

# Fujitsu Norway AS

## General Terms of Sale and Delivery

(Valid from 1st September 2016)



### PREAMBLE

These General Terms of Sale and Delivery ("these terms" or "the terms") apply to the sale and delivery of any service/product by Fujitsu Norway AS ("Fujitsu") e.g. hardware, software and consultancy services, unless these terms are expressly deviated from or modified by other written agreement. The terms apply whether the contract is made over the Internet, by E-shop, e-mail, facsimile, telephone or in any other manner. Any indication by the Customer of special terms of purchase or specific requirements in the Customer's tender material, order, acceptance or purchasing terms will not be binding on Fujitsu, unless expressly accepted by Fujitsu in writing.

Section A contains the general terms that apply to the sale and delivery of any service/product. Section A is amended or modified by the special terms in section B (hardware), C (software) or D (consultancy services).

### SECTION A

#### A.1 Offer and acceptance

Unless agreed otherwise in writing, any offer from Fujitsu is only valid if acceptance is received by Fujitsu within 5 working days from the date stipulated in the offer. If Fujitsu's order confirmation deviate from the Customers order, the Customer shall within 5 working days inform Fujitsu of its non-acceptance. Otherwise only Fujitsu's order confirmation applies.

#### A.2 Technical information, instructions etc.

Any product information, illustrations, drawings and information on technical data such as volume, load capacity, performance, uptime, response time and the like in brochures, power point presentations, on Fujitsu's homepage etc. are indicative only. Fujitsu's information is only binding when it is agreed separately and expressly in writing.

The Customer shall be responsible for the selection of the service/product, including for the achievement of the anticipated results and functionality, and for the ability of the service/product to function in the Customer's existing or envisaged operating environment.

#### A.3 Prices

All prices are strictly net and exclusive VAT and any other taxes. The prices are subject to change until delivery takes place, unless fixed prices have been expressly agreed. Where the price of a service/product is increased by more than 10 % from the conclusion of the contract until delivery takes place, the Customer may, without being liable to pay damages, rescind the contract, if Fujitsu is notified thereof in writing immediately after the Customer received information of the price change. The prices specified on Fujitsu's homepage are only recommended prices - they shall be considered an invitation to trade. In addition to the purchase price, Fujitsu is entitled to reimbursement of all costs and expenses incurred in connection with the delivery.

#### A.4 Payment

The purchase price/the payment agreed is payable upon delivery and the final due date is 14 days after delivery, unless a different due date is stipulated in Fujitsu's invoice.

If the Customer fails to pay the outstanding amount in time, interest shall be payable at a rate of 1.5% per month or fraction thereof, until the amount is credited to the bank account of Fujitsu.

The Customer is not entitled to set off claims pertaining to other legal matters against the purchase price and shall have no right of retention or non-payment due to any delay, complaint or counterclaim in respect of the delivery in question.

Fujitsu may fix a credit limit for the Customer which may be changed unilaterally or terminated with immediate effect by Fujitsu at any time.

#### A.5 Retention of title

ANY DELIVERY (INCLUDING ANCILLARY EQUIPMENT) SHALL REMAIN THE PROPERTY OF FUJITSU UNTIL THE FULL PURCHASE PRICE PLUS ANY INTEREST AND COSTS HAVE BEEN SETTLED.

Until the title has passed to the Customer, the Customer shall insure the delivery at replacement value against fire, theft and water damage and shall not modify, move, pledge, let out or lend the delivery in any way.

#### A.6 Time of delivery

Fujitsu always try to deliver on the stated time of delivery, however, any time of delivery stated by Fujitsu shall be approximate and thus not be binding on Fujitsu, unless a fixed time of delivery has been expressly agreed in respect of the whole service/product or parts thereof.

