SGI Federal Terms and Conditions of Sale

1. ORDERS; ORDER ACCEPTANCE. These Terms and Conditions of Sale (the "Terms") constitute the only terms and conditions that apply between Silicon Graphics Federal, LLC ("SGI") and you (the "Customer" or "you") regarding your purchase and license of SGI products that are sold or licensed or otherwise provided by SGI to Customer from time to time (collectively, the "Products"). These Terms will govern any order, such as a purchase order or Customer's signature on a quotation or proposal (each an "Order") accepted by SGI. Customer's placement of an Order with SGI constitutes acceptance of these Terms. You agree to submit your Orders for Products in writing, stating the quantities and descriptions of Product required, applicable purchase prices and license fees, requested delivery dates and billing/shipping instructions, and such information shall specify either (i) individual part numbers (SGI marketing codes) or ii) an explicit reference to the relevant SGI quote. SGI reserves the right to reject any Order that fails to comply with these Terms.

2. PRICE; INVOICES; PAYMENT TERMS
   a. Price. SGI proposals or quotations constitute an offer to sell Products under these Terms. SGI's invoice price for Product ordered by you will be the applicable price stated in SGI's U.S. price book in effect on the date SGI receives your Order. The price does not include transportation or installation charges (except as otherwise set forth in SGI's then-current installation policy). An accepted Order can be canceled only with SGI's written consent, and only on terms that will indemnify SGI against resulting losses (including, but not limited to, any costs already incurred by SGI in performing the Order). In no event will a cancellation be allowed after Products have shipped. A cancellation charge may be assessed to Customer in accordance with SGI's then-current cancellation policy. SGI grants to Customer the right to cancel the outstanding portion of an accepted Order if SGI fails to ship the Product within thirty (30) days after the scheduled ship date provided the delay in shipment is not due to credit issues or other actions taken by Customer.
   b. Invoices; Payment. SGI will invoice Customer, and Customer will pay, the amounts set forth in the applicable invoice delivered by SGI to you (the "Invoice"). SGI issues all Invoices upon shipment of Product. If SGI has, in its sole discretion, agreed to extend sufficient credit to Customer to cover the applicable Invoice (and all other outstanding Invoices), then Customer shall make payment within thirty (30) days from the date of Invoice. SGI reserves the right to establish, terminate or alter credit limits and terms, to delay shipment of Orders, to require full or partial prepayment or to require alternate terms and conditions based upon Customer's payment history, financial condition or any other matter that, in SGI's determination, adversely affects the likelihood that Customer will make timely payment in full. Without limiting the generality of the foregoing, if Customer fails to timely pay any Invoice, or if its financial condition becomes impaired or unsatisfactory to SGI, SGI may require Customer to provide satisfactory security and may withhold further deliveries until such security is received. Any amount payable by Customer that remains unpaid after the applicable payment due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable by law from the due date until such amount is paid. Customer shall reimburse SGI for reasonable attorneys' fees and any other costs associated with collecting delinquent payments. All payments will be made in U.S. dollars unless otherwise agreed by SGI in writing on a case-by-case basis.
   c. Security Interest. Customer hereby grants, and agrees to grant, to SGI a continuing security interest, and a purchase money security interest, in all the Products and the proceeds thereof, to secure payment of the amounts set forth on the Invoices issued by SGI to Customer. These security interests will be satisfied upon payment in full of all Invoices. Customer authorizes SGI to file a copy of the Invoice and/or a financing statement with appropriate government authorities at any time in order to perfect the foregoing security interests in compliance with the Uniform Commercial Code ("UCC") of any state or federal law. Upon the written request of SGI, Customer will execute financing statements and other instruments SGI requires to perfect its security interests.

