

- 8. Payment Terms**
 8.1 **Price.** The Charges shall be stated in the currency agreed in this Purchase Order. Charges 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 Value Added Tax) in respect of sale of Supplies, including any sales, use, excise, withholding, services, consumption, import, export (subject to Clause 3.1), custom or other tax, duty or levy. Unless otherwise agreed, and excluding as it relates to any Value Added Tax, Supplier shall pay all such sales, use, excise, withholding, services, consumption, import, export, custom or other tax, duty or levy required to perform the Purchase Order.
- 8.2 **Payment.** Subject to Clauses 8.3, 8.4 and 8.5, Fujitsu shall pay each undisputed invoice properly due, issued and submitted to it by the Supplier, within sixty (60) days from the valid invoice date.
- 8.3 **Invoicing.** The Supplier shall have the right to issue invoices (i) for Products or project services, upon acceptance in accordance with Clause 3 (Delivery, Inspection and Acceptance); (ii) for Services on an ongoing basis, monthly in arrears unless otherwise designated on this Purchase Order. The Supplier shall ensure that (i) Fujitsu's Purchase Order number is referenced on any invoice sent to Fujitsu; and (ii) any individual invoice and/or the total value of several invoices submitted to Fujitsu does not exceed the amount set out in the relevant approved Purchase Order, and acknowledges that the Supplier's failure to comply with (i) and/or (ii) will result in Fujitsu rejecting the invoice.
- 8.4 All invoices must be submitted within three (3) months of delivery or performance of the Supplies or expenses being incurred. Unless previously agreed in writing by Fujitsu, invoices submitted more than three (3) months after the period to which they refer will be rejected and not considered for payment.
- 8.5 All invoices must be sent to: **Fujitsu Services Limited, Central Financial Services, Trafalgar House, Temple Court, Risley, Warrington, WA3 6GD.**
- 8.6 **Disputed Invoices.** Where all or part of an invoice is disputed:
 (a) the Supplier shall issue Fujitsu with a credit note as soon as reasonably practicable and reissue an invoice in respect of the undisputed amount, which will be paid in accordance with Clause 8.2; and
 (b) upon resolution of the dispute, the Supplier may issue an invoice in respect of the amount that has been resolved that Fujitsu should pay, which Fujitsu shall pay within twenty-eight (28) days of receipt of the new invoice or the date on which the payment would otherwise have fallen due under Clause 8.2, whichever is later.
- 9. Taxes and Export**
 9.1 The parties acknowledge that Supplies and other materials supplied under this Purchase Order may be subject to Export Control Laws. The Supplier shall, at its cost, comply with the Export Control Laws and obtain all licenses, consents and approvals as may be required from time to time under the Export Control Laws and those of any other country (including but not limited to the U.S. Export Administration Regulations) that may affect or regulate such export or import. In addition to the information set out in Clause 9.3 below, the Supplier shall, on Fujitsu's request, provide a copy of any such licenses, consents or approvals to Fujitsu.
- 9.2 The Supplier is responsible for all taxes and duties that are due in the country of origin of the Supplies.
- 9.3 The Supplier shall on the date of dispatch of any Products to Fujitsu or at Fujitsu's direction:
 (a) provide Fujitsu or Fujitsu's designated consignee with certificates of origin and invoices in duplicate in respect of the Products dispatched;
 (b) provide Fujitsu with the following information, in a format agreed between the parties: (i) Fujitsu's part number; (ii) Supplier's part number; (iii) Product description; (iv) the harmonised (HTS) or customs code; (v) the country of origin or manufacture; (vi) confirmation as to whether the Equipment is subject to UK export/import licensing; (vii) confirmation as to whether the Equipment is subject to US export/import licensing; and (viii) any export administration regulations number ("EAR"), export control classification number ("ECCN"), US International Traffic in Arms Regulations ("ITAR") or export control classification list or export list (EC428/2009) ("AL") (or equivalent) codes and provide Fujitsu with details of relevant EAR, ECCN, ITAR or AL codes for such Products;
 (c) provide Fujitsu with confirmation of Product conformity with international standards for Electrical Safety Testing, EMC Testing, telecommunications conformance and recognition by local telecommunications authorities (where relevant) including but not limited to confirmation that the Product: (i) is CE marked and a Declaration of Conformity is available; and (ii) conforms with all relevant national law requirements.
