Fujitsu Purchase Order Terms (Products and Related Services)

1. General - This Purchase Order shall be governed by Fujitsu Purchase Order Terms hereinafter referred to as "Terms" as set forth below unless the Supplier has signed a separate supply agreement with Fujitsu, in which case the terms and conditions of that agreement shall control. In the event of any conflict or as to the interpretation of any provision of the Terms, the additional terms or conditions proposed by the Supplier are hereby rejected and shall not bind Fujitsu in any way. These Terms, or where applicable any separate supply agreement, shall, together with the Purchase Order (including its Schedules), regulate the purchase of the Products and/or Services as set out in this Purchase Order.

2. Definitions – The following terms shall be used herein as defined in this clause 2:

   a) "ACL" means the Australian Consumer Law set out in Schedule 2 of the Competition and Consumer Act 2010 Cth.
   b) "Confidential Information" means any information regarding the business affairs, developments, trade secrets, know-how, personnel, customers, suppliers, specifications, drawings, designs, descriptions, operational and testing information, technical information and data, and all other information of a confidential nature provided by Fujitsu in connection with the Products and/or Services.
   c) "Consent Order (including its Schedules)" means materials provided in writing by Supplier ancillary to the use of products of Fujitsu.
   d) "Customer" means the party to a term defined or used in GST Law.
   e) "Delivery Date" means the date for delivery of the Products or Services as set out in this Purchase Order or otherwise agreed between the parties in writing.
   f) "Documentation" means materials provided by Supplier in writing to Fujitsu about the Products or Services.
   g) "Fujitsu" means the Fujitsu company which has issued this Purchase Order.
   h) "GST" has the same meaning as in the GST Law.
   j) "Intellectual Property Rights" or "IPR" means any patents, trademarks, service marks, registered designs, applications for any of the foregoing, copyright, design rights, database rights, know-how, trade and business and/or domain names and any other similar protected rights (whether registered or unregistered).
   k) "Personal Data" means any information relating to an identified or identifiable natural person; an identified or identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number, to one or more factors including opinions (whether true or not) specific to his or her physical, psychological, mental, economic, cultural or social identity.
   l) "Price" means the amount to be paid by Fujitsu for the Products and Services pursuant to clause 10.
   m) "Product(s)" means the products defined in the Purchase Order to be supplied by Supplier under this Purchase Order, which may include embedded or open source software.
   n) "Purchase Order" means this purchase order form and any Schedules to it or other terms referred to in it but excludes any other printed terms or conditions of sale or purchase or other form of documentation.
   o) "Services" means (i) any product related service(s), including, but not limited to, customizing, installation, commissioning, maintenance, technical support, consulting and training; or (ii) support services being services for maintenance of Products, including any service levels and service credits, updates, patches and upgrades for software Products, as further detailed in the Purchase Order.
   p) "Supplier" means the recipient of this Purchase Order.
   q) "Terms" means these Fujitsu Purchase Order terms and conditions.

3. Purchaser Agreement - Supplier hereby acknowledges and agrees that (i) Supplier's offer to sell the Products and, and agrees that (ii) Supplier's written acceptance or commencement of any work, (iii) Supplier's delivery of any Product(s) or Services(s), or if Supplier does not object to the Terms or any of its schedules under this Purchase Order within 3 business days of issuance by Fujitsu, then subject to any cancellation under clause 5, shall constitute Supplier's acceptance of the Purchase Order.

