

**1. DEFINITIONS**

"Sun" means Sun Microsystems Luxembourg Sarl  
 "Terms" means these General Terms of Sale and Licensing  
 "Products" means the hardware products and software products listed in the Price List and which are the subject of any offers or Contracts governed by these Terms.  
 "Equipment" means the hardware components of Products and includes the media on which Software is loaded  
 "Software" means any software program provided by Sun in machine-readable form.  
 "Contract" means any agreement between the parties for the supply of Product(s) which expressly or implicitly incorporates the terms set out in these Terms.  
 "Price List" means Sun's applicable price list, valid at the time of acceptance by Sun of a relevant order from Customer

**2. APPLICABILITY, OFFERS AND QUOTATIONS**

2.1 Unless expressly stipulated otherwise, these Terms apply to all offers, quotations and tenders submitted by Sun, as well as to all Contracts and agreements between Sun and the Customer relating to Products and supersede all prior or contemporaneous oral and/or written communications, proposals, warranties and representations with respect to the subject matter of the Contract(s), and prevail over any conflicting or additional terms of any quotation, order, acknowledgment, or similar communication between the parties. These Terms are the parties entire agreement relating to its subject matter. Any conditions of purchase or any other standard conditions of the Customer are hereby expressly declared inapplicable. No modification to these Terms will be binding, unless in writing and signed by duly authorized representatives of both parties.

2.2 Quotations by Sun are not binding on Sun and shall constitute an invitation to treat and shall remain valid for a period of thirty (30) days from date of issue. All orders placed with Sun by the Customer for Equipment and/or Software shall constitute an offer to Sun and no Contract shall come into being until acceptance by Sun in accordance with Article 3, paragraph 1, below.

**3. ORDERS, ORDER ACKNOWLEDGEMENT, AND DELIVERY**

3.1 Acceptance of Customer's orders will only be effective upon, and no Contract will come into place until, issuance of Sun's order acknowledgment form or upon shipment of the Products. Sun will use all reasonable efforts to meet the delivery date(s) identified on the acknowledgment form.

3.2 The Products shall be delivered by Sun carriage paid to domicile (DDP, Incoterms 2000) to the delivery address in the Grand Duchy of Luxembourg indicated by Customer upon placing the order. Should no delivery address be given, the delivery address shall be considered to be either the delivery address of Customer as known to Sun, or the European distribution center of Sun Microsystems in Montfort, the Netherlands, as Sun prefers. Without prejudice to Article 5, paragraph 1, the risk of loss and/or damage to the Products passes to Customer at the time of delivery by or on behalf of Sun to Customer.

3.3 Unless otherwise specified on Customer's order, Sun may make reasonable partial deliveries and invoice for them separately. Such deliveries will not relieve Customer of its obligation to accept other parts of its order.

3.4 Customer shall check the goods delivered immediately for deficiencies in quantity and for external damage to the packaging and indicate or cause to have indicated any deficiencies and/or damage on the accompanying transport documents upon penalty of rendering any claims on this matter null and void. Customer will have three (3) business days after receipt of Products at Customer's premises to inspect and test Products. Absent any written notice to Sun reporting any defects, Products will be deemed accepted by Customer three (3) business days after receipt at Customer's premises. In the event that Sun installs Products for Customer, acceptance will be deemed to occur upon successful completion of the diagnostic testing by Sun of the installed Products

3.5 If a defect is reported to Sun within the period specified in Article 3.4 above, Sun will at its option either repair or replace Products within reasonable time, or accept their return for credit to Customer of the net purchase price.

3.6 **Ordering locally** Company accepts and understands that in Luxembourg Services are sold by Sun Microsystems Financial Services SARL but that until further notice from Sun in Luxembourg Products are sold/licensed only by Sun Microsystems Belgium S.A. (or its authorized resellers).

**4. RETENTION OF TITLE** Title to the Equipment shall be retained by Sun until payment in full is made by the Customer for the relevant Equipment, including any relevant amounts as referred to in Article 7, paragraph 6 and any taxes payable. Products delivered to the Customer with retention of title may be used by the Customer, in the framework of the normal exercising of its activities, be resold, but may not be pledged or proposed as surety for a claim of a third party.

