

IBM Modular Storage Server (MSS) Supplement



# IBM Terminology, Program License, and Warranty for the IBM 2106 Modular Storage Server (MSS)



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**Note!**

Before using this information you must read the 'Notice to IBM customers of the IBM 2106 —Modular Storage Server (MSS)' cover letter that is supplied with this product.

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## About this document

Please read the information in this document. This information supersedes the information you received in the Compaq product documentation. When communicating with IBM, you must be aware of the equivalent IBM terminology defined in Chapter 1, IBM–Compaq Terminology Cross Reference Table. The IBM International Program License Agreement provided Chapter 2 replaces any Compaq License Agreement included in the Compaq Documentation. The Statement of Limited Warranty in Chapter 3 replaces any Compaq Warranty Terms and Conditions included in the Compaq Documentation.





## Chapter 1. IBM-Compaq Terminology Cross Reference Table

| Compaq                               | IBM  |
|--------------------------------------|--|
| Cabinet                              | Rack, IBM T00 rack or equivalent (7014-T00)  |
| Shelf                                | Enclosure (we will reference disk enclosures and controller enclosures). Disk enclosures will be referenced as either single or dual bus with either 10 or 14 slots. <ul style="list-style-type: none"> <li>• The Controller enclosure is: 2106 Model 200</li> <li>• The Disk Drive enclosures are: 2106 Models Dxz</li> </ul> where x=1or 2, 1=single SCSI bus, 2= dual SCSI bus; and z=0 or 4, 0=10 bays, 4=14 bays. |
| Power Supplies                       | Power Supplies - dual power with every enclosure   |
| Environmental Monitoring Unit        | Environmental Monitoring Unit  |
| Cooling Fans                         | Cooling Fans   |
| Universal hard disk drive            | Disk Module - includes the disk drive and carrier - multiple modules can be placed in a disk enclosure. Disk modules are generally referenced by the capacity and rpm rating. For example, 72 GB 10,000 rpm disk module.   |
| Ultra3 Dual Port I/O Module          | Dual SCSI Bus Conversion Kit   |
| Ultra3 Single Port I/O Module        | Single SCSI Bus Conversion Kit   |
| Blank Panel                          | Dummy Disk Module (blank panel in enclosure that is used when no drive module is present; two parts: 1.0" and 1.6").   |
| HSG80 Array Controller               | MSS RAID controllers - each controller is equivalent to HSG80, two per MSS Controller enclosure.   |
| Cache                                | Cache  |
| Cache Batteries                      | Cache Batteries  |
| Host Bus Adapters (HBA)              | Host Bus Adapters (HBA)  |
| MA8000                               | IBM Modular Storage Server (MSS)   |
| ACS 8.5 F                            | MSS Control Module (base version)  |
| ACS 8.5 P — Data Replication Manager | MSS Control Module for Peer to Peer Remote Copy(PPRC)/FlashCopy  |
| ACS 8.5 S - Snapshot and Cloning     | MSS Control Module for FlashCopy   |
| Secure Path                          | MSS Data Path Optimizer (DPO)  |

|   |  |
|---|--|
| Platform Kits                           | MSS Storwatch Specialist for operating system                |
| Storage Works Command Console (SWCC)    | MSS Storwatch Specialist for operating system                |
| Enterprise Volume Manager (EVM)         | MSS FlashCopy Manager  |
| Cloning                                 | ImageCopy, included with MSS FlashCopy and FlashCopy Manager |
| Data Replication Manager Software (DRM) | MSS Peer-to-Peer Remote Copy (PPRC) Manager                  |
| Selective Storage Presentation          | LUN Masking  |
| Brocade Switch (8 and 16 port)          | IBM Fibre Channel Switch (2109-S08, 2109-S16)                |
| Hub (7 port)                            | IBM Fibre Channel Hub (2103-H07)                             |

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## Chapter 2. IBM International Program License Agreement

### Part 1 - General Terms

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE PROGRAM. IBM WILL LICENSE THE PROGRAM TO YOU ONLY IF YOU FIRST ACCEPT THE TERMS OF THIS AGREEMENT. BY USING THE PROGRAM YOU AGREE TO THESE TERMS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PROMPTLY RETURN THE UNUSED PROGRAM TO THE PARTY (EITHER IBM OR ITS RESELLER) FROM WHOM YOU ACQUIRED IT TO RECEIVE A REFUND OF THE AMOUNT YOU PAID.

