



sun microsystems, inc.

Quotation No. GL8602089 Page 1 of 2

Quotation

Quotation Date May 11, 1989

(Quote is valid for 60 days)

To:
 [Redacted]
 [Redacted]
 [Redacted]
 Detroit, MI 48224

From: Jim Coe
 Great Lakes Region
 2000 Town Center, Suite 1440
 Southfield, MI 48075

We are pleased to quote as follows:

Approved by C. Anderson (313) 352-7070

Reference:

Terms: Net 30 days

Credit Terms on approval of Sup. Credit Dept.

FOB Sun Microsystems
 Mountain View, CA

Item	Model	Description	Qty	Unit List Price	Disc	Unit Net Price	Extended Net Price
1.	252A	Add 19 inch High-Resolution Monochrome monitor, keyboard and mouse.	1	4000	40	2400	2400
US OEM/End User Prices							Total: \$2,400

Estimated Shipment: _____ Days After Receipt of Order, Subject to Change.

PLEASE READ THIS QUOTATION CAREFULLY. THE TERMS AND CONDITIONS SET FORTH ON THE LAST PAGE OF THIS FORM CONSTITUTE THE ENTIRE AGREEMENT BETWEEN SELLER AND BUYER. SELLER WILL NOT BE BOUND BY ANY TERMS OF BUYER'S ORDER THAT ARE INCONSISTENT WITH THE TERMS HEREIN. ACCEPTANCE

BY BUYER OF THESE TERMS MAY BE MADE EITHER (1) BY WRITTEN ACCEPTANCE OR (2) BY RECEIPT BY BUYER OF DELIVERY OF ANY GOODS DESCRIBED ON THE FACE OF THIS FORM AND FAILURE BY BUYER TO RETURN THE GOODS WITHIN FIVE DAYS FOLLOWING SUCH DELIVERY.

This quotation shall remain firm for 60 days from the date above unless modified in writing by SUN MICROSYSTEMS, INC. prior to our acceptance of your order. This Quotation and any order placed as a result hereof shall be subject exclusively to the Terms and Conditions hereon and execution of the attached Agreements. Any contract resulting from this Quotation must be signed in Mountain View, CA by a duly authorized representative of SUN MICROSYSTEMS, INC. Any additions, modifications or waivers of any of the Terms and

Conditions contained herein or on the attached Agreements shall only be effective if in writing and agreed to by an authorized representative of SUN MICROSYSTEMS, INC. SUN MICROSYSTEMS, INC. DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. SUN MICROSYSTEMS, INC. SHALL NOT BE LIABLE FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING FROM ANY CAUSE.

Accepted by _____

Title _____ Date _____

Terms and Conditions

1. DEFINITIONS

"Equipment" shall mean the hardware components of Sun's Products; "Software" shall mean each software program provided by Sun in machine readable, object, printed, or interpreted form; "Product(s)" shall mean any configuration of hardware and software, including documentation sold or licensed by Sun.

2. ACCEPTANCE OF ORDERS

All orders placed with Sun by Customer for Products shall be subject to acceptance by Sun at its principal place of business. Acceptance of Products shipped by Sun is acceptance of these Terms and Conditions.

3. PRICES AND TAXES

Prices are exclusive of, and Customer is responsible for, all sales, use, and like taxes. Sun will invoice Customer for all applicable taxes, unless Customer supplies an appropriate tax exemption certificate in a form satisfactory to Sun.

4. DELIVERY

- a. Unless otherwise specified by Customer, delivery will be made F.O.B. Sun's facilities, freight charges prepaid and billed within the contiguous limits of the United States, including Alaska and Hawaii.
- b. Title to the Equipment will pass to Customer upon delivery of the Equipment by Sun to a carrier, and upon that delivery, Customer will be responsible for, and will bear the entire risk of loss or damage to the Products, regardless of when acceptance occurs. In no event shall title pass to Customer for any Software, except title shall pass to Customer for the media on which the Software is recorded.
- c. The scheduled delivery date shall be that date acknowledged by Sun. Sun shall consider any date requested by Customer.
- d. Sun shall use its best efforts to meet the scheduled delivery date.

5. TERMS OF PAYMENT

Payment terms are Net Thirty (30) days from the date set forth on the invoice, which date shall not precede the date of shipment of the Products. The foregoing terms are subject to Customer maintaining credit arrangements satisfactory to Sun. Otherwise, terms are cash in advance of delivery. Sun reserves a purchase money security interest in the products sold to Customer, and in the proceeds thereof, until payment is made in full by Customer. Customer agrees to execute financing statements and other instruments at Sun's request.

