

# Sun Contract Terms for Products and Services



## 1 Introduction

These contract terms apply to your dealings with us when buying our products and services.

## 2 Business and financial terms

### 2.1 Placing an order

To buy a Sun product or service you must send a purchase order to us or, if you meet our requirements for placing orders electronically, you may send your order to us electronically in the way we tell you.

### 2.2 How we accept an order

We will show that we have accepted your order by:

- shipping the product;
- starting to provide the service; or
- sending you a written acceptance.

You agree that these contract terms apply to any order we accept.

### 2.3 Your right to change or cancel an order

You may:

- cancel or change an order for a service at any time before we start to provide the service or run up costs in preparing for the service; or
- cancel or change a hardware or software order no later than 15 days before the scheduled shipment date;

free of charge.

You may cancel a hardware or software order within the 15 days before the shipment date if you pay a charge equal to 3% of the cancelled order.

You may not cancel or change a hardware or software order that we have shipped.

### 2.4 The price

The price shown will be the price of the product or service after all discounts. No further discounts will apply. Prices do not include taxes and duties. You must pay all taxes and duties, but not any taxes on our income. Not all products or services are available at all locations.

### 2.5 Payment terms

You must pay each of our invoices within the time shown in the table at the end of these contract terms unless we do not allow you to buy on credit, in which case you must pay before we ship a product or provide a service. We will tell you if we do not allow you to buy on credit. You must pay in the currency we state unless you and we have agreed otherwise in writing.

For products, we will invoice you when we ship the product. The proper time for us to invoice you for services depends on the type of service. For services such as maintenance, we will invoice you every year, every three months or every month for

## Sun Contract Terms for Products and Services

the period ahead. For consulting services, we will invoice you every month at or after the end of the month for the services provided in that month. The quotation we give you may state a different time for us to invoice you.

### 2.6 Delivery

INCOTERMS 2000 are internationally accepted terms for delivering goods. They cover subjects like the point at which the buyer becomes responsible for any loss and transportation costs and who has to pay customs duties. We will ship and deliver products to you under the appropriate INCOTERMS 2000 term for your country. The appropriate term and the relevant website you can view it on are shown in the table at the end of these contract terms.

We may deliver only part of your order and invoice you for the items delivered. You will be considered to have accepted a product when it is delivered.

### 2.7 Other companies' products

When we sell you another company's product, we will give you paperwork setting out your rights in connection with the product.

We pass to you all rights in the product that the other company allows us to pass on, such as license rights if the product is software.

The paperwork we give you will tell you if the other company has any responsibilities to you. For example, the paperwork may state that the other company will provide you with direct support under a warranty.

After we deliver the other company's product to you, we have no further responsibility for the product unless we have agreed otherwise in writing. Once you place an order for another company's product, you may not cancel or change the order.

If we give you the same warranties and other rights that you would have if the product were one of ours, that will be stated in the product's paperwork.

### 2.8 Exporting and importing

Anything we supply under these contract terms, including products, services, technology, materials, tools, and technical data may be subject to the trade, commerce and export control laws of Canada and other countries, including the United States. You must comply with all applicable trade, commerce and export laws of these countries, including but not limited to those which may prohibit export to certain destinations or require that you obtain export or import permits and licenses from governmental trade authorities.

If you want to give us any technical data or information that is covered by 'ITAR', that is to say, the International Traffic in Arms Regulations of the U.S. Department of State (22 CFR Subchapter M Parts 120-130) or the National Industrial Security Program Operating Manual (DoD 5220.22-M), you must give us notice in writing before you give us the data or information. The notice must be early enough and give enough detail to allow us to comply with ITAR. You must give us only the data and information we need from you to help us to meet our contractual obligations to you.

### 2.9 Uses that are not allowed

You must not use anything we supply under these contract terms:

- to make missiles or nuclear, chemical or biological weapons; or
- in the design, construction, operation or maintenance of the power production functions of a nuclear facility.

### 2.10 Publicity

We may say that you are a customer. However, unless we have your permission in writing, we will not quote you or give details of the products or services you have bought from us.

