

TERMS AND CONDITIONS OF MAINTENANCE SERVICES

The following standard terms and conditions of maintenance services shall apply to all transactions for the maintenance of any **Fujitsu products and software** (excluding thirty party products unless otherwise set out in the Fujitsu's Quotation) by Fujitsu for Buyer.

1. DEFINITION

- 1.1 "Buyer" means the person to whom this Quotation is addressed.
- 1.2 "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 furnished by Fujitsu in connection with the Products and/or Services.
- 1.3 "Contract" shall have the meaning defined in Clause 3
- 1.4 "Force Majeure Event" means circumstances beyond the reasonable control of a party affected, including, but not limited to, refusal or evocation of license, industrial dispute, impossibility of obtaining materials, strikes by employees of a third party, fires, wars, acts of God, governmental controls,
- 1.5 "Excepted Service(s)" means the service excluded from the scope of Maintenance Services by Clause 8
- 1.6 "Fujitsu" means Fujitsu company which has issued this Quotation.
- 1.7 "Maintenance Services" means the services set out in these Maintenance Terms.
- 1.8 "Maintenance Terms" means these terms and conditions.
- 1.9 "Price" means the maintenance charges set out in this Quotation.
- 1.10 "Product(s)" means the Fujitsu products set out in this Quotation.
- 1.11 "Quotation" means this quotation and any attachments 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.
- 1.12 "Software" means the software set out in this Quotation

2. PRICE

- 2.1 The maintenance charge is set out in the Quotation and excludes the cost of any Excepted Services, GST and other taxes or levies (to be borne by Buyer). Unless otherwise set out in these Maintenance Terms, there shall be no refund of the Price paid by Buyer to Fujitsu.
- 2.2 All payments made by Buyer shall be in accordance with the payment terms stated in the Quotation, free of any withholding taxes. If withholding tax is due, such tax shall be borne by Buyer who shall promptly provide Fujitsu with a certificate.

3. CONTRACT TERMS

- 3.1 A contract between Buyer and Fujitsu on the Maintenance Terms shall be formed upon Buyer signing and returning the Quotation to the Fujitsu, or by issuing a purchase order pursuant to this Quotation, or accepting delivery, or using the Products supplied, whichever is the earliest ("Contract"). If any purchase order purports to provide terms which vary or is in conflict with the Maintenance Terms, Fujitsu reserves the right not to accept the purchase order until.
- 3.2 Employees of Fujitsu are not authorized to enter into oral collateral agreements or to give verbal guarantees beyond the Contract.
- 3.3 If Fujitsu and Buyer have entered into an applicable master agreement or specific agreement, these Maintenance Terms shall not apply.

4. PAYMENT

Fujitsu shall submit its invoice to Buyer according to the payment terms specified in the Quotation or otherwise agreed in respect of the transaction. Buyer shall pay the amount under each invoice without any counter claims, set offs or deductions, within thirty (30) days from the date of the invoice. Buyer shall be liable to pay interest on all invoiced sums which remain unpaid after their due date at the rate of 1.5% per month for each month (or part thereof) of delay till payment.

5. TAXES

All Prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation goods and services, value added and withholding taxes and/or use taxes which are levied or based upon such charges, or upon these Maintenance Terms or upon any payment therefor (herein "Taxes"). All such Taxes related to any Product and Service purchased or licensed pursuant to this Contract shall be to the account of and paid by Buyer (except for taxes based on Fujitsu's income) unless Buyer shall present an exemption certificate acceptable to the taxing authorities.

6. MAINTENANCE SERVICES

Maintenance Services comprise the following:

- 6.1 Inspection, testing and diagnosis (whether onsite or remotely) of any fault reported by Buyer for each Product (excluding supplies/ consumable items such as ribbons, toner, papers, printer heads, printwheels, platens, mouse and magnetic recording media, battery units, etc.);
- 6.2 Repairs, replacement of parts, cleaning, lubrication or adjustment as deemed necessary by Fujitsu to remedy Product fault; and
- 6.3 Provision of fixes, phone and e-mail support as Fujitsu deems necessary so that the Software remains in substantial conformity with its operating specifications. This excludes provision of new releases, version upgrades, enhancements and functional changes to the Software.

