

Grading OEMs on Terms and Conditions

Elaboration on the Rubric

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The Service Industry Association has developed a terms and conditions grading systems for IT End Users to use when considering how to approach Hardware Break-Fix. The Rubric was developed by experts in support of each category of device with an eye towards an objective analysis of T&Cs important to end users in managing their enviable support needs. This paper is a work product of the Service Industry Association. For further information or to provide comments, please contact us at www.servicenetwork.org.

Contract Terms & Conditions Grading Rubric Explained

We believe that the evaluation of OEMs as to their contractual terms and conditions regarding repair are crucial to end users in retaining residual value, managing repair and service costs, and protecting their rights as equipment owners.

The following terms and conditions issues have been identified by the SIA as useful ratings for end users to consider when considering an electronic purchase and associated break-fix contract. In our experience, IT users have been conditioned to permit terms and conditions from OEMs that would be preposterous in other settings, even when those settings are directly analogous.

To facilitate understanding the underlying principals in a way that is not threatening to those with existing biases, we have provided an automotive analogy for each situation.

SIA members are also frequent partners or subcontractors to OEMs and as such are also aware of unreasonable terms and conditions expectations on the part of end users. Where important limitations apply, these are set forth as well.

The philosophy of the grading system was to focus on objective criteria which have applicability to the end user experience. We freely admit to having a vested interest in wanting to have terms and conditions that are favorable to the use of independent maintenance services, but we feel strongly that our goals are not in any conflict with those of end users in general. The same terms and conditions which support residual value, end user flexibility, and a robust secondary market are also those which allow choices of service including independent service.

Selecting the Right Metrics for Product or Country

Not all products have the same issues with respect to terms and conditions. For example, personal computers are sold with a fully transferrable license to the Operating System, which is not the case with many other products. It is up to the reader to select the appropriate grouping of important terms for their situation. We have laid out all the criteria used to date and the reasoning behind each metric.

International readers will want to consider their particular in-country issues as this paper is directed at OEM contracts based in the US which may not be applicable in other countries. The SIA is working on a Canadian and an EU version of the Rubric.

The ordering of the list is currently arbitrary. The published grades from the SIA report each metric and the total score which is then normalized to a grade on a 0-100% scale.

Warranty Void with Independent Service Provider or End User Handling: End users wishing to avail themselves of occasional self-service or ISP service will want to identify OEMs that do not automatically void the equipment warranty if the unit is handled by anyone other than the OEM. It is understood that if the part or unit in question is damaged by such handling, that the warranty might not be preserved, however an action to replace a memory card should not void the total unit warranty.

Grades: OEMs that use a diagnostically based policy (differentiating between damage and viable repair) as opposed to a locked case policy, earn maximum points. OEMs that void the warranty automatically earn no points.

- Automotive Analogy: Car owners expect to be able to do their own oil change, but bring their vehicle to the dealer for a problem with the transmission without losing the warranty.
- Limitations: OEMs should be allowed to disclaim providing warranty support for parts they did not provide and service that was not done correctly. Requirements that machines execute all diagnostics and use genuine OEM parts are logical.

Time and Materials Contracts: There is a correlation between OEMs that will not repair their products without a service contract and the loss of residual value in the secondary market. The reasoning is very simple. Given the option to purchase a used product that could be serviced as needed or a competitive product that would never be repaired, end users will not buy the machine that lacks a repair option. T&M repair, as an option, is essential to the value of equipment in the used market.

OEMs refusing to offer T&M service argue that the end user is trying to avoid paying them for their premium service and have engaged an alternative service provider (including self-service) which is only plausible with T&M as a backstop. This may be part of the thought process for self-service, but the ISP provider had no need of OEM service as a backup. The ISP has purchased the parts inventory, invested in the training and staffing, and operates without OEM assistance. It should also be noted that many OEMs routinely subcontract with the very ISPs they denigrate in the marketing phase to execute the real work in the service delivery phase.

Grades: OEMs offering a T&M option for their equipment earn maximum points. Those which refuse any T&M repair earn no points.

- Automotive Analogy: Dealers will not perform any repair of any kind at any time without a current warranty (or extension) contract, even if the pricing is mutually agreed.
- Limitations: OEMs have the right to price their services as they see fit. Reasonable pricing is in their best interest to support the residual value of their products and desirability in the marketplace.

Separate Software and Hardware Maintenance Agreements: Many products are sold including combinations of hardware and hardware maintenance and software operating systems and associated software maintenance. The process of hardware break-fix has traditionally been separate from software support and most OEM financial reporting continues this tradition.

