

## Contract Terms that Apply to the Sun Startup Essentials Program

**Please read these contract terms carefully. By clicking on the 'Register' or 'Send' button in the Program Application, you are confirming that you accept all these terms. If you do not agree to all these terms, do not click on the 'Register' or 'Send' button. If you do this, you will not be able to join the Program.**

### 1 Introduction

When you participate in the Sun Startup Essentials Program, these contract terms and any additional country specific terms set out on our program website will apply to your purchases through, or participation in, the program. The program website is shown in the table at the end of these contract terms.

Sun may change the Startup Essentials Program from time to time and will notify you of changes by posting them on the website.

### 2 Your commitments

- You guarantee that you meet all of our program eligibility requirements as stated on the program website at the time you enter the program and throughout the term of this agreement. Unless provided otherwise on the program website, such requirements may include, but are not limited to your company:
  - being in business for six years or less;
  - having a maximum of 150 employees, including any affiliates;
  - being based in a country in which the program is offered; and
  - having a verifiable company presence (company name, street address [no post office boxes allowed], etc.).
- The person applying for your company's membership in the program is fully authorized by the company to apply on the company's behalf.
- All of the information that you provide in the program application is true and correct.
- When you give us materials and information, you have the authority or permission of your company to do so.

### 3 Authorized contact

You agree to name an authorized contact person for the program and to inform us if you change the authorized contact person, or make changes to how they may be contacted. We may end your participation in the program if we are not able to reach your authorized contact person using the information you give us.

### 4 Purchases and discounts

If you buy products or services from a Sun authorized reseller, the terms and conditions between you and the reseller will also apply to those sales. For the purposes of this agreement:

- "products", which are listed in Sun's standard price lists published from time to time, mean:
  - hardware (including components), software media, and spare parts;
  - software and firmware;
  - any updates; and
  - any related user manuals or other documentation;
- "services" mean:
  - any offering described in our published service listing, and
  - any other service offerings that you and we agree on, including services described in any statement of work.

These contract terms set out your obligations for membership in, and purchases through, the program. If you buy from us and you already have a contract with us, the terms of that contract will apply to your purchase; otherwise our Sun Contract Terms for Products and Services will apply to your purchase. Our Sun Contract Terms for Products and Services are set out on the website shown in the table at the end of these contract terms.

The following terms also apply when you buy products or services under the program:

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- Program discounts apply only to those products or services we make eligible for sale under the program.
- You may buy a maximum of U.S. \$150,000 in products or services under the program each year.
- You cannot participate in the Startup Essentials Program if you are a Channel Partner member of the Sun Partner Advantage Program. If you join the Sun Partner Advantage Program as a Channel Partner after you joined the Startup Essentials program, your membership in the Startup Essentials Program will automatically end on the day that you become a Channel Partner in the Sun Partner Advantage Program.
- You cannot combine discounts under the Startup Essentials Program with discounts under any other Sun program.

### 5 Confidential business information

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

- the contract terms between you and us;
- 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.

### 6 Right to publish and data protection

Except for your confidential information, we may freely use the fact that you are a member of the program and all materials and information you provide under the program in promotional materials, press releases, presentations, and customer references. We will obtain your prior written approval if the publicity contains claims, quotes, endorsements, or attributions by you, in which case your approval must not be unreasonably withheld.

If you have non-confidential materials or information you do not want us to use in this manner, do not submit them to us through the program.

### 7 Exporting and importing

Unless you and we agree otherwise in writing, all products purchased or licensed under the program must be used only in the country to which the products are first shipped to you and you cannot ship those products or use them elsewhere.

US export controls and the trade laws of other countries may apply to anything supplied to you under these contract terms including products, services, technology and anything else. You must comply with all relevant export- and import-control laws and regulations. You are responsible for getting any licenses needed to export, re-export or import. You agree not to export or re-export to anybody on the most current US export exclusion lists or to any country under US embargo (ban on trade) or terrorist controls. For important information about US export regulations relating to our products, visit our site about export regulations as shown in the table at the end of these contract terms.

Unless authorized by the US Government, you will not directly or indirectly export or re-export software or technology regulated under the license exception 'Technology And Software Under Restriction (TSR)' to destinations in country groups D:1 or E:2 (as defined in part 740 of the US Export Administration Regulations). You can find the list of these countries at the US export regulations website shown in the table at the end of these contract terms.

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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.

### 8 Uses that are not allowed

You must not use anything you buy 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.

You will defend and indemnify us, at your expense, against any claim that you breached (broke) this provision of these contract terms.