## 3 Hardware

### 3.1 Timescales for shipping hardware

## Sun Contract Terms for Products and Services

We publish lists of timescales for shipping hardware, which are not guaranteed. We will either:

- give you the current timescales for hardware, or tell you where to find the timescales, and confirm which of them applies to the hardware you have bought; or
- state an estimated date for us shipping the hardware to you.

### 3.2 Content of hardware

Our hardware or parts of it may be new or used, but any limited warranty we give will still apply.

## 4 Software

### 4.1 Your software license

You do not own any software that we provide to you including firmware (software built into a hardware product). We grant you a restricted and limited license to use the software, as provided by us, internally within your business. (We provide software only in 'binary' form.) We keep all other rights in the software, such as copyright.

Your license is always restricted as follows.

- You can make one copy of the software and use that copy only as a back-up record.
- You must not alter the software.
- You must not rent, lease, or lend the software.
- You must not redistribute the software.
- You must not take the software apart to analyze it or produce a copy of it by examining its code.
- You must not allow others to use or have access to the software in any way for them to provide diagnostic, maintenance, repair or technical support services to you or others, and you must not use the software in any way that allows third parties to provide such services.
- If the software contains elements that make functions in the software work, you must only use those elements in connection with the software.

Our documents for some software products may list exceptions to these restrictions. We may give you a separate software license agreement that will apply instead of or as well as the sections above. Any separate software license agreement will tell you how you can use the software and set out any rights, responsibilities, limits and restrictions. We also tell you about other business and financial terms in the document (or set of documents) called 'your entitlement'.

The way we might communicate the software license agreement and the entitlement depends on how we deliver the software to you. For example, we may provide them as part of or along with your receipt, your invoice, or in electronic form if you download software. With the software we may also give you extra terms that state other limitations and rights. All these terms apply to your license to use the software.

Below we have set out examples of what your entitlement and any separate software license agreement between you and us, would cover. There may be other matters covered. The examples are as follows.

- The fees you pay.
- How long you have the right to use the software.
- How you may use the software.
- Any services we will provide in connection with the software.
- The machines or other units which you can run the software on.
- The number of your people allowed to use the software at the same time.
- The number of copies of the software you can make and for what purpose.
- The terms applying to software updates.
- The automatic collection of information from your system and automatic software updating services.
- Restrictions on publishing the results of benchmark or comparison tests.
- Any limits on the intellectual property indemnity we provide to protect you from claims that the products we have provided undermines another's intellectual property rights (rights to property as a result of ideas or creativity).

## Sun Contract Terms for Products and Services

### 5 Services

#### 5.1 Listings of services offered and prices

We publish listings (called service listings) of support, consulting, training and other services we usually offer. You can find a list of services on our service listings website shown in the table at the end of these contract terms.

#### 5.2 Accepting and using services

You will be considered to have accepted our services when they are provided, unless the statement of work says otherwise.

Unless a service listing or statement of work says otherwise, the services we provide are for internal use for your and your businesses' benefit only and you cannot sell or transfer them.

#### 5.3 Extra conditions for support services

When you buy a support service we have offered, we will support a named product:

- for a set fee;
- for a fixed term; and
- at a set place;

as long as the following apply.

- You have got the product from us or a source we have authorized in writing.
- The product is within its useful life, as set out in the product's documents or other written communication.
- The product has been installed and used in line with our instructions and recommendations.
- If the product was repaired or altered, this has been done in line with our instructions and recommendations, and by us or someone we have authorized in writing.
- The product incorporates all updates recommended by us.
- The product has not been moved from the agreed location, unless you have moved it in line with our recommendations and with our permission.
- The product has not been damaged by misuse or other factors such as accidents or harmful environmental conditions.

If you fail or the product fails to meet any of these conditions, we may still work on your product. In that case we will charge you for our time and materials for some or all of the work.

If the product is not currently covered by a warranty or an agreement for support services, we may monitor the product. We will charge you for our time and materials during the monitoring period. At the end of the monitoring period we will either:

- offer you support services for the product; or
- tell you that the product does not qualify for Support Services.

#### 5.4 Asking for support services through a limited number of qualified people

If a service listing limits you to a number of authorized contacts, you must not go over this limit. Your contact people must be technically qualified to follow our instructions.

#### 5.5 Support service agreements

The support-service agreement between you and us sets out an initial term. You and we cannot end the support-service agreement during the initial term.