The Program is owned by International Business Machines Corporation or one of its subsidiaries (IBM) or an IBM supplier, and is copyrighted and licensed, not sold.

The term "Program" means the original program and all whole or partial copies of it. A Program consists of machine-readable instructions, its components, data, audio-visual content (such as images, text, recordings, or pictures), and related licensed materials.

This Agreement includes Part 1 - General Terms, Part 2 - Country-unique Terms, and "License Information" and is the complete agreement regarding the use of this Program, and replaces any prior oral or written communications between you and IBM. The terms of Part 2 and License Information may replace or modify those of Part 1.

#### 1. License

##### Use of the Program

IBM grants you a nonexclusive license to use the Program.

You may 1) use the Program to the extent of authorizations you have acquired and 2) make and install copies to support the level of use authorized, providing you reproduce the copyright notice and any other legends of ownership on each copy, or partial copy, of the Program.

If you acquire this Program as a program upgrade, your authorization to use the Program from which you upgraded is terminated.

You will ensure that anyone who uses the Program does so only in compliance with the terms of this Agreement.

You may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

## Transfer of Rights and Obligations

You may transfer all your license rights and obligations under a Proof of Entitlement for the Program to another party by transferring the Proof of Entitlement and a copy of this Agreement and all documentation. The transfer of your license rights and obligations terminates your authorization to use the Program under the Proof of Entitlement

## 2. Proof of Entitlement

The Proof of Entitlement for this Program is evidence of your authorization to use this Program and of your eligibility for warranty services, future upgrade program prices (if announced), and potential special or promotional opportunities.

## 3. Charges and Taxes

IBM defines use for the Program for charging purposes and specifies it in the Proof of Entitlement. Charges are based on extent of use authorized. If you wish to increase the extent of use, notify IBM or its reseller and pay any applicable charges. IBM does not give refunds or credits for charges already due or paid.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program supplied by IBM under this Agreement, then you agree to pay that amount as IBM specifies or supply exemption documentation.

## 4. Limited Warranty

IBM warrants that when the Program is used in the specified operating environment it will conform to its specifications. IBM does not warrant uninterrupted or error-free operation of the Program or that we will correct all Program defects. You are responsible for the results obtained from the use of the Program. The warranty period for the Program expires when its Program services are no longer available. The License Information specifies the duration of Program services.

During the warranty period warranty service is provided without charge for the unmodified portion of the Program through defect-related Program services. Program services are available for at least one year following the

Program's general availability. Therefore, the duration of warranty service depends on when you obtain your license. If the Program does not function as warranted during the first year after you obtain your license and IBM is unable to resolve the problem by providing a correction, restriction, or bypass, you may return the Program to the party (either IBM or its reseller) from whom you acquired it and receive a refund in the amount you paid for it. To be eligible, you must have acquired the Program while Program services (regardless of the remaining duration) were available for it.

THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE 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.

These warranties give you specific legal rights, and you may also have other rights which vary from jurisdiction to jurisdiction. Some jurisdictions do not allow the exclusion or limitation of implied warranties, so the above exclusion or limitation may not apply to you. In that event such warranties are limited in duration to the warranty period. No warranties apply after that period.

## 5. Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you may be 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) damages for bodily injury (including death) and damage to real property and tangible personal property and 2) the amount of any other actual direct damages up to the greater of U.S. \$100,000 (or equivalent in your local currency) or the charges for the Program that is the subject of the claim.