There are currently OEMs that “conflate” the need for both contracts to be concurrent based on the “complex interplay of hardware and software”. There are OEMs that demand a hardware contract in order to resell software service, and those that demand a software contract to support hardware. Both are trading on the fear and uncertainty on the part of the end user rather than any real complications.

In order for the “complex interplay” argument to be legitimate, the OEM would have to have specialist service teams unique to their organization that would be neither hardware support nor software support employees. With the exception of “Black Boxes”, this has not been the case with any OEM.

Hardware repair is a physical process involving wholly different skill sets than software support. If a hard drive is broken, no amount of software support will return it to service. Similarly, a technician replacing a broken hard drive will execute diagnostics and leave. Once the hardware item is repaired, the technician does not start writing patches to any software. OEMs claim complexity for marketing purposes which they themselves do not find overtly complex.

Grades: OEMs that demand a software support contract be in place in order to offer hardware maintenance (or vice versa) earn no points while those that offer software and hardware support and service contracts separately earn the maximum points.

- **Automotive Analogy:** The auto dealer demands a license contract for Satellite Radio as a condition of any repair including a warranty repair. Inversely, the Dealer might demand an extended warranty contract on the vehicle as a condition of offering Satellite Radio.

Non-Licensed Code (NLC) Transfers Automatically with Hardware: NLC is a catch-all term for the pieces of code that are provided with the hardware but not clearly, separately and optionally licensed. NLC includes microcode, firmware, BIOS, and anything else that is not separately licensed needed to operate the machine.

NLC is the dividing line between hardware and software and tangible and intangible. When the hardware OEM provides the equipment and the code that comes with it – they are providing a complete product which as a whole is a tangible asset. The product does not run without these bits of code. If, as has been the case with some OEMs, the OEM insists that the non-licensed code is to be treated as their intellectual property – they have then created a machine that has to be licensed, not purchased. The machine cannot be both tangible and intangible at the same time.

This is a critical issue for end users in areas of finance and accounting. Owners of tangible assets put such assets on their books and depreciate them. If a company were to state that they owed \$ 10 million of product ABC, but they couldn't sell it because it couldn't be transferred or sold, it wouldn't be an asset and they would be committing fraud.

Grade: OEMs that clearly treat NLC as hardware earn the maximum points, while those OEMs that interfere with the transfer of hardware through restrictions of NLC earn no points.

- **Automotive Analogy:** The dealer locks down access to the Engine Control Module (ECM) software and does not allow the ECM to pass with the auto to a new owner. Without the ECM, the auto does not run. No one would buy a car that wouldn't run except as scrap.
- **Limitations:** OEMs can require separate licensing agreements for particular code – taking them clearly back into the realm of protected IP.

Effective Parts Desk for Owner or ISP: Repair always requires access to service parts. Most OEMs operate a Service or Parts desk that stocks and ships parts as needed to clients. This function is commonly manipulated to give priority to OEM direct service clients, and to foot drag, or outright refuse to fill orders for parts from any source other than the OEM direct field force. The end user must then use their clout as the equipment owner to demand that the parts be shipped, but an uncooperative OEM can easily make the process hellish in order to reflect poorly on the use of an ISP.

This is a serious problem for newer model equipment, but far less so for older models where the used market is frequently scavenged for parts. End users that demand ready access to service parts to themselves or others as “agents” of the end user will experience far better service response.

Grades: OEMs that sell parts to owners or ISPs on terms that are not excessively costs nor arbitrarily delayed are awarded the highest points. OEMs which will support their end users, but not ISPS are awarded half points. Those OEMs unwilling or unable to supply parts directly to their clients earn no points.

- **Automotive Analogy:** Dealers typically stock service parts or can order them with expedited handling to facilitate a repair. If the Dealer will not sell parts to the vehicle owner, or the agent of the owner, or makes the purchase of services parts impractically long, this prevents the vehicle from being returned to service in a timely fashion. Junkyard or aftermarket parts can be used, but for late model vehicles, the option for self-service has been made impossible.
- **Limitations:** OEMs may have limited stock of service parts during the initial warranty period.

Diagnostics Available to Owner or ISP: Diagnostics (and sometimes specialty test equipment) are not always provided directly to the end user pre-installed on their machine in the same way as NLC. It has been the case with many OEMs that diagnostics are provided only to the field service teams. Access to diagnostics is essential to repair, so the owner is often in the position of having to demand access to such code.

Grades: OEMs making diagnostics readily available to the end user or ISP are awarded the maximum points. Those that restrict access to diagnostics to their end users earn half points, and those that restrict diagnostic access to their service teams exclusively earn no points.

- **Automotive Analogy:** As more electronics are used in automobiles, more and more diagnostic code is included with the vehicle. Warnings and condition alerts are provided so that the equipment owner can take action before the vehicle fails. Diagnostic equipment is also needed by the repair shop, dealer or independent, to facilitate service. Diagnostic equipment must be made available to independents or the dealers will entirely control service.