**5. EQUIPMENT UPGRADES** The list price of upgrades is based upon (i) the specified parts from system(s) being upgraded ( Specified Parts ) being owned by, used by and in the possession of Customer at least ninety (90) days prior to upgrading and; (ii) the return to Sun of Specified Parts within thirty (30) days of upgrade delivery to Customer. If Customer does not comply with both (i) and (ii) herein, Customer agrees to pay and Sun will invoice Customer the difference between the list price, less applicable discounts, if any, of the purchased upgrade(s) and the list price of the upgraded system(s), less applicable discounts, if any, if purchased new.

**6. RESCHEDULING OF ORDERS - DELAY IN DELIVERING** Customer may reschedule or reconfigure all or part of any order once at no charge, as long as (i) the written request is received by Sun at least thirty (30) days prior to the scheduled delivery date and (ii) the rescheduled delivery date is within sixty (60) days of the original date. If an order is rescheduled or reconfigured at Customer's request on any other basis, or if Sun reschedules the order because Customer fails to meet an obligation under this Agreement, Sun may charge Customer a restocking fee equal to ten percent (10%) of the list price of the rescheduled or reconfigured portion of the order., without prejudice to any other rights available to Sun by law or otherwise in case of breach by Customer of any of its obligations under the Contract.

**7. PRICES AND PAYMENT**

7.1 The prices for the Products are those indicated in the relevant quotation submitted by Sun, valid at the time of acceptance by Sun of the Customer's order. In the absence of a quotation from Sun, the list prices from Sun's Price List apply. Sun expressly reserves the right to change the Price List without prior notice.

7.2 All prices are inclusive of customs duties in the Grand Duchy of Luxembourg, applicable at the time of acceptance by Sun of the relevant order from the Customer, exclusive of transport and transport insurance costs for transport of the Products to the entrance of the delivery address in the Grand Duchy of Luxembourg and exclusive of VAT and any similar taxes. These shall be borne by the Customer. Installation of the Products is only included in the price if and insofar as this is expressly agreed.

7.3 Unless otherwise stipulated, all payments should be made, without any deduction, compensation or suspension whatsoever, within thirty (30) days of the date of invoice, payable at the registered office of Sun. All costs shall be borne by the Customer, including the costs of making payment.

7.4 Sun expressly retains the right, should it deem this reasonably necessary given the financial situation of the Customer or its past payment record, unilaterally to alter the term of payment laid down in the previous paragraph or to demand advance payment

or payment immediately upon delivery, all this without prejudice to all other rights, including the right to postpone delivery of the Products.

7.5 Any written notice by the Customer disputing the correctness of an invoice shall be received by Sun within fifteen (15) days of the date of the relevant invoice, notwithstanding the Customer's obligation to pay the undisputed portion of the relevant invoice.

7.6 Interest will accrue from the date on which payment is due, without written notice, at the legal interest rate plus (5) five percent per annum. Customer shall also be liable, without prior written notice, for compensation of all collection costs, and shall have to pay a fixed indemnity of fifteen (15) percent of the amount overdue, with a minimum of 125Euro, without prejudice to any other rights of Sun, including the right to demand higher compensation if there is reason to do so.

**8. WARRANTY**

8.1 The duration of the warranty, applicable response times, start dates and other warranty details are specified at <http://www.sun.com/service/support/warranty> (the "Warranty Web-Page") and are applicable as of the date an order is accepted, or at Customer's option, the Effective Date of this Agreement. Any subsequent changes to Warranty details specified on the Warranty Web Page will not apply to Products purchased by Customers prior to any change. In case Customer has no regular access to the internet, free printed copies of the Warranty Web-Page and subsequent changes to the Warranty Web-Page will be provided by Sun upon written request.

8.2 Subject to 8.1 above: (a) Sun warrants that the Equipment will be free from defects in materials and workmanship; and (b) the Software is warranted "AS IS" without any warranty or obligation for Sun to support such Software, or, for specifically mentioned software products, the warranty set out at the Warranty Web- Page, whichever is greater.

8.3 Customer's sole and exclusive remedy and Sun's entire liability under the warranties specified in this Article 8, will be, at Sun's option, the repair, correction, replacement of, or refund of the actual cost paid for the Products (less reasonable wear and tear) and/or refund the associated license fee paid provided Customer has notified Sun of the defect during the warranty period. Except otherwise agreed upon, Repair or replacement will occur at a repair center designated by Sun.

