

ADVANTECH



ADDInclusive

**ADVANTECH Protection –
Service at its best!**

General Terms & Conditions
of Advantech Service-IoT GmbH (ADVANTECH)
regarding ADD*Inclusive* Support and Maintenance Services
(“ADD*Inclusive* Service Agreement”)

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ADDInclusive - Service at its best!

ADVANTECH is well aware of the consequences that a failure of devices can wreak on your operational procedures.

And because ADVANTECH is a leading supplier of robust industrial PC solutions and has gained a reputation for exceptional expertise, we would like to assist you – in addition to the initial consultation in the run up and during implementation, which we do as a matter of course – with a comprehensive service and support system at an equally high level of competence so that your (mobile) computing concepts can at all times be implemented and run to fullest efficiency.

As a customer, you can take advantage of our exclusive optimal manufacturer know-how for the prompt and best possible fault-finding and solution-finding of device defects (which unfortunately can never be ruled out completely) to perfect your performance and to maintain your systems! To this end, ADVANTECH offers you the superior complete solution to safeguard your investment (including coverage for accidental breakage): **ADD*Inclusive***¹ (as a “Warranty Extension” of three (3) years up to a maximum of five (5) years after delivery of our ADVANTECH Service-IoT GmbH products).

¹ **ADD*Inclusive***– ADVANTECH Protection, additional technical and technology support including coverage for accidental breakage!

1. Scope

- 1.1 Advantech Service-IoT GmbH, Industriestraße 15, D-82110 Germering (hereinafter referred to as "**ADVANTECH**") performs the support and maintenance services (hereinafter referred to as "**ADDInclusive Services**") for ADVANTECH Service-IoT GmbH products (hereinafter referred to as "**ADDInclusive Products**") as agreed with the customer in a separate individual agreement (hereinafter referred to as "**Service Schedule**") exclusively in accordance with the following *ADDInclusive* Service Conditions/Terms. The Service Schedule corresponds to the delivery note with the device serial number and the purchase order number.
- 1.2 Deviating or supplementary conditions do not apply unless ADVANTECH has expressly agreed to these in writing.
- 1.3 The *ADDInclusive* service conditions at hand shall also apply to future contracts with the customer as regards performing *ADDInclusive* Services, even if ADVANTECH has not explicitly pointed to their validity and existence when a new contract, such as a new Service Schedule, is concluded.

2. Contract Agreement

- 2.1 The purchase of an *ADDInclusive* Service Schedule is only possible for customers who obtain *ADDInclusive* Products directly from ADVANTECH for their own use (hereinafter referred to as "**End Customer**"), as well as for customers who as authorized resellers purchase and sell *ADDInclusive* Products in their own name and on their own account (hereinafter referred to as "**Authorized Dealer**"). The *ADDInclusive* Services agreed to in the Service Schedule shall be performed solely for the respective contract partner. Transferring of rights and obligations that arise from the *ADDInclusive* service conditions and/or a Service Schedule requires the prior written approval of ADVANTECH.
- 2.2 Authorized dealers are not authorized to represent ADVANTECH in legal transactions. A Service Schedule comes into effect solely between the authorized dealer and ADVANTECH regarding the *ADDInclusive* Products as named in the Service Schedule. The authorized dealer shall be entitled to demand *ADDInclusive* Services for *ADDInclusive* Products named in the Service Schedule even when s/he has sold them on to his/her own customers. The authorized dealer remains responsible him/herself for the performance of services and maintenance services towards his/her own customers.
- 2.3 A Service Schedule only becomes effective upon a written or electronic acceptance declaration from ADVANTECH or with – even if only partial – performance of *ADDInclusive* Services requested by the customer. Offers made by ADVANTECH in this regard are non-binding.
- 2.4 Should a Service Schedule not be concluded within three (3) months after the purchase of an *ADDInclusive* Product for which *ADDInclusive* Services are to be ordered, ADVANTECH shall be entitled to carry out an inspection of the *ADDInclusive* Product/s at the customer's costs prior to concluding a Service Schedule. This shall not apply unless the *ADDInclusive* Products were previously covered by a comparable support and maintenance contract of ADVANTECH and provided this contract has not been void for longer than three (3) months at the time of concluding the new Service Schedule.
- 2.5 The parties are to specify in the Service Schedule the *ADDInclusive* Products for which *ADDInclusive* Services are to be performed, as well as the contract duration and fees for the

ADDInclusive Service. The *ADDInclusive Products* must be identified by stating the respective device serial number.