IBM WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF IBM, OR ITS RESELLER, HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

IBM will not be liable for 1) loss of, or damage to, your records or data or 2) any damages claimed by you based on any third party claim.

This limitation of liability also applies to any developer of a Program supplied to IBM. It is the maximum for which IBM and its suppliers are collectively responsible.

## 6. General

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

IBM may terminate your license if you fail to comply with the terms of this Agreement. If IBM does so, your authorization to use the Program is also terminated. You agree to comply with applicable export laws and regulations. Neither you nor IBM will bring a legal action under this Agreement more than two years after the cause of action arose unless otherwise provided by local law without the possibility of contractual waiver or limitation.

Neither you nor IBM is responsible for failure to fulfill any obligations due to causes beyond its control.

The laws of the country in which you acquire the Program govern this Agreement, except 1) in Australia, the laws of the State or Territory in which the transaction is performed govern this Agreement; 2) in Albania, Armenia, Belarus, Bosnia/Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, Ukraine, and Federal Republic of Yugoslavia, the laws of Austria govern this Agreement; 3) in the United Kingdom, all disputes relating to this Agreement will be governed by English Law and will be submitted to the exclusive jurisdiction of the English courts; 4) in Canada, the laws in the Province of Ontario govern this Agreement; and 5) in the United States and Puerto Rico, and People's Republic of China, the laws of the State of New York govern this Agreement.

### Part 2 - Country-unique Terms

#### AUSTRALIA:

##### Limited Warranty (Section 4):

The following paragraph is added to this Section:

The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

##### Limitation of Liability (Section 5):

The following paragraph is added to this Section:

Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods, or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

EGYPT:

Limitation of Liability (Section 5):

The following replaces item 2 in the first paragraph of this Section: 2) as to any other actual direct damages, IBM's liability will be limited to the total amount you paid for the Program that is the subject of the claim.

FRANCE :

Limitation of Liability (Section 5):

The following replaces the second sentence in the first paragraph of this Section: In such instances, regardless of the basis on which you are entitled to claim damages from IBM, IBM is liable for no more than 1) damages for bodily injury (including death) and damage to real property and tangible personal property; and 2) the amount of any other actual direct damages up to the greater of a) U.S. \$100,000 (or equivalent in local currency) or b) the charges for the Program which is the subject of the claim.

GERMANY:

Limited Warranty (Section 4):

The following paragraphs are added to this Section:

The minimum warranty period for Programs is six months. In case a Program is delivered without Specifications, we will only warrant that the Program information correctly describes the Program and that the Program can be used according to the Program information. You have to check the usability according to the Program information within the "money-back guaranty" period.

The following replaces the first sentence of the first paragraph of this Section:

The warranty for an IBM Program covers the functionality of the Program for its normal use and the Program's conformity to its Specifications.

#### Limitation of Liability (Section 5):

The following paragraph is added to the Section:

The limitations and exclusions specified in the Agreement will not apply to damages caused by IBM with fraud or gross negligence, and for express warranty. In item 2, replace "U.S. \$100,000" with "DEM 1.000.000". The following sentence is added to the end of item 2 of the first paragraph: IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

#### INDIA:

#### Limitation of Liability (Section 5):

The following replaces items 1 and 2 in the first paragraph:

1) liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; and 2) as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Agreement, IBM's liability will be limited to the charge paid by you for the individual Program that is the subject of the claim.

#### General (Section 6)

The following replaces the fourth paragraph of this Section:

If no suit or other legal action is brought, within two years after the cause of action arose, in respect of any claim that either party may have against the other, the rights of the concerned party in respect of such claim will be forfeited and the other party will stand released from its obligations in respect of such claim.

#### IRELAND:

#### Limited Warranty (Section 4):

The following paragraph is added to this Section:

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing, all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.