If a fixed time of delivery has been expressly agreed, Fujitsu may extend such time by 10 working days from expiry of the fixed time of delivery. Where Fujitsu exceeds the extended time of delivery, the Customer is entitled to a penalty from the expiry of the extended time of delivery. The penalty totals 0.5% of the agreed purchase price for the delayed part of the service/product for each full week of the delay. The penalty cannot exceed 5% of the agreed purchase price for the delayed part of the service/product. Where Fujitsu exceeds the extended time of delivery by more than 45 working days, the Customer may terminate the contract with immediate effect. Where the Customer chooses to terminate the contract with immediate effect, the Customer is only entitled to repayment of prepaid amounts for the delayed part of the service/product, but not to repayment of any other amounts paid for other services/products (for consultancy services section D.1 applies). The Customer shall have no other remedies for breach as a result of the delay and shall

thus be prevented from making any claim for damages. If Fujitsu's delay is caused by circumstances for which the Customer is liable, e.g. the Customer's change of configuration or specification of requirements, delay in delivery of technical specifications or other information or replacement of the Customer's responsible key person, Fujitsu's delivery period will be extended by the number of days that equals the occurred delay.

#### A.7 Guarantee

Fujitsu provides no guarantee unless otherwise agreed expressly in writing.

#### A.8 Notice of defects

The Customer shall check and examine the service/product for defects forthwith and not later than one week after receipt thereof. Claims relating to transportation shall be made against the carrier immediately. FUJITSU shall only be liable for original defects. Where the Customer establishes original defects, the Customer shall complain to FUJITSU forthwith and not later than three days after detecting original defects in writing with a specification of the claimed defects. Where a complaint is not made in time, the right to claim defects is forfeited.

The period for making complaints in respect of all services/products is 12 months after delivery time, unless a longer period is expressly specified in the documentation attached to each particular service/product or expressly agreed in writing between the parties. Any claim for defects, regardless of the nature thereof, shall be advanced prior to the end of the period for making complaints. Otherwise, the Customer is precluded from claiming defects.

Fujitsu's liability for original defects shall be limited - at Fujitsu's option - to a replacement delivery, a repair of the defect or a proportional reduction of the agreed purchase price, such allowance to be fixed by Fujitsu. The Customer shall have no other claims based on a defect. Fujitsu may have its service partners carry out the repair or the replacement delivery.

If the Customer makes a claim as a result of a defect, and it turns out that there is no such defect for which Fujitsu is liable, Fujitsu may claim payment for the work carried out according to the current price list for consultancy and other services.

#### A.9 Product liability

Fujitsu incurs product liability pursuant to the mandatory provisions of the Norwegian Product Liability Act ("Produktansvarloven"). Fujitsu excludes any other liability for damages by its products. The product liability cannot exceed the coverage of Fujitsu's product liability insurance.

The Customer shall, without undue delay, notify Fujitsu in writing of any damage or injury caused by a defective product or of any risk that such damage or injury may occur.

If Fujitsu incurs liability to any third party, the Customer shall indemnify Fujitsu to the same extent as the extent, to which Fujitsu's liability is limited pursuant to this clause.

#### A.10 Limited liability

Fujitsu's limitation of liability according to this clause does not affect Fujitsu's obligations or responsibilities pursuant to mandatory provisions.

IRRESPECTIVE OF THE BASIS OF LIABILITY AND THE DEGREE OF NEGLIGENCE FUJITSU SHALL NOT BE LIABLE FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES SUCH AS LOSS OF OPERATION, LOSS OF PROFIT, LOSS OF GOODWILL, MUTILATION OF INFORMATION, LOSS OF ANTICIPATED SAVINGS OR SIMILAR LOSSES. FURTHERMORE FUJITSU SHALL NOT BE LIABLE FOR ANY LOSS OF DATA, SOFTWARE OR BIOS OR COSTS RELATED TO THE RECOVERY/UPDATE THEREOF.