- 2.6 Subsequent contract extensions and/or amendments (e.g. upgrading the scope of services) are possible through written individual agreements between both contract parties and come into effect from the date of contract amendment for the remaining contract term as agreed in the Service Schedule. However, ADVANTECH principally reserves the right to carry out an internal plausibility check to assess the customer prior to the conclusion of such an agreement and, if necessary, to refuse agreement to a potential contract amendment without having to state any reasons.
- 2.7 During the contract duration, ADVANTECH shall furthermore be entitled to terminate any Service Schedule for certain *ADDInclusive Products* if it is no longer possible for ADVANTECH to perform the agreed upon *ADDInclusive Services* for these products because the spare parts necessary for the services are no longer available due to a discontinuation on behalf of the manufacturer. In such a case, the customer shall be reimbursed for any fees paid upfront for the respective *ADDInclusive Products*, insofar as the advance payment concerns periods in which *ADDInclusive Services* can no longer be performed due to the discontinuation.

3. Performance extent, service categories, limits of the *ADDInclusive Services*

3.1 Subject to Sections 3.2 and 3.3 below the *ADDInclusive Service* offers the following scope of services:

- (a) ADVANTECH provides the following helpdesk support services:
- Telephone service hotline with live support from competent device specialists, Monday to Friday (excluding local and national holidays), from 8 am to 6 pm (at the ADVANTECH Service-IoT office, Germering, Germany).
 - Email support by competent device specialists, Monday to Friday (excluding local and national holidays), from 6 am to 8 pm (at ADVANTECH Service-IoT office, Germering, Germany).
- (b) ADVANTECH performs (at the discretion of ADVANTECH) additional repair or replacement services in case of function failure and/or impairment of the *ADDInclusive Products* (hereinafter referred to as “**function failures**”) due to
- device faults which are attributed to the manufacturer (technical failure),
 - application problems of ADVANTECH’s own (operation) software potentially contained within *ADDInclusive Products* and/or ADVANTECH own firmware (hereinafter referred to as “**Advantech-Software**”);
 - normal wear-and-tear (e.g. abrasion) and other damages that are incurred as a result of contractual and proper usage of *ADDInclusive Products*;
 - accidental damages to the *ADDInclusive Products*.
- (c) Repairs or replacements are performed exclusively for the following components of *ADDInclusive Products*:
- System board,
 - Main memory,
 - Storage medium,
 - Wireless card,
 - Antenna / pigtail,
 - Power cord,

- Display,
- Inverter board,
- Front panel,
- Housing,
- Battery covers,
- Other additional boards made by ADVANTECH (e.g. bus adapter).

- (d) The repair or replacement services include a reconfiguration of *ADDInclusive* Products, in as far as these are requested by the customer, the customer provides the necessary data to ADVANTECH, and in as far as they are technically and economically reasonable for ADVANTECH.
- (e) ADVANTECH bears the necessary costs for performing the aforementioned *ADDInclusive* Services (including materials, spare parts, and labor), with the exception of separately regulated shipping costs.
- (f) ADVANTECH may compile a cost estimate for the chargeable repair of damages to *ADDInclusive* Products that are not covered under the *ADDInclusive* Service scope. The repair of such damages is performed under a separate order by the customer based on the respective current pricelists of ADVANTECH.
- (g) ADVANTECH offers the customer the following options for the collection/delivery of the repaired/replaced *ADDInclusive* Products:
- Collection by the customer from the offices of the ADVANTECH Poland Service Center (Warsaw, Poland) or during the regular opening hours of the local repair and support branch contracted to deal with the repair;
 - Free-of-charge dispatch to the delivery address of the *ADDInclusive* customer within the EU;
 - Dispatch to the delivery address of the *ADDInclusive* customer outside of the EU (costs following consultation).
- (h) ADVANTECH furthermore supplies updates, upgrades, and new releases (hereinafter referred to as “**UUR**”) of the ADVANTECH-software, in as far as these are included in the *ADDInclusive* Products named in the Service Schedule. ADVANTECH exclusively supplies the customer with UUR, which ADVANTECH provides as general releases during the duration of the Service Schedule. Providing new UUR is done at the sole discretion of ADVANTECH; a right to regular releases does not exist. ADVANTECH grants the customer the right to install and use the UUR in accordance with the scope of usage rights which are granted to the customer as outlined under Section 8 of the General Terms & Conditions of Advantech Service-IoT GmbH (hereinafter referred to as “**Advantech T&C**”) for the ADVANTECH-software contained within the *ADDInclusive* Products. For UUR defects of title, Section 9 of the Advantech T&C apply correspondingly.