8.4 This warranty is contingent upon proper treatment and use of the Products and maintenance of a safe and suitable site. No warranty will apply to any Product that has been (a) modified, altered or adapted without Sun's written consent, (b) maltreated or used in a manner other than in accordance with the Product manual or, (c) repaired by any third party in a manner which fails to meet Sun's maintenance requirements and quality standards. Product problems attributable to the use of the Products with equipment or software not supplied or expressly approved by Sun are not covered under warranty. Any services provided for Product or problems which are out of warranty will be billed for on a time and materials basis.

**9. NUCLEAR APPLICATIONS** Customer acknowledges that Products are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility. Sun disclaims any express or implied warranty of fitness for such uses and shall not be liable for any damage, howsoever arising, in case Customer uses Product or allows to be used for such uses against Sun's foregoing explicit warning.

**10. IMPORT AND EXPORT LAWS** All Products and technical data delivered under this Agreement are subject to Luxembourg, EU and U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such laws and regulations and acknowledges that it has the responsibility to obtain such licenses to export, re-export or import as may be required after delivery to Customer.

**11. LIABILITY** Except for the obligations under Article 14 (Intellectual Property Claims) or breach of any applicable license grant, or death or personal injury resulting from negligent act or omission, or claims for non-payment, or the non-excludable statutory rights of consumers and to the extent not prohibited by applicable law, each party's liability is limited as follows:

- (a) Each party's aggregate liability to the other for claims relating to a Contract, whether for breach, including breach of warranty, for wrongful act or in tort or otherwise, shall be limited to the amount paid by Customer for Products which are the subject matter of the claims up to a maximum amount of 125,000 Euro
- (b) Neither party will be liable for, any loss of profits or any other indirect or consequential damage (and/or, in respect of claims arising in the USA, UK or any other common law country, for punitive, special or incidental damage) in connection with or arising out of an Agreement (including loss of business, revenue, use, data or other economic advantage), however it arises, whether for breach of an Agreement, including breach of warranties, for wrongful act or in tort, even if that party has been previously advised of the possibility of such damage.
- (c) Liability for damages shall be limited and excluded, even if any exclusive remedy provided for in this Agreement fails of its essential purpose.

**12. BINARY CODE LICENCE**

12.1 Sun grants to Customer a non-exclusive and non-transferable license for the internal use only of the Software, by the number of users and the class of computer hardware for which the applicable fee has been paid in accordance with these terms and conditions. Software that is not licensed by Sun as the original licensor is subject to the license terms of the original licensor; Sun may include such additional terms in Supplemental License Terms. Sun shall provide Customer with a free copy of such Supplemental License Terms upon Customer's first request.

12.2 Software is confidential and copyrighted. Except as specifically authorized in any Supplemental License Terms, Customer may not make copies of Software, other than a single copy of Software for archival purposes. Unless expressly permitted by the applicable law or expressly authorized by Sun, Customer may not copy, modify, translate, adapt, arrange, alter, distribute, de-compile, or reverse-engineer Software. Customer may not publish or provide the results of any benchmark or comparison tests run on Software to any third party without the prior written consent of Sun.

12.3 The License is effective until terminated. Customer may terminate the License at any time by destroying Software and accompanying documentation and all copies thereof and notifying Sun. The License will terminate upon 30 days prior written notice from Sun, if commits a material breach of this Article and fails to cure such breach within thirty (30) days of receipt of such notice. Upon such termination, Customer shall destroy all copies of Software.

**13. CONFIDENTIAL INFORMATION**

13.1 If either party desires that information provided to the other party under an Agreement be held in confidence, that party will, prior to or at the time of disclosure, identify the information in writing as confidential or proprietary or otherwise unequivocally as being of a confidential nature. The recipient may not disclose such confidential or proprietary information, may use it only for purposes specifically contemplated in that Agreement, and must treat it with the same degree of care as it does its own similar information, but with no less than reasonable care. These obligations do not apply to information which: a) is or becomes known by recipient without an obligation to maintain its confidentiality; b) is or becomes generally known to the public through no act or omission of recipient, or c) is independently developed by recipient without use of confidential or proprietary information. The parties agree to return or destroy all such tangible confidential information of the other party that has been received under an Agreement or Contract, including all copies made thereof, promptly upon request by the disclosing party.