- 9.4 The Supplier shall, within five (5) days, satisfy any reasonable request by Fujitsu for assistance in connection with any requirement of any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Law.
- 9.5 The Supplier shall indemnify and hold harmless Fujitsu, its affiliates and its customers (collectively hereafter in this Clause, "**Fujitsu Indemnitees**") against any and all claims, liabilities, direct, indirect or consequential losses (including loss of profits, loss of business, depletion of goodwill and similar losses whether of a direct, indirect or consequential nature), costs and expenses (including legal fees) howsoever arising which Fujitsu Indemnitees may incur or suffer as a result of a claim by a third party 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.
- 10. Intellectual Property Rights and Indemnity**
 10.1 The Supplier shall indemnify and hold harmless Fujitsu, its affiliates and its customers (collectively hereafter in this Clause, "**Fujitsu Indemnitees**") against any and all claims, liabilities, direct, indirect or consequential losses (including loss of profits, loss of business, depletion of goodwill and similar losses whether of a direct, indirect or consequential nature), costs and expenses (including legal fees) howsoever arising which Fujitsu Indemnitees may incur or suffer as a result of a claim by a third party arising from any infringement, actual or alleged, whether or not under English law, of any Intellectual Property Rights resulting from the manufacture, possession, use, transfer, licensing, sale or other exploitation of the Supplies.
- 10.2 If the manufacture, possession, use, transfer, licensing, sale or other exploitation of the Supplies by Fujitsu Indemnitees 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 the manufacturing, possessing, using, transferring, licensing, sale or otherwise exploiting the Supplies, (ii) modify such Supplies so that it becomes non-infringing, while conforming to the applicable specifications, or (iii) replace such Supplies with a non-infringing substitute, which conforms to the applicable specifications. The rights of Fujitsu Indemnitees under Clause 10 shall not be time barred.
- 10.3 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 under this Purchase Order shall vest in, or is hereby transferred or assigned to, Fujitsu immediately on creation. To the extent, if any, that any such Intellectual Property Rights cannot be assigned under law, Supplier hereby grants to Fujitsu a perpetual, irrevocable, royalty-free, exclusive license under such Intellectual Property Rights to manufacture, use, sell, distribute or otherwise exploit such Intellectual Property Rights.
- 11. Dispute Resolution Procedure**
 11.1 Any question, difference or dispute which may arise out of or in connection with these Terms and Conditions shall in the first instance be referred to the representatives of Fujitsu and the Supplier nominated for discussion and resolution. If the matter is not resolved within twenty one (21) days of such referral, the escalation will continue through two (2) more levels of management. Neither party may initiate any legal action until the process has been completed, unless such party has reasonable cause to do so to avoid damage to its business or to protect or preserve any right of action it may have, including without limitation to seek injunctive relief in respect of any breach of its Intellectual Property Rights or similar rights.
- 12. Termination**
 12.1 Fujitsu reserves the right to cancel or terminate this Purchase Order for any reason and without cost or liability (save for any Supplies already delivered or performed) by giving the Supplier written notice at least thirty (30) days prior to the agreed time for delivery or performance.
 12.2 Upon cancellation or termination of this Purchase Order for whatever reason:
 (a) the Supplier shall reimburse any sums paid in advance by Fujitsu for Supplies ordered but not yet received as at the date of termination; and
 (b) the parties will return Confidential Information of the other party and the Supplier shall at its cost forthwith return any Fujitsu property and Fujitsu may enter any premises to recover such items at the Supplier's cost.
 12.3 The exercise of rights of termination by either party shall be without prejudice to any other rights or remedies available to it under these Terms and Conditions.
- 13. Confidentiality**
 13.1 The Receiving Party undertakes that it will take all necessary precautions to ensure that all Confidential Information is treated as confidential and that it (and any person employed or engaged by it in connection with the Supplies) uses Confidential Information of the Disclosing Party only for the purposes of these Terms and Conditions and shall not disclose any such Confidential Information to any third party without the prior written consent of the Disclosing Party or as set out herein.
 13.2 Each party undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of Clause 13.1 by its employees, agents, consultants and subcontractors.
 13.3 Neither the Supplier nor any person engaged by it whether as an employee, servant, agent or subcontractor shall use the Confidential Information for the solicitation of business from Fujitsu.
 13.4 The Supplier shall not advertise or publicly announce its involvement in this Purchase Order or Terms and Conditions without the prior written consent of Fujitsu.