FUJITSU'S LIABILITY FOR ANY LOSS OR DAMAGES SHALL BE LIMITED TO 25 % OF THE AMOUNT PAID BY THE CUSTOMER FOR THAT PART OF THE SERVICE/PRODUCT (OR LACK THEREOF) ON WHICH THE CLAIM IS BASED. IRRESPECTIVE OF THE SIZE OF THE PAYMENT FOR THE SERVICE/PRODUCT, FUJITSU'S TOTAL LIABILITY FOR DAMAGES CANNOT EXCEED NOK 2,500,000.

#### A.11 Backup

The Customer shall always arrange for and maintain the necessary and adequate backup of data, software, etc. Fujitsu shall not be liable for any loss the Customer suffers caused by insufficient backup.

#### A.12 Force Majeure

Fujitsu shall not be liable to the Customer where the following circumstances occur after the signing of the agreement and prevent or delay the performance of the agreement: war and mobilization, insurrection and civil commotion, acts of terrorism, natural disaster, strikes and lockouts, shortage of goods and defects or delays in deliveries by sub-suppliers, fire, shortage of transport, exchange control regulations, import- and export restrictions, death, disease or the resignation of key persons, computer viruses or other circumstances beyond the direct control of Fujitsu. In this case, Fujitsu may postpone delivery, until such circumstance has ceased or, alternatively, terminate the agreement with immediate effect in whole or in part without being liable for damages.

#### A.13 Confidentiality

Fujitsu is obligated to maintaining the confidentiality of confidential information that Fujitsu received concerning the Customer's business.

The Customer undertakes to keep secret confidential information relating to Fujitsu.

The parties' confidentiality obligations continue for 3 years after the termination of the agreement.

#### A.14 Marketing

Fujitsu is entitled to use the Customer as a reference in its own marketing materials.

#### A.15 Changes

Fujitsu reserves the right to change or replace a service/product provided always that the change or replacement has no essential negative effect on the service's/product's function or performance.

#### A.16 Personal Data

The Customer is responsible for the provisions of the Norwegian Act on Processing of Personal Data ("Personopplysningsloven") being complied with, including the provisions on security, and cannot hold Fujitsu liable for this.

#### A.17 Export

The Customer shall comply with the export control rules applicable from time to time and shall obtain all necessary licenses and permissions according to the laws of Norway or any other affected country. The Customer may not export services/products, if it is suspected that the service/product will be used in connection with chemical, biological or nuclear weapons and/or missile technology. The Customer may not deliver/export the service/product to companies/persons, to which deliveries are denied according to US export provisions (Tabel of denial Orders/US denied Persons List etc.).

#### A.18 Invalidity

Should one or more provisions of these terms be or become invalid, the terms shall remain valid between the Parties. In this case, the Parties shall replace the invalid provision(s) with a valid one, which shall as far as possible pursue the objective and reflect the legal position contained in the invalid provision(s).

#### A.19 Applicable law and venue

Any dispute between Fujitsu and the Customer shall be settled in accordance with Norwegian law, excluding however the conflict of law rules of Norwegian law.

DISPUTES SHALL, AT FUJITSU'S OWN DISCRETION, BE SETTLED BEFORE THE NORWEGIAN COURTS OR BY ARBITRATION IN ACCORDANCE WITH THE ARBITRATION ACT ("VOLDGIFTSLOVEN"). THE VENUE SHALL BE IN THE PLACE WHERE FUJITSU IS LOCATED AT THE TIME WHEN SUCH PROCEEDINGS ARE COMMENCED BEFORE THE COURT OR ARBITRATION TRIBUNAL.

### SECTION B

#### Special terms for hardware

This section B applies on all sale and delivery of goods (all sorts of equipment/hardware/products) from Fujitsu.

#### B.1 Time and place of delivery

Deliveries will take place CIP (INCOTERMS 2000) to agreed delivery address, unless otherwise agreed in writing in each separate case. Where delivery cannot be made due to conditions for which the Customer is responsible, the product will be stored by Fujitsu at the Customer's own expense and risk. Fujitsu may charge storage rent, costs etc.

