

# **Purchasing Exhibit to the Sun Master Agreement (General Terms)**

between

Sun Microsystems GmbH  
Sonnenallee 1  
85551 Kirchheim-Heimstetten

- hereinafter "Sun" -

and

[NAME]  
[STREET]  
[POSTAL CODE] [PLACE]

- hereinafter "Customer" -

Exhibit Effective Date [DATE]

Exhibit Reference No. \_\_\_\_\_

Elements of the Agreement Sun Master Agreement (General Terms)  
Purchasing Exhibit  
Appendix 1 – Additional provisions relating to Hardware and Software Products  
Appendix 2 – Additional provisions relating to Services  
Schedule on Price Lists and Discounts

This Purchasing Exhibit ("Exhibit") is an exhibit to the Sun Master Agreement (General Terms). This Exhibit is an integral part of the Sun Master Agreement (General Terms) and is incorporated by reference. The Sun Master Agreement (General Terms) and this Exhibit are together referred to as the "Agreement".

## **1. Interpretation**

- 1.1 Capitalized terms used but not defined in this Exhibit have the meanings set out in the Sun Master Agreement (General Terms).
- 1.2 In the event of any inconsistency between the elements of the Agreement, the following order of precedence will apply (in descending order):
  - a) the individual agreement, e. g. statement of work (the „SOW“)
  - b) the additional agreement to this Agreement
  - c) the additional provisions set out in Appendices 1 and 2
  - d) the main text of this Exhibit
  - e) the Sun Master Agreement (General Terms)
  - f) the Schedule on Price Lists and Discounts
  - g) the applicable Price List, Service Listing
  - h) the order.

## **2. Ordering**

### **2.1 Ordering procedure**

- 2.1.1 Customer may order Products or Services by
  - a) submitting an Electronic Order in the manner directed by Sun; or
  - b) submitting a written Purchase Order to Sun (and Customer acknowledges that Electronic Orders for certain Products or Services may require to be supplemented by a written Purchase Order).

In each case specifying the Products or Services required and referencing the Sun Master Agreement (General Terms) and applicable Exhibit numbers. By doing so, Customer agrees that the Order is governed by this Agreement.
- 2.1.2 Sun may accept the Order by
  - a) issuing an Order Confirmation to Customer; or
  - b) shipping the Products or initiating performance of the Services required in the Order.

### **2.2 Electronic ordering**

For the purposes of placing Electronic Orders and using electronic tools and services, Customer represents and warrants:

- 2.2.1 that it will keep confidential any unique user ID and password which Sun assigns to Customer; and
- 2.2.2 that all of Customer's employees who submit orders or use tools or services are authorized by Customer to do so.

### **3. Pricing and Payment Terms**

#### **3.1 Pricing and Payment Arrangements**

- 3.1.1 For Products or Services which are discountable in the applicable Price List, Sun agrees (subject to Section 3.3) to grant Customer the discounts set out in the Discount Schedule to this Exhibit.
- 3.1.2 Sun may modify the prices set forth in a renewable Individual Agreement upon renewal of any such Individual Agreement, or annually for Individual Agreements with a term of more than one year.
- 3.1.3 Software license fees are non refundable upon delivery of the Software (except as set forth in Appendix 1, Section 4) and are not contingent upon nor dependent on any further deliverables from Sun, including, but not limited to, professional services.
- 3.1.4 Invoices must be paid within 30 days of the date of invoice.
- 3.1.5 In the event that Customer denies a claim asserted by Sun, such denial shall be deemed the beginning of negotiations regarding such claim and the circumstances substantiating such claim. The negotiations will be deemed to be terminated if Sun refuses to continue the negotiations.

#### **3.2 Review of discounts**

Within 30 days of each anniversary of this Exhibit, Sun will determine Customer's discounts for the following year, based on Sun's applicable discount policies. Sun may obtain reimbursement from Customer for discounts extended to Customer that are based on the attainment of volume, term of service or other criteria not earned by Customer since the beginning of the following year.

#### **3.3 Set-off**

Customer may set off against any claims of Sun only if Customer's claims are undisputed or final and absolute.

### **4. Intellectual Property Ownership and Licensing**

#### **4.1 Pre-existing IPR**

Each party shall retain its own pre-existing Intellectual Property.

