

Fujitsu (FTS) Limited (Fujitsu)

Sales Conditions of Contract for the supply of Equipment, Programs and Services

1. Definitions

"Agreement" shall mean the agreement constituted by the Sales Order, these Sales Conditions of Contract for the supply of Equipment, Programs and Services and any other documents expressly incorporated in and by these Conditions.

"Sales Order" shall mean an order on Fujitsu's prevailing order documentation.

"Equipment" shall mean the computer hardware referred to on the Sales Order as more fully described in the relevant Product Description.

"Programs" shall mean the computer programs in object code form referred to on the Sales Order as more fully described in the relevant Product Description, supplied under licence and can only be used in accordance with terms stated in the licence agreement accompanying the program.

"Product Description" shall mean the written description of the Equipment, Programs, or Services set out, or referred to, on the Sales Order and/or in an attachment to the Sales Order.

"Services" shall mean the services (if any) to be provided by Fujitsu as referred to on the Sales Order and as more fully described in the relevant Product Description.

2. Delivery and Risk

2.1 The Equipment and/or the Programs will be delivered to the Customer's address as specified on the Sales Order. Risk of loss of and damage to the Equipment and Programs shall pass to the Customer as specified in the applicable Incoterms 2000.

2.2 Fujitsu shall endeavour to ensure that the Equipment and/or the Programs shall be delivered on or about any dates agreed for delivery, but shall not in any circumstances have any liability for any delay in such delivery.

2.3 Where Services are to be provided under the Agreement these shall be in accordance with the Sales Order. Dates shown on the Sales Order for the delivery of Services shall be Fujitsu's best estimate of the availability of the resources necessary for the provision of the Services and Fujitsu shall not in any circumstances have any liability for any delay in the provision of the Services.

3. Warranty

3.1 Fujitsu's standard warranty applicable to the Products will apply. Details of any warranty applicable to the Equipment will either be supplied with the Products or can be requested by the Customer. If "no warranty" is identified on the Sales Order, then the Equipment is supplied by Fujitsu "as is" without warranty or other representation, whether express or implied as to the specification, condition, performance or any other characteristics of such Equipment and Fujitsu shall have no liability whatsoever for any defect in such Equipment.

If a warranty service is to be made available by Fujitsu under the Agreement then the warranty period will be as stated in the standard warranty documentation, during such warranty period, Fujitsu shall without charge to the Customer, rectify any defect in material or workmanship in any Equipment by, at Fujitsu's discretion, repair, adjustment or supply of replacement parts, provided that the Equipment shall not be modified or repaired or maintained or operated other than in accordance with Fujitsu's recommendations. Such rectification shall be performed by Fujitsu at its specified premises to where the Customer shall, at the Customer's risk and expense, return the part that is believed by the Customer to be defective, properly packed and with a written description of the alleged defect.

The repaired, adjusted or replaced part shall be returned by Fujitsu to the Customer at the Customer's risk and expense. Parts replaced by Fujitsu in the course of repair shall become Fujitsu's property.

If a part returned by the Customer for repair under warranty is found on diagnosis by Fujitsu not to be defective as alleged, or is not a legitimate warranty claim, Fujitsu will return such part to the Customer at the Customer's risk and expense. If under such circumstances a replacement part has already been dispatched, the costs associated with this will be charged to the Customer.

For the purpose of this Sub-clause 3.1, Equipment shall not include any software or firmware elements (other than the physical components upon which the same resides) contained in Equipment. Such software and firmware shall be subject to the terms and conditions of warranty applicable to Programs as set out in Sub-clause 3.2 below.

3.2 Programs shall have the benefit of the warranty (if any) set out in the end user licence agreement as accompanies such Programs on delivery by Fujitsu. Due to the nature of Programs, no guarantee is given of uninterrupted or error free running, or that all errors will be rectified by error correction or avoidance action.

3.3 No warranty is given by Fujitsu in respect to any Services supplied by Fujitsu under the Agreement.

3.4 The warranties set out in this Clause 3 are in lieu and to the exclusion of all other representations, conditions, warranties and terms whether express or implied, statutory or otherwise as regards the quality, fitness for purpose, merchantability or any other characteristics whatsoever of the Equipment, Programs and Services.

4. Prices and Payment Terms

4.1 Prices for the Products shall be as provided by Fujitsu and be expressed in GB Pounds Sterling. Invoices shall be issued and payment therefore shall be made in full, in GB Pounds Sterling, within thirty (30) days of the date of the invoice. Fujitsu reserves the right to revoke any credit extended to the Customer at any time for good and sufficient reason.

4.2 Any taxes, rates or governmental levies (other than those assessed on profits or gains of Fujitsu) and unless stated otherwise on an accepted Sales Order, any charges for insurance, clearance, forwarding, licence fees, duties and other expenses arising from the delivery to the agreed delivery point which are payable in connection with the supply of Equipment or Programs will be borne by the Customer.

4.3 If the Customer fails to make any payment in strict accordance with the payment terms set out in 4.1 above, Fujitsu may refuse to perform any further obligations and may charge the Customer interest on the overdue amounts thereafter at 4% above Barclays Bank PLC Base Rate then current until payment in full is received by Fujitsu, plus any additional costs incurred by Fujitsu.