Limitation of Liability (Section 5):

The following replaces items 1 and 2 in the first paragraph of this Section:

1) death or personal injury or physical damage to your real property solely caused by IBM's negligence; and 2) the amount of any other actual direct damages, up to the greater of Irish Pounds 75,000 in respect of Programs or 125 percent of the charges for the Program that is the subject of the claim or which otherwise gives rise to the claim.

The following paragraph is added at the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.

ITALY:

Limitation of Liability (Section 5):

The following replaces the second sentence in the first paragraph:

In each such instance unless otherwise provided by mandatory law, IBM is liable for no more than damages for bodily injury (including death) and damage to real property and tangible personal property and 2) as to any other actual damage arising in all situations involving non-performance by IBM pursuant to, or in any way related to the subject matter of this Agreement, IBM's liability, will be limited to the total amount you paid for the Program that is the subject of the claim.

NEW ZEALAND:

Limited Warranty (Section 4):

The following paragraph is added to this Section:

The warranties specified in this Section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods or services which IBM provides, if you require the goods or services for the purposes of a business as defined in that Act.

Limitation of Liability (Section 5):

The following paragraph is added to this Section:

Where Programs are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

**PEOPLE'S REPUBLIC OF CHINA:**

**Charges (Section 3):**

The following paragraph is added to the Section:

All banking charges incurred in the People's Republic of China will be borne by you and those incurred outside the People's Republic of China will be borne by IBM.

**UNITED KINGDOM:**

**Limitation of Liability (Section 5):**

The following replaces items 1 and 2 in the first paragraph of this Section:

1) death or personal injury or physical damage to your real property solely caused by IBM's negligence; 2) the amount of any other actual direct damages, up to the greater of Pounds Sterling 75,000 in respect of Programs or 125 percent of the charges for the Program that is the subject of the claim or which otherwise gives rise to the claim.

The following item is added:

3) breach of IBM's obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

The following paragraph is added at the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.

Refer to the License agreement statement Z125-3301.

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## Chapter 3. Statement of Limited Warranty

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### Part 1 – General Terms

International Business Machines Corporation  
Armonk, New York, 10504

*This Statement of Limited Warranty includes Part 1 - General Terms and Part 2 - Country-unique Terms. The terms of Part 2 may replace or modify those of Part 1. The warranties provided by IBM in this Statement of Limited Warranty apply only to Machines you purchase for your use, and not for resale, from IBM or your reseller. The term "Machine" means an IBM machine, its features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" does not include any software programs, whether pre-loaded with the Machine, installed subsequently or otherwise. Unless IBM specifies otherwise, the following warranties apply only in the country where you acquire the Machine. Nothing in this Statement of Warranty affects any statutory rights of consumers that cannot be waived or limited by contract. If you have any questions, contact IBM or your reseller.*

Unless IBM specifies otherwise, the following warranties apply only in the country where you acquire the Machine. If you have any questions, contact IBM or your reseller.

**Machine:** IBM 2106 (Models 200, D10, D14, D20, D24) Modular Storage Server (MSS)

**Warranty Period:** Three Years \*

*\*Contact your place of purchase for warranty service information. Some IBM Machines are eligible for On-site warranty service depending on the country where service is performed.*

### The IBM Warranty for Machines

IBM warrants that each Machine 1) is free from defects in materials and workmanship and 2) conforms to IBM's Official Published Specifications ("Specifications"). The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. The date on your sales receipt is the Date of Installation, unless IBM or your reseller informs you otherwise.

During the warranty period IBM or your reseller, if approved by IBM to provide warranty service, will provide repair and exchange service for the Machine, without charge, under the type of service designated for the Machine and will manage and install engineering changes that apply to the Machine.

If a Machine does not function as warranted during the warranty period, and IBM or your reseller are unable to either 1) make it do so or 2) replace it with

one that is at least functionally equivalent, you may return it to your place of purchase and your money will be refunded. The replacement may not be new, but will be in good working order.