4. Price, Delivery, Title and Risk of Loss - Prices shall be stated in the currency agreed in this Purchase Order and be valid in accordance with Incoterms® 2010 Delivered Duty Paid (DDP) to the specified delivery point unless defined otherwise in this Purchase Order. The Supplier must deliver all Products and/or Services at its expense unconditionally to the delivery address set out in the Purchase Order during Fujitsu's normal business hours unless otherwise notified in writing by Fujitsu. The Supplier must ensure that a description of the Products and/or Services, their quantity, and/or Delivery Date is in accordance with the delivery address set out in the Purchase Order. Supplier must ensure that all applicable, part numbers and revision levels, are clearly visible upon delivery. Unless this Purchase Order specifies otherwise, prices include all fees, charges and expenses, including costs related to travel, accommodation, appropriate packaging incurred in connection with the fulfillment of this Purchase Order. In case of any inconsistency between these Terms and Incoterms® 2010, these Terms shall prevail. Supplier shall make all reasonable arrangements and permit to Fujitsu all documents and drawings, as and when required under this Purchase Order. Ownership to the hardware and software media with Products passes to Fujitsu upon delivery. The Supplier must give Fujitsu at least 5 business days prior notice of delivery of Products and/or Services and any other details concerning delivery reasonably required by Fujitsu.

5. Taxes - Prices paid under this Purchase Order shall be inclusive of all taxes, duties, levies and the like imposed by any domestic or foreign governmental authority (exclusive of GST) in respect of sale of Products and/or Services, including any sales, use, excise, withholding tax, customs duties and other duties and taxes required to be performed by the Purchaser, export duties, any other tax, duty or levy, otherwise agreed, and excluding as it relates to any GST; the Supplier must pay all such sales, use, excise, withholding, services, consumption, import, export, customs or other tax, duty or levy, required to perform the Purchase Order. Fujitsu must pay any GST that is payable in respect of any and all taxes, duties, levies and the like imposed by any domestic or foreign governmental authority (exclusive of GST) for the Taxable Supply. GST is included in the amount stated in the Purchase Order and as the amount payable for the Taxable Supply to which it relates. Any reference in these Terms to a term defined or used in GST Law is, unless the context indicates otherwise, a reference to that term as defined or used in GST Law.

6. Warranty on Price - Prices stated in this Purchase Order are fixed and may not be varied unless stated in this Purchase Order. Supplier shall pass on to Fujitsu any decrease of prices including, but not limited to matching the prices on Supplier's standard price list for Products and/or Services, that occur before delivery.

7. Invoicing Terms - the Supplier shall unless otherwise agreed with Fujitsu send the invoices describing the amount of Price and applicable GST with reference to this Purchase Order number and line item number, to Fujitsu at least within 30 days from the date of delivery. Supplier shall invoice directly to Fujitsu and not to any third party. Supplier shall ensure that all such invoices are marked at the time of invoicing as follows: (i) for Products or Project Services: upon Acceptance in accordance with clause 11 herein; (ii) for Services on an ongoing basis: monthly in arrears unless otherwise designated on this Purchase Order. Supplier must issue each invoice within 120 days of its right to be paid or shall reflect the amount payable. Supplier shall not be entitled to perform any later invoice.
exclusive license, with authority to license directly or indirectly to Fujitsu's end customer. Where the Supplier grants Fujitsu a periodic license, Fujitsu shall have the right to terminate the license in writing on not less than thirty (30) days' notice, such notice to take effect at the end of the then current period.