#### B.2 Third party products

The guarantee and/or complaint provisions applicable to third party products correspond to the guarantee and/or complaint provisions granted to Fujitsu by Fujitsu's sub-supplier/manufacturer. Reference is made to the individual sub-suppliers' / manufacturer' guarantee and/or complaint provisions valid from time to time.

#### B.3 Remedies for breach

Unless otherwise expressly agreed in writing Fujitsu will during the guarantee and/or complaint period remedy original defects as described above in clause A.8 and B.2, however, amended or modified by the special service terms specified in the product sheets or other documentation attached to each particular product. Fujitsu's standard service terms (e.g. "Bring-in", "Collect-and-Return" or "On-Site") and the service terms applicable to the particular products are available and may be read/printed/downloaded from Fujitsu's homepage <http://www.fujitsu.no>.

Fujitsu is not liable for defects caused e.g. by the Customer's construction, manufacture or changes, by repairs made by others than Fujitsu or Fujitsu's authorized service partners, errors related to software, loss of data and missing backup e.g. in connection with repairs, remedy and service, wrong installation, treatment, wear and tear, violence, water damage, fire, inconstant power supply, wrong net connection (including failure to use three-pin plugs where supplied), bad ventilation or consequential defects caused by the use of other connected equipment such as printers.

#### B.4. Right of return

Goods cannot be returned, unless expressly agreed in writing. If it is agreed that goods can be returned, return shipments must be in sealed and undamaged original packaging indicating the original invoice number and date, and the return merchandise authorization number (RMA-no.). Upon crediting Fujitsu reserves the right to make a deduction of a restocking fee of 15% of invoice value.

## SECTION C

### Special terms for software

This section C applies on all sale and delivery of software, including software accompanying or imbedded in hardware, from Fujitsu.

Any special license terms applying to the software shall prevail over this section C whether or not the software or software license terms origin from a third party or Fujitsu.

#### C.1 Right of use

Subject to timely payment of the purchase price (license fee) the Customer (licensee) is hereby granted by Fujitsu (licensor) a non-exclusive, non-transferable, non-perpetual, right of use the supplied software with any related modules and written documentation. The right of use is restricted to the Customers own internal use for the agreed number of users (user license) and/or the agreed locations (site license). The Customer may install the supplied software on the machines to which a license has been granted.

#### C.2 Copying of software

The Customer may not copy the software or any part thereof, except from the necessary copying for permitted use or installation purposes. The Customer may, however, make copies of the supplied software for backup or filing purposes when necessary in order to use the services/products. Any backup or filing copies are also subject to these license terms.

#### C.3 Modifications

The Customer may not modify the software nor make or have made reverse engineering or decompiling of software apart from what is permitted according to mandatory legislation applicable to this legal matter.

Where the Customer or third party intervenes or modifies the software, Fujitsu's obligation according to these terms and conditions shall cease to exist without notice, and Fujitsu waives any liability for the consequences of such interventions or modifications.

#### C.4 Intellectual property rights

Fujitsu holds the copyright and any other right to the supplied software or is entitled to sub-license this on behalf of a third party. The Customer shall observe Fujitsu's/the third party's rights, and the Customer is liable without limitation for any infringement of these rights, including any unauthorized passing on of the software to third party.

The Customer may not crack or alter any codes. Likewise, the Customer may not alter or remove any IPR, trademark or other indications in the software or on the media on which the software is supplied. The Customer shall make sure that the software is kept inaccessible to third party, and that no third party takes possession of the software.

#### C.5 Assignment

The Customer may not sell, let out, lend, allow the use of or in any other manner assign or hand over the right of use to the software to any third party. The software may not be used for facility management, outsourcing, hosting or similar purposes without separate agreement with Fujitsu.

#### C.6 Remedy of original defects in the software

The Customer shall check and test the software immediately upon delivery. For a period of 30 days after delivery of the software, Fujitsu shall deliver a new copy of the software if a medium (e.g. a CD-ROM) is not readable.