3.2 The following services are not included in the Service Schedule of the *ADDInclusive* Services:

- (a) Compiling backup files (backup of customer data);
- (b) Repair and/or maintenance of software (with the exception of ADVANTECH-software);
- (c) Removing cosmetic imperfections which do not influence functionality and robustness of the *ADDInclusive* Products;

- (d) Repair or replacement of *ADDInclusive* Products which are a total loss (i.e. ADVANTECH total costs of repairing the unit are higher than 100% of the unit's original sales price);
- (e) Repair or replacement of *ADDInclusive* Products which were damaged by *force majeure* (i.e. by an extraordinary event or circumstance beyond the control of the parties, such as a war, riot, crime, or a natural disaster such as hurricane, flooding, earthquake, volcanic eruption, etc.);
- (f) Performing *ADDInclusive* Services for products that are not listed in the Service Schedule; or
- (g) Repair and/or replacement of consumables as well as auxiliary materials and energy supplies, in particular batteries, rechargeable batteries and display protection foils.

3.3 ADVANTECH is not obligated to fulfill the respectively agreed *ADDInclusive* Services if the function failure of the *ADDInclusive* Products:

- (a) cannot be reproduced;
- (b) is based on a problem with the ADVANTECH-software, which is due to the ADVANTECH-software (i) having been processed, altered, or connected by the customer or third parties in parts or as a whole with other software products without the prior written approval from ADVANTECH, unless this is done within the scope of the orderly use of the ADVANTECH-software, or (ii) was used on a different hardware environment or in connection with another software environment than was intended at the time of delivery of the *ADDInclusive* Products;
- (c) is due to system interferences which are based on the operating location of the *ADDInclusive* Products with other software and/or hardware products that lie outside the sphere of influence of ADVANTECH;
- (d) is caused by (attempted) repairs or modifications of the *ADDInclusive* Products through unauthorized members of staff;
- (e) is due to the *ADDInclusive* Products and/or the ADVANTECH-software not being used in accordance with the applicable operating instructions and/or manuals;
- (f) is due to intentional damages to, or misuse of, the *ADDInclusive* Products;
- (g) is caused by the use of non-conforming tooling or equipment.

4. Provision of *ADDInclusive* Services

4.1 The *ADDInclusive* Services to be provided by ADVANTECH may be both remote services and direct services. Direct services are only such services for which ADVANTECH promises not merely the execution of a service but also expressly promises to achieve a certain outcome (hereinafter referred to as "**work performances**"). Work performance services are in particular the services regulated under Section **Fehler! Verweisquelle konnte nicht gefunden werden.** (b), while remote services are deemed to be in particular the helpdesk support in accordance with Section 3.1 (a).

4.2 Works and Services are performed by the ADVANTECH Poland Service Center (Warsaw, Poland) and/or by a local repair and support branch contracted by ADVANTECH. The execu-

tion of *ADDInclusive Services* by third parties is not subject to the approval of the customer. ADVANTECH shall, however, inform the customer beforehand about a third party having been contracted.

- 4.3 ADVANTECH shall endeavor to perform the *ADDInclusive Services* within the intended time allowances (“**lead times**”). Due to the different complexity of enquiries and the potentially extensive repair measures that may arise, these time allowances are in any case just target guidelines and are therefore non-binding.
- 4.4 In the event that an ADVANTECH employee or a third party otherwise authorized by ADVANTECH (hereinafter referred to as “**Advantech-Agent**”) visits the offices of the customer to perform the agreed *ADDInclusive Services*, this Advantech-Agent shall observe the appropriate health & safety and security guidelines of the customer, provided that these have been made available to ADVANTECH sufficiently prior to the visit.