3. TAXES, DUTIES AND CUSTOMS. All prices quoted and payable for Products are exclusive of all taxes (including, but not limited to, sales, use, excise and withholding taxes), duties, broker charges and customs requirements in each case imposed now or in the future by any governmental authority on the transactions or amounts payable hereunder. All such taxes or other charges (such as, but not limited to import excise and withholding taxes), duties, broker charges and customs requirements in each case imposed now or in the future by any governmental authority on the transactions or amounts payable hereunder, shall be the responsibility of, and paid by, you (the "Invoice"). SGI issues all Invoices upon shipment of Product. If SGI has, in its sole discretion, agreed to extend sufficient credit to Customer to cover the applicable Invoice (and all other outstanding Invoices), then Customer shall make payment within thirty (30) days from the date of Invoice. SGI reserves the right to establish, terminate or alter credit limits and terms, to delay shipment of Orders, to require full or partial prepayment or to require alternate terms and conditions based upon Customer's payment history, financial condition or any other matter that, in SGI's determination, adversely affects the likelihood that Customer will make timely payment in full. Without limiting the generality of the foregoing, if Customer fails to timely pay any Invoice, or if its financial condition becomes impaired or unsatisfactory to SGI, SGI may require Customer to provide satisfactory security and may withhold further deliveries until such security is received. Any amount payable by Customer that remains unpaid after the applicable payment due date will be subject to a late charge equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate allowable by law from the due date until such amount is paid. Customer shall reimburse SGI for reasonable attorneys' fees and any other costs associated with collecting delinquent payments. All payments will be made in U.S. dollars unless otherwise agreed by SGI in writing on a case-by-case basis.

4. DELIVERY, RISK OF LOSS; TITLE. All Products delivered outside the United States shall be shipped to you F.O.B. Origin. All Products delivered outside of the United States shall be shipped C.P.T. (pursuant to Incoterms 2000). Risk of loss and/or damage and title to Products (except for software as provided under Section 8.h below) will pass to Customer upon delivery to the carrier. Customer shall be solely responsible for obtaining appropriate insurance coverage for such shipments, unless insurance is included in a written quotation provided by SGI and accepted by Customer. Unless otherwise agreed by the parties, SGI shall arrange shipping on Customer's behalf to the destination specified by Customer in its Order. Unless you have specified a carrier in your Order, SGI will select the carrier for you with the express understanding that the carrier is not an agent of SGI. Customer will be responsible and will reimburse SGI for any shipping charges incurred by SGI, including, but not limited to, transportation charges and all taxes, VAT, duties, and any other governmental assessment applicable to any shipment. SGI may ship and invoice you for your Order in one or more installment(s). SGI will pack all Products for shipping in accordance with standard commercial practices, unless otherwise requested by Customer and agreed to in writing by SGI. In conjunction with its Order for Products hereunder, in the event Customer also orders SGI customer support services under an SGI Customer Support Agreement, such support services will commence upon shipment of Product.

5. LIMITED WARRANTY; LIMITATIONS.
   a. Limited Warranty. SGI warrants to you, as the original owner, that Products that are original SGI system hardware, hardware option, or accessory, and delivered to you, as originally configured with SGI components (collectively the "Hardware"), will be free from defects in materials and workmanship. Hardware will be of new manufacture, but may include used parts and/or components that match or exceed the performance and reliability of new parts and/or components. SGI's standard warranty ("Limited Warranty Statement"), which can be viewed at http://www.sgi.com/support/warranties/, is hereby incorporated as though fully set forth herein or alternatively, within the applicable SGI Federal Terms and Conditions of Sale.
Warranty Card provided with the Hardware. This limited warranty is effective for the warranty period specified therein, and such warranty period begins on the date of the original shipment of the Hardware. If you discover a defect in the Hardware during the warranty period, as your exclusive remedy for breach of warranty, SGI will repair or, at SGI’s sole discretion, replace the defective part at no charge to you, provided that you (i) notify an authorized SGI support provider (or an SGI service center if you purchased the Hardware directly from SGI) of the defect during the warranty period, and (ii) upon request, provide with your notice, proof of purchase, and a copy of the bill of sale, or packing list for the Hardware, bearing the applicable SGI serial number to establish the original date of your purchase.

b. Limitations. Any warranties extended to you under these Terms do not apply to any (i) software accompanying the Hardware, which is licensed to you under a separate agreement included with such software, (ii) Hardware that has been damaged by abuse, accident, act of God, misuse, misapplication, improper installation, or shipment, and (iii) Hardware that has been modified or had its serial number removed or defaced. THE FOREGOING WARRANTY IS IN LIEU OF, AND SGI DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SGI, OR ITS DEALERS, RESELLERS OR DISTRIBUTORS WILL CREATE A WARRANTY OR INCREASE THE SCOPE OF THIS WARRANTY.