#### **4.2 New IPR**

Sun will grant Customer a non-exclusive license to use all work results exclusively generated for Customer in accordance with the SOW, subject to Customer paying the total invoice amount due for such work results. Work results as well as all designs, concepts, methods, software techniques, and models used or developed by Sun under a SOW, will remain the property of Sun and/or Sun will retain all exclusive rights therein. Know-how, techniques, and other work methods contributed by Sun will remain Sun's property. Sun will grant Customer a non-exclusive license to use such know-how, techniques, and other work methods in the scope that such license is necessary to use the work results.

#### **4.3 License terms**

- 4.3.1 Sun agrees to grant Customer a license to use Software and Deliverables under the terms set out in the Appendices.

- 4.3.2 The license may be assigned to a third party upon Sun's prior written consent only. In the event that sub-licenses are granted, the license is assigned to a third party for a certain period, or the license is made available in any other way, Sun's prior written consent will also be required.
- 4.3.3 Sun or its independent audit firm may, upon reasonable notice, examine and audit the records and systems of Customer to ensure compliance with any license granted by Sun. Any audit will be performed during Customer's regular business hours and in a manner which avoids unreasonable interference with Customer's business operations.

## **5. Customer Obligations**

### **5.1 Additional services**

Any additional services which Sun provides as a result of Customer's failure to fulfill all applicable Customer obligations under the Agreement, will be billed separately, at Sun's applicable time and materials rates.

### **5.2 Cooperation**

Sun's performance of the agreed services will require Customer's cooperation. The precise scope of cooperation will be specified in the SOW. Customer will cooperate with Sun and will provide safe and timely access to its premises and computer equipment, including remote access, adequate working space, internet access as well as necessary technical facilities and any other personal support or materials that Sun personnel may reasonably require to perform Sun's obligations.

Section 5.4 of the Sun Master Agreement - General Terms - shall also apply to customer's obligation to back up data.

### **5.3 Compliance with data privacy laws**

Customer will comply with all applicable laws regarding collection and use of data under this Agreement. Customer consents to Sun's use and processing of Customer's data and will ensure that, where it provides Sun with data relating to another, it has obtained that other's consent to Sun's use and processing of such data.

## **6. Intellectual Property Claims**

- 6.1 Each party ("the Indemnifying Party") will defend or settle, at its option and expense, any legal proceeding brought against the other ("the Indemnified Party") to the extent that it is based on a claim that materials (which term includes Products) developed and provided by the Indemnifying Party infringe a third party's patent, trade secret or copyright. The Indemnifying Party will indemnify the Indemnified Party against all damages and costs attributable exclusively to such claim awarded by the court finally determining the case, provided that the Indemnified Party:
  - 6.1.1 gives written notice of the claim promptly to the Indemnifying Party;
  - 6.1.2 gives the Indemnifying Party sole control of the defense and settlement of the claim;
  - 6.1.3 provides to the Indemnifying Party, at the expense of the Indemnifying Party, all available information and assistance;
  - 6.1.4 does not compromise or settle such claim; and

- 6.1.5 is not in material breach of any Agreement.
- 6.2 If such materials are found to infringe, or in the reasonable opinion of the Indemnifying Party are likely to be the subject of a claim, the Indemnifying Party will at its option:
  - 6.2.1 obtain for the Indemnified Party the right to use such materials;
  - 6.2.2 replace or modify the materials so they become non-infringing; or
  - 6.2.3 if neither 6.2.1 nor 6.2.2 is reasonably achievable, remove such materials and refund their net book value.
- 6.3 Neither party has any obligation to the extent any claim results from:
  - 6.3.1 use of materials in combination with any third party equipment, software or data;
  - 6.3.2 compliance by the Indemnifying Party with the designs or specifications of the Indemnified Party;
  - 6.3.3 modification of materials other than at the direction of the Indemnifying Party; or
  - 6.3.4 use of an allegedly infringing version of the materials, if the alleged infringement could have been avoided by the use of a different version made available to the Indemnified Party.
- 6.4 This section states the entire liability of each party (as Indemnifying Party) and the exclusive remedies of each party (as Indemnified Party) for claims that materials infringe a third party's IPR. This limitation does not apply to any damage as defined by Section 5 in the Sun Master Agreement (General Terms).

