

Terms and Conditions Applicable to the Cray CX1 System

The following terms and conditions apply to the purchase of Equipment listed on Cray CX1 Sales Quotations.

- 1. Invoices, Charges and Payment.** Invoices for the purchase of Equipment and any applicable taxes will be issued upon shipment of the Equipment. Other invoices will be issued as the charges are incurred. Payment shall be made by Customer to Cray within thirty (30) days after the date of Cray's invoice. Late payments bear interest at the rate of one percent (1%) per month, or the highest rate permitted by applicable law, whichever is less. If Customer fails to pay invoices when due, Cray may exercise all remedies as permitted by applicable law, including recovery of its costs and legal fees.
- 2. Security Interest.** Customer grants Cray a security interest in specific items of the Equipment and all proceeds, including insurance proceeds, to secure Customer's prompt payment, and Customer agrees to sign any documents reasonably required by Cray to perfect a security interest.
- 3. Taxes.** All taxes (except income taxes and Washington State's business and occupation tax) and other Governmental charges based on or measured by the charges set forth in this Contract, or based on the sale of the Equipment, now or hereafter imposed by any Government authority, including but not limited to sales, use, gross receipts, VAT or other indirect taxes and personal property taxes, will be paid by Customer or, if paid by Cray on Customer's behalf, will be repaid by Customer immediately upon receipt of an invoice from Cray specifying the charges. If Customer claims exemption from any taxes relating to this Contract, Customer will provide Cray, prior to shipment of the Equipment, with documentation required by the taxing authority to support an exemption.
- 4. Title.** Cray transfers title of the Equipment to Customer upon making the Equipment available for shipment. Customer shall not sell the Equipment or otherwise encumber its title until the applicable invoices have been paid in full to Cray.
- 5. Risk of Loss and Insurance.** Cray bears the risk of loss and damage until the Equipment is delivered to the designated carrier for shipment to Customer's ship-to location. Thereafter Customer assumes all risk of loss and damage to the Equipment. Customer is responsible for all costs and expenses involved in the transportation, insurance and storage of the Equipment. Cray may arrange for and prepay transportation and shipment insurance, on Customer's behalf, and if it does the related charges shall be added to Customer's invoice.
- 6. Equipment.**
 - 6.1 Components.** Cray may include used components in the Equipment, and may have used the Equipment and/or components in its testing and development programs. Nevertheless, all Equipment and components are warranted to perform as new.
 - 6.2 Delivery and Installation.** Customer is responsible for the movement of the Equipment from the common carrier to the operational location of the Equipment at Customer's facility, and is also responsible for installing, connecting and configuring the Equipment.
- 7. Warranty.** Cray warrants to Customer that the Equipment is free from defects in materials and workmanship that materially impair use, and conforms in all material respects to the Specifications for such Equipment. The warranty for Equipment extends for a period of three (3) years from the date of shipment of the Equipment by Cray to Customer; this period is referred to as the "Warranty Term." Cray warrants replacement Equipment or parts for the longer of ninety (90) days or for the remainder of the Warranty Term.
- 8. Warranty Exclusions.** Cray's warranty does not apply to defects or damage resulting from: (i) improper or inadequate maintenance by Customer or service performed by anyone other than Cray or a Cray authorized service provider; (ii) modification of the Equipment in a manner which is not expressly authorized in writing by Cray; (iii) any accident, abuse or misuse, (iv) any relocation of the Equipment; (v) failure to follow user guidelines and procedures contained in the specifications and Cray's User's Guide; or (vi) operation outside the environmental site specifications for the Equipment. Cray's warranty does not apply if any Cray serial or product identification number has been removed or defaced. Non-Cray suppliers may provide warranties and, to the extent commercially reasonably possible, Cray will pass through such warranties to Customer.
- 9. Remedies.** If there is a breach of the warranty specified in this Agreement and Cray receives a valid claim during the Warranty Term, then at its option Cray will (i) repair the Equipment at no charge, using new or refurbished replacement Equipment or parts, or (ii) exchange the defective Equipment or parts, as appropriate, with Equipment or parts that are new or which have been manufactured from new or functionally equivalent serviceable used parts. The provisions of this Section state Customer's exclusive remedy for breach of warranty.
- 10. Warranty Services.** Customer must follow the problem determination and resolution procedures that Cray specifies. Cray provides telephone support and support through Internet access at a Cray website. Scheduling of service will depend upon the time of Customer's call, and hardware support is subject to parts availability. Service levels are response time objectives and are not guaranteed. The specified levels of services may not be available in all locations. Additional charges may apply outside of Cray's normal service areas. Customers should contact their Cray representative or reseller for location specific information. Warranty service may be provided by third-parties authorized by Cray, including resellers. Cray, in its discretion, may determine that the problem can be resolved by advice over the telephone or Internet, by the replacement of parts that the Customer installs or through on-site support by a Cray system support engineer or authorized service provider.
- 11. Red Hat Linux.** Customer agrees to allow Hypertechnologie Ciara Inc. to accept the Red Hat Enterprise Linux End User License Agreement (EULA) on Customer's behalf for purposes of Hypertechnologie Ciara Inc. installing Red Hat Linux on the Customer's Cray CX1 system(s).
- 12. Manuals and Documentation.** Manuals and documentation will be provided online and on accessible media with each system shipment. One (1) copy may be printed and duplicated solely for Customer's internal use if the copy clearly includes all of the proprietary notices of the original.

