to the Customer if 1) IBM receives Customer's order before the announcement date of the increase and 2) IBM ships the Customer the Machine within three months after IBM's receipt of Customer's order.

The Customer receives the benefit of a decrease in charges for amounts which become due on or after the effective date of the decrease.

Payment

Amounts are due and payable upon receipt of invoice. The Customer agrees to pay accordingly, including any late payment charges.

If any authority imposes a duty, tax, levy, or fee, excluding those based on IBM's net income, upon any transaction under this Agreement, then the Customer agrees to pay that amount as specified in an invoice or supply exemption



documentation. The Customer is responsible for personal property taxes, if any, for each Machine from the date IBM ships it to the Customer.

4. Changes to the Agreement Terms

4.1 In order to maintain flexibility in the business relationship between the Parties, IBM may propose changes to the terms of this Agreement and Machine offerings by giving the Customer three months' written notice. However, these changes are not retroactive. They apply, as of the effective date IBM specifies in the notice, only to new orders, renewals, and ongoing transactions that do not expire (except that changes to license termination terms are effective only for new orders). For ongoing transactions with a defined renewable contract period, the Customer may request that IBM defer the effective date of a notified change until the end of the current contract period if (i) the change affects Customer's current contract period, and (ii) the Customer considers the change unfavorable.

4.2 The Customer agrees that any of the following actions (or failure to take action) by the Customer will indicate Customer's consent to a notified change, and will result in implementation of the change for all applicable transactions as of the specified effective date:

- i. the Customer places a new order for a Machine after the specified effective date;
- ii. the Customer does not object to renewal for a Machine offering within 90 days after notification of the change; or
- iii. the Customer does not request either deferral of the change effective date until the end of the current contract period or termination per current Agreement terms for a Machine offering ongoing transaction within 90 days after notification of the change.

4.3 Changes to charges for Machine will be implemented as described in the Charges and Payment section above.

4.4 Otherwise, for a change to be valid, both of the Parties must sign it. Additional or different terms in any written communication from the Customer (such as an order) are void.

5. IBM Business Partners

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Machines. When the Customer orders IBM Machines (marketed to the Customer by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Machines to the Customer under the warranties and other terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to the Customer, or 3) any products or services that they supply to the Customer under their agreements.

6. Production Status

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's appropriate warranty terms apply.

7. Delivery

IBM will try to meet Customer's delivery requirements for Machines the Customer orders, and will inform the Customer of their status. Transportation charges, if applicable, will be specified in a Transaction Document.

8. Title and Risk of Loss

IBM transfers title to a Machine to the Customer or, if the Customer choose, Customer's lessor, upon payment of all the amounts due. For a feature, conversion, or upgrade involving the removal of parts which become IBM's property, IBM reserves transfer of title until IBM receives payment of all the amounts due and the removed parts.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to the Customer or its designated location. Thereafter, the Customer assumes the risk. Each Machine will be covered by insurance, arranged and paid for by IBM for the Customer, covering the period until it is delivered to the Customer or its designated location. For any loss or damage, the Customer must 1) report the loss or damage in writing to IBM within 10 business days of delivery and 2) follow the applicable claim procedure.

9. Installation

The Customer agrees to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which the Customer defers installation or a Customer-set-up Machine) installed. The Customer is responsible for installing a Customer-set-up Machine and, unless IBM agrees otherwise, a non-IBM Machine.

IBM sells features, conversions, and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, the Customer represents that the Customer have the permission from the owner and any lien holders to 1) install features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. The Customer further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance service status of the replaced part. The Customer agrees to allow IBM to install the feature, conversion, or upgrade within 30 days of its delivery. Otherwise, IBM may terminate the transaction and the Customer must return the feature, conversion, or upgrade to IBM at Customer's expense.

10. Machine Code and LIC

Machine Code is licensed under the terms of the agreement provided with the Machine Code. Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which the Customer is authorized by IBM in writing and for which payment is received by IBM.



Certain Machines IBM specifies (called "Specific Machines") use LIC. IBM will identify Specific Machines in a Transaction Document. International Business Machines Corporation, one of its subsidiaries, or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold). LIC is licensed under the terms of the agreement provided with the LIC. LIC is licensed only for use to enable a Specific Machine to function in accordance with its Specifications and only for the capacity and capability for which The Customer is authorized by IBM in writing and for which payment is received by IBM.

11. Warranty

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange service for the Machine, without charge, under the type of service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so, or 2) replace it with one that is at least functionally equivalent, the Customer may return it to IBM and Customer's money will be refunded.