## **Extent of Warranty**

The warranty does not cover the repair or exchange of a Machine resulting from misuse, accident, modification, unsuitable physical or operating environment, improper maintenance by you, 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.

**THESE WARRANTIES ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE 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. THESE WARRANTIES GIVE YOU SPECIFIC LEGAL RIGHTS AND YOU MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF EXPRESS OR IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION OR LIMITATION MAY NOT APPLY TO YOU. IN THAT EVENT, SUCH WARRANTIES ARE LIMITED IN DURATION TO THE WARRANTY PERIOD. NO WARRANTIES APPLY AFTER THAT PERIOD.**

## **Items Not Covered by Warranty**

IBM does not warrant uninterrupted or error-free operation of a Machine.

Unless specified otherwise, IBM provides non-IBM machines **WITHOUT WARRANTIES OF ANY KIND.**

Any technical or other support provided for a Machine under warranty, such as assistance via telephone with "how-to" questions and those regarding Machine set-up and installation, will be provided **WITHOUT WARRANTIES OF ANY KIND.**

## **Warranty Service**

To obtain warranty service for the Machine, contact your reseller or IBM. In the United States, call IBM at **1-800-IBM-SERV (426-7378)**. In Canada, call IBM at **1-800-465-6666** . You may be required to present proof of purchase.

IBM or your reseller provides certain types of repair and exchange service, either at your location or at a service center, to keep Machines in, or restore them to, conformance with their Specifications. IBM or your reseller will

inform you of the available types of service for a Machine based on its country of installation. IBM may repair the failing Machine or exchange it at its discretion.

When warranty service involves the exchange of a Machine or part, the item IBM or your reseller replaces becomes its property and the replacement becomes yours. You represent 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.

Any feature, conversion, or upgrade IBM or your reseller 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. Many features, conversions, or upgrades involve the removal of parts and their return to IBM. A part that replaces a removed part will assume the warranty service status of the removed part.

Before IBM or your reseller exchanges a Machine or part, you agree to remove all features, parts, options, alterations, and attachments not under warranty service.

You also agree to

1. ensure that the Machine is free of any legal obligations or restrictions that prevent its exchange;
2. obtain authorization from the owner to have IBM or your reseller service a Machine that you do not own; and
3. where applicable, before service is provided
  - a. follow the problem determination, problem analysis, and service request procedures that IBM or your reseller provides,
  - b. secure all programs, data, and funds contained in a Machine,
  - c. provide IBM or your reseller with sufficient, free, and safe access to your facilities to permit them to fulfill their obligations, and
  - d. inform IBM or your reseller of changes in a Machine's location.

IBM is responsible for loss of, or damage to, your Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Neither IBM nor your reseller is responsible for any of your confidential, proprietary or personal information contained in a Machine which you return to IBM or your reseller for any reason. You should remove all such information from the Machine prior to its return.

## Production Status

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

## Limitation of Liability

Circumstances may arise where, because of a default on IBM's part or other liability, you are entitled to recover damages from IBM. In each such instance, regardless of the basis on which you are 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. damages for bodily injury (including death) and damage to real property and tangible personal property; and
2. the amount of any other actual direct damages, up to the greater of U.S. \$100,000 (or equivalent in local currency) or the charges (if recurring, 12 months' charges apply) for the Machine that is the subject of the claim.

This limit also applies to IBM's suppliers and your reseller. It is the maximum for which IBM, its suppliers, and your reseller are collectively responsible.

**UNDER NO CIRCUMSTANCES IS IBM LIABLE FOR ANY OF THE FOLLOWING: 1) THIRD-PARTY CLAIMS AGAINST YOU FOR DAMAGES (OTHER THAN THOSE UNDER THE FIRST ITEM LISTED ABOVE); 2) LOSS OF, OR DAMAGE TO, YOUR RECORDS OR DATA; OR 3) SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR SAVINGS), EVEN IF IBM, ITS SUPPLIERS OR YOUR RESELLER IS INFORMED OF THEIR POSSIBILITY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.**

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## Part 2 - Country-unique Terms

### ASIA PACIFIC

**AUSTRALIA: The IBM Warranty for Machines:** The following paragraph is added to this Section: The warranties specified in this Section are in addition to any rights you may have under the Trade Practices Act 1974 or other legislation and are only limited to the extent permitted by the applicable legislation.