### 9 Intellectual property and conditions to resell or transfer products

#### 9.1 Software licensing and restrictions to resell products

If you license any computer software products through the program, the end user license agreement delivered to you with the product will apply to your use of the licensed software.

Products or services purchased and licensed under this program cannot be sold or transferred by you to anyone else for one year from the delivery date unless you give us information about the proposed transfer, including your reasons, and we give you written permission to do so. The information you must provide to us includes:

- which product(s) you want to sell,
- the net invoice price of that product(s), and
- an estimate of the then fair market value of the product(s).

If we give you written permission to sell or transfer products to someone else, we will have the right of first refusal to repurchase such products from you at the lower of:

- net invoice price of the products, or
- the then fair market value of the products.

Your failure to comply with this provision will be considered a material breach of these contract terms and will subject you to financial recoveries equal to the difference between the list price of the product(s) at the time of purchase and the discounted price you paid for the product(s). These financial recoveries will be sought from you for each purchase made by you through the program. Any material breach of these contract terms may also result in the cancellation of your participation in the program.

If, at any point during your participation in this program you are no longer using the product and decide to retire the equipment, you will contact us to coordinate proper recycling.

Subject to the terms and conditions set forth in these contract terms, when you sell any hardware, you may transfer your license for using the software that was originally part of that hardware as long as the person buying the hardware agrees, in writing, to keep to the license.

#### 9.2 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.

## **10 Damages**

### **10.1 Limit on direct damages**

For claims arising from our dealings under these contract terms, our liability to you for all claims is limited to the amount paid by you during your participation in the program for our products or services up to a maximum of U.S. \$150,000, 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 the unauthorized sale or transfer of products or services purchased and licensed under this program.

### **10.2 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 dealings 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, except in case of an unauthorized sale or transfer of the products purchased through the program by you in violation of section 9.1 (Software licensing and restrictions to resell products).

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 directly caused by a breach (break) of these contract terms); 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.

## **11 General conditions**

### **11.1 Records and audit**

You must keep copies, for at least three years, of all 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.

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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.

### 11.2 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.

### 11.3 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.

### 11.4 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.

### 11.5 Duration of your participation in the program

Unless otherwise terminated, your participation in the Startup Essentials Program will end on the last day of the anniversary month in which you became a participant of the program.

If not otherwise terminated, after your participation in the program ends, you may re-apply.

If we believe you did not comply with any of the applicable terms, we may suspend your program participation. We will send you an email setting out the reason(s) for the suspension. If we choose to investigate further, we will send you an email notice telling you whether your participation in the program has ended, or if you can still participate. We will not investigate or send you a follow on email notice if you are suspended from the program for failing to update your authorized contact information.

### 11.6 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 Confidential information, Exporting and importing, Uses that are not allowed, Software licensing and restrictions to resell products, Damages, Intellectual property, Records and audit, Protecting personal information, Governing law, and Settling disputes.

### 11.7 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 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.

### 11.8 Settling disputes

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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.

### 11.9 The documents that form your contract

These contract terms refer to some other documents. Examples of this are any additional country specific terms set out on our program website. Any documents that these contract terms refer to are also part of your contract with us.

If you buy from us, in the event of a conflict between these contract terms and our standard terms and conditions for the sale of products and services, these terms will govern your obligations to maintain participation in the program, and our standard terms and conditions for the sale of products and services will govern the sale of the product or service you purchased.

The following are not included in your contract with us.

- Spoken discussions
- Spoken presentations and written presentation materials
- Written proposals or counterproposals
- E-mails

In the event of any discrepancy between the English version and any non-English version of these contract terms, the English version will prevail.

### Table

Our full name	Sun Microsystems (South Africa) (Pty) Limited
Sun Startup Essentials program website	<a href="http://www.sun.com/emrkt/startupessentials/">http://www.sun.com/emrkt/startupessentials/</a>
Sun Contract Terms for Products and Services website	<a href="http://www.sun.com/sales/salesterms/">http://www.sun.com/sales/salesterms/</a>
Our site about export regulations	<a href="http://www.sun.com/sales/its/">http://www.sun.com/sales/its/</a>
U.S. export regulations	<a href="http://www.access.gpo.gov/bis/ear/ear_data.html">http://www.access.gpo.gov/bis/ear/ear_data.html</a>
Trademark and logo	<a href="http://www.sun.com/policies/trademarks">http://www.sun.com/policies/trademarks</a>
Notices to us	Legal and Compliance Department Waterfall Edge Phase 1 Waterfall Park Bekker Street Midrand 1685 South Africa
Governing law	South Africa
Venue	South Africa

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