## **7. Nuclear applications**

Customer acknowledges that Products and Services are not designed or intended for use in the design, construction, operation or maintenance of any nuclear facility.

## **8. Termination**

In addition to the termination provisions of the Sun Master Agreement (General Terms), the following additional provisions shall apply to termination of this Exhibit, Individual Agreements and of Service Contracts made under this Exhibit:

- 8.1 Either party may terminate this Exhibit at any time upon 90 days written notice;
- 8.2 Either party may terminate an Individual Agreement immediately by written notice
  - a) if the other party commits a non-remediable material breach of such agreement; or
  - b) if the other party commits a remediable material breach and fails to cure such breach within 30 days of being notified in writing of such breach;
- 8.3 In the event that an unlimited individual agreement for Support Services is placed, either party may terminate such individual agreement for Support Services by giving 60 days' prior notice to the other party, however, such termination must not be made during this individual agreement's initial term of twelve months.

- 8.4 Sun will deliver to Customer the results of any Deliverables, whether finished or unfinished, subject to receipt of payment for any Services rendered through the date of termination or expiration.

**9. Publicity**

Sun may use Customer's name in promotional materials, including press releases, presentations and customer references regarding the sale of Products or Services. These permissions are free of charge for worldwide use in any medium. Sun will obtain Customer's prior approval for publicity that contains claims, quotes, endorsements or attributions by Customer, such approval not to be unreasonably withheld.

**10. Assignment and Subcontracting**

Neither party may assign or otherwise transfer any of its rights or obligations under the Sun Master Agreement (General Terms) or any Exhibit without the prior written consent of the other party, which consent will not be unreasonably withheld, except that:

- a) both parties may assign their right to receive payment; and
- b) Sun may use subcontractors in the performance of its obligations, in which case Sun will remain responsible for the performance by such sub-contractors.

# **Appendix 1**

## **to the Purchasing Exhibit**

### **- Additional Provisions**

### **relating to Hardware and Software Products -**

#### **1. Delivery Arrangements for Products**

##### **1.1 Target delivery dates**

Sun will use reasonable efforts to meet the Product delivery dates stated on its order confirmation. Should Sun act in breach of contract, Customer may cancel the individual order only if Sun fails to perform after Customer has granted Sun a reasonable additional period to perform. When granting such additional period, Customer must add an express warning of rejection.

##### **1.2 Changing delivery arrangements**

1.2.1 Sun may make Product substitutions and modifications that do not cause a material adverse effect in overall Product performance.

1.2.2 Subject to Customer's agreement, Sun may make partial deliveries and invoice such deliveries separately.

1.2.3 Customer

- a) may cancel, reschedule or reconfigure an order for Products once, at no charge, provided Sun receives written notice at least 30 days prior to the scheduled delivery date and the requested delivery date is within 30 days of the original delivery date; and
- b) in all other cases, subject to Customer paying a fee equal to 3 % of the purchase price of the canceled, rescheduled or reconfigured portion of the order.

##### **1.3 Delivery and risk**

Unless otherwise agreed, the risk of loss of or damage to Products will pass to Customer upon delivery, which will be made in accordance with Incoterms 2000 (DDP).

##### **1.4 Retention of title**

1.4.1 Sun retains the title to any delivered Products (hereinafter "Products under Proviso") until each and every claim of Sun against Customer, originating from this contractual relationship and any other existing claims originating from the on-going business relations with Customer have been fully satisfied.

1.4.2 In the event of third parties taking access to Products under Proviso, Customer shall inform such party of Sun's ownership therein and give Sun immediate notice thereof. Customer shall bear any costs of an intervention procedure and other measures taken to repel such third party access.

- 1.4.3 Should Customer be in default or fail to perform in accordance with contract, Sun may rescind the respective individual agreement pursuant to the statutory provisions. Sun may also exercise such right in the event that the secured claims have already become statute-barred. Sun shall be entitled to realize the Products under Proviso and to satisfy its claims by setting off in proceeds of such realization against its unbalanced claims against Customer.
- 1.4.4 Upon Customer's request, Sun shall set free any securities received to such extent as exceeds by more than 10% the value of the total of the claims to be secured.
- 1.4.5 Should Sun be entitled to make use of its retention of title, Customer shall grant to Sun, for the purpose of recovering the Products under Proviso, an irrevocable and unrestricted right of access to Customer's offices and premises during the normal business hours.