**Extent of Warranty:** The following replaces the first and second sentences of this Section: The warranty does not cover the repair or exchange of a Machine

resulting from misuse, accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by you, or failure caused by a product for which IBM is not responsible.

**Limitation of Liability:**The following is added to this Section: Where IBM is in breach of a condition or warranty implied by the Trade Practices Act 1974, IBM's liability is limited to the repair or replacement of the goods or the supply of equivalent goods. Where that condition or warranty relates to right to sell, quiet possession or clear title, or the goods are of a kind ordinarily acquired for personal, domestic or household use or consumption, then none of the limitations in this paragraph apply.

**PEOPLE'S REPUBLIC OF CHINA: Governing Law:** The following is added to this Statement: The laws of the State of New York govern this Statement.

**INDIA: Limitation of Liability:** The following replaces items 1 and 2 of this Section: 1. liability for bodily injury (including death) or damage to real property and tangible personal property will be limited to that caused by IBM's negligence; 2. as to any other actual damage arising in any situation involving nonperformance by IBM pursuant to, or in any way related to the subject of this Statement of Limited Warranty, IBM's liability will be limited to the charge paid by you for the individual Machine that is the subject of the claim.

**NEW ZEALAND: The IBM Warranty for Machines:**The following paragraph is added to this Section: The warranties specified in this Section are in addition to any rights you may have under the Consumer Guarantees Act 1993 or other legislation which cannot be excluded or limited. The Consumer Guarantees Act 1993 will not apply in respect of any goods which IBM provides, if you require the goods for the purposes of a business as defined in that Act.

**Limitation of Liability:**The following is added to this Section: Where Machines are not acquired for the purposes of a business as defined in the Consumer Guarantees Act 1993, the limitations in this Section are subject to the limitations in that Act.

## **EUROPE, MIDDLE EAST, AFRICA (EMEA)**

**The following terms apply to all EMEA countries.**

The terms of this Statement of Limited Warranty apply to Machines purchased from an IBM reseller. If you purchased this Machine from IBM, the terms and conditions of the applicable IBM agreement prevail over this warranty statement.

### **Warranty Service**

If you purchased an IBM Machine in Austria, Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland or United Kingdom, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM.

If you purchased an IBM Personal Computer Machine in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Georgia, Hungary, Kazakhstan, Kirghizia, Federal Republic of Yugoslavia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, or Ukraine, you may obtain warranty service for that Machine in any of those countries from either (1) an IBM reseller approved to perform warranty service or (2) from IBM.

The applicable laws, Country-unique terms and competent court for this Statement are those of the country in which the warranty service is being provided. However, the laws of Austria govern this Statement if the warranty service is provided in Albania, Armenia, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Federal Republic of Yugoslavia, Georgia, Hungary, Kazakhstan, Kirghizia, Former Yugoslav Republic of Macedonia (FYROM), Moldova, Poland, Romania, Russia, Slovak Republic, Slovenia, and Ukraine.

**The following terms apply to the country specified:**

**EGYPT: Limitation of Liability:**The following replaces item 2 in this Section: 2. as to any other actual direct damages, IBM's liability will be limited to the total amount you paid for the Machine that is the subject of the claim.

Applicability of suppliers and resellers (unchanged).

**FRANCE: Limitation of Liability:**The following replaces the second sentence of the first paragraph of this Section:

In such instances, regardless of the basis on which you are entitled to claim damages from IBM, IBM is liable for no more than: (items 1 and 2 unchanged).

**GERMANY: The IBM Warranty for Machines:** The following replaces the first sentence of the first paragraph of this Section:

The warranty for an IBM Machine covers the functionality of the Machine for its normal use and the Machine's conformity to its Specifications.