13. Customer's Obligations.

13.1 General. Before Cray exchanges Equipment or a part, Customer agrees to remove all features, parts, alterations and attachments not under warranty service. Customer also agrees to (i) ensure that the Equipment is free of any legal obligations or restrictions that prevent its exchange; (ii) if applicable, before service is provided, follow the service request procedures that Cray provides, backup or secure all programs and data contained in the Equipment (Customer will be responsible for reinstalling all data, data recovery is not included in the warranty service, and Cray is not responsible for data that may be lost or damaged during transit or a repair or for any personal information or data), and provide Cray with appropriate access to the facilities and a suitable working area to allow disassembly and reassembly of the Equipment; and (iii) download and install designated software codes, utility programs, device drivers, diagnostics and other software updates, patches and releases from Cray's internet web site or other media provided by Cray and follow the instructions that Cray provides.

13.2 Preventive Maintenance. Customer will perform any Cray authorized user maintenance operations on Equipment including, but not limited to, cleaning Equipment, performing operating checks and diagnostics and other tasks described in Cray's User's Guide or other Cray manuals applicable to the Equipment, and will maintain at least one (1) current backup copy of all Software for backup and archival purposes only.

14. Other Exclusions and Limitations.

14.1 Disaster and Other Exceptions. Cray will not be required to repair or replace Equipment that has been damaged as a result of fire, flood, earthquake or other catastrophe or accident, Customer's (or a third party's) neglect, theft, misuse, negligence, transportation, alteration, modification, repair or maintenance, or external causes such as, but not limited to, failure of or faulty electric power or air conditioning/humidity control, or causes resulting from other than ordinary use of the Equipment.

14.2 Products Not Supplied by Cray. Cray will not be liable or responsible for the performance or nonperformance of products not supplied by Cray, the services provided by the suppliers thereof, or incompatibility between Cray Equipment and such products.

15. Limitation of Warranty and Remedy; Limitation of Damages. Except as otherwise expressly stated in a writing signed by Cray, Cray does not warrant that the Equipment delivered hereunder will operate uninterrupted, be error free, conform to any reliability or performance standards, meet Customer's needs or requirements or that Cray will correct all defects. Customer is responsible for the selection of all Equipment to achieve its intended results.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS DOCUMENT, ALL EQUIPMENT IS PROVIDED "AS IS" AND "WITHOUT WARRANTY" OF ANY KIND. CRAY HEREBY EXPRESSLY EXCLUDES AND DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ANY WARRANTY OR GUARANTEE OF ABSENCE OF HIDDEN DEFECTS, ANY WARRANTY OF NON-INFRINGEMENT, AND ANY WARRANTY THAT MAY ARISE BY REASON OF CUSTOM, USAGE OF TRADE OR COURSE OF DEALING.