If the description of a support service states that the agreement will automatically continue for a 'renewal term' after the initial term, then:

- we will give you notice of this at least 60 days before the end of the initial term (or any renewal term);

## Sun Contract Terms for Products and Services

- our notice will set out any price changes or other changes for the renewal term;
- if you do not want to renew the agreement, you must tell us within 30 days of our notice; and
- if you do not send us a notice that you do not want to renew the agreement, we will send you a confirmation of your renewal.

Even if the support-service agreement states that it will automatically be renewed, we can cancel the service at any time after the initial term. In that case, your agreement for those services will end at the time we specify.

### 6 Warranties

#### 6.1 Limited warranty on hardware

We offer a limited warranty on hardware in countries where we offer local services or support. There is a list of the countries where we offer local services or support on our warranty country list website shown in the table at the end of these contract terms.

If your product is installed where we do not offer local service or support, contact your Sun representative to find out about the cover provided under our warranty.

We warrant (guarantee) that, for a fixed period, hardware covered by our limited warranty will not be seriously faulty in materials or workmanship. Our limited warranty applies to new products and may apply to other products that we have stated in writing. We give more details of what products and parts are covered (and not covered) by our limited warranty on the warranty website shown in the table at the end of these contract terms.

The 'other companies' products' section in these contract terms explains the position on warranties that may be available for other companies' products.

Our limited warranty is the only warranty we provide for hardware.

Our responsibility to you for a fault in hardware is limited to repairing the product or replacing it, as we see fit, free of charge. If repairing or replacing the hardware would be expensive, we will refund an amount equal to the net book value of the hardware, or give you credit up to that amount.

All faulty parts which are removed from hardware under our limited warranty will belong to us.

#### 6.2 The term of the limited warranty

The term of the limited warranty is shown on the product warranty chart on the warranty website shown in the table at the end of these contract terms. The product warranty chart shows that some products have to be installed by the customer. The warranty for these products starts when we ship them. For all other products, the warranty starts when we install the product.

If a part, accessory or upgrade to a product is added later, the warranty on what is added:

- starts when it is added; and
- ends when the warranty on the product ends.

However, if the warranty on your product had already ended when you added the part, accessory or upgrade, what you added will have its own warranty term. You can find the term of the warranty for that part on the product warranty chart on the warranty website shown in the table at the end of these contract terms.

#### 6.3 When the warranty does not apply

You cannot claim under the warranty in the following circumstances.

- If you did not buy the product from us or a person authorized by us in writing. In this case, you may also be breaching (breaking) the license terms governing the use of all or part of the product.

## Sun Contract Terms for Products and Services

- If you first installed the product in the European Economic Area and you are no longer using it in the European Economic Area. (If you did not first install the product in the European Economic Area, to make a claim you must be using the product in the country where you first installed it).
- The serial number tag is missing or shows evidence of being tampered with.
- The product has been taken apart.
- You misuse a product by:
  - altering it without our permission in writing;
  - treating it badly or not following our instructions or recommendations;
  - having it installed, incorrectly, by someone not authorized in writing by us; or
  - having it repaired by someone not authorized in writing by us.

### 6.4 Making a claim under our warranty

Visit our on-line support center, or contact your local technical support centre (at the website shown in the table at the end of these contract terms), to find out:

- how to ask for a repair, replacement or refund under the warranty;
- details of information you need to give us;
- action you may need to take; and
- further details of your limited warranty.

### 6.5 Limited warranty on software

We provide all software without any warranty. We warrant that the disc or other media the software is provided on will be free of faults when used normally. You must make any claim for faults in software media within 90 days of you buying it. If you do this, we will replace the faulty software media or refund the fee you paid for it.

This is the only warranty on software that we give you.

### 6.6 Warranty for our services

We warrant that we will perform services in a good and competent way.

You must make any claim for a fault in our services within 90 days of the date we provided the service. We may choose to put the matter right by:

- providing the service a second time to correct the fault; or
- giving you a refund or credit equal to all or part of the cost of the service.

This is the only warranty we provide on services.

### 6.7 No warranty that products are free from errors

We do not warrant that any product will:

- be free from errors; or
- run without interruption.