7. AVAILABILITY OF MAINTENANCE SERVICES

- 7.1 Maintenance Services will be provided upon Buyer's request between 9.00 a.m. to 5.00 p.m., Mondays to Fridays (excluding public holidays) unless

otherwise set out in Fujitsu's Quotation. Fujitsu will use its reasonable endeavours to respond to a request for the Maintenance Services.

- 7.2 Maintenance Services outside of the above-mentioned hours will be charged at Fujitsu's prevailing rates.

8. EXCEPTED SERVICES

8.1 Maintenance Services does not include:

- 8.1.1. correction of any Product/Software fault due to:
 - (a) Buyer's failure to maintain a suitable environment as per manufacturer's specifications such as failing to maintain power supply, air conditioning or humidity control;
 - (b) Buyer's neglect or misuse or failure to operate Product/Software in accordance with manufacturer's instructions or for the intended purposes;
 - (c) alteration, modification, tampering or maintenance of the Product/Software by a party not authorised by Fujitsu;
 - (d) reinstallation, relocation and/or removal of Product/Software unless conducted by Fujitsu;
 - (e) defective/unauthorised supplies or software used with Product/Software;
 - (f) any accident, fault or negligence of Buyer (its employees, agents, or contractors) or a third party including fire, flood, water, wind, lightning, transportation, vandalism or burglary;
 - (g) maintenance or support of the operating system, data and any software used on any computer terminal, client or server;
 - (h) recovery or reconstruction of any data or programs lost or spoiled as a result of any breakdown of or fault in the Product/Software when no proper backups are available;
 - (i) system administration or data base administration work on the system;
 - (j) functional improvements and change requests to the existing system;
 - (k) third party back-end packages that was not installed or supplied by Fujitsu;
 - (l) changes or alterations in specifications;
 - (m) maintenance of peripherals, attachments, Product, associated Product or other devices not furnished by Fujitsu and/or do not form part of the Product/Software;
 - (n) electrical or other environmental work external to the Product/Software;
 - (o) Buyer's refusal to accept a new release or update of the Software;
- 8.1.2. painting or refinishing of the Product;
- 8.1.3. relocation or transportation of the Product/Software;
- 8.1.4. electrical work external to the Product/Software;
- 8.1.5. the provision of supplies for use in association with the Product/Software including furnishing peripherals and consumables, repair/replacement tapes, printing ribbons, print-heads and toners; and
- 8.1.6. any modification, alteration or removal of or attachment to the Product/Software.

- 8.2 Fujitsu is entitled to impose additional charges if Maintenance Services are provided in circumstances where any reasonably skilled and competent worker would have judged Buyer's request to have been unnecessary.

9. BUYER'S OBLIGATIONS

The Buyer undertakes to cooperate with Fujitsu by:

- 9.1 Granting Fujitsu access to the Product/Software and any assistance (including providing Buyer's employees familiar with Product/Software) as Fujitsu shall from time to time reasonably require;
- 9.2 Making available such facilities as Fujitsu shall reasonably require including without limitation adequate work space storage and office furniture and Product and electrical outlets and telecommunication facilities
- 9.3 Making available the Product/Software and supplying all documentation and other information required by Fujitsu;
- 9.4 Not allowing any personnel unauthorised by Fujitsu to modify, adjust or repair the Product/ Software without Fujitsu's prior written consent;
- 9.5 Keeping and operating Product/Software in a proper and prudent manner in accordance with the operating instructions and ensuring only trained and competent employees are allowed to operate;
- 9.6 Not to use in conjunction with the Product/ Software any accessory attachment or additional Product other than those supplied or approved in writing by Fujitsu;
- 9.7 Keeping Fujitsu informed in writing of any movement/relocation of Product;
- 9.8 Ensuring that proper environmental conditions are maintained for the Product and shall maintain in good condition the accommodation of the Product, the cables and fittings associated therewith and the electricity supply thereto;
- 9.9 Ensuring that the external surface of the Product is kept clean and in good condition and shall carry out any minor maintenance recommended by Fujitsu;
- 9.10 Keeping back-up copies of Buyer's programs, databases and computer records in accordance with best computing practice and Fujitsu will not be held responsible for any loss of Buyer's programs, data and files.