The software may - like any other software - contain inappropriate features or minor errors. Such minor errors or inappropriate features are regarded as non-material and shall not entitle the Customer to error correction or any other remedy for breach. Fujitsu will aim at correcting all errors and inappropriate features in subsequent versions of the software.

An original error is defined as material if the error affects essential elements of the software's functionality as specified in the supplied documentation or hinders the use of the software.

Where the Customer proves in writing that the software contains original material errors, Fujitsu shall in 12 months after the delivery of the software at its own option either deliver a new version of the software without the material error free of charge, correct the error free of charge or terminate the contract with immediate effect in whole or in part and repay the price paid for the software in whole or in part in which case the Customer must return all versions and copies of the software, manuals, related documentation, etc. in the Customer's possession. The Customer may not advance any other claims or claims based on defects against Fujitsu. The error correction is comparable to directions regarding workarounds which mean that the error has no essential effect on the Customer's use of the software.

The software is licensed in its present state and condition and without other warranties, correction obligations or remedies for breach than those specified above. Accordingly, Fujitsu neither guarantees that the operation and application of the software will be without interruptions or be flawless, nor that software errors can and will be corrected.

Unless clause A.8 regarding notice of defects is expressly deviated from by the above, clause A.8 shall also apply to errors in the licensed software.

#### C.7 Infringement of third party rights

Fujitsu warrants to the Customer that the service does not infringe any third party intellectual property rights. If a legal action is brought against the Customer under which it is claimed that an infringement exists, the Customer shall notify Fujitsu thereof immediately. Fujitsu or Fujitsu's licensor will then take over the

case and pay the costs related thereto, and Fujitsu be irrevocably authorized to conduct the case on its own account or to settle the case in relation to the alleged infringements.

Where a judgment is delivered in favor of the third party, Fujitsu may, at its own option, either obtain the right for the Customer to continue to use the service or cease the infringement by changing or replacing the service by another service which has the same basic function, or to terminate the contract with immediate effect against repayment of the amount paid by the Customer. In this case, the Customer may not advance any other claims against Fujitsu.

#### C.8 Support and updates

If the parties have not entered into a specific maintenance agreement governing Fujitsu's support and deployment of new versions etc., Fujitsu can offer to assist the Customer in answering questions and solving problems (hereafter collectively called "support") by payment of the then-current hourly rate for Fujitsu consultants. For support the provisions of Section D below (Special terms for consultancy services etc.) applies. If Fujitsu publishes new versions and releases, the Customer is entitled to receive them if the Customer so requests. The Customer is obligated to pay for new versions and releases in accordance with Fujitsu's list prices. Any new versions and releases will from the time of delivery be subject to these terms. Fujitsu assumes no obligation to publish new versions and releases of software, and the Customer is referred to solicit support insofar Fujitsu's deployment of new versions and releases are not sufficiently satisfying the Customers' needs.

## SECTION D

### Special terms for consultancy services etc.

This section D applies on all sale and delivery of any service (e.g. support and maintenance, project management, operating assistance, programming, adjustments, education, pilot studies, consultancy or implementation in connection with delivery of hardware/software), hereunder services not covered by the provisions in section B and C. Services covered by this section D is jointly defined as "consultancy services". The provisions in section (A and) D also applies to delivery of consultancy services according to Fujitsu's "punch ticket agreements".

#### D.1 Extent of the service

The consultancy services rendered by Fujitsu will usually be specified separately in a written agreement with the Customer. Where the contents and extent of the consultancy service are not specified, it will be based on Fujitsu's understanding thereof.

Consultancy services are delivered on a time and material basis. Unless otherwise agreed in writing, the consultancy service will be performed within normal business hours, say business days between 8.00 am and 4.00 pm.

When delivering consultancy services Fujitsu is entitled to use its own employees, subcontractors chosen by Fujitsu or others who after Fujitsu's opinion has the necessary competence to perform the consulting services.

If consultancy services are performed by employees of Fujitsu the Customer is entitled to request Fujitsu to replace such an employee, if the Customer can specify a reasonable cause. Subsequently Fujitsu will as far as possible seek to replace that employee. Under these circumstances Fujitsu shall not be liable for any delay in connection this replacement.