- 14. Limitation of Liability and Insurance**
 14.1 Notwithstanding anything to the contrary in these Terms and Conditions, each party's liability to the other party for any loss, damage, costs, claims or expenses suffered by the other party under or in connection with these Terms and Conditions, whether arising from a breach of contract, negligence or howsoever, shall be limited as follows:
 (a) in the case of (i) breach of Clause 2.5 (Data Protection); (ii) breach of Clause 2.7 (Compliance with Laws and Corporate Social Responsibility); (iii) breach of Clause 10 (Intellectual Property Rights and Indemnity); (iv) breach of Clause 13 (Confidentiality); (v) liability arising from death or injury to persons as a result of any act or omission

- of the breaching party which is negligent (as defined by the Unfair Contract Terms Act 1977 section 1); (vi) unless otherwise stated in this Agreement, any indemnity; (vii) any fraud on the part of the breaching party or of the acts, omissions or frauds of others for whom the breaching party is at law responsible, there shall be no limit;
- (b) in respect of any other liability each party's aggregate liability shall in no circumstances exceed the Charges for the Supplies in respect of which the claim arises; provided always that each party's total aggregate liability for all such claims arising in connection with these Terms and Conditions whether in contract, tort (including negligence) or otherwise shall be limited to and in no circumstances exceed the greater of (i) three (3) times the Charges paid or payable under this Purchase Order; or (ii) £1,000,000.
- 14.2 Except for breach of Clause 2.7 (Compliance with Laws and Corporate Social Responsibility) or Clause 13 (Confidentiality) and subject to Clause 14.1(a), in no event will either party be liable to the other for (i) direct or indirect loss of profit; (ii) direct or indirect loss of revenue, business, anticipated savings, opportunity, goodwill or reputation; or (iii) any special, indirect or consequential damage arising out of or in connection with this Purchase Order.
- 14.3 Where the Supplier sends its employees to Fujitsu's and/or Fujitsu's customers' premises in connection with this Purchase Order then, notwithstanding any technical supervision exercised by Fujitsu or by any instructions issued by Fujitsu, such employees shall remain the Supplier's employees alone. It is an express condition of these Terms and Conditions that the Supplier effects and maintains in force for the benefit of the Supplier and Fujitsu employer's liability insurance in respect of such employees. Further the Supplier shall effect and maintain for the duration of these Terms and Conditions, such other insurance as is appropriate in the circumstances taking into account industry practice, the availability of insurance in the market place and the risks and liabilities which it is accepting under these Terms and Conditions.
- 14.4 The Supplier shall indemnify Fujitsu against all loss, costs, damages, expenses (including court costs and legal fees) which Fujitsu may incur or become liable arising from (i) defective Supplies, including but not limited to defective workmanship, design or services supplied or provided by the Supplier; (ii) any loss of or damage to property; (iii) death or personal injury to personnel; (iv) any claim by a third party; or (v) non-compliance with applicable laws, caused by or contributed by, or resulting from any act or omission of the Supplier or its employees, agents or subcontractors. All risk of loss or theft of or damage to any property of the Supplier or belonging to the Supplier's personnel while at Fujitsu's premises and/or Fujitsu's customers' premises for any reason whatsoever shall be and remain the sole risk and responsibility of the Supplier.
- 15. General**
 15.1 **Force Majeure.** Neither party will be liable for delay in or for failure to perform obligations if that delay or failure is caused by circumstances beyond the reasonable control of the party affected including, but not limited to any of the following: act of God, governmental act, war, strikes by employees of a third party, fire, flood, explosion or civil commotion (a "**Force Majeure Event**") provided that:
 (a) a claim for relief by the Supplier shall not be valid to the extent that a prudent supplier of supplies similar to the Supplies could have foreseen and/or prevented or avoided the Force Majeure Event;
 (b) the affected party's obligation to perform the relevant obligations under these Terms and Conditions shall (during the continuation of the Force Majeure Event) be read and construed as an obligation to perform such obligations to the best level reasonably achievable in the circumstances;
 (c) an inability to obtain subcontracted services or supplies shall not constitute a Force Majeure Event except where no substitute is available;
 (d) industrial action, strikes and lock-outs by employees of the Supplier shall not constitute a Force Majeure Event unless affecting the relevant industry on a national basis; and
 (e) if the Supplier is prevented from performing its obligations under an Purchase Order by a Force Majeure Event which continues for more than thirty (30) days, Fujitsu may at its option terminate any affected Purchase Order without liability to the Supplier forthwith by giving written notice.