10. REPLACEMENT OF PARTS

Fujitsu reserves the right to supply new or reconditioned replacement parts in the performance of its duties hereunder, provided that such parts shall be of satisfactory quality and all such parts replaced shall become the property of Fujitsu.

11. SAFETY / ENGINEERING CHANGES AND SOFTWARE PATCHES

Subject to Buyer's approval, Fujitsu will install safety/engineering changes and software patches in Product as deemed necessary and Buyer shall pay such additional charges.

12. DISCLAIMER AND LIMITATION OF LIABILITY

- 12.1 The liability of Fujitsu for any breach of any term, condition or warranty under these Maintenance Terms shall be limited, at the option of Fujitsu, to:
- 12.1.1. replace the Product/Software or a part thereof;
 - 12.1.2. re-perform Maintenance Services; or
 - 12.1.3. return or credit Buyer with such part of the Price proportionate to the remaining months of the contract year in which damage or loss is claimed
- 12.2 The Fujitsu's total cumulative liability to Buyer for any cause whatsoever, including negligence, is limited to the maximum of the annual Price for the Maintenance Service(s) in which damage or loss is claimed. This limitation of liability will not apply to claims for death or personal injury caused by the negligence of such party.
- 12.3 The Fujitsu shall not be liable for any loss of data, loss of profits, loss of anticipated savings, loss of goodwill or any indirect, incidental or consequential damages even if advised of their possibility.
- 12.4 Except as expressly provided herein, all terms, conditions, warranties, undertakings, inducements or representations whether express, implied, statutory or otherwise relating to the Product or to these maintenance terms are excluded.

13. TERM AND TERMINATION

- 13.1 Maintenance Services is provided for the duration stated in Fujitsu's Quotation, and may be renewed or extended by the parties in writing at Fujitsu's then current rates.
- 13.2 If either party is in breach of these Maintenance Terms and such breach is not remedied after 30 days written notice from the non-breaching party, then the non-breaching party may immediately terminate these Maintenance Terms.
- 13.3 If either party has a petition presented for its liquidation or calls a meeting to propose a resolution for its liquidation or has a petition presented for the appointment of an administrator or has a receiver or administrative receiver appointed over it or any of its assets or makes any voluntary arrangement with its creditors, then the other party may immediately terminate this agreement by written notice to the first-mentioned party.

14. DELAYS

The Fujitsu shall not be responsible or liable for any delay or failure to deliver which is not attributable to the Fujitsu or within its reasonable control. Further, performance of orders and contracts, and delivery shipment of the Products are subject to and contingent upon delay directly or indirectly caused by, or in any other manner arising from fires, floods, accidents, riots, acts of God, war, government interference, embargoes, priorities, regulations, orders and restrictions, strikes, labor difficulties, shortage of labor, fuel, power, material or supplies, transportation delays, the Fujitsu's production schedules, or any other causes (whether or not similar in nature to any of these herein before specified) beyond the Fujitsu's control and the Fujitsu would not be liable for any loss or damage suffered by the Buyer arising therefrom. The Fujitsu would have the right, in the event if the happening of any of the above contingencies, at its option, to cancel the Buyer's order or the transaction or any part thereof without any resulting liability.

15. 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 this Contract vests in, or is hereby transferred or assigned to, Fujitsu immediately upon creation.