Fujitsu is not responsible for, whether the Customer expected results are achieved, unless Fujitsu expressly in writing has assuming such obligation.

If the Customer is entitled to terminate the agreement on delivery of consultancy services because of Fujitsu's default and the Customer chooses to terminate, then the termination will only effect the future so that the Customer from Fujitsu will receive the achieved results of the consultancy services on the termination date and so that Fujitsu has a right to the payment agreed (including any expenses) until the termination date. The Customer shall have no other claims or remedies based on termination.

#### D.2 Duties of the Customer

The Customer is obligated to provide Fujitsu with the information necessary to carry out the consultancy service. Further the Customer is free of charge obligated to ensure:

- the** necessary and legal workplaces, including the required IT communication facilities etc. as directed by the consultants;
- the** necessary contribution to the organization of the work and the allocation of resources to the effect that the consultancy service may be rendered as agreed;
- the** necessary access to the Customer's IT installations and databases as directed by the consultants;
- the** adequate backups have always been made so that the Customer's data may be restored easily at any time;
- the** appointment of an employee who is authorized to make binding agreements on behalf of the Customer.

If, due to circumstances for which the Customer is responsible, delivery of the agreed consultancy service is not possible or is delayed, Fujitsu is entitled to demand payment for the consultants assigned to the delivery of the consultancy service as well as for the extraordinary resources necessitated as a result of the delay, less any payment received by Fujitsu from other parties for work carried out by said consultants in the same period. Where the Customer otherwise fails to comply with the contract for the supply of consultancy services, Fujitsu may claim full payment for the consultancy service, whether or not the extent of the consultancy service is merely estimated by Fujitsu. If no payment or time consumed is estimated, Fujitsu is entitled to a fee which corresponds to the time usually spent on an assignment of this kind.

#### D.3 Payment, materials and expenses

Unless otherwise agreed in writing, the calculation of Fujitsu's payment will be on a time and material basis (including any time for transportation) in accordance with the current hourly rates for the consultants delivering the consultancy services. Work outside said normal working hours will be performed at an additional charge pursuant to Fujitsu's prices effective from time to time. Unless otherwise agreed in writing all expenses, including transportation, accommodation and subsistence expenses, and Fujitsu's payment will be invoiced in arrear monthly based on time consumed in the preceding month.

#### D.4 Punch tickets

Punch ticket mean the Customer's purchase of a large number of consultancy hours at the current hourly rates set out in the price list effective from time to time. The punch tickets are to be paid cash in advance less the agreed discount. When Fujitsu has rendered consultancy services to the Customer, Fujitsu deducts the number of punches equal to Fujitsu's payment. Expenses may at Fujitsu's option either be deducted from the punch ticket or invoiced separately. A punch ticket is valid for 12 months following the Customer's payment thereof, whereupon unused punches become void. The Customer is not entitled to demand a refund of unused punches, and a punch ticket may not be transferred to a third party.

#### D.5 Intellectual property rights

Fujitsu holds the copyright and any other rights to the results of the consultancy service and the Customer only receive a perpetual and non-exclusive right to use the results of the consultancy services. This implies that the Customer can use the results of consultancy services for personal use without any time limitation. Furthermore the Customer receives ownership of any copies of written material prepared specifically for the Customer.

Every concept, know-how or methods relating to the consultancy services that are developed or supplied in connection with the consultancy services from one party or jointly, may be used freely in the Customers own business and in Fujitsu's other business activities. This section does not include the parties' existing intellectual property, including tools, methods etc., used for the delivery of the consultancy services.

#### D.6 Time schedule

The consultancy services are performed from the agreed start date. If there is an agreed time schedule, this only reflects a best estimate and does not constitute an absolute delivery deadline.

If Fujitsu can anticipate delays in any agreed time schedule, Fujitsu shall contact the Customer in order to adjust the time schedule to the changed circumstances.