- 13.2 This Article will not affect any other confidential disclosure agreement between the parties.
- 13.3 Unless otherwise priorly agreed in writing between the parties, The status of PSF does not imply that Sun takes over any of Customer's liability related or not to Customer's banking activity. As a consequence Customer remains fully and entirely liable for the safeguarding and confidentiality of its data and information as well as with any other liability related to its activities.
- 14. INTELLECTUAL PROPERTY CLAIMS**
- 14.1 Sun will defend at its expense any legal proceeding brought against Customer, to the extent that it is based on a claim that the use of Products provided to Customer by Sun is an infringement of a copyright or a patent and will pay all damages and costs awarded by a court of final appeal attributable to such claim, provided that Customer: (i) gives written notice of the claim promptly to Sun; (ii) gives Sun sole control of the defense and settlement of the claim; (iii) provides to Sun all available information and assistance; and (iv) has not compromised or settled such claim.
- 14.2 \*If any Products are found to infringe, Sun will: (i) obtain for Customer the right to use such Products; if this is despite Sun's reasonable efforts commercially unreasonable, (ii) replace or modify the Products so that they become non-infringing; or, if neither of these alternatives is reasonably available, (iii) remove infringing Products and grant Customer credit for the purchase price, as depreciated on a five-year, straight-line basis.
- 14.3 Sun has no obligation under this Article for any claim which results from: (i) use of Products in combination with any non-Sun-provided equipment, software or data; (ii) Sun's compliance with designs or specifications of Customer; (iii) modification of Products; or (iv) use of an allegedly infringing version of Products, if the alleged infringement could be avoided by the use of a different version made available to Customer.
- 14.4 This Article states the entire liability of Sun and exclusive remedies of Customer for claims of infringement.
- 15. SUSPENSION - DISSOLUTION**
- Unless Sun waives the dissolution of the Contract(s) governed by these Terms by means of written notice sent to the Customer and, without prejudice to all other rights, elects to postpone the implementation of any Contract hereunder or a part thereof or to require the implementation thereof, such Contract(s) shall be dissolved without legal intervention and without prior formal notice, with immediate effect if (i) the Customer does not comply with one of the material obligations incumbent upon him as a result of these Terms or from any other agreement concluded with Sun, or does so belatedly or inadequately; and/or (ii) the Customer is not in a position to provide adequate assurance, at the request of Sun, of fulfillment of its obligations; and/or (iii) the Customer requests deferment of payment, whether or not temporary deferment of payment is granted, composition is agreed between the Customer and its debtors, the bankruptcy of the Customer is requested or the Customer's company is closed, dissolved and/or liquidated.
- 16. MISCELLANEOUS**
- 16.1 Assignment. Neither party shall assign or otherwise transfer any of its rights or obligations under any Contract, without the prior written consent of the other party, except that Sun may assign its right to payment and/or may assign any Contract to an affiliated company.
- 16.2 Force Majeure. A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control, if the party makes reasonable efforts to perform and inform the other party in writing of the event causing the non-performance. This provision does not relieve Customer of its obligation to make payments then owing and which are not related to the situation of force majeure.
- 16.3 Notices. All written notices required under any Contract or these Terms must be delivered in person or by means evidenced by a delivery receipt to the office address of the other party.
- 16.4 Waiver or delay. Any express waiver or failure to exercise promptly any right under any Contract will not create a continuing waiver or any expectation of non-enforcement.
- 16.5 Severability. If in respect of any Contract any Article or any paragraph of these Terms is held invalid, to be void, impracticable, or otherwise non-binding by the competent court, such invalidity will not affect the enforceability of any other article or paragraph of these Terms. In such case the parties will negotiate in good faith provisions to replace the invalid, void, or illegal provisions, which replacing provisions shall come as close as reasonably possible to such severed provision, or part thereof, as well as the relevant Contract as a whole, in language and intent, without being invalid, void, or illegal.
- 16.6 Governing Law and Dispute Resolution. All Contracts shall be exclusively governed by and construed in accordance with the laws of Luxembourg, excluding the Den Hage Commercial Treaty of July 1, 1964, the 1980 United Nations' Convention on Contracts for the International Sale of Goods of 11.04.1980 and choice of law rules of any jurisdiction. Any dispute arising out of or in connection with any Contract which despite reasonable efforts cannot be resolved amicably shall be exclusively submitted to the competent court of Luxembourg.