5. **Rights in case of defective work performances**

- 5.1 In as far as ADVANTECH owes work performances as part of the *ADDInclusive Services* ordered, ADVANTECH shall perform the work performances in a professional manner with the appropriate level of expertise and diligence and shall ensure that the outcome of the work performances are free from any defect in terms of material and workmanship.
- 5.2 Defects in the work performances (with the exception of defects of title) shall be remedied by ADVANTECH at their own choice through removing the defect or by providing replacement (hereinafter referred to as “**supplementary performance**”). The supplementary performance is carried out without recognition of a legal obligation. In the event of the supplementary performance finally being unsuccessful or in the event of it not being performed within a reasonable deadline, the customer shall have the right to a reduction in payment or shall be entitled to terminate the Service Schedule in terms of the *ADDInclusive Products* affected by the defect work performance. For a potential entitlement to compensation and the reimbursement of unsuccessful expenses, the liability limitations according to Section 7 apply. Other rights in case of defects, especially the right to self-performance, are excluded. This does however apply irrespective of any potential claims due to defects of title, which are dealt with in accordance with Section 9 of the Advantech T&C.
- 5.3 In the event of insignificant defects, ADVANTECH is entitled to refuse the repair and/or replacement of the concerned unit(s). In this case, the rights of the customer are limited to a reduction of the remuneration owed.
- 5.4 The limitation period for claims for defects – subject to any potential claims for compensation due to defects that have been caused deliberately or through gross negligence by ADVANTECH or a Advantech-Agent or which were brought because of death, personal or physical injury – is one year. Supplementary performance delays the limitation period only with regard to the defect in question.
- 5.5 Recognizable defects must be contested in writing within one week from the date of work performance; hidden defects must be contested in writing within one week after their detection. The time limits are deadlines.
- 5.6 Warranties are only then binding when they have been declared as such, and when the obligations of ADVANTECH have been individually stipulated within the warranty.

6. Obligations of the customer

- 6.1 The customer has to inform ADVANTECH immediately about function failures of *ADDInclusive* Products for which the customer wants to make use of the *ADDInclusive* services. The customer must in this case – within reason – clearly define and clearly document in writing the respective failure and/or the respective application problem.
- 6.2 The customer is obliged to put in place suitable precautions so as to prevent loss or damages to data and programs as regards to the performance of *ADDInclusive* services through ADVANTECH, in particular by producing, at regular intervals as is customary for his/her sector and prior to requesting *ADDInclusive* services, up-to-date backup copies of all programs and data in machine-readable form. In as far as the loss of and/or the damage to data and programs would have been avoidable by observing the obligation to carry out suitable and regular data backup, any potential damage liability of ADVANTECH shall be limited to those costs that would be incurred for the reproduction of the data if the data had been protected by the customer in a suitably effective manner. Any liability of ADVANTECH for loss of and/or damage to data is furthermore subject to the limitations as regulated under Section 7.
- 6.3 The customer has to make available to ADVANTECH (i) by mutual agreement the option to connect to the system of the customer and (ii) professional personnel who will be able to cooperate with ADVANTECH in order to arrive at a diagnosis of the problem.
- 6.4 The customer is obliged to notify the sending in of *ADDInclusive* Products and/or other materials by stating his/her purchase order number (“**PO Number**”) assigned to the Service Schedule prior to sending the *ADDInclusive* Products to the local service and repair center (as specified by ADVANTECH). The costs for the shipment shall be borne by the customer.
- 6.5 The customer is furthermore obligated to properly package the *ADDInclusive* Products for dispatch and to return them together with a completed return packing slip stating at least (i) the customer’s original (and if deviating current) invoicing and delivery address and (ii) a detailed description of the function failure. The PO Number must be stated on the return packing slip. In as far as the customer sends back other potential accessories in addition to the *ADDInclusive* Products, these must be identified separately on the return packing slip. ADVANTECH cannot be held liable for any accessories not listed and shall send these back to the customer at his/her costs.
- 6.6 In the event of *ADDInclusive* services being performed onsite (hereinafter referred to as “**On-site Services**”) the customer shall grant the Advantech-Agent suitable access to the business rooms and facilities where the *ADDInclusive* Products are located and shall provide technical facilities such as power supply, telephone connection, and data transmission services in functioning order and free-of-charge to the appropriate extent as is required to carry out the onsite services.
- 6.7 In case of increasingly occurring function failures of the *ADDInclusive* Products named in the Service Schedule that exceed normal experience values, the customer shall be obliged to grant ADVANTECH upon request access to his/her operations or access to the use locations of the *ADDInclusive* Products so as to allow ADVANTECH an insight into the way that the *ADDInclusive* Products are being utilized in the customer’s operations. ADVANTECH shall be entitled to suggest accessories and solutions to the customer designed to minimize the risk of potential function failures. The customer shall endeavor, within reason, to appropriately consider the suggestions made by ADVANTECH. Should ADVANTECH at their reasonable discretion conclude that the function failures of the *ADDInclusive* Products are caused by the *ADDInclusive* Products being used in an inappropriate and non-contractual manner, and