### 6.8 No other warranties

The warranties explained in these contract terms are the only warranties we provide for our products and services. If a local law states or indicates that there is any other warranty or term, we do not accept this.

For example, some local laws state that our products must be of satisfactory quality, fit for the purpose the products will be used for, and should not infringe (undermine) other people's rights. We reject all this.

### 6.9 When local law may override these contract terms

## Sun Contract Terms for Products and Services

The laws of some countries do not allow us to limit our warranties, and some may give you specific legal rights. In this case the 'no other warranties' section above may not apply to you and you may have extra rights.

### 7 Damages

#### 7.1 Limit on direct damages

For claims arising from our dealings under these contract terms, our liability to you for all claims is limited to US \$2 million, or in the case of purchases, to the amount paid by you during the previous 12 months for the product or service that is the subject of your claim up to a maximum of US \$2 million, and your liability to us for all claims is limited to the same amount.

These limits of liability apply to any claim made by you or us, for whatever reason, except claims:

- based on you or us misusing or violating (not respecting) the other's intellectual property;
- for personal injury or death of a person as a result of the other's negligence; or
- for payment under a purchase order.

#### 7.2 No right to claim certain damages

You give up your right to recover from us any of the types of damages listed below that arise out of or in connection with any business covered by these contract terms. This applies even if you tell us that you are suffering a loss. We also give up our rights in the same way.

The types of damage you cannot recover are:

- punitive damage (damages imposed as punishment for extremely bad conduct and to deter the conduct in the future);
- damages for loss of information;
- damages for loss of use;
- lost profits;
- lost income;
- damage to goodwill;
- loss of economic advantage;
- incidental damages (various expenses that a breach (break) directly caused, such as your cost of storing faulty hardware until we replace it); and
- indirect or consequential damages (those caused indirectly by the breach).

Some laws do not allow us or you to give up rights to some or all of the damages listed above. In that case, the information above may not apply. Also, we and you do not give up our rights to damages resulting from the other's intellectual property being misused or violated.

### 8 Intellectual property and confidential information

#### 8.1 Respecting our trademarks

When you buy one of our products or services, this does not give you any right to use our trademarks for any purpose. You must not use any of our trademarks under any circumstances. You must not remove our trademarks from any of our products or services, or alter those trademarks. Also, you must not add any other trademark to any of our products or services. You may refer to our products and services by their full names as long as this is not misleading and meets our trademark and logo policies set out on our trademark and logos website shown in the table at the end of these contract terms.

#### 8.2 Confidential business information

You and we must not disclose (release) the other's confidential business information. Confidential business information is:

- any discount or price that we offer you;
- the contract terms between you and us;

## Sun Contract Terms for Products and Services

- information given in writing and marked 'confidential'; and
- information given over the phone or in person and confirmed in writing as 'confidential'.

This clause does not apply to:

- information you or we receive from a third party, as long as you or we do not know that the third party is breaching (breaking) confidentiality;
- information that becomes known to the general public through no fault of the person the information was given to;
- information that you or we have to provide by law, as long as the person providing the information gives the other person notice of this and allows them to challenge this at the other's expense.

### 8.3 Intellectual property in services

Parts of these contract terms that refer to software will apply to any software we supply when we provide services.

If we supply other intellectual property when providing services, we grant you a license to use that intellectual property internally for your business. You agree that we own any intellectual property created in connection with us providing services to you. We grant you a license to use that intellectual property internally for your business. You agree to work with us, following our instructions and at our expense, to make sure that the created intellectual property is owned by us.

Your license is fully-paid and lasts forever. You cannot transfer your license, and we can grant the same license to others.

### 8.4 Intellectual property indemnity

We will defend, at our expense, any legal proceeding that someone brings against you because they consider that any hardware, software or service you buy from us infringes someone's patent or copyright, or misuses someone else's trade secret. We may also settle that claim. However, we will not defend you against such claims relating to products not listed on our standard price list (except as set out in the product's or service's documents).

We will indemnify you against (protect you from liability for) all your damages and costs relating only to the claim awarded by the court making the final decision on the case.

If a court finds a claim is valid, or we believe that this may be the case, and the claim relates to hardware or software, we will take one of the following steps (if practical).