16. INSOLVENCY

If a petition in bankruptcy shall be filed by or against Buyer or should Buyer take advantage of any insolvency law or proceedings under any insolvency law are threatened against Buyer, then in any of those events, Fujitsu shall have the option to cancel this Contract or any part of the Products and Services not delivered.

17. NOTICES

Any communications in connection with this purchase may be made by fax, letter, or electronic mail. Faxed communications will be deemed to have been received by a party to this Contract upon transmission to a fax number notified in advance of transmission by that party with the receipt of the appropriate transmission contact report. Communications by letter will be deemed to have been received by a party with seven (7) days of posting (by air mail) or upon delivery (if delivered personally) to the address notified in advance of posting or delivery by that party. Electronic mail communications will be deemed to have been received by a party upon transmission to an electronic mail address notified in advance of transmission by that party with the receipt of the appropriate delivery report.

18. Applicable Law

This Contract shall be governed by and construed according to the laws of Singapore.

19. Dispute Settlement

In relation to any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, breach or

termination, each of the parties irrevocably submits to the jurisdiction of the Singapore courts and waives any objection to proceedings in such courts on the grounds of venue or on the grounds that the proceedings have been brought in an inconvenient forum.

20. Entire Agreement

The Contract constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior undertakings, agreements, representations and warranties, unless this Contract is issued pursuant to a master or framework agreement in which case the latter shall prevail.

21. Severability

If any provisions of this Contract (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 Contract, and the validity and enforceability of the other provisions of this Contract shall not be affected.

22. Modifications

No amendments or additions to these Maintenance Terms is binding unless made in writing and signed by duly authorized representatives of each party.

23. Confidentiality

- 23.1 During the term of this Contract, a party may from time to time disclose (the "Disclosing Party") to the other party (the "Receiving Party") certain Confidential Information of the Disclosing Party. The Receiving Party shall protect the Confidential Information of the Disclosing Party from unauthorized use, dissemination or publication, using the same degree of care which the Receiving Party ordinarily uses with respect to its own proprietary information, but in no event with less than reasonable care.
- 23.2 The Receiving Party shall not use the Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Contract, and shall limit the disclosure of such Confidential Information to employees or agents who have a need to know such Confidential Information for purposes of this Contract and provided that such employees or agents are bound by confidentiality terms no less restrictive than those contained herein. Notwithstanding the foregoing, Confidential Information may be disclosed if such disclosure is required by law or by the order of a court of competent jurisdiction, a regulatory or administrative body; provided that the Receiving Party shall promptly notify the Disclosing Party of such requirement in writing, and shall cooperate reasonably with the Disclosing Party, at the Disclosing Party's expense, in the obtaining of a protective or similar order with respect thereto.
- 23.3 The Receiving Party shall return to the Disclosing Party, destroy or erase all Confidential Information of the Disclosing Party in tangible form: (a) upon the written request of the Disclosing Party; or (b) upon the expiration or termination of this Contract, whichever comes first, and in both cases, the Receiving Party shall certify promptly and in writing that it has done so; provided that the Receiving Party shall be entitled to retain a copy for archival or backup purposes.
- 23.4 Subject to the confidentiality obligations with respect to Confidential Information set forth above, either party may use any general learning, skills or know-how or any information retained in the unaided memory of a person who had access to the Confidential Information for any purpose. Each party is free to develop products independently without the use of the other's Confidential Information. Neither party is obligated to restrict the future work assignments of people who have had access to the Confidential Information or to restrict its product development due to such access.
- 23.5 The Receiving Party's obligation under this Clause 23 shall continue for a period of two (2) years from the expiry or earlier termination of this Contract

24. Assignment

Buyer may not assign, delegate or transfer all or any part of its right or obligations under this Contract without the prior written consent of Fujitsu.

25. 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 thirty days, the Affected Party may at its election, by notice to the other party, modify or cancel this Contract without being liable in damages or otherwise.