## **2. Charging Arrangements for Products**

### **2.1 Charges and invoices**

The charges for Products are as set out in the then current Price List.

### **2.2 Taxes and expenses**

The stated charges for Products are exclusive of VAT.

### **2.3 Equipment upgrades**

Only eligible Equipment purchased from Sun or a Sun authorised reseller, and certain non-Sun equipment identified by Sun from time to time, may qualify for the Sun Upgrade Allowance Program ("UAP") as set out on <http://www.sun.com/upgrades> (the "UAP Web Site", a free hard copy of which will be made available to Customer on request). Sun in its sole discretion will determine which Equipment or non-Sun equipment is eligible to qualify under the UAP. Under the UAP Customer may receive Standard UAP and UAP Plus allowance as shown on the UAP Web Site for trading in residual systems or components ("Residual Equipment") at the purchase of new Equipment from Sun. Sun may amend UAP from time to time. The allowance is based upon Customer:

- a) owning, possessing and using the Residual Equipment being upgraded for at least six months prior to upgrading, and
- b) returning to Sun the Residual Equipment being traded in as part of the upgrade within 60 days of upgrade delivery to Customer.

If the Residual Equipment is not returned within 60 days, Sun may bill back and Customer agrees to pay promptly the full amount of any upgrade allowance. Customer warrants that it has good and unencumbered title to the Residual Equipment. Title to Residual Equipment will pass automatically to Sun upon delivery of the upgrade Equipment to Customer. Risk of loss of or damage to Residual Equipment will pass to Sun upon receipt by Sun from Customer.

## **3. License Terms for Software Products**

### **3.1 License grant**

Sun grants Customer a non-exclusive and non-transferable license to use Software provided to Customer hereunder for its internal use only, subject to:



3.1.1 any restrictions set out in the Order or Order Confirmation as to the permitted purposes and number of users, developers, entries and CPUs; and

3.1.2 any supplemental license terms accompanying the Software.

### **3.2 Reservation of rights**

Software is confidential and copyrighted, all rights therein not expressly granted to Customer are reserved to Sun, and Sun retains title to all copies.

### **3.3 License restrictions**

Customer may make identical copies of the Software for archival purposes (which include a backup copy for disaster recovery). Customer may neither modify nor decompile or reverse-engineer Software. Information necessary to achieve interoperability will be provided by Sun upon request.

### **3.4 Transferability of software licenses**

Customer may transfer any operating system Software license with its related Equipment if:

- a) the transfer occurs at least one year after the date of Sun's delivery of the Equipment; and
- b) Customer notifies Sun in writing and obtains a written undertaking from its transferee to comply with the applicable licensing terms.

## **4. Product Warranties**

### **4.1 Defects**

Sun warrants that all Products will be provided free from defects in materials or title. Insignificant defects shall not be taken into account. The stipulated quality for in the individual agreement will be specified in product data sheets located at <http://www.de.sun.com/Downloads/Produkte/index.html>, unless a particular quality is agreed in writing. Such special agreements regarding the quality of the Product shall not be deemed a warranty of quality or stability as defined by § 443 Civil Code.

### **4.2 Rights in case of defects („Warranties“)**

Customer's remedy for breach of warranties will be – at Sun's option – the repair or replacement of defective Products at the agreed place of delivery. Only when Customer has granted Sun an additional period of at least three weeks or at least three attempts by Sun to remove the defects or to deliver a substitute have failed, Customer may claim a reduction of the contractual price or cancel the contract. In the event of cancellation of the contract, Customer must add a warning of rejection when granting the above additional period. Any further claims for damages shall be excluded unless asserted as defined by section 5 of the Sun Master Agreement (General Terms).

