

## 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 of that agreement shall control the provision of Products and/or Services under this Purchase Order. Any inconsistent or 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 defined in this Purchase Order.

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

"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.

"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.

"Documentation" means materials provided in writing by Supplier ancillary to the use of Products or Services.

"Fujitsu" means the Fujitsu company which has issued this Purchase Order and is as set out on the face thereof.

"GST" has the same meaning as in the GST Law.

"GST Law" means any law imposing or relating to a GST including the Goods and Services Act 1985 and any regulation based on those Acts.

"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, Confidential Information, trade and business and/or domain names and any other similar protected rights (whether registered or unregistered) in any country.

"Personal Data" means any information relating to an identified or identifiable natural person; an identified or identifiable natural 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, physiological, mental, economic, cultural or social identity.

"Price" means the amount to be paid by Fujitsu for the Products and Services pursuant to clause 10 herein.

"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.

"Purchase Order" means this purchase order form and any Schedules to it or other items referred to in it but excludes any other printed terms or conditions of sale or purchase or other form of documents.

"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, and/or the provision of updates, patches and upgrades for software Products, as further detailed in the Purchase Order.

"Supplier" means the recipient of this Purchase Order.

"Terms" means these Fujitsu Purchase Order purchasing terms.

**3. Purchase Order Acceptance** - Supplier has read and understood these Terms, and agrees that (i) Supplier's written acceptance or commencement of any work, (ii) Supplier's delivery of any Product(s) or Service(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 otherwise constitute Supplier's acceptance of this Purchase Order.

**4. Changes to Purchase Order** - Fujitsu may, by giving written notice to the Supplier at any time not later than 5 business days prior to the Delivery Date stated in this Purchase Order, change the Delivery Date(s), quantities or types of Product(s) or Service(s) ordered without incurring any additional costs or liability.

**5. Cancellation of Purchase Order** - Fujitsu reserves the right upon written notice to Supplier to cancel all or any part of this Purchase Order if this Purchase Order is not accepted by Supplier within 3 business days from the date of issue by Fujitsu, without incurring any liability whatsoever.

**6. 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 delivery point unless defined otherwise in this Purchase Order. The Supplier must deliver all Products and/or Services at its expense undamaged 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, Fujitsu's Purchase Order number and, where 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 fulfilment of this Purchase Order. In case of any inconsistency between these Terms and Incoterms® 2010, these Terms shall prevail. Supplier shall, when relevant, at its own cost prepare and submit to Fujitsu all documents and drawings, if any, 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.

**7. Taxes** - Prices payable 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, services, consumption, import, export, custom or other tax, duty or levy. Unless otherwise agreed, and excluding as it relates to any GST, the Supplier must pay all such sales, use, excise, withholding, services, consumption, import, export, custom or other tax, duty or levy required to perform the Purchase Order. Fujitsu must pay any GST that is payable in respect of any Taxable Supply made under this Purchase Order in addition to the amount payable (exclusive of GST) for the Taxable Supply. GST is payable at the same time 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.

**8. 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.

**9. Invoicing Terms** - Supplier shall send the invoices describing the amount of Price and Issue 12 Fujitsu New Zealand Limited 19 October, 2018

applicable GST with reference to this Purchase Order number and line item number, to the address stated on this Purchase Order or as otherwise designated by Fujitsu. Supplier shall have the right to issue invoices at the timing: (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 do so. Fujitsu will not be required to pay any invoice(s) received after this period.

**10. Payment Terms** - Payment for Products and/or Services delivered and accepted in accordance with clause 11 shall be made by Fujitsu to Supplier within 30 days from end of month of receipt of an invoice issued in accordance with clause 9 herein. Fujitsu shall be entitled to set off any amount owing by Supplier to Fujitsu against any amount payable by Fujitsu under this Purchase Order.

**11. Inspection of Deliverables/Acceptance** Fujitsu may perform a delivery inspection and/or test of the Products and/or Services delivered by Supplier under this Purchase Order. Any defects found during such delivery inspection or test shall be duly documented within ten (10) business days from delivery of the Products or Services and be reported to Supplier in writing. If Fujitsu does not report any defects within the stipulated time frame, the Products and/or Services shall be deemed to be Accepted. Acceptance does not waive Fujitsu's right to subsequently reject Products which are found to be non-functional. If Fujitsu submits a report on defects, Supplier shall, at its own cost and without undue delay, replace or correct defective or non-confirming Products and/or Services. Fujitsu shall after such replacement or correction within five (5) business days accept the replaced or corrected Products and/or Services. Upon such acknowledgement or if Fujitsu does not confirm Acceptance to Supplier within the stipulated time frame, the Products and/or Services shall be subject to Acceptance. If Fujitsu does not accept the Products and/or Services or if Supplier, when requested by Fujitsu, fails to replace or correct defective or non-confirming Products or Services without undue delay, Fujitsu may terminate this Purchase Order and/or replace or correct such Products and/or Services using other resources and in either event charge Supplier the costs or damages occasioned thereby. Operational use or payment of the Products and/or Services prior to formal Acceptance shall not constitute an implied declaration of Acceptance by Fujitsu.

