

FUJITSU PHILIPPINES, INC. – TERMS AND CONDITIONS OF PURCHASE

1. General

The PO is governed by the Terms unless Supplier has signed a separate agreement with Fujitsu and it is the parties' intention that the terms of such agreement govern the provision of Products and/or Services, in which case the PO is governed by such agreement. All other terms are hereby rejected and shall not bind Fujitsu in any way. The Terms, together with this PO (including its schedules, if any) govern Fujitsu's purchase of the Products and/or Services. In the event of any conflict between the Terms and the PO, the PO shall prevail.

2. Definitions

"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 which is designated as confidential by explicit identification or from the context of disclosure is deemed to be confidential or proprietary information. **"Delivery Date"** means the date for delivery of the Products or Services as set out in the PO or otherwise agreed between the parties in writing. **"Documentation"** means materials provided in writing by Supplier ancillary to the use of Products or Services. **"Force Majeure Event"** means circumstances beyond the reasonable control of the party affected, including, but not limited to, refusal or revocation of license, industrial dispute, impossibility of obtaining materials, strikes by employees of a third party, fires, wars, acts of God, governmental controls, failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures. **"Fujitsu"** means the Fujitsu company issuing the PO. **"Intellectual Property Rights"** means any patents, trade marks, 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 data, whether true or not, about an individual who can be identified from the data or from that data and other information to which Fujitsu has or is likely to have access. **"Price"** means the amount to be paid by Fujitsu in the PO. **"Product(s)"** means the product(s) stated in the PO to be supplied by Supplier. **"PO"** 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. **"Service(s)"** means any service(s) defined in the PO to be supplied by Supplier including, but not limited to, customizing, installation, commissioning, maintenance, technical support, consulting and training. **"Supplier"** means the recipient of the PO. **"Terms"** means these Terms and Conditions of Purchase (Products and Related Services). **"Warranty Period"** means a warranty period of 12 months commencing on the later of acceptance, delivery or installation of Products and/or Services, unless otherwise stated in the PO.

3. PO Acceptance

Supplier has read and understood the Terms, and agrees that Supplier's written acceptance or commencement of any work or delivery of any Products or Services, whichever is earlier, shall constitute Supplier's acceptance of the PO and the Terms.

4. Changes to PO

Fujitsu may, by written notice to Supplier at any time, change the Delivery Date, quantities or types of Product(s) or Service(s) without incurring any additional costs or liability.

5. Cancellation of PO

Fujitsu reserves the right to cancel all or any part of the PO at any time, without incurring any liability whatsoever.

6. Price, Delivery, Title and Risk of Loss

The Price shall be paid in the currency set out in the PO, and is valid in accordance with Incoterms 2010 Delivered Duty Paid (DDP) to delivery point. Supplier shall deliver all Products and/or Services at its expense, undamaged, to the delivery address set out in the PO, during Fujitsu's normal business hours unless otherwise notified in writing by Fujitsu. Supplier shall ensure that a description of the Products and/or Services, their quantity, the PO number and, where applicable, part numbers and revision levels, are clearly visible upon delivery. The Price includes all fees, charges and expenses, including costs related to travel, accommodation, appropriate packaging incurred in connection with the fulfilment of the PO. In the event and only to the extent of any conflict between the Terms and Incoterms 2010, the Terms shall prevail. Supplier shall, when relevant, at its own cost prepare and submit to Fujitsu all documents and drawings, if any, required under the PO. Ownership of the Products passes to Fujitsu upon delivery. Supplier commits to a world-wide best price policy for Fujitsu. If Products and/or Services are custom-made for Fujitsu, this best price policy is extended to comparison of a closest comparable product/service sold by Supplier.

7. Taxes

The Price is inclusive of all taxes, duties, levies and the like imposed by any domestic or foreign governmental authority in respect of sale of Products and/or Services. In the event that any withholding taxes are imposed by any domestic or foreign governmental authority on the Price, Fujitsu shall deduct such taxes from the Price and forward the balance to Supplier without any obligation to gross up such payment or pay Supplier any amount so withheld.

