

Sun Master Agreement General Terms

between

Sun Microsystems GmbH
Sonnenallee 1
85551 Kirchheim-Heimstetten

and its Affiliated Companies

- hereinafter together "Sun" -

and

[NAME]
[STRASSE]
[POSTLEITZAHL] [ORT]

- hereinafter "Company" -

Effective Date [DATUM]

Agreement Number _____

Elements of the Agreement Sun Master Agreement (General Terms)
Exhibit (e.g. Purchasing Exhibit or iForce Exhibit)

1. Interpretation

1.1. The purpose of the General Terms is to create a single mechanism under which Sun and Company may form Agreements.

1.2. In the General Terms:

"Affiliated Company" means, in relation to either party, any entity:

- a) which is owned 50 % or more by that party; or
- b) over which that party exercises management control; or
- c) which is under common control with that party; or
- d) which owns 50 % or more of that party;

"Agreement" means each agreement that is comprised of the General Terms and an Exhibit executed by the parties;

"Confidential Information" means any information disclosed by one party to another under each Agreement which is, prior to or at the time of disclosure, identified in writing as confidential or proprietary;

"Products" means the hardware (including components), software media and spare parts listed in Sun's standard product price lists published from time to time, or Software;

"Services" means any offering in Sun's Service List or a service description. Sun's then current Service List is located at <http://www.sun.com/service/servicelist> (a hard copy of each of which will be made available to Company on request). Such Services shall also include such other service offerings as the parties may agree on. In connection with Services a service description may also be described as a statement of work ("SOW");

"Software" means

- a) any binary software programs listed in Sun's standard price lists published from time to time,
- b) any Updates, and
- c) any related user manuals or other documentation;

"Sun Trademarks" means all names, marks, logos, designs, trade dress and other brand designations used by Sun in connection with Products and Services;

"Technology" means any technology identified in an Exhibit and provided to Sun for use in the development or distribution of Products and Services;

"Updates" means subsequent releases and error corrections for Software previously licensed, as listed in the standard price lists published by Sun from time to time.

2. Confidential Information

A party receiving Confidential Information ("the Recipient") must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Agreement. Confidential Information may be disclosed only to employees or contractors obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the relevant Agreement. These obligations do not apply to information which:

- a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
- b) is or becomes known to the public through no act or omission of the Recipient;
- c) the Recipient develops independently without using Confidential Information of the other party; or
- d) is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

3. Export Law

Products, Services, Technology, materials, tools, and technical data delivered by or to Sun may be subject to U.S. export controls or the trade laws of other countries. Company and Sun agree to comply with all export control regulations and acknowledge that they have the responsibility to obtain such licenses to export, re-export or import as may be required. Company and Sun agree not to export or re-export to entities on the most current U.S. export exclusion lists or to any country subject to U.S. embargo or terrorist controls as specified in the U.S. export laws. Company and Sun will not use or provide Products, Services, Technology, materials, tools, and technical data for nuclear, missile, or chemical and biological weaponry end uses.

4. Sun Trademarks

- 4.1. Company may refer to Products and Services by their associated names, provided that such reference is not misleading and complies with Sun's Trademark and Logo Policies, which are located at <http://www.sun.com/policies/trademarks> (and a hard copy of which will be made available to Company on request).
- 4.2. Company may not remove or alter any Sun Trademarks, nor may it co-logo Products or Services. Company agrees that any use of Sun Trademarks by Company will inure to the sole benefit of Sun.

- 4.3. Company agrees not to incorporate any Sun Trademarks into Company's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

5. Limitation of Liability

- 5.1. Each party shall be liable to the other

- a) for damage (i) caused by it through intentional act or gross negligence, (ii) arising from personal injury, injury to health or life, (iii) for which the Product Liability Act provides for compulsory liability and (iv) in cases in which it guaranteed the state and condition of the subject matter of the contract;
- b) in case of slightly negligent breach of material contractual duties for foreseeable damage up to a maximum amount of € 500.000,- (in words: five hundred thousand Euro) and for foreseeable damage to property and financial damage up to a maximum amount of € 150.000,- (in words: one hundred and fifty thousand Euro) per case of liability, but not more than double the respective amount per year.

The right to claim further damages shall be excluded.