- Limitations: Some specialty testing equipment may be needed and should be sold at reasonable cost to ISPs or End Users.

NLC Patches/Fixes/Updates Available to Owner or ISP: Access to corrections to faulty code provided by the OEM are essential to the correct operation of the machine at the specification level. Corrections made at this level are for the device, not the licensed Operating System which has its own patching process. The word “Update” is deceptive because a patch is fixing something, whereas an “Update” has a connotation of enhancement.

It is a myth that upgrades are being included in patches. OEMS do not distribute valuable enhancements through NLC patches. If there is a valuable new feature – it is included in the next model of the machine and marketed as an enhancement. End users should not need to pay a fee of any kind to download security or other patches. By extension, agents of the end user, such as a service provider, should have ready access to any known patches in order to make sure that the purchased equipment is returned to service at its most functional level.

It is also a myth that NLC patches are necessary to incorporate drives for new peripheral devices. Manufacturers of peripherals distribute their own device drivers to buyers of their equipment. Drivers are installed on the operating system level, not the NLC level.

Many patches originate with the provider of parts, such as Intel will issue a microcode update to its chips. These patches should be passed along at no charge to any user of the specific model as a routine. If the OEM has created additional NLC that has a fault, these fixes are expected to be corrected at no charge by the end user.

Grades: OEMs making patches/fixes/updates available to any user, including through an ISP earn the maximum points. Half points are awarded for those that restrict access to equipment owners, and no points are earned for restrictions on updates based on service agreements with the OEM.

- Automotive Analogy: Recalls due to product problems are offered to all vehicle owners based on the vehicle, regardless of warranty status.

Return to Service Based on Diagnostics: Many end users shift equipment around their organization, drop service on stored devices, or sell used equipment in the open market. When service contracts are arranged by serial number, the subtraction of a unit from a service plan is easily done. Returning a unit to service, be it from a transfer of location, or a used sales transaction requires the ability to return the equipment to service.

The efficient transfer of equipment relies upon an objective standard of performance before equipment can be returned to an OEM service agreement. The most effective standard is that the equipment runs all diagnostic routines. Electronic equipment that functions when diagnostics are performed is accepted without question on a new service agreement. If the equipment does not run all diagnostics, equipment is usually repaired at this time on a Time and Materials basis.

Grades: OEMS with diagnostic based policies are graded highly while those that are subjective, include performance periods beyond diagnostics, or assess financial penalties for return to service do not earn any points.

- Automotive Analogy: “Certified” used equipment is a form of OEM blessing for condition. For equipment not sold or traded to the dealer, some dealers offer an extension of the original warranty for a fee, provided that the vehicle is running up to standards. Equipment certification is based on a single point in time when it is evaluated by the Dealer.
- Limitations: Fees should reasonably apply to make repairs to bring the equipment up to diagnostic standards.

Written Policies Match Field Policies: Not all OEMs are forthright about their service policies. End users have a right to read and approve (or negotiate) written policies in advance of making a purchase of the OEM product. Such policies should be publically available.

It has also been the case that written OEM policies are not practiced in the field. An example is the acceptance of used equipment onto a new service contract. CE’s that dislike the idea of taking an older model under their wing have been known to hold up installations and certifications that are clearly blatant violations of policy.

It is also common that written policies are clear, but the application of the policy is variable according to the size of the end user. Our position is that Policy should be applied evenly across all categories of end users.

Grades: OEMS that operate according to their published policies receive the highest grade even if the policies are dreadful. OEMS that publish a policy but routinely violate that policy, or that do not publically publish their policy do not get points.

- Automotive Analogy: Most States have laws which protect consumers from Dealers failing to deliver on contracts, or entering into misleading contracts.

Warranty transfers with hardware: Not all Products come with a transferrable warranty. It is obviously useful for an end user to be able to transfer the remaining value of the warranty to a new user. Warranties in the form of extended or pre-paid warranty uplift agreements are particularly valuable as part of the overall value of a used transaction.

In the case of on-site warranties where a warranty transfer to a remote location lacking a field service office, the warranty transfer might be difficult to execute. In these cases, the user might be offered a refund on the un-used warranty, or the OEM might sub-contract to a local technician to provide service.

Grades: OEMS that allow remaining warranty to transfer to the next user earn ten points. Those that void warranty upon transfer earn no points.

- **Automotive Analogy:** Vehicle warranties are completely transferrable between owners. Without such a policy, the used market for vehicles would disappear and with it all financing options.