**12. Delays and liquidated damages** - Time shall be of the essence regarding any time or period given for delivery, despatch, performance or completion in the Purchase Order. The Supplier must immediately notify Fujitsu of any anticipated or actual delay. In the event that an agreed Delivery Date is delayed, and such failure is not due to circumstances for which Fujitsu is responsible, Fujitsu has a right at its option to either (i) claim liquidated damages; or (ii) terminate this Purchase Order without liability. Where liquidated damages apply, Fujitsu may set off any liquidated damages from an invoice from Supplier. Supplier shall, for each commenced week of delay, pay to Fujitsu as liquidated damages three (3%) per cent of the total value of this Purchase Order. The maximum liquidated damages due to a delay shall be limited to ten (10%) per cent of the total value of this Purchase Order. Payment of liquidated damages is not the sole and exclusive compensation for delays and Fujitsu has a right, at its option, to require compensation under this clause and/or any other compensation Fujitsu is entitled to under these Terms and at law.

**13. Warranties** - Supplier warrants that the Products and all replacements shall be new, free and clear of all liens, encumbrances, security interest, and other claims arising due to Supplier. Supplier warrants that the Services shall be performed in a professional manner, with all reasonable skill and care, at least to industry standards by appropriately trained and experienced personnel. Supplier warrants that from the later of acceptance, delivery or installation (unless defined otherwise in this Purchase Order), the Products shall conform with the description and other particulars stated in this Purchase Order and these Terms, be of satisfactory quality and fit for its purpose including be free from all defects in materials, workmanship and installation. If any Products are found to be defective, Fujitsu may at its option, without prejudice to any other right or remedy it may have, require the Supplier at the Supplier's cost and without undue delay, either repair or replace the defective Products to ensure that the Products are compliant this Purchase Order and these Terms. Supplier warrants to Fujitsu that it shall co-operate with Fujitsu, its agents, subcontractors and any third parties providing the Services as reasonably requested by Fujitsu, ensure that the Services conform with the Service Description set out in this Purchase Order and achieve the Service Levels (if any) agreed in this Purchase Order. If any the Services are not in accordance with this Purchase Order, or if Supplier otherwise fails to fulfil its obligations under this Purchase Order, Fujitsu may without liability at any time and without prejudice to its other rights or remedies, by written notice require Supplier to re-perform the Services as soon as reasonably practicable at no cost or liability to Fujitsu.

**15. Discontinuation of Supply** - Subject to the warranties set forth herein, Supplier warrants that for five (5) years after the completion, expiration or termination, as relevant, of this Purchase Order, Supplier shall be available, if applicable, to perform necessary and appropriate maintenance, repairs, engineering changes, and the like and shall keep all necessary parts on hand for any repairs at Supplier's then current rates or other commercially reasonable charges, whichever are lower. After this five (5) year period, Supplier will (i) give not less than twelve (12) months prior written notice if it intends to no longer provide such Services or Products, and (ii) provide Fujitsu all necessary information and documentation, whether or not proprietary or confidential, necessary to enable Fujitsu to maintain and repair such Products, either directly or through one or more subcontractors.

**16. Intellectual Property Rights** The Supplier hereby warrants and represents that, as the case may be, it either (i) has obtained all necessary approvals, rights, titles and licenses to sell or otherwise transfer the Products/Services to Fujitsu for Fujitsu's own use, or for further distribution or sub-license, including explicitly in relation to any open source software or other third-party software components integrated into or provided with the Products or Services and such allows Fujitsu to make such other copies as are reasonably necessary to support their intended use; or (ii) owns the necessary IPR in the Products, Services and Documentation related to their sale or license hereunder and that Fujitsu's use and distribution thereof, is free and clear of any encumbrance, and it has procured the necessary consents in relation to moral rights. Where the Products are created or modified for Fujitsu, with the exception of any pre-existing IPR or any open source software, all IPR in any material created in the performance of its obligations under this Purchase Order vests in, or is hereby transferred or assigned to, Fujitsu immediately upon creation. Unless either the IPR has vested in Fujitsu or where this Purchase Order states otherwise, the Supplier grants Fujitsu a perpetual, irrevocable, world-wide, royalty free, non-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.