The warranty will not apply to the extent that there has been misuse (including but not limited to use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, improper maintenance by the Customer, or failure caused by a product for which IBM is not responsible. The warranty is voided by removal or alteration of Machine or parts identification labels.

This warranty is Customer's exclusive warranty and replaces all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

IBM does not warrant uninterrupted or error-free operation of a Machine or that IBM will correct all defects.

IBM will identify IBM Machines that it does not warrant.

Unless IBM specifies otherwise, IBM provides non-IBM Machines without warranties of any kind. However, non-IBM manufacturers, suppliers, or publishers may provide their own warranties to the Customer.

12. Warranty Service

IBM provides certain types of service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the Customer of the available types of service for a Machine. At its discretion, IBM will 1) either repair or exchange the failing Machine and 2) provide the service either at Customer's location or a service center.

When the type of service requires that the Customer delivers the failing Machine to IBM, the Customer agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to the Customer at its expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, Customer's Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

The Customer agrees to:

1. obtain authorization from the owner to have IBM service a Machine that the Customer does not own; and
2. where applicable, before IBM provides service --
 - i. follow the problem determination, problem analysis, and service request procedures that IBM provides,
 - ii. secure all programs, data, and funds contained in a Machine, and
 - iii. inform IBM of changes in a Machine's location.

When service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes yours. The Customer represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty service status of the replaced item. Before IBM exchanges a Machine or part, the Customer agrees to remove all features, parts, options, alterations, and attachments not under IBM's service. The Customer also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange. Some parts of IBM Machines are designated as Customer Replaceable Units (called, "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to the Customer for replacement by the Customer. The Customer must return all defective CRUs to IBM within 30 days of Customer's receipt of the replacement CRU. The Customer is responsible for downloading designated Machine Code and LIC updates from an IBM Internet Web site or from other electronic media, and following the instructions that IBM provides.

Any feature, conversion, or upgrade IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the feature, conversion, or upgrade.

Warranty service does not cover accessories, supply items, and certain parts, such as batteries, frames, and covers.

IBM manages and installs selected engineering changes that apply to IBM Machines.

Warranty Service Upgrade

For certain Machines, the Customer may select a service upgrade from the standard type of warranty service for the Machine (in which case the Customer must also execute the IBM Customer Agreement or IBM Customer Agreement - Services). IBM charges for the service upgrade during the warranty period.

The Customer may not terminate the service upgrade or transfer it to another Machine during the warranty period.

13. Patents and Copyrights

For purpose of this Agreement, the term "Machine" includes Machine Code and LIC.



If a third party claims that a Machine IBM provides to the Customer infringes that party's patent or copyright, IBM will defend the Customer against that claim at its expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that the Customer:

1. promptly notify IBM in writing of the claim; and
2. allow IBM to control, and cooperate with IBM in, the defense and any related settlement negotiations.

Remedies

If such a claim is made or appears likely to be made, the Customer agrees to permit IBM to enable the Customer to continue to use the Machine, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the Customer agrees to return the Machine to IBM on its written request. IBM will then give the Customer a credit equal to Customer's net book value provided the Customer have followed generally-accepted accounting principles.

This is IBM's entire obligation to the Customer regarding any claim of infringement.

Claims for Which IBM Is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

1. anything the Customer provides which is incorporated into a Machine or IBM's compliance with any designs, specifications, or instructions provided by the Customer or by a third party on Customer's behalf;
2. Customer's modification of a Machine;
3. the combination, operation, or use of a Machine with other products not provided by IBM as a system, or the combination, operation, or use of a Machine with any product, data, apparatus or business method that IBM did not provide, or the distribution, operation or use of a Machine for the benefit of a third party outside Customer's Enterprise; or
4. infringement by a non-IBM Machine alone.

14. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, the Customer is entitled to recover damages from IBM. In each such instance, regardless of the basis on which the Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM is liable for no more than:

1. payments referred to in the Patents and Copyrights section above;
2. damages for bodily injury (including death) and damage to real property and tangible personal property; and
3. the amount of any other actual direct damages up to the greater of the equivalent of U.S. \$100,000 in local currency converted according to the exchange rate published by Central Bank of Russia on the business day preceding the date of payment of the relevant invoice by the customer or, if none, the date of IBM's breach or the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this item, the term "Product" includes Materials, Machine Code, and LIC.

This limit also applies to any of IBM's subcontractors. It is the maximum for which IBM and its subcontractors are collectively responsible.