6. LIMITATIONS OF LIABILITY. IN NO EVENT SHALL SGI BE LIABLE FOR EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THESE TERMS, SALE OR USE OF PRODUCTS, OR YOUR RELATIONSHIP WITH SGI, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SGI’S MAXIMUM LIABILITY ARISING OUT OF THESE TERMS SHALL NOT EXCEED THE AMOUNTS RECEIVED BY SGI FROM CUSTOMER FOR THE PRODUCTS THAT ARE THE BASIS FOR THE LIABILITY. IN NO EVENT WILL SGI BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS BY YOU OR ANY OTHER PERSON OR ENTITY. THE LIMITATIONS IN THIS SECTION WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

7. PATENT AND COPYRIGHT PROTECTION. SGI will defend you in any suit or proceeding based on a claim that the Hardware purchased under these Terms, constitutes infringement of any U.S. copyright, patent or trademark. SGI will pay all settlements or damages finally awarded against you, provided that you (i) inform SGI of such suit or proceeding in writing within ten (10) days of actual notice of a claim, and provide SGI with all related information (ii) grant SGI the authority to settle or litigate such suit or proceeding and (iii) provide all necessary assistance to SGI. You have no authority to settle or litigate such suit or proceeding. Should the Hardware be held to infringe and its use enjoined, SGI, at its expense, shall have the right to (a) procure for you the right to continue using such Hardware (b) replace such Hardware with non-infringing Hardware, (c) modify the Hardware to make it non-infringing, or (d) accept return of the Hardware and refund the depreciated value.

SGI will not be obligated to defend any claim of infringement nor be subject to any liability for costs or damages thereof, arising out of or related to: (i) a modification to or use the Hardware made by you or a third party, (ii) use, operation or combination of the Hardware with any product, data, software, apparatus or services that SGI did not provide, (iii) use of infringing Hardware, if non-infringing Hardware is made available to you, (iv) continued use of Hardware after you receive notice that the Hardware infringes a U.S. patent, copyright or trademark of a third-party, (v) SGI’s compliance with your or your third-party designs, specifications, instructions, or technical information, or (vi) any open source or freeware software, or any other software accompanying the Hardware which is licensed to you under a separate agreement included with such software.

8. GENERAL.

a. Notices. Any notice required to be given hereunder shall be in writing and shall be deemed to have been delivered when deposited in the United States mail as registered or certified mail with a return receipt requested, with adequate postage affixed and addressed to SGI at the attention of SGI’s CEO, 46600 Landing Parkway, Fremont CA 94538 (or such future address as SGI may specify in writing), or if to Customer at the address set forth on Customer’s Order or any address at which the Products have been delivered (unless a different notice address has been provided in writing by Customer).

b. Force Majeure. Neither party will incur any liability to the other party for any loss or damages resulting from any delay or failure to perform its obligations (other than the obligation to pay money due and owing) under these Terms if such failure is caused by events beyond its reasonable control.

c. Publicity. Neither party shall disclose any of the terms and conditions of these Terms without the prior written consent of the other except to (i) its attorneys, accountants, and other professional advisors under a duty of confidentiality, (ii) as required by law, or (iii) in connection with a proposed merger, financing, or sale of such party’s business provided that any third-party to whom these Terms are to be disclosed is under a duty of confidentiality. Customer grants to SGI the right to use Customer’s name and logo on SGI’s promotional materials (including, without limitation, on SGI’s web site) for the sole purpose of identifying Customer as one of SGI’s customers.