**17. 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

patent, trademark, copyright or other intellectual property infringement claims or claims based on misappropriation of trade secret or other proprietary rights arising out of or relating to the manufacture, use, transfer, sale or other distribution of the Products, Services or Documentation, whether alone or in combination with other items. If the manufacture, use, transfer, sale or other distribution of any of the Products, Services or Documentation by a Fujitsu Indemnitee constitutes an infringement or misappropriation or is enjoined, Supplier shall, at its own expense and option, (i) procure for all Fujitsu Indemnitees the right to continue using, transferring, selling, and otherwise distributing such Product, Service or Documentation, (ii) modify such Product, Service or Documentation so that it becomes non-infringing, while conforming to the applicable Specifications, or (iii) replace such Product, Service or Documentation with a non-infringing substitute, which conforms to the applicable Specifications. The rights of Fujitsu Indemnitees under this Section shall not become time-barred.

**18. Compliance with Law and Corporate Social Responsibility** - In the performance of its obligations under this Purchase Order, Supplier shall comply with (i) all laws, regulations, privacy principles, codes of practice, and local country standards including but not limited to those found at <http://www.fujitsu.com/nz/>; (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 any gratuity, 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 purchases made pursuant to this Purchase Order. Supplier shall 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 "Applicable Anti-Bribery Laws"). The Supplier shall not engage in any activity, practice or conduct which would constitute an offence under the applicable Anti-Bribery Laws. Supplier shall have and maintain in place throughout the term of this Purchase Order their own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and shall enforce them where appropriate. Supplier shall (i) not use child labor or involuntary labor of any kind; (ii) treat all its employees with dignity and respect; (iii) not illegally discriminate in hiring and employment practices; (iv) provide its employees with a safe and healthy workplace; (v) not tolerate or be involved in any form of corruption or bribery; and (vi) comply with all applicable environmental regulations and standards.

**19. Exports** - The parties acknowledge that Products, Services, their respective Documentation and other 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 that may affect or regulate such export. Supplier shall, on request, provide a copy of any such licenses, consents or approvals to Fujitsu as well as any export control classification numbers, tariff codes, country of origin and any other information reasonably requested by Fujitsu in connection with the import or subsequent export of the Products, Services and Documentation. Supplier releases, defends, indemnifies and holds harmless Fujitsu and its affiliates and its customers, servants and agents (collectively hereafter in this Clause, "Fujitsu") harmless against all actions, claims and demands, damages and expenses (including the legal fees and other cost of defending or settling any action, claim or demand) which may be instituted against Fujitsu arising out of a breach of this clause by the Supplier or the negligence of the Supplier, its agents, employees or of any other person for whose acts or omissions the Supplier is vicariously liable.

**20. 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) public liability to the value of \$5m per claim, (ii) products liability to the value of \$5m per claim and in the aggregate in any insurance year, (iii) professional indemnity; or errors and omissions; insurance to the value of \$2m per claim and (iv) 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.

**21. 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 instruction 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 the Personal Data. Supplier shall not transfer, disclose or allow access by a person, or permit 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 where applicable, Supplier transfers Personal Data outside the European Economic Area pursuant to this clause, such transfer shall be subject to the Standard Contractual Clauses issued by the European Commission. Supplier is responsible for the compliance of its personnel and subcontractors with its obligations under this clause and shall indemnify Fujitsu and its customers against any and all claims, losses, liabilities, damages, costs and expenses (including legal fees) incurred by Fujitsu as a result of the Supplier's breach of this Clause.

**22. 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 must, at no additional cost to Fujitsu, at Fujitsu's request, provide to Fujitsu and its internal and external auditors, inspectors, regulators and other agents or representatives, access at reasonable times and on reasonable notice to Supplier's and, if relevant, subcontractors premises, Supplier environment (including systems and networks), Supplier personnel and all materials relating to this Purchase Order.