6. PROPRIETARY RIGHTS

Sun retains for itself all proprietary rights in and to all designs, engineering details, schematics, drawings, and other similar data pertaining to the Products and which is provided to Customer under this Agreement. Proprietary information which Sun may furnish to Customer shall be in Customer's possession pursuant only to a restrictive, nontransferable, nonexclusive license under which Customer may use such Proprietary Information solely for the purposes of operating, servicing, and repairing the Products, or integrating the Products into a system, and for no other purpose. Customer shall not, without the express written consent of Sun, provide, disclose, transfer, or otherwise make available any Proprietary Information, or copies thereof, to any third party. Customer shall take appropriate action by instruction, agreement, or otherwise with those of its employees and third party agents having access to any Proprietary Information, to restrict and control the use, copying, modification, disclosure, transfer, protection, and security of such Proprietary Information in accordance with the provisions of these Terms and Conditions. Customer agrees to protect any Proprietary Information with the same standard of care which it uses to protect its own like information.

7. SALE CONVEYS NO LICENSE

The Equipment is offered for sale, and is sold by Sun subject, in every case, to the condition that such sale does not convey any license, expressly or by implication, estoppel or otherwise, under any patent claim with respect to which Sun can grant licenses covering complete Equipment, or any assembly, circuit combination, method, or process in which any such goods are used as components. Sun expressly reserves all its rights under such patent claims.

8. INSPECTION AND ACCEPTANCE

- a. Acceptance shall be accomplished by using test procedures or programs established by Sun which are applicable to the Products. Such acceptance shall be at the time of completion of final tests at Sun's facilities, except as otherwise specified below. If Customer has conveyed in writing its intention to witness final tests in Customer's order, Sun will give Customer prior notice of the date of such tests. Customer shall be responsible for any charges that may be associated with witnessing said tests. If installation by Sun is included in the purchase price, acceptance will be at the installation site when Sun demonstrates that the applicable diagnostic or verification programs work properly. If Sun's demonstration of the programs at the installation site is delayed for more than fifteen (15) calendar days, except due to the fault of Sun, the Products will be deemed accepted.
- b. Should any Product fail the acceptance procedures set forth above Sun shall, at its option, repair or replace that Product or part thereof.

9. LIMITED WARRANTY

- a. **Equipment.** Equipment is warranted against defects in workmanship and material, in the United States, or on a return-to-repair-facility basis for a period of ninety (90) days from the date of delivery. Sun will perform the warranty service at a Sun repair facility, provided Customer returns the Equipment in accordance with Sun's shipping instructions. Transportation costs shall be paid by Sun. If Sun installs the Equipment, the ninety (90) day warranty shall be an on-site warranty and shall begin upon acceptance of the Equipment. Sun's sole responsibility under this warranty shall be, at Sun's option, to either repair or replace, during Sun's normal working hours, any component which fails during the warranty period because of a defect in workmanship or materials. All replaced Equipment or parts shall become Sun's property. If Sun determines that the Equipment is not defective within the terms of the warranty, Customer shall pay Sun all costs of handling, transportation, and repairs at Sun's then prevailing rates.
- b. **Software.** Software is warranted in accordance with the Sun Microsystems, Inc. Object Code License.
- c. **General.** The stated warranties apply only to the initial end-user, and are contingent upon proper treatment and use of the Product and maintenance of a safe and suitable site. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, SUN DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, ON PRODUCTS FURNISHED HEREUNDER, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

10. LIMITATION OF LIABILITY

SUN'S LIABILITY UNDER OR FOR BREACH OF THIS AGREEMENT WILL BE LIMITED TO REFUND OF THE PURCHASE PRICE OR LICENSE FEE. IN NO EVENT WILL SUN BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS BY CUSTOMER. IN NO EVENT WILL SUN BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, NEGLIGENCE, OR OTHERWISE.

11. SOFTWARE LICENSE

Sun shall retain all right, title, and ownership of any Software provided to the Customer or its end users. Use of Software is governed by the provisions of the Object Code License.

12. SUBSTITUTIONS AND MODIFICATIONS

Sun shall have the right to make substitutions and modifications in the specifications of Products, provided that such substitutions or modifications will not materially adversely affect overall Product performance.

13. DEFAULT AND REMEDIES

- a. Sun shall have the right to terminate this Agreement immediately should Customer refuse to make any payments required under this Agreement.
- b. Should Sun be forced to put Customer on credit hold because of a failure or refusal to pay, exceeding its credit limit or any other like reason, Sun shall have the right to cancel any orders already accepted by Sun, but not yet delivered to Customer. Cancellation charges are set forth in Paragraph 14 hereof.
- c. Sun shall have the right to terminate this Agreement in the event that Customer becomes bankrupt or insolvent, suffers a receiver to be appointed or makes an assignment for the benefit of creditors.
- d. In the event of default by Customer hereunder, Sun may, in its discretion, refuse to make further shipments and exercise any or all of its remedies under the law including, but not limited to, acceleration of all outstanding invoices due to Sun, stoppage of shipments in transit and repossession of Products not paid for which are in Customer's possession.