d. Applicable Law; Venue. These Terms shall be governed by and interpreted in accordance with the laws of the State of California, U.S.A., excluding its choice of laws rules. The U.N. Convention on the International Sale of Goods shall not apply to the sale of Products hereunder or otherwise to these Terms. Customer consents to the exclusive jurisdiction of, and venue in, the California state courts in Santa Clara County, California, U.S.A., or if there is federal jurisdiction the U.S. District Court for the Northern District of California, U.S.A., and the prevailing party shall recover all of its costs, including reasonable attorneys’ fees.

e. No Waiver. The failure of either party at any time to require performance by the other party of any provision hereof will not affect, in any way, the full rights to require such performance at any time thereafter, nor will the waiver by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

f. Export. You warrant that you do not intend to, and will not knowingly, export, either directly or indirectly, any Product or any portion of Product, to any country for which such approval is required, without the prior written approval of the Office of Export Administration of the U.S. Department of Commerce or any other applicable U.S. Government agency. Customer will comply fully with all relevant export laws and regulations of the United States, including without limitation the U.S. Export Administration Regulations (collectively “Export Controls”).

g. Assignment. Customer may not assign any Orders under these Terms without the prior written consent of SGI and any such attempt by Customer to assign without such consent will be null and void. Subject to the preceding sentence, these Terms will bind each party and its permitted successors and assigns.

h. Licenses; No Implied Rights; SGI Licensed Products. When used in this Section, reference to SGI Licensed Software, the word “purchase” or any derivative words that are used, shall be deemed to mean “license”. All SGI licensed software products (collectively, “SGI Licensed Software”) are licensed to you by SGI for your use with the Products under these Terms. The terms and conditions in SGI’s End User License Agreement included with SGI Licensed Software will govern your use. Notwithstanding the foregoing, other software programs and other
information embodied in the Products are licensed, not sold, for Customers' limited use as specified in the applicable license agreement(s). The applicable license agreements will be provided with the Products at delivery, and are also available from SGI upon request. Customer shall comply with all such license agreements, and any breach by Customer of any such license agreements shall be deemed a breach of these Terms. Nothing in these Terms or the sale of the Products shall imply any other license or other rights with respect to any intellectual property rights of SGI or its suppliers except as may be set forth in a written license agreement supplied by SGI or its suppliers as applicable, and SGI reserves all rights in the Products. In all cases, title to SGI Licensed Software will remain with SGI and its licensors.

j. **Product Changes and Discontinuation.** SGI reserves the right, from time to time and in its discretion, to modify, alter, change, improve or discontinue Products.

k. **Technical Data.** Customer shall not, without SGI's prior written consent, use, duplicate, or disclose any technical data or information, or any information related to the functionality, performance, or construction of the Products delivered or disclosed by SGI to Customer, for any purposes other than for the purposes of installation, operation or maintenance of Products by persons who have agreed to preserve the confidentiality of such technical data and information. All such technical data and information shall remain the confidential information and sole property of SGI.

l. **Actions; Attorneys Fees.** Any action resulting from any alleged breach by SGI must be commenced within one (1) year after the cause of action has accrued. If one party to these Terms brings an action against the other party to enforce its rights under these Terms, the prevailing party shall be entitled to recover its costs and expenses, including, without limitation, reasonable attorneys' fees and costs incurred in connection with such action, including any appeal of such action.

m. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to these Terms, and these Terms do not provide a third-party with any remedy, claim, liability, reimbursement, cause of action or other right or privilege.

n. **Unenforceable Provisions.** In the event that any of the Terms are held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining Terms will remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions that most nearly affect the parties' intent hereunder.

o. **Modification.** Any modifications to these Terms proposed by Customer are expressly rejected by SGI and shall not become part of these Terms in absence of SGI's written acceptance. Such acceptance may only be confirmed either by i) the signing of a written amendment to the Terms by duly authorized representatives of both parties, or ii) SGI's issuance and delivery to you of the applicable SGI Invoice referencing the applicable Customer Order number, and inclusive of such modified terms and conditions.

p. **Complete Agreement.** These Terms, SGI's Invoice, and any applicable software license agreements constitute the final, complete and exclusive statement of the agreement between the parties regarding your Order, and supersede all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of these Terms. (rev 03-17-11)