Service Lockouts: Some products are designed to restrict access to the equipment for repair purposes to the OEM service team exclusively. These lockouts used to be physical keys, but have become software passwords or even key devices similar to the remote key system on automobiles.

Access to owned equipment for the purposes of service is a fundamental right of ownership. If an end user wishes to electrocute themselves by attempting self-service – so be it. The OEM should not be able to tell the equipment owner that they cannot open the case to their asset for any reason, including safety.

A 2010 ruling by the US Library of Congress Copyright Office against Apple confirmed not just the lack of legal basis for denying physical access to the machine as control of the “End user experience”, but went further and affirmed the right of the equipment owner to make operating system software modifications in order to control their own enjoyment of the product. Lookup “Apple Jailbreak Ruling” for details.

Grades: OEMs with service lockouts (physical or electronic) do not earn any points unless the physical or software keys are provided to the owner and are transferred with the equipment without interference by the OEM.

- **Automotive Analogy:** Vehicles are made to allow service by any person with access to the vehicle, including incompetent tinkerers. The owner is understood to be responsible for their own purchase “experience”.
- **Limitations:** OEMs disclaim, as they do with all other warranty issues, tampering or other evidence of incompetent or physical damage.

PCI “Cracked Case” Service Lockouts: There are several categories of equipment, particularly credit card handling equipment, where the manufacturer has provided tamper-proof features to reduce the obvious risk of theft. Repair of a tamper-proof device requires opening the device (“Cracking the Case”) which triggers the tamper-proof features. The equipment must first be repaired, then the software/encryption keys can be reloaded and the unit returned to service.

OEMs have taken advantage of a legitimate fear factor on the part of companies subject to rules regarding PCI compliance to grab exclusive service contracts for equipment repair. OEM’s in this space will provide software to bring their terminals back life as long as the vendor (or end user) is a PCI compliant Encryption Service Organization (ESO). Each compliant organization goes through the certification process annually to maintain their ESO status. Despite certification, OEM’s will not sell service parts or offer any form of support (such as diagnostics or documentation) to allow any party other than themselves to physically repair the terminal.

OEMS control enforcement of this policy by severing any Distributor or Reseller Agreements to companies offering ISP repair services.

Grades: OEMS providing security lockouts for potential tampering, such as with credit card processing equipment, earn full points provided that the ESO end user or ISP agent of the end user is allowed to repair their owned equipment. OEMS restricting the repair process to themselves exclusively do not earn any points.

- **Automotive Analogy:** Security control of vehicle access (door locks) is understood to be the responsibility of the equipment owner. If the door lock mechanism breaks the owner is able to have the lock repaired. The owner can also purchase a replacement key. Issues of loss, such as from theft, are handled by the insurance policies purchased by the owner. This includes theft of contents, which might potentially include lists of credit card numbers or diamonds.

Authorized Repair Status Available: Many widely distributed products such as printers or personal computers are intended to be repaired by Authorized Providers or end users with authorization and support of the OEM. These agreements are often restricted by volume, which is logical. For example, an Apple user can be authorized to perform self service for a minimum of 50 units, but to be approved for labor reimbursement must have at least 300 units of current models.

Some OEMs make the service authorization process impossible for any parties other than their largest resellers. In these cases the relationship of Independent Service Provider and the OEM is severely restricted and many result in the ISP having to choose between offering service on one product line and not another. Lack of repair choice results, with the end user the loser indirectly. It is better for end users to be able to select from a variety of qualified service providers than to be herded into an OEM agreement.

Grades: OEMs with authorization approvals based on repair skill earn the maximum points, those that have a reseller volume requirement earn half points, and those with no authorization process earn no points.

- **Automotive Analogy:** Many common parts, such as air filters, oil changes and brakes are intended to be serviced easily by equipment owners or whole specialist industries such as Jiffy Lube or Midas. OEMS do not even certify repair shops for these purposes, nor do they insist that original OEM parts be used since the specialist offers their own part warranty. There is no direct analogy to certification of repair shops by volume of equipment sales.

About The Service Industry Association:

The Service Industry Association was founded in 1985 as the leading trade association for companies engaged in the repair of electronic hardware and those that support the high tech service industry. Members of the SIA include Hardware OEMs, Independent Service Providers, Consultants, Software companies, and logistical support companies. The SIA has been instrumental in fighting for the rights of end users in the Right to Repair Act, now part of the DMCA in 1998, many Friend of the Court Briefs,

White Papers and Complaints filed with the Department of Justice to the U.S., European Council, and Canadian Commission in support of open and competitive service. Membership in the SIA now tops 150 companies representing members in the U.S., Canada, Australia, United Kingdom, The Netherlands, Denmark, Norway, Ireland, Singapore and member locations in most developed nations such as China.