- Get a license for you to continue using the product as it is.
- Alter the product or replace it, without changing either the way it performs or the results you get from using it.

If we do not think either of these steps is practical, you must stop using the product. In that case, we will refund the price you paid for the product, less an amount for the benefit you gained from using the product. We will work out the benefit gained based on a consistent reduction in value over five years.

If a court finds that a claim is valid, or we believe that this may happen, and the claim relates to a service, we may choose to alter or stop providing the service. If you do not want the altered service, or if we stop providing it, we will have no liability to you other than to refund you any prepaid fees for the remaining service.

The following conditions apply to this section.

- The hardware or software must be in the form originally provided by us, unless it has been altered by us.
- You must give us notice of the claim as soon as possible.
- You must give us all available information and help that we need to defend the claim. We will refund your expenses in providing this information and help.
- You must allow us to control the defense and settlement of the claim.
- You must not settle the claim without our written permission.
- If a court finds that a claim is valid, or we believe that this may happen, you must allow us to alter or replace the relevant product.
- If a court finds that a claim is valid, or we believe that this may happen, and we do not think it is practical to alter or replace the product, you must stop using the product and accept a refund.

## Sun Contract Terms for Products and Services

We will not defend you or protect you against the following types of claim.

- Any claim that arose because you used our hardware or software in combination with another company's hardware, software, services, or materials.
- Any claim that could have been avoided if you had used a version of a product that we provided to you.
- Any claim that arose because we followed your designs or specification.
- Any claim that arose because you breached (broke) the terms of a license from us.
- Any claim that relates to 'open source' software (software that can be altered by users) that was not built into our product when it was originally made.
- Any claim that relates to Linux open source software, even if it was built into our product when it was originally made.

Our documents (including the software license agreement, the entitlement or extra terms) for some products may state further conditions and exceptions to this section.

This section sets out our entire responsibility for any claim that a third party brings against you because hardware, software or service you bought from us may have breached (broken) their patent or copyright, or misuses someone else's trade secret.

You will defend and protect us on the same terms as set out in this section in connection with anything you have provided to us.

### 9. General conditions

#### 9.1 Records and audit

You must keep copies, for at least three years, of all purchase orders, quotations, invoices and other documents that record (by description, serial number and quantity) the identity and location of all our hardware and software supplied to you.

You must allow us or our independent audit firm to carry out an audit of the documents to make sure you have kept to these contract terms and software licenses. This audit will be carried out on your premises and during your normal business hours. We will give you five days' written notice of the audit.

We will keep to our obligation in these contract terms relating to confidential business information gained during the audit.

We will carry out audits in a way that avoids unreasonable inconvenience to your business. We will not carry out an audit more than once a calendar year unless we have good reason to think that you may not have kept to these contract terms.

#### 9.2 Protecting personal information

You authorize us to process your authorized contact person's personal information in connection with selling and delivering our products and services. You agree to us making the personal information available for this purpose to people we appoint to process or meet the terms of a purchase order.

You must tell your authorized contact person about their information being processed and get their permission in writing. If you ask, we will give you reasonable details about how the information is processed.

You will defend and indemnify us, at your expense, against any claim that any authorized contact person may bring against us in connection with us processing their personal information.

You agree that your data, such as your address, delivery and services specifications, installation address, will be used and distributed within Sun and its related companies and to certain third parties, such as subcontractors within your country and abroad.

#### 9.3 Transferring rights and duties

We may transfer our rights under any purchase order. This includes our right to receive payment.

## Sun Contract Terms for Products and Services

We may supply products or services directly to you or appoint someone else to do this. However, if we do this it will not change our responsibilities to you.

You may not transfer your rights under a purchase order to anyone else without our permission in writing. However, we will not unreasonably withhold our permission.

When you sell any hardware, you may transfer your license for using the software that was originally part of that hardware as long as:

- you have owned the hardware for at least one year; and
- the person buying the hardware agrees, in writing, to keep to the license.

You may not transfer your duties under a purchase order without our permission in writing. This includes your duty to pay us. However, we will not unreasonably refuse to give our permission. Before giving our permission, we must be satisfied with the financial security of the company that would be performing the purchase order instead of you.