14. CANCELLATION AND RESCHEDULE CHARGES

In the event Customer: (i) cancels all or any part of any order; (ii) fails to meet any material obligation hereunder, including failure or refusal to make timely payments, causing Sun to cancel or reschedule any order or portion thereof; (iii) requests a rescheduling of scheduled Products and the request is accepted by Sun; or (iv) requests a configuration change causing rescheduling of scheduled Products, and the request is accepted by Sun, Customer agrees to pay to Sun the following cancellation/reschedule charges:

Cancellation or Reschedule Notice is Received	Cancellation/Reschedule Charge (% of Product List Price)
46-75 days prior to scheduled delivery date	5%, or \$400, whichever is greater
0-45 days prior to scheduled delivery date	10%, or \$400, whichever is greater

Recognizing that Sun's damages arising from any cancellation or rescheduling of any order will be difficult to estimate, the parties agree that the foregoing charges are reasonable and are intended as liquidated damages and not as a penalty.

15. EXPORT

Regardless of any disclosure by Customer to Sun of the ultimate destination of the Products, Customer will not export, directly or indirectly, any Sun Product without first obtaining an export license from the Department of Commerce or other agency of the United States Government, as required.

16. PATENT, TRADE SECRET, AND COPYRIGHT INDEMNIFICATION

- a. Sun will defend, at its expense, any action brought against Customer to the extent that it is based on a claim that the use of Equipment, within the scope of this Agreement, infringes any United States patent, trade secret, or copyright, and Sun will indemnify Customer from any costs, damages and fees finally awarded against Customer in such action which are attributable to such claim; provided that Customer notifies Sun promptly in writing of the claim; and provided further that, Customer permits Sun to defend, compromise or settle the claim and provides all available information, assistance and authority to enable Sun to do so. Sun shall not be liable to reimburse Customer for such activity. Customer shall have no authority to settle any claim on behalf of Sun.
- b. Should Equipment become, or in Sun's opinion be likely to become, the subject of a claim of infringement of a patent, trade secret or a copyright, Sun may (i) procure for Customer, at no cost to Customer the right to continue to use the Equipment, (ii) replace or modify the Equipment, at no cost to Customer, to make such non-infringing, provided that the same function is performed by the replacement or modified Equipment, or (iii) if the right to continue to use cannot be procured or the Equipment cannot be replaced or modified, terminates the right to use such Equipment, remove the Equipment and grant Customer credit thereon as depreciated on a straight-line five (5) year basis.
- c. Sun shall have no liability for any claim of patent, trade secret or copyright infringement based on the (i) use of other than the then-latest version of the Equipment from Sun, if such infringement could have been avoided by the use of the latest version of the Equipment and such latest version had been made available to Customer, but Customer, with knowledge of actual or possible infringement, chose to acquire the prior version, or (ii) use or combination of the Equipment with software, hardware or other materials not provided by Sun.
- d. THIS ARTICLE STATES THE ENTIRE LIABILITY OF SUN WITH RESPECT TO INFRINGEMENT OF ANY PATENTS, TRADE SECRETS, OR COPYRIGHTS BY THE EQUIPMENT OR ANY PART THEREOF AND SUN SHALL HAVE NO ADDITIONAL LIABILITY WITH RESPECT TO ANY ALLEGED OR PROVEN INFRINGEMENT.

17. FORCE MAJEURE

If the performance of this Agreement, or any obligation hereunder except the making of payments hereunder is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion, or other casualty or accident; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, or power; war or other violence; any law, order proclamation, regulation, ordinance, demand, or requirement of any governmental agency; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction, or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of nonperformance and shall resume performance hereunder with dispatch whenever such causes are removed.

20. GENERAL

- a. These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof, and supersede all prior proposals, negotiations and communications, oral or written, between the parties with respect to the subject matter hereof and no deviation from these provisions shall be binding unless in writing and signed by the party to be charged.
- b. These Terms and Conditions will be governed by the laws of the State of California; (except that the body of law controlling conflicts of law). Any suit hereunder shall be brought in federal or state courts in the Northern District of California and Customer hereby submits to the personal jurisdiction thereof.
- c. All rights and remedies conferred under these Terms and Conditions or by any other instrument or law shall be cumulative, and may be exercised singularly or concurrently. Failure by either party to enforce any provision shall not be deemed a waiver of future enforcement of that or any other provision. In the event that any portion of these Terms and Conditions shall be held to be unenforceable, the remaining portions of these Terms and Conditions shall remain in full force and effect.
- d. All notices required or permitted under these Terms and Conditions shall be in writing and shall be deemed to have been given upon personal delivery or upon deposit in the mail, first-class, with postage prepaid. The addresses of the parties (until written notice of change shall have been given) shall be as follows:

Sun: Sun Microsystems, Inc.
255C Garcia Avenue
Mountain View, California 94043

Attn: Manager, Contracts

Customer: _____

Attn: _____



sun
microsystems

2550 Garcia Avenue
Mountain View, CA 94043
415 960-1300