IBM's liability under the art. 395 of the Civil Code of Russia is excluded to the extent permitted by law, otherwise it shall be 18% per annum.

Items for Which IBM Is Not Liable

Under no circumstances is IBM or its subcontractors liable for any of the following even if informed of their possibility:

1. loss of, or damage to, data;
2. special, incidental, or indirect damages or for any economic consequential damages; or
3. lost profits, business, revenue, goodwill, or anticipated savings.

15. General Principles of Our Relationship

1. Neither of the Parties grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
2. All information exchanged is nonconfidential. If either of the Parties requires the exchange of confidential information, it will be made under a signed confidentiality agreement.



3. Each of the Parties is free to enter into similar agreements with others.
4. Each of the Parties grants the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
5. To the extent permissible under applicable law, each of the Parties may communicate with the other by electronic means and such communication is acceptable as a signed writing. An identification code (called a "user ID") contained in an electronic document is sufficient to verify the sender's identity and the document's authenticity.
6. Each of the Parties will allow the other reasonable opportunity to comply before it claims that the other has not met its obligations.
7. Neither of the Parties is responsible for failure to fulfill any obligations due to causes beyond its control.
8. Neither of the Parties may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither of the Parties will unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either of the Parties is a part or to a successor organization by merger or acquisition does not require the consent of the other. IBM is also permitted to assign its rights to payments under this Agreement without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
9. The Customer agrees that this Agreement will not create any right or cause of action for any third party, nor will IBM be responsible for any third party claims against the Customer except as described in the Patents and Copyrights section above or as permitted by the Limitation of Liability section above for bodily injury (including death) or damage to real or tangible personal property for which IBM is legally liable.
10. The Customer agrees to acquire Machines with the intent to use them within Customer's Enterprise and not for reselling, leasing, or transferring to a third party, unless either of the following applies:
 - i. the Customer is arranging lease-back financing for the Machines; or
 - ii. the Customer purchases them without any discount or allowance.
11. The Customer agrees to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts IBM removes become IBM's property. The Customer represents that the Customer has the permission from the owner and any lien holders to transfer ownership and possession of removed parts to IBM.
12. The Customer agrees that the Customer is responsible for the results obtained from the use of the Machines.
13. The Customer agrees to provide IBM with sufficient, free, and safe access to Customer's facilities and systems for IBM to fulfill its obligations.
14. The Customer agrees to allow International Business Machines Corporation and its subsidiaries to store and use Customer's contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with the business relationship between the Parties, and may be provided to contractors, Business Partners, and assignees of International Business Machines Corporation and its subsidiaries for uses consistent with their collective business activities, including communicating with the Customer (for example, for processing orders, for promotions, and for market research).
15. The Customer agrees to comply with all applicable export and import laws and regulations.
16. All provisions of this Agreement apply to extent that they are not prohibited under applicable law.

15. Agreement Termination

Either of the Parties may terminate this Agreement on written notice to the other following the expiration or termination of the terminating party's obligations.

Either of the Parties may terminate this Agreement if the other does not comply with any of its terms, provided the one who is not complying is given written notice and reasonable time to comply.

Any terms of this Agreement which by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both of the Parties' respective successors and assignees.

16. Geographic Scope and Governing Law

The rights, duties and obligations of each of the Parties are valid only in Russia, unless specifically granted otherwise.

Both the Customer and IBM consent to the application of the laws of Russian Federation to govern, interpret, and enforce all of Customer's and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

All disputes arising out of or in relation to the interpretation, the violation, the termination, the nullity of the execution of this Agreement shall be settled by Arbitration Court of Moscow.



The United Nations Convention on Contracts for the International Sale of Goods does not apply.

Except where required by law, IBM has no obligation to provide any services for Machines located outside Russia.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this Agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

This Agreement and its applicable Attachments and Transaction Documents are the complete agreement between us and replace any prior oral or written communications, regarding the purchase of Machines. By signing below, both of the Parties agree to the terms of this Agreement without modification. Once signed, 1) any reproduction of this Agreement, an Attachment, or Transaction Document made by reliable means (for example, photocopy or facsimile) is considered an original and 2) all Machines ordered under this Agreement are subject to it.

Agreed to:

Agreed to:

IBM East Europe/Asia

By _____

By _____

Authorized Signature

Authorized Signature

Name (type or print):

Name (type or print):

Date:

Date:

Customer identification number:

Agreement number:

Customer address:

IBM address:

After signing, please return a copy of this Agreement to the "IBM address" shown above.