- 5.2. Neither party shall be liable to the other for indirect damages and consequential damages (including loss of use and lost profit) except in cases referred to in Section 5.1 a).
- 5.3. Each party shall be liable to the other for documented damage suffered by the other party due to any delay caused solely by that party's failure to deliver/perform an obligation within a set deadline. The compensation for delay is limited to 0.5 % per week of delay, not to exceed 5 % of the price for that portion of the performances that was not completed on time.
- 5.4. As a major contractual duty, Company assumes the obligation to back up data at adequate intervals on a regular basis, at least once daily, and thus to assure that they can be reconstructed at reasonable efforts. In the event of a loss of data for which Sun is responsible, Sun is liable for reconstruction only in the amount of the expense that is incurred if Company has performed the aforesaid data back-ups.

6. Termination and Expiration

- 6.1. Either party may terminate the General Terms or any Exhibit immediately by written notice:
- a) if the other party commits a non-remediable material breach; or
 - b) if the other party fails to cure any remediable material breach within 30 days of being notified in writing of such breach.

- 6.2. Either party may terminate the General Terms immediately by written notice if no Exhibit is in effect.
- 6.3. On termination or expiration of the General Terms, all Exhibits shall automatically terminate with immediate effect. Following termination or expiration of an Exhibit, each party will deliver to the other any property of the other in its possession or control relating to that Exhibit, in good condition, reasonable wear and tear excepted.

7. Assignment and Subcontracting

The General Terms and any Exhibit may only be assigned by either party as described in the applicable Exhibit.

8. Dispute Resolution

The parties will use reasonable efforts to resolve any dispute arising out of the General Terms or any Exhibit through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within 30 days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other equitable relief at any time.

9. General

- 9.1. All disputes will be governed by the laws of the Federal Republic of Germany. The venue for litigation will be the courts in Munich, provided that the company is a merchant as defined by Commercial Code or a legal person under or a special fund under public law. Choice of law rules of any jurisdiction and the United Nations Convention on Contracts for the International Sale of Goods will not apply to any dispute under the Agreement.
- 9.2. A party is not liable under any Agreement for non-performance caused by events or conditions beyond that party's reasonable control, if the party makes reasonable efforts to perform. This provision does not relieve either party of its obligation to make payments then owing.
- 9.3. As far as written form is required for declarations under the General Terms or under any Exhibit, such written form requirement will be deemed met by fax or non-qualified e-mail communication. However, in case of modification of, supplements to or notice of termination of the General Terms or any Exhibit or an individual order based thereon, the requirement of written form will not be met by non-qualified e-mail communication but only by e-mails within the meaning of Section 126a BGB [German Civil Code] (qualified electronic signature within the meaning of the Signature Act).
- 9.4. Neither the General Terms nor any Agreement is intended to create a partnership, franchise, joint venture, agency, or a fiduciary or employment relationship. Neither party may

bind the other party or act in a manner which expresses or implies a relationship other than that of independent contractor.

- 9.5. If any provision of the General Terms or any Agreement is held invalid by any law or regulation of any government or by any court or arbitrator or contains a gap, such invalidity or gap will not affect the enforceability of other provisions. Any such provision held to be invalid or unenforceable or containing a gap will be replaced by a provision which comes closest to the original business purpose without being invalid.
- 9.6. Rights and obligations under the General Terms and any Exhibit which by their nature should survive, will remain in effect after termination or expiration of the General Terms or the relevant Exhibit.
- 9.7. Any express waiver or failure to exercise promptly any right under the General Terms or any Exhibit will not create a continuing waiver or any expectation of non-enforcement.
- 9.8. Modifications of or supplements to the General Terms or any Exhibit or an individual order based thereon shall be valid only if in writing in accordance with Section 9.3 and signed by an authorised representative of each of the parties. This applies also to any change or waiver of Section 9.3 or Section 9.8.
- 9.9. Each Agreement including all Appendices constitutes the parties' entire agreement relating to its subject matter. It cancels and supersedes all prior or contemporaneous oral or written communications, proposals, conditions, representations and warranties and prevails over any conflicting or additional terms contained in any quote, purchase order, acknowledgement, or other communication between the parties relating to its subject matter.