8. Warranty on Price

The Price is fixed at the date of the PO unless varied by Fujitsu and Supplier in writing. However, Supplier shall pass on to Fujitsu any decrease in price prior to delivery including, but not limited to, prices on Supplier's standard price list for Products and/or Services.

9. Invoicing and Payment

Supplier shall send the invoices describing the Price, goods and services tax and

other applicable taxes with reference to the PO and line item number, to the address stated on the PO or otherwise designated by Fujitsu. Supplier shall issue invoices as follows (i) for Products or project Services, upon delivery of such Products or acceptance of such project Services; and (ii) for Services on an ongoing basis, monthly in arrears unless otherwise designated on the PO. Payment for Products and/or Services delivered and accepted shall be made by Fujitsu to Supplier within 60 days from receipt of an invoice issued. Fujitsu is entitled to set off any amount owing by Supplier to Fujitsu against any amount payable by Fujitsu under the PO.

10. Defective or Non-Functional Products or Services

If at any time after Fujitsu receives delivery of the Products and/or Services, such Products and/or Services are found to be non-functional or defective, Fujitsu shall submit a report on defects to Supplier and Supplier shall, at its own costs and within the time period specified by Fujitsu (or if not specified, without undue delay), replace or correct defective or non-conforming Products and/or Services. Fujitsu may terminate this PO 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, including without limitation any incidental or consequential damages. Operational use of, inspection of, or payment for the Products and/or Services shall not constitute an implied declaration of acceptance of such Products and/or Services by Fujitsu.

11. Delays and Liquidated Damages

Time is of the essence regarding any time or period given for delivery, dispatch, performance or completion of the PO. Supplier shall immediately notify Fujitsu of any anticipated or actual delay. Supplier shall, for each day of delay, pay to Fujitsu as liquidated damages 0.5% of the Price. Fujitsu is entitled to set off any accrued liquidated damages from any invoice from Supplier. Payment of liquidated damages is not the sole and exclusive compensation for delays and Fujitsu has a right, at its option, to require any other compensation Fujitsu is entitled to under the Terms and at law. Fujitsu has the option to terminate the PO if any delay exceeds 10 working days, and such termination shall not affect Fujitsu's entitlement to accrued liquidated damages.

12. Warranties

Supplier warrants that (i) the Products and all replacements are new and free from all liens, encumbrances, security interest, and any other claims arising due to Supplier; (ii) the Services are performed in a professional manner, with all reasonable skill and care, at least to industry standards, by appropriately trained and experienced personnel; (iii) from the Delivery Date and throughout the Warranty Period, the Products shall conform to the description and other particulars stated in the PO and the Terms, be of satisfactory quality, fit for its purpose, and free from all defects in materials, workmanship and installation; (iv) if any Products are found to be defective during the Warranty Period, Fujitsu may, without prejudice to any other right or remedy it may have, require Supplier, at Supplier's cost and without undue delay, to either repair or replace (at Fujitsu's option) the defective Products to ensure that the Products conform to the PO and the Terms; and (v) Supplier shall, in providing the Services, co-operate with Fujitsu, its agents, sub-contractors and any other third parties identified by Fujitsu. Supplier shall ensure that the Services conform to the service description set out in the PO and shall achieve the service levels agreed in the PO.

13. Discontinuation of Supply

For 5 years after delivery of the Products and/or acceptance of Services, Supplier warrants to perform necessary and appropriate maintenance, repairs, engineering changes and the like, and to keep all necessary parts on hand for any repairs at Supplier's then current rates or other commercially reasonable charges, whichever is lower. After this 5-year period, Supplier will (i) give not less than 6 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, without reference to Supplier.

14. Embedded Software in the Products and/or Services

Where the Products and/or Services include any embedded software and/or where and to the extent that any Intellectual Property Rights subsist in the Products and/or Services, Supplier warrants and represents that it has obtained all necessary approvals, rights, titles and licenses to sell or otherwise transfer the Products and/or Services to Fujitsu for Fujitsu's own use or for further distribution, and/or to permit third parties to use each copy of such embedded software and to make such other copies as are reasonably necessary to support their intended use. The foregoing explicitly includes any open source software or other third-party software components integrated into or provided with the Products and/or Services. Supplier further guarantees that it has fulfilled and continuously fulfils any applicable obligations related to open source software or other third-party software components integrated into or provided with the Products and/or Services.