should the customer not implement the solutions for avoiding the function failures proposed by ADVANTECH, ADVANTECH shall be entitled to terminate the *ADDInclusive* services for the respective *ADDInclusive* Products. Section 2.7 applies correspondingly.

- 6.8 The orderly and timely performance of the customer's obligations named under Sections 6 to 6.7 forms an essential precondition for the performance of the *ADDInclusive* services. For this reason, no claims on behalf of the customer will be recognized due to a non-orderly or non-timely performance of *ADDInclusive* services if the customer cannot prove that s/he has fulfilled his/her obligations in an orderly and timely manner or that the non-orderly or delayed performance of *ADDInclusive* services was not caused by the delayed or non-orderly fulfillment of the customer's obligations.

7. Limitation of liability

- 7.1 ADVANTECH shall be liable without limitation (i) in as far as a damage was caused deliberately or due to gross negligence, (ii) in case of death, personal or physical injury, (iii) in case of breach of a warranty, (iv) in case of fraudulent concealment of defects, and (v) in case of breaches against the Product Liability Act.
- 7.2 For the remainder, ADVANTECH shall only be liable for the slight negligent breach of substantial contractual obligations whose breach jeopardizes achieving the contract objective, or for the breach of obligations whose fulfillment is essential for the orderly contract execution in the first place and which the customer can routinely expect to be complied with.
- 7.3 ADVANTECH's liability for slight negligence is limited to damages that are typical for this kind of contract. This also applies in the event of gross negligence by simple vicarious agents (i.e. not legal representatives or managerial personnel) of ADVANTECH.
- 7.4 Claims for damages covered under Section 7.2 are limited to two (2) years. The period starts after the claim has arisen and (i) the customer has gained knowledge of the circumstances causing the claim and the person causing the claim, or (ii) without gross negligence from the time he/she ought to have gained knowledge thereof. Irrespective of this these, claims lapse five (5) years after the claim has arisen, and without consideration to their emergence after fifteen (15) years from the time of the damaging event. Decisive is the time period ending the earliest. The limitation period of damage claims for defects of work performances is determined as per Section 5.4.
- 7.5 The aforementioned liability limitations in accordance with Section 7 apply also in the event of potential damage claims of the customers against employees and/or vicarious agents of ADVANTECH.
- 7.6 The regulations under Section 7 apply for all damage claims irrespective for what legal reason, including tortuous action.

8. Fees and payments

- 8.1 The fees for *ADDInclusive* services are calculated based on the list price valid at the time of the conclusion of the Service Schedule for the *ADDInclusive* Products to be maintained and are defined in the Service Schedule. Any potential subsequent contract extensions shall be calculated based on the list price valid at the time of the contract extension.
- 8.2 The total fees for the base period agreed in the Service Schedule (in accordance with Section 9.1) become due upon conclusion of the contract and must be paid in advance or in accord-

ance with the payment terms agreed in the Service Schedule. Fees for a potential contract extension period (in accordance with Section 9.2) become due upon the respective contract amendment and are to be paid according to the named payment terms and in the amount agreed. Fees for *ADDInclusive* Products added to the contract are calculated pro rata until the end of the contract duration of the Service Schedule and become due for payment immediately upon acceptance. All other fees invoiced by the customer also become due immediately. Invoices must be paid within thirty (30) days of the date of invoice.