IN NO EVENT SHALL CRAY'S LIABILITY OF ANY KIND INCLUDE ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF CRAY SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE, INCLUDING THE COSTS OF RECOVERING OR REPRODUCING ANY PROGRAM OR DATA STORED IN OR USED WITH THE EQUIPMENT, AND ANY FAILURE TO MAINTAIN THE CONFIDENTIALITY OF DATA STORED ON THE EQUIPMENT. CRAY'S LIABILITY FOR DIRECT DAMAGES SHALL BE LIMITED TO \$50,000 EXCEPT IN CASES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT BY EMPLOYEES OR AGENTS OF CRAY OR ITS INDEMNITY OBLIGATIONS UNDER SECTION 15 (Patents and Copyrights). CRAY SPECIFICALLY DOES NOT REPRESENT THAT IT WILL BE ABLE TO REPAIR ANY PRODUCT UNDER THIS WARRANTY OR MAKE ANY EQUIPMENT EXCHANGE WITHOUT RISK TO OR LOSS OF PROGRAMS OR DATA.

16. Patents and Copyrights. If a third party claims that the Equipment provided to Customer infringes that party's patent or copyright, Cray will defend Customer against that claim at Cray's expense and pay all costs, damages and attorney's fees that a court finally awards or are included in a settlement approved by Cray, provided that Customer promptly notifies Cray in writing of such claim, allows Cray to control, and Customer cooperates with Cray in, the defense and any related settlement negotiations. If such a claim is made or appears likely to be made, Customer agrees to permit Cray to enable Customer to continue to use the Equipment or to modify it so that it becomes non-infringing, or replace it with items that are at least functionally equivalent. If Cray determines that none of these alternatives is reasonably available, Customer agrees to return the Equipment to Cray at Cray's written request. Cray will then give Customer credit equal to Customer's net book value of the Equipment provided Customer has followed generally accepted accounting principles. Cray has no obligation whatsoever regarding any claim based on: (i) any Customer or third-party hardware that is incorporated into the Equipment without Cray's written permission, or Cray's compliance with any designs, specifications or instructions provided by or on behalf of Customer; (ii) Customer's modification of the Equipment or use of the Equipment in other than a specified operating environment; (iii) the combination, operation or use of the Equipment with other products not provided by Cray as a system, or the combination, operation or use of the Equipment with any product, data, apparatus or business method that Cray did not provide; (iv) the distribution, operation or use of the Equipment for the benefit of a third party outside the Customer and the Customer's enterprise; or (v) infringement by a non-Cray product alone.

17. **Assignments.** No assignment of the sales contract between Cray and Customer shall constitute a novation or relieve any party of its obligations under this Contract.
18. **Applicable Law; Limitation of Actions.** These terms and conditions and the sales contract are governed by the laws of Washington. Any legal action in connection with this Contract must be filed within two (2) years after the cause for such action has accrued.
19. **Export Compliance.** Customer agrees (and agrees to cause any subsequent buyer of the Equipment and/or licensee or user of the Software to agree) to comply with U.S. Department of Commerce and any other U.S. export requirements on export and re-export of any Equipment including any parts or components, or any other Cray intellectual property. Customer also will comply with all other applicable export and import laws and regulations.
20. **Severability.** If any of the provisions of these terms and conditions are in conflict with any rule of law or statutory provision in an applicable jurisdiction, such provision shall be stricken, but such provision shall not invalidate any other terms, which shall survive.
21. **Force Majeure.** Neither Cray nor Customer is responsible for failure to fulfill any obligations due to causes beyond its control.
22. **Entire Contract; Amendments; Governing Language.** The terms and conditions stated in these Terms and Conditions, the Cray CX1 Sales Quotation and Cray Sales Quotation Acknowledgement constitute the complete and exclusive statement of the contract between Customer and Cray and supersede all prior oral and written statements of any kind whatsoever made by either party or their representatives. Any order form used by Customer in connection with the Equipment will be considered to have its pre-printed clauses and statements deleted and such terms are expressly rejected by Cray. Any waivers or amendments, to be effective, must be in writing, signed by both parties. Any translation of these Terms and Conditions is done for local requirements and in the event of a dispute between the English and non-English versions, the English version of these Terms and Conditions shall govern.