15. Intellectual Property Rights Indemnities

Supplier warrants and represents that (i) it owns or has obtained valid licenses or rights to all Intellectual Property Rights in the Products, Services and Documentation; and (ii) the sale of the Products, Services and Documentation hereunder and Fujitsu's use and distribution thereof shall not infringe the Intellectual Property Rights of any third party. Supplier shall at its own expense defend, indemnify and hold Fujitsu and its affiliates and customers (collectively, **"Fujitsu Indemnitees"**) harmless from any and all claims, costs, expenses, damages or other liabilities, including court costs, reasonable attorneys' fees and settlement costs (collectively **"Costs"**), arising out of or relating to the infringement or suspected infringement of any Intellectual Property Rights or the misappropriation or suspected misappropriation of trade secrets 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, (a) procure for all Fujitsu Indemnitees the right to continue using, transferring, selling, and otherwise distributing such Product, Service or Documentation; (b) modify such Product, Service or Documentation so that it becomes non-infringing, while conforming to the applicable specifications; or (c) replace such Product, Service or Documentation with a non-infringing substitute, which conforms to the applicable specifications.

16. Compliance with Law and Corporate Social Responsibility

In the performance of its obligations under the PO, Supplier shall comply with (i) all applicable laws, regulations, local country standards and government policies, guidelines, codes of practice; and (ii) all instructions, policies, guidelines and codes of conduct stipulated by Fujitsu from time to time, including but not limited to those found at <http://www.fujitsu.com/global/about/philosophy/>. Supplier will 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 the PO. Supplier shall ensure that its personnel do not accept gratuities which would influence their impartiality or create a conflict of interest or create the appearance of a bribe or impropriety, relative to purchases made pursuant to the PO. 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 US Foreign Corrupt Practices Act, the UK Bribery Act and the Anti-Graft and Corrupt Practices Act of the Philippines (the "**Applicable Anti-Bribery Laws**"). 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 the PO its own policies and procedures to ensure compliance with the Applicable Anti-Bribery Laws and will enforce them where appropriate. Supplier shall (a) not use child labor or involuntary labor of any kind; (b) treat all its employees with dignity and respect; (c) not illegally discriminate in hiring and employment practices; (d) provide its employees with a safe and healthy workplace; (e) not tolerate or be involved in any form of corruption or bribery; and (f) comply with all applicable environmental regulations and standards.

17. Export Control

The parties acknowledge that Products, Services, their respective Documentation and other materials supplied under the PO may be subject to export control laws and regulations of the US, Philippines 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 under the laws and regulations of any other country, including but not limited to the US Export Administration Regulations that may affect or regulate such export. Supplier will, on request, provide a copy of any such 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 the Fujitsu Indemnitees harmless from any and all Costs arising out of a breach of this Clause, howsoever occasioned, by Supplier, its agents, employees or of any other person for whose acts or omissions Supplier is vicariously liable.

18. Insurance

Whilst performing its obligations under the PO, Supplier shall maintain in force adequate insurance against any liabilities that may arise under the PO and such insurance that it is required to maintain by law. Supplier shall provide Fujitsu evidence of the insurance terms and amounts upon request by Fujitsu.

19. Permitted Processing and Access to Personal Data

Supplier shall process any Personal Data held in connection with the PO only for the purposes of fulfilling its obligations under the PO and in accordance with Fujitsu's instruction and all relevant personal data protection legislation. Supplier must take all reasonable steps to ensure that the Personal Data held in connection with the PO is protected against misuse and loss, and from unauthorised access, modification and disclosure, and that only its authorised personnel with a legitimate role in fulfilling its obligations under the PO have access to the Personal Data. Supplier must not transfer, disclose or allow access by a person, or permit the transfer, disclosure or access by a person, outside of the jurisdiction of Personal Data held in connection with the PO without the prior written consent of Fujitsu.