**23. Performance Indemnities to Fujitsu** - Supplier shall indemnify Fujitsu against all loss, costs, damages, expenses (including court costs and reasonable attorneys' fees) which Fujitsu may incur or become liable arising from i) defective Products and/or Services, including but not limited to defective workmanship, design or services supplied or provided by Supplier; ii) loss or damage to property; iii) death or injury to personnel; iv) a breach of obligations of confidentiality or privacy; v) any claim by a third party; or (vi) non-compliance with any applicable laws, caused or contributed to by, or resulting from any act or omission of, the Supplier, its officers, employees, sub-contractors and agents.

**24. Limitation of Liability** - Fujitsu's total cumulative liability to Supplier for any and all claims arising out of or in connection with this Purchase Order for breach of contract, breach of warranty, breach of statutory duty or negligence (or other tort) is limited to the Price in this Purchase Order. This limitation of liability shall not apply to claims for Supplier's obligations of indemnification

hereunder or for breaches of confidentiality or privacy, data protection, or to injury to persons or death, or to damages related to fraud, misconduct or default, or gross negligence. Notwithstanding the foregoing clause, and regardless whether the Supplier has been advised of the possibility of such loss or damages, neither party shall be liable for loss of production, loss of profits, loss of anticipated savings, loss of goodwill or any other indirect, incidental, special or consequential damages; provided, however, that the above limitations shall not apply so far as it relates to damages Fujitsu suffers arising from Supplier's obligations of indemnification hereunder or for breaches of confidentiality, privacy, data protection, or to injury to persons or death, or to damages related to fraud, misconduct or default, or gross negligence.

**25. Applicable Law** - This Purchase Order shall be governed by and construed according to the laws of the New Zealand. The conflict of laws provisions and the "UN Convention on Contracts for International Sale of Goods" dated April 11, 1980 (CISG) 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 Wellington, New Zealand in accordance with Resolution Institute (Association of Dispute Resolvers) guidelines (which set out the procedures to be adopted, the process of selection of a mediator and the allocation of costs). The language of the mediation shall be English. The Parties hereto undertake to keep the mediation proceedings and all information, pleadings, documents, evidence and all matters relating thereto confidential. Notwithstanding anything else in this clause, neither party is restricted from seeking interlocutory relief.

**27. Entire Agreement** - Unless in accordance with clause 1 of these Terms, the Supplier has signed a separate supply agreement with Fujitsu which shall instead govern this Purchase Order, this Purchase Order otherwise 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 or part-provision shall, to the extent required, be deemed not to form part of this Purchase Order, and the validity and enforceability of the other provisions of this Purchase Order shall not be affected.

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

**30. Subcontractors** - Supplier may use sub-manufacturers and/or subcontractors upon Fujitsu's prior written consent. Supplier shall make such sub-manufacturers and/or subcontractors comply with the standards and requirements contained in this Purchase Order and shall be fully liable for their non-compliance therewith.

**31. Confidentiality; Publicity** - Any Confidential Information which one party has disclosed or may hereafter disclose (the "Disclosing Party") to the other party (the "Receiving Party") in connection with the Products or Services covered by this Purchase Order and which is designated as confidential or by explicit identification or from the context of disclosure shall be deemed to be confidential or proprietary information, shall only be disclosed to those of its employees, advisors, contractors or subcontractors who have a need to know and are under obligations of confidentiality and shall not otherwise be disclosed to any third party without Disclosing Party's prior written consent. Supplier shall not, without obtaining Fujitsu's consent, in any manner, advertise or publish the fact that the Products or Services ordered hereunder have been contracted for or furnished by Supplier to Fujitsu.

**32. Assignment** - The Supplier may not assign, delegate or transfer all or any part of its right or obligations under this Purchase Order without the prior written consent of Fujitsu.

**33. Force Majeure** - If a party ("Affected Party") is unable to perform any of its obligations because of any event outside its reasonable control, including but not limited to strikes by employees of a third party, fires, wars, acts of God, governmental controls ("Force Majeure Event"), then it shall promptly notify the other party of its inability to perform and the nature and extent of the circumstances that amounts to a Force Majeure Event. Subject to compliance with the aforesaid, the Affected Party's obligation to perform those obligations affected by the Force Majeure Event shall be suspended for the duration of the delay arising directly out of the Force Majeure Event. If a delay in performance by Supplier arising directly out of a Force Majeure Event continues for more than thirty (30) days, Fujitsu may at its election, by notice to the Supplier, modify or cancel this Purchase Order without being liable to the Supplier in damages or otherwise.

**34. Termination** - Fujitsu may by notice in writing to Supplier terminate this Purchase Order forthwith if Supplier is in material default of this Purchase Order or if 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 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 suffered by the Supplier as a result of the 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.