16. Intellectual Property Rights Indemnities - Supplier at its own expense shall defend, indemnify and hold Fujitsu and its affiliates and customers (collectively hereafter in this Clause, “Fujitsu Indemnitees”) harmless from any and all claims, costs, expenses, damages or other liabilities, including court costs and reasonable attorneys’ fees, arising out of or relating to any patents, copyrights, trademarks, trade secrets or other intellectual property rights arising out of or relating to the manufacture, use, transfer, sale or other distribution of the Products, Services or Documentation for their intended purpose. If the manufacture, use, transfer, sale or other distribution of any of the Products, Services or Documentation by Supplier or any of Supplier’s manufacturers and/or subcontractors constitutes, or in any way purports to constitute, an infringement of any third party’s intellectual property rights, including but not limited to those found at https://www.fujitsu.com/au/; (ii) any government policies, guidelines and codes of conduct relevant to your obligations; and (iii) as otherwise communicated by Fujitsu to Supplier from time to time. Supplier shall not offer to give to any employee, agent or representative of Fujitsu, or any of its Subcontractors, any compensation, gift, remuneration or benefit, for the purposes of securing any business from Fujitsu or influencing that person with respect to this Purchase Order. Supplier shall ensure that its personnel do not accept gratuities which would influence their impartiality, create a conflict of interest or create the appearance of a bribe or impropriety, relative to purchasing decisions made at all times comply with the applicable laws relating to anti-bribery including but not limited to the OECD Convention policies against corruption, the Foreign Corrupt Practices Act of the USA and the UK Bribery Act 2010 (the “Anti-Bribery Laws”). The Supplier shall not engage in any activity, practice or conduct which would result in any act of bribery. Supplier shall require the manufacturers and/or subcontractors of any Products and Services to have in place throughout the term of this Purchase Order their own policies and procedures to ensure compliance with the Anti-Bribery Laws and shall enforce them where appropriate. Supplier shall (i) not use child labour or involuntary labour of any kind; (ii) treat its employees with dignity and respect, and not subject them to harassment in hiring, retention and promotion practices; (iii) treat its employees with a safe and healthy workplace; (iv) not tolerate or be involved in any form of corruption or bribery or slavery; and (vi) comply with all applicable environmental regulations and standards.

18. Export - The parties acknowledge that Products, Services, their respective Documentation and materials supplied under this Purchase Order may be subject to export control laws and regulations of the United States and other countries. Supplier must at its cost obtain all licenses, consents and approvals as may be required from time to time under local laws and regulations and those of any other country, including but not limited to the U.S. Export Administration Regulations (EAR) and the Office of Foreign Asset Control (OFAC) of the U.S. Treasury. Supplier shall at its cost defend, indemnify and hold Fujitsu’s employees, officers, agents and contractors against any and all claims, costs, expenses, damages or other liabilities, including court costs and reasonable attorneys’ fees, arising out of or relating to any violations of export control laws and regulations. Supplier shall (a) procure for Fujitsu’s benefit in connection with the Products and Services covered by this Purchase Order, and (b) in connection with the products and Services covered by this Purchase Order. Supplier shall not use any export license or other permits in connection with the Products or Services covered by this Purchase Order or the Documentation other than for the purpose of export and import.

19. Required Insurance - Whilst performing its obligations under this Purchase Order (and for a period of seven (7) years thereafter), Supplier shall maintain in force policies of insurance including at a minimum (i) workers compensation insurance as required by law, (ii) public liability to the extent required by law; (iii) products liability insurance at the sum of $100,000.00 per incident, $3,000,000.00 aggregate in any insurance year, (iv) professional indemnity; or errors and omissions; insurance to the value of $50m per claim and (v) any other policies that it is required to maintain by law. Supplier shall be able to provide Fujitsu evidence of the insurance terms and amounts upon request by Fujitsu. If the Supplier fails to comply with this clause, Fujitsu may arrange such cover, at the Supplier's cost.

20. Permitted Processing and Access to Personal Data - Supplier shall only process any Personal Data held in connection with this Purchase Order for the purposes of fulfilling its obligations under this Purchase Order and in accordance with Fujitsu’s instructions and all relevant privacy legislation. In this regard Supplier shall implement all necessary measures to protect Personal Data including protection against accidental or unlawful misuse and loss, and from unauthorised access, disclosure, modification and processing. Only Supplier’s authorised personnel with a legitimate role in fulfilling its obligations under this Purchase Order have access to Personal Data. Supplier shall keep in strict confidence all information by way of it and from the same by another person, outside of the jurisdiction where Personal Data is held in connection with this Purchase Order without the prior written consent of Fujitsu. Where such consent is given and Supplier transfers Personal Data outside the European Economic Area pursuant to this clause Supplier shall ensure that the transfers take place in accordance with the relevant Data Protection legislation and regulations (including any question regarding its existence, validity, enforceability or enforceability or enforceability or enforceability of this Agreement, including any breach of confidentiality, security, or privacy obligations in this Purchase Order or at any breach of any Law, fraud or any other deliberate wrongful act or omission, or breach of warranty or indemnity which relates to damages suffered by a party’s arising from breach of obligations of indemnification that is Unaccompanied Liability. The liability of a party for loss or damage sustained by the other party is reduced proportionately to the extent that such loss has been caused by the other party's failure to comply with its obligations and responsibilities under the Purchase Order and in accordance with this clause.