- 15.2 **Assignment.** The Supplier may not assign, transfer or subcontract any of its rights or obligations under these Terms and Conditions in whole or in part without the prior written consent of Fujitsu and any purported assignment or transfer shall be null and void and all acts and omissions by the assignee or transferee are deemed to be those of the Supplier. Delegation, whether authorised or not, shall not relieve the Supplier of any of its liability or obligations under these Terms and Conditions and the Supplier shall be fully liable for any non-compliance of its subcontractors.
- 15.3 **Notices.** All notices hereunder shall be in writing addressed to the parties at their respective addresses set forth in the Purchase Order or such other address as may be notified from time to time by either party to the other.
- 15.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under these Terms and Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. No terms or 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.
- 15.5 **Variations.** Fujitsu may, by giving written notice to the Supplier at any time not later than five (5) business days prior to the Delivery Date stated in this Purchase Order, change the Delivery Date(s), quantities or types of Supplies ordered without incurring any additional costs or liability. Save for the foregoing, no variation of these Terms and Conditions or of any of the documents referred to in it shall be valid unless it is in writing and signed by duly authorised representatives of each party.
- 15.6 **Non-solicitation.** During the term of these Terms and Conditions and for a period of six (6) months after either its termination or the end of the provision of the Supplies (whichever is later), neither party shall solicit the employment or services of any personnel of the other party who has been engaged in connection with the Supplies. Nothing in this Clause 15.6 shall apply to any person engaged or employed as a result of a general recruitment initiative or public advertisement undertaken or placed by or on behalf of either party.
- 15.7 **Severance.** If any provision of these Terms and Conditions is found by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions, which shall remain in full force and effect.
- 15.8 **Survival.** Notwithstanding anything to the contrary in these Terms and Conditions, the expiration or termination of this Purchase Order shall not affect or prejudice any provisions of these Terms and Conditions which are expressly or by implication intended to continue in effect after such expiration or termination.
- 15.9 **Right to Audit.** The Supplier shall maintain, for a period of seven (7) years (or longer if required by law), records and supporting documentation of all financial and non-financial transactions under this Purchase Order and compliance with the obligations of Clauses 2.7 (Compliance with Laws and Corporate Social Responsibility) and 9 (Taxes and Export) herein sufficient to permit a complete audit in accordance with this Clause. The 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.
- 15.10 **Relationship of Parties.** Nothing in these Terms and Conditions shall create a partnership or a fiduciary relationship or the relationship of employment between Fujitsu and the Supplier. The Supplier shall not make any direct or indirect approach to Fujitsu's customer without Fujitsu's prior written consent.
- 15.11 **Cumulative Remedies.** The rights and remedies of the parties under these Terms and Conditions are cumulative and without prejudice and in addition to any rights or remedies at law or in equity.
- 15.12 **Rights of Third Parties.** A person who is not a party to these Terms and Conditions has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms and Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 15.13 **Entire Agreement.** The terms of these Terms and Conditions contain the entire agreement between the parties unless otherwise agreed in writing. These Terms and Conditions supersede all prior drafts, agreements, arrangements, understandings and discussions between the parties or their advisors and all statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings whenever given and whether orally or in writing. Each party acknowledges that in entering into this Purchase Order and these Terms and Conditions it does not rely on, and shall have no remedies in respect of, any such statements, representations, terms and conditions, warranties, guarantees, proposals, communications and understandings that are not set out in these Terms and Conditions. Nothing in this Clause shall limit or exclude any liability for fraud.
- 15.14 **Governing Law and Jurisdiction.** The construction, validity and performance of these Terms and Conditions and all non-contractual obligations arising from or connected with these Terms and Conditions shall be governed by the laws of England and, without prejudice to Clause 11 (Dispute Resolution Procedure), the parties submit to the exclusive jurisdiction of the English courts. Notwithstanding the other provisions of these Terms and Conditions, Fujitsu shall be entitled to bring an action in any jurisdiction where this relates to the protection of its Intellectual Property Rights or other rights, or those of its licensors. The conflict of law provisions and the "UN Convention on Contracts for International Sale of Goods" shall not apply.