### **4.3 Limitation of action for rights in case of defects**

Customer's remedies for breach of warranties under section 4.2 will become statute-barred within twelve months after delivery. This period will not apply in the event of intent and gross negligence or personal injury or injury to health or life. The limitation period for a defective repair or replacement will become statute-barred within the same period set out in the first sentence. In the event that Customer reports a defect before the expiration of the limitation period, the limitation period of the reported defect shall be suspended when Sun, with Customer's approval, reviews the existence of such defect or repairs such defect. The limitation

period will be suspended until Sun notifies Customer of its review or declares the repair or replacement completed or until Sun refuses to continue such repair or replacement.

#### **4.4 Sun Global warranty**

In addition to the above Customer's remedies for breach of warranties, Sun will grant Customer further rights shown on the web-page <http://www.sun.com/service/support/warranty> (the "Warranty Web Page") in the event of material defects in materials and workmanship as at the date of delivery. Details on the above rights such as start dates, applicable response times, and duration will be included on the Warranty Web Page (a hard copy of which is available on request). Any changes to details specified on the Warranty Web Page will not apply to Products ordered by Customer prior to such change.

#### **4.5 Replacement parts**

Parts or components which are replaced under applicable warranty may be new or like-new. Title in all defective parts which are removed from Equipment under applicable warranty shall transfer back to Sun.

#### **4.6 Products excluded from rights in case of defects**

No warranty will apply to any Product which 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 relevant manual;
- c) repaired by any third party in a manner which fails to meet Sun's quality standards;
- d) improperly installed by any party other than Sun;
- e) used with equipment or software not included in Sun's Price List, to the extent that the problems are attributable to such use; or
- f) purchased from any entity other than Sun or a Sun authorized reseller.

## **Appendix 2 to the Purchasing Exhibit**

### **- Additional Provisions relating to Services -**

#### **1. Remote Services**

- 1.1 By purchasing any Services which are delivered remotely, Customer:
  - 1.1.1 agrees that Sun may access Products remotely at Customer's site, and may process and store Product data in order to remotely monitor, manage and service Products (all such data will be treated by Sun as Customer Confidential Information, except that Customer permits disclosure for the purposes of fulfilling this Agreement);
  - 1.1.2 commits to procure and maintain a Sun-specified bridge or gateway appropriate to the systems or networks involved, at Customer's expense; and
  - 1.1.3 assumes responsibility for all telecommunications and internet access charges related to the remote Services.
- 1.2 If Customer fails to permit or facilitate remote Services, Sun may assess additional charges for the delivery of Services which would otherwise be provided remotely, or decline to deliver certain Services.

#### **2. Systems Support**

##### **2.1 Individual Agreements**

For each Service to be delivered by Sun, Sun and Customer will execute an Individual Agreement or SOW which will detail the scope of the Services ordered by Customer.

##### **2.2 Customer Sites**

Systems support will be delivered to the Customer's sites and for the systems indicated on the relevant systems certificate ("Covered Systems"). Customer will give Sun at least 30 days' written notice prior to relocating Covered Systems, which notice must specify the new site. Support of relocated systems is subject to local availability and may be subject to additional fees, and to inspection and recertification of the relocated systems at Sun's applicable time and materials rates.

##### **2.3 Problem Avoidance**

Customer will perform routine system preventative maintenance and cleaning. Prior to requesting support from Sun, Customer will comply with all applicable operating and troubleshooting procedures, as posted on a Sun knowledge database or as otherwise provided by Sun. If such efforts are unsuccessful in eliminating the malfunction, Customer will promptly notify Sun. Customer will establish and maintain a procedure external to Covered Systems so that Customer can reconstruct lost or altered files, data, or programs.

## **2.4 Qualified Personnel**

Requests for hardware and software support may be made only by Customer personnel who:

- 2.4.1 possess the necessary expertise and training to diagnose and resolve system and software malfunctions with direction by Sun; and
- 2.4.2 are designated as "Contacts".

## **2.5 Additional Systems**

Customer may add systems to an Individual Agreement for a period coterminous with the term of the Individual Agreement at Sun's applicable, pro-rated, per-system fee, upon written notice to Sun and subject to Sun's right of inspection. Sun will provide to Customer an add-on Order Confirmation reflecting the additional Covered Systems and associated additional fee.