### 9.4 Notices

All written notices that must be given under these contract terms must be delivered in person or in a way that provides proof of delivery. The notice will take effect when it is received. An e-mail, posted letter or fax can be a notice as long as there is written proof that it was received. Notices to us must be sent to the addresses shown in the table at the end of these contract terms. We will send you notices to the address you give us in writing or your usual trading or registered address.

### 9.5 Your relationship with us

You and we are not partners, agents, trustees or employees of each other. You and we are independent contractors. You and we have no right to commit the other to any obligation.

### 9.6 Our personnel

You should not hire any employee that we assign to provide professional services to you for one year after the services are delivered unless you get our prior written permission. If you do not comply with this requirement, you must pay us damages equal to six months of pay and benefits for the person you hire. This does not apply if the person you hire applied on his or her own behalf in response to an advertised job opening.

### 9.7 Duration of these contract terms, and ending them

These contract terms take effect when you issue a purchase order for the relevant product or service. These contract terms end for that product or service after we ship the product to you or stop providing the service.

### 9.8 Terms that continue

Rights and obligations under these contract terms which, by their nature, should continue will stay in effect after these contract terms end. These rights and obligations include those in the sections headed Payment terms, Exporting and importing, Uses that are not allowed, Your software license, Warranties, Damages, Intellectual property and confidential information, Records and audit, Protecting personal information, Governing law, and Settling disputes.

### 9.9 Governing law

These contract terms are governed by the governing law shown in the table at the end of these contract terms. That law will apply as though you and we entered into the agreement between us and provided the goods or services there. The United Nations Convention on Contracts for the International Sale of Goods does not apply. No conflict of law rules of any state or country apply.

You and we agree that these contract terms and all other documents exchanged between us will be written in English. Nous convenons que ces termes et conditions et tout autre document soient rédigés en anglais.

### 9.10 Settling disputes

## Sun Contract Terms for Products and Services

If a dispute arises out of these contract terms, you and we must not sue each other until we have tried to negotiate a settlement. If negotiations do not produce a settlement within 90 days of the date the dispute was first made known, you or we may take the dispute to the court or other tribunal in the venue and according to the rules shown in the table at the end of these contract terms.

Also, without trying to negotiate first:

- either of us may go to court to get an injunction or a similar remedy; and
- you may make a claim in court under the warranty sections of these contract terms.

### 9.11 The documents that form your contract

These contract terms refer to some other documents. Examples of this are warranty terms for specific products, and delivery policies. Any documents that these contract terms refer to are also part of your contract with Sun.

If you accept a quotation from us by signing it, or signing a purchase order relating to it, this also forms part of your contract with us. If a quotation you accept conflicts with these contract terms, these contract terms take priority. A quotation from us and these contract terms take priority over your purchase order. If a document these contract terms refer to, other than a quotation or purchase order, conflicts with these contract terms, the document referred to takes priority.

The following are not included in your contract with us.

- Spoken discussions
- Spoken presentations and written presentation materials
- Written proposals or counterproposals
- E-mails
- Anything contained in your purchase order that is inconsistent with any part of your contract with us or that places an extra obligation on us

#### Table:

Our full name	Sun Microsystems of Canada, Inc
Delivery table	<a href="http://www.sun.com/sales/delivery-terms/index.html">http://www.sun.com/sales/delivery-terms/index.html</a>
Service listings	<a href="http://www.sun.com/service/servicelist">http://www.sun.com/service/servicelist</a>
Warranty country list	<a href="http://www.sun.com/service/warranty/country_list.html">http://www.sun.com/service/warranty/country_list.html</a>
Warranty	<a href="http://www.sun.com/service/support/warranty">http://www.sun.com/service/support/warranty</a>
Support center	<a href="http://www.sun.com/service/support/warranty">http://www.sun.com/service/support/warranty</a>
Trademark and logo	<a href="http://www.sun.com/policies/trademarks">http://www.sun.com/policies/trademarks</a>
Notices to us	Legal Department 27 Allstate Parkway, Suite 700 Markham, Ontario L3R 5L7 Canada
Governing law	Ontario and applicable laws of Canada
Venue	Judicial District of Toronto, Province of Ontario
Payment Terms	30 days from the date of invoice