- 8.3 All fees shown are subject to the applicable VAT rate and any potential taxes and duties. These shall, if applicable, be invoiced to the customer.
- 8.4 All payments must as a matter of principle be made in the same currency as used in the invoice.
- 8.5 In the event of delayed payment of the customer, ADVANTECH reserves the right to suspend the performance of *ADDInclusive* services or terminate them if necessary. The legal rights of ADVANTECH in the event of delayed payment on behalf of the customer remain unaffected by this.
- 8.6 All services ordered by the customer that are not covered under the scope of services of the contracted *ADDInclusive* services shall be calculated based on the hourly rates and spare parts price lists of ADVANTECH valid at the time said services are being ordered, plus any potential delivery costs and/or appropriate travel and subsistence costs.
- 8.7 The customer can only offset against the fee claims of ADVANTECH with undisputed or legally determined claims or can assert the right of retention or make a plea of objection for non-performance of contract.

9. Contract start, duration, and termination

- 9.1 The *ADDInclusive* services are available to the customer as of contract conclusion and are performed for the duration agreed upon in the Service Schedule (hereinafter referred to as “**Contract Term**”). The Contract Term begins – potentially retroactively – on the *ADDInclusive* Product’s original delivery date to the Customer (an order for *ADDInclusive* services may no longer be placed after a period of 3 months has passed after the delivery date). The contractual services end with the expiry of the agreed period.
- 9.2 The contract duration (including renewal terms, if any) covers in total a maximum of five (5) years after the original delivery date of the respective *ADDInclusive* Product.
- 9.3 The right to termination for just cause for both contract parties remains unaffected. A just cause exists in particular when the respective other contract partner has breached fundamental contract obligations and if the breach has not, despite being warned in writing, been remedied within 30 days after having received a written warning.
- 9.4 Any termination must be made in writing.

10. Confidentiality

- 10.1 All information that ADVANTECH gains by way of access to the system of the customer or which is otherwise made known to them by the customer shall be treated in confidence by ADVANTECH.
- 10.2 Section 10.1 does not apply to information which

- (a) was already known to ADVANTECH beforehand, or
 - (b) is or becomes public knowledge without this being the fault of ADVANTECH, or
 - (c) was made known to ADVANTECH by a person other than the customer without this person having breached contractual or legal obligations when gaining or transferring this information, or
 - (d) has been developed independently by ADVANTECH, or
 - (e) must be disclosed because of legal regulations, or
 - (f) may be disclosed because the customer releases ADVANTECH from the confidentiality obligation.
- 10.3 The aforementioned confidentiality obligations apply correspondingly for confidential information that the customer obtains from ADVANTECH or becomes otherwise known to him/her.

11. Other Points

- 11.1 The *ADDInclusive* service conditions are subject to German law with the exclusion of any references to other jurisdictions. The exclusive place of jurisdiction for all disputes from or in connection with these *ADDInclusive* service conditions and/or a Service Schedule is Munich (District Court Munich I); this does not apply for summary debt collection proceedings. ADVANTECH shall, however, at their own discretion be entitled to bring a claim against the customer before a court which has jurisdiction at the place where the performance is brought or at the seat of the customer.
- 11.2 Should individual regulations in this contract be deemed wholly or in parts ineffective or unfeasible or become ineffective or unfeasible after conclusion of the contract due to changes in legislation, the remainder of the contract regulations and the effectiveness of this contract shall on the whole remain unaffected by this. To this end, an effective and feasible regulation shall be reached that resembles the sense and purpose of the void regulation most closely. Should the contract be found to have any gaps, the regulations that correspond to the sense and purpose of the contract that would have been agreed had they been considered at the time shall be deemed as agreed.
- 11.3 Alterations of and/or supplementation to these *ADDInclusive* service conditions and/or of a Service Schedule must be made in writing to be effective. This also applies to changing the written form clause itself. E-mail declarations are not sufficient for this purpose.