20. Audit

Supplier must maintain records and supporting documentation of all financial and non-financial transactions under the PO and compliance with the obligations of Clauses 16 and 17 sufficient to permit a complete audit in accordance with this Clause for a period of 10 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 premises, Supplier environment (including systems and networks), Supplier personnel and all materials relating to the PO.

21. Intellectual Property Rights

With the exception of any pre-existing Intellectual Property Rights or any open source software, all Intellectual Property Rights in any material created in the performance of its obligations under the PO vests in, or is hereby transferred or assigned to, Fujitsu immediately upon creation. Supplier shall execute all documents and deeds as are necessary to effect, perfect, record, or register Fujitsu's ownership of such Intellectual Property Rights.

22. Performance Indemnities to Fujitsu

Supplier shall indemnify Fujitsu against all Costs which Fujitsu may incur or become liable for arising out of (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) any claim by a third party; or (v) non-compliance with any applicable laws, caused or contributed to by, or resulting from any act or omission of, Supplier, its officers, employees, sub-contractors and agents.

23. Limitation of Liability

Either party's total cumulative liability to the other party for any and all claims arising out of or in connection with each PO for breach of contract, breach of warranty, breach of statutory duty or negligence (or other tort) is limited to the Price. This limitation of liability shall not apply to any claims arising out of breach of confidentiality, injury to persons or death, or to damages related to fraud, wilful misconduct or default, or gross negligence. Fujitsu shall not 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.

24. Governing law and Jurisdiction

The PO and the Terms shall be governed by and construed according to the laws of the Republic of the Philippines and the parties submit to the jurisdiction of the proper court sitting in Makati City, Philippines to the exclusion of all other courts.

25. Entire Agreement

The PO and the Terms constitute the entire agreement between the parties relating to the subject matter of these terms and supersede all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them. Each party acknowledges that it does not rely on any oral or written representation, warranty or other assurance that is not set out in the PO or the Terms.

26. Confidentiality; Publicity

Each party agrees that all Confidential Information revealed by the other party shall only be disclosed to those of its employees, advisors, contractors or subcontractors who are subject to obligations of confidentiality, strictly on a need-to-know basis and only for the purposes of ensuring the performance of its obligations hereunder. In particular, 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.

27. Subcontractors

Supplier may use sub-contractors upon Fujitsu's prior written consent. Supplier shall ensure that such subcontractors comply with the standards and requirements contained in the PO and Terms and shall be fully liable for their non-compliance therewith.

28. Force Majeure

If a party ("**Affected Party**") is unable to perform its obligations because of Force Majeure Event, it shall promptly notify the other party of its inability to perform and the nature and extent of the Force Majeure Event, and the Affected Party's obligation to perform those obligations affected by the Force Majeure Event will be suspended for the duration of the Force Majeure Event. If the Force Majeure Event continues for more than 30 days, Fujitsu may at its election, by notice to Supplier, modify or cancel the PO without being liable in damages or otherwise.

29. Termination

Fujitsu may by notice in writing to Supplier and without any costs or liability (i) terminate the PO by giving Supplier at any time without providing any reason and without incurring any liability whatsoever; (ii) terminate the PO forthwith if Supplier becomes insolvent or bankrupt, files for reorganization under the bankruptcy laws, or makes an assignment for the benefit of its creditors; or (iii) terminate the PO forthwith if Supplier fails to remedy a material breach within 14 days from the date of written notification by Fujitsu.

30. Miscellaneous

Severance. If any Clause of the Terms is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that Clause shall, to the extent required, be deemed not to form part of the agreement between the parties, and the validity and enforceability of the other Clauses shall not be affected.

Amendments and Modifications. No amendments or modifications to the PO or the Terms are binding unless made in writing and signed by the duly authorized representatives of each party. Employees of Fujitsu are not authorized to enter into oral collateral agreements or to give verbal guarantees beyond the contents of a written contract. **Waiver.** No failure on the part of Fujitsu to exercise, and no delay in exercising, any right hereunder or under the PO or Terms shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law. **Survival.** Notwithstanding anything to the contrary in the Terms, the expiration or termination of the PO shall not affect or prejudice any provisions of the Terms which are expressly or by implication intended to continue in effect after such expiration or termination.