4.4 Legal and equitable title to Equipment sold by Fujitsu to the Customer shall be retained by Fujitsu until it is in receipt of payment in full of the relevant contract price. Legal and equitable title to Programs shall at all times remain with Fujitsu or its licensors.

5. Specifications

Fujitsu may substitute or modify any Equipment or Programs agreed to be supplied to the Customer provided that any substituted or modified item shall be substantially equivalent in performance and capability to the Equipment and Programs originally ordered.

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6. Intellectual Property Rights

6.1 Fujitsu retains all intellectual property rights to itself and on behalf of its licensors in and to all Equipment, Programs and Services (including customisation and modifications made by Fujitsu) provided by Fujitsu to the Customer.

6.2 The parties agree not to use or disclose to any third party except for the purpose of the observance of the terms and conditions of the Agreement any confidential information of the other party.

6.3 The Customer shall follow all reasonable instructions that Fujitsu gives from time to time with regard to the use of trademarks, copyrights and other notice of ownership rights of Fujitsu and/or its licensors.

7. Limitation of Liability

Save and to the extent that exclusion of, or limitation of, liability shall be prohibited by law, Fujitsu's liability for any and all claims whether in contract, tort or otherwise, or whether related to any one event or series of connected events shall not exceed the greater of, the price paid for the item of Equipment or Program or the Services in respect of which liability arises, or £250,000.

Fujitsu shall have no responsibility for equipment programs or services supplied by persons other than Fujitsu, or for modifications to any Equipment or Programs which are made by persons other than Fujitsu.

In no event shall Fujitsu be liable for any incidental or consequential damages, loss of use, loss of data, loss of business and loss of profits or for any loss resulting from any defect or deficiency which Fujitsu shall have remedied at its own expense.

8. Duration

The Agreement shall come into effect upon acceptance by Fujitsu of the applicable Sales Order, subject to the provisions of Clause 9 below, it shall continue for so long as either party has any obligation to the other party hereunder.

9. Termination

9.1 If the Customer is in breach of the Agreement and does not remedy that breach within fourteen (14) days after receiving written notice from Fujitsu, then Fujitsu may immediately terminate the Agreement or, at Fujitsu's option, suspend the performance of Fujitsu's obligations under the Agreement or any other agreement between Fujitsu and the Customer until the breach is remedied. The Customer will have no claim against Fujitsu on account of Fujitsu withholding performance of its obligations in these circumstances.

9.2 If either party commits an act of bankruptcy, or goes or is put into liquidation (other than solely for amalgamation or reconstruction) or if a receiver is appointed over any part of the party's business or if the party suffers the seizure of property for the non payment of any debt, then the other party may regard such circumstances as grounds for immediately terminating any contract without notice.

9.3 Termination will not discharge the Customer from payment of any sums already due or becoming due by reason of the termination.

9.4 Upon termination for whatever reason the Customer shall immediately:

- (a) deliver up any Fujitsu property which he has no contractual right to retain and Fujitsu may enter any premises to recover and remove such property; and
- (b) cease using any Fujitsu trademark or trade name.

9.5 Termination of the Agreement for breach by the Customer shall be without prejudice to any right of Fujitsu to damages or other rights or remedies.

9.6 The provisions of Clauses 7 and 10 and Sub-clauses 6.1, 6.2 and 11.5 shall survive termination of the Agreement.

10. Resale and Export

10.1 If the Customer wishes to export any Equipment or Programs supplied under the Agreement it is the Customer's responsibility to obtain all such consents and licences as may from time to time be required under local laws or under US Export Administration Regulations or under United Kingdom laws or under the laws of any other country affecting or regulating such export.

10.2 No Equipment or Programs supplied under the Agreement may be exported or resold for export if the Customer has any grounds for suspecting that such Equipment or Programs are intended to be used for any purpose related to nuclear, chemical or biological weapons or missile technology.

11. General Provisions

11.1 Force Majeure

Neither party will be liable for any delay in or failure to perform obligations if that delay or failure is caused by circumstances beyond the control of the party, including, but not limited to, refusal or revocation of licence, industrial dispute or impossibility of obtaining materials.

11.2 Assignment

Neither party shall assign the Agreement without the written consent of the other except that Fujitsu may assign the Agreement to another company controlling/controlled by or under common control with Fujitsu Holding BV or to any person, firm or corporation that may purchase or take any assignment of the business relating to anything supplied under the Agreement and provided such purchaser or assignee shall assume the obligations of Fujitsu under the Agreement.

11.3 Notices

All notices under the Agreement shall be in writing addressed to the parties at the addresses as shown on the Sales Order, or such other address as may be notified from time to time by either party to the other.

11.4 Waiver

No terms and conditions hereof shall be deemed waived and no breach or default excused unless such waiver or excuse shall be in writing and signed by the party issuing the same.

11.5 Governing law

The Agreement shall be governed by the laws of England and the parties submit to the jurisdiction of the English courts.

11.6 Headings

The headings in the Agreement are inserted for convenience only and shall not constitute a part of, or be referred to in interpreting, the Agreement.

11.7 Entire Agreement

The Agreement shall constitute the entire agreement between the parties and shall supersede any and all prior agreements between the parties relating to the subject matter hereof. The Agreement shall be subject to modification only by duly executed written agreements signed on behalf of the parties by their respective duly authorised representative.