The following paragraphs are added to this Section:



The minimum warranty period for Machines is six months.

In case IBM or your reseller are unable to repair an IBM Machine, you can alternatively ask for a partial refund as far as justified by the reduced value of the unrepaired Machine or ask for a cancellation of the respective agreement for such Machine and get your money refunded.

**Extent of Warranty:** The second paragraph does not apply.

**Warranty Service:**The following is added to this Section: During the warranty period, transportation for delivery of the failing Machine to IBM will be at IBM's expense.

**Production Status:** The following paragraph replaces this Section: Each Machine is newly manufactured. It may incorporate in addition to new parts, re-used parts as well.

**Limitation of Liability:** The following is added to this Section:

The limitations and exclusions specified in the Statement of Limited Warranty will not apply to damages caused by IBM with fraud or gross negligence and for express warranty.

In item 2, replace "U.S. \$100,000" with "1,000,000 DM."

The following sentence is added to the end of the first paragraph of item 2:

IBM's liability under this item is limited to the violation of essential contractual terms in cases of ordinary negligence.

**IRELAND: Extent of Warranty:**The following is added to this Section:

Except as expressly provided in these terms and conditions, all statutory conditions, including all warranties implied, but without prejudice to the generality of the foregoing all warranties implied by the Sale of Goods Act 1893 or the Sale of Goods and Supply of Services Act 1980 are hereby excluded.

**Limitation of Liability:** The following replaces items one and two of the first paragraph of this Section:

1. death or personal injury or physical damage to your real property solely caused by IBM's negligence; and 2. the amount of any other actual direct damages, up to the greater of Irish Pounds 75,000 or 125 percent of the charges (if recurring, the 12 months' charges apply) for the Machine that is the subject of the claim or which otherwise gives rise to the claim.

Applicability of suppliers and resellers (unchanged).

The following paragraph is added at the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default shall be limited to damages.

**ITALY: Limitation of Liability:** The following replaces the second sentence in the first paragraph:

In each such instance unless otherwise provided by mandatory law, IBM is liable for no more than: (item 1 unchanged) 2) as to any other actual damage arising in all situations involving non-performance by IBM pursuant to, or in any way related to the subject matter of this Statement of Warranty, IBM's liability, will be limited to the total amount you paid for the Machine that is the subject of the claim.

Applicability of suppliers and resellers (unchanged).

The following replaces the second paragraph of this Section:

Unless otherwise provided by mandatory law, IBM and your reseller are not liable for any of the following: (items 1 and 2 unchanged) 3) indirect damages, even if IBM or your reseller is informed of their possibility.

**SOUTH AFRICA, NAMIBIA, BOTSWANA, LESOTHO AND SWAZILAND: Limitation of Liability:**The following is added to this Section:

IBM's entire liability to you for actual damages arising in all situations involving nonperformance by IBM in respect of the subject matter of this Statement of Warranty will be limited to the charge paid by you for the individual Machine that is the subject of your claim from IBM.

**TURKIYE: Production Status:** The following replaces this Section:

IBM fulfills customer orders for IBM Machines as newly manufactured in accordance with IBM's production standards.

**UNITED KINGDOM: Limitation of Liability:** The following replaces items 1 and 2 of the first paragraph of this Section:

1. death or personal injury or physical damage to your real property solely caused by IBM's negligence;

2. the amount of any other actual direct damages or loss, up to the greater of Pounds Sterling 150,000 or 125 percent of the charges (if recurring, the 12 months' charges apply) for the Machine that is the subject of the claim or which otherwise gives rise to the claim;

The following item is added to this paragraph:

3. breach of IBM's obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

Applicability of suppliers and resellers (unchanged).

The following is added to the end of this Section:

IBM's entire liability and your sole remedy, whether in contract or in tort, in respect of any default will be limited to damages.



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