21. Audit - The Supplier shall maintain records and supporting documentation of all financial and non-financial transactions under this Purchase Order and compliance with the obligations of clauses 18 and 19 herein sufficient to permit a complete audit in accordance with this clause for a period of seven (7) years, or longer, if required by law. Supplier shall, at no additional cost to Fujitsu, make available to Fujitsu its employees, officers, agents, contractors and subcontractors all necessary records and supporting documentation including systems and networks, Supplier personnel and all materials relating to this Purchase Order.

22. Dispute Resolution - If any disputes arise out of or in connection with this Purchase Order, including any breach of confidentiality, security, or privacy obligations in this Purchase Order or at any breach of any Law, fraud or any other deliberate wrongful act or omission, or breach of warranty or indemnity which relates to damages suffered by a party’s arising from breach of obligations of indemnification that is Unaccompanied Liability. The liability of a party for loss or damage sustained by the other party is reduced proportionately to the extent that such loss has been caused by the other party's failure to comply with its obligations and responsibilities under the Purchase Order and in accordance with this clause.

24. Australian Consumer Law and Consumer Guarantees (a) This clause 25 applies where: the Price of the Products and related Services does not exceed $100,000.00 (or such other amount as may be identified as the prescribed amount under the ACL).

25. Applicable Law - This Purchase Order shall be governed by and construed according to the laws of the State of New South Wales. The conflict of laws provisions and the “UN Convention on the International Sale of Goods” shall not apply.

26. Dispute Settlement – Any dispute arising out of or in connection with this Purchase Order, including any question regarding its existence, validity, non-payment, breach or termination, shall be referred to mediation in Sydney, Australia in accordance with the Mediation Rules of the Resolution Institute (调解中心) (‘Mediation’) which shall instead govern this Purchase Order, neither party is restricted from seeking interim relief or any other legal remedy such as an injunction or exemplary damages.

27. Entire Agreement - Supplier (including any subsidiary of Supplier) acknowledges and confirms that this Purchase Order constitutes the entire Agreement between the parties with respect to the subject matter hereof and supersedes all prior undertakings, agreements, representations and warranties. Each party acknowledges that, in entering into this Purchase Order, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein.

28. Severability - If any provisions of this Purchase Order (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision shall be limited or eliminated to the extent necessary to make it valid, legal and enforceable.

29. Modifications - No amendments or additions to this Purchase Order or these Terms is binding unless made in writing and signed by duly authorised representatives of each party.

30. Assignment - Supplier shall not, without obtaining Fujitsu’s prior written consent, assign, sell, sub-contract or otherwise dispose of, any or all of its rights or obligations under this Purchase Order or the Supplier becomes or threatens to become or is in jeopardy of becoming subject to any form of bankruptcy or insolvency administration. Fujitsu may, at its option and without any cost or liability, terminate this Purchase Order.
Order without cause by giving Supplier not less than ten (10) days prior written notice. In the case where the Purchase Order has been accepted and Services delivered by the Supplier, Fujitsu may pay such sums as are fair and reasonable regarding the Services delivered by the Supplier prior to termination without cause by Fujitsu, subject to the Supplier having exercised all reasonable efforts to mitigate such loss or damage.

35. **Survival** – Notwithstanding anything to the contrary in these Terms, the expiration or termination of this Purchase Order shall not affect or prejudice any provisions of these Terms which are expressly or by implication intended to continue in effect after such expiration or termination.