## **2.6 Eligible Systems - Automatic Eligibility**

Systems support is available for systems which are covered by a valid software license and are either still under Sun's global warranty or currently under an existing Sun support agreement. For any other systems, Sun, in its sole discretion, may elect to provide systems support provided that:

- a) the systems pass a Sun inspection; and
- b) Sun may place the systems under observation and that support coverage will only commence once the systems have operated for 90 consecutive days without experiencing a system failure, during which period required support will be charged on a time and materials basis.

## **2.7 Exclusions**

Sun will be under no obligation to perform Services in the event of:

- 2.7.1 improper use, abuse, accident, or gross neglect;
- 2.7.2 alterations, modifications, or attempts to repair Covered Systems by personnel not authorized by Sun;
- 2.7.3 causes external to a Covered System, such as failure to maintain environmental conditions within the operating range specified by the manufacturer;
- 2.7.4 attachment of a Covered System to equipment, software, or other items that are not included in Sun's Price List or the use of which was not permitted by Sun in writing;
- 2.7.5 problems caused by relocations or attempts to relocate Covered Systems; or
- 2.7.6 failure to maintain software and Covered Systems at Sun-specified minimum release levels or configurations necessary to keep a Covered System within the terms of Sun's applicable end of life support policy, or to install replacement parts, patches, software updates or subsequent releases.

Any support Services Sun delivers as a result of any such event will be invoiced separately at Sun's applicable time and materials rates, and will be subject to a separate agreement.

### **3. On-site Materials**

- 3.1 Customer will segregate, safeguard and designate as the property of Sun all tools, parts, spares, equipment and materials placed on a Customer site and for which title is not transferred to Customer ("On-Site Materials").
- 3.2 On-Site Materials may only be used by authorized persons consistent with the terms of the applicable Service Listing or SOW. Customer will have no right or interest in the On-Site Materials, and will not grant any liens or security interests therein. Customer assumes all risk of loss of or damage to On-Site Materials that may occur prior to their return and receipt by Sun.
- 3.3 Within ten days after termination or expiration of any Individual Agreement or individual order, Customer will deliver to Sun any On-Site Materials related to such Individual Agreement or individual order, with a bill of lading, freight charges prepaid and fully insured.

### **4. Non-Solicitation**

- 4.1 Without the prior written consent of Sun, Customer will not recruit any personnel assigned by Sun to perform any Services for Customer until one year after completion of the applicable Services.
- 4.2 "Recruit" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are, without Customer involvement, presented to Customer by a recruiting firm.
- 4.3 If Customer hires personnel in violation of this provision, Customer will pay Sun liquidated damages in an amount equal to the hired employee's total compensation for the six months preceding the date of hiring. Such amount will immediately be due upon the employee's hiring.

### **5. Intellectual Property Ownership and License Terms for Service Deliverables**

#### **5.1 Deliverables**

Subject to section 4.1 of the main text of this Exhibit, Sun shall own all Intellectual Property in the Deliverables. Rights not expressly granted under this Agreement or a SOW are reserved to Sun.

#### **5.2 License terms**

- 5.2.1 General scope of licenses:  
Sun grants Customer a non-exclusive and non-transferable license to use Deliverables for its internal use only.
- 5.2.2 Use of tools and Updates:  
Tools may be accessed only by Contacts for the sole purpose of diagnosing and resolving problems on Covered Systems. The provision of an Update will not alter any warranty on the Software previously licensed, and such Updates may be used or accessed only in connection with the use of Covered Systems.
- 5.2.3 License restrictions:  
Customer may not:
  - a) make copies of Deliverables, other than for archival purposes; or
  - b) modify, decompile, or reverse-engineer Deliverables.

Information required to achieve interoperability will be provided by Sun upon request.

## **6. Rights in case of defects (Warranties) for Services**

- 6.1 Provided that the law on sales of goods applies to the agreed Services, Customer's remedies are as specified in section 4 of Appendix 1 of the Purchasing Exhibit - Additional Provisions relating to Hardware and Software Products. In all other respects, Customer's remedies are as follows:
- 6.2 Sun must provide any Services to Customer in such a way that the work shall comply with the agreed quality and/or be performed according to the state of the art. Sun will start to correct, at Sun's expense, any defects occurring during the limitation period immediately upon receipt of a notice of defects. An agreement on the due Services shall not be deemed a warranty of quality as defined by § 639 Civil Code.
- 6.3 Such Customer remedies will become statute-barred within twelve months from the commencement of the limitation period which, as a rule, will be the date of acceptance. Such easing of limitation will not apply in the event of intent or gross negligence or personal injury or injury to health or life.

## **7. Charging Arrangements for Services**

### **7.1 Charges and invoices**

The charges for Services are as set out in the Price List or the applicable SOW. Charges for systems support Services shall be invoiced monthly, quarterly or annually in advance as agreed between the parties in the individual agreement. Invoices for other Services shall be rendered upon completion of such Services or monthly in the event the duration of Services exceeds one month.

### **7.2 Items not included in charges**

Unless otherwise provided for in the Service Listing or an SOW, the stated charges are exclusive of the following items (for which Customer is responsible):

- 7.2.1 all sales and other taxes based upon the value of the Services;
  - 7.2.2 reasonable travel expenses in the amount actually incurred by Sun;
  - 7.2.3 reasonable and necessary out-of-pocket expenses associated with Services designated as consulting services in a Service Listing or SOW ("Consulting Services");
  - 7.2.4 costs incurred by Customer or its employees in connection with their participation in educational services; and
  - 7.2.5 if applicable, transportation and insurance charges.
- 7.3 Any additional services will be billed separately according to an individual agreement.

## **8. Third party products**

- 8.1 Customer may from time to time request and Sun may agree to procure Third Party Products in conjunction with the provision by Sun of the Services. In such circumstances the terms and conditions of this Agreement shall apply.
- 8.2 Sun shall procure the requested Third Party Product(s) as a limited agent for Customer from the third party supplier and shall pass through to Customer any terms and conditions applicable, including terms of rights in case of defects and license terms in the case of software, as warranted or licensed by the third party manufacturer or importer.
- 8.3 All orders for Third Party Products are non-cancelable and non-returnable to Sun.
- 8.4 Sun will not be liable nor responsible for:
  - 8.4.1 any delays in delivery of Third Party Products;
  - 8.4.2 any rights in case of defects or continuing support and/or maintenance for any period of time but shall liaise between Customer and the third party supplier in respect of any rights in case of defects claims during the period of rights in case of defects, unless otherwise agreed in a SOW;
  - 8.4.3 continued compatibility of Sun products and Third Party Products; or
  - 8.4.4 patent or copyright infringements or the provision of an indemnity in respect of Third Party Products.

## **9. Miscellaneous**

### **9.1 Service availability**

Services may not be available in certain locations. Services are subject to availability of qualified Sun personnel and facilities and may be subject to additional costs or terms or to payment of minimum applicable fees. Sun may make Service substitutions and modifications that do not cause a material adverse effect in overall Service performance.

### **9.2 Limitations on use of Services**

Customer acknowledges that Services are solely for Customer's internal use, and Customer may not provide, lease, or resell Services, directly or indirectly, to any third party, unless, and only to the extent that, Customer is authorized by Sun in writing to do so.

## **10. Change Request**

- 10.1 During the term of the SOW the parties may at any time submit a written request for a change of the agreed scope of Services. Where a written change request is received, the recipient will review whether and on which conditions such change can be implemented, immediately inform the request's originator of the approval and/or rejection in writing and give an explanation, if appropriate.
- 10.2 In the event that a change request submitted by Customer requires an extensive review, a separate agreement will be made for such review. Sun may charge any costs incurred during such review to Customer. Any contractual modifications to the agreed conditions and services required for a review and/or change shall be specified in an amendment.

- 10.3 The periods to meet obligations to deliver and perform shall be extended by the calendar days during which Sun reviews change requests, prepares recommendations for changes, negotiates with Customer such recommendations or, as a result of the change request, the project implementation is interrupted upon the request of Customer. The periods to meet such obligations shall further be extended by a reasonable resumption period.
- 10.4 In the event that the parties fail to agree on a recommendation for a change within a period of 21 calendar days or if for technical, organisational or economic reasons, no recommendation can be issued in accordance with Customer's change request, Sun will continue to implement the SOW. In that case Customer has the right to terminate the Agreement pursuant to § 649 Civil Code.
- 10.5 Provided that the conditions which are the basis of the contractual relationship are modified essentially and such modification is not taken into account by the provisions of the Agreement, both parties may request the Agreement's amendment to the changed conditions.

## **11. Acceptance of Work Services, Error Classification**

- 11.1 In the event that work Services are provided, the delivery and the performance review of such Services will be made by an acceptance test. For Service parts that can be defined and economically used independently, Sun may request partial acceptance. In that case, the total project work will be deemed accepted upon the last partial acceptance ("final acceptance"). Partial acceptances already made will not be affected in the event that final acceptance is not made.

After completion of the acceptance test an acceptance protocol will be prepared in which the delivered work result will be compared with the prepared SOW and existing deviations will be assigned to the following error classes:

### **11.2 Error classification**

#### **11.2.1 Error class 1:**

An error occurs in a part of Services or in all Services due to which the appropriate and economical use is impossible, unreasonably restricted or impeded.

#### **11.2.2 Error class 2:**

Error class 2 includes any other deviation from the agreed Service targets.

### **11.3 Consequences**

In the event of problems of *error class 1*, the parties will agree on a new date for acceptance. Provided that problems of *error class 2* occur, the system will be deemed to be basically in accordance with the contract and in the acceptance protocol the parties will agree on how to correct such problems within which period of time.

- 11.4 Together the parties will perform the acceptance. The acceptance protocol must be signed by both parties. The date to be added to the signature will be deemed the time of acceptance.
- 11.5 In the event the acceptance test cannot be performed for reasons beyond Sun's control, the part of the Agreement's subject matter will be deemed accepted after one week following Sun's declaration regarding its readiness for acceptance. The productive use of Services is equivalent to an acceptance.



- 11.6 Unless otherwise agreed, the legal consequences of § 640 Civil Code shall apply on acceptance and/or partial acceptance.

**12. Sun Instant Upgrades (SIU)**

Within 90 days after purchase of the hardware, the customer may acquire a SunSpectrum service agreement at the more favourable price (the value of warranty shall be taken into account) during the warranty period, provided that the customer makes a pre-payment for the respective term (1, 2 or 3 years). Additional details shall be included in the respective individual contract.

**13. End of Service Life**

In the event of individual agreements for products that are no longer distributed, Sun will continue to provide service for a period of five years after notification that the products are no longer distributed ("End of Life", "EOL"). The same applies if an EOL for an individual product is issued and such product is listed on a system certificate along with other products. In that case Sun is entitled to partially terminate service for the product concerned and will issue an updated system certificate for the customer as may be required.

## Schedule on Price Lists and Discounts

This Schedule sets out the Price Lists and discounts applicable to Customer's purchase of Products and Services.

A. Customer Name:

B. Customer's Individual Contact Details:

Name:  
Address:

Phone:  
Fax:  
Email:

C. Products:

In case of Customer's Product purchases from Sun, the discounts are for the period as of the Exhibit Effective Date until *[insert end date]* as set out below:

a)	<u>International Price List</u>	<u>Country Price List</u>
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A	B	C
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Product Category

Category A:  
Category B:  
Category D (non-discountable):  
Category H:  
Category J:  
Category K:

Category M:  
Category P:  
Category \_\_\_\_:

To be eligible for all discounts for Product purchases effected in several countries, an approval under the Sun Passport Program will be required. Such discounts will be subject to special reporting guidelines specified in the Sun Passport Program.

Certain Products may not fall into any of the above categories; the discounts, if any, applicable to such Products may differ from the discounts on this Schedule. In addition, discount limits may apply to certain Products in which event the foregoing discounts may be reduced to the discount limit.

For Product purchases within the European Union, in Norway and Switzerland, the Sun International Price List C which also includes Euro prices shall be available. As specified below, Customer will choose the Euro or the USD version with regard to such purchases (and Customer will make its payments in the appropriate currency):

( ) Euro ( ) U.S. Dollar

D. Services

Services discounts may be available for Customer's purchase of Services, subject to the Price List, discount eligibility criteria, and standard discount level applicable to Customer's purchase. The type(s) and level(s) of Services discount(s) currently applicable to Customer's purchase of Services is (are):

**[Insert or attach table]**